

Chief Executive's Office

TRUST CONSTITUTION

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Northern Lincolnshire and Goole NHS Foundation Trust actively seeks to promote equality of opportunity. The Trust seeks to ensure that no employee, service user, or member of the public is unlawfully discriminated against for any reason, including the "protected characteristics" as defined in the Equality Act 2010. These principles will be expected to be upheld by all who act on behalf of the Trust, with respect to all aspects of Equality.

Contents

Section.....	Page
TRUST CONSTITUTION	5
1. Name	5
2. Principal purpose	5
3. Powers.....	5
4. Membership and constituencies.....	5
5. Application for membership.....	6
6. Public Constituency.....	6
7. Staff Constituency.....	6
8. Restriction on membership.....	7
9. Annual Members' Meeting.....	7
10. Council of Governors – composition.....	7
11. Council of Governors – election of governors.....	7
12. Council of Governors – tenure.....	7
13. Council of Governors – disqualification and removal	8
14. Termination of office and removal of governors.....	8
15. Council of Governors – duties of governors	9
16. Council of Governors – meetings of governors.....	9
17. Council of Governors – standing orders	10
18. Council of Governors - referral to the Panel	10
19. Council of Governors – conflicts of interest of governors.....	10
20. Council of Governors – expenses	10
21. Board of Directors – composition	10
22. Board of Directors – general duty.....	11
23. Board of Directors – qualification for appointment as a non-executive director....	11
24. Board of Directors – appointment and removal of chairman and other non-executive directors	11
25. Board of Directors – appointment of initial Chairman and initial other non-executive directors	12
26. Board of Directors – appointment of Deputy Chairman	12

27.	Board of Directors - appointment and removal of the Chief Executive and other executive directors	12
28.	Board of Directors – appointment and removal of initial Chief Executive	13
29.	Board of Directors – disqualification	13
30.	Board of Directors – meetings.....	13
31.	Board of Directors – standing orders.....	13
32.	Board of Directors – liability of directors	14
33.	Board of Directors - conflicts of interest of directors	14
34.	Board of Directors – remuneration and terms of office	15
35.	Registers.....	15
36.	Registers – inspection and copies.....	15
37.	Documents available for public inspection.....	16
38.	Auditor	17
39.	Audit committee	17
40.	Accounts	17
41.	Annual report, forward plans and non-NHS work	18
42.	Presentation of the annual accounts and reports to the governors and members	18
43.	Resolution of disputes.....	19
44.	Instruments	19
45.	Amendment of the Constitution	19
46.	Mergers Etc. and Significant Transactions	20
47.	Interpretation and definitions.....	20
	ANNEX 1 – THE PUBLIC CONSTITUENCIES.....	24
	ANNEX 2 – THE STAFF CONSTITUENCY.....	25
	ANNEX 3 – COMPOSITION OF COUNCIL OF GOVERNORS	26
	ANNEX 4 –THE MODEL RULES FOR ELECTIONS.....	30
	Part 1 – Interpretation.....	33
	Part 2 – Timetable for election.....	33
	Part 3 – Returning officer.....	33
	Part 4 – Stages Common to Contested and Uncontested Elections	34
	Part 5 – Contested elections.....	37

Part 6 – Counting the votes	42
Part 7 – Final proceedings in contested and uncontested elections.....	49
Part 8 – Disposal of documents.....	50
Part 9 – Death of a candidate during a contested election	52
Part 10 – Election expenses and publicity	52
Part 11 – Questioning elections and the consequence of irregularities	54
Part 12 – Miscellaneous	55
ANNEX 5 – ADDITIONAL PROVISIONS – COUNCIL OF GOVERNORS.....	57
ANNEX 6 – STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE COUNCIL OF GOVERNORS.....	59
ANNEX 7 – STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE BOARD OF DIRECTORS	73
PART I - INTERPRETATION AND SCOPE.....	74
PART II - APPOINTMENT TO THE BOARD	76
PART III - MEETINGS OF THE TRUST BOARD.....	79
In accordance with the Constitution the trust will hold a members meeting (the “annual members’ meeting”) within nine months of the end of the financial year	
PART IV - RESERVATION OF POWERS AND DELEGATION OF FUNCTIONS	86
PART V - STANDARDS OF BUSINESS CONDUCT	89
PART VI - TENDERING AND CONTRACTING PROCEDURES.....	91
PART VII – MISCELLANEOUS	102
ANNEX 8 – FURTHER PROVISIONS.....	104

TRUST CONSTITUTION

1. Name

The name of the foundation trust is Northern Lincolnshire and Goole NHS Foundation Trust ("the trust").

2. Principal purpose

2.1 The principal purpose of the trust is the provision of goods and services for the purposes of the health service in England (the "Principal Purpose").

2.2 The trust does not fulfil its Principal Purpose unless, in each financial year, its total income from the provision of goods and services for the purposes of the health service in England is greater than its total income from the provision of goods and services for any other purposes.

2.3 The trust may provide goods and services for any purposes related to:

2.3.1 The provision of services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness; and

2.3.2 The promotion and protection of public health

2.4 Subject to the requirements of paragraph 41, the trust may also carry on activities other than those mentioned in paragraph 2.3 for the purpose of making additional income available in order to better carry on its Principal Purpose.

3. Powers

3.1 The powers of the trust are set out in the 2006 Act, subject to any restrictions in its Licence.

3.2 The powers of the trust shall be exercised by the Board of Directors on behalf of the trust.

3.3 Any of these powers may be delegated to a committee of directors or to an executive director.

4. Membership and constituencies

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

4.1 a public constituency and

4.2 a staff constituency.

5. Application for membership

- 5.1** Save as provided for in paragraph 7, an individual who is eligible to become a member of the trust may do so on application to the trust.
- 5.2** Applications for membership shall be dealt with by the trust in accordance with the provisions of Annex 8.

6. Public Constituency

- 6.1** An individual who lives in an area specified in Annex 1 as an area for a public constituency may become or continue as a member of the trust.
- 6.2** Those individuals who live in an area specified as an area for any public constituency are referred to collectively as the public constituency.
- 6.3** The minimum number of members in each area specified as an area for a 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 that:
- 7.1.1** he or she 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 or she 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 those functions continuously for a period of at least twelve months.
- 7.3** Those individuals who are eligible for membership of the trust by reason of the previous provisions are referred to collectively as the staff constituency.
- 7.4** The minimum number of members in the staff constituency is specified in Annex 2.
- 7.5** An individual who is:
- 7.5.1** eligible to become a member of the staff constituency, and
- 7.5.2** invited by the trust to become a member of the staff constituency, shall become a member of the trust without an application being made, unless they inform the trust that they do not wish to do so, in accordance with the process more fully set out in Annex 8.

8. Restriction on membership

- 8.1** An individual who is a member of a constituency may not while membership of that constituency continues, be a member of any other constituency.
- 8.2** An individual who satisfies the criteria for membership of the staff constituency may not become or continue as a member of any constituency other than the staff constituency.
- 8.3** Further provisions as to the circumstances in which an individual may not become or continue as a member of the trust are set out in Annex 8.

9. Annual Members' Meeting

- 9.1** The trust shall hold an annual members' meeting which shall be open to members of the public. Further provisions about the annual members meeting are set out in Annex 6.

10. Council of Governors – composition

- 10.1** The trust shall have a Council of Governors, which shall comprise both elected and appointed governors.
- 10.2** The composition of the Council of Governors is specified in Annex 3.
- 10.3** The members of the Council of Governors, other than the appointed members, shall be chosen by election by their constituency. The number of governors to be elected by each constituency is specified in Annex 3.

11. Council of Governors – election of governors

- 11.1** Elections for elected members of the Council of Governors shall be conducted in accordance with the Model Rules for Elections, as may be varied from time to time.
- 11.2** The Model Rules for Elections, as may be varied from time to time, form part of this Constitution and are attached at Annex 4.
- 11.3** A variation of the Model Rules by the Department of Health shall not constitute a variation of the terms of this Constitution. For the avoidance of doubt, the trust cannot amend the Model Rules.
- 11.4** An election, if contested, shall be by secret ballot.

12. Council of Governors – tenure

- 12.1** Subject to the transitional provisions, governors, both elected and nominated, shall hold office for three years and will be eligible for re-election or re-appointment as applicable at the end of that period.
- 12.2** An elected governor shall cease to hold office if they cease to be a member of the constituency by which they were elected.

12.3 An appointed governor shall cease to hold office if the appointing organisation withdraws its sponsorship and / or terminates the appointment.

13. Council of Governors – disqualification and removal

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

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

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

13.1.3 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.

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

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

14. Termination of office and removal of governors

A governor shall immediately cease to hold office if:

14.1 They resign by notice in writing to the Chairman.

14.2 They fail to attend half of the council meetings in any financial year, unless the other governors are satisfied that:

14.2.1 the absences were due to a reasonable cause and

14.2.2 he or she will start attending council meetings within such a period as the governors consider reasonable.

14.3 In the case of an elected governor, they cease to be a member of the constituency by whom they were elected.

14.4 In the case of an appointed governor, the appointing organisation withdraws its sponsorship or terminates the appointment.

14.5 Without good reason the governor has failed to undertake any training required by the Council of Governors and/or fails to engage with the development review process for governors as agreed by the Council of Governors.

14.6 They have failed to sign and deliver to the Chairman a statement in the form required by the Council of Governors confirming acceptance of the code of conduct and/or complete the Criminal Records Bureau (CRB) process within the specified time period.

- 14.7** They refuse to sign a declaration, in the form specified by the Council of Governors, that they are a member of one of the public constituencies or one of the classes of staff constituency as the case might be and are not prevented from being a member of the Council of Governors.
- 14.8** Any of the exclusion criteria listed in Annex 5 become applicable.
- 14.9** They are removed from the Council of Governors by a resolution, approved by a two-thirds majority of the remaining governors, that:
- 14.9.1** he or she has committed a serious breach of the code of conduct;,
- 14.9.2** he or she has acted in a manner detrimental to the interests of the trust,
- 14.9.3** the Council of Governors considers that it is not in the best interests of the trust for that person to continue as governor.
- 14.10** Where there is any disagreement as to whether the proposal for removal of a governor is justified, an independent assessor agreeable to both parties shall be requested to consider the evidence and conclude whether the proposed removal is reasonable or otherwise.

15. Council of Governors – duties of governors

- 15.1** The general duties of the Council of Governors are:
- 15.1.1** to hold the non-executive directors individually and collectively to account for the performance of the Board of Directors; and
- 15.1.2** to represent the interests of the members of the trust as a whole and the interests of the public.
- 15.2** The trust must take steps to secure that the governors are equipped with the skills and knowledge they require in their capacity as such.

16. Council of Governors – meetings of governors

- 16.1** The Chairman or, in the absence of the Chairman, the Deputy Chairman or, in the absence of the Deputy Chairman, any other non-executive director, shall preside at meetings of the Council of Governors.
- 16.2** Meetings of the Council of Governors shall be open to members of the public except as provided for in Annex 6.
- 16.3** For the purposes of obtaining information about the trust's performance of its functions or the directors' performance of their duties (and deciding whether to propose a vote on the trust's or directors' performance), the Council of Governors may require one or more of the directors to attend a meeting.

17. Council of Governors – standing orders

- 17.1 The standing orders for the practice and procedure of the Council of Governors, as may be varied from time to time, are attached at Annex 6.

18. Council of Governors - referral to the Panel

- 18.1 The Panel means a panel of persons appointed by Monitor to which a governor of the trust may refer a question as to whether the trust has failed or is failing:

18.1.1 to act in accordance with its Constitution; or

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

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

19. Council of Governors – conflicts of interest of governors

- 19.1 If a governor has a pecuniary, personal or family interest, whether that interest is actual or potential and whether that interest is direct or indirect, in any proposed contract or other matter which is under consideration or is to be considered by the Council of Governors, the governor shall disclose that interest to the members of the Council of Governors as soon as he or she becomes aware of it. The standing orders for the Council of Governors shall make provision for the disclosure of interests and arrangements for the exclusion of a governor declaring any interest from any discussion or consideration of the matter in respect of which an interest has been disclosed.

20. Council of Governors – expenses

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

21. Board of Directors – composition

- 21.1 The Board of Directors shall comprise:

21.1.1 a non-executive Chairman;

21.1.2 five other non-executive directors; and

21.1.3 five executive directors.

- 21.2 One of the executive directors shall be the Chief Executive.

21.3 The Chief Executive shall be the accounting officer.

21.4 One of the executive directors shall be the Finance Director.

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

21.6 One of the executive directors shall be a registered nurse or a registered midwife.

22. Board of Directors – general duty

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

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

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

23.1 they are a member of the public constituency, or

23.2 where any of the trust's hospitals includes a medical or dental school provided by a university, they exercise functions for the purposes of that university, and

23.3 they are not disqualified by virtue of paragraph 29 below.

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

24.1 The Council of Governors at a general meeting of the Council of Governors shall appoint or remove the Chairman and the other non-executive directors.

24.2 The Council of Governors shall appoint a Chairman who is independent. This provision shall exclude anyone who:

- is a former Chief Executive of the trust.
- has been an employee of the NHS foundation trust within the last five years.
- has, or has had within the last three years, a material business relationship with the NHS foundation trust either directly, or as a partner, shareholder, director or senior employee of a body that has such a relationship with the NHS foundation trust.
- has received or receives additional remuneration from the NHS foundation trust apart from a director's fee, participates in the NHS foundation trust's performance-related pay scheme, or is a member of the NHS foundation trust's pension scheme;
- has close family ties with any of the NHS foundation trust's advisers, directors or senior employees;
- holds cross directorships or has significant links with other directors through involvement in other companies or bodies;

- has served on the board for more than nine years from the date of his or her first appointment;
- is an appointed representative of the NHS foundation trust's university medical or dental school.

These criteria shall apply only on appointment, thereafter the test of independence is not appropriate in relation to the Chairman.

24.3 The Council of Governors shall not appoint as Chairman a person who is simultaneously a chairman of another NHS foundation trust.

24.4 Removal of the Chairman or another non-executive director shall require the approval of three-quarters of the members of the Council of Governors.

24.5 The initial Chairman and the initial non-executive directors are to be appointed in accordance with paragraph 25 below.

25. Board of Directors – appointment of initial Chairman and initial other non-executive directors

25.1 The Chairman of the applicant NHS trust shall be appointed as the initial Chairman of the trust if he or she wishes to be appointed.

25.2 The power of the Council of Governors to appoint the other non-executive directors of the trust is to be exercised, so far as possible, by appointing as the initial non-executive directors of the trust any of the non-executive directors of the applicant NHS trust (other than the Chairman) who wish to be appointed.

25.3 The criteria for qualification for appointment as a non-executive director set out in paragraph 23 above (other than disqualification by virtue of paragraph 29 below) do not apply to the appointment of the initial chairman and the initial other non-executive directors in accordance with the procedures set out in this paragraph.

25.4 An individual appointed as the initial Chairman or as an initial non-executive director in accordance with the provisions of this paragraph shall be appointed for the unexpired period of his or her term of office as Chairman or (as the case may be) non-executive director of the applicant NHS trust; but if, on appointment, that period is less than 12 months, the appointment shall be for 12 months.

26. Board of Directors – appointment of Deputy Chairman

26.1 The Council of Governors at a general meeting of the Council of Governors shall appoint one of the non-executive directors as Deputy Chairman.

27. Board of Directors - appointment and removal of the Chief Executive and other executive directors

27.1 The non-executive directors shall appoint or remove the Chief Executive.

27.2 The appointment of the Chief Executive shall require the approval of the Council of Governors. This shall be a subject of the first general meeting after the appointment.

27.3 The initial Chief Executive shall be appointed in accordance with paragraph 28 below.

27.4 A committee consisting of the Chairman, the Chief Executive and the other non-executive directors shall appoint or remove the other executive directors.

28. Board of Directors – appointment and removal of initial Chief Executive

28.1 The chief officer of the applicant NHS trust shall be appointed as the initial Chief Executive of the trust if he or she wishes to be appointed.

28.2 The appointment of the chief officer of the applicant NHS trust as the initial Chief Executive of the trust shall not require the approval of the Council of Governors.

29. Board of Directors – disqualification

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

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

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

29.3 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;

29.4 a person who falls within the additional grounds for disqualification set out at Annex 8.

30. Board of Directors – meetings

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

30.2 Before holding a meeting, the Board of Directors must send a copy of the agenda of the meeting to the Council of Governors. As soon as practicable after holding a meeting, the Board of Directors must send a copy of the minutes of the meeting to the Council of Governors.

31. Board of Directors – standing orders

31.1 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 7.

32. Board of Directors – liability of directors

32.1 The trust shall indemnify non-executive directors in respect of any personal civil liability they incur as a result of carrying out their duties, provided that they have acted honestly, in good faith and without recklessness.

32.2 The trust shall indemnify executive directors in respect of any personal civil liability they incur as a result of carrying out their duties, provided that they have acted honestly, in good faith, without recklessness and within the remit of their contractual duties as set out by the trust.

33. Board of Directors - conflicts of interest of directors

33.1 The duties that a director of the trust has by virtue of being a director include in particular:

33.1.1 a duty to avoid a situation in which the director has (or can have) a direct or indirect interest that conflicts (or possibly may conflict) with the interests of the trust; and

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

33.2 The duty referred to in sub-paragraph 33.1.1 is not infringed if:

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

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

33.3 The duty referred to in sub-paragraph 33.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.

33.4 In sub-paragraph 33.1.2, “third party” means a person other than:

33.4.1 the trust; or

33.4.2 a person acting on its behalf.

33.5 If a director of the trust has in any way a direct or indirect interest in a proposed transaction or arrangement with the trust, the director must declare the nature and extent of that interest to the other directors.

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

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

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

33.9 A director need not declare an interest:

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

33.9.2 if, or to the extent that, the directors are already aware of it;

33.9.3 if, or to the extent that, it concerns terms of the director's appointment that have been or are to be considered:

- by a meeting of the Board of Directors; or
- by a committee of the directors appointed for the purpose under the Constitution.

34. Board of Directors – remuneration and terms of office

34.1 The Council of Governors at a general meeting of the Council of Governors shall decide the remuneration and allowances, and the other terms and conditions of office, of the Chairman and the other non-executive directors.

34.2 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.

35. Registers

35.1 The trust shall have:

35.1.1 a register of members showing, in respect of each member, the constituency to which they belong;

35.1.2 a register of members of the Council of Governors;

35.1.3 a register of interests of governors;

35.1.4 a register of directors; and

35.1.5 a register of interests of the directors.

35.2 The process of admission to and removal from the register shall be as set out in Annex 8.

36. Registers – inspection and copies

36.1 The trust shall make the registers specified in paragraph 35 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.

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

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

- 36.3.1** they are to be available for inspection free of charge at all reasonable times; and
- 36.3.2** a person who requests a copy of or extract from the registers is to be provided with a copy or extract.
- 36.4** If the person requesting a copy or extract is not a member of the trust, the trust may impose a reasonable charge for doing so.

37. Documents available for public inspection

- 37.1** The trust shall make the following documents available for inspection by members of the public free of charge at all reasonable times:
- 37.1.1** a copy of the current Constitution;
- 37.1.2** a copy of the latest annual accounts and of any report of the auditor on them; and
- 37.1.3** a copy of the latest annual report; .
- 37.2** The trust shall also make the following documents relating to a special administration of the trust available for inspection by members of the public free of charge at all reasonable times:
- 37.2.1** a copy of any order made under section 65D (appointment of trust special administrator), 65J (power to extend time), 65KC (action following Secretary of State's rejection of final report), 65L(trusts coming out of administration) or 65LA (trusts to be dissolved) of the 2006 Act;
- 37.2.2** a copy of any report laid under section 65D (appointment of trust special administrator) of the 2006 Act;
- 37.2.3** a copy of any information published under section 65D (appointment of trust special administrator) of the 2006 Act;
- 37.2.4** a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act;
- 37.2.5** a copy of any statement provided under section 65F (administrator's draft report) of the 2006 Act;
- 37.2.6** a copy of any notice published under section 65F (administrator's draft report), 65G (consultation plan), 65H (consultation requirements), 65J (power to extend time), 65KA (Monitor's decision), 65KB (Secretary of State's response to Monitor's decision), 65KC (action following Secretary of State's rejection of final report) or 65KD (Secretary of State's response to re-submitted final report) of the 2006 Act;
- 37.2.7** a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act;
- 37.2.8** a copy of any final report published under section 65I (administrator's final report);
- 37.2.9** a copy of any statement published under section 65J (power to extend time) or 65KC (action following Secretary of State's rejection of final report) of the 2006 Act; and

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

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

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

38. Auditor

38.1 The trust shall have an auditor.

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

38.3 In all matters regarding the appointment, re-appointment, removal, remuneration and terms of engagement of the external auditor, the Council of Governors will be advised by the audit committee.

38.4 Should the Council of Governors not accept the recommendation of the audit committee then the Board of Directors shall ensure that the annual report both includes a statement from the audit committee explaining the recommendation and also sets out the reasons why the Council of Governors has taken a different position.

38.5 Should the Council of Governors remove the auditor contrary to the advice of the audit committee then the Chairman will advise Monitor in writing of the reasons behind the decision.

39. Audit committee

39.1 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.

40. Accounts

40.1 The trust shall keep proper accounts and proper records in relation to the accounts.

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

40.3 The accounts shall be audited by the trust's auditor.

40.4 The trust shall prepare in respect of each financial year annual accounts in such form as Monitor may, with the approval of the Secretary of State, direct.

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

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

- 41.1** The trust shall prepare an annual report and send it to Monitor.
- 41.2** The trust shall give information as to its forward planning in respect of each financial year to Monitor.
- 41.3** The document containing the information with respect to forward planning (referred to in paragraph 41.2 above) shall be prepared by the directors.
- 41.4** In preparing the said document with respect to forward planning, the directors shall have regard to the views of the Council of Governors.
- 41.5** Each forward plan must include information about:
- 41.5.1** the activities other than the provision of goods and services for the purposes of the health service in England that the trust proposes to carry on; and
- 41.5.2** the income it expects to receive from doing so.
- 41.6** Where a forward plan contains a proposal that the trust carry on an activity of a kind mentioned in sub-paragraph 41.5.1 the Council of Governors must:
- 41.6.1** determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfilment by the trust of its Principal Purpose or the performance of its other functions; and
- 41.6.2** notify the directors of the trust of its determination.
- 41.7** A trust which proposes to increase by 5% or more the proportion of its total income in any financial year attributable to activities other than the provision of goods and services for the purposes of health service in England may implement the proposal only if more than half of the members of the Council of Governors voting approve its implementation.

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

- 42.1** The following documents are to be presented to the Council of Governors at a general meeting of the Council of Governors:
- 42.1.1** the annual accounts;
- 42.1.2** any report of the auditor on them; and
- 42.1.3** the annual report.
- 42.2** The documents shall also be presented to the members of the trust at the annual members' meeting by at least one member of the Board of Directors in attendance.
- 42.3** The trust may combine a meeting of the Council of Governors convened for the purposes of sub-paragraph 42.1 with the annual members' meeting.

43. Resolution of disputes

- 43.1** Should a disagreement arise between the Board of Directors and the Council of Governors, such as would impair the decision making process or the successful operation of the trust, then the Chairman shall convene a joint meeting of the two bodies to consider the issue in dispute.
- 43.2** Should this meeting not resolve the issue then the Chairman shall have the authority to make a decision on behalf of the trust. This decision, and the reasons supporting it, will be communicated in writing to all members of both the Board of Directors and the Council of Governors.

44. Instruments

- 44.1** The trust shall have a seal.
- 44.2** The seal shall not be affixed except under the authority of the Board of Directors.

45. Amendment of the Constitution

- 45.1** The trust may make amendments of its Constitution only if:
- 45.1.1** More than half of the members of the Council of Governors of the trust voting approve the amendments; and
- 45.1.2** More than half of the members of the Board of Directors of the trust voting approve the amendments.
- 45.2** Amendments made under paragraph 45.1 take effect as soon as the conditions in that paragraph are satisfied, but the amendment has no effect in so far as the Constitution would, as a result of the amendment, not accord with schedule 7 of the 2006 Act.
- 45.3** Where an amendment is made to the Constitution in relation to the powers or duties of the Council of Governors (or otherwise with respect to the role that the Council of Governors has as part of the trust):
- 45.3.1** At least one member of the Council of Governors must attend the next annual members' meeting and present the amendment; and
- 45.3.2** The trust must give the members an opportunity to vote on whether they approve the amendment.
- 45.4** If more than half of the members voting approve the amendment, the amendment will continue to have effect; otherwise, it will cease to have effect and the trust must take such steps as are necessary as a result.
- 45.5** The trust shall inform Monitor of amendments to its Constitution.

46. Mergers Etc. and Significant Transactions

- 46.1** The trust may only apply for a merger, acquisition, separation or dissolution with the approval of more than half of the members of the Council of governors.
- 46.2** The trust may enter into a Significant Transaction only if more than half of the members of the Council of Governors of the Trust voting approve of the trust entering into the transaction.
- 46.3** "Significant Transaction" means:
- 46.3.1** the acquisition of, or an agreement to acquire, whether contingent or not, assets the value of which is more than 25% of the value of the trust's gross assets before the acquisition; or
- 46.3.2** the disposition of, or an agreement to dispose of, whether contingent or not, assets of the trust the value of which is more than 25% of the value of the trust's gross assets before the disposition; or
- 46.3.3** a transaction that has or is likely to have the effect of the trust acquiring rights or interests or incurring obligations or liabilities, including contingent liabilities, the value of which is more than 25% of the value of the trust's gross assets before the transaction.
- 46.4** For the purpose of this paragraph 46:
- 46.4.1** "gross assets" means the total of fixed assets and current assets;
- 46.4.2** in assessing the value of any contingent liability for the purposes of sub-paragraph 46.3.3, the directors:
- must have regard to all circumstances that the directors know, or ought to know, affect, or may affect, the value of the contingent liability; and
 - may rely on estimates of the contingent liability that are reasonable in the circumstances; and
 - may take account of the likelihood of the contingency occurring.

47. Interpretation and definitions

- 47.1** Unless a contrary intention is evident or the context requires otherwise, words or expressions contained in this Constitution shall bear the same meaning as in the 2006 Act.
- 47.2** Words importing the masculine gender only shall include the feminine gender; words importing the singular shall import the plural and vice-versa.
- 47.3** References in this Constitution to legislation include all amendments, replacements or re-enactments made in references to paragraph numbers or references to paragraphs of this Constitution unless the context provides otherwise.
- 47.4** References to legislation include all regulations and statutory guidance.

- 47.5** Headings are for ease of reference only and are not to affect interpretation.
- 47.6** If there is a conflict between the provisions of this Constitution and the provisions of any document referred to herein then the provisions of this Constitution shall prevail unless the law requires otherwise.
- 47.7** References to this paragraph are to paragraphs in this Constitution.
- 47.8** All Annexes referred to in this Constitution form part of it.
- 47.9** In this Constitution:

“accounting officer”	is the person who from time to time discharges the functions specified in paragraph 25(5) in Schedule 7 to the 2006 Act;
“annual members’ meeting”	means the annual meeting of all the members;
“applicant NHS trust”	means the Northern Lincolnshire and Goole NHS Foundation Trust;
“appointed governors”	means the local authority governors, the medical school governors and the partnership organisation governors;
“authorisation”	means the authorisation for the trust to become an NHS foundation trust given by Monitor;
“Board of Directors”	means the Board of Directors of the trust as constituted in accordance with this Constitution and referred to in paragraph 21.
“Chairman”	means the chairman of the trust appointed in accordance with the Constitution;
“Chief Executive”	means the chief executive (and accounting officer) of the trust appointed in accordance with paragraph 27;
“constituencies”	means the public constituencies and the staff constituency of the trust;
“Constitution”	means this constitution of the trust;
“Council of Governors”	means the Council of Governors of the trust as constituted in accordance with this Constitution;
“Deputy Chairman”	means the Deputy Chairman of the trust;
“director”	means a director on the Board of Directors;
“elected governors”	means the public and staff governors respectively;
“election rules”	means the election rules set out in Annex 4 and which are to be used in connection with the election of the elected governors;
“executive director”	means an executive director of the trust;

“financial year”	means:- (a) the period beginning with the date on which the trust is authorised and ending with the next 31st March; and (b) each successive period of twelve months beginning with 1 st April;
“governor”	means a governor on the Council of Governors and being either an elected governor or an appointed governor;
"Licence"	means the Trust's licence granted by Monitor under the 2012 Act;
“member”	means a member of the trust as determined in accordance with this Constitution;
“members’ meetings”	means a meeting of the members;
“membership”	means membership of the trust through being a member of one of the constituencies;
“model election rules”	means the model form rules for the conduct of elections published from time to time by the Department of Health and as currently set out in Annex 4;
“Monitor”	means the regulator for the purposes of the 2006 Act;
“non-executive directors”	means a non-executive director of the trust;
“partnership organisation governor”	means a member of the Council of Governors appointed by a partnership organisation referred to in Annex 3;
“partnership organisations”	means organisations designated as partnership organisations for the purposes of this Constitution and referred to in Annex 3;
“public constituencies”	means that part of the trust's membership consisting of members from the area of the public constituency as described in Annex 1;
“public governor”	means a member of the Council of Governors elected by the members of a public constituency;
“qualifying local authorities”	means those Councils referred to in Annex 3 all of which are Councils for an area which includes the whole or part of the area of the trust;
“qualifying local authority governors”	means a member of the Council of Governors appointed by qualifying local authorities and referred to in Annex 3;
“Secretary”	means the secretary of the trust or any other person appointed to perform the duties of the secretary of the trust;

“staff constituency”	means that part of the trust’s membership consisting of staff of the trust and other persons as described in paragraph 7;
“staff governor”	means a member of the Council of Governors elected by the staff constituency;
“the 2006 Act”	means the National Health Service Act 2006;
“the trust”	means the Northern Lincolnshire and Goole NHS Foundation Trust;
“transitional provisions”	means those provisions relating to the terms of office of the initial governors as set out in Annex 3,

ANNEX 1 – THE PUBLIC CONSTITUENCIES

Name of the Public Constituency	Area of the public constituency by Electoral Wards	Minimum number of members	Number of Governors to be elected
North Lincolnshire	The Wards of: Ashby; Axholme Central; Axholme North; Axholme South; Barton; Bottesford; Brigg & Wolds; Broughton & Appleby; Brumby; Burringham & Gunness; Burton upon Stather & Winterton; Crosby & Park; Ferry; Frodingham; Kingsway/Lincoln Gardens; Ridge; Town.	500	5
North East Lincolnshire	The Wards of: Croft Baker; East Marsh; Freshney; Haverstoe; Heneage; Humberston & New Waltham; Immingham; Park; Scartho; Sidney; South; Sussex; Waltham; West Marsh; Wolds; Yarborough.	500	5
Goole & Howdenshire	The Wards of Goole North; Goole South; Howden; Howdenshire; Snaith, Airmyn & Rawcliffe and Marshlands.	200	3
East & West Lindsey	The Wards of: Binbrook; Grimoldby; Holton Le Clay; Legbourne; Ludford; Mablethorpe Central; Mablethorpe East; Mablethorpe North; Marsh Chapel; North Holme; North Somercotes; North Thoresby; Priors; Skidbrook with Saltfleet Haven; St Mary's; St Michaels; Sutton on Sea North; Sutton on Sea South; Tetney; Trinity; Trusthorpe/Mablethorpe South; Withern with Stain. Caistor; Gainsborough East; Gainsborough North; Gainsborough South West; Hemswell; Kelsey; Scotter; Thonock; Waddingham & Spital; Wold View; Yarborough.	200	2

ANNEX 2 – THE STAFF CONSTITUENCY

There are no classes within the staff constituency. The minimum number of members in the staff constituency is 150.

ANNEX 3 – COMPOSITION OF COUNCIL OF GOVERNORS

1. Introduction

1.1 The Council of Governors shall comprise governors who are:

1.1.1 elected by the respective constituencies in accordance with the provisions of this constitution; and

1.1.2 appointed in accordance with paragraph 2 below.

1.2 The Council of Governors shall at all times be constituted so that more than half the Council of Governors shall consist of governors who are elected by members of the trust other than those who are members of the staff constituency.

2. Bodies entitled to appoint a member of the Council of Governors

2.1 The following bodies in this paragraph 2 shall be entitled to appoint a governor or governors (as the case may be) to the Council of Governors as provided for in this paragraph 2.

Qualifying Local Authorities

2.2 There are four qualifying local authorities covering the areas specified within the Trust's Constitution as a public constituency, as follows:

- North East Lincolnshire
- North Lincolnshire
- Lincolnshire
- East Riding of Yorkshire

2.3 There will be two local authority seats on the Council of Governors to be shared by the four qualifying local authorities in accordance with a process of appointment agreed by them with the Trust.

2.4 A governor appointed under paragraph 2.3 above shall then serve on the Council of Governors for the period stipulated in the Constitution.

Qualifying Medical Schools

2.5 Hull York Medical School shall be entitled to appoint one governor in accordance with a process of appointment agreed by it with the trust. The absence of any such agreed process of appointment shall not preclude the medical school from appointing its governor.

Partnership Organisations:**Clinical Commissioning Groups**

- 2.6** NHS North Lincolnshire Clinical Commissioning Group and NHS North East Lincolnshire Clinical Commissioning Group shall be entitled to appoint one governor each in accordance with a process of appointment agreed by them with the trust. The absence of any such agreed process of appointment shall not preclude the said clinical commissioning groups from appointing their governors provided the appointment is duly made in accordance with the clinical commissioning groups' own internal processes.
- 2.7** If a clinical commissioning group named in paragraph 2.7 above declines or fails to appoint a governor within three months of being requested to do so by the trust, the trust shall in its absolute discretion be entitled to invite any of those other clinical commissioning groups to whom it provides goods and services to appoint a governor in substitution for the clinical commissioning group which has failed or declined to do so.
- 2.8** If the invitation referred to in paragraph 2.8 above is accepted by a clinical commissioning group, that clinical commissioning group shall appoint a governor and any clinical commissioning group which has previously failed to appoint a governor shall cease to be entitled to do so subject to the provisions of paragraph 2.12 below.
- 2.9** Subject to paragraph 2.11 below, if the invitation is not accepted within a reasonable period or such period as may have been specified in the invitation the trust shall invite any other such clinical commissioning group until the invitation, is accepted and a governor is appointed.
- 2.10** Any governor appointed under paragraphs 2.9 and 2.10 above shall serve on the Council of Governors for the period stipulated in the constitution. At the end of that period the trust shall in its absolute discretion decide whether to permit that clinical commissioning group which had first failed or declined to appoint a governor to do so for the next period of office or to invite that clinical commissioning group which had appointed a governor in substitution to do so.
- 2.11** Notwithstanding the foregoing provisions of this paragraph, the trust shall in its absolute discretion be entitled:
- 2.11.1** to give not less than 6 months' notice to any of those clinical commissioning groups referred to in paragraphs 2.7 above (or any substituted clinical commissioning group appointed under paragraphs 2.8 to 2.10 above) terminating their right to appoint a governor and upon the expiration of that notice period or such other date as the trust and the relevant clinical commissioning group may agree that clinical commissioning group's right to appoint a governor shall be terminated and the period of office of the governor appointed by that clinical commissioning group shall also come to an end on that date; and
- 2.11.2** to appoint another clinical commissioning group for which the trust provides goods and services to replace that clinical commissioning group to which notice has been given under paragraph 2.12.1 above save that these provisions shall at all times be operated so as to ensure that the number of clinical commissioning groups entitled to appoint a governor remains as provided for in paragraph 2.7 and 2.8 above.

GP Providers

- 2.12** GP providers in each of the following four areas: North East Lincolnshire, North Lincolnshire; East Riding of Yorkshire; and Lincolnshire, shall be entitled to appoint one governor for each area in accordance with a process of appointment agreed with the trust.
- 2.13** If the GP providers in a particular area named in paragraph 2.82.13 above declines or fails to agree a process to appoint a governor within three months of being requested to do so by the trust, the trust shall consult the GP providers in that area and the trust in its absolute discretion may invite any of those GP providers to appoint a governor in substitution for the GP providers which have failed or declined to do so.
- 2.14** A governor appointed under paragraph 2.14 shall then serve on the Council of Governors for the period stipulated in the constitution. At the end of that period the trust shall in its absolute discretion decide whether to permit those GP providers which had failed or declined to appoint a governor to appoint a governor for the next period of office (provided it remains eligible to do so) or to invite the GP providers which had appointed a governor in substitution to do so.

3. The Composition of the Council of Governors

The composition of the Council of Governors shall be as set out in Table 1 below

Table 1:

	Electing/Appointing Body	Number of Governors
1.	Public Constituency Governors	
1.1	North East Lincolnshire Constituency	5
1.2	North Lincolnshire Constituency	5
1.3	East and West Lindsey Constituency	2
1.4	Goole & Howdenshire Constituency	3
2.	Staff Governors	4
3.	Partnership Organisations	
3.1	NHS North East Lincolnshire CCG	1
3.2	NHS North Lincolnshire CCG	1
3.3	North East Lincolnshire GP Providers	1
3.4	North Lincolnshire GP Providers	1
3.5	East Riding of Yorkshire GP Providers	1
3.6	Lincolnshire GP Providers	1
4.	Qualifying Local Authority Governors	2
5.	Qualifying Medical Schools	
5.1	Hull York Medical School	1
	Total number of governors	28

ANNEX 4 –THE MODEL RULES FOR ELECTIONS

(Paragraph 11.2)

Part 1 – Interpretation

1. Interpretation

Part 2 – Timetable for election

2. Timetable
3. Computation of time

Part 3 – Returning officer

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

Part 4 - Stages Common to Contested and Uncontested Elections

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

Part 5 – Contested elections

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

Action to be taken before the poll

22. List of eligible voters
23. Notice of poll
24. Issue of voting documents
25. Ballot paper envelope and covering envelope

The poll

26. Eligibility to vote
27. Voting by persons who require assistance
28. Spoilt ballot papers
29. Lost ballot papers
30. Issue of replacement ballot paper
31. Declaration of identity for replacement ballot papers

Procedure for receipt of envelopes

32. Receipt of voting documents
33. Validity of ballot paper
34. Declaration of identity but no ballot paper
35. Sealing of packets

Part 6 -- Counting the votes

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

Part 7 – Final proceedings in contested and uncontested elections

47. Declaration of result for contested elections
48. Declaration of result for uncontested elections

Part 8 – Disposal of documents

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

Part 9 – Death of a candidate during a contested election

54. Countermand or abandonment of poll on death of candidate

Part 10 – Election expenses and publicity Expenses

55. Expenses incurred by candidates
56. Expenses incurred by other persons
57. Personal, travelling, and administrative expenses

Publicity

- 58. Publicity about election by the corporation
- 59. Information about candidates for inclusion with voting documents
- 60. Meaning of "for the purposes of an election"

Part 11 – Questioning elections and irregularities

- 61. Application to question an election

Part 12 – Miscellaneous

- 62. Secrecy
 - 63. Prohibition of disclosure of vote
 - 64 Disqualification
 - 65 Delay in postal service through industrial action or unforeseen event
-

Part 1 – Interpretation

1. Interpretation – (1) In these rules, unless the context otherwise requires –

“corporation” means the public benefit corporation subject to this Constitution;

“election” means an election by a constituency, or by a class within a constituency, to fill a vacancy among one or more posts on the Council of Governors;

“the regulator” means the Independent Regulator for NHS foundation trusts; and

“the 2003 Act” means the Health and Social Care (Community Health and Standards) Act 2003.

(2) Other expressions used in these rules and in Schedule 1 to the Health and Social Care (Community Health and Standards) Act 2003 have the same meaning in these rules as in that Schedule.

Part 2 – Timetable for election

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

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

3. Computation of time - (1) In computing any period of time for the purposes of the timetable -

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

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

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

Part 3 – Returning officer

4. Returning officer – (1) Subject to rule 64, the returning officer for an election is to be appointed by the corporation.

(2) Where two or more elections are to be held concurrently, the same returning officer may be appointed for all those elections.

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

6. Expenditure - The corporation is to pay the returning officer –

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

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

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

Part 4 – Stages Common to Contested and Uncontested Elections

8. Notice of election – The returning officer is to publish a notice of the election stating –

(a) the constituency, or class within a constituency, for which the election is being held,

(b) the number of members of the Council of Governors to be elected from that constituency, or class within that constituency,

(c) the details of any nomination committee that has been established by the corporation,

(d) the address and times at which nomination papers may be obtained;

(e) the address for return of nomination papers and the date and time by which they must be received by the returning officer,

(f) the date and time by which any notice of withdrawal must be received by the returning officer

(g) the contact details of the returning officer, and

(h) the date and time of the close of the poll in the event of a contest.

9. Nomination of candidates – (1) Each candidate must nominate themselves on a single nomination paper.

(2) The returning officer-

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

(b) is to prepare a nomination paper for signature at the request of any member of the corporation,

but it is not necessary for a nomination to be on a form supplied by the returning officer.

10. Candidate's particulars – (1) The nomination paper must state the candidate's –

- (a) full name,
- (b) contact address in full, and
- (c) constituency, or class within a constituency, of which the candidate is a member.

11. Declaration of interests – The nomination paper must state –

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

12. Declaration of eligibility – The nomination paper must include a declaration made by the candidate–

- (a) that he is not prevented from being a member of the Council of Governors by paragraph 8 of Schedule 1 of the 2003 Act or by any provision of the Constitution; and,
- (b) for a member of the public or patient constituency, of the particulars of his or her qualification to vote as a member of that constituency, or class within that constituency, for which the election is being held.

13. Signature of candidate – The nomination paper must be signed and dated by the candidate, indicating that –

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

14. Decisions as to the validity of nomination – (1) Where a nomination paper is received by the returning officer in accordance with these rules, the candidate is deemed to stand for election unless and until the returning officer-

- (a) decides that the candidate is not eligible to stand,
- (b) decides that the nomination paper is invalid,
- (c) receives satisfactory proof that the candidate has died, or
- (d) receives a written request by the candidate of their withdrawal from candidacy.

(2) The returning officer is entitled to decide that a nomination paper is invalid only on one of the following grounds –

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

- (b) that the paper does not contain the candidate's particulars, as required by rule 10;
 - (c) that the paper does not contain a declaration of the interests of the candidate, as required by rule 11,
 - (d) that the paper does not include a declaration of eligibility as required by rule 12, or
 - (e) that the paper is not signed and dated by the candidate, as required by rule 13.
- (3) The returning officer is to examine each nomination paper as soon as is practicable after he has received it, and decide whether the candidate has been validly nominated.
- (4) Where the returning officer decides that a nomination is invalid, the returning officer must endorse this on the nomination paper, stating the reasons for their decision.
- (5) The returning officer is to send notice of the decision as to whether a nomination is valid or invalid to the candidate at the contact address given in the candidate's nomination paper.

15. Publication of statement of candidates – (1) The returning officer is to prepare and publish a statement showing the candidates who are standing for election.

(2) The statement must show –

- (a) the name, contact address, and constituency or class within a constituency of each candidate standing, and
 - (b) the declared interests of each candidate standing, as given in their nomination paper.
- (3) The statement must list the candidates standing for election in alphabetical order by surname.
- (4) The returning officer must send a copy of the statement of candidates and copies of the nomination papers to the corporation as soon as is practicable after publishing the statement.

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

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

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

18. Method of election – (1) If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is greater than the number of members to be elected to the Council of Governors, a poll is to be taken in accordance with Parts 5 and 6 of these rules.

(2) If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is equal to the number of members to be elected to the

Council of Governors, those candidates are to be declared elected in accordance with Part 7 of these rules.

(3) If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is less than the number of members to be elected to be Council of Governors, then –

(a) the candidates who remain validly nominated are to be declared elected in accordance with Part 7 of these rules, and

(b) the returning officer is to order a new election to fill any vacancy which remains unfilled, on a day appointed by him in consultation with the corporation.

Part 5 – Contested elections

19. Poll to be taken by ballot – (1) The votes at the poll must be given by secret ballot.

(2) The votes are to be counted and the result of the poll determined in accordance with Part 6 of these rules.

20. The ballot paper – (1) The ballot of each voter is to consist of a ballot paper with the persons remaining validly nominated for an election after any withdrawals under these rules, and no others, inserted in the paper.

(2) Every ballot paper must specify –

(a) the name of the corporation,

(b) the constituency, or class within a constituency, for which the election is being held,

(c) the number of members of the Council of Governors to be elected from that constituency, or class within that constituency,

(d) the names and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,

(e) instructions on how to vote,

(f) if the ballot paper is to be returned by post, the address for its return and the date and time of the close of the poll, and

(g) the contact details of the returning officer.

(3) Each ballot paper must have a unique identifier.

(4) Each ballot paper must have features incorporated into it to prevent it from being reproduced.

21. The declaration of identity (public and patient constituencies) – (1) In respect of an election for a public or patient constituency a declaration of identity must be issued with each ballot paper.

(2) The declaration of identity is to include a declaration –

- (a) that the voter is the person to whom the ballot paper was addressed,
 - (b) that the voter has not marked or returned any other voting paper in the election, and
 - (c) for a member of the public or patient constituency, of the particulars of that member's qualification to vote as a member of the constituency or class within a constituency for which the election is being held.
- (3) The declaration of identity is to include space for –
- (a) the name of the voter,
 - (b) the address of the voter,
 - (c) the voter's signature, and
 - (d) the date that the declaration was made by the voter.
- (4) The voter must be required to return the declaration of identity together with the ballot paper.
- (5) The declaration of identity must caution the voter that, if it is not returned with the ballot paper, or if it is returned without being correctly completed, the voter's ballot paper may be declared invalid.

Action to be taken before the poll

22. List of eligible voters – (1) The corporation is to provide the returning officer with a list of the members of the constituency or class within a constituency for which the election is being held who are eligible to vote by virtue of rule 26 as soon as is reasonably practicable after the final date for the delivery of notices of withdrawals by candidates from an election.

(2) The list is to include, for each member, a mailing address where his or her ballot paper is to be sent.

23. Notice of poll - The returning officer is to publish a notice of the poll stating–

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

(h) the contact details of the returning officer.

24. Issue of voting documents by returning officer – (1) As soon as is reasonably practicable on or after the publication of the notice of the poll, the returning officer is to send the following documents to each member of the corporation named in the list of eligible voters–

(a) a ballot paper and ballot paper envelope,

(b) a declaration of identity (if required),

(c) information about each candidate standing for election, pursuant to rule 59 of these rules, and

(d) a covering envelope.

(2) The documents are to be sent to the mailing address for each member, as specified in the list of eligible voters.

25. Ballot paper envelope and covering envelope – (1) The ballot paper envelope must have clear instructions to the voter printed on it, instructing the voter to seal the ballot paper inside the envelope once the ballot paper has been marked.

(2) The covering envelope is to have –

(a) the address for return of the ballot paper printed on it, and

(b) pre-paid postage for return to that address.

(3) There should be clear instructions, either printed on the covering envelope or elsewhere, instructing the voter to seal the following documents inside the covering envelope and return it to the returning officer –

(a) the completed declaration of identity if required, and

(b) the ballot paper envelope, with the ballot paper sealed inside it.

The poll

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

27. Voting by persons who require assistance – (1) The returning officer is to put in place arrangements to enable requests for assistance to vote to be made.

(2) Where the returning officer receives a request from a voter who requires assistance to vote, the returning officer is to make such arrangements as he considers necessary to enable that voter to vote.

28. Spoilt ballot papers (1) – If a voter has dealt with his or her ballot paper in such a manner that it cannot be accepted as a ballot paper (referred to a “spoilt ballot paper”), that voter may apply to the returning officer for a replacement ballot paper.

(2) On receiving an application, the returning officer is to obtain the details of the unique identifier on the spoilt ballot paper, if he can obtain it.

(3) The returning officer may not issue a replacement ballot paper for a spoilt ballot paper unless he –

(a) is satisfied as to the voter's identity, and

(b) has ensured that the declaration of identity, if required, has not been returned.

(4) After issuing a replacement ballot paper for a spoilt ballot paper, the returning officer shall enter in a list ("the list of spoilt ballot papers") –

(a) the name of the voter, and

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

(c) the details of the unique identifier of the replacement ballot paper.

29. Lost ballot papers – (1) Where a voter has not received his or her ballot paper by the fourth day before the close of the poll, that voter may apply to the returning officer for a replacement ballot paper.

(2) The returning officer may not issue a replacement ballot paper for a lost ballot paper unless he –

(a) is satisfied as to the voter's identity,

(b) has no reason to doubt that the voter did not receive the original ballot paper, and

(c) has ensured that the declaration of identity if required has not been returned.

(3) After issuing a replacement ballot paper for a lost ballot paper, the returning officer shall enter in a list ("the list of lost ballot papers") –

(a) the name of the voter, and

(b) the details of the unique identifier of the replacement ballot paper.

30. Issue of replacement ballot paper– (1) If a person applies for a replacement ballot paper under rule 28 or 29 and a declaration of identity has already been received by the returning officer in the name of that voter, the returning officer may not issue a replacement ballot paper unless, in addition to the requirements imposed rule 28(3) or 29(2), he is also satisfied that that person has not already voted in the election, notwithstanding the fact that a declaration of identity if required has already been received by the returning officer in the name of that voter.

(2) After issuing a replacement ballot paper under this rule, the returning officer shall enter in a list ("the list of tendered ballot papers") –

(a) the name of the voter, and

(b) the details of the unique identifier of the replacement ballot paper issued under this rule.

31. Declaration of identity for replacement ballot papers (public and patient constituencies) – (1) In respect of an election for a public or patient constituency a declaration of identity must be issued with each replacement ballot paper.

(2) The declaration of identity is to include a declaration –

(a) that the voter has not voted in the election with any ballot paper other than the ballot paper being returned with the declaration, and

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

(3) The declaration of identity is to include space for –

(a) the name of the voter,

(b) the address of the voter,

(c) the voter's signature, and

(d) the date that the declaration was made by the voter.

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

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

Procedure for receipt of envelopes

32. Receipt of voting documents – (1) Where the returning officer receives a –

(a) covering envelope, or

(b) any other envelope containing a declaration of identity if required, a ballot paper envelope, or a ballot paper,

before the close of the poll, that officer is to open it as soon as is practicable; and rules 33 and 34 are to apply.

(2) The returning officer may open any ballot paper envelope for the purposes of rules 33 and 34, but must make arrangements to ensure that no person obtains or communicates information as to –

(a) the candidate for whom a voter has voted, or

(b) the unique identifier on a ballot paper.

(3) The returning officer must make arrangements to ensure the safety and security of the ballot papers and other documents.

33. Validity of ballot paper – (1) A ballot paper shall not be taken to be duly returned unless the returning officer is satisfied that it has been received by the returning officer before the close of the poll, with a declaration of identity if required that has been correctly completed, signed, and dated.

(2) Where the returning officer is satisfied that paragraph (1) has been fulfilled, he is to –

(a) put the declaration of identity if required in a separate packet, and

(b) put the ballot paper aside for counting after the close of the poll.

(3) Where the returning officer is not satisfied that paragraph (1) has been fulfilled, he is to –

(a) mark the ballot paper “disqualified”,

(b) if there is a declaration of identity accompanying the ballot paper, mark it as “disqualified” and attach it the ballot paper,

(c) record the unique identifier on the ballot paper in a list (the “list of disqualified documents”); and

(d) place the document or documents in a separate packet.

34. Declaration of identity but no ballot paper (public and patient constituency) – Where the returning officer receives a declaration of identity if required but no ballot paper, the returning officer is to –

(a) mark the declaration of identity “disqualified”,

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

(c) place the declaration of identity in a separate packet.

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

(a) the disqualified documents, together with the list of disqualified documents inside it,

(b) the declarations of identity if required,

(c) the list of spoiled ballot papers,

(d) the list of lost ballot papers,

(e) the list of eligible voters, and

(f) the list of tendered ballot papers.

Part 6 – Counting the votes

36. Interpretation of Part 6 – In Part 6 of these rules –

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

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

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

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

“non-transferable vote” means a ballot paper –

(a) on which no second or subsequent preference is recorded for a continuing candidate, or

(b) which is excluded by the returning officer under rule 44(4) below, “preference” as used in the following contexts has the meaning assigned below–

(a) “first preference” means the figure “1” or any mark or word which clearly indicates a first (or only) preference,

(b) “next available preference” means a preference which is the second, or as the case may be, subsequent preference recorded in consecutive order for a continuing candidate (any candidate who is deemed to be elected or is excluded thereby being ignored); and

(c) in this context, a “second preference” is shown by the figure “2” or any mark or word which clearly indicates a second preference, and a third preference by the figure “3” or any mark or word which clearly indicates a third preference, and so on,

“quota” means the number calculated in accordance with rule 41 below,

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

“stage of the count” means –

(a) the determination of the first preference vote of each candidate,

(b) the transfer of a surplus of a candidate deemed to be elected, or

(c) the exclusion of one or more candidates at any given time,

“transferable 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,

“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

“transfer value” means the value of a transferred vote calculated in accordance with paragraph (4) or (7) of rule 42 below.

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

38. The count – (1) The returning officer is to –

(a) count and record the number of ballot papers that have been returned, and

(b) count the votes according to the provisions in this Part of the rules.

(2) The returning officer, while counting and recording the number of ballot papers and counting the votes, must make arrangements to ensure that no person obtains or communicates information as to the unique identifier on a ballot paper.

(3) The returning officer is to proceed continuously with counting the votes as far as is practicable.

39. Rejected ballot papers – (1) Any ballot paper –

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

(b) on which the figure “1” standing alone is not placed so as to indicate a first preference for any candidate,

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

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

shall be rejected and not counted, but the ballot 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.

(2) The returning officer is to endorse the word “rejected” on any ballot paper which under this rule is not to be counted.

(3) The returning officer is to draw up a statement showing the number of ballot papers rejected by him under each of the subparagraphs (a) to (d) of paragraph (1).

40. First stage – (1) The returning officer is to sort the ballot papers into parcels according to the candidates for whom the first preference votes are given.

(2) The returning officer is to then count the number of first preference votes given on ballot papers for each candidate, and is to record those numbers.

(3) The returning officer is to also ascertain and record the number of valid ballot papers.

41. The quota – (1) The returning officer is to divide the number of valid ballot papers by a number exceeding by one the number of members to be elected.

(2) The result, increased by one, of the division under paragraph (1) above (any fraction being disregarded) shall be the number of votes sufficient to secure the election of a candidate (in these rules referred to as “the quota”).

(3) At any stage of the count a candidate whose total votes equals or exceeds the quota shall be deemed to be elected, except that any election where there is only one vacancy a candidate shall not be deemed to be elected until the procedure set out in paragraphs (1) to (3) of rule 44 has been complied with.

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

(a) according to next available preference given on those papers for any continuing candidate, or

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

(2) The returning officer is to count the number of ballot papers in each parcel referred to in paragraph (1) above.

(3) The returning officer is, in accordance with this rule and rule 43 below, to transfer each sub-parcel of ballot papers referred to in paragraph (1)(a) to the candidate for whom the next available preference is given on those papers.

(4) The vote on each ballot paper transferred under paragraph (3) above shall be at a value (“the transfer value”) which –

(a) reduces the value of each vote transferred so that the total value of all such votes does not exceed the surplus, and

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

(5) Where at the end of any stage of the count involving the transfer of 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 –

(a) according to the next available preference given on those papers for any continuing candidate, or

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

(6) The returning officer is, in accordance with this rule and rule 43 below, to transfer each sub-parcel of ballot papers referred to in paragraph (5)(a) to the candidate for whom the next available preference is given on those papers.

(7) The vote on each ballot paper transferred under paragraph (6) shall be at –

(a) a transfer value calculated as set out in paragraph (4)(b) above, or

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

whichever is the less.

(8) Each transfer of a surplus constitutes a stage in the count.

(9) Subject to paragraph (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.

(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 –

(a) less than the difference between the total vote then credited to the continuing candidate with the lowest recorded vote and the vote of the candidate with the next lowest recorded vote, or

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

(11) This rule does not apply at an election where there is only one vacancy.

43. Supplementary provisions on transfer – (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 –

(a) 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

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

(2) The returning officer shall, on each transfer of transferable papers under rule 42 above–

(a) record the total value of the votes transferred to each candidate,

(b) add that value to the previous total of votes recorded for each candidate and record the new total,

(c) record as non-transferable votes the difference between the surplus and the total transfer value of the transferred votes and add that difference to the previously recorded total of non-transferable votes, and

(d) compare—

(i) the total number of votes then recorded for all of the candidates, together with the total number of non-transferable votes, with

(ii) the recorded total of valid first preference votes.

(3) All 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.

(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 – (1) If—

(a) all transferable papers which under the provisions of rule 42 above (including that rule as applied by paragraph (11) below) and this rule are required to be transferred, have been transferred, and

(b) subject to rule 45 below, 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 (12) below applies, the candidates with the then lowest votes).

(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 (1) above into two sub-parcels so that they are grouped as—

(a) ballot papers on which a next available preference is given, and

(b) 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).

(3) The returning officer shall, in accordance with this rule and rule 43 above, transfer each sub-parcel of ballot papers referred to in paragraph (2)(a) above to the candidate for whom the next available preference is given on those papers.

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

(5) If, subject to rule 45 below, 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 (1) above into sub-parcels according to their transfer value.

(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).

(7) The vote on each transferable paper transferred under paragraph (6) above shall be at the value at which that vote was received by the candidate excluded under paragraph (1) above.

(8) Any papers on which no next available preferences have been expressed shall be set aside as non-transferable votes.

(9) After the returning officer has completed the transfer of the ballot papers in the sub-paragraph of ballot papers with the highest transfer value he shall proceed to transfer in the same way the sub-paragraph of ballot papers with the next highest value and so on until he has dealt with each sub-paragraph of a candidate excluded under paragraph (1) above.

(10) The returning officer shall after each stage of the count completed under this rule—

(a) record –

(i) the total value of votes, or

(ii) the total transfer value of votes transferred to each candidate,

(b) add that total to the previous total of votes recorded for each candidate and record the new total,

(c) record the value of non-transferable votes and add that value to the previous non-transferable votes total, and

(d) compare—

(i) the total number of votes then recorded for each candidate together with the total number of non-transferable votes, with

(ii) the recorded total of valid first preference votes.

(11) If after a transfer of votes under any provision of this rule, a candidate has a surplus, that surplus shall be dealt with in accordance with paragraphs (5) to (10) of rule 42 and rule 43.

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

(13) If when a candidate has to be excluded under this rule, two or more candidates each have the same number of votes and are lowest—

(a) regard shall be 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

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

45. Filling of last vacancies – (1) Where the number of continuing candidates is equal to the number of vacancies remaining unfilled the continuing candidates shall thereupon be deemed to be elected.

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

(3) Where the last vacancies can be filled under this rule, no further transfer of votes shall be made.

46. Order of election of candidates – (1) The order in which candidates whose votes equal or exceed the quota are deemed to be elected shall be the order in which their respective surpluses were transferred, or would have been transferred but for rule 42(10) above.

(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.

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

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

Part 7 – Final proceedings in contested and uncontested elections

47. Declaration of result for contested elections – (1) In a contested election, when the result of the poll has been ascertained, the returning officer is to—

(a) declare the candidates who are deemed to be elected under Part 6 of these rules as elected,

(b) give notice of the name of each candidate who he has declared elected –

(i) where the election is held under a proposed Constitution pursuant to powers conferred on the Northern Lincolnshire and Goole Foundation NHS Trust by section 4(4) of the 2003 Act, to the chairman of the NHS Trust, or

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

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

(2) The returning officer is to make –

(a) the number of first preference votes for each candidate whether elected or not,

(b) any transfer of votes,

(c) the total number of votes for each candidate at each stage of the count at which such transfer took place,

- (d) the order in which the successful candidates were elected, and
- (e) the number of rejected ballot papers under each of the headings in rule 39(1), available on request.

48. Declaration of result for uncontested elections – In an uncontested election, the returning officer is to as soon as is practicable after final day for the delivery of notices of withdrawals by candidates from the election –

- (a) declare the candidate or candidates remaining validly nominated to be elected,
- (b) give notice of the name of each candidate who he has declared elected to the chairman of the corporation, and
- (c) give public notice of the name of each candidate who he has declared elected.

Part 8 – Disposal of documents

49. Sealing up of documents relating to the poll – (1) On completion of the counting at a contested election, the returning officer is to seal up the following documents in separate packets –

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

(d) the constituency, or class within a constituency, to which the election relates.

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

51. Forwarding of documents received after close of the poll – Where –

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

(b) any envelopes addressed to eligible voters are returned as undelivered too late to be resent, or

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

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

52. Retention and public inspection of documents – (1) The corporation is to retain the documents relating to an election that are forwarded to the chair by the returning officer under these rules for one year, and then, unless otherwise directed by the regulator, cause them to be destroyed.

(2) With the exception of the documents listed in rule 53(1), the documents relating to an election that are held by the corporation shall be available for inspection by members of the public at all reasonable times.

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

53. Application for inspection of certain documents relating to an election –

(1) The corporation may not allow the inspection of, or the opening of any sealed packet containing –

(a) any rejected ballot papers, including ballot papers rejected in part,

(b) any disqualified documents, or the list of disqualified documents,

(c) any counted ballot papers,

(d) any declarations of identity, or

(e) the list of eligible voters,

by any person without the consent of the Regulator.

(2) A person may apply to the Regulator to inspect any of the documents listed in (1), and the Regulator may only consent to such inspection if it is satisfied that it is necessary for the purpose of questioning an election pursuant to Part 11.

(3) The Regulator's consent may be on any terms or conditions that it thinks necessary, including conditions as to –

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

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

(4) On an application to inspect any of the documents listed in paragraph (1), –

- (a) in giving its consent, the regulator, and
- (b) and making the documents available for inspection, the corporation,

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

- (i) that his or her vote was given, and
- (ii) that the regulator has declared that the vote was invalid.

Part 9 – Death of a candidate during a contested election

54. Countermand or abandonment of poll on death of candidate – (1) If, at a contested election, proof is given to the returning officer's satisfaction before the result of the election is declared that one of the persons named or to be named as a candidate has died, then the returning officer is to –

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

(2) The 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)(a).

Part 10 – Election expenses and publicity

Election expenses

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

56 Expenses and payments by candidates - A candidate may not incur any expenses or make a payment (of whatever nature) for the purposes of an election, other than expenses or payments that relate to –

(a) personal expenses,

(b) travelling expenses, and expenses incurred while living away from home, and

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

57. Election expenses incurred by other persons – (1) No person may -

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

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

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

Publicity

58. Publicity about election by the corporation – (1) The corporation may –

(a) compile and distribute such information about the candidates, and

(b) organise and hold such meetings to enable the candidates to speak and respond to questions,

as it considers necessary.

(2) Any information provided by the corporation about the candidates, including information compiled by the corporation under rule 59, must be –

(a) objective, balanced and fair,

(b) equivalent in size and content for all candidates,

(c) compiled and distributed in consultation with all of the candidates standing for election, and

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

(3) Where the corporation proposes to hold a meeting to enable the candidates to speak, the corporation must ensure that all of the candidates are invited to attend, and in organising and holding such a meeting, the corporation must not seek to promote or procure the

election of a specific candidate or candidates at the expense of the electoral prospects of one or more other candidates.

59. Information about candidates for inclusion with voting documents - (1)

The corporation must compile information about the candidates standing for election, to be distributed by the returning officer pursuant to rule 24 of these rules.

(2) The information must consist of –

(a) a statement submitted by the candidate of no more than 250 words, and

(b) a photograph of the candidate.

60. Meaning of “for the purposes of an election” - (1) In this Part, the phrase “for the purposes of an election” means with a view to, or otherwise in connection with, promoting or procuring a candidate’s election, including the prejudicing of another candidate’s electoral prospects; and the phrase “for the purposes of a candidate’s election” is to be construed accordingly.

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

Part 11 – Questioning elections and the consequence of irregularities

61. Application to question an election – (1) An application alleging a breach of these rules, including an electoral irregularity under Part 10, may be made to the regulator.

(2) An application may only be made once the outcome of the election has been declared by the returning officer.

(3) An application may only be made to the Regulator by -

(a) a person who voted at the election or who claimed to have had the right to vote, or

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

(4) The application must –

(a) describe the alleged breach of the rules or electoral irregularity, and

(b) be in such a form as the Regulator may require.

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

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

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

b. The determination by the person or persons nominated in accordance with Rule 61(7) shall be binding on and shall be given effect by the corporation, the applicant and the

members of the constituency (or class within a constituency) including all the candidates for the election to which the application relates.

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

Part 12 – Miscellaneous

62. Secrecy – (1) The following persons –

(a) the returning officer,

(b) the returning officer's staff,

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

(i) the name of any member of the corporation who has or has not been given a ballot paper or who has or has not voted,

(ii) the unique identifier on any ballot paper,

(iii) the candidate(s) for whom any member has voted.

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

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

63. Prohibition of disclosure of vote – No person who has voted at an election shall, in any legal or other proceedings to question the election, be required to state for whom he has voted.

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

(a) a member of the corporation,

(b) an employee of the corporation,

(c) a director of the corporation, or

(d) employed by or on behalf of a person who has been nominated for election.

65. Delay in postal service through industrial action or unforeseen event – If industrial action, or some other unforeseen event, results in a delay in –

(a) the delivery of the documents in rule 24, or

(b) the return of the ballot papers and declarations of identity,

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

ANNEX 5 – ADDITIONAL PROVISIONS – COUNCIL OF GOVERNORS

1. Further Provisions as to the Disqualification of Governors

In addition to those provisions in paragraph 12 of the Constitution, the following persons may not become or continue as a member of the Council of Governors:

- 1.1 Anyone who is a director or chair of the trust or a governor of another healthcare trust or equivalent NHS funded provider.
- 1.2 Persons defined under the trust's complaints policy as a vexatious complainant or litigant.
- 1.3 Staff and appointed governors with current disciplinary action, or who have a disciplinary sanction still in force will not be permitted to be elected, or if already elected carry out the role of a governor.
- 1.4 Members who have, within the preceding two years, been dismissed otherwise than by reason of redundancy or ill health from any paid employment with a health service body.
- 1.5 Persons whose name appears or is added to the Sex Offenders Register.
- 1.6 A person whose tenure of office as the chairman, governor or director of a health service body has been terminated on the grounds that the appointment was not in the interests of the health service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest.
- 1.7 Anyone who is suffering from a mental disorder and is either admitted to hospital in pursuance of an application for admission for treatment under the Mental Health Act 1983 or is subject to an order made by a court having jurisdiction in matters concerning mental disorder for detention or for the appointment of a receiver; and is, therefore, incapable by reason of mental disorder of carrying out the duties of a governor.

2. Vacancies

- 2.1 In the event of an appointed governor not serving out their full term of office the Council of Governors shall require the organisation concerned to appoint a replacement at the earliest opportunity.
- 2.2 In the event of an elected governor not serving out their full term of office the Chairman may, where the unexpired term is less than twelve months, choose to leave the seat vacant until the next scheduled election unless the vacancy is in a public constituency and the vacancy means that the governors elected by the public constituencies no longer constitute more than half the members of the Council of Governors. In that event and in all other cases save as provided for in this paragraph the Chairman shall be at liberty either:
 - 2.2.1 to call an election within three months to fill the seat for the remainder of that term of office, or

- 2.2.2** to invite the next highest polling candidate for that seat at the most recent election to fill the seat until the next annual election, at which time the seat will fall vacant and subject to election for any unexpired period of the term of office. At the annual election, it shall be the last candidate elected to the constituency involved who will serve the unexpired period of the term of office for that constituency.
- 2.3** In the event of the seat of an elected governor not being filled at an election the Chairman shall be at liberty either to call a further election within three months to fill the seat for the remainder of that terms of office.

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

1. General Overview and Introduction to the Council of Governors

- 1.1** The Council of Governors shall be constituted in accordance with the requirements of the constitution.
- 1.2** Provisions concerning the nomination and election to the Council of Governors are set out in the Constitution and the election rules. A member may not be nominated as a candidate for election to the Council of Governors unless he or she conforms to the requirements set out in the Constitution.
- 1.3** Governors shall comply with the code of conduct set out in Section 4.
- 1.4** A member of the Council of Governors shall be disqualified from taking up office, or if in office shall vacate the office, in the circumstances set out in the Constitution. A governor shall cease to hold office when required to do so by the Council of Governors.
- 1.5** In accordance with the Constitution the Chairman will chair the Council of Governors.
- 1.6** Standing orders, including those concerning agenda, quorum, voting and the taking of minutes at Council of Governors meetings are set out in Section 2 and in the Constitution.
- 1.7** Members of the Council of Governors shall not be remunerated, but may receive expenses agreed by the executive remuneration committee of the Board of Directors.

1.8 Functions and Responsibilities of the Council of Governors

The function of the Council of Governors is to exercise the rights set out in the Constitution and the powers (if any) delegated from time to time by the Board of Directors and to act in accordance with these procedures. The Council's roles and responsibilities are set out in Section 4 and the trust shall provide sufficient resources to enable the Council of Governors to discharge its responsibilities.

1.9 Lead Governor

- 1.9.1** The Council of Governors shall select a public governor to undertake the role of Lead Governor of the Northern Lincolnshire and Goole NHS Foundation Trust. The Lead Governor shall be chosen by the Council of Governors, who will also approve the process for the appointment.
- 1.9.2** The process for the selection and appointment of the Lead Governor shall be as follows:
- The Lead Governor shall be elected by their peers at the first general meeting of the Council of Governors occurring at least six weeks after the position of Lead Governor becoming vacant. Where a ballot is required, all Governors present shall be entitled to vote. The Chairman shall not participate in the ballot but shall have a casting vote in the event of a tie.

- At least one calendar month before the date of the meeting of the Council of Governors, the Trust Secretary shall contact all Governors by post inviting nominations.
- Where more than one nomination is received, ballot papers showing the names of all the nominated candidates shall be distributed with the papers for the meeting and a secret ballot shall be conducted at the meeting. The Trust Secretary, or their nominee, shall act as returning officer and shall announce the results of the election before the close of the meeting when completed ballot papers will be made available for scrutiny by Governors as required. Where there is only one nomination, the Council of Governors shall be asked to ratify the appointment.

1.9.3 The appointment as Lead Governor shall be for a period of three (3) years or until:

- the end of that Governor's current term of office whichever is the sooner; or
- they resign the position of Lead Governor by giving notice to the Chairman in writing; or
- they are removed from the position of Lead Governor by a resolution passed by a two thirds majority of the remaining governors at a general meeting of the Council of Governors;

with the option of re-election after that period if that governor is re-elected on to the Council of Governors. Continuation in the role will not be automatic on re-election to the Council, unless following a recommendation by the Appointments & Remuneration Committee to the Council of Governors.

1.9.4 The Trust Secretary shall be responsible for notifying Monitor of a change of Lead Governor.

1.9.5 The responsibilities of the Lead Governor shall be:

- To lead the Council of Governors in circumstances where it may not be considered appropriate for the Chairman or another one of the Non-Executive Directors to lead (e.g. chairing a meeting to discuss the appointment of a new chair) and to act as the point of contact with the independent panel referred to in paragraph 18 of the Constitution where a question is referred to that panel in accordance with that paragraph.
- To chair the Governors' Steering Group and Appointments and Remuneration Committee.
- On behalf of the Council of Governors, to attend the monthly meetings with the Chairman and the Trust Secretary;.
- On behalf of the Council of Governors, to raise issues for discussion at the Trust Board;.
- To assist the Chairman in facilitating the flow of information between the Trust Board and the Council of Governors.

1.10 Trust Secretary

The functions of Trust Secretary; most particularly monitoring of the trust's compliance with the law, Standing Orders and the regulatory framework, are a corporate responsibility shared by the directors but with the lead role being assumed by the Trust Secretary.- In accordance with *Standing Orders for the Practice and Procedure of the Board of Directors* (paragraph 5.4) the Chief Executive and the Director of Finance have responsibility for advising the Chairman on the interpretation of Standing Orders and the *Standing Financial Instructions*.- The specific duties and responsibilities of the Trust Secretary are outlined below.

Acts as 'Company Secretary' to the Council of Governors and Trust Board of Directors:

- in conjunction with Executive and Non-Executive Directors, ensure that the Trust complies with all relevant legislation and the Terms of its Authorisation;
- providing advice/information to ensure compliance with existing and future best practice and corporate governance requirements;
- ensuring that meetings of the Board of Directors, Council of Governors and committees thereof run efficiently and effectively, that they are properly recorded and that Directors and Governors receive appropriate support and timely information;
- in conjunction with the Chairman and Lead Governor ensuring the ongoing development of the Council of Governors;
- responsible for the management of the membership office;
- as/if required, provide a source of advice and support independent of the Executive on any matters of concern relating to the governance of the organisation.

1.11 Disputes

The Chairman shall, in the first instance, arbitrate in any dispute concerning the interpretation of or arising out of these procedures. The Chairman shall enforce any code of conduct approved by the Board of Directors. Any unresolved dispute shall be determined in accordance with the Constitution as if references to any dispute in relation to the Constitution include any dispute in relation to these procedures.

1.12 Validity of Procedures

The procedures set out in this document are made in accordance with the Constitution. They shall only be altered on a recommendation of the Council of Governors and with the approval of the Board of Directors. Changes to these procedures shall not be recommended that would make them inconsistent with the Constitution or the 2006 Act. Where there is any inconsistency between these policies and the Constitution, the Constitution shall prevail.

2. Standing Orders for Council of Governors Meetings

2.1 Calling Meetings

2.1.1 The Council of Governors is to meet at least three times in each financial year (excluding the annual members meeting) at such times and places as the Council of Governors may determine.

2.1.2 Meetings of the Council of Governors may be called by the Chairman, or by six governors including not less than three public governors who give written notice to the Chairman specifying the business to be carried out.

2.2 Admission of the Public

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

2.3 Notice of Meetings

2.3.1 Save in the case of emergencies or the need to conduct urgent business, the Chairman's office will give at least 14 days written notice of the date and place of every meeting of the Council of Governors to all governors. Notice will also be published on the trust's website.

2.3.2 After the receipt of a request to call a meeting the Chairman's office shall send written notice to all governors, specifying the business to be carried out, as soon as possible after the receipt of such a request. The Chairman shall call a meeting on at least fourteen but not more than twenty-eight days' notice to discuss the specified business. If the Chairman fails to call such a meeting then four governors may call such a meeting.

2.3.3 The notice of the meeting shall be delivered to every governor, or sent by post to the usual place of residence of such governor, so as to be available to the governor at least five clear days before the meeting.

2.3.4 In the case of a meeting called by the governors in default of the Chairman, those governors shall sign the notice and no business shall be transacted at the meeting other than that specified in the notice.

2.3.5 Failure to serve such a notice on more than 25 governors will invalidate the meeting.

2.4 Setting the Agenda

2.4.1 The trust may determine that certain matters shall appear on every agenda for a meeting of the Council of Governors and shall be addressed prior to any other business being conducted.

2.4.2 In accordance with the Constitution every agenda for meetings of the Council of Governors will draw to the attention of the elected governors the declaration governors are required to make in clause 2.9.1 stating that they are qualified to vote as a member of the trust and that they are not prevented from being a member of the Council of Governors. An elected governor shall be deemed to have confirmed the declaration upon attending any subsequent meeting of the meeting of the Council of Governors.

2.4.3 Any governor wishing to submit an agenda item must notify the Chairman's office in writing at least ten clear days prior to the meeting at which it is to be considered. Requests made less than ten clear days before a meeting may be included on the agenda at the discretion of the Chairman.

2.5 Chairman of the Meeting

2.5.1 The Chairman or, in the absence of the Chairman, the Deputy Chairman or, in the absence of the Deputy Chairman, one of the other non-executive directors is to preside at meetings of the Council of Governors.

2.5.2 If the person presiding at any such meeting has a conflict of interest in relation to the business being discussed then the governors present will choose one of their number to chair that part of the meeting.

2.5.3 If a vote concerns matters relating to the Chairman and/or non-executive directors, neither the Chairman nor any other non-executive director should preside over the meeting. In this instance, the governors present will choose one of their number to chair the meeting and to have the casting vote.

2.6 Annual Members Meeting

2.6.1 The trust will publicise and hold an annual members meeting in accordance with the Constitution.

2.6.2 The following documents shall be presented to the members of the trust at the annual members' meeting by at least one member of the Board of Directors:

- (a)** the annual accounts;
- (b)** any report of the auditor on the annual accounts; and
- (c)** the annual report.

2.6.3 The trust may combine a meeting of the Council of Governors convened for the purposes of being presented with the documents in sub-paragraph 2.6.2 with the annual members' meeting.

2.7 Motions

2.7.1 Motions may only be submitted by a governor and must be received by the Chairman's office in writing at least one week prior to the meeting at which they are to be considered.

2.7.2 Emergency motions may only be submitted by a governor and must be received by the Chairman before the commencement of the meeting. Acceptance of such motions for inclusion on the agenda will be at the discretion of the Chairman.

- 2.7.3** Any other business should be notified to the Chairman at the commencement of the meeting. Acceptance of such items of business for inclusion on the agenda will be at the discretion of the Chairman.
- 2.7.4** Notice of a motion to rescind a previous minute must be received by the Chairman's office at least 21 days before the meeting and must be signed by a majority of members. Such a motion should not be taken until at least 30 minutes after the start of the meeting.
- 2.7.5** An amendment that does not directly negate a resolution may be moved by any member. No further amendments may be moved until the first amendment is disposed of. If an amendment is passed it shall become part of the substantive motion and subject to further amendment.
- 2.7.6** The mover of a motion under standing order no. 2.7.1 or 2.7.2 above shall have a maximum of five minutes to move and three minutes to reply. Once a motion has been moved no member shall speak more than once or for more than three minutes.

2.8 Chairman's Ruling

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 Chairman of the meeting on questions of order, relevancy, regularity and any other matters shall be observed at the meeting.

2.9 Voting

- 2.9.1** An elected governor may not vote at a meeting of the Council of Governors unless, before attending the meeting, a declaration has been made in the form specified by the Council of Governors of particulars of his or her qualification to vote as a member of the trust, and that they are not prevented from being a member of the Council of Governors. An elected governor shall be deemed to have confirmed the declaration upon attending any subsequent meeting of the Council of Governors, and every agenda for meetings of the Council of Governors will draw this to the attention of elected governors.
- 2.9.2** Subject to the Constitution, questions arising 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.
- 2.9.3** All questions put to the vote shall, at the discretion of the chairman 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.
- 2.9.4** In no circumstances may an absent governor vote by proxy. Absence is defined as being absent at the time of the vote.
- 2.9.5** No resolution of the Council of Governors shall be passed if the public governors present unanimously oppose it.

2.10 Attendance

- 2.10.1** Governors who are unable to attend the Council of Governors meeting should advise the Chairman's office in advance of the meeting so that their apologies may be submitted.
- 2.10.2** The Council of Governors may agree that its members can participate in its meetings by telephone, video or computer link. Participation in a meeting in this manner shall be deemed to constitute presence in person at the meeting.
- 2.10.3** The Council of Governors may invite the Chief Executive or any other member or members of the Board of Directors, or a representative of the trust's auditors or other advisors to attend a meeting of the Council of Governors.
- 2.10.4** The Council of Governors may require one or more directors to attend a meeting of the Council of Governors for the purpose of obtaining information about the trust's performance of its functions or the directors' performance of their duties (and deciding whether to propose a vote on the trust's or directors' performance).

2.11 Minutes

- 2.11.1** The minutes of the proceedings of a meeting shall be drawn up and submitted for agreement at the next ensuing meeting. The person presiding at it will sign them.
- 2.11.2** No discussion shall take place upon the minutes except upon their accuracy or where the Chairman considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the next meeting.
- 2.11.3** Minutes shall be circulated in accordance with the governors' wishes. Where providing a record of a public meeting the minutes shall be made available to the public.

2.12 Record of Attendance

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

2.13 Suspension of Standing Orders

- 2.13.1** Except where this would contravene any statutory provision, any one or more of the Standing Orders may be suspended at any meeting, provided that at least two-thirds of the Council of Governors are present, and that a majority of those present vote in favour of suspension.
- 2.13.2** A decision to suspend SOs shall be recorded in the minutes of the meeting.
- 2.13.3** A separate record of matters discussed during the suspension of SOs shall be made and shall be available to the governors.
- 2.13.4** No formal business may be transacted while SOs are suspended.

2.14 Variation and Amendment of Standing Orders

2.14.1 These standing orders shall be amended only if the requirements provided for in the Constitution for variation of the Constitution have been met and if:

- (a)** a majority of the governors voting at a quorate meeting of the Council of Governors agrees to the amendment;
- (b)** the amendment has been authorised by a majority of directors voting at a quorate meeting of the Trust Board;
- (c)** the variation proposed does not contravene a statutory provision.

Any amendments to these Standing Orders shall be reported to Monitor.

2.14.2 Where an amendment is made in relation to the powers or duties of the Council of Governors (or otherwise with respect to the role that the Council of Governors has as part of the trust) at least one member of the Council of Governors must attend the next annual members' meeting and present the amendment and the trust must give the members an opportunity to vote on whether they approve the amendment.

2.14.3 If more than half of the members voting approve the amendment, the amendment continues to have effect; otherwise, it ceases to have effect and the trust must take such steps as are necessary as a result.

2.15 Quorum

2.15.1 Nine governors including not less than five public governors shall form a quorum.

2.15.2 Any governor who has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of the declaration of a conflict of interest 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.

2.15.3 In accordance with the Constitution, if at any meeting there is no quorum within an appropriate period of time (to be determined by the chairman of the meeting) from the start of the meeting it shall stand adjourned for six clear days and written notice of the date, place and time of the adjourned meeting shall be given to all governors. Upon reconvening, those present shall constitute a quorum.

2.16 Appointment of Committees

2.16.1 The Council of Governors may establish such committees as it requires to conduct its business. Membership of these committees shall be open to all governors.

2.16.2 Each committee shall have such terms of reference and powers and be subject to such conditions (as to reporting back to the council) as the Council of Governors shall decide. Such terms of reference shall be read in conjunction with these Standing Orders.

2.16.3 As and when vacancies arise on each committee, governors shall be invited to express an interest in standing for appointment. Where elections are required, they shall be held at the first meeting of the Council of Governors after the vacancy has arisen. Governor members will be elected by the Council of Governors until the end of their term of office as a governor although will be entitled to express an interest in standing for re-appointment if they are re-elected as a governor.

3. Governors – Roles and Responsibilities

In addition to those duties specified in the constitution, it is the role of the Council of Governors and of each governor:

- 3.1** To act at all times in the best interests of the trust.
- 3.2** To represent the interests of the membership and partner organisations.
- 3.3** To feedback information about the trust to the membership and partner organisations.
- 3.4** To use their best endeavours to ensure Northern Lincolnshire and Goole NHS Foundation Trust remains a leading acute trust;.
- 3.5** To ensure the Council of Governors meetings are held in accordance with policy and standing orders.
- 3.6** To comply with and implement the code of conduct for the Council of Governors as set out in Section 4.
- 3.7** To be consulted on and make recommendations to the Board of Directors on the development of the membership strategy.
- 3.8** To respond as appropriate when consulted by the Board of Directors in accordance with the Constitution.
- 3.9** To undertake such functions as the Board of Directors shall from time to time request.
- 3.10** To consider the annual accounts, any report of the auditor on them and the annual report.
- 3.11** To set up committees and working groups; for example, membership strategy, internal and external environment and car parking;.
- 3.12** To attend regular Council of Governors' meetings;.
- 3.13** To attend the annual members meeting.

4. Code of Conduct for the Council of Governors and the Nolan Principles

4.1 Introduction

4.1.1 This code seeks to outline appropriate conduct for governors, and addresses both the requirements of office and their personal behaviour. Ideally any penalties for non-compliance would never need to be applied; however a code is considered an essential guide for governors, particularly those who are newly elected.

4.1.2 The code seeks to expand on or complement the Constitution. Copies will be made available for the information of all governors and for those considering seeking election to the trust's Council of Governors.

4.1.3 Members seeking election to the Council of Governors should sign a declaration to confirm that they will comply with the code in all respects and that, in particular, they support the trust's objectives.

4.2 Qualifications for Office

Members of the Council of Governors must continue to comply with the qualifications required to hold elected office throughout their period of tenure as defined in the Constitution. The Chairman should be advised of any changes in circumstances, which disqualify the governor from continuing in office. An example of this would be a public governor becoming an employee of the trust.

4.3 Role and Functions

In addition to their duties set out in the Constitution, governors should:

4.3.1 adhere to the trust's rules and policies and support its objectives, in particular those of retaining foundation status and developing a successful organisation;

4.3.2 act in the best interests of the trust at all times;

4.3.3 contribute to the workings of the Council of Governors in order for it to fulfil its role and functions as defined in the Constitution;

4.3.4 recognise that their role is a collective one. They exercise collective decision making in the meeting room, which is recorded in the minutes. Outside the meeting room a governor has no more rights and privileges than any other member;

4.3.5 note that the functions allotted to the Council of Governors are not of a managerial nature.

4.4 Confidentiality

All governors are required to respect the confidentiality of the information they are made privy to as a result of their membership of the Council of Governors.

4.5 Conflict of Interests

4.5.1 Governors should act with the utmost integrity and objectivity and in the best interests of the trust in performing their duties. They should not use their position for personal advantage or seek to gain preferential treatment. Any governor who has a material interest in a matter as defined by the Constitution, shall declare such interest to the Council of Governors and:

- shall not vote on any such matters;
- shall not be present except with the permission of the Council of Governors in any discussion of the matter.

4.5.2 If in any doubt the governor should seek advice from the Chairman and/or Trust Secretary. It is important that conflicts of interest are addressed and are seen to be actioned in the interests of the trust and all individuals concerned.

4.5.3 Any governor who fails to disclose any interest required to be disclosed under the preceding paragraph must permanently vacate their office if required to do so by a majority of the remaining governors.

4.5.4 The Register of Governors Interests will feature as a standing item on the agenda of each meeting of the Council of Governors.

4.6 Council of Governors Meetings

4.6.1 Governors have a responsibility to attend meetings of the Council of Governors. When this is not possible they should submit an apology to the Chairman's office in advance of the meeting stating the reason for non-attendance. The reason for non-attendance will be recorded in the minutes of the meeting.

4.6.2 In accordance with the Constitution, absence from the Council of Governors meetings without good reason established to the satisfaction of the Council of Governors is grounds for disqualification. If a governor fails to attend half of the meetings of the Council of Governors in any financial year his or her tenure of office is to be immediately terminated unless the other governors are satisfied that the absence was due to a reasonable cause and he or she will be able to start attending meetings of the trust again within such a period as they consider reasonable.

4.6.3 Governors are expected to attend for the duration of the meeting.

4.7 Personal Conduct

Governors are required to adhere to the highest standards of conduct in the performance of their duties. In respect of their interaction with others, they are required to:

4.7.1 adhere to good practice in respect of the conduct of meetings and respect the views of their fellow elected members;

4.7.2 be mindful of conduct which could be deemed to be unfair or discriminatory;

4.7.3 treat the trust's executives and other employees with respect and in accordance with the trust's policy in this respect;

4.7.4 recognise that the Council of Governors and management have a common purpose, i.e. the success of the trust and adopt a team approach;

4.7.5 conduct themselves in such a manner as to reflect positively on the trust. When attending external meetings or any other events at which they are present, it is important for governors to be ambassadors for the trust.

4.8 Accountability

Governors are accountable to the membership and should demonstrate this by attending members' meetings and other key events, which provide opportunities to interface with their electorate in order to understand their views.

4.9 Induction and Development

Training is essential for governors, in respect of the effective performance of their current role. Governors are required to adhere to the trust's policy in all respects.

4.10 Visits to Trust Premises

Where governors wish to visit the premises of the trust in a formal capacity as opposed to individuals in a personal capacity, the Council of Governors should liaise with the Chairman's office to make the necessary arrangements.

4.11 Non-Compliance with the Code of Conduct

4.11.1 Non-compliance with the code may result in action being taken as follows:

- Where misconduct takes place, the Chairman shall be authorised to take such action as may be immediately required, including the exclusion of the person concerned from a meeting.
- Where such misconduct is alleged, it shall be open to the Council of Governors to decide, by simple majority of those in attendance, to lay a formal charge of misconduct:
 - notifying the governor in writing of the charge/s, detailing the specific behaviour, which is considered to be detrimental to the trust, and inviting and considering their response within a defined timescale.
 - inviting the governor to address the Council of Governors in person if the matter cannot be resolved satisfactorily through correspondence;
 - deciding, by simple majority of those present and voting, whether to uphold the charge of conduct detrimental to the trust;
 - imposing such sanctions as shall be deemed appropriate. Such sanctions will range from the issuing of a written warning as to the member's future conduct and consequences, non-payment of expenses to the removal of the governor from office.

4.11.2 A governor may be removed from the Council of Governors by a resolution approved by not less than two-thirds of the remaining governors present and voting at a general meeting of the Council of Governors.

4.11.3 This code of conduct does not limit or invalidate the right of the governor or the trust to act under the Constitution.

4.12 Nolan Principles – the seven principles of public life

Governors should act in accordance with the Nolan Principles, namely:

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

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

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

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

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

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

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

5. Declarations of Interests and Register of Interests

5.1 Declarations

5.1.1 In accordance with the Constitution and the 2006 Act and in recognition of the codes of conduct and accountability issued by the Department of Health the trust is required to maintain a register of interests of governors. The governors must declare any relevant and material interest, whether direct or indirect, in any contract, proposed contract or other matter which is under consideration by the Council of Governors.

5.1.2 Interests, which should be regarded as 'relevant and material' are:

- Directorships, including non-executive directorships held in private companies or PLCs (with the exception of those of dormant companies).
- Ownership, part-ownership or directorship of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS;.
- Majority or controlling share holdings in organisations likely or possibly seeking to do business with the NHS.
- A position of authority in a charity or voluntary organisation in the field of health or social care.
- Any connection with a voluntary or other organisation contracting for NHS services or commissioning NHS services.
- 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.

5.1.3 The trust will interpret the phrase 'relevant and material' in accordance with guidance issued from time to time by the Independent Regulator.

5.1.4 If governors have any doubt about the relevance of an interest, this should be discussed with the Chairman.

5.1.5 The exceptions, which shall not be treated as material interests are as follows:

- shares not exceeding 2% of the total shares in issue held in any company whose shares are listed on any public exchange.
- an employment contract held by staff governors.
- an employment contract with a local authority held by a local authority governor.
- an employment contract with a partnership organisation held by a partnership governor.

5.2 Register of Interests

5.2.1 The Trust Secretary will ensure that a register of interests is established to record formally declarations of interests of governors. In particular the register will include details of all directorships and other relevant and material interests, which governors have declared.

5.2.2 These details will be kept up to date and governors must disclose any relevant and material interest as soon as they are aware of it.

5.2.3 The register will be available for inspection by members of the public free of charge.

5.3 Disclosure

Any governor who has a material interest as defined above shall declare such interest to the Council of Governors and:

- shall not be present except with the permission of the Council of Governors in any discussion with relevance to the interest,;
- shall not vote on the issue (and if by inadvertence they do remain and vote, their vote shall not be counted).

ANNEX 7 – STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE BOARD OF DIRECTORS**i. Introduction**

- i.a** The Northern Lincolnshire and Goole NHS Foundation Trust (the trust) is a public benefit corporation authorised by the Independent Regulator of NHS foundation trusts under the National Health Service Act 2006.
- i.b** The trust's Constitution requires the Board of Directors, in consultation with the Council of Governors, to adopt Standing Orders (SOs) for the regulation of its proceedings and business.

PART I - INTERPRETATION AND SCOPE

Interpretation

5.4 Save as permitted by law, and subject to the Constitution, at any meeting the Chairman of the trust shall be the final authority on the interpretation of Standing Orders on which he/she shall be advised by the Chief Executive and in the case of Standing Financial Instructions by the Director of Finance.

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

“Accounting Officer” shall be the officer responsible and accountable for funds entrusted to the trust. He/she shall be responsible for ensuring the proper stewardship of public funds and assets. For this trust it shall be the Chief Executive.

“Trust” means the Northern Lincolnshire and Goole NHS Foundation Trust.

“Board” shall mean the Chairman, non-executive directors, and the executive directors.

“Budget” shall mean a resource, expressed in financial terms, proposed by the board for the purpose of carrying out, for a specific period, any or all of the functions of the trust;

“Chairman” is the person appointed by the Council of Governors to lead the board and to ensure that it successfully discharges its overall responsibility for the trust as a whole. The expression “the Chairman of the trust” shall be deemed to include the Deputy Chairman of the trust if the Chairman is absent from the meeting or is otherwise unavailable.

“Chief Executive” shall mean the chief executive officer of the trust.

“Committee” shall mean a committee appointed by the trust.

“Committee Members” shall be persons formally appointed by the trust to sit on or to chair specific committees.

“Deputy Chairman” means the non-executive director appointed by the trust to take on the Chairman’s duties if the Chairman is absent for any reason

“Director” shall mean a person appointed as a director in accordance with the Constitution and includes the Chairman.

“Director of Finance” shall mean the chief finance officer of the trust.

“Funds Held On Trust” shall mean those funds which the trust holds at its date of incorporation, receives on distribution by statutory instrument, or chooses subsequently to accept. Such funds may or may not be charitable.

“Motion” means a formal proposition to be discussed and voted on during the course of a meeting.

“Non-Executive Director” means a director, including the Chairman, who does not hold an executive office of the trust.

“Nominated Officer” means an officer charged with the responsibility for discharging specific tasks within SOs and SFIs.

“Officer” means an employee of the trust.

“Senior Independent Director” means the non-executive director appointed by the trust to provide an alternative means of contact with the Trust Board for members and governors.

“SFIs” means Standing Financial Instructions.

“SOs” means Standing Orders.

6. Business Scope

- 6.1** All business shall be conducted using these Standing Orders in the name of the trust.
- 6.2** 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.
- 6.3** The trust has resolved that certain powers and decisions may only be exercised by the board in formal session. These powers and decisions are set out in the “Reservation of Powers to the Board” and have effect as if incorporated into the standing orders.

PART II - APPOINTMENT TO THE BOARD

7. Composition of the Trust Board

In accordance with the Constitution the composition of the board of the trust shall comprise a Chairman, five non-executive directors, and five executive directors including the Chief Executive, Director of Finance, a registered medical practitioner and a registered nurse or midwife.

8. Appointment of the Chairman and Non-Executive Directors

8.1 The trust has resolved that certain powers and decisions may only be exercised by the board in formal session. These powers and decisions are set out in the "Reservation of Powers to the Board" and have effect as if incorporated into the standing orders.

8.2 In accordance with the Constitution, the appointment and removal of the Chairman and the other non-executive directors is the prerogative of the Council of Governors. The skills required to be fulfilled by the non-executive director will be assessed and agreed by the Trust Board.

8.3 For the appointment of a chairman the trust shall appoint a panel which will include the Senior Independent Director (or another non-executive director in the case of a conflict of interests) and at least two governors to interview applicants and make a recommendation to the Council of Governors.

8.4 In the case of other non-executive directors the trust shall appoint a panel which will include the Chairman, and at least two governors to interview applicants and to make a recommendation to the Council of Governors.

9. Terms of Office of the Chairman and Non-Executive Directors

Unless the Council of Governors decides otherwise from time to time the Chairman and the non-executive directors are to be appointed for a term of three years and will be eligible for reappointment for one further term of three years. Any term beyond six years (e.g. two three year terms) for a non-executive director shall be subject to particularly rigorous review, and shall take into account the need for progressive refreshing of the board. Non-executive directors may in exceptional circumstances serve longer than six years (e.g. two three-year terms following authorisation of the NHS foundation trust), but subject to annual re-appointment.

10. Performance Appraisal of the Chairman

The non-executive directors shall meet without the Chairman at least annually to evaluate the Chairman's performance as part of a process of appraisal which has been agreed with the Council of Governors.

11. Appointment of Deputy Chairman

11.1 For the purpose of enabling the proceedings of the trust to be conducted in the absence of the Chairman, the Council of Governors will appoint a non-executive director to be Deputy Chairman for such a period, not exceeding the remainder of the term as non-executive director of the trust, as it may specify on making the appointment. If the Chairman is unable to discharge the office of chairman of the trust, the Deputy Chairman shall be Acting Chairman of the trust.

11.2 Any non-executive director so elected may at any time resign from the office of Deputy Chairman by giving notice in writing to the Chairman and the Council of Governors may thereupon appoint another non-executive director as Deputy Chairman.

12. Powers of Deputy Chairman

Where the Chairman of the trust has died or has otherwise ceased to hold office or where he/she has been unable to perform his/her duties as Chairman owing to illness, absence from England and Wales or any other cause, references to the Chairman in these Standing Orders shall, so long as there is no Chairman able to perform his/her duties, be taken to include references to the Deputy Chairman.

13. Executive Directors – Additional Appointments

13.1 With the approval of the Trust Board, an executive director may accept not more than one appointment as a non-executive director of another NHS foundation trust or an organisation of comparable size and complexity.

13.2 An executive director may not accept an appointment as chairman of another NHS foundation trust or an organisation of comparable size and complexity.

14. Declaration of Interests

14.1 The regulatory framework requires board directors to declare interests that are relevant and material to the NHS foundation trust board of which they are a director.

14.2 All existing board directors should declare such interests. Any board directors appointed subsequently should do so on appointment.

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

- (a)** Directorships, including non-executive directorships held in private companies or PLCs (with the exception of those of dormant companies);
- (b)** Ownership, part-ownership or directorates of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS;
- (c)** Majority or controlling share holdings in organisations likely or possibly seeking to do business with the NHS;
- (d)** A position of authority in a charity or voluntary organisation in the field of health and social care;
- (e)** Any connection with a voluntary or other organisation contracting for NHS services or commissioning NHS services;
- (f)** Any connection with an organisation, entity or company considering entering into a financial arrangement with the trust, including, but not limited to, lenders or banks.

14.4 If board directors have any doubt about the relevance of an interest, this should be discussed with the Chairman.

14.5 At the time board directors' interests are declared, they should be recorded in the

board minutes. Any changes in interests should be declared at the next board meeting following the change occurring.

- 14.6** Board directors' directorships of companies likely or possibly seeking to do business with the NHS should be published in the board's annual report. The information should be kept up to date for inclusion in succeeding annual reports.
- 14.7** During the course of a board meeting, if a conflict of interest is established, the board director concerned should withdraw from the meeting and play no part in the relevant discussion or decision.
- 14.8** There is no requirement for the interests of board directors' spouses or partners to be declared. (Note, however, that SO 29.0 requires that the interest of directors' spouses, if living together, in contracts should be declared).

15. Register of Interests

- 15.1** In accordance with the Constitution the Trust Secretary will ensure that a Register of Interests is established to record formally declarations of interests of directors. In particular the register will include details of all directorships and other relevant and material interests which have been declared by both executive and non-executive board directors, as defined in SO 14.3.
- 15.2** These details will be kept up to date by means of an annual review of the register in which any changes to interests declared during the preceding twelve months will be incorporated.
- 15.3** The register will be available to the public and the Chairman will take reasonable steps to bring the existence of the register to the attention of the local population and to publicise arrangements for viewing it.

PART III - MEETINGS OF THE TRUST BOARD**16. Calling Meetings / Extraordinary Meetings**

- 16.1** The Chief Executive may call a meeting of the Trust Board at any time. The Chairman or four directors may request the Chief Executive to call a meeting giving written notice of the business to be carried out. The Chief Executive shall send a written notice to all directors as soon as possible after the receipt of such a request. The Chief Executive shall call a meeting on at least fourteen, but not more than twenty-eight, days' notice to discuss the specified business. If the Chief Executive fails to call such a meeting then the Chairman, or four directors, whichever is the case, may forthwith call a meeting.
- 16.2** The ordinary meetings of the Trust Board shall, unless otherwise be determined, be held on a nominated day each month or at such other times as the board may determine and at such places as the board may determine.
- 16.3** Meetings of the Trust Board shall be open to the public, unless and to the extent that the Trust Board has resolved that members of the public should be excluded from a meeting due to special reasons.
- 16.4** The Chairman (or Deputy Chairman in the absence of the Chairman) shall give such directions as the Chairman thinks fit in regard to the arrangements for meetings and accommodation of the public and representatives of the press such as to ensure that the Trust Board's business shall be conducted without interruption and disruption.
- 16.5** Nothing in these Standing Orders shall require the Trust Board to allow members of the public or representative of the press to record proceedings in any manner whatsoever, other than writing, or to make an oral report of proceedings as they take place without the prior agreement of the Trust Board.

17. Notice of Meetings

- 17.1** Save in the case of emergencies or the need to conduct urgent business, the Chairman's office shall give to all directors at least fourteen days written notice of the date and place of every meeting of the Board of Directors.
- 17.2** Before each meeting of the Board of Directors, a notice of the meeting, specifying the business proposed to be transacted at it shall be delivered to every director, or sent by post to the usual place of residence of such director, so as to be available to every director at least three clear days before the meeting.
- 17.3** Lack of service of the notice on any director shall not affect the validity of a meeting.
- 17.4** In the case of a meeting called by directors or the Chairman, in default of the Chief Executive, the notice shall be signed by those directors or the Chairman and no business shall be transacted at the meeting other than that specified in the notice.
- 17.5** Failure to serve such a notice on more than two directors 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.

18. Notice of Agenda Items

- 18.1** The trust may determine that certain matters shall appear on every agenda for a meeting of the Trust Board and shall be addressed prior to any other business being conducted, which will have effect as though incorporated into the Standing Orders.
- 18.2** A director wishing to propose an agenda item or motion should send written notice 8 clear days before the meeting to the Chairman who shall insert the item or motion in the agenda for the meeting. Requests made less than eight days before a meeting may be included on the agenda at the discretion of the Chairman.
- 18.3** Notwithstanding the intent of the previous paragraph urgent business may be raised at a meeting of the board provided the director wishing to raise such business has given notice to the Chief Executive not later than the day preceding the meeting or in exceptional circumstances not later than one hour before the meeting. In either case, the Chairman (or in his/her absence the Deputy Chairman) shall determine in consultation with the Chief Executive, the urgency of the proposed business and whether it should be discussed, deferred to the next meeting, or dealt with by the Chief Executive.
- 18.4** Before holding a meeting, the Trust Board shall send a copy of the agenda to the Council of Governors.

19. Chairman of Meeting

- 19.1** At any meeting of the Board of Directors, the Chairman, if present, shall preside.
- 19.2** If the Chairman is absent from the meeting the Deputy Chairman, if present, shall preside. If the Chairman and Deputy Chairman are absent such non-executive director as the directors present shall choose shall preside.
- 19.3** If the Chairman is absent from the meeting temporarily on the grounds of a declared conflict of interest the Deputy Chairman, if present, shall preside. If Chairman and Deputy Chairman are absent, or are disqualified from participating, such non-executive director as the directors present shall choose shall preside.

20. Annual Members' Meeting

In accordance with the Constitution the trust will hold a members meeting (the "annual members' meeting") within nine months of the end of the financial year.

21. Motions

- 21.1** A director of the trust wishing to move or amend a motion shall send a written notice thereof at least 8 clear days before the meeting to the Chairman, 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 SO 17.4
- 21.2** A motion or amendment once moved and seconded may be withdrawn by the proposer with the concurrence of the seconder and the consent of the Chairman.

- 21.3** Notice of motion to amend or rescind any resolution (or the general substance of any resolution) which has been passed within the preceding 6 calendar months shall bear the signature of the director(s) who gives it and also the signature of 4 other directors. When any such motion has been disposed of by the trust, it shall not be competent for any director other than the Chairman to propose a motion to the same effect within 6 months.
- 21.4** When a motion is under discussion or immediately prior to discussion it shall be open to a director to move:
- An amendment to the motion.
 - The adjournment of the discussion or the meeting.
 - That the meeting proceed to the next business. (*)
 - The appointment of an ad hoc committee to deal with a specific item of business.
 - That the motion be now put. (*)

In the case of sub-paragraphs denoted by (*) above to ensure objectivity motions may only be put by a director who has not previously taken part in the debate and who is eligible to vote.

- 21.5** No amendment to the motion shall be admitted if, in the opinion of the chairman of the meeting, the amendment negates the substance of the motion.
- 21.6** The mover of a motion shall have a right of reply at the close of any discussion on the motion or any amendment thereto.

22. Chairman's Ruling

Statements of directors made at meetings of the board shall be relevant to the matter under discussion at the material time. The decision of the chairman of the meeting on questions of order, relevancy and regularity (including procedure on handling motions) and his/her interpretation of the Standing Orders, shall be final. In this interpretation he/she shall be advised by the Chief Executive and in the case of Standing Financial Instructions by the Director of Finance.

23. Voting

- 23.1** Every question at a meeting can 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.
- 23.2** All questions put to the vote shall, at the discretion of the chairman 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 directors present so request.
- 23.3** 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.

- 23.4** If a director so requests, his/her vote shall be recorded by name upon any vote (other than by paper ballot).
- 23.5** In no circumstances may an absent director vote by proxy. Absence is defined as being absent at the time of the vote.
- 23.6** Any director or member of a committee of the directors may participate in a meeting of the board of directors or such committee by means of a conference telephone or similar communications equipment whereby all persons participating in the meeting can hear each other and participation in the meeting in this manner shall be deemed to constitute presence in person at such meeting.
- 23.7** A resolution in writing signed by all of the directors entitled to receive notice of a meeting of the board of directors shall be as valid and effectual as if it had been passed at a meeting of the board of directors duly convened and held and may consist of several documents in the like form each signed by one or more directors.
- 23.8** A resolution in electronic form sent to all of the directors entitled to receive notice of a meeting of the board of directors by electronic communication (for the purposes of this provision "electronic communication" means a communication transmitted (whether from one person to another, from one device to another or from a person to a device or vice versa) (a) by means of an electronic communications network; or (b) by other means but while in an electronic form) to the electronic addresses notified to the trust by each of the directors, shall be as valid and effectual as if it had been passed at a meeting of the board of directors duly convened and held provided that each and every director entitled to receive a notice of a meeting of the board of directors responds by electronic communication to the electronic address from which the resolution in electronic form was transmitted from, confirming their acceptance of the resolution.
- 23.9** An acting director who has been appointed formally by the appropriate appointments committee in accordance with the Constitution to carry out a vacant director's duties during a period of temporary incapacity, shall be entitled to exercise the voting rights of the director. An officer attending the board to represent an executive director during a period of incapacity or temporary absence without being formally appointed to the board may not exercise the voting rights of the executive director. An officer's status when attending a meeting shall be recorded in the minutes.
- 24. Minutes**
- 24.1** The minutes of the proceedings of a meeting shall be drawn up and submitted for agreement at the next ensuing meeting where they will be signed by the person presiding at it.
- 24.2** The names of the directors present at the meeting shall be recorded in the minutes. No discussion shall take place upon the minutes except upon their accuracy or where the Chairman considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the next meeting.
- 24.3** It is the responsibility of each individual director to ensure that, where they have concerns which cannot be resolved about the running of the foundation trust or a proposed action, those concerns are recorded in the board minutes.
- 24.4** Minutes shall be circulated in accordance with directors' wishes.

24.5 A copy of the minutes shall be provided by the Trust Board to the Council of Governors as soon as practicable after the meeting to which they relate.

25. Quorum

25.1 No business shall be transacted at a meeting of the Trust Board unless at least six of the directors are present including not less than three executive directors (one of whom must be the Chief Executive or Finance Director) and three non-executive directors.

25.2 An officer in attendance for an executive director but without formal acting up status may not count towards the quorum.

25.3 If a director has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of the declaration of a conflict of interest (see SO 13.0 and 29.0) he/she shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business. The above requirement for at least three executive directors to form part of the quorum shall not apply where the executive directors are excluded from a meeting (for example when the board considers the recommendations of the Remuneration Committee).

26. Personal Conduct

Directors are required to adhere to the highest standards of conduct in the performance of their duties. In respect of their interaction with others, they are required to:

- adhere to good practice in respect of the conduct of meetings and respect the views of their colleagues;,
- be mindful of conduct which could be deemed to be unfair or discriminatory;,
- treat the trust's Council of Governors and trust employees with respect and in accordance with the trust's policy;,
- recognise that the Board of Directors and the Council of Governors have a common purpose, i.e. the success of the trust, and adopt a team approach;,
- conduct themselves in such a manner as to reflect positively on the trust. When attending external meetings or any other events at which they are present, it is important for directors to be ambassadors for the trust.

27. Variation of Standing Orders

These Standing Orders shall be amended only if: the requirements provided for in the Constitution for variation of the Constitution have been met and if:

- (a)** a notice of motion under Standing Order 21.1 has been given; and
- (b)** no fewer than half the total of the trust's non-executive directors vote in favour of amendment; and

- (c) at least two-thirds of the directors are present; and
- (d) the variation proposed does not contravene a statutory provision; and
- (e) the proposed amendment has been reported to Monitor.

28. Suspension of Standing Orders

- 28.1** Except where this would contravene any statutory provision, Standing Orders may be suspended at any meeting, provided that at least two thirds of the board are present including one executive director and one non-executive director, and that a majority of those present vote in favour of a suspension.
- 28.2** A decision to suspend Standing Orders shall be recorded in the minutes of the meeting. A separate record of matters discussed during the suspension of Standing Orders shall be made and should be available to the directors.
- 28.3** No formal business shall be transacted while Standing Orders are suspended.

29. Exclusion of Directors from Proceedings on Account of Pecuniary Interest

- 29.1** Subject to the following provisions of this Standing Order, 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/she 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.
- 29.2** The trust shall exclude a director from a meeting of the trust while any contract, proposed contract or other matter in which he/she has a pecuniary interest, is under consideration.
- 29.3** For the purpose of this Standing Order, any remuneration, compensation or allowances payable to a director by virtue of paragraph 9 of Schedule 2 to the NHS & Community Care Act 1990, relating to payments of travelling expenses and other allowances as determined by the Secretary of State with the approval of the Treasury, shall not be treated as a pecuniary interest.
- 29.4** For the purpose of this Standing Order the Chairman or a director shall be treated, subject to SO 29.5, as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if:
- (a) they, or their nominee, 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
- (b) they are a partner of, or in the employment of, a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration; and in the case of persons living together as partners the interest of one or other shall, if known to the other, be deemed for the purposes of this Standing Order to be also an interest of the other.

29.5 A director shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only:

- (a) of his/her membership of a company or other body, if the director has no beneficial interest in any securities of that company or other body;
- (b) of an interest in any company, body or person with which the director is connected as mentioned in SO 29.4 above 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.

29.6 Where a director:

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

this Standing Order shall not prohibit the director 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/her duty to disclose his/her interest.

29.7 Standing Order 29.0 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/she is also a director of the trust) as it applies to a director of the trust.

PART IV - RESERVATION OF POWERS AND DELEGATION OF FUNCTIONS**30. Reservation of Powers**

The trust has resolved that certain powers and decisions may only be exercised by the board in formal session, held in accordance with Part III of these Standing Orders. These powers and decisions are set out in the "Reservation of Powers to the Board and Delegation of Powers" and have effect as if incorporated into the Standing Orders.

31. Arrangements for the Exercise of Functions by Delegation

Subject to SO 33.0, the board may make arrangements for the exercise, on behalf of the trust, of any of its functions by a committee or sub-committee, appointed by virtue of SO 35.0 below or by a director or an officer of the trust in each case subject to such restrictions and conditions as the board thinks fit.

32. Emergency Powers

The powers which the board has retained to itself within these Standing Orders (SO 30.0) may in emergency be exercised by the Chief Executive and the Chairman after having consulted at least two non-executive directors. The exercise of such powers by the Chief Executive and the Chairman shall be reported to the next formal meeting of the board for ratification.

33. Delegation to Committees

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

34. Delegation to Officers

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

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

34.3 Nothing in the Scheme of Delegation shall impair the discharge of the direct accountability to the board of the Director of Finance or other executive director to provide information and advise the board in accordance with any statutory requirements or the requirements of the Independent Regulator.

35. Appointment of Committees and Sub Committees

35.1 Subject to SO 33.0 and such directions as may be given by the Constitution, the trust may appoint committees of the trust, consisting wholly or partly of directors of the trust or wholly of persons who are not directors of the trust.

35.2 A committee appointed under SO 35.1 may, subject to such directions as may be given by the trust, 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).

35.3 The Standing Orders of the trust, as far as they are applicable, shall apply with appropriate alteration agreed by the board to meetings of any committees or sub-committee established by the trust.

35.4 Each such committee or sub-committee shall have such terms of reference and powers and be subject to such conditions (as to reporting back to the board), as the board shall decide. Such terms of reference shall have effect as if incorporated into the Standing Orders.

35.5 Committees may not delegate their executive powers to a sub-committee unless expressly authorised by the board.

35.6 The board shall approve the appointments to each of the committees which it has formally constituted. Where the board 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.

35.7 Where the trust is required to appoint persons to a committee and/or to undertake statutory functions as required by the independent regulator, and where such appointments are to operate independently of the trust such appointment shall be made in accordance with applicable statute and regulations and with guidance issued by the independent regulator.

35.8 The following committees shall be established:

(a) Audit Committee

The board shall establish an Audit Committee which shall meet at least quarterly and be answerable to, and report to, the board.

The terms of reference of the Audit Committee have effect as if incorporated into these Standing Orders.

(b) Finance Committee

The board shall establish a Finance Committee which shall meet at least quarterly and be answerable to, and report to, the board.

The terms of reference of the Finance Committee have effect as if incorporated into these Standing Orders.

(c) Remuneration and Terms of Service Committee

The board shall establish a Remuneration and Terms of Service Committee which shall meet at least half yearly and be answerable to, and report to, the board.

The terms of reference of the Committee have effect as if incorporated into the Standing Orders.

(d) Charitable Funds Committee

The board shall establish a Charitable Funds Committee which shall meet at least half yearly and be answerable to, and report to, the board.

(e) Governance Committee

The board shall establish a Governance Committee consisting of at a minimum the Director of Clinical and Quality Assurance, the Medical Director, the Chief Nurse and two non-executive directors.- The Committee shall meet at least quarterly and be answerable to, and report to, the board.

(f) Other Committees

The board shall establish any other permanent or ad hoc committees as may be required. It is not necessarily a requirement that these other committees report directly to the board, but in all cases the reporting arrangements will be defined in their terms of reference.

36. Confidentiality

36.1 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 or shall otherwise have concluded on that matter.

36.2 A director of the trust or a member of a committee shall not disclose any matter reported to the board or otherwise dealt with by the committee, notwithstanding that the matter has been reported or action has been concluded, if the board or committee shall resolve that it is confidential.

PART V - STANDARDS OF BUSINESS CONDUCT**37. Policy**

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 that document.

38. Interest of Officers in Contracts

- 38.1** If it comes to the knowledge of a director or an officer of the trust that a contract in which he/she has any pecuniary interest, not being a contract to which he/she is himself a party, has been, or is proposed to be, entered into by the trust he/she shall, at once, give notice in writing to the Chief Executive of the fact that he/she is interested therein. In the case of married persons, or persons living together as partners, the interest of one partner shall, if known to the other, be deemed to be also the interest of that partner.
- 38.2** An officer or employee must also declare to the Chief Executive any other employment or business or other relationship of his/hers, or of a cohabiting spouse, that conflicts, or might reasonably be predicted could conflict with the interests of the trust. A register of declared interests shall be kept and maintained by means of an annual review.
- 38.3** 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 the Standing Order shall be included in application forms or otherwise brought to the attention of candidates.
- 38.4** A director of the trust shall not solicit for any person any appointment under the trust or recommend any person for such appointment. This does not preclude a director from giving written testimonial of a candidate's ability, experience or character for submission to the trust for reference purposes.
- 38.5** Informal discussions which take place with potential candidates outside appointments panels or committees, whether solicited or unsolicited, should be declared to the panel or committee.
- 38.6** Candidates for any staff appointment shall, when making application, be required to disclose in writing whether they have a close relationship or 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/her liable to instant dismissal.
- 38.7** 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.
- 38.8** 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.

- 38.9** Where the relationship of an officer or another director to a director of the trust is disclosed, Standing Order 29.0 shall apply.
- 38.10** All managers must comply with the Code of Conduct for NHS Managers Directions (2002).

PART VI - TENDERING AND CONTRACTING PROCEDURES**39. Duty to Comply with Standing Orders**

The procedure for making all contracts by or on behalf of the trust shall comply with these Standing Orders (except where SO 28.0 (Suspension of SOs) is applied). Failure to comply will be treated as a disciplinary matter.

40. EU Directives Governing Public Procurement

Directives by the Council of the European Union on public sector purchasing as brought into effect in England by Act of Parliament and statutory instrument shall have effect as if incorporated in these Standing Orders.

41. Compliance with Guidance

The trust shall comply as far as is practicable and relevant with the requirements of the Department of Health "Capital Investment Manual" and "Estatecode" in respect of capital investment and estate and property transactions and with the Department of Health guidance. In the case of management and consultancy contracts the trust shall comply as far as is practicable with DoH guidance "The Procurement and Management of Consultants within the NHS".

42. Formal Competitive Tendering

42.1 The Chief Executive shall be responsible for ensuring that best value for money can be demonstrated for all services provided under contract or in-house. The board may determine from time to time that in-house services should be market tested by competitive tendering (SO 53.0).

42.2 The trust shall ensure that competitive tenders are invited for:

- (a) the supply of goods, materials and manufactured articles;
- (b) the rendering of any services including all forms of management consultancy;
- (c) the design, construction and maintenance of building and engineering works (including construction and maintenance of grounds and gardens); and
- (d) disposals.

42.3 Except where SO 49.0, or a requirement under SO 40.0 applies, the trust shall ensure that invitations to tender are sent to a sufficient number of firms/individuals to provide fair and adequate competition as appropriate. Normally no less than four firms/individuals shall be invited to submit tenders, having regard to their capacity to supply the goods or materials or to undertake the services or works required; nevertheless, this requirement shall not apply if the Purchasing Manager confirms that there are fewer than four possible suppliers. The Purchasing Manager shall hold a permanent record of such confirmation which will be available for subsequent audit.

42.4 The trust shall ensure that normally the firms/individuals invited to tender (and where appropriate under SO 50.0, quote) are among those on approved lists (see SO 48.0). Where in the opinion of officers with appropriately delegated powers it is desirable to seek tenders from firms not on the approved lists, the reason shall be recorded in writing to the Chief Executive (see SO 48.4).

43. Invitation to Tender

- 43.1** All invitations to tender on a formal competitive basis shall state that no tender will be considered for acceptance unless submitted in either:
- (a)** a plain, sealed package bearing a pre-printed label supplied by the trust (or bearing the word 'Tender' followed by the subject to which it relates and the latest date and time for the receipt of such tender); or
 - (b)** in a special envelope supplied by the trust to prospective tenderers and the tender envelopes/packages shall not bear any names or marks indicating the sender.
- 43.2** Where invitations to tender are sent out by electronic means, then those tenders will contain sufficient information to allow the tenderers either to return their tenders electronically or via the postal service as in SO 43.1. The Director of Finance shall ensure that there is a policy in place to manage electronic tendering.
- 43.3** Every tender for goods, materials, manufactured articles supplied as part of a works contract and services shall embody such of the main contract conditions as may be appropriate in accordance with the contract forms described in Standing Orders 43.4 and 43.5 below.
- 43.4** Every tender for building and engineering works, except for maintenance work only where Estate code guidance should be followed, shall embody or be in the terms of the current edition of the appropriate Joint Contracts Tribunal (JCT) or Department of the Environment (GC/Wks) standard forms of contract amended to comply with Concode. When the content of the works is primarily engineering, tenders shall embody or be in the terms of the General Conditions of Contract recommended by the Institutions of Mechanical Engineers and the Association of Consulting Engineers (Form A) or, in the case of civil engineering work, the General Conditions of Contract recommended by the Institution of Civil Engineers. The standard documents should be amended to comply with Concode and, in minor respects, to cover special features of individual projects.
- 43.5** Every tender for goods, materials, services (including consultancy services) or disposals shall embody such terms and conditions as are applicable. Every tenderer must have given or give a written undertaking not to engage in collusive tendering or other restrictive practice.
- 43.6** For every invitation to tender for services the Director of Finance must be satisfied as to the Financial Standing, and the relevant Executive Director satisfied as to the technical/clinical competence of the provider.

44. Receipt, Safe Custody and Record of Formal Tenders

- 44.1** Formal competitive tenders shall be addressed to the Chief Executive.
- 44.2** The date and time of receipt of each tender shall be endorsed on the unopened tender envelope/package.
- 44.3** The Chief Executive shall designate an officer or officers, not from the originating department, to receive tenders on his/her behalf and to be responsible for their endorsement and safe custody until the time appointed for their opening and for the records maintained in accordance with SO 45.0.

44.4 Where competitive tenders are carried out using e-tendering, then the Director of Finance shall ensure that appropriate security arrangements are in place to receive tenders electronically, and that the system will register the tenders with the date and time received, but will not allow opening until the tender close date and time.

45. Opening Formal Tenders

45.1 As soon as practicable after the date and time stated as being the latest time for the receipt of tenders they shall be opened in the presence of two senior officers designated by the Chief Executive, and not from the originating department. Where e-tendering is used, then the lead Procurement Officer will open the tenders in accordance with the agreed policy.

45.2 Every tender received shall be stamped with the date of opening and initialled by two of those present at the opening.

45.3 A permanent record shall be maintained to show for each set of competitive tender invitations despatched:

- (a)** the names of firms/individuals invited;
- (b)** the names of and the number of firms/individuals from which tenders have been received;
- (c)** the total price(s) tendered;
- (d)** closing date and time;
- (e)** date and time of opening; and the persons present at the opening shall sign the record.

45.4 Except as in SO 45.5 below, a record shall be maintained of all price alterations on tenders, i.e. where a price has apparently been altered, and the final price shown shall be recorded. Every price alteration appearing on a tender and the record should be initialled by two of those present at the opening.

45.5 A report shall be made in the record if, on any one tender, price alterations are so numerous as to render the procedure SO 45.4 unreasonable.

45.6 The tender documents will then be shown to the director of the originating department for confirmation.

46. Admissibility and Acceptance of Formal Tenders

46.1 In considering which tender to accept, if any, the designated officers shall have regard to whether value for money will be obtained by the trust, taking into account whole lifetime costs, and whether the number of tenders received provides adequate competition. In cases of doubt they shall consult the Chief Executive.

- 46.2** Tenders received after the due time and date may be considered only if the Chief Executive or nominated officer decides that there are exceptional circumstances, (e.g. where significant financial, technical or delivery advantages would accrue), and is satisfied that there is no reason to doubt the bona fides of the tenders concerned. The Chief Executive or nominated officer shall decide whether such tenders are admissible and whether re-tendering is desirable. Re-tendering may be limited to those tenders reasonably in the field of consideration in the original competition. If the tender is accepted the late arrival of the tender should be reported to the board at its next meeting.
- 46.3** Technically late tenders (i.e. those despatched in good time but delayed through no fault of the tenderer) may at the discretion of the Chief Executive be regarded as having arrived in due time.
- 46.4** Incomplete tenders (i.e. those from which information necessary for the adjudication of the tender is missing) and amended tenders (i.e. those amended by the tenderer upon his/her own initiative either orally or in writing after the due time for receipt) should be dealt with in the same way as late tenders under Standing Order 46.2.
- 46.5** Where examination of tenders reveals errors that would affect the tender figure, the tenderer is to be given details of such errors and afforded the opportunity of confirming or withdrawing his/her offer.
- 46.6** Necessary discussions with a tenderer of the contents of his/her tender, in order to elucidate technical points etc, before the award of a contract, need not disqualify the tender.
- 46.7** While decisions as to the admissibility of late, incomplete, or amended tenders are under consideration and while re-tenders are being obtained, the tender documents shall remain strictly confidential and kept in safekeeping by an officer designated by the Chief Executive.
- 46.8** Where only one tender/quotation is received the trust shall, as far as practicable, ensure that the price to be paid is fair and reasonable.
- 46.9** A tender other than the most economically advantageous tender (MEAT) shall not be accepted unless there are good and sufficient reasons permanently recorded and approved by:
- (a)** the Chief Executive and Director of Finance for expenditure below £100,000;
 - (b)** the board, for expenditure over £100,000. In cases where urgent action is required, the Chairman, in conjunction with the Chief Executive and the Director of Finance, shall have the delegated power to accept a tender other than the lowest. The exercise of this power shall be reported to the next formal meeting of the board for ratification.
- 46.10** Where the form of contract includes a fluctuation clause all applications for price variations must be submitted in writing by the tenderer and shall be approved by the Chief Executive or nominated officer.
- 46.11** All tenders should be treated as confidential and should be retained for inspection.

47. Delegated Limits for Acceptance

Formal tenders/quotations may be accepted as detailed in the Trust Scheme of Delegation.

48. Lists of Approved Firms

48.1 The trust shall compile and maintain lists of approved firms and individuals from whom tenders may be invited, as provided for in SO 42.4 and shall keep these under review. The lists shall be selected from all firms that have applied for permission to tender provided that:

- (a)** in the case of building, engineering and maintenance works, the Chief Executive or his/her nominated officer is satisfied on their capacity, conditions of labour, etc, and that the Director of Finance is satisfied that their financial standing is adequate
- (b)** in the case of the supply of goods, materials and related services, and consultancy services the Chief Executive or the nominated officer is satisfied as to their technical competence etc, and that the Director of Finance is satisfied that their financial standing is adequate.
- (c)** in the case of the provision of healthcare services to the trust by a private sector provider, the Director of Finance is satisfied that their financial standing is adequate, and the Medical Director is satisfied as to their technical/clinical competence.

48.2 The trust shall arrange for advertisements to be issued as may be necessary, and not less frequently than every third year, in trade journals and national newspapers inviting applications from firms for inclusion in the prescribed lists.

48.3 If in the opinion of the Chief Executive or the Director of Finance it is impractical to use a list of approved firms/individuals (for example where specialist services or skills are required and there are insufficient suitable potential contractors on the list), the Chief Executive should ensure that appropriate checks are carried out as to the technical and financial capability of firms invited to tender or quote.

48.4 A permanent record should be made of the reasons for inviting a tender or quote other than from an approved list.

49. Waiving of Formal Tendering Procedures

49.1 Formal tendering procedures may be waived by officers to whom powers have been delegated by the Chief Executive without reference to the Chief Executive where:

- (a)** the estimated expenditure or income does not, or is not reasonably expected to, exceed the limits set in the Trust Scheme of Delegation: or
- (b)** where the supply is proposed under special arrangements negotiated by the department of Health, NHS Supply Chain, Office of Government Commerce, NHS Purchasing and Supplies Agency, or Commercial Procurement Collaborative, in which event the said special arrangements must be complied with; or
- (c)** where provided for in the Capital Investment Manual; or

- (d) where the requirement is ordered under existing contracts. However, where the goods and services are capable of being provided by a number of firms under contract arrangements, as specified in (b) above, a value for money assessment shall take place to demonstrate that the trust receives best value; or
- (e) where so provided in Concode or Estatecode for building, engineering and grounds maintenance; or
- (f) where, in the opinion of the Chief Executive and the Director of Finance, the nature of the requirement is such that the invitation of competitive tenders is demonstrably not practicable; or,
- (g) where a decision as to the particular item(s) to be purchased has already been taken for reasons of standardisation of equipment across the trust.

49.2 Where formal tendering is waived under this Standing Order, formal quotations shall be invited subject to the delegated limits referred to in SO 49.1. The procedure for obtaining quotations set out in SO 50.0 shall be followed.

49.3 For estimated expenditure above the limits set in SO 49.1(a), competitive tendering procedures shall be waived for the following reasons only:

- (a) the timescale genuinely precludes competitive tendering. Failure to plan the work properly is not a justification for single tender; or
- (b) the task is essential to complete the project, AND arises as a consequence of a recently completed assignment and engaging different consultants for the new task would be inappropriate; or

The reason for waiving competitive tendering procedures under this Standing Order shall be documented in a permanent record and approved by:

- (a) The Chief Executive and Director of Finance for expenditure below £100,000;
- (b) The board for expenditure of £100,000 or more. In the case of urgent requirements, the Chairman, in conjunction with the Chief Executive and Director of Finance, may waive tendering procedures. The decision to do so will be reported to the next formal meeting of the board.

Where formal competitive tendering procedures are waived under this Standing Order, formal single tenders shall be invited, unless the requirement is waived by the Chief Executive and Director of Finance or by the board, as appropriate. All requests for waivers shall be made prospectively.

The limited application of the single tender rules should not be used to avoid competition or for administrative convenience or to award further work to a consultant originally appointed through a competitive procedure.

The Audit Committee shall review all occasions where formal tendering is waived under this Standing Order.

50. Quotations

- 50.1** Where formal tendering procedures are waived under SO 49.1 and the expenditure or income limits specified in the Trust Scheme of Delegation are exceeded, then a minimum of three formal competitive quotations shall be obtained by the supplies service, based upon a prepared specification or terms of reference.
- 50.2** Where quotations are required under SO 50.1 they should be obtained from at least three firms/individuals based on specifications or terms of reference prepared by, or on behalf of, the board. Where less than three competitive quotations are invited, the reasons shall be recorded by the Procurement Lead for audit purposes.
- 50.3** Quotations should be received either electronically or in writing unless the Director of Facilities or his/her nominated officer determines that it is impractical to do so. In such a case quotations may be obtained by telephone. Confirmation of telephone quotation should be obtained as soon as possible and the reasons why the telephone quotation was obtained should be set out in a permanent record.
- 50.4** All quotations should be treated as confidential and should be retained for inspection for up to 6 years for audit scrutiny.
- 50.5** The nominated officer should evaluate the quotations and select the one that gives the best value for money. If this is not the lowest then this fact and the reasons why the lowest quotation was not chosen should be documented in a permanent record.
- 50.6** For estimated expenditure or income above the limits in SO 50.1, but below the limits in SO 49.1(a), the Director of Finance and/or the Director of Facilities may waive formal quotation procedures, following advice from the trust's supplies or estates management services, and subject to the waiver and the reasons for it being recorded. In these circumstances non-competitive quotations may be obtained for the following purposes:
- (a)** the supply of goods and services of a special character for which it is not, in the opinion of the Chief Executive or his/her nominee, possible or desirable to obtain competitive quotations; or
 - (b)** the goods/services are required urgently.
- 50.7** The Audit Committee shall review all occasions where the Director of Finance and/or the Director of Facilities have waived competitive quotations under SO 50.6.
- 50.8** For estimated expenditure or income below the limits set in SO 50.1, the trust shall procure goods and services through the NHS Supplies Authority, or alternatives, as appropriate. Officers should at all times demonstrate value for money by:
- (a)** obtaining quotations; or
 - (b)** documenting in a departmental record how value for money has been secured if quotations are not appropriate; or
 - (c)** justification for not obtaining quotations.

Such records should be retained in the department and be available for audit scrutiny.

51. Acceptance of Lowest Priced Tenders and Quotations

The most economically advantageous tender or quotation should be selected on all occasions, unless there are valid reasons for not doing so. Any proposal to accept other than the most economically advantageous return should be approved by the Chief Executive and Director of Finance for all but instances covered by SO 46.9(b), and the reasons set out in a permanent record.

52. Special Rules for Procurement of Consultancy for IT and Management

52.1 When procuring consultancy services the following procedures shall be applied:

- (a)** Small projects such as may be authorised by the Budget Holder as defined in the Trust Scheme of Delegation

Formal quotations should be invited, ensuring a minimum of four quotations from firms on an approved list. The project manager should provide the brief. The consultancy firms should be required to provide a letter expressing interest and an estimate of cost.

- (b)** Medium-sized projects such as may be authorised by the Chief Executive and Director of Finance as defined in the Trust Scheme of Delegation

Formal tenders should be invited from at least four qualified firms selected from an approved list. Written terms of reference should be supplied. The selected firms should submit written proposals including proposed approach, experience and qualifications. A project team or selection committee should make the decision.

- (c)** Large or complex projects in excess of £50,000

All such consultancy projects should first be approved at board or committee level. Requests for proposals should be advertised in journals (if appropriate), and a pre-bid conference held to answer questions. Written detailed proposals are required as above. The formal tendering process should be used. A selection committee should make the decision.

52.2 Formal quotation and tender exercises should be compulsory for all management consultancy projects in excess of £2,000.

52.3 It is acknowledged that as well as price, other factors must be taken into consideration to ensure best value for money. The selection criteria should be specified in advance by the project manager/team or selection committee.

52.4 Selection criteria may include:

- (a)** Price
- (b)** Experience and qualifications of team members
- (c)** Understanding of client's needs
- (d)** Feasibility and credibility of proposed approach
- (e)** Ability to complete the project on time

52.5 If a decision is made to accept other than the lowest tender/quotation, this must first be approved by:

- the Chief Executive and Director of Finance for contracts not exceeding £25,000
- the board for contracts in excess of £25,000.

The criteria used and the reasons for not accepting the lowest tender should be recorded in a permanent record.

52.6 A register of consultancy projects should be maintained and held centrally; recording the following information:

- brief description of project
- name of consultancy firm
- department
- estimated cost
- brief evaluation of completed project

The officer responsible for maintaining this register shall monitor the use of management consultants. Any instances of non-compliance with the procedures shall be reported to the Director of Finance.

53. In-House Services

53.1 In all cases where the trust determines that in-house services should be subject to competitive tendering the following groups shall be set up:

- (a)** Specification group, comprising the Chief Executive or nominated officer(s) and specialist(s).
- (b)** In-house tender group, comprising representatives of the in-house team, a nominee of the Chief Executive and technical support;.
- (c)** Evaluation group, comprising normally a specialist officer, a supplies officer and a Director of Finance representative. For services having a likely annual expenditure exceeding £500,000, a non-executive director should be a member of the evaluation team.

53.2 All groups should work independently of each other but individual officers may be members of more than one group. No member of the in-house tender group may, however, participate in the evaluation of tenders.

53.3 The evaluation group shall make recommendations to the board.

53.4 The Chief Executive shall nominate an officer to oversee and manage the contract.

54. Contracts

54.1 The trust may only enter into contracts within its statutory powers and shall comply with:

- these Standing Orders;
- the trust's SFIs;
- EU Directives and other statutory provisions;
- any relevant guidance including the Capital Investment Manual and guidance on the Procurement and Management of Consultants.

Where appropriate contracts shall be in or embody the same terms and conditions of contract as was the basis on which tenders or quotations were invited.

In all contracts made by the trust, the board shall endeavour to obtain best value for money. The Chief Executive shall nominate an officer who shall oversee and manage each contract on behalf of the trust.

55. Personnel and Agency or Temporary Staff Contracts

The Chief Executive shall nominate officers with delegated authority to enter into contracts for the employment of other officers, to authorise the regrading of staff, and enter into contracts for the employment of agency staff or temporary staff.

56. Cancellation of Contracts

Every written contract shall include a clause empowering the trust to cancel the contract and to recover from the contractor the amount of any loss resulting from such cancellation, if:

- the contractor shall have offered, or given or agreed to give, any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of the contract or any other contract with the trust; or
- the contractor shows favour or disfavour to any person in relation to the contracts or any other contract with the trust, or if the like acts shall have been done by any person employed by the contractor or acting on his/her behalf (whether with or without the knowledge of the contractor); or
- in relation to any contract with the trust the contractor or any person employed by him/her or acting on his/her behalf shall have committed any offence under the Bribery Act 2010 and other appropriate legislation.

57. Determination of Contracts for Failure to Deliver Goods or Materials

Except where the board otherwise resolves, every written contract for the supply of goods or materials shall include a clause to secure that, should the contractor fail to deliver the goods or materials or any portion thereof within the time or times specified in the contract, the trust may without prejudice determine the contract either wholly or to the extent of such default and purchase other goods, or material of similar description to make good (a) such default, or (b) in the event of the contract being wholly determined the goods or materials remaining to be delivered. The amount by which the cost of so purchasing other goods or materials exceeds the amount which would have been payable to the contractor in respect of the goods or materials shall be recoverable from the contractor.

58. Contracts Involving Funds Held on Trust

Contracts involving funds held on trust shall do so individually to a specific named fund. Such contracts involving charitable funds shall comply with the requirements of the Charities Acts.

59. Disposals

Competitive tendering or quotation procedures shall not apply to the disposal of:

- (a) any matter in respect of which a fair price can be obtained only by negotiation or sale by auction as determined (or pre-determined in a reserve) by the Chief Executive or his/her nominated officer;
- (b) obsolete or condemned articles and stores, which may be disposed of in accordance with the supplies policy of the trust;
- (c) items to be disposed of with an estimated sale value of less than £5,000, this figure to be reviewed annually;
- (d) items arising from works of construction, demolition or site clearance, which should be dealt with in accordance with the relevant contract;
- (e) land or buildings concerning which guidance has been issued by the independent regulator, but subject to compliance with such guidance

PART VII – MISCELLANEOUS**60. Standing Orders to be Given to Directors and Officers**

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 within Standing Orders and SFIs. Updated copies shall be available to all staff via the trust intranet. New officers designated by the Chief Executive shall be informed in writing of the location and means of accessing SOs.

61. Trust Policies

All trust policies will be prepared, consulted upon and assessed for equality impact in accordance with the trust document control policy and supporting procedures. Draft policies presented to the board or the Trust Executive Team for approval must be accompanied by evidence of compliance with the proper procedures for consultation and equality assessment.

62. Documents Having the Standing of Standing Orders

Standing Financial Instructions, Reservation of Powers to the board and Delegation of Powers including the trust's Devolution Policy, shall have the effect as if incorporated into SOs.

63. Signature of Documents

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

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

64. Seal and Sealing of Documents**64.1 Custody of Seal**

The Common Seal of the trust shall be kept by the Chief Executive or nominated officer in a place secured by two different locks. Keys shall be kept respectively by the Chairman and Chief Executive who shall only release the Seal to enable it to be affixed to a document in accordance with these Standing Orders. Either the Chairman or the Chief Executive may entrust their key to a director of the board (both keys must not be held by the same person).

64.2 Sealing of Documents

The Seal of the trust shall not be fixed to any documents unless the sealing has been authorised by a resolution of the board. The seal of the trust must be used in order to execute a deed, when required to do so by law, normally the conveyancing of land.

Before any building, engineering, property or capital document is sealed it must be approved and signed by the Director of Finance and authorised and countersigned by the Chief Executive (or an officer nominated by the Chief Executive who shall not be within the originating directorate).

64.3 Register of Sealing

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 sealing shall be made to the trust at least quarterly. (The report shall contain details of the seal number, the description of the document and date of sealing).

64.4 Review of Standing Orders

Standing Orders shall be reviewed annually by the trust. The requirement for review extends to all documents having the effect as if incorporated in Standing Orders.

ANNEX 8 – FURTHER PROVISIONS

1. Application for Membership

- 1.1** An individual may become a member by application to the trust in accordance with this Constitution or, where so provided for in this Constitution, by being invited by the trust to become a member of a staff class of the staff constituency in accordance with paragraph 7.5.
- 1.2** Where an individual wishes to apply to become a member of the trust, the following procedure shall apply:
- 1.2.1** the trust shall upon request supply the individual with a form of application for membership in a form determined by the trust;
- 1.2.2** upon receipt of the said form of application duly completed or upon application in person or via the telephone, the trust will complete the actions described in paragraph 1.2.3;
- 1.2.3** unless the applicant is ineligible for membership or is disqualified from membership, the trust shall cause their name to be entered forthwith on the trust's Register of Members and shall give notice in writing to the applicant of that fact;
- 1.2.4** upon the applicant's name being entered on the trust's Register of Members the individual shall thereupon become a member;
- 1.2.5** the information to be included in the trust's Register of Members shall include the following details relating to that member:
- full name and title;
 - the constituency of which they are a member.
- 1.3** Where an individual is to be invited by the trust to become a member, the following procedure shall apply:
- 1.3.1** the trust shall take all reasonable steps to satisfy itself that the individual is eligible to become a member of the staff constituency before issuing an invitation to become a member of the trust and that it has all the information needed to administer that person's membership, as may be defined by the trust from time to time;
- 1.3.2** the trust having so satisfied itself, it shall thereupon invite that individual to become a member pursuant to paragraph 7.5 of the Constitution and if necessary shall request the individual to provide such further information, if any, as it may need to administer his or her membership;
- 1.3.3** unless the individual has within 14 days of the date upon which the trust dispatches its invitation to him or her to become a member advised the trust that they do not wish to become a member, the trust shall thereupon enter that individual's name on the Register of Members and they shall thereupon become a member provided that the trust has been provided with the information, if any, requested pursuant to paragraph 1.3.2 to enable it to administer the membership;

- 1.3.4** if the individual has failed to provide the information requested by the trust within 14 days of being invited by the trust to provide it in accordance with paragraph 1.3.2 above, the trust shall give notice in writing to the applicant that the information has not been provided and that unless and until the information is provided that individual's name shall not be entered on the Register of Members.
- 1.4** No individual who is ineligible or disqualified from membership shall be entered or remain on the Register of Members.
- 1.5** For the avoidance of doubt, an individual shall become a member on the date upon which their name is entered on the trust's Register of Members and shall cease to be a member upon the date on which their name is removed from the Register of Members as provided for in this Constitution.

2. Additional Grounds for Eligibility or Disqualification of Members

In addition to satisfying those grounds of eligibility otherwise provided for in the Constitution, the trust reserves the right to exclude persons from membership of the trust if they are:

- Persons under 16 years of age.
- Vexatious complainants, as defined by the trust complaints policy from time to time.
- Former members of the staff of the trust who were dismissed due to misconduct in the course of their employment.
- Patients of the trust who have been excluded from treatment by the trust in accordance with the trust's policy from time to time for the management of violent and aggressive behaviour towards trust staff.
- Persons who, within the preceding 5 years, have committed an act of violence against any of the trust's employees or registered volunteers in association with their employment, as defined in the trust's policy from time to time for the management of violent and aggressive behaviour, or who have wilfully damaged trust property or facilities.

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