

**SALISBURY NHS FOUNDATION TRUST**  
**CONSTITUTION**

|  |                                    |
|--|------------------------------------|
| <b>Post Holder Responsible for Policy:</b> | Director of Integrated Governance  |
| <b>Directorate Responsible for Policy:</b> | Chief Executive's                  |
| <b>Contact Details:</b>                    | Ext: 2774                          |
| <b>Date Written:</b>                       | 2005                               |
| <b>Date Revised:</b>                       | April 2024                         |
| <b>Approved by:</b>                        | Council of Governor's/ Trust Board |
| <b>Date Approved:</b>                      |                                    |
| <b>Next Due for Revision:</b>              | April 2025 (Annual Review)         |
| <b>Date Document Becomes Live:</b>         |                                    |

| Version No. | Updated By  | Updated On                  | Description of Changes   |
|-------------|---|-----------------------------|--|
| 1.0         | Director of Corporate Governance  | See amendment history below |  |
| 1.1         | Director of Corporate Governance  | April 2020                  | Annex 9 Updated  |
| 2.0         | Director of Corporate Governance  | October 2020                | Complete revision  |
| 2.1         | Corporate Governance Manager/ Membership Manager                                    | December 2020               | Further amendments as per amendment history below agreed at CoG.   |
| 2.2         | Head of Corporate Governance  | January 2022                | Small amendments to wording to provide consistency in document   |
| 2.3         | Head of Corporate Governance  | March 2022                  | Further small amendments following CoG.  |
| 2.4         | Head of Corporate Governance / Membership Manager                                   | January/ February 2023      | Amendments to NED terms of office, nominated governor categories and nominations Committee composition and Annex 4 |
| 2.5         | Head of Corporate Governance  | April 2024                  | Annual Review - Further amendments reflected in amendment history 2024.  |
| 2.6         | Director of Integrated Governance/ Head of Corporate Governance/ Membership Manager | Sept 2024                   | Amendments summarised in the amendment history.<br><br>Complete re-format.   |

## **Introduction**

Salisbury NHS Foundation Trust, Royal United Hospitals Bath NHS Foundation Trust and Great Western Hospitals NHS Foundation Trust approved arrangements to establish a group model to support increased joint working and collaboration between the three organisations and wider system, in line with the powers set out in the Health and Care Act 2022 and with approval from NHS England and Bath and North-East Somerset, Swindon and Wiltshire Integrated Care Board (BSW ICB)

In line with current legislation all three trusts remain as individual statutory organisations with individual constitutions. Therefore, for the purposes of this document references to the chief executive will remain singular and not 'joint' or 'group'.

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## Amendment History:

| Year | Amendment   |
|------|---|
| 2014 | <ul style="list-style-type: none"> <li>The addition of paragraph 21 of the Council's Standing Orders was approved by the Council on 21 July 2014</li> </ul>   |
| 2016 | <ul style="list-style-type: none"> <li>Amendment of paragraph 37 of the Constitution was approved by the Board of Directors on 29 February 2016 and by the Council of Governors on 11 April 2016.</li> <li>The new Model Election Rules were issued by the former Foundation Trust Network (NHS Providers) in August 2014 and formally adopted by the trust on 29 February/11 April 2016</li> <li>Amendment of paragraph 16 of the Council's standing orders was approved by the Council on 16 May 2016</li> </ul>  |
| 2018 | <ul style="list-style-type: none"> <li>April 2018 minor amendments to Board Standing Orders</li> <li>Addition of Standing Financial Instructions – approved February 2018</li> </ul>  |
| 2019 | <ul style="list-style-type: none"> <li>Amendment of Annex 1 to a) insert the area covered by the West Wiltshire constituency into the South Wiltshire Rural constituency; (b) delete West Wiltshire as a constituency; (c) increase the number of governors for the South Wiltshire Rural Constituency from 5 to 6. – approved November 2019</li> </ul>   |
| 2020 | <ul style="list-style-type: none"> <li>Annex 8 Standing Orders of the Board of Directors has been completely revised and is included as an appendix to the Constitution.</li> <li>The wards and constituencies have been updated. This includes merging West Wiltshire into South Wiltshire Rural. North Dorset and East Dorset constituencies have also been updated based on the electoral ward.</li> <li>Within Annex 2 the Hotel and Property Class in the Staff Constituency is merged with the Clerical, Administrative and Managerial staff class. The name has been amended to “Administrative, Facilities and Managerial”.</li> <li>The unused paragraphs have been removed and the document renumbered and reformatted to reflect this.</li> </ul>  |
| 2021 | <ul style="list-style-type: none"> <li>Wiltshire Clinical Commissioning Group (CCG) is now called Bath and North-East Somerset, Swindon and Wiltshire (BSW)</li> </ul>  |
| 2022 | <ul style="list-style-type: none"> <li>Amendments to Annex 6 and Annex 9 to update Governor and Board disqualification criteria.</li> <li>Document renumbered.</li> </ul>   |
| 2023 | <ul style="list-style-type: none"> <li>Minor formatting updates.</li> <li>Item 32.3 updated to reflect NED terms of office (2 x 3-year terms plus 1 x 2-year term).</li> <li>Annex 4 – Composition of the Appointed Governors updated to reflect the distinction between local authority and partnership organisations.</li> <li>Annex 7 – Item 11.3 updated to include ‘external stakeholder’ in the composition of future Nominations Committees</li> </ul>   |
| 2025 | <ul style="list-style-type: none"> <li>Updating para 1 to reflect the Health and Social Care Act 2022.</li> <li>Para 4 – Powers updated to recognise joint committees and the 2006 Act (revised 2022).</li> <li>Para 4.5 added as specified in the Health and Care Act 2022.</li> <li>Para 17 updated to recognise joint committees.</li> <li>Annex 4 updated to reflect changes to ‘partnership organisations’ in relation to Appointed Governors.</li> <li>Annex 8, para 5.9 added to reflect the establishment of Joint Committees and Committee-in Common.</li> <li>Para 14.5 – the wording around Governor elections has been further clarified</li> <li>Para 21 – Board Composition has been updated and aligns with Great Western Hospitals NHS Foundation Trust.</li> <li>Para 23 – updated to include the associate NED reference.</li> <li>Para 25 – Updated to reflect the Fit and Proper Persons (FPPR) regulations.</li> </ul> |

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|  | <ul style="list-style-type: none"><li>• Para 26 – new section added reflecting the latest Code of Governance relating to the appointment and removal of the Company Secretary.</li><li>• Para 31 – Updated wording for terms of office for Chair and Non-Executive Directors to reflect the latest Code of Governance. Ultimately, any decision to extend a NED term of office beyond 6 years should be subject to rigorous review.</li><li>• Para 42 – The wording around significant transactions has been strengthened following feedback from the Council of Governors</li><li>• Annex 9 – updated wording to reflect an exception to board membership</li></ul> |
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## 1. Interpretation and definitions

- 1.1 Unless otherwise stated, words or expressions used in this constitution have the same meaning as in the National Health Service Act 2006 as amended by the Health and Social Care Act 2012 and the Health and Social Care Act 2022.
- 1.2 Words importing the masculine gender only shall include the feminine gender. Words importing the singular shall import the plural and vice versa where it is appropriate that they do so.
- 1.3 The 2006 Act is the National Health Service act 2006 as amended at any time, and the 2012 Act is the Health and Social Care Act 2012 as amended at any time.
- 1.4 The Health and Care Act 2022 has merged “Monitor” and the Trust Development Authority (TDA) into NHS England and removed legal barriers to collaboration and integrated care, ensuring providers adopt greater responsibility for service planning and putting Integrated Care Systems (ICSs) on a statutory footing.
- 1.5 Constitution means this constitution and its annexes (save that the standing orders set out for convenience in annexes 7 and 8 are not part of the constitution). It comes into effect when it has been approved both by more than half of the members of the Council of Governors voting, and by more than half of the Board of Directors voting.
- 1.6 The Accounting Officer is the person who discharges the functions specified in paragraph 25(5) of Schedule 7 to the 2006 Act.
- 1.7 The Code of Conduct is the Code of Conduct as set out in the Standing Orders of the Council of Governors.

## 2. Name

- 2.1 The name of the foundation trust is the Salisbury NHS Foundation Trust, and the Trust means that trust.

## 3. Principal purpose

- 3.1 The principal purpose of the Trust is the provision of goods and services for the purposes of the health service in England.
- 3.2 The Trust does not fulfil its principal purpose unless, in each financial year, its total income from the provision of goods and services for the purposes of the health service in England is greater than its total income from the provision of goods and services for any other purposes.
- 3.3 The Trust may provide goods and services for any purposes related to—
  - 3.3.1 the provision of services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness, and
  - 3.3.2 the promotion and protection of public health.
- 3.4 The Trust may also carry on activities other than those mentioned in this paragraph for the purpose of making additional income available in order better to carry out its principal purpose.
- 3.5 The Trust may carry out research in connection with the provision of health care and may make facilities and staff available for the purposes of education, training or research carried on by others.

## 4. Powers

- 4.1 The powers of the Trust are set out in the 2006 Act, updated in the 2012 Health and Social Care Act and the 2022 Health and Care Act.
- 4.2 All the powers of the Trust shall be exercised by the Board of Directors on behalf of the Trust.
- 4.3 Any of these powers may be delegated to a committee of directors or to an executive director.
- 4.4 The Trust may arrange for any functions exercisable by it to be exercised by or jointly with any one or more of the bodies set out in section S 65Z5(i) of the 2006 Act. Where such a function is exercisable jointly the bodies may arrange for the functions to be exercised by joint committees as set out in S5 65Z6 of the 2006 Act.

- In exercising its powers, the Trust will have regard to:
- S.63A of the 2006 Act (revised 2022) (duty to have regard to wider effect of decisions), also referred to as the “Triple Aim”.
- 3.7.2 S.63B of the 2006 Act (revised 2022) (duties in relation to climate change).

## **5. Membership and constituencies**

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

**5.1.1** A public constituency

**5.1.2** A staff constituency

## **6. Application for membership**

**6.1** An individual who is eligible to become a member of the Trust shall become a member on his application to the Trust to become a member or by being invited by the Trust to become a member of the staff constituency in accordance with paragraph 9.

## **7. Public Constituency**

**7.1** The public constituencies are the areas specified in Annex 1 and individuals living within them may become members of the Trust.

**7.2** The individuals who live in the areas so specified are referred to collectively as a Public Constituency.

**7.3** An individual who ceases to live in the areas specified in Annex 1 shall cease to be a member of the Trust. A member who moves from one such area to another shall continue to be a member but shall have a right to vote in any election of governors in accordance with the new area.

**7.4** The minimum number of members in each Public Constituency is specified in Annex 1, and if the number of members does not equal or exceed the minimum the area shall not be treated as a Public Constituency for the purpose of electing governors.

## **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** They are employed by the Trust under a contract of employment which has no fixed term or has a fixed term of at least 12 months; or

**8.1.2** They have been continuously employed by the Trust under a contract of employment for at least 12 months.

**8.2** Individuals who exercise functions for the purposes of the Trust other than under a contract of employment with the Trust, may become or continue as members of the staff constituency provided that they have exercised these functions continuously for a period of at least 12 months.

**8.3** Individuals eligible for membership of the Trust under this paragraph are referred to collectively as the Staff Constituency.

**8.4** The Staff Constituency shall be divided into 5 classes of individuals as set out in Annex 2

**8.5** The minimum number of members in each class of the Staff Constituency is specified in Annex 2, and if the number of members in a class does not equal or exceed the minimum number that class shall not be treated as a class for the purpose of electing governors.

## **9. Automatic Membership by default – Staff**

**9.1** An individual who is:

**9.1.1** Eligible under paragraph 8.1 to become a member of the Staff Constituency, and invited by the Trust to become a member of the Staff Constituency, shall become

**9.1.2** a member of the Staff Constituency and in the appropriate staff class without an application being made, unless they inform the Trust that they do not wish to do so.

## 10. Patients' Constituency

There is no Patients' Constituency

## 11. Restrictions on Membership

- 11.1 An individual, who is a member of a constituency, or of a class within a constituency, may not while such membership continues be a member of any other constituency or class.
- 11.2 An individual who satisfies the criteria for membership of the Staff Constituency may not become or continue as a member of any other constituency.
- 11.3 An individual must be at least 16 years old to become a member of the Trust.
- 11.4 An individual may not become or remain a member of the Trust if they have been convicted of any offence involving violent, threatening or abusive behaviour on Trust property or in connection with receiving services from the Trust.
- 11.5 A member of the Trust shall inform the Secretary of the Trust of any circumstances which may affect their entitlement to be a member.
- 11.6 Where the Trust has reason to believe that a person may be disqualified from becoming a member or no longer entitled to be a member, the Secretary may give the member 14 days written notice to show why he should not become or remain a member. On receipt of such response as may be made by the member, or failing any response, the Secretary may, if he considers it appropriate, refuse the application to become a member or remove the member from the register of members. If the person wishes to dispute a decision of the Secretary not to admit him to membership or to remove him, he may refer the issue to the Council of Governors, whose decision by a majority of the governors voting shall be final.
- 11.7 A member may resign by written notice to the Secretary of the Trust.

## 12. Annual Members' Meeting

- 12.1 The Trust shall hold an annual meeting of its members, 'the Annual Members Meeting'. It shall be open to the public. This should be held no later than 30th September.

## 13. Council of Governors – Composition

- 13.1 The Trust is to have a Council of Governors comprising both elected and appointed governors.
- 13.2 The composition of the Council of Governors is specified in Annex 4.
- 13.3 The members of the Council of Governors, other than the appointed members, shall be chosen by election by their constituency or, where there are classes within a constituency, by their class within that constituency. The number of governors to be elected by each constituency or class is specified in Annex 4.
- 13.4 No person may stand for election as a governor or be appointed as a governor unless he will be at least 18 years old when he becomes a governor.

## 14. Council of Governors – Election of Governors

- 14.1 Elections for the elected members of the Council of Governors shall be conducted in accordance with the Model Election Rules current at the time of the election.
- 14.2 The Model Election Rules are those as published from time to time by the Department of Health, and form part of this Constitution. The Rules current at the time of the coming into effect of this constitution are set out in Annex 5.
- 14.3 A subsequent variation of the Model Election Rules by the Department of Health does not constitute an amendment of the constitution for the purpose of paragraph 48 hereof (amendment of the constitution).
- 14.4 An election, if contested, shall be by secret ballot.
- 14.5 Where membership of the Council of Governors ceases within 12 months of election, public and staff governors shall be replaced by the candidate in the same constituency and class with the next highest number of votes at the last election. If the vacancy cannot be filled by this method the Trust will commence another election process at the earliest opportunity, in accordance with the Model Election Rules

## 15. Council of Governors – Tenure

- 15.1 Subject to 14.5 and 15.2, an elected governor may hold office for a period of up to three years.
- 15.2 An elected governor may stand for re-election but may not stand for re-election when, if re-elected, he might serve for more than nine years in all.
- 15.3 An appointed governor may hold office for a period of up to three years and may then be re-appointed but shall not hold office for more than nine years in all. He shall cease to hold office if his appointing organisation withdraws its appointment of him by notice in writing to the Trust or if the appointing organisation ceases to exist.
- 15.4 A governor may resign by giving notice in writing to the Chair of the Trust.
- 15.5 In the event of an appointed governor ceasing to hold office, the body appointing him may make a further appointment.
- 15.6 The limits of nine years in sub-paragraphs 15.2 and 15.3 shall in the case of an elected governor include any time served as an appointed governor, and in the case of an appointed governor include any time served as an elected governor.

## 16. Council of Governors – Disqualification and Termination of Office

- 16.1 The following may not stand for election or continue as a member of the Council of Governors:
  - 16.1.1 a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged.
  - 16.1.2 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.
  - 16.1.3 a person who within the preceding five years has been convicted in the British Islands of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on them.
  - 16.1.4 The further persons set out in Annex 6.
- 16.2 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.
- 16.3 If a governor fails to attend 3 consecutive scheduled meetings of the Council of Governors, he shall cease to be a governor unless a voting majority of the other governors are satisfied that:
  - 16.3.1 the failure was in their opinion due to a reasonable cause or causes, and
  - 16.3.2 he will be able to, and will, start attending meetings of the Council within such period as they consider reasonable.
- 16.4 A governor shall cease to be a governor if he is adjudged by not less than 75% of the remaining Council of Governors to have:
  - 16.4.1 acted in a manner inconsistent with the core principles set out in the Trust's authorisation, or with the Constitution, or with the Code of Conduct, in such a way that he should cease to be a governor, or
  - 16.4.2 failed to declare a material interest pursuant to paragraph 21 below and participated in a meeting where that interest was relevant, in such a way that he should cease to be a governor.
- 16.5 Where circumstances arise which give rise to an issue as to a governor's ability to remain a governor (other than those referred to in paragraphs 16.3 and 16.4 above), the governor shall give written notice of the circumstances to the Secretary of the Trust and shall state whether he is resigning.
- 16.6 In the event of a notice being given under sub-paragraph 16.3 which states that the governor is not resigning, or where no such notice is received but circumstances as to a governor's ability to remain a governor (other than those set out in paragraphs 16.3 and 16.4 above) come to the notice of the Trust, the issue shall be considered by the other governors at a meeting and if 75% of the remaining Council of Governors consider that the governor is disqualified from continuing as a governor, he shall cease to be a governor.

- 16.7** A governor shall not exercise any function as a governor (including attending any meeting of the Council as a governor) if he has not signed and delivered to the Secretary a statement in the form required by the Council confirming that he accepts the Code of Conduct.
- 16.8** If a governor who is an employee of the Trust is suspended as an employee as a part of a disciplinary process, the Chair of the Trust may suspend the governor from acting as a governor while the governor remains suspended as an employee.

### **17. Council of Governors – Duties of Governors, Equipping Governors, Lead Governor and Deputy Lead Governor**

- 17.1** The general duties of the Council of Governors are–
- 17.1.1** to hold the non-executive directors individually and collectively to account for the performance of the Board of Directors, and
  - 17.1.2** to represent the interests of the members of the Trust as a whole and the interests of the public.
- 17.2** The Trust must take steps to secure that the governors are equipped with the skills and with the knowledge that they require in their capacity as governors.
- 17.3** The governors shall choose a Lead Governor and a Deputy Lead Governor as set out in the Council's standing orders. The Lead Governor and the Deputy Lead Governor shall have the functions set out in the standing orders.

### **18. Council of Governors – Meetings of Governors**

- 18.1** The Chair of the Trust, that is the Chair of the Board of Directors, or in his absence, the Deputy Chair or, in his absence, the Lead Governor (or Deputy Lead Governor), shall preside at meetings of the Council of Governors.
- 18.2** Where it is inappropriate by reason of the subject matter of a meeting that it should be chaired by the Chair, the Deputy Chair may preside unless it is also inappropriate that the Deputy Chair preside, in which case the Lead Governor or in his absence the Deputy Lead Governor may preside.
- 18.3** Meetings of the Council of Governors shall be open to members of the public, but the public may be excluded from all or any part of the meeting by resolution of the Council for special reasons, namely that publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted or for other special reasons stated in the resolution and arising from the nature of the business or proceedings.
- 18.4** The Council of Governors shall meet at least 4 times a year, including an annual meeting no later than 31 October when the Council shall receive and consider the annual accounts, any report of the Auditor on them, and the Trust's annual report. The meetings shall be called by the Secretary after consultation with the Lead Governor.
- 18.5** The Lead Governor (or in the case of the Lead Governor's unavailability the Deputy Lead Governor) or at least 10 governors may, by written notice to the Secretary stating the business to be considered, requisition a meeting of the Council, and the Secretary shall arrange for a meeting to be held as soon as practicable after notice has been given to the governors.
- 18.6** For the purpose of obtaining information about the Trust's performance of its functions or the directors' performance of their duties (and deciding whether to propose a vote on the Trust's or directors' performance), the Council of Governors may require one or more of the directors to attend a meeting.
- 18.7** The Council of Governors may appoint committees consisting wholly or partly of its members to assist it in carrying out its functions as are required by law and to carry out such functions as the Council specifies.
- 18.8** The Council of Governors may appoint members to serve on joint committees with the Board of Directors of committees thereof.
- 18.9** The Council of Governors will establish working groups to carry out such functions as the Council specifies.
- 18.10** These committees, sub-committees or joint committees may call upon outside advisers to help them in their tasks, provided that the financial and other implications of seeking outside advisers have been discussed and agreed by the Board of Directors. Any conflict arising

between the Council of Governors and the Board of Directors under this paragraph will be determined in accordance with para 44 (Dispute Resolution).

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

- 19.1** The Council of Governors shall adopt standing orders for the practice and procedure of the Council. Those in force as at the date of the adoption of this constitution are set out in Annex 7. They may be amended as provided in them.

### **20. Council of Governors – Referral to the Panel**

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

### **21. Council of Governors – Conflicts of Interest of Governors**

- 21.1** 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 they become aware of it. The Standing Orders for the Council of Governors shall make provision for the disclosure of interests and arrangements for the exclusion of a governor declaring any interest from any discussion or consideration of the matter in respect of which an interest has been disclosed.
- 21.2** For the avoidance of doubt a governor has a personal interest where the governor or a person close to the governor has had a personal experience which might be considered to affect the governor's view of the matter in question.

### **22. Council of Governors – Travel Expenses**

- 22.1** The members of the Council of Governors are not entitled to remuneration, but the Trust shall on application pay travelling and other expenses incurred by a member for the purpose of his duties at rates to be decided by the Trust.

### **23. Board of Directors – Composition**

- 23.1** The Trust is to have a Board of Directors, which shall comprise both executive and non-executive directors.
- 23.2** The Board of Directors is to comprise:
- 23.2.1** a non-executive Chair
  - 23.2.2** a minimum of 5 other non-executive directors
  - 23.2.3** a minimum of 5 executive directors to include:
    - 23.2.4** One of the Executive Directors shall be the Chief Executive.
    - 23.2.5** The Chief Executive shall be the Accounting Officer.
    - 23.2.6** One of the Executive Directors shall be the Chief Finance Officer
    - 23.2.7** One of the Executive Directors shall be the Managing Director
- 23.3** One of the executive directors must be a qualified medical practitioner or a registered dentist (within the meaning of the Dentists Act 1984) and one must be a registered nurse or midwife.
- 23.4** The number of non-executive directors including the Chair must always exceed the number of executive directors. At any meeting where there is parity of non-executive and executive directors the Chair, or in his absence the Deputy Chair, shall have a casting vote.
- 23.5** Only a member of a public constituency or the patients' constituency is eligible for appointment as a non-executive Director.

### **24. Board of Directors – General Duty**

- 24.1** 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.

## **25. Board of Directors – Appointment and removal of Chair and Non-Executive Directors, including Associate Non-Executive Directors**

- 25.1** The Council of Governors at a general meeting of the Council of Governors shall appoint or remove the Chair of the Trust and the other non-executive directors, including Associate Non-Executive Directors.
- 25.2** Removal of the Chair or any other non-executive director, including Associate Non-Executive Directors shall require the approval of 75% of the members of the Council of Governors (in person or virtual attendance).
- 25.3** The Standing Orders of the Council shall provide for nomination committees to identify appropriate candidates for appointment as Chair and as non-executive directors.

## **26. Board of Directors – Deputy Chair**

- 26.1** After consultation with the Council of Governors the Board of Directors shall appoint one of the non-executive directors to be the Deputy Chair. The Deputy Chair shall also have the functions previously exercised by the Senior Independent Director, namely in particular to act as a means of communication between the non-executive directors and the governors.

## **27. Board of Directors – Appointment and removal of the Chief Executive and Executive Directors**

- 27.1** The non-executive directors shall appoint or remove the Chief Executive. All appointments must satisfy the requirements of Regulation 5: Fit and Proper Persons: Directors of the Health and Social Care Act 2008 (Regulated Activities Regulations 2014 including all future amendments to the regulation).
- 27.2** The appointment of the Chief Executive shall require the approval of the Council of Governors.
- 27.3** A committee consisting of the Chair, the Chief Executive and the other non-executive directors shall appoint or remove the other executive directors. All appointments must satisfy the requirements of Regulation 5: Fit and Proper Persons: Directors of the Health and Social Care Act 2008 (Regulated Activities Regulations 2014 including all future amendments to the regulation).

## **28. Board of Directors – appointment and removal of the Company Secretary**

- 28.1** The whole Board shall appoint or remove the Company Secretary (Director of Corporate Governance)

## **29. Board of Directors – Disqualification**

- 29.1** The following may not be appointed or continue as a member of the Board of Directors:
- 29.1.1** a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged.
  - 29.1.2** 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.
  - 29.1.3** a person who within the preceding five years has been convicted in the British Islands of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him.
  - 29.1.4** The persons referred in Annex 9.

## **30. Board of Directors – Meetings**

- 30.1** Before holding a meeting, the Board of Directors must send a copy of the agenda of the meeting to the Council of Governors.

- 30.2** As soon as practical after holding a meeting the Board of Directors must send a copy of the minutes of the meeting to the Council of Governors.
- 30.3** Meetings of the Board of Directors shall be open to members of the public.
- 30.4** Members of the public may be excluded from all or any part of a meeting by a resolution of the Board for special reasons, namely that publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted or for other special reasons stated in the resolution and arising from the nature of the business or proceedings.

### **31. Board of Directors – Standing orders**

- 31.1** The standing orders for the practice and procedure of the Board of Directors are attached at Annex 8. They may be amended as provided in them.

### **32. Board of Directors – Conflicts of Interest of Directors**

- 32.1** The duties that a director of the Trust has by virtue of being a director include in particular–
  - 32.1.1** a duty to avoid a situation in which the director has (or can have) a direct or indirect interest that conflicts (or may possibly conflict) with the interests of the Trust.
  - 32.1.2** a duty not to accept a benefit from a third party by reason of being a director or by reason of doing or not doing anything in that capacity.
- 32.2** The duty referred to in sub-paragraph 31.1.1 is not infringed if the situation cannot reasonably be regarded as likely to give rise to a conflict of interest.
- 32.3** The duty referred to in sub-paragraph 31.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- 32.4** In sub-paragraph 31.1.2 ‘third party’ means a person other than the Trust or a person acting on its behalf.
- 32.5** If a director of the Trust has in any way a direct or indirect interest in a proposed transaction or arrangement with the Trust, the director must declare the nature and extent of that interest to the other directors before the Trust enters into the transaction or arrangement.
- 32.6** If a declaration under this paragraph proves to be, or becomes, inaccurate or incomplete, a further declaration must be made.
- 32.7** Any declaration required by this paragraph must be made before the trust enters into the transaction or arrangement.
- 32.8** This paragraph does not require a declaration of an interest of which the director is not aware, or where the director is not aware of the transaction or arrangement in question.
- 32.9** A director need not declare an interest –
  - 32.9.1** if it cannot be reasonably regarded as likely to give rise to a conflict of interest.
  - 32.9.2** if, or to the extent that, the directors are already aware of it.
  - 32.9.3** if, or to the extent that, it concerns terms of the director’s appointment that have been or are to be considered by a meeting of the Board of Directors, or by a committee of the directors appointed for the purpose under the constitution.

### **33. Board of Directors – Remuneration and Terms of Office**

- 33.1** The Council of Governors shall decide at a general meeting of the Council the remuneration and allowances, and the other terms and conditions of office, of the Chair and the other non-executive directors.
- 33.2** The Trust shall establish a committee of non-executive directors to decide the remuneration and allowances, and the other terms of office, of the Chief Executive and the other executive directors.
- 33.3** The Chair and other non-executive directors should not remain in post beyond nine years from the date of their first appointment to the board of directors and any decision to extend a term beyond six years for a valid reason and should be subject to rigorous review which may be renewed by the Council. To facilitate effective succession planning and the development of a diverse board, this period of nine years can be extended for a limited time, particularly where on appointment a chair was an existing non-executive director. The need for all extensions should be clearly explained and should have been agreed with NHS England. A

NED becoming chair after a three-year term as a non-executive director would not trigger a review after three years in post as chair.

### **34. Registers**

- 34.1** The Trust shall have a register of members, showing in respect of each member, the constituency to which the member belongs and, where there are classes within it, the class to which he belongs.
- 34.2** a register of members of the Council of Governors.
- 34.3** a register of interests of Governors.
- 34.4** a register of interests of directors.
- 34.5** and a register of directors.

### **35. Registers – Inspection and copies**

- 35.1** The Trust shall make the registers specified in paragraph 33 above available for inspection by members of the public, except in the circumstances set out in the next sub-paragraph or as otherwise prescribed by regulations.
- 35.2** The Trust shall not make any part of its registers available for inspection by members of the public which shows details of:
  - 35.2.1** any member of the Rest of England Constituency; or
  - 35.2.2** any other member of the Trust if the member so requests.
- 35.3** So far as the registers are required to be made available:
  - 35.3.1** They are to be available for inspection free of charge at all reasonable times; and
  - 35.3.2** A person who requests a copy or extract from the registers is to be provided with a copy or extract.
- 35.4** If the person requesting a copy or extract is not a member of the trust, the Trust may impose a reasonable charge for doing so.

### **36. Documents available for public inspection**

- 36.1** The Trust shall make the following documents available for inspection by members of the public free of charge at all reasonable times:
  - 36.1.1** A copy of the current constitution.
  - 36.1.2** A copy of the latest annual accounts and of any report of the auditor on them; and
  - 36.1.3** A copy of the latest annual report
- 36.2** The Trust shall also make the following documents available for inspection by members of the public free of charge at all reasonable times:
  - 36.2.1** A copy of any order made under section 65D (appointment of special trust administrator), 65J (power to extend time), 65KC (action following Secretary of State's rejection of final report), 65L (trusts coming out of administration) or 65LA (trusts to be dissolved) of the 2006 Act.
  - 36.2.2** A copy of any report laid under section 65D (appointment of trust special administrator) of the 2006 Act.
  - 36.2.3** A copy of any information published under section 65D (appointment of special trust administrator) of the 2006 Act.
  - 36.2.4** A copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act.
  - 36.2.5** A copy of any statement provided under section 65F (administrator's draft report) of the 2006 Act.
  - 36.2.6** A copy of any notice published under section 65F (administrator's draft report), 65G (consultation plan), 65H (consultation requirements), 65J (power to extend time), 65KA (Monitor's decision), 65KB (Secretary of State's response to Monitor's decision), 65KC (action following Secretary of State's rejection of final report) or 65KD (Secretary of State's response to re-submitted final report) of the 2006 Act.
  - 36.2.7** A copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act.
  - 36.2.8** A copy of any final report published under section 65I (administrator's final report) of the 2006 Act.

- 36.2.9** A copy of any statement published under section 65J (power to extend time), or 65KC (action following Secretary of State's rejection of final report) of the 2006 Act.
- 36.2.10** A copy of any information published under section 65M (replacement of trust special administrator) of the 2006 Act.
- 36.3** Any person who requests a copy or extract from any of the above documents is to be provided with a copy.
- 36.4** If the person requesting an extract or copy is not a member of the Trust, the Trust may impose a reasonable charge for doing so.

### **37. Auditor**

- 37.1** The Trust shall have an auditor.
- 37.2** The Council of Governors shall appoint or remove the auditor at a general meeting of the Council.
- 37.3** The auditor must be qualified to act as auditor in accordance with paragraph 23 of schedule 7 to the 2006 Act.
- 37.4** The auditor shall comply with schedule 10 of the 2006 Act and shall have the rights and powers there set out.
- 37.5** The Trust shall provide the auditor with every facility and all information which he may reasonably require for the purpose of his functions.

### **38. Audit Committee**

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

### **39. Accounts**

- 39.1** The Trust must keep proper accounts in such form as NHS England may with the approval of the Treasury direct and proper records in relation to those accounts.
- 39.2** NHS England may, with the approval of the Secretary of State for Health, give directions to the Trust as to the content and form of its accounts.
- 39.3** the accounts are to be audited by the Trust's auditor.
- 39.4** The following documents will be made available to the Comptroller and Auditor General for examination at his request:
  - 39.4.1** the accounts.
  - 39.4.2** the records relating to them; and
  - 39.4.3** any report of the Auditor on them
- 39.5** The Trust (through its Chief Executive and accounting officer) is to prepare in respect of each Financial Year annual accounts in such form as NHS England may with the approval of the Secretary of State for Health direct.
- 39.6** NHS England may with the approval of the Secretary of State for Health direct the Trust:
  - 39.6.1** to prepare accounts in respect of such period or periods as may be specified in the direction; and/or
  - 39.6.2** that any accounts prepared by it by virtue of sub-paragraph 38.6.1 above are to be audited in accordance with such requirements as may be specified in the direction.
- 39.7** In preparing its annual accounts or in preparing any accounts by virtue of sub-paragraph 44.6.1 above, the Trust is to comply with any directions given by NHS England with the approval of the Secretary of State for Health as to:
  - 39.7.1** the methods and principles according to which the annual accounts are to be prepared; and/or
  - 39.7.2** the content and form of the annual accounts
- 39.8** The Trust must –
  - 39.8.1** lay a copy of the annual accounts, and any report of the Auditor on them, before Parliament; and
  - 39.8.2** send copies of the annual accounts, and any report of the Auditor on them to NHS England within such a period as NHS England may direct

- 39.9** The Trust must send a copy of any accounts prepared by virtue of paragraph 38.6 above and a copy of any report of the Auditor to NHS England within such a period as NHS England may direct.
- 39.10** The functions of the Trust referred to in this paragraph 38 shall be delegated to the accounting officer.

#### **40. Annual Report, Forward Plans and Non-NHS work**

- 40.1** The Trust shall prepare an annual report and send it to NHS England.
- 40.2** The annual report must give:
- 40.2.1** information on any steps taken by the Trust to secure that (taken as a whole) the actual membership of any public constituency and of the patients' constituency is representative of those eligible for membership.
  - 40.2.2** information on any occasions in the period to which the report relates on which the council of governors exercised its power to require one or more of the directors to attend a meeting as provided by paragraph 18.5 here of
  - 40.2.3** information on the corporation's policy on pay and on the work of the committee established under paragraph 32(2) hereof and such other procedures as the corporation has on pay.
  - 40.2.4** information on the remuneration of the directors and on the expenses of the governors and the directors
  - 40.2.5** any other information that NHS England or requires.
- 40.3** The Trust shall give information as to its forward planning in respect of each financial year to NHS England
- 40.4** the document containing the information with respect to forward planning (referred to above) shall be prepared by the directors.
- 40.5** In preparing the document, the directors shall have regard to the views of the governors, and the directors shall provide the governors with information appropriate for them to be able to form their views.
- 40.6** Each forward plan must include information about:
- 40.6.1** the activities other than the provision of goods and services for the purposes of the health service in England that the Trust proposes to carry on, and
  - 40.6.2** the income it expects to receive from doing so.
- 40.7** Where a forward plan contains a proposal that the trust carry on an activity of the kind mentioned in sub-paragraph 39.6.1, the Council of Governors must:
- 40.7.1** determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfilment by the Trust of its principal purpose or the performance of its other functions, and
  - 40.7.2** notify the directors of the Trust of its determination.
- 40.8** If the Trust proposes to increase by 5% or more the proportion of its total income in any financial year attributable to activities other than the provision of goods and services for the purposes of health service in England, the Trust may implement the proposal only if more than half of the members of the Council of Governors of the Trust voting approve its implementation.

#### **41. Presentation of the Annual Accounts and Reports to the Governors and Members**

- 41.1** The following documents are to be presented to the Council of Governors at a general meeting of the Council:
- 41.1.1** the annual accounts
  - 41.1.2** any report of the auditor on them
  - 41.1.3** the annual report.
- 41.2** The documents shall also be presented to the members of the Trust at the Annual Members' Meeting by at least one member of the Board of Directors in attendance.
- 41.3** The Trust may combine a meeting of the Council of Governors convened for the purposes of sub-paragraph 40.1 with the Annual Members' Meeting.

#### **42. Instruments**

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

### 43. Amendment of the Constitution

- 43.1 The Trust may make amendments of its constitution only if –
  - 43.1.1 more than half of the members of the Council of Governors of the Trust voting approve the amendments, and
  - 43.1.2 more than half of the members of the Board of Directors of the Trust voting approve the amendments.
- 43.2 Amendments made under paragraph 42.1 take effect as soon as the conditions in that paragraph are satisfied, but the amendment has no effect in so far as the constitution would, as a result, not accord with Schedule 7 of the 2006 Act.
- 43.3 Where amendment is made to the constitution in relation to the powers or duties of the Council of Governors (or otherwise with respect to the role that the Council of Governors has as part of the Trust) –
  - 43.3.1 at least one member of the Council of Governors must attend the next Annual Members' Meeting and present the amendment, and
  - 43.3.2 the Trust must give the members an opportunity to vote on whether they approve the amendment.
- 43.4 If more than half of the members voting approve the amendment, the amendment continues to have effect. Otherwise, it ceases to have effect and the Trust must take such steps as are necessary as a result.
- 43.5 Amendments by the Trust of its constitution are to be notified to NHS England. For the avoidance of doubt, NHS England's functions do not include a power or duty to determine whether or not the constitution, as a result of the amendments, accords with Schedule 7 of the 2006 Act.

### 44. Mergers etc. and Significant Transactions

- 44.1 The Trust may only apply for a merger, acquisition, separation or dissolution, as referred to in sections 56,56A, 56B, and 57A of the 2006 Act with the approval of more than half of the members of the Council of Governors.
- 44.2 The Trust may only enter 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. The threshold for a significant transaction differs depending upon whether the transaction relates to UK or non-UK healthcare investment or disinvestment.
- 44.3 A Significant Transaction is a transaction deemed to be high risk and will include Statutory Transactions, (as set out in clause 44.1), and a transaction which the Trust's Finance Director, reporting to the Board, determines is covered by ANY of the following:
  - 44.3.1 Assets, (i.e. the gross assets of the proposed transaction divided by the gross assets of the Trust), will exceed or be reduced by 10% or more
  - 44.3.2 Income, (i.e. the income of the proposed transaction divided by the operating income of the Trust), will exceed or be reduced by 10%, or more
  - 44.3.3 Any transaction that might lead to the Trust breaching its licence conditions
  - 44.3.4 would be likely to put at risk the Trust's ability to provide its services as a whole, or a significant part of its services, to the appropriate regulatory standard.
  - 44.3.5 would be likely to put at risk the Trust's ability to maintain the minimum required financial risk rating/ continuity of service risk rating.
- 44.4 In deciding whether to approve a proposed significant transaction the Council will:
  - 44.4.1 act in accordance with its judgment of the best interests of the Trust; and
  - 44.4.2 have regard to the risks the transaction might entail and the adequacy of steps proposed to mitigate those risks, and to the risks which not entering into the transaction might entail.
- 44.5 If the Council votes not to approve a significant transaction, the reasons advanced in the course of the Council's discussion of the transaction for and against approval shall be recorded in the minutes.

- 44.6** The Board shall inform the Council of transactions not featuring in the annual estimates, capital programme or annual plan for the year which the Board is considering which involve a sum which is greater than 2% of the Trust's income or capital in the previous year.

#### **45. Indemnity**

- 45.1** Members of the Council of Governors and of the Board of Directors who act honestly and in good faith will be indemnified by the Trust against any civil liability which is incurred in the execution or purported execution of their functions relating to the Trust, save where they have acted recklessly. The Trust shall take out insurance against liability under this indemnity.

#### **46. Dispute Resolution**

- 46.1** In the event of a dispute arising between the Board of Directors and the Council, the Chair shall take the advice of the Secretary and such other advice as he sees fit, and he shall confer with the Vice-Chair and the Lead Governor and shall seek to resolve the dispute.
- 46.2** If the Chair is unable to do so, he shall appoint a committee consisting of an equal number of directors and governors to consider the matter and to make recommendations to the Board and Council with a view to resolving the dispute.
- 46.3** If the dispute is not resolved, the Chair may refer the dispute to an external mediator appointed by the Centre for Dispute Resolution, or by such other organisation as he considers appropriate.

## ANNEX 1 – THE PUBLIC CONSTITUENCIES

### Public Constituency (paragraph 7)

| Class/Constituency    | Number of Governors | Minimum numbers of members |
|-----------------------|---------------------|----------------------------|
| North Dorset          | 2                   | 50                         |
| Kennet                | 1                   | 50                         |
| New Forest            | 1                   | 50                         |
| Salisbury City        | 3                   | 50                         |
| South Wiltshire Rural | 6                   | 50                         |
| East Dorset           | 1                   | 50                         |
| Rest of England       | 1                   | 50                         |
| <b>Total</b>          | <b>15</b>           |                            |

| Class/Constituency | Area  |
|--------------------|---|
| North Dorset       | <p>Part of the area formerly covered by North Dorset District Council, comprising the following electoral wards:</p> <ul style="list-style-type: none"> <li>▪ Beacon</li> <li>▪ Blandford</li> <li>▪ Cranborne Chase</li> <li>▪ Gillingham</li> <li>▪ Hill Forts &amp; Upper Tarrants</li> <li>▪ Shaftesbury Town</li> <li>▪ Stalbridge &amp; Marnhull (Marnhull parish)</li> <li>▪ Sturminster Newton</li> </ul>   |
| Kennet             | <p>The area formerly covered by Kennet District Council comprising the following electoral wards:</p> <ul style="list-style-type: none"> <li>• Bromham, Rowde &amp; Potterne</li> <li>• Devizes East</li> <li>• Devizes North</li> <li>• Devizes &amp; Roundway South</li> <li>• Ludgershall &amp; Perham Down</li> <li>• Pewsey</li> <li>• Pewsey Vale</li> <li>• Roundway</li> <li>• Summerham &amp; Seend</li> <li>• The Lavingtons &amp; Erlestoke</li> <li>• The Collingbournes &amp; Netheravon</li> <li>• Tidworth</li> <li>• Urchfont &amp; The Cannings</li> </ul> |
| New Forest         | <p>The following electoral wards within New Forest District Council:</p> <ul style="list-style-type: none"> <li>▪ Downlands &amp; Forest</li> <li>▪ Fordingbridge</li> <li>▪ Forest Northwest</li> <li>▪ Ringwood East &amp; Sopley</li> <li>▪ Ringwood North</li> <li>▪ Ringwood South</li> </ul>  |

|                       |  |
|-----------------------|--|
|                       |  |
| Salisbury City        | <p>The following electoral wards formerly covered by Salisbury District Council:</p> <ul style="list-style-type: none"> <li>• Salisbury Bemerton</li> <li>• Salisbury Fisherton &amp; Bemerton Village</li> <li>• Salisbury Harnham</li> <li>• Salisbury St. Edmund's &amp; Milford</li> <li>• Salisbury St. Francis &amp; Stratford</li> <li>• Salisbury St. Marks &amp; Bishopdown</li> <li>• Salisbury St. Martin's &amp; Cathedral</li> <li>• Salisbury St. Paul's</li> </ul>  |
| South Wiltshire Rural | <p>The following electoral wards</p> <ul style="list-style-type: none"> <li>• Alderbury &amp; Whiteparish</li> <li>• Amesbury East</li> <li>• Amesbury West</li> <li>• Bourne &amp; Woodford Valley</li> <li>• Bulford, Allington &amp; Figheldean</li> <li>• Downton &amp; Ebbel Valley</li> <li>• Durrington &amp; Larkhill</li> <li>• Ethandune</li> <li>• Fovant &amp; Chalke Valley</li> <li>• Laverstock, Ford &amp; Old Sarum</li> <li>• Mere</li> <li>• Nadder &amp; East Knoyle</li> <li>• Redlynch &amp; Landford</li> <li>• Till &amp; Wylde Valley</li> <li>• Tisbury</li> <li>• Warminster Broadway</li> <li>• Warminster Copheap &amp; Wylde</li> <li>• Warminster East</li> <li>• Warminster West</li> <li>• Warminster Without</li> <li>• Westbury East</li> <li>• Westbury North</li> <li>• Westbury West</li> <li>• Wilton &amp; Lower Wylde Valley</li> <li>• Winterslow</li> </ul> |
| East Dorset           | <p>The following electoral wards within the area formerly covered by East Dorset District Council:</p> <ul style="list-style-type: none"> <li>• Cranborne &amp; Alderholt</li> <li>• St. Leonards &amp; St. Ives</li> <li>• Stour &amp; Allen Vale (Horton, Holt, Hinton, &amp; Charbury parishes)</li> <li>• Verwood</li> <li>• West Moors &amp; Three Legged Cross</li> </ul>  |
| Rest of England       | All other areas of England not covered above   |

## **ANNEX 2 – THE STAFF CONSTITUENCY**

*(See paragraph 6)*

*The Staff Constituency is divided into 5 classes as set out below and the classes shall contain the groups set out by each.*

| <b>STAFF CLASSES</b>                                   | <b>SUBGROUPS WITHIN EACH CLASS</b>  |
|--|---|
| <b>Registered Medical and Dental Practitioners</b>     |   |
| <b>Nurses and Midwives</b>                             | All Nurses and Nursing Auxiliaries<br>Health Care Assistants (Nursing)  |
| <b>Scientific, Therapeutic and Technical Staff</b>     | Occupational Therapists and Helpers<br>Orthoptists<br>Physiotherapists and Helpers<br>Art/Music/Drama Therapists<br>Speech and Language Therapists and Helpers<br>Psychologists and Psychology Technicians<br>Psychotherapists<br>Medical Physicists and Technicians<br>Pharmacists and Pharmacy Technicians<br>Dental Technicians<br>Operating Department Practitioners<br>Social Workers<br>Chaplains<br>Clinical Scientists<br>Biomedical Scientists and Technical Staff<br>Geneticists and Technicians<br>Audiology Staff<br>Cardiographers and Support Staff |
| <b>Administrative, Facilities and Managerial Staff</b> | Ancillary Staff<br>Works and Maintenance Staff<br>Ambulance Staff   |
| <b>Voluntary Staff</b>                                 |   |

1. The minimum number of members of each class shall be 10.
2. The Secretary to the Trust shall assign persons to the classes set out above in accordance with the groups set out by each. In case of any difficulty the Secretary shall have discretion to allocate the person to the class which is in his opinion the most appropriate.
3. The Secretary shall maintain a register of volunteer schemes designated for the purposes of membership of the Trust.
4. A volunteer is a person who carries out functions on behalf of the Trust on a voluntary basis under a scheme on the register referred to in paragraph 4 above.
5. Where a person is eligible to be included both in the volunteers class and another class, the Secretary shall assign the person to that other class.

## **ANNEX 3 – THE PATIENTS' CONSTITUENCY**

The Trust has no Patients' Constituency

## **ANNEX 4 - COMPOSITION OF COUNCIL OF GOVERNORS**

(See paragraph 13)

### **Public Governors**

1. There shall be 15 public governors as set out in Annex 1.

### **Staff Governors**

2. There shall be 5 staff governors, one to be elected by the members of each class set out in Annex 2 from the members of the class in question.

### **Appointed Governors**

3. There shall be 4 appointed governors:

- **Local Authority**

**3.1** As stated in paragraph 9(4) of the Schedule 7 of the 2006 Act, Wiltshire Council may appoint one governor by notice in writing to the chair, signed by the senior executive of the Council. For the avoidance of doubt, the person appointed shall be a councillor of Wiltshire Council.

- **Partnership Organisations**

**3.2** There shall be a maximum of five partnership organisations (or successor organisations) who may appoint one governor by notice in writing, signed by the chief executive (or equivalent) of that organisation and delivered to the chair. These partnership organisations are decided by the Board of Directors and Council of Governors.

## **ANNEX 5 - THE MODEL ELECTION RULES**

[See paragraph 14]

### **PART 1: INTERPRETATION**

1. Interpretation

### **PART 2: TIMETABLE FOR ELECTION**

2. Timetable
3. Computation of time

### **PART 3: RETURNING OFFICER**

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

### **PART 4: STAGES COMMON TO CONTESTED AND UNCONTESTED ELECTIONS**

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

### **PART 5: CONTESTED ELECTIONS**

19. Poll to be taken by ballot
20. The ballot paper
21. The declaration of identity (public and patient constituencies)

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

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

#### *The poll*

27. Eligibility to vote
28. Voting by persons who require assistance
29. Spoilt ballot papers and spoilt text message votes
30. Lost voting information
31. Issue of replacement voting information
32. ID declaration form for replacement ballot papers (public and patient constituencies)
33. Procedure for remote voting by internet

- 34. Procedure for remote voting by telephone
- 35. Procedure for remote voting by text message

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

- 36. Receipt of voting documents
- 37. Validity of votes
- 38. Declaration of identity but no ballot (public and patient constituency)
- 39. De-duplication of votes
- 40. Sealing of packets

#### **PART 6: COUNTING THE VOTES**

- 41- [NOT USED]
- 42. Arrangements for counting of the votes
- 43. The count
- FPP44. Rejected ballot papers and rejected text voting records
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## PART 1: INTERPRETATION

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### 1. Interpretation

1.1 In these rules, unless the context otherwise requires:

- “**2006 Act**” means the National Health Service Act 2006;
- “**corporation**” means the public benefit corporation subject to this constitution;
- “**council of governors**” means the council of governors of the corporation;
- “**declaration of identity**” has the meaning set out in rule 21.1;
- “**election**” means an election by a constituency, or by a class within a constituency, to fill a vacancy among one or more posts on the council of governors;
- “**e-voting**” means voting using either the internet, telephone or text message;
- “**e-voting information**” has the meaning set out in rule 24.2;
- “**ID declaration form**” has the meaning set out in Rule 21.1; “**internet voting record**” has the meaning set out in rule 26.4(d);
- “**internet voting system**” means such computer hardware and software, data other equipment and services as may be provided by the returning officer for the purpose of enabling voters to cast their votes using the internet;
- “**lead governor**” means the governor nominated by the corporation to fulfil the role described in Appendix B to The NHS Foundation Trust Code of Governance (Monitor, December 2013) or any later version of such code.
- “**list of eligible voters**” means the list referred to in rule 22.1, containing the information in rule 22.2;
- “**method of polling**” means a method of casting a vote in a poll, which may be by post, internet, text message or telephone;
- “**Monitor**” means the corporate body known as Monitor as provided by section 61 of the 2012 Act;
- “**numerical voting code**” has the meaning set out in rule 64.2(b)
- “**polling website**” has the meaning set out in rule 26.1;
- “**postal voting information**” has the meaning set out in rule 24.1;
- “**telephone short code**” means a short telephone number used for the purposes of submitting a vote by text message;

- “*telephone voting facility*” has the meaning set out in rule 26.2;
- “*telephone voting record*” has the meaning set out in rule 26.5 (d);
- “*text message voting facility*” has the meaning set out in rule 26.3;
- “*text voting record*” has the meaning set out in rule 26.6 (d);
- “*the telephone voting system*” means such telephone voting facility as may be provided by the returning officer for the purpose of enabling voters to cast their votes by telephone;
- “*the text message voting system*” means such text messaging voting facility as may be provided by the returning officer for the purpose of enabling voters to cast their votes by text message;
- “*voter ID number*” means a unique, randomly generated numeric identifier allocated to each voter by the Returning Officer for the purpose of e-voting,
- “*voting information*” means postal voting information and/or e-voting information

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

## PART 2: TIMETABLE FOR ELECTIONS

### 2. Timetable

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

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

### 3. Computation of time

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

- a) a Saturday or Sunday;
  - b) Christmas day, Good Friday, or a bank holiday, or
  - c) a day appointed for public thanksgiving or mourning, shall be disregarded, and any such day shall not be treated as a day for the purpose of any proceedings up to the completion of the poll, nor shall the returning officer be obliged to proceed with the counting of votes on such a day.
- 3.2** In this rule, “bank holiday” means a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in England and Wales.

## **PART 3: RETURNING OFFICER**

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### 4. Returning Officer

- 4.1** Subject to rule 69, the returning officer for an election is to be appointed by the corporation.
- 4.2** Where two or more elections are to be held concurrently, the same returning officer may be appointed for all those elections.

### 5. Staff

- 5.1** Subject to rule 69, the returning officer may appoint and pay such staff, including such technical advisers, as he or she considers necessary for the purposes of the election.

### 6. Expenditure

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

### 7. Duty of co-operation

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

## **PART 4: STAGES COMMON TO CONTESTED AND UNCONTESTED ELECTIONS**

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### 8. Notice of election

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

### 9. Nomination of candidates

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

**9.2** The returning officer:

a) is to supply any member of the corporation with a nomination form, and

b) is to prepare a nomination form for signature at the request of any member of the corporation, but it is not necessary for a nomination to be on a form supplied by the returning officer and a nomination can, subject to rule 13, be in an electronic format.

## 10. Candidate's particulars

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

a) full name,

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

c) constituency, or class within a constituency, of which the candidate is a member.

## 11. Declaration of interests

**11.1** The nomination form must state:

a) any financial interest that the candidate has in the corporation, and

b) whether the candidate is a member of a political party, and if so, which party, and if the candidate has no such interests, the paper must include a statement to that effect.

## 12. Declaration of eligibility

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

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

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

## 13. Signature of candidate

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

a) they wish to stand as a candidate,

b) their declaration of interests as required under rule 11, is true and correct, and

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

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

## 14. Decisions as to the validity of nomination

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

a) decides that the candidate is not eligible to stand,

b) decides that the nomination form is invalid,

c) receives satisfactory proof that the candidate has died, or

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

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

a) that the paper is not received on or before the final time and date for return of nomination forms, as specified in the notice of the election,

b) that the paper does not contain the candidate's particulars, as required by rule 10;

c) that the paper does not contain a declaration of the interests of the candidate, as required by

rule 11,

(d) that the paper does not include a declaration of eligibility as required by rule 12, or

(e) that the paper is not signed and dated by the candidate, if required by rule 13.

- 14.3** The returning officer is to examine each nomination form as soon as is practicable after he or she has received it and decide whether the candidate has been validly nominated.
- 14.4** Where the returning officer decides that a nomination is invalid, the returning officer must endorse this on the nomination form, stating the reasons for their decision.
- 14.5** The returning officer is to send notice of the decision as to whether a nomination is valid or invalid to the candidate at the contact address given in the candidate's nomination form. If an e-mail address has been given in the candidate's nomination form (in addition to the candidate's postal address), the returning officer may send notice of the decision to that address.

## 15. Publication of statement of candidates

- 15.1** The returning officer is to prepare and publish a statement showing the candidates who are standing for election.
- 15.2** The statement must show:
- the name, contact address (which shall be the candidate's postal address), and constituency or class within a constituency of each candidate standing, and
  - the declared interests of each candidate standing, as given in their nomination form.
- 15.3** The statement must list the candidates standing for election in alphabetical order by surname.
- 15.4** The returning officer must send a copy of the statement of candidates and copies of the nomination forms to the corporation as soon as is practicable after publishing the statement.

## 16. Inspection of statement of nominated candidates and nomination forms

- 16.1** The corporation is to make the statement of the candidates and the nomination forms supplied by the returning officer under rule 15.4 available for inspection by members of the corporation free of charge at all reasonable times.
- 16.2** If a member of the corporation requests a copy or extract of the statement of candidates or their nomination forms, the corporation is to provide that member with the copy or extract free of charge.

## 17. Withdrawal of candidates

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

## 18. Method of election

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

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## 19. Poll to be taken by ballot

- 19.1** The votes at the poll must be given by secret ballot.
- 19.2** The votes are to be counted and the result of the poll determined in accordance with Part 6 of these rules.
- 19.3** The corporation may decide that voters within a constituency or class within a constituency, may, subject to rule 19.4, cast their votes at the poll using such different methods of polling in any combination as the corporation may determine.
- 19.4** The corporation may decide that voters within a constituency or class within a constituency for whom an e-mail address is included in the list of eligible voters may only cast their votes at the poll using an e-voting method of polling.
- 19.5** Before the corporation decides, in accordance with rule 19.3 that one or more e-voting methods of polling will be made available for the purposes of the poll, the corporation must satisfy itself that:
- a) if internet voting is to be a method of polling, the internet voting system to be used for the purpose of the election is:
    - i. configured in accordance with these rules; and
    - ii. will create an accurate internet voting record in respect of any voter who casts his or her vote using the internet voting system.
  - b) if telephone voting to be a method of polling, the telephone voting system to be used for the purpose of the election is:
    - i. configured in accordance with these rules; and
    - ii. will create an accurate telephone voting record in respect of any voter who casts his or her vote using the telephone voting system.
  - c) if text message voting is to be a method of polling, the text message voting system to be used for the purpose of the election is:
    - i. configured in accordance with these rules; and
    - ii. will create an accurate text voting record in respect of any voter who casts his or her vote using the text message voting system.

## 20. The ballot paper

- 20.1** The ballot of each voter (other than a voter who casts his or her ballot by an e-voting method of polling) is to consist of a ballot paper with the persons remaining validly nominated for an election after any withdrawals under these rules, and no others, inserted in the paper.
- 20.2** Every ballot paper must specify:
- a) the name of the corporation,
  - b) the constituency, or class within a constituency, for which the election is being held,
  - c) the number of members of the council of governors to be elected from that constituency, or class within that constituency,
  - d) the names and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
  - e) instructions on how to vote by all available methods of polling, including the relevant voter's voter ID number if one or more e-voting methods of polling are available,
  - f) if the ballot paper is to be returned by post, the address for its return and the date and time of the close of the poll, and
  - g) the contact details of the returning officer.
- 20.3** Each ballot paper must have a unique identifier.
- 20.4** Each ballot paper must have features incorporated into it to prevent it from being reproduced.

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

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

- a) that the voter is the person:
  - i. to whom the ballot paper was addressed, and/or
  - ii. to whom the voter ID number contained within the e-voting information was allocated,
- b) that he or she has not marked or returned any other voting information in the election, and
- c) the particulars of his or her qualification to vote as a member of the constituency or class within the constituency for which the election is being held,

("declaration of identity")

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

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

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

*Action to be taken before the poll*

## 22. List of eligible voters

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

**22.2** The list is to include, for each member:

- a) a postal address; and,
- b) the member's e-mail address, if this has been provided to which his or her voting information may, subject to rule 22.3, be sent.

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

## 23. Notice of poll

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

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

## 24. Issue of voting information by returning officer

- 24.1** Subject to rule 24.3, as soon as is reasonably practicable on or after the publication of the notice of the poll, the returning officer is to send the following information by post to each member of the corporation named in the list of eligible voters:
- a ballot paper and ballot paper envelope,
  - the ID declaration form (if required),
  - information about each candidate standing for election, pursuant to rule 61 of these rules, and
  - a covering envelope.  
("postal voting information").
- 24.2** Subject to rules 24.3 and 24.4, as soon as is reasonably practicable on or after the publication of the notice of the poll, the returning officer is to send the following information by e-mail and/ or by post to each member of the corporation named in the list of eligible voters whom the corporation determines in accordance with rule 19.3 and/ or rule 19.4 may cast his or her vote by an e-voting method of polling:
- instructions on how to vote and how to make a declaration of identity (if required),
  - the voter's voter ID number,
  - 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,
  - contact details of the returning officer,  
("e-voting information").
- 24.3** The corporation may determine that any member of the corporation shall:
- only be sent postal voting information; or
  - only be sent e-voting information; or
  - be sent both postal voting information and e-voting information.  
for the purposes of the poll.
- 24.4** If the corporation determines, in accordance with rule 22.3, that the e-voting information is to be sent only by e-mail to those members in the list of eligible voters for whom an e-mail address is included in that list, then the returning officer shall only send that information by e-mail.
- 24.5** The voting information is to be sent to the postal address and/ or e-mail address for each member, as specified in the list of eligible voters.

## 25. Ballot paper envelope and covering envelope

- 25.1** The ballot paper envelope must have clear instructions to the voter printed on it, instructing the voter to seal the ballot paper inside the envelope once the ballot paper has been marked.
- 25.2** The covering envelope is to have:
- the address for return of the ballot paper printed on it, and
  - 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 –
- the completed ID declaration form if required, and
  - the ballot paper envelope, with the ballot paper sealed inside it.

## 26. E-voting systems

- 26.1** If internet voting is a method of polling for the relevant election, then the returning officer must provide a website for the purpose of voting over the internet (in these rules referred to as "the polling website").
- 26.2** If telephone voting is a method of polling for the relevant election, then the returning officer must provide an automated telephone system for the purpose of voting by the use of a touch-tone telephone (in these rules referred to as "the telephone voting facility").
- 26.3** If text message voting is a method of polling for the relevant election, then the returning officer must provide an automated text messaging system for the purpose of voting by text message (in

these rules referred to as “the text message voting facility”).

- 26.4** The returning officer shall ensure that the polling website and internet voting system provided will:
- a) require a voter to:
    - i. enter his or her voter ID number; and
    - ii. where the election is for a public or patient constituency, make a declaration of identity; in order to be able to cast his or her vote;
  - b) specify:
    - i. the name of the corporation,
    - ii. the constituency, or class within a constituency, for which the election is being held,
    - iii. the number of members of the council of governors to be elected from that constituency, or class within that constituency,
    - iv. the names and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
    - v. instructions on how to vote and how to make a declaration of identity,
    - vi. the date and time of the close of the poll, and
    - vii. the contact details of the returning officer.
  - c) prevent a voter from voting for more candidates than he or she is entitled to at the election.
  - d) create a record ("internet voting record") that is stored in the internet voting system in respect of each vote cast by a voter using the internet that comprises of-
    - i. the voter’s voter ID number.
    - ii. the voter’s declaration of identity (where required).
    - iii. the candidate or candidates for whom the voter has voted; and
    - iv. the date and time of the voter’s vote,
  - e) if the voter’s vote has been duly cast and recorded, provide the voter with confirmation of this; and
  - f) prevent any voter from voting after the close of poll.
- 26.5** The returning officer shall ensure that the telephone voting facility and telephone voting system provided will:
- a) require a voter to
    - i. enter his or her voter ID number in order to be able to cast his or her vote; and
    - ii. where the election is for a public or patient constituency, make a declaration of identity.
  - b) specify:
    - i. the name of the corporation,
    - ii. the constituency, or class within a constituency, for which the election is being held,
    - iii. the number of members of the council of governors to be elected from that constituency, or class within that constituency,
    - iv. instructions on how to vote and how to make a declaration of identity,
    - v. the date and time of the close of the poll, and
    - vi. the contact details of the returning officer.
  - c) prevent a voter from voting for more candidates than he or she is entitled to at the election.
  - d) create a record ("telephone voting record") that is stored in the telephone voting system in respect of each vote cast by a voter using the telephone that comprises of:
    - i. the voter’s voter ID number.
    - ii. the voter’s declaration of identity (where required).
    - iii. the candidate or candidates for whom the voter has voted; and
    - iv. the date and time of the voter’s vote
  - e) if the voter’s vote has been duly cast and recorded, provide the voter with confirmation of this.
  - f) prevent any voter from voting after the close of poll.
- 26.6** The returning officer shall ensure that the text message voting facility and text messaging voting system provided will:
- a) require a voter to:
    - i. provide his or her voter ID number; and
    - ii. where the election is for a public or patient constituency, make a declaration of identity; in order to be able to cast his or her vote;
  - b) prevent a voter from voting for more candidates than he or she is entitled to at the election;
  - c) create a record ("text voting record") that is stored in the text messaging voting system in

- respect of each vote cast by a voter by text message that comprises of:
- i. the voter's voter ID number;
  - ii. the voter's declaration of identity (where required);
  - iii. the candidate or candidates for whom the voter has voted; and
  - iv. the date and time of the voter's vote
- d) if the voter's vote has been duly cast and recorded, provide the voter with confirmation of this;
- e) prevent any voter from voting after the close of poll.

### ***The poll***

## 27. Eligibility to vote

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

## 28. Voting by persons who require assistance

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

## 29. Spoilt ballot papers and spoilt text message votes

- 29.1** If a voter has dealt with his or her ballot paper in such a manner that it cannot be accepted as a ballot paper (referred to as a "spoilt ballot paper"), that voter may apply to the returning officer for a replacement ballot paper.
- 29.2** On receiving an application, the returning officer is to obtain the details of the unique identifier on the spoilt ballot paper, if he or she can obtain it.
- 29.3** The returning officer may not issue a replacement ballot paper for a spoilt ballot paper unless he or she:
- a) is satisfied as to the voter's identity; and
  - b) has ensured that the completed ID declaration form, if required, has not been returned.
- 29.4** After issuing a replacement ballot paper for a spoilt ballot paper, the returning officer shall enter in a list ("the list of spoilt ballot papers"):
- a) the name of the voter, and
  - b) the details of the unique identifier of the spoilt ballot paper (if that officer was able to obtain it), and
  - c) the details of the unique identifier of the replacement ballot paper.
- 29.5** If a voter has dealt with his or her text message vote in such a manner that it cannot be accepted as a vote (referred to as a "spoilt text message vote"), that voter may apply to the returning officer for a replacement voter ID number.
- 29.6** On receiving an application, the returning officer is to obtain the details of the voter ID number on the spoilt text message vote, if he or she can obtain it.
- 29.7** The returning officer may not issue a replacement voter ID number in respect of a spoilt text message vote unless he or she is satisfied as to the voter's identity.
- 29.8** After issuing a replacement voter ID number in respect of a spoilt text message vote, the returning officer shall enter in a list ("the list of spoilt text message votes"):
- a) the name of the voter, and
  - b) the details of the voter ID number on the spoilt text message vote (if that officer was able to obtain it), and
  - c) the details of the replacement voter ID number issued to the voter.

## 30. Lost voting information

- 30.1** Where a voter has not received his or her voting information by the tenth day before the close of the poll, that voter may apply to the returning officer for replacement voting information.
- 30.2** The returning officer may not issue replacement voting information in respect of lost voting information unless he or she:
- is satisfied as to the voter's identity,
  - has no reason to doubt that the voter did not receive the original voting information,
  - 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"):
- the name of the voter
  - the details of the unique identifier of the replacement ballot paper, if applicable, and
  - the voter ID number of the voter.

### 31. Issue of replacement voting information

- 31.1** If a person applies for replacement voting information under rule 29 or 30 and a declaration of identity has already been received by the returning officer in the name of that voter, the returning officer may not issue replacement voting information unless, in addition to the requirements imposed by rule 29.3 or 30.2, he or she is also satisfied that that person has not already voted in the election, notwithstanding the fact that a declaration of identity if required has already been received by the returning officer in the name of that voter.
- 31.2** After issuing replacement voting information under this rule, the returning officer shall enter in a list ("the list of tendered voting information"):
- the name of the voter,
  - the unique identifier of any replacement ballot paper issued under this rule;
  - the voter ID number of the voter.

### 32. ID declaration form for replacement ballot papers (public and patient constituencies)

- 32.1** In respect of an election for a public or patient constituency an ID declaration form must be issued with each replacement ballot paper requiring the voter to make a declaration of identity.

*Polling by internet, telephone or text*

### 33. Procedure for remote voting by internet

- 33.1** To cast his or her vote using the internet, a voter will need to gain access to the polling website by keying in the url of the polling website provided in the voting information.
- 33.2** When prompted to do so, the voter will need to enter his or her voter ID number.
- 33.3** If the internet voting system authenticates the voter ID number, the system will give the voter access to the polling website for the election in which the voter is eligible to vote.
- 33.4** To cast his or her vote, the voter will need to key in a mark on the screen opposite the particulars of the candidate or candidates for whom he or she wishes to cast his or her vote.
- 33.5** The voter will not be able to access the internet voting system for an election once his or her vote at that election has been cast.

### 34. Voting procedure for remote voting by telephone

- 34.1** To cast his or her vote by telephone, the voter will need to gain access to the telephone voting facility by calling the designated telephone number provided in the voter information using a telephone with a touch-tone keypad.
- 34.2** When prompted to do so, the voter will need to enter his or her voter ID number using the keypad.
- 34.3** If the telephone voting facility authenticates the voter ID number, the voter will be prompted to vote in the election.
- 34.4** When prompted to do so the voter may then cast his or her vote by keying in the numerical voting code of the candidate or candidates, for whom he or she wishes to vote.

- 34.5** The voter will not be able to access the telephone voting facility for an election once his or her vote at that election has been cast.

### 35. Voting procedure for remote voting by text message

- 35.1** To cast his or her vote by text message the voter will need to gain access to the text message voting facility by sending a text message to the designated telephone number or telephone short code provided in the voter information.
- 35.2** The text message sent by the voter must contain his or her voter ID number and the numerical voting code for the candidate or candidates, for whom he or she wishes to vote.
- 35.3** The text message sent by the voter will need to be structured in accordance with the instructions on how to vote contained in the voter information, otherwise the vote will not be cast.

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

### 36. Receipt of voting documents

- 36.1** Where the returning officer receives:
- a covering envelope, or
  - any other envelope containing an ID declaration form if required, a ballot paper envelope, or a ballot paper,
- before the close of the poll, that officer is to open it as soon as is practicable; and rules 37 and 38 are to apply.
- 36.2** The returning officer may open any covering envelope or any ballot paper envelope for the purposes of rules 37 and 38, but must make arrangements to ensure that no person obtains or communicates information as to:
- the candidate for whom a voter has voted, or
  - the unique identifier on a ballot paper.
- 36.3** The returning officer must make arrangements to ensure the safety and security of the ballot papers and other documents.

### 37. Validity of votes

- 37.1** A ballot paper shall not be taken to be duly returned unless the returning officer is satisfied that it has been received by the returning officer before the close of the poll, with an ID declaration form if required that has been correctly completed, signed and dated.
- 37.2** Where the returning officer is satisfied that rule 37.1 has been fulfilled, he or she is to:
- put the ID declaration form if required in a separate packet, and
  - put the ballot paper aside for counting after the close of the poll.
- 37.3** Where the returning officer is not satisfied that rule 37.1 has been fulfilled, he or she is to:
- mark the ballot paper “disqualified”,
  - if there is an ID declaration form accompanying the ballot paper, mark it “disqualified” and attach it to the ballot paper,
  - record the unique identifier on the ballot paper in a list of disqualified documents (the “list of disqualified documents”); and
  - place the document or documents in a separate packet.
- 37.4** An internet, telephone or text message vote shall not be taken to be duly returned unless the returning officer is satisfied that the internet voting record, telephone voting record or text voting record (as applicable) has been received by the returning officer before the close of the poll, with a declaration of identity if required that has been correctly made.
- 37.5** Where the returning officer is satisfied that rule 37.4 has been fulfilled, he or she is to put the internet voting record, telephone voting record or text voting record (as applicable) aside for counting after the close of the poll.
- 37.6** Where the returning officer is not satisfied that rule 37.4 has been fulfilled, he or she is to:
- mark the internet voting record, telephone voting record or text voting record (as applicable) “disqualified”,

- b) record the voter ID number on the internet voting record, telephone voting record or text voting record (as applicable) in the list of disqualified documents; and
- c) place the document or documents in a separate packet.

### 38. Declaration of identity but no ballot paper (public and patient constituency)<sup>1</sup>

- 38.1** Where the returning officer receives an ID declaration form if required but no ballot paper, the returning officer is to:
- a) mark the ID declaration form “disqualified”,
  - b) record the name of the voter in the list of disqualified documents, indicating that a declaration of identity was received from the voter without a ballot paper, and
  - c) place the ID declaration form in a separate packet.

### 39. De-duplication of votes

- 39.1** Where different methods of polling are being used in an election, the returning officer shall examine all votes cast to ascertain if a voter ID number has been used more than once to cast a vote in the election.
- 39.2** If the returning officer ascertains that a voter ID number has been used more than once to cast a vote in the election he or she shall:
- a) only accept as duly returned the first vote received that was cast using the relevant voter ID number; and
  - b) mark as “disqualified” all other votes that were cast using the relevant voter ID number.
- 39.3** Where a ballot paper is disqualified under this rule the returning officer shall:
- a) mark the ballot paper “disqualified”,
  - b) if there is an ID declaration form accompanying the ballot paper, mark it “disqualified” and attach it to the ballot paper,
  - c) record the unique identifier and the voter ID number on the ballot paper in the list of disqualified documents.
  - d) place the document or documents in a separate packet; and
  - e) disregard the ballot paper when counting the votes in accordance with these rules.
- 39.4** Where an internet voting record, telephone voting record or text voting record is disqualified under this rule the returning officer shall:
- a) mark the internet voting record, telephone voting record or text voting record (as applicable) “disqualified”,
  - b) record the voter ID number on the internet voting record, telephone voting record or text voting record (as applicable) in the list of disqualified documents;
  - c) place the internet voting record, telephone voting record or text voting record (as applicable) in a separate packet, and
  - d) disregard the internet voting record, telephone voting record or text voting record (as applicable) when counting the votes in accordance with these rules.

### 40. Sealing of packets

- 40.1** As soon as is possible after the close of the poll and after the completion of the procedure under rules 37 and 38, the returning officer is to seal the packets containing:
- a) the disqualified documents, together with the list of disqualified documents inside it,
  - b) the ID declaration forms, if required,
  - c) the list of spoiled ballot papers and the list of spoiled text message votes,
  - d) the list of lost ballot documents,
  - e) the list of eligible voters, and
  - f) the list of tendered voting information
- and ensure that complete electronic copies of the internet voting records, telephone voting records and text voting records created in accordance with rule 26 are held in a device suitable for the

<sup>1</sup> It should not be possible, technically, to make a declaration of identity electronically without also submitting a vote

purpose of storage.

## PART 6: COUNTING THE VOTES

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### 41. -[NOT USED]

### 42. Arrangements for counting of the votes

- 42.1** The returning officer is to make arrangements for counting the votes as soon as is practicable after the close of the poll.
- 42.2** The returning officer may make arrangements for any votes to be counted using vote counting software where:
- a) the board of directors and the council of governors of the corporation have approved:
    - i. the use of such software for the purpose of counting votes in the relevant election, and
    - ii. a policy governing the use of such software, and
  - b) the corporation and the returning officer are satisfied that the use of such software will produce an accurate result.

### 43. The count

- 43.1** The returning officer is to:
- a) count and record the number of:
    - iii. ballot papers that have been returned; and
    - iv. the number of internet voting records, telephone voting records and/or text voting records that have been created, and
  - b) count the votes according to the provisions in this Part of the rules and/or the provisions of any policy approved pursuant to rule 42.2(ii) where vote counting software is being used.
- 43.2** The returning officer, while counting and recording the number of ballot papers, internet voting records, telephone voting records and/or text voting records and counting the votes, must make arrangements to ensure that no person obtains or communicates information as to the unique identifier on a ballot paper or the voter ID number on an internet voting record, telephone voting record or text voting record.
- 43.3** The returning officer is to proceed continuously with counting the votes as far as is practicable.

### PP44. Rejected ballot papers and rejected text voting records

- FPP44.1** Any ballot paper:
- a) which does not bear the features that have been incorporated into the other ballot papers to prevent them from being reproduced,
  - b) on which votes are given for more candidates than the voter is entitled to vote,
  - c) on which anything is written or marked by which the voter can be identified except the unique identifier, or
  - d) which is unmarked or rejected because of uncertainty,
- shall, subject to rules FPP44.2 and FPP44.3, be rejected and not counted.
- FPP44.2** Where the voter is entitled to vote for more than one candidate, a ballot paper is not to be rejected because of uncertainty in respect of any vote where no uncertainty arises, and that vote is to be counted.
- FPP44.3** A ballot paper on which a vote is marked:
- a) elsewhere than in the proper place,
  - b) otherwise, than by means of a clear mark,
  - c) by more than one mark,
- is not to be rejected for such reason (either wholly or in respect of that vote) if an intention that the vote shall be for one or other of the candidates clearly appears, and the way the paper is marked does not itself identify the voter and it is not shown that he or she can be identified by it.

- FPP44.4** The returning officer is to:
- endorse the word “rejected” on any ballot paper which under this rule is not to be counted, and
  - in the case of a ballot paper on which any vote is counted under rules FPP44.2 and FPP 44.3, endorse the words “rejected in part” on the ballot paper and indicate which vote or votes have been counted.
- FPP44.5** The returning officer is to draw up a statement showing the number of rejected ballot papers under the following headings:
- does not bear proper features that have been incorporated into the ballot paper,
  - voting for more candidates than the voter is entitled to,
  - writing or mark by which voter could be identified, and
  - unmarked or rejected because of uncertainty,
- and, where applicable, each heading must record the number of ballot papers rejected in part.
- FPP44.6** Any text voting record:
- on which votes are given for more candidates than the voter is entitled to vote,
  - on which anything is written or marked by which the voter can be identified except the voter ID number, or
  - which is unmarked or rejected because of uncertainty,
- shall, subject to rules FPP44.7 and FPP44.8, be rejected and not counted.
- FPP44.7** Where the voter is entitled to vote for more than one candidate, a text voting record is not to be rejected because of uncertainty in respect of any vote where no uncertainty arises, and that vote is to be counted.
- FPP44.8** A text voting record on which a vote is marked:
- otherwise than by means of a clear mark,
  - by more than one mark,
- is not to be rejected for such reason (either wholly or in respect of that vote) if an intention that the vote shall be for one or other of the candidates clearly appears, and the way the text voting record is marked does not itself identify the voter and it is not shown that he or she can be identified by it.
- FPP44.9** The returning officer is to:
- endorse the word “rejected” on any text voting record which under this rule is not to be counted, and
  - in the case of a text voting record on which any vote is counted under rules FPP44.7 and FPP 44.8, endorse the words “rejected in part” on the text voting record and indicate which vote or votes have been counted.
- FPP44.10** The returning officer is to draw up a statement showing the number of rejected text voting records under the following headings:
- voting for more candidates than the voter is entitled to,
  - writing or mark by which voter could be identified, and
  - unmarked or rejected because of uncertainty,
- and, where applicable, each heading must record the number of text voting records rejected in part.

[PARAGRAPHS 45-50 NOT USED]

## FPP51. Equality of votes

- FPP51.1** Where, after the counting of votes is completed, an equality of votes is found to exist between any candidates and the addition of a vote would entitle any of those candidates to be declared elected, the returning officer is to decide between those candidates by a lot and proceed as if the candidate on whom the lot falls had received an additional vote.

## PART 7: FINAL PROCEEDINGS IN CONTESTED AND UNCONTESTED ELECTIONS

## FPP52. Declaration of result for contested elections

- FPP52.1** In a contested election, when the result of the poll has been ascertained, the returning officer is to:
- a) declare the candidate or candidates whom more votes have been given than for the other candidates, up to the number of vacancies to be filled on the council of governors from the constituency, or class within a constituency, for which the election is being held to be elected,
  - b) give notice of the name of each candidate who he or she has declared elected:
    - i. where the election is held under a proposed constitution pursuant to powers conferred on the [insert name] NHS Trust by section 33(4) of the 2006 Act, to the Chair of the NHS Trust, or
    - ii. in any other case, to the Chair of the corporation; and
  - c) give public notice of the name of each candidate whom he or she has declared elected.
- FPP52.2** The returning officer is to make:
- a) the total number of votes given for each candidate (whether elected or not), and
  - b) the number of rejected ballot papers under each of the headings in rule FPP44.5,
  - c) the number of rejected text voting records under each of the headings in rule FPP44.10,  
available on request.

## 53. Declaration of result for uncontested elections

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

### PART 8: DISPOSAL OF DOCUMENTS

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## 54. Sealing up of documents relating to the poll

- 54.1** On completion of the counting at a contested election, the returning officer is to seal up the following documents in separate packets:
- a) the counted ballot papers, internet voting records, telephone voting records and text voting records,
  - b) the ballot papers and text voting records endorsed with “rejected in part”,
  - c) the rejected ballot papers and text voting records, and
  - d) the statement of rejected ballot papers and the statement of rejected text voting records,
- and ensure that complete electronic copies of the internet voting records, telephone voting records and text voting records created in accordance with rule 26 are held in a device suitable for the purpose of storage.
- 54.2** The returning officer must not open the sealed packets of:
- a) the disqualified documents, with the list of disqualified documents inside it,
  - b) the list of spoilt ballot papers and the list of spoilt text message votes,
  - c) the list of lost ballot documents, and
  - d) the list of eligible voters,
- or access the complete electronic copies of the internet voting records, telephone voting records and text voting records created in accordance with rule 26 and held in a device suitable for the purpose of storage.
- 54.3** The returning officer must endorse on each packet a description of:

- a) its contents,
- b) the date of the publication of notice of the election,
- c) the name of the corporation to which the election relates, and
- d) the constituency, or class within a constituency, to which the election relates.

## 55. Delivery of documents

**55.1** Once the documents relating to the poll have been sealed up and endorsed pursuant to rule 56, the returning officer is to forward them to the chair of the corporation.

## 56. Forwarding of documents received after close of the poll

**56.1** Where:

- a) any voting documents are received by the returning officer after the close of the poll, or
- b) any envelopes addressed to eligible voters are returned as undelivered too late to be resent, or
- c) any applications for replacement voting information are made too late to enable new voting information to be issued,  
the returning officer is to put them in a separate packet, seal it up, and endorse and forward it to the Chair of the corporation.

## 57. Retention and public inspection of documents

**57.1** The corporation is to retain the documents relating to an election that are forwarded to the chair by the returning officer under these rules for one year, and then, unless otherwise directed by the board of directors of the corporation, cause them to be destroyed.

**57.2** With the exception of the documents listed in rule 58.1, the documents relating to an election that are held by the corporation shall be available for inspection by members of the public at all reasonable times.

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

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

**58.1** The corporation may not allow:

- a) the inspection of, or the opening of any sealed packet containing –
  - i. any rejected ballot papers, including ballot papers rejected in part,
  - ii. any rejected text voting records, including text voting records rejected in part,
  - iii. any disqualified documents, or the list of disqualified documents,
  - iv. any counted ballot papers, internet voting records, telephone voting records or text voting records, or
  - v. the list of eligible voters, or
- b) access to or the inspection of the complete electronic copies of the internet voting records, telephone voting records and text voting records created in accordance with rule 26 and held in a device suitable for the purpose of storage,  
by any person without the consent of the board of directors of the corporation.

**58.2** A person may apply to the board of directors of the corporation to inspect any of the documents listed in rule 58.1, and the board of directors of the corporation may only consent to such inspection if it is satisfied that it is necessary for the purpose of questioning an election pursuant to Part 11.

**58.3** The board of directors of the corporation's consent may be on any terms or conditions that it thinks necessary, including conditions as to –

- a) persons,
- b) time,
- c) place and mode of inspection,

- d) production or opening,  
and the corporation must only make the documents available for inspection in accordance with those terms and conditions.

**58.4** On an application to inspect any of the documents listed in rule 58.1 the board of directors of the corporation must:

- a) in giving its consent, and
- b) in making the documents available for inspection  
ensure that the way in which the vote of any particular member has been given shall not be disclosed, until it has been established –
  - i. that his or her vote was given, and
  - ii. that NHS England has declared that the vote was invalid.

## **PART 9: DEATH OF A CANDIDATE DURING A CONTESTED ELECTION**

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### **FPP59. Countermand or abandonment of poll on death of candidate**

**FPP59.1** If at a contested election, proof is given to the returning officer's satisfaction before the result of the election is declared that one of the persons named or to be named as a candidate has died, then the returning officer is to:

- a) countermand notice of the poll, or, if voting information has been issued, direct that the poll be abandoned within that constituency or class, and
- b) order a new election, on a date to be appointed by him or her in consultation with the corporation, within the period of 40 days, computed in accordance with rule 3 of these rules, beginning with the day that the poll was countermanded or abandoned.

**FPP59.2** Where a new election is ordered under rule FPP59.1, no fresh nomination is necessary for any candidate who was validly nominated for the election where the poll was countermanded or abandoned but further candidates shall be invited for that constituency or class.

**FPP59.3** Where a poll is abandoned under rule FPP59.1(a), rules FPP59.4 to FPP59.7 are to apply.

**FPP59.4** The returning officer shall not take any step or further step to open envelopes or deal with their contents in accordance with rules 38 and 39 and is to make up separate sealed packets in accordance with rule 40.

**FPP59.5** The returning officer is to:

- a) account and record the number of ballot papers, internet voting records, telephone voting records and text voting records that have been received,
- b) seal up the ballot papers, internet voting records, telephone voting records and text voting records into packets, along with the records of the number of ballot papers, internet voting records, telephone voting records and text voting records and ensure that complete electronic copies of the internet voting records telephone voting records and text voting records created in accordance with rule 26 are held in a device suitable for the purpose of storage.

**FPP59.6** The returning officer is to endorse on each packet a description of:

- a) its contents,
- b) the date of the publication of notice of the election,
- c) the name of the corporation to which the election relates, and
- d) the constituency, or class within a constituency, to which the election relates.

**FPP59.7** Once the documents relating to the poll have been sealed up and endorsed pursuant to rules FPP59.4 to FPP59.6, the returning officer is to deliver them to the Chair of the corporation, and rules 57 and 58 are to apply.

## **PART 10: ELECTION EXPENSES AND PUBLICITY**

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## *Election expenses*

### 60. Election expenses

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

### 61. Expenses and payments by candidates

- 61.1** A candidate may not incur any expenses or make a payment (of whatever nature) for the purposes of an election, other than expenses or payments that relate to:
- personal expenses,
  - travelling expenses, and expenses incurred while living away from home, and
  - 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:
- 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
  - give a candidate or his or her family any money or property (whether as a gift, donation, loan, or otherwise) to meet or contribute to expenses incurred by or on behalf of the candidate for the purposes of an election.
- 62.2** Nothing in this rule is to prevent the corporation from incurring such expenses, and making such payments, as it considers necessary pursuant to rules 63 and 64.

## *Publicity*

### 63. Publicity about election by the corporation

- 63.1** The corporation may:
- compile and distribute such information about the candidates, and
  - organise and hold such meetings to enable the candidates to speak and respond to questions,  
as it considers necessary.
- 63.2** Any information provided by the corporation about the candidates, including information compiled by the corporation under rule 64, must be:
- objective, balanced and fair,
  - equivalent in size and content for all candidates,
  - compiled and distributed in consultation with all of the candidates standing for election, and
  - must not seek to promote or procure the election of a specific candidate or candidates, at the expense of the electoral prospects of one or more other candidates.
- 63.3** Where the corporation proposes to hold a meeting to enable the candidates to speak, the corporation must ensure that all of the candidates are invited to attend, and in organising and holding such a meeting, the corporation must not seek to promote or procure the election of a specific candidate or candidates at the expense of the electoral prospects of one or more other candidates.

### 64. Information about candidates for inclusion with voting information

- 64.1** The corporation must compile information about the candidates standing for election, to be distributed by the returning officer pursuant to rule 24 of these rules.
- 64.2** The information must consist of:
- a statement submitted by the candidate of no more than 250 words,
  - if voting by telephone or text message is a method of polling for the election, the

- numerical voting code allocated by the returning officer to each candidate, for the purpose of recording votes using the telephone voting facility or the text message voting facility (“numerical voting code”), and
- c) a photograph of the candidate.

## 65. Meaning of “for the purposes of an election”

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

## **PART 11: QUESTIONING ELECTIONS AND THE CONSEQUENCE OF IRREGULARITIES**

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### 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 NHS England (previously Monitor) for the purpose of seeking a referral to the independent election arbitration panel (IEAP).
- 66.2** An application may only be made once the outcome of the election has been declared by the returning officer.
- 66.3** An application may only be made to NHS England (previously Monitor) by:
- a) a person who voted at the election or who claimed to have had the right to vote, or
  - b) a candidate, or a person claiming to have had a right to be elected at the election.
- 66.4** The application must:
- a) describe the alleged breach of the rules or electoral irregularity, and
  - b) be in such a form as the independent panel may require.
- 66.5** The application must be presented in writing within 21 days of the declaration of the result of the election. NHS England (previously Monitor) will refer the application to the independent election arbitration panel appointed by NHS England (previously Monitor).
- 66.6** If the independent election arbitration panel requests further information from the applicant, then that person must provide it as soon as is reasonably practicable.
- 66.7** NHS England (previously Monitor) shall delegate the determination of an application to a person or panel of persons to be nominated for the purpose.
- 66.8** The determination by the IEAP shall be binding on and shall be given effect by the corporation, the applicant and the members of the constituency (or class within a constituency) including all the candidates for the election to which the application relates.
- 66.9** The IEAP may prescribe rules of procedure for the determination of an application including costs.

## **PART 12: MISCELLANEOUS**

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### 67. Secrecy

- 67.1** The following persons:
- a) the returning officer,
  - b) the returning officer’s staff,
- must maintain and aid in maintaining the secrecy of the voting and the counting of the votes, and must not, except for some purpose authorised by law, communicate to any person any information as to:
- i. the name of any member of the corporation who has or has not been given voting information or who has or has not voted,

- ii. the unique identifier on any ballot paper,
- iii. the voter ID number allocated to any voter,
- iv. the candidate(s) for whom any member has voted.

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

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

## 68. Prohibition of disclosure of vote

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

## 69. Disqualification

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

- a) a member of the corporation,
- b) an employee of the corporation,
- c) a director of the corporation, or
- d) employed by or on behalf of a person who has been nominated for election.

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

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

- a) the delivery of the documents in rule 24, or
- b) the return of the ballot papers,  
the returning officer may extend the time between the publication of the notice of the poll and the close of the poll by such period as he or she considers appropriate.

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

(See paragraph 16)

In addition to the cases set out in paragraph 17, the following may not stand for election or continue as a governor:

1. A person who is the subject of a sexual offences order under the Sexual Offences Act 2003 or any subsequent legislation.
2. A person who is disqualified from being a company director under the laws of England and/or Wales.
3. A person who is a director of the Trust, Chair or chief executive of another NHS Foundation Trust or NHS Trust; However, a governor (other than the lead governor) may be a governor or non-executive director (other than Chair) of another NHS Foundation trust or NHS trust, save where there is a real risk of conflict of interest arising as a result of the two governorships or directorship and governorship.
4. A person whose physical or mental wellbeing is such that their ability to act as a governor of the Trust is materially affected.
5. A person who occupies the same household as an existing governor or a director of the Trust.
6. In the case of a public or patient governor, a person who has been employed by the Trust within 12 months prior to election or becomes employed by the Trust.
7. A person who has had his name removed from a list maintained under regulations pursuant to Sections 91, 106, 123, or 146 of the 2006 Act, or the equivalent lists maintained by Local Health Boards in Wales under the National Health Service (Wales) Act 2006, and he has not subsequently had his name included in such a list and, due to the reason(s) for such removal, he is considered by the Trust to be unsuitable to be a Governor.

## ANNEX 7 - STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE COUNCIL OF GOVERNORS

(See paragraph 19)

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## 1. Introduction

**1.1** Paragraph 14 of Schedule 7 to the National Health Service Act 2006 provides that the constitution of an NHS foundation trust must make provision for the practice and procedure of the Council of Governors. The Council made such provision in its standing orders adopted in 2006. Paragraph 3.13 of those orders provided that they might be amended as there set out. At a meeting of the Council on 25 February 2013 in accordance with paragraph 3.13, these standing orders as set out herein were adopted in substitution of those orders.

## 2. Interpretation

**2.1** The expressions and terms used herein shall have the same meaning as in the Trust's Constitution.

**2.2** 'The Constitution' means the constitution of the Trust.

**2.3** 'The Council' means the Council of Governors.

**2.4** A 'motion' means a formal proposition to be considered and voted on at a meeting of the Council.

**2.5** An 'item for the agenda' means a matter to be considered at a meeting of the Council.

**2.6** 'The Secretary' means the person appointed as the Secretary to the Trust.

## 3. Meetings of the Council

**3.1** Paragraph 18.3 of the Constitution provides that meetings of the Council shall be open to members of the public but that the public may be excluded as there set out.

**3.2** The dates, times and venues of meetings of the Council shall be arranged by the Secretary in consultation with the Chair and the Lead Governor. There shall be at least 4 meetings in any year, in respect of which the dates and times shall be arranged, and notice given to the governors, before December of the previous year. At least 4 days clear notice of other meetings must be given

**3.3** If the Lead Governor (or in case of the Lead Governor's unavailability the Deputy Lead Governor), or at least 10 governors, give notice to the Secretary requiring a meeting stating the proposed agenda, the Secretary shall arrange a meeting as soon as practicable.

**3.4** Notice of meetings of the Council shall be given to the governors by email (or post where a governor so requests).

**3.5** Notice of meetings of the Council will be posted on the Trust's website, as soon as practical after notice has been given to the governors.

## 4. Agenda Items and Motions

**4.1** Save as provided in 3.3 above and 4.2 below, the agenda for meetings shall be arranged by the Secretary in consultation with the Chair and the Lead Governor.

**4.2** A governor wishing to have an item included in the agenda for a meeting of the Council or to propose a motion at a meeting shall give notice of the item or motion to the Secretary 10 clear days before the meeting unless the circumstances relating to the item make necessary a shorter period. In the case of a motion the notice shall name a governor who is prepared to second the motion and shall otherwise be treated as invalid. The Secretary shall include in the agenda for the meeting all items and motions which have been duly notified. The Chair of the meeting may, at his discretion, permit an item to be raised or a motion proposed where due notice has not been given.

**4.3** A motion may be withdrawn at any time by the proposer with the agreement of the seconder and the consent of the Chair of the meeting.

**4.4** No motion shall be proposed to amend or rescind any resolution, or the substance of any resolution, passed by the Council within the preceding 6 months unless it is signed by the proposer and seconder and by 4 other governors. Once such motion has been disposed of no motion to a similar effect may be proposed for 6 months without the consent of the Chair of the Trust.

**4.5** The proposer of a motion shall propose it and shall have a right to speak before a vote is taken.

**4.6** During the consideration of a motion a governor may move:

- 4.6.1 an amendment to the motion;
- 4.6.2 that the consideration of motion be adjourned to a subsequent meeting;
- 4.6.3 that the motion be summarily dismissed and the meeting to proceed to the next business;
- 4.6.4 that the motion be voted on immediately.

4.7 No amendment to a motion may be submitted if its effect would be to negate the substance of the motion as determined by the Chair of the meeting.

4.8 Save where the Chair of a meeting permits otherwise, the agenda and any papers for the meeting shall be provided to the governors not less than 5 working days before the meeting.

## 5. Quorum

5.1 No business may be transacted at a meeting of the Council of Governors unless more than half of the governors are present.

## 6. Relevance and Concision

6.1 Statements made by governors at a meeting of the Council must be concise and relevant to the matter under discussion at the time.

6.2 The Chair of the meeting shall have power to rule on the relevance and regularity any statement, and to determine any issue arising as to the conduct of the meeting.

6.3 In any matter relating to the interpretation of the Constitution and Standing Orders the Chair of the meeting shall consider the advice of the Secretary.

## 7. Voting

7.1 Save where it is otherwise provided by the constitution, or these orders any matter on which a vote is taken shall be determined by a majority vote of the governors present and voting.

7.2 In the case of an equality of votes the person presiding shall have a vote to decide the matter (if that person is a governor, a second vote).

7.3 At the discretion of the Chair of the meeting, the vote may be taken orally, or by show of hands. If a majority of governors present so request, it shall be by secret paper ballot.

7.4 Save in the case of a secret paper ballot, if at least one third of the governor's present request, the voting for and against of each governor shall be minuted.

7.5 If a governor requests, his vote shall be minuted.

7.6 No one may vote unless physically present: there shall be no votes by proxy.

## 8. Minutes

8.1 Minutes of meetings shall be drawn up and circulated in draft as soon as practical after the meeting. They shall be submitted for approval at the next meeting.

8.2 The minutes shall record the names of those attending.

## 9. Suspension of Standing Orders

9.1 Except where to do so would contravene any statutory provision, the terms of the Trust's authorisation or the Constitution, the Chair of any meeting of the Council may suspend any one or more of the Standing Orders.

9.2 A decision to suspend standing orders shall be recorded in the minutes.

9.3 A separate record of matters while the orders were suspended shall be made and shall be provided to the governors with the minutes.

## 10. Committees

10.1 The Council may set up committees (with sub-committees) or working groups to consider aspects of the Council's business. They shall report to the Council.

10.2 The powers of the Council may be delegated to a committee for a specific purpose if the law and the Constitution permit, but otherwise the power of any committee is limited to making recommendations to the Council.

10.3 The powers of the Council shall be exercised in general meeting.

10.4 The Council shall approve the membership of committees, sub-committees and working groups, and may appoint persons with specialised knowledge or expertise useful to the

committee on such terms as the Council may determine.

- 10.5** Meetings of the Council's committees, sub-committees and working groups shall be private. Their proceedings shall remain confidential until reported in public to a meeting of the Council.

## 11. Nominations Committee

**11.1** Paragraph 27 of the Constitution provides for the appointment and removal of the Chair of the Trust and the other non-executive directors by the Council. Paragraph 27.3 provides that the Council's standing orders shall provide for there to be a Nominations Committee or Committees to put forward persons for the Council to consider for appointment.

**11.2** For the appointment of the Chair, the Nominations Committee shall consist of:

- 2 public governors, one of whom will chair the Committee
- 1 staff governor
- 1 appointed governor
- 1 non-executive director
- 1 external stakeholder

**11.3** For the appointment of non-executive directors, the Nominations Committee shall consist of:

- the Chair (or, at the Chair's request the Deputy Chair)
- 2 public governors
- 1 staff governor
- 1 appointed governor
- the Chief Executive
- 1 external stakeholder

**11.4** When the formation of a Nomination committee is required the Secretary shall:

**11.4.1** ask governors to put themselves forward as members within 10 days of his request, and if more governors put themselves forward than are places for particular categories of governor shall conduct an election or elections for each category with each governor having one vote in respect of each governor place on the committee.

**11.4.2** In the case of a nomination for Chair invite the non-executive directors to appoint a non-executive director to serve on the committee.

**11.5** If a majority of the governors present at a meeting of the Council of Governors decide that the circumstances of a particular situation require the membership of a Nominations Committee to differ from that set out in paragraph 2 or 3 above, the membership of that Committee shall be as determined by that majority.

## 12. Declarations and Register of Interests

**12.1** Paragraph 21 of the Constitution provides for declarations of interest. It states:

- **21.1** *If a governor has a pecuniary, personal or family interest, whether that interest is actual or potential and whether that interest is direct or indirect, in any proposed contract or other matter which is under consideration or is to be considered by the Council of Governors, the governor shall disclose that interest to the members of the Council of Governors as soon as he becomes aware of it. The Standing Orders for the Council of Governors shall make provision for the disclosure of interests and arrangements for the exclusion of a governor declaring any interest from any discussion or consideration of the matter in respect of which an interest has been disclosed.*
- **21.2.** *For the avoidance of doubt a governor has a personal interest where the governor or a person close to the governor has had a personal experience which might be considered to affect the governor's view of the matter in question.*

**12.2** Interests should be declared to the Secretary within 28 days of appointment, or, if arising later, within 7 days of the governor becoming aware of the interest.

**12.3** If a governor only becomes aware of an interest at a meeting of the Council (or at a meeting of any committee, sub-committee or working group) he must declare it immediately.

**12.4** Subject to the exceptions below, material interests include:

**12.4.1** any directorship of a company;

**12.4.2** any interest held in any firm, company or business, which, in connection with the

matter, is trading with the Trust, or is likely to be considered as a potential trading partner with the Trust;

**12.4.3** any interest in an organisation providing health and social care services to the National Health Service;

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

**12.4.5** any other interest which, in the opinion of a reasonable bystander would be liable to prejudice the ability of the governor to consider the matter before the Council fairly.

**12.5** The exceptions are:

**12.5.1** shares not exceeding 2% of the total shares in issue held in any company whose shares are listed on any public exchange;

**12.5.2** an employment contract with the Trust held by a staff governor;

**12.5.3** an employment contract held with the appointing body by an appointed governor;

**12.6** If a governor has any uncertainty as to an interest, he should discuss it in advance of any meeting with the Secretary. In case of doubt the interest should be declared.

**12.7** The Secretary shall keep a record in a Register of Interests of all interests declared by governors. Any interest declared at a meeting shall also be recorded in the minutes of the meeting

**12.8** The Register shall be open to inspection by members of the public free of charge. A copy of any part will be provided on request and a reasonable charge for it may be made to persons who are not members of the Trust.

**12.9** If a question arises at a meeting of the Council whether or not an interest of a governor is such that he should not be present when a matter is considered and should not vote on it, the Chair of the meeting shall rule on the question having taken the advice of the Secretary.

**12.10** A governor who has an interest in a matter under consideration by the Council shall not be present during such consideration and shall not take part in any vote in connection with it.

**12.11** A failure to comply with any of the provisions of this paragraph may be considered by the Council as grounds for removal under paragraph 16.4 of the Constitution.

### 13. Code of Conduct

**13.1** Governors shall agree to, and shall upon appointment sign a copy of, the Code of Conduct set out in the Appendix to these orders and shall at all times comply with the Code.

### 14. Confidentiality

**14.1** It is the duty of a governor not to divulge any information which he receives in confidence, whether that confidence is expressed or arises from circumstances relating to the information.

**14.2** Governors must keep secure all confidential matter recorded on paper or electronically and must ensure that their NHS mail and forum details are not disclosed.

**14.3** Agendas and minutes and information relating to those parts of meetings of the Board of Directors, or of meetings of the Council, which are not open to the public, are confidential.

**14.4** The proceedings of committees and working groups which take place in private are confidential until reported to the Council at a meeting open to the public.

**14.5** A governor should keep confidential any information which may come into his possession concerning a patient, a person associated with a patient, or a member of staff or a person associated with a member of staff, unless the information has entered the public domain.

**14.6** Any matter which the Council has resolved shall be treated as confidential shall be so treated.

### 15. Expenses

**15.1** Paragraph 22 of the Constitution provides that the Trust shall on application pay travelling and other expenses of governors incurred for the purpose of his duties at rates to be decided by the Trust.

**15.2** Payment shall be made by the Secretary following receipt of a signed expenses form backed by receipts.

**15.3** The total of the expenses paid to governors will be published in the Annual Report.

## 16. Lead and Deputy Lead Governor's Appointment

- 16.1** The Lead Governor and the Deputy Lead Governor must be elected governors. A staff governor may only be appointed as Lead or Deputy in a situation where he will serve with a publicly appointed governor. Thus a staff governor may stand for election as Deputy only if the Lead is a publicly elected governor.
- 16.2** A person shall be elected as Lead Governor Elect.
- a) He will serve for one year as Deputy Lead Governor.
  - b) Subject to a vote of approval by a majority of the governors present at a meeting of the Council towards the end of the year he will then become the Lead Governor for one year and if similarly approved may serve a second year.
  - c) At the end of the second year as Lead, if similarly approved, he may serve as Deputy Lead Governor for one year.
- 16.3** Thus a person may serve two years as Lead Governor supported in their first year by the former Lead Governor acting as Deputy and supported in their second year by the new Deputy.
- 16.4** 3 months before a Lead Governor Elect is needed the Secretary shall ask for nominations within 21 days.
- 16.5** If more than one governor is nominated, a secret ballot will be arranged by the Secretary with each governor having one vote. If only one candidate is nominated, that person is chosen.
- 16.6** Where there is a ballot the candidate securing the most votes will be elected. The Secretary will announce the winner but not the votes cast - which shall remain confidential to him.
- 16.7** In the event that the Deputy Lead Governor stands down or is unable to continue, a new Deputy shall be chosen by the process set out above, and shall serve as Deputy until the Lead Governor reaches the end of his term. He will then become lead governor if approved as set out in 16.3(b) above.
- 16.8** In the event that the Lead Governor stands down or is unable to continue, if the Deputy has not served as Lead Governor, subject to a vote of approval as above he shall become Lead Governor and shall serve an initial term consisting of the unexpired term of the departing Lead Governor plus one year and then subject to such a vote of approval may serve a second year.
- 16.9** If the Deputy has served as Lead Governor, then subject to such a vote of approval he may act as Lead Governor for the remainder of the departing Lead Governor's term, and the Secretary shall initiate the process for choosing a new Deputy Lead Governor.
- 16.10** In the event that a Deputy Lead Governor does not secure the approval of the Governors to become Lead Governor, the Secretary shall immediately initiate the process of choosing a new Lead Governor by the process set out in paragraphs 16.4 to 16.7.
- 16.11** In the event that the Lead Governor does not secure approval for a second year, the person chosen as Deputy shall become Lead Governor.
- 16.12** Where a need arises to choose a Lead Governor or a Deputy Lead Governor In any circumstances not covered above, the Secretary shall take such steps as may be necessary following the principles set out in so far as applicable to the situation.
- 16.13** Where the Lead Governor is a staff governor, in any situation where the Lead Governor's position as an employee of the Trust gives rise to a position of potential conflict or embarrassment, the Deputy Lead shall act as Lead until the next meeting of the Council, when the situation shall be considered and a decision made as to how it shall be handled.

## 17. Lead Governor and Deputy Lead Governor – Roles

- 17.1** The role of the Lead Governor is:
- 17.1.1** to chair meetings of the Council which cannot for any reason be chaired by the Chair or the Deputy Chair;
  - 17.1.2** to consult routinely with the governors regarding the planning and preparation of the agendas for Council meetings and work programme, and to agree them with the Chair;
  - 17.1.3** to communicate regularly with the Chair, to receive reports, as appropriate, on matters considered by the Board at closed meetings, and to provide updates/information to all governors as may be appropriate in the circumstances and respecting the confidentiality of matters of which he has been informed on a confidential basis.
  - 17.1.4** to be a point of contact for NHS England when appropriate;
  - 17.1.5** to provide input into the appraisal of the Chair;

**17.1.6** to take an active role in the activities of the Council;

**17.1.7** to be a point of contact for governors when they have concerns;

**17.2** The role of the Deputy Lead Governor is to support and assist the Lead Governor, and to deputise for the Lead Governor when the Lead Governor is not available to act.

## **18. Lead and Deputy Lead Governors – Vote of No Confidence**

**18.1** If 8 governors sign a motion of no confidence in the Lead Governor or Deputy lead Governor and present it to the Chair, the Chair shall call an emergency meeting of the Council to be held within no more than 4 weeks from his receipt of the motion.

**18.2** The Chair will inform the Lead Governor (or Deputy Lead Governor) of his receipt of the motion but not of the names of the signatories, and he shall be invited to attend the meeting.

**18.3** The meeting shall not proceed unless at least two thirds of the governors are present, and if they are not the motion will lapse.

**18.4** At the meeting the Chair will present the reasons for the motion, and it will be debated. The Lead Governor (or Deputy Lead Governor) may address the meeting.

**18.5** A secret ballot shall be taken (in which the Lead Governor - or Deputy Lead Governor - shall be entitled to vote). If more than half of the governor's present support the motion, then the Lead Governor (or Deputy Lead Governor) shall stand down.

**18.6** A Lead Governor or a Deputy Lead Governor against whom a motion of no confidence succeeds shall not be eligible to be Lead Governor or Deputy Lead Governor for 2 years.

## **19. Directors' Attendance**

**19.1** Paragraph 18.6 of the Constitution provides that the Council may require the attendance of one or more of the directors to attend a meeting for the purposes set out in the paragraph, which include the purpose of obtaining information about the Trust's performance of its functions.

**19.2** The attendance of a director pursuant to paragraph 18.6 of the Constitution shall be obtained by request of the Lead Governor made to the Chair. The Lead Governor may make a request at his discretion but shall make one if 5 governors sign a notice requiring the attendance of a named director or directors stating the reason why the request is made.

## **20. Forward Plan**

**20.1** Paragraph 39.5 of the Constitution provides that in preparing the Trust's forward plan the directors must have regard to the views of the governors, and that the directors shall provide the governors with information appropriate for them to be able to form their views.

**20.2** The Trust's Strategic Development Working Group shall consider aspects of the proposed plan as they become available.

**20.3** The proposed plan shall be considered at a joint meeting of the directors and the governors. It shall be provided to the governors, with the information required to form their views, in good time, at least 7 days, for the governors to consider it in advance of the meeting.

## **21. Amendment of Standing Orders**

**21.1** Paragraph 19.1 of the Trust's Constitution provides that the standing orders of the Council may be amended as provided in the standing orders.

**21.2** The Standing Orders of the Council of Governors may be amended at a meeting of the Council by a vote of the majority of governors (not a majority of governors present, but a majority of the governors).

**21.3** No such vote shall be taken unless the proposed amendment has been included in an agenda for the meeting circulated to governors not less than 7 days before the meeting (for example, for a meeting on 27 January no later than 20 January). But the Council may vote to make an amendment the substance of which has been so included but which has been altered at the meeting.

## APPENDIX 7.1

### CODE OF CONDUCT

#### Governors will:

1. Actively support the purpose and aims of Salisbury NHS Foundation Trust;
2. Act in the best interests of the Trust at all times, with integrity and objectivity, recognising the need for corporate responsibility, without expectation of personal benefit;
3. Contribute to the work of the Council of Governors so it may fulfil its role, in particular attending meetings of the Council and training events, serving on the committees and working groups of the Council, and attending members meetings, on a regular basis;
4. Recognise that the Council exercises collective decision-making on behalf of patients, public and staff;
5. Acknowledge that, other than when carrying out their duties as governors, they have no rights or privileges different from other members of the Trust;
6. Recognise that the Council has no managerial role within the Trust other than as provided by statute;
7. Respect the confidentiality of all confidential information received by them as governors as more particularly set out in paragraph 15 of the Council's Standing orders;
8. Conduct themselves in a manner to reflect positively on the Trust and not to conduct themselves so as to reflect badly on the Trust;
9. Recognise that the Trust is a non-political organisation.
10. Recognise that they are not, save in the case of appointed governors and their appointing body, representing any trade union, political party or other organisation to which they may belong, or its views, but are representing the constituency which elected them;
11. Seek to ensure that no one is discriminated against because of their religion, race, colour, gender, marital status, sexual orientation, age, social or economic status, or national origin;
12. Comply with the Council's Standing Orders;
13. Not make, or permit to be made, any statement concerning the Trust which they know or suspect to be untrue or misleading;
14. Recognise the need for great care in making public pronouncements, in particular any statement to the media, and will recognise the harm that ill-judged statements can cause to the Trust and to the patients and public the Trust and its governors serve. To this end:
  - a) advice of the Trust's press officer and of the Lead Governor, and take their observations into account;
  - b) any request by the media for comment should be forwarded to the Trust's press officer;
  - c) if a governor considers that a media story requires a response, he will communicate his concern to the Lead Governor and the Trust's press officer rather than responding himself;
  - d) it is not the role of a governor to speak in public on operational matters or matters concerning individual patients or staff;
15. Uphold the seven principles of public life as set out by the Nolan Committee, namely:

#### Selflessness:

Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

#### Integrity:

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.

### Objectivity:

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

### Accountability:

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

### Openness:

Holders of public office should be as open as possible about all the decisions and actions they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

### Honesty:

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

### Leadership:

Holders of public office should promote and support these principles by leadership and example

## Governor's undertaking

I, \_\_\_\_\_, of \_\_\_\_\_, undertake as a Governor of Salisbury NHS Foundation Trust to abide by the above Code of Conduct including the obligations as to confidentiality and as to dealing with the media there set out.

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

## ANNEX 8 - STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE BOARD OF DIRECTORS

(see paragraph 30)

### 1. Interpretations and Definitions

- 1.1. Save as otherwise permitted by law, at any meeting the Chair of the Trust shall be the final authority on the interpretation of Standing Orders (on which he should be advised by the Chief Executive).
- 1.2. All references in these Standing Orders to the masculine gender shall be read equally applicable to the feminine gender.
- 1.3. Any expression to which a meaning is given in the Health and Social Care Act 2012, or any legislation or any regulations made under this Act, shall have the same meaning in these standing orders and in addition:
  - 1.3.1 **"Accounting officer"** means the person responsible and accountable for funds trusted to the Trust. The Officer shall be responsible for ensuring the proper stewardship of public funds and assets. For this Trust, this shall be the Chief Executive;
  - 1.3.2 **"Board"** means the Board of Directors, consisting of the Chair, the independent non-executive directors and the executive directors;
  - 1.3.3 **"Audit Committee"** means a committee whose functions are concerned with providing the Trust Board with a means of independent and objective review and monitoring financial systems and information, quality and clinical effectiveness, compliance with law, guidance and codes of conduct, effectiveness of risk management, the processes of governance and the delivery of the Board assurance framework;
  - 1.3.4 **"Commissioning"** means the process for determining the need for and for obtaining the supply of healthcare and related services by the Trust within available resources;
  - 1.3.5 **"Committee"** means a committee or sub-committee appointed by the Trust;
  - 1.3.6 **"Committee Members"** shall be persons formally appointed by the Trust to sit on or to chair specific committees;
  - 1.3.7 **"Contracting and Procuring"** means the systems for obtaining the supply of goods, materials, manufactured items, services, building and engineering services, works of construction and maintenance and for disposal of surplus and obsolete assets;
  - 1.3.8 **"Council"** means the Council of Governors, formally constituted in accordance with the constitution and presided over by the Chair;
  - 1.3.9 **"Director of Finance"** means the chief financial officer of the Trust;
  - 1.3.10 **"Executive Director"** means a member of the board who is an officer of the Trust;
  - 1.3.11 **"Motion"** means a formal proposition to be discussed and voted on during the course of a meeting;
  - 1.3.12 **"Nominated Officer"** means an Officer charged with the responsibility for discharging specific tasks within Standing Orders and Standing Financial Instructions;
  - 1.3.13 **"Officer"** means an employee of the Trust or any other person holding a paid appointment or office with the Trust;
  - 1.3.14 **"SFIs"** means standing financial instructions;
  - 1.3.15 **"SOs"** means Standing Orders.
  - 1.3.16 **"Trust"** means Salisbury NHS Foundation Trust

### 2. THE BOARD OF DIRECTORS: COMPOSITION OF MEMBERSHIP AND ROLE OF MEMBERS

#### 2.1 Composition of the Board of Directors

The composition of the Board of Directors shall be in accordance with paragraph 23 of the Constitution.

## 2.2 Role of Members of the Board of Directors

The Board of Directors will function as a corporate decision-making body. Executive Directors and Non-Executive Directors will be full and equal members. Their role will be to consider the key strategic and managerial issues facing the Trust in carrying out its statutory and other functions 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.

### Executive Directors

Executive Directors shall exercise their authority within the terms of these Standing Orders and Standing Financial Instructions and the Scheme of Delegation.

### Chief Executive

The Chief Executive shall be responsible for the overall performance of the executive functions of the Trust. The Chief Executive is the Accounting Officer for the Trust and shall be responsible for ensuring the discharge of obligations under Financial Directions and in line with the requirements of the NHS Foundation Trust Accounting Officer Memorandum.

### Director of Finance

The Director of Finance shall be responsible for the provision of financial advice to the Trust and to its members and for the supervision of financial control and accounting systems. The Director of Finance shall be responsible along with the Chief Executive for ensuring the discharge of obligations under relevant Financial Directions.

### Non-Executive Directors

The Non-Executive Directors shall not be granted nor shall they seek to exercise any individual executive powers on behalf of the Trust. They may; however, exercise collective authority when acting as members of or when chairing a committee of the Trust which has delegated powers.

### Chair

The Chair shall be responsible for the operation of the Board of Directors and Chair all Board meetings when present. The Chair has certain delegated executive powers. The Chair must comply with the terms of employment and with these Standing Orders.

The Chair shall take responsibility either directly, or indirectly, for the induction, portfolios of interests and assignments, and the performance of Non-Executive Directors.

The Chair shall work in close conjunction with the Chief Executive and shall ensure that key and appropriate issues are discussed by the Board of Directors in a timely manner with all the necessary information and advice being made available to the Board of Directors to inform the discussion and ultimate resolutions.

### Senior Independent Director

The Board of Directors should in consultation with the Council of Governors, appoint a Non-Executive Director to be the Senior Independent Director. Any Non-Executive Director so appointed may at any time resign from the office of Senior Independent Director by giving notice in writing to the Chair. The Board of Directors may thereupon, in consultation with the Council of Governors, appoint another Non-Executive Director as Senior Independent Director.

## 2.3 Corporate role of the Board of Directors.

**2.3.1** All business shall be conducted in the name of the Trust.

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

**2.3.3** The powers of the Trust established under statute shall be exercised by the Board except as otherwise provided for under Section 4 of this annex.

**2.3.4** The Board has resolved that certain powers and decisions may only be exercised by the Board of Directors in formal session. These powers and decisions are set out in the

'Schedule of Matters reserved to the Board' and Scheme of Delegation and have effect as if incorporated into the Standing Orders.

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

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

**3.1.1** The meetings of the Board of Directors shall be open to members of the public and press unless the Board decides otherwise in relation to all of the meeting for reasons of confidentiality, or on other proper grounds, or for other special reasons. Matters to be dealt with by the Board following the exclusion of members of the public and/or press shall be confidential to the members of the Board. Directors and any employees of the Trust in attendance shall not reveal or disclose the contents of papers marked 'In Confidence' or minutes headed 'Items Taken in Private' outside of the Trust, without the express permission of the Trust.

**3.1.2** In the event that the public and press are admitted to all or part of a Board meeting by reason of SO 3.1 above, the Chair (or Vice Chair) shall give such directions as he thinks fit in regard to the arrangements for meetings and accommodation of the public and representatives of the press such as to ensure that the Board's business shall be conducted without interruption and disruption and the public will be required to withdraw upon the Board resolving "that in the interests of public order the meeting adjourn for (the period to be specified) to enable the Board to complete business without the presence of the public".

#### **3.2 Observers at Board Meetings**

**3.2.1** The Trust may make such arrangements from time to time as it sees fit with regards to the extending of invitations to observers to attend and address any of the Board meetings.

**3.2.2** Nothing in these Standing Orders shall be construed as permitting the introduction by the public or press representatives of recording, transmitting, video or small apparatus into meetings of the Board or Committees. Such permission shall be granted only upon resolution of the Trust.

#### **3.3 Calling of Meetings**

**3.3.1** Ordinary meetings of the Board shall be held at such times and places as the Board determines. Board meetings shall be held in public but the whole or any part of a meeting may be held in private if the Board of Directors so resolves for special reasons.

**3.3.2** The Chair of the Trust may call a meeting of the Board at any time. If the Chair refuses to call a meeting after a requisition for that purpose, signed by at least one-third of the whole number of Directors, has been presented to him/her, or if, without so refusing, the 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.

#### **3.4 Notice of Meetings**

**3.4.1** Before each meeting of the Board, a written notice of the meeting, specifying the business proposed to be transacted at it shall be delivered to every Director, or sent by post to the usual place of residence of such Director, so as to be available to him at least five clear days before the meeting.

**3.4.2** In the case of a meeting called by Directors in default of the 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, or emergency motions permitted under SO 3.10 below

**3.4.3** Agendas will normally be sent to members of the Board seven calendar days before the meeting and supporting papers, whenever possible, shall accompany the agenda, but will certainly be despatched no later than five clear days before the meeting, save in emergency.

**3.4.4** Before any meeting of the Board which is to be held in public, a public notice of the time and place of the meeting, and the public part of the agenda, shall be displayed on the

Trust's website at least five clear days before the meeting.

### **3.5 Agendas and supporting papers**

**3.5.1** The Board may determine that certain matters shall appear on every agenda for a meeting and shall be addressed prior to any other business being conducted.

**3.5.2** A Director desiring a matter to be included on an agenda shall make his/her request in writing to the Chair at least 12 clear days before the meeting. The request should state whether the item of business is proposed to be transacted in the presence of the public and should include appropriate supporting information. Requests made less than 12 days before a meeting may be included on the agenda at the discretion of the Chair.

### **3.6 Petitions**

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

### **3.7 Chair of Meeting**

**3.7.1** At any meeting of the Board, the Chair of the Board, if present, shall preside. If the Chair is absent from the meeting the Vice Chair, if there is one and he/she is present, shall preside. If the Chair and Vice Chair are absent, such Non-Executive as the Directors present shall choose shall preside.

**3.7.2** If the Chair is absent temporarily on the grounds of a declared conflict of interest the Vice Chair, if present, shall preside. If the Chair and Vice Chair are absent, or are disqualified from participating, then the remaining non-executive directors present shall choose which non-executive director shall preside.

### **3.8 Notices of Motion**

**3.8.1** A Director of the Board desiring to move or amend a motion shall send a written notice thereof at least 12 clear days before the meeting to the Chief Executive, who shall ensure that it is brought to the immediate attention of the Chair. The Chair shall include in the agenda for the meeting all notices so received, subject to the notice being permissible under the appropriate regulations. This Standing Order 3.8.1 shall not prevent any motion being withdrawn or moved without notice on any business mentioned on the agenda.

#### **3.8.2 Withdrawal of Motion or Amendments**

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

#### **3.8.3 Motion to Rescind a Resolution**

Notice of motion to amend or rescind any resolution (or the general substance of any resolution) which has been passed within the preceding six calendar months shall bear the signature of the Director who gives it and also the signature of three other Board Directors and, before considering any such motion, the Board may refer the matter to any appropriate Committee or the Chief Executive for recommendation. When any such motion has been disposed of by the Board, it shall not be competent for any Director other than the Chair to propose a motion to the same effect within six months; however the Chair may do so if he/she considers it appropriate. This Standing Order shall not apply to motions moved in pursuance of a report or recommendations of a Committee or the Chief Executive.

### **3.9 Motions – procedure at and during meetings**

#### **3.9.1 Who may propose?**

A motion may be proposed by the Chair or any Director present at the meeting. Such motion must also be seconded by another Director.

#### **3.9.2 Contents of Motions**

The Chair may (at his discretion) refuse to admit any motion of which notice was not given in accordance with SO 3.8, other than a motion relating to:

- (a) the reception of a report;
- (b) consideration of any item of business before the Trust Board;
- (c) the accuracy of minutes;
- (d) that the Board proceed to next business;
- (e) that the Board adjourn;
- (f) that the question be now put.

### **3.9.3 Amendments to Motions**

A motion for amendment shall not be discussed unless it has been proposed and seconded. Amendments to motions shall be moved relevant to the motion and shall not have the effect of negating the motion before the Board.

If there are a number of amendments, they shall be considered one at a time. When a motion has been amended, the amended motion shall become the substantive motion before the meeting, upon which any further amendment may be moved.

### **3.9.4 Rights of reply to motions**

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

Original motion: The member who proposed the substantive motion shall have a right of reply at the close of any debate on the motion.

### **3.9.5 Motions Once Under Debate**

When a motion is under debate, no motion may be moved other than:

- an amendment to the motion;
- the adjournment of the discussion or the meeting;
- that the meeting proceed to the next business;
- the appointment of an ad hoc committee to deal with a specific item of business;
- that the motion be now put;
- that a Director be not further heard;
- a motion resolving to exclude the public, including the press.

In those cases where the motion is either that the meeting proceeds to the 'next business' or 'that the question be now put' in the interests of objectivity these should only be put forward by a Director of the Board who has not taken part in the debate and who is eligible to vote.

If a motion to proceed to the next business or that the question be now put is carried, the Chair should give the mover of the substantive motion under debate a right of reply, if not already exercised. The matter should then be put to the vote.

### 3.10 Emergency Motions

Subject to the agreement of the Chair and SO 3.9 above, a Director may give written notice of an emergency motion after the issue of the notice of meeting and agenda, up to one hour before the time fixed for the meeting. The notice shall state the grounds of urgency. At the Chair's discretion, the emergency motion shall be declared to the Board at the commencement of the business of the meeting as an additional item included on the agenda. The Chair's decision to include the item shall be final.

### 3.11 Chair's Ruling

Statements of Directors made at meetings of the Board shall be relevant to the matter under discussion at the material time and the decision of the Chair of the meeting on questions of order, relevancy, regularity (including procedure on handling motions) and any other matter shall be final.

### 3.12 Voting

- 3.12.1** Save as provided in SO 3.15 Suspension of Standing Orders, every question at a meeting shall be determined by a majority of the votes of the Chair of the meeting and Directors present and voting on the question and, in the case of the number of votes for and against a motion being equal, the Chair of the meeting (or any other person presiding in accordance with the terms of these Standing Orders) 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 the Chair so directs or it is proposed and seconded by any of the Directors present.
- 3.12.3** 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.
- 3.12.4** If a Director so requests, his/her vote shall be recorded by name upon any vote (other than by paper ballot).
- 3.12.5** In no circumstances may an absent Director 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 to act up for an Executive Director during a period of incapacity or temporarily to fill an Executive Director vacancy, shall be entitled to exercise the voting rights of the Executive Director. An Officer attending the Board to represent an Executive Director during a period of incapacity or temporary absence without formal acting up status may not exercise the voting rights of the Executive Director. An Officer's status when attending a meeting shall be recorded in the minutes.

### 3.13 Minutes

- 3.13.1** The Minutes of the proceedings of a meeting shall be drawn up and submitted for agreement at the next ensuing meeting.
- 3.13.2** No discussion shall take place upon the minutes except upon their accuracy or where the Chair considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the next meeting.

### 3.14 Quorum

- 3.14.1** The quorum of a meeting will be at least half of the whole number of members of the Board of Directors (including at least one Non-Executive Director and one Executive Director).
- 3.14.2** An officer in attendance for an Executive Director but without formal acting up status may not count towards the quorum.
- 3.14.3** If the Chair or member has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of a declaration of a conflict of

interest that person shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business.

### **3.15 Suspension of Standing Orders**

**3.15.1** Except where it would contravene any statutory provision or any provision in the Constitution, any one or more of the Standing Orders may be suspended at any meeting, provided that at least two-thirds of the Board are present, including one Executive Director and one Non-Executive Director, and at least two-thirds of those present votes in favour of suspension.

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

**3.15.3** A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the Chair and Directors of the Board.

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

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

### **3.16 Record of Attendance**

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

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

**4.1** Subject to the Constitution, or any relevant statutory provision, the Board may make arrangements for the exercise, on behalf of the Board, of any of its functions:

**4.1.1** by a committee, sub-committee or,

**4.1.2** appointed by virtue of Standing Order 5.1 or 5.2 below or by an Officer of the Trust,

**4.1.3** or by another body as defined in Standing Order 4.2 below,

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

**4.2** Where a function is delegated to a third party, the Trust has responsibility to ensure that the proper delegation is in place. In other situations, i.e. delegation to committees, sub committees or Officers, the Trust retains full responsibility.

### **4.3 Emergency Powers**

The powers which the Board has retained to itself within these Standing Orders may in emergency be exercised by the Chief Executive and the Chair after having consulted at least two Non-Executive Directors. The exercise of such powers by the Chief Executive and Chair shall be reported to the next formal meeting of the Board in public or private session (as appropriate) for ratification.

#### **4.4 Delegation to Committees**

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

#### **4.5 Delegation to Officers**

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

#### **4.6 Scheme of Delegation**

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

#### **4.7 Discharge of the Direct Accountability**

Nothing in the Scheme of Delegation shall impair the discharge of the direct accountability to the Board of the Finance Director to provide information and advise the Board in accordance with statutory or NHS England requirements. Outside these requirements the roles of the Finance Director shall be accountable to the Chief Executive for operational matters.

**4.8** The arrangements made by the Board as set out in the Schedule of Matters reserved to the Board and Scheme of Delegation shall have effect as if incorporated in these Standing Orders.

#### **4.9 Overriding Standing Orders**

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

### **5. COMMITTEES**

#### **5.1 Appointment of Committees**

Subject to the Constitution, (and to any guidance issued by the Department of Health applicable to Foundation Trusts or as may be given by NHS England), the Board of Directors may appoint committees of the Trust

## **5.2 Applicability of Standing Orders and Standing Financial Instructions to committees**

The Standing Orders and Standing Financial Instructions of the Trust, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees established by the Trust. In which case the term “Chair” is to be read as a reference to the Chair of the committee as the context permits, and the term “member” is to be read as a reference to a member of the committee also as the context permits. (There is no requirement to hold meetings of committees established by the Trust in public).

## **5.3 Terms of Reference**

Each such committee shall have such terms of reference and powers and be subject to such conditions (as to reporting back to the Board), as the Board shall decide and shall be in accordance with any applicable legislation and regulation or direction. Such terms of reference shall have effect as if incorporated into the Standing Orders.

## **5.4 Delegation of Powers**

The Board of Directors may appoint committees consisting wholly or partly of persons who are not Executive Directors or Non-Executive Directors of the Trust for any purpose that is calculated or likely to contribute or assist it in the exercise of its powers. It may delegate powers to such committees only if the membership consists wholly of Directors.

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

## **5.6 Approval of appointments to committees**

The Board shall approve the appointments to each of the committees which it has formally constituted. Where the Board determines, and regulations permit, that persons, who are neither Directors nor Officers, shall be appointed to a committee the terms of such appointment shall be within the powers of the Board. The Board shall define the powers of such appointees and shall agree allowances, including reimbursement for loss of earnings, and/or expenses in accordance where appropriate with national guidance.

## **5.7 Appointments for Statutory Functions**

Where the Board is required to appoint persons to a committee and/or to undertake statutory functions, and where such appointments are to operate independently of the Board, such appointment shall be made in accordance with the Constitution, the Terms of Reference and any applicable regulations and directions.

## **5.8 Committees established by the Board of Directors**

The Trust Board of Directors shall establish an Audit Committee and Remuneration and Nomination Committee, as standing Committees of the Trust Board of Directors. In addition, the Trust Board of Directors shall establish such other Committees as it deems necessary and appropriate from time to time.

## **5.9 Joint Committees**

Joint committees may be established by the Trust, by joining together with one or more other trusts, consisting of wholly or partly of the Chair and Directors of the Trust or other health service bodies, or of Directors of the Trust with non-directors of other health bodies in question.

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

## **6.1 Disclosure of Interests**

The Constitution, the 2006 Act and the Foundation Trust Code of Governance requires Board Directors to declare interests which are relevant and material to the NHS board of which they

are a director. All existing Board Directors should declare such interests. Any Board Directors appointed subsequently should do so on appointment.

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

- 6.2.1 directorships, including non-executive directorships held in private companies or public limited companies (with the exception of those of dormant companies);
- 6.2.2 ownership or part-ownership of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS;
- 6.2.3 majority or controlling shareholdings in organisations likely or possibly seeking to do business with the NHS;
- 6.2.4 a position of trust in a charity or voluntary organisation in the field of health and social care;
- 6.2.5 any connection with a voluntary or other organisation contracting for NHS services;
- 6.2.6 any connection with an organisation, entity or company considering entering into or having entered into a financial arrangement with the Trust including but not limited to, lenders or banks;
- 6.2.7 interests in pooled funds that are under separate management;
- 6.2.8 research funding/grants that may be received by an individual or their department;
- 6.2.9 any other commercial interest in the decision before the meeting.

## 6.3 Declaring interests

- 6.3.1 At the time Board Directors' interests are declared, they should be recorded in the Board minutes. Any changes in interests should be declared at the next Board meeting following the change occurring and recorded in the minutes of that meeting.
- 6.3.2 Board Directors' directorships of companies likely or possibly seeking to do business with the NHS should be published in the Board's Annual Report. The information should be kept up to date for inclusion in succeeding annual reports.
- 6.3.3 During the course of a Board meeting, if a conflict of interest is established, the Director concerned should withdraw from the meeting and play no part in the relevant discussion or decision.
- 6.3.4 If Board Directors have any doubt about the relevance of an interest, this should be discussed with the Chair or the Company Secretary.
- 6.3.5 Financial Reporting Standard (issued by the Accounting Standards Board) specifies that influence rather than the immediacy of the relationship is more important in assessing the relevance of an interest. The interests of partners in professional partnerships including general practitioners should also be considered.
- 6.3.6 This standing order applies to a committee or sub-committee and to a joint committee as it applies to the Trust and applies to a Director 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.

## 6.4 Register of Interests

- 6.4.1 The Chief Executive will ensure that a Register of Interests is established to record formally declarations of interests of Board Directors. In particular, the Register will include details of all directorships and other relevant and material interests which have been declared by both Executive and Non-Executive Directors, as defined in Standing Order 6.2.
- 6.4.2 These details will be kept up to date by means of an annual review of the Register in which any changes to interests declared during the preceding 12 months will be incorporated.
- 6.4.3 The Register will be available to the public in accordance with the Constitution and the Chief Executive will take reasonable steps to bring the existence of the Register to the attention of the local population and to publicise arrangements for viewing it.
- 6.4.4 All senior managers and clinicians have a duty to ensure that declaration of interests are made which could materially affect the outcome of decisions made by them. Where in doubt, all senior managers and clinicians should contact their respective Directors for clarification.

## **6.5 Exclusion of Chair and Members in proceedings on account of pecuniary interests**

- 6.5.1** Subject to the following provisions of this Standing Order, if the Chair or a Director has any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter and is present at a meeting of the 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.
- 6.5.2** The Board of Directors may exclude the Chair or a Director of the Board from a meeting of the Board while any contract, proposed contract or other matter in which he has a pecuniary interest, is under consideration.
- 6.5.3** Any remuneration, compensation or allowances payable to the Chair or a Director by virtue of the 2006 Act shall not be treated as a pecuniary interest for the purpose of this Standing Order.
- 6.5.4** For the purpose of this Standing Order the Chair or a Director shall be treated, subject to SO 6.6, as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if:
- he, or a nominee of his, is a director of a company or other body, not being a public body, with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration; or
  - he is a partner / associate of, or is in the employment of, a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration;
  - and in the case of persons living together as partners, the interest of one partner shall, if known to the other, be deemed for the purposes of this Standing Order to be also an interest of the other.

## **7 STANDARDS OF BUSINESS CONDUCT POLICY**

- 7.1** All staff and members must comply with the Trust's Standards of Business Conduct, the Regulatory Framework and the National guidance contained in HSG 1993/5 "Standards of Business Conduct for NHS Staff".
- 7.2 Interest of Officers in Contracts**
- 7.2.1** If it comes to the knowledge of 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 the Secretary of the fact that he is interested therein. In the case of persons living together as partners, the interest of one partner shall, if known to the other, be deemed to be also the interest of that partner.
- 7.2.2** An Officer should also declare to the Chief Executive any other employment or business or other relationship of his, or of a cohabiting spouse, that conflicts, or might reasonably be predicted could conflict with the interests of the Trust.
- 7.3** The Trust requires interests, employment or relationships declared, to be entered in a register of interests of staff.
- 7.4 Canvassing of and Recommendations by, Directors in Relation to Appointments**
- 7.4.1** Canvassing of Directors of the Trust or of any Committee or joint 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 Standing Order 7 shall be included in application forms or otherwise brought to the attention of candidates.
- 7.4.2** A Director of the Board shall not solicit for any person any appointment under the Trust or recommend any person for such appointment, but this paragraph of this Standing Order 7 shall not preclude a Director from giving written testimonial of a candidate's

ability, experience or character for submission to the Trust.

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

## **7.5 Relatives of Directors or Officers**

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

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

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

## **8 CUSTODY OF SEAL, SEALING OF DOCUMENTS AND SIGNATURE OF DOCUMENTS**

### **8.1 Custody of Seal**

The Common Seal of the Trust shall be kept by the Chief Executive or designated 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 sealing has been authorised by a resolution of the Board or of a committee thereof, or where the Board has delegated its powers. Where it is necessary that a document be sealed, the seal shall be affixed in the presence of two Directors; OR, one Director and the Trust Secretary; OR two senior managers (not being from the originating department) duly authorised by the Chief Executive, and shall be attested by them.

**8.2.2** Before any building, engineering, property or capital document is 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 Sealing**

**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 applications of the Trust seal shall be made to the Board at least quarterly.

(The report shall contain details of the seal number, a description of the document and the date of sealing).

### **8.4 Signature of documents**

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

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



## **ANNEX 9 – Additional Provisions - Directors – DISQUALIFICATION**

(See Paragraph 28)

The following may not be appointed or continue as a director:

1. A person who is the subject of a sexual offences order under the Sexual Offences Act 2003 or any subsequent legislation.
2. A person who is disqualified from being a company director under the law of England and/or Wales.
3. A person who is a governor of the Trust, or a governor, director, Chair or chief executive of another NHS Foundation trust or NHS trust. However, a non-executive director (other than the Chair) may be a non-executive director or a governor of another NHS Foundation trust or NHS trust, save where there is a real risk of conflict of interest arising as a result of the two directorships or directorship and governorship. With exception to when a Board member is appointed to a joint role within a group structure
4. A person whose physical or mental wellbeing is such that their ability to act as a director of the Trust is materially affected.
5. A person who occupies the same household as an existing director of the Trust or a governor.
6. A person who has had their name removed from a list maintained under regulations pursuant to Sections 91, 106, 123, or 146 of the 2006 Act, or the equivalent lists maintained by Local Health Boards in Wales under the National Health Service (Wales) Act 2006, and they have not subsequently had their name included in such a list and, due to the reasons(s) for such removal, they are considered by the Trust to be unsuitable to be a Director.