

Northumbria Healthcare NHS Foundation Trust

Constitution

(Incorporates changes updated as per the Health and Social Care Act 2012 – April 2013)

Last updated July 2016

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1. 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 Services Act 2006 as amended by the Health and Social Care Act 2012

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

The 2006 Act is the National Health services Act 2006.

The 2012 Act is the Health and Social Care Act 2012.

Constitution means this constitution and all annexes to it.

Annual Members Meeting is defined in paragraph 11 of the constitution

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

2. Name

2.1 The name of this foundation trust is Northumbria Healthcare NHS Foundation Trust (the Trust).

3. Principal purpose

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

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

3.3 The trust may provide goods and services for any purposes related to—

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

3.3.2 The promotion and protection of public health

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

4. Powers

4.1 The powers of the trust are set out in the 2006 Act.

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

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

5. Membership and constituencies

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

5.1.1 A public constituency

5.1.2 A staff constituency

5.1.3 A patients' constituency

6. Application for membership

6.1 An individual who is eligible to become a member of the trust may do so on application to the trust.

7. Public Constituency

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

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

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

8. Staff Constituency

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

8.1.1 he is employed by the trust under a contract of employment which has no fixed term or has a fixed term of at least 12 months; or

8.1.2 he has been continuously employed by the trust under a contract of employment for at least 12 months

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

- 8.3 Those individuals who are eligible for membership of the trust by reason of the previous provisions are referred to collectively as the Staff Constituency.
- 8.4 The Staff Constituency shall be divided into nine descriptions of individuals who are eligible for membership of the Staff Constituency, each description of individuals being specified in Annex 2 and being referred to as a class within the Staff Constituency.
- 8.5 The minimum number of members in each class of the Staff Constituency is specified in Annex 2.
- 8.6 An individual who is:
- 8.6.1 eligible to become a member of the staff Constituency; and
 - 8.6.2 invited by the trust to become a member of the Staff Constituency and a member of the appropriate class within the Staff Constituency,

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

9. Patients' Constituency

- 9.1 An individual who has, within the period specified below, attended any of the trust's hospitals as either a patient or as the carer of a patient may become a member of the trust.
- 9.2 The period referred to above shall be the period of 1 year immediately preceding the date of an application by the patient or carer to become a member of the trust.
- 9.3 Those individuals who are eligible for membership of the trust by reasons of the previous provisions are referred to collectively as the Patient Constituency.
- 9.4 An individual providing care in pursuance of a contract (including a contract of employment) with a voluntary organisation, or as a volunteer for a voluntary organisation, does not come within the category of those who qualify for membership of the Patient Constituency.
- 9.5 The minimum number of members of the Patient Constituency is specified in Annex 3.
- 9.6 An individual who is:
- 9.6.1 Eligible to become a member of the Patient Constituency (otherwise than as a carer of a patient); and

9.6.2 Invited by the trust to become a member of a specified constituency and a member of a specified class within the specified constituency shall become a member of the trust as a member of that specified constituency and specified class without an application being made, unless he informs the trust that he does not wish to do so.

9.7 The constituency and, where applicable, the class to be specified:

9.7.1 If he is eligible to be a member of any Public Constituency, is that constituency,

9.7.2 Otherwise, is the Patient Constituency and, where applicable, the class of which he is eligible to become a member.

10. Restriction on membership and Termination of membership

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

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

10.3 Further provisions as to the circumstances in which an individual may not become or continue as a member of the Trust are set out in Annex 5.

10.4 The circumstances in which an individual's membership may be terminated are set out in Annex 5.

11. Annual Members' Meeting

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

12 Council of Governors – composition

12.1 The trust is to have a Council of Governors, which shall comprise both elected and appointed Governors.

12.2 The composition of the Council of Governors is specified in Annex 4.

12.3 The members of the Council of Governors, other than the appointed 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 4.

13 Council of Governors - election of Governors

- 13.1 Elections for elected members of the Council of Governors shall be conducted in accordance with the Model Rules for Elections.
- 13.2 The Model Rules for Elections, as published from time to time by the Department of Health, form part of this constitution. The Model Election Rules current at the date of the Trust's authorisation are attached at Annex 6.
- 13.3 A subsequent variation of the Model Election Rules by the Department of Health shall not constitute a variation of the terms of this constitution for the purposes of paragraph 42 of the constitution (amendment of the constitution).
- 13.4 An election, if contested, shall be by secret ballot.

14. Council of Governors – tenure

- 14.1 An elected Governor may hold office for a period of up to 3 years.
- 14.2 An elected Governor shall be eligible for re-election at the end of his 3-year term.
- 14.3 An elected Governor shall cease to hold office if he ceases to be a member of the constituency or class by which he was elected.
- 14.4 An appointed Governor may hold office for a period of up to 3 years.
- 14.5 An appointed Governor shall be eligible for re-appointment at the end of his term.
- 14.6 An appointed Governor shall cease to hold office if the appointing organisation withdraws its sponsorship of him.

15. Council of Governors - disqualification and removal

- 15.1 The following may not become or continue as a member of the Council of Governors:
 - 15.1.1 A person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;
 - 15.1.2 A person who has made a composition or arrangement with, or granted a Trust deed for, his creditors and has not been discharged in respect of it;
 - 15.1.3 a person who within the preceding five years has been convicted in the British Isles of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him.

- 15.2 Governors must be at least 16 years of age at the date that they are nominated for election or appointment.
- 15.3 Further provisions as to the circumstances in which a person may not become or continue as a Governor of the Trust are set out in annex 7.
- 15.4 The procedure for the removal of Governors are set out in annex 7.

16. Council of Governors – duties of Governors

- 16.1 The general duties of the Council of Governors are:
 - 16.1.1 to hold the non-executive directors individually and collectively to account for the performance of the Board of Directors, and
 - 16.1.2 to represent the interests of the members of the trust as a whole and the interests of the public
- 16.2 The Trust must take steps to secure that the Governors are equipped with the skills and knowledge they require in their capacity as such.

17. Council of Governors - meetings of Governors

- 17.1 The chairman of the trust (i.e. the chairman of the Board of Directors, appointed in accordance with the provisions of paragraph 25) or, in his absence, the Vice Chairman (appointed in accordance with the provisions of paragraph 26), shall preside at meetings of the Council of Governors.
- 17.2 Meetings of the Council of Governors shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons.
- 17.3 For the purposes of obtaining information about the trust's performance of its functions or the directors' performance of their duties (and deciding whether to propose a vote on the trust's or directors' performance), the Council of Governors may require one or more of the directors to attend a meeting.
- 17.4 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 8

18. Council of Governors – referral to the Panel

- 18.1 In this paragraph, the Panel means a panel of persons appointed by Monitor to which a governor of an NHS foundation trust may refer a question as to whether the trust has failed or is failing
 - 18.1.1 to act in accordance with its constitution; or
 - 18.1.2 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

19. Council of Governors - conflicts of interest of Governors

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

20. Council of Governors - travel expenses

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

21. Council of Governors – further provisions

21.1 Further provisions in respect of the Council of Governors are set out in Annex 7.

22. Board of Directors – composition

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

22.2 The Board of Directors is to comprise:

22.2.1 A non-executive Director Chairman

22.2.2 A minimum of six other non-executive Directors; and

22.2.3 Six executive Directors

22.3 One of the executive Directors shall be the Chief Executive.

22.4 The Chief Executive shall be the Accounting Officer

22.5 One of the executive Directors shall be the finance Director

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

22.7 One of the executive Directors is to be a registered nurse or a registered midwife.

23. Board of Directors – General Duty

23.1 The general duty of the Board of Directors and of each director individually, is to act

with a view to promoting the success of the trust so as to maximise the benefits for the members of the trust as a whole and for the public

24. Board of Directors - qualification for appointment as a non-executive Directors

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

24.1.1 He is a member of the Public or patient Constituency, or

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

24.1.3 He is not disqualified by virtue of paragraph 28 below.

25. Board of Directors - appointment and removal of Chairman and other non-executive Directors

25.1 The Council of Governors at a general meeting of the Council of Governors shall appoint or remove the Chairman of the Trust and the other non-executive Directors.

25.2 Removal of the Chairman or another non-executive Directors shall require the approval of three-quarters of the members of the Council of Governors.

26. Board of Directors - appointment of the Vice-Chairman

26.1 The Council of Governors at a general meeting of the Council of Governors shall appoint one of the non-executive Directors as a Vice Chairman.

27. Board of Directors - appointment and removal of the Chief Executive and other executive Directors

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

27.2 The appointment of the Chief Executive Officer shall require the approval of a majority of the Council of Governors.

27.3 A committee consisting of the Chairman, the Chief Executive Officer and the other non-executive Directors shall appoint or remove the other executive Directors.

28. Board of Directors – disqualification

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

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

28.1.2 A person who has made a composition or arrangement with, or granted a Trust deed for, his creditors and has not been discharged in respect of it,

- 28.1.3 A person who within the preceding five years has been convicted in the British Isles of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him;
- 28.1.4 They are a member of the Council of Governors;
- 28.1.5 They are the spouse, partner, parent or child of a member of the Board of Directors;
- 28.1.6 They are the subject of a disqualification order made under the Company Directors Disqualification Act 1986;
- 28.1.7 A person who is a medical practitioner and who has been removed from the register of medical practitioners held by the General Medical Council in accordance with the Medical Act 1983, or has been suspended from that register, and not subsequently had his name returned to that register;
- 28.1.8 In the case of a non-executive Directors they are no longer a member of one of the public or patient constituencies;
- 28.1.9 They have within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with a health service body;
- 28.1.10 They have had a tenure of office as a Chairman or as a member or Director of a health service body 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;
- 28.1.11 In the case of a non-executive Director they have refused without reasonable cause to fulfil any training requirement established by the Board of Directors;
- 28.1.12 They have refused to sign and deliver to the Nominated Officer a statement in the prescribed format confirming acceptance of a Code of Conduct for Directors.

29. Board of Directors – meetings

- 29.1 Meetings of the Board of Directors shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons
- 29.2 Before holding a meeting, the Board of Directors must send a copy of the agenda of the meeting to the Council of Governors. As soon as practicable after holding a meeting, the Board of Directors must send a copy of the minutes of the meeting to the Council of Governors
- 29.3 The standing orders for the practice and procedure of the Board of Directors are attached at Annex 9

30. Board of Directors - conflicts of interest of Directors

30.1 The duties that a director of the trust has by virtue of being a director include in particular:

31.1.1 A duty to avoid a situation in which the director has (or can have) a direct or indirect interest that conflicts (or possibly may conflict) with the interests of the trust

31.1.2 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

30.2 The duty referred to in sub-paragraph 31.1.1 is not infringed; if

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

30.2.2 The matter has been authorized in accordance with the constitution

30.3 The duty referred to in sub-paragraph 31.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest

30.4 In sub-paragraph 31.1.2, "third party" means a person other than:

30.4.1 The trust, or

30.4.2 A person acting on its behalf

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

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

30.7 Any declaration required by this paragraph must be made before the trust enters into the transaction or arrangement

30.8 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

30.9 A director need not declare an interest:

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

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

- 30.9.3 If, or to the extent that, it concerns terms of the director's appointment that have been or are to be considered –
By a meeting of the Board of Directors, or
By a committee of the directors appointed for the purpose under the constitution

31. Board of Directors - remuneration and terms of office

- 31.1 The Council of Governors at a general meeting of the Council of Governors shall decide the remuneration and allowances, and the other terms and conditions of office, of the Chairman and the other non-executive Directors.
- 31.2 The Trust shall establish a committee of non-executive directors to decide the remuneration and allowances, and the other terms and conditions of office, of the Chief Executive and other executive directors. Pending the establishment of such a committee the Chairman shall make such decisions.

32. Registers

- 32.1 The Trust shall have:
- 32.1.1 a register of members showing, in respect of each member, the constituency to which he belongs and, where there are classes within it, the class to which he belongs;
- 32.1.2 A register of members of the Council of Governors;
- 32.1.3 A register of interests of Governors;
- 32.1.4 A register of Directors; and
- 32.1.5 A register of interests of the Directors.

33. Admission to and removal from the registers

- 33.1 The Trust Secretary will be responsible for making arrangements for additions and removals from the registers.

34. Registers - inspection and copies

- 34.1 The Trust shall make the registers specified in paragraph 32 above available for inspection by members of the public, except in the circumstances set out at paragraph 34 or as otherwise prescribed by regulations.
- 34.2 The Trust shall not make any part of its registers available for inspection by members of the public which shows details of:
- 34.2.1 Any member of the Patients' Constituency; or

34.2.2 Any other member of the Trust, if he so requests.

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

34.3.1 They are to be available for inspection free of charge at all reasonable times; and

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

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

35. Documents available for public inspection

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

32.1.1 A copy of the current constitution;

32.1.3 A copy of the latest annual accounts and of any report of the auditor on them;

32.1.4 A copy of the latest annual report;

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

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

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

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

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

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

35.2.6 a copy of any notice published under section 65F(administrator's draft report), 65G (consultation plan), 65H (consultation requirements), 65J (power to

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

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

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

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

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

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

35.4 If the person requesting a copy or extract is not a member of the trust, the trust may impose a reasonable charge for doing so

36. Auditor

36.1 The Trust shall have an auditor.

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

37. Audit committee

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

38. Annual accounts

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

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

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

38.4 The Trust shall prepare in respect of each financial year annual accounts in such form as Monitor may with the approval of the Secretary of State direct.

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

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

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

39.2 The Trust shall give information as to its forward planning in respect of each financial year to Monitor.

39.3 The document containing the information with respect to forward planning referred to in paragraph 39.5 shall be prepared by the Directors.

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

39.5 Each forward plan must include information about –

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

39.5.2 The income it expects to receive from doing so.

39.6 Where a forward plan contains a proposal that the trust carry on an activity of a kind mentioned in sub-paragraph 39.5.1 the Council of Governors must –

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

39.6.2 Notify the directors of the trust of its determination.

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

40. Presentation of the Annual Accounts and Reports to the Governors and members

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

40.1.1 The annual accounts

40.1.2 Any report of the auditor on them

40.1.3 The annual report

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

40.3 The Trust may combine a meeting of the Council of Governors with the Annual Members' Meeting

41. Instruments

41.1 The Trust shall have a seal.

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

42. Amending the Constitution

42.1 The trust may make amendments of its constitution only if

42.1.1 More than half of the members of the Council of Governors of the trust voting approve the amendments, and

42.1.2 More than half of the members of the Board of Directors of the trust voting approve the amendments

42.1.3 Amendments made under paragraph 42.1 take effect as soon as the conditions in that paragraph are satisfied, but the amendment has no effect in so far as the constitution would, as a result of the amendment, not accord with schedule 7 of the 2006 Act

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

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

42.1.2 The trust must give the members an opportunity to vote on whether they approve the amendment

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

42.1.5 Amendments by the trust of its constitution are to be notified to Monitor. For the avoidance of doubt, Monitor's functions do not include a power or duty to determine whether or not the constitution, as a result of the amendments, accords with Schedule 7 of the 2006 Act

43. Mergers etc., significant transactions

- 43.1 The trust may only apply for a merger, acquisition, separation or dissolution with the approval of more than half of the members of the council of governors
- 43.2 Significant transaction is defined as investments, divestments or other transactions comprising more than 25% of the assets, income or capital of the NHS foundation trust in line with Monitors Compliance Framework.

ANNEX 1 - THE PUBLIC CONSTITUENCY

1.1 The Trust has three public constituencies which are:

- Northumberland;
- North Tyneside; and
- The rest of England.

1.2 The Northumberland and North Tyneside constituencies consist of electoral areas as outlined in 1.4 and 1.5 below.

1.3 The rest of England public constituency consists of all the electoral areas in England, save for those specified in clause 1.4 below.

1.4 The constituency classes for Northumberland are as follows:

Constituency class	Minimum number of members (based on 1% of the population)
Berwick upon Tweed	703
Blyth Valley	812
Hexham	749
Wansbeck	806

1.5 The constituency classes for North Tyneside are as follows:

Constituency class	Minimum number of members (based on 1% of the population)
Wallsend Locality	428
North Shields Locality	557
Whitley Bay Locality	456
North West Locality	474

ANNEX 2 - THE STAFF CONSTITUENCY

Constituency	Minimum number of members
The staff at Hexham General Hospital (including Haltwhistle War Memorial Hospital) staff class	54
The staff at North Tyneside General Hospital (including Tynemouth Court, Sir GB Hunter Memorial hospital and Northumbria House) staff class	281
The staff at Berwick Infirmary staff class	23
The staff at Alnwick Infirmary (including Rothbury community Hospital) staff class	25
The staff at Wansbeck General Hospital staff class	186
The staff at Blyth Community Hospital (including Morpeth NHS centre and Whalton unit) staff class	21
The Northumberland Community staff class	20
The North Tyneside Community staff class	20
The Northumbria Specialist Emergency Care Hospital staff class	100

ANNEX 3 – THE PATIENTS’ CONSTITUENCY

There are no classes of the Patients’ Constituency

The minimum number of members in the Patients Constituency shall be 10

ANNEX 4 - COMPOSITION OF COUNCIL OF GOVERNORS

The Council of Governors of the Trust shall consist of:

1. **36 Public Governors** elected by the Public Constituencies as follows:
 - 1.1 Berwick upon Tweed 6 Governors
 - 1.2 Blyth Valley 6 Governors
 - 1.3 Hexham 6 Governors
 - 1.4 Wansbeck 6 Governors
 - 1.5 Wallsend locality 3 Governors
 - 1.6 North Shields locality 3 Governors
 - 1.7 Whitley Bay locality 3 Governors
 - 1.8 North West Tyneside 2 Governors
 - 1.9 Rest of England 1 Governor

2. **23 Staff Governors** elected by the Staff Constituencies as follows:
 - 2.1 The staff at Hexham General Hospital (Including Haltwhistle War Memorial Hospital) staff class 2 Governors
 - 2.2 The staff at North Tyneside General Hospital (Including Tynemouth Court, Sir GB Hunter Memorial Hospital and Northumbria House) staff class 6 Governors
 - 2.3 The staff at Berwick Infirmary staff class 1 Governor
 - 2.4 The staff at Alnwick Infirmary (Including Rothbury Community Hospital) staff class 1 Governor
 - 2.5 The staff at Wansbeck General Hospital staff class 4 Governors
 - 2.6 The staff at Blyth Community Hospital (including Morpeth NHS Centre and the Whalton unit) staff class 1 Governor
 - 2.7 The Northumberland Community staff class 3 Governors
 - 2.8 The North Tyneside Community staff class 2 Governors
 - 2.9 The Northumbria Specialist Emergency Care Hospital staff class 3 Governors

3. **1 Patient Governor** **1 Governor**

4. **2 Clinical Commissioning Group (C C G) Governors** appointed by the following CCGs (to be appointed pursuant to a process agreed between the CCGs and the Trust):
 - 4.1 North Tyneside CCG 1 Governor

- | | | |
|-----|---|-------------|
| 4.2 | Northumberland CCG | 1 Governor |
| 5. | 4 Local Authority Governors appointed by the following Local Authorities (to be appointed pursuant to a process to be agreed between the Local Authorities and the Trust): | |
| 5.1 | North Tyneside Council | 2 Governors |
| 5.2 | Northumberland County Council | 2 Governors |
| 6. | 2 University Governors appointed by the following Universities (to be appointed pursuant to a process to be agreed between the Universities and the Trust): | |
| 6.1 | The University of Newcastle Medical School | 1 Governor |
| 6.2 | The University of Northumbria | 1 Governor |
| 7. | 3 Partnership Governors appointed by the following bodies (to be appointed pursuant to a process to be agreed between the Partners and the Trust): | |
| 7.1 | North East Ambulance Service | 1 Governor |
| 7.2 | Voluntary Services Organisations | 2 Governors |

ANNEX 5 – RESTRICTIONS ON MEMBERSHIP AND TERMINATION OF MEMBERSHIP

1. Restrictions on Membership

- 1.1** A person may not become or continue as a member of the Trust if he;
- 1.1.1 is under 12 years of age;
 - 1.1.2 is detained at one of Her Majesty's prisons;
 - 1.1.3 has had his name added to and not removed from a list prepared under the Sexual Offenders Act 1997;
 - 1.1.4 fails or ceases to fulfil the criteria for membership of any of the constituencies;
 - 1.1.5 has been involved in an act of violence against staff or other members of the Trust or an act of damage against its property;
 - 1.1.6 has been identified as a vexatious complainant against the Trust;
 - 1.1.7 does not uphold the values of the Trust; and
 - 1.1.8 has been previously expelled from membership and has not been subsequently re-admitted by the Council of Governors
- 1.2** It is the responsibility of each member to ensure that they are and remain eligible for membership of the Trust. However, if the Trust is on notice that a member may be disqualified from membership, the Trust shall make reasonable enquiries to establish the case.

2. Termination of Membership

- 2.1** A member of the Trust will cease to be a member if he;
- 2.1.1 resigns by notice to the Membership Officer;
 - 2.1.2 fails to demonstrate that they wish to continue as a member following enquiries made in accordance with a process approved by the Council of Governors;
 - 2.1.3 dies;
 - 2.1.4 is expelled from membership by a resolution of two-thirds of the Council of Governors. Once expelled no person will be re-admitted as a member unless a resolution to that effect is approved by a resolution of two-thirds of the Council of Governors.

ANNEX 6 -THE MODEL RULES FOR ELECTIONS

Northumbria Healthcare NHS Foundation Trust (Council of Governors) Model Election Rules

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1. Interpretation

Part 2: Timetable for election

2. Timetable
3. Computation of time

Part 3: Returning officer

4. Returning officer
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7. Duty of co-operation

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20. The ballot paper
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26. E-voting systems

The poll

27. Eligibility to vote
28. Voting by persons who require assistance
29. Spoilt ballot papers and spoilt text message votes
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33. Procedure for remote voting by internet
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36. Receipt of voting documents
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41. Interpretation of Part 6
42. Arrangements for counting of the votes
43. The count
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52. Declaration of result for contested elections
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54. Sealing up of documents relating to the poll

55. Delivery of documents
56. Forwarding of documents received after close of the poll
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59. Countermand or abandonment of poll on death of candidate

Part 10: Election expenses and publicity

Expenses

60. Election expenses
61. Expenses and payments by candidates
62. Expenses incurred by other persons

Publicity

63. Publicity about election by the corporation
64. Information about candidates for inclusion with voting information
65. Meaning of “for the purposes of an election”

Part 11: Questioning elections and irregularities

66. Application to question an election

Part 12: Miscellaneous

67. Secrecy
68. Prohibition of disclosure of vote
69. Disqualification
70. Delay in postal service through industrial action or unforeseen event

Part 1: Interpretation

1. Interpretation

1.1 In these rules, unless the context otherwise requires:

“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 (Monitor, December 2013) 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;

“Monitor” means the corporate body known as Monitor as provided by section 61 of the 2012 Act;

“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.

Part 2: Timetable for elections

2. Timetable

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

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

3. Computation of time

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

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

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

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

Part 3: returning officer

4. Returning Officer

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

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

5. Staff

5.1 Subject to rule 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.

Part 4: Stages Common to Contested and Uncontested Elections

8. Notice of election

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

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

officer

- (g) the contact details of the returning officer
- (h) the date and time of the close of the poll in the event of a contest.

9. Nomination of candidates

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

9.2 The returning officer:

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

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

10. Candidate's particulars

10.1 The nomination form must state the candidate's:

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

11. Declaration of interests

11.1 The nomination form must state:

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

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

12. Declaration of eligibility

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

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

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

13. Signature of candidate

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

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

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

14. Decisions as to the validity of nomination

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

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

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

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

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

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

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

15. Publication of statement of candidates

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

15.2 The statement must show:

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

as given in their nomination form.

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

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

16. Inspection of statement of nominated candidates and nomination forms

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

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

17. Withdrawal of candidates

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

18. Method of election

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

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

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

- (a) the candidates who remain validly nominated are to be declared elected in accordance with Part 7 of these rules, and
- (b) the returning officer is to order a new election to fill any vacancy which remains unfilled, on a day appointed by him or her in consultation with the corporation.

Part 5: Contested elections

19. Poll to be taken by ballot

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

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

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

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

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

- (a) if internet voting is to be a method of polling, the internet voting system to be used for the purpose of the election is:
 - (i) configured in accordance with these rules; and
 - (ii) will create an accurate internet voting record in respect of any voter who casts his or her vote using the internet voting system;
- (b) if telephone voting to be a method of polling, the telephone voting system to be used for the purpose of the election is:
 - (i) configured in accordance with these rules; and
 - (ii) will create an accurate telephone voting record in respect of any voter who casts his or her vote using the telephone voting system;

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

- (i) configured in accordance with these rules; and
- (ii) will create an accurate text voting record in respect of any voter who casts his or her vote using the text message voting system.

20. The ballot paper

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

20.2 Every ballot paper must specify:

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

20.3 Each ballot paper must have a unique identifier.

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

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

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

- (a) that the voter is the person:
 - (i) to whom the ballot paper was addressed, and/or
 - (ii) to whom the voter ID number contained within the e-voting information was allocated,

- (b) that he or she has not marked or returned any other voting information in the election, and
- (c) the particulars of his or her qualification to vote as a member of the constituency or class within the constituency for which the election is being held, (“declaration of identity”)

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

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

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

Action to be taken before the poll

22. List of eligible voters

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

22.2 The list is to include, for each member:

(a) a postal address; and,

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

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

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

23. Notice of poll

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

(a) the name of the corporation,

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

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

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

24. Issue of voting information by returning officer

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

- (a) a ballot paper and ballot paper envelope,
- (b) the ID declaration form (if required),
- (c) information about each candidate standing for election, pursuant to rule 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);

(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.

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:

- (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

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

- (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 spoiled ballot papers and the list of spoiled text message votes,
- (d) the list of lost ballot documents,
- (e) the list of eligible voters, and
- (f) the list of tendered voting information

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

Part 6: COUNTING THE VOTES

41. Interpretation of Part 6

41.1 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 49,

“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 47.4 or 47.7.

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:

(i) ballot papers that have been returned; and

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

(b) count the votes according to the provisions in this Part of the rules and/or the provisions of any policy approved pursuant to rule 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.

44. Rejected ballot papers and rejected text voting records

44.1 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.

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

44.3 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.

44.4 The returning officer is to endorse the word “rejected” on any text voting record which under this rule is not to be counted.

44.5 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 44.3.

45. First stage

45.1 The returning officer is to sort the ballot documents into parcels according to the candidates for whom the first preference votes are given.

45.2 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.

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

46. The quota

46.1 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.

46.2 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”).

46.3 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 47.1 to 47.3 has been complied with.

47. Transfer of votes

47.1 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.

47.2 The returning officer is to count the number of ballot documents in each parcel referred to in rule 47.1.

47.3 The returning officer is, in accordance with this rule and rule 48, to transfer each sub-parcel of ballot documents referred to in rule 47.1(a) to the candidate for whom the next available preference is given on those ballot documents.

47.4 The vote on each ballot document transferred under rule 47.3 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).

47.5 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.

47.6 The returning officer is, in accordance with this rule and rule 48, to transfer each sub-parcel of ballot documents referred to in rule 47.5(a) to the candidate for whom the next available preference is given on those ballot documents.

47.7 The vote on each ballot document transferred under rule 47.6 shall be at:

(a) a transfer value calculated as set out in rule 47.4(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.

47.8 Each transfer of a surplus constitutes a stage in the count.

47.9 Subject to rule 47.10, 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.

47.10 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.

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

48. Supplementary provisions on transfer

48.1 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.

48.2 The returning officer shall, on each transfer of transferable ballot documents under rule 47:

- (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.

48.3 All ballot documents transferred under rule 47 or 49 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.

48.4 Where a ballot document is so marked that it is unclear to the returning officer at any stage of the count under rule 47 or 49 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.

49. Exclusion of candidates

49.1 If:

- (a) all transferable ballot documents which under the provisions of rule 47 (including that rule as applied by rule 49.11) and this rule are required to be transferred, have been transferred, and
- (b) subject to rule 50, 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 49.12 applies, the candidates with the then lowest votes).

9.2 The returning officer shall sort all the ballot documents on which first preference votes are given for the candidate or candidates excluded under rule 49.1 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).

49.3 The returning officer shall, in accordance with this rule and rule 48, transfer each sub-parcel of ballot documents referred to in rule 49.2 to the candidate for whom the next available preference is given on those ballot documents.

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

49.5 If, subject to rule 50, 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 49.1 into sub- parcels according to their transfer value.

49.6 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).

49.7 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.

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

49.9 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 49.1.

49.10 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.

49.11 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 47.5 to 47.10 and rule 48.

49.12 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.

49.13 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.

50. Filling of last vacancies

50.1 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.

50.2 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.

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

51. Order of election of candidates

51.1 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 47.10.

51.2 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.

51.3 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.

51.4 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.

Part 7: Final proceedings in contested and uncontested elections

52. Declaration of result for contested elections

52.1 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.

52.2 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 44.1,
- (f) the number of rejected text voting records under each of the headings in rule 44.3,

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.

Part 8: Disposal of documents

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 spoiled ballot papers and the list of spoiled 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 Monitor has declared that the vote was invalid.

Part 9: Death of a candidate during a contested election

59. Countermand or abandonment of poll on death of candidate

59.1 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.

59.2 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).

Part 10: election expenses and publicity

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 Monitor 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 Monitor 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 Monitor by:

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

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. Monitor will refer the application to the independent election arbitration panel appointed by Monitor.

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 Monitor 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.

Part 12: Miscellaneous

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 7 – FURTHER PROVISIONS RELATING TO THE COUNCIL OF GOVERNORS

1. Circumstances in which an individual cannot become or continue as a member of the Council of Governors

1.1 A person may not become or continue as a member of the Council of Governors if he:

- 1.1.1 Fails to attend three general meetings of the Council of Governors in a 12 month period, unless the Council of Governors is satisfied that the absences were due to reasonable causes and that attendance at future meetings will begin again immediately or within a reasonable period of time
- 1.1.2 Has been dismissed within the preceding two years, otherwise than by reasons of redundancy, from employment with a public body (paid or otherwise);
- 1.1.3 Is appointed as an executive or non-executive Director of the Trust or a Governor, non-executive Director, Chairman or Chief Executive of another NHS organisation;
- 1.1.4 Is the spouse, partner, parent or child of a Governor from the same constituency;
- 1.1.5 Is a member of a Local Authority's Scrutiny Committee covering health matters;
- 1.1.6 Is a person who is a medical practitioner and who has been removed from the register of medical practitioners held by the General Medical Council in accordance with the Medical Act 1983, or has been suspended from that register, and not subsequently had his name returned to that register;
- 1.1.7 Is incapable by reason of continuing mental incapacity, illness or injury of managing and administering his property and affairs;
- 1.1.8 Has refused to sign a declaration in the form specified by the nominated Member's Office of the particulars of their qualification to vote as a member and that they are not prevented from being a member;
- 1.1.9 Has refused to undertake without reasonable cause any training that the Council of Governors requires all Governors to undertake;
- 1.1.10 Has failed to sign and deliver to the Nominated Officer a statement in the prescribed form confirming acceptance of the Code of Conduct for Governors;
- 1.1.11 Fails to disclose any conflict of interest required to be disclosed in meetings of the Council of Governors
- 1.1.12 Is a person whose name has been added to and not removed from a list prepared

under the Sexual Offences Act 1997

- 1.2 A Governor may resign from office at any time during his term of office by giving notice in writing to the Chairman such notice specifying the date of resignation
- 1.3 A Governor may be removed from office by resolution of the Council of Governors in the following circumstances:
 - 1.3.1 For any of the reasons listed in section 1.1 above;
 - 1.3.2 He acts in a way that is incompatible with the values of the Trust or is prejudicial to the reputation of the Trust or the NHS or fails to discharge his responsibilities as a Governor.
- 1.4. A staff Governor who is suspended from staff duties for any reason will also be suspended from their role as a Governor for the duration of their suspension. Whilst a staff Governor is under suspension, he cannot attend meetings of the Council of Governors in any capacity, but missing any meetings of the Council of Governors will not count as failure to attend for the purpose of 1.1.1 above.

2. Casual Vacancies

- 2.1 A casual vacancy is a vacancy that arises because a Governor does not complete his term of office for any reason. A vacancy that arises because the term of office of a governor has expired and he has not been re-elected or re-appointed is not a casual vacancy.
- 2.2 The validity of any act of the Council of Governors is not affected by any vacancy amongst the Council of Governors or by any defect in the appointment of any Governor.
- 2.3 Where there is a casual vacancy of the Council of Governors for whatever reason:
 - 2.3.1 Where the vacancy is for an appointed Governor, the appointing organisation will be requested to appoint a replacement to hold office for the remainder of the term in accordance with the agreed appointment processes; and
 - 2.3.2 Where the vacancy is for an elected Governor, the next highest polling candidate at the most recent elections to fill the seat will be invited to take up the seat for the remainder of the period of office at which time he may seek re-election.

3. Indemnity

Members of the Council of Governors who act honestly and in good faith will not have to meet out of their personal resources any personal civil liability which is incurred in the execution or purported execution of their official functions, save where they have acted recklessly. Any costs arising in this way will be met by the Trust. The Trust may purchase and maintain insurance against this liability for its own benefit any for the benefit of the members of the Council of Governors.

4. Dispute Resolution Procedures

The Trust is to establish a dispute resolution procedure in respect of any disputes arising between the Council of Governors and the Board of Directors that shall be approved by both the Council of Governors and the Board of Directors.

5. Appointment of a Lead Governor

5.1 The Trust may appoint a Lead Governor.

5.2 The duties of the Lead Governor shall be:

5.2.1 To lead the Board of Governors in circumstances where it is not appropriate for the Chairman, the Vice-Chairman, Senior Independent Director or other non-executive Director to do so.

5.2.2 To act as the point of contact for Monitor in circumstances where it would be inappropriate for Monitor to contact the Chairman.

5.3 The Lead Governor shall have no other duties unless agreed otherwise by the Board of Directors

5.4 The Lead Governor shall normally hold office for a period of two years

ANNEX 8 - STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE COUNCIL OF GOVERNORS

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1. **STATUTORY AUTHORITY**

- 1.1. Northumbria Healthcare NHS Foundation Trust is a public benefit corporation established under the NHS Act 2006 and authorised by Monitor on 1st August 2006 to act as an NHS Foundation Trust.
- 1.2. The Constitution requires the Council of Governors to adopt Standing Orders for the regulation of its procedures and business. These Standing Orders have been agreed by the Board of Directors and the Council of Governors and have been approved by Monitor.
- 1.3. Governors are required to comply with the requirements of these Standing Orders at all times.

2. **INTERPRETATION**

- 2.1. Save as permitted by law, at any meeting the Chairman of the Trust shall be the final authority on the interpretation of Standing Orders (on which he should be advised by the Chief Executive and Trust Secretary).
- 2.2. Words importing the masculine gender only shall include the feminine gender and words importing the singular shall import the plural and vice-versa.
- 2.3. Any expression to which a meaning is given in the Health Service Acts or in the Regulations or Orders made under the Acts shall have the same meaning in this interpretation and in addition:
 - a) **ACCOUNTABLE OFFICER** shall be the officer responsible and accountable for funds entrusted to the Trust. He shall be responsible for ensuring the proper stewardship of public funds and assets. For this Trust it shall be the Chief Executive.
 - b) **BOARD** means the Board of Directors, formally constituted in accordance with this Constitution and consisting of a Chairman, and Non-executive Directors, appointed by the Council of Governors and the Executive Directors, appointed by the Non-executive Directors and (except for his own appointment) by the Chief Executive.
 - c) **BUDGET** shall mean a resource, expressed in financial terms, proposed by the Board for the purpose of carrying out, for a specific period, any or all of the functions of the Trust.
 - d) **CHAIRMAN** is the person appointed by the Council of Governors as a Non-Executive Chairman to lead the Board of Directors, and Council of Governors, to ensure it successfully discharges its overall responsibility for the Trust as a whole.

- e) **CHIEF EXECUTIVE** shall mean the accountable officer of the Trust.
- f) **COMMITTEE OF THE COUNCIL OF GOVERNORS** means a committee formed by the Council of Governors with specific Terms of Reference, chair and membership.
- g) **COMMITTEE OF THE BOARD** means a committee formed by the Board with specific Terms of Reference, Chair and Membership.
- h) **DIRECTOR** means a person appointed to the Board of Directors
- i) **DIRECTOR OF FINANCE** shall mean the Chief Finance Officer of the Trust who will ensure compliance with Standing Financial Instructions.
- j) **FUNDS HELD ON TRUST** shall mean those funds which the Trust holds at its date of incorporation, receives on distribution by statutory instrument, or chooses subsequently to accept under powers derived under Schedule 3 and 4 para 14.1c National Health Service Act 2006. Such funds may or may not be charitable.
- k) **GOVERNOR** means a person elected or appointed to the Council of Governors.
- l) **COUNCIL OF GOVERNORS** means the Council of Governors, formally constituted in accordance with this Constitution meeting in public and presided over by the Chairman.
- m) **MEMBER** means a person registered as a member of one of the constituencies of the Trust as outlined in this Constitution.
- n) **MONITOR** is the body corporate known as Monitor, as provided by Section 61 of the Health and Social Care Act 2012.
- o) **MOTION** means a formal proposition to be discussed and voted on during the course of a meeting.
- p) **NOMINATED OFFICER** means an officer charged with the responsibility for discharging specific tasks within Standing Orders in line with the 2006 Act.
- q) **NON-EXECUTIVE DIRECTOR** is a person appointed by the Council of Governors to be a member of the Board of Directors. This includes the chairman of the Trust.
- r) **OFFICER** means an employee of the Trust
- s) **SOs** means Standing Orders

- t) **SFIs** means Standing Financial Instructions
- u) **TRUST** means Northumbria Healthcare NHS Foundation Trust.
- v) **TRUST SECRETARY** this role will act as independent advice to the Board and monitor the Trust's compliance with its terms of authorisation and constitution.
- w) **VICE-CHAIRMAN** means the Non-Executive Director appointed by the Council of Governors to carry out the duties of the Chairman if he is absent for any reason.

3. **COMPOSITION OF THE COUNCIL OF GOVERNORS**

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

3.2 **Role of the Chairman**

The Chairman shall not be a member of the Council of Governors however, in accordance with the regulatory framework; he will preside over meetings of the Council of Governors.

3.3 **Role of the Vice-Chairman**

In respect of meetings of the Council of Governors, where the Chairman has died or has otherwise ceased to hold office or where he has been unable to perform his duties as a Chairman owing to illness, absence from England and Wales or any other cause, references to the Chairman shall, so long as there is no Chairman able to perform his duties, be taken to include to the Vice-Chairman.

3.4 **Removal of the Chairman or Vice-Chairman of the Council of Governors**

It shall be for the Council of Governors to determine the period of office for the Chairman and Vice-Chairman, which shall normally be for a period of up to three years after which the Council of Governors shall review the appointment. Should there be the requirement to remove the Chairman or Vice-Chairman of the Council of Governors this shall be carried out in accordance with SO 4.8.6.

4. **MEETINGS OF THE COUNCIL OF GOVERNORS**

4.1 **Frequency of Meetings**

The Council of Governors will meet in a general meeting on no less than four occasions each year at times and places that the Council of Governors may determine.

4.2 Duration of Meetings

The business of meetings will be conducted efficiently and in a timely manner and will not last longer than three hours. Any business not conducted within three hours will be adjourned until the next meeting.

4.3 Admission of the Public and Press

4.3.1 Meetings shall be open to members of the public and the press. Members of the public and press shall be required to withdraw from the meeting upon the Council of Governors resolving as follows:

“that representatives of the press and other members of the public be excluded from the remainder of this meeting having regard to the confidential nature of business to be transacted, publicity on which would be prejudicial to the public interest.”

4.3.2 The Chairman shall give such directions as he thinks fit in regard to the arrangements for meetings and accommodation of the public and the press so as to ensure that the business of the Council of Governors is conducted without interruption and disruption. Without prejudice to the power to exclude on the grounds of the confidential nature of the business to be transacted, the public will be required to withdraw upon the Council of Governors resolving as follows:

“That in the interests of public order the meeting adjourn for *the period specified] to enable the Council of Governors to complete business without the presence of the public.”

4.3.3 The Chairman may exclude any member of the public from a meeting of the Council of Governors if they are interfering with or preventing the reasonable conduct of the meeting.

4.3.4 Nothing in these Standing Orders shall require the Council of Governors to allow members of the public or press to record proceedings in any manner, other than in writing, or to make any oral report of proceedings as they take place without the prior agreement of the Council of Governors.

4.3.5 The Council of Governors may invite the Chief Executive and Directors of the Trust to attend any meeting of the Council of Governors to respond to questions from Governors on the affairs of the Trust.

4.4 Calling Meetings

Notwithstanding section 4.1 above, the Chairman may call a meeting of the Council of

Governors at any time. If the Chairman refuses to call a meeting after a requisition for that purpose, signed by at least one-third of the whole number of Governors, has been presented to him, or if without so refusing, the Chairman does not call a meeting within fourteen days after such requisition to do so, such one-third or more Governors may call a meeting forthwith. A requisition from Governors under this section may be submitted electronically provided that such requisition includes the names and electronic signatures of the Governors issuing it.

4.5 Notice of Meetings

- 4.5.1 Before each meeting of the Council of Governors, a notice of the meeting, specifying the business proposed to be transacted at it and signed by the Chairman or by an officer of the Trust authorised by the Chairman to sign on his behalf, shall be delivered to every Governor or sent by post to the normal place of residence of such Governor to arrive at least five clear working days before the meeting.
- 4.5.2 Lack of service of the notice on any Governor shall not affect the validity of the meeting.
- 4.5.3 In the case of a meeting called by the Governors in default of the Chairman, the notice shall be signed by those Governors and no business shall be transacted at the meeting other than that specified in the notice.
- 4.5.4 Before each meeting of the Council of Governors a public notice of the time and place of the meeting, along with the agenda, shall be available on the Trust's website, at least seven days before the meeting.

4.6 Setting the Agenda

- 4.6.1 The Council of Governors may determine that certain matters shall appear on every agenda for a meeting of the Council of Governors.
- 4.6.2 A Governor who wishes for an item to be included on an agenda for a meeting of the Council of Governors shall make a written request to the Chairman at least ten clear working days before the meeting. Requests made less than ten clear working days before a meeting may be included on the agenda solely at the discretion of the Chairman.
- 4.6.3 The Council of Governors will agree an annual schedule of work proposed by the Board of Directors to ensure that the Council of Governors discharge their statutory responsibilities as Governors.

4.7 Chairman of the Meeting

4.7.1 At any meeting of the Council of Governors, the Chairman, if present, shall preside. If the Chairman is absent from the meeting, or if he is disqualified from participating because of a declared conflict of interest, the Vice-Chairman, if he is present, shall preside. If both the Chairman and Vice-Chairman are absent or disqualified, the Council of Governors may choose an appropriate individual from among the remaining non-executive Directors or the Lead Governor to preside.

4.8 **Notice of Questions**

4.8.1 Governors may ask the Chairman, another Governor or Executive Director questions about matters which are directly in relation to a matter over which the Council of Governors has powers or duties or which affects the area covered by the Trust.

4.8.2 A Governor may only ask a question under paragraph 4.8.1 if either;

a) they have given at least 14 working days notice in writing of the question to the Trust Secretary. For the purposes of this Standing Order, receipt of any such questions via electronic means is considered acceptable;

b) the question relates to urgent matters, they have the consent of the person to whom the question is to be put and the content of the question is given to the Company Secretary by 10.00am on the day of the meeting (if the meeting is scheduled for the afternoon) or by 2.00pm on the preceding day (if the meeting is scheduled for the morning). Urgent is defined as a matter which will adversely affect the Trust within the next seven days.

4.8.3 A Governor may ask any question through the Chairman without notice upon a report from an Executive Director, or other officer of the Trust, when that item is being received or under consideration by the Council of Governors. Unless the Chairman decides otherwise no statements will be made other than those which are strictly essential to define the question, which should last no longer than three minutes. The Chairman may reject any question from any Governor if in his opinion the question is substantially the same as the question which has already been put to the meeting or a previous meeting of the Council of Governors.

4.8.4 An answer may take the form of a direct oral answer; where the desired information is in a publication of the Trust or other published work, a reference to that publication; where the reply cannot conveniently be given orally, a written answer circulated later to the questioner; or a brief oral answer supplemented by a written answer circulated later to the Governor who has raised the question.

- 4.8.5 A Governor asking a question under paragraphs 4.81 or 4.82 above may ask one supplementary question (lasting no longer than three minutes) without notice of the person to whom the first question was asked. The supplemental question must arise directly out of the reply

4.9 Notices of Motion

- 4.9.1 A Governor of the Trust desiring to move or amend a motion shall send a written notice thereof at least ten clear days before the meeting to the Chairman, who shall insert in the agenda for the meeting all notices so received subject to the notice being permissible under the appropriate regulations. This paragraph shall not prevent any motion being moved during the meeting, without notice on any business mentioned on the agenda, subject to SO 4.5.
- 4.9.2 A motion or amendment once moved and seconded may be withdrawn by the proposer with the concurrence of the seconder and the consent of the Chairman.
- 4.9.3 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 members of the Council of Governors who give it and also the signature of four other members of the Council of Governors. When any such motion has been disposed of by the Council of Governors it shall not be competent for any member of the Council of Governors, other than the Chairman, to propose a motion to the same effect within six months.
- 4.9.4 The mover of a motion shall have a right of reply at the close of any discussion on the motion or any amendment thereto.
- 4.9.5 When a motion is under discussion or immediately prior to discussion it shall be open to a member of the Council of Governors to move:
- a) An amendment to the motion.
 - b) The adjournment of the discussion or the meeting.
 - c) That the meeting proceeds to the next business.
 - d) That the motion shall be now put.

Such a motion, if seconded, shall be disposed of before the motion which was originally under discussion or about to be discussed.

No amendment to the motion shall be admitted if, in the opinion of the Chairman of the meeting, the amendment negates the substance of the motion.

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

4.9.6 A motion to remove the Chairman or a non-executive Director must be seconded by 10 members of the Council of Governors.

4.9.7 The following motions may be moved without notice:

- a) in relation to the accuracy of the minutes;
- b) to change the order of business in the agenda;
- c) to refer something to an appropriate body or individual;
- d) to appoint a working group arising from an item on the agenda for the meeting;
- e) to receive reports or adopt recommendations made by the Board of Directors;
- f) to withdraw a motion;
- g) to amend a motion;
- h) to proceed to the next business;
- i) that the question be now put;
- j) to adjourn a debate;
- k) to adjourn a meeting;
- l) to suspend a particular Standing Order; a rule may be suspended by motion on notice or without notice if at least one half of the whole number of Governors of the Council of Governors are present. Suspension can only be for the duration of the meeting;
- m) to exclude the public and press in accordance with Standing Orders 4.3

- n) to not hear further a Governor, or to exclude them from the meeting. If a Governor persistently disregards the ruling of the Chairman by behaving improperly or offensively or deliberately obstructs business, the Chairman may move that the Governor be not heard further. If seconded, the motion will be voted on without discussion. If the Governor continues to behave improperly after such a motion is carried, the Chairman may move that either the Governor leaves the meeting room or that the meeting is adjourned for a specified period. If seconded, the motion will be voted on without discussion;
- o) to give the consent of the Council of Governors where its consent is required by the Constitution.

4.10 Chairman's Ruling

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

4.11 Voting

4.11.1 Every question at a meeting shall be determined by a majority of the votes of the Governors present and voting on the question with the exception of a decision to remove the Chairman or a non-executive Director which requires the approval of three-quarters of the Governors present and voting.

4.11.2 In the case of an equality of votes, the person presiding over the meeting shall have a second or casting vote.

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

4.11.4 If at least one-third of the Governors present so request, the voting on any question may be recorded to show how each Governor present voted or abstained.

4.11.5 In no circumstances may a Governor, who is absent at the time of the vote, vote by proxy.

4.12 Minutes

4.12.1 The minutes of the proceedings of a meeting shall be drawn up and submitted for agreement at the next ensuing meeting where they will be

signed by the person presiding at it.

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

4.12.3 Minutes shall be circulated to all Governors. The minutes of meetings shall be made available to the public except for minutes relating to business conducted when members of the public are excluded under the terms of section 4.3 of these Standing Orders.

4.13 Suspension of Standing Orders

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

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

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

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

4.13.5 The Audit Committee shall review every decision to suspend Standing Orders.

4.14 Record of Attendance

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

4.15 Quorum

4.15.1 No formal business shall be transacted at a general meeting of the Council of Governors unless at least one-third of the Governors are present including at least one-third of the Governors from the public constituency.

4.15.2 If a Governor has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of the declaration of a conflict of interest, he shall no longer count towards the quorum. If a quorum is not then 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 the meeting. Such a position shall be recorded in the minutes of the meeting. The meeting will then proceed to the next business.

4.15.3 For the clarification of doubt, the requirements of this section will not apply to development meetings of the Council of Governors, held for briefing and training purposes, unless such a meeting intends to act as a general meeting and transact formal business. In that event these Standing Orders apply in full to the consideration of any such business.

4.15.3 The Chairman of a meeting of the Council of Governors may adjourn a meeting of the body if a quorum is either not present within thirty minutes of the appointed time of commencement or is not maintained for the duration of the meeting.

5. ARRANGEMENTS FOR THE EXERCISE OF FUNCTIONS BY DELEGATION

5.1 Emergency Powers

The powers which the Council of Governors has retained to itself within these Standing Orders may in emergency be exercised by the Chairman after having consulted at least five elected members of the Council of Governors. The exercise of such powers by the Chairman shall be reported to the next formal meeting of the Council of Governors for ratification.

5.2 Appointment of Committees

5.2.1 The Council of Governors may appoint committees consisting wholly of Governors.

5.2.2 The Standing Orders of the Council of Governors, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees or sub-committees established by the Council of Governors.

5.2.3 Each committee shall have such terms of reference and powers and be subject to such conditions as the Council of Governors shall determine. Such terms of reference shall have effect as if incorporated into the Standing Orders.

5.2.4 The Council of Governors shall approve the appointments to each of the committees it has constituted.

5.2.5 The standing committees to be established by the Council of Governors are:

a) Nominations, Remuneration & Development Committee

b) Membership Strategy Committee

6 CONFIDENTIALITY

6.1 A member of the Council of Governors or an attendee on a committee of the Council of Governors shall not disclose a matter dealt with by, or brought before, the

committee without its permission or until the committee shall have reported to the Council of Governors or shall otherwise have concluded on that matter.

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

7 DECLARATIONS OF INTERESTS AND REGISTER OF INTERESTS

7.1 Declaration of Interests

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

7.1.1 Interests referred to in 7.1 which should be regarded as “relevant and material” include but are not restricted to:

- a) Directorships, including non-executive directorships held in limited companies (with the exception of dormant companies);
- b) Ownership, part-ownership or directorships of companies, businesses or consultancies that carry out or are likely to carry out business with the Trust;
- c) Majority or controlling shareholdings in an organisation that carries out business with the Trust or is likely to carry out business with the Trust;
- d) A position of authority in a charity or voluntary organisation in the field of health or social care that carries out business with the Trust or is likely to carry out business with the Trust;
- e) Any connection with a voluntary or other organisation contracting or likely to contract for Trust services;
- f) To the extent not covered above, any connection with an organisation, entity or company considering entering into or having entered into a financial arrangement with the Trust, including but not limited to, lenders or banks.

- 7.1.2 If Governors have any doubt about the relevance of an interest, this should be discussed with the Chairman or Trust Secretary who will advise on whether or not the interest should be disclosed.
- 7.1.3 For the avoidance of doubt, the above relevant and material interests extend to the spouse or partner of a Governor and declaration of such interests will be required.
- 7.1.4 At the time Governors' interests are declared, they should be recorded in the minutes of the Governor Body meetings. Any changes in interests should be declared at the next board meeting following the change occurring.
- 7.1.5 During the course of a meeting, if a conflict of interest is established, the Governor 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 Chief Executive will ensure that a Register of Interests is established to record formally declarations of interests of Governors. The Register will include details of all directorships and other relevant and material interests which have been declared by Governors, as defined in SO 7.1.
- 7.2.2 Governors must notify the Trust Secretary of any changes to their declared interests. Such notification must be made to the Trust Secretary within seven days of the change becoming known.
- 7.2.3 The Trust Secretary will ensure that such notifications are entered into the Register within seven days.
- 7.2.4 The Trust Secretary will conduct an annual review of the Register and report the outcome to the Council of Governors
- 7.2.5 The Register will be available for inspection by members of the public at the Trust's headquarters.

8. DISABILITY OF GOVERNORS IN PROCEEDINGS ON ACCOUNT OF PECUNIARY INTEREST

- 8.1 Subject to the following provisions of this Standing Order, if a Governor has any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter and is present at a meeting of the Council of Governors at which the contract or other matter is the subject of consideration, he shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not take part in the consideration or discussion of the contract or other matter or vote on any question with respect to it.

8.2 The Trust shall exclude a Governor from a meeting of the Council of Governors while any contract, proposed contract or other matter in which he has a pecuniary interest, is under consideration.

8.3 For the purpose of this Standing Order a Governor shall be treated, subject to SO 8.4, as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if:

he, or a nominee of his, is a Director of a company or other body, not being a public body, with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration; or

he is a partner of, or is in the employment of a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration; and

in the case of married persons living together the interest of one spouse shall, if known to the other, be deemed for the purposes of this Standing Order to be also an interest of the other.

8.4 A Governor shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only:

of his membership of a company or other body, if he has no beneficial interest in any securities of that company or other body;

of an interest in any company, body or person with which he is connected as mentioned in SO 7.3 above which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a director in the consideration or discussion of or in voting on, any question with respect to that contract or matter.

8.5 Where a Governor:

has an indirect pecuniary interest in a contract, proposed contract or other matter by reason only of a beneficial interest in securities of a company or other body, and

the total nominal value of those securities does not exceed 5% of the total nominal value of the issued share capital of the company or body and

if the share capital is of more than one class, the total nominal value of shares of any one class in which he has a beneficial interest does not exceed one-hundredth of the total issued share capital of that class,

this Standing Order shall not prohibit him from taking part in the consideration or discussion of the contract or other matter or from voting on any question with respect to it without prejudice however to his duty to disclose his interest.

- 8.6 Standing Order 8 applies to a committee or sub-committee of the Council of Governors as it applies to the Council of Governors itself and applies to any member of any such committee or sub-committee (whether or not he is also a Governor) as it applies to a Governor.

9 DISPUTES BETWEEN THE COUNCIL OF GOVERNORS AND THE BOARD OF DIRECTORS

- 9.1 Conflicts between the Board of Directors and the Council of Governors will be resolved through the Trust's Dispute Resolution Procedure.

10. VARIATION AND AMENDMENT OF STANDING ORDERS

- 10.1 These Standing Orders shall be amended only if:

10.1.1 A notice of motion under Standing Order 4.8 has been given; and

10.1.2 A majority of three-quarters of Governors present at the meeting at which the matter is put vote in favour of the changes; and

10.1.3 The variation proposed does not contravene a statutory provision or a direction made by the Regulator of NHS Foundation Trusts; and

10.1.4 The amendment is agreed by the Board of Directors; and

10.1.5 The amendments agreed by the Board of Directors are approved by Monitor.

**ANNEX 9 - STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF
THE BOARD OF DIRECTORS**

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Section 1 INTRODUCTION

1. Statutory Framework

The Northumbria Healthcare NHS Foundation Trust (the Trust) is a public benefit corporation which is established under the NHS Act 2006 and authorised by Monitor on 1st August 2006 to act as a NHS Foundation Trust

The principal places of business of the Trust are:

Northumbria Specialist Emergency Care Hospital

Wansbeck General Hospital

North Tyneside General Hospital

Hexham General Hospital

The Constitution requires the Board to adopt Standing Orders for the regulation of its proceedings and business. In addition the “Directions on Financial Management in England” (HSG (96)12) require health bodies to adopt Standing Financial Instructions setting out the responsibility of individuals. Although not mandatory on NHS Foundation Trusts, the Board will continue to apply them as a key element of its governance arrangements.

2. Delegation of Powers

Under the Standing Orders relating to the Arrangements for the Exercise of Functions SO 4 the Board exercises its powers to make arrangements for the exercise, on behalf of the Trust, of any of its functions by a committee or sub-committee appointed by virtue of SO 5 or by an officer of the Trust, in each case subject to such restrictions and conditions as the Board thinks fit or as Monitor may direct. Delegated Powers are covered in a separate document (Reservation of Powers to the Board and Delegation of Powers). That document has effect as if incorporated into the Standing Orders.

SECTION 2 STANDING ORDERS

1 INTERPRETATION

Save as permitted by law, at any meeting the Chairman of the Trust shall be the final authority on the interpretation of Standing Orders (on which he should be advised by the Chief Executive and Company Secretary).

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

Any expression to which a meaning is given in the Health Service Acts or in the Regulations or Orders made under the Acts shall have the same meaning in this interpretation and in addition:

- a) **ACCOUNTABLE OFFICER** shall be the officer responsible and accountable for funds entrusted to the Trust. He shall be responsible for ensuring the proper stewardship of public funds and assets. For this Trust it shall be the Chief Executive.
- b) **BOARD** means the Board of Directors, formally constituted in accordance with this Constitution and consisting of a Chairman, and Non-executive Directors, appointed by the Governors' Body and the Executive Directors, appointed by the Non-executive Directors and (except for his own appointment) by the Chief Executive.
- c) **BUDGET** shall mean a resource, expressed in financial terms, proposed by the Board for the purpose of carrying out, for a specific period, any or all of the functions of the Trust.
- d) **CHAIRMAN** is the person appointed by the Council of Governors as a Non Executive Chairman to lead the Board of Directors, and Council of Governors, to ensure it successfully discharges its overall responsibility for the Trust as a whole.
- e) **CHIEF EXECUTIVE** shall mean the accountable officer of the Trust.
- f) **COMMITTEE OF THE COUNCIL OF GOVERNORS** means a committee formed by the Council of Governors with specific Terms of Reference, chair and membership.

- g) **COMMITTEE OF THE BOARD** means a committee formed by the Board with specific Terms of Reference, Chair and Membership.
- h) **DIRECTOR** means a person appointed to the Board of Directors
- i) **DIRECTOR OF FINANCE** shall mean the Chief Finance Officer of the Trust who will ensure compliance with Standing Financial Instructions.
- j) **FUNDS HELD ON TRUST** shall mean those funds which the Trust holds at its date of incorporation, receives on distribution by statutory instrument, or chooses subsequently to accept under powers derived under Schedule 3 and 4 para 14.1c National Health Service Act 2006. Such funds may or may not be charitable.
- k) **GOVERNOR** means a person elected or appointed to the Council of Governors.
- l) **COUNCIL OF GOVERNORS** means the Council of Governors, formally constituted in accordance with this Constitution meeting in public and presided over by the Chairman.
- m) **MEMBER** means a person registered as a member of one of the constituencies of the Trust as outlined in this Constitution.
- n) **MONITOR** is the Independent Regulator of NHS Foundation Trusts appointed under the National Health Service Act 2006.
- o) **MOTION”** means a formal proposition to be discussed and voted on during the course of a meeting.
- p) **NOMINATED OFFICER** means an officer charged with the responsibility for discharging specific tasks within Standing Orders in line with the 2006 Act.
- q) **NON-EXECUTIVE DIRECTOR** is a person appointed by the Council of Governors to be a member of the Board of Directors. This includes the chairman of the Trust.

- r) **OFFICER** means an employee of the Trust
- s) **SOs** means Standing Orders
- t) **SFIs** means Standing Financial Instructions
- u) **TRUST** means Northumbria Healthcare NHS Foundation Trust.
- v) **TRUST/COMPANY SECRETARY** this role will act as independent advice to the Board and monitor the Trust's compliance with its terms of authorisation and constitution.
- w) **VICE-CHAIRMAN** means the Non-Executive Director appointed by the Council of Governors to carry out the duties of the Chairman if he is absent for any reason.

2. THE BOARD OF DIRECTORS

- 2.1 All business shall be conducted in the name of the Trust.
- 2.2 All funds received in Trust shall be in the name of the Trust as Corporate Trustee. In relation to funds held on trust, powers exercised by the Trust as Corporate Trustee shall be exercised separately and distinctly from those powers exercised as a Trust.
- 2.3 The Trust has the functions conferred on it by the NHS Act 2006 and by its Authorisation.
- 2.4 Directors acting on behalf of the Trust as a Corporate Trustee are acting as quasi-trustees. Accountability for charitable funds held on trust is to the Charity Commission and to the Secretary of State for Health. Accountability for non-charitable funds held on trust is only to Monitor.
- 2.5 The Trust has resolved that certain powers and decisions may only be exercised or made by the Board in formal session. These powers and decisions are set out in "Reservation of Powers to the Board" and have effect as if incorporated into the Standing Orders.
- 2.6 The Board of Directors will function as a unitary Board. The Board is collectively responsible for discharging the powers and for the performance of the Trust. Executive and non-executive Directors will have joint responsibility for every decision of the Board regardless of their individual skills or status.

2.7 The Role of Directors

- 2.7.1 The role of the Directors as members of the Board is to set the direction of the Trust and monitor and manage its performance in carrying out its statutory and other functions.
- 2.7.2 The executive Directors will exercise their authority in accordance with the terms of these Standing Orders, the Trust's Standing Financial Instructions, the Reservation of Powers to the Board and the Scheme of Delegation.
- 2.7.3 The Chief Executive is responsible for the overall performance of the executive functions of the Trust. He is the Accounting Officer for the Trust and is responsible for ensuring that the requirements of the NHS Accounting Officer Memorandum are met.
- 2.7.4 The Executive Director of Finance is responsible for the provision of financial advice to the Trust and for the supervision of systems for financial accounting and control.
- 2.7.5 The non-executive Directors will not be granted nor seek to exercise any individual executive powers on behalf of the Trust. They may exercise authority when acting as members of, or when chairing, a committee of the Trust which has delegated powers.
- 2.7.6 The Chairman is responsible for the operation and performance of the Board and will chair meetings of the Board when present. The Chairman has certain delegated powers and must act within the terms of his appointment, the Standing Orders and the Standing Financial Instructions in exercising those powers and carrying out his duties.
- 2.7.7 The Chairman will ensure that the business of the Board is dealt with in an effective and timely manner and that the Board is provided with appropriate information and advice to inform debate and decision.
- 2.7.8 The Board shall approve and keep under review a Statement of Division of Responsibility between the Chairman and the Chief Executive which sets out the division of responsibility between them.
- 2.7.9 The Chairman is also responsible for the leadership of the Council of Governors and for ensuring that it and the Board work effectively together.

2.8 **Composition of the Board of Directors**

- 2.8.1 The composition of the Board of Directors is set out in section 22 of the Trust's Constitution:

A non-executive Director Chairman

A minimum of six other non-executive Directors; and

Six executive Directors including:

The Chief Executive Officer (the Chief Accounting Officer)

One Executive Director of Finance (the Chief Finance Officer)

One Executive Director who is a registered medical or dental practitioner

One Executive Director who is a registered nurse or midwife

2.8.2 The Trust Secretary (or nominated deputy) will be in attendance at all meetings of the Board

2.8.3 Other officers of the Trust may attend meetings of the Board by invitation.

2.9 Appointment of the Chairman and Directors

2.9.1 The Chairman and non-executive Directors are appointed by the Council of Governors.

2.9.2 The Board shall appoint a committee whose members shall be the Chairman and non-executive Directors of the Trust whose function will be to appoint the Chief Executive Officer of the Trust subject to the approval of the Council of Governors.

2.9.3 The Board shall appoint a committee whose members will be the Chairman, the Chief Executive and other non-executive Directors whose function will be to appoint the Executive Directors.

2.10 Terms of Office of the Chairman and Directors

2.10.1 The remuneration and terms of office of the Chairman and non-executive Directors shall be decided by a formal committee of the Council of Governors, the Nominations, Remuneration & Development Committee

2.10.2 The remuneration and terms of office of the executive Directors will be determined by a committee of non-executive Directors.

2.11 Appointment of Vice- Chairman

2.11.1 The Council of Governors may appoint one of the non-executive Directors to be Vice-Chairman for such a period, not exceeding the remainder of his term as non-executive Director of the Trust, as they may specify on appointing him.

2.11.2 Any non-executive Director so elected, may at any time resign from the office of Vice-Chairman by giving notice in writing to the Chairman and the Directors of the Trust may thereupon appoint another non-executive Director as Vice-Chairman in accordance with paragraph 2.9.

2.12 Powers of the Vice- Chairman

Where the Chairman of an NHS Trust has died or has otherwise ceased to hold office or where he has been unable to perform his duties as Chairman owing to illness, absence from England and Wales or any other cause, references to the Chairman in these Standing Orders shall, so long as there is no Chairman able to perform his duties, be taken to include references to the Vice-Chairman.

2.13 The role of the Senior Independent Director

2.13.1 The Senior Independent Director ('SID') is a role undertaken by one of the Trust's independent Non-Executive Directors. The SID should be available to all stakeholders, particularly governors and members, should they have concerns which they feel unable to resolve via normal channels, such as through contact with the Chair or Chief Executive, or in circumstances in which such contact would be inappropriate.

2.13.2 The Senior Independent Director shall meet with the Trust Chair at least annually to evaluate his/her performance, as part of a process, which should be agreed with the Board of Governors, for appraising the Trust Chair and on such occasions as are deemed appropriate.

2.14 Joint Directors

Where more than one person is appointed jointly to a post in the 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 for the purpose of Standing Order 2.9.

3 MEETINGS OF THE BOARD OF DIRECTORS

3.1 The Board will meet at sufficient intervals to properly discharge its duties. Meetings of the Board will be held in public unless the Board determines otherwise.

3.2 The public and representatives of the press shall be afforded the opportunity to attend all formal public meetings of the Board of Directors but shall be required to withdraw upon the Board resolving as follows:

3.2.1 That representatives of the press and other members of the public be excluded from the remainder of the meeting having regard to the confidential nature of the business to be transacted, publicity on which would be prejudicial to the public interest' (Section 1 (2) Public Bodies (Admission to Meetings) Act 1960).

- 3.2.2 The Chair shall give such direction as seen fit in regard to the arrangements for meetings and accommodation of the public and representatives of the press such as to ensure that the Board's business shall be conducted without interruption and disruption and, without prejudice to the power to exclude on the grounds of the confidential nature of the business to be transacted, the public will be required to withdraw upon the Board resolving as follows:
- 3.2.3 That in the interests of public order, the meeting adjourn for *(the period)* to enable the Board to complete business without the presence of the public' (Section 1(8) Public Bodies (Admission to Meetings) Act 1960).
- 3.3** Nothing in these Standing Orders shall require the Board to allow members of the public or representatives of the press to record proceedings in any manner whatsoever, other than writing, or to make any oral report of proceedings as they take place without the prior agreement of the Board.
- 3.4** Where the public is invited to attend a meeting of the Board, the Chairman may exclude any member of the public from that meeting if they are interfering with or preventing the proper and reasonable conduct of the meeting.
- 3.5** Attendance at meetings by members of the press or public does not confer any right to ask questions or otherwise participate in the meeting unless invited to do so by the Chairman.
- 3.6 Calling Meetings**
- 3.6.1 Meetings of the Board shall be held at such times and places as the Board may determine.
- 3.6.2 The Chairman may call a meeting of the Board at any time. If the Chairman refuses to call a meeting after a requisition for that purpose, signed by at least one-third of the whole number of Directors, has been presented to him, or if without so refusing, the Chairman does not call a meeting within seven days after such requisition has been presented to him, at the Trust's Headquarters, such one third or more Directors may forthwith call a meeting.
- 3.7 Notice of Meetings**
- 3.7.1 Before each meeting of the Board, a notice of the meeting, specifying the business proposed to be transacted at it, and signed by the Chairman or by an officer of the Trust authorised by the Chairman to sign on his behalf shall be delivered to every Director, or sent by post to the usual place of residence of such Director, so as to be available to him at least five clear working days before the meeting.
- 3.7.2 Lack of service of the notice on any Director shall not affect the validity of a meeting.

- 3.7.3 In the case of a meeting called by Directors in default of the Chairman, the notice shall be signed by those Directors and no business shall be transacted at the meeting other than that specified in the notice.
- 3.7.4 Failure to serve such a notice on more than three Directors will invalidate the meeting. A notice shall be presumed to have been served at the time at which the notice would be delivered in the ordinary course of the post.
- 3.7.5 A public notice of the time and place of the meeting shall be displayed on the Trust's website at least five working days before the meeting.
- 3.7.6 Before holding a meeting, the Board of Directors will send a copy of the agenda of the meeting to the Council of Governors. As soon as practicable after holding a meeting, the Board of Directors must send a copy of the minutes of the meeting to the Council of Governors.

3.8 Setting the Agenda

- 3.8.1 The Board may determine that certain matters shall appear on every agenda for a meeting of the Board and shall be addressed prior to any other business being conducted.
- 3.8.2 A director desiring a matter to be included on an agenda shall make his request in writing to the Chairman at least ten clear working days before the meeting, subject to Standing Order 3.6. Requests made less than ten days before a meeting may be included on the agenda at the discretion of the Chairman.

3.9 Chairman of Meeting

- 3.9.1 At any meeting of the Board, the Chairman, if present, shall preside. If the Chairman is absent from the meeting the Vice-Chairman, if there is one and he is present, shall preside. If the Chairman and Vice-Chairman are absent such non-executive Director as the Directors present shall choose shall preside.
- 3.9.2 If the Chairman is absent from a meeting temporarily on the grounds of a declared conflict of interest the Vice-Chairman, if present, shall preside. If the Chairman and Vice-Chairman are absent, or are disqualified from participating, such non-executive Director as the Directors present shall choose shall preside.

3.10 Annual Members Meeting

- 3.10.1 The Trust will publicise and hold an annual members meeting, in accordance with the terms of the Constitution.

3.11 Notices of Motion

3.11.1 A Director desiring to move or amend a motion shall send a written notice thereof at least ten clear days before the meeting to the Chairman, who shall insert in the agenda for the meeting all notices so received subject to the notice being permissible under the appropriate regulations. This paragraph shall not prevent any motion being moved during the meeting, without notice on any business mentioned on the agenda subject to Standing Order 3.6.

3.12 Withdrawal of Motion or Amendments

A motion or amendment once moved and seconded may be withdrawn by the proposer with the concurrence of the seconder and the consent of the Chairman.

3.13 Motion to Rescind a Resolution

Notice of motion to amend or rescind any resolution (or the general substance of any resolution) which has been passed within the preceding six calendar months shall bear the signature of the Director(s) who gives it and also the signature of four other Directors. When any such motion has been disposed of by the Board, it shall not be competent for any Director other than the Chairman to propose a motion to the same effect within six months

3.14 Motions

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

3.14.2 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) That the meeting proceed to the next business
- d) The appointment of an ad hoc committee to deal with a specific item of business
- e) That the motion be now put

No amendment to the motion shall be admitted if, in the opinion of the Chairman of the meeting, the amendment negates the substance of the motion.

3.15 Chairman's Ruling

Statements of Directors made at meetings of the Board shall be relevant to the matter under discussion at the material time and the decision of the Chairman of the meeting on questions of order, relevance, regularity and any other matters shall be observed at

the meeting.

3.16 Voting

3.16.1 Every question at a meeting shall be determined by a majority of the votes of the Directors present and voting on the question and, in the case of any equality of votes, the person presiding shall have a second or casting vote.

3.16.2 The arrangements for the casting of votes by joint Directors is set out in 3.17 below

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

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

3.16.5 If a Director so requests, his vote shall be recorded by name upon any vote (other than by paper ballot).

3.16.6 In no circumstances may an absent Director vote by proxy. Absence is defined as being absent at the time of the vote.

3.16.7 An officer who has been appointed formally by the Board to act up for an executive Director during a period of incapacity or temporarily to fill an executive Director vacancy, shall be entitled to exercise the voting rights of the executive Director. An officer attending the Board to represent an executive Director during a period of incapacity or temporary absence without formal acting up status may not exercise the voting rights of the executive Director. An officer's status when attending a meeting shall be recorded in the minutes.

3.16.8 Corporate Directors on the Board of Directors will have no formal voting rights on a decision nor the personal accountabilities associated with full Board membership.

3.16.9 No resolution shall be passed if it is opposed by all the non-executive Directors present or by all of the executive Directors present.

3.17 Joint Directors - Where a post of executive Director is shared by more than one person:

3.17.1 Both persons shall be entitled to attend meetings of the Trust;

3.17.2 Either of those persons shall be eligible to vote in the case of agreement between them;

3.17.3 In the case of disagreement between them no vote should be cast;

3.17.4 The presence of either or both of those persons shall count as one person for the purposes of determining the quorum of the meeting.

3.18 Minutes

3.18.1 The Minutes of the proceedings of a meeting shall be drawn up and submitted for agreement at the next ensuing meeting where they will be signed by the person presiding at it.

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

3.18.3 Minutes shall be circulated in accordance with the wishes of the Board and made available to the public.

3.19 Suspension of Standing Orders

3.19.1 Except where this would contravene any statutory provision or any direction made by Monitor, any one or more of the Standing Orders may be suspended at any meeting, provided that at least two-thirds of the Board are present, including one executive Director and one non-executive Director, and that a majority of those present vote in favour of suspension.

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

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

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

3.19.5 The Audit Committee shall review every decision to suspend Standing Orders.

3.20 Variation and Amendment of Standing Orders

3.20.1 These Standing Orders shall be amended only if:

A notice of motion under Standing Order 3.11 has been given;

No fewer than half the total of the Trust's non-executive Directors vote in favour of amendment;

At least two-thirds of the voting Directors are present;

The variation proposed does not contravene a statutory provision or provision of

the authorisation or of the Constitution

3.21 Record of Attendance

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

3.22 Quorum

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

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

3.22.3 If a Director has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of the declaration of a conflict of interest (see Standing Order 6 and 7) he shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business. The above requirement for at least one executive Director to form part of the quorum shall not apply where the executive Directors are excluded from a meeting (for example, when the Board considers the recommendations of the Remuneration and Terms of Service Committee).

3.22.4 The Chairman may adjourn a meeting of the Board if a quorum is either not present within thirty minutes of the appointed time of commencement or is not maintained for the duration of the meeting.

4. ARRANGEMENTS FOR THE EXERCISE OF FUNCTIONS BY DELEGATION

4.1 General Provision

Subject to a provision in the authorisation or the Constitution, the Board may make arrangements for the exercise, on behalf of the Trust, of any of its functions by a committee or sub-committee, appointed by virtue of SO 5 below or by a Director or an officer of the Trust in each case subject to such restrictions and conditions as the Board thinks fit.

4.2 Emergency Powers

The powers which the Board has retained to itself within these Standing Orders (SO 2) may in emergency be exercised by the Chief Executive and the Chairman after having consulted at least two non-executive Directors. The exercise of such powers by the Chief Executive and the Chairman shall be reported to the next formal meeting of the Board for ratification.

4.3 Delegation to Committees

The Board shall agree from time to time to the delegation of executive powers to be exercised by committees or sub-committees, 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.

4.4 Delegation to Officers – Scheme of Delegation and Reservation of Powers

4.4.1 Those functions of the Trust which have not been retained as reserved by the Board or delegated to an executive committee or sub-committee shall be exercised on behalf of the Board by the Chief Executive. The Chief Executive shall determine which functions he will perform personally and shall nominate officers to undertake the remaining functions for which he will still be accountable to the Board.

4.4.2 The Chief Executive shall prepare a Scheme of Delegation identifying his proposals which shall be considered and approved by the Board, subject to any amendment agreed during the discussion. The Chief Executive may periodically propose amendment to the Scheme of Delegation which shall be considered and approved by the Board as indicated above.

4.4.3 Nothing in the Scheme of Delegation shall impair the discharge of the direct accountability to the Board or the Director of Finance or other executive Directors to provide information and advise the Board in accordance with any statutory requirements.

4.4.4 The arrangements made by the Board as set out in the "Reservation of Powers to the Board and Delegation of Powers" shall have effect as if incorporated in these Standing Orders.

5. COMMITTEES

5.1 Appointment of Committees

5.1.1 Subject to SO 2 and such directions as may be given by Monitor, the Trust may and, if directed by him, shall appoint committees of the Trust, consisting wholly or partly of Directors of the Trust or wholly of persons who are not Directors of the Trust.

5.1.2 A committee appointed under SO 5.1.1 may, subject to such directions as may be given by Monitor or the Board appoint sub-committees consisting wholly or partly of members of the committee (whether or not they include Directors of the Trust) or wholly of persons who are not members of the Board committee (whether or not they include Directors of the Trust).

5.1.3 The Standing Orders of the Board, as far as they are applicable, shall apply with

appropriate alteration to meetings of any committees or sub-committee established by the Board.

5.1.4 Each such committee or sub-committee shall have such terms of reference and powers and be subject to such conditions, as the Board shall decide. Such terms of reference shall have effect as if incorporated into the Standing Orders.

5.1.5 Committees may not delegate their executive powers to a sub-committee unless expressly authorised by the Board.

5.1.6 The Board shall approve the appointments to each of the committees which it has formally constituted. Where the Board determines that persons, who are neither Directors nor officers, shall be appointed to a committee, the terms of such appointment shall be determined by the Board.

5.1.7 Where the Board is required to appoint persons to a committee and/or to undertake statutory functions as required by the Secretary of State or Monitor, and where such appointments are to operate independently of the Trust such appointment shall be made in accordance with the regulations laid down by the Secretary of State.

5.1.8 Without prejudice to the formation of any other committees or sub-committees as the Board may see fit, the following committees shall be established by the Board:

Audit Committee

Remuneration Committee

Charitable Funds Committee

5.2 Confidentiality

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

5.2.2 A Director of the Trust or a member of a committee shall not disclose any matter reported to the Board or otherwise dealt with by the committee, notwithstanding that the matter has been reported or action has been concluded, if the Board or committee shall resolve that it is confidential.

6. DECLARATIONS OF INTERESTS AND REGISTER OF INTERESTS

6.1 Declaration of Interests

6.1.1 If a Director has a pecuniary, personal or family interest, whether that interest is actual or potential and whether that interest is direct or indirect, in any

proposed contract or other matter which is under consideration or is to be considered by the Board, the Director shall disclose that interest to the Board as soon as he becomes aware of it.

6.1.2 Interests which should be regarded as "relevant and material" are:

- a) Directorships, including non-executive directorships held in limited companies (with the exception of dormant companies);
- b) Ownership, part-ownership or directorships of companies, businesses or consultancies that carry out or are likely to carry out business with the Trust;
- c) Majority or controlling shareholdings in an organisation that carries out business with the Trust or is likely to carry out business with the Trust;
- d) A position of authority in a charity or voluntary organisation in the field of health or social care that carries out business with the Trust or is likely to carry out business with the Trust;
- e) Any connection with a voluntary or other organisation contracting or likely to contract for Trust services;
- f) To the extent not covered above, any connection with an organisation, entity or company considering entering into or having entered into a financial arrangement with the Trust, including but not limited to, lenders or banks.

6.1.3 If Directors have any doubt about the relevance of an interest, this should be discussed with the Chairman.

6.1.4 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.

6.1.5 Board directors' directorships of companies likely or possibly seeking to do business with the NHS should be published in the board's annual report.

6.1.6 During the course of a board meeting, if a conflict of interest is established, the Director concerned should withdraw from the meeting and play no part in the relevant discussion or decision.

6.2 Register of Interests

6.2.1 The Chief Executive will ensure that a Register of Interests is established to record formally declarations of interests of Directors. The Register will include details of all directorships and other relevant and material interests which have been declared by Directors, as defined in SO 6.1.

6.2.2 Directors must notify the Trust Secretary of any changes to their declared interests. Such notification must be made to the Trust Secretary within ten

days of the change becoming known.

6.2.3 The Trust Secretary will ensure that such notifications are entered into the Register within seven days.

6.2.4 The Trust Secretary will conduct an annual review of the Register and will report the outcome to the Board.

6.2.5 The Register will be available for inspection by the public at the Trust's headquarters.

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

7.1 Subject to the following provisions of this Standing Order, if a Director has any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter and is present at a meeting of the Board at which the contract or other matter is the subject of consideration, he shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not take part in the consideration or discussion of the contract or other matter or vote on any question with respect to it.

7.2 The Board shall exclude a Director from a meeting of the Board while any contract, proposed contract or other matter in which he has a pecuniary interest, is under consideration.

7.3 For the purpose of this Standing Order a Director shall be treated, subject to SO 7.4, as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if:

he, or a nominee of his, is a director of a company or other body, not being a public body, with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration; or

he is a partner of, or is in the employment of a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration; and

in the case of married persons living together the interest of one spouse shall, if known to the other, be deemed for the purposes of this Standing Order to be also an interest of the other.

7.4 A Director shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only:

of his membership of a company or other body, if he has no beneficial interest in any securities of that company or other body;

of an interest in any company, body or person with which he is connected as mentioned in SO 7.3 above which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a director in the consideration or discussion of or in voting on, any question with respect to that contract or matter.

7.5 Where a Director:

has an indirect pecuniary interest in a contract, proposed contract or other matter by reason only of a beneficial interest in securities of a company or other body, and

the total nominal value of those securities does not exceed 5% of the total nominal value of the issued share capital of the company or body, and

if the share capital is of more than one class, the total nominal value of shares of any one class in which he has a beneficial interest does not exceed 5% of the total issued share capital of that class,

7.6 Standing Order 7 applies to a committee or sub-committee of the Board as it applies to the Board itself and applies to any member of any such committee or sub-committee (whether or not he is also a Director of the Trust) as it applies to a Director of the Trust.

8. STANDARDS OF BUSINESS CONDUCT

8.1 All staff must comply with the requirements of the Trust's Policy on Business Conduct and Ethical Standards for Commercial Sponsorship. The following provisions should be read in conjunction with this document.

8.2 If it comes to the knowledge of a Director or an officer of the Trust that a contract in which he has any pecuniary interest not being a contract to which he is himself a party, has been, or is proposed to be, entered into by the Trust he shall, at once, give notice in writing to the Chief Executive of the fact that he is interested therein. In the case of married persons [or persons] living together as partners, the interest of one partner shall, if known to the other, be deemed to be also the interest of that partner.

8.3 An officer must also declare to the Chief Executive any other employment or business or other relationship of his, or of a cohabiting spouse, that conflicts, or might reasonably be predicted could conflict with the interests of the Trust.

8.4 The Chief Executive will ensure that the interests, employment or relationships declared by staff shall be entered in a register of interests of staff. The Register of Interests of Staff will be maintained by the Trust Secretary.

8.5 Canvassing of Directors of the Trust or members of any committee of the Trust directly or indirectly for any appointment under the Trust shall disqualify the candidate for such appointment. The contents of this paragraph of the Standing Order shall be included in application forms or otherwise brought to the attention of candidates.

8.6 A Director of the Trust shall not solicit for any person any appointment under the Trust

or recommend any person for such appointment: but this paragraph of this Standing Order shall not preclude a Director from giving written testimonial of a candidate's ability, experience or character for submission to the Trust.

- 8.7** Informal discussions outside appointments panels or committees, whether solicited or unsolicited, should be declared to the panel or committee.
- 8.8** Candidates for any staff appointment shall when making application disclose in writing whether they are related to any director or the holder of any office under the Trust. Failure to disclose such a relationship shall disqualify a candidate and, if appointed, render him liable to instant dismissal.
- 8.9** The Directors and every officer of the Trust shall disclose to the Chief Executive any relationship with a candidate of whose candidature that director or officer is aware. It shall be the duty of the Chief Executive to report to the Trust any such disclosure made.
- 8.10** On appointment, Directors (and prior to acceptance of an appointment in the case of executive Directors) should disclose to the Trust whether they are related to any other Director or holder of any office under the Trust.
- 8.11** Where the relationship of an officer or another director to a Director of the Trust is disclosed, the Standing Order headed 'Disability of Directors in proceedings on account of pecuniary interest' (SO 7) shall apply.

9. TENDERING AND CONTRACTING

- 9.1** The procedure for making all contracts by or on behalf of the Trust shall comply with these Standing Orders (except where SO 3.19 (Suspension of SOs) is applied).
- 9.2** Directives by the Council of the European Union promulgated by the Department of Health (DoH) prescribing procedures for awarding all forms of contracts shall have effect as if incorporated in these Standing Orders.
- 9.3** The Trust shall comply as far as is practicable with the requirements of the NHS Executive "Capital Investment Manual". In the case of management consultancy contracts the Trust shall comply as far as is practicable with NHS Executive guidance "The Procurement and Management of Consultants within the NHS".
- 9.4** In addition to the requirements of these Standing Orders all officers will observe the requirements of any guidance issued by the Head of Procurement and Commercial Services (HPCS) when entering into contracts.
- 9.5** The value of any proposed contract must be estimated before undertaking a procurement to determine whether or not it falls within the limits of the EU Directives and the requirements of the Public Contracts Regulations. The value for these purposes is the total cost of the goods or services supplied over the intended contract term but may include other elements such as the value of any land disposed of. Where the

duration of any contract is uncertain then the value should be assessed as the equivalent of four years expenditure.

- 9.6** The HPCS must be consulted on any proposal to tender for services where the prospective contract value exceeds £50,000 and will undertake the subsequent procurement jointly with the nominated officer.
- 9.7** The Trust's procurement team will carry out all tender activity for contracts where the value is in excess of £50,000 unless the prior approval of the Director of Finance and the HPCS has been obtained.
- 9.8** The HPCS must countersign all contracts where the total value exceeds £50,000 and will retain a copy.
- 9.9** The Trust shall ensure that competitive tenders are invited for the supply of goods, materials and manufactured articles and for the rendering of services including all forms of management consultancy services (other than specialised services sought from or provided by the DoH); for the design, construction and maintenance of building and engineering works (including construction and maintenance of grounds and gardens); and for disposals.
- 9.10** Formal tendering procedures may be waived by officers to whom powers have been delegated by the Chief Executive without reference to the Chief Executive (except in (c) to (f) below) where:
 - (a) the total estimated expenditure or income does not, or is not reasonably expected to, exceed £95,000 (this figure to be reviewed annually); or
 - (b) where the supply is proposed under special arrangements negotiated by the DoH in which event the said special arrangements must be complied with; or
 - (c) the timescale genuinely precludes competitive tendering. Failure to plan the work properly is not a justification for single tender; or
 - (d) specialist expertise is required and is available from only one source; or
 - (e) the task is essential to complete the project, and arises as a consequence of a recently completed assignment and engaging different consultants for the new task would be inappropriate; or
 - (f) there is a clear benefit to be gained from maintaining continuity with an earlier project. However in such cases the benefits of such continuity must outweigh any potential financial advantage to be gained by competitive tendering; or
 - (g) where provided for in the Capital Investment Manual.

The limited application of the single tender rules should not be used to avoid competition or for administrative convenience or to award further work to a

consultant originally appointed through a competitive procedure.

Where it is decided that competitive tendering is not applicable and should be waived by virtue of (c) to (f) above the fact of the waiver and the reasons should be documented and reported by the Chief Executive to the Board in a formal meeting.

- 9.11** All proposals to contract for goods and services under section 9.10 must be subject to prior review by the HPCS
- 9.12** Except where SO 9.5, or a requirement under SO 9.2, applies, the Board shall ensure that all tenders are advertised appropriately to provide for open and fair competition.
- 9.13** The written consent of the Director of Finance is required prior to the commencement of any procurement under the EU Directives other than for the Open or Restricted Procedures.
- 9.14** The Board shall ensure that normally the firms/individuals invited to tender (and where appropriate, quote) are among those on approved lists (see Annex Section 5). Where in the opinion of the Director of Finance it is desirable to seek tenders from firms not on the approved lists, the reason shall be recorded in writing to the Chief Executive (see Annex).
- 9.15** Detailed procedures for the tendering of goods and services will be issued by the HPCS.
- 9.16** Quotations are required where formal tendering procedures are waived under SO 9.10 (a) or (c) and where the intended expenditure or income exceeds, or is reasonably expected to exceed, £5,000.
- 9.17** Where quotations are required under SO 9.9 they should be obtained from at least three firms/individuals as per the Annex based on specifications or terms of reference prepared by, or on behalf of, the Board.
- 9.18** Quotations should be in writing unless the Chief Executive or his nominated officer determines that it is impractical to do so in which case quotations may be obtained by telephone. Confirmation of telephone quotation should be obtained as soon as possible and the reasons why the telephone quotation was obtained should be set out in a permanent record.
- 9.19** All quotations should be treated as confidential and should be retained for inspection.
- 9.20** The Chief Executive or his nominated officer should evaluate the quotations and select the one which gives the best value for money. If this is not the lowest then this fact and the reasons why the lowest quotation was not chosen should be in a permanent record.
- 9.21** Non-competitive quotations in writing may be obtained for the following purposes:

- a) the supply of goods/services of a special character for which it is not, in the opinion of the Chief Executive or his nominated officer, possible or desirable to obtain competitive quotations;
 - b) the goods/services are required urgently.
- 9.22** Where tenders or quotations are not required, because expenditure is below £5,000, the Trust shall procure goods and services in accordance with procurement procedures approved by the Board.
- 9.23** The Chief Executive shall be responsible for ensuring that best value for money can be demonstrated for all services provided under contract or in-house. The Board may also determine from time to time that in-house services should be market tested by competitive tendering (SO 11).
- 9.24** When the Board proposes, or is required, to use finance provided by the private sector the following should apply:
- (a) The Chief Executive shall demonstrate that the use of private finance represents value for money and genuinely transfers risk to the private sector.
 - (b) Where the borrowing required to undertake the scheme exceeds the Prudential Borrowing Code or the scheme value exceeds the levels laid down by Monitor, the Trust will comply with the requirements of Monitor regarding scheme approval.
 - (c) The proposal must be specifically agreed by the Trust in the light of such professional advice as should reasonably be sought in particular with regard to the Trust's powers.
 - (d) The selection of a contractor/finance company must be on the basis of competitive tendering or quotations.
- 9.25** The Trust may only enter into contracts within its statutory powers and shall comply with:
- (a) these Standing Orders;
 - (b) the Trust's SFIs;
 - (c) EU Directives and other statutory provisions;
 - (d) the Capital Investment Manual and guidance on the Procurement and Management of Consultants in as much as the Trust deems them to be relevant;
 - (e) such of the NHS Standard Contract Conditions as are applicable.

Where appropriate contracts shall be in or embody the same terms and conditions of contract as was the basis on which tenders or quotations were invited.

- 9.26** In all contracts made by the Trust, the Board shall endeavour to obtain best value for money. The Chief Executive shall nominate an officer who shall oversee and manage each contract on behalf of the Trust.
- 9.27** The Chief Executive shall nominate officers with delegated authority to enter into contracts for the employment of other officers, to authorise re-grading of staff, and enter into contracts for the employment of agency staff or temporary staff.
- 9.28** The Chief Executive shall nominate officers with power to negotiate for the provision of healthcare services with purchasers of healthcare.
- 9.29** Except where specific provision is made in model Forms of Contracts or standard Schedules of Conditions approved for use within the National Health Service and in accordance with Standing Orders 9.2 and 9.3, there shall be inserted in every written contract a clause empowering the Trust to cancel the contract and to recover from the contractor the amount of any loss resulting from such cancellation, if the contractor shall have offered, or given or agreed to give, any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of the contract or any other contract with the Trust, or for showing or forbearing to show favour or disfavour to any person in relation to the contracts or any other contract with the Trust, or if the like acts shall have been done by any person employed by him or acting on his behalf (whether with or without the knowledge of the contractor), or if in relation to any contract with the Trust the contractor or any person employed by him or acting on his behalf shall have committed any offence under the Prevention of Corruption Acts 1889 and 1916 and other appropriate legislation.
- 9.30** There shall be inserted in every written contract for the supply of goods or materials a clause to secure that, should the contractor fail to deliver the goods or materials or any portion thereof within the time or times specified in the contract, the Trust may without prejudice determine the contract either wholly or to the extent of such default and purchase other goods, or material of similar description to make good (a) such default, or (b) in the event of the contract being wholly determined the goods or materials remaining to be delivered. The clause shall further secure that the amount by which the cost of so purchasing other goods or materials exceeds the amount which would have been payable to the contractor in respect of the goods or materials shall be recoverable from the contractor.
- 9.31** Contracts involving funds held on trust shall be referenced to a specific named fund. Such contracts involving charitable funds shall comply with the requirements of the Charities Acts.

10. DISPOSALS

Competitive Tendering or Quotation procedures shall not apply to the disposal of:

- (a) any matter in respect of which a fair price can be obtained only by negotiation or sale by auction as determined (or pre-determined in a reserve) by the Chief Executive or his nominated officer;
- (b) obsolete or condemned articles and stores, which may be disposed of in accordance with the supplies policy of the Trust;
- (c) items to be disposed of with an estimated sale value of less than £[n], this figure to be reviewed annually;
- (d) items arising from works of construction, demolition or site clearance, which should be dealt with in accordance with the relevant contract.

11. IN-HOUSE SERVICES

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

- (a) Specification group, comprising the Chief Executive or nominated officer(s) and specialist(s).
- (b) In-house tender group, comprising representatives of the in-house team, a nominee of the Chief Executive and technical support.
- (c) Evaluation group, comprising normally a specialist officer, a supplies officer and a Director of Finance representative. For services having a likely annual expenditure exceeding £250,000, a non-executive Director should be a member of the evaluation team.

11.2 All groups should work independently of each other but individual officers may be a member of more than one group. No member of the in-house tender group may participate in the evaluation of tenders.

11.3 The evaluation group shall make recommendations to the Board.

11.4 The Chief Executive shall nominate an officer to oversee and manage the contract.

12. CUSTODY OF SEAL AND SEALING OF DOCUMENTS

12.1 The Common Seal of the Trust shall be kept by the Trust Secretary in a secure place.

12.2 The Seal of the Trust shall not be fixed to any documents unless the sealing has been authorised by a resolution of the Board, or of a committee thereof, or where the Board has delegated its powers.

12.3 Before any building, engineering, property or capital document is sealed it must be approved and signed by the Director of Finance (or an officer nominated by him) and

authorised and countersigned by the Chief Executive (or an officer nominated by him who shall not be within the originating directorate).

- 12.4** An entry of every sealing shall be made and numbered consecutively in a book provided for that purpose, and shall be signed by the persons who shall have approved and authorised the document and those who attested the seal. A report of all sealing shall be made to the Trust at least quarterly. (The report shall contain details of the seal number, the description of the document and date of sealing).

13. SIGNATURE OF DOCUMENTS

- 13.1** Where the signature of any document will be a necessary step in legal proceedings involving the Trust, it shall be signed by the Chief Executive, unless any enactment otherwise requires or authorises, or the Board shall have given the necessary authority to some other person for the purpose of such proceedings.

- 13.2** The Chief Executive or nominated officers shall be authorised, by resolution of the Board, to sign on behalf of the Trust any agreement or other document (not required to be executed as a deed) the subject matter of which has been approved by the Board or committee or sub-committee to which the Board has delegated appropriate authority.

14. MISCELLANEOUS

- 14.1** It is the duty of the Chief Executive to ensure that existing Directors and officers and all new appointees are notified of and understand their responsibilities within Standing Orders and SFIs. Updated copies shall be issued to staff designated by the Chief Executive. New designated officers shall be informed in writing and shall receive copies where appropriate of SOs.

- 14.2** Standing Financial Instructions and Reservation of Powers to the Board and Delegation of Powers shall have the effect as if incorporated into Standing Orders.

- 14.3** Standing Orders shall be reviewed annually by the Trust. The requirement for review extends to all documents having the effect as if incorporated in Standing Orders.