



Birmingham and Solihull Mental Health NHS Foundation Trust

CONSTITUTION

Election Rules

Standing Orders - Board of Directors

Standing Orders – Commissioning Committee

Standing Orders - Council of Governors

Version control

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1. Name

The name of the foundation trust is The Birmingham and Solihull Mental Health NHS Foundation Trust (the trust).

2. Principal purpose

2.1 *The principal purpose of the trust is the provision of goods and services for the purposes of the health service in England. The trust undertakes both provision and commissioning functions, as the Lead Provider for the West Midlands Reach Out Provider Collaborative, incorporating adult secure care and LDA secure care services, and with delegated authority for individual placements.*

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

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

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

2.3.2 the promotion and protection of public health.

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

3. Powers

3.1 The powers of the trust are set out in the 2006, 2012 and 2022 Acts, subject to any restrictions in the terms of authorisation.

3.2 The powers of the trust shall be exercised by the Board of Directors and Commissioning Committee ("Board in Committee") on behalf of the trust. Standing Orders for the Board of Directors and Commissioning Committee are provided as Annexes 8 and 9 respectively.

3.3 The Commissioning Committee has delegated responsibility from NHS England and the ICB for the commissioning, contractual and quality and safety oversight of the entirety of the contracts awarded to the Trust as the Lead Provider of the West Midlands Reach Out Provider Collaborative and the BSOL MHPC. These roles and responsibilities are set out in the Lead Provider contract. In terms of financial risk exposure, this is mitigated by the formal risk and gain share agreement that is in place between the Provider Collaborative partners. These

responsibilities are discharged through the Commissioning Committee, which is the Board in Committee.

- 3.4** Any of these powers may be delegated to a committee of directors or to an executive director or (if in accordance with and for the purpose of provisions made by or under the Mental Health Act 1983) otherwise as resolved by the Board of Directors or by the Commissioning Committee for commissioning responsibilities.
- 3.5** The Trust shall exercise its functions effectively, efficiently and economically.
- 3.6** In exercising its functions, the Trust shall have regard to the need to contribute towards compliance with the UK net zero emissions target set out in section 1 of the Climate Change Act 2008 and the environmental targets set out at section 5 of the Environmental Act 2021, and to adapt to any current or predicted impacts of climate change identified in the most recent report under section 56 of the Climate Change Act 2008. In doing so, the Trust shall also have regard to the guidance published by NHS England.

4. Membership and constituencies

Further provisions related to the Council of Governors are set out in Annex 6 – Additional Provisions – and Annex 7 – Standing Orders, Council of Governors.

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

- 4.1** a public constituency;
- 4.2** the staff constituency; or
- 4.3** the service users' and carers' constituency.

5. Application for membership

An individual who is eligible to become a member of the trust may do so on application to the trust in accordance with this Constitution, with the exception of individuals who are eligible to become members of the Staff Constituency and who shall automatically become members in accordance with 7.6 below.

6. Public Constituency

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

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

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

7. Staff Constituency

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

7.1.1 they are employed by the trust under a contract of employment which has no fixed term or has a fixed term of at least 12 months; or

7.1.2 they have been continuously employed by the trust under a contract of employment for at least 12 months.

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

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

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

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

Automatic membership by default – staff

7.6 An individual who is:

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

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

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

8. Service Users' and Carers' Constituency

- 8.1** An individual who has, within the period specified below, attended any of the trust's hospitals as either a patient or as the carer of a patient may become or continue as a member of the trust.
- 8.2** The period referred to above shall be the period from 5 July 1948 to the date of an application by the patient or carer to become a member of the trust.
- 8.3** Those individuals who are eligible for membership of the trust by reason of the previous provisions are referred to collectively as the Service Users' and Carers' Constituency.
- 8.4** The Service Users' and Carers' Constituency shall be divided into four descriptions of individuals who are eligible for membership of the Service Users' and Carers' Constituency, each description of individuals being specified within Annex 3 and being referred to as a class within the Service Users' and Carers' Constituency.
- 8.5** An individual providing care in pursuance of a contract (including a contract of employment) with a voluntary organisation, or as a volunteer for a voluntary organisation, does not come within the category of those who qualify for membership of the Service Users' and Carers' Constituency

Automatic membership by default - patients

8.6 An individual who is:

- 8.5.1** eligible to become a member of the Service Users' and Carers' Constituency (otherwise than as a carer of a patient), and
 - 8.5.2** invited by the trust to become a member of a specified constituency and a member of a specified class within that specified constituency, shall become a member of the trust as a member of that specified constituency and specified class without an application being made, unless they inform the trust that they do not wish to do so.
- 8.6** Those individuals who are eligible for membership of the Trust by reason of the previous provisions are referred to collectively as the Staff Constituency.
- 8.7** The constituency and, where applicable, the class to be specified:

8.7.1 if they are eligible to be a member of any public constituency, is that constituency,

8.7.2 otherwise, is the Service Users' and Carers' Constituency and, where applicable, the class of which they are eligible to become a member.

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 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 10 – Further Provisions.

10. Council of Governors – composition

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

10.2 The composition of the Council of Governors is specified in Annex 4.

10.3 The members of the Council of Governors, other than the appointed members, shall be chosen by election by their constituency or, where there are classes within a constituency, by their class within that constituency. The maximum number of governors to be elected by each constituency, or, where appropriate, by each class of each constituency, is specified in Annex 4.

11. Council of Governors – election of governors

11.1 Elections for elected members of the Council of Governors shall be conducted in accordance with the Model Rules for Elections, as may be varied from time to time.

11.2 The Model Rules for Elections, as may be varied from time to time, form part of this constitution and are attached at Annex 5.

11.3 A variation of the Model Rules by the Department of Health shall not constitute a variation of the terms of this constitution. For the avoidance of doubt, the trust cannot amend the Model Rules.

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

- 11.5** A vacant Governor post may be filled without an election where permitted by the Model Rules as they apply to the trust or by paragraph 7 of Annex 10.
- 11.6** The provisions in this constitution take priority over the Election Rules in the event of conflict.

12. Council of Governors - tenure

- 12.1** An elected governor shall hold office for an initial term of 3 years and shall be eligible for re-election for one subsequent term of not more than 3 years, subject to paragraph 12.3.
- 12.2** An elected governor shall cease to hold office if they cease to be a member of the constituency or class by which they were elected.
- 12.3** An elected governor shall be eligible for re-election at the end of their term, subject to a maximum period of office of 6 years.

13. Council of Governors – disqualification and removal

- 13.1** The following may not become or continue as a member of the Council of Governors:
- 13.1.1** a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;
 - 13.1.2** a person who has made a composition or arrangement with, or granted a trust deed for, their creditors and has not been discharged in respect of it;
 - 13.1.3** a person who within the preceding five years has been convicted in the British Isles of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on them.
- 13.2** Governors must be at least 16 years of age at the date they are nominated for election or appointment.
- 13.3** If a governor fails to attend three successive meetings of the Council of Governors, their tenure of office is to be immediately terminated unless the other governors are satisfied that:
- 13.3.1.** the absence was due to a reasonable cause; and
 - 13.3.2** they will be able to start attending meetings of the Council again within such a period as they consider reasonable.

13.4 Further provisions as to the circumstances in which an individual may not become or continue as a member of the Council of Governors are set out in Annex 6.

13.5 Provision for the management of a complaint against a Governor, and the removal of Governors is set out in Annex 6.

14. Council of Governors – meetings of governors

14.1 The Chair of the trust (i.e. the Chair of the Board of Directors, appointed in accordance with the provisions of paragraph 21.1 or paragraph 22.1 below) or, in his/her absence the Deputy Chair (appointed in accordance with the provisions of paragraph 23 below), shall preside at meetings of the Council of Governors.

14.2 Meetings of the Council of Governors shall normally be open to members of the public but they are not public meetings. Members of the public may be excluded from the whole or part of a meeting for special reasons either by resolution of the Council of Governors or at the discretion of the Chair of the meeting.

15. Council of Governors – standing orders

The standing orders for the practice and procedure of the Council of Governors, as may be varied from time to time, are attached at Annex 7.

16. Council of Governors - conflicts of interest of governors

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

17. Council of Governors – travel expenses

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

18. Council of Governors – further provisions

Further provisions with respect to the Council of Governors are set out in Annex 6.

19. Board of Directors – composition

19.1 The trust has a Board of Directors, which comprises both executive and non-executive directors.

19.2 The Board of Directors comprises:

19.2.1 a non-executive Chair

19.2.2 up to 6 other non-executive directors; and

19.2.3 up to 6 executive directors.

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

19.4 The Chief Executive shall be the Accountable Officer.

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

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.

19.8 One of the executive directors shall be the Deputy CEO & Executive Director of Strategy, People & Partnerships.

19.9 One of the executive directors shall be the Chief Operating Officer.

19.10 The validity of any act of the Trust is not affected by any vacancy among the Directors or by any defect in the appointment of any Director.

19.11 The Board meets separately “in Committee” - and as the full unitary board - as the Commissioning Committee. The Commissioning Committee discharges the trust’s accountability and responsibilities as lead provider for provider collaboratives.

19.12 Board of Directors – general duty

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

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

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

20.1 they are a member of the Public Constituency.

20.2 (in a case falling under any of the preceding sub-paragraphs of this paragraph) they are not disqualified by virtue of paragraph 26 below.

21. Board of Directors – appointment and removal of the Chair and other non-executive directors

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

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

22. Board of Directors – appointment of Deputy Chair

22.1 The Council of Governors at a general meeting of the Council of Governors shall appoint one of the non-executive directors as deputy chair.

22.2 If the Chair is unable to discharge his/her functions as Chair of the Trust, the Deputy Chair of the Board of Directors shall become the acting Chair of the Trust until the vacancy is filled.

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 Council of Governors.

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

24. Board of Directors – disqualification

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

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

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

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

25. Board of Directors – standing orders

The standing orders for the practice and procedure of the Board of Directors, as may be varied from time to time, are attached at Annex 8.

The standing orders for the practice and procedure of the Commissioning Committee (the Board in Committee), as may be varied from time to time, are attached at Annex 10.

26. Board of Directors - conflicts of interest of directors

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 they become aware of it. 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.

All Board members shall declare their interests as members of the Commissioning Committee, and vice versa. The Standing Orders for the Commissioning Committee 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.

27. Board of Directors – remuneration and terms of office

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

27.2 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.

28 Registers

The trust shall have:

- 28.1** a register of members showing, in respect of each member, the constituency to which they belong and, where there are classes within it, the class to which they belong;
- 28.2** a register of members of the Council of Governors;
- 28.3** a register of interests of governors. Where applicable, this should separate interests relevant to the Trust's provider role from those relevant to the Trust's commissioner role;
- 28.4** a register of directors; and
- 28.5** a register of interests of the directors. Where applicable, this should separate interests relevant to the trust's provider role from those relevant to the trust's commissioner role.

29 Registers – inspection and copies

- 29.1** The trust shall make the registers specified in paragraph 30 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.
- 29.2** The trust shall not make any part of its registers available for inspection by members of the public which shows details of –
 - 29.2.1** any member of the Service Users' and Carers' Constituency; or
 - 29.2.2** any other member of the trust, if they so request.
- 29.3** So far as the registers are required to be made available:
 - 29.3.1** they are to be available for inspection free of charge at all reasonable times; and
 - 29.3.2** a person who requests a copy of or extract from the registers is to be provided with a copy or extract.
- 29.4** 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.

30 Documents available for public inspection

- 30.1** The trust shall make the following documents available for inspection by members of the public free of charge at all reasonable times:
 - 30.1.1** a copy of the current constitution and its Annexes;
 - 30.1.2** a copy of the current authorisation;

- 30.1.3** a copy of the latest annual accounts and of any report of the auditor on them;
 - 30.1.4** a copy of the latest annual report;
 - 30.1.5** a copy of the latest information as to its forward planning; and
 - 30.1.6** a copy of any notice given under section 52 of the 2006 Act. (Including section 31 notifications from the CQC, any enforcement notices from the HSE and improvement notices from HM Coroner).
- 30.2** The trust shall also make the following documents relating to a special administration of the trust available for inspection by members of the public free of charge at all reasonable times:
- 30.2.1** a copy of any order made under section 65D (appointment of trust special administrator), 65J (power to extend time), 65KC (action following Secretary of State's rejection of final report), 65L(trusts coming out of administration) or 65LA (trusts to be dissolved) of the 2006 Act.
 - 30.2.2** a copy of any report laid under section 65D (appointment of trust special administrator), of the 2006 Act.
 - 30.2.3** a copy of any information published under section 65D (appointment of trust special administrator) of the 2006 Act.
 - 30.2.4** a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act.
 - 30.2.5** a copy of any statement provided under section 65F(administrator's draft report) of the 2006 Act.
 - 30.2.6** a copy of any notice published under section 65F(administrator's draft report), 65G (consultation plan), 65H (consultation requirements), 65J (power to extend time), 65KA(Monitor's decision), 65KB (Secretary of State's response to Monitor's decision), 65KC (action following Secretary of State's rejection of final report) or 65KD (Secretary of State's response to re-submitted final report) of the 2006 Act.
 - 30.2.7** a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act.
 - 30.2.8** a copy of any final report published under section 65I (administrator's final report),
 - 30.2.9** a copy of any statement published under section 65J (power to

extend time) or 65KC (action following Secretary of State's rejection of final report) of the 2006 Act.

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

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

30.2.12 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.

31 Auditor

31.1 The trust shall have an auditor.

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

31.3 A person may only be appointed as the auditor if they (or in the case of a firm, each of its members) are eligible to become an Auditor in accordance with paragraph 23 of schedule 7 to the 2006 Act.

31.4 The Auditor is to carry out their duties in accordance with Schedule 10 of the 2006 Act and in accordance with any directions issued by the DHSC or NHSE on standards, procedures and techniques to be adopted.

32 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. The Audit Committee will oversee ~~both~~ areas of trust responsibility (provider, commissioner and SSL).

33 Accounts

33.1 The trust must keep proper accounts and proper records in relation to the accounts. NHS Impact may with the approval of the Secretary of State give directions to the trust as to the content and form of its accounts.

33.2 The accounts are to be audited by the trust's auditor.

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

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

33.5 There shall be one set of consolidated Accounts that incorporates SSL Ltd (the trust's trading company), the trust's provider responsibilities and the trust's commissioning responsibilities.

33.6 The Trust shall lay a copy of the annual accounts, and any report of the auditor on them, before Parliament and once it has done so, send copies of those documents to NHSE.

34 Annual report and forward plans and non-NHS work

34.1 The trust shall prepare an Annual Report and send it to NHS England/Impact

34.2 The trust shall give information as to its forward planning in respect of each financial year to NHS England/Impact

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

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

34.5 Each forward plan must include information about –

34.5.1 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

34.5.2 the income it expects to receive from doing so.

34.6 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 Council of Governors must –

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

34.6.2 notify the directors of the trust of its determination.

35 Significant Transactions

35.1 The Council of Governors has powers to endorse (approve) a statutory transaction (i.e. "Significant and Material Transactions". In endorsing a statutory transaction, the Council of Governors should seek to satisfy itself that: - in approving the transaction, the Board of Directors had

been thorough and comprehensive in reaching its decision and had obtained and considered the interests of its FT members and the public at large. The Board of Directors may enter into a statutory Transaction only if more than half of the Governors in post to endorse the transaction at the relevant meeting.

35.2 A Significant Transaction relates to merger, acquisition, separation, or dissolution. It is defined in the Trust's Significant Transactions Policy (v5.3, November 2024). The Policy must be followed to ensure due process.

36. Meeting of Council of Governors to consider annual accounts and reports

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

36.1 The annual accounts

36.2 Any report of the auditor on them

36.3 The annual report.

36.4 The Annual Quality Account

36.5 The documents shall also be presented to the members of the trust at the Annual Members' Meeting by at least one member of the Board of Directors in attendance.

36.6 The trust may combine a meeting of the Council of Governors with the Annual Members' Meeting.

37. Instruments

37.1 Trust shall have a seal.

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

37.3 The trust shall have a register of sealings, which shall be maintained by the Company Secretary.

38. Amendment of the Constitution

38.1 Amendments to the Trust Constitution will be valid only if:-

38.1.1 more than half of the members of the Board of Directors of the Trust vote to approve the amendment.

38.1.2 more than half of the members of the Council of Governors present vote to approve the amendments.

38.2 Where an amendment is made to the Constitution in relation to the powers or duties of the Council of Governors (or otherwise with respect to the role that the Council of Governors has as part of the Trust):-

38.2.1 at least one (1) member of the Council of Governors must attend the next Annual General Meeting and present the amendments;

38.2.2 The Trust must give the members an opportunity to vote on the whether they approve the amendment.

If more than half of the members voting approve the amendment, the amendment continues to have effect; otherwise, it ceases to have effect if more than half of the members do not approve, and the Trust must take such steps as are necessary as a result.

38.3 It is recommended that this Constitution be reviewed once every 3years to ensure it remains fit-for-purpose and aligns with best practice and any changes to the statutory, regulatory and policy landscapes.

39. Interpretation and definitions

Unless a contrary intention is evident or the context requires otherwise, words or expressions contained in this constitution shall bear the same meaning as in the National Health Service Act 2006 as amended by the Health and Social Care Act 2012.

The 2006 Act is the National Health Service Act 2006.

The 2012 Act is the Health and Social Care Act 2012.

The 2022 Act is the Health and Social Care Act 2022.

Council of Governors is the name the Trust gives to its Board of Governors.

NHS England/Impact is the name of the Regulator.

Secretary is the Secretary of the Foundation Trust or any other person appointed to perform the duties of the Secretary, including a joint, assistant or deputy secretary.

Service Users' and Carers' Constituency is the name the Trust gives to its Patients' constituency.

Terms of authorisation are the terms of authorisation issued by Monitor under Section 35 of 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 **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.

ANNEX 1 – THE PUBLIC CONSTITUENCY

(Paragraphs 6.1 and 6.3)

Public Constituency	Minimum number of members
Birmingham	7
Solihull	1
Rest of England and Wales	0

ANNEX 2 – THE STAFF CONSTITUENCY

(Paragraphs 6.4 and 6.5)

Class of Staff Constituency	Minimum number of members
Clinical staff	1
Non-clinical staff	1

ANNEX 3 – THE SERVICE USERS’ AND CARERS’ CONSTITUENCY

Class of Service Users’ and Carers’ Constituency	Minimum number of members
Birmingham Service Users*	7
Solihull Service User*	1
Rest of England and Wales Service User*	0

* refers to the area (defined as in Annex 1) in which the Service User is resident.

ANNEX 4 – COMPOSITION OF COUNCIL OF GOVERNORS (update)

(Paragraphs 9.2 and 9.3)

Elected Governors

Constituency	Governors
Southeast Birmingham- includes Hall Green, Edgbaston, Selly Oak and Moseley	Each constituency shall vote the following two types of governors: •Public Governor = 1 •Service User and Carer Governor = 1
East Birmingham- includes Hodge Hill, Yardley	
Solihull (inc. Meridan) and Coventry	
Northeast Birmingham- includes Erdington and Sutton Coldfield	
Rest of West Midlands	
Central Birmingham- includes Ladywood	
North Birmingham- includes Perry Barr	
South Birmingham & Worcester- includes Northfield	

Staff Elected Governors

Staff Group	
Non-medical clinical staff	1
clinical staff	1
Total staff	2

Stakeholder Governors

Appointer	Number of governors
Birmingham City Council	1
Solihull Metropolitan Borough Council	1
Birmingham and Solihull Councils for Voluntary Services	1
University of Birmingham	1
Birmingham City University	1
West Midlands Police	1

*Council of Governors establishment number = 24.

ANNEX 5

MODEL ELECTION RULES 2014

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PART 1 - INTERPRETATION

1. Interpretation

1.1 In these rules, unless the context otherwise requires:

“2006 Act” means the National Health Service Act 2006;

“Corporation” means the public benefit corporation subject to this constitution;

“Council of governors” means the council of governors of the corporation;

“Declaration of identity” has the meaning set out in rule 21.1;

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

“e-voting” means voting using either the internet, telephone or text message;

“e-voting information” has the meaning set out in rule 24.2;

“ID declaration form” has the meaning set out in Rule 21.1; “internet voting record” has the meaning set out in rule 26.4(d);

“Internet voting system” means such computer hardware and software, data other equipment and services as may be provided by the returning officer for the purpose of enabling voters to cast their votes using the internet;

“Lead governor” means the governor nominated by the corporation to fulfil the role described in Appendix B to The NHS Foundation Trust Code of Governance (Monitor, December 2013) or any later version of such code.

“list of eligible voters” means the list referred to in rule 22.1, containing the information in rule 22.2;

“Method of polling” means a method of casting a vote in a poll, which may be by post, internet, text message or telephone;

“Numerical voting code” has the meaning set out in rule 64.2(b)

“Polling website” has the meaning set out in rule 26.1;

“Postal voting information” has the meaning set out in rule 24.1;

“Telephone short code” means a short telephone number used for the purposes of submitting a vote by text message;

“Telephone voting facility” has the meaning set out in rule 26.2;

“Telephone voting record” has the meaning set out in rule 26.5 (d);

“Text message voting facility” has the meaning set out in rule 26.3;

“Text voting record” has the meaning set out in rule 26.6 (d);

“the telephone voting system” means such telephone voting facility as may be provided by the returning officer for the purpose of enabling voters to cast their votes by telephone;

“the text message voting system” means such text messaging voting facility as may be provided by the returning officer for the purpose of enabling voters to cast their votes by text message;

“Voter ID number” means a unique, randomly generated numeric identifier allocated to each voter by the Returning Officer for the purpose of e-voting,

“Voting information” means postal voting information and/or e-voting information

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

PART 2 – TIMETABLE FOR ELECTIONS

2. Timetable

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

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

3. Computation of time

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

- (a) a Saturday or Sunday;
- (b) Christmas day, Good Friday, or a bank holiday, or

(c) a day appointed for public thanksgiving or mourning,

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

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

PART 3 - RETURNING OFFICER

4. Returning Officer

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

5. Staff

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

6. Expenditure

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

7. Duty of co-operation

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

PART 4 - STAGES COMMON TO CONTESTED AND UNCONTESTED ELECTIONS

8. Notice of election

- 8.1 The returning officer is to publish a notice of the election stating:

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

9. Nomination of candidates

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

9.2 The returning officer:

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

10. Candidate's particulars

10.1 The nomination form must state the candidate's:

- (a) Full name,
- (b) Contact address in full (which should be a postal address although an e-mail address may also be provided for the purposes of electronic communication), and
- (c) Constituency, or class within a constituency, of which the candidate is a member.

11. Declaration of interests

11.1 The nomination form must state:

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

12. Declaration of eligibility

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

- (a) that he or she is not prevented from being a member of the council of governors by paragraph 8 of Schedule 7 of the 2006 Act or by any provision of the constitution; and,
- (b) for a member of the public or patient constituency, of the particulars of his or her qualification to vote as a member of that constituency, or class within that constituency, for which the election is being held.

13. Signature of candidate

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

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

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

14. Decisions as to the validity of nomination

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

- (a) decides that the candidate is not eligible to stand,
- (b) decides that the nomination form is invalid,
- (c) receives satisfactory proof that the candidate has died, or

- (d) receives a written request by the candidate of their withdrawal from candidacy.
- 14.2 The returning officer is entitled to decide that a nomination form is invalid only on one of the following grounds:
- (a) that the paper is not received on or before the final time and date for return of nomination forms, as specified in the notice of the election,
 - (b) that the paper does not contain the candidate's particulars, as required by rule 10;
 - (c) that the paper does not contain a declaration of the interests of the candidate, as required by rule 11,
 - (d) that the paper does not include a declaration of eligibility as required by rule 12, or
 - (e) that the paper is not signed and dated by the candidate, if required by rule
- 14.3 The returning officer is to examine each nomination form as soon as is practicable after he or she has received it, and decide whether the candidate has been validly nominated.
- 14.4 Where the returning officer decides that a nomination is invalid, the returning officer must endorse this on the nomination form, stating the reasons for their decision.
- 14.5 The returning officer is to send notice of the decision as to whether a nomination is valid or invalid to the candidate at the contact address given in the candidate's nomination form. If an e-mail address has been given in the candidate's nomination form (in addition to the candidate's postal address), the returning officer may send notice of the decision to that address.

15. Publication of statement of candidates

- 15.1 The returning officer is to prepare and publish a statement showing the candidates who are standing for election.
- 15.2 The statement must show:
- (a) the name, contact address (which shall be the candidate's postal 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 form.

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

15.4 The returning officer must send a copy of the statement of candidates and copies of the nomination forms to the corporation as soon as is practicable after publishing the statement.

16. Inspection of statement of nominated candidates and nomination forms

16.1 The corporation is to make the statement of the candidates and the nomination forms supplied by the returning officer under rule 15.4 available for inspection by members of the corporation free of charge at all reasonable times.

16.2 If a member of the corporation requests a copy or extract of the statement of candidates or their nomination forms, the corporation is to provide that member with the copy or extract free of charge.

17. Withdrawal of candidates

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

18. Method of election

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

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

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

(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.

PART 5 - CONTESTED ELECTIONS

19. Poll to be taken by ballot

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

20. The ballot paper

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

20.2 Every ballot paper must specify:

- (a) the name of the corporation,
- (b) the constituency, or class within a constituency, for which the election is being held,
- (c) the number of members of the council of governors to be elected from that constituency, or class within that constituency,
- (d) the names and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
- (e) instructions on how to vote by all available methods of polling, including the relevant voter's voter ID number if one or more e-voting methods of polling are available,
- (f) if the ballot paper is to be returned by post, the address for its return and the date and time of the close of the poll, and
- (g) the contact details of the returning officer.

20.3 Each ballot paper must have a unique identifier.

20.4 Each ballot paper must have features incorporated into it to prevent it from being reproduced.

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

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

- (a) that the voter is the person:
 - (i) to whom the ballot paper was addressed, and/or
 - (ii) to whom the voter ID number contained within the e-voting information was allocated,
- (b) that he or she has not marked or returned any other voting information in the election, and

- (c) the particulars of his or her qualification to vote as a member of the constituency or class within the constituency for which the election is being held, ("declaration of identity") and the corporation shall make such arrangements as it considers appropriate to facilitate the making and the return of a declaration of identity by each voter, whether by the completion of a paper form ("ID declaration form") or the use of an electronic method.
- 21.2 The voter must be required to return his or her declaration of identity with his or her ballot.
- 21.3 The voting information shall caution the voter that if the declaration of identity is not duly returned or is returned without having been made correctly, any vote cast by the voter may be declared invalid.

Action to be taken before the poll

22. List of eligible voters

- 22.1 The corporation is to provide the returning officer with a list of the members of the constituency or class within a constituency for which the election is being held who are eligible to vote by virtue of rule 27 as soon as is reasonably practicable after the final date for the delivery of notices of withdrawals by candidates from an election.
- 22.2 The list is to include, for each member:
 - (a) a postal address; and,
 - (b) the member's e-mail address, if this has been providedto which his or her voting information may, subject to rule 22.3, be sent.
- 22.3 The corporation may decide that the e-voting information is to be sent only by e-mail to those members in the list of eligible voters for whom an e-mail address is included in that list.

23. Notice of poll

- 23.1 The returning officer is to publish a notice of the poll stating:
 - (a) the name of the corporation,
 - (b) the constituency, or class within a constituency, for which the election is being held,
 - (c) the number of members of the council of governors to be elected from that constituency, or class with that constituency, (d) the names, contact addresses, and other particulars of the candidates standing for

election, with the details and order being the same as in the statement of nominated candidates,

- (e) that the ballot papers for the election are to be issued and returned, if appropriate, by post,
- (f) the methods of polling by which votes may be cast at the election by voters in a constituency or class within a constituency, as determined by the corporation in accordance with rule 19.3,
- (g) the address for return of the ballot papers,
- (h) the uniform resource locator (url) where, if internet voting is a method of polling, the polling website is located;
- (i) the telephone number where, if telephone voting is a method of polling, the telephone voting facility is located,
- (j) the telephone number or telephone short code where, if text message voting is a method of polling, the text message voting facility is located,
- (k) the date and time of the close of the poll,
- (l) the address and final dates for applications for replacement voting information, and
- (m) the contact details of the returning officer.

24. Issue of voting information by returning officer

24.1 Subject to rule 24.3, as soon as is reasonably practicable on or after the publication of the notice of the poll, the returning officer is to send the following information by post to each member of the corporation named in the list of eligible voters:

- (a) a ballot paper and ballot paper envelope,
 - (b) the ID declaration form (if required),
 - (c) information about each candidate standing for election, pursuant to rule 61 of these rules, and
 - (d) a covering envelope;
- ("postal voting information").

24.2 Subject to rules 24.3 and 24.4, as soon as is reasonably practicable on or after the publication of the notice of the poll, the returning officer is to send the following information by e-mail and/ or by post to each member of the corporation named in the list of eligible voters whom the corporation

determines in accordance with rule 19.3 and/ or rule 19.4 may cast his or her vote by an e-voting method of polling:

- (a) instructions on how to vote and how to make a declaration of identity (if required),
 - (b) the voter's voter ID number,
 - (c) information about each candidate standing for election, pursuant to rule 64 of these rules, or details of where this information is readily available on the internet or available in such other formats as the Returning Officer thinks appropriate, (d) contact details of the returning officer,
- ("e-voting information").

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

- (a) only be sent postal voting information; or
 - (b) only be sent e-voting information; or
 - (c) be sent both postal voting information and e-voting information;
- for the purposes of the poll.

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

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

25. Ballot paper envelope and covering envelope

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

25.2 The covering envelope is to have:

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

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

- (a) the completed ID declaration form if required, and
- (b) the ballot paper envelope, with the ballot paper sealed inside it.

26. E-voting systems

- 26.1** If internet voting is a method of polling for the relevant election then the returning officer must provide a website for the purpose of voting over the internet (in these rules referred to as "the polling website").
- 26.2** If telephone voting is a method of polling for the relevant election then the returning officer must provide an automated telephone system for the purpose of voting by the use of a touch-tone telephone (in these rules referred to as "the telephone voting facility").
- 26.3** If text message voting is a method of polling for the relevant election then the returning officer must provide an automated text messaging system for the purpose of voting by text message (in these rules referred to as "the text message voting facility").
- 26.4** The returning officer shall ensure that the polling website and internet voting system provided will:
- (a) require a voter to:
 - (i) enter his or her voter ID number; and
 - (ii) where the election is for a public or patient constituency, make a declaration of identity;in order to be able to cast his or her vote;
 - (b) specify:
 - (i) the name of the corporation,
 - (ii) the constituency, or class within a constituency, for which the election is being held,
 - (iii) the number of members of the council of governors to be elected from that constituency, or class within that constituency,
 - (iv) the names and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
 - (v) instructions on how to vote and how to make a declaration of identity,
 - (vi) the date and time of the close of the poll, and

- (vii) the contact details of the returning officer;
- (c) prevent a voter from voting for more candidates than he or she is entitled to at the election;
- (d) create a record ("internet voting record") that is stored in the internet voting system in respect of each vote cast by a voter using the internet that comprises of-
 - (i) the voter's voter ID number;
 - (ii) the voter's declaration of identity (where required);
 - (iii) the candidate or candidates for whom the voter has voted; and
 - (iv) the date and time of the voter's vote,
- (e) if the voter's vote has been duly cast and recorded, provide the voter with confirmation of this; and
- (f) prevent any voter from voting after the close of poll.

26.5 The returning officer shall ensure that the telephone voting facility and telephone voting system provided will:

- (a) require a voter to
 - (i) enter his or her voter ID number in order to be able to cast his or her vote; and
 - (ii) where the election is for a public or patient constituency, make a declaration of identity;
- (b) specify:
 - (i) the name of the corporation,
 - (ii) the constituency, or class within a constituency, for which the election is being held,
 - (iii) the number of members of the council of governors to be elected from that constituency, or class within that constituency,
 - (iv) instructions on how to vote and how to make a declaration of identity,
 - (v) the date and time of the close of the poll, and
 - (vi) the contact details of the returning officer;

- (c) prevent a voter from voting for more candidates than he or she is entitled to at the election;
- (d) create a record ("telephone voting record") that is stored in the telephone voting system in respect of each vote cast by a voter using the telephone that comprises of:
 - (i) the voter's voter ID number;
 - (ii) the voter's declaration of identity (where required);
 - (iii) the candidate or candidates for whom the voter has voted; and
 - (iv) the date and time of the voter's vote
- (e) if the voter's vote has been duly cast and recorded, provide the voter with confirmation of this;
- (f) prevent any voter from voting after the close of poll.

26.6 The returning officer shall ensure that the text message voting facility and text messaging voting system provided will:

- (a) require a voter to:
 - (i) provide his or her voter ID number; and
 - (ii) where the election is for a public or patient constituency, make a declaration of identity;

in order to be able to cast his or her vote;
- (b) prevent a voter from voting for more candidates than he or she is entitled to at the election;
- (d) create a record ("text voting record") that is stored in the text messaging voting system in respect of each vote cast by a voter by text message that comprises of:
 - (i) the voter's voter ID number;
 - (ii) the voter's declaration of identity (where required);
 - (ii) the candidate or candidates for whom the voter has voted; and
 - (iii) the date and time of the voter's vote
- (e) if the voter's vote has been duly cast and recorded, provide the voter with confirmation of this;
- (f) prevent any voter from voting after the close of poll.

The poll

27. Eligibility to vote

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

28. Voting by persons who require assistance

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

29. Spoilt ballot papers and spoilt text message votes

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

- 29.6** On receiving an application, the returning officer is to obtain the details of the voter ID number on the spoilt text message vote, if he or she can obtain it.
- 29.7** The returning officer may not issue a replacement voter ID number in respect of a spoilt text message vote unless he or she is satisfied as to the voter's identity.
- 29.8** After issuing a replacement voter ID number in respect of a spoilt text message vote, the returning officer shall enter in a list ("the list of spoilt text message votes"):
- (a) the name of the voter, and
 - (b) the details of the voter ID number on the spoilt text message vote (if that office was able to obtain it), and
 - (c) the details of the replacement voter ID number issued to the voter.

30. Lost voting information

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

31. Issue of replacement voting information

- 31.1** If a person applies for replacement voting information under rule 29 or 30 and a declaration of identity has already been received by the returning officer in

the name of that voter, the returning officer may not issue replacement voting information unless, in addition to the requirements imposed by rule 29.3 or 30.2, he or she is also satisfied that that person has not already voted in the election, notwithstanding the fact that a declaration of identity if required has already been received by the returning officer in the name of that voter.

31.2 After issuing replacement voting information under this rule, the returning officer shall enter in a list ("the list of tendered voting information"):

- (a) the name of the voter,
- (b) the unique identifier of any replacement ballot paper issued under this rule;
- (c) the voter ID number of the voter.

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

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

Polling by internet, telephone or text

33. Procedure for remote voting by internet

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

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

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

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

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

34. Voting procedure for remote voting by telephone

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

- 34.2** When prompted to do so, the voter will need to enter his or her voter ID number using the keypad.
- 34.3** If the telephone voting facility authenticates the voter ID number, the voter will be prompted to vote in the election.
- 34.4** When prompted to do so the voter may then cast his or her vote by keying in the numerical voting code of the candidate or candidates, for whom he or she wishes to vote.
- 34.5** The voter will not be able to access the telephone voting facility for an election once his or her vote at that election has been cast.

35. Voting procedure for remote voting by text message

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

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

36. Receipt of voting documents

36.1 Where the returning officer receives:

- (a) a covering envelope, or
- (b) any other envelope containing an ID declaration form if required, a ballot paper envelope, or a ballot paper,

before the close of the poll, that officer is to open it as soon as is practicable; and rules 37 and 38 are to apply.

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

- (a) the candidate for whom a voter has voted, or
- (b) the unique identifier on a ballot paper.

- 36.3** The returning officer must make arrangements to ensure the safety and security of the ballot papers and other documents.

37. Validity of votes

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

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

38. Declaration of identity but no ballot paper (public and patient constituency).

38.1 Where the returning officer receives an ID declaration form if required but no ballot paper, the returning officer is to:

- (a) mark the ID declaration form “disqualified”,
- (b) record the name of the voter in the list of disqualified documents, indicating that a declaration of identity was received from the voter without a ballot paper, and
- (c) place the ID declaration form in a separate packet.

It should not be possible, technically, to make a declaration of identity electronically without also submitting a vote.

39. De-duplication of votes

39.1 Where different methods of polling are being used in an election, the returning officer shall examine all votes cast to ascertain if a voter ID number has been used more than once to cast a vote in the election.

39.2 If the returning officer ascertains that a voter ID number has been used more than once to cast a vote in the election he or she shall:

- (a) only accept as duly returned the first vote received that was cast using the relevant voter ID number; and
- (b) mark as “disqualified” all other votes that were cast using the relevant voter ID number

39.3 Where a ballot paper is disqualified under this rule the returning officer shall:

- (a) mark the ballot paper “disqualified”,
- (b) if there is an ID declaration form accompanying the ballot paper, mark it “disqualified” and attach it to the ballot paper,
- (c) record the unique identifier and the voter ID number on the ballot paper in the list of disqualified documents;
- (d) place the document or documents in a separate packet; and
- (e) disregard the ballot paper when counting the votes in accordance with these rules.

39.4 Where an internet voting record, telephone voting record or text voting record is disqualified under this rule the returning officer shall:

- (a) mark the internet voting record, telephone voting record or text voting record (as applicable) “disqualified”,
- (b) record the voter ID number on the internet voting record, telephone voting record or text voting record (as applicable) in the list of disqualified documents;
- (c) place the internet voting record, telephone voting record or text voting record (as applicable) in a separate packet, and
- (d) disregard the internet voting record, telephone voting record or text voting record (as applicable) when counting the votes in accordance with these rules.

40. Sealing of packets

40.1 As soon as is possible after the close of the poll and after the completion of the procedure under rules 37 and 38, the returning officer is to seal the packets containing:

- (a) the disqualified documents, together with the list of disqualified documents inside it,
- (b) the ID declaration forms, if required,
- (c) the list of spoilt ballot papers and the list of spoilt text message votes,
- (d) the list of lost ballot documents,
- (e) the list of eligible voters, and
- (f) the list of tendered voting information and ensure that complete electronic copies of the internet voting records, telephone voting records and text voting records created in accordance with rule 26 are held in a device suitable for the purpose of storage.

PART 6 - COUNTING THE VOTES

STV41. Interpretation of Part 6

STV41.1 In Part 6 of these rules:

“ballot document” means a ballot paper, internet voting record, telephone voting record or text voting record.

“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 document:

- (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 STV49,

“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 STV46,

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

“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 vote” means a ballot document on which, following a first preference, a second or subsequent preference is recorded in consecutive numerical order for a continuing candidate,

“transferred vote” means a vote derived from a ballot document on which a second or subsequent preference is recorded for the candidate to whom that ballot document has been transferred, and

“transfer value” means the value of a transferred vote calculated in accordance with rules STV47.4 or STV47.7.

42. Arrangements for counting of the votes

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

42.2 The returning officer may make arrangements for any votes to be counted using vote counting software where:

- (a) the board of directors and the council of governors of the corporation have approved:
 - (i) the use of such software for the purpose of counting votes in the relevant election, and
 - (ii) a policy governing the use of such software, and
- (b) the corporation and the returning officer are satisfied that the use of such software will produce an accurate result.

43. The count

43.1 The returning officer is to:

- (a) count and record the number of:
 - (iii) ballot papers that have been returned; and
 - (iv) the number of internet voting records, telephone voting records and/or text voting records that have been created, and
- (b) count the votes according to the provisions in this Part of the rules and/or the provisions of any policy approved pursuant to rule 42.2(ii) where vote counting software is being used.

43.2 The returning officer, while counting and recording the number of ballot papers, internet voting records, telephone voting records and/or text voting records and counting the votes, must make arrangements to ensure that no

person obtains or communicates information as to the unique identifier on a ballot paper or the voter ID number on an internet voting record, telephone voting record or text voting record.

- 43.3** The returning officer is to proceed continuously with counting the votes as far as is practicable.

STV44. Rejected ballot papers and rejected text voting records

STV44.1 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.

STV44.2 The returning officer is to endorse the word “rejected” on any ballot paper which under this rule is not to be counted.

STV44.3 Any text voting record:

- (a) on which the figure “1” standing alone is not placed so as to indicate a first preference for any candidate,
- (b) on which anything is written or marked by which the voter can be identified except the unique identifier, or
- (c) which is unmarked or rejected because of uncertainty,

shall be rejected and not counted, but the text voting record shall not be rejected by reason only of carrying the words “one”, “two”, “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.

STV44.4 The returning officer is to endorse the word “rejected” on any text voting record which under this rule is not to be counted.

STV44.5 The returning officer is to draw up a statement showing the number of ballot papers rejected by him or her under each of the subparagraphs (a) to (d) of rule STV44.1 and the number of text voting records rejected by him or her under each of the sub-paragraphs (a) to (c) of rule STV44.3.

FPP44. Rejected ballot papers and rejected text voting records

FPP44.1 Any ballot paper:

- (a) which does not bear the features that have been incorporated into the other ballot papers to prevent them from being reproduced,
- (b) on which votes are given for more candidates than the voter is entitled to vote,
- (c) on which anything is written or marked by which the voter can be identified except the unique identifier, or
- (d) which is unmarked or rejected because of uncertainty, shall, subject to rules FPP44.2 and FPP44.3, be rejected and not counted.

FPP44.2

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

FPP44.3 A ballot paper on which a vote is marked:

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

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

FPP44.4 The returning officer is to:

- (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 rules FPP44.2 and FPP 44.3, endorse the words “rejected in part” on the ballot paper and indicate which vote or votes have been counted.

FPP44.5 The returning officer is to draw up a statement showing the number of rejected ballot papers under the following headings:

- (a) does not bear proper features that have been incorporated into the ballot paper,
- (b) voting for more candidates than the voter is entitled to,
- (c) writing or mark 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.

FPP44.6 Any text voting record:

- (a) on which votes are given for more candidates than the voter is entitled to vote,
- (b) on which anything is written or marked by which the voter can be identified except the voter ID number, or
- (c) which is unmarked or rejected because of uncertainty,

shall, subject to rules FPP44.7 and FPP44.8, be rejected and not counted.

FPP44.7

Where the voter is entitled to vote for more than one candidate, a text voting record is not to be rejected because of uncertainty in respect of any vote where no uncertainty arises, and that vote is to be counted.

FPP44.8 A text voting record on which a vote is marked:

- (a) otherwise than by means of a clear mark,
- (b) by more than one mark,

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

FPP44.9 The returning officer is to:

- (a) endorse the word “rejected” on any text voting record which under this rule is not to be counted, and

- (b) in the case of a text voting record on which any vote is counted under rules FPP44.7 and FPP 44.8, endorse the words “rejected in part” on the text voting record and indicate which vote or votes have been counted.

FPP44.10

The returning officer is to draw up a statement showing the number of rejected text voting records under the following headings:

- (a) voting for more candidates than the voter is entitled to,
- (b) writing or mark by which voter could be identified, and
- (c) unmarked or rejected because of uncertainty,

and, where applicable, each heading must record the number of text voting records rejected in part.

STV45. First stage

- STV45.1 The returning officer is to sort the ballot documents into parcels according to the candidates for whom the first preference votes are given.
- STV45.2 The returning officer is to then count the number of first preference votes given on ballot documents for each candidate, and is to record those numbers.
- STV45.3 The returning officer is to also ascertain and record the number of valid ballot documents.

STV46. The quota

- STV46.1 The returning officer is to divide the number of valid ballot documents by a number exceeding by one the number of members to be elected.
- STV46.2 The result, increased by one, of the division under rule STV46.1 (any fraction being disregarded) shall be the number of votes sufficient to secure the election of a candidate (in these rules referred to as “the quota”).
- STV46.3 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 rules STV47.1 to STV47.3 has been complied with.

STV47. Transfer of votes

- STV47.1 Where the number of first preference votes for any candidate exceeds the quota, the returning officer is to sort all the ballot documents on which first preference votes are given for that candidate into sub-parcels so that they are grouped:
- (a) according to next available preference given on those ballot documents for any continuing candidate, or
 - (b) where no such preference is given, as the sub-parcel of non-transferable votes.
- STV47.2 The returning officer is to count the number of ballot documents in each parcel referred to in rule STV47.1.
- STV47.3 The returning officer is, in accordance with this rule and rule STV48, to transfer each sub-parcel of ballot documents referred to in rule STV47.1(a) to the candidate for whom the next available preference is given on those ballot documents.
- STV47.4 The vote on each ballot document transferred under rule STV47.3 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 documents on which those votes are given, the calculation being made to two decimal places (ignoring the remainder if any).
- STV47.5 Where at the end of any stage of the count involving the transfer of ballot documents, the number of votes for any candidate exceeds the quota, the returning officer is to sort the ballot documents in the sub-parcel of transferred votes which was last received by that candidate into separate sub-parcels so that they are grouped:
- (a) according to the next available preference given on those ballot documents for any continuing candidate, or
 - (b) where no such preference is given, as the sub-parcel of non-transferable votes.
- STV47.6 The returning officer is, in accordance with this rule and rule STV48, to transfer each sub-parcel of ballot documents referred to in rule STV47.5(a) to the candidate for whom the next available preference is given on those ballot documents.

- STV47.7 The vote on each ballot document transferred under rule STV47.6 shall be at:
- (a) a transfer value calculated as set out in rule STV47.4(b), 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.
- STV47.8 Each transfer of a surplus constitutes a stage in the count.
- STV47.9 Subject to rule STV47.10, the returning officer shall proceed to transfer transferable ballot documents until no candidate who is deemed to be elected has a surplus or all the vacancies have been filled.
- STV47.10 Transferable ballot documents shall not be liable to be transferred where any surplus or surpluses which, at a particular stage of the count, have not already been transferred, are:
- (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.
- STV47.11 This rule does not apply at an election where there is only one vacancy.

STV48. Supplementary provisions on transfer

- STV48.1 If, at any stage of the count, two or more candidates have surpluses, the transferable ballot documents 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 ballot documents 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 ballot documents of the candidate on whom the lot falls shall be transferred first.
- STV48.2 The returning officer shall, on each transfer of transferable ballot documents under rule STV47:

- (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.

STV48.3 All ballot documents transferred under rule STV47 or STV49 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 ballot document or, as the case may be, all the ballot documents in that sub-parcel.

STV48.4 Where a ballot document is so marked that it is unclear to the returning officer at any stage of the count under rule STV47 or STV49 for which candidate the next preference is recorded, the returning officer shall treat any vote on that ballot document as a non-transferable vote; and votes on a ballot document shall be so treated where, for example, the names of two or more candidates (whether continuing candidates or not) are so marked that, in the opinion of the returning officer, the same order of preference is indicated or the numerical sequence is broken.

STV49. Exclusion of candidates

STV49.1 If:

- (a) all transferable ballot documents which under the provisions of rule STV47 (including that rule as applied by rule STV49.11) and this rule are required to be transferred, have been transferred, and
- (b) subject to rule STV50, one or more vacancies remain to be filled,

the returning officer shall exclude from the election at that stage the candidate with the then lowest vote (or, where rule STV49.12 applies, the candidates with the then lowest votes).

- STV9.2 The returning officer shall sort all the ballot documents on which first preference votes are given for the candidate or candidates excluded under rule STV49.1 into two sub-parcels so that they are grouped as:
- (a) ballot documents on which a next available preference is given, and
 - (b) ballot documents on which no such preference is given (thereby including ballot documents on which preferences are given only for candidates who are deemed to be elected or are excluded).
- STV49.3 The returning officer shall, in accordance with this rule and rule STV48, transfer each sub-parcel of ballot documents referred to in rule STV49.2 to the candidate for whom the next available preference is given on those ballot documents.
- STV49.4 The exclusion of a candidate or of two or more candidates together, constitutes a further stage of the count.
- STV49.5 If, subject to rule STV50, one or more vacancies still remain to be filled, the returning officer shall then sort the transferable ballot documents, if any, which had been transferred to any candidate excluded under rule STV49.1 into sub- parcels according to their transfer value.
- STV49.6 The returning officer shall transfer those ballot documents in the sub-parcel of transferable ballot documents with the highest transfer value to the continuing candidates in accordance with the next available preferences given on those ballot documents (thereby passing over candidates who are deemed to be elected or are excluded).
- STV49.7 The vote on each transferable ballot document transferred under rule STV49.6 shall be at the value at which that vote was received by the candidate excluded under rule STV49.1.
- STV9.8 Any ballot documents on which no next available preferences have been expressed shall be set aside as non-transferable votes.
- STV49.9 After the returning officer has completed the transfer of the ballot documents in the sub-parcel of ballot documents with the highest transfer value he or she shall proceed to transfer in the same way the sub-parcel of ballot documents with the next highest value and so on until he has dealt with each sub-parcel of a candidate excluded under rule STV49.1.
- STV49.10 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.
- STV49.11 If after a transfer of votes under any provision of this rule, a candidate has a surplus, that surplus shall be dealt with in accordance with rules STV47.5 to STV47.10 and rule STV48.
- STV49.12 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.
- STV49.13 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.

STV50. Filling of last vacancies

- STV50.1 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.
- STV50.2 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.

- STV50.3 Where the last vacancies can be filled under this rule, no further transfer of votes shall be made.
- STV51. Order of election of candidates
- STV51.1 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 STV47.10.
- STV51.2 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.
- STV51.3 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.
- STV51.4 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.

FPP51. Equality of votes

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

PART 7 - FINAL PROCEEDINGS IN CONTESTED AND UNCONTESTED ELECTIONS

FPP52. Declaration of result for contested elections

- FPP52.1 In a contested election, when the result of the poll has been ascertained, the returning officer is to:
- (a) declare the candidate or candidates whom more votes have been given than for the other candidates, up to the number of vacancies to be filled on the council of governors from the constituency, or class within a constituency, for which the election is being held to be elected,

- (b) give notice of the name of each candidate who he or she has declared elected:
 - (i) where the election is held under a proposed constitution pursuant to powers conferred on the [insert name] NHS Trust by section 33(4) of the 2006 Act, to the 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 whom he or she has declared elected.

FPP52.2 The returning officer is to make:

- (a) the total number of votes given for each candidate (whether elected or not), and
- (b) the number of rejected ballot papers under each of the headings in rule FPP44.5,
- (c) the number of rejected text voting records under each of the headings in rule FPP44.10, available on request.

STV52. Declaration of result for contested elections

STV52.1 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 [insert name] 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.

STV52.2 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 STV44.1,
- (f) the number of rejected text voting records under each of the headings in rule STV44.3, available on request.

53. Declaration of result for uncontested elections

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

PART 8 - DISPOSAL OF DOCUMENTS

54. Sealing up of documents relating to the poll

- 54.1 On completion of the counting at a contested election, the returning officer is to seal up the following documents in separate packets:
- (a) the counted ballot papers, internet voting records, telephone voting records and text voting records,
 - (b) the ballot papers and text voting records endorsed with "rejected in part",
 - (c) the rejected ballot papers and text voting records, and
 - (d) the statement of rejected ballot papers and the statement of rejected text voting records,

and ensure that complete electronic copies of the internet voting records, telephone voting records and text voting records created in accordance with rule 26 are held in a device suitable for the purpose of storage.

54.2 The returning officer must not open the sealed packets of:

- (a) the disqualified documents, with the list of disqualified documents inside it,
- (b) the list of spoilt ballot papers and the list of spoilt text message votes,
- (c) the list of lost ballot documents, and
- (d) the list of eligible voters,

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

54.3 The returning officer must endorse on each packet a description of:

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

55. Delivery of documents

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

56. Forwarding of documents received after close of the poll

56.1 Where:

- (a) any voting documents are received by the returning officer after the close of the poll, or
- (b) any envelopes addressed to eligible voters are returned as undelivered too late to be resent, or
- (c) any applications for replacement voting information are made too late to enable new voting information to be issued,

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

57. Retention and public inspection of documents

- 57.1 The corporation is to retain the documents relating to an election that are forwarded to the chair by the returning officer under these rules for one year, and then, unless otherwise directed by the board of directors of the corporation, cause them to be destroyed.
- 57.2 With the exception of the documents listed in rule 58.1, the documents relating to an election that are held by the corporation shall be available for inspection by members of the public at all reasonable times.
- 57.3 A person may request a copy or extract from the documents relating to an election that are held by the corporation, and the corporation is to provide it, and may impose a reasonable charge for doing so.

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

58.1 The corporation may not allow:

- (a) the inspection of, or the opening of any sealed packet containing –
 - (i) any rejected ballot papers, including ballot papers rejected in part,
 - (ii) any rejected text voting records, including text voting records rejected in part,
 - (iii) any disqualified documents, or the list of disqualified documents,
 - (iv) any counted ballot papers, internet voting records, telephone voting records or text voting records, or
 - (v) the list of eligible voters, or
- (b) access to or the inspection of the complete electronic copies of the internet voting records, telephone voting records and text voting records created in accordance with rule 26 and held in a device suitable for the purpose of storage,

by any person without the consent of the board of directors of the corporation.

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

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

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

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

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

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

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

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

DEATH OF A CANDIDATE DURING A CONTESTED ELECTION

FPP59. Countermand or abandonment of poll on death of candidate

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

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

FPP59.2 Where a new election is ordered under rule FPP59.1, no fresh nomination is necessary for any candidate who was validly nominated

for the election where the poll was countermanded or abandoned but further candidates shall be invited for that constituency or class.

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

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

FPP59.5 The returning officer is to:

- (a) count and record the number of ballot papers, internet voting records, telephone voting records and text voting records that have been received,
- (b) seal up the ballot papers, internet voting records, telephone voting records and text voting records into packets, along with the records of the number of ballot papers, internet voting records, telephone voting records and text voting records and

ensure that complete electronic copies of the internet voting records telephone voting records and text voting records created in accordance with rule 26 are held in a device suitable for the purpose of storage.

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

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

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

STV59. Countermand or abandonment of poll on death of candidate

STV59.1 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 documents 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 documents which have preferences recorded for other candidates are to be counted according to the consecutive order of those preferences, passing over preferences marked for the candidate who has died.
- STV59.2 The ballot documents which have preferences recorded for the candidate who has died are to be sealed with the other counted ballot documents pursuant to rule 54.1(a).

PART 10 - ELECTION EXPENSES AND PUBLICITY

Election expenses

60. Election expenses

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

61. Expenses and payments by candidates

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

62. Election expenses incurred by other persons

- 62.1 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.

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

Publicity

63. Publicity about election by the corporation

63.1 The corporation may:

- (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.

63.2 Any information provided by the corporation about the candidates, including information compiled by the corporation under rule 64, 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.

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

64. Information about candidates for inclusion with voting information

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

64.2 The information must consist of:

- (a) a statement submitted by the candidate of no more than 250 words,
- (b) if voting by telephone or text message is a method of polling for the election, the numerical voting code allocated by the returning officer to each candidate, for the purpose of recording votes using the telephone voting facility or the text message voting facility (“numerical voting code”), and
- (c) a photograph of the candidate.

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

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

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

PART 11 - QUESTIONING ELECTIONS AND THE CONSEQUENCE OF IRREGULARITIES

66. Application to question an election

66.1 An application alleging a breach of these rules, including an electoral irregularity under Part 10, may be made to NHS Impact.

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

66.3 An application may only be made to NHS Impact by:

- (a) a person who voted at the election or who claimed to have had the right to vote, or
- (b) a candidate, or a person claiming to have had a right to be elected at the election.

66.4 The application must:

- (a) describe the alleged breach of the rules or electoral irregularity, and
- (b) be in such a form as NHS Impact may require.

- 66.5 The application must be presented in writing within 21 days of the declaration of the result of the election.
- 66.6 If NHS Impact requests further information from the applicant, then that person must provide it as soon as is reasonably practicable.
- 66.7 NHS Impact shall delegate the determination of an application to a person or panel of persons to be nominated for the purpose.
- 66.8 The determination by the person or panel of persons nominated in accordance with rule 66.7 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.
- 66.9 NHS Impact may prescribe rules of procedure for the determination of an application including costs.

PART 12 MISCELLANEOUS

67. Secrecy

67.1 The following persons:

- (a) the returning officer,
- (b) the returning officer's staff,

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

- (i) the name of any member of the corporation who has or has not been given voting information or who has or has not voted,
- (ii) the unique identifier on any ballot paper,
- (iii) the voter ID number allocated to any voter,
- (iv) the candidate(s) for whom any member has voted.

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

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

68. Prohibition of disclosure of vote

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

69. Disqualification

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

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

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

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

- (a) the delivery of the documents in rule 24, or
- (b) the return of the ballot papers,

the returning officer may extend the time between the publication of the notice of the poll and the close of the poll by such period as he or she considers appropriate

ANNEX 6 – ADDITIONAL PROVISIONS – COUNCIL OF GOVERNORS

(Paragraph 13.1)

Persons also may not become or continue as a Governor of the Trust if:

1. they are a Director of the Trust, or an employee of the Trust with the courtesy title “director”, or a Governor or Director of another NHS body, or an employee of another NHS body with the courtesy title “director”, or a director or senior employee of an independent/private sector health care provider that competes with the Trust. These restrictions do not apply to Appointed Governors;
2. in the case of a Staff, Service User/Carer Governor or Public Governor the person ceases to be a member of the constituency for which he/she was elected;
3. they are on the register of sex offenders;
4. they have had their name removed, by a direction under section 46 of the 1977 NHS Act from any list prepared under Part II of that Act or have otherwise been disqualified or suspended from any healthcare profession, and have not subsequently had their name included in such a list or had their qualification re-instated or suspension lifted and/or they are the subject of an alert letter;
5. they fail to, or indicate that they are unwilling to, act in the best interests of the Trust and in accordance with The Seven Principles of Public Life laid out by the Committee on Standards in Public Life, set out in Part A of Annex 11 as amended from time to time;
6. they fail to agree (or, having agreed, fail) to abide by the values of the Trust Principles set out in Part B of Annex 11

**ANNEX 7 – STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF
THE COUNCIL OF GOVERNORS**

(Paragraph 14)

**THE BIRMINGHAM AND
SOLIHULL MENTAL HEALTH
NHS FOUNDATION TRUST**

**Standing Orders
COUNCIL of Governors**

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1. INTRODUCTION

Statutory Framework

The Birmingham and Solihull Mental Health NHS Foundation Trust (The Trust) is a statutory body which became a public benefit corporation on July 1st, 2008, following its approval 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 of the Trust is:

*The Uffculme Centre
52 Queensbridge Road
Moseley
Birmingham.
B13 8QY*

The Trust operates across c90 sites in the Birmingham and Solihull area.

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

The functions of the Trust are conferred by the Regulatory Framework. As a body corporate it has specific powers to contract in its own name and to act as a corporate trustee. In the latter role it is accountable to the Charity Commission for those funds deemed to be charitable. The Trust also has a common law duty as a bailee for patients' property held by the Trust on behalf of patients.

The Regulatory Framework requires the Council of Governors 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 Chair of the Trust shall be the final authority on the interpretation of Standing Orders (on which they 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 Birmingham and Solihull Mental Health NHS Foundation Trust.

"COUNCIL OF GOVERNORS" means the Council of Governors of the Trust as defined in the Constitution and **"Board"** means the Council of Governors, unless the context otherwise requires.

“BOARD OF DIRECTORS” means the Chair, Executive and Non-Executive Directors of the Trust collectively as a body, meeting to lead the Trust’s provider arm.

“COMMISSIONING COMMITTEE” means the Chair, Executive and Non-Executive Directors of the Trust collectively as a body, meeting to lead the Trust’s commissioning arm.

“CHAIR OF THE BOARD” or “Chair of the Trust” is the person appointed by the Board of Governors to lead the Board of Directors and the Board in Committee and to ensure that it successfully discharges its overall responsibility for the Trust as a whole. Except where the context otherwise requires, the expressions “the Chair of the Board” and “the Chair of the Trust” shall be deemed to include the Deputy Chair of the Trust if the Chair is absent from the meeting or is otherwise unavailable.

“CHIEF EXECUTIVE” means the chief executive officer of the Trust.

“COMMITTEE” means a committee of the Council of Governors

“CONSTITUTION” means the constitution of the Trust.

“COMMITTEE MEMBERS” means the Chair and the Governors or Directors formally appointed by the Council of Governors or Board of Directors to sit on or to chair specific committees.

“DEPUTY CHAIR” means the Non-Executive Director appointed from amongst the Non-Executive Directors as Deputy Chair by the Council of Governors to take on the Chair’s duties in their capacity as chair of the Council of Governors if the Chair is absent for any reason.

“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 Council of Governors does not include the Chair).

“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.

“SOs” means these Standing Orders.

“SECRETARY TO THE TRUST” means a person who may be appointed to act independently of the Board to provide advice on corporate governance issues to the Board and the Chair and monitor the Trust’s compliance with the Regulatory Framework and these standing orders.

3. THE COUNCIL OF GOVERNORS

3.1 Composition of the Council of Governors

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

3.2 Role of the Chair

- 3.2.1 The Chair is not a Governor. However, under the Regulatory Framework, they preside at meetings of the Council of Governors and have a casting vote.
- 3.2.2 Where the Chair of the Trust has died or has ceased to hold office, or where they have been unable to perform their duties as Chair owing to illness or any other cause, the Deputy Chair shall act as Chair until a new Chair is appointed or the existing Chair resume their duties, as the case may be; and references to the Chair in these Standing Orders shall, so long as there is no Chair able to perform their duties, be taken to include references to the Deputy Chair.

3.3 Role and Responsibilities of the Council of Governors

- 3.3.1 The roles and responsibilities of the Council of Governors, to be undertaken in accordance with the Trust Constitution, are:
- To appoint and remove the Chair and other Non-Executive Directors of the Foundation Trust at a general meeting.
 - To approve at a general meeting the appointment by the Non-Executive Directors of the Chief Executive.
 - To appoint or remove the auditor at a general meeting.
 - To approve any project brought forward by the Board of Directors under the Significant Transactions Policy (v3, March 2020).
 - To be consulted by the Trust's Board of Directors on forward planning and to have the Board of Governors' views taken into account.
 - To be presented with the Trust's Annual Report and Accounts and the report of the auditor on the Accounts at a meeting.
- 3.3.2 The 2006 Act provides that all the powers of the Foundation Trust are to be exercised by its Directors. The Council of Governors does not have the right to veto decisions made by the Board of Directors.
- 3.3.3 The Council of Governors, and individual Governors, are not empowered to speak on behalf of the Trust and must seek the advice and views of the Chair 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 Chair acts as Chair of the Trust not as chair of the Council of

Governors and in their absence Governors should seek the advice and views of the Deputy Chair of the Trust.

4. MEETINGS OF THE BOARD

4.1 Admission of the Public

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

- (a) 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; and/or
- (b) That in the interests of the public order the meeting adjourn 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 such times and places as the Council may determine and there shall be not less than 3 nor more than 6 formal meetings in any year except in exceptional circumstances.

4.2.2 The Chair of the Trust may call a meeting of the Council at any time. If the Chair refuses to call a meeting after a requisition for that purpose, signed by at least one third of the whole number of Members of the Council, has been presented to them, or if, without so refusing, the Chair does not call meeting within seven days after such requisition has been presented to them at 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 Chair or by an officer authorised by the Chair to sign on their 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 them at least three 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 Chair, 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 Agendas will be sent to Members of the Council before the meeting and supporting papers, whenever possible, shall accompany the agenda, but will certainly be dispatched no later than three clear days before the meeting, save in emergency.

4.3.5 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 three clear days before the meeting.

4.4 Setting the agenda

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

4.4.2 A Governor desiring a matter to be included on an agenda shall make their request in writing to the Chair 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 Chair.

4.4 Petitions

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

4.5 Chair of Meeting

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

4.7 Notices of Motion

4.7.1 A Governor desiring to move or amend a motion shall send a written notice thereof at least 10 clear days before the meeting to the Chair, who shall insert in the agenda for the meeting all notices so received subject to the notice being permissible under the appropriate regulations. This paragraph shall not prevent any motion being moved during the meeting without notice on any business mentioned on the agenda.

4.8 Withdrawal of Motion or Amendments

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

4.9 Motion to Rescind a Resolution

- 4.9.1 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 than the Chair to propose a motion to the same effect within six months, however the Chair may do so if they consider 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:
- an amendment to the motion
 - the adjournment of the discussion or the meeting
 - that the meeting proceed to the next business (*)
 - the appointment of an ad hoc committee to deal with a specific item of business
 - that the motion be now put. (*)
 - a motion resolving to exclude the public under SO 4.1.1.

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

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

4.11 Chair's Ruling

- 4.11.1 Statements of Members of the Council made at meetings of the Council shall be relevant to the matter under discussion at the material time and the decision of the Chair of the meeting on questions of order, relevancy, regularity, and any other matters shall be 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 Chair of the meeting shall have a second or casting vote.

- 4.12.2. All questions put to the vote shall, at the discretion of the Chair of the meeting, be determined by oral expression or by a show of hands. A paper ballot may also be used if a majority of the Members of the Council present so request.
- 4.12.3 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.
- 4.12.4 If a Governor so requests, their vote shall be recorded by name upon any vote (other than paper ballot).
- 4.12.5 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 Chair considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the meeting.
- 4.13.3 Minutes shall be circulated in accordance with the members' wishes.

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 Chair 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

4. 15.1 These Standing Orders shall be amended only if:
- a notice of a motion under Standing Order 4.7 has been given; and
 - no fewer than half the total of the Trust's Governors vote in favour of amendment; and
 - at least two-thirds of the Council Members are present; and

- the variation proposed does not contravene a statutory provision or direction made by the Independent Regulator.

4.16 Record of Attendance

- 4.16.1 The names of the Chair 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 at least one third of the Governors appointed are present, of which there must be at least two groups of governors represented. The groups are: staff, service user, public, stakeholder and carer governors.
- 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 Order 6, 7 or 8) they 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 Chair and Members of the Council of Governors.
- 5.2 A committee appointed under this regulation 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 “Chair” is to be read as a reference to the Chair 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 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. Such terms of reference shall have effect as if incorporated into the Standing Orders.

- 5.5 The Council may not delegate any decision-making or executive powers to any committee or sub-committee.
- 5.6 The Council shall approve the appointments to each of the committees which it has formally constituted.
- 5.7 The committees and sub-committees established by the Council shall be such committees as are required to assist the Board in discharging its responsibilities.

6. DECLARATIONS OF INTERESTS AND REGISTER OF INTERESTS

6.1 Declaration of Interests

- 6.1.1 The Regulatory Framework requires Council Members to declare interests which are relevant and material to the Council of which they are a Member. All existing Council Members should declare such interests. Any Council Members appointed subsequently should do so on appointment.
- 6.1.2 Interests which should be regarded as “relevant and material” are defined in the Trust’s Constitution as follows:

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 Council of Governors
- 6.1.3 At the time Board members’ interests are declared, they should be recorded in the Council minutes. Any changes in interests should be declared at the next Council meeting following the change occurring.
- 6.1.4 Council members’ directorships of companies likely or possibly seeking to do business with the NHS should be published in the Trust’s Annual Report. The information should be kept up to date for inclusion in succeeding annual reports.
- 6.1.5 During the course of a Council Meeting, if a conflict of interest is established, the Council Members concerned shall withdraw from the meeting and play no part in the relevant discussion or decision.
- 6.1.6 There is no requirement for the interests of Council members’ spouses or partners to be declared. However, Standing Order 7, which is based on the regulations, requires that the interests of Governors’ spouses or common-law partners, if living together, in contracts should be declared. Therefore, the interests of Council Members’ spouses and cohabiting partners should also be regarded as relevant.

6.2 Register of Interests

- 6.2.1 The Secretary to the Trust will ensure that a Register of Interests is established to record formally declarations of interests of Council Members. The Register will include details of all directorships and other relevant and

material interests which have been declared by Council Members, as defined in Standing Order 6.1.2.

- 6.2.2 These details will be kept up to date by means of a monthly review of the Register in which any changes to interests declared will be incorporated.
- 6.2.3 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 the local population and to publicise arrangements for viewing it.
- 6.2.4 In establishing, maintaining, updating, and publicising the Register, the Trust shall comply with all guidance issued from time to time by the Regulator.

7. DISABILITY OF CHAIR AND MEMBERS IN PROCEEDINGS ON ACCOUNT OF PECUNIARY INTEREST

- 7.1 Subject to the following provisions of this Standing Order, if the Chair or another Governor has any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter and is present at a meeting of the Trust at which the contract or other matter is the subject of consideration, they shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not take part in the consideration or discussion of the contract or other matter or vote on any question with respect to it.
- 7.2 The Council may exclude the Chair (or Governor) from a meeting of the Council while any contract, proposed contract or other matter in which they have pecuniary interest, is under consideration.
- 7.3 For the purpose of this Standing Order the Chair or Governor shall be treated, subject to SO 7.4, as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if:

- (a) they, or a nominee of theirs, is a Director of a company or other body, not being a public body, with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration;

Or

- (b) they are a partner of or are in the employment of a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration.

and in the case of married persons living together the interest of one spouse shall, if known to the other, be deemed for the purposes of this Standing Order to be also an interest of the other.

- 7.4 The Chair or a Governor shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only:
 - (a) of their membership of a company or other body, if they have no beneficial interest in any securities of that company or other body;

- (b) of an interest in a company, body or person with which they are connected as mentioned in SO 7.3 above which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a Governor in the consideration or discussion of or in voting on, any question with respect to that contract or matter.

7.5 Where a Governor:

- (a) has an indirect pecuniary interest in a contract, proposed contract or other matter by reason only of a beneficial interest in securities of a company or other body, and
- (b) the total nominal value of those securities does not exceed £5,000 or one-hundredth of the total nominal value of the issued share capital of the company or body, whichever is the less, and
- (c) if the share capital is of more than one class, the total nominal value of shares of any one class in which they have a beneficial interest does not exceed one-hundredth of the total issued share capital of that class,

this Standing Order shall not prohibit them from taking part in the consideration or discussion of the contract or other matter or from voting on any question with respect to it without prejudice however to their duty to disclose their interest.

7.6 The Standing Order applies to a committee or sub-committee and to a joint committee as it applies to the Council and applies to a Governor of any such committee or sub-committee as it applies to a Governor.

8. STANDARDS OF BUSINESS CONDUCT POLICY

8.1 Governors should comply with the Trust Constitution, the “Code of governance for NHS provider trusts”, published by NHS England (came into effect on 1 April 2023), the requirements of the Regulatory Framework, and any guidance and directions issued by the Independent Regulator.

8.2 Interest of Governors in Contracts

8.2.1 If it comes to the knowledge of a Governor that a contract in which they have any pecuniary interest not being a contract to which they are a party, has been, or is proposed to be, entered into by the Trust they shall, at once, give notice in writing to the Secretary of the Trust of the fact that they are interested therein. In the case of persons living together as partners, the interest of one partner shall, if known to the other, be deemed to be also the interest of that partner.

8.2.2 A Governor should also declare to the Secretary of the Trust any other employment or business or other relationship of theirs, or of cohabitating spouse, which might reasonably be predicted could conflict with the interests of the Trust.

8.3 Canvassing of and recommendations by Governors in Relation to Appointments

- 8.3.1 Canvassing of Governors of the Trust or of any Committee of the Council of Governors directly or indirectly for any appointment under the Trust shall disqualify the candidate for such appointment.
- 8.3.2 A Governor 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.
- 8.3.3 Informal discussions outside appointments panels or committees, whether solicited or unsolicited, should be declared to the panel or committee.

8.4 Relatives of Governors or Officers

- 8.4.1 Candidates for any staff appointment under the Trust, shall when making application, disclose in writing to the Trust whether they are related to any Member of the Board of Directors or Council of Governors or the holder of any office under the Trust. Failure to disclose such a relationship shall disqualify a candidate and, if appointed, render them liable to instant dismissal.

The Chair and every Governor and officer of the Trust shall disclose to the Chief Executive any relationship between themselves and a candidate whose candidature that Governor or Officer is aware.

- 8.4.3 On appointment, Governors (and prior to acceptance of an appointment in the case of officer members) should disclose to the Board whether they are related to any other Governor or holder of any office in the Trust.
- 8.4.4 Where the relationship to a Governor of the Trust is disclosed, the Standing Order headed Disability of Chair and Members of the Board in proceedings on account of pecuniary interest (SO 7) shall apply.

9. SENIOR INDEPENDENT DIRECTOR

- 9.1 The Council of Governors is entitled to be consulted by the Board of Directors on the appointment of the Trust's Senior Independent Director.
- 9.2 The role of the Senior Independent Director is as set out in the Trust's "Senior Independent Director Role Profile", as amended from time to time.
- 9.3 Arrangements for the appointment and removal of the Senior Independent Director are described in Annex 8 – Board of Directors, Standing Orders.

10. APPOINTMENT OF A LEAD GOVERNOR AND DEPUTY LEAD GOVERNOR

- 10.1 Since 2010 Monitor, now NHS Impact (NHSI), has required all NHS Foundation Trusts to have a lead governor to facilitate direct communication in the limited circumstances where it may not be appropriate to communicate through the normal channels.
- 10.2 The criteria, eligibility and process for the selection of a lead governor and deputy lead governor within the Trust ((BSMHFT) are outlined in this document.

10.3 Primary Role and Accountability

Lead governor

- 10.3.1 The primary purpose of the lead governor is to facilitate direct communication between the Regulator (NHSI) and the governors. NHSI does not envisage regular direct communication with governors save where there may be a real risk of the Trust significantly breaching its licence or constitution and where concerns cannot be satisfactorily resolved via the normal channels.
- 10.3.2 Once there is a risk that this may be the case, and the likely issue is one of board leadership, NHSI may wish to make contact with the governors at speed, through one established point of contact – the lead governor. This will enable governors to understand the Regulator's concerns and in understanding the views of governors as to the capacity and capability of individuals to lead the Trust and to rectify, successfully, any issues.
- 10.3.3 The Trust should support the lead governor in understanding NHSI's role, particularly the basis on which NHSI may take regulatory action, to ensure the lead governor is able to correctly communicate more widely with other governors.
- 10.3.4 The lead governor is accountable to the Council of Governors as a collective and the Trust Chair. Other than the specified additional responsibilities, the role does not hold any additional responsibility or powers beyond those of an individual governor.
- 10.3.5 Similarly, but not exclusively, where individual governors may wish to contact NHSI, this would be expected to be through the lead governor.

Deputy Lead governor

- 10.3.6 The primary role of the deputy lead governor is to deputise for the lead governor and to provide the Trust with a point of contact for the Council of Governors in the event that the lead governor is unavailable for a period of time or has a conflict of interest.
- 10.3.7 The deputy lead governor is accountable to the Council of Governors as a

collective and the Trust Chair. Other than the specified additional responsibilities, the role does not hold any additional responsibility or powers beyond those of an individual governor.

10.4 Criteria and eligibility

10.4.1 The Council of Governors will select a governor to undertake the role of lead governor and deputy lead governor of BSMHFT.

10.4.2 Governors wishing to undertake the role of lead governor or deputy lead governor must:

- a) have served as a governor for at least one year.
- b) be able to commit time to undertake the role.
- c) be prepared to acquire knowledge and understanding of the arrangements/requirements of the role and the responsibilities attaching.
- d) understand NHS's role as an external regulator and the requirements of the Trust constitution.
- e) uphold the values of the Trust, understanding and championing the Trust's values.
- f) be committed to the success of the Trust.

10.4.3 Desirable personal qualities for a lead governor include:

- excellent interpersonal and communication skills.
- the ability to deal with potential conflicts.
- the ability to command the respect, confidence and support of their governor colleagues.
- the ability to represent the views of their governor colleagues.

10.5 Process

10.5.1 The lead governor and deputy lead governor will be selected by the Council of Governors.

10.5.2 The process for the selection and appointment of the lead governor and deputy lead governor is as follows:

10.5.2.1 Upon a vacancy arising, the Chair will inform the Council of Governors of the vacancy and invite governors to express interest in the role.

10.5.2.2 Where more than one nomination is received, a confidential ballot of all governors will be held. Nominees will provide a short nomination statement describing their reasons for standing and a ballot paper showing all the candidates and their nomination statements will be distributed to all governors. Votes will be counted on a 'first past the post' basis. The Company Secretary will act as returning officer and at the deadline for receipt of votes will provide the outcome of the ballot to the Chair for announcement of the result to the Council of

Governors. Ballot papers will be kept for six months and made available for scrutiny if required.

- 10.5.2.3 Where only one nomination is received, the Council of Governors will be asked to ratify the appointment at the next Council of Governors meeting.

10.6 Term of Office and Re-Election

- 10.6.1 The term of office of the lead governor and deputy lead governor will be for a period of one year.
- 10.6.1.1 until they resign the position by giving notice to the Chair; or
10.6.1.2 until they are removed from the position by a resolution passed at a general meeting of the Council of Governors.
- 10.6.2 At the end of their term of office an individual may stand for re-election to the role. Governors serving as lead governor are eligible to nominate themselves for the role of deputy lead governor and visa versa.
- 10.6.3 The Governance & Membership Manager will notify NHSI of any change of lead governor.
- 10.6.4 There is no limit on the number of times a governor can seek re-election as either a Lead Governor or Deputy Lead Governor.

11. PROCESS RELATING TO ALLEGED BREACH OF CODE OF CONDUCT AND TERMINATIONS OF A GOVERNOR'S MANDATE

11.1 Informal Resolution

- 11.1.1 Upon receiving information or a concern about the conduct of a governor, the Chair will take fair and reasonable steps over a period of up to 14 days to resolve the matter informally if appropriate.
- 11.1.2 Where during the informal discussions the governor admits to a breach of the Code of Conduct, the need to proceed to a panel hearing may be avoided with the agreement of the governor. Any admission of a breach of the Code of Conduct must be confirmed in writing by the governor. Following discussion, if the Chair agrees not to proceed to a hearing, the Chair is able to decide on an appropriate resolution in agreement with the governor concerned. The governor has the right to proceed to a formal panel process if informal resolution is not agreed.

11.2 Establishing the Panel

- 11.2.1 If the matter cannot be resolved informally as at paragraph 11.1 it shall be open to a panel consisting of the Senior Independent Director of the Board of Directors (who will chair the panel) and 4 (four) governors to consider the allegations and what (if any) action should be taken. Where there is a need to form a panel, members will be selected by the Senior Independent Director in

consultation with the Lead Governor. If the Lead Governor has been involved as per paragraph 11.1, the Deputy Lead Governor with support the Senior Independent Director.

11.2.2 The panel should conduct a fair investigation which may include the need to commission an investigatory report. The panel should, in the first instance, seek one or more individuals with relevant experience to conduct an investigation, either from within or outside the Council of Governors. For example, the Trust's HR department has considerable experience in advising on such issues and the panel may commission a senior member of the HR team to be a member of the investigation team. Any governor who is a member of the panel should not be part of the investigation team. The Company Secretary will support the panel with the administration processes of commissioning and investigator.

11.2.3 The panel will be quorate if the Senior Independent Director and 3 governors are present. If in this scenario members of the panel are required to vote and a majority cannot be reached, the chair of the panel will have the casting vote.

11.3 Suspension

11.3.1 The panel may on a majority vote of its members suspend a governor who is the subject of allegations that the panel is investigating.

11.3.2 This suspension will not be communicated to the wider Council of Governors or Trust employees.

11.4 Investigation process

11.4.1 The governor will be informed that an investigation will be undertaken. Where possible this should be face to face but if this is not practicable then it is appropriate for this information to be provided over the telephone and confirmed in writing at the earliest opportunity. This communication should include a copy of this Annex of the Trust's Constitution.

11.4.2 The investigating officer(s) may request written statements from parties involved or witnesses to the incident(s) being investigated ahead of an investigation meeting. All parties must be advised that during the investigation the issue must remain confidential.

11.4.3 The investigating officer(s) will arrange a meeting with the governor concerned. They will also arrange a meeting with any other witnesses as deemed necessary.

11.4.4 Where the governor who is the subject of the investigation is invited to the meeting, they will be advised of their right to be accompanied by a companion (not acting in a legal capacity). Reasonable notification will be given of the meeting. The governor will inform the investigating officer of the name of the companion they wish to accompany them in advance of such a meeting.

- 11.4.5 The investigating officer(s) will reasonably gather other documentation relevant to the investigation.
- 11.4.6 If the investigating officer(s) feels that they need to obtain further information from a witness it is appropriate for a further statement to be requested or another interview arranged in accordance with the above process.
- 11.4.7 It is important that all investigations are carried out thoroughly and should be undertaken normally within 20 working days. The governor who is the subject of the investigation should be informed in writing by the investigating officer(s) if this timescale is not likely to be met and given a revised timescale for completion, outlining any reasons for the delays.
- 11.4.8 Upon completion of the investigation an investigation report will be submitted to the panel members and the governor concerned. The panel will consider the report.
- 11.4.9 If necessary, a panel hearing will be called as soon as is reasonably practical to consider the allegations and if applicable any potential sanctions.

11.5 The Panel Hearing Process

- 11.5.1 The governor concerned is permitted to make written and/or oral representations to the panel for consideration in the panel hearing irrespective of whether the governor has been interviewed as part of an investigation.
- 11.5.2 The governor has the right to be accompanied at the panel hearing by a companion (i.e., an advocate). The companion can speak on the governor's behalf, with permission from the governor.
- 11.5.3 The investigating officer(s) will present their case to the panel members. Once the presentation is completed, the panel members may question the investigating officer(s). The governor will then present their case and panel members may question the governor.
- 11.5.4 After questions from the panel, the investigating officer(s) and the governor will have the opportunity to sum up.
- 11.5.5 There will be an adjournment for the panel members to consider the cases presented and reach a conclusion. The panel will reach its conclusions based on a majority vote of its members. This may include a recommendation to the Council of Governors to consider terminating the tenure of the governor in question. By way of example, lesser sanctions may include but are not limited to one or more of:
- a) Requirement that the governor signs the Code of Conduct;
 - b) Requirement that the governor attends specified training;
 - c) Requirement that the governor desists from specified conduct.

11.5.6 If possible, the meeting will reconvene the same day and the chair of the panel will issue their decision and the reasoning that directed their conclusion. The decision will be confirmed in writing to the governor within 5 working days. If it is not possible to reconvene the same day, the panel should meet within 10 working days and issue their decision in writing to the governor within 5 working days of this meeting.

11.6 Panel Decision not Comprising a Recommendation to Terminate Tenure

11.6.1 Any decision made by the panel may be appealed in writing by the governor concerned within 28 days of the date upon which notice in writing of the panel's decision is communicated to the governor concerned (time of the essence).

11.6.2 The appeal will be heard by the Council of Governors in private session within 14 days of the date upon which the notice of the appeal is received by the Trust.

11.6.3 If it is not possible to hear an appeal within the 14 days' time limit, then the Council of Governors shall be asked to agree either to hold an exceptional meeting for an appeal hearing within the 14 days' time limit or to extend the time limit to the date of the next meeting of the Council of Governors after expiry of the time limit.

11.6.4 The governor has the right to have the appeal against the panel's decision heard by the full Council of Governors, however, the governor may request that a subgroup of the Council of Governors, comprising Governors who have not already been involved in the process, hear the appeal instead. This request will need to be agreed by the Council of Governors.

11.6.5 If the Council of Governors agrees to the above the subgroup will consist of four (4) governors and the Chair who will act as chair of the subgroup.

11.7 Appeal Process to Council of Governors of a Decision not Comprising a Recommendation to Terminate Tenure

11.7.1 The Chair or (if the Chair is disqualified) the Deputy Chair shall act as the chair of the appeal. If both the Chair and Deputy Chair are disqualified, then the Chief Executive in consultation with the lead governor shall nominate another Non-Executive Director of the Trust to act as the chair of the appeal. At the start of an appeal hearing, the Council of Governors must approve the appointment of the chair of the appeal if they are not the Chair or Deputy Chair.

11.7.2 The Council of Governors will receive the original investigation report and outcome letter and the written grounds for appeal.

11.7.3 At the decision appeal hearing:

- 11.7.3.1. The chair of the panel will present their reasons for the conclusions reached and decision taken.
- 11.7.3.2. Governors may ask the chair of the panel clarification questions about their decision.
- 11.7.3.3. The appellant may address the Council of Governors outlining their grounds of appeal. The representation may be time limited at the absolute discretion of the chair of the appeal.
- 11.7.3.4. The appellant has the right to be accompanied at the hearing by a companion (i.e., an advocate). The companion can speak on the appellant's behalf, with permission from the appellant.
- 11.7.3.5. Governors may ask the appellant clarification questions about their comments, response, and representations.
- 11.7.3.6. The appellant and the chair of the panel may make final summary representations to the Council of Governors which may be time limited at the absolute discretion of the chair of the appeal.
- 11.7.3.7. The chair of the appeal may make such recommendations as they consider appropriate to the Council of Governors.
- 11.7.3.8. The chair of the appeal may exclude the appellant and the chair of the panel from the meeting so that the Council of Governors may discuss the chair of the appeal's recommendation in their absence. The chair of the appeal shall invite the appellant and the chair of the panel to return to the meeting on the conclusion of such discussion.
- 11.7.4 The Council of Governors shall decide whether to uphold the panel's decision or to apply any other sanction by a majority vote of all governors present and voting. The members of the panel who are present will count towards the quorum but will be omitted from the vote. The Council of Governors' decision will be communicated in writing to the appellant within 5 working days of the date of the Council of Governors' meeting.
- 11.7.5 The chair of the appeal may at their absolute discretion at any time adjourn the appeal hearing to a date and time to be fixed.
- 11.7.6 The chair of the appeal may at any time before or during an appeal hearing take such advice as they consider to be appropriate from the Trust's officers and/or advisers and if necessary, may adjourn an appeal hearing to do so in private.
- 11.8 Appeal Process to a Subgroup of a Decision not Comprising a Recommendation to Terminate Tenure**
- 11.8.1 The Chair or (if the Chair is disqualified) the Deputy Chair shall act as chair of the appeal. If both the Chair and Deputy Chair are disqualified, then the Chief

Executive in consultation with the Lead Governor shall nominate another Non-Executive Director of the Trust to act as chair of the appeal. At the start of an appeal hearing, the Council of Governors must approve the appointment of the chair of the appeal if they are not the Chair or Deputy Chair.

11.8.2 At the subgroup decision appeal hearing:

11.8.2.1 The chair of the panel will present their reasons for the conclusions reached and decision taken.

11.8.2.2 The subgroup except the appellant may ask the chair of the panel clarification questions about their decision.

11.8.2.3 The appellant may address the subgroup outlining their grounds of appeal. The representation may be time limited at the absolute discretion of the chair of the appeal.

11.8.2.4 The appellant has the right to be accompanied at the hearing by a companion (i.e., an advocate). The companion can speak on the appellant's behalf, with permission from the appellant.

11.8.2.5 The subgroup may ask the appellant clarification questions about their comments, response and representations.

11.8.2.6 The appellant and the chair of the panel may make final summary representations to the subgroup which may be time limited at the absolute discretion of the chair of the appeal.

11.8.2.7 The chair of the appeal may make such recommendations as they consider appropriate to the subgroup.

11.8.2.8 The chair of the appeal may exclude the appellant and the chair of the panel from the meeting so that the subgroup may discuss the chair of the appeal's recommendation in their absence. The chair of the appeal shall invite the appellant and chair of the panel to return to the meeting on the conclusion of such discussion.

11.8.3 The chair of the appeal may at their absolute discretion at any time adjourn the appeal hearing to a date and time to be fixed.

11.8.4 The chair of the appeal may at any time before or during an appeal hearing take such advice as they consider to be appropriate from the Trust's officers and/or advisers and if necessary, may adjourn an appeal hearing to do so in private.

11.8.5 The subgroup shall decide whether to uphold the panel's decision or to apply any other sanction by a majority vote of subgroup members present and voting.

11.8.6 The subgroup decision will be presented to the full Council of Governors for ratification.

11.9 Panel Decision Comprising a Recommendation to Terminate the Tenure of a Governor

11.9.1 Following a panel hearing the panel may recommend to the Council of Governors the termination of a governor's tenure. The chair of the panel will set out the reasons for the recommendation of termination of tenure.

11.9.2. At the termination hearing:

11.9.2.1 The chair of the panel will present their reasons for the recommendation to terminate the governor's tenure.

11.9.2.2 The Council of Governors, except the governor concerned, may ask the chair of the panel clarification questions about their recommendation.

11.9.2.3 The governor concerned has the right to be accompanied at the hearing by a companion (i.e., an advocate). The companion can speak on the governor's behalf, with permission from the governor.

11.9.2.4 The governor may address the Council outlining their case for non-termination.

11.9.2.5 The Council may ask the governor concerned clarification questions about their comments, response, and representations.

11.9.2.6. The governor concerned and the chair of the panel may make final summary representations to the Council of Governors which may be time limited at the absolute discretion of the Chair.

11.9.2.7 The Chair may make such recommendations as they consider appropriate to the Council of Governors.

11.9.2.8 The Chair may exclude the governor concerned and the chair of the panel from the meeting so that the Council of Governors may discuss the chair of the panel's recommendation in their absence. The Chair shall invite the governor concerned and the chair of the panel to return to the meeting on the conclusion of such discussion.

11.9.3 Termination of a governor's tenure of office requires the approval of two-thirds of the members of the Council of Governors present and voting providing the meeting is quorate in accordance with the Standing Orders for the Practice and Procedure of the Council of Governors. The members of the panel who are present will count towards the quorum and will be able to vote.

11.9.4 A governor whose tenure has been terminated by the Trust is not eligible to stand again for election as a governor of the Trust.

11.9.5 In the event of an appeal being referred to the Council of Governors if the governor concerned is aggrieved at the decision, they may apply in writing within 7 days to the Council of Governors for the decision to be referred to an independent assessor. The independent assessor will then consider the evidence and conclude whether the proposed removal is reasonable or otherwise.

11.9.6 On receipt of an application the Chair and Lead Governor and the applicant governor will co-operate in good faith to agree on the appointment of the independent assessor. If the parties fail to agree on an independent assessor within 21 days of the date upon which the application is received by the Council of Governors, then the Council of Governors shall request the Centre for Effective Dispute Resolution to nominate the independent assessor. The independent assessor's decision will be binding and conclusive on the parties.

11.10 Timeline

11.10.1 All time limits specified in this section are for guidance only unless it is stated that time is of the essence. Breach of a time limit shall not invalidate any step taken or decision made unless time is of the essence.

12. MISCELLANEOUS

12.1 Standing Orders to be given to Governors

12.1.1 It is the duty of the Secretary to the Trust to ensure that existing Governors and all new appointees are notified of and understand their responsibilities within these Standing Orders. New designated officers shall be informed in writing and shall receive copies where appropriate in Standing Orders.

12.2 Review of Standing Orders

12.2.1 Standing Orders shall be reviewed every two years. The requirement for review extends to all documents having the effect as if incorporated in Standing Orders.

APPENDIX A

GOVERNORS' CODE OF CONDUCT

This document sets out in very broad terms the role and responsibilities of all Governors of Birmingham & Solihull Mental Health NHS Foundation Trust and the standards of conduct expected of them.

GOVERNORS' ROLE

- To appoint the Chair and the Non-Executive Directors and, as appropriate, remove.
- To decide the remuneration and allowances and other terms and conditions of the Chair and other Non-Executive Directors.
- To approve the appointment of the Chief Executive.
- To appoint and, if appropriate, remove the auditors.
- To receive the annual accounts, any report of the auditors on them, and the annual report.

- In preparing the Trust's forward plan, the Board of Directors must have regard to the views of the Council. The Council (at least 50%) must approve an increase of 5% or more in non-NHS income in any one financial year.
- To approve amendments to the Trust's constitution.
- To endorse an application by the Trust to enter into a merger, acquisition, separation or dissolution (a "Significant Transaction").
- To hold the Non-Executive Directors, individually and collectively to account, for the performance of the Board of Directors.
- To represent the interests of the members and of the public.

NOLAN PRINCIPLES

The Nolan Committee set out seven principles for all who serve the public in any way. Governors are holders of a public office and are therefore expected to adhere to the Nolan Principles.

These principles are listed below.

Selflessness

Holders of public office should act solely in terms of the public interest.

Integrity

Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family or their friends. They must declare and resolve any interests and relationships.

Objectivity

Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

Accountability

Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

Openness

Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for doing so.

Honesty

Holders of public office should be truthful.

Leadership

Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

DECLARATION OF INTERESTS

Governors on election or appointment are required to list all relevant interests which may reasonably be thought – by any other person – to influence their actions in the performance of their duties as a governor of this Trust. These interests are to be reviewed on a regular

basis.

It is the responsibility of the governor to inform the Company Secretary immediately in writing of any changes to their interests and these should be recorded in the minutes of the Council.

VALUES

Our values are our guide to how we treat ourselves, one another, our service users, families and carers, and our partners. Our values describe our core ethics and principles. They help guide our culture by inspiring people's best efforts and constraining unwanted actions that do not align with our values. These are:

- Compassionate
- Inclusive
- Committed

BEHAVIOURS

Our everyday and detailed behaviours describe what our values look like in practice. They give us a shared language to help bridge the wide range of specialties and roles in our Trust. Governors will be expected to adhere to our Every Day Behaviours Guide.

CODE OF CONDUCT

I will:

- support the Trust, its Constitution, and the NHS Constitution.
- respect the whole Trust Team (Governors, Board, Staff and Members) and recognise and support the common purpose in achieving the Trust's Vision, Values and Behaviours.
- be a good Ambassador for the Trust and always work in the best interests of the Trust, its Patients and Members.
- always observe confidentiality on matters relating to the work of the Trust, its Patients and Staff.
- attend meetings of the Governor's Council and related Sub Committees during which I will observe good meeting practices.
- respect and accept the majority decisions of the whole Governors Council, understanding that this is the sole decision-making body for the Governors. Committees and working parties will advise the Council of their work for agreement and ratification by the full Governors Council.
- understand that I should never approach the media except through the Communications Office and wherever possible passing media approaches to that office.
- oppose any discrimination and claim no privileges in my role as Governor.
- undertake all appropriate training provided to enable me to fulfill my role as Governor.
- act responsibly, whilst contributing to the work of the Governors Council, bringing my strengths to bear, whilst respecting the strengths of the other Governors.
- represent and be accountable to the Membership of the Trust and the wider public.
- abide by the Policies and Procedures of the Trust, including the Whistleblowing policy and guidance.
- participate in public contacts, including visits to Trust sites after agreement and sanctioning by the Trust. I will act as an observer and not adopt a management role.
- make effective use the resources available to me.

Code of Conduct Acceptance

I, (name) representing (public constituency/staff constituency/partner organisation

.....
confirm that I have read and agree to abide by the Code of Conduct for the Council of
Governors of Birmingham & Solihull Mental Health NHS Foundation Trust

Date

Signature

Delete as appropriate

Copies of the signed declaration will be kept by the Company Secretary

APPENDIX B

MEETING ETIQUETTE: GOOD GOVERNANCE ETIQUETTE OF THE COUNCIL OF GOVERNORS

We will:

- Respect one another as possessing individual and corporate skills, knowledge and responsibilities.
- Show determination, tolerance and sensitivity – rigorous and challenging questioning, tempered by respect.
- Show group support and loyalty towards each other.
- Listen carefully to all ideas and comments and be tolerant to other points of view – be sensitive to colleagues' needs for support when challenging or being challenged.
- Be honest, open and constructive.
- Be courteous and respect freedom to speak
- Regard challenge as a test of the robustness of arguments – ensure no one becomes isolated in expressing their view. Treat all ideas with respect.
- Read all papers before the meeting.
- Arrive on time and participate wholeheartedly.
- Focus discussion on material issues and on the resolution of issues.
- Make the most of time.
- Support the chair, colleagues and guests in maximising scope and variety of viewpoints heard.
- Ensure individual points are relevant and short.
- Take decisions and abide by these.
- Refer to past systems or mistakes as being responsible for today's situation.
- Act in a positive manner.
- Ensure Governor has the right to challenge/question another.
- Be ready to apologise if offence is taken.
- Stay open to discussion.
- Maintain a view of the strategic picture.

**ANNEX 8 – STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF
THE BOARD OF DIRECTORS**

(Paragraph 25)

**Birmingham and Solihull Mental
Health NHS Foundation Trust**

**Standing Orders for the Practice and Procedure of
The Board of Directors**

FOREWORD

The Trust Board holds the responsibility to agree the Standing Orders and the Reservation of Powers to the Board and Delegation of Powers.

Those documents, together with Standing Financial Instructions, provide a regulatory framework for the business conduct of the Trust. They fulfill the dual role of protecting the Trust's interests by ensuring, for example, all transactions maximize the benefit to the Trust and protecting staff from possible accusations that they have acted less than properly. This is provided, of course, staff have followed the correct procedures outlined in the relevant document.

The Standing Orders, Delegated Powers and Standing Financial Instructions provide a comprehensive business framework. All Board directors and all staff should be aware of the existence of these documents and, where necessary, be familiar with their detailed provisions to the extent required for the proper conduct of their duties.

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APPENDIX A

CODE OF BUSINESS CONDUCT

INTRODUCTION

The principal place of business of the Trust is Uffculme Centre, 52 Queensbridge Rd, Birmingham. B13 8QY

NHS Foundation Trusts are governed by a Regulatory Framework that confers the functions of the Trust and comprises: Acts of Parliament and in particular the National Health Service Act 2006 ("the 2006 Act"); their constitutions; the terms of their authorisations granted by the Independent Regulator of NHS Foundation Trusts ('the Independent Regulator'); and binding guidance issued by the Independent Regulator.

The Regulatory Framework requires the Board of Directors to adopt Standing Orders for the practice and procedure of the Board of Directors.

1. INTERPRETATION

- 1.1 Save as otherwise permitted by law, at any meeting the Chair of the Trust shall be the final authority on the interpretation of Standing Orders (on which they should be advised by the Trust's Secretary).
- 1.2 Any expression to which a meaning is given in the 2006 Act and other Acts relating to the National Health Service or in the Financial Regulations made under the Acts shall have the same meaning in these Standing Orders and in addition:
 - 1.2.1 **"Board of Directors"** means the Chair, executive and non-executive directors of the Trust collectively as a body as constituted in accordance with the constitution and the 2006 Act.
 - 1.2.2 **"Chief Executive"** means the Chief Officer of the Trust.
 - 1.2.3 **"Committee"** means a committee appointed by the Trust.
 - 1.2.4 **"Committee members"** mean persons formally appointed to the Board of Directors to sit or to chair specific committees.
 - 1.2.5 **"Director of Finance"** means the chief financial officer of the Trust.
 - 1.2.6 **"Executive Director"** means a Director who is also an officer of the Trust.
 - 1.2.7 **"Director"** means an executive (including the Chief Executive) or non-executive director (including the Chair) of the Board.
 - 1.2.8 **"Nominated Officer"** means an officer charged with the responsibility for discharging specific tasks within Standing Orders and Standing Financial Instructions.
 - 1.2.9 **"Non-executive Director"** means a director of the Trust who is not an officer of the Trust, except where the Director is a nominee of the university that provides the Trust's medical school.
 - 1.2.10 **"Officer"** means employee of the Trust or any other person holding a paid appointment of office within the Trust.

2. THE TRUST

- 2.1 All business shall be conducted in the name of the Trust.
- 2.2 All funds received in trust shall be held in the name of the Trust as corporate trustee. In relation to funds held on trust, powers exercised by the Board of Directors as corporate trustee shall be exercised separately and distinctly from those powers exercised as a Trust.
- 2.3 Directors acting on behalf of the Trust as a corporate trustee are acting as quasi trustees. Accountability for charitable funds held on trust is to the Charity Commission.
- 2.4 The Board of Directors has resolved that certain powers and decisions may only be exercised by the Board of Directors in formal session. These powers and decisions are set out in the document entitled 'Reservation of powers to the Board of Directors and Scheme of Delegation' and shall have effect as if incorporated into the Standing Orders. Those powers which it has delegated to officers and other bodies are contained in that document also.
- 2.4 **Appointment and Powers of Deputy Chair** – For the purposes of allowing the proceedings of the Board of Directors to be conducted in the absence of the Chair for any reason and subject to Standing Order 2.6 below, the Council of Governors may appoint a non-executive director to be Deputy Chair, for such period, not exceeding the remainder of their term as a Director, as they may specify on appointment.
- 2.5 Any non-executive director so appointed may at any time resign from the office of Deputy Chair by giving notice in writing to the Chair. The Council of Governors may thereupon appoint another non-executive director as Deputy Chair in accordance with the provisions of Standing Order 2.5.
- 2.6 Where the Chair of the Trust has died or has ceased to hold office, or where they have been unable to perform their duties as Chair owing to illness or any other cause, the Deputy Chair shall act as Chair until a new Chair is appointed or the existing Chair resumes their duties, as the case may be; and references to the Chair in these Standing Orders shall, so long as there is no Chair able to perform their duties, be taken to include references to the Deputy Chair.

2.7 Senior Independent Director

- 2.7.1 The Code of Governance for Foundation Trusts, states in paragraph A4.1

“In consultation with the council of governors, the board should appoint one of the independent non-executive directors to be the senior independent director to provide a sounding board for the chairperson and to serve as an intermediary for the other directors when necessary. The senior independent director should be available to governors if they have concerns that contact through the normal channels of chairperson, chief executive, finance director or trust secretary has failed to resolve, or for which such contact is

inappropriate. The senior independent director could be the deputy chairperson.”

2.8 Appointment of the Senior Independent Director

2.8.1 Following the resignation of the current Senior Independent Director (SID) or the current SID is at the end of their Term of Office, the following appointment process will apply:

2.8.1.1 When a vacancy for a Senior Independent Director arises, the Trust Chair will seek expressions of interest from Non-Executive Director colleagues regarding standing for the role of Senior Independent Director.

2.8.1.2 If only one Non-Executive Director expresses an interest in the role, a report will be prepared for the Board of Directors in private session, proposing the Non-Executive Director as the new Senior Independent Director.

2.8.1.3 If approved, following the meeting of the Board of Directors, a report will be presented to the next Council of Governors meeting to request endorsement to the appointment of the Non-Executive Director as the new Senior Independent Director.

2.8.1.4 If more than one expression of interest is received, then the Non-Executive Directors will be asked to write a supporting statement to the Board of Directors, detailing why they wish to be considered for the role. This will include ensuring they can deliver on the areas detailed within the role profile.

2.8.1.5 The statement will be circulated to Board Members and a formal vote undertaken. All Board Members will have a vote on the process. The process will be conducted in a timely manner by the Associate Director of Corporate Governance.

2.8.1.6 Once the results are known, the recommended candidate from the Board of Directors for the appointment of Senior Independent Director, will be presented for formal endorsement to the Council of Governors.

2.8.1.7 The Associate Director of Corporate Governance will then formally write confirming the appointment to the Non-Executive Director as SID. This letter will be placed on their personal file in the central electronic filing system.

2.8.1.8 If the vote results in a tie, then the Chair will have a casting vote and a report will be prepared for the Council of Governors for formal endorsement.

2.9 Any Member of the Board of Directors so appointed may at any time resign from the office of Senior Independent Director by giving notice in writing to the

Chair. The Board of Directors may thereupon in consultation with the Council of Governors appoint another Non-Executive Director as Senior Independent Director in accordance with the provisions of Standing Order 2.8 above.

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

3. MEETINGS OF THE BOARD OF DIRECTORS

- 3.1 **Admission of the Public and the Press** - Meetings of the Board of Directors shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons. Before holding a meeting, the Board of Directors must send a copy of the agenda of the meeting to the Council of Governors. As soon as practicable after holding, the Board of Directors must send a copy of the minutes of the meeting to the Council of Governors.

- 3.2 The Chair (or Deputy Chair) shall give such directions as he/she thinks fit in regard to the arrangements for meetings and accommodation of the public and representatives of the press such as to ensure that the Board of Directors' business shall be conducted without interruption and disruption and, without prejudice to the power to exclude on grounds of the confidential nature of the business to be transacted, the public will be required to withdraw upon the Board of Directors resolving as follows:

"That in the interests of public order the meeting adjourn for (the period to be specified) to enable the Board of Directors to complete business without the presence of the public".

3.3 Confidentiality.

- 3.3.1 Nothing in these Standing Orders shall require the Board of Directors to allow members of the public or representatives of the press 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 Board of Directors. Proceedings shall not be transmitted in any manner whatsoever without the prior agreement of the Board of Directors.
- 3.3.2 Matters to be dealt with by the Board of Directors following the exclusion of representatives of the press, and other members of the public shall be confidential to the members of the Board of Directors.
- 3.3.2 Directors 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 Board of Directors meeting, without the express permission of the Board of Directors. This prohibition shall

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

- 3.4 **Calling Meetings** - Ordinary meetings of the Board of Directors shall be held at such times and places as the Board of Directors may determine.
- 3.5 The Chair of the Trust may call a meeting of the Board of Directors at any time. If the Chair refuses to call a meeting after a requisition for that purpose, signed by at least one-third of the whole number of Directors, has been presented to them, or if, without so refusing, the Chair does not call a meeting within seven days after such requisition has been presented to them at the Trust's Headquarters, such one third or more Directors may forthwith call a meeting.
- 3.6 **Notice of Meetings** - Before each meeting of the Board of Directors, a notice of the meeting, specifying the business proposed to be transacted at it, and signed by the Chair or by an officer authorised by the Chair to sign on their behalf shall be delivered to every Director, or sent by post to the usual place of residence of such Director, so as to be available to them at least three clear days before the meeting.
- 3.7 Want of service of the notice on any Director shall not affect the validity of a meeting.
- 3.8 In the case of a meeting called by Directors in default of the Chair, the notice shall be signed by those Directors and no business shall be transacted at the meeting other than that specified in the notice or emergency motions allowed under these Standing Orders. Failure to serve such a notice on more than three Directors will invalidate the meeting. A notice shall be presumed to have been served one day after posting.
- 3.9 Agendas will wherever possible be sent to Directors at least five clear days before the meeting and supporting papers, whenever possible.
- 3.10 Before each meeting of the Board of Directors a public notice of the time and place of the meeting, and the public part of the agenda, shall be shared on the Trust website at least three clear days before the meeting.
- 3.11 **Setting the Agenda** - The Board of Directors may determine that certain matters shall appear on every agenda for a meeting and shall be addressed prior to any other business being conducted. (Such matters may be identified within these Standing Orders or following subsequent resolution shall be listed in an Appendix to the Standing Orders.)
- 3.12 A Director desiring a matter to be included on an agenda shall make their request in writing to the Chair 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 Chair.

- 3.13 **Petitions** - Where a petition has been received by the Trust the Chair of the Board of Directors shall include the petition as an item for the agenda of the next Board of Directors meeting subject to the powers granted to the Chair by these Standing Orders to regulate arrangements for Board of Directors' meetings.
- 3.14 **Chair of Meeting** - At any meeting of the Board of Directors, the Chair of the Board of Directors, if present, shall preside. If the Chair is absent from the meeting the Deputy Chair, if there is one and they are present, shall preside. If the Chair and Vice -Chair are absent such Director (who is not also an officer of the Trust) as the Directors present shall choose shall preside.
- 3.15 If the Chair is absent temporarily on the grounds of a declared conflict of interest the Deputy Chair, if present, shall preside. If the Chair and Deputy Chair are absent, or are disqualified from participating, such non-executive director as the Directors present shall choose shall preside. If any matter for consideration at a meeting of the Board of Directors relates to the interests of the Chair or to the interests of the non-executive Directors as a class, neither the Chair nor any of the other non-executive Directors shall preside over the period of the meeting during which the matter is under discussion. The Directors (excluding the Chair or the other non-executive Directors) shall elect one of their number to preside during that period and that person shall exercise all the rights and obligations of the Chair including the right to exercise a second or casting vote where the number of votes for and against a motion is equal.
- 3.16 **Annual Members' Meeting** – The Trust will publicise and hold an annual members' meeting.
- 3.17 **Notices of Motion** - A Director desiring to move or amend a motion shall send a written notice thereof at least 10 clear days before the meeting to the Chair, who shall insert in the agenda for the meeting all notices so received subject to the notice being permissible under the appropriate regulations. This paragraph shall not prevent any motion being moved during the meeting, without notice on any business mentioned on the agenda, subject to Standing Order 3.8.
- 3.18 **Withdrawal of Motion or Amendments** - A motion or amendment once moved and seconded may be withdrawn by the proposer with the concurrence of the seconder and the consent of the Chair.
- 3.19 **Motion to Rescind a Resolution** - Notice of motion to amend or rescind any resolution (or the general substance of any resolution) which has been passed within the preceding 6 calendar months shall bear the signature of the Director who gives it and also the signature of 4 other Directors. When any such motion has been disposed of by the Board of Directors, it shall not be competent for any Director other than the Chair to propose a motion to the same effect within 6 months; however the Chair may do so if they consider it appropriate.

- 3.20 **Motions** - The mover of a motion shall have a right of reply at the close of any discussion on the motion or any amendment thereto.
- 3.21 When a motion is under discussion or immediately prior to discussion it shall be open to a Director to move:
- An amendment to the motion.
 - The adjournment of the discussion or the meeting.
 - That the meeting proceeds to the next business. (*)
 - The appointment of an ad hoc committee to deal with a specific item of business.
 - That the motion be now put. (*)
 - A motion resolving to exclude the public (including the press).
- * In the case of sub-paragraphs denoted by (*) above to ensure objectivity motions may only be put by a Director who has not previously taken part in the debate and who is eligible to vote. No amendment to the motion shall be admitted if, in the opinion of the Chair of the meeting, the amendment negates the substance of the motion.
- 3.22 **Chair's Ruling** - Statements of Directors made at meetings of the Board of Directors shall be relevant to the matter under discussion at the material time and the decision of the Chair of the meeting on questions of order, relevancy, regularity and any other matters shall be final.
- 3.23 **Voting** - Every question put to a vote at a meeting shall be determined by a majority of the votes of the Directors present and voting on the question and, in the case of the number of votes for and against a motion being equal, the Chair of the meeting shall have a second or casting vote.
- 3.24 All questions put to the vote shall, at the discretion of the Chair of the meeting, be determined by oral expression or by a show of hands. A paper ballot may also be used if a majority of the Directors present so request.
- 3.25 If at least one-third of the Directors present so request, the voting (other than by paper ballot) on any question may be recorded to show how each Director present voted or abstained.
- 3.26 If a Director so requests, their vote shall be recorded by name upon any vote (other than by paper ballot).
- 3.27 In no circumstances may an absent Director vote by proxy. Absence is defined as being absent at the time of the vote.
- 3.28 An officer who has been appointed formally by the Board of Directors to act up for an executive director during a period of incapacity or temporarily to fill an executive director vacancy, shall be an executive director.
- 3.29 An officer attending the Board of Directors to represent an executive director during a period of incapacity or temporary absence without formal acting up status may not exercise the voting rights of the executive director. An officer's status when attending a meeting shall be recorded in the minutes.

- 3.30 **Minutes** - 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.
- 3.31 No discussion shall take place upon the minutes except upon their accuracy or where the Chair considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the next meeting.
- 3.32 Minutes shall be circulated in accordance with Directors' wishes. Where providing a record of a public meeting the minutes shall be made available to the public.
- 3.33 **Suspension of Standing Orders** - Except where this would contravene any provision of the Regulatory Framework, any one or more of the Standing Orders may be suspended at any meeting, provided that at least two-thirds of the Directors are present, including one executive director and one non-executive director, and that a majority of those present vote in favour of suspension.
- 3.34 A decision to suspend Standing Orders shall be recorded in the minutes of the meeting.
- 3.35 A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the Directors.
- 3.36 No formal business may be transacted while Standing Orders are suspended.
- 3.37 The Audit Committee shall review every decision to suspend Standing Orders.
- 3.37 **Waiver of Standing Orders** - Except where this would contravene any provision of the Regulatory Framework, any one or more of the Standing Orders may be waived at any meeting, provided that at least two-thirds of the Directors are present, including one executive director and one non-executive director, and that a majority of those present vote in favour of suspension.
- 3.38 A decision to waive Standing Orders shall be recorded in the minutes of the meeting.
- 3.39 The Audit Committee shall review every decision to waive Standing Orders.
- 3.40 **Variation and Amendment of Standing Orders** - These Standing Orders shall be amended only if:
- a notice of motion under Standing Order 3.17 has been given; and
 - no fewer than half the total of the Trust's non-executive directors vote in favour of amendment; and
 - at least two-thirds of the Directors are present; and
 - the variation proposed does not contravene any provision of the Regulatory Framework.

- 3.41 **Record of Attendance** - The names of the Directors present at the meeting shall be recorded in the minutes.
- 3.42 **Quorum** - No business shall be transacted at a meeting of the Board of Directors unless at least one half of the whole number of the Directors appointed, (including at least one non-executive director and one executive director) are present.
- 3.43 An officer in attendance for an executive Director but without formal acting up status may not count towards the quorum.
- 3.44 If a Director has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of the declaration of a conflict of interest (see Standing Order 6 or 7) they shall no longer count towards the quorum. If a quorum is then not available for discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business. The above requirement for at least one executive director to form part of the quorum shall not apply where the executive Directors are excluded from a meeting (for example when the Board of Directors considers the recommendations of the Remuneration and Terms of Service Committee). The above requirement for at least one non-executive Director to form part of the quorum shall not apply where the non-executive Directors are excluded from a meeting.
- 3.45 **Adjournment of Meetings** - The Board of Directors may, by resolution, adjourn any meeting to some other specified date, place and time and such adjourned meeting shall be deemed a continuation of the original meeting. No business shall be transacted at any adjourned meeting which was not included in the agenda of the meeting of which it is an adjournment.
- 3.46 When any meeting is adjourned to another day, other than the following day, notice of the adjourned meeting shall be sent to each Director specifying the business to be transacted.
- 3.47 **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 Board of Directors meetings and may change, alter or vary these terms and conditions as it deems fit.

4. ARRANGEMENTS FOR THE EXERCISE OF FUNCTIONS BY DELEGATION

- 4.1 Subject to the Regulatory Framework, the Board of Directors may make arrangements for the exercise, on behalf of the Board of Directors, of any of its functions subject to such restrictions and conditions as the Board of Directors thinks fit by:

- a) committee or sub-committee appointed by virtue of Standing Order 5 or by a Director or an officer of the Trust; or
 - b) in the case of delegation for the purposes of a provision of, or made under, the Mental Health Act 1983, in such other manner as is permitted by the relevant provision in each case subject to contractual arrangements and such restrictions and conditions as the Board of Directors thinks fit to ensure appropriate oversight.
- 4.2 **Emergency Powers** - The powers which the Board of Directors has retained to itself within these Standing Orders (Standing Order 2.4) may in emergency be exercised by the Chief Executive and the Chair after having consulted at least two non-executive directors. The exercise of such powers by the Chief Executive and Chair shall be reported to the next formal meeting of the Board of Directors for noting.
- 4.3 **Delegation to Committees** - The Board of Directors shall agree from time to time to the delegation of executive powers to be exercised by committees, or subcommittees, which it has formally constituted. The constitution and terms of reference of these committees, or joint committees, and their specific executive powers shall be approved by the Board of Directors.
- 4.4 When the Directors are not meeting as the Board of Directors in public session it shall operate as a committee and may only exercise such powers as may have been delegated to it by the Board of Directors in public session.
- 4.4 **Delegation to Officers** - Those functions of the Trust which have not been retained as reserved by the Board of Directors or delegated to a committee or subcommittee or otherwise for the purposes of and in accordance with the Mental Health Act 1983 shall be exercised on behalf of the Board of Directors by the Chief Executive. The Chief Executive shall determine which functions he/she will perform personally and shall nominate officers to undertake the remaining functions for which he/she will still retain accountability to the Board of Directors.
- 4.5 The Chief Executive shall prepare a Scheme of Delegation identifying their proposals, which shall be considered and approved by the Board of Directors, subject to any amendment, agreed during the discussion. The Chief Executive may periodically propose amendment to the Scheme of Delegation, which shall be considered and approved by the Board of Directors as indicated above.
- 4.6 Nothing in the Scheme of Delegation shall impair the discharge of the direct accountability to the Board of Directors of the Director of Finance or other executive Director to provide information and advise the Board of Directors in accordance with the Constitution, Terms of Authorisation, any statutory requirements or provisions required by the Independent Regulator of NHS Foundation Trusts. Outside these statutory requirements the roles of the Director of Finance shall be accountable to the Chief Executive for operational matters.

- 4.7 The arrangements made by the Board of Directors as set out in the “Reservation of Powers to the Board of Directors and Delegation of Powers” document shall have effect as if incorporated in these Standing Orders.
- 4.8 **Overriding Standing Orders** - If for any reason these Standing Orders are not complied with, full details of the non-compliance and any justification for non-compliance and the circumstances around the non-compliance, shall be reported to the next formal meeting of the Board of Directors for action or ratification. All Directors and staff have a duty to disclose any non-compliance with these Standing Orders to the Chief Executive as soon as possible.

5. COMMITTEES

- 5.1 Subject to the Regulatory Framework, the Board of Directors may appoint committees of the Board of Directors. The Board of Directors 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 subject to contractual arrangements and such restrictions and conditions as the Board of Directors thinks fit to ensure appropriate oversight.
- 5.2 A committee appointed under this regulation may, subject to their terms of reference and the Regulatory Framework, appoint sub-committees consisting wholly of members of the committee.
- 5.3 The Standing Orders and Standing Financial Instructions of the Trust, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees established by the Board of Directors. In which case the term “Chair” is to be read as a reference to the Chair of the committee as the context permits, and the term “Director” is to be read as a reference to a member of the committee also as the context permits. (There is no requirement to hold meetings of committees, established by the Board of Directors in public.)
- 5.4 Each such committee shall have such terms of reference and powers and be subject to such conditions (as to reporting back to the Board of Directors), as the Board of Directors shall decide. Such terms of reference shall have effect as if incorporated into the Standing Orders.
- 5.5 Where committees are authorised to establish sub-committees they may not delegate executive powers to the sub-committee unless expressly authorised by the Board of Directors.
- 5.6 The Board of Directors shall approve the appointments to each of the committees which it has formally constituted. The Chair of each Board of Directors committee shall be a non-executive Director.
- 5.7 The committees established by the Board of Directors shall include an Audit Committee and a Remuneration and Terms of Service Committee.

- 5.8 The Board of Directors may elect to change the committees of the Board of Directors, as necessary, without requirement to amend these Standing Orders.
- 5.9 **Confidentiality** - A member of a committee shall not disclose a matter dealt with by, or brought before, the committee without its permission until the committee shall have reported to the Board of Directors or shall otherwise have concluded on that matter.
- 5.10 A Director of the Trust or a member of a committee shall not disclose any matter reported to the Board of Directors or otherwise dealt with by the committee, notwithstanding that the matter has been reported or action has been concluded, if the Board of Directors or committee shall resolve that it is confidential.

6. DECLARATIONS OF INTERESTS AND REGISTER OF INTERESTS

- 6.1 Declaration of Interests - The Constitution requires Directors to declare interests which are relevant and material to the Board of Directors. All existing Directors should declare such interests. Any Directors appointed subsequently should do so on appointment.
- 6.2 Interests which should be regarded as "relevant and material" are to be interpreted in accordance with guidance issued by the Independent Regulator of NHS Foundation Trusts and include:
- a) Directorships, including non-executive directorships held in private companies or PLC's (with the exception of those of dormant companies).
 - b) Ownership or part-ownership or directorship of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS.
 - c) Majority or controlling shareholdings in organisations likely or possibly seeking to do business with the NHS.
 - d) A position of trust in a charity or voluntary organisation in the field of health and social care.
 - e) Any connection with a voluntary or other organisation contracting for NHS services.
 - f) Research funding/grants that may be received by an individual or their department.
 - g) Interests in pooled funds that are under separate management.
 - h) Any connection with an organisation, entity or company considering entering into or having entered into a financial arrangement with the Trust, including but not limited to, lenders or banks.
 - i) Membership of clubs, societies or organisations whose purpose may include furthering the business or personal interests of their members by undeclared or informal means.
 - j) Any other commercial interest in the decision before the meeting.
 - k) Membership of the Reach Out Commissioning Sub-Committee

- 6.1 At the time Directors' interests are declared, they should be recorded in the board minutes. Any changes in interests should be declared at the next Board of Directors meeting following the change occurring. It is the obligation of the Director to inform the Secretary of the Trust in writing within 7 days of becoming aware of the existence of a relevant or material interest. The Secretary will amend the Register upon receipt within 5 working days.
- 6.2 Directors' directorships of companies in 6.2(a) above and Directors' directorships of companies likely or possibly seeking to do business with the NHS in 6.2(b) above should be published in the board's annual report. The information should be kept up to date for inclusion in succeeding annual reports.
- 6.5 During the course of a Board of Directors meeting, if a conflict of interest is established, the Director concerned should withdraw from the meeting and play no part in the relevant discussion or decision.
- 6.6 There is no requirement for the interests of Directors' family or close personal relationships to be declared. However, Standing Order 7 requires that the interest of Directors' family or close personal relationships, if living together, in contracts should be declared.
- 6.7 If Directors have any doubt about the relevance of an interest, this should be Discussed with the Chair. 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.
- 6.8 **Register of Interests** - The details of Directors' interests recorded in the Register will be kept up to date by means of a monthly review of the Register by the Secretary in which any changes to interests declared during the preceding month will be incorporated.
- 6.9 The Register will be available to the public and the Chair will take reasonable steps to bring the existence of the Register to the attention of the local population and to publicise arrangements for viewing it.

7. EXCLUSION OF CHAIR AND DIRECTORS IN PROCEEDINGS ON ACCOUNT OF PECUNIARY INTEREST

- 7.1 Subject to the following provisions of this Standing Order if the Director has any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter and is present at a meeting of the Board of Directors at which the contract or other matter is the subject of consideration, they shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not take part in the consideration or discussion of the contract or other matter or vote on any question with respect to it.

- 7.2 The Board of Directors may exclude the Director from a meeting of the Board of Directors while any contract, proposed contract or other matter in which they have a pecuniary interest, is under consideration.
- 7.3 Any remuneration, compensation or allowances payable to the Director shall not be treated as a pecuniary interest for the purpose of this Standing Order.
- 7.4 For the purpose of this Standing Order a Director shall be treated, subject to Standing Order 7.2 and Standing Order 7.5, as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if:
- (a) they, or a nominee of theirs, is a director of a company or other body, not being a public body, with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration;
- Or
- (b) they are a partner of, or are in the employment of a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration; and in the case of family or close personal relationship, the interest of one party shall, if known to the other, be deemed for the purposes of this Standing Order to be also an interest of the other.
- 7.5 The Director shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only:
- (a) of their membership of a company or other body, if they have no beneficial interest in any securities of that company or other body;
 - (b) of an interest in any company, body or person with which they are connected as mentioned in Standing Order 7.5 above which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a Director in the consideration or discussion of or in voting on, any question with respect to that contract or matter.
- 7.6 Where a Director has:
- (a) an indirect pecuniary interest in a contract, proposed contract or other matter by reason only of a beneficial interest in securities of a company or other body, and
 - (b) the total nominal value of those securities does not exceed £5,000 or one hundredth of the total nominal value of the issued share capital of the company body, whichever is the less, and
 - (c) if the share capital is of more than one class, the total nominal value of shares of any one class in which he/she has a beneficial interest does not exceed one-hundredth of the total issued share capital of that class, this Standing Order shall not prohibit him/her from taking part in the consideration or discussion of the contract or other matter or from voting

on any question with respect to it, without prejudice however to his/her duty to disclose his/her interest. Shareholdings in excess of 3% and directorships in any publicly listed, private or not for profit company, business, partnership or consultancy which is doing or might reasonably be expected to do business with the NHS including pharmaceutical companies, should be declared.

- 7.8 Standing Order 7 applies to a committee or sub-committee as it applies to the Board of Directors and applies to a member of any such committee or sub-committee (whether or not he/she is also a Director) as it applies to a Director. Full details of the declaration requirements are available in the Trust Declaration Policy.

8. STANDARDS OF BUSINESS CONDUCT POLICY

- 8.1 **Policy** - Staff must comply with the national guidance contained in HSG 1993/5 "Standards of Business Conduct for NHS Staff" (contained in Appendix B). This Section of Standing Orders should be read in conjunction with this document.
- 8.2 **Interest of Officers in Contracts** - If it comes to the knowledge of a director or an officer of the Trust that a contract in which they have any pecuniary interest not being a contract to which they are a party, has been, or is proposed to be, entered into by the Trust they shall, at once, give notice in writing to the Chief Executive of the fact that they are interested therein. In the case of married persons or persons living together as partners, the interest of one partner shall, if known to the other, be deemed to be also the interest of that partner.
- 8.3 An officer must also declare to the Chief Executive any other employment or business or other relationship of theirs, or of a member of their family or of someone with whom they have a close personal relationship, that conflicts, or might reasonably be predicted could conflict with the interests of the Trust. The Trust requires interests, employment or relationships so declared to be entered in a register of interests of staff.
- 8.4 **Canvassing of and Recommendations by, Directors in Relation to Appointments** - Canvassing of Directors 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.
- 8.5 A Director 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 Director from giving written testimonial of a candidate's ability, experience, or character for submission to the Trust.
- 8.4 Informal discussions outside appointments panels or committees, whether solicited or unsolicited, should be declared to the panel or committee.

- 8.7 **Relatives of Directors or Officers** - Candidates for any staff appointment shall, when making application, disclose in writing to the Trust whether they are related to any Director or the holder of any office under the Trust. Failure to disclose such a relationship shall disqualify a candidate and, if appointed, render them liable to instant dismissal.
- 8.8 Every Director and officer of the Trust shall disclose to the Chief Executive any relationship between themselves and a candidate of whose candidature that Director or officer is aware. It shall be the duty of the Chief Executive to report to the Board of Directors any such disclosure made.
- 8.9 On appointment, Directors (and prior to acceptance of an appointment in the case of executive Directors) should disclose to the Board of Directors whether they are related to any other Director or holder of any office in the Trust.
- 8.9 Where the relationship to a Director is disclosed, the Standing Order headed 'Disability of Chair and Directors in proceedings on account of pecuniary interest' (Standing Order 7) shall apply.
- 8.10 No formal definition of relationship is made. In considering whether a disclosure is required the influence rather than immediacy of the relationship is more important. In case of doubt disclosure should be made.

9. TENDERING AND CONTRACT PROCEDURE

- 9.1 The procedure for making all contracts by or on behalf of the Trust shall comply with: the Regulatory Framework; these Standing Orders (except where Standing Order 3.33 or 3.37 is applied); and the Trust's Standing Financial Instructions. Such contracts involving charitable funds shall comply with the requirements of the Charities Act and the trust deed.

10. CUSTODY OF SEAL AND SEALING OF DOCUMENTS

- 10.1 **Custody of Seal** - The Common Seal of the Trust shall be kept by the Chief Executive or their nominated officer in a secure place.
- 10.2 **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 of Directors or of a committee, thereof or where the Board of Directors has delegated its powers. The Board has resolved that the seal may be used between Board meetings, based on business need, at the discretion of the Chief Executive or Director of Finance. Two Executive Director signatories are required for use of the seal. The Seal shall be used whenever required by law, or on the advice of the Trust's solicitor. Where it is necessary that a document shall be sealed, the seal shall be affixed in the presence of the Company Secretary or Trust Solicitor. A report on the use of the seal will be provided to the Board, after its use, at the next available opportunity.

- 10.3 Before any building, engineering, property or capital document is sealed it must be approved and signed by the Director of Finance (or an officer nominated by them) and authorised and countersigned by the Chief Executive (or an officer nominated by them who shall not be within the originating directorate).
- 10.4 **Register of Sealing** - An entry of every sealing shall be made and numbered consecutively in a book provided for that purpose and shall be signed by the persons who shall have approved and authorised the document and those who attested the seal. A report of all sealing shall be made to the Board of Directors and to the Audit Committee at least quarterly. (The report shall contain details of the seal number, the description of the document and date of sealing).

11. SIGNATURE OF DOCUMENTS

- 11.1 Where the signature of any document will be a necessary step in legal proceedings involving the Trust, it shall be signed by the Chief Executive, unless any enactment otherwise requires or authorises, or the Board of Directors shall have given the necessary authority to some other person for the purpose of such proceedings.
- 11.2 The Chief Executive or nominated officers shall be authorised, by resolution of the Board of Directors, to sign on behalf of the Trust any agreement or other document, not required to be executed as a deed, the subject matter of which has been approved by the Board of Directors or any committee, sub-committee, or standing committee with delegated authority.

PROCESS FOR THE RECEIPT OF COMPLAINTS/BREACH OF CODE OF CONDUCT AGAINST CHAIR/NON-EXECUTIVE DIRECTOR

12.1 Introduction

- 12.1 Governors have a range of roles to fulfil incorporating legal, oversight and governance responsibilities. They have strategic stewardship responsibilities and are expected to act in the best interest of the NHS foundation trust. They represent the interests of NHS foundation trust members and hold the Non-Executive Directors, individually and collectively, to account for the performance of the Board of Directors, including ensuring the Licence is complied with. It is therefore essential that Governors are fully aware of the values, vision and behaviours the Trust seeks to promote to staff, members, patients and the wider public.

12.2 Purpose

- 12.2.1 The purpose of this procedure is to provide a robust process to follow in the event that a Non-Executive Director or the Chair is alleged to have breached the Board Code of Conduct in Appendix 1.

12.3 Definitions

- 12.3.1 The following definitions apply for terms used in this procedure:

Chair: the chair of the Trust.

NEDs : Non-Executive Directors of the Trust.

Council of Governors: the Council of Governors as constituted in the BSMHFT Constitution.

Associate Director of Corporate Governance: Trust Lead for Corporate Governance.

Governor: a member of the Council of Governors.

Member: a member of the BSMHFT Trust.

Complainant(s): the person(s) who is raising the complaint or concern.

A Complaint is any expression of dissatisfaction that requires a response.

Conflict of interest: a situation in which an individual has more than one interest which prevents the proper exercise of their duties and finds themselves unable to be impartial under this procedure. If Governors have

any doubt as to the relevance or materiality of an interest, this should be discussed with the Chair.

Investigator: the person requested to conduct a fair, prompt and proportionate investigation under this procedure

CoG Investigation Panel: (responsible for the investigation and takes the role of the “Commissioning Manager as detained in Trust Policies.

Lead Governor: A Governor elected by the Council of Governors to the role of Lead Governor.

Deputy Lead Governor: A Governor elected by the Council of Governors to the role of Deputy Lead Governor.

Terms of Reference: the framework used by the Investigator, setting out the issues to be investigated and matters to be considered as part of the investigation.

Supporter: to support a NED or Chair/Complainant during the process.

Suspension: the process of placing on a NED or the Chair so that they do not participate in the work of the Trust, while an investigation is undertaken into the allegations reported. Suspension is a neutral act; it is neither a disciplinary action nor an assumption of guilt. A suspended Chair or NED shall continue to be required to adhere to the Board Code of Conduct.

Present at a meeting: this can be virtually as well as face-to-face.

- 12.3.2 If any post holder is conflicted or otherwise unavailable to act, references in this procedure to that post holder shall be construed as references to a suitable deputy agreed by the Lead Governor. If the Lead Governor is conflicted, then the Deputy Lead Governor shall deputise.

12.4 Duties and Responsibilities

- 12.4.1 The Lead Governor is responsible for undertaking their role as per this procedure and for being able to take immediate action where necessary under 5.3 of this Procedure.
- 12.4.2 The Council of Governors is responsible for ensuring that in the event of the need to sanction or remove a NED or the Chair that the process is fair, rigorous, lawful and transparent.
- 12.4.3 The Associate Director of Corporate Governance is responsible for ensuring that the procedure is enacted and followed, and supporting the Lead

Governor, the Council, and the CoG Investigation Panel to discharge their duties, including receipt of external advice.

12.4.4 The NED's and the Chair are responsible for their own conduct and for demonstrating an appropriate standard of behaviour at all times in line with the Board Code of Conduct. The NED's and the Chair should be aware that complaints of inappropriate conduct or behaviour and/or breaches of the Board Code of Conduct may still be dealt with under this procedure, and could still therefore lead to their removal as a NED or the Chair, where the complaint in question relates to events occurring outside of their specific duties as NED or the Chair. This is because such behaviour and/or breaches of the Code of Conduct still have the potential to adversely impact on the Trust's reputation and/or may still be considered relevant to the question of whether they are fit to carry out their duties. The NED's or the Chair are responsible for engaging with any action taken in line with this procedure and for arranging their own support for formal meetings.

12.4.5 The CoG Investigation Panel is responsible for undertaking its role as per this procedure. The CoG will meet to identify and agree on 3 Governors to form the CoG Investigation Panel.

12.4.6 Supporters are responsible for recognising this is confidential business of the Trust.

12.5 Miscellaneous

12.5.1 Any written correspondence may be by electronic means (email). Any documents attached to emails should be protected by password.

12.5.2 It is anticipated that all timescales set out within this procedure will be met; however, the Lead Governor in consultation with the Company Secretary may extend any timescale given, if they have a clear reason to do so. Where a time limit imposed on is not met, or the Chair/NED indicate that they do not intend to engage with the procedure, the Lead Governor may continue to progress the procedure without further process or delay.

12.5.3 At any time, the Lead Governor is authorised to take such interim measures as may be immediately required, including the exclusion of the NED or the Chair concerned from a meeting or suspension from duties, on the basis that such measures are necessary to:

12.5.3.1 enable an effective investigation to be undertaken into any concern or complaint about a NED or the Chair;

12.5.3.2 address or prevent any significant disruption to the effective operation of any part of the Trust;

12.5.3.3 manage risk to the health or well-being of any NED or the Chair, Governor, employee, volunteer or patient of the Trust;

12.5.3.4 protect the reputation of the Trust.

Any suspension should be within the terms of the applied Policy. The suspension should be ratified and kept under review in line with the applied Policy.

12.5.4 During any period of suspension from duties, the NED or the Chair is not permitted to:

12.5.4.1 attend or enter the Trust's premises unless he or she is doing so as a patient of the Trust, as a carer or family member of a patient of the Trust or with the consent of the Lead Governor;

12.5.4.2 contact any of the Trust's NED's or the Chair, Governors, employees, suppliers, volunteers or patients without the express prior permission of the Lead Governor, other than in circumstances where any such contact is purely of a personal nature and unrelated to their position or duties as a Chair/NED or in relation to this process.

12.5.5 Any decision by the Lead Governor under paragraph 5.3 shall be communicated to the CoG Investigation Panel as soon as reasonably practicable and is effective when the NED or the Chair is notified either verbally or in writing. The NED or the Chair will be required to maintain confidentiality in regard to their suspension and the process being undertaken, save that they may disclose information about the process being followed to their Supporter required for the purposes of paragraphs 9 and 11 below.

12.5.6 The Lead Governor shall notify the Council of Governors that an interim measure has been imposed as soon as reasonably practicable.

12.5.7 In order to protect the legitimate interests of a NED or the Chair and any Complainant, the Council of Governors shall not be entitled to receive any further information regarding the use of this procedure in relation to any NED or the Chair until it is notified of any charge on which it is being asked to make a decision.

12.5.8 Notwithstanding the use of this procedure, a NED or the Chair is entitled to resign at any time. Where a NED or the Chair who is subject to this procedure resigns, the Lead Governor will provide an overview of the complaint to the Council where this would not unduly prejudice the interests of the NED or the Chair, and the complaint may still be investigated under this procedure if the Council of Governors considers necessary or appropriate to do so in the circumstances.

12.5.9 The CoG Investigation Panel or Council of Governors are authorised to obtain outside legal or other independent professional advice and to secure the attendance of outsiders with relevant experience and expertise if it considers this necessary. The costs of such advice must be agreed with the Trust via the Chief Executive.

12.5.10 Any meeting or hearing under this Procedure may be conducted remotely, by telephone or video conference technology, if the Lead Governor, following consultation with the Associate Director of Corporate Governance, considers it possible and appropriate in the circumstances. If any meeting or hearing is conducted remotely in this way, instructions for how to attend the meeting or hearing will be sent (usually by email) to all parties who are invited to attend, prior to the start of the meeting or hearing itself. Specific rules for remote participation in the meeting or hearing may also be circulated to all attendees in advance, and any failure to adhere to these rules by any NED or the Chair attending the meeting or hearing may be treated as a breach of the Board Code of Conduct and dealt with accordingly.

12.5.11 Normally this Procedure will apply as set out; however, in some circumstances it may not meet the circumstances of a complaint and investigation, for example where multiple complaints and counter complaints arise. The aim should be to incorporate the essential elements of the Procedure and the final decision of the most appropriate process will remain with the Lead Governor, following consultation with the Associate Director of Corporate Governance.

12.6 Process on Initial Receipt of a Complaint or Allegation

12.6.1 This procedure shall apply where the Lead Governor identifies, or becomes aware of, a complaint about a NED or the Chair from any source (it may be necessary to consider section 12.5.3 at this stage).

12.6.2 The Lead Governor shall ensure that all complaints are documented before proceeding.

12.6.3 The Lead Governor, in consultation with the Associate Director of Corporate Governance, will determine whether and how to proceed with a complaint: either informally or formally. Consideration should be given to undertaking a without prejudice wellbeing check of the NED or the Chair against whom the complaint has been received and the Complainant(s). This check will be with the informed consent of the person being assessed.

12.6.4 If the Lead Governor decides a complaint shall be dealt with informally, the Lead Governor will discuss it with the NED or the Chair and if appropriate, offer advice or support to the NED or the Chair in an effort to avoid any further breaches of the Board Code of Conduct or the Trust Constitution. This will be documented in writing to the NED or the Chair and kept on file for a period of 12 months. The complaint shall not be taken further under this procedure,

unless the Lead Governor subsequently determines that the complaint is more serious than first thought and should be dealt with as in paragraph 12.7 below.

12.6.5 If the Lead Governor decides a complaint shall be dealt with formally, the provisions of paragraph 12.7 below will apply.

12.6.6 With the support of the Associate Director of Corporate Governance, the Lead Governor shall document:

12.6.6.1 their reasons for their decision under paragraph 12.6.4;

12.6.6.2 any advice or support offered to a NED or the Chair under paragraph 12.6.4; and

12.6.6.3 provide a copy to the Associate Director of Corporate Governance.

12.6.7 The Lead Governor shall report all complaints and any actions taken to the CoG Investigation Panel.

12.6.8 In the event that the NED or the Chair complained against raises a counter-complaint, the Lead Governor and the Associate Director of Corporate Governance shall decide how to proceed with that counter-complaint.

12.7 Initial Consideration by the CoG Investigation Panel

12.7.1 The Lead Governor shall provide written details of the complaint to the NED or the Chair and advise them that the matter will be referred to the CoG Investigation Panel. The Lead Governor will invite the NED or the Chair to provide a response to the complaint within 10 working days so that this can be considered by the Panel. If the NED or the Chair requests any further information in relation to the complaint than that which has already been provided, the Lead Governor, with support by the Associate Director of Corporate Governance, will determine whether it is appropriate or necessary to provide this information.

12.7.2 If the NED or the Chair fails to provide a response to the complaint or fails to provide a response within 10 working days (without providing a good reason for the delay), this may be deemed a breach of the Code of Conduct, which requires a NED or the Chair to cooperate fully and in a timely manner with any authorised due process or investigation. This alleged breach may be added to the existing allegations made against the Chair/NED in the complaint, which will then be considered by the CoG Investigation Panel as detailed at paragraph 12.7.4 below.

12.7.3 The complaint and any response received from the NED or the Chair will be sent to the CoG Investigation Panel for discussion at the next meeting which should be convened at the earliest opportunity.

12.7.4 At the next meeting of the CoG Investigation Panel, the Panel shall be asked to determine by a majority of those present and voting whether the complaint requires further investigation. In the event the NED or the Chair has not provided a response to the complaint as envisaged in paragraph 12.7.1 (or has not provided a response within the required timeframe set out in paragraph 12.7.1), the CoG Investigation Panel will be entitled to consider and vote on whether the complaint requires further investigation solely based on the information available to it at that meeting.

12.7.5 If the majority required for the decision under is not achieved, no further action shall be taken against the Chair/NED under this procedure in relation to that complaint unless the Lead Governor receives new information or evidence and subsequently determines that the complaint is more serious than first thought and asks the CoG Investigation Panel to reconsider the matter or the NED or the Chair refuses to engage with the help and support offered as set out in paragraph 12.7.6 below. The NED or the Chair will be informed of the decision by the Lead Governor in writing within ten (10) working days and will be offered advice or support.

12.7.6 For the purposes of this procedure, advice and support may include:

12.7.6.1 Helping a NED or the Chair to understand their obligations under the Board Code of Conduct and the Trust's Constitution;

12.7.6.2 Offering an opportunity for a NED or the Chair to discuss their behaviour with the Lead Governor to help them to comply with their obligations under the Board Code of Conduct and the Trust's Constitution.

12.7.6.3 Offering mediation between a NED or the Chair and a Complainant.

12.8 Investigation

12.8.1 If the majority required for the decision is achieved, the Committee shall agree Terms of Reference (ToR) for an investigation into the complaint and instruct the Associate Director of Corporate Governance to initiate an investigation. The Associate Director of Corporate Governance may delegate responsibility for undertaking the investigation to an external third party with relevant experience.

12.8.2 The Terms of Reference will be documented.

12.8.3 The NED or the Chair shall cooperate with the investigation, and any failure to do so may be considered to be a breach of the Board Code of Conduct. Any such breach may be added to the existing allegations made against the NED or the Chair in the complaint and investigated accordingly in accordance with this paragraph 8.

12.8.4 The Committee shall also require the Complainant to cooperate with the investigation, in so far as it is possible for the Panel to do so.

12.8.5 An investigation should be completed as soon as practicable, and ideally within thirty (30) working days, subject always to paragraph 5.2 above. If a significantly longer period than 30 working days is required for the investigation to be completed, then this should be agreed by the CoG Investigation Panel. Under the terms of the relevant Policy, the “Commissioning Manager” will be the COG Investigation Panel.

12.8.6 Where further complaints about the NED or the Chair are identified in the course of an investigation, the Investigator may ask the CoG Investigation Panel to widen the ToR or decide whether a new investigation is required.

12.8.7 The Investigator shall produce a draft investigation outcome report setting out:

12.8.7.1 The Terms of Reference and the evidence obtained for each element of the ToR;

12.8.7.2 Any information obtained from the NED or the Chair,

12.8.7.3 Any other information that the Investigator deems appropriate.

12.8.8 The draft investigation outcome report shall then be sent to the Lead Governor and then to the NED or the Chair for them to provide any comments on factual accuracy, which must be provided within 10 working days of receipt of the report. If the NED or the Chair does not provide any comments within 10 working days, the NED or the Chair will be deemed not to have any comments to make in relation to the conclusions in the report, and this procedure will continue to be followed as set out below. Once any factual accuracy amendments have been made, the report will change from “draft” to “final” status.

12.8.9 The final investigation report, along with any comments from the NED or the Chair, shall be sent to the members of the CoG Investigation Panel by the Associate Director of Corporate Governance in good time to be read before the meeting at which it is to be discussed.

12.9 Consideration of the Final Investigation Report

12.9.1 The CoG Investigation Panel can decide to hold preliminary meetings in private to consider the Investigation Report to consider whether any further information is required before the Investigation is complete.

12.9.2 The CoG Investigation Panel shall hold a meeting in private to consider the investigation report.

12.9.3 The NED or the Chair shall be entitled to (but can choose not to) attend a CoG Investigation Panel meeting convened for the purposes of paragraph 9.2. They shall be entitled to make representations relevant to the contents of the investigation report. They may attend the CoG Investigation Panel

meeting with a supporter, but that supporter shall not be entitled to address the meeting. Where the NED or the Chair seeks to rely on information that they have not previously provided to the Investigator, they will only be allowed to do so where this is agreed by the Lead Governor. The NED or the Chair and Supporter shall be required to withdraw from the meeting after making representations and shall not be allowed to be present when the CoG Investigation Panel discusses the investigation report and vote on any matter.

12.9.4 A Complainant shall not be entitled to attend a CoG Investigation Panel meeting convened for the purposes of paragraph 12.9.2 without the permission of the Lead Governor. Where a Complainant is asked to attend a CoG Investigation Panel meeting, they may attend with a Supporter, but that Supporter shall not be entitled to address the meeting. The Complainant and Supporter shall not be allowed to be present when the panel discusses the investigation report and vote on any matter.

12.9.5 Having considered the investigation report and any submissions, the panel shall be asked to determine by a majority of those present and voting whether the complaint should be taken forward by means of the formal route set out at paragraph 10.

12.9.6 If the majority required for the decision under paragraph 12.9.5 is not achieved, the panel shall adopt the informal route set out at paragraph 12.6 above.

12.10 Formal Council of Governors Route

12.10.1 If the majority required in paragraph 12.9.5 is achieved, the panel shall instruct the Company Secretary to prepare a draft statement stating that the NED or the Chair has breached the Board Code of Conduct or the Trust's Constitution or both.

12.10.2 The panel shall consider the draft statement and the evidence of the breaches and make any amendments. A majority of those present and voting at a meeting of the panel shall be required to approve the terms of the statement and propose a sanction. Abstentions are not included in the voting total.

12.10.3 A confidential Extraordinary Council of Governors meeting shall be called. A copy of the statement, the evidence, the proposed sanction and the evidence relied upon by the panel in support of the statement, along with any information or representations that have been received from the NED or the Chair in the course of this procedure, shall be sent at least 7 days prior to the meeting to:

12.10.3.1 The NED or the Chair who is subject to this process, with an invitation to attend the Extraordinary Council of Governors meeting to make representations and then withdraw. The NED or the Chair shall

be asked to respond in writing to the invitation at least five (5) working days before the meeting;

12.10.3.2 All members of the Council of Governors, with a request that they each confirm safe receipt of the information.

12.10.4 The Extraordinary Council of Governors meeting will take place and the Council will consider the issues as set out in paragraph 12.10.7 below regardless of whether the NED or the Chair who is subject to this process responds to the invitation as set out in paragraph 12.10.3.1 or attends the meeting itself.

12.10.5 If the NED or the Chair attends the meeting convened for the purposes of paragraph 12.10.3, they shall be entitled to make representations relevant to the contents of the charge statement. They may attend the Council meeting with a Supporter but that Supporter shall not be entitled to address the meeting. Where the NED or the Chair seeks to rely on information that they have not previously provided to the Investigator or the CoG Coordinating Committee, they will only be allowed to do so where this is agreed by the Lead Governor. The NED or the Chair (with their Supporter) shall be required to withdraw from the meeting after making their representations, and shall not be allowed to be present or to vote when the Council discusses the charge statement and votes.

12.10.6 In recognising this is confidential business of the Trust, where the Complainant is not a member of the CoG, a Complainant shall not be entitled to attend a Council meeting convened for the purposes of paragraph 12.10.3 without the permission of the Council. Where a Complainant is asked to attend a Council meeting, they may attend with a Supporter, but that Supporter shall not be entitled to address the Council. The Complainant (and Supporter) shall not be allowed to be present or to vote when the Council discusses the charge and votes.

12.10.7 If a quorum as laid down in the Constitution is not achieved for any reason, the meeting will be rescheduled for another date which will be as soon as practicably possible taking into account the notice requirements set out in Trust's Constitution. Any Governor who has any conflict of interest in the matter which is the subject of the complaint, shall disclose their conflict as soon as is practicable after the commencement of the meeting and will not take part in the consideration or discussion of the charge. The Lead Governor should consider whether to exclude that Governor from the meeting entirely.

12.10.8 At the meeting called under paragraph 12.10.3, the Council will review the available evidence, determine whether the allegations set out in the statement are proven and decide by way of a vote whether to impose a sanction.

12.10.9 Sanctions may include (but are not limited to):

- 12.10.9.1 A written warning. A time limit of up to 12 months will be applied to this sanction.
- 12.10.9.2 Removal from office as a NED or the Chair from the Trust.
- 12.10.10 The threshold of votes required in order to impose a sanction on a NED or the Chair is as follows:
- 12.10.10.1 in the case of the sanction of removal from their office as NED or the Chair, this shall only be imposed with the support of not less than two-thirds of the Governing body; or
- 12.10.10.2 in the case of any other sanction, this shall only be imposed with the support of a majority of those present and voting at the Council meeting where the statement is considered.
- 12.10.11 If the relevant threshold as set out in paragraph 10.10 is not reached for the purposes of imposing a sanction, no further action shall be taken against the NED or the Chair under this procedure in relation to that complaint.
- 12.10.12 The NED or the Chair shall be notified of the Council's decision by the Lead Governor in writing usually within ten (10) working days of the decision. Where a sanction is proposed, the NED or the Chair shall be asked to acknowledge in writing receipt of the sanction within ten (10) working days, although any failure to do so on the NED or the Chair part will not affect the imposition of the sanction, which will take effect regardless from the date of the letter confirming the Council's decision.
- 12.10.13 If the imposed sanction is removal from office, the NED or the Chair will be required to return all Trust property (ID badge, parking permit, papers etc.) to the Company Secretary immediately.
- 12.10.14 If the NED or the Chair was suspended at any time during the process under paragraph 5.3, then the suspension is concluded when the outcome and any sanction is communicated to the NED or the Chair under paragraph 12.10.13.

12.11 Appeal

- 12.11.1 The NED or the Chair has the right to appeal the decision reached by the CoG Investigation Panel, not the findings but the process taken to reach those findings. An appeal must be raised in writing.
- 12.11.2 An appeal must be lodged within ten (10) working days of receipt of the outcome letter. The NED or the Chair should state in full their grounds of appeal.
- 12.11.3 Appeals should be sent to the Associate Director of Corporate Governance and an independent external Lead Governor will be appointed.

12.11.4 Appeal hearings will normally be set up within 15 working days of receipt of the appeal letter.

12.11.5 It is the responsibility of the NED or the Chair to state their case for appeal. The Associate Director of Corporate Governance will have available to them the original hearing information and any further information submitted by the NED or the Chair in advance of the appeal hearing.

12.11.6 The decision may be given on the day or may be deferred for further consideration in which case the NED or the Chair will usually be written to within 7 working days of the hearing with the details of the decision reached. The outcome will also be presented to the Council of Governors, usually within 7 working days of the hearing.

12.11.7 The Complainant will be notified in writing of the completion of the process.

12.11.8 The outcome is final and there is no further right of appeal.

12.12 Communications

12.12.1 If a NED or the Chair is removed, a communications plan will be produced the Chief Executive/Associate Director of Corporate Governance.

12.13 Process for Monitoring Compliance with and Effectiveness of the Procedure

12.13.1 Frequency

Each time the Procedure is used, the internal auditors will audit compliance to ensure that this Procedure has been adhered to and a formal report will be written and presented to the Council of Governors.

12.13.2 Dissemination of Results

At the next Council of Governors meeting.

Appendix 1

CODE OF CONDUCT FOR BOARD OF DIRECTORS

INTRODUCTION

High standards of corporate and personal conduct are an essential component of public service. The purpose of this code is to provide clear guidance of the standards of conduct and behaviour expected of all directors.

This code of conduct applies to all voting members of the trust board, namely the chair, non-executive and executive directors and other directors who participate in Board meetings. These are all referred to as directors.

This code, together with the Trust constitution, forms part of the framework designed to promote the highest possible standards of conduct and behaviour within the trust. The code is designed to operate in conjunction with the NHS Improvement code of governance, the trust's constitution and standing orders and other relevant codes of practice.

This code is complementary to the trust's values:

Our values are our guide to how we treat ourselves, one another, our service users, families and carers, and our partners.

Our values were developed by listening to feedback about what people wanted to see and experience when working for us, with us or accessing our services.

Our values describe our core ethics and principles. They help guide our culture by inspiring people's best efforts and constraining unwanted actions that do not align with our values.

Our values will only make a difference when we each let them guide our own thoughts, feelings, decisions, attitudes and actions.

The more we demonstrate our values through our work, the more likely others are to experience our values when working with us.

Our everyday and detailed behaviours describe what our values look like in practice. They give us a shared language to help bridge the wide range of specialties and roles in our Trust.

Compassionate

- Supporting recovery for all and maintaining hope for the future.
- Being kind to ourselves and others.
- Showing empathy for others and appreciating vulnerability in each of us.

Inclusive

- Treating people fairly, with dignity and respect.
- Challenging all forms of discrimination.
- Valuing all voices so we all feel we belong.

Committed

- Striving to deliver the best work and keeping service users at the heart.
- Taking responsibility for our work and doing what we say we will.
- Courage to question to help us learn, improve and grow together.

Directors are responsible for complying with the provisions of this code whenever they conduct business of the trust or act as its representative.

PRINCIPLES OF PUBLIC LIFE AND PUBLIC SERVICE VALUES

In 1995, the Committee on Standards in Public Life (the Nolan Committee) identified three public service values and seven principles of conduct underpinning public life “for the benefit of those who serve the public in any way”.

The Trust recognises the Seven Principles:

Selflessness

Holders of public office should act solely in terms of the public interest.

Integrity

Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family or their friends. They must declare and resolve any interests and relationships.

Objectivity

Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

Accountability

Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

Openness

Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for doing so.

Honesty

Holders of public office should be truthful.

Leadership

Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

Directors should promote and support these principles by leadership and example.

GENERAL PRINCIPLES

Public sector values matter in the trust and directors have a duty to conduct trust business with probity. They have a responsibility to respond to staff, patients and their families, and other stakeholders impartially, to achieve value for money from the public funds with which they are entrusted and to demonstrate high ethical standards of personal conduct.

The success of this code depends on a vigorous and visible example from the trust board and the consequential behaviour of all those who work within the organisation.

The Board therefore undertakes to set an example in the conduct of its business and to promote the highest corporate standards of conduct.

The Board will lead in ensuring that the provisions of the NHS constitution, the standing orders, financial standing instructions and accompanying scheme of delegation, conform to best practice and serve to enhance standards of conduct. The Board expects that this code will inform and govern the decisions and conduct of all directors.

The Board has confirmed its commitment to compliance with the Bribery Act and to ensure that all staff are aware of their responsibilities in relation to the prevention of bribery and corruption and that the risk of trust exposure to acts of bribery is mitigated. Directors must ensure that they are aware of the implications of the Bribery Act 2010, and of its underpinning principles, and will support related initiatives.

PUBLIC SERVICE VALUES IN MANAGEMENT

The Board will ensure that public service values guide the organisation in achieving its results. The Board has a duty to ensure that public funds are properly safeguarded and that at all times the board conducts its business as efficiently and effectively as possible. Proper stewardship of public monies requires value for money to be high on the agenda for the Board.

Accounting, tendering and employment practices will reflect the highest professional standards. Public statements and reports by the trust board will be

clear, comprehensive, understandable and balanced, and fully represent the facts. Annual and other key reports will be issued in good time to all stakeholders in the community who have a legitimate interest in health issues to allow full consideration by those wishing to attend public meetings on local health issues.

The Board will maintain a sound system of internal control and establish formal and transparent arrangements for considering how they should apply the financial reporting and internal control principles and for maintaining an appropriate relationship with all its stakeholders.

DECLARATION OF INTEREST AND CONFLICTS OF INTEREST

Directors will act impartially and will not be influenced by social, family or business relationships. They will not use their public position to further their private interest.

Directors have a statutory duty to avoid a situation in which they have (or can have) a direct or indirect interest that conflicts (or possibly may conflict) with the interests of the trust. Directors have a further statutory duty not to accept a benefit from a third party by reason of being a director or doing (or not doing) anything in that capacity. Directors must make a declaration of interests in accordance with the trust's conflicts of interests policy on appointment, as changes arise and annually.

These will be formally recorded in the minutes of the trust board and entered into a register, which is published on the trust's website. Failure to register a relevant interest in a timely manner may constitute a breach of this code.

If directors acquire any relevant interest subsequent to their appointment, they must declare this at the next board meeting so that it is formally recorded in the minutes, and entered into the register.

Declaration of interests is a standing item at the beginning of every meeting of the trust board or its committees, to ensure that any change in interests is declared and that board or committee members declare any interest they have that is relevant to a matter on the agenda. Their subsequent participation at the meeting will be at the chair's discretion.

HOSPITALITY AND OTHER EXPENDITURE

Directors will set an example to the trust in the use of public funds and the need for good value in incurring public expenditure. All expenditure on these items should be capable of justification as reasonable in the light of general practice in the public sector.

The Board is conscious of the fact that expenditure on hospitality or entertainment is the responsibility of management and is open to be challenged by the internal and external auditors and that ill-considered actions can damage respect for the organisation in the eyes of the immediate community and its wider stakeholders.

The trust has adopted a conflict of interests policy, which covers gifts and hospitality, and which will be followed at all times by directors and all employees. Directors must not accept gifts or hospitality other than in compliance with this policy and must make disclosures in accordance it. Advice on the acceptance of gifts and hospitality should be sought from the Company Secretary

The Board should also take cognisance of the trust's Fraud, Corruption and Bribery Policy and is legally bound by the Bribery Act 2010, under which it is an offence for employees to pay or receive bribes.

RELATIONS WITH SUPPLIERS

The conflict of interests policy includes provisions relating to the declaration of hospitality and sponsorship offered by, for example, suppliers. Their authorisation must be carefully considered, and the decision recorded. The trust board should be aware of the risks of incurring obligations to suppliers at any stage of a contracting relationship. Suppliers will be selected on the basis of quality, suitability, reliability and value for money.

FIT AND PROPER PERSON

All directors are required to comply with Care Quality Commission Regulation 5: fit and proper persons: directors. Directors must certify on appointment, and each year within the appraisal process, that they are/remain a fit and proper person. If circumstances change so that a director can no longer be regarded as a fit and proper person or if it comes to light that a director is not a fit and proper person, they are suspended from being a director with immediate effect pending confirmation and any appeal. Where it is confirmed that a director is no longer a fit and proper person, their board membership is terminated.

PERSONAL CONDUCT

Directors must conduct themselves in a manner which maintains the integrity of the organisation and its standing in the NHS and the wider community.

Specifically directors must: act in the best interests of the trust and adhere to its values and this code of conduct;

- respect others and treat them with dignity and fairness;
- seek to ensure that no one is unlawfully discriminated against and promote equal opportunities and social inclusion;
- be honest and act with integrity and probity;
- contribute to the workings of the board in order for it to fulfil its role and functions;
- recognise that the board is collectively responsible for the exercise of its powers and the performance of the trust;
- raise concerns and provide appropriate challenge regarding the running of the trust or a proposed action where appropriate;
- recognise the differing roles of the chair, senior independent director, chief executive, executive directors and non-executive directors;

- make every effort to attend meetings where practicable;
- adhere to good practice in respect of the conduct of meetings and respect the views of others;
- take and consider advice on issues where appropriate;
- acknowledge the responsibility of the council of governors to hold the non-executive directors individually and collectively to account for the performance of the board;
- represent the interests of the trust's members, public and partner organisations in the governance and performance of the trust; and to have regard to the views of the council of governors;
- not use their position for personal advantage or seek to gain preferential treatment; nor seek improperly to confer an advantage or disadvantage on any other person; and
- accept responsibility for their performance, learning and development.

OPENNESS AND PUBLIC RESPONSIBILITIES

The Board will make its decisions in public unless there is a justifiable and properly documented reason for not doing so.

The needs of the population that the trust serves and the resulting provision of services are subject to constant change. The trust board will be open with the public, patients and staff as the need for change emerges. Major changes will be consulted upon before decisions are reached in accordance with statute, guidelines and best practice. Clear and understandable information supporting those decisions will be made available and positive responses will be given to reasonable requests for information.

The trust will act in a socially responsible and inclusive manner. The Board will forge an open relationship with the communities it serves. The Board will actively involve staff, the Council of Governors and other key stakeholders and partners in setting out a vision for the organisation, which demonstrates concern for the wider health of the population and best use of public resources allocated to the trust. The trust will work in partnership and co-operate with local and national bodies to support the delivery of safe, high quality care.

CONFIDENTIALITY AND ACCESS TO INFORMATION

Directors must comply with the trust's confidentiality policies and procedures.

Directors must not disclose any confidential information, except in specified lawful circumstances.

Information on decisions made by the trust board and information supporting those decisions should be made available in a way that is understandable. Positive responses should be given to reasonable requests for information and in accordance with the Freedom of Information Act 2000 and other applicable legislation, and directors must not seek to prevent a person from gaining access to information to which they are legally entitled.

The trust has adopted policies and procedures to protect confidentiality of personal information and to ensure compliance with the Data Protection Act (now replaced by the General Data Protection Regulation - GDPR), the Freedom of Information Act and other relevant legislation which will be followed at all times by the trust board.

Nothing said in this code precludes directors from making a protected disclosure within the meaning of the Public Disclosure Act 1998.

RAISING MATTERS OF CONCERN – “SPEAKING UP” OR “WHISTLE-BLOWING”

The trust board acknowledges that directors and staff must have a proper and widely publicised procedure for voicing complaints or concerns about maladministration, malpractice, breaches of this code and other concerns of an ethical nature. The trust board has adopted a policy (speaking up policy and procedure ((incorporating whistleblowing/raising concerns policy and procedure)) which should be followed at all times by directors and all staff.

Where a director believes that a board colleague is non-compliant with all or part of this code, they should raise the matter with the chair of the board. Where the chair is the person who is alleged to have contravened the code, the concerns should be raised with the senior independent director.

The trust board will seek to ensure that NHS resources are protected from fraud, corruption and bribery and that any incident of this kind is reported to the Local Counter Fraud Specialist in line with the counter fraud policy.

EXTERNAL COMMUNICATIONS

The trust has a guideline for communicating with the media. Directors will be familiar with, and abide by, this policy. All press enquiries must be referred to the communications team.

When speaking as a director of the board, whether in a public forum or in a private or informal discussion, directors should ensure that they reflect the current policies or view of the trust. They should do so only with the prior knowledge and approval of the Communications Team. Where this is not practicable, they should report their action to the communications team as soon as possible. Comments should be well considered, sensible, well informed, made in good faith, in the public interest and without malice and that they enhance the reputation and status of the trust.

COMPLIANCE

Directors must satisfy themselves that the actions of the board and its members in conducting business fully reflect the values in this code and, as far as is reasonably practicable, that concerns expressed by staff and others are fully investigated and acted upon. All directors are required, on appointment, to subscribe to the code of conduct.

The chair and non-executive directors of the board are responsible for taking firm, prompt and fair disciplinary action against any executive or other director in breach of the code of conduct.

The corporate nature of the organisation will mean that, in most cases, if a decision is open to criticism individual directors will not be legally liable due to the specific statutory protections where they are acting in good faith. However directors who commit a criminal offence will carry personal responsibility for any liability.

Directors will be cognisant of their responsibilities and appropriate conduct relating to equality and human rights and the related legislation. Non-executive directors have a key role in applying proper scrutiny to equality and human rights in NHS organisations.

CODE OF CONDUCT TRUST BOARD MEMBERS DECLARATION

I (full name).....have read, understood and agree to comply with BSMHFT code of conduct for trust board members.

Signature

Date

Please return this completed, signed form to:
Associate Director of Corporate Governance

**ANNEX 9 – STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF
THE COMMISSIONING COMMITTEE**

(Paragraph 25)

Birmingham and Solihull Mental Health NHS Foundation Trust

**Standing Orders for the Practice and Procedure of
The Commissioning Committee**

FOREWORD

Trust Boards have a responsibility to agree Standing Orders and Schedules of Reservation of Powers and Delegation of Powers to their boards.

The documents, together with Standing Financial Instructions, provide a regulatory framework for the business conduct of the Trust. They fulfill the dual role of protecting the Trust's interests by ensuring, for example, all transactions maximize the benefit to the Trust and protecting staff from possible accusations that they have acted less than properly. This is provided that staff have followed the correct procedures outlined in the relevant document.

The Standing Orders, Delegated Powers and Standing Financial Instructions provide a comprehensive business framework. All Board directors and all staff should be aware of the existence of these documents and, where necessary, be familiar with their detailed provisions to the extent required for the proper conduct of their duties.

These Standing Orders relate to the business of the Commissioning Committee (“**CoCo**”), which is a new governance forum to enable discharge of the Trust’s Lead Provider responsibilities.

The CoCo is a decision-taking forum. The CoCo is the ‘Board in Committee’, i.e., its membership comprises all Non-Executive and Executive Directors of the Foundation Trust. It is the controlling mind of the Trust’s commissioning arm, i.e., those Provider Collaborative arrangements for which it is Lead Provider.

These Standing Orders should be read in conjunction with the Standing Orders for the Board of Directors, i.e., Annex 8 of the Trust’s Constitution. As the Board in Committee, the Commissioning Committee is bound by many of same Standing Orders as are expressed in Annex 8.

These are not repeated in these Standing Orders, but still apply in full, to wit:

Standing Order 1	Interpretation
Standing Order 2	The Trust
Standing Order 6	Declarations of Interests and Register of Interests
Standing Order 7	Exclusion of Chair and Directors in Proceedings on Account of Pecuniary Interest
Standing Order 8	Standards of Business Conduct Policy
Standing Order 9	Tendering and Contract Procedure
Standing Order 10	Custody of Seal and Sealing of Documents
Standing Order 11	Signature of Documents
Standing Order 12	Process for the Receipt of Complaints/Breach of Code of Conduct against Chair/Non-Executive Director
Appendix 1	Code of Conduct for Board of Directors

1. MEETINGS OF THE COMMISSIONING COMMITTEE

- 1.1 Admission of the Public and the Press – The commercial and contractual nature of the proceedings of the CoCo dictate that all meetings of the CoCo are Part II, i.e., private discussions. This means that the public and press are excluded from all meetings.

Confidentiality

- 1.2 Matters to be dealt with by the CoCo shall be confidential to the members of the CoCo and to any other officer in attendance.
- 1.3 Directors and Officers or any employee of the Trust in attendance shall not reveal or disclose the contents of any papers or discussion.

Calling Meetings

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

Notice of Meetings

- 1.6 Before each meeting of the CoCo, a notice of the meeting, specifying the business proposed to be transacted at it, shall be delivered to every Director, at least three clear days before the meeting.
- 1.7 Want of service of the notice on any Director shall not affect the validity of a meeting.
- 1.8 In the case of a meeting called by Directors in default of the Chair, no business shall be transacted at the meeting other than that specified in the notice or emergency motions allowed under these Standing Orders. Failure to deliver such a notice on more than three Directors will invalidate the meeting. A notice shall be presumed to have been served one day after posting.
- 1.9 Agendas and supporting papers will wherever possible be sent to Directors at least five clear working days before the meeting.

Setting the Agenda

- 1.10 The CoCo may determine that certain matters shall appear on every agenda for a meeting and shall be addressed prior to any other business being conducted. (Such matters may be identified within these Standing Orders or

following subsequent resolution shall be listed in an Appendix to the Standing Orders.)

- 1.11 A Director desiring a matter to be included on an agenda shall make their request in writing to the Chair at least 10 clear days before the meeting. Requests made less than 10 days before a meeting may be included on the agenda at the discretion of the Chair.

Chair of Meeting

- 1.12 At any meeting of the CoCo, the Chair of the Board of Directors, if present, shall preside. If the Chair is absent from the meeting the Deputy Chair, if there is one and they are present, shall preside. If the Chair and Deputy Chair are absent such Director (who is not also an officer of the Trust) as the Directors present shall choose shall preside.
- 1.13 If the Chair is absent temporarily on the grounds of a declared conflict of interest, the Deputy Chair, if present, shall preside. If the Chair and Deputy Chair are absent, or are disqualified from participating, such non-executive director as the Directors present shall choose shall preside. If any matter for consideration at a meeting of the CoCo relates to the interests of the Chair or to the interests of the non-executive Directors as a class, neither the Chair nor any of the other non-executive Directors shall preside over the period of the meeting during which the matter is under discussion. The Directors (excluding the Chair or the other non-executive Directors) shall elect one of their number to preside during that period and that person shall exercise all the rights and obligations of the Chair including the right to exercise a second or casting vote where the number of votes for and against a motion is equal.

Notices of Motion

- 1.14 A Director desiring to move or amend a motion shall send a written notice thereof at least 10 clear days before the meeting to the Chair, who shall insert in the agenda for the meeting all notices so received subject to the notice being permissible under the appropriate regulations.

Withdrawal of Motion or Amendments

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

Motion to Rescind a Resolution

- 1.16 Notice of motion to amend or rescind any resolution (or the general substance of any resolution) which has been passed within the preceding 6 calendar months shall bear the signature of the Director who gives it and also the signature of 4 other Directors. When any such motion has been disposed of by the CoCo, it shall not be competent for any Director other than the Chair to propose a motion to the same effect within 6 months; however, the Chair may do so if they consider it appropriate.

Motions

- 1.17 The mover of a motion shall have a right of reply at the close of any discussion on the motion or any amendment thereto.
- 1.18 When a motion is under discussion or immediately prior to discussion it shall be open to a Director to move:
- An amendment to the motion.
 - The adjournment of the discussion or the meeting.
 - That the meeting proceeds to the next business. (*)
 - The appointment of an ad hoc committee to deal with a specific item of business.
 - That the motion be now put. (*)
 - A motion resolving to exclude the public (including the press).

* In the case of sub-paragraphs denoted by (*) above to ensure objectivity motions may only be put by a Director who has not previously taken part in the debate and who is eligible to vote. No amendment to the motion shall be admitted if, in the opinion of the Chair of the meeting, the amendment negates the substance of the motion.

Chair's Ruling

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

Voting

- 1.20 Every question put to a vote at a meeting shall be determined by a majority of the votes of the Directors present and voting on the question and, in the case of the number of votes for and against a motion being equal, the Chair of the meeting shall have the casting vote.
- 1.21 All questions put to the vote shall, at the discretion of the Chair of the meeting, be determined by oral expression or by a show of hands. A paper ballot may also be used if a majority of the Directors present so request.
- 1.22 If at least one-third of the Directors present so request, the voting (other than by paper ballot) on any question may be recorded to show how each Director present voted or abstained.
- 1.23 If a Director so requests, their vote shall be recorded by name upon any vote (other than by paper ballot).
- 1.24 In no circumstances may an absent Director vote by proxy. Absence is defined as being absent at the time of the vote.

- 1.25 An officer who has been appointed formally by the Trust to act up for an executive director during a period of incapacity or temporarily to fill an executive director vacancy, shall be an executive director.
- 1.26 An officer attending the CoCo to represent an executive director during a period of incapacity or temporary absence without formal acting up status may not exercise the voting rights of the executive director. An officer's status when attending a meeting shall be recorded in the minutes.

Minutes

- 1.27 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.
- 1.28 No discussion shall take place upon the minutes except upon their accuracy or where the Chair considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the next meeting.

Suspension of Standing Orders

- 1.29 Except where this would contravene any provision of the Regulatory Framework, any one or more of the Standing Orders may be suspended at any meeting, provided that at least two-thirds of the Directors are present, including one executive director and one non-executive director, and that a majority of those present vote in favour of suspension.
- 1.30 A decision to suspend Standing Orders shall be recorded in the minutes of the meeting.
- 1.31 A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the Directors.
- 1.32 No formal business may be transacted while Standing Orders are suspended.
- 1.33 The Audit Committee shall review every decision to suspend Standing Orders.

Waiver of Standing Orders

- 1.34 Except where this would contravene any provision of the Regulatory Framework, any one or more of the Standing Orders may be waived at any meeting, provided that at least two-thirds of the Directors are present, including one executive director and one non-executive director, and that a majority of those present vote in favour of suspension.
- 1.35 A decision to waive Standing Orders shall be recorded in the minutes of the meeting.
- 1.36 The Audit Committee shall review every decision to waive Standing Orders.

Approval, Variation, and Amendment of Standing Orders

1.37 These Standing Orders shall be approved and amended only if:

- a notice of motion has been given; and
- at least half the total of the Trust's non-executive directors vote in favour of amendment; and
- at least two-thirds of the Directors are present; and
- the variation proposed does not contravene any provision of the Regulatory Framework.

Record of Attendance

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

Quorum

1.39 No business shall be transacted at a meeting of the CoCo unless at least one half of the whole number of the Directors appointed (including at least one non-executive director and one executive director) are present.

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

1.41 If a Director has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of the declaration of a conflict of interest (see Standing Order 6 or 7) they shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business. The above requirement for at least one executive director to form part of the quorum shall not apply where the executive Directors are excluded from a meeting (for example when the Board of Directors considers the recommendations of the Remuneration and Terms of Service Committee). The above requirement for at least one non-executive Director to form part of the quorum shall not apply where the non-executive Directors are excluded from a meeting.

Adjournment of Meetings

1.42 The CoCo may, by resolution, adjourn any meeting to some other specified date, place and time and such adjourned meeting shall be deemed a continuation of the original meeting. No business shall be transacted at any adjourned meeting which was not included on the agenda of the meeting of which it is an adjournment.

- 1.43 When any meeting is adjourned to another day, other than the following day, notice of the adjourned meeting shall be sent to each Director specifying the business to be transacted.

Observers at CoCo meetings

- 1.44 The CoCo 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 CoCo meetings and may change, alter, or vary these terms and conditions as it deems fit.

2. ARRANGEMENTS FOR THE EXERCISE OF FUNCTIONS BY DELEGATION

- 2.1 Subject to the Regulatory Framework, the CoCo may make arrangements for the exercise, on behalf of the CoCo, of any of its functions subject to such restrictions and conditions as the CoCo thinks fit by a sub-committee appointed or by a Director or an officer of the Trust.

Emergency Powers

- 2.2 The powers which the CoCo has retained to itself within these Standing Orders and the Standing Orders for the Board of Directors, in so much as those may apply, may in emergency be exercised by the Chief Executive and the Chair after having consulted at least two non-executive directors. The exercise of such powers by the Chief Executive and Chair shall be reported to the next formal meeting of the CoCo for the record.

Delegation to Sub-Committees

- 2.3 The CoCo shall agree from time to time to the delegation of executive powers to be exercised by sub-committees, which it has formally constituted. The constitution and terms of reference of these sub-committees and their specific decision-making and financial powers shall be approved by the CoCo.
- 2.4 Those functions of the Trust which have not been retained as reserved by the CoCo or delegated to a sub-committee or otherwise for the purposes of and in accordance with the Mental Health Act 1983 shall be exercised by the Chief Executive. The Chief Executive shall determine which functions they will perform personally and shall nominate officers to undertake the remaining functions for which they will still retain accountability to the CoCo.
- 2.5 The Chief Executive shall prepare a Scheme of Delegation identifying their proposals, which shall be considered and approved by the CoCo and Board of Directors, subject to any amendment, agreed during the discussion. The Chief Executive may periodically propose amendment to the Scheme of Delegation, which shall be considered and approved by the CoCo and Board of Directors.
- 2.6 Nothing in the Scheme of Delegation shall impair the discharge of the direct accountability to the CoCo of the Director of Finance or other executive

Director to provide information and advise the CoCo in accordance with the Constitution, Terms of Authorisation, any statutory requirements or provisions required by NHSEI. Outside these statutory requirements the role of the Director of Finance shall be accountable to the Chief Executive for operational matters.

- 2.7 The arrangements made by the Board of Directors as set out in the Scheme of Delegation document shall have effect as if incorporated in these Standing Orders.

Overriding Standing Orders

- 2.8 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 CoCo for action or ratification. All Directors and staff have a duty to disclose any non-compliance with these Standing Orders to the Chief Executive as soon as possible.

3. SUB-COMMITTEES

- 3.1 The CoCo may appoint sub-committees. The CoCo shall determine the membership and terms of reference of sub-committees and shall if it requires to, receive and consider reports of such sub-committees subject to contractual arrangements and such restrictions and conditions as the CoCo thinks fit to ensure appropriate oversight.
- 3.2 A sub-committee appointed under this regulation may, subject to their terms of reference, appoint Task and Finish Groups consisting wholly of members of the sub-committee.
- 2.3 The Standing Orders and Standing Financial Instructions of the Trust, as far as they are applicable, shall apply with appropriate alteration to meetings of any sub-committees established by the CoCo. In which case the term “Chair” is to be read as a reference to the Chair of the sub-committee as the context permits, and the term “Director” is to be read as a reference to a member of the sub-committee also as the context permits. There is no requirement to hold meetings of sub-committees, established by the CoCo in public.
- 3.4 Each such sub-committee shall have such terms of reference and powers and be subject to such conditions (as to reporting back to the CoCo) as the CoCo shall decide. Such terms of reference shall have effect as if incorporated into the Standing Orders.
- 3.5 Where sub-committees are authorised to establish Task and Finish Groups they may not delegate executive powers to those groups unless expressly authorised by the CoCo.

- 3.6 The CoCo shall approve the appointments to each of the sub-committees which it has formally constituted. The Chair of each CoCo sub-committee shall be an Executive Director.
- 3.7 The sub-committees established by the CoCo shall include a separate sub-committee for each Provider Collaborative for which the Trust holds Lead Provider responsibility.
- 3.8 The CoCo may elect to change or add to the sub-committees of the CoCo, as necessary, without requirement to amend these Standing Orders.

Confidentiality

- 3.9 A member of a sub- committee shall not disclose a matter dealt with by, or brought before, the sub-committee.
- 3.10 A member of a sub-committee shall not disclose any matter reported to the CoCo or otherwise dealt with by the sub-committee, notwithstanding that the matter has been reported or action has been concluded. All issues discussed by the CoCo and its sub-committees shall be deemed commercial in confidence.

ANNEX 10 – FURTHER PROVISIONS

- 1.1 The Trust shall have a Secretary who may be an employee. The Secretary may not be a Governor, or the Chief Executive or the Finance Director. The Secretary's functions shall include:
 - 1.1.1 acting as Secretary to the Council of Governors and the Board of Directors, and any committees;
 - 1.1.2 summoning and attending all members meetings, meetings of the Council of Governors and the Board of Directors, and keeping the minutes of those meetings;
 - 1.1.3 keeping the register of members and other registers and books required by this constitution to be kept;
 - 1.1.4 having charge of the Trust's seal;
 - 1.1.5 publishing to members in an appropriate form information which they should have about the Trust's affairs;
 - 1.1.6 preparing and sending to the Independent Regulator and any other statutory body all returns which are required to be made.
- 1.2 Minutes of every meeting of the Council of Governors and of every meeting of the Board of Directors are to be kept by the Secretary. Minutes of meetings will be read at the next meeting and signed by the Chair of that meeting. The signed minutes will be conclusive evidence of the events of the meeting.
- 1.3 The Company Secretary is to be appointed and removed by the Board as a body or the Chair acting on the recommendations of the Board. The Company Secretary will be accountable to the Chair and the Associate Director of Corporate Governance for professional development and supervision.
2. The Company Secretary (if any) and members of the Council of Governors and Board of Directors 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, including (but not limited to) any liability arising by reason of the Trust acting as a Corporate Trustee, save where they have acted recklessly and the Trust may also take out and maintain for their benefit insurance against such risks and may participate in risk pooling schemes, including (but not limited to) insurance and schemes operated by the NHS Resolution. Any costs arising in this way will be met by the Trust.
3. No proposal to the amendment of this Constitution will be reported to NHSEI unless it has been approved by the Board of Directors and a majority of those governors present and voting at a meeting of the Council of Governors
4. The validity of any act of the Trust is not affected by any vacancy among the directors or the governors or by any defect in the appointment of any director or governor.

4.1 If:

- (a) an executive director is temporarily unable to perform his/her duties due to illness or some other reason (the "Absent Director"); and
- (b) the board of directors agree that it is inappropriate to terminate the Absent Director's term of office and appoint a replacement director; and
- (c) the board of directors agree that the duties of the Absent Director need to be carried out;

then the Chair (if the Absent Director is the Chief Executive) or the Chief Executive (in any other case) may appoint an acting director as an additional director to carry out the Absent Director's duties temporarily.

4.2 For the purposes of paragraph 4.1 of this Annex, the maximum number of directors that may be appointed under paragraph 19.2.3 of the Constitution shall be relaxed accordingly.

4.3 The acting director will vacate office as soon as the Absent Director returns to office or, if earlier, the date on which the person entitled to appoint him under this paragraph notifies him that he/she is no longer to act as an acting director.

4.4 The acting director shall be an Executive Director for the purposes of the 2006 Act. He shall be responsible for his/her own acts and defaults and he/she shall not be deemed to be the agent of the Absent Director.

5 If:

- (a) an executive director post is vacant ("Vacant Position"); and
- (b) the board of directors agree that the Vacant Position needs to be filled by an interim postholder pending appointment of a permanent postholder, then the Chair (if the Vacant Position is the Chief Executive) or the Chief Executive (in any other case) may appoint a director as an interim director ("Interim Director") to fill the Vacant Position pending appointment of a permanent postholder.

5.1 The Interim Director will vacate office on the appointment of a permanent postholder or, if earlier, the date on which the persons entitled to appoint him under this paragraph notifies him that he/she is no longer to act as an Interim Director.

5.2 The Interim Director shall be an Executive Director for the purposes of the 2006 Act.

6. When a vacancy arises for one or more elected governors, the Council of Governors shall have the option to take from the list of members who stood for election at the most recent election of governors for the class or constituency in question whichever member who was not elected as a

governor at the recent election but had secured the next most votes at that time. This procedure, which shall be an uncontested election for the purposes of the Model Rules for Elections as they apply to the trust, shall be available to the Governors on 2 occasions within 12 months of the previous election. Governors appointed in this way shall hold office for a minimum of 6 months from their appointment but, subject thereto, shall hold office until the earlier of the conclusion of the next election of governors and (except where the vacancy arose through expiry of a term of office) the date on which would have expired the term of office of that Governor whose cessation of office gave rise to the vacancy.

7. The Trust may confer on senior staff the title “Director” as an indication of their corporate responsibility within the Trust but such persons will not be Directors of the Trust for the purposes of the 2006 Act (“statutory directors”) unless their title includes the title “Chief”, “Executive” or “Non-Executive Director” or “Chairman” and will not have the voting rights of statutory directors or any power to bind the Trust.
8. Elections shall not be invalidated by any administrative or clerical error on the part of the Trust or any acts or omissions of the returning officer acting in good faith on the basis of such error.
9. Notwithstanding any provision of the Election Rules, the Trust and the Returning Officer shall:
 - 9.1 not be obliged to send any information or photographs unless received by the Trust from the candidate;
 - 9.2 not be in breach of any obligation to include in any communication, or otherwise provide, information which is equivalent in size and content for all candidates if the information provided by one or more of the candidates does not so allow;
 - 9.3 have the right to edit or not publish any election statement if it exceeds the permitted number of words or because it contains statements which the Trust or the Returning Officer reasonably believes are factually inaccurate, offensive or libelous.
10. The minimum age for membership of the Trust is 12 years old.

11. Management of disputes between the Board and the Council of Governors

In terms of dealing with any disagreements, if at any point the Council of Governors has any concerns about engagement with the Board of Directors, they should raise these in the first instance with the Chair of the Trust. The Council of Governors may require any director to attend a Council of Governors meeting, although this would normally be discussed in the first instance with the Lead Governor, Senior Independent Director and Chair. In exceptional circumstances, NHS Impact has established a panel for the advising of governors. Questions raised to this panel by the governors will only be addressed if it relates to whether a Trust has failed or is failing to act in

accordance with its constitution or to act in accordance with Chapter 5 of the NHS Act 2006. Prior to referring a question to the panel more than half of the members of the Council of Governors voting must approve the referral and the panel will required evidence of this voting process prior to considering a question.

ANNEX 11 – NOLAN PRINCIPLES AND TRUST VALUES

PART A – NOLAN PRINCIPLES (ref Standards of Business Conduct Policy, NHS England, v4.1, 28 March 2019, p20)

Selflessness

Holders of public office should act solely in terms of the public interest.

Integrity

Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family or their friends. They must declare and resolve any interests and relationships.

Objectivity

Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

Accountability

Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

Openness

Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for doing so.

Honesty

Holders of public office should be truthful.

Leadership

Holders of public office should exhibit these principles in their own behaviour. They should actively promote and robustly support the principles and be willing to challenge poor behaviour wherever it occurs.

PART B – TRUST VALUES

All members of the Trust must role model the Trust values:

Compassionate

- Supporting recovery for all and maintaining hope for the future
- Being kind to others and myself
- Showing empathy for others and appreciating vulnerability in each of us.

Inclusive

- Treating people fairly, with dignity and respect
- Challenging all forms of discrimination
- Listening with care and valuing all voices.

Committed

- Striving to deliver the best work and keeping patients at the heart
- Taking responsibility for my work and doing what I say I will
- Courage to question to help us learn, improve, and grow together.