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**CONSTITUTION OF  
ROTHERHAM DONCASTER AND SOUTH HUMBER NHS  
FOUNDATION TRUST**

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16 December 2021

# Rotherham Doncaster and South Humber NHS Foundation Trust Constitution

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## **ROTHERHAM DONCASTER AND SOUTH HUMBER NHS FOUNDATION TRUST CONSTITUTION**

### **1. Name**

The Trust is a Public Benefit Corporation authorised under the National Health Service Act 2006. The name of the foundation Trust shall be Rotherham Doncaster and South Humber NHS Foundation Trust (the “Trust”).

### **2. Principal purpose**

- 2.1 The principal purpose of the Trust shall be the provision of goods and services for the purposes of the health service in England.
- 2.2 The trust does not fulfil its principal purpose unless, in each financial year, its total income from the provision of goods and services for the purposes of the health service in England is greater than its total income from the provision of goods and services for any other purposes.
- 2.3 The trust may provide goods and services for any purposes related to—
  - 2.3.1 the provision of services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness, and
  - 2.3.2 the promotion and protection of public health.
- 2.4 The trust may also carry on activities other than those mentioned in the above paragraph for the purpose of making additional income available in order better to carry on its principal purpose.

### **3. Powers**

- 3.1 The powers of the Trust are set out in the 2006 Act, subject to any restrictions in the Licence.
- 3.2 All the powers of the Trust shall be exercised by the Board of Directors on behalf of the Trust.
- 3.3 Any of these powers may be delegated to a committee of Directors or to an Executive Director.

### **4. Membership and Constituencies**

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

- 4.1 a Public Constituency;
- 4.2 the Staff Constituency; and
- 4.3 the Service Users and Carers Constituency.

### **5. Application for Membership**

- 5.1 An individual who is eligible to become a Member of the Trust may do so on application to the Trust, save as provided for in paragraph 8.
- 5.2 Applications for Membership shall be dealt with by the Trust in accordance with the provisions of Annex 9.

### **6. Public Constituency**

- 6.1 An individual who lives in an area specified in Annex 1 as an area for a Public Constituency may become or continue as a Member of the Trust.
- 6.2 Those individuals who live in an area specified as an area for any Public Constituency are referred to collectively as the Public Constituency.
- 6.3 The minimum number of Members in each area of a Public Constituency is specified in Annex 1.
- 6.4 Further provisions relating to Membership of the Public Constituency are set out in Annex 9.

## **7. Staff Constituency**

- 7.1 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:
- 7.1.1 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
  - 7.1.2 he has been continuously employed by the Trust under a contract of employment for at least 12 months.
- 7.2 Those individuals who are eligible for Membership of the Trust by reason of the previous provisions of this paragraph 7 are referred to collectively as the Staff Constituency.
- 7.3 The Staff Constituency shall be divided into six descriptions of individuals who are eligible for Membership of the Staff Constituency, each such description of individuals being specified within Annex 2 and being referred to as a Staff Class within the Staff Constituency.
- 7.4 The minimum number of Members in each Staff Class of the Staff Constituency is specified in Annex 2.

## **8. Automatic Membership by default – staff**

- 8.1 An individual who is:-
- 8.1.1 eligible to become a Member of the Staff Constituency, and
  - 8.1.2 invited by the Trust to become a Member of the Staff Constituency and a Member of the appropriate Staff Class within the Staff Constituency,
- shall become a Member of the Trust as a Member of the Staff Constituency and of the appropriate Staff Class within the Staff Constituency without an application being made, unless he informs the Trust that he does not wish to do so.
- 8.2 The process by which an individual shall be invited to become a Member of the Staff Constituency shall be in accordance with the provisions of section 2 of Annex 9.

## **9. Service Users and Carers Constituency**

- 9.1 An individual who has, within the period specified in paragraph 9.2, attended any of the Trust's Hospitals as a Service User, or as the Carer of a Service User, and / or received goods or services from the Trust of the nature set out in Table 2 (Annex 3) or such other goods and services as the Trust may otherwise designate from time to time for the purposes of determining eligibility for membership of this constituency, may become or continue as a Member of the Trust.
- 9.2 The period referred to above shall be the period of 5 years immediately preceding the date of the application by the Service User or Carer to become a Member of the Trust.
- 9.3 Those individuals who are eligible to become a Member of the Trust by reason of the previous provisions are referred to collectively as the Service Users and Carers Constituency.
- 9.4 The Service Users and Carers Constituency shall be divided into four descriptions of individuals who are eligible for Membership of the Service Users and Carers Constituency, each such description of individuals being specified within Annex 3 and being referred to as a Class within the Service Users and Carers Constituency.
- 9.5 An individual providing care in pursuance of a contract (including a contract of employment) with a voluntary organisation or as a volunteer for a voluntary organisation does not come within the category of those who qualify for Membership of the Service Users and Carers Constituency.
- 9.6 The minimum number of Members in each Class of the Service Users and Carers Constituency is specified in Annex 3.
- 9.7 Where an individual is eligible to be a Member both of a Public Constituency and of the Service Users and Carers Constituency the Constituency and, where applicable, the Class of which that individual shall become a Member shall be determined by the Trust in its absolute discretion.

**10. Restriction on Membership**

- 10.1 An individual who is a Member of a Constituency, or of a Class within a Constituency, may not while a Member of that Constituency or Class become or continue to be a Member of any other Constituency or Class.
- 10.2 An individual who satisfies the criteria for Membership of the Staff Constituency may not become or continue as a Member of any Constituency other than the Staff Constituency.
- 10.3 Further provisions as to the circumstances in which an individual may not become or continue as a Member of the Trust are set out in Annex 9.

**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. Further provisions about the Annual Members' Meeting are set out in Annex 9.

**12. Council of Governors – composition**

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

**13. Council of Governors – Election of Governors**

- 13.1 Elections for the elected members of the Council of Governors shall be conducted in accordance with the Model Election Rules as may be varied from time to time.
- 13.2 The Model Election Rules form part of this Constitution and are at Annex 5.
- 13.3 A variation of the Model Election Rules by the Department of Health shall not constitute a variation of the terms of this Constitution. For the avoidance of doubt, the Trust cannot amend the Model Election Rules.
- 13.4 An Election, if contested, shall be by secret ballot.

**14. Council of Governors – tenure**

- 14.1 An Elected Governor shall hold office for a period of 3 years.
- 14.2 An Elected Governor shall cease to hold office if he ceases to be a Member of the Constituency or Class by which he was elected.
- 14.3 An Elected Governor shall be eligible for re-election at the end of his term, subject to the provisions of section 1.2 of Annex 6.
- 14.4 An Appointed Governor shall hold office for a period of 3 years and shall be eligible for re-appointment at the end of that term, subject to the provisions of section 1.2 of Annex 6.
- 14.5 Further provisions relating to a Governor's tenure of office are set out in Annex 6.

**15. Council of Governors – disqualification and removal**

- 15.1 The following may not become or continue as a member of the Council of Governors:
  - 15.1.1 a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged; or
  - 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; or

- 15.1.3 a person who within the preceding five years has been convicted in the British Islands of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him.
- 15.2 Further provisions as to the circumstances in which an individual may not become or continue or may be removed as a member of the Council of Governors are set out in Annex 6.
- 15.3 Governors must be at least 16 years of age at the date they are nominated for Election or appointment.

## **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 22) or, in his absence, the Vice Chairman appointed in accordance with the provisions of paragraph 23, shall preside at meetings of the Council of Governors save that if the Chairman and Vice-Chairman are unable to preside whether for reasons of absence, conflict of interest or otherwise the Reserve Chairman shall preside.
- 17.2 The Reserve Chairman shall be a Public Governor or Service User and Carer Governor and shall be appointed by the Council of Governors in general meeting. The provisions of section 8 of Annex 6 shall also apply.
- 17.3 Meetings of the Council of Governors shall be open to members of the public save that members of the public may be excluded from a meeting on the grounds more particularly provided for in section 5 of Annex 6.
- 17.4 For the purposes of obtaining information about the trust's performance of its functions or the directors' performance of their duties (and deciding whether to propose a vote on the Trust's or directors' performance), the Council of Governors may require one or more of the directors to attend a meeting.

## **18. Council of Governors – Standing Orders**

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

## **19. Council of Governors – referral to the Panel**

- 19.1 In this paragraph, the Panel means a panel of persons appointed by NHS Improvement to which a governor of an NHS foundation trust may refer a question as to whether the trust has failed or is failing—
  - 19.1.1 to act in accordance with its constitution, or
  - 19.1.2 to act in accordance with provision made by or under Chapter 5 of the 2006 Act.
- 19.2 A governor may refer a question to the Panel only if more than half of the members of the Council of Governors voting approve the referral.

**20. Council of Governors – conflicts of interest of Governors**

- 20.1 If a Governor has a pecuniary, personal or family interest, whether that interest is actual or potential and whether that interest is direct or indirect, in any proposed contract or other matter which is under consideration or is to be considered or is likely to be considered by the Council of Governors, the Governor shall disclose that interest to the members of the Council of Governors as soon as he becomes aware of it.
- 20.2 The Standing Orders for the Council of Governors shall make provision for the disclosure of interests and arrangements for the exclusion of a Governor declaring any pecuniary interest within the meaning of paragraph 17.1 above from any discussion or consideration of the matter in respect of which an interest has been disclosed.

**21. Council of Governors – travel expenses**

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

**22. Council of Governors – further provisions**

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

**23. Board of Directors – composition**

- 23.1 The Trust shall have a Board of Directors, which shall comprise both Executive Directors and Non-Executive Directors.
- 23.2 The Board of Directors shall comprise:
- 23.2.1 a non-executive Chairman
  - 23.2.2 at least six other Non-Executive Directors; and
  - 23.2.3 six Executive Directors.
- 23.3 One of the Executive Directors shall be the Chief Executive.
- 23.4 The Chief Executive shall be the Accounting Officer.
- 23.5 One of the Executive Directors shall be the Finance Director.
- 23.6 One of the Executive Directors shall be a registered medical practitioner or a registered dentist (within the meaning of the Dentists Act 1984).
- 23.7 One of the Executive Directors shall be a registered nurse or a registered midwife.
- 23.8 The Board of Directors shall at all times be constituted so that the number of Non-Executive Directors exceeds the number of Executive Directors.

**24. Board of Directors – general duty**

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

**25. Board of Directors – qualification for appointment as a Non-Executive Director**

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

- 25.1 he is a Member of the Public Constituency; or
- 25.2 he is a Member of the Service Users and Carers Constituency; and
- 25.3 he is not disqualified by virtue of paragraph 29.

**26. Board of Directors – appointment and removal of Chairman and other Non-Executive Directors**

- 26.1 The Council of Governors at a general meeting of the Council of Governors shall appoint or remove the Chairman of the Trust and the other Non-Executive Directors.
- 26.2 The removal of the Chairman or any other Non-Executive Director shall require the approval of three-quarters of the members of the Council of Governors.
- 26.3 Further provisions relating to the appointment of the Chairman and other Non-Executive Directors are set out at section 8 of Annex 6.

**27. Board of Directors – appointment of Vice Chairman**

- 27.1 The Board of Directors shall appoint one of the Non-Executive Directors as the Vice Chairman.

**28. Board of Directors – appointment and removal of the Chief Executive and other Executive Directors**

- 28.1 The Non-Executive Directors shall appoint or remove the Chief Executive.
- 28.2 The appointment of the Chief Executive shall require the approval of the Council of Governors.
- 28.3 A committee consisting of the Chairman, the Chief Executive and the other Non-Executive Directors shall appoint or remove the other Executive Directors.

**29. Board of Directors – disqualification**

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

- 29.1 a person who has been adjudged bankrupt or whose estate has been sequestrated and in either case has not been discharged.
- 29.2 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.
- 29.3 a person who within the preceding five years has been convicted in the British Islands of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him.
- 29.4 A person who falls within the further grounds for disqualification set out in Annex 9.

**30. Board of Directors – meetings**

- 30.1 Meetings of the Board of Directors shall be open to members of the public unless and to the extent that the Board of Directors has resolved that members of the public should be excluded from a meeting on the grounds that:
  - 30.1.1 any publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted; or
  - 30.1.2 for other reasons stated in the resolution and arising from the nature of the business or the proceedings that the Board of Directors considers are special reasons for excluding the public from the meeting in accordance with the Constitution.
- 30.2 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.

**31. Board of Directors – Standing Orders**

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



**32. Board of Directors – conflicts of interest of Directors**

- 32.1 The duties that a director of the trust has by virtue of being a director include in particular –
- 32.1.1 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.
- 32.1.2 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.
- 32.2 The duty referred to in sub-paragraph 32.1.1 is not infringed if –
- 32.2.1 The situation cannot reasonably be regarded as likely to give rise to a conflict of interest, or
- 32.2.2 The matter has been authorized in accordance with the constitution.
- 32.3 The duty referred to in sub-paragraph 32.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- 32.4 In sub-paragraph 32.1.2, “third party” means a person other than –
- 32.4.1 The trust, or
- 32.4.2 A person acting on its behalf.
- 32.5 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.
- 32.6 If a declaration under this paragraph proves to be, or becomes, inaccurate, incomplete, a further declaration must be made.
- 32.7 Any declaration required by this paragraph must be made before the trust enters into the transaction or arrangement.
- 32.8 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.
- 32.9 A director need not declare an interest –
- 32.9.1 If it cannot reasonably be regarded as likely to give rise to a conflict of interest;
- 32.9.2 If, or to the extent that, the directors are already aware of it;
- 32.9.3 If, or to the extent that, it concerns terms of the director’s appointment that have been or are to be considered –
- 32.9.3.1 By a meeting of the Board of Directors, or
- 32.10 By a committee of the directors appointed for the purpose under the constitution.

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

- 33.1 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.
- 33.2 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.

**34. Registers**

- 34.1 The Trust shall have:
- 34.1.1 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;
- 34.1.2 a register of members of the Council of Governors;
- 34.1.3 a register of interests of the Governors;
- 34.1.4 a register of the Directors; and
- 34.1.5 a register of interests of the Directors.
- 34.2 The process of admission to and removal from the registers shall be as set out in Annex 9

**35. Registers – inspection and copies**

- 35.1 The Trust shall make the registers specified in paragraph 29 available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.
- 35.2 Subject to paragraph 30.3, the Trust shall not make any part of its registers available for inspection by members of the public which shows details of –
  - 35.2.1 any Member of the Service Users and Carers Constituency; or
  - 35.2.2 any other Member of the Trust, if he so requests.
- 35.3 So far as the registers are required to be made available:
  - 35.3.1 they are to be available for inspection free of charge at all reasonable times; and
  - 35.3.2 a person who requests a copy of or extract from the registers is to be provided with a copy or extract.
- 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. Documents available for public inspection**

- 36.1 The Trust shall make the following documents available for inspection by members of the public free of charge at all reasonable times:
  - 36.1.1 a copy of its current Constitution;
  - 36.1.2 a copy of its latest annual accounts and of any report of the auditor on them;
  - 36.1.3 a copy of its latest annual report;
- 36.2 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:
  - 36.2.1 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.
  - 36.2.2 a copy of any report laid under section 65D (appointment of trust special administrator) of the 2006 Act.
  - 36.2.3 a copy of any information published under section 65D (appointment of trust special administrator) of the 2006 Act.
  - 36.2.4 a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act.
  - 36.2.5 a copy of any statement provided under section 65F(administrator's draft report) of the 2006 Act.
  - 36.2.6 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(NHS Improvement's decision), 65KB (Secretary of State's response to NHS Improvement'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.
  - 36.2.7 a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act.
  - 36.2.8 a copy of any final report published under section 65I (administrator's final report),
  - 36.2.9 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.
  - 36.2.10 a copy of any information published under section 65M (replacement of trust special administrator) of the 2006 Act.
- 36.3 Any person who requests a copy of or extract from any of the above documents is to

- be provided with a copy.
- 36.4 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.

**37. Auditor**

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

**38. Audit committee**

- 38.1 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.

**39. Accounts**

- 39.1 The Trust must keep proper accounts and proper records in relation to the accounts.
- 39.2 NHS Improvement may with the approval of the Secretary of State give directions to the Trust as to the content and form of its accounts.
- 39.3 The accounts are to be audited by the Trust's auditor.
- 39.4 The Trust shall prepare in respect of each Financial Year annual accounts in such form as NHS Improvement may with the approval of the Secretary of State direct.
- 39.5 The functions of the Trust with respect to the preparation of the annual accounts shall be delegated to the Accounting Officer.

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

- 40.1 The Trust shall prepare an Annual Report and send it to NHS Improvement.
- 40.2 The Trust shall give information as to its forward planning in respect of each financial year to NHS Improvement.
- 40.3 The document containing the information with respect to forward planning referred to at paragraph 40.2 above shall be prepared by the Directors.
- 40.4 In preparing the document, the Directors shall have regard to the views of the Council of Governors.
- 40.5 Each forward plan must include information about –
- 40.5.1 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
  - 40.5.2 the income it expects to receive from doing so.
- 40.6 Where a forward plan contains a proposal that the trust carry on an activity of a kind mentioned in sub-paragraph 40.5.1 the Council of Governors must –
- 40.6.1 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
  - 40.6.2 notify the directors of the trust of its determination.
- 40.7 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.

**41. Meeting of Council of Governors to consider annual accounts and reports**

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

- 41.1.1 the annual accounts;
- 41.1.2 any report of the auditor on them;
- 41.1.3 the annual report.
- 41.2 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.
- 41.3 The Trust may combine a meeting of the Council of Governors convened for the purposes of sub-paragraph 41.1 with the Annual Members' Meeting.

#### **42. Instruments**

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

#### **43. Amendment of the constitution**

- 43.1 The trust may make amendments of its constitution only if –
  - 43.1.1 More than half of the members of the Council of Governors of the trust voting approve the amendments, and
  - 43.1.2 More than half of the members of the Board of Directors of the trust voting approve the amendments.
- 43.2 Amendments made under paragraph 43.1 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.
- 43.3 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) –
  - 43.3.1 At least one member of the Council of Governors must attend the next Annual Members' Meeting and present the amendment, and
  - 43.3.2 The trust must give the members an opportunity to vote on whether they approve the amendment.
- 43.4 If more than half of the members voting approve the amendment, the amendment continues to have effect; otherwise, it ceases to have effect and the trust must take such steps as are necessary as a result.
- 43.5 Amendments by the trust of its constitution are to be notified to NHS Improvement. For the avoidance of doubt, NHS Improvement'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.

#### **44. Mergers and significant transactions**

- 44.1 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.
- 44.2 The trust may enter into a significant transaction only if more than half of the members of the Council of Governors of the Trust voting approve entering into the transaction.
- 44.3 "Significant transaction" means a transaction that equates to
  - the gross assets or capital subject to the transaction, divided by the gross assets of the foundation trust being 25% or more; or
  - the income attributable to the assets or the contract associated with the transaction divided by the income of the foundation trust being 25% or more; or
  - the gross capital of the company or the business being acquired / divested , divided by the total capital of the foundation trust following completion or the effects on the total capital of the foundation trust resulting from the transaction being 25% or more.

#### **45. Interpretation and definitions**

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

- 45.2 Words importing the masculine gender only shall include the feminine gender and vice versa; words importing the singular shall include the plural and vice-versa.
- 45.3 References in this Constitution to legislation includes all amendments, replacements or re-enactments made from time to time and to any regulation made under it.
- 45.4 References to legislation include all regulations, statutory guidance or directions.
- 45.5 Headings are for ease of reference only and are not to affect interpretation.
- 45.6 If there is a conflict between the provisions of this Constitution and the provisions of any document referred to herein or the law then the provisions of this Constitution shall prevail unless the law requires otherwise.
- 45.7 References to paragraphs are references to paragraphs in this Constitution and references to sections are references to sections in the Annexes to this Construction (unless the context otherwise provides).
- 45.8 All Annexes referred to in this Constitution form part of it.
- 45.9 In this Constitution:-

<b>“Accounting Officer”</b>	means the person who from time to time discharges the functions specified in paragraph 25(5) in Schedule 7 to the 2006 Act;
<b>“the 2006 Act”</b>	means the National Health Service Act 2006;
<b>“the 2012 Act”</b>	means the Health and Social Care Act 2012.
<b>“Annual Members’ Meeting”</b>	means the annual meeting of all the Members;
<b>“Appointed Governors”</b>	means the Local Authority Governors and the Partnership Governors;
<b>“Area of the Trust”</b>	means the area consisting of all the areas specified in Annex 1 as an area for a Public Constituency;
<b>“Authorisation”</b>	means the authorisation for the Trust to become an NHS Foundation Trust given by NHS Improvement;
<b>“Board of Directors”</b>	means the Board of Directors of the Trust as constituted in accordance with this Constitution and referred to in paragraph 19 of this Constitution and “Board” shall be construed accordingly;
<b>“Carer”</b>	means, subject as may otherwise be provided by the 2006 Act, an individual who provides care to a Service User as defined in paragraph 38.9 of this Constitution.;
<b>“Chairman”</b>	means the chairman of the Trust appointed in accordance with paragraph 22 of this Constitution and includes where the context so requires the Vice Chairman or Reserve Chairman;
<b>“Chief Executive”</b>	means the chief executive (and Accounting Officer) of the Trust appointed in accordance with paragraph 24 of this Constitution
<b>“Class”</b>	means a Class of Members of a Constituency as defined, constituted or identified in accordance with this Constitution;
<b>“Clinical Commissioning Group (CCG)”</b>	means those Clinical Commissioning Groups specified in or appointed in accordance with Annex 4;
<b>“CCG Governors”</b>	means the members of the Council of Governors appointed in accordance with the provisions of this Constitution by a Clinical Commissioning Group specified in or appointed in accordance with Annex 4;
<b>“Constituencies”</b>	means the Public Constituencies, the Staff Constituency and the Service Users and Carers Constituency and references to the Constitution shall include all Annexes;
<b>“Constitution”</b>	means this Constitution of Rotherham Doncaster and South Humber NHS Foundation Trust and references to the Constitution shall include all Annexes to this document;
<b>“Council of Governors”</b>	means the Council of Governors of the Trust as constituted in accordance with this Constitution and which has the same meaning as the “Board of Governors” in the 2006 Act;
<b>“Director”</b>	means a director from time to time of the Trust;
<b>“Elected Governors”</b>	means the Public Governors, the Service Users and Carers Governors and the Staff Governors respectively;

<b>“Election”</b>	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;
<b>“Executive Director”</b>	means an executive director of the Trust;
<b>“Finance Director”</b>	means the person who from time to time is appointed by the Trust to discharge the usual functions of its chief finance officer;
<b>“Financial Year”</b>	Means a twelve month period commencing on 1 <sup>st</sup> April and ending on the next 31 March
<b>“Governor”</b>	means a Governor on the Council of Governors and being either an Elected Governor or an Appointed Governor;
<b>“Local Authorities”</b>	means those Councils specified in Annex 4, all of which are Councils for an area which includes the whole or part of the Area of the Trust, and “Local Authority” shall be construed accordingly;
<b>“Licence”</b>	Means the licence issued to the foundation trust by NHS Improvement The licence contains obligations for providers of NHS services that will allow NHS Improvement to fulfil its new duties in relation to: <ul style="list-style-type: none"> <li>• setting prices for NHS-funded care in partnership with NHS England (previously called the NHS Commissioning Board);</li> <li>• enabling integrated care;</li> <li>• preventing anti-competitive behaviour which is against the interests of patients; supporting commissioners in maintaining service continuity; and</li> <li>• enabling NHS Improvement to continue to oversee the way that foundation trusts are governed.</li> </ul>
<b>“Local Authority Governor”</b>	means the members of the Council of Governors appointed by a Local Authority in accordance with the provisions of this Constitution and as specified in Annex 4;
<b>“Member”</b>	means a Member of the Trust pursuant to paragraph 5 or as determined in accordance with paragraph 8;
<b>“Membership”</b>	means Membership of the Trust through being a Member of one of its Constituencies;
<b>“Members’ Meetings”</b>	means a meeting of the Members;
<b>“Membership Strategy”</b>	means the membership strategy of the Trust from time to time;
<b>“Model Election Rules”</b>	means the model form rules for the conduct of Elections published from time to time by the Department of Health and as currently set out in Annex 5;
<b>“Motion”</b>	means a formal proposition to be discussed and voted on during the course of a meeting;
<b>“NHS Improvement”</b>	means NHS Improvement, the body responsible for overseeing foundation trusts and NHS trusts, as well as independent providers that provide NHS-funded care. From 1 April 2016, NHS Improvement is the operational name for an organisation that brought together: <ul style="list-style-type: none"> <li>• Monitor</li> <li>• NHS Trust Development Authority</li> <li>• Patient Safety</li> <li>• Advancing Change Team</li> <li>• Intensive Support Teams</li> </ul>
<b>“Non-Executive Director”</b>	means a Non-Executive Director of the Trust;
<b>“Partnership Governor”</b>	means a member of the Council of Governors appointed by a Partnership Organisation specified in Annex 4;
<b>“Partnership Organisations”</b>	means those organisations designated in accordance with paragraph 9(7) of Schedule 7 to the 2006 Act as partnership organisations for the purposes of this Constitution and specified in or appointed in accordance with Annex 4;

<b>“Public Governors”</b>	means the members of the Council of Governors elected by the Members of a Public Constituency;
<b>“Public Constituencies”</b>	means that part of the Trust’s Membership consisting of Members living in the Area of the Trust;
<b>“Reserve Chairman”</b>	means the person appointed in accordance with paragraph 15.2 to preside at meetings of the Council of Governors in the circumstances set out in paragraph 15.1;
<b>“Secretary”</b>	means the secretary of the Trust or any other person appointed to perform the duties of the secretary of the Trust;
<b>“Service Users”</b>	means an individual who has attended any of the Trust’s Hospitals and / or received goods or services from the Trust of the nature set out in Table 2 (Annex 3) or such other goods and services as the Trust may otherwise designate from time to time, within the period of five years immediately before the date of that individual’s application to become a Member of the Trust;
<b>“Service Users and Carers Governors”</b>	means the members of the Council of Governors elected by the Members of the Service Users and Carers Constituency;
<b>“Service Users and Carers Constituency”</b>	means that part of the Trust’s Membership which consists of Service Users and Carers;
<b>“Staff Classes”</b>	means the Classes of the Staff Constituency as specified in Annex 2;
<b>“Staff Constituency”</b>	means that part of the Trust’s Membership consisting of the staff of the Trust and other persons as more particularly provided for at paragraph 7 and which is divided into the Staff Classes;
<b>“Staff Governors”</b>	means the members of the Council of Governors elected by the Staff Constituency;
<b>“The Trust”</b>	means Rotherham Doncaster and South Humber NHS Foundation Trust;
<b>“Trust’s Hospital”</b>	means any premises used by the Trust for the provision of goods and services for the purposes of the health service in England falling within the definition of “hospital” in Section 275 of the 2006 Act;
<b>“Vice Chairman”</b>	means the Vice Chairman of the Trust;
<b>“Voluntary Organisation”</b>	means a body, other than a public or local authority, the activities of which are not carried on for profit;
<b>“Working Day”</b>	means any day other than a Saturday, Sunday or public holiday in England and Wales.

**ANNEX 1 – THE PUBLIC CONSTITUENCY**

<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>
<b>Name of the Public Constituency</b>	<b>Area of the Public Constituency by Electoral Wards</b>	<b>Minimum number of Members</b>	<b>Number of Governors to be elected</b>
<b>Doncaster (Area A)</b>	The Electoral Area for the Doncaster Metropolitan Borough Council	30	4
<b>Rotherham (Area B)</b>	The Electoral Area for the Rotherham Metropolitan Borough Council	30	4
<b>North Lincolnshire (Area C)</b>	The Electoral Area for the North Lincolnshire Council	10	2
<b>North East Lincolnshire (Area D)</b>	The Electoral Area for the North East Lincolnshire Council	10	1
<b>Rest of England (Area E)</b>	The rest of England excluding Areas A to D	10	1



**ANNEX 2 – THE STAFF CONSTITUENCY****Table 1**

<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>
<b>Classes within the Staff Constituency</b>	<b>Individuals eligible for Membership of that Class</b>	<b>Minimum number of Members of the relevant Staff Class</b>	<b>Number of Governors to be elected</b>
<b>Medical &amp; Pharmacy Staff Class</b>	Those individuals defined in section 1 below	10	1
<b>Nursing (Mental Health, Learning Disability and Specialist Services) Staff Class</b>	Those individuals defined in section 2 below	10	1
<b>Nursing (Community) Staff Class</b>	Those individuals defined in section 3 below	10	1
<b>Allied Health Professionals Staff Class</b>	Those individuals defined in section 4 below	10	1
<b>Social Care Staff Class</b>	Those individuals defined in section 5 below	10	1
<b>Non-Clinical Staff Class</b>	Those individuals defined in section 6 below	10	1

**1. Medical and Pharmacy Staff Class**

The Members of the Medical and Pharmacy Staff Class are those individuals who are Members of the Staff Constituency who:

- 1.1 are medical practitioners whose name appears on the List of Registered Medical Practitioners maintained and administered by the General Medical Council as registered to practice in the United Kingdom or who are pharmacists subject to regulation under the Pharmacy Act 1954 and who are otherwise fully authorised and licensed to practice in England and Wales in those professions; or
- 1.2 are otherwise designated by the Trust from time to time as eligible to be Members of this Staff Class having regard to the usual definitions applicable at that time for persons carrying on the professions of medical practitioner or pharmacist; and
- 1.3 are employed by the Trust in that capacity at the date of their invitation to become a Member in accordance with the provisions of Annex 9 and who at all times thereafter remain employed by the Trust in that capacity.

**2. Nursing (Mental Health, Learning Disability and Specialist Services) Staff Class**

The Members of the Nursing (Mental Health, Learning Disability and Specialist Services) Staff Class are individuals who are Members of the Staff Constituency who:

- 2.1 are members of a profession regulated by the Nursing and Midwifery Council and who are otherwise fully authorised and licensed to practice in England and Wales in those professions;

or

- 2.2 are otherwise designated by the Trust from time to time as eligible to be Members of this Staff Class having regard to the usual definitions applicable at that time for persons carrying on the profession of nurse, midwife or health visitor; and
- 2.3 are employed by the Trust in that capacity at the date of their invitation to become a Member in accordance with the provisions of Annex 9 and who at all times thereafter remain employed by the Trust in that capacity and
- 2.4 Are employed principally within the services listed in Annex 3, Table 2 (Parts 1, 2 or 3).

### **3. Nursing (Community Services) Staff Class**

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

- 3.1 are members of a profession regulated by the Nursing and Midwifery Council and who are otherwise fully authorised and licensed to practice in England and Wales in those professions; or
- 3.2 are otherwise designated by the Trust from time to time as eligible to be Members of this Staff Class having regard to the usual definitions applicable at that time for persons carrying on the profession of nurse, midwife or health visitor; and
- 3.3 are employed by the Trust in that capacity at the date of their invitation to become a Member in accordance with the provisions of Annex 9 and who at all times thereafter remain employed by the Trust in that capacity.
- 3.4 Are employed principally within the services listed in Annex 3, Table 2 (Part 4).

### **4. Allied Health Professions Staff Class**

The Members of the Allied Health Professions Staff Class are those individuals who are Members of the Staff Constituency:

- 4.1 whose regulatory body falls within the remit of the Council for the Regulation of Healthcare Professions established by Section 25 of the NHS Reform and Healthcare Professions Act 2002 other than those bodies responsible for the regulation of those individuals referred to at sections 1 and 2 above; and
- 4.2 Chartered Psychologists on the Register of Chartered Psychologists maintained and administered by the British Psychological Society; and
- 4.3 are otherwise designated by the Trust from time to time as eligible to be Members of this Staff Class having regard to the usual definitions applicable at that time for persons carrying on such professions; and
- 4.4 are employed by the Trust in that capacity at the date of their invitation to become a Member in accordance with the provisions of Annex 9 and who at all times thereafter remain employed by the Trust in that capacity.

### **5. Social Care Staff Class**

Those individuals who are Members of the Staff Constituency:

- 5.1 whose regulatory body is the General Social Care Council; or

- 5.2 are otherwise designated by the Trust from time to time as eligible to be Members of this Staff Class having regard to the usual definitions applicable at that time for persons carrying out such professions or functions; and
- 5.3 are employed by the Trust in that capacity at the date of their invitation to become a Member in accordance with the provisions of Annex 9 and who at all times thereafter remain employed by the Trust in that capacity.

## **6. Non-Clinical Staff Class**

The Members of the Non-Clinical Staff Class are those individuals who are Members of the Staff Constituency who:

- 6.1 do not come within those definitions set out in sections 1 – 5 above and who are designated by the Trust from time to time as eligible to be Members of this Staff Class; and
- 6.2 are employed by the Trust to perform functions designated by the Trust for the purposes of section above and are engaged in that capacity at the date of their invitation to become a Member in accordance with the provisions of Annex 9 and who at all times thereafter remain employed by the Trust in that capacity.

## **7. Minimum Numbers and Numbers of Governors**

The minimum number of Members in each Staff Class shall be as set out in column 3 of Table 1 to this Annex and the number of Governors to be elected by each such Staff Class is given in the corresponding entry in Column 4 of that Table.

## **8. Continuous Employment**

For the purposes of paragraph 7.1.2 of this Constitution, Chapter 1 of Part 14 of the Employment Rights Act 1996 shall apply for the purposes of determining whether an individual has been continuously employed by the Trust.

**ANNEX 3 – THE SERVICE USERS AND CARERS CONSTITUENCY****Table 1**

<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	
<b>Description of Class within the Constituency</b>	<b>Description of Individuals Eligible to become Members</b>	<b>Minimum Number of Members of the relevant Service Users and Carers Class</b>	<b>Number of Governors to be Elected</b>	
			<b>User</b>	<b>Carer</b>
<b>Mental Health Services Service Users and Carers</b>	Those individuals defined in section 2 of this Annex 3	10	3	3
<b>Learning Disability Services Service Users and Carers</b>	Those individuals defined in section 3 of this Annex 3	10	1	1
<b>Specialist Services Service Users and Carers</b>	Those individuals defined in section 4 of this Annex 3	10	1	1
<b>Community Services Service Users and Carers</b>	Those individuals defined in section 5 of this Annex 3	10	2	2

**1. General**

- 1.1 Paragraph 9 of this Constitution defines those individuals eligible to be Members of the Service Users and Carers Constituency.

**2. Mental Health Services Service Users and Carers Class**

The Members of the Mental Health Services Service Users and Carers Class are those individuals who:

- 2.1 comply with the requirements of paragraph 9 of this Constitution; or
- 2.2 have received goods or services from the Trust of the nature set out in Part I of Table 2 below or such other goods and services as the Trust may otherwise designate from time to time for the purposes of determining eligibility for membership of this Class.

**3. Learning Disability Services Service Users and Carers Class**

The Members of the Learning Disability Services Service Users and Carers Class are those individuals who:

- 3.1 comply with the requirements of paragraph 9 of this Constitution; or

- 3.2 have received goods or services from the Trust of the nature set out in Part 2 of Table 2 below or such other goods and services as the Trust may otherwise designate from time to time for the purposes of determining eligibility for membership of this Class.

**4. Specialist Services Service Users and Carers Class**

The Members of the Specialist Services Service Users and Carers Class are those individuals who:

- 4.1 comply with the requirements of paragraph 9 of this Constitution; or
- 4.2 have received goods or services from the Trust of the nature set out in Part 3 of Table 2 below or such other goods and services as the Trust may otherwise designate from time to time for the purposes of determining eligibility for membership of this Class.

**5. Community Services Service Users and Carers Class**

The Members of the Community Services Service Users and Carers Class are those individuals who:

- 5.1 comply with the requirements of paragraph 9 of this Constitution; or
- 5.2 have received goods or services from the Trust of the nature set out in Part 4 of Table 2 below or such other goods and services as the Trust may otherwise designate from time to time for the purposes of determining eligibility for membership of this Class.

**6. Carers**

A Carer shall be eligible to be a Member of the Class for which the Service User for whom he is the Carer is eligible to be a Member.

**7. Criteria for Eligibility of the Service Users and Carers Classes**

**Table 2**

Care Groups	Care Sub-Groups	Care Sub-Group Definitions
<p><b>PART 1</b> <b>Mental Health Services Service Users and Carers</b></p>	<ol style="list-style-type: none"> <li>1. Acute Inpatient</li> <li>2. Community Mental Health Teams (CMHT)</li> <li>3. Assertive Outreach Team</li> <li>4. Crisis Resolution Team</li> <li>5. Early Intervention Team</li> <li>6. Psychiatric Intensive Care Unit</li> <li>7. Rehabilitation – Inpatient</li> <li>8. Rehabilitation – Community</li> <li>9. Low Secure</li> <li>10. Mother and Baby (Community)</li> <li>11. Eating Disorders – Inpatient</li> <li>12. Eating Disorders – Community</li> </ol>	<p>As determined by the Trust from time to time</p>

	<p>13. Personality Disorder</p> <p>14. Psychiatric Liaison</p> <p>15. Day Care</p> <p>16. Court Diversion</p>	
	<p><i>The following are services for Older People</i></p> <p>17. Inpatient – Functional</p> <p>18. Inpatient – Organic</p> <p>19. Community Mental Health Teams (CMHT)</p> <p>20. Outpatient and Day Case</p> <p><i>The following are services for Children and Adolescents</i></p> <p>21. Tier 2 Services</p> <p>22. Tier 3 Services</p> <p>23. Tier 4 Services</p>	
<p><b>PART 2</b></p> <p><b>Learning Disability Services Service Users and Carers</b></p>	<p>1. Inpatient</p> <p>2. Community Learning Disabilities Team</p> <p>3. Activities of Daily Living</p> <p>4. Inpatient – Forensic</p> <p>5. Community – Forensic</p>	<p>As determined by the Trust from time to time</p>
<p><b>PART 3</b></p> <p><b>Specialist Services Service Users and Carers</b></p>	<p>1. Inpatient – Substance Misuse Services</p> <p>2. Community – Substance Misuse Services</p> <p>3. Outpatient – Substance Misuse Services</p> <p>4. Such other services as may be provided by the Trust other than those provided to the Mental Health Services Service Users and Carers Class or the Learning Disability Services Service Users or Carers Class or the Community Services Service Users or Carers Class.</p>	<p>As determined by the Trust from time to time</p>
<p><b>PART 4</b></p> <p><b>Community Services Service Users and Carers</b></p>	<p><b><u>Children and Families</u></b></p> <p>Community Children Nursing Team</p> <p>Family Nurse Partnership</p> <p>Safeguarding Children – Designated Nurse</p>	<p>As determined by the Trust from time to time</p>

	<p>Healthcare Service - Aged 5 – 19 Years          Healthy Children’s Service – Maternity to 5 Years          Sexual Health and Contraceptive Services</p> <p><b><u>Long Term Conditions</u></b></p> <p>Integrated Community Care Pathway</p> <ul style="list-style-type: none"> <li>• District Nursing</li> <li>• Community Matrons</li> </ul> <p>Intermediate Care (IC)</p> <ul style="list-style-type: none"> <li>• Community Intervention and Re-ablement Team</li> <li>• IC Planning team</li> <li>• IC Day Rehab Services</li> <li>• Rapid Response</li> <li>• Supported discharge</li> <li>• IC Residential Rehab Beds</li> <li>• Stroke Outreach</li> </ul> <p>Sub-Acute Facility (in development)</p> <p>Specialist Nursing</p> <ul style="list-style-type: none"> <li>• Diabetes</li> <li>• Respiratory</li> <li>• Tissue Viability</li> <li>• Continence</li> <li>• Tuberculosis</li> </ul> <p>Cardiac Services</p> <ul style="list-style-type: none"> <li>• Arrhythmia Co-ordinator</li> <li>• Cardiac Rehabilitation</li> <li>• Heart Failure Specialist Nursing</li> </ul> <p>Neurology Services</p> <ul style="list-style-type: none"> <li>• Neurology Inpatient Beds</li> <li>• Neurology Outreach Team (NROT)</li> <li>• Epilepsy Specialist Nurses</li> <li>• Parkinson’s Specialist Nurses</li> </ul> <p>End of Life</p> <p>Continuing Care:</p> <ul style="list-style-type: none"> <li>• Continuing Care Review Team</li> <li>• Continuing Health Care Support Services</li> </ul> <p>Occupational Therapy          Community Podiatry          Smoke-free Services          Tele-health          Wheelchair Services          Patient Electronic Alert Key-worker System</p>	
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## **ANNEX 4 – COMPOSITION OF THE COUNCIL OF GOVERNORS**

### **1. Introduction**

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

### **2. Bodies entitled to appoint a Member of the Council of Governors**

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

#### **Qualifying Local Authorities**

- 2.2 Doncaster Metropolitan Borough Council, Rotherham Metropolitan Borough Council and North Lincolnshire Council shall be entitled to appoint one Governor each in accordance with a process of appointment agreed by each of them with the Trust respectively. The absence of any such agreed process of appointment shall not preclude the said Local Authority from appointing its Governor, provided the appointment is duly made in accordance with the Local Authority's own internal process.
- 2.3 If a Local Authority named in section 2.9 above declines or fails to appoint a Governor within three months of being requested to do so by the Trust, the Trust shall consult each Local Authority whose area includes the whole or part of the area of the Trust and the Trust in its absolute discretion may extend an invitation to any of those local authorities to appoint a Governor in substitution for the Local Authority which has failed or declined to do so.
- 2.4 A Governor appointed under section 2.10 shall then serve on the Council of Governors for the period stipulated in Annex 6. At the end of that period the Trust shall in its absolute discretion decide whether to permit that Local Authority which had failed or declined to appoint a Governor to appoint a Governor for the next period of office (provided it remains eligible to do so) or to invite the Local Authority which had appointed a Governor in substitution to do so.

#### **Partnership Organisations**

- 2.5 The Trust shall nominate those organisations to be designated as Partnership Organisations for the purposes of this Constitution. The organisations so nominated as Partnership Organisations are:
- 2.5.1 Voluntary Action Rotherham (VAR); Doncaster Council for Voluntary Services, Voluntary Action North Lincolnshire (VANL) and Voluntary Action for North East Lincolnshire (VANEL) ("the Voluntary Services Organisations"). For the purposes of section 2.13, the Voluntary Services Organisations are to be treated as one organisation;



- 2.5.2 The University of Sheffield, Sheffield Hallam University and the Hull York Medical School (“the Universities”). For the purposes of section 2.13, the Universities are to be treated as one organisation;
- 2.5.3 Each of the areas of Rotherham, Doncaster and North Lincolnshire the Local Medical Committee for such area, for the purposes of appointing one practising general medical practitioner providing contracted NHS services in such area. For the purposes of Section 2.13, the Local Medical Committees are to be treated as one organisation; and
- 2.12.3 Clinical Commissioning Groups established in the areas of Rotherham, Doncaster and North Lincolnshire respectively
- 2.6 Each of the Partnership Organisations shall be entitled to appoint one Governor in accordance with a process of appointment agreed by each of them with the Trust respectively. The absence of any such agreed process of appointment shall not preclude the said Partnership Organisation from appointing its Governor, provided the appointment is duly made in accordance with the Partnership Organisation’s own internal processes or, with regard to the joint appointment of a Governor by each of the Partnership organisation, provided the appointment is duly made in accordance with the internal processes of each Partnership Organisation and that each partnership organisation agreed the joint appointment by it and any other partnership organisation makes a joint appointment and notified the Trust in writing of such appointment..
- 2.7 The Trust shall be entitled in its absolute discretion to:
- 2.7.1 give notice to any Partnership Organisation that it is no longer to be a Partnership Organisation for the purposes of this Constitution after the expiration of a period or upon the date specified in the notice; and
- 2.7.2 appoint some other organisation as a Partnership Organisation in its place.
- 2.8 Upon notice being given under section 2.14 the Partnership Organisation to which notice has been given shall cease to be a Partnership Organisation and its Governor shall cease to hold office forthwith upon the expiration of such notice period or upon such date as may have been specified in the said notice.
- 2.9 An organisation appointed as a Partnership Organisation under section 2.14 shall be entitled to appoint one Governor from a date and in accordance with a process of appointment agreed by it with the Trust. The absence of any such agreed process of appointment shall not preclude that Partnership Organisation from appointing its Governor provided the appointment is duly made in accordance with its own internal processes.

### 3. Composition of the Council of Governors

**Table 1**

	<b>Electing/Appointing Body</b>	<b>No. of Governors</b>		<b>Total</b>
<b>1.</b>	<b>Public Constituency</b>			12
	1.1 Doncaster	4		
	1.2 Rotherham	4		
	1.3 North Lincolnshire	2		
	1.4 North East Lincolnshire	1		
	1.5 Rest of England	1		
<b>2.</b>	<b>Staff Constituency</b>			6
	2.1 Medical and Pharmacy Staff Class	1		
	2.2 Nursing (Mental Health, Learning Disability and Specialist Services) Staff Class	1		
	2.3 Nursing (Community) Staff Class	1		
	2.4 Allied Health Professionals Staff Class	1		
	2.5 Social Care Staff Class	1		
	2.6 Non-Clinical Staff Class			
<b>3.</b>	<b>Service Users and Carers Constituency</b>	<b>User</b>	<b>Carer</b>	14
	3.1 Mental Health Services	3	3	
	3.2 Learning Disabilities Services	1	1	
	3.3 Specialist Services	1	1	
	3.4 Community Services	2	2	
<b>4.</b>	<b>Appointed Governors</b>			9
	4.1 Doncaster Metropolitan Borough Council			
	4.2 Rotherham Metropolitan Borough Council	1		
	4.3 North Lincolnshire Council	1		
	4.4 Rotherham Council for Voluntary Services, Doncaster Council for Voluntary Services, Voluntary Action North Lincolnshire (VANL) and Voluntary Action for North East Lincolnshire (VANEL)	1		
	4.5 The University of Sheffield, Sheffield Hallam University and The Hull York Medical School			
	4.6 A general medical practitioner nominated by the Local Medical Committees	1		
	4.7 Clinical Commissioning Groups for the areas of the Rotherham, Doncaster and North Lincolnshire	1		
		3		
	<b>Total number of Governors</b>			41

The above Table 1 shall be amended from time to time to reflect any variation in the composition of the Council of Governors effected pursuant to this Constitution.

#### 4. Further Provision

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

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### ***Part I - Interpretation***

#### **1. Interpretation**

- (1) In these rules, unless the context otherwise requires, all words shall have the meanings attributed to them in paragraph 40 of this Constitution.
- (2) Other expressions used in these rules and in Schedule 7 to the 2006 Act have the same meaning in these rules as in that Schedule.

**Part 2— Timetable for Election****2. Timetable**

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

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

**3. Computation of time**

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

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

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

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

**Part 3— Returning officer****5. Returning officer**

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

**5. Staff**

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

## **6. Expenditure**

The Trust 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 Trust may determine.

## **7. Duty of co-operation**

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

### ***Part 4 - Stages Common to Contested and Uncontested Elections***

## **8. Notice of Election**

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

- (a) the Constituency, 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 Trust;
- (d) the address and times at which nomination papers may be obtained;
- (e) the address for return of nomination papers and the date and time by which they must be received by the returning officer;
- (f) the date and time by which any notice of withdrawal must be received by the returning officer;
- (g) the contact details of the returning officer; and
- (h) the date and time of the close of the poll in the event of a contest.

## **9. Nomination of candidates**

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

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

## **10. Candidate's particulars**

- (1) The nomination paper must state the candidate's
  - (a) full name;
  - (b) contact address in full; and

- (c) Constituency, or Class within a Constituency, of which the candidate is a Member or prospective Member.

#### **11. Declaration of interests**

The nomination paper must state:

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

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

#### **12. Declaration of eligibility**

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

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

#### **13. Signature of candidate**

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

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

#### **14. Decisions as to the validity of nomination**

- (1) Where a nomination paper is received by the returning officer in accordance with these rules, the candidate is deemed to stand for Election unless and until the returning officer:
  - (a) decides that the candidate is not eligible to stand,
  - (b) decides that the nomination paper is invalid,
  - (c) receives satisfactory proof that the candidate has died, or
  - (d) receives a written request by the candidate of their withdrawal from candidacy.
- (2) The returning officer is entitled to decide that a nomination paper is invalid only on one of the following grounds:-
  - (a) that the paper is not received on or before the final time and date for return of nomination papers, as specified in the notice of the Election,
  - (b) that the paper does not contain the candidate's particulars, as required by rule 10;
  - (c) that the paper does not contain a declaration of the interests of the candidate, as required by rule 11,



- (d) that the paper does not include a declaration of eligibility as required by rule 12, or
  - (e) that the paper is not signed and dated by the candidate, as required by rule 13.
- (3) The returning officer is to examine each nomination paper as soon as is practicable after he or she has received it, and decide whether the candidate has been validly nominated.
  - (4) Where the returning officer decides that a nomination is invalid, the returning officer must endorse this on the nomination paper, stating the reasons for his decision.
  - (5) The returning officer is to send notice of the decision as to whether a nomination is valid or invalid to the candidate at the contact address given in the candidate's nomination paper.

**15. Publication of statement of candidates**

- (1) The returning officer is to prepare and publish a statement showing the candidates who are standing for Election.
- (2) The statement must show:
  - (a) the name, contact address, and Constituency or Class within a Constituency of each candidate standing, and
  - (b) the declared interests of each candidate standing,as given in their nomination paper.
- (3) The statement must list the candidates standing for Election in alphabetical order by surname.
- (4) The returning officer must send a copy of the statement of candidates and copies of the nomination papers to the Trust as soon as is practicable after publishing the statement.

**16. Inspection of statement of nominated candidates and nomination papers**

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

**17. Withdrawal of candidates**

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

**18. Method of Election**

- (1) If the number of candidates remaining validly nominated for an Election after any withdrawals under these rules is greater than the number of Members to be elected to the Council of Governors, a poll is to be taken in accordance with Parts 5 and 6 of these rules.
- (2) If the number of candidates remaining validly nominated for an Election after any withdrawals under these rules is equal to the number of Members to be elected to the Council of Governors, those candidates are to be declared elected in accordance with Part 7 of these rules.

- (3) If the number of candidates remaining validly nominated for an Election after any withdrawals under these rules is less than the number of Members to be elected to be Council of Governors, then:-
- (a) the candidates who remain validly nominated are to be declared elected in accordance with Part 7 of these rules; and
  - (b) the returning officer is to order a new Election to fill any vacancy which remains unfilled, on a day appointed by him or her in consultation with the Trust.

#### **Part 5— Contested Elections**

##### **19. Poll to be taken by ballot**

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

##### **20. The ballot paper**

- (1) The ballot of each voter is to consist of a ballot paper with the persons remaining validly nominated for an Election after any withdrawals under these rules, and no others, inserted in the paper.
- (2) Every ballot paper must specify:-
  - (a) the name of the Trust,
  - (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;
  - (f) if the ballot paper is to be returned by post, the address for its return and the date and time of the close of the poll; and
  - (g) the contact details of the returning officer.
- (3) Each ballot paper must have a unique identifier.
- (4) Each ballot paper must have features incorporated into it to prevent it from being reproduced.

##### **21. The declaration of identity (Public and Service Users and Carers Constituencies)**

- (1) In respect of an Election for a Public or Service Users & Carers Constituency or any Class within any such Constituency a declaration of identity must be issued with each ballot paper.
- (2) The declaration of identity is to include a declaration:
  - (a) that the voter is the person to whom the ballot paper was addressed,
  - (b) that the voter has not marked or returned any other voting paper in the Election, and

- (c) for a Member of the Public or Service Users and Carers constituencies, of the particulars of that Member's qualification to vote as a Member of the Constituency or Class within a Constituency for which the Election is being held.
- (3) The declaration of identity is to include space for:
- (a) the name of the voter;
  - (b) the address of the voter;
  - (c) the voter's signature; and
  - (d) the date that the declaration was made by the voter.
- (4) The voter must be required to return the declaration of identity together with the ballot paper.
- (5) The declaration of identity must caution the voter that, if it is not returned with the ballot paper, or if it is returned without being correctly completed, the voter's ballot paper may be declared invalid.

***Action to be taken before the poll***

**22. List of eligible voters**

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

**23. Notice of poll**

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

- (a) the name of the Trust,
- (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 address for return of the ballot papers, and the date and time of the close of the poll,
- (g) the address and final dates for applications for replacement ballot papers, and
- (h) the contact details of the returning officer.

**24. Issue of voting documents by returning officer**

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

**25. Ballot paper envelope and covering envelope**

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

***The poll***

**26. Eligibility to vote**

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

**27. Voting by persons who require assistance**

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

**28. Spoilt ballot papers**

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

- (2) On receiving an application, the returning officer is to obtain the details of the unique identifier on the spoilt ballot paper, if he or she can obtain it.
- (3) The returning officer may not issue a replacement ballot paper for a spoilt ballot paper unless he or she :
  - (a) is satisfied as to the voter's identity; and
  - (b) has ensured that the declaration of identity, if required, has not been returned.
- (4) After issuing a replacement ballot paper for a spoilt ballot paper, the returning officer shall enter in a list ("the list of spoilt ballot papers"):-
  - (a) the name of the voter;
  - (b) the details of the unique identifier of the spoilt ballot paper (if that officer was able to obtain it); and
  - (c) the details of the unique identifier of the replacement ballot paper.

## **29. Lost ballot papers**

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

## **30. Issue of replacement ballot paper**

- (1) If a person applies for a replacement ballot paper under rule 28 or 29 and a declaration of identity has already been received by the returning officer in the name of that voter, the returning officer may not issue a replacement ballot paper unless, in addition to the requirements imposed rule 28(3) or 29(2), he or she is also satisfied that that person has not already voted in the Election, notwithstanding the fact that a declaration of identity if required has already been received by the returning officer in the name of that voter.
- (2) After issuing a replacement ballot paper under this rule, the returning officer shall enter in a list ("the list of tendered ballot papers"):-
  - (a) the name of the voter; and
  - (b) the details of the unique identifier of the replacement ballot paper issued under this rule.

**31. Declaration of identity for replacement ballot papers (Public and Service Users & Carers constituencies)**

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

***Procedure for receipt of envelopes***

**32. Receipt of voting documents**

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

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

- (2) The returning officer may open any ballot paper envelope for the purposes of rules 33 and 34, but must make arrangements to ensure that no person obtains or communicates information as to:-
  - (a) the candidate for whom a voter has voted; or
  - (b) the unique identifier on a ballot paper.
- (3) The returning officer must make arrangements to ensure the safety and security of the ballot papers and other documents.

**33. Validity of ballot paper**

- (1) A ballot paper shall not be taken to be duly returned unless the returning officer is satisfied that it has been received by the returning officer before the close of the poll, with a declaration of identity if required that has been correctly completed, signed, and dated.
- (2) Where the returning officer is satisfied that section (1) has been fulfilled, he is to:-
  - (a) put the declaration of identity if required in a separate packet, and
  - (b) put the ballot paper aside for counting after the close of the poll.
- (3) Where the returning officer is not satisfied that section (1) has been fulfilled, he or she is to
  - (a) mark the ballot paper “disqualified”;
  - (b) if there is a declaration of identity accompanying the ballot paper, mark it as “disqualified” and attach it the ballot paper;
  - (c) record the unique identifier on the ballot paper in a list (the “list of disqualified documents”); and
  - (d) place the document or documents in a separate packet.

**34. Declaration of identity but no ballot paper (Public and Service Users & Carers Constituencies)**

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

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

**35. Sealing of packets**

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

- (a) the disqualified documents, together with the list of disqualified documents inside it;
- (b) the declarations of identity if required;
- (c) the list of spoilt ballot papers;
- (d) the list of lost ballot papers;
- (e) the list of eligible voters; and
- (f) the list of tendered ballot papers.

## **Part 6 - Counting the votes**

### **36. [Not Used]**

### **37. Arrangements for counting of the votes**

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

### **38. The count :-**

(1) The returning officer is to:-

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

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

### **39. Rejected ballot papers**

(1) Any ballot paper:-

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

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

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

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

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

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

(4) The returning officer is to:-

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



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

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

**40. [Not used]**

**41. [Not used]**

**42. [Not used]**

**43. [Not used]**

**44. [Not used]**

**45. [Not used]**

**46. Equality of votes**

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

***Part 7— Final proceedings in contested and uncontested Elections***

**47. Declaration of result for contested Elections**

- (1) In a contested Election, when the result of the poll has been ascertained, the returning officer is to:-
  - (a) declare the candidate or candidates for whom more votes have been given than for the other candidates, up to the number of vacancies to be filled on the Council of Governors from the Constituency, or Class within a Constituency, for which the Election is being held to be elected,
  - (b) give notice of the name of each candidate who he or she has declared elected to the Chairman of the Trust—
  - (c) give public notice of the name of each candidate whom he or she has declared elected.

(2) The returning officer is to make:-

- (a) the total number of votes given for each candidate (whether elected or not); and
- (b) the number of rejected ballot papers under each of the headings in rule 39(5),

available on request.

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

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

### ***Part 8— Disposal of documents***

#### **49. Sealing up of documents relating to the poll**

(1) On completion of the counting at a contested Election, the returning officer is to seal up the following documents in separate packets:-

- (a) the counted ballot papers;
- (b) the ballot papers endorsed with “rejected in part”;
- (c) the rejected ballot papers; and
- (d) the statement of rejected ballot papers.

(2) The returning officer must not open the sealed packets of:-

- (a) the disqualified documents, with the list of disqualified documents inside it;
- (b) the declarations of identity;
- (c) the list of spoilt ballot papers;
- (d) the list of lost ballot papers;
- (e) the list of eligible voters; and
- (f) the list of tendered ballot papers.

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

- (a) its contents;
- (b) the date of the publication of notice of the Election;
- (c) the name of the Trust to which the Election relates; and
- (d) the Constituency, or Class within a Constituency, to which the Election relates.

## **50. Delivery of documents**

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

## **51. Forwarding of documents received after close of the poll**

Where:-

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

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

## **52. Retention and public inspection of documents**

- (1) The Trust 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 NHS Improvement, cause them to be destroyed.
- (2) With the exception of the documents listed in rule 53(1), the documents relating to an Election that are held by the Trust shall be available for inspection by Members of the public at all reasonable times.
- (3) A person may request a copy or extract from the documents relating to an Election that are held by the Trust, and the Trust is to provide it, and may impose a reasonable charge for doing so.

## **53. Application for inspection of certain documents relating to an Election:-**

- (1) The Trust may not allow the inspection of, or the opening of any sealed packet containing:-
  - (a) any rejected ballot papers, including ballot papers rejected in part;
  - (b) any disqualified documents, or the list of disqualified documents;
  - (c) any counted ballot papers;
  - (d) any declarations of identity; or
  - (e) the list of eligible voters,

by any person without the consent of NHS Improvement.

- (2) A person may apply to NHS Improvement to inspect any of the documents listed in (1), and NHS Improvement may only consent to such inspection if it is satisfied that it is necessary for the purpose of questioning an Election pursuant to Part II.
- (3) NHS Improvement'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 Trust must only make the documents available for inspection in accordance with those terms and conditions.

- (4) On an application to inspect any of the documents listed in paragraph (1):-
  - (a) in giving its consent, NHS Improvement, and
  - (b) and making the documents available for inspection, the Trust,

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

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

***Part 9— Death of a candidate during a contested Election***

**54. Countermand or abandonment of poll on death of candidate**

- (1) If, at a contested Election, proof is given to the returning officer's satisfaction before the result of the Election is declared that one of the persons named or to be named as a candidate has died, then the returning officer is to
  - (a) countermand notice of the poll, or, if ballot papers have been issued, direct that the poll be abandoned within that Constituency or Class, and
  - (b) order a new Election, on a date to be appointed by him or her in consultation with the Trust, within the period of 40 days, computed in accordance with rule 3 of these rules, beginning with the day that the poll was countermanded or abandoned.
- (2) Where a new Election is ordered under section (1), no fresh nomination is necessary for any candidate who was validly nominated for the Election where the poll was countermanded or abandoned but further candidates shall be invited for that Constituency or Class.
- (3) Where a poll is abandoned under section (1)(a), sections (4) to (7) of this Part 9 are to apply.
- (4) The returning officer shall not take any step or further step to open envelopes or deal with their contents in accordance with rules 33 and 34, and is to make up separate sealed packets in accordance with rule 35.
- (5) The returning officer is to:-
  - (a) count and record the number of ballot papers that have been received; and
  - (b) seal up the ballot papers into packets, along with the records of the number of ballot papers.
- (6) The returning officer is to endorse on each packet a description of:-
  - (a) its contents;
  - (b) the date of the publication of notice of the Election,
  - (c) the name of the Trust to which the Election relates, and
  - (d) the Constituency, or Class within a Constituency, to which the Election relates.

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

### **Part 10— Election expenses and publicity**

#### **Part I - Election expenses**

#### **55. Election expenses**

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

#### **56 Expenses and payments by candidates**

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

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

#### **57. Election expenses incurred by other persons**

(1) No person may:-

- (a) incur any expenses or make a payment (of whatever nature) for the purposes of a candidate's Election, whether on that candidate's behalf or otherwise; or
  - (b) give a candidate or his or her family any money or property (whether as a gift, donation, loan, or otherwise) to meet or contribute to expenses incurred by or on behalf of the candidate for the purposes of an Election.
- (2) Nothing in this rule is to prevent the Trust from incurring such expenses, and making such payments, as it considers necessary pursuant to rules 58 and 59.

#### **Publicity**

#### **58. Publicity about Election by the Trust**

(1) The Trust may:-

- (a) compile and distribute such information about the candidates; and
- (b) organise and hold such meetings to enable the candidates to speak and respond to questions,

as it considers necessary.

(2) Any information provided by the Trust about the candidates, including information compiled by the Trust under rule 59, must be:-

- (a) objective, balanced and fair;
- (b) equivalent in size and content for all candidates;

- (c) compiled and distributed in consultation with all of the candidates standing for Election; and
  - (d) must not seek to promote or procure the Election of a specific candidate or candidates, at the expense of the electoral prospects of one or more other candidates.
- (3) Where the Trust proposes to hold a meeting to enable the candidates to speak, the Trust must ensure that all of the candidates are invited to attend, and in organising and holding such a meeting, the Trust must not seek to promote or procure the Election of a specific candidate or candidates at the expense of the electoral prospects of one or more other candidates.

#### **59. Information about candidates for inclusion with voting documents**

- (1) The Trust must compile information about the candidates standing for Election, to be distributed by the returning officer pursuant to rule 24 of these rules.
- (2) The information must consist of:-
  - (a) a statement submitted by the candidate of no more than 250 words; and
  - (b) a photograph of the candidate.

#### **60. Meaning of “for the purposes of an Election”**

- (1) In this Part, the phrase “for the purposes of an Election” means with a view to, or otherwise in connection with, promoting or procuring a candidate’s Election, including the prejudicing of another candidate’s electoral prospects; and the phrase “for the purposes of a candidate’s Election” is to be construed accordingly.
- (2) The provision by any individual of his or her own services voluntarily, on his or her own time, and free of charge is not to be considered an expense for the purposes of this Part.

### *Part II — Questioning Elections and the consequence of irregularities*

#### **61. Application to question an Election**

- (1) An application alleging a breach of these rules, including an electoral irregularity under Part 10, may be made to NHS Improvement.
- (2) An application may only be made once the outcome of the Election has been declared by the returning officer.
- (3) An application may only be made to NHS Improvement by:-
  - (a) a person who voted at the Election or who claimed to have had the right to vote; or
  - (b) a candidate, or a person claiming to have had a right to be elected at the Election.
- (4) The application must:-
  - (a) describe the alleged breach of the rules or electoral irregularity; and
  - (b) be in such a form as NHS Improvement may require.
- (5) The application must be presented in writing within 21 days of the declaration of the result of the Election.

- (6) If NHS Improvement requests further information from the applicant, then that person must provide it as soon as is reasonably practicable.
- (a) NHS Improvement shall delegate the determination of an application to a person or persons to be nominated for the purpose of NHS Improvement.
- (b) The determination by the person or persons nominated in accordance with Rule 61(6)(a) shall be binding on and shall be given effect by the Trust, 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.
- (c) NHS Improvement may prescribe rules of procedure for the determination of an application including costs.

### **Part 12— Miscellaneous**

#### **62. Secrecy**

(1) The following persons:-

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

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

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

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

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

#### **63. Prohibition of disclosure of vote**

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

#### **64. Disqualification**

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

- (a) a Member of the Trust;
- (b) an employee of the Trust;
- (c) a director of the Trust; or
- (d) employed by or on behalf of a person who has been nominated for Election.

**65. Delay in postal service through industrial action or unforeseen event**

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

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

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



## **ANNEX 6 – ADDITIONAL PROVISIONS – COUNCIL OF GOVERNORS**

### **1. Council of Governors: Terms of Office**

A Governor:

- 1.1 shall be elected or appointed for a term of three years;
- 1.2 shall be eligible for re-Election or re-appointment at the end of that term but may not serve as a Governor for more than a total of 9 years;
- 1.3 shall cease to hold office if:-
  - 1.3.1 he ceases to be a Member of a Trust Constituency or, in the case of an Appointed Governor, if the body which appointed him withdraws its appointment at any time;
  - 1.3.2 his term of office is terminated in accordance with section 3 below and/or he is disqualified from or is otherwise ineligible to hold office as a Governor; or
  - 1.3.3 he resigns by notice in writing to the Trust.

### **2. Council of Governors: Removal and Disqualification**

- 2.1 A Governor shall not be eligible to become or continue in office as a Governor if:
  - 2.1.1 he ceases to be eligible to be a Member, save in the case of Appointed Governors;
  - 2.1.2 in the case of an Appointed Governor, the appointing organisation withdraws its appointment of him;
  - 2.1.3 any of the grounds contained in paragraph 14 of the Constitution apply to him;
  - 2.1.4 he has within the preceding two years been lawfully dismissed otherwise than by reason of redundancy or ill health from any paid employment;
  - 2.1.5 he is a person whose term of office as the chairman or as a member or director of a health service body has been terminated on the grounds that his continuance in office is no longer in the best interests of the health service, for non-attendance at meetings or for non-disclosure of a pecuniary interest;
  - 2.1.6 he has had his name removed from any list maintained pursuant to Parts 4 - 7 of the 2006 Act and has not subsequently had his name included in such a list;
  - 2.1.7 he has failed to make, or has falsely made, any declaration as required to be made under Section 60 of the 2006 Act;
  - 2.1.8 he is subject to a direction made under Section 142 of the Education Act 2002;
  - 2.1.9 he is a member of any Overview and Scrutiny Committee

established under the Local Government Act 2000 with responsibility for, or whose powers extended to, the services provided by the Trust;

- 2.1.10 NHS Improvement has exercised its powers to remove him as a Governor of the Trust or has suspended him from office or has disqualified him from holding office as a Governor of the Trust for a specified period or NHS Improvement has exercised any of those powers in relation to him on any other occasion whether in relation to the Trust or some other NHS Foundation Trust;
  - 2.1.11 he has received a written warning from the Trust for verbal and/or physical abuse towards Trust staff;
  - 2.1.12 his term of office is terminated pursuant to section 4 below;
  - 2.1.13 he is a Member of a Staff Class and any professional registration relevant to his eligibility to be a Member of that Staff Class has been suspended for a continuous period of more than six months;
  - 2.1.14 the relevant organisation which he represents has ceased to exist;
  - 2.1.15 he is an individual who is or who has within the preceding period of five years been subject to an Anti-Social Behaviour Order made under the Crime and Disorder Act 1998 as amended.
  - 2.1.16 he is an individual who has at any time been subject to the notification requirements under Part 2 of the Sexual Offences Act 2003 or a Sex Offenders Order made under the Crime and Disorder Act 1998 as amended.
  - 2.1.17 information revealed by a Disclosure and Barring Service (DBS) check is such that it would be inappropriate for him to become or continue as a Governor on the grounds that this would adversely affect public confidence in the Trust or otherwise bring the Trust into disrepute
- 2.2 Where a person has been elected or appointed to be a Governor and he becomes disqualified from that appointment he shall notify the Trust in writing of such disqualification as soon as practicable and in any event within 14 days of first becoming aware of those matters which rendered him disqualified.
  - 2.3 If it comes to the notice of the Trust that a Governor is disqualified, the Trust shall immediately declare him disqualified and shall give him notice in writing to that effect as soon as practicable.
  - 2.4 Upon the giving of notice under sections 2.2 and 2.3 above, that person's tenure of office as a Governor shall thereupon be terminated and he shall cease to be a Governor and his name shall be removed from the Register of Governors.

### **3. Council of Governors: Termination of Tenure**

- 3.1 A Governor's term of office shall be terminated:-
  - 3.1.1 by the Governor giving notice in writing to the Trust of his resignation from office at any time during that term of office;
  - 3.1.2 by the Trust if any grounds exist under section 2 above;

- 3.1.3 by the Council of Governors if he has failed to attend two successive meetings of the Council of Governors unless the Council of Governors is satisfied:-
  - 3.1.3.1 the absence was due to reasonable cause; and
  - 3.1.3.2 that the Governor will resume attendance at meetings of the Council of Governors within such period as it considers reasonable.
- 3.1.4 If the Council of Governors resolves to terminate his term of office for reasonable cause on the grounds that in the reasonable opinion of three quarters of the Governors present and voting at a meeting of the Council of Governors convened for that purpose:-
  - 3.1.4.1 his continuing as a Governor would or would be likely to:-
    - 3.1.4.1.1 prejudice the ability of the Trust to fulfil its principal purpose or its purposes under this Constitution or otherwise to discharge its duties and functions; or
    - 3.1.4.1.2 prejudice the Trust's work with any other person or body with whom it is engaged or may be engaged in the provision of goods and services; or
    - 3.1.4.1.3 adversely affect public confidence in the goods and services provided by the Trust; or
    - 3.1.4.1.4 otherwise brings the Trust into disrepute or is detrimental to the interest of the Trust; or
    - 3.1.4.1.5 it would not be in the best interests of the Trust for that person to continue in office as a Governor; or
    - 3.1.4.1.6 the Governor is a vexatious or persistent litigant or complainant with regard to the Trust's affairs and his continuance in office would not be in the best interests of the Trust.
  - 3.1.4.2 he has failed or refused to undertake and/or satisfactorily complete any training which the Council of Governors has required him to undertake in his capacity as a Governor.
  - 3.1.4.3 he has in his conduct as a Governor failed to comply in a material way with the values and principles of the National Health Service or the Trust; or
  - 3.1.4.4 he has committed a material breach of any code of conduct applicable to Governors of the Trust.
- 3.2 Upon a Governor resigning under section 3.1.1 above or upon the Council of Governors resolving to terminate a Governor's tenure of office in accordance with the above provisions, that Governor shall cease to be a Governor and his name shall be forthwith removed from the Register of Governors.
- 3.3 Any decision of the Council of Governors to terminate a Governor's tenure of office may be referred by the Governor to the dispute resolution procedure referred to in Annex 9 within 14 days of the date upon which notice in writing of the Council of

Governor's decision is given to the Governor.

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

#### **4. Council of Governors: Vacancies**

- 4.1 Where a Governor's term of office terminates for whatever reason then:
- 4.1.1 in the case of an Appointed Governor, the Trust shall invite the relevant appointing body to appoint a new Governor as soon as practicable; and
  - 4.1.2 in the case of an Elected Governor, Elections for a new Governor shall take place as soon as practicable subject to the provisions of sections 4.2 and 4.3.
- 4.2 Where an Elected Governor ceases for whatever reason to hold office within twelve months of his Election:
- 4.2.1 the Trust shall offer the candidate who was ranked next highest in the last Election for the Constituency, Class or Staff Class (as the case may be) in which the vacancy has arisen, the opportunity to assume the vacant office of Governor for the unexpired balance of the former Governor's term of office;
  - 4.2.2 if that candidate does not accept that invitation in a timely manner it shall be offered to that candidate who was next highest ranked in the last said Election until the vacancy is filled; but if no other candidate stood for Election or there are no remaining candidates who stood for Election to that office or no candidate accepts the Trust's invitation in accordance with the above provisions within such time as the Trust may in its absolute discretion decide, the Trust shall hold an Election for the vacancy as soon as reasonably practicable thereafter.
- 4.3 Subject to the provisions of section 4.5, where an Elected Governor ceases for whatever reason to hold office within the last twelve months of his term of office, the office shall remain vacant until the next scheduled Election takes place. If in any Election for a Class of the Service Users and Carers Constituency no or no sufficient number of Members stands for Election and in consequence the office of Governor for that Class would otherwise remain vacant,
- 4.4 the Trust may hold further Elections for that vacant office as soon as reasonably practicable or defer the holding of such further Elections until the next scheduled date for holding an Election for that Class of the Service Users and Carers Constituency, at which time they shall then hold a further Election for that vacant office together with such other vacancy as may then exist.
- 4.5 Notwithstanding the above provisions of this section 4, where the termination of a Governor's term of office causes the total number of Public Governors and Service Users and Carers Governors to be equal to or fewer than the other Governors of the Trust then an Election for that vacant office shall be held as soon as reasonably

practicable.

- 4.6 No defect in the Election or appointment of a Governor nor any deficiency in the composition of the Council of Governors shall affect the validity of any act or decision of the Council of Governors.

**4.7 Council of Governors: Role**

- 4.8 The Council of Governors and each Governor shall act in the best interests of the Trust at all times and with proper regard to the provisions of the NHS Foundation Trust Code of Governance.

- 4.9 Subject to the requirement specified in section 5.1, each Governor shall exercise his own skill and judgement in his conduct of the Trust's affairs and shall in his stewardship of the Trust's affairs bring as appropriate the perspective of the Constituency or organisation by which he was elected or appointed, as the case may be.

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

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

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

**5. Council of Governors: Meetings**

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

- 5.2 All such meetings shall be open to the public unless the Council of Governors resolves that the public be excluded from the meeting whether for the whole or part of the proceedings on the grounds that publicity would be prejudicial to the public interest or the interests of the Trust by reason of the confidential nature of the business to be transacted or for other special reasons stated in the resolution and arising from the nature of the business to be transacted or the proceedings.

- 5.3 The Council of Governors shall exercise its functions in general meeting and shall not delegate the exercise of any function or any power in relation to any function to a Committee save where required or authorised to do so by this Constitution.

- 5.4 The Council of Governors may request the attendance of some or all of the members of the Board of Directors at its meetings and the Board of Directors may attend and may give such reports and information to the Council of Governors as the Board of Directors considers appropriate and subject always to the other provisions of this Constitution.

**6. Council of Governors: Declarations**

- 6.1 A Member of a Public Constituency or of the Service Users and Carers Constituency standing for Election as Governor must make a declaration for the purposes of

Section 60 of the 2006 Act in the form specified below stating the particulars of his qualification to vote as a Member and that he is not prevented from being a member of the Council of Governors by virtue of any provisions of this Constitution.

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

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

## **7. Council of Governors: Nominations Committee**

- 7.1 The Council of Governors shall establish a committee of its members to be called the Nominations Committee (“the Committee”) to discharge those functions in relation to the appointment of the Chairman and Non-Executive Directors described in section 8.3 below and such other functions as are provided for in section 8.5 below.
- 7.2 The Committee shall consist of seven members of which:
- 7.2.1 four shall be service user and carer and public governors, with at least one being a public governor and at least one being a service user / carer governor
  - 7.2.2 three shall be Appointed and staff governors, with at least one being an Appointed governor and at least one being a staff governor
  - 7.2.3 the members shall include the Reserve Chairman who shall be the Chairman of the Committee.
- 7.3 The functions of the Committee shall be as follows:
- 7.3.1 to determine the criteria and process for the selection of candidates for office as Chairman or other Non-Executive Director of the Trust having first consulted with the Board of Directors as to those matters and having regard to such views as may be expressed by the Board of Directors and to any relevant provisions of the NHS Foundation Trust Code of Governance or like guidance which may be published from time to time;
  - 7.3.2 to seek by way of open advertisement and other means candidates for office and to assess and select for interview such candidates as are considered appropriate and in doing so the Committee shall be at liberty to seek advice and assistance from persons other than members of the Committee or of the Council of Governors;
  - 7.3.3 to make recommendation to the Council of Governors as to potential candidates for appointment as Chairman or other Non-

Executive Director, as the case may be; and

7.3.4 as further stipulated in section 8.6 below.

7.4 The Council of Governors shall resolve in general meeting to appoint such candidate or candidates (as the case may be) as it considers appropriate and in reaching its decision it shall have regard to the views of the Board of Directors and of the Committee as to the suitability of the available candidates.

7.5 The Committee shall:

7.5.1 on a regular and systematic basis monitor the performance of the Chairman and other Non-Executive Directors and make reports thereon to the Council of Governors from time to time when requested to do so or when in the opinion of the Committee the results of such monitoring ought properly to be brought to the attention of the Council of Governors; and

7.5.2 consider and make recommendations to the Council of Governors as to the remuneration and allowances and other terms and conditions of office of the Chairman and other Non-Executive Directors.

7.6 Subject to the provisions of paragraph 22 of the Constitution in relation to the appointment of the Chairman and Non-Executive Directors of the Trust:

7.6.1 only a Member of a Public Constituency or of the Service Users and Carers Constituency may be appointed as the Chairman or other Non-Executive Director; and

7.6.2 the Chairman and other Non-Executive Directors shall be appointed following a process of open competition conducted in accordance with section 8.3 above.

## **8. Council of Governors: Reserve Chairman**

8.1 No person may serve as the Reserve Chairman for more than a total of three years, without being re-appointed by the Council of Governors. The maximum term of office as Reserve Chairman is six years.

8.2 A person appointed as the Reserve Chairman shall cease to be eligible to continue serving as the Reserve Chairman if he ceases to be a Governor or Member and the Reserve Chairman's term of office can be terminated by the Council of Governors at any time.

**ANNEX 7 – STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE COUNCIL OF GOVERNORS**

**Rotherham Doncaster and South Humber NHS  
Foundation Trust**

**Standing Orders**

**Council of Governors**



## FOREWORD

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

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## **1. INTRODUCTION**

- (a) The Trust is a Public Benefit Corporation that was established by the granting of Authorisation by NHS Improvement.
- (b) The statutory functions conferred on the Trust are set out in the 2006 Act and in the Trust's Licence.
- (c) As a Public Benefit Corporation the Trust has specific powers to contract in its own name and to act as a corporate trustee. In the latter role it is accountable to the Charity Commission for those funds deemed to be charitable.
- (d) In accordance with paragraph 16 of the Constitution, the Standing Orders for the Council of Governors are set out in this Annex 7.
- (e) For convenience, and unless the context otherwise requires, the terms and expressions contained within paragraph 38 of this Constitution relating to Interpretation are incorporated and are deemed to have been repeated here verbatim for the purposes of interpreting words contained in this Annex 7.

## **2. THE COUNCIL OF GOVERNORS**

### **2.1 Roles and Responsibilities of Governors:**

Subject always to provisions of the Constitution, the Governors shall have the following roles and responsibilities:

- 2.1.1 to appoint and remove the Chair and Non-Executive Directors (Constitution paragraph 22);
- 2.1.2 to approve the appointment of the Chief Executive (Constitution paragraph 24);
- 2.1.3 to appoint the Auditor (Constitution paragraph 32);
- 2.1.4 to receive the Annual Report & Accounts (Constitution paragraph 36);
- 2.1.5 to ensure that the Trust operates in accordance with the Licence;
- 2.1.6 to oversee and advise the Board of Directors regarding future Trust plans and priorities;
- 2.1.7 to monitor the performance of the Trust against the strategic direction and the targets with a view to satisfying itself that the Board of Directors is fulfilling its responsibilities in this regard. This will be achieved by regular briefings on the performance of the Trust and, at its meetings, being able to consider and comment on that performance.

- 2.1.8 to ensure the continued success of the Trust through overseeing the effective management, partnership working and maintenance of NHS values and principles;
- 2.1.9 to oversee the development of the Trust as an effective social enterprise through focus on the wider public interest and promoting social cohesion in ensuring that the Council of Governors reflects all the interests of the Membership community;
- 2.1.10 to share local responsibility for the success of the Trust, in particular by building and sustaining a wide consensus as to the vision for the Trust and by Members representing the Trust to their respective communities and organisations and *vice versa* and
- 2.1.11 to instigate or be involved in review of a specific issue, or be involved in further development of a particular strategy through specific working groups

## **2.2 Composition of the Council of Governors**

The composition of the Council of Governors shall be as set out in the Constitution.

## **2.3 Appointment of the Chairman and Non Executive Directors**

The Chairman and Non-Executive Directors are appointed by the Council of Governors in accordance with section 22 of the Constitution and paragraph 8 of Annex 6 to the Constitution.

## **2.4 Terms of Office of the Chairman and Non Executive Directors**

The provisions governing the period of tenure of office of the Chairman and the Non Executive Directors are contained in paragraph 28 of the Constitution ("Board of Directors – Remuneration and Terms of Office").

## **2.5 Appointment of the Reserve Chairman of the Council of Governors**

- 2.5.1 The Council of Governors shall in general meeting appoint a Public Constituency or Service Users and Carers Constituency Governor to be the Reserve Chairman of the Council of Governors to preside at meetings in the absence of the Chairman and Vice Chairman or where they are both precluded from so presiding for conflict of interest or other reason.
- 2.5.2 Any Governor appointed in accordance with Standing Order 2.5.1 above may at any time resign from the office of Reserve Chairman by giving notice in writing to the Secretary to the Trust and the Governors of the Trust may thereupon appoint another Reserve Chairman.

## **2.6 Role of Reserve Chairman**

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

- 2.6.1 when there is a need for someone to have the authority to chair any meeting of the Council Governors when the Chairman and Vice Chairman are not present;

- 2.6.2 on those occasions when the Council of Governors is considering matters relating to Non-Executive Directors, and it would be inappropriate for the Chairman or Vice Chairman to preside;
- 2.6.3 when the remuneration, allowances and other terms and conditions of the Chairman or Vice Chairman (as the case may be) are being considered;
- 2.6.4 when the appointment of the Chairman is being considered, should the current Chairman be a candidate for reappointment and the Vice Chairman is absent or otherwise precluded from presiding; or
- 2.6.5 on occasions when the Chairman and Vice Chairman declare a pecuniary interest that prevents them from taking part in the consideration or discussion of a matter before the Council of Governors.

### **3. MEETINGS OF THE COUNCIL OF GOVERNORS**

#### **3.1 Calling Meetings**

- 3.1.1 Save in the case of emergencies or the need to conduct urgent business, the Secretary shall give at least 14 days written notice of the date and place of every meeting of the Council of Governors to all Governors. Notice will also be published on the Trust's website.
- 3.1.2 The Secretary shall ensure that within the meeting cycle of the Council of Governors, general meetings are called at appropriate times to consider matters as required by the 2006 Act and the Constitution.

#### **3.2 Admission of the Public**

The provisions for the admission of the public to meetings of the Council of Governors are detailed at paragraph 15 and Annex 6 of the Constitution.

#### **3.3 Chairman of Meetings**

The Chairman of the Trust, or in his absence, the Vice Chairman or Reserve Chairman (as the case may be) is to preside at meetings of the Council of Governors. If the Chairman is absent from a meeting temporarily on the grounds of a declared conflict of interest the Vice Chairman or the Reserve Chairman (as the case may be) shall preside..

#### **3.4 Setting the Agenda**

The Council of Governors may determine that certain matters shall appear on every agenda for a meeting of the Council of Governors and shall be addressed prior to any other business being conducted.

### 3.5 Agenda

A Governor desiring a matter to be included on an agenda shall specify the question or issue to be included in request in writing to the Chairman or Secretary at least 3 clear Working Days before notice of the meeting is given. Requests made less than 3 clear Working Days before the notice is given may be included on the agenda at the discretion of the Chairman.

### 3.6 Notices of Motion

A Governor desiring to move or amend a Motion shall send a written notice thereof at least 10 clear Working Days before the meeting to the Chairman or Secretary, who shall insert in the agenda for the meeting all notices so received subject to the notice being permissible under the appropriate regulations. This section shall not prevent any Motion being moved during the meeting, without notice on any business mentioned on the agenda in accordance with Standing Order 3.5, subject to the Chairman's discretion.

### 3.7 Withdrawal of Motion or Amendments

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

### 3.8 Motion to Rescind a Resolution

Notice of Motion to amend or rescind any resolution (or the general substance of any resolution) which has been passed within the preceding 6 calendar months shall be in writing, be in accordance of Standing Order 3.6 and shall bear the signature of the Governor who gives it and also the signature of 4 other Governors. When any such Motion has been disposed of by the Council of Governors, it shall not be competent for any Governor other than the Chairman to propose a Motion to the same effect within 6 months, however the Chairman may do so if he considers it appropriate.

### 3.9 Motions

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

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

- 3.10.1 an amendment to the Motion;
- 3.10.2 the adjournment of the discussion or the meeting;
- 3.10.3 that the meeting proceed to the next business;
- 3.10.4 that the Motion be now put.

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

### **3.11 Chairman's Ruling**

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

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

### **3.12 Voting**

Save as otherwise provided in the Constitution and/or the 2006 Act, if the Chairman so determines or if a Governor requests, a question at a meeting shall be determined by a majority of the votes of the Governors present and voting on the question and, in the case of any equality of votes, the person presiding shall have a casting vote.

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

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

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

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

### **3.17 Minutes**

The Minutes of the proceedings of a 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 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 ensuing meeting.

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

### **3.20 Suspension of Standing Orders**

Except where this would contravene any statutory provision, the Licence or any provision of the Constitution, any one or more of the Standing Orders may be suspended at any meeting, provided that at least two-thirds of the Council of Governors are present, including one Public Governor and one Staff Governor, and that a majority of those present vote in favour of suspension.

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

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

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

### **3.24 Variation and Amendment of Standing Orders**

Subject to Standing Order 3.26, 3.27 and 3.28, these Standing Orders shall be amended only if:

3.24.1 the variation proposed does not contravene a statutory provision, the Authorisation or the Constitution; and

3.24.2 unless presented by the Chairman or the Chief Executive, a notice of Motion under Standing Order 3.6 has been given; and

3.24.3 at least two-thirds of the Governors are present, including one Public or Service User and Carers Governor and one Staff Governor; and

3.24.4 no fewer than half the Governors vote in favour of amendment; and

3.24.5 the amendment is made in accordance with the terms of the Constitution and in particular the provisions of Annex 9, section 5.7.

### **3.25 Record of Attendance**

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

### **3.26 Quorum**

No business shall be transacted at a meeting of the Council of Governors unless at least 20% of the Council of Governors are present and those present include at least one Staff Governor, two Service Users and Carer Governors (whether a Service User or a Carer) and two Public Governors.

3.26.1 If a meeting is not quorate within 15 minutes of the time scheduled for its commencement, it shall automatically stand adjourned for a period of 7 days and the Chairman shall give or shall procure the giving of notice to all Governors of the date, time and place of that adjourned meeting.

3.27 A Governor who has declared a non-pecuniary interest in any matter may participate in the discussion and consideration of the matter but may not vote in respect of it. In these circumstances the Governor will count towards the quorum of the meeting. If a Governor has declared a pecuniary interest in any matter, the Governor must leave the meeting room, and will not count towards the quorum of the meeting, during the consideration, discussion and voting on the matter. If a quorum is then not available for the discussion and/or the passing 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.

3.28 Subject to Standing Orders in relation to interests, any Director or their nominated representatives shall have the right to attend meetings of the Council of Governors and, subject to the overall control of the Chairman, to speak to any item under consideration.

#### **4. COMMITTEES**

- 4.1 The Council of Governors shall exercise its functions in general meeting and shall not delegate the exercise of any function or any power in relation to any function to a committee save where required or authorised to do so by this Constitution.

#### **5. DECLARATIONS OF INTERESTS AND REGISTER OF INTERESTS**

##### **5.1 Declaration of Interests**

In accordance with paragraph 17 of the Constitution, Governors are required to declare formally any pecuniary, personal or family interest, or any other interest which is relevant and material to the Trust whether that interest is actual or potential and whether the interest is direct or indirect, in any proposed contract or other matter which is under consideration or is to be considered or is likely to be considered by the Council of Governors. The responsibility for declaring an interest is solely that of the Governor concerned.

- 5.2 A Governor must declare all such interests of the Council of Governors by completing and submitting to the Secretary the declaration required by Standing Order 5.3 below.

- 5.3 Such a declaration shall be made by completing and signing a form, as prescribed by the Secretary from time to time, setting out any interests required to be declared in accordance with the Constitution or these Standing Orders and delivering it to the Secretary within 28 days of a Governor's Election or appointment or otherwise as soon as practicable and in any event within 7 days of becoming aware of the existence of a relevant interest. The Secretary shall amend the Register of Interests upon receipt of notification within 3 Working Days.

- 5.4 If a Governor is present at a meeting of the Council of Governors and has an interest of any sort referred to in Standing Order 5.1 in any matter which is the subject of consideration, he shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not vote on any question with respect to the matter and, if he has declared a pecuniary interest, he shall not take part in the consideration or discussion of the matter. The provisions of this section are subject to Standing Order 5.9.

- 5.5 Interests may include but are not to be limited to the following:

- 5.5.1 directorships, including non-executive directorships held in private companies or PLCs (with the exception of those of dormant companies);
- 5.5.2 ownership or part-ownership or directorships of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS;
- 5.5.3 majority or controlling share holdings in organisations likely or possibly seeking to do business with the NHS;
- 5.5.4 a position of authority in a charity or voluntary organisation in the field of health and social care;
- 5.5.5 any connection with a voluntary or other organisation contracting for or commissioning NHS services



- 5.5.6 any connection with an organisation, entity or company considering entering into or having entered into a financial arrangement with the Trust, including but not limited to, lenders or banks;
  - 5.5.7 research funding/grants that may be received by an individual or their department; and
  - 5.5.8 interests in pooled funds that are under separate management.
- 5.6 Any travelling or other expenses or allowances payable to a Governor in accordance with this Constitution shall not be treated as a pecuniary interest.
- 5.7 Subject to any other provision of this Constitution, a Governor shall be treated as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if:
  - 5.7.1 he, or a nominee of his, is a director of a company or other body, not being a public body, with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration; or
  - 5.7.2 he is a partner of, or is in the employment of a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration.
- 5.8 A Governor shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only:-
  - 5.8.1 of his membership of a company or other body, if he has no beneficial interest in any securities of that company or other body;
  - 5.8.2 of an interest in any company, body or person with which he is connected as mentioned in Standing Orders 5.3, 5.4 and 5.6 which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a Governor in the consideration or discussion of or in voting on, any question with respect to that contract or matter.
- 5.9 Where a Governor:
  - 5.9.1 has an indirect pecuniary interest in a contract, proposed contract or other matter by reason only of a beneficial interest in securities of a company or other body, and
  - 5.9.2 the total nominal value of those securities does not exceed £5,000 or one-hundredth of the total nominal value of the issued share capital of the company or body, whichever is the less, and
  - 5.9.3 if the share capital is of more than one Class, the total nominal value of shares of any one Class in which he has a beneficial interest does not exceed one-hundredth of the total issued share capital of that Class, the Governor shall not be prohibited from taking part in the consideration or discussion of the contract or other matter or from voting on any question with respect to it, without prejudice however to his duty to disclose his interest.

5.10 In the case of persons living together the interest of one partner or spouse shall, if known to the other, be deemed for the purposes of these Standing Orders to be also an interest of the other.

5.11 If Governors have any doubt about the relevance of an interest, this should be discussed with the Secretary.

#### **5.12 Register of Interests**

The Secretary shall record any declarations of interest made in a Register of Interests kept by him in accordance with paragraph 29 of the Constitution. Any interest declared at a meeting shall also be recorded in the minutes of the meeting.

5.13 The Register will be available for inspection by members of the public free of charge at all reasonable times. A person who requests it is to be provided with a copy or extract from the register. If the person requesting a copy or extract is not a Member of the Trust then a charge may be made for doing so.

### **6. STANDARDS OF BUSINESS CONDUCT**

#### **6.1 Policy**

In relation to their conduct as Governors of the Trust, each Governor must comply with the principles outlined in HSG(93)5, 'Standards of Business Conduct for NHS staff'. In particular, the Trust must be impartial and honest in the conduct of its business and its office holders and staff must remain beyond suspicion. Governors are expected to be impartial and honest in the conduct of official business.

#### **6.2 Interest of Governors in Contracts**

If it comes to the knowledge of a Governor that a contract in which he 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 Secretary of the fact that he is interested in it. In the case of married persons or persons living together as partners, the interest of one partner shall, if known to the other, be deemed to be also the interest of that partner.

6.3 A Governor shall not solicit for any person any appointment in the Trust.

### **7. REMUNERATION**

7.1 Governors are not to receive remuneration for acting as Governors of the Trust.

### **8. PAYMENT OF EXPENSES TO GOVERNORS**

8.1 The Trust will pay travelling expenses to Governors at rates determined by the Board of Directors for attendance at general meetings of the Governors, or any other business authorised by the Secretary as being under the auspices of the Council of Governors.

8.2 Expenses will be authorised and reimbursed through the Secretary's office on receipt of a completed and signed expenses form provided by the Secretary.

8.3 A summary of expenses paid to Governors will be published in the Annual Report.

### **9. RESOLUTION OF DISPUTES**

9.1 The Council of Governors and the Board of Directors must be committed to

developing and maintaining a constructive and positive relationship. The aim at all time is to resolve any potential or actual differences of opinion quickly, through discussion and negotiation.

- 9.2 If the Chairman cannot achieve resolution of a disagreement through informal efforts the Chairman will follow the dispute resolution procedure described below. The aim is to resolve the matter at the first available opportunity and only to follow this procedure if initial action fails to achieve resolution:
- 9.2.1 The Chairman will call a joint meeting (“Resolution Meeting”) of the members of the Council of Governors and Board of Directors to take place as soon as possible, but no later than 20 clear Working Days following the date of the request. The meeting must at least comprise two thirds of the membership of the Council of Governors and two thirds of the membership of the Board of Directors. The meeting will be held in private. The aim of the meeting will be to achieve resolution of the conflict. The Chairman will have the right to appoint an independent facilitator to assist the process. Every reasonable effort must be made to reach agreement.
  - 9.2.2 If a Resolution Meeting of the members of the Council of Governors and Board of Directors fails to resolve a conflict, the Board of Directors will decide the disputed matter.
  - 9.2.3 If following the formal Resolution Meeting, and the decision of the Board of Directors, the Council of Governors considers that implementation of the decision will result in the Trust failing to comply with the Licence, the Council of Governors will notify NHS Improvement of the specific issue of non-compliance.
- 9.3 The right to call a Resolution Meeting rests with following, in the sequence of escalation shown:
- 9.3.1 the Chairman;
  - 9.3.2 the Chief Executive;
  - 9.3.3 two thirds of the members of the Council of Governors;
  - 9.3.4 two thirds of the members of the Board of Directors.

## **10. MISCELLANEOUS**

### **10.1 Review of Standing Orders**

These Standing Orders shall be reviewed annually by the Council of Governors. The requirement for review extends to all documents having the effect as if incorporated in Standing Orders.

### **10.2 Vice Chairman**

In relation to any matter touching or concerning the Council of Governors or a Governor outside a meeting of the Council of Governors, which arises during the Chairman’s absence or unavailability, at the request of the Chief Executive the Vice Chairman or in the absence or unavailability of the Vice Chairman the Reserve Chairman may exercise such power as the Chairman would have in those circumstances.

**10.3 Notice**

Any written notice required by these Standing Orders shall be deemed to have been given on the day the notice was sent to the recipient and received by the person or organisation to whom it was addressed on the day after it was sent.

**10.4 Confidentiality**

A Governor shall not disclose any matter reported to the Council of Governors notwithstanding that the matter has been reported or action has been concluded, if the Council of Governors shall resolve that it is confidential

**ANNEX 8 – STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE BOARD OF DIRECTORS**

**Rotherham Doncaster and South  
Humber NHS Foundation Trust**

**Standing Orders**

**Board of Directors**

## FOREWORD

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

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## 1. INTRODUCTION

### Statutory Framework

- a) The Trust is a Public Benefit Corporation that was established by the granting of Authorisation by NHS Improvement.
- b) The statutory functions conferred on the Trust are set out in the 2006 Act and in the Trust's Licence.
- c) The Board of Directors is also required to adopt a schedule of reservation of powers and delegation of powers. The Standing Orders set out the detail of these arrangements. Under the Standing Order relating to the Arrangements for the Exercise of Functions by delegation (Standing Order 4) the Trust is given powers to "make arrangements for the exercise, on behalf of the Trust of any of their functions by a committee and sub-committee, appointed by virtue of Standing Order 5 or by an officer of the Trust, in each case subject to such restrictions and conditions as the Trust thinks fit. Delegated Powers shall be covered in a separate document ("Reservation of Powers to the Board and Delegation of Powers"). This document shall have effect as if incorporated into the Standing Orders.
- d) In accordance with paragraph 26 of the Constitution, the Standing Orders of the Board of Directors are set out in this Annex 8.

### Interpretation

- (e) For convenience, and unless the context otherwise requires, the terms and expressions contained within paragraph 38 of the Trust's Constitution relating to Interpretation are incorporated and are deemed to have been repeated here verbatim for the purposes of interpreting words contained in this Annex 8.

## 2. THE BOARD OF DIRECTORS

The Trust has the functions conferred on it by the 2006 Act and the Terms of the Authorisation. All business shall be conducted in the name of the Trust.

All funds received in trust shall be held in the name of the Trust as corporate trustee. 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 NHS Improvement.

### 2.1 Roles and Responsibilities of Directors:

The Board of Directors is the body which exercises all the powers of the Trust on its behalf, which is held to account for all the activities of the Trust and which is responsible for ensuring that the Trust operates properly and effectively. The Board of Directors is responsible for the day-to-day operational and strategic management of the Trust.

The Board of Directors shall be primarily concerned with ensuring the financial viability of the organisation, assessing and managing business risk and holding financial and legal responsibility for the organisation. The Directors are the senior management of the organisation, with the final say on all matters, including finance, policy, employer responsibilities etc. They are accountable for ensuring that the highest clinical standards are maintained.

The Board of Directors shall:

- 2.1.1 exercise all the powers of the Trust on its behalf
- 2.1.2 set the vision, values and priorities of the Trust in consultation with the Council of Governors;
- 2.1.3 provide strategic leadership and direction;
- 2.1.4 develop strategies and plans for the future;
- 2.1.5 have oversight of operational activity ensuring targets and objectives are set and achieved, and the highest clinical standards are met;
- 2.1.6 have collective responsibility for control of monies;
- 2.1.7 establish sub-committees which will ensure that the Board of Directors effectively exercises its functions to ensure that Trust objectives are met and that probity is maintained.

All decision making will be based on principles of sound governance (corporate, clinical and research), with due discussion and diversity in debate, and with appropriate and timely documentation to support evidence based decision making.

## **2.2 Composition of the Board of Directors**

The composition of the Board of Directors shall be as set out in paragraph 20 of the Constitution. The Non-Executive Directors shall form over 50% of the Board of Directors.

## **2.3 Appointment of the Chairman and Non Executive Directors**

The Chairman and Non-Executive Directors shall be appointed by the Council of Governors in accordance with paragraph 22 of the Constitution.

## **2.4 Terms of Office of the Chairman**

The provisions governing the period of tenure of office of the Chairman and the termination or suspension of office of the Chairman are contained in paragraph 28 of the Constitution.

## **2.5 Appointment of Vice-Chairman**

The Board of Directors shall appoint a Vice-Chairman in accordance with paragraph 23 of the Constitution.

2.6 Any Non Executive Director so appointed may at any time resign from the office of Vice-Chairman by giving notice in writing to the Secretary to the Trust and the Board of Directors of the Trust may thereupon appoint another Vice-Chairman in accordance with paragraph 23 of the Constitution.

2.7 The Vice-Chairman may preside at meetings of the Board of Directors in the following circumstances:

- 2.7.1 when there is a need for someone to have the authority to chair any meeting of the Board of Directors when the Chairman is



not present; or

- 2.7.2 on occasions when the Chairman declares a pecuniary interest or other interest in accordance with paragraph 27 of the Constitution that prevents him from taking part in the consideration or discussion of a matter before the Board of Directors.

## **2.8 Independent Directors**

At least half of the Board of Directors, excluding the Chairman, shall comprise Non-Executive Directors determined by the Board of Directors to be independent. The Board of Directors shall appoint one of the independent Non-Executive Directors to be the Senior Independent Director, in consultation with the Council of Governors. The Senior Independent Director shall be available to Members and Governors if they have concerns which contact through the normal channels of the Chairman, Chief Executive or Finance Director has failed to resolve or for which such contact is inappropriate. The Vice Chairman may be appointed as the Senior Independent Director but this is not mandatory.

## **3. MEETINGS OF THE BOARD OF DIRECTORS**

### **3.1 Admission of the Public and the Press**

The public and representatives of the press shall be afforded facilities to attend formal meetings of the Board on a monthly basis but shall be required to withdraw upon the Board 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 the business to be transacted, publicity or which would be prejudicial to the public interest".*

- 3.2 The Chairman (or Vice-Chairman) shall give such directions as he thinks fit in regard to the arrangements for meetings and accommodation of the public and representatives of the press such as to ensure that the Trust 's business shall be conducted without interruption and disruption and, without prejudice to the power to exclude on grounds of the confidential nature of the business to be transacted, the public will be required to withdraw upon the Board resolving as follows:

*"That in the interests of public order the meeting adjourn for (the period to be specified) to enable the Board to complete business without the presence of the public".*

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

- 3.4 Matters to be dealt with by the Board following the exclusion of representatives of the press, and other members of the public, as provided in Standing Orders 3.1 and 3.2 above, shall be confidential to the Directors of the Board.

Directors and Officers or any employee of the Trust in attendance shall not reveal or disclose the contents of papers marked 'In Confidence' or minutes headed 'Items Taken in Private' outside of the Trust, without the express permission of the Trust. This prohibition shall apply equally to the content of any discussion during the Board meeting which may take place on such reports or papers.

### **3.5 Observers at Trust meetings**

The Trust will decide what arrangements and terms and conditions it feels are appropriate to offer in extending an invitation to observers to attend and address any of the Board's meetings and may change, alter or vary these terms and conditions as it deems fit.

### **3.6 Calling Meetings**

Ordinary meetings of the Board shall be held at such times and places as the Board may determine.

3.7 The Chairman of the Trust 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.

### **3.8 Notice of Meetings**

Before each meeting of the Board, a notice of the meeting, specifying the business proposed to be transacted at it, and signed by the Chairman or by an officer 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 three Working Days before the meeting.

3.9 Want of service of the notice on any Director shall not affect the validity of a meeting or any decision made thereat.

3.10 In the case of a meeting called by Directors in default of the Chairman, the notice shall be signed by those Directors calling the meeting and no business shall be transacted at the meeting other than that specified in the notice.

3.11 Agendas and available supporting papers will be sent to Directors 6 Working Days before the meeting but will certainly be despatched no later than three clear Working Days before the meeting, save in an emergency. Failure to serve such a notice on more than three Directors will invalidate the meeting. A notice shall be presumed to have been served one clear Working Day after posting.

### **3.12 Public Notice**

Before each monthly meeting of the Board a public notice of the time and place of the meeting, and the public part of the agenda, shall be displayed at the Trust's office at least three clear Working Days before the meeting and on its website.

### **3.13 Setting the Agenda**

The Board may determine that certain matters shall appear on every agenda for a meeting and shall be addressed prior to any other business being conducted. (Such matters may be identified within these Standing Orders or following subsequent resolution shall be listed in an Appendix to the Standing Orders.)

- 3.14 A Director desiring a matter to be included on an agenda shall make his request in writing to the Chairman at least 10 clear Working Days before the meeting. The request should state whether the item of business is proposed to be transacted in the presence of the public and should include appropriate supporting information. Requests made less than 10 Working Days before a meeting may be included on the agenda at the discretion of the Chairman.

**3.15 Petitions**

Where a petition has been received by the Trust the Chairman shall include the petition as an item for the agenda of the next Board meeting.

**3.16 Chairman of Meeting**

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.

- 3.17 If the Chairman is absent 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.

**3.18 Notices of Motion**

A Director desiring to move or amend a Motion shall send a written notice thereof at least 10 clear Working 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 section shall not prevent any Motion being moved during the meeting, without notice on any business mentioned on the agenda.

**3.19 Emergency Motions**

Subject to the agreement of the Chairman, a Director may give written notice of an emergency Motion after the issue of the notice of meeting and agenda, up to one hour before the time fixed for the meeting. The notice shall state the grounds of urgency. If in order, it shall be declared to the Board at the commencement of the business of the meeting as an additional item included in the agenda. The Chairman's decision to include or exclude the item shall be final.

**3.20 Contents of Motions**

The Chairman may exclude from the debate at his discretion any such Motion of which notice was not given on the notice convening the meeting other than a Motion relating to:

- 3.20.1 the reception of a report;
- 3.20.2 consideration of any item of business before the Board;
- 3.20.3 the accuracy of minutes;
- 3.20.4 that the Board proceed to next business;
- 3.20.5 that the Board adjourn;

3.20.6 that the question be now put.

### **3.21 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.

### **3.22 Motion to Rescind a Resolution**

Notice of Motion to amend or rescind any resolution (or the general substance of any resolution) which has been passed within the preceding 6 calendar months shall bear the signature of the Director who gives it and also the signature of 4 other Directors. When any such Motion has been disposed of by the Board, it shall not be permitted for any Director other than the Chairman to propose a Motion to the same effect within 6 months, save that the Chairman may do so if he considers it appropriate.

### **3.23 Motions**

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

3.24 When a Motion is under discussion or immediately prior to discussion it shall be open to a Director to move:

3.24.1 an amendment to the Motion;

3.24.2 the adjournment of the discussion or the meeting;

3.24.3 that the meeting proceed to the next business(\*);

3.24.4 the appointment of an ad hoc committee to deal with a specific item of business;

3.24.5 that the Motion be now put (\*);

3.24.6 that a Director be not further heard; or

3.24.7 a Motion to exclude the public (including the press).

(\* In the case of sub-sections denoted by (\*) above, to ensure objectivity, Motions may only be put by a Director who has not previously taken part in the debate and who is eligible to vote.

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.

### **3.25 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, relevancy, regularity and any other matters shall be final.

### **3.26 Voting**

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 the number of votes for and against a Motion being equal, the Chairman of the meeting shall have a second or casting vote.

- 3.27 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.
- 3.28 If at least one-third of the Directors present so request, the voting (other than by paper ballot) on any question may be recorded to show how each Director present voted or abstained.
- 3.29 If a Director so requests, his vote shall be recorded by name upon any vote (other than by paper ballot).
- 3.30 In no circumstances may an absent Director vote by proxy. Absence is defined as being absent at the time of the vote.
- 3.31 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.

### **3.32 Minutes**

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

- 3.33 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.
- 3.34 Minutes shall be circulated in accordance with Directors' wishes. Where providing a record of a meeting in public the minutes shall be made available to the public as required by Code of Practice on Openness in the NHS.

### **3.35 Joint Directors**

Where the office of a Director is shared jointly by more than one person:

- 3.35.1 either or both of those persons may attend or take part in meetings of the Board:
- 3.35.2 if both are present at a meeting they should cast one vote if they agree:
- 3.35.3 in the case of disagreements no vote should be cast:
- 3.35.4 the presence of either or both of those persons should count as the presence of one person for the purposes of Standing Order

3.43.

### **3.36 Suspension of Standing Orders**

Except where this would contravene any statutory provision or any guidance issued by NHS Improvement, 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.

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

3.38 A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the Chairman and to all other Directors.

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

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

### **3.41 Variation and Amendment of Standing Orders**

These Standing Orders shall be amended only if:-

3.41.1 a notice of Motion under Standing Order 3.18 has been given; and

3.41.2 no fewer than half the total of the Trust's Non-Executive Directors vote in favour of amendment; and

3.41.3 at least two-thirds of the Directors are present; and

3.41.4 the variation proposed does not contravene a statutory provision made by the Secretary of State or any term of the Trust's Authorisation; and

3.41.5 the amendment is made in accordance with the terms of the Trust's Constitution and in particular the provisions of Annex 9, section 5.7.

### **3.42 Record of Attendance**

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

### **3.43 Quorum**

No business shall be transacted at a meeting unless at least one-third of the whole number of the Chairman and Directors appointed, (including at least one Non-Executive and one Executive Director) are present.

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

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

#### **4. ARRANGEMENTS FOR THE EXERCISE OF FUNCTIONS BY DELEGATION**

- 4.1 Subject to the Constitution and the Licence the Board may make arrangements for the exercise, on behalf of the Board, of any of its functions:

4.1.1 by a committee, sub-committee appointed by virtue of Standing Order 5.1 or 5.2 below or by an officer of the Trust; or

4.1.2 by another body as defined in Standing Order 4.5 below,

in each case subject to such restrictions and conditions as the Trust thinks fit.

#### **4.2 Emergency Powers**

The powers which the Board has retained to itself 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 Chairman shall be reported to the next formal meeting of the Board in public session for ratification.

#### **4.3 Delegation to Committees**

The Board may (and where so required by this Constitution shall) agree from time to time to the delegation of executive powers to be exercised by committees, or sub-committees, or joint-committees, which it has formally constituted. The constitution and terms of reference of these committees, or sub-committees, or joint committees, and their specific executive powers shall be approved by the Board in respect of its sub-committees.

#### **4.4 Delegation to Officers**

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

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

- 4.6 Nothing in the Scheme of Delegation shall impair the discharge of the direct accountability to the Board of the Finance Director and other Executive Directors, to provide information and advise the Board in accordance with statutory, NHS Improvement or Department of Health requirements. Outside these statutory requirements the Finance Director and other Executive Directors shall be accountable to the Chief Executive for operational matters.
- 4.7 The arrangements made by the Board as set out in the Scheme of Delegation shall have effect as if incorporated in these Standing Orders.

#### **4.8 Overriding Standing Orders**

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

### **5. COMMITTEES**

- 5.1 Subject to such guidance as may be issued by NHS Improvement, the Trust may appoint committees of the Trust, or together with one or more Clinical Commissioning groups or other Trusts authorised to do so, appoint joint committees, consisting wholly or partly of the Chairman and Directors of the Trust or other health service bodies or wholly of persons who are not Directors or other health service bodies in question.
- 5.2 A committee or joint committee appointed under this section 5 may, subject to such guidance as issued by NHS Improvement, appoint sub-committees consisting wholly or partly of Directors of the committee or joint committee (whether or not they are Directors of the Trust); or wholly of persons who are not Directors of the committee of the Trust.
- 5.3 The Standing Orders of the Trust, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees established by the Trust. In which case the term "Chairman" is to be read as a reference to the Chairman of the committee as the context permits, and the term "Member" is to be read as a reference to a Member of the committee also as the context permits. (There is no requirement to hold meetings of committees, established by the Trust in public.)
- 5.4 Each such committee shall have such terms of reference and powers and be subject to such conditions (as to reporting to the Board), as the Board shall decide and shall be in accordance with any relevant legislation and regulation as may be applicable. Such terms of reference, and powers shall have effect as if incorporated into the Standing Orders.
- 5.5 Where committees are authorised to establish sub-committees they may not delegate executive powers to the sub-committee unless expressly authorised by the Board.
- 5.6 The Board shall approve the appointments to each of the committees which it has formally constituted. Where the Board determines that persons who are neither Directors nor officers shall be appointed to a committee, the terms of such appointment shall be within the powers of the Board. The Board shall define the powers of such appointees and shall agree allowances, including reimbursement for loss of earnings, and/or expenses in accordance, where appropriate, with national guidance.



- 5.7 Where the Board is required to appoint persons to a committee and/or to undertake statutory functions, and where such appointments are to operate independently of the Board, such appointment shall be made in accordance with applicable statute and regulations, and with any guidance issued by NHS Improvement.
- 5.8 The committees established by the Board shall include:-
- 5.8.1 the Audit Committee;
  - 5.8.2 the Remuneration Committee; and
  - 5.8.3 the Mental Health Legislation Committee; and
  - 5.8.4 the Charitable Funds Committee; and
  - 5.8.5 the Quality Committee; and
  - 5.8.6 the Finance, Performance and Informatics Committee

## **6. DECLARATIONS OF INTERESTS AND REGISTER OF INTERESTS**

### **6.1 Declaration of Interests**

Pursuant to Paragraph 20 of the Schedule 7 of the 2006 Act, a register of Directors and Governors' interests must be kept by the Trust.

If a Director has a pecuniary, personal or family interest or any other interest which is relevant and material to the Trust, 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 or is likely to be considered, by the Board of Directors, the Director shall disclose that interest to the Members of the Board of Directors as soon as he becomes aware of it.

6.2 Interests which should be disclosed include, but are not limited to:-

- 6.2.1 directorships, including non-executive directorships held in private companies or PLCs (with the exception of those of dormant companies);
- 6.2.2 ownership or part-ownership of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS;
- 6.2.3 majority or controlling share holdings in organisations likely or possibly seeking to do business with the NHS;
- 6.2.4 a position of authority in a charity or voluntary organisation in the field of health and social care;
- 6.2.5 any connection with a voluntary or other organisation contracting for NHS services;
- 6.2.6 research funding/grants that may be received by an individual or their department;
- 6.2.7 interests in pooled funds that are under separate management;

and

6.2.8 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.

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

6.4 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.

6.5 Directors' directorships in companies likely or possibly seeking to do business with the NHS should be published in the Board's annual report. The information should be kept up to date for inclusion in succeeding annual reports.

6.6 During the course of a Board meeting, if a conflict of interest is established, the Director concerned may be required by the Board to withdraw from the meeting and play no part in the relevant discussion or decision.

#### **6.7 Register of Interests**

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

6.8 These details will be kept up to date by means of an annual review of the Register in which any changes to interests declared during the preceding 12 months will be incorporated.

6.9 Copies or extracts of the Register can be provided to the public and Members free of charge and within a reasonable time period of the request. A reasonable charge may be imposed on non-Members for copies or extracts of the Register.

### **7. DISABILITY OF CHAIRMAN AND DIRECTORS IN PROCEEDINGS ON ACCOUNT OF PECUNIARY INTEREST**

7.1 Subject to the following provisions of this Standing Order and notwithstanding the provisions of Standing Order 6.6, if the Chairman or other Director has any pecuniary interest, whether that interest is actual or potential or whether the interest is direct or indirect, in any contract, proposed contract or other matter or other interest within the meaning of paragraph 27 of the Constitution and is present at a meeting of the Trust at which the contract or other matter is the subject of consideration, he shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not take part in the consideration or discussion of the contract or other matter or vote on any question with respect to it.

7.2 The Board may exclude the Chairman or 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 Any remuneration, compensation or allowance payable to the Chairman or a Director shall not be treated as a pecuniary interest for the purpose of this Standing Order.

7.4 For the purpose of this Standing Order the Chairman or a Director shall be treated, subject to Standing Order 7.5, as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if:

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

7.4.2 he is a partner 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.

7.5 A person shall not be regarded as having a pecuniary interest in any contract if:-

7.5.1 neither he or any person connected with him has any beneficial interest in the securities of a company of which he or such person appears as a Director, or

7.5.2 any interest that he or any person connected with him may have in the contract is so remote or insignificant that it cannot reasonably be regarded as likely to influence him/her in relation to considering or voting on that contract, or

7.5.3 those securities of any company in which he (or any person connected with him) has a beneficial interest do not exceed £5,000 in nominal value or one per cent of the total issued share capital of the company or of the relevant Class of such capital, whichever is the less

provided that where Standing Order 7.5 `above applies the person shall nevertheless be obliged to disclose/declare their interest in accordance with Standing Order 6.2

7.6 This Standing Order applies to a committee or sub-committee and to a joint committee as it applies to the Trust and applies to a 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.

## **8. STANDARDS OF BUSINESS CONDUCT POLICY**

8.1 All Trust staff and Directors must comply with the national guidance contained in HSG 1993/5 "Standards of Business Conduct for NHS Staff". This section of Standing Orders should be read in conjunction with this document.

### **8.2 Interest of Officers in Contracts**

If it comes to the knowledge of 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 persons living together as partners, the interest of one partner shall, if known to the other, be deemed to be also the interest of that partner.

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

The Trust requires interests, employment or relationships declared, to be entered in a register of interests of staff.

**8.4 Canvassing of, and Recommendations by, Directors in Relation to Appointments**

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

- 8.5 A Director shall not solicit for any person any appointment under the Trust or recommend any person for such appointment: but this section 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.

- 8.6 Informal discussions regarding outside appointments panels or committees, whether solicited or unsolicited, should be declared to the panel or committee.

**8.7 Relatives of Directors or Officers**

Candidates for any staff appointment under the Trust shall, when making application, disclose in writing to the Trust whether they are related to any Director or the holder of any office under the Trust.

- 8.8 The Chairman and every Director and officer of the Trust shall disclose to the Chief Executive any relationship between himself and a candidate of whose candidature that Director or officer is aware. It shall be the duty of the Chief Executive to report to the Board any such disclosure made.

- 8.9 On appointment (and prior to acceptance of an appointment in the case of officer Directors), Directors should disclose to the Board whether they are related to any other Director or holder of any office in the Trust.

- 8.10 Where the relationship to a Director of the Trust is disclosed, Standing Order 7 shall apply.

**9. RESOLUTION OF DISPUTES**

- 9.1 The Council of Governors and the Board of Directors must be committed to developing and maintaining a constructive and positive relationship. The aim at all time is to resolve any potential or actual differences of opinion quickly, through discussion and negotiation.

- 9.2 If the Chairman cannot achieve resolution of a disagreement through informal efforts the Chairman will follow the dispute resolution procedure described below. The aim is to resolve the matter at the first available opportunity and only to follow this procedure if initial action fails to achieve resolution:

- 9.2.1 The Chairman will call a joint meeting ("Resolution Meeting") of the members of the Council of Governors and Board of Directors, to take place as soon as possible, but no later than 20 clear Working Days following the date of the request. The meeting must comprise at least two thirds of the membership of the Council of Governors and two thirds of the membership

of the Board of Directors. The meeting will be held in private. The aim of the meeting will be to achieve resolution of the conflict. The Chairman will have the right to appoint an independent facilitator to assist the process. Every reasonable effort must be made to reach agreement.

9.2.2 If a Resolution Meeting of the members of the Council of Governors and Board of Directors fails to resolve a conflict, the Board of Directors will decide the disputed matter.

9.2.3 If following the Resolution Meeting, and any decision of the Board of Directors, the Council of Governors considers that implementation of the decision will result in the Trust failing to comply with the Licence, the Council of Governors will notify NHS Improvement of the specific issue of non-compliance.

9.2.4 The right to call a Resolution Meeting rests with following, in the sequence of escalation shown:

9.2.4.1 the Chairman;

9.2.4.2 the Chief Executive;

9.2.4.3 two thirds or more of the members of the Council of Governors;

9.2.4.4 two thirds or more of the members of the Board of Directors.

## **10. MISCELLANEOUS**

### **10.1 Review of Standing Orders**

These Standing Orders shall be reviewed annually by the Board of Directors. The requirement for review extends to all documents having the effect as if incorporated in Standing Orders.

### **10.2 Vice Chairman**

In relation to any matter touching or concerning the Council of Governors or a Governor outside a meeting of the Council of Governors, which arises during the Chairman's absence or unavailability, at the request of the Chief Executive the Vice-Chairman may exercise such power as the Chairman would have in those circumstances.

### **10.3 Notice**

Any written notice required by these Standing Orders shall be deemed to have been given on the day the notice was sent to the recipient.

### **10.4 Confidentiality**

A Director shall not disclose any matter reported to the Board of Directors notwithstanding that the matter has been reported or action has been concluded, if the Board of Directors shall resolve that it is confidential.

## **ANNEX 9 – FURTHER PROVISIONS**

### **1. Eligibility for Membership**

- 1.1** An individual shall be eligible for Membership of the Trust if he:-
- 1.1.1 is at least 16 years of age at the date of his application or invitation to become a Member (as the case may be); and
  - 1.1.2 he is otherwise eligible for Membership pursuant to the terms of this Constitution.

#### **Public Constituency**

- 1.2** For the purposes of determining whether an individual lives in an Area specified as an Area for Public Constituency, an individual shall be deemed to do so if;
- 1.2.1 his name appears on the electoral roll at an address within the said Area and the Trust has no reasonable cause to conclude that the individual is not living at that address; or
  - 1.2.2 the Trust is otherwise satisfied that the individual lives in the said area.
- 1.3** An individual who is a Member of the Public Constituency shall cease to be eligible to continue as a Member if he ceases to live in the Area of the Public Constituency of which he is a Member, save as may otherwise be provided in this section 1.
- 1.4** Where a Member of a Public Constituency ceases to live permanently in the Area of the Public Constituency of which he is a Member he shall forthwith advise the Trust that he is no longer eligible to continue as a Member and the Trust shall forthwith remove his name from the Register of Members, unless the Trust is satisfied that the individual concerned lives in some other Area of a Public Constituency of the Trust. Where the Trust is satisfied that such an individual continues to live in the Area of a Public Constituency of the Trust it shall, if the individual so requests, thereafter treat that individual as a Member of that other Public Constituency and amend the Register of Members accordingly provided the Trust has given that individual not less than 14 Working Days notice of its intention to do so.
- 1.5** Where a Member ceases to live temporarily in the area of the Public Constituency of which he is a Member, the Trust may permit that individual nonetheless to remain on the Register of Members for that Public Constituency if it is for good cause satisfied that the Member continues to live in the area of the Trust for the purposes of this Constitution and the 2006 Act, that the absence is of a temporary duration only and that the Member will either return to live in the Area of that Public Constituency of which he is a Member or will live in some other part of the Area of the Trust in which case the provisions of section 1.5 shall apply as appropriate.

#### **Staff Constituency**

- 1.6** A Member of a Staff Class will cease to be eligible to be a Member of that Staff Class if they no longer meet the eligibility requirements of paragraph 7 of the Constitution and of Annex 2.

- 1.7 Where an individual is a Member by virtue of their eligibility to be a Member of a Staff Class and they cease to be eligible for Membership of that Staff Class but are eligible for Membership of some other Staff Class then the Trust may give notice to that Member of its intention to transfer him to that other Staff Class on the expiration of a period of time or upon a date specified in the said notice and shall after the expiration of that notice or date amend the Register of Members accordingly.

### **Service Users and Carers Constituency**

- 1.8 A Member of the Service Users and Carers Constituency who qualified for Membership of a Class but who, in the reasonable opinion of the Trust and having regard to all the circumstances, ought more properly to be a Member of some other Class having regard to the provisions of Annex 2 may be transferred to that other Class by the Trust upon giving that Service User not less than 21 days notice of its intention to do so and upon the expiration of that notice period the Trust shall amend the Register of Members accordingly.
- 1.9 Where a Service User is transferred from one Class to another in accordance with the preceding section, any Carer of that Member who is a Member of the Trust shall also be transferred to the same Class and the Register of Members amended accordingly.

## **2. Application for Membership**

- 2.1 An individual may become a Member by application to the Trust in accordance with this Constitution or, where so provided for in this Constitution, by being invited by the Trust to become a Member of a Staff Class of the Staff Constituency in accordance with paragraph 8 of this Constitution.
- 2.2 Where an individual wishes to apply to become a Member of the Trust, the following procedure shall apply:-
- 2.2.1 the Trust shall upon request supply the individual with a form of application for Membership in a form determined by the Trust;
  - 2.2.2 upon receipt of the said form of application duly completed and signed by the applicant (or in the Trust's discretion signed on behalf of the applicant) the Trust shall as soon as is reasonable practicable and in any event within 10 Working Days of receipt of the duly completed form consider the same;
  - 2.2.3 unless the applicant is ineligible for Membership or is disqualified from Membership, the Trust shall cause his name to be entered forthwith on the Trust's Register of Members and shall give notice in writing to the applicant of that fact;
  - 2.2.4 upon the applicant's name being entered on the Trust's Register of Members the individual shall thereupon become a Member;
  - 2.2.5 the information to be included in the Trust's Register of Members shall include the following details relating to that Member:
    - 2.2.5.1 his full name and title;
    - 2.2.5.2 his date of birth;

- 2.2.5.3 his full postal address;
  - 2.2.5.4 his home telephone number (if any);
  - 2.2.5.5 his email address (if any);
  - 2.2.5.6 the Constituency and Class of which he is a Member;
  - 2.2.5.7 the date upon which he became a Member;
  - 2.2.5.8 his gender, ethnicity and any disability, and
  - 2.2.5.9 his affiliation to any health and social care group.
- 2.3** Where an individual is to be invited by the Trust to become a Member, the following procedure shall apply:-
- 2.3.1 the Trust shall take all reasonable steps to satisfy itself that the individual is eligible to become a Member of the Staff Class of the Staff Constituency relevant to him before inviting him to become a Member of the Trust and that it has all the information needed to complete the Register of Members in accordance with section 2.2.5 above;
  - 2.3.2 the Trust having so satisfied itself, it shall thereupon invite that individual to become a Member pursuant to paragraph 8 of this Constitution and if necessary shall request the individual to provide such further information, if any, as it may need to complete the necessary entry in the Register of Members;
  - 2.3.3 unless the individual has within 14 Working Days of the date upon which the Trust dispatches its invitation to him to become a Member advised the Trust that he does not wish to become a Member, the Trust shall thereupon enter that individual's name on the Register of Members and he shall thereupon become a Member provided that the Trust has been provided with the information, if any, requested pursuant to section 2.3.2 to enable it to complete the relevant entry in the Register of Members;
  - 2.3.4 if the individual has failed to provide the information requested by the Trust within 14 days of being invited by the Trust to provide it in accordance with section 2.3.2 above, the Trust shall give notice in writing to the applicant that the information has not been provided and that unless and until the information is provided that individual's name shall not be entered on the Register of Members.
- 2.4** No individual who is ineligible or disqualified from Membership shall be entered or remain on the Register of Members.
- 2.5** For the avoidance of doubt, an individual shall become a Member on the date upon which his name is entered on the Trust's Register of Members and shall cease to be a Member upon the date on which his name is removed from the Register of Members as provided for in this Constitution.
- 2.6** The Trust shall procure that the Register of Members and all other Registers to be maintained in accordance with this Constitution or in accordance with the 2006 Act are regularly reviewed and updated and that the Register of Members in particular is reviewed and updated as appropriate and no less often than every 28 days.



- 2.7 Where, in the reasonable opinion of the Trust, a Member is no longer eligible or his disqualified from Membership of the Trust, it shall be entitled to remove the name of that individual from the Register of Members and that individual shall thereupon cease to be a Member, provided always that this power shall not be exercised until the Trust has given not less than 14 Working Days written notice to the Member addressed to him at the address given in the Register of Members of its intention to remove him from the Register and that Member has not within that period notified the trust of his wish to continue as a Member and provided proof satisfactory to the Trust of his continued eligibility provided that any of the information contained in paragraph 2.2.5 shall only be made available to members of the public in accordance with the provisions contained in Clause 30.1 of this Constitution.

### 3. Members' Meetings

- 3.1 The Trust shall hold a Members' Meeting for all the Members (called the "Annual Members' Meeting") within 8 months of the end of each financial year of the trust.
- 3.2 Any Members' Meetings other than the Annual Members' Meeting shall be called "Special Members' Meetings".
- 3.3 Members' Meetings shall be open to all Members of the Trust, Members of the Council of Governors and the Board of Directors, representatives of the Trust's financial auditors and to Members of the public. The Trust may invite representatives of the media, and any experts or advisors, whose attendance they consider to be in the best interests of the Trust to attend a Members' Meeting.
- 3.4 All Members' Meetings are to be convened by order of the Board of Directors.
- 3.5 The Trust may make provision for Members' Meetings to be held at different venues whether simultaneously or at different times.
- 3.6 The Board of Directors shall present to the Members at the Annual Members' Meeting: -
- 3.6.1 a report on steps taken to secure that (taken as a whole) the actual Membership is representative of those eligible for such Membership;
  - 3.6.2 the progress of the Membership Strategy;
  - 3.6.3 any proposed changes to the policy for the composition of the Council of Governors and of the Non-Executive Directors; and
  - 3.6.4 the results of the Election and appointment of Governors and any other reports or documentation it considers necessary or otherwise required by NHS Improvement or the 2006 Act.
- 3.7 The Trust shall give notice of all Members' Meetings:-
- 3.7.1 by notice in writing to all Members;
  - 3.7.2 by notice prominently displayed at the Trust's main address and at all of the Trust's principal places of business;
  - 3.7.3 by notice on the Trust's website at least 14 Working Days before the date of the meeting;

3.7.4 to the Council of Governors and the Board of Directors, and to the Trust's auditors stating whether the meeting is an Annual or Special Members' Meeting giving the time, date and place of the meeting and indicating the business to be dealt with at the meeting.

3.8 The Chairman, or in his absence the Vice Chairman, or in their absence the Reserve Chairman shall preside at all Members' Meetings of the Trust. If none of the Chairman, the Vice Chairman or the Reserve Chairman is present the Governors present shall elect one of their number to be Chairman and if there is only one Governor present and willing to act that person shall be Chairman. If no Governor is willing to act as Chairman or if no Governor is present within fifteen minutes after the time appointed for holding the meeting, the Members present and entitled to vote shall choose one of their number to be Chairman

#### **4. Board of Directors: Disqualification**

4.1 In addition to the grounds of disqualification set out in paragraph 25 of the Constitution, a person may also not be or continue as a Director of the Trust if:-

4.1.1 in the case of a Non-Executive Director, he no longer satisfies all relevant appointment requirements;

4.1.2 he is a person whose tenure of office as a chairman or as a member or director of a health service body has been terminated on the grounds that his appointment is not in the interests of public service, or for non-disclosure of a pecuniary interest;

4.1.3 he has within the preceding 2 years been dismissed, otherwise than by reason of redundancy, by the coming to an end of fixed term contract or through ill health, from any paid employment with a health service body;

4.1.4 information revealed by a Criminal Records Bureau check is such that it would be inappropriate for him to become or continue as a Director on the grounds that this would adversely affect public confidence in the Trust or otherwise bring the Trust into disrepute; or

4.1.5 in the case of an Executive Director, he is no longer employed by the Trust.

#### **5. Governors and Directors: Communication and Conflict**

##### **5.1 Summary**

This section 5 describes the processes intended to ensure a successful and constructive relationship between the Council of Governors and the Board of Directors. It emphasises the importance of informal and formal communication, and confirms the formal arrangements for communication within the Trust. It suggests an approach to informal communications, and sets out the formal arrangements for resolving conflicts between the Council of Governors and the Board of Directors.

##### **5.2 Informal Communications**

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

- 5.2.2 The Chairman shall use his reasonable endeavours to encourage effective informal methods of communication including: -
- 5.2.2.1 participation of the Board of Directors in the induction, orientation and training of Governors;
  - 5.2.2.2 development of special interest relationships between Non-Executive Directors and Governors;
  - 5.2.2.3 discussions between governors and the Chairman and/or the Chief Executive and/or Directors through the office of the Chief Executive or his nominated officer; and
  - 5.2.2.4 involvement in Membership recruitment and briefings at public events organised by the Trust.

### **5.3 Formal Communication**

- 5.3.1 Some aspects of formal communication are defined by the constitutional roles and responsibilities of the Council of Governors and the Board of Directors respectively.
- 5.3.2 Formal communications initiated by the Council of Governors and intended for the Board of Directors will be conducted as follows:-
- 5.3.2.1 specific requests by the Council of Governors will be made through the Chairman to the Board of Directors;
  - 5.3.2.2 any Governor has the right to raise specific issues to be put to the Board of Directors at a duly constituted meeting of the Council of Governors through the Chairman but if the Chairman declines to raise any such issue the said Governor may nonetheless still raise it provided at least two thirds of the Governors present approve his request to do so. The Chairman shall then raise the matter with the Board of Directors and provide the response to the Council of Governors;
  - 5.3.2.3 joint meetings will take place between the Council of Governors and the Board of Directors as and when appropriate.
- 5.3.3 The Board of Directors may request the Chairman to seek the views of the Council of Governors on such matters as the Board of Directors may from time to time determine.
- 5.3.4 Communications between the Council of Governors and the Board of Directors may occur with regard to, but shall not be limited to:-
- 5.3.4.1 the Board of Directors proposals for the strategic direction and the Annual business plan;
  - 5.3.4.2 the Board of Directors' proposals for developments;
  - 5.3.4.3 Trust performance;
  - 5.3.4.4 involvement in service reviews and evaluation relating to the trust's services; and

- 5.3.4.5 proposed changes, plans and developments for the Trust other than may be covered by section 5.3.4.2 above.
- 5.3.5 The Board of Directors shall also present to the Council of Governors the annual accounts, annual report and auditors report in accordance with paragraph 36 of this Constitution and of the 2006 Act.
- 5.3.6 The following formal methods of communication may also be used as appropriate with the consent of both the Council of Governors and the Board of Directors:-
  - 5.3.6.1 attendance by the Board of Directors at a meeting of the Council of Governors;
  - 5.3.6.2 provision of formal reports or presentations by Executive Directors to a meeting of the Council of Governors;
  - 5.3.6.3 inclusion of appropriate minutes for information on the agenda of a meeting of the Council of Governors;
  - 5.3.6.4 reporting the views of the Council of Governors to the Board of Directors through the Chairman or Vice Chairman.

#### **5.4 Resolving Conflict**

- 5.4.1 The Council of Governors and the Board of Directors must be committed to developing and maintaining a constructive and positive relationship. The aim at all time is to resolve any potential or actual differences of opinion quickly, through discussion and negotiation.
- 5.4.2 If the Chairman cannot achieve resolution of a disagreement through informal efforts the Chairman will follow the dispute resolution procedure described below. The aim is to resolve the matter at the first available opportunity and only to follow this procedure if initial action fails to achieve resolution:
  - 5.4.2.1 The Chairman will call a joint meeting (“Resolution Meeting”) of the members of the Council of Governors and Board of Directors, to take place as soon as possible, but no later than 20 clear Working Days following the date of the request. The meeting must comprise at least two thirds of the membership of the Council of Governors and at least two thirds of the membership of the Board of Directors. The meeting will be held in private. The aim of the meeting will be to achieve resolution of the conflict. The Chairman will have the right to appoint an independent facilitator to assist the process. Every reasonable effort must be made to reach agreement.
  - 5.4.2.2 If a Resolution Meeting of the members of the Council of Governors and Board of Directors fails to resolve a conflict, the Board of Directors will decide the disputed matter.
  - 5.4.2.3 If following the Resolution Meeting, and any decision of the Board of Directors, the Council of Governors considers that implementation of the decision will result in the trust failing to comply with the Licence, the Council of Governors will notify NHS Improvement of the specific issue of non-compliance.

5.4.3 The right to call a Resolution Meeting rests with following, in the sequence of escalation shown:

5.4.3.1 the Chairman;

5.4.3.2 the Chief Executive;

5.4.3.3 two thirds or more of the members of the Council of Governors;

5.4.3.4 two thirds or more of the members of the Board of Directors.

## **5.5 Other Disputes**

5.5.1 Where an individual is held by the Trust to be ineligible and/or disqualified from Membership of the Trust and disputes the Trust's decision in this respect, the matter shall be referred to the Chief Executive (or such other officer of the Trust as the Chief Executive may nominate) as soon as reasonably practicable thereafter.

5.5.2 The Chief Executive (or his nominated representative) shall:

5.5.2.1 review the original decision having regard to any representations made by the individual concerned and such other material, if any, as the Chief Executive considers appropriate;

5.5.2.2 then either confirm the original decision or make some other decision as appropriate based on the evidence which he has considered; and

5.5.2.3 communicate his decision and the reasons for it in writing to the individual concerned as soon as reasonably practicable.

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

## **5.6 Indemnity**

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

## **5.7 Validity of Actions**

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