

St George's University Hospitals NHS Foundation Trust

Constitution

March 2015

St George's University Hospitals NHS Foundation Trust Constitution

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1. Interpretation and definitions

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.

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

the 2006 Act is the National Health Service Act 2006 as amended by the 2012 Act.

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

the **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 11.1 of this constitution.

Authorisation means an authorisation given by Monitor under section 35 of the 2006 Act.

Board of Directors is the board of directors of the trust as constituted in accordance with this constitution.

Code of Conduct means the code of conduct for governors of the trust, as adopted by the trust which all governors must subscribe to.

constitution means this constitution and all annexes to it.

Council of Governors is the council of governors of the trust as constituted in accordance with this constitution.

Model Election Rules means those election rules as published by the Department of Health from time to time.

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

Public Constituency means those who live in an area specified in Annex 1 of this constitution as an area for any public constituency of the trust as constituted in accordance with paragraph 7 of this constitution.

Secretary means a person whose function shall be to provide advice on corporate governance issues to the Board of Directors, Council of Governors and the chairman.

Staff Constituency means those individuals who come within paragraph 8.1 or 8.2 of this constitution and who are referred to collectively as the staff constituency, in accordance with paragraph 8.3.

2. Name

The name of the foundation trust is St George's University Hospitals NHS Foundation Trust (the “**trust**”).

3. Principal purpose

- 3.1** The principal purpose of the trust is the provision of goods and services for the purposes of the health service in England.
- 3.2** The trust does not fulfil its principal purpose unless, in each financial year, its total income from the provision of goods and services for the purposes of the health service in England is greater than its total income from the provision of goods and services for any other purposes.
- 3.3** The trust may provide goods and services for any purposes related to:
 - 3.3.1** the provision of services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness; and
 - 3.3.2** the promotion and protection of public health.
- 3.4** The trust may also carry on activities other than those mentioned in the above paragraph for the purpose of making additional income available in order better to carry on its principal purpose.
- 3.5** The trust is fully committed to the Equality Act. The trust will seek to ensure that the organisation at all levels reflects the diversity of the population it seeks to care for. It will seek to ensure that ongoing improvements are made to address health inequalities. The trust will continually seek to improve the services it provides and the way the trust manages and supports its staff. The trust is fully committed to ensuring that staff at all levels have the education and training to ensure these objectives are realised in a meaningful way.

4. Powers

- 4.1** The powers of the trust are set out in the 2006 Act.
- 4.2** All the powers of the trust shall be exercised by the Board of Directors on behalf of the trust.
- 4.3** Any of these powers may be delegated to a committee of directors or to an executive director.

5. Membership and constituencies

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

- 5.1** a Public Constituency; and
- 5.2** a Staff Constituency.

6. Application for membership

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

7. Public Constituency

- 7.1** An individual who lives in an area specified in Annex 1 as an area for a Public Constituency may become or continue as a member of the trust.
- 7.2** Those individuals who live in an area specified for a Public Constituency are referred to collectively as the Public Constituency.
- 7.3** The minimum number of members in each Public Constituency is specified in Annex 1.

8. Staff Constituency

- 8.1** An individual who is employed by the trust under a contract of employment with the trust may become or continue as a member of the trust provided:
 - 8.1.1** he/she is employed by the trust under a contract of employment which has no fixed term or has a fixed term of at least 12 months; or
 - 8.1.2** he/she has been continuously employed by the trust under a contract of employment for at least 12 months.
- 8.2** Individuals who exercise functions for the purposes of the trust, otherwise than under a contract of employment with the trust, may become or continue as members of the Staff Constituency provided such individuals have exercised these functions continuously for a period of at least 12 months.
- 8.3** Those individuals who are eligible for membership of the trust by reason of the previous provisions are referred to collectively as the Staff Constituency.

- 8.4** The Staff Constituency shall be divided into five (5) descriptions of individuals who are eligible for membership of the Staff Constituency, each description of individuals being specified within Annex 2 and being referred to as a class within the Staff Constituency.
- 8.5** The minimum number of members in each class of the Staff Constituency is specified in Annex 2.

9. Automatic membership by default – staff

- 9.1** An individual who is:
- 9.1.1** eligible to become a member of the Staff Constituency; and
 - 9.1.2** invited by the trust to become a member of the Staff Constituency and a member of the appropriate class within the Staff Constituency;

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

10. Restriction on membership

- 10.1** An individual who is a member of a constituency, or of a class within a constituency, may not while membership of that constituency or class continues, be a member of any other constituency or class.
- 10.2** An individual who satisfies the criteria for membership of the Staff Constituency may not become or continue as a member of any constituency other than the Staff Constituency.
- 10.3** An individual must be at least 14 years old to become a member of the trust.
- 10.4** Further provisions as to the circumstances in which an individual may not become or continue as a member of the trust are set out in Annex 8 – Further Provisions.

11. Annual Members' Meeting

- 11.1** The trust shall hold an annual meeting of its members ('**Annual Members' Meeting**'). The Annual Members' Meeting shall be open to members of the public.
- 11.2** Further provisions about the Annual Members' Meeting and other members' meetings are set out in Annex 9 –Members' Meeting.

12. Council of Governors – composition

- 12.1** The trust is to have a Council of Governors, which shall comprise both elected and appointed governors.
- 12.2** The composition of the Council of Governors is specified in Annex 3.
- 12.3** The members of the Council of Governors, other than the appointed members, shall be chosen by election by their constituency or, where there are classes within a constituency, by their class within that constituency. The number of governors to be elected by each constituency, or, where appropriate, by each class of each constituency, is specified in Annex 3.

13. Council of Governors – election of governors

- 13.1** Elections for elected members of the Council of Governors shall be conducted in accordance with the Model Election Rules.
- 13.2** The Model Election Rules as published from time to time by the Department of Health form part of this constitution. The Model Election Rules current at the date of the trust's Authorisation are attached at Annex 4.
- 13.3** A subsequent variation of the Model Election Rules by the Department of Health shall not constitute a variation of the terms of this constitution for the purposes of paragraph 45 of the constitution (amendment of the constitution).
- 13.4** An election, if contested, shall be by secret ballot.

14. Council of Governors - tenure

- 14.1** An elected governor may hold office for a period of up to 3 years.
- 14.2** All governors elected following the first election carried out in accordance with paragraphs 14.3 and 14.4 below, may hold office for a period of up to 3 years.
- 14.3** The first election to the Council of Governors for the public governors shall, in order that future elections shall occur on a phased basis, be conducted in such a way as to result in the initial terms of office for those governors set out below:

:

A	3	Initial public governors for the Wandsworth area will serve a term of office of three years
B	3	Initial public governors for the Wandsworth area will serve a term of office of two years

C	2	Initial public governors for the Merton area will serve a term of office of three years
D	2	Initial public governors for the Merton area will serve a term of office of two years
E	2	Initial public governors for the Regional area will serve a term of office of three years
F	2	Initial public governors for the Regional area will serve a term of office of two years
G	1	Initial public governor for the Lambeth area will serve a term of office of three years

14.4 The initial governors in each of the categories set out in paragraph 14.3 shall be selected by the number of votes cast on the following basis:

14.4.1 the number of governors specified in rows A,C, E and G of the table in paragraph 14.3 shall serve a three (3) year term, being those governors who gain the highest number of votes in each of the four (4) constituency areas specified (being an aggregate total of eight (8) governors);

14.4.2 the number of governors specified in rows B, D and F of the table in paragraph 14.3 shall serve a two (2) year term, being those governors who gain the next highest number of votes in each of the three (3) constituency areas specified after those governors referred to in paragraph 14.4.1 (being an aggregate total of seven (7) governors); and

14.4.3 the returning officer (as referred to in Annex 4) will undertake this selection.

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

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

14.7 An elected governor may not, if re-elected for more than one term of office, hold office for more than nine (9) consecutive years in total.

14.8 An elected governor who has held office for a period of nine (9) consecutive years may not be eligible for re-election until they have ceased to hold such office for a minimum of one (1) year.

14.9 An appointed governor may hold office for a period of up to three (3) years.

14.10 An appointed governor shall cease to hold office if the appointing organisation withdraws its sponsorship of him/her.

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

15. Council of Governors – disqualification and removal

15.1 The following may not become or continue as a member of the Council of Governors:

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

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

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

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

15.1.5 a person who is an executive or non-executive director of the trust, or a governor, non-executive director, chairman, chief executive or executive director of another NHS foundation trust.

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

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

15.4 Provisions for the removal of governors are set out in Annex 5.

16. Council of Governors – duties of governors

16.1 The general duties of the Council of Governors are:

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

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

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

17. Council of Governors – meetings of governors

17.1 The chairman of the trust (i.e. the chairman of the Board of Directors, appointed in accordance with the provisions of paragraph 26 or paragraph 27 below) or, in his/her absence, the deputy chairman (appointed in accordance with the provisions of paragraph 28 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 For the purposes of obtaining information about the trust's performance of its functions or the directors' performance of their duties (and deciding whether to propose a vote on the trust's or directors' performance), the Council of Governors may require one or more of the directors to attend a meeting.

18. Council of Governors – standing orders

The standing orders for the practice and procedure of the Council of Governors are attached at Annex 6.

19. Council of Governors – referral to the panel

19.1 In this paragraph, the panel means a panel of persons appointed by Monitor to which a governor of an NHS foundation trust may refer a question as to whether the trust has failed or is failing—

19.1.1 to act in accordance with its constitution; or

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

19.2 A governor may refer a question to the panel only if more than half of the members of the Council of Governors voting approve the referral.

20. Council of Governors - conflicts of interest of governors

If a governor has a pecuniary, personal or family interest, whether that interest is actual or potential and whether that interest is direct or indirect, in any proposed contract or other matter which is under consideration or is to be

considered by the Council of Governors, the governor shall disclose that interest to the members of the Council of Governors as soon as he/she becomes aware of it. The standing orders for the Council of Governors shall make provision for the disclosure of interests and arrangements for the exclusion of a governor declaring any interest from any discussion or consideration of the matter in respect of which an interest has been disclosed.

21. Council of Governors – travel expenses

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

22. Council of Governors – further provisions

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

23. Board of Directors – composition

23.1 The trust is to have a Board of Directors, which shall comprise both executive and non-executive directors.

23.2 The Board of Directors is to comprise:

23.2.1 a non-executive chairman;

23.2.2 6 (six) other non-executive directors; and

23.2.3 4 (four) executive directors.

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

23.4 The chief executive shall be the Accounting Officer.

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

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

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

24. Board of Directors – general duty

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

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

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

- 25.1 he/she is a member of a Public Constituency; or
- 25.2 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
- 25.3 he/she is not disqualified by virtue of paragraph 31 below.

26. Board of Directors – appointment and removal of chairman and other non-executive directors

- 26.1 The Council of Governors at a general meeting of the Council of Governors shall appoint or remove the chairman of the trust and the other non-executive directors.
- 26.2 Removal of the chairman or another non-executive director shall require the approval of three-quarters of the members of the Council of Governors.
- 26.3 The initial chairman and the initial non-executive directors are to be appointed in accordance with paragraph 27 below.

27. Board of Directors – appointment of initial chairman and initial other non-executive directors

- 27.1 The Council of Governors shall appoint the chairman of the applicant trust as the initial chairman of the trust, if he/she wishes to be appointed.
- 27.2 The power of the Council of Governors to appoint the other non-executive directors of the trust is to be exercised, so far as possible, by appointing as the initial non-executive directors of the trust any of the non-executive directors of the applicant trust (other than the chairman) who wish to be appointed.
- 27.3 The criteria for qualification for appointment as a non-executive director set out in paragraph 25 above (other than disqualification by virtue of paragraph 31 below) do not apply to the appointment of the initial chairman and the initial other non-executive directors in accordance with the procedures set out in this paragraph.
- 27.4 An individual appointed as the initial chairman or as an initial non-executive director in accordance with the provisions of this paragraph shall be appointed for the unexpired period of his/her term of office as chairman or (as the case may be) non-executive director

of the applicant trust; but if, on appointment, that period is less than 12 months, he/she shall be appointed for 12 months.

28. Board of Directors – appointment of deputy chairman

The Council of Governors at a general meeting of the Council of Governors shall appoint one of the non-executive directors as a deputy chairman.

29. Board of Directors - appointment and removal of the chief executive and other executive directors

- 29.1 The non-executive directors shall appoint or remove the chief executive.
- 29.2 The appointment of the chief executive shall require the approval of the Council of Governors.
- 29.3 The initial chief executive is to be appointed in accordance with paragraph 30 below.
- 29.4 A committee consisting of the chairman, the chief executive and the other non-executive directors shall appoint or remove the other executive directors.

30. Board of Directors – appointment and removal of initial chief executive

- 30.1 The non-executive directors shall appoint the chief officer of the applicant NHS trust as the initial chief executive of the trust, if he/she wishes to be appointed.
- 30.2 The appointment of the chief officer of the applicant trust as the initial chief executive of the trust shall not require the approval of the Council of Governors.

31. Board of Directors – disqualification

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

- 31.1 a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;
- 31.2 a person in relation to whom a moratorium period under a debt relief order applies (under part 7A of the Insolvency Act 1986);
- 31.3 a person who has made a composition or arrangement with, or granted a trust deed for, his/her creditors and has not been discharged in respect of it; or

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

32. Board of Directors – meetings

- 32.1** 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.
- 32.2** 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.

33. Board of Directors – standing orders

The standing orders for the practice and procedure of the Board of Directors are attached at Annex 7.

34. Board of Directors - conflicts of interest of directors

- 34.1** The duties that a director of the trust has by virtue of being a director include in particular;
- 34.1.1** 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.
 - 34.1.2** 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.
- 34.2** The duty referred to in paragraph 34.1.1 is not infringed if:
- 34.2.1** the situation cannot reasonably be regarded as likely to give rise to a conflict of interest; or
 - 34.2.2** the matter has been authorised in accordance with the constitution.
- 34.3** The duty referred to in paragraph 34.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- 34.4** In paragraph 34.1.2, “third party” means a person other than:

- 34.4.1** the trust; or
 - 34.4.2** a person acting on its behalf.
- 34.5** 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.
- 34.6** If a declaration under this paragraph proves to be, or becomes, inaccurate or incomplete, a further declaration must be made.
- 34.7** Any declaration required by this paragraph must be made before the trust enters into the transaction or arrangement.
- 34.8** This paragraph does not require a declaration of an interest of which the director is not aware or where the director is not aware of the transaction or arrangement in question.
- 34.9** A director need not declare an interest:
 - 34.9.1** if it cannot reasonably be regarded as likely to give rise to a conflict of interest;
 - 34.9.2** if, or to the extent that, the directors are already aware of it; or
 - 34.9.3** if, or to the extent that, it concerns terms of the director's appointment that have been or are to be considered:
 - 34.9.3.1** by a meeting of the Board of Directors, or
 - 34.9.3.2** by a committee of the directors appointed for the purpose under the constitution.
- 34.10** A matter shall have been authorised for the purposes of paragraph 34.2.2 if:
 - 34.10.1** the Board of Directors by majority disapples the provision of the constitution which would otherwise prevent a director from being counted as participating in the decision-making process;
 - 34.10.2** the director's interest cannot reasonably be regarded as likely to give rise to a conflict of interest (as determined by the Board of Directors from time to time); or
 - 34.10.3** the director's conflict of interest arises from a permitted cause (as determined by the Board of Directors from

time to time).

35. Board of Directors – remuneration and terms of office

- 35.1** The Council of Governors at a general meeting of the Council of Governors shall decide the remuneration and allowances, and the other terms and conditions of office, of the chairman and the other non-executive directors.
- 35.2** The trust shall establish a committee of non-executive directors to decide the remuneration and allowances, and the other terms and conditions of office, of the chief executive and other executive directors.

36. Registers

The trust shall have:

- 36.1** a register of members showing, in respect of each member, the constituency to which he/she belongs and, where there are classes within it, the class to which he/she belongs;
- 36.2** a register of members of the Council of Governors;
- 36.3** a register of interests of governors;
- 36.4** a register of directors; and
- 36.5** a register of interests of the directors.

37. Registers – inspection and copies

- 37.1** The trust shall make the registers specified in paragraph 36 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.
- 37.2** 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.
- 37.3** So far as the registers are required to be made available:
 - 37.3.1** they are to be available for inspection free of charge at all reasonable times; and
 - 37.3.2** a person who requests a copy of or extract from the registers is to be provided with a copy or extract.

- 37.4** 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.

38. Documents available for public inspection

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

38.1.1 a copy of the current constitution;

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

38.1.3 a copy of the latest annual report.

- 38.2** 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:

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

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

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

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

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

38.2.6 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;

38.2.7 a copy of any statement published or provided under

section 65G (consultation plan) of the 2006 Act;

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

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

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

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

38.4 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.

39. Auditor

39.1 The trust shall have an auditor.

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

40. Audit committee

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

41. Accounts

41.1 The trust must keep proper accounts and proper records in relation to the accounts.

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

41.3 The accounts are to be audited by the trust's auditor.

41.4 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.

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

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

- 42.1** The trust shall prepare an annual report and send it to Monitor.
- 42.2** The trust shall give information as to its forward planning in respect of each financial year to Monitor.
- 42.3** The document containing the information with respect to forward planning (referred to above) shall be prepared by the directors.
- 42.4** In preparing the document, the directors shall have regard to the views of the Council of Governors.
- 42.5** Each forward plan must include information about:
- 42.5.1** the activities other than the provision of goods and services for the purposes of the health service in England that the trust proposes to carry on; and
 - 42.5.2** the income it expects to receive from doing so.
- 42.6** Where a forward plan contains a proposal that the trust carry on an activity of a kind mentioned in paragraph 42.5.1 the Council of Governors must:
- 42.6.1** determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfillment by the trust of its principal purpose or the performance of its other functions; and
 - 42.6.2** notify the directors of the trust of its determination.
- 42.7** A trust which proposes to increase by 5% or more the proportion of its total income in any financial year attributable to activities other than the provision of goods and services for the purposes of the health service in England may implement the proposal only if more than half of the members of the Council of Governors of the trust voting approve its implementation.

43. Presentation of the annual accounts and reports to the governors and members

- 43.1** The following documents are to be presented to the Council of Governors at a general meeting of the Council of Governors:
- 43.1.1** the annual accounts;
 - 43.1.2** any report of the auditor on them; and
 - 43.1.3** the annual report.

43.2 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.

43.3 The trust may combine a meeting of the Council of Governors convened for the purposes of paragraph 43.1 with the Annual Members' Meeting.

44. Instruments

44.1 The trust shall have a seal.

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

45. Amendment of the constitution

45.1 The trust may make amendments of its constitution only if:

45.1.1 more than half of the members of the Council of Governors of the trust voting approve the amendments; and

45.1.2 more than half of the members of the Board of Directors of the trust voting approve the amendments.

45.2 Amendments made under paragraph 45.1 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.

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

45.3.1 at least one member of the Council of Governors must attend the next Annual Members' Meeting and present the amendment; and

45.3.2 the trust must give the members an opportunity to vote on whether they approve the amendment.

45.4 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.

45.5 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.

46. Mergers etc. and significant transactions

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

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

46.3 In paragraph 46, the following words have the following meanings:

“Significant transaction” means a transaction which meets any one of the tests below:

46.3.1 the fixed asset test; or

46.3.2 the turnover test; or

46.3.3 the gross capital test (relating to acquisitions or divestments)

The fixed asset test:

46.3.4 is met if the assets which are the subject of the transaction exceed 25% of the fixed assets of the trust;

The turnover test:

46.3.5 is met if, following the completion of the relevant transaction, the gross income of the trust will increase or decrease by more than 25%;

The gross capital test:

46.3.6 is met if the gross capital of the company or business which is the subject of the transaction represents more than 25% of the capital of the trust following completion (where “gross capital” is the market value of the

relevant company or business's shares and debt securities, plus the excess of current liabilities over current assets, and the trust's capital is determined by reference to its balance sheet);

- 46.3.7** for the purposes of calculating the tests in this paragraph 46, figures used to classify assets and profits must be the figures shown in the latest published audited consolidated accounts.

A transaction:

- 46.3.8** is any agreement (including an amendment to an agreement) entered into by the trust in respect of the acquisition of a business or services or the disposal of a business or service;
- 46.3.9** excludes a transaction in the ordinary course of business (including the renewal, extension or entering into an agreement in respect of healthcare services carried out by the trust);
- 46.3.10** excludes any agreement or changes to healthcare services carried out by the trust following a reconfiguration of services led by the commissioners of such services; and
- 46.3.11** excludes any grant of public dividend capital or the entering into of a working capital facility or other loan, which does not involve the acquisition or disposal of any fixed asset of the trust.

47. Procedures and Protocols

The Board of Directors shall adopt such procedures and protocols as it shall deem to be appropriate in accordance with paragraph 6 of Annex 7.

48. Indemnity

- 48.1** Members of the Board of Directors and Council of Governors who act honestly and in good faith will not have to meet out of their personal resources any personal civil liability which is incurred in the execution of their functions, save where they have acted recklessly. Any costs arising in this way will be met by the trust.
- 48.2** The trust may purchase and maintain for members of the Board of Directors and Council of Governors insurance in respect of directors'

and officers' liability, including, without limitation, liability arising by reason of the trust acting as a corporate trustee of an NHS charity.

ANNEX 1 – THE PUBLIC CONSTITUENCIES

There shall be four (4) Public Constituencies. The minimum number of members in each of the Public Constituencies is shown in the table below.

Public Constituency	Electoral area	Minimum number of members
Wandsworth	Whole borough	3,000
Merton	Whole borough	2,000
Lambeth	St. Leonard's Streatham South Streatham Wells Thornton	500
Rest of England	All electoral areas in England and Wales not falling within one of the areas referred to above.	3,000
Total		8,500

ANNEX 2 – THE STAFF CONSTITUENCY

The Staff Constituency is divided into five (5) classes. Staff shall be eligible for membership of the class within the Staff Constituency shown in the table below.

Staff Constituency class	Description	Minimum number of members
Medical and dental staff	Staff who are employed as doctors or dentists	400
Nursing and midwifery staff	Staff who are employed as nurses or midwives	1,200
Allied health professionals and other clinical and technical staff	Staff who are employed as allied health professionals and other clinical and technical staff	1,200
Community services	Staff who are employed within the community services division	600
Non clinical staff	Staff who are employed by the trust in roles other than providing medical services	1,000
Total		4,400

ANNEX 3 – COMPOSITION OF COUNCIL OF GOVERNORS

The Council of Governors shall comprise twenty-eight (28) governors as set out in the table below:

1. Elected governors

Constituency	Constituency/class	Number of governors
Public	Wandsworth	6
	Merton	4
	Lambeth	1
	Regional	4
Staff	Medical and dental	1
	Nursing and midwifery	1
	Allied health professionals and other clinical and technical staff	1
	Community services division staff	1
	Non clinical staff	1
Total		20

2. Appointed governors

Representative status	Representative of	Number of governors
Required by statute	London Borough of Wandsworth	1
Required by statute	London Borough of Merton	1
Required by statute	St Georges University London	1
Required by statute	Kingston University	1
Partnership/stakeholder organisation	Wandsworth Healthwatch	1
Partnership/stakeholder organisation	Merton Healthwatch	1
Partnership/stakeholder organisation	Wandsworth CCG	1
Partnership/stakeholder organisation	Merton CCG	1
Total		8

ANNEX 4 –THE MODEL ELECTION RULES

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Part 2 – Timetable for election

2. Timetable
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4. Returning officer
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55. Election expenses
56. Expenses and payments by candidates
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58. Publicity about election by the corporation
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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 Monitor; and

“**the 2006 Act**” means the NHS Act 2006.

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

Part 2 – Timetable for election

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

2. Timetable - The proceedings at an election shall be conducted in accordance with the following timetable.

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 64, 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

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

6. Expenditure

The corporation is to pay the returning officer:

(a) any expenses incurred by that officer in the exercise of his or her functions under these rules;

- (b) such remuneration and other expenses as the corporation may determine.

7. Duty of co-operation

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

Part 4 - Stages common to contested and uncontested elections

8. Notice of election

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.

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

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

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

13. Signature of candidate

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

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

14. Decisions as to the validity of nomination

- (1) Where a nomination paper is received by the returning officer in accordance with these rules, the candidate is deemed to stand for election unless and until the returning officer:
 - (a) decides that the candidate is not eligible to stand;
 - (b) decides that the nomination paper is invalid;
 - (c) receives satisfactory proof that the candidate has died; or
 - (d) receives a written request by the candidate of their withdrawal from candidacy.
- (2) The returning officer is entitled to decide that a nomination paper is invalid only on one of the following grounds:
 - (a) that the paper is not received on or before the final time and date for return of nomination papers, as specified in the notice of the election;
 - (b) that the paper does not contain the candidate's particulars, as required by rule 10;
 - (c) that the paper does not contain a declaration of the interests of the candidate, as required by rule 11;
 - (d) that the paper does not include a declaration of eligibility as required by rule 12; or
 - (e) that the paper is not signed and dated by the candidate, as required by rule 13.

- (3) The returning officer is to examine each nomination paper as soon as is practicable after he or she has received it, and decide whether the candidate has been validly nominated.
- (4) Where the returning officer decides that a nomination is invalid, the returning officer must endorse this on the nomination paper, stating the reasons for 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 public free of charge at all reasonable times.
- (2) If a person requests a copy or extract of the statements of candidates or their nomination papers, the corporation is to provide

that person with the copy or extract free of charge.

17. Withdrawal of candidates

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

18. Method of election

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

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;
 - (f) if the ballot paper is to be returned by post, the address for its return and the date and time of the close of the poll; and
 - (g) the contact details of the returning officer.
- (3) Each ballot paper must have a unique identifier.
- (4) Each ballot paper must have features incorporated into it to prevent it from being reproduced.

21. The declaration of identity (Public Constituencies)

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

- (c) for a member of the Public Constituency, 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 mailing address where his or her ballot paper is to be sent.

23. Notice of poll

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

- (a) the name of the corporation;
- (b) the constituency, or class within a constituency, for which the election is being held;

- (c) the number of members of the Council of Governors to be elected from that constituency, or class with that constituency;
- (d) the names, contact addresses, and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates;
- (e) that the ballot papers for the election are to be issued and returned, if appropriate, by post;
- (f) the address for return of the ballot papers, and the date and time of the close of the poll;
- (g) the address and final dates for applications for replacement ballot papers; and
- (h) the contact details of the returning officer.

24. Issue of voting documents by returning officer

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

25. Ballot paper envelope and covering envelope

- (1) The ballot paper envelope must have clear instructions to the voter printed on it, instructing the voter to seal the ballot paper inside the envelope once the ballot paper has been marked.
- (2) The covering envelope is to have:

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

The poll

26. Eligibility to vote

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

27. Voting by persons who require assistance

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

28. Spoilt ballot papers

- (1) If a voter has dealt with his or her ballot paper in such a manner that it cannot be accepted as a ballot paper (referred to a “spoilt ballot paper”), that voter may apply to the returning officer for a replacement ballot paper.
- (2) On receiving an application, the returning officer is to obtain the details of the unique identifier on the spoilt ballot paper, if he or she can obtain it.

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

29. Lost ballot papers

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

30. Issue of replacement ballot paper

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

31. Declaration of identity for replacement ballot papers (Public Constituencies)

- (1) In respect of an election for a Public Constituency a declaration of identity must be issued with each replacement ballot paper.
- (2) The declaration of identity is to include a declaration
 - (a) that the voter has not voted in the election with any ballot paper other than the ballot paper being returned with the declaration; and
 - (b) of the particulars of that member’s qualification to vote as a member of the Public Constituency, or class within a constituency, for which the election is being held.
- (3) The declaration of identity is to include space for –
 - (a) the name of the voter;
 - (b) the address of the voter;
 - (c) the voter’s signature; and

- (d) the date that the declaration was made by the voter.
- (4) The voter must be required to return the declaration of identity together with the ballot paper.
- (5) The declaration of identity must caution the voter that if it is not returned with the ballot paper, or if it is returned without being correctly completed, the replacement ballot paper may be declared invalid.

Procedure for receipt of envelopes

32. Receipt of voting documents

- (1) Where the returning officer receives a:
 - (a) covering envelope; or
 - (b) any other envelope containing a declaration of identity if required, a ballot paper envelope, or a ballot paper, before the close of the poll, that officer is to open it as soon as is practicable; and rules 33 and 34 are to apply.
- (2) The returning officer may open any ballot paper envelope for the purposes of rules 33 and 34, but must make arrangements to ensure that no person obtains or communicates information as to:
 - (a) the candidate for whom a voter has voted; or
 - (b) the unique identifier on a ballot paper.
- (3) The returning officer must make arrangements to ensure the safety and security of the ballot papers and other documents.

33. Validity of ballot paper

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

34. Declaration of identity but no ballot paper (Public Constituency)

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

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

35. Sealing of packets

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

- (a) the disqualified documents, together with the list of disqualified documents inside it;
- (b) the declarations of identity if required;
- (c) the list of spoiled ballot papers;

- (d) the list of lost ballot papers;
- (e) the list of eligible voters; and
- (f) the list of tendered ballot papers.

36. Not Used

Part 6 - Counting the votes

37. Arrangements for counting of the votes

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

38. The count

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

39. Rejected ballot papers

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

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

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

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

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

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

(a) elsewhere than in the proper place;

(b) otherwise than by means of a clear mark;

(c) by more than one mark,

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

(4) The returning officer is to:

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

(b) in the case of a ballot paper on which any vote is counted under paragraph (2) or (3) above, endorse the words "rejected in part" on the ballot paper and indicate which vote or votes have been counted.

(5) The returning officer is to draw up a statement showing the number of rejected ballot papers under the following headings:

(a) does not bear proper features that have been incorporated into the ballot paper;

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

(c) writing or mark by which voter could be identified; and

(d) unmarked or rejected because of uncertainty,

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

40. Not Used

41. Not Used

42. Not Used

43. Not Used

44. Not Used

45. Not Used

46. Equality of votes

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

Part 7 – Final proceedings in contested and uncontested elections

47. Declaration of result for contested elections

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

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

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

(i) where the election is held under a proposed

constitution pursuant to powers conferred on the St George's University Hospitals NHS Trust by section 33(4) of the 2006 Act, to the chairman of the NHS trust;
or

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

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

(2) The returning officer is to make:

(a) the total number of votes given for each candidate (whether elected or not); and

(b) the number of rejected ballot papers under each of the headings in rule 39(5);

available on request.

48. Declaration of result for uncontested elections

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

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

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

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

Part 8 – Disposal of documents

49. Sealing up of documents relating to the poll

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

(a) the counted ballot papers;

- (b) the ballot papers endorsed with “rejected in part”;
 - (c) the rejected ballot papers; and
 - (d) the statement of rejected ballot papers.
- (2) The returning officer must not open the sealed packets of:
- (a) the disqualified documents, with the list of disqualified documents inside it;
 - (b) the declarations of identity;
 - (c) the list of spoiled ballot papers;
 - (d) the list of lost ballot papers;
 - (e) the list of eligible voters; and
 - (f) the list of tendered ballot papers.
- (3) The returning officer must endorse on each packet a description of:
- (a) its contents;
 - (b) the date of the publication of notice of the election;
 - (c) the name of the corporation to which the election relates; and
 - (d) the constituency, or class within a constituency, to which the election relates.

50. Delivery of documents

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

51. Forwarding of documents received after close of the poll

Where:

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

- (b) any envelopes addressed to eligible voters are returned as undelivered too late to be resent; or
- (c) any applications for replacement ballot papers are made too late to enable new ballot papers to be issued;

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

52. 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 53(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.

53. 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; or
 - (e) the list of eligible voters,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 (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 paragraph (1):
 - (a) in giving its consent, the regulator; and
 - (b) and making the documents available for inspection, the corporation,
 - (c) must ensure that the way in which the vote of any particular member has been given shall not be disclosed, until it has been established:
 - (i) that his or her vote was given; and
 - (ii) that the regulator has declared that the vote was invalid.

Part 9 – Death of a candidate during a contested election

54. Countermand or abandonment of poll on death of candidate

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

- (a) countermand notice of the poll, or, if ballot papers have been issued, direct that the poll be abandoned within that constituency or class; and
 - (b) order a new election, on a date to be appointed by him or her in consultation with the corporation, within the period of 40 days, computed in accordance with rule 3 of these rules, beginning with the day that the poll was countermanded or abandoned.
- (2) Where a new election is ordered under paragraph (1), no fresh nomination is necessary for any candidate who was validly nominated for the election where the poll was countermanded or abandoned but further candidates shall be invited for that constituency or class.
- (3) Where a poll is abandoned under paragraph (1)(a), paragraphs (4) to (7) are to apply.
- (4) The returning officer shall not take any step or further step to open envelopes or deal with their contents in accordance with rules 33 and 34, and is to make up separate sealed packets in accordance with rule 35.
- (5) The returning officer is to:
 - (a) count and record the number of ballot papers that have been received; and
 - (b) seal up the ballot papers into packets, along with the records of the number of ballot papers.
- (6) The returning officer is to endorse on each packet a description of:
 - (a) its contents;
 - (b) the date of the publication of notice of the election;
 - (c) the name of the corporation to which the election relates; and
 - (d) the constituency, or class within a constituency, to which the election relates.

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

Part 10 – Election expenses and publicity

Election expenses

55. Election expenses

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

56. Expenses and payments by candidates

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

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

57. Election expenses incurred by other persons

- (1) No person may:
 - (a) incur any expenses or make a payment (of whatever nature) for the purposes of a candidate's election, whether on that candidate's behalf or otherwise; or
 - (b) give a candidate or his or her family any money or property (whether as a gift, donation, loan, or otherwise) to meet or contribute to expenses incurred by or on behalf of the candidate for the purposes of an election.

- (2) Nothing in this rule is to prevent the corporation from incurring such expenses, and making such payments, as it considers necessary pursuant to rules 58 and 59.

Publicity

58. Publicity about election by the 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 59, must be:
 - (a) objective, balanced and fair;
 - (b) equivalent in size and content for all candidates;
 - (c) compiled and distributed in consultation with all of the candidates standing for election; and
 - (d) must not seek to promote or procure the election of a specific candidate or candidates, at the expense of the electoral prospects of one or more other candidates.
- (3) Where the 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.

59. 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 statement submitted by the candidate of no more than 250 words.

60. Meaning of “for the purposes of an election”

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

Part 11 – Questioning elections and the consequence of irregularities

61. Application to question an election

- (1) An application alleging a breach of these rules, including an electoral irregularity under Part 10, may be made to 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.
 - (a) The regulator shall delegate the determination of an application to a person or persons to be nominated for the purpose of the regulator.
 - (b) The determination by the person or persons nominated in accordance with Rule 61(6)(a) shall be binding on and shall be given effect by the 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.
 - (c) The regulator may prescribe rules of procedure for the determination of an application including costs.

Part 12 – Miscellaneous

62. Secrecy

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

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

 - (i) the name of any member of the 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 candidate(s) for whom any member has voted.
- (2) No person may obtain or attempt to obtain information as to the

candidate(s) for whom a voter is about to vote or has voted, or communicate such information to any person at any time, including the unique identifier on a ballot paper given to a voter.

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

63. Prohibition of disclosure of vote

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

64. Disqualification

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

- (a) a member of the 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.

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

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

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

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

ANNEX 5 – ADDITIONAL PROVISIONS – COUNCIL OF GOVERNORS

Eligibility and disqualification of governors

1. Further provisions as to the circumstances in which a person may not become or continue as a member of the Council of Governors are set out below.
- 1.1. A person may not become a governor of the trust, and if already holding such office will immediately cease to do so, if:
 - 1.1.1. he/she has not reached at least 16 years of age at the date he/she is nominated for election or appointment;
 - 1.1.2. he/she is the spouse, partner, parent or child of a member of the Board of Directors (including the chairman) of the trust;
 - 1.1.3. he/she is a member of a local authority's Health Overview and Scrutiny Committee or Health and Wellbeing Board;
 - 1.1.4. he/she is a member of another NHS foundation trust or other NHS body;
 - 1.1.5. he/she is the subject of a disqualification order made under the Company Directors' Disqualification Act 1986;
 - 1.1.6. being a member of the Staff Constituency, he/she has a current and unexpired written warning which has been imposed following disciplinary action by the trust, arising out of his/her employment with the predecessor trust. For the avoidance of doubt, a member will not be precluded from eligibility as a governor by reason of his/her suspension or in the event that he/she is the subject of an ongoing disciplinary procedure and/or fact finding investigation that has not yet resulted in disciplinary action. Spent disciplinary warnings will not preclude eligibility to be a governor;
 - 1.1.7. being a member of the Public Constituency, he/she refuses to sign a declaration in the form specified by the Secretary of particulars of their qualification to vote as a member of the trust, and that he/she are not prevented from being a member of the Council of Governors;

- 2.5. he/she are expelled from membership of the trust;
- 2.6. he/she has refused without reasonable cause to undertake any training which the trust requires all governors to undertake;
- 2.7. he/she has failed to sign and deliver to the Secretary within six (6) months from the date on which they were appointed or elected as a governor a statement in the form required by the Secretary confirming acceptance of the Code of Conduct;
- 2.8. he/she acts in a manner detrimental to the trust;
- 2.9. he/she fails to disclose a disclosable interest;
- 2.10. he/she are responsible for a substantive breach of confidentiality in relation to any confidential information of the trust.

3. Expenses and remuneration of governors

- 3.1. The trust may reimburse governors for travelling and other costs and expenses incurred in carrying out their duties as the Board of Directors decides.
- 3.2. The trust may at its discretion decide to reimburse the cost and expense of a governor's carer arrangements necessarily and reasonably incurred in the governor carrying out their duties.
- 3.3. In respect of a staff governor who is an employee of the trust, the Secretary shall seek to facilitate such employee's reasonable participation as a staff governor during normal working hours to the extent reasonably necessary for the performance of their duties as a staff governor (including reasonable time off from his contractual duties) and shall not make any corresponding deduction from salary.
- 3.4. Governors shall not receive remuneration from the trust with respect to the performance of their duties as governors otherwise than as set out in paragraphs 3.1, 3.2 and 3.3.

4. Vacancies on the Council of Governors

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

- 4.1.1.** where a vacancy arises amongst the appointed governors, the Secretary shall request that the appointing organisation appoints a replacement to hold office for the remainder of the term of office;
- 4.1.2.** where the vacancy arises amongst the elected governors, the Council of Governors shall be at liberty either:
 - 4.1.2.1.** to call an election within four (4) months to fill the seat for the remainder of the term of office of the governor who is being replaced (unless they are in the last year of their term of office, in which case the seat may be left vacant until the next election due in respect of that seat is held);
or
 - 4.1.2.2.** to invite the next highest polling candidate for that seat at the most recent election, who is willing to take office, to fill the seat until the next election due in respect of that seat is held, at which time the seat will fall vacant and be subject to election for any unexpired period of the term of office of the governor who is being replaced.
- 4.2.** For the avoidance of doubt, no provision in this paragraph 4 shall operate in such a way as to subvert the phased basis on which elections to the Council of Governors occur pursuant to the terms of this constitution and the replacement of any governor pursuant to this paragraph 4 shall be undertaken in such a way as to preserve the phased basis on which elections to the Council of Governors occur pursuant to the terms of the constitution.

ANNEX 6 – STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE COUNCIL OF GOVERNORS

1. Meetings of the Council of Governors

1.1 Admission of the public and the press

All meetings of the Council of Governors are to be open to members of the public unless two thirds of the members of the Council of Governors present decide otherwise in relation to all or part of the meeting for reasons of commercial confidentiality or other special reasons. The chairman may exclude any member of the public from a meeting of the Council of Governors if they are interfering with or preventing the proper conduct of the meeting.

1.2 Calling and notice of meetings

- i.** The Council of Governors is to meet a minimum of four (4) times in each financial year. Save in the case of emergencies or the need to conduct urgent business, the Secretary shall give at least fourteen days' written notice of the date and place of every meeting of the Council of Governors to all governors. Notice will also be published on the trust's website and in the trust's membership newsletter if practicable.
- ii.** Meetings of the Council of Governors may be called by the Secretary, the chairman, or by five (5) governors (including at least two (2) elected governors and two (2) appointed governors) who give written notice to the Secretary specifying the business to be carried out. The Secretary shall send a written notice to all governors as soon as possible after receipt of such a request and will call a meeting on at least fourteen, but not more than twenty eight, days' notice. Notice by post, delivery in person, fax or email shall constitute written notice.

1.3 Chair of the meeting

In accordance with paragraph 17 of this constitution, the chairman of the Board of Directors or, in his absence, the deputy chairman of the Board of Directors, shall preside at meetings of the Council of

Governors. If the chairman and deputy chairman are absent, or are disqualified from participating, then the governors present shall choose by majority which public governor present shall preside for that part of the meeting.

1.4 Quorum

No business shall be transacted at a meeting of the Council of Governors unless at least one third of the Council of Governors is present, a majority of whom must be public governors.

1.5 Voting

- i.** Questions arising at a meeting of the Council of Governors shall be decided by a majority of votes. In case of an equality of votes the person presiding at or chairing the meeting shall have a casting vote.

- ii.** Members of the Council of Governors may participate in meetings by telephone, teleconference, video or computer link, and participation in a meeting in this manner shall be deemed to constitute a presence in person at the meeting. In such cases, if any person attends the meeting by telephone, teleconference, video or computer link, then such person shall be able to cast their vote verbally (such verbal vote to be recorded in the minutes).

1.6 Committees

The Council of Governors may not delegate any of its powers to a committee or sub-committee, but it may appoint committees to assist the Council of Governors in carrying out its functions. The Council of Governors may appoint governors and may invite directors and other persons to attend and advise committees. The Council of Governors may, through the Secretary, request that external advisors assist them or any committee they appoint in carrying out its duties. Such committees established by the Council of Governors may meet in private for reasons of commercial confidentiality or other special reasons if the members of the committee so decide.

1.7 Confidentiality

In the event of the Council of Governors, or any committee established by the governors, meeting in private for all or part of a meeting, governors shall not disclose outside of the Council of Governors meetings the contents of the papers, discussions or minutes of the items taken in private.

2. Disclosure of interests

Governors shall declare any pecuniary, personal or family interest, whether that interest is direct or indirect, in any proposed contract or other matter which is under consideration or is to be considered by the Council of Governors. A family interest will include but is not limited to those of a governor's spouse or partner. Any governors appointed subsequently shall declare such interests on appointment or election.

Such interests include:

- (i)** directorships, including non-executive directorships held in private companies, public limited companies or public benefit corporations (with the exception of those of dormant companies);
- (ii)** ownership or part-ownership of private companies, businesses or consultancies known as being likely or possibly seeking to do business with the NHS;
- (iii)** majority or controlling shareholdings in organisations known as being likely or possibly seeking to do business with the NHS;
- (iv)** a position of trust or fiduciary duty in a charity or voluntary organisation in the field of health and social care;
- (v)** any connection with a voluntary or other organisation contracting for NHS services; or
- (vi)** any other commercial interest in the decision before the meeting.

The following exceptions shall not be treated as interests:

- i.** an employment contract with the trust held by a staff governor;
- ii.** an employment contract with a local authority held by a local authority governor;

- iii. an employment contract with a partnership organisation held by a partnership governor.

3. Declaring interests

- 3.1 At the time governors' interests are declared, they shall be recorded in the Council of Governors' minutes and entered on a register of interests of governors to be maintained by the Secretary. Any changes in interests should be declared at the next Council of Governors meeting following the change occurring.
- 3.2 During the course of a Council of Governors meeting, if a conflict of interest is established, the governor concerned shall disclose the fact, and withdraw from the meeting and play no part in the relevant discussion or decision.
- 3.3 If a governor has any doubt about the relevance of an interest, he/she should discuss it with the chairman or Secretary who shall advise him/her on whether or not to disclose the interest.

4. Code of Conduct

All members of the Council of Governors are required to comply with any Code of Conduct for governors adopted from time to time by the Council of Governors or the Board of Directors.

5. Additional Provisions

The Board of Directors may establish additional protocols and procedures for the operation of the Council of Governors as appropriate.

ANNEX 7 – STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE BOARD OF DIRECTORS

1. Appointments to the Board of Directors

1.1 Appointment of the chairman and non-executive directors

The governors at a general meeting of the Council of Governors shall, subject to the other provisions of the constitution, appoint or remove the chairman of the trust and the other non-executive directors. Any re-appointment of a non-executive director by the Council of Governors shall be subject to a satisfactory appraisal carried out in accordance with any procedures the Board of Directors may approve from time to time.

1.2 Appointment of the chief executive and other executive directors

The chief executive is appointed by the non-executive directors subject to the approval of the Council of Governors. A committee consisting of the chairman, the chief executive and the other non-executive directors shall appoint the other executive directors.

1.3 Appointment and powers of the deputy chairman

The governors at a general meeting of the Council of Governors shall appoint one of the non-executive directors to be deputy chairman of the Board of Directors. If the chairman is unable to discharge his/her office as chairman of the trust for whatever reason, the deputy chairman of the Board of Directors shall be acting chairman of the trust.

2. Meetings of the Board of Directors

2.1 Calling and notice of meetings

- i. Save in the case of emergencies or the need to conduct urgent business, the Secretary shall give at least fourteen days' written notice of the date and place of every meeting of the Board of Directors to all directors.
- ii. Meetings of the Board of Directors may be called by the Secretary, the chairman, or by two or more directors who give

written notice to the Secretary specifying the business to be carried out. The Secretary shall send a written notice to all directors as soon as possible after receipt of such a request and shall call a meeting on at least fourteen but not more than twenty eight days' notice.

2.2 Chair of the meeting

- i.** At any meeting of the Board of Directors, the chairman of the Board of Directors, if present, shall preside. If the chairman is absent from the meeting the deputy chairman, if there is one and he/she is present, shall preside. If the chairman and deputy chairman are absent, then the non-executive directors present shall choose which non-executive director present shall preside.
- ii.** If the chairman is absent temporarily on the grounds of a declared conflict of interest, the deputy chairman, if present, shall preside. If the chairman and deputy chairman are absent, or are disqualified from participating, then the remaining non-executive directors present shall choose which non-executive director present shall preside.

2.3 Members of the public

- i.** Meetings of the Board of Directors shall be open to members of the public.
- ii.** Members of the public may be excluded from a meeting for special reasons.

2.4 Quorum

No business shall be transacted at a meeting unless at least one third of the directors is present including not less than one non-executive director and one executive director.

2.5 Voting

Questions arising at a meeting of the Board of Directors shall be decided by a majority of votes. In the case of an equality of votes the person presiding at or chairing the meeting shall have a casting vote.

3. Committees and delegation

- 3.1** The Board of Directors may delegate any of its powers to a committee whose membership is composed entirely of directors or to an executive director.
- 3.2** The Board of Directors shall have various committees which will advise it, including an audit committee, a Board of Directors' nominations committee and a Board of Directors remuneration committee. For the avoidance of doubt, a nominations committee shall only perform an advisory role to the Board of Directors in relation to a selection process and it shall not be responsible for making any appointments.
- 3.3** Each such committee, and any sub-committee, shall have such terms of reference and powers as the Board of Directors shall determine from time to time.

4. Disclosure of interests

Directors shall declare any pecuniary, personal or family interest, whether that interest is direct or indirect, in any proposed contract or other matter which is under consideration or is to be considered by the Board of Directors. A family interest will include those of a director's spouse or partner. Any directors appointed subsequently shall declare such interests on appointment.

Such interests include:

- 4.1** Directorships, including non-executive directorships held in private companies, public limited companies or public benefit corporations (with the exception of those of dormant companies).
- 4.2** Ownership or part-ownership of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS.
- 4.3** Majority or controlling shareholdings in organisations likely or possibly seeking to do business with the NHS.
- 4.4** A position of trust or fiduciary duty in a charity or voluntary organisation in the field of health and social care.

4.5 Any connection with a voluntary or other organisation contracting for NHS services.

4.6 Any other commercial interest in the decision before the meeting.

5. Declaring interests

5.1 At the time directors' interests are declared, they should be recorded in the Board of Directors' minutes and entered on a register of interests of directors to be maintained by the Secretary. Any changes in interests should be declared at the next Board of Directors' meeting following the change occurring.

5.2 During the course of a Board of Directors' meeting, if a conflict of interest is established, the director concerned shall disclose the fact, and withdraw from the meeting and play no part in the relevant discussion or decision.

5.3 If a director has any doubt about the relevance of an interest, he/she should discuss it with the chairman or Secretary who shall advise him/her on whether or not to disclose the interest.

6. Additional provisions

The Board of Directors may establish and adopt additional protocols and procedures for the operation of the Board of Directors, and the economic, effective and efficient operation and good governance of the trust generally from time to time as appropriate, in accordance with paragraph 47 of this constitution.

ANNEX 8 – FURTHER PROVISIONS

1. Disqualification from membership

1.1 A person may not become or remain a member of the trust if the following apply:

1.1.1 he/she does not meet the requirements of eligibility under this constitution. It is the responsibility of each member to ensure his/her eligibility at all times;

1.1.2 he/she has been removed from membership by the Council of Governors within the preceding five (5) years, and the Council of Governors has not subsequently agreed to his/her re-admission;

1.1.3 the trust considers that he/she has caused substantial detriment to the trust;

1.1.4 during the five (5) years prior to their application, he/she has demonstrated aggressive or violent behaviour towards any person working for the trust and following such behaviour he/she has been removed or excluded from any trust site under the trust's policy for withholding treatment for violent/aggressive patients, or equivalent;

1.1.5 during the two (2) years prior to their application, he/she has been dismissed by the trust for gross misconduct or lawfully dismissed by reason other than redundancy;

1.1.6 he/she has been confirmed as a 'vexatious complainant' in accordance with the trust's complaints handling policy;

1.1.7 being a member of the Public Constituency, he/she refuses to sign a declaration in the form specified at paragraph 6.1/paragraph 6.2/paragraph 6.3, as applicable, of this Annex 8;

1.1.8 the Council of Governors passes a resolution in circumstances when the Council of Governors has reasonable cause to believe that by becoming or remaining a member of the trust, a person is likely to:

2.2.2 if a complaint is made, the Council of Governors may itself consider the complaint, having taken such steps as it considers appropriate, to ensure that each member's point of view is heard and may either:

2.2.2.1 dismiss the complaint and take no further action; or

2.2.2.2 arrange for a resolution to expel the member complained of to be considered at the next meeting of the Council of Governors.

3. Termination of membership

3.1 A member shall cease to be a member if:

3.1.1 he resigns by notice in writing to the Secretary or chairman;

3.1.2 He/she is disqualified or expelled from membership under this constitution;

3.1.3 he ceases to be entitled under this constitution to be a member of the Public Constituency, or of any of the classes of the Staff Constituency;

3.1.4 if it appears to the Secretary that he no longer wishes to be a member of the trust, and after enquiries made in accordance with a process approved by the members' council, he fails to demonstrate that he/she wishes to continue to be a member of the trust; or

3.1.5 he/she dies.

4. Automatic membership

4.1 Where an individual is to be invited by the trust to become a member pursuant to paragraph 9, the following procedure shall apply:

4.1.1 if the trust is satisfied that an individual is eligible to become a member of the Staff Constituency (and a member of the appropriate class within that constituency), the trust may (at its discretion) invite that individual to become a member pursuant to paragraph 9 of the constitution;

4.1.2 then, unless the individual has within 28 days of the date upon which the trust dispatches its invitation to him/her to become a member advised the trust that he/she does not wish to become a member, that individual shall become a member of the Staff Constituency (and the relevant class within that Staff Constituency).

5. Dispute resolution procedures

5.1 *Membership* - In the event of any dispute about membership entitlement, the dispute shall be referred to the Secretary who shall make a determination on the point in issue. If the member or applicant is aggrieved at the decision of the Secretary, he/she may appeal in writing within 14 days of the Secretary's decision to the Council of Governors whose decision shall be final.

5.2 *Governor* - In the event of any dispute about eligibility and disqualification of a governor, the dispute shall be referred to the Council of Governors, whose decision shall be final.

5.3 *Boards* - In the event of any dispute between the Board of Directors and Council of Governors or between a governor and the Council of Governors:

5.3.1 in the first instance, the chairman, on the advice of the Secretary, and other advice the chairman may obtain, shall seek to resolve the issue;

5.3.2 if the chairman is unable to resolve the dispute, he/she shall appoint a special committee comprising equal numbers of directors and governors to consider the circumstances and to make recommendations to the Council of Governors with a view to resolving the dispute. The special committee may include an advisor from another foundation trust;

5.3.3 if the recommendations (if any) of the special committee are unsuccessful, the chairman may refer the dispute back to the Board of Directors who shall make the final decision.

6. Declaration

6.1 Other than in relation to the Staff Constituency, a person may not vote at an election for the Council of Governors, unless within the period specified in the Model Election Rules he/she has made a declaration in the form specified below, setting out the particulars of his/her qualification to vote as a member of the class or constituency for which the election is being held:

"I declare that I am eligible to be a member of and to vote in the election for this constituency"

6.2 Other than in relation to the Staff Constituency, a person may not stand for election to the Council of Governors, unless within the period specified in the Model Election Rules he/she has made a declaration in the form specified below, setting out the particulars of his/her qualification to stand as a member of the class or constituency for which the election is being held:

“I declare that I am eligible to be a member of and to stand in the election for this constituency”

6.3 Every governor must upon his/her appointment/election as a governor make a declaration, and he/she must make a further annual declaration thereafter, in the form specified below, that he/she is qualified to vote at meetings of the Council of Governors and is not prevented from being a member of the Council of Governors by paragraph 8 of Schedule 7 of the 2006 Act or under the constitution:

“I declare that I have been elected / appointed to serve as a member of the Council of Governors on behalf of the [] constituency. I confirm that I am not prevented from being on the Council of Governors and am eligible to vote as a member of the Council.”

ANNEX 9 –MEMBERS’ MEETINGS

1. MEMBERS’ MEETINGS

- 1.1. The trust shall hold a members’ meeting for all members (called the “**Annual Members’ Meeting**”) within six (6) months of the end of each financial year of the trust.
- 1.2. Any members’ meeting other than the Annual Members’ Meeting shall be called a “**Special Members’ Meeting**”.
- 1.3. Both Annual Members’ Meetings and any Special Members’ Meetings shall be open to all members of the trust, members of the Council of Governors and members of the Board of Directors, together with representatives of the trust’s auditors, and to members of the public. The trust may invite representatives of the media and any experts or advisors whose attendance they consider to be in the best interests of the trust to attend any such meeting.
- 1.4. The Board of Directors may convene an Annual Members’ Meeting or a Special Members’ Meeting when it thinks fit. The Council of Governors may request the Board of Directors to convene an Annual Members’ Meeting or a Special Members’ Meeting.
- 1.5. The Board of Directors (or at least one member thereof) shall present to the members at the Annual Members’ Meeting:
 - 1.5.1. the annual accounts;
 - 1.5.2. any report of the auditor on them; and
 - 1.5.3. the annual report.
- 1.6. The trust shall give notice of all Annual Members’ and Special Members’ Meetings:
 - 1.6.1. by notice in writing to all members;

1.6.2. by notice prominently displayed at the trust's headquarters and at all of the trust's hospitals;

1.6.3. by notice on the trust's website; and

1.6.4. to the Council of Governors, the Board of Directors, and to the trust's auditors,

stating whether the meeting is an Annual Members' Meeting or a Special Members' Meeting including the time, date, place of the meeting, and the business to be dealt with at the meeting at least 14 working days before the date of a Special Members' Meeting or, in the case of an Annual Members' Meeting, at least 21 working days before the date of the meeting).

1.7. An accidental omission to give notice of an Annual Members' Meeting or a Special Members' Meeting or to send, supply or make available any document or information relating to the Annual Members' Meeting or a Special Members' Meeting, or the non-receipt of any such notice, document or information by a person entitled to receive any such notice, document or information shall not invalidate the proceedings at an Annual Members' Meeting or a Special Members' Meeting.

1.8. The chairman or in his/her absence the deputy chairman shall preside at all Annual Members' Meetings and Special Members' Meetings of the trust. If neither the chairman nor the deputy chairman is present, the governors present shall elect a governor at the meeting to act as chairman and if there is only one governor present and willing to act that person shall be chairman. If no governor is willing to act as chairman or if no governor is present within fifteen minutes after the time appointed for holding the Annual Members' Meeting or Special Members' Meeting, the members present and entitled to vote shall choose one of their number to act as chairman.

1.9. The quorum for an Annual Members' Meeting or Special Members' Meeting shall be eight (8) members present and entitled to vote. If a quorum is not present within thirty minutes from the time appointed for the Annual Members' Meeting or Special Members' Meeting, the Annual Members' Meeting or Special Members' Meeting shall stand adjourned for a minimum of seven (7) days until such time as the Board of Directors determine.

- 1.10.** The chairman may, with the consent of an Annual Members' Meeting or Special Members' Meeting at which a quorum is present (and shall, if so directed by the meeting), adjourn an Annual Members' Meeting or a Special Members' Meeting from time to time and from place to place or for an indefinite period.
- 1.11.** A resolution put to the vote of an Annual Members' Meeting or a Special Members' Meeting shall be decided on a show of hands.
- 1.12.** No business shall be transacted at an adjourned Annual Members' Meeting or Special Members' Meeting other than business which might properly have been transacted at the Annual Members' Meeting or Special Members' Meeting had the adjournment not taken place.
- 1.13.** If the Board of Directors, in its absolute discretion, considers that it is impractical or unreasonable for any reason to hold an Annual Members' Meeting or Special Members' Meeting at the time, date or place specified in the notice calling that Annual Members' Meeting or Special Members' Meeting, it may move and/or postpone the Annual Members' or Special Members' Meeting to another time, date and/or place by giving notice in accordance with paragraph 1.6 and paragraph 1.14.
- 1.14.** If an Annual Members' Meeting or a Special Members' Meeting is adjourned or postponed for 14 days or more, at least seven (7) working days' notice shall be given specifying the time and place of the adjourned Annual Members' Meeting or Special Members' Meeting and the general nature of the business to be transacted. Otherwise, it shall not be necessary to give any such notice.
- 1.15.** The Board of Directors may make any arrangement and impose any restriction it considers appropriate to ensure the security of an Annual Members' Meeting or a Special Members' Meeting.
- 1.16.** The Board of Directors shall arrange for minutes to be taken and recorded, in writing, of all proceedings at Annual Members' Meetings and Special Members' Meetings.