CONSTITUTION OF

LIVERPOOL HEART AND CHEST HOSPITAL NHS FOUNDATION TRUST

(A PUBLIC BENEFIT CORPORATION)

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Constitution of Liverpool Heart and Chest Hospital

NHS Foundation Trust

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A. Introduction

Liverpool Heart and Chest Hospital NHS Foundation Trust, Liverpool University Hospitals NHS Foundation Trust and Liverpool Women's NHS Foundation Trust have approved arrangements to establish a group model to support increased joint working and collaboration between the organisations and the wider system, in line with the powers set out in the Health and Care Act 2022 and with approval from NHS England and the Cheshire and Merseyside Integrated Care Board. To support the joint working, a joint Chair and a joint Chief Executive have been appointed, together with joint Non-Executive Directors and Joint Executive Directors. In line with current legislation, both Trusts remain as individual statutory organisations with individual Constitutions. Therefore, for the purposes of this document, references to the Chair and Chief Executive, and other joint roles on the Board of Directors, will remain singular and not 'joint' or 'group'.

1. **Name**

The name of the foundation trust is Liverpool Heart and Chest Hospital NHS Foundation Trust ("the Foundation Trust").

2. **Principal Purpose**

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

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

2.3 The Foundation Trust may provide goods and services for any purposes related to:

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

2.3.2 The promotion and protection of public health.

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

3. **Powers**

3.1 The powers of the Foundation Trust are set out in the 2006 Act and supplemented by subsequent legislation such as the Health and Social Care Act 2012 and the Health and Care Act 2022.

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

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

3.4 The Trust may enter into arrangement for the carry out, on such terms as the Trust considers appropriate, of any of its functions jointly with any other person.

3.5 The trust may arrange for any of the functions exercisable by the trust to be exercised by or jointly with any one or more of the following:

3.5.1 A relevant body;
3.5.2 A local authority within the meaning of section 2B of the 2006 Act;
3.5.3 A combined authority.[1]

3.6 The Trust may also enter into arrangements to carry out the function of another relevant body, whether jointly or otherwise

3.7 Where a function is exercisable by the trust jointly with one or more of the other

[1] Section 65Z5 2006 Act

organisations mentioned at paragraph 4.5, those organisations and the trust may:

3.7.1 Arrange for the function to be exercised by a joint committee of theirs;
3.7.2 Arrange for the trust, one or more of those other organisations, or a joint committee of them, to establish and maintain a pooled fund in accordance with section 65Z6 of the 2006 Act.

3.8 The trust must exercise its functions effectively, efficiency and economically.[2]

3.9 In making a decision about the exercise of its functions,[3] the trust must have regard to all likely effects of the decision in relation to:

3.9.1 The health and well-being of (including inequalities between) the people of England;

3.9.2 The quality of services provided to (including inequalities between benefits obtained by) individuals by or in pursuance of arrangements made by relevant bodies for or in connection with the prevention, diagnosis or treatment of illness, as part of the health service in England;

3.9.3 Efficiency and sustainability in relation to the use of resources by relevant bodies for the purposes of the health service in England.

3.10 In the exercise of its functions, the trust must have regard to its duties under section 63B of the 2006 Act (complying with targets under section 1 of the Climate Change Act 2008 and section 5 of the Environment Act 2021, and to adapt any current or predicted impacts of climate change in the most recent report under section 56 of the Climate Change Act 2008).

3.11 For the purposes of this section, “relevant body” means NHSE, an integrated care board, an NHS trust, a NHS foundation trust (including the trust) or such other body as may be prescribed under section 65Z5(2). “Relevant bodies” means two or more of these organisations as the context requires.

3.12 The arrangements under this paragraph 4 shall be in accordance with:

3.12.1 any applicable requirements imposed by the 2006 Act or regulations made under that Act;
3.12.2 any applicable statutory guidance that has been issued and
3.12.3 otherwise on such terms as the trust sees fit.

[2] Section 63 2006 Act
[3] Section 63A

4. **Membership and constituencies**

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

4.1 a public constituency; or

4.2 a staff constituency

Further provisions as to members meetings are set out in Annex 9.

5. **Application for membership**

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

5.2 The Secretary shall make the final decision as to which constituency, and to which class of a constituency, an individual is eligible to be a member.

6. **Public Constituency**

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

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

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

7. **Staff Constituency**

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

7.1.1 they are employed by the Foundation Trust under a contract of employment which has no fixed term or has a fixed term of at least 12 months; or

7.1.2 they have been continuously employed by the Foundation Trust under a contract of employment for at least 12 months.

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

7.3 For the purposes of paragraph 7.4, a “hosted service” means a service or business that is hosted by the Foundation Trust, and which operates with a degree of autonomy within the Foundation Trust. The Trust Secretary shall maintain a list of all hosted services of the Foundation Trust.

7.4 An individual may not become a member of the staff constituency of the Foundation Trust pursuant to this paragraph 7 if they exercise functions solely for the purposes of a hosted service of the Foundation Trust, whether or not they are employed by the Foundation Trust under a contract of employment

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

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

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

Automatic membership by default – staff

7.8 An individual who is:

7.8.1 Eligible to become a member of the Staff Constituency, and

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

8. Restriction on membership

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

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

8.3 Further provisions as to the circumstances in which an individual may not become or continue as a member of the Foundation Trust are set out in Annex 9.

9. Council of Governors – composition

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

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

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

10. Council of Governors – election of Governors

10.1 Elections for elected members of the Council of Governors shall be conducted on a First Past the Post basis and in accordance with the Model Election Rules.

10.2 The Model Election Rules 2014 for use in elections to Foundation Trust councils of governors are attached at Annex 4.

10.3 A subsequent variation of the Model Election Rules by the NHS Providers shall not constitute a variation of the terms of this Constitution for the purposes of paragraph 41 of the Constitution.

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

11. Council of Governors - tenure

11.1 A Governor (whether elected or appointed) may hold office for a period of 3 years commencing immediately after the annual members meeting at which their election or appointment, whichever the case may be, is announced.

11.2 An elected Governor shall cease to hold office if he/she ceases to be a member of the constituency or class by which he/she was elected.

11.3 An elected Governor shall be eligible for re-election at the end of his/her term.

11.4 An appointed Governor shall cease to hold office immediately if their appointing organisation terminates the appointment.

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

11.6 A Governor (whether elected or appointed) may not hold office for more than nine consecutive years, and shall not be eligible for re-election or re-appointment, whichever the case may be, if he/she has already held office for more than six consecutive years.

11.7 For the purposes of these provisions concerning terms of office for elected or appointed Governors, “year” means a period commencing immediately after the conclusion of the annual members meeting and ending at the conclusion of the next annual members meeting, save that a Governor may not hold a term of office for more than three calendar years.

12. Council of Governors – disqualification and removal

12.1 The following may not become or continue as a Governor on the Council of Governors:

12.1.1 a person who has been made bankrupt or whose estate has been sequestrated and (in either case) has not been discharged.

12.1.2 a person in relation to whom a moratorium period under a debt relief order applies (under Part 7A of the Insolvency Act 1986);

12.1.3 a person who has made a composition or arrangement with, or

granted a trust deed for, his/her creditors and has not been discharged in respect of it;

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

12.2 Governors must be at least 16 years of age at the date they are nominated for election or appointment.

12.3 Further provisions as to the circumstances in which an individual may not become or continue as a Governor on the Council of Governors are set out in Annex 5.

13. Council of Governors – general duties

13.1 The general duties of the Council of Governors are:

13.1.1 to hold the non-executive directors individually and collectively to account for the performance of the Board of Directors; and

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

13.2 The Foundation trust must take steps to secure that the Governors are equipped with the skills and knowledge they require in their capacity as such.

14. Council of Governors – meetings of Governors

14.1 The Chair of the Foundation Trust (i.e. the Chair of the Board of Directors, appointed in accordance with the provisions of paragraph 22 below) or, in his/her absence the Deputy Chair (appointed in accordance with the provisions of paragraph 23 below) or, in his absence, one of the non- executive directors, shall preside at meetings of the Council of Governors. If the person presiding at any such meeting has a conflict of interest in relation to the business being discussed, the Lead Governor of the Council of Governors (appointed in accordance with the provisions of paragraph 4 of Annex 5) will chair that part of the meeting.

14.2 Meetings of the Council of Governors shall be open to members of the public unless the Council of Governors decides otherwise in relation to all or part of a meeting for reasons of commercial confidentiality or on other proper grounds. Members of the public may be excluded from a meeting if they are interfering with or preventing the proper conduct of the meeting or for other special reasons.

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

15. Council of Governors – referral to the Panel

15.1 In this paragraph, "the Panel" means a panel of persons appointed by NHSE to which a Governor of the Foundation Trust may refer a question as to whether the Foundation Trust has failed or is failing:

15.1.1 to act in accordance with this Constitution; or

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

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

15.3 Without prejudice to the ability of a governor to make a referral to the Panel, the trust must take steps to secure that governors are able to access support and/or advice, as and where necessary to enable to fulfill their duties.

16. Council of Governors – standing orders

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

17. Council of Governors - conflicts of interest of Governors

If a Governor has a pecuniary, personal or family interest, whether that interest is actual or potential and whether that interest is direct or indirect, in any proposed contract or other matter which is under consideration or is to be considered by the Council of Governors, the Governor shall disclose that interest to the Council of Governors as soon as he becomes aware of it. The Standing Orders (Annex 7) 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.

18. Council of Governors – travel expenses

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

19. Council of Governors – further provisions

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

20. Board of Directors – composition

20.1 The Foundation Trust is to have a Board of Directors, which shall comprise both executive and non-executive directors.

20.2 The Board of Directors is to comprise:

20.2.1 a Non-Executive Chair

20.2.2 no less than four and no more than 11 other Non-Executive Directors; and

20.2.3 no less than four and no more than 11 Executive Directors;

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

20.4 The Chief Executive shall be the Accounting Officer.

20.5 One of the executive directors shall be the finance director.

20.6 One of the executive directors is to be a registered medical practitioner.

20.7 One of the executive directors is to be a registered nurse.

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

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

21.1 they are a member of the Public Constituency; and

21.2 they are not disqualified by virtue of paragraph 26 below or Annex 6.

22. **Board of Directors – appointment and removal of Chair and other non-executive directors**

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

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

22.3 The Council of Governors should raise issues to the Chair or in the case of the Chair to the Senior Independent Director prior to formal action to remove a non-executive director or the Chair.

22.3 Further provisions as to the process of appointment and removal of the Chair and other non-executive directors are set out at Annex 6.

23. **Board of Directors – appointment of Deputy Chair**

23.1 A non-executive director shall be appointed the Deputy Chair in accordance with the following procedure:

23.1.1 A recommendation as to an appropriate non-executive director candidate for the position of Deputy Chair shall be made by the non-executive directors to the Board of Directors.

23.1.2 The Board of Directors shall consider the non-executives' recommendation before compiling a formal proposal to the Nominations Committee.

23.1.3 Having considered the non-executive directors' recommendation and the Board of Directors' proposal, the Nominations Committee shall appoint the Deputy Chair subject to approval by the Council of Governors.

23.2 The Deputy Chair should not chair the Audit Committee.

23.3 If the Chair is unable to discharge his office as Chair of the Foundation Trust the Deputy Chair of the Board of Directors shall be acting Chair of the Foundation Trust.

24. **Board of Directors – appointment of Senior Independent Director**

24.1 The Board of Directors may appoint a non-executive director as a Senior Independent Director.

24.2 The Senior Independent Director should not, ideally, chair the Audit Committee.

24.3 Any appointment of a Senior Independent Director pursuant to paragraph 24.1 shall require the approval of the Council of Governors.

25. **Board of Directors - appointment and removal of the Chief Executive and other Executive Directors**

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

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

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

25.4 The Chief Executive may appoint one of the executive directors as Deputy Chief Executive.

26. **Board of Directors – disqualification**

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

26.1 a person who has been made bankrupt or whose estate has been sequestrated and (in either case) has not been discharged.

26.2 a person in relation to whom a moratorium period under a debt relief order applies (under Part 7A of the Insolvency Act 1986).

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

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

Further provisions as to the circumstances in which an individual may not become or continue as a member of the Board of Directors are set out at Annex 6.

27. **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 Foundation Trust so as to maximise the benefits for the members of the Foundation Trust as a whole and for the public.

28. **Board of Directors - standing orders**

The standing orders for the practice and procedure of the Board of Directors, as may be varied from time to time, are attached at Annex 8.

29. Board of Directors - conflicts of interest of Directors

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

29.1.1 A duty to avoid a situation in which the director has (or can have) a direct or indirect interest that conflicts (or possibly may conflict) with the interests of the Foundation Trust; and

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

29.2 The duty referred to in paragraph 29.1.1 is not infringed if:

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

29.2.2 The matter has been authorised in accordance with the Constitution.

29.3 The duty referred to in paragraph 29.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.

29.4 In paragraph 29.1.2, “third party” means a person other than –

29.4.1 The Foundation Trust; or

29.4.2 A person acting on its behalf.

29.5 If a director of the Foundation Trust has in any way a direct or indirect interest in a proposed transaction or arrangement with the Foundation Trust, the director must declare the nature and extent of that interest to the other directors.

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

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

29.8 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.

29.9 A director need not declare an interest:

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

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

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

29.9.3.1 By a meeting of the Board of Directors, or
29.9.3.2 By a committee of the directors appointed for the purpose under the Constitution.

30. **Board of Directors – remuneration and terms of office**

30.1 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.

30.2 The Foundation 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.

31. **Registers**

The Foundation Trust shall have:

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

31.2 a register of members of the Council of Governors;

31.3 a register of interests of Governors;

31.4 a register of directors; and

31.5 a register of interests of the directors.

32. **Admission to and removal from the registers**

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

33. **Registers – inspection and copies**

33.1 The Foundation 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 regulations.

33.2 The Foundation Trust shall not make any part of its registers available for inspection by members of the public which shows details of any member of the Foundation Trust, if the member so requests.

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

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

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

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

34. **Documents available for public inspection**

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

34.1.1 a copy of the current Constitution;

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

34.1.3 a copy of the latest annual report;

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

34.1.5 a copy of the Foundation Trust's membership strategy;

34.1.6 a copy of the Foundation Trust's policy for the composition of the Council of Governors and of the non-executive directors.

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

34.2.1 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;

34.2.2 a copy of any report laid under section 65D (appointment of trust special administrator) of the 2006 Act;

34.2.3 a copy of any information published under section 65D (appointment of trust special administrator) of the 2006 Act;

34.2.4 a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act;

34.2.5 a copy of any statement provided under section 65F(administrator's draft report) of the 2006 Act;

34.2.6 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(NHSE's decision), 65KB (Secretary of State's response to NHSE'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;

34.2.7 a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act;

34.2.8 a copy of any final report published under section 65I (administrator's final report);

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

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

34.3 Any person who requests a copy of or extract from any of the above documents 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 Foundation Trust, the Foundation Trust may impose a reasonable charge for doing so.

35. **Auditor**

35.1 The Foundation Trust shall have an auditor.

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

36. **Audit committee**

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

37. **Annual Accounts**

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

37.2 NHSE may with the approval of the Secretary of State give directions to the Foundation Trust as to the content and form of its accounts.

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

37.4 The Foundation trust shall prepare in respect of each Financial Year annual accounts in such form as NHSE may, with the approval of the Secretary of State, direct.

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

38. **Annual report, forward plans and non-NHS work**

38.1 The Foundation Trust shall prepare an Annual Report and send it to NHSE.

38.2 The Annual Report must include:

38.2.1 Information on the impact that any income received by the Foundation Trust otherwise than from the provision of goods and services for the purposes of the health service in England has had on the provision by the Trust of goods and services for those purposes;

38.2.2 Information on the Foundation Trust's policy on pay, the work of the committee established pursuant to paragraph 30.2 and such other procedures as the Foundation Trust has on pay; and

38.2.3 Information on the remuneration of Directors and expenses of the Governors and Directors.

38.3 The Foundation Trust shall give information as to its forward planning in respect of each Financial Year to NHSE.

38.4 The document containing the information with respect to forward planning (referred to above) shall be prepared by the directors.

38.5 In preparing the document, the directors shall have regard to the views of the Council of Governors.

38.6 Each forward plan must include information about:

38.6.1 The activities other than the provision of goods and services for the purposes of the health service in England that the Foundation Trust proposes to carry on; and

38.6.2 The income it expects to receive from doing so.

38.7 Where a forward plan contains a proposal that the Foundation Trust carry on an activity of a kind mentioned in paragraph 38.6.1, the Council of Governors must:

38.7.1 Determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfillment by the Foundation Trust of its principal purpose or the performance of its other functions; and

38.7.2 Notify the Board of Directors of its determination.

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

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

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

39.1.1 the annual accounts;

39.1.2 any report of the auditor on them; and

39.1.3 the annual report.

39.2 The documents shall also be presented to the members of the Foundation Trust at an annual members' meeting by at least one member of the Board of Directors in attendance.

39.3 The Foundation Trust may combine a meeting of the Council of Governors convened for the purposes of paragraph 39.1 with the annual members' meeting.

40. Instruments

40.1 The Foundation Trust shall have a seal.

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

41. Amendment of the Constitution

41.1 No amendment shall be made to this Constitution (or to any of its Annexes, save as otherwise specified) unless:

41.1.1 it has been approved by more than half of the members of the Council of Governors of the Foundation Trust voting; and

41.1.2 it has been approved by more than half of the members of the Board

of Directors voting.

41.2 Amendments made under paragraph 41.1 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.

41.3 Where an amendment is made to the Constitution in relation to the powers or duties of the Council of Governors (or otherwise with respect to the role that the Council of Governors has as part of the Foundation Trust) –

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

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

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

41.5 Amendments by the Foundation Trust to its Constitution are to be notified to NHSE . For the avoidance of doubt, NHSE'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.

42. Mergers etc.

The Foundation 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. Significant transactions

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

43.2 For the purposes of this paragraph:

43.2.1 A "transaction" may be either an investment or divestment.

43.2.2 A transaction is "significant" if its value equates to 25% of either the Foundation Trust's:

43.2.2.1 gross assets;

43.2.2.2 income; or

43.2.2.3 gross capital (following completion of the transaction)

calculated with reference to the Foundation Trust's opening Balance Sheet for the Financial Year in which approval is being sought.

43.3 In taking decisions on significant transactions, mergers, acquisitions, separations or dissolutions, Governors need to be assured that the process undertaken by the Board was appropriate, and that the interests of the public at large were considered. A Council of Governors may disagree with the merits of a particular decision of the Board on a transaction, but still give its consent because due diligence has been followed and assurance received. To

withhold its consent, the Council of Governors would need to provide evidence that due diligence was not undertaken.

43.4 If more than half of the members of the Council of Governors voting decline to approve a significant transaction or any part of it, the Council of Governors must approve a written Statement of Reasons for its rejection to be provided to the Board of Directors.

43.5 For the avoidance of doubt, this paragraph 43 does not prevent the Board of Directors from appropriate engagement with the Council of Governors, as it sees fit, to provide information on any other transaction that the Foundation Trust may enter, which does not constitute a significant transaction.

Interpretation and definitions

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

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

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

"Accounting Officer"	means the person who from time to time discharges the functions specified in paragraph 25(5) of Schedule 7 to the 2006 Act;
"appointed Governors"	means those Governors appointed by the appointing organisations;
"appointing organisations"	means those organisations named in this Constitution who are entitled to appoint Governors;
"Constitution"	means this constitution and all annexes to it;
"Director"	means a member of the Board of Directors;
"elected Governors"	means those Governors elected by the Public constituency and the classes of the Staff Constituency;
"Financial year"	means: (a) the period beginning with the date on which the Foundation Trust is authorised and ending with the next 31 March; and (b) each successive period of twelve months beginning with 1 April;
"Local Authority Governor"	means a Governor appointed by one or more local authorities whose area includes the whole or part of an area for a public constituency of the Foundation Trust;
"NHSE"	means the body corporate known as NHS England;
"partner"	means, in relation to another person, a member of the same household living together as a family unit;
"Public Governor"	means a Governor elected by the members of one of the areas of the Public Constituency;
"Secretary"	means the Secretary of the Foundation Trust or any other person appointed to perform the duties of the Secretary, including a joint assistant or deputy secretary;

“Staff Governor”	means a Governor elected by the members of one of the classes of the Staff Constituency;
“the 2006 Act”	means the National Health Service Act 2006;
“the 2012 Act”	means the Health and Social Care Act 2012;
“voluntary organisation”	means a body, other than a public or local authority, the activities of which are not carried on for profit;

ANNEX 1 – THE PUBLIC CONSTITUENCY

(Paragraphs 6.1 and 6.3)

The areas for the Public Constituency are:

- Merseyside (Districts of Knowsley, Liverpool, Sefton, St Helens and Wirral, including all electoral wards in those Districts)

- Cheshire (Districts of Chester, Congleton, Crewe and Nantwich, Ellesmere Port and Neston, Macclesfield, Vale Royal, Warrington and Halton, including all electoral wards in those Districts)

- North Wales (Districts of Conwy, Denbighshire, Flintshire, Gwynedd, Isle of Anglesey and Wrexham, including all electoral wards in those Districts)

- Rest of England and Wales

The minimum number of members of each of the areas of the Public Constituency is to be ten.

ANNEX 2 – THE STAFF CONSTITUENCY

(Paragraphs 7.4 and 7.5)

1 registered nurses and non-registered nurses (being health care assistants or their equivalent and student nurses)

2 non-clinical staff

3 allied healthcare professionals, technical and scientific staff

4 registered medical practitioners

The minimum number of members of each class of the Staff Constituency is to be ten.

ANNEX 3 – COMPOSITION OF COUNCIL OF GOVERNORS

(Paragraphs 9.2 and 9.3)

1 The aggregate number of Public Governors is to be more than half of the total number of members of the Council of Governors.

2 The Council of Governors, subject to the 2006 Act, shall seek to ensure that through the composition of the Council of Governors:

2.1 the interests of the community to whom the Foundation Trust provides services are appropriately represented;

2.2 the level of representation of the Public Constituency, the classes of the Staff Constituency and the appointing organisations strikes an appropriate balance having regard to their legitimate interest in the Foundation Trust's affairs; and to this end, the Council of Governors:

2.3 shall at all times maintain a policy for the composition of the Council of Governors which takes account of the membership strategy, and

2.4 shall from time to time and not less than every two years review the policy for the composition of the Council of Governors, and

2.5 when appropriate shall propose amendments to this Constitution.

3. The Council of Governors of the Foundation Trust is to comprise:

3.1 14 Public Governors from the following areas of the Public Constituency

3.1.1 Merseyside - six Public Governors

3.1.2 Cheshire – four Public Governors

3.1.3 North Wales – three Public Governors

3.1.4 Rest of England and Wales – one Public Governor

3.2 Seven Staff Governors from the following classes;

3.2.1 registered nurses and non-registered nurses (being health care assistants or their equivalent and student nurses) – three Staff Governors

3.2.2 non-clinical staff – two Staff Governors

3.2.3 allied healthcare professionals, technical and scientific – one Staff Governor

3.2.4 registered medical practitioners – one Staff Governor

3.3 Four Appointed Governors:

3.3.1 Liverpool City Council;

3.3.2 Liverpool John Moores University;

3.3.3 Friends of Robert Owen House;

3.3.4 University of Liverpool

ANNEX 4 –THE MODEL RULES FOR ELECTIONS

(Paragraph 10.2)

Model Election Rules 2014
For use in elections to FT councils of governors

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

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PART 3: RETURNING OFFICER

4. Returning officer
5. Staff
6. Expenditure
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PART 4: STAGES COMMON TO CONTESTED AND UNCONTESTED ELECTIONS

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10. Candidate's particulars
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13. Signature of candidate
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1. Interpretation

1.1 In these rules, unless the context otherwise requires:

"*2006 Act*" means the National Health Service Act 2006;

"*corporation*" means the public benefit corporation subject to this constitution;

"*council of governors*" means the council of governors of the corporation;

"*declaration of identity*" has the meaning set out in rule 21.1;

"*election*" means an election by a constituency, or by a class within a constituency, to fill a vacancy among one or more posts on the council of governors;

"*e-voting*" means voting using either the internet, telephone or text message;

"*e-voting information*" has the meaning set out in rule 24.2;

"*ID declaration form*" has the meaning set out in Rule 21.1; "internet voting record" has the meaning set out in rule 26.4(d);

"*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;

"*lead governor*" means the governor nominated by the corporation to fulfil the role described in Appendix B to The NHS Foundation Trust Code of Governance (NHS England, 2022) or any later version of such code.

"*list of eligible voters*" means the list referred to in rule 22.1, containing the information in rule 22.2;

"*method of polling*" means a method of casting a vote in a poll, which may be by post, internet, text message or telephone;

"*NHSE*" means the corporate body known as NHS England;

"*numerical voting code*" has the meaning set out in rule 64.2(b)

"*polling website*" has the meaning set out in rule 26.1;

"*postal voting information*" has the meaning set out in rule 24.1;

"*telephone short code"* means a short telephone number used for the purposes of submitting a vote by text message;

"*telephone voting facility*" has the meaning set out in rule 26.2;

"*telephone voting record*" has the meaning set out in rule 26.5 (d);

"*text message voting facility*" has the meaning set out in rule 26.3;

"*text voting record*" has the meaning set out in rule 26.6 (d);

"*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,

"*voting information*" means postal voting information and/or e-voting information

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

2. Timetable

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

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

3. Computation of time

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

(a) a Saturday or Sunday;

(b) Christmas day, Good Friday, or a bank holiday, or

(c) a day appointed for public thanksgiving or mourning,

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

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

4. Returning Officer

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

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

5. Staff

5.1 Subject to rule 69, 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.

8. Notice of election

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

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

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

(c) the details of any nomination committee that has been established by the corporation,

(d) the address and times at which nomination forms may be obtained;

(e) the address for return of nomination forms (including, where the return of nomination forms in an electronic format will be permitted, the e-mail address for such return) and the date and time by which they must be received by the returning officer,

(f) the date and time by which any notice of withdrawal must be received by the returning officer

(g) the contact details of the returning officer

(h) the date and time of the close of the poll in the event of a contest.

9. Nomination of candidates

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

9.2 The returning officer:

(a) is to supply any member of the corporation with a nomination form, and

(b) is to prepare a nomination form for signature at the request of any member of the corporation,

but it is not necessary for a nomination to be on a form supplied by the returning officer and a nomination can, subject to rule 13, be in an electronic format.

10. Candidate's particulars

10.1 The nomination form must state the candidate's:

(a) full name,

(b) contact address in full (which should be a postal address although an e-mail address may also be provided for the purposes of electronic communication), and

(c) constituency, or class within a constituency, of which the candidate is a member.

11. Declaration of interests

11.1 The nomination form must state:

(a) any financial interest that the candidate has in the corporation, and

(b) whether the candidate is a member of a political party, and if so, which party,

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

12. Declaration of eligibility

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

(a) that he or she is not prevented from being a member of the council of governors by paragraph 8 of Schedule 7 of the 2006 Act or by any provision of the constitution; and,

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

13. Signature of candidate

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

(a) they wish to stand as a candidate,

(b) their declaration of interests as required under rule 11, is true and correct, and

(c) their declaration of eligibility, as required under rule 12, is true and correct.

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

14. Decisions as to the validity of nomination

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

(a) decides that the candidate is not eligible to stand,

(b) decides that the nomination form is invalid,

(c) receives satisfactory proof that the candidate has died, or

(d) receives a written request by the candidate of their withdrawal from candidacy.

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

(a) that the paper is not received on or before the final time and date for return of nomination forms, as specified in the notice of the election,

(b) that the paper does not contain the candidate's particulars, as required by rule 10;

(c) that the paper does not contain a declaration of the interests of the candidate, as required by rule 11,

(d) that the paper does not include a declaration of eligibility as required by rule 12, or

(e) that the paper is not signed and dated by the candidate, if required by rule 13.

14.3 The returning officer is to examine each nomination form as soon as is practicable after he or she has received it and decide whether the candidate has been validly nominated.

14.4 Where the returning officer decides that a nomination is invalid, the returning officer must endorse this on the nomination form, stating the reasons for their decision.

14.5 The returning officer is to send notice of the decision as to whether a nomination is valid or invalid to the candidate at the contact address given in the candidate's nomination form. If an e-mail address has been given in the candidate's nomination form (in addition to the candidate's postal address), the returning officer may send notice of the decision to that address.

15. Publication of statement of candidates

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

15.2 The statement must show:

(a) the name, contact address (which shall be the candidate's postal address), and constituency or class within a constituency of each candidate standing, and

(b) the declared interests of each candidate standing,

as given in their nomination form.

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

15.4 The returning officer must send a copy of the statement of candidates and copies of the nomination forms to the corporation as soon as is practicable after publishing the statement.

16. Inspection of statement of nominated candidates and nomination forms

16.1 The corporation is to make the statement of the candidates and the nomination forms supplied by the returning officer under rule 15.4 available for inspection by members of the corporation free of charge at all reasonable times.

16.2 If a member of the corporation requests a copy or extract of the statement of candidates or their nomination forms, the corporation is to provide that member with the copy or extract free of charge.

17. Withdrawal of candidates

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

18. Method of election

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

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

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

(a) the candidates who remain validly nominated are to be declared elected in accordance with Part 7 of these rules, and

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

19. Poll to be taken by ballot

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

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

19.3 The corporation may decide that voters within a constituency or class within a constituency, may, subject to rule 19.4, cast their votes at the poll using such different methods of polling in any combination as the corporation may determine.

19.4 The corporation may decide that voters within a constituency or class within a constituency for whom an e-mail address is included in the list of eligible voters may only cast their votes at the poll using an e-voting method of polling.

19.5 Before the corporation decides, in accordance with rule 19.3 that one or more e-voting methods of polling will be made available for the purposes of the poll, the corporation must satisfy itself that:

(a) if internet voting is to be a method of polling, the internet voting system to be used for the purpose of the election is:

(i) configured in accordance with these rules; and

(ii) will create an accurate internet voting record in respect of any voter who casts his or her vote using the internet voting system;

(b) if telephone voting to be a method of polling, the telephone voting system to be used for the purpose of the election is:

(i) configured in accordance with these rules; and

(ii) will create an accurate telephone voting record in respect of any voter who casts his or her vote using the telephone voting system;

(c) if text message voting is to be a method of polling, the text message voting system to be used for the purpose of the election is:

(i) configured in accordance with these rules; and

(ii) will create an accurate text voting record in respect of any voter who casts his or her vote using the text message voting system.

20. The ballot paper

20.1 The ballot of each voter (other than a voter who casts his or her ballot by an e-voting method of polling) is to consist of a ballot paper with the persons remaining validly nominated for an election after any withdrawals under these rules, and no others, inserted in the paper.

20.2 Every ballot paper must specify:

(a) the name of the corporation,

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

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

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

(e) instructions on how to vote by all available methods of polling, including the relevant voter's voter ID number if one or more e-voting methods of polling are available,

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

(g) the contact details of the returning officer.

20.3 Each ballot paper must have a unique identifier.

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

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

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

(a) that the voter is the person:

(i) to whom the ballot paper was addressed, and/or

(ii) to whom the voter ID number contained within the e-voting information was allocated,

(b) that he or she has not marked or returned any other voting information in the election, and

(c) the particulars of his or her qualification to vote as a member of the constituency or class within the constituency for which the election is being held,

("declaration of identity")

and the corporation shall make such arrangements as it considers appropriate to facilitate the making and the return of a declaration of identity by each voter, whether by the completion of a paper form ("ID declaration form") or the use of an electronic method.

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

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

Action to be taken before the poll

22. List of eligible voters

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

22.2 The list is to include, for each member:

(a) a postal address; and,

(b) the member's e-mail address, if this has been provided

to which his or her voting information may, subject to rule 22.3, be sent.

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

23. Notice of poll

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

(a) the name of the corporation,

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

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

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

(e) that the ballot papers for the election are to be issued and returned, if appropriate, by post,

(f) the methods of polling by which votes may be cast at the election by voters in a constituency or class within a constituency, as determined by the corporation in accordance with rule 19.3,

(g) the address for return of the ballot papers,

(h) the uniform resource locator (url) where, if internet voting is a method of

polling, the polling website is located;

(i) the telephone number where, if telephone voting is a method of polling, the telephone voting facility is located,

(j) the telephone number or telephone short code where, if text message voting is a method of polling, the text message voting facility is located,

(k) the date and time of the close of the poll,

(l) the address and final dates for applications for replacement voting information, and

(m) the contact details of the returning officer.

24. Issue of voting information by returning officer

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

(a) a ballot paper and ballot paper envelope,

(b) the ID declaration form (if required),

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

(d) a covering envelope;

("postal voting information").

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

(a) instructions on how to vote and how to make a declaration of identity (if required),

(b) the voter's voter ID number,

(c) information about each candidate standing for election, pursuant to rule 64 of these rules, or details of where this information is readily available on the internet or available in such other formats as the Returning Officer thinks appropriate, (d) contact details of the returning officer,

("e-voting information").

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

(a) only be sent postal voting information; or

(b) only be sent e-voting information; or

(c) be sent both postal voting information and e-voting information;

for the purposes of the poll.

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

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

25. Ballot paper envelope and covering envelope

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

25.2 The covering envelope is to have:

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

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

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

(a) the completed ID declaration form if required, and

(b) the ballot paper envelope, with the ballot paper sealed inside it.

26. E-voting systems

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

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

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

26.4 The returning officer shall ensure that the polling website and internet voting

system provided will:

(a) require a voter to:

(i) enter his or her voter ID number; and

(ii) where the election is for a public or patient constituency, make a declaration of identity;

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

(b) specify:

(i) the name of the corporation,

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

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

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

(v) instructions on how to vote and how to make a declaration of identity,

(vi) the date and time of the close of the poll, and

(vii) the contact details of the returning officer;

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

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

(i) the voter's voter ID number;

(ii) the voter's declaration of identity (where required);

(iii) the candidate or candidates for whom the voter has voted; and

(iv) the date and time of the voter's vote,

(e) if the voter's vote has been duly cast and recorded, provide the voter with confirmation of this; and

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

26.5 The returning officer shall ensure that the telephone voting facility and telephone voting system provided will:

(a) require a voter to

(i) enter his or her voter ID number in order to be able to cast his or her vote; and

(ii) where the election is for a public or patient constituency, make a declaration of identity;

(b) specify:

(i) the name of the corporation,

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

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

(iv) instructions on how to vote and how to make a declaration of identity,

(v) the date and time of the close of the poll, and

(vi) the contact details of the returning officer;

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

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

(i) the voter's voter ID number;

(ii) the voter's declaration of identity (where required);

(iii) the candidate or candidates for whom the voter has voted; and

(iv) the date and time of the voter's vote

(e) if the voter's vote has been duly cast and recorded, provide the voter with confirmation of this;

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

26.6 The returning officer shall ensure that the text message voting facility and text messaging voting system provided will:

(a) require a voter to:

(i) provide his or her voter ID number; and

(ii) where the election is for a public or patient constituency, make a declaration of identity;

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

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

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

(i) the voter's voter ID number;

(ii) the voter's declaration of identity (where required);

(ii) the candidate or candidates for whom the voter has voted; and

(iii) the date and time of the voter's vote

(e) if the voter's vote has been duly cast and recorded, provide the voter with confirmation of this;

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

The poll

27. Eligibility to vote

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

28. Voting by persons who require assistance

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

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

29. Spoilt ballot papers and spoilt text message votes

29.1 If a voter has dealt with his or her ballot paper in such a manner that it cannot be accepted as a ballot paper (referred to as a "spoilt ballot paper"), that voter may apply to the returning officer for a replacement ballot paper.

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

29.3 The returning officer may not issue a replacement ballot paper for a spoilt ballot paper unless he or she:

(a) is satisfied as to the voter's identity; and

(b) has ensured that the completed ID declaration form, if required, has not been returned.

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

(a) the name of the voter, and

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

(c) the details of the unique identifier of the replacement ballot paper.

29.5 If a voter has dealt with his or her text message vote in such a manner that it cannot be accepted as a vote (referred to as a "spoilt text message vote"), that voter may apply to the returning officer for a replacement voter ID number.

29.6 On receiving an application, the returning officer is to obtain the details of the voter ID number on the spoilt text message vote, if he or she can obtain it.

29.7 The returning officer may not issue a replacement voter ID number in respect of a spoilt text message vote unless he or she is satisfied as to the voter's identity.

29.8 After issuing a replacement voter ID number in respect of a spoilt text message vote, the returning officer shall enter in a list ("the list of spoilt text message votes"):

(a) the name of the voter, and

(b) the details of the voter ID number on the spoilt text message vote (if that officer was able to obtain it), and

(c) the details of the replacement voter ID number issued to the voter.

30. Lost voting information

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

30.2 The returning officer may not issue replacement voting information in respect of lost voting information unless he or she:

(a) is satisfied as to the voter's identity,

(b) has no reason to doubt that the voter did not receive the original voting information,

(c) has ensured that no declaration of identity, if required, has been returned.

30.3 After issuing replacement voting information in respect of lost voting information, the returning officer shall enter in a list ("the list of lost ballot documents"):

(a) the name of the voter

(b) the details of the unique identifier of the replacement ballot paper, if applicable, and

(c) the voter ID number of the voter.

31. Issue of replacement voting information

31.1 If a person applies for replacement voting information under rule 29 or 30 and a declaration of identity has already been received by the returning officer in the name of that voter, the returning officer may not issue replacement voting

information unless, in addition to the requirements imposed by rule 29.3 or 30.2, he or she is also satisfied that that person has not already voted in the election, notwithstanding the fact that a declaration of identity if required has already been received by the returning officer in the name of that voter.

31.2 After issuing replacement voting information under this rule, the returning officer shall enter in a list ("the list of tendered voting information"):

(a) the name of the voter,

(b) the unique identifier of any replacement ballot paper issued under this rule;

(c) the voter ID number of the voter.

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

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

Polling by internet, telephone or text

33. Procedure for remote voting by internet

33.1 To cast his or her vote using the internet, a voter will need to gain access to the polling website by keying in the url of the polling website provided in the voting information.

33.2 When prompted to do so, the voter will need to enter his or her voter ID number.

33.3 If the internet voting system authenticates the voter ID number, the system will give the voter access to the polling website for the election in which the voter is eligible to vote.

33.4 To cast his or her vote, the voter will need to key in a mark on the screen opposite the particulars of the candidate or candidates for whom he or she wishes to cast his or her vote.

33.5 The voter will not be able to access the internet voting system for an election once his or her vote at that election has been cast.

34. Voting procedure for remote voting by telephone

34.1 To cast his or her vote by telephone, the voter will need to gain access to the telephone voting facility by calling the designated telephone number provided in the voter information using a telephone with a touch-tone keypad.

34.2 When prompted to do so, the voter will need to enter his or her voter ID number

using the keypad.

34.3 If the telephone voting facility authenticates the voter ID number, the voter will be prompted to vote in the election.

34.4 When prompted to do so the voter may then cast his or her vote by keying in the numerical voting code of the candidate or candidates, for whom he or she wishes to vote.

34.5 The voter will not be able to access the telephone voting facility for an election once his or her vote at that election has been cast.

35. Voting procedure for remote voting by text message

35.1 To cast his or her vote by text message the voter will need to gain access to the text message voting facility by sending a text message to the designated telephone number or telephone short code provided in the voter information.

35.2 The text message sent by the voter must contain his or her voter ID number and the numerical voting code for the candidate or candidates, for whom he or she wishes to vote.

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

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

36. Receipt of voting documents

36.1 Where the returning officer receives:

(a) a covering envelope, or

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

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

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

(a) the candidate for whom a voter has voted, or

(b) the unique identifier on a ballot paper.

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

37. Validity of votes

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

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

(a) put the ID declaration form if required in a separate packet, and

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

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

(a) mark the ballot paper "disqualified",

(b) if there is an ID declaration form accompanying the ballot paper, mark it "disqualified" and attach it to the ballot paper,

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

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

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

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

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

(a) mark the internet voting record, telephone voting record or text voting record (as applicable) "disqualified",

(b) record the voter ID number on the internet voting record, telephone voting record or text voting record (as applicable) in the list of disqualified documents; and

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

38. Declaration of identity but no ballot paper (public and patient constituency)[1]

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

[1] It should not be possible, technically, to make a declaration of identity electronically without also submitting a vote.

(a) mark the ID declaration form “disqualified”,

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

(c) place the ID declaration form in a separate packet.

39. De-duplication of votes

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

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

(a) only accept as duly returned the first vote received that was cast using the relevant voter ID number; and

(b) mark as “disqualified” all other votes that were cast using the relevant voter ID number

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

(a) mark the ballot paper “disqualified”,

(b) if there is an ID declaration form accompanying the ballot paper, mark it “disqualified” and attach it to the ballot paper,

(c) record the unique identifier and the voter ID number on the ballot paper in the list of disqualified documents;

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

(e) disregard the ballot paper when counting the votes in accordance with these rules.

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

(a) mark the internet voting record, telephone voting record or text voting record (as applicable) “disqualified”,

(b) record the voter ID number on the internet voting record, telephone voting record or text voting record (as applicable) in the list of disqualified documents;

(c) place the internet voting record, telephone voting record or text voting record (as applicable) in a separate packet, and

(d) disregard the internet voting record, telephone voting record or text voting record (as applicable) when counting the votes in accordance with these rules.

40. Sealing of packets

40.1 As soon as is possible after the close of the poll and after the completion of the procedure under rules 37 and 38, the returning officer is to seal the packets containing:

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

(b) the ID declaration forms, if required,

(c) the list of spoilt ballot papers and the list of spoilt text message votes,

(d) the list of lost ballot documents,

(e) the list of eligible voters, and

(f) the list of tendered voting information

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

STV41. Interpretation of Part 6

STV41.1 In Part 6 of these rules:

"*ballot document*" 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 document:

(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 STV49,

"*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 STV46,

"*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 ballot documents 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 document 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 document on which a second or subsequent preference is recorded for the candidate to whom that ballot document has been transferred, and

"*transfer value*" means the value of a transferred vote calculated in accordance with rules STV47.4 or STV47.7.

42. Arrangements for counting of the votes

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

42.2 The returning officer may make arrangements for any votes to be counted using vote counting software where:

(a) the board of directors and the council of governors of the corporation have approved:

(i) the use of such software for the purpose of counting votes in the relevant election, and

(ii) a policy governing the use of such software, and

(b) the corporation and the returning officer are satisfied that the use of such software will produce an accurate result.

43. The count

43.1 The returning officer is to:

(a) count and record the number of:

(iii) ballot papers that have been returned; and

(iv) the number of internet voting records, telephone voting records and/or text voting records that have been created, and

(b) count the votes according to the provisions in this Part of the rules and/or the provisions of any policy approved pursuant to rule 42.2(ii) where vote counting software is being used.

43.2 The returning officer, while counting and recording the number of ballot papers, internet voting records, telephone voting records and/or text voting records and counting the votes, must make arrangements to ensure that no person obtains or communicates information as to the unique identifier on a ballot paper or the voter ID number on an internet voting record, telephone voting record or text voting record.

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

STV44. Rejected ballot papers and rejected text voting records

STV44.1 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.

STV44.2 The returning officer is to endorse the word "rejected" on any ballot paper which under this rule is not to be counted.

STV44.3 Any text voting record:

(a) on which the figure "1" standing alone is not placed so as to indicate a first preference for any candidate,

(b) on which anything is written or marked by which the voter can be identified except the unique identifier, or

(c) which is unmarked or rejected because of uncertainty,

shall be rejected and not counted, but the text voting record 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.

STV44.4 The returning officer is to endorse the word "rejected" on any text voting record which under this rule is not to be counted.

STV44.5 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 STV44.1 and the number of text voting records rejected by him or her under each of the sub-paragraphs (a) to (c) of rule STV44.3.

FPP44. Rejected ballot papers and rejected text voting records

FPP44.1 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 FPP44.2 and FPP44.3, be rejected and not counted.

FPP44.2 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.

FPP44.3 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.

FPP44.4 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 FPP44.2 and FPP 44.3, endorse the words “rejected in part” on the ballot paper and indicate which vote or votes have been counted.

FPP44.5 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.

FPP44.6 Any text voting record:

(a) on which votes are given for more candidates than the voter is entitled to vote,

(b) on which anything is written or marked by which the voter can be identified except the voter ID number, or

(c) which is unmarked or rejected because of uncertainty,

shall, subject to rules FPP44.7 and FPP44.8, be rejected and not counted.

FPP44.7 Where the voter is entitled to vote for more than one candidate, a text voting record is not to be rejected because of uncertainty in respect of any vote where no uncertainty arises, and that vote is to be counted.

FPP448 A text voting record on which a vote is marked:

(a) otherwise than by means of a clear mark,

(b) by more than one mark,

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

FPP44.9 The returning officer is to:

(a) endorse the word “rejected” on any text voting record which under this rule is not to be counted, and

(b) in the case of a text voting record on which any vote is counted under rules FPP44.7 and FPP 44.8, endorse the words “rejected in part” on the text voting record and indicate which vote or votes have been counted.

FPP44.10 The returning officer is to draw up a statement showing the number of rejected text voting records under the following headings:

(a) voting for more candidates than the voter is entitled to,

(b) writing or mark by which voter could be identified, and

(c) unmarked or rejected because of uncertainty,

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

STV45. First stage

STV45.1 The returning officer is to sort the ballot documents into parcels according to

the candidates for whom the first preference votes are given.

STV45.2 The returning officer is to then count the number of first preference votes given on ballot documents for each candidate, and is to record those numbers.

STV45.3 The returning officer is to also ascertain and record the number of valid ballot documents.

STV46. The quota

STV46.1 The returning officer is to divide the number of valid ballot documents by a number exceeding by one the number of members to be elected.

STV46.2 The result, increased by one, of the division under rule STV46.1 (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”).

STV46.3 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 STV47.1 to STV47.3 has been complied with.

STV47. Transfer of votes

STV47.1 Where the number of first preference votes for any candidate exceeds the quota, the returning officer is to sort all the ballot documents 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 ballot documents for any continuing candidate, or

(b) where no such preference is given, as the sub-parcel of non-transferable votes.

STV47.2 The returning officer is to count the number of ballot documents in each parcel referred to in rule STV47.1.

STV47.3 The returning officer is, in accordance with this rule and rule STV48, to transfer each sub-parcel of ballot documents referred to in rule STV47.1(a) to the candidate for whom the next available preference is given on those ballot documents.

STV47.4 The vote on each ballot document transferred under rule STV47.3 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 ballot documents on

which those votes are given, the calculation being made to two decimal places (ignoring the remainder if any).

STV47.5 Where at the end of any stage of the count involving the transfer of ballot documents, the number of votes for any candidate exceeds the quota, the returning officer is to sort the ballot documents 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 ballot documents for any continuing candidate, or

(b) where no such preference is given, as the sub-parcel of non-transferable votes.

STV47.6 The returning officer is, in accordance with this rule and rule STV48, to transfer each sub-parcel of ballot documents referred to in rule STV47.5(a) to the candidate for whom the next available preference is given on those ballot documents.

STV47.7 The vote on each ballot document transferred under rule STV47.6 shall be at:

(a) a transfer value calculated as set out in rule STV47.4(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.

STV47.8 Each transfer of a surplus constitutes a stage in the count.

STV47.9 Subject to rule STV47.10, the returning officer shall proceed to transfer transferable ballot documents until no candidate who is deemed to be elected has a surplus or all the vacancies have been filled.

STV47.10 Transferable ballot documents 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.

STV47.11 This rule does not apply at an election where there is only one vacancy.

STV48. Supplementary provisions on transfer

STV48.1 If, at any stage of the count, two or more candidates have surpluses, the transferable ballot documents 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 ballot documents 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 ballot documents of the candidate on whom the lot falls shall be transferred first.

STV48.2 The returning officer shall, on each transfer of transferable ballot documents under rule STV47:

(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.

STV48.3 All ballot documents transferred under rule STV47 or STV49 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 document or, as the case may be, all the ballot documents in that sub-parcel.

STV48.4 Where a ballot document is so marked that it is unclear to the returning officer at any stage of the count under rule STV47 or STV49 for which candidate the next preference is recorded, the returning officer shall treat any vote on that ballot document as a non-transferable vote; and votes on a ballot document 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.

STV49. Exclusion of candidates

STV49.1 If:

(a) all transferable ballot documents which under the provisions of rule STV47 (including that rule as applied by rule STV49.11) and this rule are required to be transferred, have been transferred, and

(b) subject to rule STV50, 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 STV49.12 applies, the candidates with the then lowest votes).

STV9.2 The returning officer shall sort all the ballot documents on which first preference votes are given for the candidate or candidates excluded under rule STV49.1 into two sub-parcels so that they are grouped as:

(a) ballot documents on which a next available preference is given, and

(b) ballot documents on which no such preference is given (thereby including ballot documents on which preferences are given only for candidates who are deemed to be elected or are excluded).

STV49.3 The returning officer shall, in accordance with this rule and rule STV48, transfer each sub-parcel of ballot document referred to in rule STV49.2 to the candidate for whom the next available preference is given on those ballot documents.

STV49.4 The exclusion of a candidate, or of two or more candidates together, constitutes a further stage of the count.

STV49.5 If, subject to rule STV50, one or more vacancies still remain to be filled, the returning officer shall then sort the transferable ballot documents, if any, which had been transferred to any candidate excluded under rule STV49.1 into sub-parcels according to their transfer value.

STV49.6 The returning officer shall transfer those ballot documents in the sub-parcel of transferable ballot documents with the highest transfer value to the continuing candidates in accordance with the next available preferences given on those ballot documents (thereby passing over candidates who are deemed to be elected or are excluded).

STV49.7 The vote on each transferable ballot document transferred under rule STV49.6 shall be at the value at which that vote was received by the candidate excluded under rule STV49.1.

STV9.8 Any ballot documents on which no next available preferences have been expressed shall be set aside as non-transferable votes.

STV49.9 After the returning officer has completed the transfer of the ballot documents in the sub-parcel of ballot documents with the highest transfer value he or she shall proceed to transfer in the same way the sub-parcel of ballot documents with the next highest value and so on until he has dealt with each sub-parcel of a candidate excluded under rule STV49.1.

STV49.10 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.

STV49.11 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 STV47.5 to STV47.10 and rule STV48.

STV49.12 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.

STV49.13 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.

STV50. Filling of last vacancies

STV50.1 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.

STV50.2 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.

STV50.3 Where the last vacancies can be filled under this rule, no further transfer of votes shall be made.

STV51. Order of election of candidates

STV51.1 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 STV47.10.

STV51.2 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.

STV51.3 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.

STV51.4 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.

FPP51. Equality of votes

FPP51.1 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.

FPP52. Declaration of result for contested elections

FPP52.1 In a contested election, when the result of the poll has been ascertained, the returning officer is to:

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

(b) give notice of the name of each candidate who he or she has declared elected:

(i) where the election is held under a proposed constitution pursuant to powers conferred on the [insert name] NHS Trust by section 33(4) of the 2006 Act, to the chairman of the NHS Trust, or

(ii) in any other case, to the chairman of the corporation; and

(c) give public notice of the name of each candidate whom he or she has declared elected.

FPP52.2 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 FPP44.5,

(c) the number of rejected text voting records under each of the headings in rule FPP44.10,

available on request.

STV52. Declaration of result for contested elections

STV52.1 In a contested election, when the result of the poll has been ascertained, the returning officer is to:

(a) declare the candidates who are deemed to be elected under Part 6 of these rules as elected,

(b) give notice of the name of each candidate who he or she has declared elected –

(i) where the election is held under a proposed constitution pursuant to powers conferred on the [insert name] NHS Trust by section 33(4) of the 2006 Act, to the chairman of the NHS Trust, or

(ii) in any other case, to the chairman of the corporation, and

(c) give public notice of the name of each candidate who he or she has declared elected.

STV52.2 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 STV44.1,

(f) the number of rejected text voting records under each of the headings in rule STV44.3,

available on request.

53. Declaration of result for uncontested elections

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

(a) declare the candidate or candidates remaining validly nominated to be elected,

(b) give notice of the name of each candidate who he or she has declared elected to the chairman of the corporation, and

(c) give public notice of the name of each candidate who he or she has declared elected.

54. Sealing up of documents relating to the poll

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

(a) the counted ballot papers, internet voting records, telephone voting records and text voting records,

(b) the ballot papers and text voting records endorsed with “rejected in part”,

(c) the rejected ballot papers and text voting records, and

(d) the statement of rejected ballot papers and the statement of rejected text voting records,

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

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

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

(b) the list of spoilt ballot papers and the list of spoilt text message votes,

(c) the list of lost ballot documents, and

(d) the list of eligible voters,

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

54.3 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.

55. Delivery of documents

55.1 Once the documents relating to the poll have been sealed up and endorsed pursuant to rule 56, the returning officer is to forward them to the chair of the corporation.

56. Forwarding of documents received after close of the poll

56.1 Where:

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

(b) any envelopes addressed to eligible voters are returned as undelivered too late to be resent, or

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

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

57. Retention and public inspection of documents

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

57.2 With the exception of the documents listed in rule 58.1, 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.

57.3 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.

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

58.1 The corporation may not allow:

(a) the inspection of, or the opening of any sealed packet containing –

(i) any rejected ballot papers, including ballot papers rejected in part,

(ii) any rejected text voting records, including text voting records rejected in part,

(iii) any disqualified documents, or the list of disqualified documents,

(iv) any counted ballot papers, internet voting records, telephone voting records or text voting records, or

(v) the list of eligible voters, or

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

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

58.2 A person may apply to the board of directors of the corporation to inspect any of the documents listed in rule 58.1, and the board of directors of the corporation may only consent to such inspection if it is satisfied that it is necessary for the purpose of questioning an election pursuant to Part 11.

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

(a) persons,

(b) time,

(c) place and mode of inspection,

(d) production or opening,

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

58.4 On an application to inspect any of the documents listed in rule 58.1 the board of directors of the corporation must:

(a) in giving its consent, and

(b) in making the documents available for inspection

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

(i) that his or her vote was given, and

(ii) that NHSE has declared that the vote was invalid.

FPP59. Countermand or abandonment of poll on death of candidate

FPP59.1 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.

FPP59.2 Where a new election is ordered under rule FPP59.1, 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.

FPP59.3 Where a poll is abandoned under rule FPP59.1(a), rules FPP59.4 to FPP59.7 are to apply.

FPP59.4 The returning officer shall not take any step or further step to open envelopes or deal with their contents in accordance with rules 38 and 39, and is to make up separate sealed packets in accordance with rule 40.

FPP59.5 The returning officer is to:

(a) count and record the number of ballot papers, internet voting records, telephone voting records and text voting records that have been received,

(b) seal up the ballot papers, internet voting records, telephone voting records and text voting records into packets, along with the records of the number of ballot papers, internet voting records, telephone voting records and text voting records and

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

FPP59.6 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.

FPP59.7 Once the documents relating to the poll have been sealed up and endorsed pursuant to rules FPP59.4 to FPP59.6, the returning officer is to deliver them to the chairman of the corporation, and rules 57 and 58 are to apply.

STV59. Countermand or abandonment of poll on death of candidate

STV59.1 If, at a contested election, proof is given to the returning officer's satisfaction before the result of the election is declared that one of the persons named or to be named as a candidate has died, then the returning officer is to:

(a) publish a notice stating that the candidate has died, and

(b) proceed with the counting of the votes as if that candidate had been excluded from the count so that –

(i) ballot documents which only have a first preference recorded for the candidate that has died, and no preferences for any other candidates, are not to be counted, and

(ii) ballot documents 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.

STV59.2 The ballot documents which have preferences recorded for the candidate who has died are to be sealed with the other counted ballot documents pursuant to rule 54.1(a).

Election expenses

60. Election expenses

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

61. Expenses and payments by candidates

61.1 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.

62. Election expenses incurred by other persons

62.1 No person may:

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

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

62.2 Nothing in this rule is to prevent the corporation from incurring such expenses, and making such payments, as it considers necessary pursuant to rules 63 and 64.

Publicity

63. Publicity about election by the corporation

63.1 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.

63.2 Any information provided by the corporation about the candidates, including information compiled by the corporation under rule 64, must be:

(a) objective, balanced and fair,

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

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

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

63.3 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.

64. Information about candidates for inclusion with voting information

64.1 The corporation must compile information about the candidates standing for election, to be distributed by the returning officer pursuant to rule 24 of these rules.

64.2 The information must consist of:

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

(b) if voting by telephone or text message is a method of polling for the election, the numerical voting code allocated by the returning officer to each candidate, for the purpose of recording votes using the telephone voting facility or the text message voting facility ("numerical voting code"), and

(c) a photograph of the candidate.

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

65.1 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.

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

PART 11: QUESTIONING ELECTIONS AND THE CONSEQUENCE OF IRREGULARITIES

66. Application to question an election

66.1 An application alleging a breach of these rules, including an electoral irregularity under Part 10, may be made to NHSE for the purpose of seeking a referral to the independent election arbitration panel (IEAP).

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

66.3 An application may only be made to NHSE 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.

66.4 The application must:

(a) describe the alleged breach of the rules or electoral irregularity, and

(b) be in such a form as the independent panel may require.

66.5 The application must be presented in writing within 21 days of the declaration of the result of the election. NHSE will refer the application to the independent election arbitration panel appointed by NHSE.

66.6 If the independent election arbitration panel requests further information from the applicant, then that person must provide it as soon as is reasonably practicable.

66.7 NHSE shall delegate the determination of an application to a person or panel of persons to be nominated for the purpose.

66.8 The determination by the IEAP 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.

66.9 The IEAP may prescribe rules of procedure for the determination of an application including costs.

67. Secrecy

67.1 The following persons:

(a) the returning officer,

(b) the returning officer's staff,

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

(i) the name of any member of the corporation who has or has not been given voting information or who has or has not voted,

(ii) the unique identifier on any ballot paper,

(iii) the voter ID number allocated to any voter,

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

67.2 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.

67.3 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.

68. Prohibition of disclosure of vote

68.1 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.

69. Disqualification

69.1 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.

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

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

(a) the delivery of the documents in rule 24, or

(b) the return of the ballot papers,

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

ANNEX 5 – ADDITIONAL PROVISIONS – COUNCIL OF GOVERNORS

(Paragraphs 12.3, 14.1 and 19)

Elected Governors

1. A member of the Public Constituency may not vote at an election for a Public Governor unless within twenty-one days before they vote they have made a declaration in the form specified by the Secretary that they are qualified to vote as a member of the relevant area of the Public Constituency. It is an offence to knowingly or recklessly make such a declaration which is false in a material particular.

Appointed Governors

2. The Secretary, having consulted Liverpool City Council, is to adopt a process for agreeing the appointment of the Local Authority Governor with Liverpool City Council.

3. The other Appointed Governors are to be appointed by the appointed organisations, in accordance with a process agreed with the Secretary.

Appointment of Lead Governor

4. The Council of Governors shall appoint one of the Public Governors to be Lead Governor on the Council of Governors.

Further provisions as to eligibility to be a Governor

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

    5.1 they are a director of the Foundation Trust or a governor or director of an NHS body (unless they are appointed by an appointing organisation which is an NHS body);

    5.2 they are the spouse, partner, parent or child of a member of the Board of Directors of the Foundation Trust;

    5.3 they have, or they are a member of a committee which has, any role on behalf of a local authority or the Welsh Assembly to scrutinise and review health matters;

    5.4 they are a member of Local Healthwatch;

    5.5 they have been previously removed as a Governor pursuant to paragraph 7 of this Annex 5.

    5.6 being a member of the Public Constituency, 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 Foundation Trust, and that they are not prevented from being a Governor on the Council of Governors;

    5.7 they are subject to a sex offender order;

    5.8 they have within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with an NHS body;

5.9 they are, or are eligible to be, a member of the Staff Constituency and have received a final written warning from the Foundation Trust which has not yet expired;

5.10 they are a person whose tenure of office as the Chair or as a member or director of an NHS body has been terminated on the grounds that their appointment is not in the interests of the health service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest.

5.11 They are incapable by reason of mental disorder, illness or injury of managing or administering their property and affairs.

5.12 On the basis of disclosures obtained through an application to the Disclosure and Barring Service, they are not considered suitable to become or continue as a Governor by the Chair.

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

6.1 they resign by notice in writing to the Secretary;

6.2 they fail to attend three consecutive meetings of the Council of Governors, unless the other Governors are satisfied that:

6.2.1 the absences were due to reasonable causes; and

6.2.2 they will be able to start attending meetings of the Council of Governors again within such a period as the other Governors consider reasonable;

6.3 they have refused without reasonable cause to undertake any training which the Council of Governors requires all Governors to undertake;

6.4 they have failed to sign and deliver to the Secretary a statement in the form required by the Secretary confirming acceptance of the code of conduct for Governors;

6.5 they are removed from the Council of Governors under the following provisions.

7. A Governor may be removed from the Council of Governors by a resolution approved by not less than three-quarters of the remaining Governors present and voting on the grounds that:

7.1 they have committed a serious breach of the code of conduct; or

7.2 they have acted in a manner detrimental to the interests of the Foundation Trust; and

7.3 the Council of Governors consider that it is not in the best interests of the Foundation Trust for them to continue as a Governor.

Vacancies amongst Governors

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

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

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

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

    10.2 to invite the next highest polling candidate for that seat at the most recent election to fill the seat until the next election, at which time the seat will fall vacant and subject to election for any unexpired period of the term of office. Should that candidate decline, the Council of Governors shall be at liberty to approach each of the remaining next highest polling candidates in order until the seat is filled, failing which the options referred to in paragraphs 10.1 and 10.3 of this Annex 5 shall be available to the Council of Governors; or

    10.3 if the unexpired period of the term of office is less than six months, to leave the seat vacant until the next elections are held.

ANNEX 6 - ADDITIONAL PROVISIONS – BOARD OF DIRECTORS

(Paragraphs 21.2, 22.3 and 26)

Appointment and Removal of Chair and other Non-executive directors

1. Non-executive directors, including the Chair, are to be appointed by the Council of Governors in accordance with paragraph 22 of the Constitution using the following procedure.

   1.1 The Council of Governors will maintain a policy for the composition of the non-executive directors which takes account of the membership strategy, and which they shall review from time to time and not less than every two years.

   1.2 The Board of Directors will identify the skills and experience required for non-executive directors and, in order to do this, may work with an external organisation recognised as expert at appointments.

   1.3 Appropriate candidates will be identified by a Nominations Committee through a process of open competition, which take account of the policy maintained by the Council of Governors and the skills and experience required.

   1.4 Save when a Chair or a Deputy Chair is being appointed, the Nominations Committee will comprise the Chair, the Deputy Chair and not less than three elected Governors from the Public Constituency. When a Chair is being appointed, the Nominations Committee will comprise the Deputy Chair, one other non-executive director and not less than three elected Governors from the Public Constituency. When a Deputy Chair is being appointed, the Nominations Committee will comprise two other non-executive directors and not less than three elected Governors from the Public Constituency. The Chief Executive may advise the Nominations Committee in relation to the appointment of non-executive directors but shall not be entitled to exercise a vote or take any further part in relation to such appointment.

2. The removal of the Chair or another non-executive director shall be in accordance with paragraph 22 of the Constitution and shall be subject to the following procedures.

   2.1 The Council of Governors should raise issues to the Chair or in the case of the Chair to the Senior Independent Director prior to any formal action to remove a non-executive director or the Chair.

   2.1 Any proposal for removal must be proposed by a Governor and seconded by not less than nine Governors including at least two elected Governors and one appointed Governor.

   2.2 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.

   2.3 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.

2.4 A decision to remove a non-executive director will only be effective if such decision is approved by not less than three quarters of the total number of the Council of Governors.

2.5 If any proposal to remove a 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 reasons within 12 months of the meeting.

Further provisions as to disqualification of Directors

3. A person may not become or continue as a director of the Foundation Trust if:

3.1 they are a Governor on the Council of Governors or a governor of an NHS body;

3.2 they are a member of Local Healthwatch;

3.3 they are the spouse, partner, parent or child of a member of the Board of Directors of the Foundation Trust;

3.4 they have, or they are a member of a committee which has, any role on behalf of a local authority or the Welsh Assembly to scrutinise and review health matters;

3.5 they are the subject of a disqualification order made under the Company Directors Disqualification Act 1986;

3.6 they are a person whose tenure of office as a Chair or as a member or director of an NHS body has been terminated on the grounds that their appointment is not in the interests of the health service, for non attendance at meetings, or for non-disclosure of a pecuniary interest;

3.7 they have within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with an NHS body;

3.8 in the case of a non-executive director they have refused without reasonable cause to fulfill any training requirement established by the Board of Directors; or

3.9 they have refused to sign and deliver to the Secretary a statement in the form required by the Board of Directors confirming acceptance of the code of conduct for directors.

3.10 they are incapable by reason of mental disorder, illness or injury of managing or administering their property and affairs.

Expenses

4. The Foundation Trust may reimburse executive directors travelling and other costs and expenses incurred in carrying out their duties at such rates as the remuneration committee of non-executive directors decides. For the avoidance of doubt, such reimbursement shall be disclosed in the annual report.

Secretary

5. The Foundation Trust shall have a Secretary who may be an employee. The Secretary may not be a Governor, or the Chief Executive or the Finance Director. The Secretary's functions shall include:

5.1 acting as Secretary to the Council of Governors and the Board of Directors, and any committees;

5.2 summoning and attending all members meetings, meetings of the Council of Governors and the Board of Directors, and keeping the minutes of those meetings;

5.3 keeping the register of members and other registers and books required by this Constitution to be kept;

5.4 having charge of the Foundation Trust's seal;

5.5 publishing to members in an appropriate form information which they should have about the Foundation Trust's affairs;

5.6 preparing and sending to NHSE and any other statutory body all returns which are required to be made.

6. The Secretary is to be appointed and removed by the Board of Directors.

ANNEX 7
STANDING ORDERS FOR THE PRACTICE AND PROCEDURES OF THE COUNCIL OF GOVERNORS OF
Liverpool Heart and Chest Hospital NHS Foundation Trust

(Paragraphs 16 and 17)

1. **INTERPRETATION**

1.1 Save as permitted by law, the Chair of the Foundation Trust shall be the final authority on the interpretation of Standing Orders (on which s/he shall be advised by the Secretary).

1.2 Any expression to which a meaning is given in the 2006 Act shall have the same meaning in this interpretation and in addition:

"Board of Directors"	shall mean the Chair and Non-Executive Directors, appointed by the Council of Governors, and the Executive Directors appointed by the Nominations, Remuneration and Succession (Executive Directors) Committee of the Board of Directors.
"Chair"	is the person appointed by the Council of Governors in accordance with paragraph 22 of this Constitution. The expression "the Chair" shall be deemed to include the Deputy Chair or otherwise a Non-Executive Director appointed by the Board of Directors to preside for the time being over its meetings.
"Chief Executive"	shall mean the chief officer of the Foundation Trust.
"Constitution"	means the constitution of the Foundation Trust and all annexes to it, as may be amended from time to time.
"Council of Governors"	means the Council of Governors of the Foundation Trust;
"Director"	shall mean a person appointed to the Board of Directors in accordance with the Foundation Trust's Constitution and includes the Chair.
"Governor"	means a Governor on the Council of Governors
"Meeting"	means a duly convened meeting of the Council of Governors;
"Motion"	Means a formal proposition to be discussed and

	voted on during the course of a meeting.
"Nominated Officer"	means an Officer charged with the responsibility for discharging specific tasks within Standing Orders.
"Officer"	means an employee of the Foundation Trust.
"Question on Notice"	means a question from a Governor (notice of which has been given pursuant to Standing Order 4.7.2) about a matter over which the Council has powers or duties or which affects the services provided by the Foundation Trust;
"Nominations, Remuneration and Succession Committee (Executive Directors)"	shall be a committee appointed by the Board of Directors in accordance with paragraph 25.3 of this Constitution.
"Secretary"	means the Secretary of the Foundation Trust or any other person appointed to perform the duties of the Secretary, including a joint assistant or deputy secretary.

2. GENERAL INFORMATION

2.1 These Standing Orders for the practice and procedure of the Council of Governors are the standing orders referred to in paragraph 16 of the Constitution. They may be amended in accordance with the procedure set out in Standing Order 4.14 below. If there is any conflict between these Standing Orders and the Constitution, the Constitution shall prevail.

2.2 The purpose of the Council of Governors' Standing Orders is to ensure that the highest standards of corporate governance and conduct are applied to all meetings of the Council of Governors and associated deliberations. The Council shall at all times seek to comply with the Foundation Trust's Code of Conduct for the Council of Governors.

2.3 All business shall be conducted in the name of the Foundation Trust.

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

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

3. Composition of the Council of Governors

3.1. The composition of the Council of Governors shall be in accordance with paragraph 9 and Annex 3 of the Foundation Trust's Constitution.

3.2. **Appointment and Removal of the Chair and Deputy Chair of the Council of Governors -** These appointments shall be made by the Council of Governors in accordance with paragraphs 22 and 23 of the Foundation Trust's Constitution.

3.3. **Duties of Deputy Chair** - Where the Chair of the Foundation Trust has died or has otherwise ceased to hold office or where s/he has been unable to perform his/her duties as Chair owing to illness, absence from England and Wales or any other cause, references to the Chair shall, so long as there is no Chair able to perform his/her duties, be taken to include references to the Deputy Chair or the Non-Executive Director nominated by the Council of Governors to take on the duties of the Chair or Deputy Chair should both be absent from a meeting or otherwise unavailable or unable to perform his/her duties.

4. Meetings of the Council of Governors

4.1. Admission to meetings

4.1.1 Meetings of the Council of Governors must be open to the public (which, for the avoidance of doubt, includes representatives of the press), subject to 4.1.2 and 4.1.3 below.

4.1.2 The Council of Governors may resolve to exclude members of the public or a representative from the press from any meeting or part of a meeting for reasons of commercial confidentiality or on other proper grounds.

4.1.3 The Chair may exclude any member of the public or representative from the press from the meeting of the Council of Governors if s/he considers that s/he is interfering with or preventing the proper conduct of the meeting or for other special reasons.

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

4.1.5 Without prejudice to the power of the Council of Governors to require one or more of the Directors to attend a meeting of the Council of Governors for the purposes of obtaining information about the Foundation Trust's performance of its functions or the Directors' performance of their duties (and decide whether to propose a vote on the Foundation Trust's or Directors' performance) at paragraph 14.3 of the Constitution, the Council of Governors may invite the Chief Executive, one or more Directors or a representative of the auditor or other advisors , as appropriate, to attend any meeting of the Council of Governors to enable Governors to raise questions about the Foundation Trust's affairs.

4.2 **Calling Meetings**

4.2.1 Meetings of the Council of Governors may be called by the Secretary or the Chair or nine Governors (including at least two elected Governors and one appointed 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. If upon receipt of such a request, the Secretary fails to call such a meeting, the Chair or nine Governors, whichever is the case, shall call the meeting.

4.2.2 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.

4.3 **Notice of Meetings**

4.3.1 The Secretary shall deliver a schedule of the dates, times and venues of meetings of the Council of Governors for each calendar year, six months in advance of the first meeting of the Council of Governors to be called, duly signed by the Chair or by an Officer of the Foundation Trust authorised by the Chair to sign on his/her behalf, to every Governor, or send such schedule by post to the usual place of residence of such Governor. Lack of service of the notice on any Governor shall not affect the validity of a meeting, subject to 4.3.4 below.

4.3.2 Notwithstanding 4.3.1, and subject to 4.3.3, should an additional meeting of the Council of Governors be called pursuant to 4.2, the Secretary shall, as soon as possible, deliver written notice of the date, time and venue of the meeting to every Governor, or send by post to the usual place of residence of such Governor, so as to be available to him/her at least fourteen days and not more than twenty eight days before the meeting. Such notice will also be published on the Foundation Trust's website.

4.3.3 The Chair may waive the notice required pursuant to 4.3.2 in the case of emergencies or in the case of the need to conduct urgent business.

4.3.4 Subject to 4.3.3, failure to serve notice on more than three quarters of Council of Governors will invalidate any meeting. A notice will be presumed to have been served 48 hours after the envelope containing it was posted or, in the case of a notice contained in an electronic communication, 48 hours after it was sent.

4.3.5 Before each meeting of the Council of Governors, the Secretary shall ensure that every Governor is provided with reasonable notice of the details of the business to be transacted in it. In the case of a meeting called by Governors in default of the Chair, no business shall be transacted at the meeting other than that specified in the notice.

4.4 **Setting the Agenda**

4.4.1 The Secretary shall ensure an agenda, minutes of the previous meeting of the Council of Governors, copies of any Questions on Notice and/or motions on notice to be considered at the relevant meeting of the Council of Governors and any supporting papers are delivered to every Governor, or sent by post to the usual place of residence of such Governor, so as to be available to him/her normally at least seven days in advance of the meeting.

4.4.2 Approval of the minutes of the previous meeting of the Council of Governors will be a specific item on each agenda.

4.4.3 In the case of a meeting called by the Chair, a Governor desiring a matter to be included on an agenda shall make his/her request in writing to the Chair at least ten clear days before the meeting. Requests made less than ten days before a meeting may be included on the agenda at the discretion of the Chair.

4.5 **Chair of Meeting**

At any meeting of the Council of Governors, the person presiding shall be determined in accordance with paragraph 14.1 of the Constitution.

4.6 **Notices of Motions**

4.6.1 For the avoidance of doubt, motions by the Council of Governors may only concern matters for which the Council of Governors has a responsibility or which affect the services provided by the Foundation Trust.

4.6.2 Notice of motion to amend or rescind any resolution (or the general substance of any resolution), which has been passed within the preceding six calendar months, shall bear the signature of the Governor who gave it and the signature of four other Governors. When any such motion has been disposed of by the Council of Governors it shall not be competent for any Governor, other than the Chair, to propose a motion to the same effect within six months; however, the Chair may do so if s/he considers it appropriate.

4.6.3 Subject to 4.6.5 and except in the circumstances covered by 4.8, Governors desiring to move or amend a motion shall send a written notice thereof at least ten clear days before the meeting at which it is proposed to be considered to the Secretary, such written notice to be signed or transmitted by at least two Governors. For the purposes of this 4.6, receipt of such motions by electronic means is acceptable.

4.6.4 Upon receipt of a motion, the Secretary shall:

4.6.4.1 acknowledge receipt in writing to each of the Governors who signed or transmitted it; and

4.6.4.2 insert this in the agenda for that meeting, together with any relevant papers.

4.6.5 The following motions may be moved at any meeting without notice:

4.6.5.1 To amend the minutes of the previous meeting of the Council of Governors in order to ensure accuracy;

4.6.5.2 To change the order of business in the agenda for the meeting;

4.6.5.3 To refer a matter discussed at a meeting to an appropriate body or individual;

4.6.5.4 To appoint a working group arising from an item on the agenda for the meeting;

4.6.5.5 To receive reports or adopt recommendations made by the Board of Directors;

4.6.5.6 To withdraw a motion;

4.6.5.7 To amend a motion;

4.6.5.8 To proceed to the next business on the agenda;

4.6.5.9 That the question be now put;

4.6.5.10 To adjourn a debate;

4.6.5.11 To adjourn a meeting;

4.6.5.12 To exclude the public and press from the meeting in question pursuant to 4.1.2 (in which case, the motion shall state on what grounds such exclusion is appropriate).

4.6.5.13 To not hear further from a Governor, or to exclude them from the meeting in question (if a member persistently disregards the ruling of the Chair or behaves improperly or offensively or deliberately obstructs business, the Chair, in his/her absolute

discretion, may move that the Governor in question will not be heard further at that meeting and, if seconded, the motion will be voted on without discussion. If the Governor continues to behave improperly after such a motion is carried, the Chair may move that either the Governor leaves the meeting room or that the meeting is adjourned for a specific period. If seconded, that motion will be voted on without discussion.)

4.6.5.14 To give the consent of the Council of Governors to any matter on which its consent is required pursuant to the Constitution.

4.6.6 The mover of a motion shall have a right of reply at the close of any discussion on the motion or any amendment thereto.

4.7 **Questions on Notice at Meetings**

4.7.1 Subject to 4.7.2, a Governor may ask a Question on Notice of:

4.7.1.1 the Chair;

4.7.1.2 another Governor;

4.7.1.3 an Executive Director; or

4.7.1.4 the chair of any sub-committee or working group of the Council.

4.7.2 Except in the circumstances covered by 4.8, notice of a Question on Notice must be given in writing to the Secretary at least ten days prior to the relevant meeting. For the purposes of this Standing Order 4.7, receipt of any such Questions on Notice via electronic means is acceptable.

4.7.3 A response to a Question on Notice may take the form of:

4.7.3.1 A direct oral answer at the relevant meeting (which may, where the desired information is in a publication of the Foundation Trust or other published work, take the form of a reference to that publication);

4.7.3.2 Where a direct oral answer cannot be given, a written answer which will be circulated as soon as reasonably practicable to the questioner and circulated to the remaining Governors with the agenda for the next meeting.

4.7.4 Supplementary questions for the purpose of clarification of a reply to a Question on Notice may be asked at the absolute discretion of the Chair.

4.8 **Urgent motions or questions**

4.8.1 The Chair may, in his/her opinion, table an urgent motion or question.

4.8.2 A Governor may submit an urgent motion or question in writing to the Secretary before the commencement of the meeting at which it is proposed it should be considered.

4.9 **Reports from the Executive Directors**

4.9.1 At any meeting, a Governor may ask any question on any report by an Executive Director or another Officer through the Chair without notice, after that report has been received by or while such report is under consideration by the Council of Governors at the meeting.

4.9.2 Unless the Chair decides otherwise, no statements will be made by a Governor other than those which are strictly necessary to define or

clarify any questions posed pursuant to 4.9.1 and, in any event, no such statement may last longer than three minutes each.

4.9.3 A Governor who has asked a question pursuant to 4.9.1 may ask a supplementary question if the supplementary question arises directly out of the reply given to the initial question.

4.9.4 The Chair may, in his/her absolute discretion, reject any question from any Governor if, in the opinion of the Chair, the question is substantially the same and relates to the same topic as a question which has already been put to the meeting or a previous meeting.

4.9.5 At the absolute discretion of the Chair, questions may, at any meeting which is held in public, be asked of the Executive Directors present by members of the Foundation Trust or any other members of the public present at the meeting.

4.10 **Speaking**

This Standing Order applies to all forms of speech/debate by Governors or members of the Foundation Trust and public in relation to a motion or question under discussion at a meeting of the Council of Governors.

4.10.1 Any approval to speak must be given by the Chair.

4.10.2 All speakers must state their name and role before starting to speak to ensure the accuracy of the meeting minutes.

4.10.3 Speeches must be directed to the matter, motion or question under discussion or to a point of order.

4.10.4 Unless in the opinion of the Chair it would not be desirable or appropriate to time limit speeches on any topic to be discussed having regard to its nature, complexity or importance, no proposal, speech nor any reply may exceed three minutes.

4.10.5 The Chair may, in his/her absolute discretion, limit the number of replies, questions or speeches which are heard at any one meeting.

4.10.6 A person who has already spoken on a matter at a meeting may not speak again at that same meeting in respect of that matter unless exercising a right of reply or speaking on a point of order.

4.11 **Chair's Ruling**

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

4.12 **Voting**

4.12.1 Decisions at meetings shall be determined by a majority of the votes of the Governors present and voting. In the case of any equality of votes, the person presiding shall have a second or casting vote.

4.12.2 All decisions put to the vote shall, at the discretion of the Chair of the meeting, be determined by oral expression or by a show of hands. A paper ballot may also be used if a majority of the Governors present so request.

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

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

4.12.5 In no circumstances may an absent Governor vote by proxy. Subject to paragraph 4.17.3, absence is defined as being absent at the time of the vote.

4.12.6 An elected Governor may not vote at a meeting of the Council of Governors unless, before attending the meeting, they have made a declaration in the form specified by the Secretary of the particulars of their qualification to vote as a member of the Foundation Trust and that they are not prevented from being a Governor on the Council of Governors. An elected Governor shall be deemed to have confirmed the declaration upon attending any subsequent meeting of the Council of Governors and every agenda for meetings of the Council of Governors shall draw this to the attention of the elected Governors.

4.13 **Suspension of Standing Orders (SOs)**

4.13.1 Except where this would contravene any statutory provision or a direction made by the Secretary of State, any one or more of these Standing Orders may be suspended at any meeting, provided that at least two-thirds of the Council of Governors are present and that a majority of those present vote in favour of suspension.

4.13.2 A decision to suspend SOs shall be recorded in the minutes of the meeting.

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

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

4.13.5 The Trust's Audit Committee shall review every decision to suspend SOs.

4.14 **Variation and Amendment of Standing Orders**

Notwithstanding paragraph 41 of this Constitution, these Standing Orders shall be amended only if:

4.14.1 the variation proposed does not contravene a statutory provision;

4.14.2 a motion to amend the Standing Orders is signed by seven Governors (including at least two elected Governors and one appointed Governors) and submitted to the Secretary in writing at least 21 days before the meeting at which the motion is intended to be proposed; and

4.14.3 no fewer than three quarters of the Governors present and voting vote in favour of the amendment.

4.15 **Record of Attendance**

4.15.1 The names of the Governors present at the meeting (including when present pursuant to paragraph 4.17.3) shall be recorded in the minutes.

4.15.2 Governors who are unable to attend a meeting shall notify the Secretary in writing in advance of the meeting in question in order that their apologies are submitted.

4.16 **Minutes**

4.16.1 The minutes of the proceedings of the meeting shall be drawn up and maintained as a public record. They will be submitted for agreement at

the next meeting where they will be signed by the person presiding at it.

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

4.16.3 The minutes of the meeting shall be made available to the public except for minutes relating to business conducted when members of the public and press are excluded pursuant to 4.1.2 unless otherwise required by law.

4.17 **Quorum**

4.17.1 Ten Governors shall form a quorum.

4.17.2 If a Governor has been disqualified from participating in the discussion on any matter and from voting on any resolution by reason of the declaration of a conflict of interest s/he shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business.

4.17.3 The Council of Governors may agree that its members can participate in its meetings by telephone, video or video media link. Participation in a meeting in this manner shall be deemed to constitute presence in person at the meeting.

5. Arrangements for the Exercise of Functions by Delegation

The Council of Governors may not delegate any of its powers to a committee or sub-committee, although it may appoint committees consisting of its members, Directors and other persons to assist the Council of Governors in carrying out its functions. The Council of Governors may, through the Secretary, request that advisors assist them or any committee they appoint in carrying out its duties.

6. **Confidentiality**

6.1 A Governor on the Council of Governors shall not disclose a matter dealt with by, or brought before, the Council of Governors without its permission.

6.2 Members of the Nominations Committee shall not disclose any matter dealt with by the Committee, notwithstanding that the matter has been reported or action has been concluded, if the Council of Governors or the Committee resolves that it is confidential.

7. Declaration of Interests and Register of Interests

7.1 Governors are required to comply with the Foundation Trust's Standards of Business Conduct and declare interests that are material to the Council. All Governors should declare such interests on appointment and on any subsequent occasion that a conflict arises.

7.2 Subject to the exceptions in 7.3, a "material interest" is:

7.2.1 any directorship of a company;

7.2.2 any interest or position in any firm, company, business or organisation (including any charitable or voluntary organisation) which has or is

likely to have a trading or commercial relationship with the Foundation Trust;

7.2.3 any interest in an organisation providing health and social care services to the National Health Service;

7.2.4 a position of authority in a charity or voluntary organisation in the field of health and social care;

7.2.5 any connection with any organisation, entity or company considering entering into a financial arrangement with the Foundation Trust including but not limited to lenders or banks.

7.3 The exceptions which shall not be treated as material interests for the purposes of these provisions are as follows:

7.3.1 shares not exceeding 2% of the total shares in issue held in any company whose shares are listed on any public exchange;

7.3.2 an employment contract with the Foundation Trust held by a Staff Governor;

7.3.3 an employment contract with a local authority held by a Local Authority Governor;

7.3.4 an employment contract with or other position of authority within an appointing organisation held by an Appointed Governor.

7.4 Any Governor who has an interest in a matter to be considered by the Council of Governors (whether because the matter involves a firm, company, business or organisation in which the Governor or his/her spouse or partner has a material interest or otherwise) shall declare such interest to the Council of Governors and:

7.4.1 shall withdraw from the meeting and play no part in the relevant discussion or decision; and

7.4.2 shall not vote on the issue (and if by inadvertence they do remain and vote, their vote shall not be counted).

7.5 Any Governor who fails to disclose any interest or material interest required to be disclosed under these provisions must permanently vacate their office if required to do so by a majority of the remaining Governors.

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

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

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

8. Register of Interests

8.1 The Secretary, will ensure that a Register of Interests is established to record formally declarations of interests of Governors.

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

8.3 The Register will be available to the public.

9. Compliance - Other Matters

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

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

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

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

9. Resolution of Disputes with Board of Directors

9.1. Should a dispute arise between the Council of Governors and the Board of Directors, then the disputes resolution procedure set out below shall be followed.

9.2. 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.

9.3. Failing resolution under 9.2 above, then the Board of Directors or the Council of Governors, as appropriate, shall at its next formal meeting approve the precise wording of a Disputes Statement setting out clearly and concisely the issue or issues giving rise to the dispute.

9.4. The Chair shall ensure that the Disputes Statement, without amendment or abbreviation in any way, shall be an agenda item and agenda paper at the next formal meeting of the Board of Directors or Council of Governors as appropriate. That meeting shall agree the precise wording of a Response to Disputes Statement.

9.5. The Chair or Deputy Chair (if the dispute involves the hair) shall immediately, or as soon as is practical, communicate the outcome to the other party and deliver the written Response to Disputes Statement. If the matter remains unresolved or only partially resolved then the procedure outlined in 9.2 above shall be repeated.

9.6. If, in the opinion of the Chair or Deputy Chair (if the dispute involves the Chair) and following the further discussions prescribed in 9.5 above, there is no further prospect of a full resolution or, if at any stage in the whole process, in the opinion of the Chair or Deputy Chair, as the case may be, there is no prospect of a resolution (partial or otherwise) then s/he shall advise the Council of Governors and Board of Directors accordingly.

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

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

9.9. Nothing in this procedure shall prevent the Council of Governors, if it so desires, from informing NHSE that, in the Council of Governors' opinion, the Board of Directors has not responded constructively to concerns of the Council of Governors that the Foundation Trust is not acting in accordance with the terms of its Constitution or not complying with the terms of the 2006 Act.

10. Council Performance

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

10.2. The performance assessment process in 10.1 shall include a review of the input into the Council of Governors of each appointing organisation.

ANNEX 8 – STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE BOARD OF DIRECTORS

(Paragraphs 26 and 28)

1. Interpretation

1.1. Save as permitted by law, the Chair of the Foundation Trust shall be the final authority on the interpretation of Standing Orders (on which s/he shall be advised by the Secretary).

1.2. Any expression to which a meaning is given in the 2006 Act shall have the same meaning in this interpretation and in addition:

"BOARD OF DIRECTORS" shall mean the Chair and Non-Executive Directors, appointed by the Council of Governors, and the Executive Directors appointed by the Nominations, Remuneration and Succession (Executive Directors) Committee.

"CHAIR" is the person appointed by the Council of Governors in accordance with paragraph 22 of this Constitution. The expression “the Chair” shall be deemed to include the Deputy Chair or otherwise a Non-Executive Director appointed by the Board of Directors to preside for the time being over its meetings.

"CHIEF EXECUTIVE" shall mean the chief officer of the Foundation Trust.

"COMMITTEE" shall mean a committee appointed by the Board of Directors.

"COMMITTEE MEMBERS" shall be persons formally appointed by the Board of Directors to sit on or to chair specific committees.

“CONSTITUTION” shall mean the constitution of the Foundation Trust and all annexes to it, as may be amended from time to time.

"DIRECTOR" shall mean a member of the Board of Directors appointed in accordance with the Foundation Trust’s Constitution and includes the Chair.

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

"NOMINATED OFFICER" means an Officer charged with the responsibility for discharging specific tasks within Standing Orders.

"OFFICER" means an employee of the Foundation Trust.

"NOMINATIONS, REMUNERATION AND SUCCESSION (EXECUTIVE DIRECTORS) COMMITTEE" shall be a committee appointed in accordance with paragraph 25.3 of this Constitution.

"SECRETARY" means the Secretary of the Foundation Trust or any other person appointed to perform the duties of the Secretary, including a joint assistant or deputy secretary.

"SOS" mean Standing Orders.

2. General Information

2.1. The purpose of the Board of Directors Standing Orders is to ensure that the highest standards of Corporate Governance are achieved in the Board of Directors and throughout the organisation. The Board of Directors shall at all times seek to comply with the Foundation Trust's Code of Conduct for Directors.

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

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

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

3. Composition of the Board of Directors

3.1. The composition of the Board of Directors shall be as set out in paragraph 20 of the Foundation Trust's Constitution.

Subject to paragraph 20.2 of the Constitution, the number of Directors may be increased or reduced by the Board of Directors.

3.2. **Appointment and Removal of the Chair and Non-Executive Directors** - The Chair and Non-Executive Directors are appointed/removed by the Council of Governors in accordance with paragraph 22 of the Foundation Trust's Constitution.

3.3. **Appointment and Removal of the Executive Directors** – The Nominations, Remuneration and Succession (Executive Directors) Committee of the Board of Directors (excluding the Chief Executive) shall appoint the Chief Executive (which appointment shall be approved by the Council of Governors). The Nominations, Remuneration and Succession (Executive Directors) Committee of the Board of Directors (inclusive of the Chief Executive) shall appoint or remove the other Executive Directors.

3.4. **Appointment and Removal of Deputy Chair** – For the purpose of enabling the proceedings of the Foundation Trust to be conducted in the absence of the

Chair, a Deputy Chair shall be appointed in accordance with paragraph 23 of the Foundation Trust's Constitution.

3.5. **Powers of Deputy Chair** - Where the Chair of the Foundation Trust has died or has otherwise ceased to hold office or where s/he has been unable to perform his/her duties as Chair owing to illness, absence from England and Wales or any other cause, references to the Chair shall, so long as there is no Chair able to perform his/her duties, be taken to include references to the Deputy Chair or otherwise to the Non-Executive Director appointed by the Board of Directors to preside for the time being over its meetings.

3.6. **Joint Directors** - Where more than one person is appointed jointly to a post in the Foundation Trust which qualifies the holder for executive directorship or in relation to which an Executive Director is to be appointed, those persons shall become appointed as an Executive Director jointly, and shall count as one person.

3.7. Non-Executive Directors may seek external advice or appoint an external advisor on any material matter of concern provided the decision to do so is a collective one by the majority of Non-Executive Directors.

4. Meetings of the Board of Directors

4.1. Admission to meetings

4.1.1. Meetings of the Board of Directors must be open to the public, unless the Board in its absolute discretion decides otherwise in relation to all or part of such meetings for reasons of commercial sensitivity or on other proper grounds.

4.1.2. The Board of Directors may resolve to invite an individual to any meeting or part of a meeting on the grounds that it considers that:

(a) their attendance at the meeting is relevant and beneficial to the nature of the business under consideration or is otherwise in the public interest; and

(b) that the individual understands any requirements for confidentiality that will be required of them by attending that meeting or part of a meeting.

4.1.3. Meetings of the Board of Directors shall be held at least three times each year at times and places that the Board of Directors may determine.

4.1.4. The Board of Directors shall arrange for an annual public meeting to be held within 9 months of the end of each financial year. The registers and documents set out in paragraphs 31 and 34 of this Constitution shall be available for inspection at the meeting subject to the provisions of paragraph 33 of this Constitution.

4.2. **Calling Meetings**

Meetings of the Board of Directors may be called by the Secretary, or by the Secretary on the request of the Chair or by four Directors who give written notice to the Secretary specifying the business to be carried out. The Secretary shall send a written notice to all Directors as soon as possible after receipt of such a request. If the Secretary fails to call such a meeting, the Chair or four Directors, whichever is the case, shall call the meeting.

4.3. **Notice of Meetings**

4.3.1. The Secretary shall deliver a schedule giving notice of the date, time and venue of all meetings of the Board of Directors planned for the next calendar year, signed by the Chair or by an Officer of the Foundation Trust authorised by the Chair to sign on his/her behalf to every Director, or send such schedule by post to the usual place of residence of such Director, so as to be available to him/her at least fourteen days before the first meeting and, in any event, before 1 January of the next calendar year. Lack of service of the notice on any Director shall not affect the validity of a meeting, subject to 4.3.4 below.

4.3.2. Notwithstanding the above requirement for a schedule of meeting dates each calendar year, and subject to 4.3.3, should an additional meeting of the Board of Directors be called pursuant to 4.2, the Secretary shall, as soon as possible, deliver written notice of the date, time and venue of the meeting to every Director, or send by post to the usual place of residence of such Director, so as to be available to him/her at least fourteen days before the meeting and not more than twenty eight days before the meeting.

4.3.3. The Chair may waive the notice required pursuant to 4.3.2 in the case of emergencies or in the case of the need to conduct urgent business.

4.3.4. Subject to 4.3.3, failure to serve such a notice on more than three Directors will invalidate the meeting. A notice will be presumed to have been served 48 hours after the envelope containing it was posted or, in the case of a notice contained in an electronic communication, 48 hours after it was sent.

4.3.5. Before each meeting of the Board, the Secretary shall ensure that every Director is provided with reasonable notice of the details of the business proposed to be transacted at it. In the case of a meeting called by Directors in default of the Chair, no business shall be transacted at the meeting other than that specified in the notice.

4.4. **Setting the Agenda**

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

4.4.2. In the case of a meeting called by the Chair or Secretary, a Director desiring a matter to be included on an agenda shall make his/her request in writing to the Secretary at least ten clear days before the meeting. Requests made less than ten days before a meeting may be included on the agenda at the discretion of the Chair.

4.4.3. The Secretary shall make arrangements to ensure that the final agenda and any supporting papers for the meeting, following the receipt of any requests in accordance with 4.4.2 above, are delivered to every Director, or sent by post to the usual place of residence of such Director, so as to be available to him/her at least seven clear days before the meeting. Copies of the final agenda must be sent to the Council of Governors at the same time.

4.5. **Chair of Meeting**

At any meeting of the Board of Directors, the Chair, if present, shall preside. If the Chair is absent from the meeting the Deputy Chair appointed by the Council of Governors to take on the Chair's duties shall preside. Otherwise, such Non-Executive Director as the Directors present shall choose shall preside.

4.6. **Notices of Motions**

4.6.1. A Director of the Foundation Trust desiring to move or amend a motion shall send a written notice thereof at least ten clear days before the meeting to the Secretary, who shall insert in the agenda for the meeting all notices so received subject to the notice being permissible under the appropriate regulations. This paragraph shall not prevent any motion being moved during the meeting, without notice, on any business mentioned on the agenda subject to 4.3.5 above.

4.6.2. A motion or amendment, once moved and seconded, ma be withdrawn by the proposer with the concurrence of the seconder and the consent of the Chair.

4.6.3. Notice of motion to amend or rescind any resolution (or the general substance of any resolution), which has been passed within the preceding six calendar months, shall bear the signature of the Directors who gave it and also the signature of four other Directors. Where any such motion has been disposed of by the Board of Directors it shall not be competent for any Director, other than the Chair, to propose a motion to the same effect within six months; however the Chair may do so if s/he considers it appropriate.

4.6.4. The mover of a motion shall have a right of reply at the close of any discussion on the motion or any amendment thereto.

4.6.5. When a motion is under discussion or immediately prior to discussion it shall be open to a Director to move:

(a) An amendment to the motion.

(b) The adjournment of the discussion or the meeting.

(c) The appointment of an ad hoc committee to deal with a specific item of business.

(d) That the meeting proceeds to the next business.

(e) That the motion be now put.

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

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

4.7. **Chair's Ruling**

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

4.8. **Voting**

4.8.1. Decisions at meetings shall be determined by a majority of the votes of the Directors present and voting.

(a) In the case of any equality of votes, the Chair, or, in his/her absence, the person appointed to preside in accordance with 4.5 shall have a second and casting vote.

(b) No resolution of the Board of Directors shall be passed if it is opposed by all of the Non Executive Directors present or by all of the Executive Directors present.

4.8.2. All decisions put to the vote shall, at the discretion of the Chair of the meeting, be determined by oral expression or by a show of hands. A paper ballot may also be used if a majority of the Directors present so request.

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

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

4.8.5. In no circumstances may an absent Director vote by proxy. Subject to paragraph 4.14.4, absence is defined as being absent at the time of the vote.

4.8.6. An officer who has been appointed formally by the Board of Directors to act up for an Executive Director during a period of incapacity or temporarily to fill an Executive Director vacancy, shall be entitled to exercise the voting rights of the Executive Director. An Officer attending the Board of Directors to represent an Executive Director during a period of incapacity or temporary absence without formal acting up status may not exercise the voting rights of the Executive Director. An Officer's status when attending a meeting shall be recorded in the minutes.

4.9. **Joint Directors**

Where an Executive Director post is shared by more than one person:

(a) each person shall be entitled to attend meetings of the Board of Directors;

(b) in the case of agreement between them, they shall be eligible to have one vote between them;

(c) in the case of disagreement between them, no vote should be cast;

(d) the presence of those persons shall count as one person.

4.10. **Suspension of Standing Orders (SOs)**

4.10.1. Except where this would contravene any statutory provision or direction made by the Secretary of State, any one or more of these Standing Orders may be suspended at any meeting, provided that at least two- thirds of the Board of Directors are present, including two Executive Directors and two Non-Executive Directors, and that a majority of those present vote in favour of suspension.

4.10.2. A decision to suspend SOs shall be recorded in the minutes of the meeting.

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

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

4.10.5. The Audit Committee shall review every decision to suspend SOs.

4.11. **Variation and Amendment of Standing Orders**

Notwithstanding paragraph 41 of this Constitution, these Standing Orders shall be amended only if:

4.11.1. the variation proposed does not contravene a statutory provision; and
4.11.2. at least two thirds of the Directors are present; and
4.11.3. no fewer than half the total number of Non Executive Directors vote in favour of the amendment.

4.12. **Record of Attendance**

The names of the Directors present at the meeting (including when deemed present pursuant to paragraph 4.14.4) shall be recorded in the minutes.

4.13. **Minutes**

4.13.1. The minutes of the proceedings of a meeting shall be drawn up and maintained as a permanent record. They will be submitted for

agreement at the next meeting where they will be formally approved as an accurate record.

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

4.13.3. Approved minutes shall be sent to the Council of Governors as soon as practicable after each meeting of the Board and shall be otherwise circulated in accordance with the Directors' wishes.

4.14. **Quorum**

4.14.1. No business shall be transacted at a meeting of the Board of Directors unless at least five Directors including not less than two Executive Directors (one of whom must be the Chief Executive or Deputy Chief Executive or another Executive Director nominated by the Chief Executive), and not less than two Non-Executive Directors (one of whom must be the Chair or the Deputy Chair of the Board of Directors) are present.

4.14.2. An Officer in attendance for an Executive Director but without formal acting up status may not count towards the quorum.

4.14.3. If a Director has been disqualified from participating in the discussion on any matter and from voting on any resolution by reason of the declaration of a conflict of interest s/he shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business.

4.14.4. The Board of Directors may agree that its members can participate in its meetings by telephone, video or video media link. Participation in a meeting in this manner shall be deemed to constitute presence in person at the meeting.

5. Arrangements for the Exercise of Functions by Delegation

5.1. The Board of Directors may make arrangements for the exercise, on behalf of the Foundation Trust, of any of its functions by a committee or sub-committee, or by a Director or an Officer of the Foundation Trust in each case subject to such restrictions and conditions as the Board of Directors thinks fit.

5.2. **Emergency Powers** - The powers which the Board of Directors has retained to itself within these Standing Orders may in emergency be exercised by the Chief Executive and the Chair after having consulted at least two Non-Executive Directors. The exercise of such powers by the Chief Executive and the Chair shall be reported to the next formal meeting of the Board of Directors for ratification.

5.3. **Delegation to Committees** - The Board of Directors shall agree from time to time to the delegation of executive powers to be exercised by committees or

sub-committees, which it has formally constituted. The constitution and terms of reference of these committees, or sub-committees, and their specific executive powers shall be approved by the Board of Directors.

5.4. **Delegation to Officers** - Those functions of the Foundation Trust which have not been retained as reserved by the Board of Directors or delegated to one of its Committees shall be exercised on behalf of the Board of Directors by the Chief Executive. S/he shall determine which functions s/he will perform personally and shall nominate Officers to undertake remaining functions but still retain an accountability for these to the Board of Directors.

5.5. The Chief Executive shall prepare a Scheme of Delegation identifying his/her proposals that shall be considered and approved by the Board of Directors, subject to any amendment agreed during the discussion. The Chief Executive may periodically propose amendment to the Scheme of Delegation, which shall be considered and approved by the Board of Directors as indicated above.

5.6. Nothing in the Scheme of Delegation shall impair the discharge of the direct accountability to the Board of Directors of the Executive Directors to provide information and advise the Board of Directors in accordance with any statutory requirements.

5.7. The arrangements made by the Board of Directors as set out in the "Scheme of Delegation" shall have effect as if incorporated into these Standing Orders.

6. Committees

6.1. Appointment of Committees

6.1.1. The Board of Directors may appoint committees of the Board of Directors, consisting wholly or partly of Directors of the Foundation Trust or wholly of persons who are not Directors of the Foundation Trust.

6.1.2. A committee so appointed may appoint sub-committees consisting wholly or partly of members of the committee (whether or not they include Directors of the Foundation Trust) or wholly of persons who are not members of the committee (whether or not they include Directors of the Foundation Trust).

6.1.3. The Standing Orders of the Board of Directors, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees or sub-committees established by the Board of Directors.

6.1.4. Each such committee or sub-committee shall have such terms of reference and powers and be subject to such conditions (as to reporting back to the Board of Directors) as the Board of Directors shall decide from time to time following reviews of the terms of reference, powers and conditions. Such terms of reference shall be read in conjunction with these Standing Orders.

6.1.5. The Board of Directors may not delegate their executive powers to a committee, and a committee may not delegate any executive power it may have to a sub-committee, unless the committee or subcommittee consists wholly of Directors and such delegation is expressly authorised by the Board of Directors.

6.1.6. The Board of Directors shall approve the appointments to each of the committees that it has formally constituted. Where the Board of Directors determines that persons, who are neither Directors nor Officers, shall be appointed to a committee, the terms of such appointment shall be determined by the Board of Directors.

6.1.7. Where the Foundation Trust is required to appoint persons to a committee, which is to operate independently of the Foundation Trust, such appointment shall be approved by the Board of Directors.

6.2. Confidentiality

6.2.1. A member of the Board of Directors shall not disclose a matter dealt with by, or brought before, the Board of Directors without its permission.

6.2.2. A member of a committee of the Board of Directors shall not disclose any matter dealt with by, or brought before, the committee, notwithstanding that the matter has been reported or action has been concluded, if the Board of Directors or committee shall resolve that it is confidential.

7. Declaration of Interests and Register of Interests

7.1. Declaration of Interests

7.1.1. Directors are required to comply with the Foundation Trust's Standards of Business Conduct, to declare interests that are required to be declared by the Constitution and to declare any other interests that are material to the Board of Directors. All Directors should declare such interests on appointment and on any subsequent occasion that a conflict arises.

7.1.2. Interests regarded as " material" include any of the following, held by a Director, or the spouse or partner of a Director:

a) Any interest (excluding a holding of shares in a company whose shares are listed on any public exchange where the holding is less than 2% of the total shares in issue) or position held by a Director in any firm, company or business which has or is likely to have a trading or commercial relationship with the Foundation Trust.

b) Any interest in a voluntary or other organisation providing health and social care services to the National Health Service.

c) A position of authority in a charity or voluntary organisation in the field of health and social care.

d) Any connection with any organisation, entity or company considering entering into a financial arrangement with the Foundation Trust including but not limited to lenders or banks.

7.1.3. If Directors have any doubt about the relevance of an interest, this should be discussed with the Chair.

7.1.4. At the time Directors' interests are declared, they should be recorded in the Board minutes. Any changes in interests should be declared at the next Board meeting following the change occurring.

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

7.1.6. During the course of a Board meeting, if a conflict of interest is established in accordance with this Standing Order, the Director concerned should withdraw from the meeting and play no part in the relevant discussion or decision.

7.2. Register of Interests

7.2.1. The Secretary will ensure that a Register of Interests is established to record formally declarations of interests of Directors. In particular the Register will include details of all directorships and other relevant and material interests that have been declared by both Executive and Non-Executive Directors.

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

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

8. Compliance - Other Matters

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

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

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

- Selflessness;
- Integrity;
- Objectivity;
- Accountability;

- Openness;
- Honesty; and
- Leadership.

9. Resolution of Disputes with Council of Governors

9.1. Should a dispute arise between the Board of Directors and the Council of Governors, then the disputes resolution procedure set out below shall be followed.

9.2. 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.

9.3. Failing resolution under 9.2 above, then the Board of Directors or the Council of Governors, as appropriate, shall at its next formal meeting approve the precise wording of a Disputes Statement setting out clearly and concisely the issue or issues giving rise to the dispute.

9.4. The Chair shall ensure that the Disputes Statement, without amendment or abbreviation in any way, shall be an agenda item and agenda paper at the next formal meeting of the Board of Directors or Council of Governors as appropriate. That meeting shall agree the precise wording of a Response to Disputes Statement.

9.5. The Chair or Deputy Chair (if the dispute involves the Chair) shall immediately, or as soon as is practical, communicate the outcome to the other party and deliver the written Response to Disputes Statement. If the matter remains unresolved or only partially resolved then the procedure outlined in 9.2 above shall be repeated.

9.6. If, in the opinion of the Chair or Deputy Chair (if the dispute involves the Chair) and following the further discussions prescribed in 9.5 above, there is no further prospect of a full resolution or, if at any stage in the whole process, in the opinion of the Chair or Deputy Chair, as the case may be, there is no prospect of a resolution (partial or otherwise) then s/he shall advise the Council of Governors and Board of Directors accordingly.

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

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

9.9. Nothing in this procedure shall prevent the Council of Governors, if it so desires, from informing NHSE that, in the Council of Governors' opinion, the Board of Directors has not responded constructively to concerns of the Council of Governors that the Foundation Trust is not acting in accordance with the terms of its Constitution or not complying with the terms of the 2006 Act.

10. Notification to Council of Governors

The Board of Directors shall notify the Council of Governors of any major changes in the circumstances of the Foundation Trust, which have made or could lead to a substantial change to its financial well-being, healthcare delivery performance, or reputation and standing or which might otherwise affect the Foundation Trust's compliance with the terms of its Constitution or the 2006 Act.

11. Board of Directors' Performance

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

ANNEX 9 – ADDITIONAL PROVISIONS – MEMBERS

(Paragraphs 4 and 8.3)

1. **DISQUALIFICATION FROM MEMBERSHIP**

1.1 An individual may not become a member of the Foundation Trust if:

1.1.1 they are under 16 years of age;

1.1.2 within the last five years they have been involved as a perpetrator in a serious incident of violence at any of the Foundation Trust's hospitals or facilities or against any of the Foundation Trust's employees or other persons who exercise functions for the purposes of the Foundation Trust, or against any registered volunteer; or

1.1.3 they have been designated a vexatious complainant in accordance with the Foundation Trust's policy.

2. **TERMINATION OF MEMBERSHIP**

2.1 A member shall cease to be a member if:

2.1.1 they resign by notice to the Secretary;

2.1.2 they die;

2.1.3 they are expelled from membership under this Constitution;

2.1.4 they cease to be entitled under this Constitution to be a member of the Public Constituency or of any of the classes of the Staff Constituency; or

2.1.5 it appears to the Secretary that they no longer wish to be a member of the Foundation Trust, and after enquiries made in accordance with a process approved by the Council of Governors, they fail to demonstrate that they wish to continue to be a member of the Foundation Trust.

2.2 A member may be expelled by a resolution approved by not less than three quarters of the Governors present and voting at a General Meeting. The following procedure is to be adopted.

2.2.1 Any member may complain to the Secretary that another member has acted in a way detrimental to the interests of the Foundation Trust.

2.2.2 If a complaint is made, the Council of Governors may itself consider the complaint having taken such steps as it considers

appropriate to ensure that each member's point of view is heard and may either:

2.2.2.1 dismiss the complaint and take no further action; or

2.2.2.2 for a period not exceeding twelve months suspend the rights of the member complained of to attend members meetings and vote under this Constitution; or

2.2.2.3 arrange for a resolution to expel the member complained of to be considered at the next General Meeting of the Council of Governors.

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

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

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

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

2.4 No person who has been expelled from membership is to be re-admitted except by a resolution carried by the votes of three quarters of the Council of Governors present and voting at a General Meeting.

3. MEMBERS MEETINGS

3.1 The Foundation Trust is to hold a members meeting (called the annual members meeting) within nine months of the end of each financial year.

3.2 All members meetings other than annual meetings are called special members meetings.

3.3 Members meetings are open to all members of the Foundation Trust, Governors and Directors, representatives of the auditor and to members of the public. The Board of Directors may invite any experts or advisors whose attendance they consider to be in the best interests of the Foundation Trust to attend a members meeting.

3.4 All members meetings are to be convened by the Secretary by order of the Board of Directors.

3.5 The Board of Directors may decide where a members meeting is to be held and may also for the benefit of members:

3.5.1 arrange for the annual members meeting to be held in different venues each year:

3.5.2 make provisions for a members meeting to be held at different venues.

3.6 At the annual members meeting:

3.6.1 the Board of Directors shall present to the members:

3.6.1.1 the annual report and accounts;

3.6.1.2 any report of the auditor;

3.6.1.3 any report of any other external auditor of the Foundation Trust's affairs; and

3.6.1.4 forward planning information for the next Financial Year

3.6.2 the Council of Governors shall present to the members a report on:

3.6.2.1 steps taken to secure that (taken as a whole) the actual membership of the Public Constituency and of the classes of the Staff Constituency is representative of those eligible for such membership;

3.6.2.2 the progress of the membership strategy; and

3.6.2.3 any proposed changes to the policy for the composition of the Council of Governors and of the non-executive Directors

3.6.3 the results of the election and appointment of Governors and the appointment of non-executive Directors will be announced.

3.7 Notice of a members meeting is to be given:

3.7.1 by notice to all members;

3.7.2 by notice prominently displayed at the head office and at all of the Foundation Trust's places of business; and

3.7.3 by notice on the Foundation Trust's website

at least 14 clear days before the date of the meeting. The notice must:

3.7.4 be given to the Council of Governors and the Board of Directors, and to the auditor;

3.7.5 state whether the meeting is an annual or special members meeting;

3.7.6 give the time, date and place of the meeting; and

3.7.7 indicate the business to be dealt with at the meeting.

3.8 Before a members meeting can do business there must be a quorum present. Except where this Constitution says otherwise a quorum is ten members present, including at least one Governor.

3.9 The Foundation Trust may make arrangements for members to vote by post or, by using electronic communications.

3.10 It is the responsibility of the Board of Directors, the Chair of the meeting and the Secretary to ensure that at any members meeting:

3.10.1 the issues to be decided are clearly explained;

3.10.2 sufficient information is provided to members to enable rational discussion to take place.

3.11 The Chair of the Foundation Trust, or in their absence the Deputy Chair of the Board of Directors, shall act as Chair at all members meetings of the Foundation Trust. If neither the Chair nor the Deputy Chair of the Board of Directors is present, the members of the Council of Governors present shall elect one of their number to be Chair and if there is only one Governor present and willing to act they shall be Chair.

3.12 If no quorum is present within half an hour of the time fixed for the start of the meeting, the meeting shall stand adjourned to a date and time to be determined by the Board of Directors within the following 21 days.

3.13 A resolution put to the vote at a members meeting shall be decided upon by a show of hands unless a poll is requested by the Chair of the meeting.

3.14 Every member present and every member who has voted by post or using electronic communications is to have one vote. In the case of an equality of votes the Chair of the meeting is to have a second and casting vote.

3.15 The result of any vote will be declared by the Chair and entered in the minute book. The minute book will be conclusive evidence of the result of the vote.

4. REPRESENTATIVE MEMBERSHIP

4.1 The Foundation Trust shall at all times strive to ensure that taken as a whole its actual membership is representative of those eligible for membership. To this end:

4.1.1 the Foundation Trust shall at all times have in place and pursue a membership strategy which shall be approved by the Council of Governors, and shall be reviewed by them from time to time, and at least every two years,

4.1.2 the Council of Governors shall present to each annual members meeting a report on:

4.1.2.1 steps taken to secure that (taken as a whole) the actual membership of the Public Constituency and of the classes of the Staff Constituency is representative of those to whom the Foundation Trust provides services and/or is eligible for such membership;

4.1.2.2 the progress of the membership strategy;

4.1.2.3 any changes to the membership strategy.