
Constitution of Sheffield Children's NHS Foundation Trust

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Note: The Board of Directors' Standing Orders can now be found in a separate document known as Standing Orders, Reservation of Powers to the Board and Delegation of Powers & Standing Financial Instructions.

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.
- 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.

“2006 Act”	the National Health Service Act 2006;
“2012 Act”	the Health and Social Care Act 2012
“1977 Act”	the National Health Service Act 1977;
“Accounting Officer”	is the person who from time to time discharges the functions specified in NHS England’s NHS Foundation Trust Accounting Officer Memorandum;
“Appointed Governors”	those Governors appointed by the Partnership Organisations;
“Areas of the Trust”	the areas specified in Annex 1;
“Authorisation”	an authorisation given by the Independent Regulator;
“Board of Directors”	the Board of Directors as constituted in accordance with this constitution;
“Chair”	the chair of the Trust appointed in accordance with paragraph 25 of this Constitution;
“Constitution”	this constitution of the Trust;
“Council of Governors”	the Council of Governors as constituted in accordance with this Constitution, which has the same meaning as the board of governors in the 2006 Act;

"Deputy Chair"	the deputy Chair of the Trust appointed in accordance with paragraph 26 of this Constitution;
"Director"	a Member of the Board of Directors;
"Elected Governors"	those Governors elected by the Public Constituencies and the classes of the Staff Constituency;
"External Auditor"	the person appointed to audit the accounts of the Trust, who is called the auditor in the 2006 Act;
"Financial Year"	means each successive period of twelve (12) months beginning with 1 April;
"Independent Regulator" or "NHS England"	is the body corporate known as NHS England, as provided by Section 61 of the 2012 Act;
"Local Authority Governor"	a Governor appointed by one or more local authorities whose area includes the whole or part of one of the areas of the Trust;
"Member"	a member of the Trust;
"Membership"	Membership of the Trust through being a Member of one of the Public or Staff Constituencies;
"Partner"	in relation to another person, a Member of the same household living together as a family unit;
"Partnership Governor"	a Governor appointed by a Partnership Organisation;
"Partnership Organisation"	those organisations specified in Annex 4 as a partnership organisation;
"Public Constituency"	collectively those Members living in the areas of the Trust specified in Annex 1 as an area for public constituency;
"Public Governor"	a Governor elected by the Members of one of areas of the Public Constituency;
"Registered Dentist"	a registered dentist within the meaning of the Dentists Act 1984;
"Registered Medical Practitioner"	a fully registered person within the meaning of the Medicines Act 1983 who holds a licence to practice under that Act;
"Secretary"	the Secretary of the Trust or any other person appointed to perform the duties of the Secretary, including a joint, assistant or deputy secretary;
"Staff Constituency"	collectively those Members of the four classes comprising the staff constituency;
"Staff Governor"	a Governor elected by the Members of one of the classes of the Staff Constituency;

“Terms of Authorisation” are the terms of authorisation issued by NHS England under Section 35 of the 2006 Act;

“Trust” Sheffield Children’s NHS Foundation Trust;

2. **NAME**

The name of the Trust is Sheffield Children's 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 to better carry on its principal purpose.

4. **POWERS**

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

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

4.3 Any of these powers may be delegated to a committee of Directors, a joint committee 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 a Staff 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.

6.2 Applications for Membership shall be dealt with by the Trust in accordance with the provisions of Annex 8.

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 the Public Constituency are referred to collectively as the Public Constituency.
- 7.3 The minimum number of Members in each area for the Public Constituency is specified in Annex 1.
- 7.4 Further provisions relating to Membership of the Public Constituency are set out in Annex 8.

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 twelve (12) months; or
 - 8.1.2 he has been continuously employed by the Trust under a contract of employment for at least twelve (12) months.
- 8.2 Those individuals who are eligible for Membership of the Trust by reason of the previous provisions are referred to collectively as the Staff Constituency.
- 8.3 The Staff Constituency shall be divided into four (4) descriptions of individuals who are eligible for Membership of the Staff Constituency, each description of individuals being specified within Annex 2 and being referred to as a class within the Staff Constituency.
- 8.4 The minimum number of Members in each class of the Staff Constituency is specified in Annex 2.
- 8.5 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, or who provides services to the Trust (for no remuneration) does not come within the category of those who qualify for Membership of the Staff Constituency.

Automatic Membership by default – staff

- 8.6 An individual who is:
 - 8.6.1 eligible to become a Member of the Staff Constituency; and
 - 8.6.2 invited by the Trust to become a Member of the Staff Constituency and a Member of the appropriate class within the Staff Constituency,shall become a Member of the Trust as a Member of the Staff Constituency and appropriate class within the Staff Constituency without an application being made, unless he informs the Trust that he does not wish to do so.
- 8.7 The process by which an individual will be eligible to become a Member of the Staff Constituency shall be in accordance with the conditions of Annex 8.

9. PATIENTS' AND CARERS' CONSTITUENCY

[Not used]

10. RESTRICTION ON MEMBERSHIP

- 10.1 An individual who is a Member of a constituency, or of a class or area within a constituency, may not while Membership of that constituency or class or area continues, be a Member of any other.
- 10.2 An individual who satisfies the criteria for Membership of the Staff Constituency may not become or continue as a Member of any constituency other than the Staff Constituency.
- 10.3 An individual must be at least fourteen (14) years old to become a Member of the Trust.
- 10.4 For the avoidance of doubt, Non-executive Directors of the Trust shall not be entitled to become a Member of the Staff Constituency.
- 10.5 The Secretary shall make a final decision about the Constituency or class of which an individual is eligible to be a Member.
- 10.6 Further provisions as to the circumstances in which an individual may not become or continue as a Member of the Trust are set out in Annex 8.

11. ANNUAL MEMBERS MEETING

- 11.1 The Trust shall hold an annual meeting of its members (Annual Members' Meeting). The Annual Members' Meeting shall be open to members of the public.

12. COUNCIL OF GOVERNORS – COMPOSITION

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

13. COUNCIL OF GOVERNORS – ELECTION OF GOVERNORS

- 13.1 Elections for elected Members of the Council of Governors shall be conducted in accordance with the Model Election Rules.
- 13.2 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 approval of this Constitution are attached at Annex 5.
- 13.3 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 42 of the Constitution (Amendment of the Constitution).
- 13.4 An election, if contested, shall be by secret ballot.

14. COUNCIL OF GOVERNORS - TENURE

- 14.1 An Elected Governor may hold office for a period of up to three (3) years. Unless there is an immediate vacancy on the Council of Governors, in which case the elected Governor will take up office immediately, the period of three (3) years shall

commence from the date of the next Council of Governors meeting following the elections held for the Members of the Council of Governors.

- 14.2 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.
- 14.3 An Elected Governor shall be eligible for re-election at the end of his term, but shall not hold office for longer than nine (9) consecutive years and shall not be eligible for re-election if they have already held office for more than six (6) consecutive years.
- 14.4 An Appointed Governor may hold office for a period of up to three (3) years.
- 14.5 An Appointed Governor shall cease to hold office if the Partnership Organisation withdraws its sponsorship of him.
- 14.6 An Appointed Governor shall be eligible for re-appointment at the end of his term, but may not hold office for longer than nine (9) consecutive years and shall not be eligible for re-appointment if they have already held office for more than six (6) consecutive years.
- 14.7 For the purposes of these provisions relating to the term of office for a newly elected Governor replacing a Governor retiring at the end of their term, a "year" means a period commencing immediately after conclusion of the next meeting of the Council of Governors following the Election for the Members of the Council of Governors and ending at the conclusion of the next meeting of the Council of Governors following Elections for Members of the Council of Governors in the subsequent year.
- 14.8 Further provisions relating to a Governor's tenure of office are set out at Annex 6.

15. **COUNCIL OF GOVERNORS – DISQUALIFICATION AND REMOVAL**

- 15.1 The following may not become or continue as a Member of the Council of Governors:
 - 15.1.1 a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;
 - 15.1.2 a person who has made a composition or arrangement with, or granted a Trust deed for, his creditors and has not been discharged in respect of it; and
 - 15.1.3 a person who within the preceding five (5) 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 (3) months (without the option of a fine) was imposed on him.
- 15.2 Governors must be at least sixteen (16) years of age at the date they are nominated for election or appointment.
- 15.3 Further provisions as to the circumstances in which an individual may not become or continue as a Member of the Council of Governors are set out in Annex 6.
- 15.4 Paragraph 2 and Paragraph 3 of Annex 6 of the Constitution set out further provisions for the removal of Governors.

16. **COUNCIL OF GOVERNORS – DUTIES OF GOVERNORS**

- 16.1 The general duties of the Council of Governors are –
 - 16.1.1 to hold the non-executive directors individually and collectively to account for the performance of the Board of Directors, and

16.1.2 to represent the interests of the members of the Trust as a whole and the interests of the public.

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

17. COUNCIL OF GOVERNORS – MEETINGS OF GOVERNORS

17.1 The Chair of the Trust (i.e. the Chair of the Board of Directors, appointed in accordance with the provisions of paragraph 25.1 below) or, in his absence, the Deputy Chair (appointed in accordance with the provisions of paragraph 26 below), or in their absence, one of the Non-executive Directors shall preside at meetings of the Council of Governors.

17.2 Meetings of the Council of Governors shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons.

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

18. COUNCIL OF GOVERNORS – STANDING ORDERS

The Standing Orders for the Practice and Procedure of the Council of Governors are attached at Annex 7.

19. COUNCIL OF GOVERNORS - CONFLICTS OF INTEREST OF GOVERNORS

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

19.2 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.

20. 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.

21. COUNCIL OF GOVERNORS – FURTHER PROVISIONS

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

22. BOARD OF DIRECTORS – COMPOSITION

22.1 The Trust is to have a Board of Directors, which shall comprise both Executive and Non-executive Directors.

22.2 The Board of Directors is to comprise:

22.2.1 a Non-Executive Chair (who shall have a casting vote);

22.2.2 other Non-executive Directors (ie not including the Chair); and

- 22.2.3 Executive Directors (but not exceeding the combined number of Non-executive Directors and the Non-Executive Chair).
- 22.3 One of the Executive Directors shall be the Chief Executive.
- 22.4 The Chief Executive shall be the Accounting Officer.
- 22.5 One of the Executive Directors shall be the Finance Director.
- 22.6 One of the Executive Directors is to be a registered medical practitioner or a Registered Dentist.
- 22.7 One of the Executive Directors is to be a registered nurse or a registered midwife.
- 22.8 For the avoidance of doubt, the Deputy Chair shall have the casting vote in the event that the Chair is not participating at the meeting where voting takes place.
- 23. 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.
- 24. BOARD OF DIRECTORS – QUALIFICATION FOR APPOINTMENT AS A NON-EXECUTIVE DIRECTOR**
- A person may be appointed as a Non-executive Director only if:
- 24.1 he is a Member of the Public Constituency;
- 24.2 he is not disqualified by virtue of paragraph 27 below.
- 25. BOARD OF DIRECTORS – APPOINTMENT AND REMOVAL OF CHAIR AND OTHER NON-EXECUTIVE DIRECTORS**
- 25.1 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.
- 25.2 Removal of the Chair or another Non-executive Director shall require the approval of three-quarters of the Members of the Council of Governors.
- 26. BOARD OF DIRECTORS – APPOINTMENT OF DEPUTY CHAIR**
- The Board of Directors shall appoint one of the Non-executive Directors as a Deputy Chair.
- 27. BOARD OF DIRECTORS - APPOINTMENT AND REMOVAL OF THE CHIEF EXECUTIVE AND OTHER EXECUTIVE DIRECTORS**
- 27.1 The Non-executive Directors shall appoint or remove the Chief Executive.
- 27.2 The appointment of the Chief Executive shall require the approval of the Council of Governors.
- 27.3 A committee consisting of the Chair, the Chief Executive and the other Non-executive Directors shall appoint or remove the other executive directors.
- 28. BOARD OF DIRECTORS – DISQUALIFICATION**
- The following may not become or continue as a Member of the Board of Directors:
- 28.1 a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;

- 28.2 a person who has made a composition or arrangement with, or granted a Trust deed for, his creditors and has not been discharged in respect of it;
- 28.3 a person who within the preceding five (5) 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 (3) months (without the option of a fine) was imposed on him; or
- 28.4 a person who falls within further grounds for disqualification.
- 28.5 a person who does not satisfy all of the 'fit and proper person' requirements set out in regulation 5(3) of The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014;

29. BOARD OF DIRECTORS – MEETINGS

- 29.1 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.
- 29.2 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.

30. BOARD OF DIRECTORS – STANDING ORDERS

The standing orders for the practice and procedure of the Board of Directors can be found in a separate document.

31. BOARD OF DIRECTORS - CONFLICTS OF INTEREST OF DIRECTORS

- 31.1 The duties that a director of the trust has by virtue of being a director include in particular –
- 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.
 - A duty not to accept a benefit from a third party by reason of being a director or doing (or not doing) anything in that capacity.
- 31.2 The duty referred to in sub-paragraph 31.1 (point 1) is not infringed if –
- The situation cannot reasonably be regarded as likely to give rise to a conflict of interest, or
 - The matter has been authorised in accordance with the constitution.
- 31.3 The duty referred to in sub-paragraph 31.1 (point 2) is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- 31.4 In sub-paragraph 31.1, “third party” means a person other than –
- The trust, or
 - A person acting on its behalf.
- 31.5 If a director of the trust has in any way a direct or indirect interest in a proposed transaction or arrangement with the trust, the director must declare the nature and extent of that interest to the other directors.

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

32. BOARD OF DIRECTORS – REMUNERATION AND TERMS OF OFFICE

- 32.1 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.
- 32.2 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.

33. REGISTERS

The Trust shall have:

- 33.1 a register of Members showing, in respect of each Member, the constituency to which he belongs and, where there are classes or areas within it, the class or area to which he belongs;
- 33.2 a register of Members of the Council of Governors;
- 33.3 a register of interests of Governors;
- 33.4 a register of Directors; and
- 33.5 a register of interests of the Directors.

34. REGISTERS – INSPECTION AND COPIES

- 34.1 The Trust shall make the registers specified in paragraph 31 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by the Public Benefit Corporation (Register of Members) Regulations 2004.
- 34.2 The Trust shall not make any part of its registers available for inspection by Members of the public which shows details of and other member of the Trust, if he so requests.
- 34.3 So far as the registers are required to be made available:

- 34.3.1 they are to be available for inspection free of charge at all reasonable times; and
- 34.3.2 a person who requests a copy of or extract from the registers is to be provided with a copy or extract.
- 34.4 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.

35. DOCUMENTS AVAILABLE FOR PUBLIC INSPECTION

- 35.1 The Trust shall make the following documents available for inspection by Members of the public free of charge at all reasonable times:
 - 35.1.1 a copy of the current Constitution;
 - 35.1.2 a copy of the latest annual accounts and of any report of the External Auditor on them;
 - 35.1.3 a copy of the latest annual report;
- 35.2 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:
 - 35.2.1 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.
 - 35.2.2 a copy of any report laid under section 65D (appointment of trust special administrator) of the 2006 Act.
 - 35.2.3 a copy of any information published under section 65D (appointment of trust special administrator) of the 2006 Act.
 - 35.2.4 a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act.
 - 35.2.5 a copy of any statement provided under section 65F(administrator's draft report) of the 2006 Act.
 - 35.2.6 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.
 - 35.2.7 a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act.
 - 35.2.8 a copy of any final report published under section 65I (administrator's final report),
 - 35.2.9 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.
 - 35.2.10 a copy of any information published under section 65M (replacement of trust special administrator) of the 2006 Act.

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

35.4 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.

36. AUDITOR

36.1 The Trust shall have an External Auditor.

36.2 The Council of Governors shall appoint or remove the External Auditor at a general meeting of the Council of Governors.

37. 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.

38. ACCOUNTS

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

38.2 NHS England may with the approval of the Secretary of State give directions to the Trust as to the content and form of its accounts.

38.3 The accounts are to be audited by the External Auditor.

38.4 The Trust shall prepare in respect of each Financial Year annual accounts in such form as NHS England may, with the approval of the Secretary of State direct.

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

39. ANNUAL REPORT AND FORWARD PLANS AND NON-NHS WORK

39.1 The Trust shall prepare an Annual Report and send it to NHS England.

39.2 The Trust shall give information as to its forward planning in respect of each Financial Year to NHS England, which shall be prepared by the Directors. In preparing the document, the Directors shall have regard to the views of the Council of Governors.

39.3 Each forward plan must include information about:

39.3.1 the activities other than the provision of goods and services for the purposes of the health service in England that the Trust proposes to carry on, and

39.3.2 the income it expects to receive from doing so.

39.4 Where a forward plan contains a proposal that the Trust carry on an activity of a kind mentioned in sub-paragraph 39.3.1 the Council of Governors must:

39.4.1 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

39.4.2 Notify the Directors of the Trust and its determination.

39.5 A trust which proposes to increase by 5% or more the proportion of its total income in any financial year attributable to activities other than the provision of goods and

services for the purposes of health service in England may implement the proposal only if more than half of the members of the Council of Governors of the Trust voting approve its implementation.

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

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

- 40.1 the annual accounts;
- 40.2 any report of the External Auditor on them; and
- 40.3 the annual report.
- 40.4 The documents shall also be presented to the members of the Trust at the Annual Members Meeting by at least one member of the Board of Directors in attendance.
- 40.5 The Trust may combine a meeting of the Council of Governors convened for the purposes of paragraph 38 with the Annual Members' Meeting.

41. INSTRUMENTS

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

42. AMENDMENT OF THE CONSTITUTION

- 42.1 The trust may make amendments of its constitution only if:
 - 42.1.1 More than half of the members of the Council of Governors voting approve the amendments; and
 - 42.1.2 More than half of the members of the Board of Directors voting approve the amendments.
- 42.2 The Constitution shall be formally reviewed by the Council of Governors and Board of Directors every 3 years.
- 42.3 Amendments made under paragraph 42.1 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.
- 42.4 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):
 - 42.4.1 At least one member of the Council of Governors must attend the next Annual Members' Meeting and present the amendment, and
 - 42.4.2 The Trust must give the members an opportunity to vote on whether they approve the amendment.
- 42.5 If more than half of the members present and voting approve the amendment, the amendment continues to have effect; otherwise, it ceases to have effect and the trust must take such steps as are necessary as a result.

42.6 Amendments by the trust of its constitution are to be notified to NHS England. For the avoidance of doubt, NHS England'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.

43. MERGERS ETC. AND SIGNIFICANT TRANSACTIONS

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

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

43.3 For the purpose of paragraph 43.2, "significant transaction" means a transaction which meets any one of the following criteria:

43.3.1 Where the gross assets subject to the transaction are greater than or equal to 25% of the gross assets of the Trust.

43.3.2 Where the income attributable to the assets or the contract associated with the transaction is greater than or equal to 25% of the income of the Trust.

43.3.3 Where the gross capital of the company or business being acquired or divested, or the effects on the total capital of the Trust resulting from a transaction, is greater than or equal to 25% of the total capital of the Trust following completion of the transaction,

ANNEX 1

The Public Constituency

1	2	3	4	5
Area of the Trust	Local Authority area	Wards	Minimum Member Numbers	Number of Governors to be Elected
Sheffield	Sheffield	All Wards	4	12
Rest of South Yorkshire	Barnsley Doncaster Rotherham	All Wards	4	3
North Derbyshire	Bolsover Chesterfield North East Derbyshire	All Wards	4	1
Rest of England and Wales	All those areas which are not set out above.	All Wards	4	2

ANNEX 2

The Staff Constituency

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.	4	1
Nursing and Midwifery Staff Class	Those individuals defined in paragraph 2 below.	4	2
Other Clinical Healthcare	Those individuals defined in paragraph 3 below.	4	2
Non-Clinical Healthcare	Those individuals defined in paragraph 4 below.	4	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 1983 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 date of their invitation or application under paragraph 8.1 of the Constitution to become a Member in accordance with the provisions of Annex 8 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 8 of the Constitution to become a Member in

accordance with the provisions of Annex 8 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 and 2 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 8 of the Constitution to become a Member in accordance with the provision of Annex 8 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, 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.

4.2 Who are employed or designated by the Trust at the date of their invitation or application under paragraph 8 of the Constitution to become a Member in accordance with the provisions of Annex 8 and at all times thereafter remain employed by the Trust in that capacity.

5. Minimum Numbers of Members and Numbers of Governors

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.

6. Continuous Employment

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.

7. Exercise of Functions

For the purposes of paragraph 8.1 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 (12) months.

ANNEX 3

Not used.

ANNEX 4

Composition of Council of Governors

1. Introduction

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

2. Partnership Organisations

- 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 Sheffield City Council shall be entitled to appoint at least one 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.

Universities

- 2.3 The University of Sheffield and Sheffield Hallam University 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.
- 2.4 Governors appointed under paragraph 2.4 shall serve on the Council of Governors for the period stipulated in Annex 6.

Other Partnership Organisations

- 2.5 The following organisations have also been nominated by the Trust as nominated Partnership Organisations:
 - 2.5.1 The Children's Hospital Charity, who shall be entitled to appoint one (1) Governor.
 - 2.5.2 Sheffield Futures, who shall be entitled to appoint one (1) Governor.
 - 2.5.3 Yorkshire Ambulance Service, who shall be entitled to appoint one (1) Governor.

2.6 Each of the above organisations shall be entitled to appoint Governors in accordance with a process of appointment agreed by it with the Trust. The absence of any such agreed process of appointment shall not preclude that Partnership Organisation from appointing its Governor provided the appointment is duly made in accordance with its own internal processes

3. Composition of the Council of Governors

Table 1

	Electing/Appointing Body	Number of Governors	Total
1.	Public Constituencies		
	1.1 Sheffield	12	
	1.2 Rest of South Yorkshire	3	
	1.3 North Derbyshire	1	
	1.4 Rest of England and Wales	2	18
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	2	
	2.4 Non-Clinical Healthcare Staff Class	2	7
3.	Appointed Governors		
	4.1 The Children's Hospital Charity	1	
	4.2 Sheffield City Council	1	
	4.3 University of Sheffield	1	
	4.4 Sheffield Hallam University	1	
	4.6 Sheffield Futures	1	
	4.7 Yorkshire Ambulance Service	1	6
	Total Number of Governors		31

4. Further Provisions

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

Annex 5: Model Election Rules

MODEL ELECTION RULES 2014

Part 1 Interpretation

1. Interpretation

Part 2 Timetable

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

8. Notice of election
9. Nomination of candidates
10. Candidate's 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

Action to be taken before the poll

21. List of eligible voters
22. Notice of poll
23. Issue of voting information by returning officer
24. The covering envelope
25. E-voting systems

The poll

26. Eligibility to vote
27. Voting by persons who require assistance
28. Spoilt ballot papers
29. Lost voting information
30. Issue of replacement voting information
31. Procedure for remote voting by internet
32. Procedure for remote voting by telephone

33. Procedure for remote voting by text message

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

34. Receipt of voting documents

35. Validity of votes

36. De-duplication of votes

37. Sealing of packets

Part 6 Counting the votes

STV38. Interpretation of Part 6

39. Arrangements for counting of the votes

40. The count

STV41. Rejected ballot papers

FPP41. Rejected ballot papers

STV42. First stage

STV43. The quota

STV44. Transfer of votes

STV45. Supplementary provisions on transfer

STV46. Exclusion of candidates

STV47. Filling of last vacancies

STV48. Order of election of candidates

FPP48. Equality of votes

Part 7 Final proceedings in contested and uncontested elections

FPP49. Declaration of result for contested elections

STV49. Declaration of result for contested elections

50. Declaration of result for uncontested elections

Part 8 Disposal of documents

51. Sealing up of documents relating to the poll

52. Delivery of documents

53. Forwarding of documents received after close of the poll

54. Retention and public inspection of documents

55. Application for inspection of certain documents relating to election

Part 9 Death of a candidate during a contested election

FPP56. Countermand or abandonment of poll on death of candidate

STV56. Countermand or abandonment of poll on death of candidate

Part 10 Expenses and publicity

57. Election expenses

58. Expenses and payments by candidates

59. Expenses incurred by other persons

Publicity

60. Publicity about election by the corporation

61. Information about candidates for inclusion with voting information

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

Part 11 Questioning elections and irregularities

63. Application to question an election

Part 12 Miscellaneous

64. Secrecy

65. Prohibition of disclosure of vote

66. Disqualification

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

Part 1 Interpretation

1. Interpretation

1.1 In these rules, unless the context otherwise requires:

- “corporation” means the public benefit corporation subject to this constitution
- “election” means an election by a constituency, or by a class within a constituency, to fill 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
- “e-voting” means voting using either the internet, telephone or text message
- “internet voting system” means such computer hardware and software, data other equipment and services as may be provided by the returning officer for the purpose of enabling voters to cast their votes using the internet
- “method of polling” means voting either by post, internet, text message or telephone
- “the telephone voting system” means such telephone voting facility as may be provided by the returning officer for the purpose of enabling voters to cast their votes by telephone
- “the text message voting system” means such text messaging voting facility as may be provided by the returning officer for the purpose of enabling voters to cast their votes by text message
- “voter ID number” means a unique, randomly generated numeric identifier allocated to each voter by the Returning Officer for the purpose of e-voting

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

Part 2 Timetable

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

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

Computation of time

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

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

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

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

Part 3 Returning Officer

- 4.1 Subject to rule 66, the returning officer for an election is to be appointed by the corporation.
- 4.2 Where two or more elections are to be held concurrently, the same returning officer may be appointed for all those elections.

5. STAFF

- 5.1 Subject to rule 66, the returning officer may appoint and pay such staff, including such technical advisers, as he or she considers necessary for the purposes of the election.

6. Expenditure

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

7. Duty of co-operation

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

Part 4 Stages

8. Notice of election

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

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

9. Nomination of candidates

- 9.1 Each candidate must nominate themselves on a single nomination paper.

9.2 The returning officer:

- (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 and it can, subject to rule 13, be in an electronic format.

10. Candidate's particulars

The nomination paper must state the candidate's:

- (a) full name,
- (b) contact address in full, and
- (c) constituency, or class within a constituency, of which the candidate is a member.

11. Declaration of interests

The nomination paper must state:

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

12. Declaration of eligibility

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

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

13. Signature of candidate

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

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

14. Decisions as to the validity of nomination

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

- (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.

- 14.2 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.
- 14.3 The returning officer is to examine each nomination paper as soon as is practicable after he or she has received it, and decide whether the candidate has been validly nominated.
- 14.4 Where the returning officer decides that a nomination is invalid, the returning officer must endorse this on the nomination paper, stating the reasons for their decision.
- 14.5 The returning officer is to send notice of the decision as to whether a nomination is valid or invalid to the candidate at the contact address given in the candidate's nomination paper.

15 Publication of statement of candidates

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

16. INSPECTION OF STATEMENT OF NOMINATED CANDIDATES AND NOMINATION PAPERS

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

17. WITHDRAWAL OF CANDIDATES

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

18. METHOD OF ELECTION

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

Part 5 Contested elections

19. POLL TO BE TAKEN BY BALLOT

- 19.1 The votes at the poll must be given by secret ballot.
- 19.2 The votes are to be counted and the result of the poll determined in accordance with Part 6 of these rules.
- 19.3 The corporation may decide if eligible voters, within a constituency, or class within a constituency, may, subject to rule 19.4, cast their vote by any combination of the methods of polling.
- 19.4 The corporation may decide if eligible voters, within a constituency or class within a constituency, for whom an e-mail mailing address is included in the list of eligible voters may only cast their votes by, one or more, e-voting methods of polling.
- 19.5 If the corporation decides to use an e-voting method of polling then they and the returning officer must satisfy themselves that:

(a) if internet voting is being used, the internet voting system to be used for the purpose of the election is configured in accordance with these rules and that it will accurately record the internet voting record of any voter who chooses to cast their vote using the internet voting system.
(b) if telephone voting is being used, the telephone voting system to be used for the purpose of the election is configured in accordance with these rules and that it will accurately record the telephone voting record of any voter who choose to cast their vote using the telephone voting system.
(c) if text message voting is being used, the text message voting system to be used for the purpose of the election is configured in accordance with these rules and that it will accurately record the text voting record of any voter who choose to cast their vote using the text message voting system.

20. THE BALLOT PAPER

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

- (a) the name of the corporation,
- (b) the constituency, or class within a constituency, for which the election is being held,
- (c) the number of members of the council of governors to be elected from that constituency, or class within that constituency,
- (d) the names and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
- (e) instructions on how to vote by all available methods of polling, including the relevant voters and voter ID number if e-voting is a method of polling,
- (f) if the ballot paper is to be returned by post, the address for its return and the date and time of the close of the poll, and
- (g) the contact details of the returning officer.

20.3 Each ballot paper must have a unique identifier.

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

Action to be taken before the poll

21. LIST OF ELIGIBLE VOTERS

21.1 The corporation is to provide the returning officer with a list of the members of the constituency or class within a constituency for which the election is being held who are eligible to vote by virtue of rule 26 as soon as is reasonably practicable after the final date for the delivery of notices of withdrawals by candidates from an election.

21.2 The list is to include, for each member, a postal mailing address and if available an e-mail address, where their voting information may be sent.

21.3 The corporation may decide if the voting information is to be sent only by e-mail to those members, in a particular constituency or class within a constituency, for whom an e-mail address is included in the list of eligible voters.

22. NOTICE OF POLL

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

- (a) the name of the corporation,
- (b) the constituency, or class within a constituency, for which the election is being held,
- (c) the number of members of the council of governors to be elected from that constituency, or class with that constituency,
- (d) the names, contact addresses, and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
- (e) the methods of polling by which votes may be cast at the election by a constituency or class within a constituency as determined by the corporation in rule 19 (3).
- (f) the address for return of the ballot papers, and the date and time of the close of the poll,
- (g) the uniform resource locator (url) where, if internet voting is being used, the polling website is located.
- (h) the telephone number where, if telephone voting is being used, the telephone voting facility is located,
- (i) the telephone number or telephone short code where, if text message voting is being used, the text message voting facility is located,
- (j) the address and final dates for applications for replacement voting information, and
- (k) the contact details of the returning officer.

23. ISSUE OF VOTING INFORMATION BY RETURNING OFFICER

23.1 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 voting information:

(a) by post to each member of the corporation named in the list of eligible voters and on the basis of rule 21 able to cast their vote by post:

(i) a ballot paper

(ii) information about each candidate standing for election, pursuant to rule 61 of these rules,

(iii) a covering envelope

(b) by e-mail or by post, to each member of the corporation named in the list of eligible voters and on the basis of rule 19.4 able to cast their vote only by an e-voting method of polling:

(i) instructions on how to vote

(ii) the eligible voters voter ID number

(iii) information about each candidate standing for election, pursuant to rule 61 of these rules, or details of where this information is readily available on the internet or available in such other formats as the Returning Officer thinks appropriate.

(iv) contact details of the returning officer.

23.2 The documents are to be sent to the mailing address or e-mail address for each member, as specified in the list of eligible voters.

24. THE COVERING ENVELOPE

24.1 The covering envelope is to have:

(a) the address for return of the ballot paper printed on it, and

(b) pre-paid postage for return to that address.

25. E-VOTING SYSTEMS

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

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

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

25.4 The provision of the polling website and internet voting system, will:

(a) require a voter, to be permitted to vote, to enter his voter ID number;

(b) specify:

(i) the name of the corporation,

(ii) the constituency, or class within a constituency, for which the election is being held

(iii) the number of members of the council of governors to be elected from that constituency, or class within that constituency,

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

(v) instructions on how to vote.

(c) prevent a voter voting for more candidates than he is entitled to at the election;

(d) create a record ("the internet voting record") that is stored in the internet voting system in respect of each vote cast using the internet of-

- (i) the voter ID number used by the voter;
- (ii) the candidate or candidates for whom he has voted; and
- (iii) the date and time of his vote, and

(e) if their vote has been cast and recorded, provide the voter with confirmation

(f) prevent any voter voting after the close of poll.

25.5 The provision of a telephone voting facility and telephone voting system, will:

(a) require a voter to be permitted to vote, to enter his voter ID number;

(b) specify:

- (i) the name of the corporation,
- (ii) the constituency, or class within a constituency, for which the election is being held
- (iii) the number of members of the council of governors to be elected from that constituency, or class within that constituency,
- (iv) instructions on how to vote.

(c) prevent a voter voting for more candidates than he is entitled to at the election;

(d) create a record ("the telephone voting record") that is stored in the telephone voting system in respect of each vote cast by telephone of-

- (i) the voter ID number used by the voter;
- (ii) the candidate or candidates for whom he has voted; and
- (iii) the date and time of his vote

(e) if their vote has been cast and recorded, provide the voter with confirmation;

(f) prevent any voter voting after the close of poll.

25.6 The provision of a text message voting facility and text messaging voting system, will:

(a) require a voter to be permitted to vote, to provide his voter ID number;

(b) prevent a voter voting for more candidates than he is entitled to at the election;

(d) create a record ("the text voting record") that is stored in the text messaging voting system in respect of each vote cast by text message of:

- (i) the voter ID number used by the voter;
- (ii) the candidate or candidates for whom he has voted; and
- (iii) the date and time of his vote

(e) if their vote has been cast and recorded, provide the voter with confirmation;

(f) prevent any voter voting after the close of poll.

The poll

26. ELIGIBILITY TO VOTE

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

27. VOTING BY PERSONS WHO REQUIRE ASSISTANCE

27.1 The returning officer is to put in place arrangements to enable requests for assistance to vote to be made.

27.2 Where the returning officer receives a request from a voter who requires assistance to vote, the returning officer is to make such arrangements as they consider necessary to enable that voter to vote.

28. SPOILT BALLOT PAPERS

28.1 If a voter has dealt with their ballot paper in such a manner that it cannot be accepted as a ballot paper (referred to as a “spoilt ballot paper”), that voter may apply to the returning officer for a replacement ballot paper.

28.2 On receiving an application, the returning officer is to obtain the details of the unique identifier on the spoilt ballot paper, if they can obtain it.

28.3 The returning officer may not issue a replacement ballot paper for a spoilt ballot paper unless satisfied as to the voter’s identity.

28.4 After issuing a replacement ballot paper for a spoilt ballot paper, the returning officer shall enter in a list (“the list of spoilt ballot papers”):

- (a) is satisfied as to the voter’s identity, 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 spoilt ballot paper.

29. LOST VOTING INFORMATION

29.1 Where a voter has not received their voting information by the tenth day before the close of the poll, that voter may apply to the returning officer for replacement voting information.

29.2 The returning officer may not issue replacement voting information for lost voting information unless they:

- (a) are satisfied as to the voter’s identity,
- (b) have no reason to doubt that the voter did not receive the original voting information.

29.3 After issuing replacement voting information, the returning officer shall enter in a list (“the list of lost ballots”):

- (a) the name of the voter
- (b) the details of the unique identifier of the replacement ballot paper, and
- (c) if applicable, the voter ID number of the voter.

30. ISSUE OF REPLACEMENT VOTING INFORMATION

30.1 If a person applies for replacement voting information under rule 28 or 29, the returning officer may not issue replacement voting information unless, in addition to the requirements imposed by rule 28.3 or 29.2, they are also satisfied that that person has not already voted in the election.

Polling by internet, telephone or text

31. PROCEDURE FOR REMOTE VOTING BY INTERNET

31.1 To cast their vote using the internet the voter must gain access to the polling website by keying in the url of the polling website provided in the voting information,

31.2 When prompted to do so, the voter must enter their voter ID number.

- 31.3 If the internet voting system authenticates the voter ID number the system must give the voter access to the polling website for the election in which the voter is eligible to vote.
- 31.4 To cast their vote the voter may then key in a mark on the screen opposite the particulars of the candidate or candidates for whom they wish to cast their vote.
- 31.5 The voter must not be able to access the internet voting facility for an election once their vote at that election has been cast.

32. VOTING PROCEDURE FOR REMOTE VOTING BY TELEPHONE

- 32.1 To cast their vote by telephone the voter must gain access to the telephone voting facility by calling the designated telephone number provided on the voter information using a telephone with a touch-tone keypad.
- 32.2 When prompted to do so, the voter must enter their voter ID number using the keypad.
- 32.3 If the telephone voting facility authenticates the voter ID number, the voter must be prompted to vote in the election.
- 32.4 When prompted to do so the voter may then cast his vote by keying in the code of the candidate or candidates, allocated in accordance with rule 61 of these rules, for whom they wish to vote.
- 32.5 The voter must not be able to access the telephone voting facility for an election once their vote at that election has been cast.

33. VOTING PROCEDURE FOR REMOTE VOTING BY TEXT MESSAGE

- 33.1 To cast their vote by text the voter must gain access to the text message voting facility by sending a text message to the designated telephone number or telephone short code provided on the voter information.
- 33.2 The text message sent by the voter must contain their voter ID number and the code for the candidate or candidates, allocated in accordance with rule 61 of these rules, for whom they wish to vote.
- 33.3 The text message sent by the voter must be structured in accordance with the instructions on how to vote contained in the voter information.

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

34. RECEIPT OF VOTING DOCUMENTS

- 34.1 Where the returning officer receives a:
- (a) covering envelope, or
 - (b) any other envelope containing a ballot paper,
- before the close of the poll, that officer is to open it as soon as is practicable; and rules 35 and 36 are to apply.

34.2 The returning officer may open any covering envelope for the purposes of rules 35 and 36, 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.

34.3 The returning officer must make arrangements to ensure the safety and security of the ballot papers.

35. VALIDITY OF VOTES

35.1 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.

35.2 Where the returning officer is satisfied that rule 35.1 has been fulfilled, the ballot paper is to be put aside for counting after the close of the poll.

35.3 Where the returning officer is not satisfied that rule 35.1 has been fulfilled, they should:

- (a) mark the ballot paper “disqualified”,
- (b) record the unique identifier on the ballot paper in a list (the “list of disqualified documents”); and
- (c) place the document or documents in a separate packet.

35.4 An internet, telephone or text message vote shall not be taken to be duly returned unless the returning officer is satisfied that the internet, telephone or text voting record has been received by the returning officer before the close of the poll.

36. DE-DUPLICATION OF VOTES

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

36.2 If the returning officer ascertains that a voter ID number has been used more than once to cast a vote in an election they shall:

- (a) only accept as duly returned the first vote received that contained the duplicated voter ID number
- (b) mark as “disqualified” all other votes containing the duplicated voter ID number

36.3 Where a ballot paper is “disqualified” under this rule the returning officer shall:

- (a) mark the ballot paper “disqualified”,
- (b) record the unique identifier and voter id number on the ballot paper in a list (the “list of disqualified documents”); and
- (c) place the ballot paper in a separate packet.

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

- (a) mark the record as “disqualified”,
- (b) record the voter ID number on the record in a list (the “list of disqualified documents”).
- (c) disregard the record when counting the votes in accordance with these Rules.

37. SEALING OF PACKETS

37.1 As soon as is possible after the close of the poll and after the completion of the procedure under rules 35 and 36, the returning officer is to seal the packets containing:

- (a) the disqualified documents, together with the list of disqualified documents inside it,
- (b) the list of spoiled ballot papers,
- (c) the list of lost ballots
- (d) the list of eligible voters, and
- (e) complete electronic copies of records referred to in rule 25 held in a device suitable for the purpose of storage.

Part 6 Counting the votes

Note: the following rules describe how the votes are to be counted manually but it is expected that appropriately audited vote counting software will be used to count votes where a combination of methods of polling is being used and votes are contained as electronic e-voting records and ballot papers.

STV38. Interpretation of Part 6

STV38.1 In Part 6 of these rules:

“ballot” means a ballot paper, internet voting record, telephone voting record or text voting record.

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

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

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

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

“non-transferable vote” means a ballot:

- (a) on which no second or subsequent preference is recorded for a continuing candidate, or
- (b) which is excluded by the returning officer under rule STV46,

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

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

“quota” means the number calculated in accordance with rule STV43,

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

- (a) the determination of the first preference vote of each candidate,
- (b) the transfer of a surplus of a candidate deemed to be elected, or

(c) the exclusion of one or more candidates at any given time,

“transferable vote” means a ballot on which, following a first preference, a second or subsequent preference is recorded in consecutive numerical order for a continuing candidate, “transferred vote” means a vote derived from a ballot on which a second or subsequent preference is recorded for the candidate to whom that ballot has been transferred, and “transfer value” means the value of a transferred vote calculated in accordance with rules STV44.4 or STV44.7.

38. ARRANGEMENTS FOR COUNTING OF THE VOTES

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

39. THE COUNT

40.1 The returning officer is to:

- (a) count and record the number of votes that have been returned, and
- (b) count the votes according to the provisions in this Part of the rules.

40.2 The returning officer, while counting and recording the number of votes and counting the votes, must make arrangements to ensure that no person obtains or communicates information as to the unique identifier on a ballot paper or a voter’s voter ID number.

40.3 The returning officer is to proceed continuously with counting the votes as far as is practicable.

STV41. Rejected ballot papers

STV41.1 Any ballot paper:

- (a) which does not bear the features that have been incorporated into the other ballot papers to prevent them from being reproduced,
- (b) on which the figure “1” standing alone is not placed so as to indicate a first preference for any candidate,
- (c) on which anything is written or marked by which the voter can be identified except the unique identifier, or
- (d) which is unmarked or rejected because of uncertainty,

shall be rejected and not counted, but the ballot paper shall not be rejected by reason only of carrying the words “one”, “two”, “three” and so on, or any other mark instead of a figure if, in the opinion of the returning officer, the word or mark clearly indicates a preference or preferences.

STV41.2 The returning officer is to endorse the word “rejected” on any ballot paper which under this rule is not to be counted.

STV41.3 The returning officer is to draw up a statement showing the number of ballot papers rejected by him or her under each of the subparagraphs (a) to (d) of rule STV41.1

FPP41. Rejected ballot papers

FPP41.1 Any ballot paper:

- (a) which does not bear the features that have been incorporated into the other ballot papers to prevent them from being reproduced,
- (b) on which votes are given for more candidates than the voter is entitled to vote,

- (c) on which anything is written or marked by which the voter can be identified except the unique identifier, or
- (d) which is unmarked or rejected because of uncertainty, shall, subject to rules FPP41.2 and FPP41.3, be rejected and not counted.

FPP41.2 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.

FPP41.3 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.

FPP41.4 The returning officer is to:

- (a) endorse the word “rejected” on any ballot paper which under this rule is not to be counted, and
- (b) in the case of a ballot paper on which any vote is counted under rules FPP41.2 and FPP 41.3, endorse the words “rejected in part” on the ballot paper and indicate which vote or votes have been counted.

FPP41.5 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.

STV42. First stage

STV42.1 The returning officer is to sort the ballots into parcels according to the candidates for whom the first preference votes are given.

STV42.2 The returning officer is to then count the number of first preference votes given on ballots for each candidate, and is to record those numbers.

STV42.3 The returning officer is to also ascertain and record the number of valid ballots.

STV43. The quota

STV43.1 The returning officer is to divide the number of valid ballots by a number exceeding by one the number of members to be elected.

STV43.2 The result, increased by one, of the division under rule STV43.1 (any fraction being disregarded) shall be the number of votes sufficient to secure the election of a candidate (in these rules referred to as “the quota”).

STV43.3 At any stage of the count a candidate whose total votes equals or exceeds the quota shall be deemed to be elected, except that any election where there is only one vacancy a candidate shall not be deemed to be elected until the procedure set out in rules STV44.1 to

STV44.3 has been complied with.

STV44. Transfer of votes

STV44.1 Where the number of first preference votes for any candidate exceeds the quota, the returning officer is to sort all the ballots on which first preference votes are given for that candidate into sub- parcels so that they are grouped:

- (a) according to next available preference given on those ballots for any continuing candidate, or
- (b) where no such preference is given, as the sub-parcel of non-transferable votes.

STV44.2 The returning officer is to count the number of ballots in each parcel referred to in rule

STV44.3 The returning officer is, in accordance with this rule and rule STV45, to transfer each sub- parcel of ballots referred to in rule STV44.1(a) to the candidate for whom the next available preference is given on those papers.

STV44.4 The vote on each ballot transferred under rule STV44.3 shall be at a value (“the transfer value”) which:

- (a) reduces the value of each vote transferred so that the total value of all such votes does not exceed the surplus, and
- (b) is calculated by dividing the surplus of the candidate from whom the votes are being transferred by the total number of the ballots on which those votes are given, the calculation being made to two decimal places (ignoring the remainder if any).

STV44.5 Where at the end of any stage of the count involving the transfer of ballots, the number of votes for any candidate exceeds the quota, the returning officer is to sort the ballots in the sub-parcel of transferred votes which was last received by that candidate into separate sub- parcels so that they are grouped:

- (a) according to the next available preference given on those ballots for any continuing candidate, or
- (b) where no such preference is given, as the sub-parcel of non-transferable votes.

STV44.6 The returning officer is, in accordance with this rule and rule STV45, to transfer each sub- parcel of ballots referred to in rule STV44.5(a) to the candidate for whom the next available preference is given on those ballots.

STV44.7 The vote on each ballot transferred under rule STV44.6 shall be at:

- (a) a transfer value calculated as set out in rule STV44.4(b), or
- (b) at the value at which that vote was received by the candidate from whom it is now being transferred, whichever is the less.

STV44.8 Each transfer of a surplus constitutes a stage in the count.

STV44.9 Subject to rule STV44.10, the returning officer shall proceed to transfer transferable ballots until no candidate who is deemed to be elected has a surplus or all the vacancies have been filled.

STV44.10 Transferable ballots shall not be liable to be transferred where any surplus or surpluses which, at a particular stage of the count, have not already been transferred, are:

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

STV44.11 This rule does not apply at an election where there is only one vacancy.

STV45. Supplementary provisions on transfer

STV45.1 If, at any stage of the count, two or more candidates have surpluses, the transferable ballots of the candidate with the highest surplus shall be transferred first, and if:

- (a) The surpluses determined in respect of two or more candidates are equal, the transferable ballots of the candidate who had the highest recorded vote at the earliest preceding stage at which they had unequal votes shall be transferred first, and
- (b) the votes credited to two or more candidates were equal at all stages of the count, the returning officer shall decide between those candidates by lot, and the transferable ballots of the candidate on whom the lot falls shall be transferred first.

STV45.2 The returning officer shall, on each transfer of transferable ballots under rule STV44:

- (a) record the total value of the votes transferred to each candidate,
- (b) add that value to the previous total of votes recorded for each candidate and record the new total,
- (c) record as non-transferable votes the difference between the surplus and the total transfer value of the transferred votes and add that difference to the previously recorded total of non-transferable votes, and
- (d) compare:
 - (i) the total number of votes then recorded for all of the candidates, together with the total number of non-transferable votes, with
 - (ii) the recorded total of valid first preference votes.

STV45.3 All ballots transferred under rule STV44 or STV45 shall be clearly marked, either individually or as a sub-parcel, so as to indicate the transfer value recorded at that time to each vote on that ballot or, as the case may be, all the ballots in that sub-parcel.

STV45.4 Where a ballot is so marked that it is unclear to the returning officer at any stage of the count under rule STV44 or STV45 for which candidate the next preference is recorded, the returning officer shall treat any vote on that ballot as a non-transferable vote; and votes on a ballot shall be so treated where, for example, the names of two or more candidates (whether continuing candidates or not) are so marked that, in the opinion of the returning officer, the same order of preference is indicated or the numerical sequence is broken.

STV46. Exclusion of candidates

STV46.1 If:

- (a) all transferable ballots which under the provisions of rule STV44 (including that rule as applied by rule STV46.11 and this rule are required to be transferred, have been transferred, and
- (b) subject to rule STV47, one or more vacancies remain to be filled, the returning officer shall exclude from the election at that stage the candidate with the then lowest vote (or, where rule STV46.12 applies, the candidates with the then lowest votes).

STV46.2 The returning officer shall sort all the ballots on which first preference votes are given for the candidate or candidates excluded under rule STV46.1 into two sub-parcels so that they are grouped as:

- (a) ballots on which a next available preference is given, and
- (b) ballots on which no such preference is given (thereby including ballots on which preferences are given only for candidates who are deemed to be elected or are excluded).

STV46.3 The returning officer shall, in accordance with this rule and rule STV45, transfer each sub-parcel of ballots referred to in rule STV46.2 to the candidate for whom the next available preference is given on those ballots.

STV46.4 The exclusion of a candidate, or of two or more candidates together, constitutes a further stage of the count.

STV46.5 If, subject to rule STV47, one or more vacancies still remain to be filled, the returning officer shall then sort the transferable ballots, if any, which had been transferred to any candidate excluded under rule STV46.1 into sub-parcels according to their transfer value.

STV46.6 The returning officer shall transfer those ballots in the sub-parcel of transferable ballots with the highest transfer value to the continuing candidates in accordance with the next available preferences given on those ballots (thereby passing over candidates who are deemed to be elected or are excluded).

STV46.7 The vote on each transferable ballot transferred under rule STV46.6 shall be at the value at which that vote was received by the candidate excluded under rule STV46.1.

STV46.8 Any ballots on which no next available preferences have been expressed shall be set aside as non-transferable votes.

STV46.9 After the returning officer has completed the transfer of the ballots in the sub-parcel of ballots with the highest transfer value he or she shall proceed to transfer in the same way the sub-parcel of ballots with the next highest value and so on until he has dealt with each sub-parcel of a candidate excluded under rule STV46.1.

STV46.10 The returning officer shall after each stage of the count completed under this rule:

(a) record:

(i) the total value of votes, or

(ii) the total transfer value of votes transferred to each candidate,

(b) add that total to the previous total of votes recorded for each candidate and record the new total,

(c) record the value of non-transferable votes and add that value to the previous non-transferable votes total, and

(d) compare:

(i) the total number of votes then recorded for each candidate together with the total number of non-transferable votes, with

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

STV46.11 If after a transfer of votes under any provision of this rule, a candidate has a surplus, that surplus shall be dealt with in accordance with rules STV44.5 to STV44.10 and rule STV45.

STV46.12 Where the total of the votes of the two or more lowest candidates, together with any surpluses not transferred, is less than the number of votes credited to the next lowest candidate, the returning officer shall in one operation exclude such two or more candidates.

STV46.13 If when a candidate has to be excluded under this rule, two or more candidates each have the same number of votes and are lowest:

(a) regard shall be had to the total number of votes credited to those candidates at the earliest stage of the count at which they had an unequal number of votes and the candidate with the lowest number of votes at that stage shall be excluded, and

(b) where the number of votes credited to those candidates was equal at all stages, the

returning officer shall decide between the candidates by lot and the candidate on whom the lot falls shall be excluded.

STV47. Filling of last vacancies

STV47.1 Where the number of continuing candidates is equal to the number of vacancies remaining unfilled the continuing candidates shall thereupon be deemed to be elected.

STV47.2 Where only one vacancy remains unfilled and the votes of any one continuing candidate are equal to or greater than the total of votes credited to other continuing candidates together with any surplus not transferred, the candidate shall thereupon be deemed to be elected.

STV47.3 Where the last vacancies can be filled under this rule, no further transfer of votes shall be made.

STV48. Order of election of candidates

STV48.1 The order in which candidates whose votes equal or exceed the quota are deemed to be elected shall be the order in which their respective surpluses were transferred, or would have been transferred but for rule STV44.10.

STV48.2 A candidate credited with a number of votes equal to, and not greater than, the quota shall, for the purposes of this rule, be regarded as having had the smallest surplus at the stage of the count at which he obtained the quota.

STV48.3 Where the surpluses of two or more candidates are equal and are not required to be transferred, regard shall be had to the total number of votes credited to such candidates at the earliest stage of the count at which they had an unequal number of votes and the surplus of the candidate who had the greatest number of votes at that stage shall be deemed to be the largest.

STV48.4 Where the number of votes credited to two or more candidates were equal at all stages of the count, the returning officer shall decide between them by lot and the candidate on whom the lot falls shall be deemed to have been elected first.

FPP48. Equality of votes

FPP48.1 Where, after the counting of votes is completed, an equality of votes is found to exist between any candidates and the addition of a vote would entitle any of those candidates to be declared elected, the returning officer is to decide between those candidates by a lot, and proceed as if the candidate on whom the lot falls had received an additional vote.

Part 7 Final proceedings in contested and uncontested elections

FPP49. Declaration of result for contested elections

FPP49.1 In a contested election, when the result of the poll has been ascertained, the returning officer is to:

(a) declare the candidate or candidates whom more votes have been given than for the other candidates, up to the number of vacancies to be filled on the council of governors from the constituency, or class within a constituency, for which the election is being held to be elected,
b) give notice of the name of each candidate who they have declared elected:

(i) where the election is held under a proposed constitution pursuant to powers conferred on the [insert name] NHS Trust by section 33(4) of the 2006 Act, to the chair of the NHS Trust, or
(ii) in any other case, to the chair of the corporation; and

(c) give public notice of the name of each candidate whom they have declared elected.

FPP49.2 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 FPP41.5, available on request.

STV49. Declaration of result for contested elections

STV49.1 In a contested election, when the result of the poll has been ascertained, the returning officer is to:

- (a) declare the candidates who are deemed to be elected under Part 6 of these rules as elected,
- (b) give notice of the name of each candidate who they have declared elected –
 - (i) where the election is held under a proposed constitution pursuant to powers conferred on the [insert name] NHS Trust by section 33(4) of the 2006 Act, to the chair of the NHS Trust, or
 - (ii) in any other case, to the chair of the corporation, and
- (c) give public notice of the name of each candidate who they have declared elected.

STV49.2 The returning officer is to make:

- (a) the number of first preference votes for each candidate whether elected or not,
- (b) any transfer of votes,
- (c) the total number of votes for each candidate at each stage of the count at which such transfer took place,
- (d) the order in which the successful candidates were elected, and
- (e) the number of rejected ballot papers under each of the headings in rule STV41.1, available on request.

50. Declaration of result for uncontested elections

50.1 In an uncontested election, the returning officer is to as soon as is practicable after final day for the delivery of notices of withdrawals by candidates from the election:

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

Part 8 Disposal of documents

51. Sealing up of documents relating to the poll

51.1 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.
- (e) the complete electronic copies of records referred to in rule 25 held in a device suitable for the purpose of storage.

51.2 The returning officer must not open the sealed packets of:

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

- (b) the list of spoiled ballot papers,
- (c) the list of lost ballots,
- (d) the list of eligible voters, and
- (e) the complete electronic copies of records referred to in rule 25 held in a device suitable for the purpose of storage.

51.3 The returning officer must endorse on each packet a description of:

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

52. Delivery of documents

52.1 Once the documents relating to the poll have been sealed up and endorsed pursuant to rule 51, the returning officer is to forward them to the chair of the corporation.

53. Forwarding of documents received after close of the poll

53.1 Where:

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

54. Retention and public inspection of documents

54.1 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.

54.2 With the exception of the documents listed in rule 55.1, 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.

54.3 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

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

55.1 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, or
- (d) the list of eligible voters,
- (e) the complete electronic copies of records referred to in rule 25 held in a device suitable for the purpose of storage by any person without the consent of the Regulator.

55.2 A person may apply to the Regulator to inspect any of the documents listed in rule 55.1, and the Regulator may only consent to such inspection if it is satisfied that it is necessary for the purpose of questioning an election pursuant to Part 11.

- 55.3 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.
- 55.4 On an application to inspect any of the documents listed in rule 55.1:
- (a) in giving its consent, the regulator, and
 - (b) 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 their 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

FPP56. Countermand or abandonment of poll on death of candidate

FPP56.1 If at a contested election, proof is given to the returning officer's satisfaction before the result of the election is declared that one of the persons named or to be named as a candidate has died, then the returning officer is to:

- (a) countermand notice of the poll, or, if voting information has been issued, direct that the poll be abandoned within that constituency or class, and
- (b) order a new election, on a date to be appointed by him or her in consultation with the corporation, within the period of 40 days, computed in accordance with rule 3 of these rules, beginning with the day that the poll was countermanded or abandoned.

FPP56.2 Where a new election is ordered under rule FPP56.1, no fresh nomination is necessary for any candidate who was validly nominated for the election where the poll was countermanded or abandoned but further candidates shall be invited for that constituency or class.

FPP56.3 Where a poll is abandoned under rule FPP56.1(a), rules FPP56.4 to FPP56.7 are to apply.

FPP56.4 The returning officer shall not take any step or further step to open envelopes or deal with their contents in accordance with rules 35 and 36, and is to make up separate sealed packets in accordance with rule 37.

FPP56.5 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.
- (c) seal up the electronic copies of records that have been received referred to in rule 25 held in a device suitable for the purpose of storage.

FPP56.6 The returning officer is to endorse on each packet a description of:

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

FPP56.7 Once the documents relating to the poll have been sealed up and endorsed pursuant to rules FPP56.4 to FPP56.6, the returning officer is to deliver them to the chair of the corporation, and rules 54 and 55 are to apply.

STV56. Countermand or abandonment of poll on death of candidate

STV56.1 If, at a contested election, proof is given to the returning officer's satisfaction before the result of the election is declared that one of the persons named or to be named as a candidate has died, then the returning officer is to:

(a) publish a notice stating that the candidate has died, and
(b) proceed with the counting of the votes as if that candidate had been excluded from the count so that –

(i) ballots which only have a first preference recorded for the candidate that has died, and no preferences for any other candidates, are not to be counted, and
(ii) ballots which have preferences recorded for other candidates are to be counted according to the consecutive order of those preferences, passing over preferences marked for the candidate who has died.

STV56.2 The ballots which have preferences recorded for the candidate who has died are to be sealed with the other counted ballots pursuant to rule 51.1(a).

Part 10 Election expenses and publicity

57. Election expenses

57.1 Any expenses incurred, or payments made, for the purposes of an election which to the regulator under Part 11 of these rules.

58. Expenses and payments by candidates

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

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

59. Election expenses incurred by other persons

59.1 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 their family any money or property (whether 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.

59.2 Nothing in this rule is to prevent the corporation from incurring such expenses, and making such payments, as it considers necessary pursuant to rules 60 and 61.

Publicity

60. Publicity about election by the corporation

60.1 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.

60.2 Any information provided by the corporation about the candidates, including information compiled by the corporation under rule 61, 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, the expense of the electoral prospects of one or more other candidates.

60.3 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.

61. **Information about candidates for inclusion with voting information**

61.1 The corporation must compile information about the candidates standing for election, to be distributed by the returning officer pursuant to rule 23 of these rules.

The information must consist of:

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

62. **Meaning of “for the purposes of an election”**

62.1 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.

62.2 The provision by any individual of their own services voluntarily, on their own time, and free of charge is not to be considered an expense for the purposes of this Part.

Part 11 Questioning elections and the consequence of irregularities

63. **Application to question an election**

63.1 An application alleging a breach of these rules, including an electoral irregularity under Part 10, may be made to the regulator.

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

63.3 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.

63.4 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.

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

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

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

63.8 The determination by the person or persons nominated in accordance with rule 63.7 shall be binding on and shall be given effect by the corporation, the applicant and the members of the constituency (or class within a constituency including all the candidates for the election to which the application relates).

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

Part 12 Miscellaneous

64. Secrecy

64.1 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 voter information or who has or has not voted,
- (ii) the unique identifier on any ballot paper,
- (iii) the voter ID number allocated to any voter
- iv) the candidate(s) for whom any member has voted.

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

64.3 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.

65. Prohibition of disclosure of vote

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

66. Disqualification

66.1 A person may not be appointed as a returning officer, or as staff of the returning officer

pursuant to these rules, if that person is:

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

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

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

- (a) the delivery of the documents in rule 23, 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 (3) years in accordance with the provisions of paragraph 14 of the Constitution;
- 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 (9) years and shall not be eligible for re-election if they have already held office for more than six (6) consecutive years;
- 1.3 shall cease to hold office if:
 - 1.3.1 he ceases to be a Member of a Trust constituency or class within it, 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.

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 Partnership Organisation withdraws its appointment of him;
 - 2.1.3 any of the grounds contained in paragraph 15 of the Constitution apply to him;
 - 2.1.4 he has within the preceding two (2) 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, patients, carers and/or Governors;
 - 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), (including whether or not the conviction is spent);
 - 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 (6) 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 they are the spouse, partner, parent or child of a Member of the Board of Directors of the Trust;
 - 2.1.18 he is a Member of a local authority overview and scrutiny committee;
 - 2.1.19 he is not sixteen (16) years of age at the closing date for nominations for election or appointment;
 - 2.1.20 they are a member of a local authority's Scrutiny Committee covering health matters; or
 - 2.1.21 being a Member of one of the Public Constituencies, they refuse to sign a declaration in the form specified by the Secretary of particulars of their qualification to vote as a member of the Trust, and that they are not prevented from being a member of the Council of Governors; or
 - 2.1.22 in the case of a Local Authority Governor, they are an elected member of the local authority.
- 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 fourteen (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 Secretary 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 three (3) 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

(i) adversely affect public confidence in the goods and services provided by the Trust; or

(ii) otherwise brings the Trust into disrepute or is detrimental to the interest of the Trust; or

(iii) it would not be in the best interests of the Trust for that person to continue in office as a Governor; or

(iv) 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

(v) 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

(vi) 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, the Constitution and/or the Terms of Authorisation; or

(vii) he has committed a material breach of any code of conduct applicable to Governors of the Trust and/or the Governors standing orders; or

- (viii) he has failed to sign and deliver to the Secretary a Statement in the form required by the Secretary confirming acceptance of the code of conduct of Governors.
 - 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 3 shall not be eligible to stand for re-election for a period of three (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 thirty (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, or if the Trust decides in its absolute discretion to hold an election to fill the vacancy for the Elected Governor, an election will then be held in accordance with the Election Scheme save that if an election is due to be held within twelve (12) 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 to be half or 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: Declarations
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- 5.1 A Member of a Public 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.
- 5.2 The specified form of declaration shall be set out on the Nomination Form referred to in the Model Rules for Elections at Annex 5.

ANNEX 7

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

SHEFFIELD CHILDREN'S 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

Sheffield Children's NHS Foundation Trust ("the Trust") is a Public Benefit Corporation that was established by the granting of Terms of Authorisation by the Independent Regulator of NHS Foundation Trusts (NHS England).

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

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

1. INTERPRETATION

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 Council of Governors: Role

2.1.1 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.

2.1.2 Subject to the requirement specified in paragraph 2.1.1 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.

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

- (a) undertake such functions as the Board of Directors shall from time to time request;
- (b) prepare and from time to time review the Trust's Membership strategy and its policy for the composition of the Council of Governors and of the Non-executive Directors; and
- (c) monitor the activities of the Trust with the view to ensuring that they are being conducted in a manner consistent with its Terms of Authorisation and the terms of this Constitution.
- (d) appoint and remove the Chair and Non-executive Directors (Constitution paragraph 25);
- (e) approve the appointment of the Chief Executive (Constitution paragraph 27);
- (f) decide the remuneration and allowances and other terms and conditions of offices of the Non-executive Directors (including the Chair) (Constitution paragraph (32.1));
- (g) appoint and remove the External Auditor (Constitution paragraph 36);
- (h) receive the Annual Report & Accounts (Constitution paragraph 40);
- (i) develop the extent and the engagement of the Membership;
- (j) provide their views to the Board of Directors regarding future Trust plans and priorities;
- (k) oversee the development of the Trust as an effective social enterprise through focus on the wider public interest and promoting social cohesion in seeking to ensure that the Council of Governors reflects all the interests of the membership community;

- (l) respond, as appropriate, when consulted by the Board of Directors;
- (m) consider and determine Membership disputes in accordance with Annex 8, Paragraph 6.1.2;
- (n) consider resolution to remove a Governor from the Council of Governors in accordance with Annex 6, paragraph 3;
- (o) approve any amendments to this Constitution
- (p) seek to ensure that the interests of the community served by the Trust are appropriately represented when taking into account 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 25 of the Constitution.

2.4 Terms of Office of the Chair and Non-executive Directors

2.4.1 The Chair and the Non-executive Directors are to be appointed for a period of office in accordance with the terms and conditions of office decided by the Council of Governors at a General Meeting. Any re-appointment of a Non-executive Director by the Council of Governors shall be subject to a satisfactory appraisal carried out in accordance with the procedures which shall be approved by the Board of Directors.

2.4.2 Any proposal for the removal of a Non-executive Director must be agreed by 75% of governors present and voting at a meeting of the Council of Governors. Written reasons for the proposal shall be provided to the Non-executive Director in question who shall be given the opportunity to respond to such reasons. In making any decision to remove a Non-executive Director the Council of Governors shall take into account the annual appraisal carried out by the Chair. If any proposal to remove the Non-executive Director is not approved at a meeting of the Council of Governors, no further proposal can be put forward to remove such Non-executive Director based upon the same facts.

2.5 Appointment of Deputy-Chair

2.6 Any Non-executive Director appointed as the Deputy Chair in accordance with paragraph 24 of the Constitution may at any time resign from the office of Deputy Chair by giving notice in writing to the Secretary to the Trust and the Board of Directors may thereupon appoint another Deputy Chair in accordance with paragraph 24 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 when the appointment of the Chair is being considered, and the Deputy Chair is not standing for the appointment of Chair; and
 - 2.7.3 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.
- 2.8 Council of Governors: Appointment of Senior Independent Director
- 2.8.1 The Board of Directors, following consultation with the Council of Governors, shall appoint one of the Non-Executive Directors to be the Senior Independent Director for a term of three years. The Senior Independent Director shall be eligible for reappointment at the end of that term but may not serve as Senior Independent Director for more than a total of six years.
 - 2.8.2 The Senior Independent Director shall be available to Members and Governors if they have concerns which contact through the normal channels of the Chair, Chief Executive or Finance Director has failed to resolve or for which such contact is inappropriate.
 - 2.8.3 A person appointed as the Senior Independent Director shall cease to be eligible to continue serving as the Senior Independent Director if he ceases to be a Non-Executive Director and the Senior Independent Director's term of office may be terminated by a majority of not less than 75% of the Governors present and voting at a meeting of the Council of Governors.
- 2.9 On those occasions where the Council of Governors is considering the remuneration, allowance and other terms and conditions of the Chair and/or the Non-executive Directors then the Chair (or Deputy Chair as the case may be) shall leave the meeting whilst that consideration takes place and a Governor from the Remuneration Committee shall chair the part of the meeting until it is considered appropriate for the Chair (or the Deputy Chair) to return to the meeting.

3. MEETINGS OF THE COUNCIL OF GOVERNORS

- 3.1 The Council of Governors shall hold not less than three (3) general meetings each Financial Year.
- 3.2 Save in the case of emergencies or the need to conduct urgent business, the Secretary shall give at least fourteen (14) days written notice (which shall include notice by e-mail) 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 and in Members' newsletters.
- 3.3 Meetings of the Council of Governors may be called by the Secretary or by the Chair or by eight governors, who give written notice to the Secretary specifying the business to be carried out. The Secretary shall send a written notice to all Governors as soon as possible after receipt of such a request. The Secretary shall call a meeting on at least fourteen (14) but not more than twenty-eight (28) days' notice to discuss the specified business. If the Secretary fails to call such a meeting then the Chair or eight Governors, whichever is the case, shall call such a meeting.
- 3.4 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.

- 3.5 All decisions taken in good faith at a meeting of the Council of Governors or of any committee shall be valid even if it is discovered subsequently that there was a defect in the calling of the meeting, or the appointment of the Governors attending the meeting.
- 3.6 The Council of Governors may request the attendance of some or all of the members of the Board of Directors, advisors and/or the External Auditor 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.
- 3.7 A meeting of the Council of Governors shall be quorate so long as no fewer than eight of the total number of Council of Governors are present. . The Council of Governors may agree that its members can participate in its meetings by telephone, video or computer link. Participation in a meeting in this manner shall be deemed to constitute presence in person at the meeting.
- 3.8 No business shall be conducted at a meeting which is not quorate.
- 3.9 If a meeting is not quorate within fifteen (15) minutes of the time scheduled for its commencement it shall automatically stand adjourned for a period of seven (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.
- 3.10 Admission to meeting

The provisions for the admission of the public to meetings of the Council of Governors are detailed at Annex 7. The Council of Governors may invite the Chief Executive or any other member or members of the Board of Directors or a representative if the Auditor or other advisors to attend a meeting of the Council of Governors.

3.11 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.

In the event that a Governor wishes a specific item to be included on the agenda then they shall provide a minimum of fourteen (14) days' notice in advance of the date of that meeting to the Secretary.

3.12 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 (6) calendar months shall be in writing, and shall bear the signature of the Governor who gives it and also the signature of four (4) 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 (6) months, however the Chair may do so if he considers it appropriate.

3.13 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.

3.14 When a motion is under discussion or immediately prior to discussion it shall be open to a Governor to move:

3.14.1 an amendment to the motion;

3.14.2 the adjournment of the discussion or the meeting;

3.14.3 that the meeting proceed to the next business; and

3.14.4 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.

3.15 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 Chairman 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).

3.16 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 participating in the meeting and voting on the question and, in the case of any equality of votes, the person presiding shall have a casting vote. No resolution of the Council of Governors shall be passed if it is opposed by all of the Public Governors present and participating in the meeting.

3.17 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.

3.18 If at least one-third of the Governors participating so request, the voting (other than by paper ballot) on any question may be recorded to show how each Governor present voted or abstained.

3.19 If a Governor so requests, his/her vote shall be recorded by name upon any vote (other than by paper ballot).

3.20 In no circumstances may any Governor who is not participating in the meeting, vote by proxy. Absence is defined as not participating in the meeting.

3.21 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.

3.22 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.

3.23 Minutes of meetings will be taken and circulated in accordance with Governors' wishes.

3.24 Suspension of Standing Orders

Except where this would contravene any statutory provision, the Terms of Authorisation or any provision of the Constitution, any one or more of the Standing Orders may be suspended at any meeting provided that at least two thirds of the Council of Governors participating vote in favour of suspension.

3.25 A decision to suspend Standing Orders shall be recorded in the minutes of the meeting.

3.26 A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the Governors.

3.27 No formal business may be transacted while Standing Orders are suspended.

3.28 Variation and Amendment of Standing Orders

3.28.1 These Standing Orders shall be amended only if:

- (a) the variation proposed does not contravene a statutory provision, the Terms of Authorisation or the Constitution;
- (b) unless presented by the Chair or the Chief Executive, a notice of motion under Standing Orders. has been given;
- (c) at least two thirds of the Governors are present
- (d) no fewer than half the Governors vote in favour of amendment.

3.29 Record of Attendance

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

3.30 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.

3.31 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.

3.32 Meetings of the Council of Governors shall be held in such manner and using such methods as may be determined by the Council of Governors (including but not limited to telephone conferencing and web hosted facilities). The Chair will ensure that those not physically present at the meeting are given similar opportunity for oral debate and scrutiny to that afforded to members who are physically present at the meeting. For the avoidance of doubt where any or all the Governors participate in meetings using such methods then the requirements of these Standing Orders shall apply equally to the conduct of those meetings and the requirements under SO3.7 shall be fulfilled where Governors participate using these methods.

4. **COMMITTEES**

Except as required by SO10 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 19 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 and the Council of Governors:

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 twenty-eight (28) days of a Governor's election or appointment or otherwise within seven (7) 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 (3) working days.

5.4 If a Governor is present at a meeting of the Council of Governors and has an interest of any sort (meaning any relevant and material interest) 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; and
 - 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 (save in the case of Other Partnership Organisations), 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 33 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 the Trust's Code of Business Conduct (including Declaration of Interests, Gifts and Hospitality and Sponsorship). 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

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.

9. MISCELLANEOUS

9.1 Review of Standing Orders

These Standing Orders shall be reviewed annually by the Council of Governors.

9.2 Notice

Any written notice required by these Standing Orders shall be deemed to have been given forty-eight (48) hours after the day the notice was sent to the recipient.

9.3 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: REMUNERATION & RECRUITMENT COMMITTEE**

10.1 The Non-executive Directors of the Trust, the Chair and other Non-executive Directors shall be appointed following a process of open competition.

10.2 The Council of Governors shall establish a committee of its members to be called the Remuneration and Recruitment Committee (“the Committee”) to discharge those functions in relation to the selection of the Chair and Non-executive Directors.

10.3 The Committee shall consist of the Chair (or when the Chair is being appointed the Senior Independent Director) and at least seven governors the majority of which should be Public Governors.

10.4 The functions of the Committee shall be set out in its terms of reference.

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.

11. **PARTNERSHIP CHARTER**

11.1 The Council of Governors shall comply with the Partnership Charter set out in Appendix 1 of these Standing Orders.

Appendix 1

PARTNERSHIP CHARTER OF THE COUNCIL OF GOVERNORS AND BOARD OF DIRECTORS

This Partnership Charter is derived from all the statements provided by governors and board members who attended the 2nd July 2006 Council of Governors and Board of Directors development event.

This charter is also the guiding principles and code of conduct for the Council of Governors in its own right.

1	The Council and the Board will always focus on the best needs of children, young people and families
2	The Council and the Board will recognise, encourage, support and respect the contributions of all governors and directors
3	The Council and the Board will promote a culture of openness and transparency whilst respecting, where necessary, patient and business confidentiality
4	The Council and the Board will communicate in an open and transparent manner, speak in simple English and be inclusive, to ensure that all members are able to understand and make contributions.
5	The Council and Board will collectively promote the Trust and enhance its reputation
6	The Council and Board will be considerate and make best use of each others time commitment by planning ahead and being flexible in approach.
7	The Board of Directors will provide real opportunities for governors to be involved and to contribute to the Trust business plan
8	The Council and the Board will accept and support majority decision and respect the need for confidentiality over decisions and discussions made
9	The Council and the Board will work in a way which is representative of its membership, avoiding the promotion of personal agendas and causes
10	The Council and the Board will ensure its effectiveness through continual review of progress, being reflective, adaptive and open to change

ANNEX 8

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 (2) 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 (5) 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 Service Development Strategy;
 - 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 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 fourteen (14) 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 the 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.
- 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.
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 Secretary;
 - 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;
 - 2.1.4 if at any time they fulfil any of the criteria set out in paragraph 1.1 of Annex 8 of this Constitution;
 - 2.1.5 if it appears to the Secretary 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 8.

- 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 Secretary at the Trust shall as soon as is reasonably practicable and in any event within twenty-eight (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 Secretary 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 email address (if any);
 - (d) the constituency and class of which he is a Member;
 - (e) the date upon which he became a Member; and
 - (f) his gender and ethnicity,

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;
 - 3.3.3 unless the individual has within twenty-eight (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 Secretary shall thereupon enter that individual's name on the Register of Members and he shall thereupon become a Member provided that the Secretary 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 Secretary within twenty-eight (28) days of being invited by the Secretary to provide it in accordance with paragraph 3.3.2 above, the Secretary 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. Subject to paragraph 3.7, in the event that a Member becomes aware that they fail to fulfil any of the requirements for Membership and/or are disqualified from Membership under the terms of this Constitution then they shall immediately notify the Trust who shall remove them from 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.
- 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 to remove the name of that individual from the Register of Members and that individual shall thereupon cease to be a Member.
4. Governors and Directors: Communication and Conflict
- 4.1 Summary
- This paragraph 4 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.
- 4.2 Informal Communications
- 4.2.1 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.
- 4.2.2 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; and

- (d) involvement in Membership recruitment and briefings at public events organised by the Trust.

4.3 Formal Communication

- 4.3.1 Some aspects of formal communication are defined by the constitutional roles and responsibilities of the Council of Governors and the Board of Directors respectively.
- 4.3.2 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; and
 - (c) joint meetings will take place between the Council of Governors and the Board of Directors as and when appropriate.
- 4.3.3 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.
- 4.3.4 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;
 - (b) the Board of Directors' proposals for developments;
 - (c) Trust performance;
 - (d) the Annual Plan
 - (e) involvement in service reviews and evaluation relating to the Trust's services; and
 - (f) proposed changes, plans and developments for the Trust other than may be covered by paragraph 4.3.2(b) above.
- 4.3.5 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.
- 4.3.6 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; and
- (d) reporting the views of the Council of Governors to the Board of Directors through the Chair or Deputy Chair.

5. Resolution Of Disputes

5.1 Dispute Resolution between Board of Directors and Council of Governors

- 5.1.1 Should a dispute arise between the Council of Governors 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.
- 5.1.2 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.
- 5.1.3 Failing resolution under 5.1.1 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").
- 5.1.4 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.
- 5.1.5 If the matter remains unresolved or only partially resolved then the procedure outlined in 5.1.1 above shall be repeated.
- 5.1.6 If, in the opinion of the Chair or Deputy Chair (if the dispute involves the Chair), and following the further discussions prescribed in 5.1.4, 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.
- 5.1.7 On the satisfactory completion of this disputes process the Board of Directors shall implement agreed changes.
- 5.1.8 On the unsatisfactory completion of this disputes process the view of the Board of Directors shall prevail.

- 5.2 Nothing in this procedure shall prevent the Council, if it so desires, from informing NHS England that, in the Council's opinion, the Board has not responded constructively to concerns of the Council that the Trust is not meeting the Terms of Authorisation.

6. Other Disputes

- 6.1 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.

6.1.1 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.

6.1.2 If the Member is aggrieved of the decision of the Secretary pursuant to paragraph 6.1.1 above, he may appeal in writing to the Council of Governors within fourteen (14) days of the Secretary's decision. The Council of Governors decision is to be final.

6.1.3 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.

6.2 Review of Process

6.2.1 The arrangements in paragraph 6.1 above will apply for twelve months from the date of approval of the Constitution. 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.

6.2.2 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.

6.3 Indemnity

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 Resolution to cover such costs.

6.4 Validity of Actions

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.

7. Board of Directors: Disqualification

- 7.1 In addition to the grounds of disqualification set out in Paragraph 28 of the Constitution, a person may also not be or continue as a Director of the Trust if:
- 7.1.1 in the case of a Non-executive Director, he no longer satisfies the relevant requirements for appointment;
 - 7.1.2 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;
 - 7.1.3 he has within the preceding two (2) 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;
 - 7.1.4 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;
 - 7.1.5 in the case of an Executive Director, he is no longer employed by the Trust;
 - 7.1.6 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;
 - 7.1.7 he is the subject of a disqualification order made under the Company Directors' Disqualifications Act 1986;
 - 7.1.8 he has failed or refused to undertake any training which the Board of Directors requires all Directors to undertake;
 - 7.1.9 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;
 - 7.1.10 he/she is a partner or spouse of an existing Director.