

Constitution, Election Rules, Standing Orders

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Constitution, Election Rules and Standing Orders

1. Interpretation and definitions

1.1 Interpretations

- 1.1.1 Unless a contrary intention is evident or the context requires otherwise, words or expressions contained in this Constitution shall bear the same meaning as provided by the 2006 Act or the 2012 Act.
- 1.1.2 Words importing the masculine gender only shall include the feminine gender; words importing the singular shall import the plural and vice-versa in accordance with the Interpretations Act 1978.
- 1.1.3 Save as permitted by law, at any meeting the Trust Chair shall be the final authority on the interpretation of this Constitution (on which he should be advised by the Trust Secretary).
- 1.1.4 Any expression to which a meaning is given in the 2006 or 2016 Acts or in the Regulations or Orders made under the Act shall have the same meaning in this interpretation and in addition:

1.2 Definitions

- 1.2.1 **"the 2006 Act" is the** National Health Service Act 2006 (as amended);
- 1.2.2 **"the 2012 Act" is the Health and Social Care Act 2012;**
- 1.2.3 **"the Accounting Officer" is the person who**, from time to time, discharges the functions specified in paragraph 25(5) of Schedule 7 to the National Health Service Act 2006;
- 1.2.4 **"Annual Accounts" shall mean those accounts prepared by the Trust** pursuant to paragraph 25 of Schedule to the 2006 Act;
- 1.2.5 **"Annual General Meeting" has the meaning ascribed to it in** paragraph 11.8.1 of this Constitution;
- 1.2.6 **"Annual Report" shall mean a report prepared by the Trust pursuant** to paragraph 25 of Schedule 7 to the 2006 Act;
- 1.2.7 **"Auditor" shall mean the auditor of the Trust appointed by the** Council of Governors pursuant to paragraph 35.1 and 35.2 of this Constitution;
- 1.2.8 **"BDSO" shall mean the Board of Directors' Standing Orders;**

- 1.2.9 **"Board of Directors"** shall mean the Board of Directors as constituted in accordance with this Constitution.
- 1.2.10 **"Council of Governors"** shall mean the Trust Chair and Governors, appointed and elected;
- 1.2.11 **"CGSO"** shall mean the *Council of Governors' Standing Orders*;
- 1.2.12 **"Chief Executive"** shall mean the chief executive officer of the Trust;
- 1.2.13 **"committee"** shall mean a committee appointed by the Trust;
- 1.2.14 **"committee members"** shall be persons formally appointed by the Trust to sit on, or to chair, specific committees;
- 1.2.15 **"Constitution"** means this Constitution and all annexes to it;
- 1.2.16 **"Deputy Trust Chair"** shall mean the Non-Executive Director appointed by the Council of Governors to take on the Trust Chair's duties if the Trust Chair is absent for any reason;
- 1.2.17 **"Director"** shall mean a member of the Board of Directors;
- 1.2.18 **"Director of Finance"** shall mean the chief finance officer of the Trust;
- 1.2.19 **"Executive Director"** shall mean an executive member of the Board of Directors;
- 1.2.20 **"Financial Year"** shall mean:
- 1.2.20.1 period beginning with the date in which the Trust is authorised and ending with the next 31 March, and
 - 1.2.20.2 each successive period of 12 months beginning with 1 April;
- 1.2.21 **"Forward Plan"** means the document prepared by the Trust pursuant to paragraph 27 of Schedule 7 to the 2006 Act;
- 1.2.22 **"funds held on trust"** shall mean those funds that the Trust holds at its date of incorporation, receives on distribution by statutory instrument, or chooses subsequently to accept under powers derived from the 2006 Act. Such funds may or may not be charitable;
- 1.2.23 **"Governors Code of Conduct"** means the Code of Conduct for Governors, as amended from time to time and subscribed to by all Governors;

- 1.2.24 **"Health Service Body"** shall have the meaning ascribed to NHS Body in Section 275 of the 2006 Act;
- 1.2.25 **"Model Rules for Elections"** shall mean the election rules set out in Annex 2
- 1.2.26 **"motion"** shall mean a formal proposition to be discussed and voted on during the course of a meeting;
- 1.2.27 **"nominated officer"** shall mean an officer charged with the responsibility for discharging specific tasks within *BDSOs* and *Standing Financial Instructions*;
- 1.2.28 **"Non-Executive Director"** shall mean a Non-Executive Director of the Trust;
- 1.2.29 **"officer"** shall mean an employee of the Trust;
- 1.2.30 **"patient"** shall mean a person who has been assessed and is on a waiting list; a person who is receiving treatment; and/or a person who is not receiving treatment but has not been discharged;
- 1.2.31 **"public"** shall mean persons who would be entitled to treatment (that is, those satisfying national residency criteria that could at any time be referred and accepted for treatment); or a resident EU citizen or taxpayer of the areas served;
- 1.2.32 **"the Regulator"** is the body corporate known as Monitor the Foundation Trust Regulator (operating as part of NHS Improvement), as provided by Section 61 of the 2012 Act;
- 1.2.33 **"staff"** shall mean all those employed on permanent contracts, all those appointed on fixed term contracts of more than a year, people who have been continuously employed for more than twelve months, honorary staff working more than 10 hours per week on average or earning more than £5,000 per annum, contractors (e.g. canteen staff), those employed by other organisations but working at the Trust (e.g. researchers, staff in service units);
- 1.2.34 **"Terms of Authorisation"** are the terms of authorisation issued by the Regulator under Section 35 of the National Health Service Act 2006;
- 1.2.35 **"the Trust"** shall mean The Tavistock and Portman NHS Foundation Trust, the head office of which is The Tavistock Centre, 120 Belsize Lane, London NW3 5BA;
- 1.2.36 **"Trust Chair"** shall mean the person appointed by the Governors under paragraph 22.1 of this Constitution; and

1.2.37 **“Trust Secretary” shall mean a person appointed by the Trust to perform the roles and responsibilities of the Trust Secretary as set out in this Constitution and appendix A of the Foundation Trust Code of Governance.**

2. Name

2.1 The name of the foundation trust is The Tavistock and Portman NHS Foundation Trust (the Trust).

3. Principal and other purposes

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 Other purposes shall include:

3.5.1 the provision of the highest quality mental health training for staff from a range of professional backgrounds, with a focus on human relations skills;

3.5.2 to expand the numbers of trained staff available nationally to support the greater provision of excellent services and to strengthen the recruitment of well-trained staff from ethnic minorities and other under-represented groups;

3.5.3 **to use the Trust’s knowledge of groups and organisations to expand** understanding of how organisations work;

3.5.4 **to extend the Trust’s consultancy services to provide help to** organisations in the NHS, the wider public sector, and to private industry and commerce;

- 3.5.5 to take a leading role in influencing mental health policy, both locally and nationally, focusing on children and adolescent services, and adult and forensic psychotherapies; and
 - 3.5.6 **to draw on the Trust's research strength to provide new clinical methods, new services and new ways of delivering care, while increasing the evidence base for all services.**
- 4. Powers
 - 4.1 The powers of the Trust are set out in the National Health Service Act 2006 (as amended), subject to any restrictions in the Terms of Authorisation.
 - 4.2 The Board of Directors, on behalf of the Trust, shall exercise all powers of the Trust.
 - 4.3 Subject to any restriction contained in this Constitution, any of these powers may be delegated to a committee of Directors, or to an Executive Director.
 - 5. Governance Framework
 - 5.1 The affairs of the Trust are to be conducted by the Board of Directors, the Council of Governors and the members in accordance with this Constitution and each shall have their roles and responsibilities set out in this Constitution.
 - 5.2 Members
 - 5.2.1 The Members of the Trust are those individuals who are entered in to the Register of Members.
 - 5.2.2 Members may attend and participate at Members meetings, vote in elections to, and stand for election to the Council of Governors, and take such other part in the affairs of the Trust as is provided in this Constitution.
 - 5.3 Council of Governors
 - 5.3.1 The roles and responsibilities of the Council of Governors are at a meeting:
 - 5.3.1.1 To appoint or remove the Chair and the other Non-Executive Directors;
 - 5.3.1.2 To approve an appointment (by the Non-Executive Directors) of the Chief Executive;

- 5.3.1.3 To decide the remuneration and allowances, and the other terms and conditions of office, of the Non-Executive Directors;
- 5.3.1.4 **To appoint or remove the Trust's Auditor;**
- 5.3.1.5 To be presented with the Annual Accounts, any report of the Auditor on them and the Annual Report;
- 5.3.1.6 To provide their views to the Board of Directors when the **Board of Directors is preparing the Trust's Forward Plan;**
- 5.3.1.7 To respond as appropriate when consulted by the Board of Directors in accordance with this Constitution;
- 5.3.1.8 To undertake such functions as the Board of Directors shall from time to time request.

5.4 Council of Governors: Duties of Governors

5.4.1 The general duties of the Council of Governors are:

- 5.4.1.1 To hold the Non-Executive Directors individually and collectively to account for the performance of the Board of Directors; and
- 5.4.1.2 To represent the interests of the Members of the Trust as a whole and the interest of the public.

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

5.5 Board of Directors

5.5.1 The business of the Trust is to be managed by the Board of Directors, who shall exercise all the powers of the Trust in accordance with the provisions of this Constitution.

5.6 Board of Directors – General Duty

5.6.1 The general duty of the Board of Directors and of each Director individually, is to act with a view to promoting the success of the Trust so as to maximise the benefits for the Members of the Trust as a whole and for the public.

5.7 Constituencies

5.7.1 Every Member is a Member of one of the following Constituencies:

- 5.7.1.1 the Public Constituency;
- 5.7.1.2 the Service User and Carer Constituency; or
- 5.7.1.3 the Staff Constituency;
- 5.7.1.4 the Student Constituency.

6. Application for Membership

- 6.1 Any individual, other than a member of staff, who is eligible to become a Member of the Trust by virtue of paragraphs 7, 9 or 10, may do so on application to the Trust.
- 6.2 Any person who has caused significant harm to an NHS staff member (physical assault, violence or serious harassment) will be deemed ineligible.

7. Public Constituency

- 7.1 An individual over the age of 14 who lives in the areas specified in *Annex 1* as the 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 in an area for any Public Constituency are referred to collectively as the Public Constituency.
- 7.3 The Public Constituency shall be divided into three descriptions of individuals who are eligible for membership of the Public Constituency, each description of individuals being specified within *Annex 1* and being referred to as a class within the Public Constituency.
- 7.4 The minimum number of Members in the Public Constituency is specified in *Annex 1*.

8. Staff Constituency

- 8.1 An individual who is employed by the Trust under a contract of employment with the Trust may become or continue as a Member of the Trust provided:
 - 8.1.1 he is employed by the Trust under a contract of employment which has no fixed term or has a fixed term of at least twelve months; or
 - 8.1.2 he has been continuously employed by the Trust under a contract of employment for at least twelve 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 twelve months.

8.3 Those individuals who are eligible for membership of the Trust as described in paragraphs 8.1 and 8.2 are referred to collectively as the Staff Constituency.

8.4 The Staff Constituency shall be divided into three descriptions of individuals who are eligible for membership of the Staff Constituency, each description of individuals being specified within *Annex 1* 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 1*.

8.6 An individual who is:

8.6.1 eligible to become a Member of the Staff Constituency; and

8.6.2 invited by the Trust to become a Member of the Staff Constituency and a Member of the appropriate class within the Staff Constituency,

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

9. Service User and Carer Constituency

9.1 Members of the Service User and Carer Constituency shall be individuals who:

9.1.1 Are Service Users or Service User Carers;

9.1.2 are not eligible to become a Member of the Staff Constituency and are not Members of any other Membership Constituency and are not otherwise disqualified from membership;

9.1.3 have made an application to the Trust to become a Member and whose name has been entered on the Register of Members in accordance with paragraph 5.2.1; and

9.1.4 are not less than 14 years of age at the time of their application to become a Member.

9.2 A Service User is an individual whose name is recorded as a service user on **the Trust's clinical administration system or other record maintained by the Trust** for the purposes of identifying service users of the Trust and to whom the Trust has provided clinical services or treated as a service user within the period of five years immediately prior to that person applying to

become a Member. A person ceases to be a Service User when five years have elapsed since his last attendance at the Trust as a service user.

9.3 A Service User Carer is an individual who:

9.3.1 is not less than 14 years of age at the date of applying to become a member; and

9.3.2 provides care on a regular basis for a Service User who has not attained the age of 14 years or who is by reason of physical or mental incapacity unable to discharge the functions of a Member; and

9.3.3 does not (as set out in Paragraph 3(6) of Schedule 7 to the 2006 Act) provide that care:

9.3.3.1 by virtue of a contract of employment or other contract with any person; or

9.3.3.2 as a volunteer for a voluntary organisation; and

9.3.4 has either been:

9.3.4.1 nominated by that Service User as his Service User Carer for the purposes of this paragraph and has been accepted **by the Trust as that Service User's Carer for that purpose;** or

9.3.4.2 has been accepted by the Trust as a Service User Carer for the purposes of this paragraph where the Service User is under 14 years of age or lacks the legal or mental capacity to nominate that individual as his Service User Carer and the Trust has to the extent that it is reasonably practicable to do so consulted with that Service User as to his wishes and has then agreed to treat that individual as the Service User Carer for the purposes of this paragraph provided the individual has agreed in writing to act in that capacity and he is otherwise qualified in accordance with this paragraph.

9.3.5 An individual shall not be eligible to apply to become a Member as a Service User Carer or to continue as a Member as a Service User Carer if:

9.3.5.1 the Service User has withdrawn his nomination of that individual under 9.3.4.1 as his Service User Carer; or

9.3.5.2 the Service User on whose behalf he is a Service User Carer is ineligible or disqualified from membership under paragraph 14; or

- 9.3.5.3 when paragraph 9.3.4.2 applies the Service User becomes capable of discharging the functions of a Member and attains the age of 14 years of age.

10. Student Constituency

10.1 Members of the Student Constituency shall be individuals who

- 10.1.1 are a Students (as defined in paragraph 10.2) on a Trust education programme that last two years or longer;
- 10.1.2 are not eligible to become a Member of the Staff Constituency and are not Members of any other Membership Constituency and are not otherwise disqualified from membership;
- 10.1.3 have made an application to the Trust to become a Member and whose name has been entered on the Register of Members in accordance with paragraph 5.2; and
- 10.1.4 are not less than 14 years of age at the time of their application to become a Member.

10.2 A Student is an individual whose name is recorded as a student on the **Trust's student information system or other record maintained by the Trust** for the purposes of identifying students of the Trust and who has been registered as a student within the last three years.

10.3 An individual shall not be eligible to apply to become a Member as a Student or to continue as a Member as a Student if:

- 10.3.1 the individual is a Member of some other Membership Constituency or Class of Membership Constituency under this Constitution; or
- 10.3.2 three years have elapsed since the completion by the individual of an education programme at Trust; or
- 10.3.3 the Student is ineligible or disqualified from Membership under paragraph 11.

11. Restriction on Membership

11.1 An individual who is a Member of the Public Constituency, or of a class within that Constituency, may not while membership of that Constituency or class continues, be a Member of any other Constituency or class.

11.2 An individual who satisfies the criteria for membership of the Staff Constituency, or of a class within that Constituency, may not while

membership of that Constituency or class continues, be a Member of any other Constituency or class.

11.3 An individual who satisfies the criteria for membership of the Service User Constituency, or of a class within that Constituency, may not while membership of that Constituency or class continues, be a Member of any other Constituency or class.

11.4 An individual who satisfies the criteria for membership of the Student Constituency, or of a class within that Constituency, may not while membership of that Constituency or class continues, be a Member of any other Constituency or class.

11.5 An individual must be at least 14 years of age to become a Member.

11.6 A person may be disqualified from Membership, or may have their Membership revoked if,

11.6.1 in the opinion of the Council of Governors, they have acted in a way that is detrimental to the interests of the Trust, for example committed an act of verbal or physical abuse against a member of Trust staff, or

11.6.2 No Member may represent himself, in writing or verbally, as belonging to any category of membership of the Trust:

11.6.2.1 in a manner which could associate the Trust with personal opinions expressed by the Member;

11.6.2.2 where this might be misconstrued as a title; or

11.6.2.3 when this might imply a professional qualification. It is emphasised that the letters MTPFT, or similar, must not be used in such a way.

11.6.3 This prohibition shall not apply to a factual statement of any type of membership of the Trust in the appropriate paragraphs of books of reference or in a curriculum vitae.

11.6.4 Other than staff members, no Member may designate the Trust as his personal or professional postal address in any published work or in any communication to the media.

11.7 The Trust Secretary, or any other person appointed to perform the duties of the Trust Secretary, shall remove from the Register of Members the name of any Member who ceases to be entitled to be a Member under the provisions of this Constitution.

11.8 Meetings

11.8.1 The Trust will hold an Annual General Meeting for the purposes of communicating progress and plans of the Trust and to explore other matters of interest to Members as set out in the notice of meeting. The Annual General Meeting shall be open to members of the public.

11.8.2 At least one member of the Board of Directors must attend the meeting and present the following documents to the Members at the meeting: the Annual Accounts; any report of the Auditor on them; and the Annual Report.

11.8.3 The Trust may hold other meetings of Members from time to time.

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 1*.

12.3 The members of the Council of Governors, other than the members appointed by the bodies listed in section 2 of *Annex 1*, shall be drawn from the membership of the Trust and chosen by election by their Constituency. The number of Governors to be elected by each Constituency, or, where appropriate, by each class of each Constituency, is specified in section 1 of *Annex 1*.

13. Council of Governors – election of Governors and in-term vacancies

13.1 Elections for elected members of the Council of Governors shall be conducted in accordance with the Model Rules for Elections, as published from time to time, by the Department of Health and Social Care. Any subsequent variation by the Department of Health and Social Care does not constitute a variation to the terms of this Constitution for the purpose of paragraph 42.

13.2 The Model Rules for Elections form part of this Constitution and are set out in *Annex 2*.

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

13.4 Should vacancies arise during a term of office, the unsuccessful candidate with the highest number of votes at the last stage of the count of the previous election shall be deemed elected and shall hold office until the end of the original term. If there are no candidates available, then a by-election shall be called provided there is at least a year and a day remaining from the announcement of results until the term of office expires, otherwise the seat shall be left vacant.

13.5 The Returning Officer under the Model Rules of Elections shall maintain a record of votes cast at each election under the Model Rules of Elections for the above purposes and the Returning Officer shall conduct or shall oversee the conducting of the process set out in paragraphs 13.

13.6 No proceedings of the Council of Governors shall be invalidated by any vacancy in its membership or any defect in the appointment or election of any Governor.

14. Council of Governors – tenure

14.1 An elected Governor may hold office for a period of up to three years.

14.2 An elected Governor shall cease to hold office if he ceases to be a Member of the Constituency or class by which he was elected.

14.3 An elected Governor shall be eligible for re-election at the end of his first term. However, no Governor may stand for election having served two terms or six years, whichever is the less.

14.4 An appointed Governor may hold office for a period of up to three years.

14.5 An appointed Governor shall cease to hold office terminates the appointment and in such circumstances the appointing organisation shall notify the Trust Secretary of such termination.

14.6 An appointed Governor shall be eligible for re-appointment at the end of his first term. However, no Governor may be re-appointed having served two terms or six years, whichever is the less.

14.7 Governors shall sign a declaration entitling them to vote at meetings, see Council of Governors Standing Orders 10 set out in *Annex 3*.

15. Council of Governors – disqualification and removal

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

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

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

15.1.3 a person who within the preceding five years has been convicted in the British Isles of any offence if a sentence of imprisonment

(whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him;

- 15.1.4 a person who has caused significant harm to any member of NHS staff;
 - 15.1.5 he is a person whose term of office as the chair or as a member or director of a Health Service Body has been terminated because his appointment is not in the interests of the health service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest;
 - 15.1.6 he has had his name removed from a list maintained under regulations pursuant to sections 91, 106, 123 or equivalent lists maintained by local Health Boards in Wales under the National Health Service (Wales) Act 2006, and he has not subsequently had their name included in such a list;
 - 15.1.7 he is a subject of a sex offender order;
 - 15.1.8 he has been dismissed from employment by a Health Service Body other than by reason of redundancy; or
 - 15.1.9 he is incapable of managing and administering his property and affairs because of mental disorder, illness or injury.
- 15.2 Governors must be at least 18 years of age at the date they are nominated for election or appointment.
- 15.3 Governors will be subject to removal for the following reasons:
- 15.3.1 failure to attend more than two consecutive meetings without satisfactory explanation to the Trust Chair;
 - 15.3.2 making false declaration for any purpose of this Constitution or the 2006 Act; and
 - 15.3.3 conduct that has caused, or is likely to cause, material prejudice to the best interests of the Trust or the proper conduct of the Council of Governors or otherwise in a manner inconsistent with continued membership of the Council of Governors.
 - 15.3.4 serious breach **of the Governor's Code of Conduct.**
- 15.4 Removal shall be on the recommendation of the Trust Chair and should require the approval of at least two-thirds of the Governors present, the Governor concerned not being eligible to participate in such a vote and voting at a general meeting of the Council of Governors being absent from the room whilst it takes place. If a Governor is removed from office then he

is not eligible to stand for re-election as a Governor for a period of for a period of three years from the date of such removal. A decision for termination should be effective notwithstanding any reference to dispute resolution.

15.5 A Governor may resign from that office at any time during the term of that office by giving notice in writing to the Trust Secretary whereupon that individual shall cease to hold office.

15.6 A Governor shall cease to hold office on their death.

16. Council of Governors – meetings of Governors

16.1 The Trust Chair or, in his absence, the Deputy Trust Chair, shall preside at meetings of the Council of Governors.

16.2 All meetings of the Council of Governors are to be general meetings open to members of the public unless the Council of Governors decides otherwise in relation to a part of a meeting for reasons of commercial confidentiality or on other proper grounds. The Trust Chair may exclude any members of the public from a meeting of the Council of Governors if they are interfering with or prevent the proper conduct of the meeting.

16.3 There shall be not less than three general meetings of the Council of Governors each year.

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

17. Council of Governors – Standing Orders

17.1 The Standing Orders for the practice and procedure of the Council of Governors, as may be varied from time to time, are set out in *Annex 3*.

18. Council of Governors – conflicts of interest of Governors

18.1 If a Governor has a pecuniary, personal or family interest, whether that interest is actual or potential, and whether that interest is direct or indirect, in any proposed contract or other matter which is under consideration or is to be considered by the Council of Governors, the Governor shall disclose that interest to the members of the Council of Governors as soon as he becomes aware of it. The Council of Governors' Standing Orders set out in Annex 3 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.

19. Council of Governors – expenses

19.1 The Trust may pay travelling and other expenses to members of the Council of Governors at rates determined by the Trust. These rates are to be disclosed in the Annual Report and Accounts.

20. Board of Directors – composition

20.1 The Trust is to have a Board of Directors, which shall comprise both Executive and Non-Executive Directors.

20.2 The Board of Directors is to comprise:

20.2.1 a Non-Executive Trust Chair;

20.2.2 not less than five nor more than seven other Non-Executive Directors; and

20.2.3 not less than five nor more than seven Executive Directors as follows:

20.2.3.1 a Chief Executive (who is the Accounting Officer);

20.2.3.2 a Chief Finance Officer;

20.2.3.3 a Chief Clinical Operating Officer;

20.2.3.4 a Chief Medical Officer who is a registered medical practitioner;

20.2.3.5 a Chief Nursing Officer who is a registered nurse; and

20.2.3.6 Two other Executive Directors.

20.3 Other Directors of the Trust will attend on a regular basis.

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

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

21.1.1 he is a Member of the Public Constituency, Service User or Carer Constituency, or Student Constituency; or

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

21.1.3 he is not disqualified by virtue of paragraph 11.

22. Board of Directors – appointment and removal of Trust Chair and other Non-Executive Directors

- 22.1 The Council of Governors at a general meeting of the Council of Governors shall appoint or remove the Trust Chair and the other Non-Executive Directors, in the case of the appointment subject to the approval of a majority of members of the Council of Governors present and voting at the meeting, and in the case of removal of the Trust Chair or another Non-Executive Director subject to approval of three-quarters of the members of the Council of Governors voting at the meeting.
23. Board of Directors – appointment of Deputy Trust Chair
- 23.1 The Council of Governors at a general meeting of the Council of Governors shall appoint one of the Non-Executive Directors as Deputy Trust Chair.
24. Board of Directors – appointment of Senior Independent Director
- 24.1 The Board of Directors shall appoint one of the independent Non-Executive Directors as Senior Independent Director, having first consulted with the Council of Governors. The role of the Senior Independent Director is set out in section 4 of *Annex 4*.
25. Board of Directors – appointment and removal of the Chief Executive and other Executive Directors
- 25.1 The Non-Executive Directors shall appoint or remove the Chief Executive.
- 25.2 The appointment of the Chief Executive shall require the approval of a majority of the Council of Governors present and voting at a general meeting.
- 25.3 A committee consisting of the Chair, the Chief Executive and the other Non-Executive Directors shall appoint or remove the other Executive Directors.
26. Board of Directors – disqualification
- 26.1 The following may not become or continue as a member of the Board of Directors:
- 26.1.1 a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;
- 26.1.2 a person who has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it;
- 26.1.3 a person who within the preceding five years has been convicted in the British Isles of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him;

- 26.1.4 a person who has caused significant harm to any member of NHS staff;
- 26.1.5 he is a person whose term of office of office as the chair or as a member or director of a Health Service Body has been terminated because his appointment is not in the interests of the health service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest;
- 26.1.6 he has had his name removed from a list maintained under regulations pursuant to sections 91, 106, 123 or equivalent lists maintained by local Health Boards in Wales under the National Health Service (Wales) Act 2006, and he has not subsequently had their name included in such a list;
- 26.1.7 If a Non-Executive Director ceases to be a member of the public constituency, the service user or carer constituency or the student constituency;
- 26.1.8 he is subject of a disqualification order made under the Company Directors Disqualification Act 1986;
- 26.1.9 he is incapable of managing and administering his property and affairs because of mental disorder, illness or injury.

26.2 Directors will be subject to removal for the following reasons:

- 26.2.1 failure to attend more than two consecutive meetings without satisfactory explanation to the Trust Chair;
- 26.2.2 making false declaration, for any purpose, of this Constitution or the 2006 or 2012 Acts;
- 26.2.3 conduct that has caused, or is likely to cause, material prejudice to the best interests of the Trust or the proper conduct of the Board of Directors or otherwise in a manner inconsistent with continued membership of the Board of Directors.

26.3 With regard to Non-Executive Directors, removal is subject to the provisions of paragraph 21. With regard to the Chief Executive, removal is subject to the provisions of paragraph 25. A decision for termination should be effective notwithstanding any reference to dispute resolution.

27. Board of Directors – meetings

27.1 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.

27.2 Before holding a meeting, the Board of Directors must send a copy of the agenda of the meeting to the members of 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.

28. Board of Directors – Standing Orders

28.1 The Standing Orders for the practice and procedure of the Board of Directors, as may be varied from time to time, are set out in *Annex 4*.

29. Board of Directors – conflicts of interest of Directors

29.1 The duties that a Director has by virtue of being a Director include in particular –

29.1.1 a duty to avoid a situation in which the Director has (or can have) a direct or indirect interest that conflicts (or possibly may conflict) with the interests of the Trust.

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

29.2 The duty referred to in sub-paragraph 29.1.1 is not infringed if –

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

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

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

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

29.4.1 the Trust, or

29.4.2 a person acting on its behalf.

29.5 If a Director 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.

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

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

29.8 This paragraph does not require a declaration of an interest of which the Director is not aware or where the Director is not aware of the transaction or arrangement in question.

29.9 A Director need not declare an interest –

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

29.9.2 if, or to the extent that, the Directors are already aware of it;

29.9.3 if, or to the extent that, it concerns terms of the **Director's** appointment that have been or are to be considered –

29.9.3.1 by a meeting of the Board of Directors, or

29.9.3.2 by a committee of the Directors appointed for the purpose under the Constitution.

30. Board of Directors – remuneration and Terms of Office

30.1 The Council of Governors at a general meeting shall decide the remuneration and allowances, and the other terms and conditions of office, of the Trust Chair and the other Non-Executive Directors. The Trust Chair shall not be present during discussions **relating to the Trust Chair's pay**. A temporary chair may be elected for this part of the meeting if the Deputy Trust Chair is not available.

30.2 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.

31. Interaction between the Board of Directors and Council of Governors

31.1 The Board of Directors will cooperate with the Council of Governors as far as possible in order to comply with the Regulatory Framework in all respects and in particular in relation to matters set out within the Constitution.

31.2 The Board of Directors, having regard to the views of the Council of Governors, are to prepare the Forward Plan in respect of each Financial Year to be given to the Regulator.

31.3 The Board of Directors are to present to the Council of Governors at a general meeting the Annual Accounts, any report of the auditor on them, and the Annual Report.

31.4 The Annual Report is to give information on any steps taken by the Trust to secure that (taken as a whole) the actual membership of its Public Constituency is representative of those eligible for such membership.

31.5 In order to comply with the Regulatory Framework in all respects and in particular in relation to the matters which are set out above, the Council of Governors may request that a matter which relates to Annual Accounts or the Forward Plan is included on the agenda for a meeting of the Board of Directors. If the Council of Governors so desires, they shall make their request in writing to the Trust Chair at least fourteen (14) days before the meeting of the Board of Directors. The Trust Chair shall decide whether the matter is appropriate to be included on the agenda.

32. Registers

32.1 The Trust shall have:

32.1.1 Register of Members showing, in respect of each Member, the Constituency to which he belongs and, where there are classes within it, the class to which he belongs;

32.1.2 a Register of Members of the Council of Governors;

32.1.3 a **Register of Governors' Interests;**

32.1.4 a Register of Members of the Board of Directors;

32.1.5 a **Register of Directors' Interests.**

32.2 Provisions relating to the registers are set out in Annex 5.

33. Registers – inspection and copies

33.1 The Trust shall make the Registers specified in paragraph 33, available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations, see *Annex 5*.

33.2 The Trust shall make any part of its Registers available for inspection by members of the public that shows names and Constituencies of:

33.2.1 any Member of the Service User and Service User Carer Constituency;

33.2.2 any other Member of the Trust, if he so requests.

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

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

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

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

34. Documents available for public inspection

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

34.1.1 a copy of the current Constitution;

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

34.1.3 a copy of the latest Annual Report.

34.2 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:

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

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

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

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

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

34.2.6 a copy of any notice published under section 65F **(administrator's draft report)**, 65G (consultation plan), 65H (consultation requirements), 65J (power to extend time), 65KA **(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.

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

- 34.2.8 a copy of any final report published under section 65I (**administrator's** final report).
 - 34.2.9 a copy of any statement published under section 65J (power to **extend time**) or **65KC (action following Secretary of State's rejection** of final report) of the 2006 Act.
 - 34.2.10 a copy of any information published under section 65M (replacement of trust special administrator) of the 2006 Act.
- 34.3 Any person who requests a copy of or extract from any of the above documents is to be provided with a copy.

35. Auditor

- 35.1 The Trust shall have an Auditor.
- 35.2 The Council of Governors shall appoint or remove the Auditor at a general meeting of the Council of Governors.

36. Audit Committee

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

37. Accounts

- 37.1 The Trust must keep proper accounts and proper records in relation to the accounts.
- 37.2 The Regulator may with the approval of the Secretary of State give directions to the Trust as to the content and form of its accounts.
- 37.3 The accounts are to be audited by the Auditor.
- 37.4 The Trust shall prepare, in respect of each Financial Year, Annual Accounts in such form as the Regulator may, with the approval of the Secretary of State, direct. The functions of the Trust with respect to the preparation of the Annual Accounts shall be delegated to the Accounting Officer.

38. Annual Report, Forward Plan and Non-NHS Work

- 38.1 The Trust shall prepare an Annual Report and send it to the Regulator.
- 38.2 The Trust shall give the Forward Plan in respect of each Financial Year to the Regulator

38.3 The Forward Plan shall be prepared by the Directors.

38.4 The Forward Plan shall have regard to the views of the Council of Governors.

38.5 Each Forward Plan must include information about:

38.5.1 the activities other than the provision of goods and services for the purposes of the health service (identified in paragraphs XX) in England that the Trust proposes to carry on, and

38.5.2 the income it expects to receive from doing so.

38.6 Where a Forward Plan contains a proposal that the Trust carry on an activity of a kind mentioned in paragraph 38.5.1, the Council of Governors must:

38.6.1 determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfilment by the Trust of its principal purpose or the performance of its other functions, and

38.6.2 notify the Board of Directors of the Trust of its determination.

38.7 If the Trust proposes to increase by five per cent 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 (identified in paragraphs 3.3) it may implement the proposal only if more than half of the members of the Council of Governors present and voting approve its implementation.

39. Meeting of the Council of Governors to consider Annual Accounts and reports

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

39.1.1 the Annual Accounts;

39.1.2 any report of the Auditor on them; and

39.1.3 the Annual Report.

40. Instruments

40.1 The Trust shall have a seal.

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

41. Indemnity

41.1 Members of the Council of Governors and of the Board of Directors and the Trust Secretary who act honestly and in good faith will not have to meet out of their personal resources any personal civil liability which is incurred in the execution or purported execution of their respective functions, save where they have acted recklessly. Any costs arising in this way will be met by the Trust.

41.2 The Trust may make such arrangements as it considers appropriate for the provision of indemnity insurance or similar arrangement for the benefit of the Trust, Governors, Directors and the Secretary to meet all or any liabilities which are properly the liabilities of the Trust under paragraph 41.

42. Amendments to the Constitution

42.1 The Trust may make amendments to this Constitution with the approval of the Board of Directors, Council of Governors and Members. Amendments take effect as soon as the following conditions are satisfied, as long as the amendment is in accordance with Schedule 7 of the 2006 Act.

42.2 Where an amendment is made to the Constitution in relation to the powers or duties of the Council of Governors:

42.2.1 at least one member of the Council of Governors must attend the next Annual General Meeting and present the amendment, and the Trust must give the Members an opportunity to vote on whether they approve the amendment.

42.2.2 If more than half of the Members present and voting at the Annual General Meeting approve the amendment, the amendment continues to have effect; otherwise, it ceases to have effect and the Trust must take such steps as are necessary as a result.

42.3 Amendments by the Trust of its Constitution are to be notified to the Regulator.

43. **Mergers, Acquisitions and Separations and "Significant Transactions"**

43.1 The Trust may only apply for a merger, acquisition, separation or dissolution or any other matter the Board of Directors determine with the approval of more than half of the members of the Council of Governors.

43.2 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.

43.3 The **Constitution does not contain any descriptions of the term 'significant transaction' for the purposes of section 51A of the 2006 Act (Significant Transactions).**

Annex 1

Composition of the Council of Governors

1. Membership Constituencies and associated Elected Governors

1.1 The Public Constituency

Class	Governor Seats	Minimum Membership
All electoral wards within the area of the London Borough of Camden	3	200
All electoral wards in all London Boroughs with the exception of Camden	6	200
The rest of England and Wales excluding all London Boroughs covered by the Greater London Authority	2	200
<i>Total</i>	11	

1.2 The Staff Constituency

1.2.1 There will be three classes of the Staff Constituency.

Class	Governor Seats	Minimum Membership
Clinical	1	100
Academic	1	100
Administrative and Technical	1	5
<i>Total</i>	3	

1.3 The Service User and Service User Carer Constituency

Class	Governor Seats	Minimum Membership
Service User and Service User Carer	1	100

1.4 The Student Constituency

Class	Governor Seats	Minimum Membership
Student	1	100

2. Appointed Governors

	Governor Seats
<i>Commissioners</i>	
Camden Clinical Commissioning Group	1
Other Commissioning Body	1
<i>Local Authorities</i>	
London Borough of Camden	1
<i>Partnership Organisations</i>	
Voluntary Action Camden	1
University of Essex	1

University of East London	1
Representatives of Recognised Staff Organisations and Trade Unions	1
<i>Total</i>	7

Annex 2

The Model Rules for Elections

PART 1 INTERPRETATION

1. Interpretation

1.1 In these Rules, unless the context otherwise requires:

- 1.1.1 **“the Trust” means the Tavistock & Portman NHS Foundation Trust;**
- 1.1.2 **“the 2006 Act” means the** National Health Service Act 2006.
- 1.1.3 **“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.
- 1.1.4 **“the Regulator” is** the body corporate known as Monitor, as provided by Section 61 of the Health and Social Care Act 2012, and operating as NHS Improvement.
- 1.1.5 **“Declaration of identity” has the meaning set out in rule 21 .1;**
- 1.1.6 **“e-voting” means voting using either the internet,** telephone or text message.
- 1.1.7 **“e-voting information” has the meaning set out in rule 24.2.**
- 1.1.8 **“ID declaration form” has the meaning set out in Rule 21.2; “internet voting record” has the meaning set out in rule 26.4(d).**
- 1.1.9 **“internet voting system” means such computer hardware and** software, data other equipment and services as may be provided by the returning officer for the purpose of enabling voters to cast their votes using the internet.
- 1.1.10 **“lead governor” means the governor nominated by the Trust to** fulfil the role described in Appendix B to the NHS Foundation Trust Code of Governance (December 2013) or any later version of such code.

- 1.1.11 **"list of eligible voters"** means the list referred to in rule 22.1, containing the information in rule 22.2.
 - 1.1.12 **"method of polling"** means a method of casting a vote in a poll, which may be by post, internet, text message or telephone.
 - 1.1.13 **"numerical voting code"** has the meaning set out in rule 64.2(b).
 - 1.1.14 **"polling website"** has the meaning set out in rule 26.1.
 - 1.1.15 **"postal voting information"** has the meaning set out in rule 24.1.
 - 1.1.16 **"telephone short code"** means a short telephone number used for the purposes of submitting a vote by text message.
 - 1.1.17 **"telephone voting facility"** has the meaning set out in rule 26.2.
 - 1.1.18 **"telephone voting record"** has the meaning set out in rule 26.5(d).
 - 1.1.19 **"text voting record"** has the meaning set out in rule 26.6(d).
 - 1.1.20 **"the telephone voting system"** means such telephone voting facility as may be provided by the returning officer for the purpose of enabling voters to cast their votes by telephone.
 - 1.1.21 **"the text message voting system"** means such telephone voting facility as may be provided by the returning officer for the purpose of enabling voters to cast their votes by text message.
 - 1.1.22 **"voter ID number"** means a unique, randomly generated numeric identifier allocated to each voter by the Returning Officer for the purpose of e-voting.
 - 1.1.23 **"voting information"** means postal voting information and/or e-voting information.
- 1.2 Other expressions used in these Rules and in the 2006 Act have the same meaning in these Rules as in that Schedule.

PART 2 TIMETABLE FOR ELECTION

2. Timetable

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

Proceeding	Time
Publication of notice of election	Not later than the fortieth day before the day of the close of the poll
Final day for delivery of nomination forms to returning officer	Not later than the twenty eighth day before the day of the close of the poll
Publication of statement of nominated candidates	Not later than the twenty seventh day before the day of the close of the poll
Final day for delivery of notices of withdrawals by candidates from election	No later than the twenty fifth day before the day of the close of the poll
Notice of the poll	Not later than the fifteen day before the day of the close of the poll
Close of the poll	By 5pm of the final day of the election

3. Computation of time

3.1 In computing any period of time for the purposes of the timetable, the following days shall be disregarded, and any such day shall not be treated as a day for the purpose of any proceedings up to the completion of the poll, nor shall the Returning Officer be obliged to proceed with the counting of votes on such a day:

3.1.1 a Saturday or Sunday;

3.1.2 Christmas day, Good Friday, or a bank holiday, or a day appointed for public thanksgiving or mourning.

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

PART 3 RETURNING OFFICER

4. Returning Officer

4.1 Subject to Rule 69, the Returning Officer for an election is to be appointed by the Trust.

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

5. Staff

5.1 Subject to Rule 69, the Returning Officer may appoint and pay such staff, including such technical advisers, as he considers necessary for the purposes of the election.

6. Expenditure

6.1 The Trust is to pay the Returning Officer:

6.1.1 any expenses incurred by that officer in the exercise of his functions under these Rules; and

6.1.2 such remuneration and other expenses as the Trust may determine.

7. Duty of co-operation

7.1 The Trust is to co-operate with the Returning Officer in the exercise of his functions under these Rules.

PART 4 STAGES COMMON TO CONTESTED AND UNCONTESTED ELECTIONS

8. Notice of election

8.1 The Returning Officer is to publish a notice of the election stating:

8.1.1 the Constituency, or class within a Constituency, for which the election is being held;

8.1.2 the number of members of the Council of Governors to be elected from that Constituency, or class within that Constituency;

8.1.3 the details of any nomination committee that has been established by the Trust;

8.1.4 the address and times at which nomination papers may be obtained;

8.1.5 the address for return of nomination papers and the date and time by which they must be received by the Returning Officer;

8.1.6 the date and time by which any notice of withdrawal must be received by the Returning Officer;

8.1.7 the contact details of the Returning Officer; and

8.1.8 the date and time of the close of the poll in the event of a contest.

9. Nomination of candidates

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

9.2 The Returning Officer:

9.2.1 is to supply any Member of the Trust with a nomination paper; and

9.2.2 is to prepare a nomination paper for signature at the request of any Member of the Trust,

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

10. **Candidate's particulars**

10.1 **The nomination paper must state the candidate's:**

10.1.1 full name;

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

10.1.3 Constituency, or class within a Constituency, of which the candidate is a Member.

11. Declaration of interests

11.1 The nomination paper must state:

11.1.1 any financial interest that the candidate has in the Trust; and

11.1.2 whether the candidate is a member of a political party, and if so, which party,

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

12. Declaration of eligibility

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

12.1.1 that he 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 this Constitution; and,

12.1.2 for a Member of the Public, Service User and Carer, and Student Constituencies, of the particulars of his qualification to vote as a Member of that Constituency, or class within that Constituency, for which the election is being held.

13. Signature of candidate

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

13.1.1 they wish to stand as a candidate;

13.1.2 their declaration of interests as required under Rule 11, is true and correct; and

13.1.3 their declaration of eligibility, as required under Rule 12, is true and correct.

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

14. Decisions as to the validity of nomination forms

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

14.1.1 decides that the candidate is not eligible to stand;

14.1.2 decides that the nomination paper is invalid;

14.1.3 receives satisfactory proof that the candidate has died; or

14.1.4 receives a written request by the candidate of their withdrawal from candidacy.

14.2 The Returning Officer is entitled to decide that a nomination paper is invalid only on one of the following grounds:

14.2.1 that the paper is not received on or before the final date and time for return of nomination papers, as specified in the notice of the election;

14.2.2 that the paper does not contain the **candidate's particulars**, as required by Rule 10;

14.2.3 that the paper does not contain a declaration of the interests of the candidate, as required by Rule 11;

14.2.4 that the paper does not include a declaration of eligibility as required by Rule 12; or

14.2.5 that the paper is not signed and dated by the candidate, as required by Rule 13.

- 14.3 The Returning Officer is to examine each nomination paper as soon as is practicable after he has received it, and decide whether the candidate has been validly nominated.
- 14.4 Where the Returning Officer decides that a nomination is invalid, the Returning Officer must endorse this on the nomination paper, stating the reasons for his decision.
- 14.5 The Returning Officer is to send notice of the decision as to whether a nomination is valid or invalid to the candidate at the contact address given **in the candidate's nomination form**. If an e-mail address has been given in **the candidate's nomination form (in addition to the candidate's postal address)**, the Returning Officer may send notice of the decision to that address.
15. Publication of statement of nominated candidates
- 15.1 The Returning Officer is to prepare and publish a statement showing the candidates who are standing for election.
- 15.2 The statement must show:
- 15.2.1 the name, contact address (**which shall be the candidate's postal address**), and Constituency or class within a Constituency of each candidate standing; and
- 15.2.2 the declared interests of each candidate standing,
as given in their nomination paper.
- 15.3 The statement must list the candidates standing for election in alphabetical order by surname.
- 15.4 The Returning Officer must send a copy of the statement of candidates and copies of the nomination papers to the Trust as soon as is practicable after publishing the statement.
16. Inspection of statement of nominated candidates and nomination forms
- 16.1 The Trust is to make the statements of the candidates and the nomination forms supplied by the Returning Officer under Rule 15.4 available for inspection by members of the public free of charge at all reasonable times.
- 16.2 If a Member of the Trust requests a copy or extract of the statements of candidates or their nomination forms, the Trust is to provide that person with the copy or extract free of charge.
17. Withdrawal of candidates

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

18. Method of election

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

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

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

18.3.1 the candidates who remain validly nominated are to be declared elected in accordance with Part 7 of these Rules; and

18.3.2 the Returning Officer is to order a new election to fill any vacancy, which remains unfilled, on a day appointed by him in consultation with the Trust.

PART 5 CONTESTED ELECTIONS

19. Poll to be taken by ballot

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

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

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

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

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

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

19.5.1.1 configured in accordance with these Rules; and

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

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

19.5.2.1 configured in accordance with these Rules; and

19.5.2.2 will create an accurate telephone voting record in respect of any voter who casts his vote using the telephone voting system;

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

19.5.3.1 configured in accordance with these rules; and

19.5.3.2 will create an accurate text voting record in respect of any voter who casts his vote using the text message voting system.

20. The ballot paper

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

20.2 Every ballot paper must specify:

20.2.1 the name of the Trust;

20.2.2 the Constituency, or class within a Constituency, for which the election is being held;

20.2.3 the number of members of the Council of Governors to be elected from that Constituency, or class within that Constituency;

- 20.2.4 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;
 - 20.2.5 instructions on how to vote by all available methods of polling, **including the relevant voter's voter ID number if one or more e-voting methods of polling are available;**
 - 20.2.6 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
 - 20.2.7 the contact details of the Returning Officer.
- 20.3 Each ballot paper must have a unique identifier.
- 20.4 Each ballot paper must have features incorporated into it to prevent it from being reproduced.
21. The declaration of identity (public and service user and carer Constituencies)
The Trust shall require each voter who participates in an election for a public or service use and carer Constituency to make a declaration confirming:
- 21.1.1 that the voter is the person to whom the:
 - 21.1.1.1 ballot paper was addressed, and/or;
 - 21.1.1.2 Voter ID number contained within the e-voting information was allocated;
 - 21.1.2 that the voter has not marked or returned any other voting information in the election; and
 - 21.1.3 **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 ("**declaration of identity**") and the Trust shall make such arrangements as it considers appropriate to facilitate the making and the return of a declaration of identify by each voter, whether by the completion of a paper **form ("ID declaration form) or the use of an electronic method.**
- 21.2 The voter must be required to return the declaration of identity together with the ballot.
- 21.3 The voting information shall caution the voter that if the declaration of identify is not duly returned, or is returned without being made correctly, any vote cast by the vote may be declared invalid.

Action to be taken before the poll

22. List of eligible voters

22.1 The Trust is to provide the Returning Officer with a list of the Members of the Constituency or class within a Constituency for which the election is being held who are eligible to vote by virtue of Rule 27 as soon as is reasonably practicable after the final date for the delivery of notices of withdrawals by candidates from an election.

22.2 The list is to include, for each Member:

22.2.1 a postal address; and,

22.2.2 **the Member's e-mail** address, if this has been provided to which his voting information may, subject to Rule 22.3, be sent.

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

23. Notice of poll

23.1 The Returning Officer is to publish a notice of the poll stating:

23.1.1 the name of the Trust;

23.1.2 the Constituency, or class within a Constituency, for which the election is being held;

23.1.3 the number of members of the Council of Governors to be elected from that Constituency, or class with that Constituency;

23.1.4 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;

23.1.5 that the ballot papers for the election are to be issued and returned, if appropriate, by post;

23.1.6 the methods of polling by which votes may be cast at the election by voters in a Constituency or class within a Constituency, as determined by the Trust in accordance with Rule 19.3;

23.1.7 the address for return of the ballot papers;

23.1.8 the uniform resource locator (URL) where, if internet voting is a method of polling, the polling website is located;

- 23.1.9 the telephone number where, if telephone voting is a method of polling, the telephone voting facility is located;
 - 23.1.10 the telephone number or telephone short code where, if text message voting is a method of polling, the text message voting facility is located;
 - 23.1.11 the date and time of the close of the poll;
 - 23.1.12 the address and final dates for applications for replacement voting information; and
 - 23.1.13 the contact details of the Returning Officer.
24. Issue of voting information by the Returning Officer
- 24.1 Subject to Rule 24.3, as soon as is reasonably practicable on or after the publication of the notice of the poll, the Returning Officer is to send the following information to each Member of the Trust named in the list of eligible voters:
 - 24.1.1 a ballot paper and ballot paper envelope;
 - 24.1.2 the ID declaration form (if required);
 - 24.1.3 information about each candidate standing for election, pursuant to Rule 61 of these Rules; and
 - 24.1.4 a covering envelope
("postal voting information").
 - 24.2 Subject to Rules 24.3 and 24.4, as soon as is reasonably practicable on or after the publication of the notice of the poll, the Returning Officer is to send the following information by e-mail and/or by post to each member of the Trust named in the eligible voters whom the Trust determines in accordance with Rule 19.3 and/or Rule 19.4 may cast his vote by an e-voting method of polling:
 - 24.2.1 instructions on how to vote and how to make a declaration of identity (if required);
 - 24.2.2 **the voter's voter ID number;**
 - 24.2.3 information about each candidate standing for election, pursuant to Rule 64 of these Rules, or details of where this information is readily available on the internet or available in such other formats as the Returning Officer thinks appropriate,
 - 24.2.4 contact details of the Returning Officer

("e-voting information").

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

24.3.1 only be sent postal voting information; or

24.3.2 only be sent e-voting information; or

24.3.3 be sent both postal voting information and e-voting information; for the purposes of the poll.

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

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

25. Ballot paper envelope and covering envelope

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

25.2 The covering envelope is to have:

25.2.1 the address for return of the ballot paper printed on it; and

25.2.2 pre-paid postage for return to that address.

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

25.3.1 the completed ID declaration form if required, and

25.3.2 the ballot paper envelope, with the ballot paper sealed inside it.

26. E-voting systems

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

26.2 If telephone voting is a method of polling for the relevant election then the Returning Officer must provide an automated telephone system for the purpose of voting by the use of a touch-tone telephone (in these Rules referred to as **"the telephone voting facility"**).

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

26.4 The Returning Officer shall ensure that the polling website and internet voting system provided will:

26.4.1 Require a voter to:

26.4.1.1 enter his voter ID number; and

26.4.1.2 where the election is for a public or service user or carer or student, make a declaration of identity; in order to be able to cast his vote;

26.4.2 specify:

26.4.2.1 the name of the Trust;

26.4.2.2 the Constituency, or class within a Constituency, for which the election is being held;

26.4.2.3 the number of members of the Council of Governors to be elected from that Constituency, or class within that Constituency;

26.4.2.4 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;

26.4.2.5 instructions on how to vote and how to make a declaration of identity;

26.4.2.6 the date and time of the close of the poll; and

26.4.2.7 the contact details of the Returning Officer;

26.4.3 prevent a voter from voting for more candidates than he is entitled to at the election;

26.4.4 **create a record (“internet voting record”) that is stored in the internet voting system in respect of each vote cast by a voter using the internet that comprises of:**

26.4.4.1 **the voter’s voting ID number;**

26.4.4.2 **the voters’ declaration of identity (where required);**

- 26.4.4.3 the candidate or candidates for whom the voter has voted; and
 - 26.4.4.4 **the date and time of the voter's vote;**
 - 26.4.5 **if the voter's vote has been duly cast and recorded, provide the** voter with confirmation of this; and
 - 26.4.6 prevent any voter from voting after the close of the poll.
- 26.5 The Returning Officer shall ensure that the telephone voting facility and telephone voting system provided will:
- 26.5.1 Require a voter to:
 - 26.5.1.1 enter his voter ID number in order to be able to cast his vote; and
 - 26.5.1.2 where the election is for a public or service user or carer or student, make a declaration of identity;
 - 26.5.2 specify:
 - 26.5.2.1 the name of the Trust;
 - 26.5.2.2 the Constituency, or class within a Constituency, for which the election is being held;
 - 26.5.2.3 the number of members of the Council of Governors to be elected from that Constituency, or class within that Constituency;
 - 26.5.2.4 instructions on how to vote and how to make a declaration of identity;
 - 26.5.2.5 the date and time of the close of the poll; and
 - 26.5.2.6 the contact details of the Returning Officer;
 - 26.5.3 prevent a voter from voting for more candidates that he is entitled to at the election;
 - 26.5.4 **create a record ("telephone voting record") that is stored in the** telephone voting system in respect of each vote cast by a voter using the telephone that comprises of:
 - 26.5.4.1 **the voter's voting ID number;**
 - 26.5.4.2 **the voters' declaration of identify (where required);**

- 26.5.4.3 the candidate or candidates for whom the voter has voted; and
 - 26.5.4.4 **the date and time of the voter's vote;**
 - 26.5.5 **if the voter's vote has been duly cast and recorded, provide the voter with confirmation of this;** and
 - 26.5.6 prevent any voter from voting after the close of the poll.
- 26.6 The Returning Officer shall ensure that the text message voting facility and the text messaging system provided will:
- 26.6.1 Require a voter to:
 - 26.6.1.1 enter his voter ID number; and
 - 26.6.1.2 where the election is for a public or service user or carer or student, make a declaration of identity;
 - in order to be able to cast his vote;
 - 26.6.2 prevent a voter from voting for more candidates that he is entitled to at the election;
 - 26.6.3 **create a record ("text voting record") that is stored in the internet voting system in respect of each vote cast by a voter by text message that comprises of:**
 - 26.6.3.1 **the voter's voting ID number;**
 - 26.6.3.2 **the voters' declaration of identify (where required);**
 - 26.6.3.3 the candidate or candidates for whom the voter has voted; and
 - 26.6.3.4 the date and time of **the voter's vote;**
 - 26.6.4 **if the voter's vote has been duly cast and recorded, provide the voter with confirmation of this;** and
 - 26.6.5 prevent any voter from voting after the close of the poll.

The poll

- 27. Eligibility to vote
- 27.1 An individual who becomes a Member of the Trust on or before the closing date for the receipt of nominations by candidates for the election, is eligible to vote in that election.

28. Voting by persons who require assistance
- 28.1 The Returning Officer is to put in place arrangements to enable requests for assistance to vote to be made.
- 28.2 Where the Returning Officer receives a request from a voter who requires assistance to vote, the Returning Officer is to make such arrangements as he considers necessary to enable that voter to vote.
29. Spoilt ballot papers and spoilt text message votes
- 29.1 If a voter has dealt with his 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.
- 29.2 On receiving an application, the Returning Officer is to obtain the details of the unique identifier on the spoilt ballot paper, if he can obtain it.
- 29.3 The Returning Officer may not issue a replacement ballot paper for a spoilt ballot paper unless he:
- 29.3.1 **is satisfied as to the voter's identity; and**
- 29.3.2 has ensured that the completed ID declaration form, if required, has not been returned.
- 29.4 After issuing a replacement ballot paper for a spoilt ballot paper, the Returning Officer shall enter in a list ("**the list of spoilt ballot papers**"):
- 29.4.1 the name of the voter;
- 29.4.2 the details of the unique identifier of the spoilt ballot paper (if that officer was able to obtain it); and
- 29.4.3 the details of the unique identifier of the replacement ballot paper.
- 29.5 If a voter has dealt with his text message vote in such a manner that it **cannot be accepted as a vote (referred to as a "spoilt text message vote")**, that voter may apply to the Returning Officer for a replacement voter ID number.
- 29.6 On receiving an application, the Returning Officer is to obtain the details of the voter ID number on the spoilt text message vote, if he can obtain it.
- 29.7 The Returning Officer may not issue a replacement voter ID in respect of a **spoilt text message vote unless he is satisfied as to the voter's identity**. After issuing a replacement voter ID number in respect of a spoilt text

message vote, the Returning Officer shall enter in a list (“the list of spoilt text message votes”):

- 29.7.1 the name of the voter, and
- 29.7.2 the details of the voter ID number on the spoilt text message vote (if that officer was able to obtain it), and
- 29.7.3 the details of the replacement voter ID number issued to the voter.

30. Lost voting information

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

30.2 The Returning Officer may not issue replacement voting information in respect of lost voting information unless he:

30.2.1 **is satisfied as to the voter’s identity;**

30.2.2 has no reason to doubt that the voter did not receive the original voting information; and

30.2.3 has ensured that no declaration of identity, if required, has been returned.

30.3 After issuing replacement voting information in respect of lost voting information, **the Returning Officer shall enter in a list (“the list of lost ballot documents”):**

30.3.1 the name of the voter; and

30.3.2 the details of the unique identifier of the replacement ballot paper, if applicable, and

30.3.3 the voter ID number of the voter.

31. Issue of replacement voting information

31.1 If a person applies for a replacement ballot information under Rule 29 or 30 and a declaration of identity has already been received by the Returning Officer in the name of that voter, the Returning Officer may not issue a replacement ballot information unless, in addition to the requirements imposed Rule 29.3 or 30.2, he is also satisfied that that person has not already voted in the election, notwithstanding the fact that a declaration of identity if required has already been received by the Returning Officer in the name of that voter.

31.2 After issuing a replacement voting information under this Rule, the **Returning Officer shall enter in a list (“the list of tendered voting information”)**:

31.2.1 the name of the voter; and

31.2.2 the unique identifier of the replacement ballot paper issued under this Rule, and

31.2.3 the voter ID number of the vote.

32. ID declaration form for replacement ballot papers (public, service users and carers and student Constituencies)

32.1 In respect of an election for a public, service users and carers and student Constituency an ID declaration form must be issued with each replacement ballot paper requiring the voter to make a declaration of identity.

33. Procedure for remote voting by internet

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

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

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

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

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

34. Voting procedure for remote voting by telephone

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

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

- 34.3 If the telephone voting facility authenticates the voter ID number, voter will be prompted to vote in the election.
- 34.4 When prompted to do so the voter may then cast his vote by keying in the numerical voting code of the candidate or candidates for whom he wishes to vote.
- 34.5 The voter will not be able to access the telephone voting facility for an election once his vote at that election has been cast.
35. Voting procedure for remote voting by text message
- 35.1 To cast his vote using text message, a voter will need to gain access to the text message voting facility by sending a text message to the designated telephone number or telephone short code provided in the voting information using a touch-tone keypad.
- 35.2 The text message sent by the voter must contain his voter ID number and the numerical voting code for the candidate or candidates, for whom he wishes to vote.
- 35.3 The text message sent by the voter will need to be structures in accordance with the instructions on how to vote contained in the voter information, otherwise the vote will not be cast.

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

36. Receipt of voting documents

36.1 Where the Returning Officer receives a:

36.1.1 covering envelope; or

36.1.2 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 37 and 38 are to apply.

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

36.2.1 the candidate for whom a voter has voted; or

36.2.2 the unique identifier on a ballot paper.

36.3 The Returning Officer must arrange to ensure the safety and security of the ballot papers and other documents.

37. Validity of votes

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

37.2 Where the Returning Officer is satisfied that paragraph 37.1 has been fulfilled, he is to:

37.2.1 put the ID declaration form if required in a separate packet; and

37.2.2 put the ballot paper aside for counting after the close of the poll.

37.3 Where the Returning Officer is not satisfied that paragraph 37.1 has been fulfilled, he is to:

37.3.1 **mark the ballot paper "disqualified";**

37.3.2 if there is an ID declaration form accompanying the ballot paper, **mark it as "disqualified" and attach it the ballot paper;**

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

37.3.4 place the document or documents in a separate packet.

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

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

37.6 Where the Returning Officer is not satisfied that paragraph 37.4 has been fulfilled, he is to:

37.6.1 mark the internet voting record, telephone voting record, or text message voting record (as applicable) as **"disqualified";**

- 37.6.2 record the voter ID number on the internet voting record, telephone voting record, or text message voting record (as applicable) in the list of disqualified documents; and
- 37.6.3 place the document or documents in a separate packet.
- 38. Declaration of identity but no ballot paper (Public, Service User and Student Constituencies)
 - 38.1 Where the Returning Officer receives an ID declaration form but no ballot paper, the Returning Officer is to:
 - 38.1.1 mark the ID declaration form **"disqualified"**;
 - 38.1.2 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
 - 38.1.3 place the ID declaration form in a separate packet.
 - 39. De-duplication of votes
 - 39.1 Where different methods of polling are being used in an election, the returning officer shall examine all votes cast to ascertain if a voter ID number has been used more than once to cast a vote in the election.
 - 39.2 If the returning officer ascertains that a voter ID number has been used more than once to cast a vote in the election he shall:
 - 39.2.1 only accept as duly returned the first vote received that was cast using the relevant voter ID number; and
 - 39.2.2 **mark as "disqualified" all other votes that were cast using the relevant voter ID number.**
 - 39.3 Where a ballot paper is disqualified under this rule the returning officer shall:
 - 39.3.1 **mark the ballot paper "disqualified",**
 - 39.3.2 **if there is an ID declaration form accompanying the ballot paper, mark it "disqualified" and attach it to the ballot paper;**
 - 39.3.3 record the unique identifier and the voter ID number on the ballot paper in the list of disqualified documents;
 - 39.3.4 place the document or documents in a separate packet; and
 - 39.3.5 disregard the ballot paper when counting the votes in accordance with these rules.
 - 39.4 Where an internet voting record, telephone voting record or text voting record is disqualified under this rule the Returning Officer shall:
 - 39.4.1 mark the internet voting record, telephone voting record or text **voting record "disqualified",**
 - 39.4.2 record the voter ID number of the internet voting record, telephone voting record or text voting record (as applicable) in the list of disqualified documents;

- 39.4.3 place the internet voting record, telephone voting record or text voting record (as applicable) in a separate packet; and
- 39.4.4 disregard the internet voting record, telephone voting record or text voting record (as applicable) when counting the votes in accordance with these rules.

40. Sealing of packets

40.1 As soon as is possible after the close of the poll and after the completion of the procedure under Rules 37 and 38, the Returning Officer is to seal the packets containing:

- 40.1.1 the disqualified documents, together with the list of disqualified documents inside it;
- 40.1.2 the ID declaration forms, if required;
- 40.1.3 the list of spoiled ballot papers and the list of spoiled text message votes;
- 40.1.4 the list of lost ballot documents;
- 40.1.5 the list of eligible voters; and
- 40.1.6 the list of tendered voting information and ensure that complete electronic copies of the internet voting record, telephone voting records and text voting records created in accordance with Rule 26 are held in a device suitable for the purpose of storage.

PART 6 COUNTING THE VOTES

41. Interpretation of Part 6

41.1 In Part 6

- 41.1.1 **"ballot document"** means a ballot paper, Internet voting record, telephone record or text voting record;
- 41.1.2 **"continuing candidate"** means any candidate not deemed to be elected, and not excluded;
- 41.1.3 **"count"** means all the operations involved in counting of the first preferences recorded for candidates, the transfer of the surpluses of elected candidates, and the transfer of the votes of the excluded candidates;
- 41.1.4 **"deemed to be elected"** means deemed to be elected for the purposes of counting of votes but without prejudice to the declaration of the result of the poll;
- 41.1.5 **"mark"** means a figure, an identifiable written word, or a mark such as **"X"**;
- 41.1.6 **"non-transferable vote"** means a ballot document:
 - 41.1.6.1 on which no second or subsequent preference is recorded for a continuing candidate; or
 - 41.1.6.2 which is excluded by the Returning Officer under Rule 49,

- 41.1.7 **"preference" as used in the following contexts has the meaning assigned below:**
- 41.1.7.1 **"first preference" means the figure "1" or any mark or word that clearly indicates a first (or only) preference;**
- 41.1.7.2 **"next available preference" means a preference which is the second, or as the case may be, subsequent preference recorded in consecutive order for a continuing candidate (any candidate who is deemed to be elected or is excluded thereby being ignored); and**
- 41.1.7.3 **in this context, a "second preference" is shown by the figure "2" or any mark or word which clearly indicates a second preference, and a third preference by the figure "3" or any mark or word which clearly indicates a third preference, and so on,**
- 41.1.8 **"quota" means the number calculated in accordance with Rule 46;**
- 41.1.9 **"surplus" means the number of votes by which the total number of votes for any candidate (whether first preference or transferred votes, or a combination of both) exceeds the quota; but references in these Rules to the transfer of the surplus means the transfer (at a transfer value) of all transferable ballot documents from the candidate who has the surplus,**
- 41.1.10 **"stage of the count" means:**
- 41.1.10.1 the determination of the first preference vote of each candidate;
- 41.1.10.2 the transfer of a surplus of a candidate deemed to be elected; or
- 41.1.10.3 the exclusion of one or more candidates at any given time,
- "transferable vote" means a ballot document on which, following a first preference, a second or subsequent preference is recorded in consecutive numerical order for a continuing candidate;**
- "transferred vote" means a vote derived from a ballot document on which a second or subsequent preference is recorded for the candidate to whom that document has been transferred; and**
- "transfer value" means the value of a transferred vote calculated in accordance with paragraph 47.4 or 47.7.**

42. Arrangements for counting of the votes

- 42.1 The Returning Officer is to arrange for counting the votes as soon as is practicable after the close of the poll.
- 42.2 The Returning Officer may make arrangements for any votes to be counted using vote counting software where:
- 42.2.1 the Board of Directors and the Council of Governors of the Trust have approved:
- 42.2.1.1 The use of such software for the purpose of counting votes in the relevant election, and
- 42.2.1.2 A policy governing the use of such software, and

42.2.2 the Trust and the Returning Officer are satisfied that the use of such software will produce an accurate result.

43. The count

43.1 The Returning Officer is to:

43.1.1 count and record the number of:

43.1.1.1 ballot papers that have been returned, and

43.1.1.2 The number of internet voting records, telephone voting records and/or text voting records that have been created, and

43.1.2 count the votes according to the provisions in this part of the Rules and/or the provisions of any policy pursuant to Rule 42.2.2 where vote counting software is being used.

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

43.3 The Returning Officer is to proceed continuously with counting the votes as far as is practicable.

44. Rejected ballot papers and rejected text voting records

44.1 Any ballot paper:

44.1.1 which does not bear the features that have been incorporated into the other ballot papers to prevent them from being reproduced,

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

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

44.1.4 which is unmarked or rejected because of uncertainty, shall be rejected and not counted, but the ballot paper,

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

44.2 The Returning Officer **is to endorse the word "rejected" on any ballot paper** that under this Rule is not to be counted.

44.3 Any text voting record:

- 44.3.1 on **which the figure "1" standing alone is not place so as to indicate** a first preference for any candidate,
- 44.3.2 on which anything is written or marked by which the voter can be identified except the unique identifier, or
- 44.3.3 which is unmarked or rejected because of uncertainty, shall be rejected and not counted, but the text voting record shall not be **rejected by reason only of carrying the words "one", "two" or "three" and so on, or any other mark instead of a figure if, in the Opinion of the Returning Officer, the word or mark clearly indicates a preference or preferences.**
- 44.4 **The Returning Officer is to endorse the word "rejected" on any text voting record which under this rule is not to be counted.**
- 44.5 The Returning Officer is to draw up a statement showing the number of ballot papers rejected by him under each of the sub-paragraphs of 44.3.
45. First stage
- 45.1 The Returning Officer is to sort the ballot documents into parcels according to the candidates for whom the first preference votes are given.
- 45.2 The Returning Officer is to then count the number of first preference votes given on ballot documents for each candidate, and is to record those numbers.
- 45.3 The Returning Officer is to also ascertain and record the number of valid ballot documents.
46. The quota
- 46.1 The Returning Officer is to divide the number of valid ballot documents by a number exceeding by one the number of members of the Council of Governors to be elected.
- 46.2 The result, increased by one, of the division under paragraph 46.1 (any fraction being disregarded) shall be the number of votes sufficient to secure the **election of a candidate (in these Rules referred to as "the quota")**.
- 46.3 At any stage of the count a candidate whose total votes equals or exceeds the quota shall be deemed to be elected, except in any election where there is only one vacancy, when a candidate shall not be deemed to be elected until the procedure set out in paragraphs 47.1 to 47.3 of Rule 44 has been complied with.
47. Transfer of votes
- 47.1 Where the number of first preference votes for any candidate exceeds the quota, the Returning Officer is to sort all the ballot documents on which

first preference votes are given for that candidate into sub-parcels so that they are grouped:

47.1.1 according to next available preference given on those ballot documents for any continuing candidate; or

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

47.2 The Returning Officer is to count the number of ballot papers in each parcel referred to in paragraph 47.1.

47.3 The Returning Officer is, in accordance with this Rule and Rule 48, to transfer each sub-parcel of ballot documents referred to in paragraph 47.1.1 to the candidate for whom the next available preference is given on those ballot documents.

47.4 The vote on each ballot document transferred under paragraph 47.3, shall **be at a value ("the transfer value") which:**

47.4.1 reduces the value of each vote transferred so that the total value of all such votes does not exceed the surplus; and

47.4.2 is calculated by dividing the surplus of the candidate from whom the votes are being transferred by the total number of the ballot documents on which those votes are given, the calculation being made to two decimal places (ignoring the remainder if any).

47.5 Where at the end of any stage of the count involving the transfer of ballot documents, the number of votes for any candidate exceeds the quota, the Returning Officer is to sort the ballot documents in the sub-parcel of transferred votes which was last received by that candidate into separate sub-parcels so that they are grouped:

47.5.1 according to the next available preference given on those ballot documents for any continuing candidate; or

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

47.6 The Returning Officer is, in accordance with this Rule and Rule 48, to transfer each sub-parcel of ballot papers referred to in paragraph 47.5.1 to the candidate for whom the next available preference is given on those ballot documents.

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

47.7.1 a transfer value calculated as set out in paragraph 47.4.2; or

47.7.2 at the value at which that vote was received by the candidate from whom it is now being transferred,

whichever is the less.

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

47.9 Subject to paragraph 47.10, the Returning Officer shall proceed to transfer transferable ballot documents until no candidate who is deemed to be elected has a surplus or all the vacancies have been filled.

47.10 Transferable ballot documents shall not be liable to be transferred where any surplus or surpluses, which, at a particular stage of the count, have not already been transferred, are:

47.10.1 less than the difference between the total vote then credited to the continuing candidate with the lowest recorded vote and the vote of the candidate with the next lowest recorded vote; or

47.10.2 less than the difference between the total votes of the two or more continuing candidates, credited at that stage of the count with the lowest recorded total numbers of votes and the candidate next above such candidates.

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

48. Supplementary provisions on transfer

48.1 If, at any stage of the count, two or more candidates have surpluses, the transferable papers of the candidate with the highest surplus shall be transferred first, and if:

48.1.1 the surpluses determined in respect of two or more candidates are equal, the transferable papers of the candidate who had the highest recorded vote at the earliest preceding stage at which they had unequal votes shall be transferred first; and

48.1.2 the votes credited to two or more candidates were equal at all stages of the count, the Returning Officer shall decide between those candidates by lot, and the transferable papers of the candidate on whom the lot falls shall be transferred first.

48.2 The Returning Officer shall, on each transfer of transferable papers under Rule 47:

48.2.1 record the total value of the votes transferred to each candidate;

48.2.2 add that value to the previous total of votes recorded for each candidate and record the new total;

48.2.3 record as non-transferable votes the difference between the surplus and the total transfer value of the transferred votes and add that difference to the previously recorded total of non-transferable votes; and

48.2.4 compare:

48.2.4.1 the total number of votes then recorded for all of the candidates, together with the total number of non-transferable votes; with

48.2.4.2 the recorded total of valid first preference votes.

48.3 All ballot documents transferred under Rule 47 or 49 shall be clearly marked, either individually or as a sub-parcel, so as to indicate the transfer value recorded at that time to each vote on that paper or, as the case may be, all the ballot documents in that sub-parcel.

48.4 Where a ballot document is so marked that it is unclear to the Returning Officer at any stage of the count under Rule 47 or 49 for which candidate the next preference is recorded, the Returning Officer shall treat any vote on that ballot document as a non-transferable vote; and votes on a ballot document shall be so treated where, for example, the names of two or more candidates (whether continuing candidates or not) are so marked that, in the opinion of the Returning Officer, the same order of preference is indicated or the numerical sequence is broken.

49. Exclusion of candidates

49.1 If:

49.1.1 all transferable papers which under the provisions of Rule 47 (including that Rule as applied by paragraph 49.11) and this Rule are required to be transferred, have been transferred; and

49.1.2 subject to Rule 50, one or more vacancies remain to be filled, the Returning Officer shall exclude from the election at that stage the candidate with the then lowest vote (or, where Rule 49.12 applies, the candidates with the then lowest votes).

49.2 The Returning Officer shall sort all the ballot documents on which first preference votes are given for the candidate or candidates excluded under paragraph 49.1 into two sub-parcels so that they are grouped as:

49.2.1 Ballot documents on which a next available preference is given; and

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

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

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

49.5 If, subject to Rule 50 one or more vacancies still remain to be filled, the Returning Officer shall then sort the transferable ballot documents, if any, which had been transferred to any candidate excluded under paragraph 49.1 into sub-parcels according to their transfer value.

- 49.6 The Returning Officer shall transfer those ballot documents in the sub-parcel of transferable ballot documents with the highest transfer value to the continuing candidates in accordance with the next available preferences given on those ballot documents (thereby passing over candidates who are deemed to be elected or are excluded).
- 49.7 The vote on each transferable ballot documents transferred under paragraph 50.6 above shall be at the value at which that vote was received by the candidate excluded under paragraph 50.1.
- 49.8 Any ballot documents on which no next available preferences have been expressed shall be set aside as non-transferable votes.
- 49.9 After the Returning Officer has completed the transfer of the ballot documents in the sub-parcel of ballot papers with the highest transfer value he shall proceed to transfer in the same way the sub-parcel of ballot documents with the next highest value and so on until he has dealt with each sub-parcel of a candidate excluded under paragraph 49.1.
- 49.10 The Returning Officer shall after each stage of the count completed under this Rule:
- 49.10.1 record:
 - 49.10.1.1 the total value of votes; or
 - 49.10.1.2 the total transfer value of votes transferred to each candidate,
 - 49.10.2 add that total to the previous total of votes recorded for each candidate and record the new total;
 - 49.10.3 record the value of non-transferable votes and add that value to the previous non-transferable votes total; and
 - 49.10.4 compare:
 - 49.10.4.1 the total number of votes then recorded for each candidate together with the total number of non-transferable votes; with
 - 49.10.4.2 the recorded total of valid first preference votes.
- 49.11 If after a transfer of votes under any provision of this Rule, a candidate has a surplus, that surplus shall be dealt with in accordance with Rules 47.5 to 47.10 and Rule 48.
- 49.12 Where the total of the votes of the two or more lowest candidates, together with any surpluses not transferred, is less than the number of votes credited to the next lowest candidate, the Returning Officer shall in one operation exclude such two or more candidates.
- 49.13 If when a candidate has to be excluded under this Rule, two or more candidates each have the same number of votes and are lowest:

49.13.1 regard shall be had to the total number of votes credited to those candidates at the earliest stage of the count at which they had an unequal number of votes and the candidate with the lowest number of votes at that stage shall be excluded; and

49.13.2 where the number of votes credited to those candidates was equal at all stages, the Returning Officer shall decide between the candidates by lot and the candidate on whom the lot falls shall be excluded.

50. Filling of last vacancies

50.1 Where the number of continuing candidates is equal to the number of vacancies remaining unfilled the continuing candidates shall thereupon be deemed to be elected.

50.2 Where only one vacancy remains unfilled and the votes of any one continuing candidate are equal to or greater than the total of votes credited to other continuing candidates together with any surplus not transferred, the candidate shall thereupon be deemed to be elected.

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

51. Order of election of candidates

51.1 The order in which candidates whose votes equal or exceed the quota are deemed to be elected shall be the order in which their respective surpluses were transferred, or would have been transferred but for Rule 47.10.

51.2 A candidate credited with a number of votes equal to, and not greater than, the quota shall, for the purposes of this Rule, be regarded as having had the smallest surplus at the stage of the count at which he obtained the quota.

51.3 Where the surpluses of two or more candidates are equal and are not required to be transferred, regard shall be had to the total number of votes credited to such candidates at the earliest stage of the count at which they had an unequal number of votes and the surplus of the candidate who had the greatest number of votes at that stage shall be deemed to be the largest.

51.4 Where the number of votes credited to two or more candidates were equal at all stages of the count, the Returning Officer shall decide between them by lot and the candidate on whom the lot falls shall be deemed to have been elected first.

PART 7 FINAL PROCEEDINGS IN CONTESTED AND UNCONTESTED ELECTIONS

52. Declaration of result for contested elections

52.1 In a contested election, when the result of the poll has been ascertained, the Returning Officer is to:

52.1.1 declare the candidates who are deemed to be elected under Part 6 , of these Rules as elected,

52.1.2 give notice of the name of each candidate who he has declared elected to the Chair of the Trust

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

52.2 The Returning Officer is to make:

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

52.2.2 the number of rejected ballot papers under each of the headings in Rule 44.1;

52.2.3 the number of rejected text voting records under each of the headings in Rule 44.3 available on request.

53. Declaration of result for uncontested elections

53.1 In an uncontested election, when 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:

53.1.1 declare the candidate or candidates remaining validly nominated to be elected;

53.1.2 give notice of the name of each candidate who he has declared elected to the Trust Chair; and

53.1.3 give public notice of the name of each candidate who he has declared elected.

PART 8 DISPOSAL OF DOCUMENTS

54. Sealing up of documents relating to the poll

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

54.1.1 the counted ballot papers, internet voting records, telephone voting records and text voting records;

54.1.2 the ballot papers and text voting records **endorsed with "rejected in part"**;

54.1.3 the rejected ballot papers and text voting records; and

54.1.4 the statement of rejected ballot papers and the statement of rejected text records,
and ensure that complete electronic copies of the Internet voting records, telephone voting records and text voting records created in accordance with Rule 26 and held in a device suitable for the purpose of storage.

54.2 The Returning Officer must not open the sealed packets of:

54.2.1 the disqualified documents, with the list of disqualified documents inside it;

54.2.2 the list of spoilt ballot papers and the list of spoilt text message votes;

54.2.3 the list of lost ballot documents; and

54.2.4 the list of eligible voters.

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

54.3 The Returning Officer must endorse on each packet a description of:

54.3.1 its contents;

54.3.2 the date of the publication of notice of the election;

54.3.3 the name of the Trust to which the election relates; and

54.3.4 the Constituency, or class within a Constituency, to which the election relates.

55. Delivery of documents

55.1 Once the documents relating to the poll have been sealed up and endorsed pursuant to Rule 58, the Returning Officer is to forward them to the Trust Chair.

56. Forwarding of documents received after close of the poll

56.1 Where:

56.1.1 any voting documents are received by the Returning Officer after the close of the poll: or

56.1.2 any envelopes addressed to eligible voters are returned as undelivered too late to be resent: or

56.1.3 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 Trust Chair.

57. Retention and public inspection of documents

57.1 The Trust is to retain the documents relating to an election that are forwarded to the Trust Chair by the Returning Officer under these Rules for

one year, and then, unless otherwise directed by the Board of Directors, cause them to be destroyed.

57.2 With the exception of the documents listed in Rule 60.1, the documents relating to an election that are held by the Trust shall be available for inspection by members of the public at all reasonable times.

57.3 A person may request a copy or extract from the documents relating to an election that are held by the Trust, and the Trust is to provide it, and may impose a reasonable charge for doing so.

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

58.1 The Trust may not allow:

- 58.1.1 the inspection of, or the opening of any sealed packet containing:
 - 58.1.1.1 any rejected ballot papers, including ballot papers rejected in part;
 - 58.1.1.2 any rejected text voting records, including text voting records rejected in part
 - 58.1.1.3 any disqualified documents, or the list of disqualified documents;
 - 58.1.1.4 any counted ballot papers, internet voting records, telephone voting records or text voting records or;
 - 58.1.1.5 the list of eligible voters, or

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

by any person without the consent of the Board of Directors of the Trust.

58.2 A person may apply to the Board of Directors of the Trust to inspect any of the documents listed in Rule 58.1, and the Board of Directors of the Trust may only consent to such inspection if it is satisfied that it is necessary for questioning an election pursuant to Part 11.

58.3 The Board of Directors of the Trust consent may be on any terms or conditions that it thinks necessary, including conditions as to:

- 58.3.1 persons;
 - 58.3.2 time;
 - 58.3.3 place and mode of inspection; or
 - 58.3.4 production or opening,
- and the Trust must only make the documents available for inspection in accordance with those terms and conditions.

58.4 On an application to inspect any of the documents listed in paragraph 58.1, the Board of Directors of the Trust must:

- 58.4.1 in giving its consent; and
 - 58.4.2 in making the documents available for inspection;
- ensure that the way in which the vote of any particular Member has been given shall not be disclosed, until it has been established:
- 58.4.2.1 that his vote was given; and
 - 58.4.2.2 that the Regulator has declared that the vote was invalid.

PART 9 DEATH OF A CANDIDATE DURING A CONTESTED ELECTION

59. Countermand or abandonment of poll on death of candidates

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

- 59.1.1 publish a notice stating that the candidate has died, and
- 59.1.2 proceed with the counting of the votes as if that candidate had been excluded from the count so that –
 - 59.1.2.1 ballot documents which only have a first preference recorded for the candidate that has died, and no preferences for any other candidate, are not to be counted, and
 - 59.1.2.2 ballot documents which have preferences recorded for other candidates are to be counted according to the consecutive order of those preferences, passing over preferences marked for the candidate who has died.

59.1.3 ballot documents which have preferences recorded for the candidate who has died are to be sealed with the other counted ballot documents pursuant to Rule 54.1.1.

PART 10 ELECTION EXPENSES AND PUBLICITY

Part 10. Election expenses and publicity

Expenses

60. Election expenses

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

61. Election expenses and payments by candidates

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

61.1.1 personal expenses;

61.1.2 travelling expenses, and expenses incurred while living away from home; and

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

62. Election expenses incurred by other persons

62.1 No person may:

62.1.1 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

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

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

Publicity

63. Publicity about election by the Trust

63.1 The Trust may:

63.1.1 compile and distribute such information about the candidates; and

63.1.2 organise and hold such meetings to enable the candidates to speak and respond to questions, as it considers necessary.

63.2 Any information provided by the Trust about the candidates, including information compiled by the Trust under Rule 59, must be:

63.2.1 objective, balanced and fair;

63.2.2 equivalent in size and content for all candidates;

63.2.3 compiled and distributed in consultation with all of the candidates standing for election; and

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

63.3 Where the Trust proposes to hold a meeting to enable the candidates to speak, the Trust must ensure that all of the candidates are invited to attend, and in organising and holding such a meeting, the Trust must not seek to promote or procure the election of a specific candidate or candidates at the expense of the electoral prospects of one or more other candidates.

64. Information about candidates for inclusion with voting documents

64.1 The Trust must compile information about the candidates standing for election, to be distributed by the Returning Officer pursuant to Rule 24 of these Rules.

64.2 The information must consist of:

64.2.1 a statement submitted by the candidate of no more than 250 words;

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

64.2.3 a photograph of the candidate.

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

65.1 **In this Part, the phrase "for the purposes of an election" means with a view to, or otherwise in connection with, promoting or procuring a candidate's election, including the prejudicing of another candidate's electoral prospects; and the phrase "for the purposes of a candidate's election" is to be construed accordingly.**

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

PART 11. QUESTIONING ELECTIONS AND THE CONSEQUENCE OF IRREGULARITIES

66. Application to question an election

66.1 An application alleging a breach of these Rules, including an electoral irregularity under Part 10, may be made to the Regulator.

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

66.3 An application may only be made to the Regulator by:

66.3.1 a person who voted at the election or who claimed to have had the right to vote; or

- 66.3.2 a candidate, or a person claiming to have had a right to be elected at the election.
- 66.4 The application must:
- 66.4.1 describe the alleged breach of the Rules or electoral irregularity; and
 - 66.4.2 be in such a form as the Regulator may require.
- 66.5 The application must be presented in writing within 21 days of the declaration of the result of the election.
- 66.6 If the Regulator requests further information from the applicant, then that person must provide it as soon as is reasonably practicable.
- 66.7 The Regulator shall delegate the determination of an application to a person or persons to be nominated for the purpose of the Regulator.
- 66.8 The determination by the person or persons nominated in accordance with Rule 66.7 shall be binding on, and shall be given effect by, the Trust, the applicant and the Members of the Constituency (or class within a Constituency) including all the candidates for the election to which the application relates.
- 66.9 The Regulator may prescribe rules of procedure for the determination of an application including costs.

PART 12. MISCELLANEOUS

67. Secrecy

67.1 The following persons:

67.1.1 the Returning Officer; and

67.1.2 **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:

67.1.2.1 the name of any Member of the Trust who has or has not been given a ballot paper or who has or has not voted;

67.1.2.2 the unique identifier on any ballot paper;

67.1.2.3 the voter ID number allocated to any voter

67.1.2.4 the candidate(s) for whom any Member has voted.

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

67.3 The Returning Officer is to make such arrangements as he thinks fit to ensure that the individuals who are affected by this provision are aware of the duties it imposes.

68. Prohibition of disclosure of vote

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

69. Disqualification

69.1 A person may not be appointed as a Returning Officer, or as staff of the Returning Officer pursuant to these Rules, if that person is:

69.1.1 a Member of the Trust;

69.1.2 an employee of the Trust;

69.1.3 a Director of the Trust; or

69.1.4 employed by or on behalf of a person who has been nominated for election.

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

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

70.1.1 the delivery of the documents in Rule 24; or

70.1.2 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 3

Standing Orders for the Practice and Procedure of the Council of Governors (*CGSOs*)

1. Introduction
 - 1.1 All business shall be conducted in the name of the Trust.
 - 1.2 Save as otherwise permitted by law, at any meeting of the Council of Governors the Trust Chair shall be the final authority on the interpretation of these Standing Orders (on which he should be advised by the Trust Secretary).
2. The Council of Governors
 - 2.1 The roles and responsibilities of the Council of Governors to be carried out in accordance with the Regulatory Framework include the following:
 - 2.1.1 to hold the Board of Directors to account for the performance of the Trust;
 - 2.1.2 to respond as appropriate when consulted by the Board of Directors in accordance with the Constitution;
 - 2.1.3 **to prepare and from time to time review the Trust's membership strategy; and**
 - 2.1.4 when appropriate to make recommendations for the revision of the Constitution.
 - 2.2 Certain powers and decisions may only be exercised by the Council of Governors in general meeting. These powers and decisions are set out in the Constitution and have effect as if incorporated into these Standing Orders.
 - 2.3 The Council of Governors shall at all times seek to comply with the Code of Conduct for the Council of Governors.
3. Meetings of the Council of Governors
 - 3.1 Calling meetings
 - 3.1.1 General meetings of the Council of Governors shall be held at such times and places as the Trust Chair may determine.
 - 3.1.2 The Trust Chair shall call meetings of the Council of Governors. If the Trust Chair refuses to call a meeting after a requisition for that purpose, signed by at least one-third of the whole number of

Governors including at least one member of each Constituency, has been presented to him, or if, without so refusing, the Trust Chair does not call a meeting within seven days after such requisition has **been presented to him, at the Trust's** head office, such one third or more Governors may forthwith call a meeting of the Council of Governors.

3.2 Notice

3.2.1 Of meetings: before each meeting of the Council of Governors, a notice of the meeting, signed by the Trust Chair or by an officer of the Trust authorised by the Trust Chair to sign on his behalf shall be delivered to every member of the Council of Governors, or sent by post to the usual place of residence of such Governor or by electronic transmission, shall be sent no less than fourteen days in advance of the meeting.

3.2.2 Of business to be transacted: before each meeting of the Council of Governors, an agenda setting out the business of the meeting, signed by the Trust Chair or by an officer of the Trust authorised by the Trust Chair to sign on his behalf shall be delivered to every member of the respective Council, or sent by post to the usual place of residence of such Governor or by electronic transmission specifying the business proposed to be transacted at it so as to be available to him at least five days before the meeting.

3.3 Lack of service of the notice on any Governor shall not affect the validity of a meeting.

3.4 In the case of a meeting called by Governors in default of the Trust Chair, the notice shall be signed by those respective Governors and no business shall be transacted at the meeting other than that specified in the notice.

3.5 Failure to serve such a notice on more than three Governors will invalidate the meeting. A notice shall be presumed to have been served at the time at which the notice would be delivered in the ordinary course of the post or at the time of sending an electronic transmission.

3.6 Setting the agenda

3.6.1 The Council of Governors may determine that certain matters shall appear on every agenda for a meeting of the Council of Governors and shall be addressed prior to any other business being conducted. Such matters may be identified within these *CGSOs* or following subsequent resolution shall be listed in an appendix to these *CGSOs*.

3.6.2 A Governor desiring a matter to be included on an agenda shall make his request in writing to the Trust Chair at least ten clear days before the respective meeting. Requests made less than ten days

before a meeting may be included on the agenda at the discretion of the Trust Chair.

3.7 Attendance and questions from the public

3.7.1 Subject to paragraph 16 of the Constitution, the public shall be welcome at all meetings of the Council of Governors. Up to fifteen minutes will be set aside at the end of each ordinary meeting to enable members of the public or other interested parties to ask questions of the Council of Governors. Questions on any matter that has been discussed at the meeting can be raised at this point. Questions on general matters related to the business of the Trust should be sent in writing to the Trust Chair at least ten days prior to the meeting; **the Trust's Patient Advice and Liaison Service is** available to help with this if appropriate.

3.8 Nothing in these *CGSOs* shall require the Trust to allow members of the public and representatives of the press to record proceedings in any manner whatsoever, other than in writing, or to make any oral report of proceedings as they take place, without the prior agreement of the Trust Chair.

3.9 3.9 Motions: notice of, withdrawal, amendment and rescission

3.9.1 A Governor of the Trust desiring to move or amend a motion shall send a written notice thereof at least ten clear days before the meeting to the Trust Chair, who shall insert in the agenda for the meeting all notices so received subject to the notice being permissible. This paragraph shall not prevent any motion being moved during the meeting without notice, on any business mentioned on the agenda, subject to *CGSO* 3.4.

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

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

3.10 Motions: arrangements within meeting

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

- 3.10.2 When a motion is under discussion or immediately prior to discussion it shall be open to a Governor to move:
- 3.10.2.1 an amendment to the motion;
 - 3.10.2.2 the adjournment of the discussion or the meeting;
 - 3.10.2.3 that the meeting proceeds to the next business (*);
 - 3.10.2.4 the appointment of an ad hoc committee to deal with a specific item of business; and/or
 - 3.10.2.5 that the motion be now put (*).
- 3.10.3 In the case of sub-paragraphs denoted by (*), to ensure objectivity, motions may only be put by the respective Governor who has not previously taken part in the debate.
- 3.10.4 No amendment to the motion shall be admitted if, in the opinion of the Chair of the meeting, the amendment negates the substance of the motion

3.11 **Chair's ruling**

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

3.12 Voting

- 3.12.1 Every question at a meeting shall be determined by a majority of the votes of the Governors present and voting on the question. Each Governor shall have one vote. In the case of any equality of votes, the person presiding shall have a second or casting vote.
- 3.12.2 All questions put to the vote shall, at the discretion of the Chair of the meeting, be determined by oral expression or by a show of hands. A paper ballot may also be used if a majority of the Governors present so request.
- 3.12.3 If at least one-third of the Governors present so request, the voting (other than by paper ballot) on any question may be recorded to show how each Governor present voted or abstained.
- 3.12.4 If a Governor so requests, his vote shall be recorded by name upon any vote (other than by paper ballot).

- 3.12.5 In no circumstances may an absent Governor vote by proxy. Absence is defined as being absent at the time of the vote.
- 3.12.6 An officer who has been appointed formally by the board of a nominating organisation to deputise for an appointed Governor during a period of incapacity or temporarily to fill a vacancy, shall be entitled to exercise the voting rights of the Governor. An officer attending the Council of Governors to represent an appointed Governor during a period of incapacity or temporary absence without formal deputy status may not exercise the executives of the **Governor. An officer's status when attending a meeting shall be** recorded in the minutes.

3.13 Minutes

- 3.13.1 The minutes of the proceedings of, a meeting shall be drawn up and submitted for agreement at the next meeting.
- 3.13.2 The names of the Governors present at meetings shall be recorded in the minutes.
- 3.13.3 No discussion shall take place upon the minutes except upon their accuracy or where the Trust Chair considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the next meeting.
- 3.13.4 Minutes shall be circulated in accordance with Council **of Governor's** wishes. Where providing a record of a public meeting the minutes shall be made available to the public.

3.14 Joint appointments in the case of appointed Governors

- 3.14.1 Where a post of nominated Governor is shared by more than one person, it shall be for the nominating organisation to decide which person shall serve as Governor.

3.15 Suspension of *CGSOs*

- 3.15.1 Except where this would contravene any statutory provision, any one or more of these *CGSOs* may be suspended at any meeting, provided that at least two-thirds of the Council of Governors are present, including one Public Constituency Governor and one other Governor, and that a majority of those present vote in favour of suspension.
- 3.15.2 A decision to suspend *CGSOs* shall be recorded in the minutes of the meeting.

3.15.3 A separate record of matters discussed during the suspension of *CGSOs* shall be made and shall be available to the Governors as applicable.

3.15.4 No formal business may be transacted while *CGSOs* are suspended.

3.15.5 The Audit Committee shall review every decision to suspend *CGSOs*.

3.16 Variation and amendment of *CGSOs*

3.16.1 These *CGSOs* shall be amended by the Council of Governors only if:

3.16.1.1 a notice of motion under *CGSO* 3.11 has been given;

3.16.1.2 no fewer than half the total of the Public Constituency Governors present vote in favour of amendment;

3.16.1.3 the variation proposed does not contravene a statutory provision; and

3.16.1.4 the Board of Directors ratifies the motion.

3.17 Quorum

3.17.1 No business shall be transacted at a meeting of the Council of Governors unless at least one-third of the whole number of the Governors is present including at least two Governors from the Public Constituency.

3.17.2 An officer in attendance for an appointed Governor but without formal acting up status may not count towards the quorum.

3.17.3 If a Governor has been disqualified from participating in the discussion on any matter and/or from voting on any resolution because of the declaration of a conflict of interest he shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business. The above requirement for at least two Governors from the Public Constituency to form part of the quorum shall not apply where a Governor from the Public Constituency is excluded from a meeting.

4. Dispute resolution procedures

4.1 Dispute resolution procedures may operate in the following circumstance:

4.1.1 for disputes with members of the Council of Governors in relation to matters of eligibility, disqualification and termination of tenure, the dispute may be referred to the full Council of Governors; and/or

- 4.1.2 for other disputes, such as between the Council of Governors and the Board of Directors, the dispute may be resolved via an appropriate disputes resolution process.
5. Process for the appointment of Non-Executive Directors
 - 5.1 When a vacancy arises, or is scheduled to arise within six months, a Nominations Committee shall be convened to oversee the process.
 - 5.2 The Panel shall consult the Trust Chair and Chief Executive regarding particular skills, qualifications or experience which in their opinion would be desirable for any Non-Executive Director to possess who may be appointed.
 - 5.3 The Committee shall, having regard to any proposals of the Trust Chair and the Chief Executive made pursuant to the preceding sub-paragraph, draw up a specification for the required candidate(s) and advertise the vacancy. It may use any other search procedures it considers necessary.
 - 5.4 The Committee shall select candidates for shortlist and interview, and shall present the details of not more than two candidates to the Council of Governors with a recommendation as to which candidate they consider the most suitable for appointment and the reasons why, though any preceding discussion and documents shall remain confidential.
 - 5.5 If more than one candidate is presented, the Council of Governors shall vote to select a single candidate.
 - 5.6 Subject to the foregoing, the Trust Chair and the Non-Executive Directors shall be appointed for a period of office of no less than three years duration and in accordance with the terms and conditions of office decided by the Council of Governors at a general meeting. The maximum period of office should be no more than seven years.
6. Process for the appointment of the Trust Chair
 - 6.1 Subject to the provisions in relation to the appointment and removal of the Trust Chair, the Trust Chair shall be appointed in accordance with the process of open competition outlined as follows:
 - 6.1.1 The Council of Governors shall create a duly authorised Panel which shall be composed of three Governors from the Public, Service User or Carer, or Student Constituencies, a Staff Governor and an Appointed Governor.
 - 6.1.2 The Panel will consult the Non-Executive Directors and the Chief Executive regarding the necessary skills.

- 6.1.3 The Panel shall advertise in the national media to seek candidates whom they consider appropriate against a job description as agreed by the Council of Governors to be appropriate to the post of Trust Chair.
- 6.1.4 The Panel shall then shortlist appropriate candidates to be interviewed.
- 6.1.5 The Panel shall then consult the Non-Executive Directors and Chief Executive on the shortlist.
- 6.1.6 The Panel shall then interview and consider each candidate.
- 6.1.7 The Panel shall then consider those candidates and recommend not more than two candidates to the full Council of Governors.
- 6.1.8 The Council of Governors shall formally convey their decision to the successful candidate.

7. Process for the appointment of the auditor

- 7.1 The Council of Governors shall take a lead in agreeing with the Audit Committee the criteria for appointing, reappointing, and removing the External Auditors.
- 7.2 The Audit Committee shall make recommendations to the Council of Governors, in relation to the appointment, reappointment, and removal of the External Auditors.
- 7.3 If the Council **of Governors does not accept the Audit Committee's** recommendation it shall give its reasons for departing from the recommendation and the Board of Directors shall include in the Annual Report a statement from the Audit Committee explaining its recommendation, and a statement on the position of the Council of Governors.

8. Disability of Governors in Proceedings because of a Pecuniary Interest

- 8.1 Subject to the following provisions of these *CGSOs* (see *Annex 5* for further provisions) if a Governor of the Trust has any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter and is present at a meeting of the Trust at which the contract or other matter is the subject of consideration, he shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not vote on any question with respect to it. If there is a dispute as to whether a conflict of interest exists,

the majority of Governors present and voting at the meeting shall resolve the issue, with the Trust Chair having a second or casting vote in accordance with the provisions of this Constitution.

- 8.2 Any remuneration, compensation or allowances payable to a Governor by virtue of the National Health Service Act 2006 shall not be treated as a pecuniary interest for the purpose of these *CGSOs*.
- 8.3 For the purpose of these *CGSOs*, the Trust Chair or a Governor shall be treated, subject to *Standing Financial Instructions*, as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if:
 - 8.3.1 he, or a deputy of his, is a Director of a company or other body, not being a public body, with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration; or
 - 8.3.2 he is a partner of, or is in the employment of a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration; and
 - 8.3.3 in the case of married persons, persons in a civil partnership, or persons living together, the interest of one partner shall, if known to the other, be deemed for the purposes of these *CGSOs* to be also an interest of the other.
- 8.4 A Governor shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only:
 - 8.4.1 of his membership of a company or other body, if he has no beneficial interest in any shares or securities of that company or other body; or
 - 8.4.2 of an interest in any company, body or person with which he is connected as mentioned in *Standing Financial Instructions* which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a Governor in the consideration or discussion of or in voting on, any question with respect to that contract or matter.
- 8.5 Where a Governor:
 - 8.5.1 has an indirect pecuniary interest in a contract, proposed contract or other matter by reason only of a beneficial interest in securities of a company or other body; and
 - 8.5.2 the total nominal value of those securities does not exceed £5,000 or one-hundredth of the total nominal value of the issued share capital of the company or body, whichever is the less; and

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

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

8.6 *CGSO 9* applies to a committee or sub-committee of the Trust as it applies to the Trust, and applies to any member of any such committee or sub-committee (whether or not he is also a Governor of the Trust) as it applies to a Governor of the Trust.

9. Committees

9.1 Appointment of Committees

9.1.1 The Council of Governors may appoint committees of the Council of Governors consisting wholly or partly of members of the Council of Governors.

9.2 A committee appointed under *CGSO 9.1* may appoint sub-committees consisting wholly or partly of members of the committee (whether or not they include Governors of the Trust) or wholly of persons who are not members of the Trust committee (whether or not they include Governors of the Trust).

9.3 These *CGSOs*, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees or sub-committee established by the Council of Governors. The minimum quorum for any committee shall be two.

9.4 Each such committee or sub-committee shall have such terms of reference and powers and be subject to such conditions (as to reporting to the Council), as the Council of Governors shall decide. Such terms of reference shall have effect as if incorporated into these *CGSOs*.

9.5 Committees will normally only make recommendations and provide advice to the Council of Governors. Committees may not delegate their executive powers to a sub-committee unless expressly authorised by the Council of Governors.

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

travelling and other allowances being in accordance with such sum as may be determined by the Council of Governors.

9.7 Confidentiality

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

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

10. Miscellaneous

10.1 The Trust Secretary shall provide a copy of these standing orders to each Governor and **shall draw each Governor’s attention to such Governor’s** responsibilities under the Standing Orders.

10.2 These Standing Orders including all documents having effect as if incorporated in them shall be reviewed as necessary by the Board of Directors and the Council of Governors.

10.3 If, for any reason, these Standing Orders are not complied with, full details of the non-compliance and any reason for such non-compliance and the circumstances around the noncompliance, shall be reported to the next formal meeting of the Council of Governors for action or ratification. All Governors have a duty to disclose any non-compliance with these standing orders to the Trust Chair as soon as possible.

11. Declaration of Eligibility

11.1 At the first meeting, of the Council of Governors he attends shall be required to sign the following declaration:

Declaration of Eligibility	
Name	
Constituency	
<i>I declare that I am qualified to vote as an elected Governor for the above Constituency and that I am not prevented from being a member of the Council of Governors by any of the provisions set out in this Constitution.</i>	
Signed	
Dated	

This declaration shall be valid for the duration of the term of office.

Annex 4

Standing Orders for the Practice and Procedure of the Board of Directors (*BDSOs*)

1. The Trust

1.1 All business shall be conducted in the name of the Trust.

1.2 The Trust has the functions conferred on it by the 2006 Act as set out in paragraph 2 of this Constitution.

1.3 Joint Directors

1.3.1 Where more than one person is appointed jointly to a post in the Trust which qualifies the holder for Executive Directorship or in relation to which an Executive Director is to be appointed, the Chief Executive shall nominate one of those persons to serve as the voting member of the Board of Directors.

1.4 Responsibility for funds held on trust

1.4.1 All funds received in trust shall be in the name of the Trust as corporate trustee. In relation to funds held on trust, powers exercised by the Trust as corporate trustee shall be exercised separately and distinctly from those powers exercised as a Trust.

1.4.2 Directors acting on behalf of the Trust as a corporate trustee are acting as quasi-trustees. Accountability for charitable funds held on trust is to the Charity Commission and to the Members. Accountability for non-charitable funds held on trust is only to Members.

2. Meetings of the Board of Directors

2.1 Calling meetings

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

2.1.2 The Trust Chair may call a meeting of the Board of Directors at any time. If the Trust Chair refuses to call a meeting after a requisition for that purpose, signed by at least one-third of the whole number of members of the Board of Directors, has been presented to him, or if, without so refusing, the Trust Chair does not call a meeting within seven days after such requisition has been presented to **him, at the Trust's Headquarters, such one third or more Directors** may forthwith call a meeting of the Board of Directors.

2.2 Notice

2.2.1 Of meetings

2.2.1.1 Before each meeting of the Board of Directors, a notice of the meeting, signed by the Trust Chair or by an officer of the Trust authorised by the Trust Chair to sign on his behalf shall be delivered to every member of the Board of Directors, or sent by post to the usual place of residence of such Director, shall be sent no less than fourteen days in advance of the meeting.

2.2.2 Of business to be transacted

2.2.2.1 Before each meeting of the Board of Directors, an agenda setting out the business of the meeting, signed by the Trust Chair or by an officer of the Trust authorised by the Trust Chair to sign on his behalf shall be delivered to every member of the Board of Directors, or sent by post to the usual place of residence of such Director specifying the business proposed to be transacted at it so as to be available to him at five days before the meeting.

2.3 Lack of service of the notice on any Director shall not affect the validity of a meeting.

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

2.5 Failure to serve such a notice on more than three Directors as applicable to the Board of Directors meeting will invalidate the meeting. A notice shall be presumed to have been served at the time at which the notice would be delivered in the ordinary course of the post.

2.6 Setting the agenda

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

2.6.2 A Director desiring a matter to be included on an agenda shall make his request in writing to the Trust Chair at least ten clear days before the respective meeting, subject to *BDSO* 2.2. Requests made less than ten days before a meeting may be included on the agenda at the discretion of the Trust Chair.

2.7 Nothing in these *BDSOs* shall require the Trust to allow members of the public and representatives of the press to record proceedings in any manner whatsoever, other than in writing, or to make any oral report of

proceedings as they take place, without the prior agreement of the Trust Chair.

2.8 Questions from the public

2.8.1 Up to fifteen minutes will be set aside at the end of each ordinary meeting to enable members of the public or other interested parties to ask questions of the Board of Directors. Questions on any matter that has been discussed at the meeting can be raised at this point. Questions on general matters related to the business of the Trust should be sent in writing to the Trust Chair at least ten **days prior to the meeting; the Trust's Patient Advice and Liaison Service** is available to help with this if appropriate.

2.9 Notices of motion

2.9.1 A Director of the Trust desiring to move or amend a motion shall send a written notice thereof at least ten clear days before the meeting to the Trust Chair, who shall insert in the agenda for the meeting all notices so received subject to the notice being permissible under the appropriate regulations. This paragraph shall not prevent any motion being moved during the meeting without notice, on any business mentioned on the agenda, subject to *BDSO 2.4*.

2.10 Withdrawal of motion or amendments

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

2.11 Motion to rescind a resolution

2.11.1 Notice of motion to amend or rescind any resolution (or the general substance of any resolution) which has been passed within the preceding six calendar months shall bear the signature of the Directors who gives it and also the signature of four other Directors. When any such motion has been disposed of by the Trust, it shall not be competent for any Director other than the Trust Chair to propose a motion to the same effect within six months. However, the Trust Chair may do so if he considers it appropriate.

2.12 Motions

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

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

- 2.12.2.1 an amendment to the motion;
 - 2.12.2.2 the adjournment of the discussion or the meeting;
 - 2.12.2.3 that the meeting proceeds to the next business (*);
 - 2.12.2.4 the appointment of an ad hoc committee to deal with a specific item of business; and
 - 2.12.2.5 That the motion be now put (*).
- 2.12.3 In the case of sub-paragraphs denoted by (*), to ensure objectivity, motions may only be put by the respective Director who has not previously taken part in the debate.
- 2.12.4 No amendment to the motion shall be admitted if, in the opinion of the Chair of the meeting, the amendment negates the substance of the motion.

2.13 Chair's ruling

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

2.14 Voting

- 2.14.1 Every question at a meeting shall be determined by a majority of the votes of the Directors present and voting on the question and, in the case of any equality of votes, the person presiding shall have a second or casting vote.
- 2.14.2 All questions put to the vote shall, at the discretion of the Trust Chair, be determined by oral expression or by a show of hands. A paper ballot may also be used if a majority of the Directors present so request.
- 2.14.3 If at least one-third of the Directors present so request, the voting (other than by paper ballot) on any question may be recorded to show how each Director present voted or abstained.
- 2.14.4 If a Director so requests, his vote shall be recorded by name upon any vote (other than by paper ballot).
- 2.14.5 In no circumstances may an absent Director vote by proxy. Absence is defined as being absent at the time of the vote.
- 2.14.6 An officer who has been appointed formally by the Board of Directors to act for an Executive Director during a period of incapacity or temporarily to fill an Executive Director vacancy, shall be entitled to exercise the voting rights of the Executive Director. An officer attending the Board of Directors to represent an Executive Director during a period of incapacity or temporary absence without formal acting up status may not exercise the voting rights of the Executive Director. **An officer's status when attending a meeting shall be recorded in the minutes.**

2.15 Minutes

- 2.15.1 The minutes of the proceedings of a meeting shall be drawn up and submitted for agreement at the next meeting.
- 2.15.2 No discussion shall take place upon the minutes except upon their accuracy or where the Trust Chair considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the next meeting.
- 2.15.3 Minutes shall be circulated in accordance with the Board of **Directors' wishes. Where providing a record of a public meeting** the minutes shall be made available to the public. Wherever possible, a summary of decisions made or items discussed in private will also be provided.

2.16 Suspension of *BDSOs*

- 2.16.1 Except where this would contravene any statutory provision, any one or more of these *BDSOs* may be suspended at any meeting, provided that at least two-thirds of the Board of Directors are present, including one Executive Director and one Non-Executive Director, and that a majority of those present vote in favour of suspension.
- 2.16.2 A decision to suspend *BDSOs* shall be recorded in the minutes of the meeting.
- 2.16.3 A separate record of matters discussed during the suspension of *BDSOs* shall be made and shall be available to the Directors as applicable.
- 2.16.4 No formal business may be transacted while *BDSOs* are suspended.
- 2.16.5 The Audit Committee shall review every decision to suspend *BDSOs*.

2.17 Variation and amendment of *BDSOs*

- 2.17.1 These *BDSOs* shall be amended by the Board of Directors only if:
 - 2.17.1.1 a notice of motion under *BDSO* 2.9 has been given;
 - 2.17.1.2 no fewer than half the total Non-Executive Directors present vote in favour of amendment;
 - 2.17.1.3 the variation proposed does not contravene a statutory provision; and
 - 2.17.1.4 the Council of Governors ratifies the motion.

2.18 Record of attendance

- 2.18.1 The names of Directors present at their respective meetings shall be recorded in the minutes.

2.19 Quorum

- 2.19.1 No business shall be transacted at a meeting of the Board of Directors unless at least one-third of the whole number of the Directors is present including at least one Executive Director and one Non-Executive Director.
- 2.19.2 An officer in attendance for an Executive Director but without formal acting status may not count towards the quorum.
- 2.19.3 If a Director has been disqualified from participating in the discussion on any matter and/or from voting on any resolution due to the declaration of a conflict of interest (see paragraphs 6 and 7 of these *BDSOs*) he shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business. The above requirement for at least one Executive Director to form part of the quorum shall not apply where the Executive Directors are excluded from a meeting (for example when the Board of Directors considers the recommendations of the Remuneration Committee).

3. Arrangements for the exercise of functions by delegation

3.1 The Trust has resolved that certain powers and decisions may only be exercised or made by the Board of Directors in formal session. These powers and decisions are set out in *BDSO* 11.

3.2 Emergency Powers

3.2.1 The powers that the Board of Directors has retained to itself within these *BDSOs* (see paragraph 11) may in emergency be exercised by the Chief Executive and the Trust Chair after having consulted, if at all possible, at least two Non-Executive Directors. The exercise of such powers by the Chief Executive and the Trust Chair shall be reported to the next formal meeting of the Board of Directors for ratification.

3.3 Delegation

3.3.1 Subject to *BDSO* 5.1, the Board of Directors may make arrangements for the exercise, on behalf of the Trust, of any of its functions by:

- 3.3.1.1 a committee or sub-committee, appointed by virtue of *BDSO* 5.1 or 5.2; or
- 3.3.1.2 a Director or an officer of the Trust, in each case subject to such restrictions and conditions in the 2006 Act.

3.4 Delegation to Committees

- 3.4.1 The Board of Directors shall agree from time to time to the delegation of its powers to be exercised by committees or sub-committees, which it has formally constituted. This Constitution and terms of reference of these committees, or sub-committees, and their specific executive powers shall be approved by the Board of Directors.

3.5 Delegation to Officers

- 3.5.1 Those functions of the Trust that have not been retained as reserved by the Board of Directors or delegated to an executive committee or sub-committee shall be exercised on behalf of the Board of Directors by the Chief Executive.

- 3.5.2 The Chief Executive shall determine which functions he will perform personally and shall nominate officers to undertake the remaining functions for which he will retain accountability to the Board of Directors.

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

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

3.8 General enabling provision

- 3.8.1 Notwithstanding any arrangements made for delegation of functions, the Board of Directors may determine in formal session any matter it wishes within its statutory powers.

4. Senior Independent Director

4.1 Concerns of the Council of Governors

- 4.1.1 The Senior Independent Director shall be available to Members and Governors if they have concerns which contact through the normal channels of Trust Chair, Chief Executive or Finance Director has failed to resolve, or for which such contact is inappropriate.
- 4.1.2 The Senior Independent Director should attend sufficient meetings with Governors to listen to their views in order to help develop a balanced understanding of the issues and concerns of Governors.
- 4.1.3 The Senior Independent Director should maintain sufficient contact with Governors to understand their issues and concerns.

4.2 Performance Evaluation

- 4.2.1 Led by the Senior Independent Director, the Non-Executive Directors shall meet without the Trust Chair at least annually to **evaluate the Trust Chair's performance, as part of a process, which** should be agreed with the Council of Governors, for appraising the Trust Chair and on such other occasions as are deemed appropriate

5. Committees

5.1 Appointment of committees

- 5.1.1 Subject to *BDSO* 3.3, the Board of Directors may appoint committees of the Trust, consisting wholly of Directors of the Trust, and other advisory committees reporting to the Board of Directors consisting wholly or partly of Directors of the Trust, including the Executive Director to whom specified powers of the Trust have been delegated.

- 5.2 A committee appointed under *BDSO* 5.1.1 may appoint sub-committees consisting wholly or partly of members of the committee (whether or not they include Directors of the Trust) or wholly of persons who are not members of the Trust committee (whether or not they include Directors of the Trust).

- 5.3 These *BDSOs*, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees or sub-committee established by the Board of Directors. The minimum quorum for any committee shall be two.

- 5.4 Each such committee or sub-committee shall have such terms of reference and powers and be subject to such conditions (as to reporting to the Board of Directors), as the Board of Directors shall decide. Such terms of reference shall have effect as if incorporated into these *BDSOs*.

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

5.6 The Board of Directors shall approve the appointments to each of the committees, which it has formally constituted. Where the Board of Directors determines that persons who are neither Directors nor officers shall be appointed to a committee, the terms of such appointment shall be determined by the Board of Directors subject to the payment of travelling and other allowances being in accordance with such sum as may be determined by the Board of Directors.

5.7 Confidentiality

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

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

6. Disability of Directors in proceedings because of pecuniary interest

6.1 Subject to the following provisions of these *BDSOs* (see *Annex 5* for further provisions) if a Director of the Trust has any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter and is present at a meeting of the Trust at which the contract or other matter is the subject of consideration, he shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not take part in the consideration or discussion of the contract or other matter or vote on any question with respect to it. If there is a dispute as to whether a conflict of interest exists, the majority of Directors present and voting at the meeting shall resolve the issue, with the Trust Chair having a second or casting vote in accordance with the provisions of this Constitution.

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

6.3 Any remuneration, compensation or allowances payable to a Director by virtue of 2006 Act shall not be treated as a pecuniary interest for the purpose of these *BDSOs*.

6.4 For the purpose of this *BDSO* the Trust Chair or a Director shall be treated, subject to *Standing Financial Instructions*, as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if:

- 6.4.1 he, or a nominee of his, is a Director of a company or other body, not being a public body, with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration; or
 - 6.4.2 he is a partner of, or is in the employment of a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration; and
 - 6.4.3 in the case of married persons, persons in a civil partnership, or persons living together, the interest of one partner shall, if known to the other, be deemed for the purposes of this *BDSO* to be also an interest of the other.
- 6.5 A Director shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only:
- 6.5.1 of his membership of a company or other body, if he has no beneficial interest in any securities of that company or other body; and
 - 6.5.2 of an interest in any company, body or person with which he is connected as mentioned in *Standing Financial Instructions* which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a Director in the consideration or discussion of or in voting on, any question with respect to that contract or matter.
- 6.6 Where a Director:
- 6.6.1 has an indirect pecuniary interest in a contract, proposed contract or other matter by reason only of a beneficial interest in securities of a company or other body;
 - 6.6.2 the total nominal value of those securities does not exceed £5,000 or one-hundredth of the total nominal value of the issued share capital of the company or body, whichever is the less; and
 - 6.6.3 if the share capital is of more than one class, the total nominal value of shares of any one class in which he has a beneficial interest does not exceed one-hundredth of the total issued share capital of that class,
- this *BDSO* shall not prohibit him from taking part in the consideration or discussion of the contract or other matter or from voting on any question with respect to it without prejudice however to his duty to disclose his interest.
- 6.7 *BDSO* 6 applies to a committee or sub-committee of the Trust as it applies to the Trust and applies to any member of any such committee or sub-

committee (whether or not he is also a Director of the Trust) as it applies to a Director of the Trust.

7. Standards of business conduct

7.1 Policy

7.1.1 Staff shall comply with the national guidance contained in HSG **(93)5 "Standards of Business Conduct for NHS staff"**. The following provisions should be read in conjunction with this document.

7.2 Interest of officers in contracts

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

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

7.4 Interests, employment or relationships so declared by staff shall be entered in a register of interests of staff, to be held and maintained by the Trust Secretary. Such register must be made available to the public.

7.5 Canvassing of, and recommendations by, Directors in relation to appointments

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

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

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

7.8 Relatives of Directors or officers

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

7.9 The Directors and every officer of the Trust shall disclose to the Chief Executive any relationship with a candidate of whose candidature that Director or officer is aware. It shall be the duty of the Chief Executive to report to the Trust any such disclosure made.

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

7.11 Where the relationship of an officer or another Director to a Director of the Trust is disclosed, *BDSO 6* shall apply.

8. Custody of Seal and Sealing of Documents

8.1 Custody of Seal

8.1.1 The Common Seal of the Trust shall be kept by the Chief Executive or delegated officer in a secure place.

8.2 Sealing of Documents

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

8.2.2 Prior to any deed or document being sealed it must be approved and signed by the Finance Director (or an officer nominated by him) and authorised and countersigned by the Chief Executive (or an officer nominated by him who shall not be within the originating Directorate).

8.3 Register of sealings

8.3.1 An entry of every sealing shall be made and numbered consecutively in a book provided for that purpose, and shall be signed by the persons who shall have approved and authorised the document and those who attested the seal. A report of all sealings shall be made to the Board of Directors at least annually. The report shall contain details of the seal number, the description of the document and date of sealing.

9. Signature of Documents

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

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

10. Miscellaneous

10.1 *BDSOs* Orders to be given to Directors and officers

10.1.1 It is the duty of the Chief Executive to ensure that existing Directors and officers, and all new appointees, are notified of and understand their responsibilities under this Constitution, *Standing Financial Instructions* and *Scheme of Delegation of Powers*. Updated copies shall be issued to staff designated by the Chief Executive. New designated officers shall be informed in writing and shall receive copies where appropriate of *BDSOs*.

10.2 Documents having the standing of *BDSOs*

10.2.1 *Standing Financial Instructions, the Scheme of Delegation and Powers* and the terms of reference of committees shall have effect as if incorporated into *BDSOs*.

10.3 Review of *BDSOs*

10.3.1 *BDSOs* shall be reviewed annually by the Trust. The requirement for review extends to all documents having the effect as if incorporated in *BDSOs*.

11. Schedule of powers reserved to the Board of Directors

11.1 The Trust has resolved that the following powers and decisions may only be exercised or made by the Board of Directors in formal session:

11.2 Regulation and Control

11.2.1 Proposals for changes to *BDSOs*, which must be submitted to the Council of Governors for approval.

- 11.2.2 Approval of a scheme of delegation of powers from the Board of Directors to officers (see *BDSO 3*).
- 11.2.3 **Requiring and receiving the declaration of Directors' interests that** may conflict with those of the Trust and determining the extent to which that Director may remain involved with the matter under consideration.
- 11.2.4 Requiring and receiving the declaration of interests from officers that may conflict with those of the Trust.
- 11.2.5 Disciplining Directors who are in breach of statutory requirements or *BDSOs*.
- 11.2.6 Approval of the disciplinary procedure for officers of the Trust.
- 11.2.7 Approval of arrangements for dealing with complaints; and receiving regular reports summarising the complaints received and investigated.
- 11.2.8 Adoption of the organisational structures, processes and procedures to facilitate the discharge of business by the Trust and to agree modifications thereto.
- 11.2.9 To receive reports from committees including those which the Trust is required by regulation to establish and to take appropriate action thereon.
- 11.2.10 **To confirm the recommendations of the Trust's committees where** the committees do not have executive powers. To establish terms of reference and reporting arrangements of all sub-committees (and other committees if required).
- 11.2.11 Ratification of any urgent decisions taken by the Chief Executive and Trust Chair in accordance with *BDSO 3.2*.
- 11.2.12 **Approval of arrangements relating to the discharge of the Trust's** responsibilities as a corporate trustee for funds held on trust.
- 11.2.13 **Approval of arrangements relating to the discharge of the Trust's responsibilities as a bailee for patients' property (if and when this is applicable).**

11.3 Appointments

- 11.3.1 The appointment and dismissal of committees.
- 11.3.2 The appointment of members of any committee of the Board of Directors or the appointment of representatives on outside bodies.

11.4 Policy Determination

- 11.4.1 The approval of management policies including personnel policies incorporating the arrangements for the appointment not outlined in this Constitution or appendices thereof, and removal and remuneration of staff.

11.5 Strategy and Business Plans and Budgets

- 11.5.1 In consultation with the Council of Governors, definition of the strategic aims and objectives of the Trust.
- 11.5.2 In consultation with the Council of Governors, approval of the annual income and expenditure budget.
- 11.5.3 Any proposed annual income or expenditure change exceeding £250,000.
- 11.5.4 In consultation with the Council of Governors, approval of the annual capital budget.
- 11.5.5 Approval of any proposed increase to the annual capital budget.
- 11.5.6 In consultation with the Council of Governors, the approval and **monitoring of the Trust's policies and procedures for the management of risk.**

11.6 Direct Operational Decisions

- 11.6.1 Acquisition, disposal or change of use of land and/or buildings.
- 11.6.2 In consultation with the Council of Governors, the introduction or discontinuance of any significant activity or operation.
- 11.6.3 Approval of individual contracts (other than NHS contracts) of a capital or revenue nature amounting to, or likely to amount to over £5,000,000 over a three year period or the period of the contract if longer.
- 11.6.4 Approval of individual compensation payments over £100,000.
- 11.6.5 To agree action on litigation against or on behalf of the Trust.

11.7 Financial and Performance Reporting Arrangements

- 11.7.1 Continuous appraisal of the affairs of the Trust by means of the receipt of reports as it sees fit from Directors, committees, associate

Directors and officers of the Trust as set out in management policy statements. All regulatory returns required by the Regulator and the Charity Commission shall be reported, at least in summary, to the Board of Directors.

- 11.7.2 Approval of the opening or closing of any bank or investment account. Approval of the lists of posts whose holders may be included in bank signatory panels (as referenced in *Standing Financial Instructions*, 17.2).
- 11.7.3 Receipt and approval of contracts and agreements signed in accordance with arrangements approved by the Chief Executive.
- 11.7.4 Consideration and approval of the Trust's Annual Report including the annual accounts.
- 11.7.5 Receipt and approval of the Annual Report for funds held on trust, including the annual accounts.

11.8 Audit Arrangements

- 11.8.1 To approve audit arrangements (including arrangements for the audit of funds held on trust) and to receive reports of the Audit Committee meetings and take appropriate action.
- 11.8.2 The receipt of the annual management letter received from the External Auditor and agreement of action on the recommendation where appropriate of the Audit Committee.
- 11.8.3 The receipt of the Annual Report received from the Auditor and the agreement of action on the recommendation where appropriate of the Audit Committee.

Annex 5

Registers

1. The Trust shall have and maintain:
 - 1.1 a Register of Members showing, in respect of each Member, the Constituency and where there are classes, within the classes to which he belongs;
 - 1.2 a **register of interests of the Board of Directors (“the Register of Directors’ Interests”); and**
 - 1.3 a register of interests of the Council **of Governors (“the Register of Governors’ Interests”).**
2. The information to be included in the above Registers shall be such as will comply with the requirements of the 2006 Act, any subordinate legislation made under it and the provisions of this Constitution.
3. The Trust Secretary shall ensure that the above Registers reflect the current position at all times and that entries are added or deleted as appropriate to achieve this and in particular that Members shall be removed from the Register of Members if:
 - 3.1 the Member is no longer eligible or is disqualified;
 - 3.2 the Member is deceased; or
 - 3.3 the Member fails or declines to confirm their wish to continue as a Member when requested to do so by the Council of Governors, or the Council of Governors resolves to terminate the membership of that Member under this Constitution.
4. The Trust Chair shall take reasonable steps to bring the existence of the Register of **Directors’ Interests to the attention of the local population and** to publicise arrangements for viewing it.
5. In relation to any time before the Trust is first required to send an Annual Report to the Regulator, the Trust shall send to the Regulator a list of the persons who were first elected or appointed as:
 - 5.1 the members of the Council of Governors; and
 - 5.2 the members of the Board of Directors.

6. The Trust Secretary shall thereupon amend the Register within three working days of having received the said written notification from the Trust Chair.
7. **Director's directorships of companies within** *Standing Financial Instructions* or in companies likely or possibly seeking to be business with the National Health Service within this paragraph 7 of this *Annex* should be published in the Annual Report of the Trust and this information shall be kept up to date for inclusion in succeeding Annual Reports.
8. **The Register of Directors' Interests shall be kept up to date by means of a** regular review by the Trust Secretary, during which, any changes of interest declared during the preceding period shall be incorporated, subject always to the provisions of paragraph 6 of this *Annex*.
9. **The Trust shall maintain a Register of Directors' Interests.**
 - 9.1 All existing Directors shall declare relevant and material interests forthwith and the Trust shall ensure that those interests are noted in the Register of **Directors' Interests**. Any Directors appointed subsequently shall declare their relevant and material interests on appointment.
 - 9.2 **Interests which shall be regarded as "relevant and material" and which for** the avoidance of doubt should be declared and should be included in the Register of Directors' Interests are:
 - 9.2.1 directorships, including Non-Executive Directorships held in private companies or PLCs (with the exception of those directorships of dormant companies);
 - 9.2.2 ownership, part-ownership or directorships of private companies, businesses or consultancies likely or possibly seeking to do business with the National Health Service;
 - 9.2.3 majority or controlling shareholdings in organisations likely or possibly seeking to do business with the National Health Service;
 - 9.2.4 a position of authority in a charity or voluntary organisation in the field of health and social care;
 - 9.2.5 any connection with a voluntary or other organisation contracting for National Health Service services or commissioning National Health Service services; and
 - 9.2.6 any connection with an organisation entity or company considering entering into or having entered into a financial arrangement with the Trust including but not limited to lenders or banks.

9.3 If a Director has a doubt about the relevance or materiality of any interest this should be discussed with the Trust Chair.

9.4 At the time the interests are declared this shall be recorded in the minutes of the Board of Directors meeting as appropriate. Any changes in interest shall be officially declared at the next meeting of the Board of Directors following the change occurring. It is the obligation of the Director to inform the Trust Secretary in writing within seven days of becoming aware of the existence of a relevant or material interest and the membership.

10. **The Trust shall maintain a Register of Governors' Interests.**

10.1 All existing Governors shall declare relevant and material interests forthwith and the Trust shall ensure that those interests are noted in the **Register of Governors' Interests**. Any Governors appointed or elected subsequently shall declare their relevant and material interests on appointment or election as the case may be.

10.2 **Interests which shall be regarded as "relevant and material" and which for the avoidance of doubt should be declared and should be included in the Register of Governors' Interests are:**

10.2.1 directorships, including non-executive directorships held in private companies or PLCs (with the exception of those Governorships of dormant companies) likely or possibly seeking to do business with the National Health Service;

10.2.2 ownership, or part-ownership of private companies, businesses or consultancies likely or possibly seeking to do business with the National Health Service;

10.2.3 majority or controlling shareholdings in organisations likely or possibly seeking to do business with the National Health Service;

10.2.4 a position of authority in a charity or voluntary organisation in the field of health and social care;

10.2.5 any connection with a voluntary or other organisation contracting for National Health Service services or commissioning National Health Service services; and

10.2.6 any connection with an organisation entity or company considering entering into or having entered into a financial arrangement with the Trust including but not limited to lenders or banks.

10.3 If a Governor has a doubt about the relevance or materiality of any interest this should be discussed with the Trust Chair.

10.4 At the time the interests are declared this shall be recorded in the minutes of the Council of Governors meeting as appropriate. Any changes in

interest shall be officially declared at the next meeting of the Council of Governors following the change occurring. It is the obligation of the Governor to inform the Trust Secretary in writing within seven days of becoming aware of the existence of a relevant or material interest and the membership.

11. In relation to any time before the Trust is first required to send an Annual Report to the Regulator the Trust shall send to the Regulator a list of the persons who were first elected or appointed as:
 - 11.1 The members of the Council of Governors; and
 - 11.2 The members of the Board of Directors.
12. The Trust Secretary shall thereupon amend the Register within three working days of having received the said written notification from the Trust Chair.
13. **Governors' directorships of companies within** *Standing Financial Instructions* or in companies likely or possibly seeking to do business with the National Health Service within paragraph 7 of this *Annex* should be published in the Annual Report of the Trust and this information shall be kept up to date for inclusion in succeeding Annual Reports.
14. **The Register of Governors' Interests shall be kept up to date by means of a** regular review by the Trust Secretary, during which, any changes of interest declared during the preceding period shall be incorporated, subject always to the provisions of paragraph 6 of this *Annex*.