

Constitution, Election Rules, Standing Orders

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Constitution, Election Rules and Standing Orders

1. Name

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

2. Principle and other purposes

- 2.1 The principal purpose of the Trust is the provision of goods and services for the purposes of the National Health Service in England.

2.2 Other purposes shall include:

- 2.2.1 the provision of the highest quality mental health training for staff from a range of professional backgrounds, with a focus on human relations skills;
- 2.2.2 to expand the numbers of trained staff available nationally to support the greater provision of excellent services and to strengthen the recruitment of well-trained staff from ethnic minorities and other under-represented groups;
- 2.2.3 to use the Trust's knowledge of groups and organisations to expand understanding of how organisations work;
- 2.2.4 to extend the Trust's consultancy services to provide help to organisations in the NHS, the wider public sector, and to private industry and commerce;
- 2.2.5 to take a leading role in influencing mental health policy, both locally and nationally, focusing on children and adolescent services, and adult and forensic psychotherapies; and
- 2.2.6 to draw on the Trust's research strength to provide new clinical methods, new services and new ways of delivering care, while increasing the evidence base for all services.

3. Powers

- 3.1 The powers of the Trust are set out in the National Health Service Act 2006, subject to any restrictions in the Terms of Authorisation.
- 3.2 The Board of Directors, on behalf of the Trust, shall exercise all powers of the Trust.

3.3 Any of these powers may be delegated to a committee of Directors, or to an Executive Director.

4. Membership and Constituencies

4.1 The Trust shall have two Membership Constituencies, a Board of Directors, and a Board of Governors, who are to have roles as set out in this Constitution. Individuals wishing to serve on the Board of Governors or Board of Directors must abide by the Nolan Principles and any code of conduct as may be adopted by the Boards of Directors and Governors.

4.2 Membership

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

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

4.2.1.2 where this might be misconstrued as a title; or

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

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

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

4.3 Constituencies

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

4.3.1.1 the Public Constituency; or

4.3.1.2 the Staff Constituency.

4.4 Meetings

4.4.1 Annual General Meeting

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

4.4.2 Other meetings

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

5. Application for Membership

5.1 Any individual, other than a member of staff, who is eligible to become a Member of the Trust by virtue of paragraph 6, may do so on application to the Trust. Any person who has caused significant harm to an NHS staff member (physical assault, violence or serious harassment) will be deemed ineligible.

6. Public Constituency

6.1 An individual over the age of 14 who lives in the areas specified in *Annex 1* as the area for a Public Constituency may become or continue as a Member of the Trust.

6.2 Those individuals who live in an area specified in an area for any Public Constituency are referred to collectively as the Public Constituency.

6.3 The Public Constituency shall be divided into three descriptions of individuals who are eligible for membership of the Public Constituency, each description of individuals being specified within *Annex 1* and being referred to as a class within the Public Constituency.

6.4 The minimum number of Members in the Public Constituency is specified in *Annex 1*.

7. Staff Constituency

7.1 An individual who is employed by the Trust under a contract of employment with the Trust may become or continue as a Member of the Trust provided:

7.1.1 he is employed by the Trust under a contract of employment which has no fixed term or has a fixed term of at least twelve months; or

- 7.1.2 he has been continuously employed by the Trust under a contract of employment for at least twelve months.
- 7.2 Individuals who exercise functions for the purposes of the Trust, otherwise than under a contract of employment with the Trust, may become or continue as Members of the Staff Constituency provided such individuals have exercised these functions continuously for a period of at least twelve months.
- 7.3 Those individuals who are eligible for membership of the Trust because of the previous provisions are referred to collectively as the Staff Constituency.
- 7.4 The Staff Constituency shall be divided into three descriptions of individuals who are eligible for membership of the Staff Constituency, each description of individuals being specified within *Annex 1* and being referred to as a class within the Staff Constituency.
- 7.5 The minimum number of Members in each class of the Staff Constituency is specified in *Annex 1*.
- 7.6 An individual who is:
- 7.6.1 eligible to become a Member of the Staff Constituency; and
- 7.6.2 invited by the Trust to become a Member of the Staff Constituency and a Member of the appropriate class within the Staff Constituency,
- shall become a Member of the Trust as a Member of the Staff Constituency and appropriate class within the Staff Constituency without an application being made, unless he informs the Trust that he does not wish to do so.

8. Restriction on Membership

- 8.1 An individual who is a Member of the Public Constituency, or of a class within that Constituency, may not while membership of that Constituency or class continues, be a Member of any other Constituency or class.
- 8.2 An individual who satisfies the criteria for membership of the Staff Constituency, or of a class within that Constituency, may not while membership of that Constituency or class continues, be a Member of any other Constituency or class.
- 8.3 An individual must be at least 14 years of age to become a Member.

9. Board of Governors – composition

- 9.1 The Trust is to have a Board of Governors, which shall comprise both elected and appointed Governors.
- 9.2 The composition of the Board of Governors is specified in *Annex 1*.
- 9.3 The members of the Board of Governors, other than the members appointed by the bodies listed in section 2 of *Annex 1*, shall be chosen by election by their Constituency or, where there are classes within a Constituency, by their class within that Constituency. The number of Governors to be elected by each Constituency, or, where appropriate, by each class of each Constituency, is specified in section 2 of *Annex 1*.

10. Board of Governors – election of Governors

- 10.1 Elections for elected members of the Board of Governors shall be conducted in accordance with the Rules for Elections, as may be varied from time to time.
- 10.2 The Rules for Elections, as may be varied from time to time, form part of this Constitution and are attached at *Annex 2*.
- 10.3 An election, if contested, shall be by secret ballot.
- 10.4 Should vacancies arise during a term of office, the unsuccessful candidate with the highest number of votes at the last stage of the count of the previous election shall be deemed elected and shall hold office until the end of the original term. If there are no candidates available, then a by-election shall be called provided there is at least a year and a day remaining from the announcement of results until the term of office expires, otherwise the seat shall be left vacant.

11. Board of Governors – tenure

- 11.1 An elected Governor may hold office for a period of up to three years.
- 11.2 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.
- 11.3 An elected Governor shall be eligible for re-election at the end of his first term. However, no Governor may stand for election having served two terms or six years, whichever is the less.
- 11.4 An appointed Governor may hold office for a period of up to three years.

11.5 An appointed Governor shall cease to hold office if the appointing organisation withdraws its sponsorship of him.

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

11.7 Governors shall sign a declaration entitling them to vote at meetings, see *BGSO* 10.

12. Board of Governors – disqualification and removal

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

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

12.1.2 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;

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

12.1.4 a person who has abused any member of NHS staff;

12.1.5 he is a person whose term of office of office as the chair or as a member or director of a health service body has been terminated because his appointment is not in the interests of the health service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest;

12.1.6 he is a medical practitioner that has been removed from the professional register by the General Medical Council; or

12.1.7 he is incapable of managing and administering his property and affairs because of mental disorder, illness or injury.

12.2 Governors must be at least 18 years of age at the date they are nominated for election or appointment.

12.3 Governors will be subject to removal for the following reasons:

- 12.3.1 failure to attend more than two consecutive meetings without satisfactory explanation to the Trust Chair;
 - 12.3.2 making false declaration for any purpose of this Constitution or the 2006 Act; and
 - 12.3.3 conduct that has caused, or is likely to cause, material prejudice to the best interests of the Trust or the proper conduct of the Board of Governors or otherwise in a manner inconsistent with continued membership of the Board of Governors.
- 12.4 Removal shall be on the recommendation of the Trust Chair and should require the approval of at least two-thirds of the Governors present, the Governor concerned not being eligible to participate in such a vote and being absent from the room whilst it takes place. If a Governor's tenure of office is terminated, then he should be ineligible to stand for re-election as a Governor for a period of three years. A decision for termination should be effective notwithstanding any reference to dispute resolution.

13. Board of Governors – meetings of Governors

- 13.1 The Trust Chair (that is, the Chair of the Board of Directors, appointed in accordance with the provisions of paragraph 20.1) or, in his absence, the Deputy Trust Chair (appointed in accordance with the provisions of paragraph 21.1), shall preside at meetings of the Board of Governors.
- 13.2 Meetings of the Board of Governors shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons at the discretion of the Trust Chair.
- 13.3 There shall be not less than three meetings of the Board of Governors each year.

14. Board of Governors – *Standing Orders*

- 14.1 The Standing Orders for the practice and procedure of the Board of Governors, as may be varied from time to time, are attached at *Annex 3*.

15. Board of Governors – conflicts of interest of Governors

- 15.1 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 Board of Governors, the Governor shall disclose that interest to the members of the Board of

Governors as soon as he becomes aware of it. The *Board of Governors' Standing Orders* 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.

16. Board of Governors – expenses

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

17. Board of Directors – composition

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

17.2 The Board of Directors is to comprise:

17.2.1 a Non-Executive Chair;

17.2.2 five other Non-Executive Directors; and

17.2.3 six Executive Directors.

17.3 One of the Executive Directors shall be the Chief Executive.

17.4 The Chief Executive shall be the Accounting Officer.

17.5 One of the Executive Directors shall be the Finance Director.

17.6 One of the Executive Directors is to be a registered medical practitioner.

17.7 One of the Executive Directors is to be a registered nurse or a registered midwife; this Executive Director will be a non-voting Executive Director.

17.8 One of the Executive Directors shall be the Dean of Postgraduate Studies.

17.9 One of the Executive Directors shall be the Trust Clinical Director.

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

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

18.1.1 he is a Member of the Public Constituency; or

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

18.1.3 he is not disqualified by virtue of paragraph 26.

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

19.1 The Board of Governors at a general meeting of the Board of Governors shall appoint or remove the Trust Chair and the other Non-Executive Directors.

19.2 Removal of the Trust Chair or another Non-Executive Director shall require the approval of three-quarters of the members of the Board of Governors.

20. Board of Directors – appointment of Deputy Trust Chair

20.1 The Board of Governors at a general meeting of the Board of Governors shall appoint one of the Non-Executive Directors as Deputy Trust Chair.

21. Board of Directors – appointment of Senior Independent Director

21.1 The Board of Directors shall appoint one of the independent Non-Executive Directors as Senior Independent Director, in consultation with the Board of Governors. The role of the Senior Independent Director is set out in section 4 of *Annex 4*.

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

22.1 The Non-Executive Directors shall appoint or remove the Chief Executive.

22.2 The appointment of the Chief Executive shall require the approval of the Board of Governors.

22.3 A committee consisting of the Chair, the Chief Executive and the other Non-Executive Directors shall appoint or remove the other Executive Directors.

23. Board of Directors – disqualification

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

- 23.1.1 a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;
- 23.1.2 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;
- 23.1.3 a person who within the preceding five years has been convicted in the British Isles of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him;
- 23.1.4 a person who has abused any member of NHS staff;
- 23.1.5 he is a person whose term of office as the chair or as a member or director of a health service body has been terminated because his appointment is not in the interests of the health service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest;
- 23.1.6 he is a medical practitioner that has been removed from the professional register by the General Medical Council; or
- 23.1.7 he is incapable of managing and administering his property and affairs because of mental disorder, illness or injury.

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

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

23.3 With regard to Non-Executive Directors, removal is subject to the provisions of paragraph 19. With regard to the Chief Executive, removal is subject to the provisions of paragraph 22. A decision for termination should be effective notwithstanding any reference to dispute resolution.

24. Board of Directors – *Standing Orders*

24.1 The Standing Orders for the practice and procedure of the Board of Directors, as may be varied from time to time, are attached at *Annex 4*.

25. Board of Directors – conflicts of interest of Directors

25.1 If a Director 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 Board of Directors, the Director shall disclose that interest to the members of the Board of Directors as soon as he becomes aware of it. The *Board of Directors' Standing Orders (BDSOs)* shall make provision for the disclosure of interests and arrangements for the exclusion of a Director declaring any interest from any discussion or consideration of the matter in respect of which an interest has been disclosed.

26. Board of Directors – remuneration and Terms of Office

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

26.2 The Trust shall establish a committee of Non-Executive Directors to decide the remuneration and allowances, and the other terms and conditions of office, of the Chief Executive and other Executive Directors.

27. Registers

27.1 The Trust shall have:

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

27.1.2 a Register of Members of the Board of Governors;

27.1.3 a Register of Governors' Interests;

27.1.4 a Register of Members of the Board of Directors;

27.1.5 a Register of Directors' Interests; and

28. Admission to and removal from the Registers

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

29. Registers – inspection and copies

29.1 The Trust shall make the Registers specified in paragraph 28, available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations, see *Annex 5*.

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

29.2.1 any Member of the Public Constituency; or

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

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

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

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

30. Documents available for public inspection

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

30.1.1 a copy of the current Constitution;

30.1.2 a copy of the current Terms of Authorisation;

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

30.1.4 a copy of the latest Annual Report;

30.1.5 a copy of the latest information as to its forward planning; and

30.1.6 a copy of any notice given under the National Health Service Act 2006.

30.2 Any person who requests a copy of or extract from any of the above documents is to be provided with a copy.

31. Auditor

31.1 The Trust shall have an Auditor.

31.2 The Board of Governors shall appoint or remove the Auditor at a general meeting of the Board of Governors.

32. Audit Committee

32.1 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.

33. Accounts

33.1 The Trust shall keep accounts in such form as the Regulator may with the approval of HM Treasury direct.

33.2 The accounts are to be audited by the Trust's Auditor.

33.3 The Trust shall prepare, in respect of each financial year, annual accounts in such form as the Regulator may, with the approval of HM Treasury, direct. The functions of the Trust with respect to the preparation of the annual accounts shall be delegated to the Accounting Officer.

34. Annual Report and Annual Plan

34.1 Annual Report

34.1.1 The Trust shall prepare an Annual Report and send it to the Regulator.

34.2 Annual Plan

34.2.1 The Trust shall give information as to its forward planning in respect of each financial year to the Regulator.

34.2.2 The document containing the information with respect to planning (referred to above) shall be prepared by the Directors.

34.2.3 In preparing the document, the Directors shall have regard to the views of the Board of Governors.

35. Meeting of Board of Governors to consider annual accounts and reports

35.1 The following documents are to be presented to the Board of Governors at a general meeting of the Board of Governors:

35.1.1 the annual accounts;

35.1.2 any report of the Auditor on them; and

35.1.3 the Annual Report.

36. Instruments

36.1 The Trust shall have a seal.

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

37. Amendments to the Constitution

37.1 The Trust may make amendments to this Constitution with the approval of the Regulator.

37.2 No proposal for the amendment of this Constitution shall be put to the Regulator unless it has been approved by the Board of Directors, Board of Governors, and Members.

38. Interpretation and definitions

38.1 Interpretations

38.1.1 Unless a contrary intention is evident or the context requires otherwise, words or expressions contained in this Constitution shall bear the same meaning as provided by the 2006 Act.

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

38.1.3 Save as permitted by law, at any meeting the Trust Chair shall be the final authority on the interpretation of this Constitution (on which he should be advised by the Trust Secretary).

38.1.4 Any expression to which a meaning is given in the National Health Service Act 2006 or in the Regulations or Orders made under the Act shall have the same meaning in this interpretation and in addition:

38.2 Definitions

38.2.1 "the 2006 Act" is the *National Health Service Act 2006*;

38.2.2 "the Accounting Officer" is the person who, from time to time, discharges the functions specified in paragraph 25(5) of Schedule 7 to the National Health Service Act 2006;

38.2.3 "Chief Executive" shall mean the chief officer of the Trust;

38.2.4 "committee" shall mean a committee appointed by the Trust;

38.2.5 "committee members" shall be persons formally appointed by the Trust to sit on, or to chair, specific committees;

38.2.6 "Constitution" means this Constitution and all annexes to it;

38.2.7 "BDSO" shall mean the *Board of Directors' Standing Orders*;

38.2.8 "BGSO" shall mean the *Board of Governors' Standing Orders*;

38.2.9 "Director" shall mean a person appointed as a Director in accordance with the Membership and Procedure Regulations and includes the Trust Chair;

38.2.10 "Director of Finance" shall mean the chief finance officer of the Trust;

38.2.11 "Board of Directors" shall mean the Trust Chair and Non-Executive Directors, appointed by the Governors, and the Executive Directors, appointed by the relevant committee of the Trust;

38.2.12 "Board of Governors" shall mean the Trust Chair and Governors, appointed and elected;

38.2.13 "Deputy Trust Chair" shall mean the Non-Executive Director appointed by the Board of Governors to take on the Trust Chair's duties if the Trust Chair is absent for any reason;

- 38.2.14 “funds held on trust” shall mean those funds that the Trust holds at its date of incorporation, receives on distribution by statutory instrument, or chooses subsequently to accept under powers derived from the 2006 Act. Such funds may or may not be charitable;
- 38.2.15 “motion” shall mean a formal proposition to be discussed and voted on during the course of a meeting;
- 38.2.16 “nominated officer” shall mean an officer charged with the responsibility for discharging specific tasks within *BDSOs* and *Standing Financial Instructions*;
- 38.2.17 “officer” shall mean an employee of the Trust;
- 38.2.18 “patient” shall mean a person who has been assessed and is on a waiting list; a person who is receiving treatment; and/or a person who is not receiving treatment but has not been discharged;
- 38.2.19 “public” shall mean persons who would be entitled to treatment (that is, those satisfying national residency criteria that could at any time be referred and accepted for treatment); or a resident EU citizen or taxpayer of the areas served;
- 38.2.20 “the Regulator” is Monitor, the Independent Regulator of NHS Foundation Trusts, as provided by Section 31 of the National Health Service Act 2006;
- 38.2.21 “staff” shall mean all those employed on permanent contracts, all those appointed on fixed term contracts of more than a year, people who have been continuously employed for more than twelve months, honorary staff working more than 10 hours per week on average or earning more than £5000pa, contractors (e.g. canteen staff), those employed by other organisations but working at the Trust (e.g. researchers, staff in service units);
- 38.2.22 “Terms of Authorisation” are the terms of authorisation issued by Monitor under Section 35 of the National Health Service Act 2006;
- 38.2.23 “the Trust” shall mean the Tavistock and Portman NHS Foundation Trust;
- 38.2.24 “Trust Chair” shall mean the person appointed by the Governors;
and

38.2.25 "Trust Secretary" shall mean a person appointed by the Trust to monitor the Trust's compliance with the law, this *Constitution*, and observance of relevant guidance.

Annex 1

Composition of the Board of Governors

1. Elected Governors

1.1 The Public Constituency

| Class | Governor Seats | Minimum Membership |
|-------------------------|----------------|--------------------|
| Camden | 3 | 200 |
| Rest of London | 6 | 200 |
| Rest of England & Wales | 2 | 200 |
| Total | 11 | |

1.2 The Staff Constituency

1.2.1 There will be three classes of the Staff Constituency.

| Class | Governor Seats | Minimum Membership |
|--|----------------|--------------------|
| Clinical, Academic, Senior | 1 | 100 |
| Administrative & Technical | 1 | 100 |
| Representatives of Recognised Staff Organisations and Trade Unions | 1 | 5 |
| Total | 3 | |

1.2.2 Where the distinction between the Clinical, Academic and Senior class and the Administrative and Technical class is unclear, NHS pay bands (or equivalent) 7 and above shall represent the former and 1-6 the latter.

1.2.3 The Representatives of Recognised Staff Organisations and Trade Unions at any time will not be eligible to be Members of either of the other classes.

2. Appointed Governors

| | Governor Seats |
|---|----------------|
| <i>Primary Care Trusts</i> | |
| Camden PCT | 1 |
| <i>Local Authorities</i> | |
| London Borough of Camden | 1 |
| <i>Partnership Organisations</i> | |
| Voluntary Action Camden | 1 |
| London Strategic Health Authority | 1 |
| University of Essex | 1 |
| University of East London | 1 |
| <i>Total</i> | 6 |

Annex 2

The Rules for Elections

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Part 1. Interpretation

1. Interpretation

1.1 In these Rules, unless the context otherwise requires:

- 1.1.1 “the Trust” means the Tavistock & Portman NHS Foundation Trust;
- 1.1.2 “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 Board of Governors;
- 1.1.3 “the Regulator” is Monitor, the Independent Regulator of NHS Foundation Trusts, established under the National Health Service Act 2006; and
- 1.1.4 “the 2006 Act” means the National Health Service Act 2006.
- 1.1.5 Other expressions used in these Rules and in the 2006 Act have the same meaning in these Rules as in that Schedule.

Part 2. Timetable for election

2. Timetable

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

- 2.1.1 Proceeding Time
 - 2.1.1.1 Publication of notice of election not later than the fortieth day before the day of the close of the poll.
 - 2.1.1.2 Final day for delivery of nomination papers to Returning Officer not later than the twenty eighth day before the day of the close of the poll.
 - 2.1.1.3 Publication of statement of nominated candidates not later than the twenty seventh day before the day of the close of the poll.
 - 2.1.1.4 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.

2.1.1.5 Notice of the poll not later than the fifteenth day before the day of the close of the poll.

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

3.1.1 a Saturday or Sunday

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

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

Part 3. Returning Officer

4. Returning Officer

4.1 Subject to *Rule 65*, the Returning Officer for an election is to be appointed by the Trust.

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

5. Staff

5.1 Subject to Rule 65, the Returning Officer may appoint and pay such staff, including such technical advisers, as he considers necessary for the purposes of the election.

6. Expenditure

6.1 The Trust is to pay the Returning Officer:

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

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

7. Duty of co-operation

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

Part 4. Stages common to contest and uncontested elections

8. Notice of election

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

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

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

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

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

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

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

8.1.7 the contact details of the Returning Officer; and

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

9. Nomination of candidates

9.1 Each candidate must nominate themselves on a single nomination paper.

9.2 The Returning Officer:

- 9.2.1 is to supply any Member of the Trust with a nomination paper; and
- 9.2.2 is to prepare a nomination paper for signature at the request of any Member of the Trust, but it is not necessary for a nomination to be on a form supplied by the Returning Officer.

10. Candidate's particulars

10.1 The nomination paper must state the candidate's:

- 10.1.1 full name;
- 10.1.2 contact address in full; and
- 10.1.3 Constituency, or class within a Constituency, of which the candidate is a Member.

11. Declaration of interests

11.1 The nomination paper must state:

- 11.1.1 any financial interest that the candidate has in the Trust; and
- 11.1.2 whether the candidate is a member of a political party, and if so, which party, and if the candidate has no such interests, the paper must include a statement to that effect.

12. Declaration of eligibility

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

- 12.1.1 that he is not prevented from being a member of the Board of Governors by the National Health Service Act 2006 or by any provision of this Constitution; and,
- 12.1.2 for a Member of the Public Constituency, of the particulars of his qualification to vote as a Member of that Constituency, or class within that Constituency, for which the election is being held.

13. Signature of candidate

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

- 13.1.1 they wish to stand as a candidate;
- 13.1.2 their declaration of interests as required under Rule 11, is true and correct; and
- 13.1.3 their declaration of eligibility, as required under Rule 12, is true and correct.

14. Decisions as to the validity of nomination

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

- 14.1.1 decides that the candidate is not eligible to stand;
- 14.1.2 decides that the nomination paper is invalid;
- 14.1.3 receives satisfactory proof that the candidate has died; or
- 14.1.4 receives a written request by the candidate of their withdrawal from candidacy.

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

- 14.2.1 that the paper is not received on or before the final date and time for return of nomination papers, as specified in the notice of the election;
- 14.2.2 that the paper does not contain the candidate's particulars, as required by Rule 10;
- 14.2.3 that the paper does not contain a declaration of the interests of the candidate, as required by Rule 11;
- 14.2.4 that the paper does not include a declaration of eligibility as required by Rule 12; or
- 14.2.5 that the paper is not signed and dated by the candidate, as required by *Rule 13*.

14.3 The Returning Officer is to examine each nomination paper as soon as is practicable after he has received it, and decide whether the candidate has been validly nominated.

14.4 Where the Returning Officer decides that a nomination is invalid, the Returning Officer must endorse this on the nomination paper, stating the reasons for his decision.

14.5 The Returning Officer is to send notice of the decision as to whether a nomination is valid or invalid to the candidate at the contact address given in the candidate's nomination paper.

15. Publication of statement of nominated candidates

15.1 The Returning Officer is to prepare and publish a statement showing the candidates who are standing for election.

15.2 The statement must show:

15.2.1 the name, contact address, and Constituency or class within a Constituency of each candidate standing; and

15.2.2 the declared interests of each candidate standing, as given in their nomination paper.

15.3 The statement must list the candidates standing for election in alphabetical order by surname.

15.4 The Returning Officer must send a copy of the statement of candidates and copies of the nomination papers to the Trust as soon as is practicable after publishing the statement.

16. Inspection of statement of nominated candidates and nomination papers

16.1 The Trust is to make the statements of the candidates and the nomination papers supplied by the Returning Officer under Rule 15.4 available for inspection by members of the public free of charge at all reasonable times.

16.2 If a person requests a copy or extract of the statements of candidates or their nomination papers, the Trust is to provide that person with the copy or extract free of charge.

17. Withdrawal of nominated 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 Board 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 Board of Governors, those candidates are to be declared elected in accordance with Part 7 of these Rules.
- 18.3 If the number of candidates remaining validly nominated for an election after any withdrawals under these Rules is less than the number of members to be elected to the Board of Governors, then:
- 18.3.1 the candidates who remain validly nominated are to be declared elected in accordance with Part 7 of these Rules; and
 - 18.3.2 the Returning Officer is to order a new election to fill any vacancy, which remains unfilled, on a day appointed by him in consultation with the Trust.

Part 5. Contested elections

19. Poll to be taken by ballot

- 19.1 The votes at the poll must be given by secret ballot.
- 19.2 The votes are to be counted and the result of the poll determined in accordance with Part 6 of these Rules.

20. The ballot paper

- 20.1 The ballot of each voter is to consist of a ballot paper with the persons remaining validly nominated for an election after any withdrawals under these Rules, and no others, inserted in the paper.
- 20.2 Every ballot paper must specify:
- 20.2.1 the name of the Trust;
 - 20.2.2 the Constituency, or class within a Constituency, for which the election is being held;

- 20.2.3 the number of members of the Board of Governors to be elected from that Constituency, or class within that Constituency;
 - 20.2.4 the names and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates;
 - 20.2.5 instructions on how to vote;
 - 20.2.6 if the ballot paper is to be returned by post, the address for its return and the date and time of the close of the poll; and
 - 20.2.7 the contact details of the Returning Officer.
- 20.3 Each ballot paper must have a unique identifier.
- 20.4 Each ballot paper must have features incorporated into it to prevent it from being reproduced.

21. The declaration of identity (Public Constituency)

- 21.1 In respect of an election for a Public Constituency, a declaration of identity must be issued with each ballot paper.
- 21.2 The declaration of identity is to include a declaration:
- 21.2.1 that the voter is the person to whom the ballot paper was addressed;
 - 21.2.2 that the voter has not marked or returned any other voting paper in the election; and
 - 21.2.3 of the particulars of that Member's qualification to vote as a Member of the Constituency or class within a Constituency for which the election is being held.
- 21.3 The declaration of identity is to include space for:
- 21.3.1 the name of the voter;
 - 21.3.2 the address of the voter;
 - 21.3.3 the voter's signature; and
 - 21.3.4 the date that the declaration was made by the voter.

21.4 The voter must be required to return the declaration of identity together with the ballot paper.

21.5 The declaration of identity must caution the voter that, if it is not returned with the ballot paper, or if it is returned without being correctly completed, the voter's ballot paper may be declared invalid.

Action to be taken before the poll

22. List of eligible voters

22.1 The Trust is to provide the Returning Officer with a list of the Members of the Constituency or class within a Constituency for which the election is being held who are eligible to vote by virtue of Rule 26 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 mailing address where his ballot paper is to be sent.

23. Notice of poll

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

23.1.1 the name of the Trust;

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

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

23.1.4 the names, contact addresses, and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates;

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

23.1.6 the address for return of the ballot papers, and the date and time of the close of the poll;

23.1.7 the address and final dates for applications for replacement ballot papers; and

23.1.8 the contact details of the Returning Officer.

24. Issue of voting documents by the Returning Officer

24.1 As soon as is reasonably practicable on or after the publication of the notice of the poll, the Returning Officer is to send the following documents to each Member of the Trust named in the list of eligible voters:

24.1.1 a ballot paper and ballot paper envelope;

24.1.2 a declaration of identity (if required);

24.1.3 information about each candidate standing for election, pursuant to Rule 59 of these Rules; and

24.1.4 a covering envelope.

24.2 The documents are to be sent to the mailing address for each Member, as specified in the list of eligible voters.

25. Ballot paper envelope and covering envelope

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

25.2 The covering envelope is to have:

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

25.2.2 pre-paid postage for return to that address.

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

25.3.1 the completed declaration of identity if required, and

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

The poll

26. Eligibility to vote

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

27. Voting by persons who require assistance

27.1 The Returning Officer is to put in place arrangements to enable requests for assistance to vote to be made.

27.2 Where the Returning Officer receives a request from a voter who requires assistance to vote, the Returning Officer is to make such arrangements as he considers necessary to enable that voter to vote.

28. Spoilt ballot papers

28.1 If a voter has dealt with his ballot paper in such a manner that it cannot be accepted as a ballot paper (referred to a "spoilt ballot paper"), that voter may apply to the Returning Officer for a replacement ballot paper.

28.2 On receiving an application, the Returning Officer is to obtain the details of the unique identifier on the spoilt ballot paper, if he can obtain it.

28.3 The Returning Officer may not issue a replacement ballot paper for a spoilt ballot paper unless he:

28.3.1 is satisfied as to the voter's identity; and

28.3.2 has ensured that the declaration of identity, if required, has not been returned.

28.4 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"):

28.4.1 the name of the voter;

28.4.2 the details of the unique identifier of the spoilt ballot paper (if that officer was able to obtain it); and

28.4.3 the details of the unique identifier of the replacement ballot paper.

29. Lost ballot papers

29.1 Where a voter has not received his ballot paper by the fourth day before the close of the poll, that voter may apply to the Returning Officer for a replacement ballot paper.

29.2 The Returning Officer may not issue a replacement ballot paper for a lost ballot paper unless he:

29.2.1 is satisfied as to the voter's identity;

29.2.2 has no reason to doubt that the voter did not receive the original ballot paper; and

29.2.3 has ensured that the declaration of identity, if required, has not been returned.

29.3 After issuing a replacement ballot paper for a lost ballot paper, the Returning Officer shall enter in a list ("the list of lost ballot papers"):

29.3.1 the name of the voter; and

29.3.2 the details of the unique identifier of the replacement ballot paper.

30. Issue of replacement ballot paper

30.1 If a person applies for a replacement ballot paper under Rule 28 or 29 and a declaration of identity has already been received by the Returning Officer in the name of that voter, the Returning Officer may not issue a replacement ballot paper unless, in addition to the requirements imposed Rule 28.3 or 29.2, he 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.

30.2 After issuing a replacement ballot paper under this Rule, the Returning Officer shall enter in a list ("the list of tendered ballot papers"):

30.2.1 the name of the voter; and

30.2.2 the details of the unique identifier of the replacement ballot paper issued under this Rule.

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

31.1 In respect of an election for a Public Constituency a declaration of identity must be issued with each replacement ballot paper.

31.2 The declaration of identity is to include a declaration:

- 31.2.1 that the voter has not voted in the election with any ballot paper other than the ballot paper being returned with the declaration; and
 - 31.2.2 of the particulars of that Member's qualification to vote as a Member of the Public Constituency, or class within a Constituency, for which the election is being held.
- 31.3 The declaration of identity is to include space for:
- 31.3.1 the name of the voter;
 - 31.3.2 the address of the voter;
 - 31.3.3 the voter's signature; and
 - 31.3.4 the date that the declaration was made by the voter.
- 31.4 The voter must be required to return the declaration of identity together with the ballot paper.
- 31.5 The declaration of identity must caution the voter that if it is not returned with the ballot paper, or if it is returned without being correctly completed, the replacement ballot paper may be declared invalid.

Procedure for receipt of envelopes

32. Receipt of voting documents

- 32.1 Where the Returning Officer receives a:
- 32.1.1 covering envelope; or
 - 32.1.2 any other envelope containing a declaration of identity, if required, a ballot paper envelope, or a ballot paper,
- before the close of the poll, that officer is to open it as soon as is practicable; and Rules 33 and 34 are to apply.
- 32.2 The Returning Officer may open any ballot paper envelope for the purposes of Rules 33 and 34, but must make arrangements to ensure that no person obtains or communicates information as to:
- 32.2.1 the candidate for whom a voter has voted; or
 - 32.2.2 the unique identifier on a ballot paper.

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

33. Validity of ballot paper

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

33.2 Where the Returning Officer is satisfied that paragraph 33.1 has been fulfilled, he is to:

33.2.1 put the declaration of identity if required in a separate packet; and

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

33.3 Where the Returning Officer is not satisfied that paragraph 33.1 has been fulfilled, he is to:

33.3.1 mark the ballot paper "disqualified";

33.3.2 if there is a declaration of identity accompanying the ballot paper, mark it as "disqualified" and attach it the ballot paper;

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

33.3.4 place the document or documents in a separate packet.

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

34.1 Where the Returning Officer receives a declaration of identity but no ballot paper, the Returning Officer is to:

34.1.1 mark the declaration of identity "disqualified";

34.1.2 record the name of the voter in the list of disqualified documents, indicating that a declaration of identity was received from the voter without a ballot paper; and

34.1.3 place the declaration of identity in a separate packet.

35. Sealing of packets

35.1 As soon as is possible after the close of the poll and after the completion of the procedure under Rules 33 and 34, the Returning Officer is to seal the packets containing:

35.1.1 the disqualified documents, together with the list of disqualified documents inside it;

35.1.2 the declarations of identity, if required;

35.1.3 the list of spoiled ballot papers;

35.1.4 the list of lost ballot papers;

35.1.5 the list of eligible voters; and

35.1.6 the list of tendered ballot papers.

Part 6. Counting the Votes

36. Interpretation of Part 6

36.1 In Part 6 of these Rules:

36.1.1 "continuing candidate" means any candidate not deemed to be elected, and not excluded;

36.1.2 "count" means all the operations involved in counting of the first preferences recorded for candidates, the transfer of the surpluses of elected candidates, and the transfer of the votes of the excluded candidates;

36.1.3 "deemed to be elected" means deemed to be elected for the purposes of counting of votes but without prejudice to the declaration of the result of the poll;

36.1.4 "mark" means a figure, an identifiable written word, or a mark such as "X";

36.1.5 "non-transferable vote" means a ballot paper:

36.1.5.1 on which no second or subsequent preference is recorded for a continuing candidate; or

36.1.5.2 which is excluded by the Returning Officer under Rule 44.4,

- 36.1.6 "preference" as used in the following contexts has the meaning assigned below:
- 36.1.6.1 "first preference" means the figure "1" or any mark or word that clearly indicates a first (or only) preference;
 - 36.1.6.2 "next available preference" means a preference which is the second, or as the case may be, subsequent preference recorded in consecutive order for a continuing candidate (any candidate who is deemed to be elected or is excluded thereby being ignored); and
 - 36.1.6.3 in this context, a "second preference" is shown by the figure "2" or any mark or word which clearly indicates a second preference, and a third preference by the figure "3" or any mark or word which clearly indicates a third preference, and so on,
- 36.1.7 "quota" means the number calculated in accordance with Rule 41;
- 36.1.8 "surplus" means the number of votes by which the total number of votes for any candidate (whether first preference or transferred votes, or a combination of both) exceeds the quota; but references in these Rules to the transfer of the surplus means the transfer (at a transfer value) of all transferable papers from the candidate who has the surplus,
- 36.1.9 "stage of the count" means:
- 36.1.9.1 the determination of the first preference vote of each candidate;
 - 36.1.9.2 the transfer of a surplus of a candidate deemed to be elected; or
 - 36.1.9.3 the exclusion of one or more candidates at any given time,
- 36.1.10 "transferable paper" means a ballot paper on which, following a first preference, a second or subsequent preference is recorded in consecutive numerical order for a continuing candidate;
- 36.1.11 "transferred vote" means a vote derived from a ballot paper on which a second or subsequent preference is recorded for the candidate to whom that paper has been transferred; and
- 36.1.12 "transfer value" means the value of a transferred vote calculated in accordance with paragraph 42.4 or 42.7.

37. Arrangements for counting of the votes

37.1 The Returning Officer is to arrange for counting the votes as soon as is practicable after the close of the poll.

38. The count

38.1 The Returning Officer is to:

38.1.1 count and record the number of ballot papers that have been returned, and

38.1.2 count the votes according to the provisions in this part of the Rules.

38.2 The Returning Officer, while counting and recording the number of ballot papers and counting the votes, must arrange to ensure that no person obtains or communicates information as to the unique identifier on a ballot paper.

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

39. Rejected ballot papers

39.1 Any ballot paper:

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

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

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

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

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

39.2 The Returning Officer is to endorse the word “rejected” on any ballot paper that under this Rule is not to be counted.

39.3 The Returning Officer is to draw up a statement showing the number of ballot papers rejected by him under each of the sub-paragraphs of 39.1.

40. First stage

40.1 The Returning Officer is to sort the ballot papers into parcels according to the candidates for whom the first preference votes are given.

40.2 The Returning Officer is to then count the number of first preference votes given on ballot papers for each candidate, and is to record those numbers.

40.3 The Returning Officer is to also ascertain and record the number of valid ballot papers.

41. The quota

41.1 The Returning Officer is to divide the number of valid ballot papers by a number exceeding by one the number of members of the Board of Governors to be elected.

41.2 The result, increased by one, of the division under paragraph 41.1 (any fraction being disregarded) shall be the number of votes sufficient to secure the election of a candidate (in these Rules referred to as “the quota”).

41.3 At any stage of the count a candidate whose total votes equals or exceeds the quota shall be deemed to be elected, except in any election where there is only one vacancy, when a candidate shall not be deemed to be elected until the procedure set out in paragraphs 44.1 to 44.3 of Rule 44 has been complied with.

42. Transfer of votes

42.1 Where the number of first preference votes for any candidate exceeds the quota, the Returning Officer is to sort all the ballot papers on which first preference votes are given for that candidate into sub-parcels so that they are grouped:

42.1.1 according to next available preference given on those papers for any continuing candidate; or

- 42.1.2 where no such preference is given, as the sub-parcel of non-transferable votes.
- 42.2 The Returning Officer is to count the number of ballot papers in each parcel referred to in paragraph 42.1.
- 42.3 The Returning Officer is, in accordance with this Rule and Rule 43, to transfer each sub-parcel of ballot papers referred to in paragraph 42.1.1 to the candidate for whom the next available preference is given on those papers.
- 42.4 The vote on each ballot paper transferred under paragraph 42.3, shall be at a value ("the transfer value") which:
- 42.4.1 reduces the value of each vote transferred so that the total value of all such votes does not exceed the surplus; and
- 42.4.2 is calculated by dividing the surplus of the candidate from whom the votes are being transferred by the total number of the ballot papers on which those votes are given, the calculation being made to two decimal places (ignoring the remainder if any).
- 42.5 Where at the end of any stage of the count involving the transfer of ballot papers, the number of votes for any candidate exceeds the quota, the Returning Officer is to sort the ballot papers in the sub-parcel of transferred votes which was last received by that candidate into separate sub-parcels so that they are grouped:
- 42.5.1 according to the next available preference given on those papers for any continuing candidate; or
- 42.5.2 where no such preference is given, as the sub-parcel of non-transferable votes.
- 42.6 The Returning Officer is, in accordance with this Rule and Rule 43, to transfer each sub-parcel of ballot papers referred to in paragraph 42.5.1 to the candidate for whom the next available preference is given on those papers.
- 42.7 The vote on each ballot paper transferred under paragraph 42.6 shall be at:
- 42.7.1 a transfer value calculated as set out in paragraph 42.4.2; or
- 42.7.2 at the value at which that vote was received by the candidate from whom it is now being transferred, whichever is the less.
- 42.8 Each transfer of a surplus constitutes a stage in the count.

42.9 Subject to paragraph 42.10, the Returning Officer shall proceed to transfer transferable papers until no candidate who is deemed to be elected has a surplus or all the vacancies have been filled.

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

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

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

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

43. Supplementary provisions on transfer

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

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

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

43.2 The Returning Officer shall, on each transfer of transferable papers under Rule 42:

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

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

43.2.3 record as non-transferable votes the difference between the surplus and the total transfer value of the transferred votes and

add that difference to the previously recorded total of non-transferable votes; and

43.2.4 compare:

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

43.2.4.2 the recorded total of valid first preference votes.

43.3 All ballot papers transferred under Rule 42 or 44 shall be clearly marked, either individually or as a sub-parcel, so as to indicate the transfer value recorded at that time to each vote on that paper or, as the case may be, all the papers in that sub-parcel.

43.4 Where a ballot paper is so marked that it is unclear to the Returning Officer at any stage of the count under Rule 42 or 44 for which candidate the next preference is recorded, the Returning Officer shall treat any vote on that ballot paper as a non-transferable vote; and votes on a ballot paper shall be so treated where, for example, the names of two or more candidates (whether continuing candidates or not) are so marked that, in the opinion of the Returning Officer, the same order of preference is indicated or the numerical sequence is broken.

44. Exclusion of candidates

44.1 If:

44.1.1 all transferable papers which under the provisions of Rule 42 (including that Rule as applied by paragraph 44.11) and this Rule are required to be transferred, have been transferred; and

44.1.2 subject to Rule 45, one or more vacancies remain to be filled,

the Returning Officer shall exclude from the election at that stage the candidate with the then lowest vote (or, where paragraph 44.12 applies, the candidates with the then lowest votes).

44.2 The Returning Officer shall sort all the ballot papers on which first preference votes are given for the candidate or candidates excluded under paragraph 44.1 into two sub-parcels so that they are grouped as:

44.2.1 ballot papers on which a next available preference is given; and

- 44.2.2 ballot papers on which no such preference is given (thereby including ballot papers on which preferences are given only for candidates who are deemed to be elected or are excluded).
- 44.3 The Returning Officer shall, in accordance with this Rule and Rule 43, transfer each sub-parcel of ballot papers referred to in paragraph 44.2.1 to the candidate for whom the next available preference is given on those papers.
- 44.4 The exclusion of a candidate, or of two or more candidates together, constitutes a further stage of the count.
- 44.5 If, subject to Rule 45, one or more vacancies still remain to be filled, the Returning Officer shall then sort the transferable papers, if any, which had been transferred to any candidate excluded under paragraph 44.1 into sub-parcels according to their transfer value.
- 44.6 The Returning Officer shall transfer those papers in the sub-parcel of transferable papers with the highest transfer value to the continuing candidates in accordance with the next available preferences given on those papers (thereby passing over candidates who are deemed to be elected or are excluded).
- 44.7 The vote on each transferable paper transferred under paragraph 44.6 above shall be at the value at which that vote was received by the candidate excluded under paragraph 44.1.
- 44.8 Any papers on which no next available preferences have been expressed shall be set aside as non-transferable votes.
- 44.9 After the Returning Officer has completed the transfer of the ballot papers in the sub-parcel of ballot papers with the highest transfer value he shall proceed to transfer in the same way the sub-parcel of ballot papers with the next highest value and so on until he has dealt with each sub-parcel of a candidate excluded under paragraph 44.1.
- 44.10 The Returning Officer shall after each stage of the count completed under this Rule:
- 44.10.1 record:
- 44.10.1.1 the total value of votes; or
- 44.10.1.2 the total transfer value of votes transferred to each candidate,
- 44.10.2 add that total to the previous total of votes recorded for each candidate and record the new total;

44.10.3 record the value of non-transferable votes and add that value to the previous non-transferable votes total; and

44.10.4 compare:

44.10.4.1 the total number of votes then recorded for each candidate together with the total number of non-transferable votes; with

44.10.4.2 the recorded total of valid first preference votes.

44.11 If after a transfer of votes under any provision of this Rule, a candidate has a surplus, that surplus shall be dealt with in accordance with paragraphs 42.5 to 42.10 and 44.5 to 44.10.

44.12 Where the total of the votes of the two or more lowest candidates, together with any surpluses not transferred, is less than the number of votes credited to the next lowest candidate, the Returning Officer shall in one operation exclude such two or more candidates.

44.13 If when a candidate has to be excluded under this Rule, two or more candidates each have the same number of votes and are lowest:

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

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

45. Filling of last vacancies

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

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

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

46. Order of election of candidates

- 46.1 The order in which candidates whose votes equal or exceed the quota are deemed to be elected shall be the order in which their respective surpluses were transferred, or would have been transferred but for Rule 42.10.
- 46.2 A candidate credited with a number of votes equal to, and not greater than, the quota shall, for the purposes of this Rule, be regarded as having had the smallest surplus at the stage of the count at which he obtained the quota.
- 46.3 Where the surpluses of two or more candidates are equal and are not required to be transferred, regard shall be had to the total number of votes credited to such candidates at the earliest stage of the count at which they had an unequal number of votes and the surplus of the candidate who had the greatest number of votes at that stage shall be deemed to be the largest.
- 46.4 Where the number of votes credited to two or more candidates were equal at all stages of the count, the Returning Officer shall decide between them by lot and the candidate on whom the lot falls shall be deemed to have been elected first.

47. Equality of votes

- 47.1 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

48. Declaration of result for contested elections

- 48.1 In a contested election, when the result of the poll has been ascertained, the Returning Officer is to:
- 48.1.1 declare the candidates who are deemed to be elected under Part 6 of these Rules as elected;
 - 48.1.2 give notice of the name of each candidate who he has declared elected to the Trust Chair; and

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

48.2 The Returning Officer is to make:

48.2.1 the number of first preference votes for each candidate whether elected or not;

48.2.2 any transfer of votes;

48.2.3 the total number of votes for each candidate at each stage of the count at which such transfer took place;

48.2.4 the order in which the successful candidates were elected; and

48.2.5 the number of rejected ballot papers under each of the headings in Rule 39.1, available on request.

49. Declaration of result for uncontested elections

49.1 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:

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

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

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

Part 8. Disposal of documents

50. Sealing up of documents relating to the poll

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

50.1.1 the counted ballot papers;

50.1.2 the ballot papers endorsed with "rejected in part";

50.1.3 the rejected ballot papers; and

50.1.4 the statement of rejected ballot papers.

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

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

50.2.2 the declarations of identity;

50.2.3 the list of spoilt ballot papers;

50.2.4 the list of lost ballot papers;

50.2.5 the list of eligible voters; and

50.2.6 the list of tendered ballot papers.

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

50.3.1 its contents;

50.3.2 the date of the publication of notice of the election;

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

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

51. Delivery of documents

51.1 Once the documents relating to the poll have been sealed up and endorsed pursuant to Rule 49, the Returning Officer is to forward them to the Trust Chair.

52. Forwarding of documents received after close of the poll

52.1 Where:

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

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

52.1.3 any applications for replacement ballot papers are made too late to enable new ballot papers to be issued,

the Returning Officer is to put them in a separate packet, seal it up, and endorse and forward it to the Trust Chair.

53. Retention and public inspection of documents

53.1 The Trust is to retain the documents relating to an election that are forwarded to the Trust Chair by the Returning Officer under these Rules for one year, and then, unless otherwise directed by the Regulator, cause them to be destroyed.

53.2 With the exception of the documents listed in Rule 53.1, the documents relating to an election that are held by the Trust shall be available for inspection by members of the public at all reasonable times.

53.3 A person may request a copy or extract from the documents relating to an election that are held by the Trust, and the Trust is to provide it.

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

54.1 The Trust may not allow the inspection of, or the opening of any sealed packet containing:

54.1.1 any rejected ballot papers, including ballot papers rejected in part;

54.1.2 any disqualified documents, or the list of disqualified documents;

54.1.3 any counted ballot papers;

54.1.4 any declarations of identity; or

54.1.5 the list of eligible voters,

by any person without the consent of the Regulator.

54.2 A person may apply to the Regulator to inspect any of the documents listed in Rule 54.1, and the Regulator may only consent to such inspection if it is satisfied that it is necessary for questioning an election pursuant to Part 11.

54.3 The Regulator's consent may be on any terms or conditions that it thinks necessary, including conditions as to:

54.3.1 persons;

54.3.2 time;

54.3.3 place and mode of inspection; or

54.3.4 production or opening, and the Trust must only make the documents available for inspection in accordance with those terms and conditions.

54.4 On an application to inspect any of the documents listed in paragraph 54.1:

54.4.1 in giving its consent, the Regulator; and

54.4.2 in making the documents available for inspection, the Trust,

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

54.4.2.1 that his vote was given; and

54.4.2.2 that the Regulator has declared that the vote was invalid.

Part 9. Death of a candidate during a contested election

55. Countermand or abandonment of poll on death of candidate

55.1 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:

55.1.1 publish a notice stating that the candidate has died; and

55.1.2 proceed with the counting of the votes as if that candidate had been excluded from the count so that:

55.1.2.1 ballot papers which only have a first preference recorded for the candidate that has died, and no preferences for any other candidates, are not to be counted; and

55.1.2.2 ballot papers that have preferences recorded for other candidates are to be counted according to the consecutive order of those preferences, passing over preferences marked for the candidate who has died.

55.2 The ballot papers which have preferences recorded for the candidate who has died are to be sealed with the other counted ballot papers pursuant to Rule 49.1.

Part 10. Election expenses and publicity

56. Election expenses

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

57. Election expenses and payments by candidates

57.1 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:

57.1.1 personal expenses;

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

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

58. Election expenses incurred by other persons

58.1 No person may:

58.1.1 incur any expenses or make a payment (of whatever nature) for the purposes of a candidate's election, whether on that candidate's behalf or otherwise; or

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

58.2 Nothing in this Rule is to prevent the Trust from incurring such expenses, and making such payments, as it considers necessary pursuant to Rules 58 and 59.

Publicity

59. Publicity about election by the Trust

59.1 The Trust may:

59.1.1 compile and distribute such information about the candidates; and

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

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

59.2.1 objective, balanced and fair;

59.2.2 equivalent in size and content for all candidates;

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

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

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

60. Information about candidates for inclusion with voting documents

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

60.2 The information must consist of:

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

60.2.2 a photograph of the candidate.

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

61.1 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.

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

Part 11. Questioning elections and the consequence of irregularities

62. Application to question an election

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

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

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

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

62.3.2 a candidate, or a person claiming to have had a right to be elected at the election.

62.4 The application must:

62.4.1 describe the alleged breach of the Rules or electoral irregularity; and

62.4.2 be in such a form as the Regulator may require.

62.5 The application must be presented in writing within 21 days of the declaration of the result of the election.

62.6 If the Regulator requests further information from the applicant, then that person must provide it as soon as is reasonably practicable.

62.7 The Regulator shall delegate the determination of an application to a person or persons to be nominated for the purpose of the Regulator.

62.8 The determination by the person or persons nominated in accordance with Rule 61.1 shall be binding on, and shall be given effect by, the Trust, the applicant and the Members of the Constituency (or class within a Constituency) including all the candidates for the election to which the application relates.

62.9 The Regulator may prescribe rules of procedure for the determination of an application including costs.

Part 12. Miscellaneous

63. Secrecy

63.1 The following persons:

63.1.1 the Returning Officer; and

63.1.2 the Returning Officer's staff,

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

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

63.1.4 the unique identifier on any ballot paper; or

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

63.2 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.

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

64. Prohibition of disclosure of vote

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

65. Disqualification

65.1 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:

65.1.1 a Member of the Trust;

65.1.2 an employee of the Trust;

65.1.3 a Director of the Trust; or

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

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

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

66.1.1 the delivery of the documents in Rule 24; or

66.1.2 the return of the ballot papers and declarations of identity, the Returning Officer may extend the time between the publication of the notice of the poll and the close of the poll, with the agreement of the Regulator.

Annex 3

Standing Orders for the Practice and Procedure of the Board of Governors (BGSOs)

1. The Trust

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

2. Meetings of the Board of Governors

2.1 Calling meetings

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

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

2.2 Notice

2.2.1 Of meetings

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

2.2.2 Of business to be transacted

2.2.2.1 Before each meeting of the Board of Governors, an agenda setting out the business of the meeting, signed by the Trust Chair or by an officer of the Trust authorised by the Trust Chair to sign on his behalf shall be delivered to every member of the respective Board, or sent by post to the usual place of residence of such Governor

specifying the business proposed to be transacted at it so as to be available to him at least five days before the meeting.

- 2.3 Lack of service of the notice on any Governor shall not affect the validity of a meeting.
- 2.4 In the case of a meeting called by Governors in default of the Trust Chair, the notice shall be signed by those respective Governors and no business shall be transacted at the meeting other than that specified in the notice.
- 2.5 Failure to serve such a notice on more than three Governors will invalidate the meeting. A notice shall be presumed to have been served at the time at which the notice would be delivered in the ordinary course of the post.
- 2.6 Setting the agenda
 - 2.6.1 The Board of Governors may determine that certain matters shall appear on every agenda for a meeting of the Board of Governors and shall be addressed prior to any other business being conducted. Such matters may be identified within these *BGSOs* or following subsequent resolution shall be listed in an appendix to these *BGSOs*.
 - 2.6.2 A Governor desiring a matter to be included on an agenda shall make his request in writing to the Trust Chair at least ten clear days before the respective meeting, subject to *BGSO 2.2*. Requests made less than ten days before a meeting may be included on the agenda at the discretion of the Trust Chair.
- 2.7 Nothing in these *BGSOs* shall require the Trust to allow members of the public and representatives of the press to record proceedings in any manner whatsoever, other than in writing, or to make any oral report of proceedings as they take place, without the prior agreement of the Trust Chair.
- 2.8 Attendance and questions from the public
 - 2.8.1 The public shall be welcome at all meetings of the Board of Governors. Up to fifteen minutes will be set aside at the end of each ordinary meeting to enable members of the public or other interested parties to ask questions of the Board of Governors. Questions on any matter that has been discussed at the meeting can be raised at this point. Questions on general matters related to the business of the Trust should be sent in writing to the Trust Chair at least ten days prior to the meeting; the Trust's Patient Advice and Liaison Service is available to help with this if appropriate.

2.9 Notices of motion

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

2.10 Withdrawal of motion or amendments

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

2.11 Motion to rescind a resolution

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

2.12 Motions

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

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

2.12.2.1 An amendment to the motion;

2.12.2.2 The adjournment of the discussion or the meeting;

2.12.2.3 That the meeting proceeds to the next business (*);

2.12.2.4 The appointment of an ad hoc committee to deal with a specific item of business; and/or

2.12.2.5 That the motion be now put (*).

2.12.3 In the case of sub-paragraphs denoted by (*), to ensure objectivity, motions may only be put by the respective Governor who has not previously taken part in the debate.

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

2.13 Chair's ruling

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

2.14 Voting

2.14.1 Every question at a meeting shall be determined by a majority of the votes of the Governors present and voting on the question and, in the case of any equality of votes, the person presiding shall have a second or casting vote.

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

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

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

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

2.14.6 An officer who has been appointed formally by the board of a nominating organisation to act up for an appointed Governor during a period of incapacity or temporarily to fill a vacancy, shall be entitled to exercise the voting rights of the Governor. An officer attending the Board of Governors to represent an appointed Governor during a period of incapacity or temporary absence without formal acting up status may not exercise the voting rights of the Governor. An officer's status when attending a meeting shall be recorded in the minutes.

2.15 Minutes

- 2.15.1 The minutes of the proceedings of a meeting shall be drawn up and submitted for agreement at the next meeting.
- 2.15.2 No discussion shall take place upon the minutes except upon their accuracy or where the Trust Chair considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the next meeting.
- 2.15.3 Minutes shall be circulated in accordance with Board of Governor's wishes. Where providing a record of a public meeting the minutes shall be made available to the public.

2.16 Joint appointments in the case of appointed Governors

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

2.17 Suspension of *BGSOs*

- 2.17.1 Except where this would contravene any statutory provision, any one or more of these *BGSOs* may be suspended at any meeting, provided that at least two-thirds of the Board of Governors are present, including one Public Constituency Governor and one other Governor, and that a majority of those present vote in favour of suspension.
- 2.17.2 A decision to suspend *BGSOs* shall be recorded in the minutes of the meeting.
- 2.17.3 A separate record of matters discussed during the suspension of *BGSOs* shall be made and shall be available to the Governors as applicable.
- 2.17.4 No formal business may be transacted while *BGSOs* are suspended.
- 2.17.5 The Audit Committee shall review every decision to suspend *BGSOs*.

2.18 Variation and amendment of *BGSOs*

- 2.18.1 These *BGSOs* shall be amended by the Board of Governors only if:
 - 2.18.1.1 a notice of motion under *BGSO* 2.11 has been given;
 - 2.18.1.2 no fewer than half the total of the Public Constituency Governors present vote in favour of amendment;

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

2.18.1.4 the Board of Directors ratifies the motion.

2.19 Record of attendance

2.19.1 The names of the Governors present at their respective meetings shall be recorded in the minutes.

2.20 Quorum

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

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

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

3. Dispute resolution procedures

3.1 Dispute resolution procedures may operate in the following circumstance:

3.1.1 for disputes involving members in relation to matters of eligibility and disqualification; the dispute may be referred to an ad hoc sub-committee (the composition of which is determined by the Trust Chair) of the Board of Governors;

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

- 3.1.3 for other disputes, such as between the Board of Governors and the Board of Directors, the dispute may be resolved via the English legal system.

4. Process for the appointment of Non-Executive Directors

- 4.1 When a vacancy arises, or is scheduled to arise within six months, a Nomination Panel shall be convened consisting of the Trust Chair (or his nominee) three members of the Board of Governors, two Non-Executive Directors of the Board of Directors, and a suitably qualified independent advisor. A quorum of the Panel should be three including the Trust Chair (or his nominee), one member of the Board of Governors and one Non-Executive Director of the Board of Directors, plus the independent adviser.
- 4.2 The Panel shall consult the Trust Chair and Chief Executive regarding particular skills, qualifications or experience which in their opinion would be desirable for any Non-Executive Director to possess who may be appointed.
- 4.3 The Panel shall, having regard to any proposals of the Trust Chair and the Chief Executive made pursuant to the preceding sub-paragraph, draw up a specification for the required candidate(s) and advertise the vacancy. It may use any other search procedures it considers necessary.
- 4.4 The Panel shall select candidates for shortlist and interview, and shall present the details of not more than two candidates to the Board of Governors with a recommendation as to which candidate they consider the most suitable for appointment and the reasons why, though any preceding discussion and documents shall remain confidential.
- 4.5 If more than one candidate is presented, the Board of Governors shall vote to select a single candidate by secret ballot.
- 4.6 Subject to the foregoing, the Trust Chair and the Non-Executive Directors shall be appointed for a period of office of no less than three years duration and in accordance with the terms and conditions of office decided by the Board of Governors at a general meeting. The maximum period of office should be no more than seven years.

5. Process for the appointment of the Trust Chair

- 5.1 Subject to the provisions in relation to the appointment and removal of the Trust Chair, the Trust Chair shall be appointed in accordance with the process of open competition outlined as follows:

- 5.1.1 The Board of Governors shall create a duly authorised Panel which shall be composed of three Public Governors, a Staff Governor and an Appointed Governor.
- 5.1.2 The Panel will consult the Non-Executive Directors and the Chief Executive regarding the necessary skills.
- 5.1.3 The Panel shall advertise in the national media to seek candidates whom they consider appropriate against a job description as agreed by the Board of Governors to be appropriate to the post of Trust Chair.
- 5.1.4 The Panel shall then shortlist appropriate candidates to be interviewed.
- 5.1.5 The Panel shall then consult the Non-Executive Directors and Chief Executive on the shortlist.
- 5.1.6 The Panel shall then interview and consider each candidate.
- 5.1.7 The Panel shall then consider those candidates and recommend not more than two candidates to the full Board of Governors.
- 5.1.8 The Board of Governors shall formally convey their decision to the successful candidate.

6. Process for the appointment of the Chief Executive

- 6.1 Subject to the provisions in relation to the appointment and removal of the Chief Executive, the Chief Executive shall be appointed in accordance with the process of open competition outlined as follows:
 - 6.1.1 The Board of Directors shall create a duly authorised Panel which shall be composed of the Trust Chair and Non-Executive Directors.
 - 6.1.2 That Panel shall seek candidates whom they consider appropriate against a job description as agreed by the Board of Directors to be appropriate to the post of Chief Executive.
 - 6.1.3 The Panel shall then shortlist appropriate candidates to be interviewed.
 - 6.1.4 The Panel shall interview and consider then consider those candidates and make a recommendation of one candidate to the Board of Directors.

6.1.5 The Board of Governors shall consider the nomination and convey their decision to the candidate and Board of Directors.

7. Process for the appointment of the auditors

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

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

- 8.1 Subject to the following provisions of these *BGSOs* (see *Annex 5* for further provisions) if a Governor of the Trust has any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter and is present at a meeting of the Trust at which the contract or other matter is the subject of consideration, he shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not vote on any question with respect to it. If there is a dispute as to whether a conflict of interest exists, the majority of Governors present and voting at the meeting shall resolve the issue, with the Trust Chair having a second or casting vote in accordance with the provisions of this Constitution.
- 8.2 Any remuneration, compensation or allowances payable to a Governor by virtue of the National Health Service Act 2006 shall not be treated as a pecuniary interest for the purpose of these *BGSOs*.
- 8.3 For the purpose of these *BGSOs*, the Trust Chair or a Governor shall be treated, subject to *Standing Financial Instructions*, as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if:
- 8.3.1 he, or a nominee of his, is a Governor of a company or other body, not being a public body, with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration; or

- 8.3.2 he is a partner of, or is in the employment of a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration; and
- 8.3.3 in the case of married persons, persons in a civil partnership, or persons living together, the interest of one partner shall, if known to the other, be deemed for the purposes of these *BGSOs* to be also an interest of the other.
- 8.4 A Governor shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only:
- 8.4.1 of his membership of a company or other body, if he has no beneficial interest in any securities of that company or other body; or
- 8.4.2 of an interest in any company, body or person with which he is connected as mentioned in *Standing Financial Instructions* which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a Governor in the consideration or discussion of or in voting on, any question with respect to that contract or matter.
- 8.5 Where a Governor:
- 8.5.1 has an indirect pecuniary interest in a contract, proposed contract or other matter by reason only of a beneficial interest in securities of a company or other body; and
- 8.5.2 the total nominal value of those securities does not exceed £5,000 or one-hundredth of the total nominal value of the issued share capital of the company or body, whichever is the less; and
- 8.5.3 if the share capital is of more than one class, the total nominal value of shares of any one class in which he has a beneficial interest does not exceed one-hundredth of the total issued share capital of that class,
- these *BGSOs* shall not prohibit him from taking part in the consideration or discussion of the contract or other matter or from voting on any question with respect to it without prejudice however to his duty to disclose his interest.
- 8.6 *BGSO 8* applies to a committee or sub-committee of the Trust as it applies to the Trust, and applies to any member of any such committee or sub-committee (whether or not he is also a Governor of the Trust) as it applies to a Governor of the Trust.

9. Committees

9.1 Appointment of Committees

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

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

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

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

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

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

9.7 Confidentiality

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

9.8 A Governor of the Trust or a member of a committee shall not disclose any matter reported to the Board of Governors or otherwise dealt with by the committee, notwithstanding that the matter has been reported or action

has been concluded, if the Board of Governors or committee shall resolve that it is confidential.

10. Declaration of Eligibility

10.1 At the first meeting, all Governors shall be required to sign the following declaration:

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

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

Annex 4

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

1. The Trust

- 1.1 All business shall be conducted in the name of the Trust.
- 1.2 The Trust has the functions conferred on it by the 2006 Act as set out in paragraph 2 of this Constitution.
- 1.3 Joint Directors
 - 1.3.1 Where more than one person is appointed jointly to a post in the Trust which qualifies the holder for Executive Directorship or in relation to which an Executive Director is to be appointed, the Chief Executive shall nominate one of those persons to serve as the voting member of the Board of Directors.
- 1.4 Responsibility for funds held on trust
 - 1.4.1 All funds received in trust shall be in the name of the Trust as corporate trustee. In relation to funds held on trust, powers exercised by the Trust as corporate trustee shall be exercised separately and distinctly from those powers exercised as a Trust.
 - 1.4.2 Directors acting on behalf of the Trust as a corporate trustee are acting as quasi-trustees. Accountability for charitable funds held on trust is to the Charity Commission and to the Members. Accountability for non-charitable funds held on trust is only to Members.

2. Meetings of the Board of Directors

2.1 Calling meetings

- 2.1.1 Ordinary meetings of the Board of Directors shall be held at such times and places as the Trust Chair may determine.
- 2.1.2 The Trust Chair may call a meeting of the Board of Directors at any time. If the Trust Chair refuses to call a meeting after a requisition for that purpose, signed by at least one-third of the whole number of members of the Board of Directors, has been presented to him, or if, without so refusing, the Trust Chair does not call a meeting within seven days after such requisition has been presented to him,

at the Trust's Headquarters, such one third or more Directors may forthwith call a meeting of the Board of Directors.

2.2 Notice

2.2.1 Of meetings

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

2.2.2 Of business to be transacted

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

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

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

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

2.6 Setting the agenda

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

- 2.6.2 A Director desiring a matter to be included on an agenda shall make his request in writing to the Trust Chair at least ten clear days before the respective meeting, subject to *BDSO* 2.2. Requests made less than ten days before a meeting may be included on the agenda at the discretion of the Trust Chair.
- 2.7 Nothing in these *BDSOs* shall require the Trust to allow members of the public and representatives of the press to record proceedings in any manner whatsoever, other than in writing, or to make any oral report of proceedings as they take place, without the prior agreement of the Trust Chair.
- 2.8 Questions from the public
- 2.8.1 Up to fifteen minutes will be set aside at the end of each ordinary meeting to enable members of the public or other interested parties to ask questions of the Board of Directors. Questions on any matter that has been discussed at the meeting can be raised at this point. Questions on general matters related to the business of the Trust should be sent in writing to the Trust Chair at least ten days prior to the meeting; the Trust's Patient Advice and Liaison Service is available to help with this if appropriate.
- 2.9 Notices of motion
- 2.9.1 A Director of the Trust desiring to move or amend a motion shall send a written notice thereof at least ten clear days before the meeting to the Trust Chair, who shall insert in the agenda for the meeting all notices so received subject to the notice being permissible under the appropriate regulations. This paragraph shall not prevent any motion being moved during the meeting without notice, on any business mentioned on the agenda, subject to *BDSO* 2.4.
- 2.10 Withdrawal of motion or amendments
- 2.10.1 A motion or amendment once moved and seconded may be withdrawn by the proposer with the concurrence of the seconder and the consent of the Trust Chair.
- 2.11 Motion to rescind a resolution
- 2.11.1 Notice of motion to amend or rescind any resolution (or the general substance of any resolution) which has been passed within the preceding six calendar months shall bear the signature of the Directors who gives it and also the signature of four other Directors. When any such motion has been disposed of by the Trust, it shall not be competent for any Director other than the Trust

Chair to propose a motion to the same effect within six months. However, the Trust Chair may do so if he considers it appropriate.

2.12 Motions

- 2.12.1 The mover of a motion shall have a right of reply at the close of any discussion on the motion or any amendment thereto.
- 2.12.2 When a motion is under discussion or immediately prior to discussion it shall be open to a Director to move:
 - 2.12.2.1 an amendment to the motion;
 - 2.12.2.2 the adjournment of the discussion or the meeting;
 - 2.12.2.3 that the meeting proceeds to the next business (*);
 - 2.12.2.4 the appointment of an ad hoc committee to deal with a specific item of business; and
 - 2.12.2.5 That the motion be now put (*).
- 2.12.3 In the case of sub-paragraphs denoted by (*), to ensure objectivity, motions may only be put by the respective Director who has not previously taken part in the debate.
- 2.12.4 No amendment to the motion shall be admitted if, in the opinion of the Chair of the meeting, the amendment negates the substance of the motion.

2.13 Chair's ruling

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

2.14 Voting

- 2.14.1 Every question at a meeting shall be determined by a majority of the votes of the Directors present and voting on the question and, in the case of any equality of votes, the person presiding shall have a second or casting vote.
- 2.14.2 All questions put to the vote shall, at the discretion of the Trust Chair, be determined by oral expression or by a show of hands. A

paper ballot may also be used if a majority of the Directors present so request.

- 2.14.3 If at least one-third of the Directors present so request, the voting (other than by paper ballot) on any question may be recorded to show how each Director present voted or abstained.
- 2.14.4 If a Director so requests, his vote shall be recorded by name upon any vote (other than by paper ballot).
- 2.14.5 In no circumstances may an absent Director vote by proxy. Absence is defined as being absent at the time of the vote.
- 2.14.6 An officer who has been appointed formally by the Board of Directors to act up for an Executive Director during a period of incapacity or temporarily to fill an Executive Director vacancy, shall be entitled to exercise the voting rights of the Executive Director. An officer attending the Board of Directors to represent an Executive Director during a period of incapacity or temporary absence without formal acting up status may not exercise the voting rights of the Executive Director. An officer's status when attending a meeting shall be recorded in the minutes.

2.15 Minutes

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

2.16 Joint Directors

- 2.16.1 Where a post of Executive Director is shared by more than one person the Chief Executive shall nominate one person to serve as the voting member of the Board of Directors.

2.17 Suspension of *BDSOs*

- 2.17.1 Except where this would contravene any statutory provision, any one or more of these *BDSOs* may be suspended at any meeting, provided that at least two-thirds of the Board of Directors are

present, including one Executive Director and one Non-Executive Director, and that a majority of those present vote in favour of suspension.

2.17.2 A decision to suspend *BDSOs* shall be recorded in the minutes of the meeting.

2.17.3 A separate record of matters discussed during the suspension of *BDSOs* shall be made and shall be available to the Directors as applicable.

2.17.4 No formal business may be transacted while *BDSOs* are suspended.

2.17.5 The Audit Committee shall review every decision to suspend *BDSOs*.

2.18 Variation and amendment of *BDSOs*

2.18.1 These *BDSOs* shall be amended by the Board of Directors only if:

2.18.1.1 a notice of motion under *BDSO* 2.9 has been given;

2.18.1.2 no fewer than half the total Non-Executive Directors present vote in favour of amendment;

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

2.18.1.4 the Board of Governors ratifies the motion.

2.19 Record of attendance

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

2.20 Quorum

2.20.1 No business shall be transacted at a meeting of the Board of Directors unless at least one-third of the whole number of the Directors is present including at least one Executive Director and one Non-Executive Director.

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

2.20.3 If a Director has been disqualified from participating in the discussion on any matter and/or from voting on any resolution due to the declaration of a conflict of interest (see paragraphs 6 and 7 of these *BDSOs*) he shall no longer count towards the quorum. If a

quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business. The above requirement for at least one Executive Director to form part of the quorum shall not apply where the Executive Directors are excluded from a meeting (for example when the Board of Directors considers the recommendations of the Remuneration and Terms of Service Committee).

3. Arrangements for the exercise of functions by delegation

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

3.2 Emergency Powers

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

3.3 Delegation

3.3.1 Subject to *BDSO* 4.1, the Board of Directors may make arrangements for the exercise, on behalf of the Trust, of any of its functions by:

3.3.1.1 a committee or sub-committee, appointed by virtue of *BDSO* 4.1 or 4.2; or

3.3.1.2 a Director or an officer of the Trust,

in each case subject to such restrictions and conditions in the 2006 Act.

3.4 Delegation to Committees

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

and their specific executive powers shall be approved by the Board of Directors.

3.5 Delegation to Officers

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

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

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

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

3.8 General enabling provision

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

4. Senior Independent Director

4.1 Concerns of the Board of Governors

4.1.1 The Senior Independent Director should be available to Members and Governors if they have concerns which contact through the normal channels of Trust Chair, Chief Executive or Finance Director has failed to resolve, or for which such contact is inappropriate.

4.1.2 The Senior Independent Director should attend sufficient meetings with Governors to listen to their views in order to help develop a balanced understanding of the issues and concerns of Governors.

4.1.3 The Senior Independent Director should maintain sufficient contact with Governors to understand their issues and concerns.

4.2 Performance Evaluation

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

5. Committees

5.1 Appointment of committees

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

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

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

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

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

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

and other allowances being in accordance with such sum as may be determined by the Board of Directors.

5.7 Confidentiality

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

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

6. Disability of Directors in proceedings because of pecuniary interest

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

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

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

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

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

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

7. Standards of business conduct

7.1 Policy

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

7.2 Interest of officers in contracts

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

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

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

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

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

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

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

7.8 Relatives of Directors or officers

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

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

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

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

8. Custody of Seal and Sealing of Documents

8.1 Custody of Seal

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

8.2 Sealing of Documents

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

8.3 Before any deed or 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).

8.4 Register of sealings

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

report shall contain details of the seal number, the description of the document and date of sealing.

9. Signature of Documents

- 9.1 Where the signature of any document 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 of Directors shall have given the necessary authority to some other person for the purpose of such proceedings.
- 9.2 The Chief Executive or nominated officers shall be authorised, by resolution of the Board of Directors, to sign on behalf of the Trust any agreement or other document (not required to be executed as a deed) the subject matter of which has been approved by the Board of Directors or committee or sub-committee to which the Board of Directors has delegated appropriate authority.

10. Miscellaneous

10.1 BDSOs Orders to be given to Directors and officers

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

10.2 Documents having the standing of BDSOs

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

10.3 Review of BDSOs

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

11. Schedule of powers reserved to the Board of Directors

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

11.2 Regulation and Control

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

11.3 Appointments

11.3.1 The appointment and dismissal of committees.

11.3.2 The appointment of members of any committee of the Board of Directors or the appointment of representatives on outside bodies.

11.4 Policy Determination

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

11.5 Strategy and Business Plans and Budgets

11.5.1 In consultation with the Board of Governors, definition of the strategic aims and objectives of the Trust.

11.5.2 In consultation with the Board of Governors, approval of the annual income and expenditure budget, and of any proposed change exceeding £100,000.

11.5.3 In consultation with the Board of Governors, approval of the annual capital budget.

11.5.4 Approval of any proposed change to the annual capital budget exceeding £20,000.

11.5.5 In consultation with the Board of Governors, the approval and monitoring of the Trust's policies and procedures for the management of risk.

11.6 Director Operational Decisions

11.6.1 Acquisition, disposal or change of use of land and/or buildings.

11.6.2 In consultation with the Board of Governors, the introduction or discontinuance of any significant activity or operation. An activity or operation shall be regarded as significant if it has a gross annual income or expenditure (that is before any set off) in excess of £100,000.

11.6.3 Approval of individual contracts (other than NHS contracts) of a capital or revenue nature amounting to, or likely to amount to over £500,000 over a three year period or the period of the contract if longer.

11.6.4 Approval of individual compensation payments over £100,000.

11.6.5 To agree action on litigation against or on behalf of the Trust.

11.7 Financial and Performance Reporting Arrangements

11.7.1 Continuous appraisal of the affairs of the Trust by means of the receipt of reports as it sees fit from Directors, committees, associate Directors and officers of the Trust as set out in management policy statements. All regulatory returns required by the Regulator and the Charity Commission shall be reported, at least in summary, to the Board of Directors.

11.7.2 Approval of the opening or closing of any bank or investment account. Approval of the lists of posts whose holders may be included in bank signatory panels (see *Standing Financial Instructions*, 5.3.2).

11.7.3 Receipt and approval of contracts and agreements signed in accordance with arrangements approved by the Chief Executive.

11.7.4 Consideration and approval of the Trust's Annual Report including the annual accounts.

11.7.5 Receipt and approval of the Annual Report for funds held on trust, including the annual accounts.

11.8 Audit Arrangements

11.8.1 To approve audit arrangements (including arrangements for the audit of funds held on trust) and to receive reports of the Audit Committee meetings and take appropriate action.

11.8.2 The receipt of the annual management letter received from the External Auditor and agreement of action on the recommendation where appropriate of the Audit Committee.

11.8.3 The receipt of the Annual Report received from the Internal Auditor and the agreement of action on the recommendation where appropriate of the Audit Committee.

Annex 5

Registers

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

5.2 the members of the Board of Directors.

6. The Trust Secretary shall thereupon amend the Register within three working days of having received the said written notification from the Trust Chair.
7. Director's directorships of companies within *Standing Financial Instructions* or in companies likely or possibly seeking to be business with the National Health Service within this paragraph 7 of this *Annex* should be published in the Annual Report of the Trust and this information shall be kept up to date for inclusion in succeeding Annual Reports.
8. The Register of Directors' Interests shall be kept up to date by means of a monthly review by the Trust Secretary, during which, any changes of interest declared during the preceding month shall be incorporated, subject always to the provisions of paragraph 6 of this *Annex*.
9. The Trust shall maintain a Register of Directors' Interests.
 - 9.1 All existing Directors shall declare relevant and material interests forthwith and the Trust shall ensure that those interests are noted in the Register of Directors' Interests. Any Directors appointed subsequently shall declare their relevant and material interests on appointment.
 - 9.2 Interests which shall be regarded as "relevant and material" and which for the avoidance of doubt should be declared and should be included in the Register of Directors' Interests are:
 - 9.2.1 directorships, including Non-Executive Directorships held in private companies or PLCs (with the exception of those directorships of dormant companies);
 - 9.2.2 ownership, part-ownership or directorships of private companies, businesses or consultancies likely or possibly seeking to do business with the National Health Service;
 - 9.2.3 majority or controlling shareholdings in organisations likely or possibly seeking to do business with the National Health Service;
 - 9.2.4 a position of authority in a charity or voluntary organisation in the field of health and social care;

- 9.2.5 any connection with a voluntary or other organisation contracting for National Health Service services or commissioning National Health Service services; and
- 9.2.6 any connection with an organisation entity or company considering entering into or having entered into a financial arrangement with the Trust including but not limited to lenders or banks.
- 9.3 If a Director has a doubt about the relevance or materiality of any interest this should be discussed with the Trust Chair.
- 9.4 At the time the interests are declared this shall be recorded in the minutes of the Board of Directors meeting as appropriate. Any changes in interest shall be officially declared at the next meeting of the Board of Directors following the change occurring. It is the obligation of the Director to inform the Trust Secretary in writing within seven days of becoming aware of the existence of a relevant or material interest and the membership.
10. The Trust shall maintain a Register of Governors' Interests.
- 10.1 All existing Governors shall declare relevant and material interests forthwith and the Trust shall ensure that those interests are noted in the Register of Governors' Interests. Any Governors appointed or elected subsequently shall declare their relevant and material interests on appointment or election as the case may be.
- 10.2 Interests which shall be regarded as "relevant and material" and which for the avoidance of doubt should be declared and should be included in the Register of Governors' Interests are:
- 10.2.1 directorships, including Non-Executive Directorships held in private companies or PLCs (with the exception of those Governorships of dormant companies) likely or possibly seeking to do business with the National Health Service;
- 10.2.2 ownership, part-ownership or Governorships of private companies, businesses or consultancies likely or possibly seeking to do business with the National Health Service;
- 10.2.3 majority or controlling shareholdings in organisations likely or possibly seeking to do business with the National Health Service;
- 10.2.4 a position of authority in a charity or voluntary organisation in the field of health and social care;

- 10.2.5 any connection with a voluntary or other organisation contracting for National Health Service services or commissioning National Health Service services; and
 - 10.2.6 any connection with an organisation entity or company considering entering into or having entered into a financial arrangement with the Trust including but not limited to lenders or banks.
- 10.3 If a Governor has a doubt about the relevance or materiality of any interest this should be discussed with the Trust Chair.
- 10.4 At the time the interests are declared this shall be recorded in the minutes of the Board of Governors meeting as appropriate. Any changes in interest shall be officially declared at the next meeting of the Board of Governors following the change occurring. It is the obligation of the Governor to inform the Trust Secretary in writing within seven days of becoming aware of the existence of a relevant or material interest and the membership.
11. In relation to any time before the Trust is first required to send an Annual Report to the Regulator the Trust shall send to the Regulator a list of the persons who were first elected or appointed as:
- 11.1 The members of the Board of Governors; and
 - 11.2 The members of the Board of Directors.
12. The Trust Secretary shall thereupon amend the Register within three working days of having received the said written notification from the Trust Chair.
13. Governors' directorships of companies within *Standing Financial Instructions* or in companies likely or possibly seeking to be business with the National Health Service within paragraph 7 of this *Annex* should be published in the Annual Report of the Trust and this information shall be kept up to date for inclusion in succeeding Annual Reports.
14. The Register of Governors' Interests shall be kept up to date by means of a monthly review by the Trust Secretary, during which, any changes of interest declared during the preceding month shall be incorporated, subject always to the provisions of paragraph 6 of this *Annex*.