Appendix A

The Queen Elizabeth Hospital NHS
King's Lynn
NHS Foundation Trust

The Queen Elizabeth Hospital King's Lynn NHS Foundation Trust

Constitution

Draft – November 2012

- Updated to incorporate 2012 Act amendments which came into force on or before 1 October 2012 as a result of the first and second commencement orders (Statutory Instruments 2012/1319 and 2012/1831). The amendments have been aligned with Monitor's revised Model Core Constitution and 'track changed'. They concern:

- The continuation of the body corporate known as Monitor;
- Change from the 'Board of Governors' to the 'Council of Governors';
- Requirement for the principal purpose (i.e. provision of goods and services for the health service in England) to be stated in the constitution;
- Introduction of the new legal duty to ensure that income of NHS funded goods and services is greater than income from other sources;
- Introduction of additional oversight and scrutiny by the Council of Governors over activities generating non-NHS income;
- Replacement of HM Treasury with Secretary of State as regards giving guidance over FT accounts

The Queen Elizabeth Hospital, King's Lynn, NHS Foundation Trust Constitution

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1. Interpretation and definitions

Unless otherwise stated, words or expressions contained in this constitution shall bear the same meaning as in the National Health Service Act 2006.

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

- **the 2006 Act** is the National Health Service Act 2006.
- the 2012 Act is the Health and Social Care Act 2012.
- **constitution** means this constitution and all annexes to it.
- **Monitor** is the body corporate known as Monitor, as provided by section 61 of the 2012 Act.

~~**Monitor** is the Independent Regulator of NHS Foundation Trusts, as provided by Section 31 of the 2006 Act.~~

~~**terms of Authorisation** are the terms of authorisation issued by Monitor under Section 35 of the 2006 Act.~~

- the **Accounting Officer** is the person who from time to time discharges the functions specified in paragraph 25(5) of Schedule 7 to the 2006 Act.
- **voluntary organisation** is a body, other than a public or local authority, the activities of which are not carried on for profit.
- the **Governors' Council** is the name given to the Council of Governors as defined in the Health and Social Care Act 2012.

~~the **Governors' Council** is the name given to the Board of Governors as defined in Schedule 7 of the 2006 Act.~~

- **Secretary** means the Secretary of the Trust, a person who may be appointed to act independently of the Board of Directors and Governors' Council to provide advice on corporate governance issues to the Board of Directors, Governors' Council and the Chairman and monitor the Trust's compliance with the Regulatory Framework and these standing orders and includes a joint, assistant or deputy secretary of the Trust.

- **Senior Independent Director** means a Non-Executive director of the Trust as selected by the Board of Directors in consultation with the Governors' Council.

- **Regulatory Framework** refers to Acts of Parliament, the NHS Foundation Trust's constitution and regulatory requirements.

~~**Regulatory Framework** refers to Acts of Parliament, (mainly the 2006 Act), the NHS Foundation Trust's constitution and the terms of authorisation granted by the Independent Regulator, governing NHS Foundation Trusts.~~

2. Name

The name of the foundation trust is The Queen Elizabeth Hospital, King's Lynn, NHS Foundation Trust (the Trust).

3. Principal purpose

3.1 The principal purpose of the trust is the provision of goods and services for the purposes of the health service in England.

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

3.3 The Trust may provide goods and services for any purposes related to:

3.3.1 the provision of services provide to individuals for or in connection with the prevention, diagnosis or treatment of illness, and

3.3.2 the promotion and protection of public health.

3.4 The Trust may also carry on activities other than those mentioned in the above paragraph for the purpose of making additional income available in order better to carry on its principal purpose.

4. Powers

4.1 The powers of the trust are set out in the 2006 Act, subject to any restrictions in the Terms of Authorisation.

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

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

5. Membership and constituencies

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

(i) the public constituency (Annex 1); and
(ii) the staff constituency (Annex 2)

6. Application for membership

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

7. Public Constituency

7.1 An individual who lives in an area specified in Annex 1 as an area for a public constituency may become or continue as a member of the trust.

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

7.3 The minimum number of members in each area for the Public Constituency is specified in Annex 1.

8. Staff Constituency

8.1 An individual who is employed by the trust under a contract of employment with the trust may become or continue as a member of the trust provided:

8.1.1 he is employed by the trust under a contract of employment which has no fixed term or has a fixed term of at least 12 months; or

8.1.2 he has been continuously employed by the trust under a contract of employment for at least 12 months.

8.2 Individuals who exercise functions for the purposes of the trust, otherwise than under a contract of employment with the trust, may become or continue as members of the staff constituency provided such individuals have exercised these functions continuously for a period of at least 12 months.

8.3 Those individuals who are eligible for membership of the trust by reason of the previous provisions are referred to collectively as the Staff Constituency.

8.4 The Staff Constituency shall be divided into 2 descriptions of individuals who are eligible for membership of the Staff Constituency, each description of individuals being specified within Annex 2 and being referred to as a class within the Staff Constituency.

8.5 The minimum number of members in each class of the Staff Constituency is specified in Annex 2.

Automatic membership by default – staff

8.6 An individual who is:

8.6.1 eligible to become a member of the Staff Constituency, and

8.6.2 invited by the trust to become a member of the Staff Constituency and a member of the appropriate class within the Staff Constituency,

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

9. Restriction on membership

9.1 An individual who is a member of a constituency, or of a class within a constituency, may not while membership of that constituency or class continues, be a member of any other constituency or class.

9.2 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.

9.3 An individual must be at least 16 years old to become a member of the trust.

9.4 Further provisions as to the circumstances in which an individual may not become or continue as a member of the trust are set out in Annex 8 – Further Provisions.

10. Governors' Council – composition

10.1 The trust is to have a Governors' Council, which shall comprise both elected and appointed governors.

10.2 The composition of the Governors' Council is specified in Annex 3.

10.3 The members of the Governors' Council, other than the appointed members, shall be chosen by election by their constituency or, where there are classes within a constituency, by their class within that

constituency. The number of governors to be elected by each constituency, or, where appropriate, by each class of each constituency, is specified in Annex 3.

11. Governors' Council – election of governors

11.1 Elections for elected members of the Governors' Council shall be conducted in accordance with the Model Election Rules.

11.2 The Model Election Rules as published from time to time by the Department of Health form part of this constitution. The Model Election Rules current at the date of the trust's authorisation are attached at Annex 4.

11.3 A subsequent variation of the Model Election Rules by the Department of Health shall not constitute a variation of the terms of this constitution for the purposes of paragraph 39 of the constitution (amendment of the constitution).

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

12. Governors' Council - tenure

12.1 An elected governor may hold office for a period of up to 3 years, subject to the provisions of Annex 5.

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

12.3 An elected governor shall be eligible for re-election at the end of his term but may not hold continuous office for longer than 2 terms.

12.4 An appointed governor may hold office for a period of up to 3 years.

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

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

13. Governors' Council – disqualification and removal

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

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, his 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 Islands of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him.

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 Governors' Council are set out in Annex 5.

13.4 The provisions for the removal of Governors are set out in Annex 5.

14. Governors' Council – meetings of governors

14.1 The Chairman of the trust (i.e. the Chairman of the Board of Directors, appointed in accordance with the provisions of paragraph 21 or paragraph 22 (below) or, in his absence the Vice-Chairman, shall preside at meetings of the Governors' Council.

14.2 Meetings of the Governors' Council shall be open to members of the public. Members of the public may be excluded from the whole or part of a meeting for special reasons, such as those outlined in Annex 6.

15. Governors' Council – standing orders

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

16 Governors' Council - conflicts of interest of governors

16.1 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 Governors' Council, the governor shall disclose that interest to the members of the Governors' Council as soon as he becomes aware of it.

16.2 The Standing Orders for the Governors' Council 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.

17. Governors' Council – travel expenses

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

18. Governors' Council – further provisions

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

19. Board of Directors – composition

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

19.2 The Board of Directors is to comprise:

19.2.1 a non-executive Chairman and

19.2.2 up to 7 other non-executive directors; and

19.2.3 up to 7 executive directors.

19.3 One of the executive directors shall be the Chief Executive.

19.4 The Chief Executive shall be the Accounting Officer.

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

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

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

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

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

20.1.1 he is a member of the Public Constituency, or

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

20.1.3 he is not disqualified by virtue of paragraph 25 below.

21. <u>Board of Directors – appointment and removal of Chairman and other non-executive directors</u>

21.1 The Governors' Council at a general meeting of the Governors' Council shall appoint or remove the Chairman of the trust, the Vice-Chairman and the other non-executive directors.

21.2 Removal of the Chairman, the Vice-Chairman or another non-executive director shall require the approval of three-quarters of the members of the Governors' Council.

21.3 The initial Chairman, Vice-Chairman and the initial non-executive directors are to be appointed in accordance with paragraph 22 below.

22. <u>Board of Directors – appointment of initial Chairman, Vice-Chairman and initial other non-executive directors</u>

22.1 The Governors' Council shall appoint the Chairman of the applicant NHS Trust as the initial Chairman of the trust if he wishes to be appointed.

22.2 The Governors' Council shall appoint the Vice-Chairman of the applicant NHS Trust as the initial Vice-Chairman of the Trust if he wishes to be appointed.

22.3 The power of the Governors' Council 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 and Vice-Chairman) who wish to be appointed.

22.4 The criteria for qualification for appointment as a non-executive director set out in paragraph 20 above (other than disqualification by virtue of paragraph 25 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.

22.5 An individual appointed as the initial Chairman, Vice-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 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, he shall be appointed for 12 months.

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

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

23.2 The appointment of the Chief Executive shall require the approval of the Governors' Council.

23.3 The initial Chief Executive is to be appointed in accordance with paragraph 24 below.

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

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

24.1 The non-executive directors shall appoint the chief officer of the applicant NHS Trust as the initial Chief Executive of the trust, if he wishes to be appointed.

24.2 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 Governors' Council.

25. Board of Directors – disqualification

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

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

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

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

26. Board of Directors – standing orders

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

27 Board of Directors – conflicts of interest of directors

27.1 If a director has a pecuniary, personal or family interest, whether that interest is actual or potential and whether that interest is direct or indirect, in any proposed contract or other matter which is under consideration or is to be considered by the Board of Directors, the director shall disclose that interest to the members of the Board of Directors as soon as he becomes aware of it.

27.2 The Standing Orders for the Board of Directors shall make provision for the disclosure of interests and arrangements for the exclusion of a director declaring any interest from any discussion or consideration of the matter in respect of which an interest has been disclosed.

28. Board of Directors – remuneration and terms of office

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

28.2 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.

29. Registers

29.1 The trust shall have:

29.1.1 a register of members showing, in respect of each member, the constituency to which he belongs and, where there are classes within it, the class to which he belongs;

29.1.2 a register of members of the Governors' Council;

29.1.3 a register of interests of governors;

29.1.4 a register of directors; and

29.1.5 a register of interests of the directors.

30. Admission to and removal from the registers

30.1 The Secretary shall remove from the register of members the name of any member who ceases to be a member under the terms of the constitution.

30.2 The Secretary is to send to Monitor a list of persons who were first elected as Governors and Directors

31. Registers – inspection and copies

31.1 The trust shall make the registers specified in paragraph 29 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.

31.2 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.

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

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

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

31.4 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.

32. Documents available for public inspection

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

32.1.1 a copy of the current constitution;

32.1.2 a copy of the current authorisation;

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

32.1.4 a copy of the latest annual report;

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

32.1.6 a copy of any notice given under section 52 of the 2006 Act.

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

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.

33. Auditor

33.1 The trust shall have an auditor.

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

34. Audit committee

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

35. Accounts

35.1 The Trust must keep proper accounts and proper records in relation to the accounts.

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

~~**35.1** The trust shall keep accounts in such form as Monitor may with the approval of HM Treasury direct.~~

35.3~~2~~ The accounts are to be audited by the trust's auditor.

35.4~~3~~ The trust shall prepare in respect of each financial year annual accounts in such form as Monitor may with the approval of the ~~HM Treasury direct~~Secretary of State direct.

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

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

36.1 The trust shall prepare an Annual Report and send it to Monitor.

36.2 The trust shall give information as to its forward planning in respect of each financial year to Monitor.

36.3 The document containing the information with respect to forward planning (referred to above) shall be prepared by the directors.

36.4 In preparing the document, the directors shall have regard to the views of the Governors' Council.

36.5 Each forward plan must include information about –

36.5.1 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

36.5.1 the income it expects to receive from doing so.

36.6 Where a forward plan contains a proposal that the trust carry on an activity of a kind mentioned in sub-paragraph 36.5.1 the Governors' Council must -

36.6.1 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

36.6.2 notify the directors of the trust of its determination.

36.7 Should the Trust propose to increase by 5% or more the proportion of its total income in any financial year attributable to activities other than the provision of goods and services for the purposes of the health service in England, it may implement the proposal only if more than half of the members of the Governors' Council of the trust voting approve its implementation.

37. Meeting of Governors' Council to consider annual accounts and reports

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

37.1.1 the annual accounts

37.1.2 any report of the auditor on them

37.1.3 the quality accounts

37.1.4 the annual report.

38. Instruments

38.1 The trust shall have a seal.

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

39. Amendment of the constitution

Amendments by the trust of its constitution are to be made with the approval of Monitor. For the avoidance of doubt, any amendments to the annexes attached to this constitution must also be approved by Monitor.

ANNEX 1 – THE PUBLIC CONSTITUENCY

AREAS	Number of Members (minimum)
West Norfolk	50
North Norfolk	10
Breckland	5
Cambridgeshire	20
South East Lincoln/Rest of England	5
Total	90

West Norfolk comprising the district of King's Lynn and West Norfolk - Local Authority Wards:

Airfield, Brancaster, Burnham, Clenchwarton, Dersingham, Denton, Docking, Downham East, Downham North, Downham Old Town, Downham South, East Rudham, Emneth with Outwell, Fairstead, Gayton, Gaywood Chase, Gaywood North Bank, Gaywood Old, Grimston, Hilgay with Denver, Heacham, Hunstanton, Lynn North, Lynn South & West, Marshland, North Wootton, Priory, Snettisham, South Wootton, Spellowfields, Springwood, St Lawrence, St Margarets with St Nicholas, Upwell with Delph, Valley Hill, Walpole, Walton, Watlington, West Winch, Wiggenhall, Wimbotsham with Fincham, Wissey.

North Norfolk comprising the following Local Authority Wards:

Walsingham, The Raynhams, Lancaster North and South, Priory, Wensum

Breckland comprising the following Local Authority Wards:

Hermitage, Launditch, Nar Valley, Swaffham, Mid Forest, Conifer, Dereham - Toftwood, Dereham-Neatherd, Dereham-Humbletoft, Dereham-Central, Springvale and Scarning, Necton, Haggard de Toni, Shipdham, Taverner, Templar, Upper Wensum, Watton, Wissey

Cambridgeshire/Fenland comprising the following Local Authority Wards:

Roman Bank, Peckover, Medworth, Waterlees, Kirkgate, Staithe, Hill, Clarkson, Parson Drove and Wisbech St Marys, Elm and Christchurch, March East, March North, March West

South East Lincolnshire / Rest of England comprising the following Local Authority Wards:

Long Sutton, Weston and Moulton, Fleet, The Saints, Gedney, Holbeach Town, Holbeach Hurn, Holbeach St Johns, Whaplode, Sutton Bridge, Crowland, Pinchbeck and Surfleet, Spalding Castle, Spalding Monks House, Spalding St John, Spalding St Mary's, Spalding St Paul's, Spalding Wygate, Rest of England.

ANNEX 2 – THE STAFF CONSTITUENCY

Classes	**Number of Members (minimum)**
Clinical	50
Non-clinical	50

ANNEX 3 – COMPOSITION OF GOVERNORS' COUNCIL

Elected governors

Public constituency area	Number of governors
West Norfolk	9
North Norfolk	2
Breckland	1
Cambridgeshire	4
South East Lincoln/Rest of England	1
Total elected governors	**17**

Appointed governors

Statutory governors	Number of governors
Norfolk PCT	1
Norfolk County Council	1

Partnership governors	Number of governors
Lincolnshire PCT	1
Borough Council of King's Lynn and West Norfolk	1
Breckland District Council	1
University of East Anglia	1
College of West Anglia	1
West Norfolk Voluntary and Community Action – invited to nominate from among WNVCA member organisations, in consultation with the Trust	1
West Norfolk Practice-Based Commissioners	1

Total appointed governors	**9**

Staff constituency

Classes	Number of governors
Clinical staff	3
Non-clinical staff	3
Total	**6**

ANNEX 4 –THE MODEL RULES FOR ELECTIONS

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2. Timetable
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Part 1 - Interpretation

1. Interpretation –

(1) In these rules, unless the context otherwise requires -

"corporation" means the public benefit corporation subject to this constitution;

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

"the regulator" means the Independent Regulator for NHS foundation trusts;

"the 2006 Act" means the National Health Service Act 2006;

(2) Other expressions used in these rules and in Schedule 7 of the 2006 Act 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.

<u>Part 3 – Returning officer</u>

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.

<u>Part 4 - Stages Common to Contested and Uncontested Elections</u>

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 Governors’ Council 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 –

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 or she is not prevented from being a member of the Governors' Council by paragraph 8 of Schedule 7 of the 2006 Act or by any provision of the constitution; and,
(b) for a member of the public constituency, of the particulars of his or her qualification to vote as a member of that constituency, or 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 or she has received it, and decide whether the candidate has been validly nominated.

(4) Where the returning officer decides that a nomination is invalid, the returning officer must endorse this on the nomination paper, stating the reasons for their decision.

(5) The returning officer is to send notice of the decision as to whether a nomination is valid or invalid to the candidate at the contact address given in the

candidate's nomination paper.

15. Publication of statement of candidates –

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

(2) The statement must show –

(a) the name, contact address, and constituency or class within a constituency of each candidate standing, and
(b) the declared interests of each candidate standing, as given in their nomination paper.

(3) The statement must list the candidates standing for election in alphabetical order by surname.

(4) The returning officer must send a copy of the statement of candidates and copies of the nomination papers to the corporation as soon as is practicable after publishing the statement.

16. Inspection of statement of nominated candidates and nomination papers –

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

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

17. Withdrawal of candidates –

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

18. Method of election –

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

(a) the candidates who remain validly nominated are to be declared elected in accordance with Part 7 of these rules, and
(b) the returning officer is to order a new election to fill any vacancy which remains unfilled, on a day appointed by him or her in consultation with the corporation.

<u>Part 5 – Contested elections</u>

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 Governors' Council to be elected from that constituency, or class within that constituency,
(d) the names and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
(e) instructions on how to vote,
(f) if the ballot paper is to be returned by post, the address for its return and the date and time of the close of the poll, and
(g) the contact details of the returning officer.

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

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

21. The declaration of identity (public constituencies) –

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

24. Issue of voting documents by returning officer –

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

(a) a ballot paper and ballot paper envelope,
(b) a declaration of identity (if required),
(c) information about each candidate standing for election, pursuant to rule 59 of these rules, and
(d) a covering envelope.

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

25. Ballot paper envelope and covering envelope –

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

(2) The covering envelope is to have –

(a) the address for return of the ballot paper printed on it, and
(b) pre-paid postage for return to that address.

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

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

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

The poll

26. Eligibility to vote –

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

27. Voting by persons who require assistance –

(1) The returning officer is to put in place arrangements to enable requests for assistance to vote to be made.

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

28. Spoilt ballot papers –

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

(2) On receiving an application, the returning officer is to obtain the details of the unique identifier on the spoilt ballot paper, if he 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 or she is also satisfied that that person has not already voted in the election, notwithstanding the fact that a declaration of identity if required has already been received by the returning officer in the name of that voter.

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

(a) the name of the voter, and
(b) the details of the unique identifier of the replacement ballot paper issued under this rule.

31. Declaration of identity for replacement ballot papers (public constituencies) –

(1) In respect of an election for a public constituency a declaration of identity must be issued with each replacement ballot paper.

(2) The declaration of identity is to include a declaration –
(a) that the voter has not voted in the election with any ballot paper other than the ballot paper being returned with the declaration, and
(b) of the particulars of that member's qualification to vote as a member of the public constituency, 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 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 spoilt 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).
(4) Any ballot paper –

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

vote'

(c) on which anything is written or marked by which the voter can be identified except by the unique identifier, or
(d) which is unmarked or rejected because of uncertainty, shall, subject to paragraphs(3) and (4) below, be rejected and not counted.

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

(6) A ballot paper on which a vote is marked –

(a) elsewhere that in the proper place,
(b) otherwise than by means of a clear mark,
(c) by more than one mark,

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

(7) The Returning Officer is to –

(a) endorse the word "rejected" on any ballot paper which under this rule is not to be counted, and
(b) in the case of a ballot paper on which any vote is counted under paragraph (3) or (4) above, endorse the words "rejected in part" on the ballot paper and indicate which vote or votes have been counted.

(8) The Returning Officer is to draw up a statement showing the number of rejected ballot papers under the following headings –

(a) does not bear proper features that have been incorporated into the ballot papers,
(b) voting for more candidates than the voter is entitled to,
(c) writing or maker by which voter could be identified, and
(d) unmarked or rejected because of uncertainty,

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

40. 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-parcel of ballot papers with the highest transfer value he or she shall proceed to transfer in the same way the sub-parcel of ballot papers with the next highest value and so on until he has dealt with each sub-parcel of a candidate excluded under paragraph (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 or she has declared elected –
(i) where the election is held under a proposed constitution pursuant to powers conferred on the Queen Elizabeth Hospital King's Lynn NHS Trust by section 33(4) of the 2006 Act, to the chairman of the NHS Trust, or
(ii) in any other case, to the chairman of the corporation, and
(c) give public notice of the name of each candidate who he or she 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 or she has declared elected to the chairman of the corporation, and
(c) give public notice of the name of each candidate who he or she has declared elected.

<u>Part 8 – Disposal of documents</u>

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 spoilt 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 chairman 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 chairman 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.

<u>Part 9 – Death of a candidate during a contested election</u>

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).

<u>Part 10 – Election expenses and publicity</u>

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.

Part 12 – Miscellaneous

62. Secrecy –

(1) The following persons –

(a) the returning officer,
(b) the returning officer's staff, must maintain and aid in maintaining the secrecy of the voting and the counting of the votes, and must not, except for some purpose authorised by law, communicate to any person any information as to –
(i) the name of any member of the corporation who has or has not been given a ballot paper or who has or has not voted,
(ii) the unique identifier on any ballot paper,
(iii) the candidate(s) for whom any member has voted.

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

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

63. Prohibition of disclosure of vote –

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

64. Disqualification –

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

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

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

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

(a) the delivery of the documents in rule 24, or
(b) the return of the ballot papers and declarations of identity, the returning officer may extend the time between the publication of the notice of the poll and the close of the poll, with the agreement of the Regulator.

ANNEX 5 – ADDITIONAL PROVISIONS – GOVERNORS' COUNCIL

1 Elections

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

1.2 Public governors are to be elected by members of their area of the public constituency and staff governors are to be elected by members of their class in the staff constituency. Each class/constituency may elect any of their number to be a governor in accordance with the provisions of this constitution.

1.3 A member of a public constituency may not vote at an election for a public governor unless within 21 days before they vote they have made a declaration in the form specified by the Secretary that they are qualified to vote as a member of the relevant public constituency area. It is an offence to knowingly or recklessly make such a declaration which is false in a material particular.

2 Appointments

PCTs, local authorities and other partnership organisations entitled by this constitution to provide representatives to sit on the Governors' Council, as set out in Annex 3, will be consulted and asked to nominate individuals to become members of this body.

3 Terms of office

3.1 In the first staff/public election of governors, half, (or if that is not a whole number then rounded up to the next whole number) of the elected governors will serve an initial term of 3 years with the remaining elected governors serving an initial term of 2 years. The candidates who receive the highest proportion of votes within their class/area shall hold office for three years and the remaining elected governors shall hold office for two years. In the event that an election in a particular class of the staff constituency or area of the public constituency is uncontested, the initial term/s of office of the governor/s shall be for 2 years.

3.2 Thereafter an elected governor shall hold office for three years.

3.3 An elected governor may not hold office for more than six consecutive years, and shall not be eligible for election if he has held office for two terms.

3.4 An appointed governor may hold office for three years.

3.5 An appointed governor shall be eligible for reappointment at the end of his three year term.

3.6 An appointed governor may not hold office for more than six consecutive years and shall not be eligible for reappointment if he has held office for two terms.

4. Eligibility to be a governor

4.1 In addition to paragraphs 12 and 13 of the constitution a person may not become a governor of the Trust, and if already holding such office will immediately cease to do so if:

4.1.1 He is under 16 years of age;

4.1.2 He is a Director of the Trust, or an employee of the Trust with the courtesy title "Director", or a Governor or Director of another health service body (unless he is appointed by an appointing organisation that is the health service body) or an employee of another health service body with courtesy title "director" or a director or senior employee of an independent/private sector health care provider that competes with the Trust.

4.1.3 He is the spouse, partner, parent or child of a member of the Board of Directors of the Trust;

4.1.4 He is a member of a local authority scrutiny committee covering health matters;

4.1.5 Being a member of the public constituency, he refuses to sign a declaration in the form specified by the Secretary of particulars of his qualification to vote as a member of the Trust and that he is not prevented from being a member of the Governors' Council;

4.1.6 If he is subject to a sex offender order;

4.1.7 If he has, within a preceding two years, been dismissed, other than by reasons of redundancy or incapacity from any paid employment with a health service body;

4.1.8 If he has had his name removed or otherwise been disqualified or suspended from any healthcare profession, and has not subsequently had his name included in such a list or had his qualification re-instated or suspension lifted and /or he is subject to an alert letter;

4.1.9 If he is a person whose tenure of office as a chairman or member or director of a health service body has been terminated on the grounds that his appointment is not in the interests of the health service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest.

5. Termination and removal of governors

5.1 A person holding office as a governor shall immediately cease to do so if:

5.1.1 he resigns by notice in writing to the Secretary;

5.1.2 he fails to attend three consecutive meetings, unless the other governors are satisfied:

(i) The absences were due to reasonable causes; and
(ii) He will be able to start attending meetings of the Governors' Council within such a period as the other governors consider reasonable.

5.1.3 In a case of an elected governor he ceases to be a member of the constituency or class of constituency by which he was elected;

5.1.4 In a case of an appointed governor, where the appointing organisation terminates the appointment;

5.1.5 He has refused without reasonable cause to undertake any training which the Governors' Council requires all Governors to undertake;

5.1.6 He has failed to sign and deliver to the Secretary a statement in the form requested by the Secretary confirming the acceptance of the Code of Conduct for Governors;

5.2 In accordance with the Trust's Code of Conduct for Governors (which Governors are required to sign as confirmation that they agree to abide by the code.) and the Trust's Procedure for dealing with alleged non-compliance with the Governors' Council Code of Conduct, a governor may be removed from the Governors' Council by resolution approved by not less than three-quarters of the remaining governors present and voting, on the grounds that in their opinion:

5.2.1 He has committed a serious breach of the Code of Conduct for Governors;

5.2.2 He has acted in a manner detrimental to the interests of the Trust;

5.2.3 The Governors' Council considers that it is not in the best interests of the Trust for him to continue as a governor.

6. Vacancies

6.1 Where a vacancy arises on the Governors' Council for any reason other than expiry of term of office, the following provisions shall apply:

6.1.1 Where the vacancy arises amongst the appointed governors, the appointing organisation will be requested to appoint a replacement to hold office for the remainder of the term;

6.1.2 Where the vacancy arises amongst the elected governors, the Governors' Council may appoint the person who received the next largest number of votes in the election for that constituency to hold the office for the remainder of the term (if they are eligible and willing), or they may call an election in order to fill the position for the remainder of the term, or they may leave the position vacant until the next programmed election, provided that the representative nature of the Governors' Council is not compromised and the Governors' Council composition remains within the provision of Schedule 7 of the 2006 Act, in that more than half of the members of the Governors' Council must be elected by members of the corporation other than those who come within the staff constituency.

7. Use of Power

The Governors' Council may not delegate its powers and must exercise them in formal session.

8. Role of the Governors' Council

8.1 The Governors' Council should:

8.1.1 Represent the interests of the Trust's members and partner organisations in the local health economy in the governance of the Trust.

8.1.2 Regularly feed back information about the Trust, its vision and its performance to the constituencies and the stakeholder organisations that either elected or appointed them.

8.1.3 Act in the best interests of the Trust and adhere to its values and Code of Conduct.

8.1.4 Hold the Board of Directors to account for the performance of the Trust, including ensuring the Board of Directors acts so that the Trust does not breach the terms of its authorisation.

8.1.5 Acknowledge the overall responsibility of the Board of Directors for running the Trust.

8.1.6 Establish a policy for engagement with the Board of Directors for those circumstances when they have concerns about the performance of the Board of Directors, compliance with the terms of authorisation or the welfare of the Trust.

8.1.7 Inform the Independent Regulator if the Trust is at risk of breaching the terms of its authorisation if these concerns cannot be resolved at a local level.

8.1.8 Take the lead in agreeing with the Audit Committee of the Board of Directors the criteria for appointing, reappointing and removing auditors, and receive any relevant reports from the Audit Committee.

8.1.9 Work with the Board of Directors on such other matters for the benefit of the Trust as may be agreed between them.

8.1.10 Assess its own collective performance and its impact on the Trust, and communicate this to the members of the Trust.

9. Elected Council members

An elected council member shall represent the members of their constituency, and not any professional body, political party or trade union of which he is a member.

10. Appointed Council members

An appointed council member shall represent the organisation (or group of organisations) that appointed him, and is also expected to provide a perspective of the wider community and be a knowledgeable source for Council members to develop better understanding of the environment in which the Trust operates.

11. Lead Governor

The Governors' Council shall elect one of their number to be the Trust's Lead Governor, having the role described in Monitor's NHS Foundation Trust Code of Governance (March 2010).

ANNEX 6 – STANDING ORDERS FOR THE GOVERNORS' COUNCIL

THE QUEEN ELIZABETH HOSPITAL KING'S LYNN NHS FOUNDATION TRUST

[date of adoption]

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1. INTRODUCTION

Statutory Framework

The Queen Elizabeth Hospital, King's Lynn NHS Foundation Trust (The Trust) is a statutory body which became a public benefit corporation on 1st February 2011 following its authorisation as an NHS Foundation Trust by Monitor - the Independent Regulator of NHS Foundation Trusts (Independent Regulator), pursuant to the National Health Service Act 2006 (the 2006 Act).

The principal place of business (Headquarters) of the Trust is:

Gayton Road
King's Lynn
Norfolk
PE30 4ET

NHS Foundation Trusts are governed by Act of Parliament, mainly the 2006 Act, by their constitutions and by their terms of authorisation granted by the Independent Regulator (Regulatory Framework).

The functions of the Trust are conferred by the Regulatory Framework.

The Regulatory Framework requires the Governors' Council to adopt Standing Orders (SOs) for the regulation of its proceedings and business.

2. INTERPRETATION

2.1 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 should be advised by the Secretary).

2.2 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 the interpretation and in addition:

"**TRUST**" means the Queen Elizabeth Hospital King's Lynn NHS Foundation Trust.

"GOVERNORS' COUNCIL" means the Governors' Council of the Trust as defined in the Constitution and the "Council" means the Governors' Council, unless the context otherwise requires. The **Governors' Council** is the name given to the Council of Governors as defined in the Health and Social Care Act 2012.

"BOARD OF DIRECTORS" means the Board consisting of the Chairman, Executive and Non-Executive Directors of the Trust collectively as a body.

"CHAIRMAN OF THE COUNCIL" or "Chairman of the Trust" is the person appointed by the Governors' Council to lead the Board of Directors and to ensure that it successfully discharges its overall responsibility for the Trust as a whole. Except where the context or the Regulatory Framework otherwise requires, the expressions "the Chairman of the Council" and "the Chairman of the Trust" shall be deemed to include the Vice Chairman of the Trust if the Chairman is absent from the meeting or is otherwise unavailable.

"CHIEF EXECUTIVE" means the chief executive officer of the Trust, except where the context or the Regulatory Framework otherwise requires and this constitution permits. Chief Executive shall be deemed to include the **Deputy Chief Executive** if the Chief Executive is absent from the meeting or otherwise unavailable.

"COMMITTEE" means a committee or subcommittee created and appointed by the Governors' Council

"CONSTITUTION" means the constitution of the Trust.

"EXECUTIVE DIRECTOR" means a Member of the Board of Directors who holds an executive office of the Trust.

"GOVERNOR" means a Governor of the Trust. (Governor in relation to the Governors' Council does not include the Chairman).

"NON-EXECUTIVE DIRECTOR" means a member of the Board of Directors who does not hold an executive office with the Trust.

"OFFICER" means employee of the Trust or any other person holding a paid appointment or office with the Trust.

"REGISTERS" means those registers listed in clause 29 of the constitution.

"SOs" means these Standing Orders.

"SECRETARY TO THE TRUST""SECRETARY" means the Secretary as defined in the Trust's constitution.

"VICE CHAIRMAN" means the Non-Executive Director appointed from amongst the Non-Executive Directors as Vice Chairman by the Governors' Council to take on the Chairman's duties in his capacity as chairman of the Governors' Council if the Chairman is absent for any reason.

"SENIOR INDEPENDENT DIRECTOR" Means a Non-Executive Director selected by the Board of Directors in consultation with the Governors' Council.

Any term not defined above but contained in these Standing Orders and which is referred to elsewhere in the constitution shall have the same meaning as in the constitution.

3. GOVERNORS' COUNCIL

3.1 Composition of the Governors' Council

The composition of the Governors' Council shall be in accordance with the Constitution of the Foundation Trust.

3.2 Role of the Chairman

3.2.1 The Chairman is not a Governor. However under the Regulatory Framework, he presides at meetings of the Governors' Council and has a casting vote.

3.2.2 Where the Chairman of the Trust has died or has ceased to hold office, or where he has been unable to perform his duties as Chairman owing to illness or any other cause, the Vice Chairman shall act as Chairman until a new Chairman is appointed or the existing Chairman resumes his duties, as the case may be; and

references to the Chairman in these Standing Orders shall, so long as there is no Chairman able to perform his duties, be taken to include references to the Vice Chairman.

3.3 Powers and Duties of the Governors' Council

3.3.1 The powers and duties, conferred by the 2006 Act, (as amended by the Health and Social Care Act 2012) on the Governors' Council, to be undertaken in accordance with the Trust Constitution, are:

(i) To appoint and remove the Chairman, Vice-Chairman and other Non Executive Directors of the Foundation Trust at a general meeting;

(ii) To approve at a general meeting the appointment by the Non-Executive Directors of the Chief Executive (except for the initial Chief Executive);

(iii) To appoint or remove the auditor at a general meeting;

(iv) To have the Governors' views taken into account by the Trust's Board of Directors on forward planning;

(v) To be presented with the Trust's Annual Report and Accounts and the report of the auditor on the Accounts at a general meeting;

(vi) To decide the remuneration and allowances, and the other terms and conditions of office, of the Non-Executive Directors.

3.3.2 Where the Trust's forward plan (in the preparation of which, the directors shall have regard to the views of the Governors' Council) contains a proposal that the Trust carry on an activity other than the provision of goods and services for the purposes of the health service in England, the Governors' Council must -

(i) 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

(ii) notify the directors of the trust of its determination.

3.3.3 Where the Trust proposes to increase by 5% or more the proportion of its total income in any financial year attributable to activities other than the provision of goods and services for the purposes of the health service in England, it may implement the proposal only if more

than half of the members of the Governors' Council of the trust voting, approve its implementation.

3.3.2 The 2006 Act provides that all the powers of the Foundation Trust are to be exercised by its Directors.

3.3.3 The Governors' Council, and individual Governors, are not empowered to speak on behalf of the Trust, and must seek the advice and views of the Chairman concerning any contact from the media or any invitation to speak publicly about the Trust or their role within it. For the avoidance of doubt, in this context the Chairman acts as Chairman of the Trust not as chairman of the Governors' Council and in his absence Governors should seek the advice and views of the Vice Chairman of the Trust.

4. MEETINGS OF THE COUNCIL

4.1 Admission of the Public

4.1.1. The public shall be afforded facilities to attend publicly notified formal meetings of the Governors' Council except where the Council resolves:

(i) That members of the public be excluded from the remainder of a meeting having regard to the confidential nature of the business to be transacted, publicity on which would be prejudicial to the public interest; and/or

(ii) That in the interests of the public order the meeting adjourns for a period to be specified in such resolution to enable the Council to complete business without the presence of the public.

4.1.2 Nothing in these Standing Orders shall require the Council to allow members of the public to record proceedings in any manner whatsoever, other than writing, or to make any oral report of proceedings as they take place, without the prior agreement of the Council.

4.2 Calling Meetings

4.2.1 Ordinary meetings of the Council shall be held at least four times a year at such times and places as the Council may determine. The Council may call additional meetings as necessary to discharge its functions.

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

4.3 Notice of Meetings

4.3.1 Before each meeting of the Council, a notice of the meeting, specifying the business proposed to be transacted at it, and signed by the Chairman or by an officer authorised by the Chairman to sign on his behalf 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 him at least 14 clear days before the meeting, except in case of urgency. Supporting papers shall wherever possible, be available to the Governors at least 7 clear days before the meeting.

4.3.2 Want of service of the notice on any Governor shall not affect the validity of a meeting.

4.3.3 In the case of a meeting called by Members of the Council in default of the Chairman, the notice shall be signed by those Members of the Council and no business shall be transacted at the meeting other than specified in the notice.

4.3.4 Before each meeting of the Council a public notice of the time and place of the meeting shall be displayed at the Trust's Headquarters at least fourteen clear days before the meeting, except in case of urgency.

4.4 Setting the agenda

A Governor desiring a matter to be included on an agenda shall make his request in writing to the Secretary at least 10 clear days before the meeting. The request should state whether the item of business is proposed to be transacted in the presence of the public and should include appropriate supporting information. Requests made less than 10 days before a meeting may be included on the agenda at the discretion of the Chairman.

4.5 Petitions

Where a petition has been received by the Trust, the Chairman of the Council shall include the petition as an item for the agenda of the next Council meeting.

4.6 Chairman of Meeting

4.6.1 At any meeting of the Council, the Chairman of the Trust, if present, shall preside unless he has a conflict of interest. If the Chairman is absent from the meeting or has a conflict of interest the Vice Chairman, if he is present, shall preside unless he has a conflict of interest. If the Chairman and Vice Chairman are absent or have a conflict of interest such Non-Executive Director as the Members of the Council present shall choose shall preside unless he has a conflict of interest. Where the Chairman of the Trust, Vice Chair, and other Non-Executive Directors are all absent or have a conflict of interest, the Governors' Council shall select one of their number to preside at the meeting. The person presiding at the meeting shall have a casting vote.

4.6.2. In the application of clause 4.6.1 with respect to Council decisions on Chairman and non-executive director remuneration, the Chairman shall preside where non-executive director remuneration is discussed and determined by the Governors' Council and the Vice-Chairman or another non-executive director shall preside where the Chairman's remuneration is discussed and determined by the Governors' Council.

4.7 Notices of Motion

A Governor wishing to move or amend a motion shall send written notice thereof at least 10 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.

4.8 Withdrawal of Motion or Amendments

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

4.9 Motion to Rescind a Resolution

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

4.10 Motions

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

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

(i) an amendment to the motion,
(ii) the adjournment of the discussion or the meeting,
(iii) that the meeting proceed to the next business,
(iv) the appointment of an ad hoc committee to deal with a specific item of business,
(v) that the motion be now put.,
(vi) a motion resolving to exclude the public under SO 4.1.1.

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.

4.11 Chairman's Ruling

Statements of Members of the Council made at Council meetings 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 final.

4.12 Voting

4.12.1 If a question is put to the vote, it shall be determined by a majority of the votes of the Governors present and voting on the question and, in the case of number of votes for and against a motion being equal, the Chairman of the meeting shall have a second or casting vote.

4.12.2 If the question is of the removal of the Chairman or Non-Executive Director and is put to the vote, the majority requirement in 4.12.1 shall not apply but it shall require a three quarters majority.

4.12.3 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 members of the Council present so request.

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

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

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

4.13 Minutes

4.13.1 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.

4.13.2 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 meeting.

4.14 Suspension of Standing Orders

4.14.1 Except where this would contravene any statutory provision or any direction made by the Independent Regulator, any one or more of the Standing Orders may be suspended at any meeting, provided that at least two-thirds of the Council are present, including two public governors, and that a majority of those present vote in favour of suspension.

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

4.14.3 A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the Chairman and Members of the Council.

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

4.15 Variation and Amendment of Standing Orders

These Standing Orders shall be amended only if:

(i) a notice of a motion under Standing Order 4.7 has been given; and
(ii) no fewer than half the total of the Trust's Governors vote in favour of amendment; and
(iii) at least two-thirds of the Council Members are present; and
(iv) the proposed variation /amendment is approved by the Independent Regulator, having been agreed by the Governors' Council

4.16 Record of Attendance

The names of the Chairman and Members of the Council present at the meeting shall be recorded in the minutes.

4.17 Quorum

4.17.1 No business shall be transacted at a meeting unless one third of the total number of Governors (rounding up, if one third is not a whole number, to the next whole number) including not fewer than six public Governors and not fewer than two staff Governors are present.

4.17.2 If a Governor has been disqualified from participating in the discussion on any matter and/or from other voting on any resolution by reason of the declaration of a conflict of interest (see Standing Orders 6-9) he shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business.

5. COMMITTEES

5.1 Subject to the Regulatory Framework and such guidance as may be issued by the Independent Regulator, the Council may, and if so required by the Independent Regulator, shall, appoint committees of the Council to assist the Council in the proper performance of its functions under the Constitution and the Regulatory Framework, consisting wholly of the Chairman and Members of the Governors' Council.

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5.2 A committee appointed under this order may, subject to such guidance as may be given by the Independent Regulator or restriction imposed by the Council, appoint sub-committees consisting wholly of members of the committee.

5.3 The Standing Orders of the Council, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees established by the Council. In which case the term "Chairman" is to be read as a reference to the Chairman of the Committee as the context permits, and the term "Governor" is to be read as a reference to a member of the committee also as the context permits.

5.4 Subject to Standing Order 5.5, each sub-committee shall have such terms of reference and power and be subject to such conditions (as to reporting back to the Council), as the Council shall decide and shall be in accordance with

the Regulatory Framework and any guidance issued by the Independent Regulator.

5.5 The Council may not delegate any decision-making or executive powers to any committee or sub-committee.

5.6 The committees and sub-committees established by the Council shall be such committees as are required to assist the Council in discharging its responsibilities.

6. DUTIES AND OBLIGATIONS OF GOVERORS UNDER THE SOs

6.1 Declaration of Interests

6.1.1. Requirements for declaring Interests and applicability to Governors

Governors' Council Members are required to declare interests which are relevant and material. All existing Governors should declare such interests as soon as they become aware of them.

Any Governors appointed subsequently should do so on appointment.

6.1.2 Interests which are relevant and material

Interests which should be regarded as "relevant and material" are defined in the Trust's Constitution as follows:

(i) any 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 Governors' Council

6.1.3 Advice on Interests

(i) If Governors have any doubt about the relevance of an interest, this should be discussed with the Chairman of the Trust or with the Trust's Secretary.

(ii) Influence rather than the immediacy of the relationship is more important in assessing the relevance of an interest. The interests of partners in professional partnerships including general practitioners should also be considered.

6.1.4 Recording of Interests in Governors' Council minutes

(i) At the time Governors' interests are declared, they should be recorded in the Governors' Council minutes.

(ii) Any changes in interests should be declared at the next Governors' Council meeting following the change occurring and recorded in the minutes of that meeting.

6.1.5 Publication of declared interests in Annual Report

Governors' directorships of companies likely or possibly seeking to do business with the NHS should be published in the Trust's annual report and in the register of directors' interests (see SO 6.2). The information should be kept up to date for inclusion in the register and succeeding annual reports.

6.1.6 Conflicts of interest which arise during the course of a meeting

During the course of a Governors' Council meeting, if a conflict of interest is established, the Governor concerned should withdraw from the meeting and play no part in the relevant discussion or decision.

6.2 Register of Interests

(i) The Secretary to the Trust will ensure that a Register of Interests is established to record formally declarations of interests of Governors.

(ii) These details will be kept up to date by means of a quarterly review of the Register in which any changes to interests declared during the preceding three months will be incorporated.

(iii) The Register will be available to the public and the Secretary will take reasonable steps to bring the existence of the Register to the attention of local residents and to publicise arrangements for viewing it.

6.3 Pecuniary Interests

6.3.1 Definition of terms used in interpreting 'Pecuniary' interest.

For the sake of clarity, the following definition of terms is to be used in interpreting this Standing Order:

(a.) "spouse" shall include any person who lives with another person in the same household (and any pecuniary interest of one spouse shall, if known to the other spouse, be deemed to be an interest of that other spouse);

(b.) "contract" shall include any proposed contract or other course of dealing.

(c.) “Pecuniary interest”

Subject to the exceptions set out in this Standing Order, a person shall be treated as having a pecuniary interest in a contract if:-

(i) he, or a nominee of his/hers, is a member of a company or other body (not being a public body), with which the contract is made, or to be made or which has a direct pecuniary interest in the same, or

(ii) he is a partner, associate or employee of any person with whom the contract is made or to be made or who has a direct pecuniary interest in the same.

6.3.2 Exception to Pecuniary interests

A person shall not be regarded as having a pecuniary interest in any contract if:-

(i) neither he nor any person connected with him/her has any beneficial interest in the securities of a company of which he or such person appears as a member, or

(ii) any interest that he or any person connected with him/her may have in the contract is so remote or insignificant that it cannot reasonably be regarded as likely to influence him/her in relation to considering or voting on that contract, or

(iii) those securities of any company in which he (or any person connected with him/her) has a beneficial interest do not exceed £5,000 in nominal value or one per cent of the total issued share capital of the company or of the relevant class of such capital, whichever is the less.

Provided however, that where paragraph (c) above applies the person shall nevertheless be obliged to disclose/declare their interest in accordance with Standing Order 6.1.1.

The following shall not be treated as pecuniary interests for the purposes of these standing orders:

(a) any expenses payable to the Governor (in relation to their position with the Trust);

(b) an employment contract with the Trust held by a Staff Governor;

(c) an employment contract with their employing PCT held by a PCT Governor;

(d) an employment contract with a local authority held by a Local Authority Governor;

(e) an employment contract with a partnership organisation held by an Appointed Governor;

6.4 Standards of Business Conduct

6.4.1 Trust Policy

All Trust staff, members of the Board and Governors' Council must comply with the Trust's Standards of Business Conduct and Conflicts of Interest Policy.

6.4.2 Canvassing of and Recommendations by Governors in Relation to Appointments

(i) Canvassing of members of the Governors' Council 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.

(ii) Governors' shall not solicit for any person any appointment under the Trust or recommend any person for such appointment; but this paragraph of this Standing Order shall not preclude a Governor from giving written testimonial of a candidate's ability, experience or character for submission to the Trust, if requested to provide a reference by the candidate.

6.4.3 Relatives of Members, Governors or Officers

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

(ii) The Chairman and every member of the Governors' Council shall disclose to the Trust any relationship between himself and a candidate of whose candidature the Chairman or Governor is aware.

(iii) On taking up appointment on the Governors' Council, Governors should disclose to the Trust whether they are related to any other Governor, Board member or holder of any office under the Trust.

7. SENIOR INDEPENDENT DIRECTOR

7.1 The Governors' Council is entitled to be consulted by the Board of Directors on the appointment of the Trust's Senior Independent Director.

7.2 The role of the Senior Independent Director is as set out in the Trust's "Senior Independent Director Role Description", as amended from time to time.

8. REVIEW OF STANDING ORDERS

8.1 Standing Orders shall be reviewed every two years.

ANNEX 7 – STANDING ORDERS FOR THE BOARD OF DIRECTORS

THE QUEEN ELIZABETH HOSPITAL KING'S LYNN NHS FOUNDATION TRUST

[date of adoption]

INTRODUCTION

1 INTERPRETATION

2 TRUST BOARD: POWERS, DUTIES, COMPOSITION OF MEMBERSHIP, TENURE, AND ROLE OF DIRECTORS

3 MEETINGS OF THE BOARD OF DIRECTORS

4 APPOINTMENT OF COMMITTEES & SUB-COMMITTEES

5 ARRANGEMENTS FOR THE EXERCISE OF TRUST FUNCTIONS BY DELEGATION

6 DUTIES AND OBLIGATIONS OF DIRECTORS AND SENIOR MANAGERS UNDER THE SOs

7 CUSTODY OF SEAL, SEALING OF DOCUMENTS AND SIGNATURE OF DOCUMENTS

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INTRODUCTION

The Queen Elizabeth Hospital King's Lynn NHS Foundation Trust (the Trust) is a statutory body which became a public benefit corporation on 1st February 2011 following its authorisation by Monitor-the Independent Regulator of NHS Foundation Trusts (Independent Regulator) pursuant to the National Health Service Act 2006 (the 2006 Act).

The Trust is governed by the 2006 Act, its Constitution and its Terms of Authorisation granted by Monitor. The Trust's functions are based in the Regulatory Framework which requires the Board of Directors of the Trust to adopt Standing Orders for the regulation of its proceedings and business. The Board of Directors are also required to adhere at all times to any Code of Conduct published by the Trust.

The NHS Foundation Trust Code of Governance requires that Trust Boards draw up a schedule of decisions reserved for the Board, and ensure that management arrangements are in place to enable responsibility to be clearly delegated to senior executives (Scheme of Delegation). The Regulatory Framework also requires the establishment of audit and remuneration committees with formally agreed terms of reference, and for procedures to be put in place concerning possible conflict of interests of directors.

SECTION A

1. INTERPRETATION AND DEFINITIONS FOR STANDING ORDERS

Chairman

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 should be advised by the Secretary).

"ACCOUNTING OFFICER" means the Chief Executive

"BOARD OF DIRECTORS" means the Board consisting of the Chairman, Executive and Non-Executive Directors of the Trust collectively as a body.

"CHAIRMAN OF THE COUNCIL", "CHAIRMAN OF THE BOARD OF DIRECTORS or "Chairman of the Trust" is the person appointed by the Governors' Council to lead the Board of Directors and to ensure that it successfully discharges its overall responsibility for the Trust as a whole. Except where the context or the Regulatory Framework otherwise requires, the expressions "the Chairman of the Council" and "the Chairman of the Trust" shall be deemed to include the Vice Chairman of the Trust if the Chairman is absent from the meeting or is otherwise unavailable.

“CHIEF EXECUTIVE” means the chief executive officer of the Trust, except where the context or the Regulatory Framework otherwise requires and this constitution permits, Chief Executive shall be deemed to include the **Deputy Chief Executive** if the Chief Executive is absent from the meeting or otherwise unavailable.

“COMMITTEE” means a committee or sub committee created and appointed by the Governors’ Council.

“CONSTITUTION” means the constitution of the Trust.

“EXECUTIVE DIRECTOR” means a Member of the Board of Directors who holds an executive office of the Trust.

“GOVERNOR” means a Governor of the Trust. (Governor in relation to the Governors’ Council does not include the Chairman).

“GOVERNORS’ COUNCIL” means the Governors’ Council of the Trust as defined in the Constitution and the “Council” means the Governors’ Council, unless the context otherwise requires.

The **Governors’ Council** is the name given to the Council of Governors as defined in the Health and Social Care Act 2012.
~~It is the name given to body referred to in Schedule 7 of the 2006 Act.~~

“**MEMBER”** means in the context of the Board an officer or non-officer member of the Board as the context permits. For the avoidance of doubt, it does not refer to a Foundation Trust member or a member of the Governors’ Council.

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

“NON-EXECUTIVE DIRECTOR” means a member of the Board of Directors who does not hold an executive office with the Trust.

“OFFICER” means employee of the Trust or any other person holding a paid appointment or office with the Trust.

“REGISTERS” means those registers listed in clause 30 of the constitution.

“SOs” means these Standing Orders.

“SECRETARY TO THE TRUST””SECRETARY” means the Secretary as defined in the Trust’s constitution.

"**TRUST**" means the Queen Elizabeth Hospital King’s Lynn NHS Foundation Trust.

"VICE CHAIRMAN" means the Non-Executive Director appointed from amongst the Non-Executive Directors as Vice Chairman by the Governors' Council to take on the Chairman's duties in his capacity as Chairman of the Governors' Council if the Chairman is absent for any reason.

Any term not defined above but contained in these Standing Orders and which is referred to elsewhere in the constitution shall have the same meaning as in the constitution.

2. THE TRUST BOARD: COMPOSITION OF MEMBERSHIP, TENURE AND ROLE OF DIRECTORS

2.1 Composition of the Trust Board:

- The Chairman of the Trust and
- Up to 7 other non-officer members;
- Up to 7 officer members

2.2 Appointment of Chairman and Members of the Trust is according to the provisions of the Constitution.

2.3 Terms of Office of the Chairman and Members is according to the provisions of the Constitution.

2.4 Appointment and Powers of Vice-Chairman

Is according to the provisions of the Constitution. Where the Chairman of the Trust has died or has ceased to hold office, or where they have been unable to perform their duties as Chairman owing to illness or any other cause, the Vice-Chairman shall act as Chairman until a new Chairman is appointed or the existing Chairman resumes their duties, as the case may be; and references to the Chairman in these Standing Orders shall, so long as there is no Chairman able to perform those duties, be taken to include references to the Vice-Chairman.

2.5 Role of Directors

2.5.1 The Board will function as a corporate decision-making body, Executive and Non-Executive Members will be full and equal members. Their role as members of the Board of Directors will be to ensure that the Trust meets its statutory duties and complies with its terms of authorisation.

(i) Executive Members

Executive Members shall exercise their authority within the terms of these Standing Orders

(ii) Chief Executive

The Chief Executive shall be responsible for the overall performance of the executive functions of the Trust, and should take the lead on the evaluation of the executive Directors. The Chief Executive is the Accounting Officer of the Trust.

(iii) Director of Finance

The Director of Finance shall be responsible for the provision of financial advice to the Trust and to its directors and for the supervision of financial control and accounting systems. He shall be responsible along with the Chief Executive for ensuring the discharge of obligations imposed by these Standing Orders.

(iv) Non-Executive Directors

The Non-Executive Directors shall not be granted nor shall they seek to exercise any individual executive powers on behalf of the Trust. Led by the Senior Independent Director, the non-executive directors should meet without the Chairman at least annually to evaluate the Chairman's performance , as part of a process which shall be agreed by the Governors' Council, and for appraising the Chairman and on such occasions as are deemed appropriate.

Non-Executive Directors should expect to attend Governors' Council meetings if requested.

(v) Senior Independent Director

The Senior Independent Director should be available to the Board of Directors and the Governors' Council if they have concerns which contact through the normal channels of Chairman, Chief Executive or Director of Finance has failed to resolve or for which such contact is inappropriate. The Senior Independent Director is accountable to the Board of Directors.

(vi) Chairman

The role and responsibilities are as detailed in Annex 8 of the Constitution.

2.6 Corporate role of the Board

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

2.6.2 In relation to funds held on trust, any powers exercised by the Trust as corporate trustee shall be exercised separately and distinctly from those powers exercised as a Trust.

2.7 Schedule of Matters reserved to the Board and Scheme of Delegation.

The Board has resolved that certain powers and decisions may only be exercised by the Board in formal session. Those powers which it has delegated to officers and other bodies are contained in the Scheme of Delegation.

2.8 Lead Roles for Board Members

The Chairman will ensure that the designation of lead roles or appointments of Board members as set out in any statutory or other guidance will be made in accordance with that guidance or statutory requirement.

3. MEETINGS OF THE BOARD OF DIRECTORS

3.1 Calling meetings

(i) Ordinary meetings of the Board shall be held at regular intervals at such times and places as the Board may determine.

(ii) The Chairman of the Trust may call a meeting of the Board at any time.

(iii) One third or more members of the Board may requisition a meeting in writing. If the Chairman refuses, or fails, to call a meeting within seven days of a requisition being presented, the members signing the requisition may forthwith call a meeting.

3.2 Admission of the Public

3.2.1 The public shall normally be afforded facilities to attend publicly notified formal meetings of the Board of Directors except where the Board resolves:

(i) That members of the public be excluded from a meeting or the remainder of a meeting having regard to the confidential nature of the business to be transacted, publicity on which would be prejudicial to the public interest; and/or

(ii) That in the interests of the public order the meeting adjourns for a period to be specified in such resolution to enable the Board to complete business without the presence of the public.

3.2.2 Observers at Board of Directors' meetings

The Board of Directors will decide what arrangements and terms and conditions it feels are appropriate to offer in extending an invitation to observers to attend and address any of the Trust Board's meetings and may change, alter or vary these terms and conditions as it deems fit.

3.2.3 Business proposed to be transacted when the press and public have been excluded from a meeting

Matters to be dealt with by the Trust Board following the exclusion of representatives of the press, and other members of the public, as provided in (i) and (ii) above, shall be confidential to the members of the Board. Members and Officers or any employee of the Trust in attendance shall not reveal or disclose the contents of papers marked 'In Confidence' or minutes headed 'Items Taken in Private' outside of the Trust, without the express permission of the Trust.

This prohibition shall apply equally to the content of any discussion during the Board meeting which may take place on such reports or papers.

3.2.4 Use of Mechanical or Electrical Equipment for recording or Transmission of Meetings

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

3.3 Notice of Meetings and the Business to be transacted

3.3.1 Before each meeting of the Board a written notice specifying the business proposed to be transacted shall be delivered to every member, or sent by post to the usual place of residence of each member, so as to be available to members at least 7 days before the meeting, except in case of urgency. The notice shall be signed by the Chairman or by an officer authorised by the Chairman to sign on their behalf. Want of service of such a notice on any member shall not affect the validity of a meeting.

3.3.2 In the case of a meeting called by members in default of the Chairman calling the meeting, the notice shall be signed by those members.

3.3.3 No business shall be transacted at the meeting other than that specified on the agenda, or emergency motions allowed under Standing Order 3.7.

3.3.4 A member desiring a matter to be included on an agenda shall make his/her request in writing to the Chairman at least 10 clear days before the meeting. The request should state whether the item of business is proposed to be transacted in the presence of the public and should include appropriate supporting information. Requests made less than 10 days before a meeting may be included on the agenda at the discretion of the Chairman.

3.4 Agenda and Supporting Papers

The Agenda will be sent to members 7 days before the meeting, except in case of urgency, and supporting papers, whenever possible, shall accompany the agenda, but will certainly be despatched no later than three clear days before the meeting, save in emergency.

3.5 Petitions

Where a petition has been received by the Trust the Chairman shall include the petition as an item for the agenda of the next meeting.

3.6 Notice of Motion

3.6.1 Subject to the provision of Standing Orders 3.8 'Motions: Procedure at and during a meeting' and 3.9 'Motions to rescind a resolution', a member of the Board wishing to move a motion shall send a written notice to the Secretary who will ensure that it is brought to the immediate attention of the Chairman.

3.6.2 The notice shall be delivered at least 10 clear days before the meeting. The Secretary shall include in the agenda for the meeting all notices so received that are in order and permissible under governing regulations. This Standing Order shall not prevent any motion being withdrawn or moved without notice on any business mentioned on the agenda for the meeting.

3.7 Emergency Motions

Notwithstanding paragraph 3.6.2, subject to the agreement of the Chairman, and subject also to the provision of Standing Order 3.8 'Motions: Procedure at and during a meeting', a member of the Board may give written notice of an emergency motion after the issue of the notice of meeting and agenda, up to one hour before the time fixed for

the meeting. The notice shall state the grounds of urgency. If in order, it shall be declared to the Trust Board at the commencement of the business of the meeting as an additional item included in the agenda. The Chairman's decision to include the item shall be final.

3.8 Motions: Procedure at and during a meeting

3.8.1 Who may propose

A motion may be proposed by the Chairman of the meeting or any member present. It must also be seconded by another member.

3.8.2 Contents of motions

The Chairman may exclude from the debate at their discretion any such motion of which notice was not given on the notice summoning the meeting other than a motion relating to:

(i) the reception of a report;
(ii) consideration of any item of business before the Trust Board;
(iii) the accuracy of minutes;
(iv) that the Board proceed to next business;
(v) that the Board adjourn;
(vi) that the question be now put.

3.8.3 Amendments to motions

(i) A motion for amendment shall not be discussed unless it has been proposed and seconded.
(ii) Amendments to motions shall be moved relevant to the motion, and shall not have the effect of negating the motion before the Board.
(iii) If there are a number of amendments, they shall be considered one at a time. When a motion has been amended, the amended motion shall become the substantive motion before the meeting, upon which any further amendment may be moved.

3.8.4 Rights of reply to motions

(i) Amendments

The mover of an amendment may reply to the debate on their amendment immediately prior to the mover of the original motion, who shall have the right of reply at the close of debate on the amendment, but may not otherwise speak on it.

(ii) Substantive/original motion

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

(iii) Withdrawing a motion

A motion, or an amendment to a motion, may be withdrawn.

(iv) Motions once under debate

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

(a) an amendment to the motion;
(b) the adjournment of the discussion, or the meeting;
(c) that the meeting proceed to the next business;
(d) that the question should be now put;
(e) the appointment of an 'ad hoc' committee to deal with a specific item of business;
(f) that a member/director be not further heard;
(g) In those cases where the motion is either that the meeting proceeds to the 'next business' or 'that the question be now put' in the interests of objectivity these should only be put forward by a member of the Board who has not taken part in the debate and who is eligible to vote.
(h) If a motion to proceed to the next business or that the question be now put, is carried, the Chairman should give the mover of the substantive motion under debate a right of reply, if not already exercised. The matter should then be put to the vote.

3.9 Motion to Rescind a Resolution

3.9.1 Notice of motion to rescind any resolution (or the general substance of any resolution) which has been passed within the preceding six calendar months shall bear the signature of the member who gives it and also the signature of three other members, and before considering any such motion of which notice shall have been given, the Trust Board may refer the matter to any appropriate Committee or the Chief Executive for recommendation.

3.9.2 When any such motion has been dealt with by the Trust Board it shall not be competent for any director/member other than the Chairman to propose a motion to the same effect within six

months. This Standing Order shall not apply to motions moved in pursuance of a report or recommendations of a Committee or the Chief Executive.

3.10 Chairman of meeting

3.10.1 At any meeting of the Trust Board the Chairman, if present, shall preside. If the Chairman is absent from the meeting, the Vice-Chairman, if present, shall preside.

3.10.2 If the Chairman and Vice-Chairman are absent, such member (who is not also an Executive Director of the Trust) as the members present shall choose shall preside.

3.11 Chairman's ruling

The decision of the Chairman of the meeting on questions of order, relevancy and regularity (including procedure on handling motions) and their interpretation of the Standing Orders at the meeting, shall be final.

3.12 Quorum

3.12.1 No business shall be transacted at a meeting unless at least one-third of the whole number of the Chairman and members (including at least one member who is also an Officer Member of the Trust and one member who is not) is present (rounding up, if one third is not a whole number, to the next whole number).

3.12.2 An Officer in attendance for an Executive Director (Officer Member) but without formal acting up status may not count towards the quorum.

3.12.3 If the Chairman or member has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of a declaration of a conflict of interest (see SO No.6) that person shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business.

3.13 Voting

3.13.1 Save as provided in Standing Orders 3.l4 - Suspension of Standing Orders and 3.l5 - Variation and Amendment of Standing Orders, every question put to a vote at a meeting shall be determined by a majority of the votes of members present and voting on the question. In the case of an equal vote, the person presiding (i.e.: the Chairman of the meeting shall have a second, and casting vote.)

3.13.2 At the discretion of the Chairman all questions put to the vote shall be determined by oral expression or by a show of hands, unless the Chairman directs otherwise, or it is proposed, seconded and carried that a vote be taken by paper ballot.

3.13.3 If at least one third of the members present so request, the voting on any question may be recorded so as to show how each member present voted or did not vote (except when conducted by paper ballot).

3.13.4 If a member so requests, their vote shall be recorded by name.

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

3.13.6 A manager who has been formally appointed to act up for an Officer Member during a period of incapacity to fill an Executive Director vacancy shall be entitled to exercise the voting rights of the Officer Member.

3.13.7 An officer attending the Trust Board meeting to represent an Executive Member during a period of incapacity or temporary absence without formal acting up status may not exercise the voting rights of the Executive Member. An officer's status when attending a meeting shall be recorded in the minutes.

3.14 Suspension of Standing Orders

3.14.1 Except where this would contravene any statutory provision or the rules relating to the Quorum (SO 3.12), any one or more of the Standing Orders may be suspended at any meeting, provided that at least two-thirds of the whole number of the members of the Board are present (rounding up, if two thirds is not a whole number, to the next whole number and including at least one member who is an Officer Member of the Trust and one member who is not) and that at least two-thirds of those members present (rounding up, if two thirds is not a whole

number, to the next whole number) signify their agreement to such suspension. The reason for the suspension shall be recorded in the Trust Board's minutes.

3.14.2 A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the Chairman and members of the Trust.

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

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

3.15 Variation and amendment of Standing Orders

3.15.1 These Standing Orders shall not be varied except in the following circumstances:

(I) upon a notice of motion under Standing Order 4.5;
(II) upon a recommendation of the Chairman or Chief Executive included on the agenda for the meeting;
(III) that two thirds of the Board members are present at the meeting where the variation or amendment is being discussed (rounding up, if two thirds is not a whole number, to the next whole number and including at least one member who is also an Officer Member of the Trust and one member who is not), and that at least half of the Trust's Non-Executive Directors (rounding up, if one half is not a whole number, to the next whole number) vote in favour of the amendment;
(IV) the proposed variation or amendment is approved by the Independent Regulator

3.16 Record of Attendance

The names of the Chairman and Directors/members present at the meeting shall be recorded.

3.17 Minutes

3.17.1 The minutes of the proceedings of a meeting shall be drawn up and submitted for agreement at the next ensuing meeting where they shall be signed by the person presiding at it.

3.17.2 No discussion shall take place upon the minutes except upon their accuracy or where the Chairman considers discussion appropriate.

4. APPOINTMENT OF COMMITTEES AND SUB-COMMITTEES

4.1 Appointment of Committees

4.1.1 The Trust Board may appoint committees of the Trust.

4.1.2 The Trust shall determine the membership and terms of reference of committees and sub-committees and shall if it requires to, receive and consider reports of such committees.

4.2 Applicability of Standing Orders to Committees

The Standing Orders of the Trust, as far as they are applicable, shall as appropriate apply to meetings and any committees established by the Trust. In which case the term “Chairman” is to be read as a reference to the Chairman of other committee as the context permits, and the term “member” is to be read as a reference to a member of other committee also as the context permits.

4.3 Terms of Reference

Each such committee shall have such terms of reference and powers and be subject to such conditions (as to reporting back to the Board), as the Board shall decide.

4.4 Delegation of powers by Committees to Sub-Committees

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

4.5 Approval of Appointments to Committees

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

4.6 Appointments for Statutory functions

Where the Board is required to appoint persons to a committee and/or to undertake statutory functions, and where such appointments are to operate independently of the Board such appointment shall be made in accordance with the Regulatory Framework.

4.7 Audit Committee

An Audit Committee will be established and constituted to provide the Trust Board with an independent and objective review on its financial systems, financial information and compliance with laws, guidance, and regulations governing the NHS. The Terms of Reference will be approved by the Trust Board and reviewed on a periodic basis.

4.8 Other Committees

The committees established by the Board, required to discharge or support its responsibilities are set out in the Trust's Governance Model.

5 ARRANGEMENTS FOR THE EXERCISE OF TRUST FUNCTIONS BY DELEGATION

5.1 Delegation of Functions to Committees, Officers or other bodies

The Board may make arrangements for the exercise, on behalf of the Board, of any of its functions by a committee or sub-committee appointed by virtue of Standing Order 4 or by a Director, in each case subject to such restrictions and conditions as the Trust thinks fit.

5.2 Emergency Powers and urgent decisions

The powers which the Board has reserved to itself within these Standing Orders (see Standing Order 2.7) may in emergency or for an urgent decision be exercised by the Chief Executive and the Chairman after having consulted at least two non-executive members. The exercise of such powers by the Chief Executive and Chairman shall be reported to the next formal meeting of the Trust Board for formal noting. In exercising such powers the Chief Executive and Chairman shall be acting as a committee of the Board.

5.3 Delegation to Committees

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

5.4 Delegation to Officers

5.4.1 Those functions of the Trust which have not been retained as reserved by the Board or delegated to other committee or sub-committee or a Director shall be exercised on behalf of the Trust by the Chief Executive. Subject to the NHS Foundation Trust Accounting Officer Memorandum, the Chief Executive shall determine which functions he/she will perform personally and shall nominate officers to undertake the remaining functions for which he/she will still retain accountability to the Trust.

5.4.2 The Chief Executive shall prepare a Scheme of Delegation identifying his/her proposals which shall be considered and approved by the Board. The Chief Executive may periodically propose amendment to the Scheme of Delegation which shall be considered and approved by the Board.

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

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5.5 Schedule of Matters Reserved to the Trust and Scheme of Delegation of powers

The arrangements made by the Board for the delegation of its functions are set out in the "Schedule of Matters Reserved to the Board" and "Scheme of Delegation"

5.6 Duty to report non-compliance with Standing Orders

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

6 DUTIES AND OBLIGATIONS OF BOARD MEMBERS/DIRECTORS UNDER THESE STANDING ORDERS

6.1 Declaration of Interests

6.1.1 Requirements for declaring Interests and applicability to Board Members

Trust Board Members are required to declare interests which are relevant and material. All existing Board members should declare such interests as soon as they become aware of them.

Any Board members appointed subsequently should do so on appointment.

6.1.2 Interests which are relevant and material

Interests which should be regarded as "relevant and material" are defined in the Trust's Constitution as follows:

(i) any pecuniary, personal or family interest, whether that interest is actual or potential and whether that interest is direct or indirect, in any proposed contract or other matter which is under consideration or is to be considered by the Board.

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6.1.3 Advice on Interests

(i) If Board members have any doubt about the relevance of an interest, this should be discussed with the Chairman of the Trust or with the Trust's Secretary.

(ii) Influence rather than the immediacy of the relationship is more important in assessing the relevance of an interest. The interests of partners in professional partnerships including general practitioners should also be considered.

6.1.4 Recording of Interests in Trust Board minutes

(i) At the time Board members' interests are declared, they should be recorded in the Trust Board minutes.

(ii) Any changes in interests should be declared at the next Trust Board meeting following the change occurring and recorded in the minutes of that meeting.

6.1.5 Publication of declared interests in Annual Report

Board members' directorships of companies likely or possibly seeking to do business with the NHS should be published in the Trust's annual report and in the register of directors' interests (see SO 6.2). The information should be kept up to date for inclusion in the register and succeeding annual reports.

6.1.6 Conflicts of interest which arise during the course of a meeting

During the course of a Trust Board meeting, if a conflict of interest is established, the Board member concerned should withdraw from the meeting and play no part in the relevant discussion or decision.

6.2 Register of Interests

(i) The Secretary to the Trust will ensure that a Register of Interests is established to record formally declarations of interests of Board or Committee members.

(ii) These details will be kept up to date by means of a quarterly review of the Register in which any changes to interests declared during the preceding three months will be incorporated.

(iii) The Register will be available to the public and the Secretary will take reasonable steps to bring the existence of the Register to the attention of local residents and to publicise arrangements for viewing it.

6.3 Pecuniary Interests

6.3.1 Definition of terms used in interpreting 'Pecuniary' interest.

For the sake of clarity, the following definition of terms is to be used in interpreting this Standing Order:

(a.) "spouse" shall include any person who lives with another person in the same household (and any pecuniary interest of one spouse shall, if known to the other spouse, be deemed to be an interest of that other spouse);

(b.) "contract" shall include any proposed contract or other course of dealing.

(c.) "Pecuniary interest"

Subject to the exceptions set out in this Standing Order, a person shall be treated as having a pecuniary interest in a contract if:-

(i) he, or a nominee of his/hers, is a member of a company or other body (not being a public body), with which the contract is made, or to be made or which has a direct pecuniary interest in the same, or

(ii) he is a partner, associate or employee of any person with whom the contract is made or to be made or who has a direct pecuniary interest in the same.

6.3.2 Exception to Pecuniary interests

A person shall not be regarded as having a pecuniary interest in any contract if:-

(i) neither he nor any person connected with him/her has any beneficial interest in the securities of a company of which he or such person appears as a member, or

(ii) any interest that he or any person connected with him/her may have in the contract is so remote or insignificant that it cannot reasonably be regarded as likely to influence him/her in relation to considering or voting on that contract, or

(iii) those securities of any company in which he (or any person connected with him/her) has a beneficial interest do not exceed £5,000 in nominal value or one per cent of the total issued share capital of the company or of the relevant class of such capital, whichever is the less.

Provided however, that where paragraph (c) above applies the person shall nevertheless be obliged to disclose/declare their interest in accordance with Standing Order 6.1.1.

Any remuneration, compensation or allowance payable to the Chairman or a Board Member (remuneration, compensation or allowance in relation to their position within the Trust) shall not be treated as a pecuniary interest for the purpose of these Standing Orders.

6.4 Standards of Business Conduct

6.4.1 Trust Policy

All Trust staff and members of the Board and Governors' Council must comply with the Trust's Standards of Business Conduct and Conflicts of Interest Policy.

6.4.2 Canvassing of and Recommendations by Members in Relation to Appointments

Canvassing of members of the Board or of any Committee of the Board 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.

Members of the Board shall not solicit for any person any appointment under the Trust or recommend any person for such appointment; but this paragraph of this Standing Order shall not preclude a Board member from giving written testimonial of a candidate's ability, experience or character for submission to the Trust, if requested to provide a reference by the candidate.

6.4.3 Relatives of Members, Governors or Officers

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

(ii) The Chairman and every member of the Board shall disclose to the Trust any relationship between himself and a candidate of whose candidature that member is aware.

(iii) On appointment, members of the Board (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 member, Governor or holder of any office under the Trust.

7. CUSTODY OF SEAL, SEALING OF DOCUMENTS AND SIGNATURE OF DOCUMENTS

7.1 Custody of Seal

The common seal of the Trust shall be kept by the Secretary or an officer nominated by him in a secure place.

7.2 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 or of a committee thereof or where the Board has delegated its powers.

Where it is necessary that a document shall be sealed, it must be approved and signed by the Director of Finance (or an officer nominated by him/her). The seal shall be affixed in the presence of two senior managers duly authorised by the Chief Executive, and not also from the originating department, and shall be attested by them.

7.3 Register of Sealing

The Secretary shall keep a register in which he, or another officer of the Trust authorised by him/her, shall enter a record of the sealing of every document.

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).

7.4 Signature of documents

Where any document will be a necessary step in legal proceedings on behalf of the Trust, it shall, unless any enactment otherwise requires or authorises, be signed by the Chief Executive or any Executive Director.

In land transactions, the signing of certain supporting documents will be delegated to Managers and set out clearly in the Scheme of Delegation but will not include the main or principal documents effecting the transfer (e.g. sale/purchase agreement, lease, contracts for construction works and main warranty agreements or any document which is required to be executed as a deed).

8 REVIEW OF STANDING ORDERS

Standing Orders shall be reviewed every two years.

ANNEX 8 – FURTHER PROVISIONS

1. Further Membership Restrictions

1.1 In addition to paragraph 9 (restriction on membership) an individual may not become or continue as a member of the Trust unless the individual:

(i) falls within paragraphs 6, 7 and 8 of the constitution;
(ii) is at least 16 years old

1.2 An individual may not become or continue to be a member of the Trust if:

(i) He has been involved in any act of violence which shall include inter alia serious incident of assault or violence, or one or more incident of harassment, against any of the Trust's employees or other persons that exercise functions for the purposes of the Trust, or against registered volunteers;
(ii) He is or has been identified as a vexatious complainant;
(iii) He has been excluded from the Trust's premises from which services have been provided;
(iv) The Governors' Council considers that the individual's potential membership is not in the best interests of the Trust.

2. Disqualification from membership

2.1 A member may be disqualified if after becoming a member of the Trust:

(i) he ceases to meet the criteria in paragraphs 6, 7, or 8 he shall be disqualified;
(ii) The Governors' Council considers that it is not in the best interest of the Trust for an individual to remain a member.

2.2 It is the responsibility of members to ensure their eligibility and not the Trust, but if the Trust is in notice that a member may be disqualified from membership, they shall carry out all reasonable enquiries to establish if this is the case.

2.3 Should a dispute arise as to the eligibility of an individual to be a member of the Trust the Secretary shall determine the dispute in accordance with the Act and the eligibility criteria set out in this constitution.

2.4 Further to the application of paragraph 2.3 above the potential member may appeal the Secretary's decision to the Governors' Council. The Secretary's decision shall be considered as either approved or overturned by the Governors' Council at their next meeting immediately following the Secretary's decision. The decision of the Governors' Council shall be final.

3. Termination of membership

3.1 A member shall cease to be a member if:-

(i) he resigns by notice to the Secretary;
(ii) he dies;
(iii) he is expelled from membership under this constitution;
(iv) he ceases to be entitled under this constitution to be a member of the public constituency, or any of the classes of staff constituency;
(v) If it appears to the Secretary that he no longer wishes to be a member of the Trust, and after enquiries made in accordance with a process approved by the Governors' Council, he fails to demonstrate that they wish to continue to be a member of the Trust.

3.2 A member may be expelled by a resolution approved by not less than two-thirds of the Governors present and voting at a General Meeting. A member may only be expelled in accordance with this provision on the conclusion of the Trust's Membership Conduct and Removal Procedure.

4. Membership

4.1 An individual who is eligible to become a member of the Trust may do so on application to the Trust by completing a membership application form in whatever form the Secretary specifies or, in the case of the staff constituency, has been invited to become a member under paragraph 8 of the constitution and has not informed the Trust that he does not wish to do so.

4.2 Members may attend and participate at members' meetings, vote in elections to, and stand for election to the Governors' Council, and take such other part in the affairs of the Trust as is provided in this constitution.

4.3 The Trust shall at all times strive to ensure that its membership is representative of those eligible for membership. The Trust will therefore:

4.3.1 At all times have in place a Membership Strategy, which shall be reviewed and approved by the Governors' Council at least every three years;

4.3.2 The Governors' Council shall present to every members' meeting;

(i) A report on the steps taken to ensure that the membership of its public constituencies and classes of staff constituencies are representative of those eligible for membership;
(ii) Progress of the membership strategy; and

(iii) Any changes to the membership strategy.

4.4 Any vacancy among the members or any defect in the appointment of any member shall not affect the validity of any act of the Trust.

5. Members' Meetings

The Trust shall hold a Members' Meeting at least annually.

6. The Chairman

6.1 The Chairman is responsible for leadership of the Board of Directors and the Governors' Council, ensuring their effectiveness on all aspects of the role and setting their agenda. The Chairman is responsible for ensuring that the two boards work together effectively.

6.2 The Chairman should ensure that the views of the Governors' Council and members are communicated to the Board of Directors as a whole, and should discuss the affairs of the Trust with the Governors' Council.

6.3 The Chairman should also facilitate the effective contribution of all directors and ensure that constructive relations exist between executive and non-executive directors, and between the Board of Directors and the Governors' Council.

6.4 The Chairman shall take responsibility either directly or indirectly for the induction of Governors' Council members.

6.5 The Chairman shall work in close harmony with the Chief Executive and shall ensure that key and appropriate issues are discussed by the Board of Directors and Governors' Council in a timely manner with all the necessary information and advice being made available to the Board of Directors and Governors' Council to inform their debate and ultimate resolutions.

7. Secretary

7.1 The Trust shall have a Secretary who may be an employee. A Secretary may not be a Governor, or the Chief Executive or the Finance Director. The Secretary's functions shall include:

(i) Acting as secretary to the Governors' Council and the Board of Directors, and any committees;

(ii) Summoning and attending all members' meetings, meetings of the Governors' Council and the Board of Directors and of their respective committees, and keeping the minutes of those meetings;

(iii) Keeping the register of members and other registers required by this constitution to be kept;

(iv) Having charge of the Foundation Trust's seal;

(v) Publishing to members in an appropriate form information which they should have about the Foundation Trust's affairs;

(vi) Preparing and sending to Monitor and any other statutory body all returns which are required to be made.

7.2 Minutes of every members' meeting, of every meeting of the Governors' Council and every meeting of the Board of Directors and every meeting of committees of the Governors' Council and Board of Directors are to be kept. Minutes will be circulated and agreed at the next meeting and signed by the Chairman of that meeting. The signed minutes will be conclusive evidence of the events of the meeting.

7.3 The Secretary is to be appointed and removed by the Chair and Chief Executive, jointly.

7.4 The Chair and Chief Executive of the applicant NHS Trust shall appoint the first Secretary of the Foundation Trust.

8 Senior Independent Director

The Board of Directors shall, in consultation with the Governors' Council, select a Senior Independent Director. The initial Senior Independent Director shall be the Vice-Chairman of the Trust.

9 Indemnity

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

10 Amendment to the constitution

10.1 No amendment will be made to this constitution unless:

10.1.1 It has been approved by a majority of the Governors present and voting at a general meeting called by the Governors' Council;
10.1.2 It has been approved by the Board of Directors; and
10.1.3 It has been approved by Monitor.

11 Dispute resolution

Any unresolved dispute which arises out of this constitution shall be resolved through the Trust's Constitution Dispute Resolution Procedure.