

University Hospital Southampton NHS Foundation Trust

(A Public Benefit Corporation)

Constitution

Version control

V1	UHST	10 April 2013
V2	UHSFT	2 July 2014
V3	UHSFT	23 May 2016
V4	Hempsons	10 June 2016
V5	DAC Beachcroft	April 2018

Table of contents

Clause heading and number

Page number

1.	Name	1
2.	Principal purpose	1
3.	Powers	1
4.	Membership and constituencies	1
5.	Application for membership	1
6.	Public constituency	1
7.	Staff constituency	2
8.	Restriction on membership	2
9.	Annual Members' Meeting	3
10.	Council of governors - composition	3
11.	Council of Governors - election of governors	4
12.	Council of governors: vacancies	4
13.	Voting at council of governors elections	4
14.	Council of governors - tenure	4
15.	Council of governors - disqualification and removal	4
16.	Council of governors – duties of governors	6
17.	Council of governors – meetings of governors	6
18.	Council of governors - standing orders	7
19.	Council of governors - conflicts of interest of governors	7
20.	Council of governors - expenses	7
21.	Council of governors - further provisions	7
22.	Board of directors - composition	7
23.	Board of directors – general duty	7
24.	Board of directors - qualification for appointment as a non-executive director	7
25.	Board of directors - appointment and removal of chair and other non-executive directors	8
26.	Board of directors - appointment of deputy chair	8
27.	Board of Directors – appointment of Senior Independent Director	8
28.	Board of directors - appointment and removal of the chief executive and other executive directors	8
29.	Board of directors - disqualification	9
30.	Board of directors – meetings	10
31.	Board of directors - standing orders	10
32.	Board of directors - conflicts of interest of directors	10
33.	Registers	11
34.	Admission to and removal from the registers	12
35.	Registers - inspection and copies	12
36.	Documents available for public inspection	13
37.	Auditor	14
38.	Audit committee	14
39.	Accounts	14
40.	Annual report and forward plans and non-NHS work	14
41.	Presentation of the accounts and reports to the governors and members	15
42.	Instruments	15
43.	Amendment of the constitution	15
44.	Significant transactions	16
45.	Mergers, acquisitions, separations and dissolution	16
46.	Interpretation and definitions	16
	ANNEX 1 - The Public Constituency	19
	ANNEX 2 - The Staff Constituency	20
	ANNEX 3 – Composition of Council of Governors	21
	ANNEX 4 – The Model Election Rules	22
	ANNEX 5 – Additional Provisions – Council of Governors	50
	ANNEX 6 – Standing Orders for the Practice and Procedure of the Council of Governors	52
	ANNEX 7 – Standing Orders for the Practice and Procedure of the Board of Directors	64
	ANNEX 8 – Further Provisions	75

1. **Name**
 - 1.1 The name of the foundation trust is University Hospital Southampton NHS Foundation Trust (the Trust).
2. **Principal purpose**
 - 2.1 The principal purpose of the Trust is 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.
 - 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**
 - 4.1 The Trust shall have members, each of whom shall be a member of one of the following constituencies:
 - 4.1.1 a public constituency; or
 - 4.1.2 a staff 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.
6. **Public constituency**
 - 6.1 An individual who lives in an area specified in annex 1 as an area for the 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 a public constituency.
 - 6.3 The minimum number of members in each public constituency is specified in annex 1.
 - 6.4 An individual who ceases to live in any area specified in Annex 1 shall cease to be a member of any public constituency. A member who moves from one area to another

shall become a member of the public constituency for that new area. Members should notify the Trust of any change of address.

- 6.5 In the case of any doubt the Trust's decision as to whether or not an individual lives in an area shall be final.

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/she is employed by the Trust under a contract of employment which has no fixed term; or
 - 7.1.2 he/she is employed by the Trust under a contract of employment which has a fixed term of at least 12 months; or
 - 7.1.3 he/she has been continuously employed by the Trust for at least 12 months under one or more fixed term contracts of employment.
- 7.2 Individuals who exercise functions for the purposes of the Trust otherwise than under a contract of employment with the Trust may become or continue as members of the staff constituency if they have exercised those functions continuously for a period of at least 12 months. For the avoidance of doubt, the definition of individuals who exercise functions for the purposes of the Trust includes individuals who are employed by a contractor but excludes any individual who is not employed by the Trust and is a Volunteer or works at the Trust under an honorary contract arrangement.
- 7.3 Those individuals who are eligible for membership of the Trust by reason of the previous provisions are referred to collectively as the staff constituency.
- 7.4 The staff constituency shall be divided into four descriptions of individuals who are eligible for membership of the staff constituency, each description of individuals being specified within annex 2 and being referred to as a class within the staff constituency.
- 7.5 The minimum number of members in each class of the staff constituency is specified in annex 2.
- 7.6 An individual who is:
- 7.6.1 eligible to become a member of the staff constituency, and
 - 7.6.2 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 without an application being made, unless he/she informs the Trust that he/she does not wish to do so.

8. **Restriction on membership**

- 8.1 An individual who is a member of a constituency or of a class or area within a constituency may not, while membership of that constituency, class or area continues, be a member of any other constituency, class or area.
- 8.2 An individual who satisfies the criteria for membership of the staff constituency may not become or continue as a member of any constituency other than the staff constituency.
- 8.3 An individual shall not be eligible for membership of the Trust if he:
- 8.3.1 Is under 16 years of age;

- 8.3.2 has demonstrated aggressive or violent behaviour at any of the Trust's hospitals and following such behaviour he/she has been asked to leave, has been removed or excluded from any hospital in accordance with the relevant Trust policy for withholding treatment from violent/aggressive patients.
- 8.3.3 has been confirmed as a 'vexatious complainant' in accordance with the relevant Trust policy for handling complaints.
- 8.3.4 has been removed as a member from another NHS foundation trust.
- 8.3.5 He is deemed to have acted in a manner contrary to the interests of the Trust.

All members of the Trust shall be under a duty to notify the secretary of any change in their particulars, which may affect their entitlement as a member.

8.4 A member shall cease to be a member on:

- 8.4.1 death;
- 8.4.2 resignation by notice in writing to the secretary;
- 8.4.3 removal under the procedure at paragraph 8.5; or
- 8.4.4 ceasing to fulfil the requirements of the constitution.

8.5 Where the Trust is on notice that a member may be disqualified from membership, or may no longer be eligible to be a member the secretary shall give the member 14 days' written notice to show cause why his/her name should not be removed from the register of members. On receipt of any such information supplied by the member, the secretary may, if he/she considers it appropriate, remove the member from the register of members. In the event of any dispute the secretary shall refer the matter to the council of governors to determine.

9. **Annual Members' Meeting**

9.1 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.

10. **Council of governors - composition**

- 10.1 The Trust is to have a council of governors, which shall comprise both elected and appointed governors.
- 10.2 The composition of the council of governors is specified in annex 3.
- 10.3 The members of the council of governors, other than the appointed members, shall be chosen by election by their constituency or, where there are classes or areas within a constituency, by their class or area within that constituency. The number of governors to be elected by each constituency or, where appropriate, by each class or area of each constituency, is specified in annex 3.
- 10.4 A person may not vote at an election for or stand for election as an Elected Governor unless within the specified period stated in the Model Election Rules he has made a declaration in the specified form setting out the particulars of his qualification to vote or stand as a member of the constituency for which the election is being held. It is an offence (other than in relation to the Staff Constituency) to knowingly or recklessly make such a declaration which is false in a material particular.

11. Council of Governors - election of governors

- 11.1 Elections for elected members of the council of governors shall be conducted in accordance with the model election rules.
- 11.2 The model election rules, form part of this constitution. The model election rules published by NHS Providers in August 2014 are attached at Annex 4. A variation of the Model Election Rules shall not constitute a variation of the terms of this Constitution.
- 11.3 An election, if contested, shall be by secret ballot.

12. Council of governors: vacancies

Where a vacancy arises on the council of governors for any reason other than expiry of term of office, the following provisions will apply. Where the vacancy arises amongst the elected governors, the council of governors shall decide either:

- 12.1 to call an election to fill the seat for the remainder of that seat's term of office;
- 12.2 to invite the next highest polling (runner-up) candidate for that seat at the most recent election, who is willing to take office, to fill the seat for any unexpired period of the term of office; or
- 12.3 to leave the seat vacant until the next scheduled elections are held if the un-expired period of office is less than twelve months.

13. Voting at council of governors elections

A member may not for the purpose of Section 60(1) of the 2006 Act, vote at an election for a public governor or staff governor unless within the period specified he/she has made a declaration in the specified form stating the particulars of his/her qualification to vote as a member of a constituency, or class, or area within a constituency for which an election is being held. No member may make a statement of declaration which is false in material particular; this is an offence in respect of Section 60(1) of the 2006 Act for public members and Trust procedures apply for staff members.

14. Council of governors - tenure

- 14.1 An elected governor may hold office for a period of up to three years.
- 14.2 An elected governor shall cease to hold office if he/she ceases to be a member of the constituency, class or area by which he/she was elected.
- 14.3 An elected governor shall be eligible for re-election at the end of his term.
- 14.4 An appointed governor may hold office for a period of up to three years.
- 14.5 An appointed governor shall cease to hold office if the appointing organisation withdraws its sponsorship of him/her.
- 14.6 An appointed governor shall be eligible for re-appointment at the end of his/her first term.
- 14.7 The maximum aggregate period of office of any Elected Governor or Appointed Governor is six years.

15. Council of governors - disqualification and removal

- 15.1 A person may not become or continue as a member of the council of governors of the Trust if:

- 15.1.1 he/she has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;
- 15.1.2 he/she is a person in relation to whom a moratorium period under a debt relief order applies (under Part 7A of the Insolvency Act 1986);
- 15.1.3 he/she has made a composition or arrangement with, or granted a trust deed for, his/her creditors and has not been discharged in respect of it;
- 15.1.4 he/she 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/her.
- 15.1.5 in the case of an individual who is a member of the public constituency, if he/she ceases to live in the area of the public constituency of which he/she is a member;
- 15.1.6 in the case a member of a staff class, if he/she no longer meets the eligibility requirements of paragraph 7 of the constitution and of annex 2;
- 15.1.7 in the case of an appointed governor, the sponsoring organisation withdraws their sponsorship of him/her;
- 15.1.8 he/she has within the preceding two years been dismissed, otherwise than by reason of redundancy or ill health, from any paid employment with a Health Service Body;
- 15.1.9 he/she is a person whose tenure of office as the chair or as a member or director of a Health Service Body has been terminated on the grounds that his/her appointment is not in the interests of the health service;
- 15.1.10 he/she is a director of the Trust, or a governor, executive director, non-executive director, chair, chief executive officer of another Health Service Body, or a body corporate whose business involves the provision of health care services unless he/she is appointed to represent that body as one of the Trust's partner organisations; in such instances regard shall be given to any circumstances which may give rise to potential conflicts of interest to such a degree as to interfere with the person's proper exercise of their duties as a governor of this Trust. Any doubt or question as to what constitutes a material conflict of interest for the purposes of this paragraph should be referred to the chair of the Trust whose decision on the matter will be final;
- 15.1.11 he/she has had his/her name removed from a list maintained under regulations pursuant to sections 91, 106, 123, or 146 of the 2006 Act, or the equivalent lists maintained by Local Health Boards in Wales under the National Health Service (Wales) Act 2006, and he/she has not subsequently had his/her name included in such a list;
- 15.1.12 he/she lacks capacity within the meaning of the Mental Capacity Act 2005 to carry out all the duties and responsibilities of a governor;
- 15.1.13 he/she has refused without reasonable cause to undertake any training which the Trust and/or council of governors requires all governors to undertake;
- 15.1.14 he/she is a member of a local authority "Health Overview and Scrutiny Committee" (this does not apply to appointed governors);
- 15.1.15 he/she is the subject of a Sex Offenders Order and/or his/her name is included in the Sex Offenders Register;

- 15.1.16 he/she is an occupant of the same household and/or he/she is an immediate family member of a governor or a director of the Trust;
 - 15.1.17 he/she has failed to repay (without good cause) any amount of monies properly owed to the Trust;
 - 15.1.18 he/she has failed to sign and deliver to the secretary a statement in the form required by the Trust confirming acceptance of the council of governors code of conduct;
 - 15.1.19 he/she is an unfit person within the meaning of the Trust's NHS Provider Licence, save where Monitor has provided approval in writing to him/ her becoming or continuing as a governor;
 - 15.1.20 he/ she has previously been removed from office as a governor of another foundation trust; or
 - 15.1.21 he/ she has previously been removed from office as a governor by the council of governors of the Trust.
- 15.2 Where a person has been elected or appointed to be a governor and he/she becomes disqualified from office under the constitution he/she shall notify the secretary in writing of such disqualification. If it comes to the notice of the secretary at the time of the governor taking office or later that the governor is so disqualified, the secretary shall immediately declare that the person in question is disqualified and notify him/her in writing to that effect. A disqualified person's tenure of office shall automatically be terminated and he/ she shall cease to act as a governor.
- 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 ensure that the governors are equipped with the skills and knowledge they require in their capacity as such. An induction programme will be available for each governor at the commencement of his/her term of office.

17. **Council of governors – meetings of governors**

- 17.1 The chair of the Trust (i.e. the chair of the board of directors, appointed in accordance with the provisions of paragraph 25.1 below) or, in his/her absence the deputy chair (appointed in accordance with the provisions of paragraph 26 below) shall preside at meetings of the council of governors.
- 17.2 Meetings of the council of governors shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons.
- 17.3 The validity of any decision or act of the council of governors is not affected by any vacancy among the governors or by any defect in the appointment of any governor.
- 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

18.1 The standing orders for the practice and procedure of the council of governors are attached at annex 6.

19. Council of governors - conflicts of interest of governors

19.1 Each governor shall comply with standing order 6 of annex 6 which relates to the declaration of interests. The standing orders for the council of governors make provision for the disclosure of interests and arrangements for the exclusion of a governor declaring any interest from any discussion or consideration of the matter in respect of which an interest has been disclosed.

20. Council of governors - expenses

20.1 The Trust may pay travelling and other expenses to governors at rates determined by the Trust.

21. Council of governors - further provisions

21.1 Further provisions with respect to the council of governors are set out in annex 5.

22. Board of directors - composition

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

22.2 The Trust's board of directors is to comprise:

22.2.1 a non-executive chair

22.2.2 not more than six other non-executive directors; and

22.2.3 not more than six executive directors.

22.3 One of the executive directors shall be the chief executive.

22.4 The chief executive shall be the accounting officer.

22.5 One of the executive directors shall be the chief financial officer.

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

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

22.8 The board of directors shall at all times be constituted so that the number of non-executive directors (excluding the chair) equals or exceeds the number of executive directors.

23. Board of directors – general duty

23.1 The general duty of the board of directors and of each director individually, is to act with a view to promoting the success of the Trust so as to maximise the benefits for the members of the Trust as a whole and for the public.

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

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

24.1.1 he/she is a member of the public constituency, or

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

24.1.3 he/she is not disqualified by virtue of paragraph 29 below.

25. Board of directors - appointment and removal of chair and other non-executive directors

25.1 The council of governors at a general meeting of the council of governors shall appoint or remove the chair of the Trust and the other non-executive directors. The appointment of the chair or any other non-executive directors shall be in accordance with annex 8, appendix 4.

25.2 At the General Meeting referred to at paragraph 23.1 the council of governors shall decide the:

25.2.1 period of office;

25.2.2 remuneration and allowances; and

25.2.3 the other terms and conditions of office

of the Chairman and other Non-Executive Directors.

25.3 The non-executive directors, including the chair, shall be appointed by the council of governors for specified terms at intervals of no more than three (3) years. Any term beyond six (6) years (e.g. two three year terms) shall be subject to particularly rigorous review and shall take into account the need for progressive refreshing of the Board. Non-executive directors may in exceptional circumstances serve longer than six (6) years but in such circumstances shall be subject to annual re-appointment.

25.4 Removal of the chair or another non-executive director shall require the approval of three-quarters of the members of the council of governors.

26. Board of directors - appointment of deputy chair

26.1 The council of governors at a general meeting of the council of governors shall appoint one of the non-executive directors as a deputy chair.

27. Board of Directors – appointment of Senior Independent Director

27.1 The board of directors (in consultation with the council of governors) may appoint any independent non-executive director as the senior independent director, for such period not exceeding the remainder of his term as a non-executive director as they may specify on appointing him.

27.2 Any non-executive director so appointed may at any time resign from the office of senior independent director by giving notice in writing to the chair. The board of directors (in consultation with the council of governors) may thereupon appoint another independent non-executive director as senior independent director.

27.3 The senior independent director shall perform the role set out in "The NHS Foundation Trust Code of Governance" issued by Monitor.

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 chair, the chief executive and the other non-executive directors shall appoint or remove the other executive directors.

29. Board of directors - disqualification

- 29.1 The following may not become or continue as a member of the board of directors if he/she:
- 29.1.1 has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;
 - 29.1.2 is a person in relation to whom a moratorium period under a debt relief order applies (under Part 7A of the Insolvency Act 1986);
 - 29.1.3 has made a composition or arrangement with, or granted a trust deed for, his/her creditors and has not been discharged in respect of it;
 - 29.1.4 has 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/her.
 - 29.1.5 is a member of the council of governors;
 - 29.1.6 has within the preceding two years been dismissed, otherwise than by reason of redundancy or ill health, from any paid employment with a Health Service Body;
 - 29.1.7 is a person whose tenure of office as the chair or as a member or director of a Health Service Body has been terminated on the grounds that his/her appointment is not in the interest of the health service;
 - 29.1.8 has had his/her name removed from a list maintained under regulations pursuant to sections 91, 106, 123, or 146 of the 2006 Act, or the equivalent lists maintained by Local Health Boards in Wales under the National Health Service (Wales) Act 2006, and he/she has not subsequently had his/her name included in such a list;
 - 29.1.9 is incapable by reason of mental disorder, illness or injury of managing and administering his/her property and affairs;
 - 29.1.10 in the case of a non-executive director, he/she has refused without reasonable cause to undertake any training which the Trust and/or board of directors requires all directors to undertake;
 - 29.1.11 is a member of a local authority "Health Overview and Scrutiny Committee";
 - 29.1.12 is the subject of a Sex Offenders Order and/or his/her name is included in the Sex Offenders Register;
 - 29.1.13 is an occupant of the same household as, and/or he/she is an immediate family member of, a governor or a director of the Trust;
 - 29.1.14 has failed to repay (without good cause) any amount of monies properly owed to the Trust;
 - 29.1.15 has failed to sign and deliver to the secretary any statement in the form required by the Trust confirming acceptance of any code of conduct for the board of directors;

- 29.1.16 is an unfit person within the meaning of the Trust's NHS Provider Licence, save where Monitor has provided approval in writing to him/ her becoming or continuing as a director;
 - 29.1.17 fails to satisfy the fit and proper persons requirements for directors as detailed in Regulation 5 of The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014, as may be amended from time to time; or
 - 29.1.18 fails to provide the required confirmation of his/ her fitness to continue in post to the secretary, in the form prescribed by the Trust, within 14 days of such confirmation being demanded, without reasonable cause.
- 29.2 Where a person has been appointed as a director and he/she becomes disqualified from office he/she shall notify the secretary in writing of such disqualification. If it comes to the notice of the secretary at the time of the director taking office or later that the director is so disqualified, the secretary shall immediately declare that the person in question is disqualified and notify him/her in writing to that effect. A disqualified person's tenure of office shall automatically be terminated and he/ she shall cease to act as a director.
- 30. Board of directors – meetings**
- 30.1 Meetings of the board of directors shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons.
 - 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.
 - 30.3 The validity of any decision of the board of directors or any act of the Trust is not affected by any vacancy among the directors or by any defect in the appointment of any director.
- 31. Board of directors - standing orders**
- 31.1 The standing orders for the practice and procedure of the board of directors are attached at annex 7.
- 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 paragraph 32.1 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 authorised in accordance with the constitution.
 - 32.3 The duty referred to in paragraph 32.1 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 paragraph 32.1, "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 paragraph 32.5 proves to be, or becomes, inaccurate or incomplete, a further declaration must be made.
- 32.7 Any declaration required by paragraph 32.5 must be made before the Trust enters into the transaction or arrangement.
- 32.8 Paragraph 32.5 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:
 - (a) by a meeting of the board of directors; or
 - (b) by a committee of the directors appointed for the purpose under the constitution.
- 32.10 A matter shall have been authorised for the purposes of paragraph 32.2 if it has previously been approved by the Board of Directors at a meeting and the minutes of the meeting shall be conclusive evidence of such approval having been given.
- 32.11 Board of directors - remuneration and terms of office
- 32.12 The council of governors at a general meeting of the council of governors shall decide the remuneration and allowances, and the other terms and conditions of office, of the chair and the other non-executive directors.
- 32.13 The Trust shall establish a committee of non-executive directors to decide the remuneration and allowances, and the other terms and conditions of office, of the chief executive and other executive directors.

33. **Registers**

- 33.1 The Trust shall have:
 - 33.1.1 a register of members showing, in respect of each member, the constituency to which he/she belongs and, where there are classes or areas within it, the class or area to which he/she belongs;
 - 33.1.2 a register of members of the council of governors;
 - 33.1.3 a register of interests of governors;
 - 33.1.4 a register of directors; and
 - 33.1.5 a register of interests of the directors.

34. Admission to and removal from the registers

34.1 Register of Members

34.1.1 Subject to paragraph 7.6 above, members must complete and sign an application in the form prescribed by the secretary.

34.1.2 The secretary shall maintain the register in two parts. Part one, which shall be the register referred to in the 2006 Act, shall include the name of each Member and the constituency or class to which they belong, and shall be open to inspection by the public in accordance with paragraph 34 below. Part two shall contain all the information from the application form and shall not be open to inspection by the public nor may copies or extracts from it be made available to any third party. Notwithstanding this provision the Trust shall extract such information as it needs in aggregate to satisfy itself that the actual membership of the Trust is representative of those eligible for membership and for the administration of the provisions of this Constitution.

34.2 Register of Governors

34.2.1 The register shall list the names of governors, their category of membership of the council of governors (public, staff, or appointed) and an address through which they may be contacted which may be the secretary.

34.3 Register of Interests of the Governors

34.3.1 The register shall contain the names of each governor, whether he has declared any interests and, if so, the interests declared in accordance with this constitution or the standing orders for governors.

34.4 Register of Directors

34.4.1 The register shall list the names of directors, their capacity on the board of directors and an address through which they may be contacted which may be the Secretary.

34.5 Register of interests of Directors

34.5.1 The register shall contain the names of each director, whether he has declared any interests and, if so, the interests declared in accordance with this Constitution or the Standing Orders for Directors.

34.6 Register of Designated Trust Sub-contractors

34.6.1 The register shall contain the names of each Trust sub-contractor which is designated by the Trust for the purposes of membership of the Trust.

34.7 Register of Designated Volunteer Schemes

34.7.1 The register shall contain the names of each volunteer scheme which is designated by the Trust for the purposes of membership of the Trust.

35. Registers - inspection and copies

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

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

- 35.2.1 they are to be available for inspection free of charge at all reasonable times; and
 - 35.2.2 a person who requests a copy of or extract from the registers is to be provided with a copy or extract.
- 35.3 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 the current constitution;
 - 36.1.2 a copy of the latest annual accounts and of any report of the auditor on them; and
 - 36.1.3 a copy of the 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 the 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 the 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 (Monitor's decision), 65KB (secretary of state's response to Monitor's decision), 65KC (action following secretary of state's rejection of final report) or 65KD (secretary of state's response to re-submitted final report) of the 2006 Act;
 - 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) of the 2006 Act;
 - 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 Monitor 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 Monitor 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 and forward plans and non-NHS work**
- 40.1 The Trust shall prepare an annual report and send it to Monitor.
- 40.2 The Trust shall give information as to its forward planning in respect of each financial year to Monitor.
- 40.3 The document containing the information with respect to forward planning (referred to 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 purpose 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 paragraph 40.5 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 fulfilment 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 present and voting approve its implementation.

41. Presentation of the accounts and reports to the governors and members

- 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 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 purpose of 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 to its constitution only if:
- 43.1.1 more than half of the members of the council of governors of the Trust present and voting approve the amendments; and
 - 43.1.2 more than half of the members of the board of directors of the Trust present and 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 to the powers or duties of the council of governors (or otherwise with respect to the role that the council of governors has as part of the Trust):
- 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 Monitor. For the avoidance of doubt, Monitor's functions do not include a power or duty to determine whether or not the constitution as a result of the amendments, accords with schedule 7 of the 2006 Act.

44. **Significant transactions**

44.1 This constitution does not contain any descriptions of the term significant transaction for the purposes of section 51A of the 2006 Act (significant transactions).

44.2 The Trust shall have a policy for the board of directors to consult the council of governors about transactions that are within the description of significant transaction set out in the policy.

45. **Mergers, acquisitions, separations and dissolution**

45.1 The Trust may make an application under section 56 (Mergers), 56A (Acquisitions), 56B (Separations) or 57A (Dissolution) of the 2006 Act to Monitor only with the approval of more than half of the members of the council of governors.

46. **Interpretation and definitions**

46.1 Unless otherwise stated, words or expressions contained in this constitution shall bear the same meaning as in the National Health Service Act 2006 as amended by the Health and Social Care Act 2012.

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

Accounting officer	is the person who from time to time discharges the functions specified in paragraph 25(5) of Schedule 7 to the 2006 Act.
Annual members meeting	is defined in paragraph 9.1 of the constitution
Appointed governor	means a member of the council of governors appointed by the stakeholder partner in accordance with this constitution.
Area	means an area of the public constituency as specified in annex 1 and "Areas" shall be construed accordingly.
Board of Directors or Board	means the board of directors of the Trust as constituted in accordance with this constitution and the 2006 Act.
Chair	means the chairperson of the Trust appointed in accordance with this constitution.
Chief executive	means the chief executive officer of the Trust appointed in accordance with the constitution.
Constitution	means this constitution and all annexes to it.
Deputy chair	means the non-executive director appointed as deputy chair by the council of governors to take on the chair's duties if the chair is absent or unavailable for any reason.
Director	means a director on the board of directors.
Executive director	means a member of the board appointed as an executive director in accordance with the constitution.

Finance director	means the chief finance officer of the Trust appointed in accordance with the constitution.
Financial year	means each period of twelve months beginning with 1 st April.
Governor	means a person who is a member of the council of governors.
Health Service Body	shall have the meaning ascribed to it in Section 65 (1) of the 2006 Act.
Lead governor	means the governor nominated as the lead governor by the council of governors in accordance with annex 6, paragraph 13.
Licence	means the licence issued by Monitor under Section 87 of the 2012 Act.
Member	means a member of the Trust.
Monitor	is the corporate body known as Monitor, as provided by section 61 of the 2012 Act.
Motion	means a formal proposition to be discussed and voted on during the course of the meeting.
NHS Foundation Trust Code of Governance	means the Code of Governance published by Monitor in July 2014 or such similar or further guidance as Monitor may publish from time to time.
Non-executive director	means a member of the Board appointed as a non-executive director in accordance with the constitution.
Officer	means an employee of the Trust or any other person holding a paid appointment or office with the Trust.
Public constituency	means the constituency of the Trust constituted in accordance with paragraph 6 of this constitution and made up of the areas as identified in annex 1.
Public governor	means a member of the council of governors elected by the members of the public constituency in accordance with this constitution.
Regulatory framework	means the 2006 Act, the 2012 Act, the constitution and the Trust's Licence as granted by Monitor.
Scheme of reservation and delegation	means the document containing the Reservation of Powers to the Board and the Scheme of Delegation for the Trust.
Secretary	means the foundation trust company secretary of the Trust or any other person appointed to perform the duties of the

	secretary, including a joint, assistant or deputy secretary.
Senior independent director	means the senior independent non-executive director appointed in accordance with the constitution.
Staff classes	means the classes of the staff constituency as specified in annex 2.
Staff constituency	means the constituency of the Trust constituted in accordance with paragraph 7 of this constitution.
Staff governor	means a member of the council of governors elected by the members of the staff constituency in accordance with this constitution.
Trust's Headquarters	Trust Management Office University Hospital Southampton NHS Foundation Trust Tremona Road Southampton SO16 6YD
the 2006 Act	means the National Health Service Act 2006.
the 2012 Act	is the Health and Social Care Act 2012.
Trust	means the University Hospital Southampton NHS Foundation Trust.
Voluntary organisation	is a body, other than a public or local authority, the activities of which are not carried out for profit.

ANNEX 1
The Public Constituency

(Constitution: Paragraph 6)

Name of area (as defined by electoral wards or local authority areas)	Minimum number of members
Southampton City (Southampton City Council)	100
New Forest, Eastleigh and Test Valley (New Forest District Council, Eastleigh Borough Council and Test Valley Borough Council)	80
Isle of Wight (Isle of Wight Council)	20
Rest of England and Wales	100

ANNEX 2
The Staff Constituency

(Constitution: Paragraph 7)

Staff membership will fall into one of four staff classes:

- Medical practitioners and dental staff
- Nursing and Midwifery staff
- Health professional and health scientist staff
- Non clinical and support staff

The minimum number of members for each staff class is 20.

ANNEX 3
Composition of Council of Governors

(Constitution: Paragraph 10)

Public elected governor (13)	Number
Southampton City	5
New Forest, Eastleigh and Test Valley	4
The Isle of Wight	1
Rest of England and Wales	3

Staff elected governor (4)	Number
Medical practitioners and dental staff	1
Nursing and Midwifery staff	1
Health professional/health scientist staff	1
Non clinical and support staff	1

Appointed governor (6)	Number
Southampton CCG (Clinical Commissioning Group)	1
West Hampshire CCG (Clinical Commissioning Group)	1
Southampton City Council	1
University of Southampton	1
Hampshire County Council	1
Business South	1

ANNEX 4
The Model Election Rules

(Paragraph 11)

Part 1 – Interpretation

1. Interpretation

Part 2 – Timetable for election

2. Timetable
3. Computation of time

Part 3 – Returning officer

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

Part 4 – Stages common to contested and uncontested elections

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

Part 5 – Contested elections

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

Action to be taken before the poll

22. List of eligible voters
23. Notice of poll
24. Issue of voting information by returning officer
25. Ballot paper envelope and covering envelope
26. E-voting systems

The poll

27. Eligibility to vote
28. Voting by persons who require assistance
29. Spoilt ballot papers
30. Lost voting information
31. Issue of replacement voting information

Polling by internet, telephone or text

32. Procedure for remote voting by internet
33. Voting procedure for remote voting by telephone
34. Voting procedure for remote voting by text message

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

35. Receipt of voting documents
36. Validity of votes
37. De-duplication of votes
38. Sealing of packets

Part 6 – Counting the votes

39. Interpretation of Part 6
40. Arrangements for counting of the votes
41. The count
42. Rejected ballot papers
43. First stage
44. The quota
45. Transfer of votes
46. Supplementary provisions on transfer
47. Exclusion of candidates
48. Filling of last vacancies
49. Order of election of candidates

Part 7 – Final proceedings in contested and uncontested elections

50. Declaration of result for contested elections
51. Declaration of result for uncontested elections

Part 8 – Disposal of documents

52. Sealing up of documents relating to the poll
53. Delivery of documents
54. Forwarding of documents received after close of the poll
55. Retention and public inspection of documents
56. Application for inspection of certain documents relating to election

Part 9 – Death of a candidate during a contested election

57. Countermand or abandonment of poll on death of candidate

Part 10 – Election expenses and publicity

Expenses

58. Election expenses
59. Expenses and payments by candidates
60. Expenses incurred by other persons

Publicity

61. Publicity about election by the corporation
62. Information about candidates for inclusion with voting documents
63. Meaning of “for the purposes of an election”

Part 11 – Questioning elections and consequences of irregularities

64. Application to question an election

Part 12 – Miscellaneous

65. Secrecy

66. Prohibition of disclosure of vote

67. Disqualification

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

Part 1 – Interpretation

1. Interpretation

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

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

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

“**the Regulator**” means the Independent Regulator for NHS foundation trusts;

“**the 2006 Act**” means the National Health Service Act 2006;

“**the 2012 Act**” means the Health and Social Care Act 2012;

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

“**internet voting system**” means such computer hardware and software, data other equipment and services as may be provided by the returning officer for the purpose of enabling voters to cast their votes using the internet;

“**method of polling**” means voting either by post, internet, text message or telephone

“**the telephone voting system**” means such telephone voting facility as may be provided by the returning officer for the purpose of enabling voters to cast their votes by telephone;

“**the text message voting system**” means such text messaging voting facility as may be provided by the returning officer for the purpose of enabling voters to cast their votes by text message;

“**voter ID number**” means a unique, randomly generated numeric identifier allocated to each voter by the returning officer for the purpose of e-voting.

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

Part 2 – Timetable for election

2. Timetable

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

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

Proceeding	Time
Close of the poll	By 5.00pm on the final day of the election

3. Computation of time

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

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

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

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

Part 3 – Returning officer

4. Returning officer

- (1) Subject to rule 67, the returning officer for an election is to be appointed by the corporation.
- (2) Where two or more elections are to be held concurrently, the same returning officer may be appointed for all those elections.

5. Staff

- (1) Subject to rule 67, the returning officer may appoint and pay such staff, including such technical advisers, as he/she considers necessary for the purposes of the election.

6. Expenditure

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

7. Duty of co-operation

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

Part 4 - Stages common to contested and uncontested elections

8. Notice of election

- (1) The returning officer is to publish a notice of the election stating:
 - (a) the constituency, or class within a constituency, for which the election is being held,
 - (b) the number of members of the council of governors to be elected from that constituency, or class within that constituency,
 - (c) the details of any nomination committee that has been established by the corporation,

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

9. Nomination of candidates

- (1) Each candidate must nominate themselves on a single nomination paper.
- (2) The returning officer:
 - (a) is to supply any member of the corporation with a nomination paper, and
 - (b) is to prepare a nomination paper for signature at the request of any member of the corporation, but it is not necessary for a nomination to be on a form supplied by the returning officer and it can, subject to rule 13, be in electronic format.

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.

11. Declaration of interests

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

12. Declaration of eligibility

- (1) The nomination paper must include a declaration made by the candidate:
 - (a) that he/she is not prevented from being a member of the council of governors by paragraph 8 of Schedule 7 of the 2006 Act or by any provision of the Constitution; and,
 - (b) for a member of the Public Constituency, of the particulars of his/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

- (1) The nomination paper must be signed and dated by the candidate, in a manner prescribed by the returning officer, indicating that:
 - (a) they wish to stand as a candidate,
 - (b) their declaration of interests as required under rule 11, is true and correct, and

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

14. Decisions as to the validity of nomination

- (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/she has received it, and decide whether the candidate has been validly nominated.
- (4) Where the returning officer decides that a nomination is invalid, the returning officer must endorse this on the nomination paper, stating the reasons for their decision.
- (5) The returning officer is to send notice of the decision as to whether a nomination is valid or invalid to the candidate at the contact address given in the candidate's nomination paper.

15. Publication of statement of candidates

- (1) The returning officer is to prepare and publish a statement showing the candidates who are standing for election.
- (2) The statement must show:
 - (a) the name, contact address, and constituency 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 corporation as soon as is practicable after publishing the statement.

16. Inspection of statement of nominated candidates and nomination papers

- (1) The corporation is to make the statements of the candidates and the nomination papers supplied by the returning officer under rule 15(4) available for inspection by members of the corporation free of charge at all reasonable times.

- (2) If a person requests a copy or extract of the statements of candidates or their nomination papers, the corporation is to provide that person with the copy or extract free of charge.

17. Withdrawal of candidates

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

18. Method of election

- (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 the 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/her in consultation with the corporation.

Part 5 – Contested elections

19. Poll to be taken by ballot

- (1) The votes at the poll must be given by secret ballot.
- (2) The votes are to be counted and the result of the poll determined in accordance with Part 6 of these rules.
- (3) The corporation may decide if eligible voters, within a constituency, or class within a constituency, may, subject to rule 19(4), cast their vote by any combination of the methods of polling.
- (4) The corporation may decide if eligible voters, within a constituency or class within a constituency, for whom an e-mail mailing address is included in the list of eligible voters may cast their votes by, one or more, e-voting methods of polling.
- (5) If the corporation decides to use an e-voting method of polling then they and the returning officer must satisfy themselves that:
- (a) if internet voting is being used, the internet voting system to be used for the purpose of the election is configured in accordance with these rules and that it will accurately record the internet voting record of any voter who chooses to cast their vote using the internet voting system.
 - (b) if telephone voting is being used, the telephone voting system to be used for the purpose of the election is configured in accordance with these rules and that it will accurately record the telephone voting record of any voter who chooses to cast their vote using the telephone voting system.
 - (c) if text message voting is being used, the text message voting system to be used for the purpose of the election is configured in accordance with these rules and that it will accurately record the text voting record of any voter who chooses to cast their vote using the text message voting system.

20. The ballot paper

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

- (1) In respect of an election 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) 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 corporation is to provide the returning officer with a list of the members of the constituency or class within a constituency for which the election is being held who are eligible to vote by virtue of rule 26 as soon as is reasonably practicable after the final date for the delivery of notices of withdrawals by candidates from an election.
- (2) The list is to include, for each member, a postal mailing address and if available an e-mail address, where his/her ballot paper is to be sent.
- (3) The corporation may decide if the voting information is to be sent by e-mail to those members, in a particular constituency or class within a constituency, for whom an e-mail address is included in the list of eligible voters.

23. Notice of poll

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

24. Issue of voting information 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 voting information to each member of the corporation named in the list of eligible voters:
 - (a) by post to each member of the corporation named in the list of eligible voters and on the basis of rule 21 able to cast their vote by post:
 - (i) a ballot paper
 - (ii) information about each candidate standing for election, pursuant to rule 61 of these rules,

- (iii) a covering envelope
- (b) by e-mail or by post, to each member of the corporation named in the list of eligible voters and on the basis of rule 19(4) able to cast their vote by an e-voting method of polling:
 - (i) instructions on how to vote
 - (ii) the eligible voter's voter ID number
 - (iii) information about each candidate standing for election, pursuant to rule 61 of these rules, or details of where this information is readily available on the internet or available in such other formats as the returning officer thinks appropriate.
 - (iv) contact details of the returning officer.
- (2) The documents are to be sent to the mailing address or e-mail address for each member, as specified in the list of eligible voters.

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.

26. E-voting systems

- (1) If internet voting is a method of polling for the relevant election then the returning officer must provide a website for the purpose of voting over the internet (in these rules referred to as "the polling website").
- (2) If telephone voting is a method of polling for the relevant election then the returning officer must provide an automated telephone system for the purpose of voting by the use of a touch-tone telephone (in these rules referred to as "the telephone voting facility").
- (3) If text message voting is a method of polling for the relevant election then the returning officer must provide an automated text messaging system for the purpose of voting by text message (in these rules referred to as "the text message voting facility").
- (4) The provision of the polling website and internet voting system, will:
 - (a) require a voter, to be permitted to vote, to enter his voter ID number;
 - (b) specify:
 - (i) the name of the corporation,
 - (ii) the constituency, or class within a constituency, for which the election is being held

- (iii) the number of members of the council of governors to be elected from that constituency, or class within that constituency,
 - (iv) the names and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
 - (v) instructions on how to vote.
 - (c) prevent a voter voting for more candidates than he is entitled to at the election;
 - (d) create a record ("the internet voting record") that is stored in the internet voting system in respect of each vote cast using the internet of-
 - (i) the voter ID number used by the voter;
 - (ii) the candidate or candidates for whom he has voted; and
 - (iii) the date and time of his vote, and
 - (e) if their vote has been cast and recorded, provide the voter with confirmation
 - (f) prevent any voter voting after the close of poll.
- (5) The provision of a telephone voting facility and telephone voting system, will:
- (a) require a voter to be permitted to vote, to enter his voter ID number;
 - (b) specify:
 - (i) the name of the corporation,
 - (ii) the constituency, or class within a constituency, for which the election is being held
 - (iii) the number of members of the council of governors to be elected from that constituency, or class within that constituency,
 - (iv) instructions on how to vote.
 - (c) prevent a voter voting for more candidates than he is entitled to at the election;
 - (d) create a record ("the telephone voting record") that is stored in the telephone voting system in respect of each vote cast by telephone of-
 - (i) the voter ID number used by the voter;
 - (ii) the candidate or candidates for whom he has voted; and
 - (iii) the date and time of his vote
 - (e) if their vote has been cast and recorded, provide the voter with confirmation;
 - (f) prevent any voter voting after the close of poll.
- (6) The provision of a text message voting facility and text messaging voting system, will:
- (a) require a voter to be permitted to vote, to provide his voter ID number;
 - (b) prevent a voter voting for more candidates than he is entitled to at the election;
 - (c) create a record ("the text voting record") that is stored in the text messaging voting system in respect of each vote cast by text message of:

- (i) the voter ID number used by the voter;
- (ii) the candidate or candidates for whom he has voted; and
- (iii) the date and time of his vote
- (d) if their vote has been cast and recorded, provide the voter with confirmation;
- (e) prevent any voter voting after the close of poll.

The poll

27. Eligibility to vote

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

28. 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/she considers necessary to enable that voter to vote.

29. Spoilt ballot papers

- (1) If a voter has dealt with his/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/she can obtain it.
- (3) The returning officer may not issue a replacement ballot paper for a spoilt ballot paper unless he/she:
 - (a) is satisfied as to the voter’s identity, and
 - (b) has ensured that the declaration of identity, if required, has not been returned.
- (4) After issuing a replacement ballot paper for a spoilt ballot paper, the returning officer shall enter in a list (“the list of spoilt ballot papers”):
 - (a) the name of the voter, and
 - (b) the details of the unique identifier of the spoilt ballot paper (if that officer was able to obtain it), and
 - (c) the details of the unique identifier of the replacement ballot paper.

30. Lost voting information

- (1) Where a voter has not received his/her voting information by the tenth day before the close of the poll, that voter may apply to the returning officer for replacement voting information.
- (2) The returning officer may not issue replacement voting information for lost voting information unless he/she:
 - (a) is satisfied as to the voter’s identity,
 - (b) has no reason to doubt that the voter did not receive the original voting information, and

- (c) has ensured that the declaration of identity if required has not been returned.
- (3) After issuing replacement voting information, the returning officer shall enter in a list (“the list of lost ballots”):
- (a) the name of the voter,
 - (b) if applicable, the details of the unique identifier of the replacement ballot paper, and
 - (c) if applicable, the voter ID number of the voter.

31. Issue of replacement voting information

- (1) If a person applies for a replacement voting information under rules 29 or 30 and a declaration of identity has already been received by the returning officer in the name of that voter, the returning officer may not issue replacement voting information unless, in addition to the requirements imposed in rule 29(3) or 30(2), he/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 replacement voting information under this rule, the returning officer shall enter in a list (“the list of tendered voting information”):
- (a) the name of the voter,
 - (b) if applicable, the details of the unique identifier of the replacement ballot paper, and
 - (c) if applicable, the voter ID number of the voter.

Polling by internet, telephone or text

32. Procedure for remote voting by internet

- (1) To cast their vote using the internet the voter must gain access to the polling website by keying in the url of the polling website provided in the voting information,
- (2) When prompted to do so, the voter must enter their voter ID number.
- (3) If the internet voting system authenticates the voter ID number the system must give the voter access to the polling website for the election in which the voter is eligible to vote.
- (4) To cast their vote the voter may then key in a mark on the screen opposite the particulars of the candidate or candidates for whom they wish to cast their vote.
- (5) The voter must not be able to access the internet voting facility for an election once their vote at that election has been cast.

33. Voting procedure for remote voting by telephone

- (1) To cast their vote by telephone the voter must gain access to the telephone voting facility by calling the designated telephone number provided on the voter information using a telephone with a touch-tone keypad.
- (2) When prompted to do so, the voter must enter their voter ID number using the keypad.
- (3) If the telephone voting facility authenticates the voter ID number, the voter must be prompted to vote in the election.
- (4) When prompted to do so the voter may then cast his vote by keying in the code of the candidate or candidates, allocated in accordance with rule 62 of these rules, for whom they wish to vote.

- (5) The voter must not be able to access the telephone voting facility for an election once their vote at that election has been cast.

34. Voting procedure for remote voting by text message

- (1) To cast their vote by text the voter must gain access to the text message voting facility by sending a text message to the designated telephone number or telephone short code provided on the voter information.
- (2) The text message sent by the voter must contain their voter ID number and the code for the candidate or candidates, allocated in accordance with rule 62 of these rules, for whom they wish to vote.
- (3) The text message sent by the voter must be structured in accordance with the instructions on how to vote contained in the voter information.

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

35. 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 36 and 37 are to apply.
- (2) The returning officer may open any ballot paper envelope for the purposes of rules 36 and 37, 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.

36. Validity of votes

- (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 rule 36(1) has been fulfilled, he/she is to:
- (a) put the declaration of identity if required in a separate packet, and
 - (b) put the ballot paper aside for counting after the close of the poll.
- (3) Where the returning officer is not satisfied that rule 36(1) has been fulfilled, he/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.

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

37. De-duplication of votes

- (1) Where a combination of the methods of polling are being used, the returning officer shall examine all votes cast to ascertain if a voter ID number has been used more than once to cast a vote in an election.
- (2) If the returning officer ascertains that a voter ID number has been used more than once to cast a vote in an election they shall:
- (a) only accept as duly returned the first vote received that contained the duplicated voter ID number
 - (b) mark as “disqualified” all other votes containing the duplicated voter ID number
- (3) Where a ballot paper is “disqualified” under this rule the returning officer shall:
- (a) mark the ballot paper “disqualified”,
 - (b) record the unique identifier and voter id number on the ballot paper in a list (the “list of disqualified documents”); and
 - (c) place the ballot paper in a separate packet.
- (4) Where an internet, telephone or text voting record is “disqualified” under this rule the returning officer shall:
- (a) mark the record as “disqualified”,
 - (b) record the voter ID number on the record in a list (the “list of disqualified documents”),
 - (c) disregard the record when counting the votes in accordance with these Rules.

38. Sealing of packets

- (1) As soon as is possible after the close of the poll and after the completion of the procedure under rules 36 and 37, 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 ballots,
 - (e) the list of eligible voters, and
 - (f) complete electronic copies of records referred to in rule 25 held in a device suitable for the purpose of storage.

Part 6 - Counting the votes

39. Interpretation of Part 6

- (1) In Part 6 of these rules:

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

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

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

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

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

“**non-transferable vote**” means a ballot paper:

- (a) on which no second or subsequent preference is recorded for a continuing candidate, or
- (b) which is excluded by the returning officer under rule 47(4) below,

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

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

“**quota**” means the number calculated in accordance with rule 441 below,

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

“**stage of the count**” means:

- (a) the determination of the first preference vote of each candidate,
- (b) the transfer of a surplus of a candidate deemed to be elected, or
- (c) the exclusion of one or more candidates at any given time,

“**transferable vote**” means a ballot on which, following a first preference, a second or subsequent preference is recorded in consecutive numerical order for a continuing candidate,

“**transferred vote**” means a vote derived from a ballot on which a second or subsequent preference is recorded for the candidate to whom that ballot has been transferred, and

“**transfer value**” means the value of a transferred vote calculated in accordance with rules 45(4) and 45(7) below.

40. Arrangements for counting of the votes

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

41. The count

- (1) The returning officer is to:
 - (a) count and record the number of votes that have been returned, and
 - (b) count the votes according to the provisions in this part of the rules.

- (2) The returning officer, while counting and recording the number of votes and counting the votes, must make arrangements to ensure that no person obtains or communicates information as to the unique identifier on a ballot paper or a voter's voter ID number.
- (3) The returning officer is to proceed continuously with counting the votes as far as is practicable.

42. 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 the figure "1" standing alone is not placed so as to indicate a first preference for any candidate,
 - (c) on which anything is written or marked by which the voter can be identified except the unique identifier, or
 - (d) which is unmarked or rejected because of uncertainty,

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

- (2) The returning officer shall endorse the word "rejected" on any ballot paper which under this rule is not to be counted.
- (3) The returning officer shall draw up a statement showing the number of ballot papers rejected by him/her under each of the subparagraphs (a) to (d) of rule 42(1).

43. First stage

- (1) The returning officer is to sort the ballots into parcels according to the candidates for whom the first preference votes are given.
- (2) The returning officer is to then count the number of first preference votes given on ballots for each candidate, and is to record those numbers.
- (3) The returning officer is to also ascertain and record the number of valid ballots.

44. The quota

- (1) The returning officer is to divide the number of valid ballots by a number exceeding by one the number of members to be elected.
- (2) The result, increased by one, of the division under rule 44(1) (any fraction being disregarded) shall be the number of votes sufficient to secure the election of a candidate (in these rules referred to as "the quota").
- (3) At any stage of the count a candidate whose total votes equals or exceeds the quota shall be deemed to be elected, except that any election where there is only one vacancy a candidate shall not be deemed to be elected until the procedure set out in rules 45(1) to 45(3) has been complied with.

45. Transfer of votes

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

- (a) according to next available preference given on those ballots for any continuing candidate, or
 - (b) where no such preference is given, as the sub-parcel of non-transferable votes.
- (2) The returning officer is to count the number of ballots in each parcel referred to in rule 45(1).
- (3) The returning officer is, in accordance with this rule and rule 46 below, to transfer each sub-parcel of ballots referred to in rule 45(1)(a) to the candidate for whom the next available preference is given on those papers.
- (4) The vote on each ballot transferred under rule 45(3) shall be at a value (“the transfer value”) which:
 - (a) reduces the value of each vote transferred so that the total value of all such votes does not exceed the surplus, and
 - (b) is calculated by dividing the surplus of the candidate from whom the votes are being transferred by the total number of the ballots on which those votes are given, the calculation being made to two decimal places (ignoring the remainder if any).
- (5) Where at the end of any stage of the count involving the transfer of ballots, the number of votes for any candidate exceeds the quota, the returning officer is to sort the ballots in the sub-parcel of transferred votes which was last received by that candidate into separate sub-parcels so that they are grouped:
 - (a) according to the next available preference given on those ballots for any continuing candidate, or
 - (b) where no such preference is given, as the sub-parcel of non-transferable votes.
- (6) The returning officer is, in accordance with this rule and rule 46 below, to transfer each sub-parcel of ballots referred to in rule 45(5)(a) to the candidate for whom the next available preference is given on those ballots.
- (7) The vote on each ballot transferred under rule 45(6) shall be at:
 - (a) a transfer value calculated as set out in rule 45(4)(b), or
 - (b) at the value at which that vote was received by the candidate from whom it is now being transferred,
 whichever is the less.
- (8) Each transfer of a surplus constitutes a stage in the count.
- (9) Subject to rule 45(10), the returning officer shall proceed to transfer transferable ballots until no candidate who is deemed to be elected has a surplus or all the vacancies have been filled.
- (10) Transferable ballots shall not be liable to be transferred where any surplus or surpluses which, at a particular stage of the count, have not already been transferred, are:
 - (a) less than the difference between the total vote then credited to the continuing candidate with the lowest recorded vote and the vote of the candidate with the next lowest recorded vote, or
 - (b) less than the difference between the total votes of the two or more continuing candidates, credited at that stage of the count with the lowest recorded total numbers of votes and the candidate next above such candidates.
- (11) This rule does not apply at an election where there is only one vacancy.

46. Supplementary provisions on transfer

- (1) If, at any stage of the count, two or more candidates have surpluses, the transferable ballots of the candidate with the highest surplus shall be transferred first, and if:
 - (a) The surpluses determined in respect of two or more candidates are equal, the transferable ballots of the candidate who had the highest recorded vote at the earliest preceding stage at which they had unequal votes shall be transferred first, and
 - (b) the votes credited to two or more candidates were equal at all stages of the count, the returning officer shall decide between those candidates by lot, and the transferable ballots of the candidate on whom the lot falls shall be transferred first.
- (2) The returning officer shall, on each transfer of transferable ballots under rule 45 above:
 - (a) record the total value of the votes transferred to each candidate,
 - (b) add that value to the previous total of votes recorded for each candidate and record the new total,
 - (c) record as non-transferable votes the difference between the surplus and the total transfer value of the transferred votes and add that difference to the previously recorded total of non-transferable votes, and
 - (d) compare:
 - (i) the total number of votes then recorded for all of the candidates, together with the total number of non-transferable votes, with
 - (ii) the recorded total of valid first preference votes.
- (3) All ballots transferred under rule 45 or 46 shall be clearly marked, either individually or as a sub-parcel, so as to indicate the transfer value recorded at that time to each vote on that ballot or, as the case may be, all the ballots in that sub-parcel.
- (4) Where a ballot is so marked that it is unclear to the returning officer at any stage of the count under rule 45 or 46 for which candidate the next preference is recorded, the returning officer shall treat any vote on that ballot as a non-transferable vote; and votes on a ballot shall be so treated where, for example, the names of two or more candidates (whether continuing candidates or not) are so marked that, in the opinion of the returning officer, the same order of preference is indicated or the numerical sequence is broken.

47. Exclusion of candidates

- (1) If:
 - (a) all transferable ballots which under the provisions of rule 45 above (including that rule as applied by rule 47(11)) and this rule are required to be transferred, have been transferred, and
 - (b) subject to rule 48, one or more vacancies remain to be filled,

the returning officer shall exclude from the election at that stage the candidate with the then lowest vote (or, where rule 47(12) applies, the candidates with the then lowest votes).
- (2) The returning officer shall sort all the ballots on which first preference votes are given for the candidate or candidates excluded under rule 47(1) into two sub-parcels so that they are grouped as:
 - (a) ballots on which a next available preference is given, and
 - (b) ballots on which no such preference is given (thereby including ballots on which preferences are given only for candidates who are deemed to be elected or are excluded).

- (3) The returning officer shall, in accordance with this rule and rule 46 above, transfer each sub-parcel of ballots referred to in rule 47(2)(a) to the candidate for whom the next available preference is given on those ballots.
- (4) The exclusion of a candidate, or of two or more candidates together, constitutes a further stage of the count.
- (5) If, subject to rule 48 below, one or more vacancies still remain to be filled, the returning officer shall then sort the transferable ballots, if any, which had been transferred to any candidate excluded under rule 47(1) into sub-parcels according to their transfer value.
- (6) The returning officer shall transfer those ballots in the sub-parcel of transferable ballots with the highest transfer value to the continuing candidates in accordance with the next available preferences given on those ballots (thereby passing over candidates who are deemed to be elected or are excluded).
- (7) The vote on each transferable ballot transferred under rule 47(6) shall be at the value at which that vote was received by the candidate excluded under rule 47(1).
- (8) Any ballots on which no next available preferences have been expressed shall be set aside as non-transferable votes.
- (9) After the returning officer has completed the transfer of the ballots in the sub-parcel of ballots with the highest transfer value he/she shall proceed to transfer in the same way the sub-parcel of ballots with the next highest value and so on until he/she has dealt with each sub-parcel of a candidate excluded under rule 47(1).
- (10) The returning officer shall after each stage of the count completed under this rule:
 - (a) record:
 - (i) the total value of votes, or
 - (ii) the total transfer value of votes transferred to each candidate,
 - (b) add that total to the previous total of votes recorded for each candidate and record the new total,
 - (c) record the value of non-transferable votes and add that value to the previous non-transferable votes total, and
 - (d) compare:
 - (i) the total number of votes then recorded for each candidate together with the total number of non-transferable votes, with
 - (ii) the recorded total of valid first preference votes.
- (11) If after a transfer of votes under any provision of this rule, a candidate has a surplus, that surplus shall be dealt with in accordance with rules 47(5) to 47(10) and rule 46.
- (12) Where the total of the votes of the two or more lowest candidates, together with any surpluses not transferred, is less than the number of votes credited to the next lowest candidate, the returning officer shall in one operation exclude such two or more candidates.
- (13) If when a candidate has to be excluded under this rule, two or more candidates each have the same number of votes and are lowest:
 - (a) regard shall be made to the total number of votes credited to those candidates at the earliest stage of the count at which they had an unequal number of votes and the candidate with the lowest number of votes at that stage shall be excluded, and

- (b) where the number of votes credited to those candidates was equal at all stages, the returning officer shall decide between the candidates by lot and the candidate on whom the lot falls shall be excluded.

48. Filling of last vacancies

- (1) Where the number of continuing candidates is equal to the number of vacancies remaining unfilled the continuing candidates shall thereupon be deemed to be elected.
- (2) Where only one vacancy remains unfilled and the votes of any one continuing candidate are equal to or greater than the total of votes credited to other continuing candidates together with any surplus not transferred, the candidate shall thereupon be deemed to be elected.
- (3) Where the last vacancies can be filled under this rule, no further transfer of votes shall be made.

49. Order of election of candidates

- (1) The order in which candidates whose votes equal or exceed the quota are deemed to be elected shall be the order in which their respective surpluses were transferred, or would have been transferred but for rule 45(10).
- (2) A candidate credited with a number of votes equal to, and not greater than, the quota shall, for the purposes of this rule, be regarded as having had the smallest surplus at the stage of the count at which he/she obtained the quota.
- (3) Where the surpluses of two or more candidates are equal and are not required to be transferred, regard shall be had to the total number of votes credited to such candidates at the earliest stage of the count at which they had an unequal number of votes and the surplus of the candidate who had the greatest number of votes at that stage shall be deemed to be the largest.
- (4) Where the number of votes credited to two or more candidates were equal at all stages of the count, the returning officer shall decide between them by lot and the candidate on whom the lot falls shall be deemed to have been elected first.

Part 7 – Final proceedings in contested and uncontested elections

50. 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 candidates who are deemed to be elected under Part 6 of these rules as elected,
 - (b) give notice of the name of each candidate who he/she has declared elected:
 - (i) where the election is held under a proposed constitution pursuant to powers conferred on the University Hospital Southampton NHS Foundation Trust by section 33(4) of the 2006 Act, to the Chair of the NHS Trust, or
 - (ii) in any other case, to the chairman of the corporation, and
 - (c) give public notice of the name of each candidate who he/she has declared elected.
- (2) The returning officer is to make:
 - (a) the number of first preference votes for each candidate whether elected or not,
 - (b) any transfer of votes,

- (c) the total number of votes for each candidate at each stage of the count at which such transfer took place,
- (d) the order in which the successful candidates were elected, and
- (e) the number of rejected ballot papers under each of the headings in rule 42(1), available on request.

51. Declaration of result for uncontested elections

- (1) In an uncontested election, the returning officer is to as soon as is practicable after final day for the delivery of notices of withdrawals by candidates from the election:
 - (a) declare the candidate or candidates remaining validly nominated to be elected,
 - (b) give notice of the name of each candidate who he/she has declared elected to the chairman of the corporation, and
 - (c) give public notice of the name of each candidate who he/she has declared elected.

Part 8 – Disposal of documents

52. 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,
 - (d) the statement of rejected ballot papers, and
 - (e) the complete electronic copies of records referred to in rule 25 held in a device suitable for the purpose of storage.
- (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,
 - (e) the list of eligible voters, and
 - (f) the complete electronic copies of records referred to in rule 25 held in a device suitable for the purpose of storage..
- (3) The returning officer must endorse on each packet a description of:
 - (a) its contents,
 - (b) the date of the publication of notice of the election,
 - (c) the name of the corporation to which the election relates, and
 - (d) the constituency or class within a constituency, to which the election relates.

53. Delivery of documents

- (1) Once the documents relating to the poll have been sealed up and endorsed pursuant to rule 52, the returning officer is to forward them to the chair of the corporation.

54. Forwarding of documents received after close of the poll

- (1) Where:

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

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

55. Retention and public inspection of documents

- (1) The corporation is to retain the documents relating to an election that are forwarded to the chair by the returning officer under these rules for one year, and then, unless otherwise directed by the Regulator, cause them to be destroyed.
- (2) With the exception of the documents listed in rule 56(1), the documents relating to an election that are held by the corporation shall be available for inspection by members of the public at all reasonable times.
- (3) A person may request a copy or extract from the documents relating to an election that are held by the corporation, and the corporation is to provide it, and may impose a reasonable charge for doing so.

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

- (1) The corporation may not allow the inspection of, or the opening of any sealed packet containing:
 - (a) any rejected ballot papers, including ballot papers rejected in part,
 - (b) any disqualified documents, or the list of disqualified documents,
 - (c) any counted ballot papers,
 - (d) any declarations of identity,
 - (e) the list of eligible voters, or
 - (f) the complete electronic copies of records referred to in rule 25 held in a device suitable for the purpose of storage

by any person without the consent of the Regulator.

- (2) A person may apply to the Regulator to inspect any of the documents listed in rule 56(1), and the Regulator may only consent to such inspection if it is satisfied that it is necessary for the purpose of questioning an election pursuant to Part 11.
- (3) The Regulator's consent may be on any terms or conditions that it thinks necessary, including conditions as to:
 - (a) persons,

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

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

- (4) On an application to inspect any of the documents listed in rule 56(1):
 - (a) in giving its consent, the Regulator, and
 - (b) making the documents available for inspection, the corporation,
 must ensure that the way in which the vote of any particular member has been given shall not be disclosed, until it has been established:
 - (i) that his/her vote was given, and
 - (ii) that the Regulator has declared that the vote was invalid.

Part 9 – Death of a candidate during a contested election

57. 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) publish a notice stating that the candidate has died, and
 - (b) proceed with the counting of the votes as if that candidate has been excluded from the count so that:
 - (i) ballot papers which only have a first preference recorded for the candidate that has died, and no preference for any other candidates, are not to be counted, and
 - (ii) ballot papers which have preferences recorded for other candidates are to be counted according to the consecutive order of those preferences, passing over preferences marked for the candidate who has died.
- (2) The ballots which have preferences recorded for the candidate who has died are to be sealed with the other counted ballot papers pursuant to rule 52(1)(a).

Part 10 – Election expenses and publicity

Expenses

58. Election expenses

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

59. Expenses and payments by candidates

- (1) A candidate may not incur any expenses or make a payment (of whatever nature) for the purposes of an election, other than expenses or payments that relate to:
 - (a) personal expenses,
 - (b) travelling expenses, and expenses incurred while living away from home, and

- (c) expenses for stationery, postage, telephone, internet (or any similar means of communication) and other petty expenses, to a limit of £100.

60. 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/her family any money or property (whether as a gift, donation, loan, or otherwise) to meet or contribute to expenses incurred by or on behalf of the candidate for the purposes of an election.
- (2) Nothing in this rule is to prevent the corporation from incurring such expenses, and making such payments, as it considers necessary pursuant to rules 61 and 62.

Publicity

61. Publicity about election by the corporation

- (1) The corporation may:
 - (a) compile and distribute such information about the candidates, and
 - (b) organise and hold such meetings to enable the candidates to speak and respond to questions, as it considers necessary
- (2) Any information provided by the corporation about the candidates, including information compiled by the corporation under rule 62 must be:
 - (a) objective, balanced and fair,
 - (b) equivalent in size and content for all candidates,
 - (c) compiled and distributed in consultation with all of the candidates standing for election, and
 - (d) must not seek to promote or procure the election of a specific candidate or candidates, at the expense of the electoral prospects of one or more other candidates.
- (3) Where the corporation proposes to hold a meeting to enable the candidates to speak, the corporation must ensure that all of the candidates are invited to attend, and in organising and holding such a meeting, the corporation must not seek to promote or procure the election of a specific candidate or candidates at the expense of the electoral prospects of one or more other candidates.

62. Information about candidates for inclusion with voting documents

- (1) The corporation must compile information about the candidates standing for election, to be distributed by the returning officer pursuant to rule 24 of these rules.
- (2) The information must consist of:
 - (a) a statement submitted by the candidate of no more than 250 words,
 - (b) if voting by telephone or text message is a polling method, the numerical voting code, allocated by the returning officer, to each candidate, for the purpose of recording votes on the telephone voting facility or the text message voting facility, and
 - (c) a photograph of the candidate.

63. 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/her own services voluntarily, on his/her own time, and free of charge is not to be considered an expense for the purposes of this Part.

Part 11 – Questioning elections and the consequence of irregularities

64. Application to question an election

- (1) An application alleging a breach of these rules, including an electoral irregularity under Part 10, may be made to the Regulator.
- (2) An application may only be made once the outcome of the election has been declared by the returning officer.
- (3) An application may only be made to the Regulator by:
 - (a) a person who voted at the election or who claimed to have had the right to vote, or
 - (b) a candidate, or a person claiming to have had a right to be elected at the election.
- (4) The application must:
 - (a) describe the alleged breach of the rules or electoral irregularity, and
 - (b) be in such a form as the Regulator may require.
- (5) The application must be presented in writing within 21 days of the declaration of the result of the election.
- (6) If the Regulator requests further information from the applicant, then that person must provide it as soon as is reasonably practicable.
- (7) The Regulator shall delegate the determination of an application to a person or persons to be nominated for the purpose of the Regulator.
- (8) The determination by the person or persons nominated in accordance with rule 64(7) shall be binding on and shall be given effect by the corporation, the applicant and the members of the constituency (or class within a constituency) including all the candidates for the election to which the application relates.
- (9) The Regulator may prescribe rules of procedure for the determination of an application including costs.

Part 12 – Miscellaneous

65. Secrecy

- (1) The following persons:
 - (a) the returning officer,
 - (b) the returning officer’s staff,

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

- (i) the name of any member of the corporation who has or has not been given a ballot paper or who has or has not voted,
 - (ii) the unique identifier on any ballot paper,
 - (iii) the voter ID number allocated to any voter
 - (iv) the candidate(s) for whom any member has voted for on any particular ballot paper.
- (2) No person may obtain or attempt to obtain information as to the candidate(s) for whom a voter is about to vote or has voted, or communicate such information to any person at any time, including the unique identifier on a ballot paper given to a voter or the voter id number allocated to a voter.
- (3) The returning officer is to make such arrangements as he/she thinks fit to ensure that the individuals who are affected by this provision are aware of the duties it imposes.

66. Prohibition of disclosure of vote

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

67. Disqualification

- (1) A person may not be appointed as a returning officer, or as staff of the returning officer pursuant to these rules, if that person is:
- (a) a member of the corporation,
 - (b) an employee of the corporation,
 - (c) a director of the corporation, or
 - (d) employed by or on behalf of a person who has been nominated for election.

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

- (1) If industrial action, or some other unforeseen event, results in a delay in:
- (a) the delivery of the documents in rule 24 or
 - (b) the return of the ballot papers and declarations of identity,

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

ANNEX 5
Additional Provisions – Council of Governors

1. Process for investigating and resolving complaints made against a governor

- 1.1 A person wishing to make a complaint concerning the conduct of a governor shall do so in writing to the chair.
- 1.2 Where a complaint is made under paragraph 1.1 above:
 - 1.2.1 the chair, shall, if in their opinion it is appropriate do so, take fair and reasonable steps to resolve the matter informally within 10 working days from receipt of the written complaint.
 - 1.2.2 the chair, may choose to delegate their responsibility under paragraph 1.2.1 above to another person.
- 1.3 If the complaint cannot be resolved by informal resolution under paragraph 1.2 above, or the chair decides that informal resolution is not appropriate, the chair may take such action as they consider is appropriate in the circumstances, including, but not limited to:
 - 1.3.1 the suspension of the governor against whom the complaint has been made from the council of governors so that the matter can be investigated. Any suspension of a governor shall be confirmed to them in writing; and
 - 1.3.2 commissioning an investigation into the complaint, to be conducted by individuals with relevant experience from either within or outside of the Trust.
- 1.4 As soon as reasonably practicable following any decision taken by the chair under clause 1.3 above, the chair shall inform the council of governors that such a decision has been taken, and, to the extent appropriate the reasons for it.
- 1.5 As soon as reasonably practicable following a decision to commission an investigation, the chair shall provide to the council of governors, to the extent they consider it appropriate, a copy of the terms of reference of such investigation.
- 1.6 Where an investigation identifies, or, if no investigation is commissioned, the chair believes, a governor has failed to comply with this constitution and/or any code of conduct applying to governors, and/or the Standing Orders, the council of governors shall be asked to decide by a majority of those present and voting, whether to approve a statement of non-compliance or misconduct, which shall set out the reasons for such non-compliance or misconduct.
- 1.7 The governor concerned shall be notified in writing and provided with a copy of the statement of non-compliance and will be invited to respond within an appropriate and reasonable timescale as determined by the council of governors in the statement of non-compliance. The governor shall be invited to address the Council of Governors in person if the matter cannot be resolved satisfactorily through correspondence.
- 1.8 Having considered the governor's response, the council of governors shall decide by a majority of those present and voting whether to uphold the statement of non-compliance.
- 1.9 If the statement of non-compliance is upheld:

- 1.9.1 subject to paragraph 1.9.2 below, the council of governors may by a majority of those present and voting impose such sanctions as it deems appropriate. This may include a written warning, non-payment of expense suspension from office.
- 1.9.2 the chair or any other governor may propose a resolution to remove the governor in question from office.
- 1.10 Where a resolution to remove a governor is proposed and the governor concerned does not believe that the proposal is justified, the chair shall offer the governor in question the opportunity to have the reasonableness of the proposal reviewed by an independent assessor (a "review"). The chair and the governor shall seek to agree on a mutually acceptable independent assessor. If no agreement can be reached within 14 days of the governor requesting a review, then the chair shall decide on the independent assessor.

2. Suspension or termination of office of a governor

- 2.1 A governor may resign from office by giving notice in writing to the secretary.
- 2.2 If a governor fails to attend two successive meetings of the council of governors, his/her tenure of office is to be immediately terminated by the council of governors unless the council is satisfied that:
 - 2.2.1 the absences were due to reasonable cause; and
 - 2.2.2 he/she will be able to attend meetings of the council of governors within such a period, as the council of governors considers reasonable.
- 2.3 Subject to paragraph 1 the council of governors may by a resolution approved by a majority of governors present and entitled to vote at a properly constituted meeting of the council of governors terminate a governor's tenure of office if it considers:
 - 2.3.1 he/she has failed to undertake any training which the council of governors requires all governors to undertake;
 - 2.3.2 he/she has committed a serious breach of the code of conduct for governors, or
 - 2.3.3 he/she has acted in a manner detrimental to the interests of the Trust.

ANNEX 6
Standing Orders for the Practice and Procedure of the Council of Governors

(Paragraph 16)

CONTENTS:

1. Introduction
2. Interpretation
3. The council of governors
4. Meetings of the council of governors
 - 4.1 Admission of the Public and Press
 - 4.2 Calling meetings
 - 4.3 Notice of meetings
 - 4.4 Setting the agenda
 - 4.5 Petition
 - 4.6 Chair of meeting
 - 4.7 Motions
 - 4.8 Chair's ruling
 - 4.9 Voting
 - 4.10 Minutes
 - 4.11 Attendance
 - 4.12 Suspension of standing orders
 - 4.13 Variation and amendment of standing orders
 - 4.14 Record of attendance
 - 4.15 Quorum
5. Committees
6. Declarations of interests and register of interests
 - 6.1 Declaration of interest
 - 6.2 Nature of interest
 - 6.3 Exclusion in proceedings of the council of governors
 - 6.4 Register of interests
7. Standards of business conduct
8. Appointments and recommendations
9. Confidentiality
10. Interface between the council of governors and the board of directors
11. Miscellaneous

1. Introduction

These standing orders for the practice and procedures of the council of governors (and any sub-committees) are the standing orders referred to in paragraph 16 of the Constitution.

2. Interpretation

2.1 The definition and interpretation of words and expressions contained in these standing orders are as set out at paragraph 45 of the constitution.

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

3. The council of governors

The council of governors may only exercise its powers in formal session.

4. Meetings of the council of governors

4.1 *Admission of the Public and the Press*

The public and representatives of the press shall be afforded facilities to attend all formal meetings of the council of governors subject to Standing Orders 4.1.1 and 4.1.2 below.

4.1.1 The council of governors may resolve to exclude members of the public and representative of the press from any meeting or part of a meeting on the grounds that:

4.1.1.1 publicity would be prejudicial to the public interest having regard to the confidential nature of the business to be transacted; or

4.1.1.2 there are special reasons stated in the resolution and arising from the nature of the business of the proceedings.

4.1.2 The council of governors may resolve, in the interests of public order, that the meeting shall adjourn for a period to be specified in the resolution to enable the council of governors to complete business without the presence of the public.

4.1.3 Nothing in these standing orders shall require the council of governors to allow members of the public and representatives of the press to record proceedings in any manner whatsoever, other than writing, or to make any oral report of proceedings as they take place, without the prior agreement of the council of governors.

4.1.4 In the event that the public and press are admitted to all or part of a meeting, the chair (or other person presiding) shall give such directions as he thinks fit in regard to the arrangements for meetings and accommodation of the public and press so as to ensure that the council of governors' business shall be conducted without interruption and disruption.

4.1.5 The Trust may make such arrangements from time to time as it sees fit with regards to extending of invitations to observers to attend and address the council of governors.

4.2 *Calling meetings*

4.2.1 Meetings of the council of governors shall be held at such times and places as the council of governors may determine and there shall be not less than

four meetings in any year.

- 4.2.2 The chair, or in his/her absence the deputy chair, may call a meeting of the council of governors at any time. If the chair refuses to call a meeting after a requisition for that purpose, signed by at least one third of the whole number of the governors and specifying the business to be transacted at the meeting, has been presented to them, or if, without so refusing, the chair does not call a meeting within seven clear days after such requisition has been presented to them at the Trust's Headquarters, such one third or more of the governors may forthwith call a meeting for the purpose of conducting that business.

4.3 ***Notice of meetings***

- 4.3.1 Before each meeting of the council of governors, a notice of the meeting, specifying the business proposed to be transacted at it, and signed by the chair or by an officer of the Trust authorised by the chair to sign on his/her behalf, shall be delivered to, or sent by email, or sent by post to the usual place of residence of every governor, so as to be available to them at least five clear days before the meeting save in the case of emergencies. Subject to Standing Order 4.3.4 below, lack of service of the notice on any governor shall not affect the validity of a meeting.
- 4.3.2 Notwithstanding the above requirement for notice, the chair may waive notice in writing on written receipt of agreement of at least half of the governors.
- 4.3.3 In the case of a meeting called by governors in default of the chair, the notice shall be signed by those governors and no business shall be transacted at the meeting other than that specified in the requisition.
- 4.3.4 Subject to Standing Order 4.3.2, failure to serve notice on more than three quarters of governors will invalidate any meeting. A notice will be presumed to have been served 48 hours after it was posted.
- 4.3.5 Save in an emergency, an agenda shall be sent to each governor so as to arrive no later than 5 days in advance of each meeting and supporting papers, whenever possible, shall accompany the agenda. Minutes of the previous meeting will be circulated with the papers for approval and this will be a specific agenda item.
- 4.3.6 Before any meeting of the council of governors which is to be held in public, a public notice of the time and place of the meeting, and the public part of the agenda, shall be displayed on the Trust's website and at the Trust's premises at least three clear days before the meeting.

4.4 ***Setting the agenda***

- 4.4.1 The council of governors may determine that certain matters shall appear on every agenda for a meeting and shall be addressed prior to any other business being conducted.
- 4.4.2 A governor desiring a matter to be included on an agenda shall make his/her request in writing to the chair at least ten clear days before the meeting. 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 ten clear days before a meeting may be included on the agenda at the discretion of the chair.

4.5 ***Chair of meeting***

- 4.5.1 The chair is appointed in accordance with the constitution (annex 9 appendix 4).
- 4.5.2 At any council of governors meeting, the chair, if present, shall preside.
- 4.5.3 If the chair is absent from the meeting or is absent temporarily on the grounds of a declared conflict of interest the deputy chair shall preside.
- 4.5.4 If the deputy chair is also absent from the meeting or is absent temporarily on the grounds of a declared conflict of interest, another non-executive director shall preside.
- 4.5.5 If no non-executive director is available such governor as the governors that are present shall appoint, shall preside.

4.6 ***Motions***

- 4.6.1 A governor wishing to move or amend a motion shall send written notice of it to the chair at least ten clear days before the meeting. Requests made less than ten days before a meeting may be included on the agenda at the discretion of the chair. This paragraph shall not prevent any motion being moved during the meeting, without notice, on any business mentioned on the agenda subject to Standing Order 4.3.3.
- 4.6.2 A motion or amendment once moved and seconded, may be withdrawn by the proposer with the concurrence of the seconder and the consent of the chair.
- 4.6.3 Notice of a motion to amend or rescind any resolution (or the general substance of any resolution) which has been passed within the preceding six calendar months, shall bear the signature of the governors who gave it and also the signature of four other governors. When the council of governors has disposed of any such motion it shall not be competent for any governor to propose a motion to the same effect within six months; however the chair may do so if he/she considers it appropriate.
- 4.6.4 The mover of a motion shall have the right of reply at the close of any discussion on the motion or any amendment thereto.
- 4.6.5 When a motion is under discussion or immediately prior to discussion it shall be open to a governor to move:
 - 4.6.5.1 an amendment to the motion;
 - 4.6.5.2 the adjournment of the discussion or the meeting;
 - 4.6.5.3 that the meeting proceed to the next business;
 - 4.6.5.4 the appointment of an ad hoc committee to deal with a specific item of business;
 - 4.6.5.5 that the motion be now put.
- 4.6.6 **Emergency motion**

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

Subject to the agreement of the chair and this Standing Order 4.7.6, a governor 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. At the chair's discretion, the emergency motion shall be declared to the council of governors at the commencement of the business of the meeting as an additional item included on the agenda. The chair's decision to include the item shall be final.

4.7 **Chair's ruling**

Statements of governors made at meetings of the council of governors shall be relevant to the matter under discussion at the material time and the decision of the chair of the meeting on questions of order, relevancy, regularity and any other matters shall be final.

4.8 **Voting**

4.8.1 A governor may not vote at a meeting of the council of governors unless he has made a declaration in the form specified within these Standing Orders, that he is a member of the constituency which elected him and is not prevented from being a member of the council of governors by paragraph 8 of Schedule 7 to the 2006 Act or under the Constitution. Such declaration must be dated at least 7 Clear Days prior to the commencement of the meeting.

4.8.2 Except as stated otherwise in the constitution or these standing orders, every question at a meeting shall be determined by a majority of the votes of the governors present and voting on the question.

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

4.8.4 Whoever is chair of the meeting of the council of governors shall in the case of an equality of votes on any question or proposal have a casting vote.

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

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

4.8.7 A governor may only vote if present at the time of the vote on which the question is to be decided; no governor may vote by proxy.

4.8.8 Any matter which could be decided by the council of governors in a meeting may be determined by written resolution. A written resolution shall, with any accompanying papers which are relevant, describe the matter to be decided and provide for governors to sign the resolution to confirm their agreement. A written resolution may comprise identical documents sent to all governors, each to be signed by a governor, or one document to be signed by all governors. A written resolution shall be passed only when at least three quarters of the governors, including a majority of governors who are members of the public constituency of the Trust, approve the resolution in writing within the timescale imposed in such a notice. The secretary shall keep records of all written resolutions.

4.9 **Meetings: Electronic Communication**

4.9.1 In this Standing Order "communication" and "electronic communication" shall have the meanings set out in the Electronic Communications Act 2000 or any statutory modification or re-enactment thereof.

- 4.9.2 A governor in electronic communication with the chair and all other parties to a meeting of the council of governors or of a committee or sub-committee of the governors shall be regarded for all purposes as personally attending such a meeting provided that, but only for so long as, at such a meeting he has the ability to communicate interactively and simultaneously with all other parties attending the meeting including all persons attending by way of electronic communication.
- 4.9.3 A meeting at which one or more of the governors attends by way of electronic communication is deemed to be held at such a place as the governors shall at the said meeting resolve. In the absence of such a resolution, the meeting shall be deemed to be held at the place (if any) where a majority of the governors attending the meeting are physically present, or in default of such a majority, the place at which the chair of the meeting is physically present.
- 4.9.4 Meetings held in accordance with this standing order are subject to requirements in respect of quorum. For such a meeting to be valid, a quorum must be present and maintained throughout the meeting.
- 4.9.5 The minutes of a meeting held in this way must state that it was held by electronic communication and that the governors were all able to hear each other and were present throughout the meeting.

4.10 ***Minutes***

- 4.10.1 The minutes of the proceedings of a meeting shall be drawn up by the secretary and submitted for agreement at the next ensuing meeting where the chair presiding at it will sign them.
- 4.10.2 No discussion shall take place upon the minutes except upon their accuracy or where the chair considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the next meeting.

4.11 ***Attendance***

Governors who are unable to attend a meeting shall notify the secretary in advance of the meeting so that their apologies may be submitted.

4.12 ***Suspension of Standing Orders***

- 4.12.1 Except where this would contravene any statutory provision or any direction made by Monitor, any one or more of the standing orders may be suspended at any meeting, provided that at least two-thirds of the governors are present, there is a majority of governors who are members of the public constituency of the Trust, and that a majority of those present vote in favour of suspension.
- 4.12.2 A decision to suspend the standing orders shall be recorded in the minutes of the meeting.
- 4.12.3 A separate record of matters discussed during the suspension of standing orders shall be made and shall be available to the chair and governors.
- 4.12.4 No formal business may be transacted while standing orders are suspended.

4.13 ***Variation and amendment of Standing Orders***

These standing orders may only be amended in accordance with paragraph 43 of the constitution.

4.14 **Record of attendance**

The names of the chair and governors present at the meeting shall be recorded in the minutes.

4.15 **Quorum**

4.15.1 No business shall be transacted at a meeting unless at least one third of the total number of governors entitled to vote are present at the meeting with the majority of those governors present being from the public constituency.

4.15.2 If at any meeting there is no quorum present within 30 minutes of the time fixed for the start of the meeting, the meeting shall stand adjourned for five clear days and upon reconvening, those present shall constitute a quorum.

4.15.3 If a governor has been disqualified from participating in the discussion on any matter and/or from other voting on any resolution by reason of the declaration of a conflict of interest then he/she 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.

5. Committees

5.1 Subject to any direction and/or guidance of Monitor, the council of governors may and, if directed by Monitor, shall appoint committees of the council of governors from time to time to assist it in the proper performance of its functions under the constitution and the regulatory framework, consisting wholly or partly of members of the council of governors and the board of directors.

5.2 A committee appointed under Standing Order 5.1 may, subject to such directions as may be given by Monitor or the council of governors, appoint sub-committees consisting wholly or partly of members of the council of governors and the board of directors.

5.3 These standing orders, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees established by the council of governors with the term "chair" to be read as a reference to the chair of the committee and the term "member" to be read as a reference to a member of the committee as the context permits.

5.4 Each committee of the council of governors shall have such terms of reference and remit and shall be subject to such conditions as the council of governors shall decide and shall be in accordance with the regulatory framework and any direction or guidance issued by Monitor but, for the avoidance of doubt, the council of governors may not delegate to any such committee any of its powers or responsibilities.

5.5 Where committees are authorised to establish sub-committees they may not require such sub-committees to carry out any of their responsibilities unless expressly authorised by the council of governors.

5.6 Where the council of governors determines that persons who are neither governors, nor members of the board of directors nor officers of the Trust, shall be appointed to a committee, the terms of such appointment shall be determined by the council of governors subject to the payment of travelling expenses and other allowances being in accordance with such sum as may be determined by the board of directors or Monitor.

5.7 If the Board of Directors agrees, the Council of Governors may appoint Governors to serve on joint committees with the Board of Directors or committees of the Board of

Directors. Where Governors are appointed to committees of the Board of Directors they shall have observer status only.

6. Declarations of interests and register of interests

6.1 Declaration of interests

- 6.1.1 The regulatory framework and the constitution require each governor to declare to the secretary :
- 6.1.1.1 any actual or potential, direct or indirect, financial interest which is material to any discussion or decision they are involved, or likely to be involved, in making, as described in Standing Orders 6.2.2 and 6.2.6 (subject to Standing Order 6.2.3); and
 - 6.1.1.2 any actual or potential, direct or indirect, non-financial professional interest, which is material to any discussion or decision they are involved, or likely to be involved, in making, as described in Standing Orders 6.2.4 and 6.2.6; and
 - 6.1.1.3 any actual or potential, direct or indirect, non-financial personal interest, which is material to any discussion or decision they are involved, or likely to be involved, in making, as described in Standing Orders 6.2.5 and 6.2.6 .
- 6.1.2 Such a declaration shall be made either at the time of the governor's election or appointment or as soon thereafter as the interest arises, but within five clear days of becoming aware of the existence of that interest, and in such manner as the secretary may prescribe from time to time.
- 6.1.3 In addition, if a governor is present at a meeting of the council of governors and has an interest of any sort in any matter which is the subject of consideration, he/she shall, at the meeting and as soon as practicable after its commencement, disclose the fact and the chair shall then decide what action to take. This may include excluding the governor from discussion on the matter and/or prohibiting the governor from voting on any question with respect to the matter.
- 6.1.4 Subject to Standing Order 6.2.3, if a governor has declared a pecuniary interest (as described in Standing Order 6.2.2) he/she shall not take part in the consideration or discussion of the matter.
- 6.1.5 Any interest declared at a meeting of the council of governors and subsequent action taken should be recorded in the council of governors' meeting minutes. Any changes in interests should be officially declared at the next relevant meeting following the change occurring.
- 6.1.6 This Standing Order 6 applies to any committee, sub-committee or joint committee of the council of governors and applies to any member of any such committee, sub-committee, or joint committee (whether or not he/she is also a governor).
- 6.1.7 The interests of governors in companies likely or possibly seeking to do business with the NHS should be published in the Trust's Annual Report. The information should be kept up to date for inclusion in succeeding Annual Reports.

6.2 Nature of Interests

- 6.2.1 Interests which should be regarded as "material" are ones which a

reasonable person would take into account when making a decision regarding the use of taxpayers' money because the interest has relevance to that decision. Material interests are to be interpreted in accordance with guidance issued by Monitor.

- 6.2.2 A financial interest is where a governor may receive direct financial benefits (by either making a gain or avoiding a loss) from the consequences of a decision of the council of governors. This could include:
 - 6.2.2.1 directorships, including non-executive directorships held in any other organisation which is doing, or is likely to be doing business with an organisation in receipt of NHS funding;
 - 6.2.2.2 employment in an organisation which is doing, or is likely to do business with an organisation in receipt of NHS funding; or
 - 6.2.2.3 a shareholding, partnerships, ownership or part ownership of an organisation which is doing, or is likely to do business with an organisation in receipt of NHS funding.
- 6.2.3 A governor shall not be treated as having a financial interest in any a matter by reason only:
 - 6.2.3.1 of his/her membership of a company or other body, if he/she has no beneficial interest in any securities of that company or other body; or
 - 6.2.3.2 of shares or securities held in collective investment or pensions funds or units of authorised unit trusts; or
 - 6.2.3.3 of an interest in any company, body or person with which he/she is connected 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; or
 - 6.2.3.4 of any travelling or other expenses or allowances payable to a governor in accordance with the constitution.
- 6.2.4 A non-financial professional interest is where a governor may obtain a non-financial professional benefit from the consequence of a decision that the council of governors makes, such as increasing their professional reputation or status or promoting their professional career. This could include situations where a governor is:
 - 6.2.4.1 an advocate for a particular group of patients; or
 - 6.2.4.2 a clinician with a special interest; or
 - 6.2.4.3 an active member of a particular specialist body; or
 - 6.2.4.4 an advisor for the Care Quality Commission or National Institute of Health and Care Excellence.
- 6.2.5 A non-financial personal interest is where a governor may benefit personally from a decision that the council of governors makes in ways which are not directly linked to their professional career and do not give rise to a direct financial benefit. This could include where the governor is:
 - 6.2.5.1 a member of a voluntary sector board or has a position of authority within a voluntary sector organisation with an

interest in health and/or social care; or

6.2.5.2 a member of a lobbying or pressure group with an interest in health and/or social care.

6.2.6 A governor will be treated as having an indirect financial interest, non-financial professional interest or non-financial personal interest where he has a close association with another individual who has a financial interest, a non-financial professional interest or a non-financial personal interest who would stand to benefit from a decision in which the governor is involved in making. This includes material interests of:

6.2.6.1 close family members and relatives, including a spouse or partner or any parent, child, brother or sister of a governor;

6.2.6.2 close friends and associates; and

6.2.6.3 business partners.

6.2.7 If governors have any doubt about the relevance or materiality of an interest, this should be discussed with the chair. Influence rather than the immediacy of the relationship is more important in assessing the relevance of an interest. The interests of partners in professional partnerships including General Practitioners should also be considered.

6.3 **Register of interests**

6.3.1 The secretary shall keep a register of interests of governors, which shall contain the names of each governor, whether he/she has declared any interest, and if so, the interest declared.

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

6.3.3 The register of interests will be available to the public in accordance with the constitution and the chief executive will take reasonable steps to bring the existence of the register of interests to the attention of the local population.

6.3.4 In establishing, maintaining and publicising the register of interests, the Trust shall comply with all guidance issued from time to time by Monitor.

7. **Standards of business conduct**

Each governor shall comply with the Trust's code of conduct and any guidance and directions issued by Monitor, in particular the NHS Foundation Trust Code of Governance.

8. **Appointments and recommendations**

8.1 A governor shall not solicit for any person any appointment under the Trust or recommend any person for such appointment but this paragraph of this standing order shall not preclude members from giving written testimonial of a candidate's ability, experience or character for submission to the Trust in relation to any appointment.

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

8.3 Candidates for any staff appointment under the Trust shall, when making such an application, disclose in writing to the Trust whether they are related to any governors or the holder of any office within the Trust. Failure to disclose such a relationship shall disqualify a candidate and, if appointed, render them liable to instant dismissal.

- 8.4 The chair and every governor shall disclose to the chief executive or his/her delegated officer any relationship between themselves and a candidate of whose candidature that governor or officer is aware. It shall be the duty of the chief executive or his/her delegated officer to report to the council of governors any such disclosure made.
- 8.5 On appointment, each governor should disclose to the council of governors whether they are related to any other governor or holder of any office in the Trust.
- 8.6 Where the relationship to another governor is disclosed, Standing Order 6 shall apply.

9. Confidentiality

- 9.1 All governors shall abide by the Trust's policies on confidentiality and code of conduct.
- 9.2 A member of the council of governors or an attendee on a committee of the council of governors shall not disclose a matter dealt with by, or brought before, the council of governors without its permission, or until the committee shall have reported to the council of governors or shall otherwise have concluded on that matter.
- 9.3 A governor or other attendee at a committee shall not disclose any matter dealt with by the committee, notwithstanding that the matter has been reported or action has been concluded, if the council of governors or committee resolves that it is confidential.

10. Interface between the council of governors and the board of directors

The council of governors will cooperate with the board of directors as far as possible in order to comply with the regulatory framework in all respects and in particular in relation to matters set out in the constitution. In the event of a dispute arrangements are set out in annex 9, appendix 2, paragraph 2.

11. Miscellaneous

- 11.1 The secretary shall provide a copy of these standing orders to each governor and endeavour to ensure that each governor understands his/her responsibilities within these standing orders.
- 11.2 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 council of governors for action or ratification. All governors have a duty to disclose any non-compliance with these standing orders to the chair as soon as possible.

12. Council of governors: declarations

- 12.1 A member of a public constituency standing for election as governor must make a declaration for the purposes of Section 60(2) of the 2006 Act in the form specified below stating the particulars of his/her qualification to vote as a member and that he/she is not prevented from being a governor by virtue of paragraph 8 of Schedule 7 of the 2006 Act. It is an offence to knowingly or recklessly make a statement or declaration in respect of Section 60(2) of the 2006 Act which is false in material particular.
- 12.2 The specified form of declaration shall be set out on the nomination form referred to in the Model Election Rules at annex 4 and shall state as follows:

"I, the above named candidate, consent to my nomination and agree to stand for election to the council of governors in the constituency indicated in Section 1 of this form. I also declare that I am a member in that constituency.

I, the above named candidate, hereby declare that I am not:

(a) a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;

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

(c) a person who within the preceding 5 years has been convicted in the British Islands of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than 3 months (without the option of a fine) was imposed on him/her.

I confirm that to the best of my knowledge, the information provided on (or in connection with) this form is accurate".

12.3 A governor elected to the council of governors by the public constituency or staff constituency may not for the purposes of Section 60(3) of the 2006 Act vote at a meeting of the council of governors unless within the period since his/her election, he/she has made a declaration in the form specified below stating which constituency he/she is a member of, and is not prevented from being a member of the council of governors by paragraph 8 of Schedule 7 to the 2006 Act:

"I declare that I am a member of the public constituency or staff constituency and am eligible to vote at a meeting of the council of governors, and that I am not debarred from voting by any of the provisions in paragraph 8 of Schedule 7 to the 2006 Act".

13. Lead governor and deputy lead governor

13.1 The council of governors shall appoint or elect a governor as the lead governor.

13.2 The lead governor shall provide his/her contact details to NHS Improvement (NHSI) and continue to update NHSI and the council of governors with his/her contact details as and when they change.

13.3 The role of the lead governor is to facilitate direct communication between NHSI and the council of governors in the limited circumstances where it may not be appropriate to communicate through the normal channels. The council of governors may agree that the lead governor should undertake other specified duties.

13.4 The lead governor shall take steps to understand NHSI's role, the available guidance and the basis on which Monitor may take regulatory action.

13.5 In the event that an individual governor wishes to make contact with NHSI, this contact will be through the lead governor.

13.6 The council of governors may appoint or elect a deputy lead governor to undertake such responsibilities as the council of governors may specify.

ANNEX 7
Standing Orders for the Practice and Procedure of the Board of Directors

(Paragraph 26)

Contents:

Introduction

1. Interpretation
2. Not used
3. Not used
4. Meetings
 - 4.1 Calling of meetings
 - 4.2 Notice of meetings
5. Agendas and supporting papers
6. Petition
7. Motions
8. Voting
9. Attendance
10. Quorum
11. Not used
12. Appointment of the deputy chair and senior independent director
 - 12.1 Deputy chair
 - 12.2 Senior independent director
13. Executive directors
14. Chief executive
15. Finance director
16. Non-executive directors
17. Chair's ruling
18. Arrangments for the exercise of Trust functions by delegation
 - 18.1 Scheme of reservation and delegation
 - 18.2 Delegation of function to committees, officers or other bodies.
 - 18.3 Delegation to committees
 - 18.4 Scheme of delegation
 - 18.5 Delegation to officers
 - 18.6 Discharge of the direct accountability
 - 18.7 Duty to report non-compliance
19. Committees and sub-committees
 - 19.1 Appointment of committees and sub-committees
 - 19.2 Applicability of Standing Orders and Standing Financial Instructions to committees and sub-committees
 - 19.3 Delegation of powers by committees to sub-committees
 - 19.4 Terms of reference of committees
 - 19.5 Approval of appointments to committees
 - 19.6 Appointments for statutory functions
 - 19.7 Committees established by the Board
 - 19.8 Other committees and sub-committees
20. Declarations of interest and register of interests
21. Custody of seal and registration of use

22. Sealing of documents
23. Signature of documents
24. Suspension of standing orders
25. Confidentiality
26. Interface between the board of directors and the council of governors
27. Standing orders to be given to members of the Board and officers

Introduction

These standing orders for the practice and procedures of the board of directors (and any sub-committees) are the standing orders referred to in paragraph 31 of the constitution.

1. Interpretation

The definition and interpretation of words and expressions contained in these standing orders are as set out at paragraph 45 of the constitution.

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

2. Not Used

3. Not Used

4. Meetings

4.1 *Calling of meetings*

4.1.1 Ordinary meetings of the board of directors shall be held at regular intervals at such times and in such places as the board of directors may determine. Board meetings shall be held in public but the whole or any part of a meeting may be held in private if the Board so resolves.

4.1.2 The chair may call a meeting of the Board at any time.

4.1.3 One third or more directors of the Board may requisition a meeting in writing. If the chair refuses, or fails, to call a meeting within seven clear days of a requisition being presented, the directors signing the requisition may forthwith call a meeting.

4.2 *Notice of meetings*

4.2.1 Before each meeting of the Board, a notice of the meeting, specifying the business proposed to be transacted at it, and signed by the chair or by an officer of the Trust authorised by the chair to sign on his/her behalf, shall be delivered to, or sent by email, or sent by post to the usual place of residence of every director, so as to be available to them at least five clear days before the meeting save in the case of emergencies.

4.2.2 In the case of a meeting called by directors in default of the chair calling the meeting, the notice shall be signed by those directors.

4.2.3 Failure to serve notice on more than three directors will invalidate any meeting. A notice will be deemed to have been served 48 hours after it was posted.

4.2.4 Before any meeting of the Board which is to be held in public, a public notice of the time and place of the meeting, and the public part of the agenda, shall be displayed on the Trust's website and at the Trust's premises at least three clear days before the meeting.

5. Agendas and supporting papers

Save in an emergency, an agenda shall be sent to each director so as to arrive with each director no later than 5 days in advance of each meeting and supporting papers, whenever possible, shall accompany the agenda. Minutes of the previous meeting will be circulated with the papers for approval and this will be a specific agenda item.

6. Motions

- 6.1 A member of the Board wishing to move or amend a motion shall send written notice of it to the chair at least ten clear days before the meeting. Requests made less than ten days before a meeting may be included on the agenda at the discretion of the chair. This paragraph shall not prevent any motion being moved during the meeting, without notice, on any business mentioned on the agenda subject to standing order 7.5.
- 6.2 A motion or amendment once moved and seconded, may be withdrawn by the proposer with the concurrence of the seconder and the consent of the chair.
- 6.3 Notice of a motion to amend or rescind any resolution (or the general substance of any resolution) which has been passed within the preceding six calendar months, shall bear the signature of the director who gave it and also the signature of four other members of the Board. When the Board has disposed of any such motion it shall not be competent for any member of the Board, other than the chair, to propose a motion to the same effect within six months; however the chair may do so if he/she considers it appropriate.
- 6.4 The mover of a motion shall have the right of reply at the close of any discussion on the motion or any amendment thereto.
- 6.5 When a motion is under discussion or immediately prior to discussion it shall be open to a director to move:
- 6.5.1 an amendment to the motion;
 - 6.5.2 the adjournment of the discussion or the meeting;
 - 6.5.3 that the meeting proceed to the next business;
 - 6.5.4 the appointment of an ad hoc committee to deal with a specific item of business;
 - 6.5.5 that the motion be now put.

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

6.6 ***Emergency Motion***

Subject to the agreement of the chair and this standing order 7, 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. At the chair's discretion, the emergency motion shall be declared to the Board at the commencement of the business of the meeting as an additional item included on the agenda. The chair's decision to include the item shall be final.

7. Voting

- 7.1 All questions put to the vote shall, at the discretion of the chair, be decided by a show of hands. A paper ballot may be used if a majority of the board of directors present so request.
- 7.2 Save as provided in the constitution, every question put to a vote at a meeting shall be determined by a majority of the votes of the directors present and voting on the question.
- 7.3 In no circumstances may an absent director vote by proxy. Absence is defined as being absent at the time of the vote.

- 7.4 In the case of an equal vote, the chair or such other person presiding at the meeting shall have a second, and casting vote.
- 7.5 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.
- 7.6 If a Director so requests, his vote shall be recorded by name upon any vote (other than by paper ballot).
- 7.7 An Officer who has been appointed formally by the board of directors to act up for an executive director during a period of incapacity or temporarily to fill an executive director vacancy, shall be entitled to exercise the voting rights of the executive director. An Officer attending the board of directors to represent an executive director during a period of incapacity or temporary absence without formal acting up status may not exercise the voting rights of the executive director. An Officer's status when attending a meeting shall be recorded in the minutes.

8. Meetings: Electronic Communication

- 8.1 In this Standing Order "communication" and "electronic communication" shall have the meanings set out in the Electronic Communications Act 2000 or any statutory modification or re-enactment thereof.
- 8.2 A director in electronic communication with the chair and all other parties to a meeting of the board of directors or of a committee or sub-committee of the directors shall be regarded for all purposes as personally attending such a meeting provided that, but only for so long as, at such a meeting he has the ability to communicate interactively and simultaneously with all other parties attending the meeting including all persons attending by way of electronic communication.
- 8.3 A meeting at which one or more of the directors attends by way of electronic communication is deemed to be held at such a place as the directors shall at the said meeting resolve. In the absence of such a resolution, the meeting shall be deemed to be held at the place (if any) where a majority of the directors attending the meeting are physically present, or in default of such a majority, the place at which the chairman of the meeting is physically present.
- 8.4 The minutes of a meeting held in this way must state that it was held by electronic communication and that the directors were all able to hear each other and were present throughout the meeting.

9. Attendance

Directors who are unable to attend a meeting shall notify the secretary in advance of the meeting in question so that their apologies may be submitted.

10. Quorum

- 10.1 The quorum of a meeting will be at least half of the whole number of members of the Board (including at least one non-executive director and one executive director).
- 10.2 An Officer in attendance for an Executive Director but without formal acting up status may not count towards the quorum.
- 10.3 If a member of the Board has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of a declaration of a conflict of interest that person 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.

10.4 The requirement in standing order 10.1 above for a least one executive director to form part of the quorum shall not apply where the executive directors are excluded from a meeting.

11. Chair

The chair is appointed in accordance with the constitution (annex 9 appendix 4) and shall be responsible for the operation of the board of directors (and council of governors), and chair all board of directors (and council of governors) meetings when present.

12. Not used

13. Executive directors

Executive directors are appointed in accordance with the constitution (annex 9 appendix 4) and shall exercise their authority within the terms of these standing orders, the standing financial instructions and the scheme of reservation and delegation.

14. Chief executive

The chief executive shall be responsible for the overall performance of the executive functions of the Trust and is the accountable officer for the Trust.

15. Finance director

The finance director shall be responsible for the provision of financial advice to the Trust and for the supervision of financial control and accounting systems.

16. Non-executive directors

The non-executive directors shall not be granted nor shall they seek to exercise any individual executive powers on behalf of the Trust.

17. Not used

18. Arrangements for the exercise of Trust functions by delegation

18.1 *Scheme of reservation and delegation*

The chief executive shall prepare a scheme of reservation and delegation identifying matters that shall be reserved and those to be delegated which shall be considered and approved by the Board.

18.2 *Delegation of function to committees, officers or other bodies*

Subject to the regulatory framework and such guidance, if any, as may be given by Monitor, the board of directors may make arrangements on behalf of the Trust for the exercise of any of its functions by a formally constituted committee, sub-committee, or an officer of the Trust; in each case subject to such restrictions and conditions as the board of directors think fit.

18.3 *Delegation to committees*

The Board shall agree from time to time to the delegation of executive powers to be exercised by committees, or sub-committees, which it has formally constituted in accordance with the constitution, the terms of authorisation, binding guidance issued by Monitor and the 2006 Act. The constitution and terms of reference of these committees, or sub-committees and their specific executive powers shall be approved by the Board in respect of its sub-committees.

18.4 *Not used*

18.5 *Delegation to officers*

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

18.6 ***Discharge of the direct accountability***

Nothing in the scheme of reservation and delegation shall impair the discharge of the direct accountability to the Board of the finance director to provide information and advise the Board in accordance with statutory requirements or any requirements of Monitor.

18.7 ***Duty to report non-compliance with standing orders and standing financial instructions***

If for any reason these standing orders are not complied with, full details of the non-compliance, and the circumstance around the non-compliance, shall be reported to the next formal meeting of the Board for action or ratification. All members of the Board and officers have a duty to disclose any non-compliance with these standing orders to the secretary as soon as possible.

19. **Appointment of committees and sub-committees**

19.1 ***Appointment of committees and sub-committees***

Subject to the paragraph 3.3 of the constitution and such directions and guidance as may be issued by Monitor from time to time, the Board may appoint committees of the Board consisting of one or more members of the Board.

A committee appointed under this standing order may, subject to such directions and guidance as may be issued by Monitor or the Board, appoint sub-committees.

19.2 ***Applicability of standing orders and standing financial instructions to committees and sub-committees***

The standing orders and standing financial instructions of the Trust, as far as applicable, shall, as appropriate, apply to meetings and any committees and sub-committees established by the Board. In which case the term "chair" is to be read as a reference to the chair of the committee or sub-committee as the context permits, and the term "member of the Board" is to be read as a reference to a member of the committee or sub-committee also as the context permits.

19.3 ***Delegation of powers by committees to sub-committees***

Where committees are authorised to establish sub-committees they may not delegate executive powers to the sub-committees unless expressly authorised by the Board.

19.4 ***Terms of reference of committees***

Each such committee or sub-committee shall have such terms of reference and powers and be subject to such conditions as the Board shall decide. Such terms of reference shall be in accordance with the regulatory framework and any directions and guidance issued by Monitor.

19.5 ***Approval of appointments to committees***

Subject to standing order 19.6, the Board shall approve the appointments to each of the committees which it has formally constituted.

19.6 ***Appointments for statutory functions***

Where the Board is required by the constitution, by any applicable statute or regulations or by any directions or guidance issued by Monitor to appoint persons to a committee to undertake statutory functions, and where such appointments are to operate independently of the Board, such appointments shall be made in accordance with the constitution or such applicable statute or regulations or such directions or guidance issued by Monitor.

19.7 Committees established by the Board

The committees established by the Board are:

- 19.7.1 Audit & Assurance Committee;
- 19.7.2 Remuneration and Nominations Committee;
- 19.7.3 Charitable Funds Committee; and
- 19.7.4 where so required, a committee to act as a joint special committee with a committee of the council of governors for the purpose of resolving disputes between the council of governors and the Board in accordance with the dispute resolution procedure.

19.8 Other committees and sub-committees

The Board may also establish such other committees and sub-committees as required to discharge the Board's responsibilities.

20. Declarations of interest and register of interests

20.1 Declarations of interests

- 20.1.1 Each director shall comply with paragraph 32 of the constitution regarding conflicts of interest.
- 20.1.2 Interests that need to be declared by a director in accordance with paragraph 32 of the constitution (a Declarable Interest) are:
 - 20.1.2.1 any actual or potential, direct or indirect, financial interest which is material to any discussion or decision they are involved, or likely to be involved, in making, as described in Standing Orders 20.2.2 and 20.2.7 (subject to Standing Orders 20.2.3 and 20.2.4); and
 - 20.1.2.2 any actual or potential, direct or indirect, non-financial professional interest, which is material to any discussion or decision they are involved or likely to be involved in making, as described in Standing Orders 20.2.5 and 20.2.7; and
 - 20.1.2.3 any actual or potential, direct or indirect, non-financial personal interest, which is material to any discussion or decision they are involved or likely to be involved in making, as described in Standing Orders 20.2.6 and 20.2.7.
- 20.1.3 If a director has a Declarable Interest, he/she shall make the declaration at the time of his appointment or as soon thereafter as the interest arises, and in any event within five clear days of becoming aware of the existence of that interest. The interest shall be declared in such manner as the secretary may prescribe from time to time.
- 20.1.4 If a director is present at a meeting of the board of directors and has a Declarable Interest, he/she shall, as soon as practicable after the commencement of the meeting, or after the conflict of interest is established, disclose that fact and the chair shall decide what action to

take. This may include excluding the director from discussions on the matter and/or prohibiting the director from voting. Subject to Standing Orders 20.2.3 and 20.2.4, if a Director has declared financial interest (as described in Standing Order 20.2.2) he shall not take part in the consideration or discussion of the matter.

- 20.1.5 At the time the interest is declared, it shall be recorded in the minutes of the meeting. Any change in interests should be officially declared at the next relevant meeting following the change occurring.
- 20.1.6 The interests of directors in companies likely or possibly seeking to do business with the NHS should be published in the Trust's Annual Report. The information should be kept up to date for inclusion in succeeding Annual Reports.

20.2 Nature of interests

- 20.2.1 A Declarable Interest is one which a reasonable person would take into account when making a decision regarding the use of taxpayers' money because the interest has relevance to that decision. Declarable Interests are to be interpreted in accordance with guidance issued by Monitor.
- 20.2.2 A financial interest is where a director may receive direct financial benefits (by either making a gain or avoiding a loss) from the consequences of a decision of the Trust. This could include:
 - 20.2.2.1 directorships, including non-executive directorships held in another organisation which is doing, or is likely to do business with an organisation in receipt of NHS funding; or
 - 20.2.2.2 employment in an organisation which is doing, or is likely to do business with an organisation in receipt of NHS funding; or
 - 20.2.2.3 a shareholding, partnerships, ownership or part ownership of an organisation which is doing, or is likely to do business with an organisation in receipt of NHS funding.
- 20.2.3 A Director shall not be treated as having a financial interest in any matter by reason only:
 - 20.2.3.1 of his/her membership of a company or other body, if he has no beneficial interest in any securities of that company or other body; or
 - 20.2.3.2 of his/her ownership of shares or securities held in collective investment or pensions funds or units of authorised unit trusts; or
 - 20.2.3.3 of an interest in any company, body or person with which he is connected which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a director in the consideration or discussion of or in voting on, any question with respect to that matter.
- 20.2.4 Any remuneration, compensation or allowances payable to a Director by virtue of paragraph 18 of Schedule 7 of the 2006 Act shall not be treated as a financial interest for the purpose of this Standing Order.
- 20.2.5 A non-financial professional interest is where a Director may obtain a non-financial professional benefit from the consequence of a decision that the Trust makes, such as increasing their professional reputation or status or

promoting their professional career. This could include situations where a Director is:

- 20.2.5.1 an advocate for a particular group of patients; or
 - 20.2.5.2 a clinician with a special interest; or
 - 20.2.5.3 an active member of a particular specialist body; or
 - 20.2.5.4 an advisor for the Care Quality Commission or National
 - 20.2.5.5 Institute of Health and Care Excellence.
- 20.2.6 A non-financial personal interest is where a Director may benefit personally from a decision that the Trust makes in ways which are not directly linked to their professional career and do not give rise to a direct financial benefit. This could include where the Director is:
- 20.2.6.1 a member of a voluntary sector board or has a position of authority within a voluntary sector organisation with an interest in health and/or social care; or
 - 20.2.6.2 a member of a lobbying or pressure group with an interest in health and/or social care.
- 20.2.7 A Director will be treated as having an indirect financial interest, non-financial professional interest or non-financial personal interest where he has a close association with another individual who has a financial interest, a non-financial professional interest, or a non-financial personal interest who would stand to benefit from a decision of the Trust. This includes material interests of:
- 20.2.7.1 close family members and relatives, including a spouse, partner, parent, child or sibling;
 - 20.2.7.2 close friends and associates; and
 - 20.2.7.3 business partners.

20.3 Register of interests

- 20.3.1 The secretary shall keep a register of interests of directors, which shall contain the names of each director, whether he/she has declared any interest, and if so, the interest declared.
- 20.3.2 These details will be kept up to date by means of an annual review of the register of interests in which any changes to interests declared during the preceding twelve months will be incorporated.
- 20.3.3 The register of interests will be available to the public in accordance with the constitution and the chief executive will take reasonable steps to bring the existence of the register of interests to the attention of the local population.
- 20.3.4 In establishing, maintaining and publicising the register of interests, the Trust shall comply with all guidance issued from time to time by Monitor.

21. Custody of seal

The common seal of the Trust shall be kept by the secretary in a secure place.

22. Register of sealing

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

23. Sealing of documents

The common seal of the Trust shall not be fixed to any documents unless the sealing has been authorised by a resolution of the Board which expression includes, by virtue of the resolution of the Board adopting these standing orders, documents approved for sealing by the chair and either the chief executive or another executive director.

24. Signature of documents

The chief executive or nominated officers shall be authorised, by resolution of the Board, to sign on behalf of the Trust any agreement or other document not requested to be executed as a deed, the subject matter of which has been approved by the Board or any committee or sub-committee with delegated authority.

25. Suspension of standing orders

Except where this would contravene any statutory provision, or guidance issued by Monitor any one or more of the standing orders may be suspended at any meeting, provided the meeting is quorate.

26. Confidentiality

All members of the board of directors shall abide by the Trust's policies on confidentiality and code of conduct.

27. Interface between the board of directors and the council of governors

The Board will cooperate with the council of governors as far as possible in order to comply with the regulatory framework in all respects and in particular in relation to matters set out in the constitution. In the event of a dispute arrangements are set out in annex 9, appendix 2, paragraph 2.

28. Standing orders to be given to members of the Board and officers

It is the duty of the chief executive to ensure that existing members of the Board and officers and all new appointees are notified of and understand their responsibilities within standing orders and standing financial instructions. Updated copies shall be issued to staff designated by the chief executive.

ANNEX 8
Further Provisions

Appendix 1 - Membership

1. Membership

Representative membership

- 1.1 The Trust shall at all times strive to ensure that, taken as a whole, its actual membership is representative of those eligible for membership. To this end the Trust shall at all times have in place and pursue a membership strategy which shall be approved by the council of governors and shall be reviewed by them from time to time and at least every three years.
- 1.2 The council of governors shall present to each annual members meeting:
 - 1.1.1 a report on steps taken to secure that, taken as a whole, the actual membership of its constituencies and the classes of constituencies is representative of those eligible for such membership;
 - 1.1.2 the progress of the membership strategy; and
 - 1.1.3 any changes to the membership strategy.

Annex 8: Appendix 2

Dispute resolution procedures

1. Dispute: general

In the event of any dispute about the entitlement to membership the dispute shall be referred to the Secretary who shall make a determination on the point in issue. If the member is aggrieved at the decision of the secretary he may appeal in writing within 14 days of the secretary's decision to the council of governors whose decision shall be final.

2. Dispute: council of governors and the board of directors

In the event of dispute between the council of governors and the board of directors:

- 2.1 In the first instance the chair on the advice of the secretary, and such other advice as the chair may see fit to obtain, shall seek to resolve the dispute;
- 2.2 If the chair is unable to resolve the dispute he/she shall refer the dispute to the secretary who shall appoint a joint special committee constituted as a committee of the board of directors and a committee of the council of governors, both comprising equal numbers, to consider the circumstances and to make recommendations to the council of governors and the board of directors with a view to resolving the dispute;
- 2.3 If the recommendations (if any) of the joint special committee are unsuccessful in resolving the dispute, the chair may refer the dispute back to the board of directors who shall make the final decision.

Annex 8: Appendix 3

Legal issues

1. Indemnity insurance

The Trust will purchase indemnity insurance cover for governors, directors and the secretary, who have acted honestly and in good faith. They will not be required to meet out of their personal resources, any personal civil liability incurred in the execution or purported execution of their functions save where they have acted recklessly.

2. Checking process: governors and non-executive directors

Governors and non-executive directors will be subject to a checking process at the time of election/appointment; this may involve Disclosure and Barring Service (DBS) checks and a health assessment undertaken by the Trust's occupational health department. NB: executive directors undergo these checks as part of the Trust's recruitment process.

3. Review of Trust documents

As part of its commitment to good governance, the Trust will undertake regular reviews of all documentation associated with governance. Any change/amendment will be considered by the appropriate board or committee, or the council of governors if appropriate, and will be submitted to Monitor where this is required.

4. Interpretation

In the event of a question arising about any ambiguity, meaning or internal inconsistency within this constitution or about any matter not provided for by the constitution the Board shall have jurisdiction to determine that question and its decision shall be binding.

Annex 8: Appendix 4

Appointment of chair and non-executive directors

1.1 Not used

1.2 Arrangements for the appointment of new non-executive directors and chair

The process for appointing new non-executive directors and chair will be as follows:

- 1.2.1 subject to paragraph 1.2.2, the chair and other non-executive directors are to be appointed by the council of governors following a process of open competition. Subject to paragraph 23.3 of the constitution, the current chair or a non-executive director may stand for reappointment;
- 1.2.2 on the first renewal of the appointment of a non-executive director, the council of governors will appoint a nominations committee to determine whether the retiring non-executive director may be reappointed without a process of open competition. If the nominations committee does not consider the reappointment appropriate, then a suitable replacement will be identified in accordance with paragraphs 1.2.3 and 1.2.4 below;
- 1.2.3 six months before the end of the term of office of the chair or a non-executive director (as the case may be), the council of governors will appoint a nominations committee to seek a suitable replacement. The nominations committee will be constituted in accordance with paragraphs 1.2.5 and 1.2.6 below;
- 1.2.4 notwithstanding the provisions of paragraph 1.2.3 above, the nominations committee shall seek, by way of open advertisement and other means, candidates for office and assess and select for interview such candidates as are considered appropriate and in doing so the committee shall consult and shall have regard to the views of the board of directors and shall be at liberty to seek advice and assistance from persons other than members of the committee;
- 1.2.5 the nominations committee will make recommendations to the council of governors, including recommendations about pay (consulting external professional advisers to market-test the remuneration levels of the chair and other non-executive directors at least once every three years and when they intend to make a material change to the remuneration of a non-executive director), and it is the council of governors who shall resolve in a 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 nominations committee as to the suitability of the available candidates and the remuneration and allowances and other terms and conditions of office;
- 1.2.6 the nominations committee for the chair will consist of the deputy chair or another non-executive director and four governors, including at least one public governor. If the number of governors prepared to serve on the nominations committee is greater than the number of places available, the committee members will be selected by election by their peer governors. In the case of the nomination and selection of the chair, the nominations committee shall be chaired by the deputy chair unless he/she is a candidate, in which case the nominations committee will seek another non-executive director as chair. Each member of the nominations committee will have one vote in respect of any recommendation to the council of governors as to potential candidates for appointment;
- 1.2.7 the nominations committee for the non-executive directors will consist of the chair and three governors, two of which should be elected. The chief executive will attend in an advisory capacity only. If the number of governors prepared to serve on the nominations committee is greater than the number of places available, the committee members will be selected by election by their peer governors. The chair will chair the nominations committee. Each member of the nominations committee will have one vote in respect of any recommendation to the council of governors as to potential candidates for appointment;

- 1.2.8 the nominations committees constituted under paragraphs 1.2.5 and 1.2.6 above will be supported by appropriate advice from the secretary and the Trust's director for human resources;
 - 1.2.9 all appointments will be made in accordance with the constitution and the human resources policies of the Trust.
- 1.3 The council of governors will not consider nominations for membership of the board of directors other than those made by the appropriate nominations committee.