
CONSTITUTION OF
ROYAL DEVON UNIVERSITY HEALTHCARE NHS FOUNDATION TRUST
(A PUBLIC BENEFIT CORPORATION)

1 April 2022

Royal Devon University Healthcare NHS Foundation Trust Constitution

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CONSTITUTION

1 Interpretation and definitions

In this Constitution:

- references to legislation include all amendments, replacements or re-enactments made;
- headings are for ease of reference only and are not to affect interpretation;
- words importing the masculine gender only shall include the feminine gender,
- words importing the singular shall include the plural, and vice-versa;
- unless otherwise stated, words or expressions bear the same meaning as in the National Health Service Act 2006.
- Attendance at any meeting may be by telephone, video or internet link and participation in a meeting in this manner shall be deemed to constitute presence at the meeting.

- 1.1 **The 2006 Act** is the National Health Service Act 2006 (as amended, including by the 2012 Act);
- 1.2 **The 2012 Act** is the Health and Social Care Act 2012;
- 1.3 **Constitution** means this Constitution and all annexes to it;
- 1.4 **The Regulator** is the body corporate known as the Independent Regulator of NHS Foundation Trusts, as provided by Section 61 of the 2012 Act;
- 1.5 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;
- 1.6 “**Annual Members’ Meeting**” means that meeting held annually at which the members of the Trust are presented with certain statutory reports;
- 1.7 “**Appointed Governors**” means those Governors appointed by the appointing organisations;
- 1.8 “**Appointing organisations**” means those organisations named in this Constitution that are entitled to appoint Governors;
- 1.9 “**Areas of the Trust**” means the three areas specified in Annex 1;
- 1.10 “**Board of Directors**” means the Board of Directors as constituted in accordance with this Constitution;
- 1.11 “**Council of Governors**” means the Council of Governors as constituted in this Constitution, which has the same meaning as “Council of Governors” in the 2006 Act;
- 1.12 “**Director**” means a member of the Board of Directors;
- 1.13 “**Elected Governors**” means those Governors elected by the public constituencies and the staff constituency;
- 1.14 “**Financial year**” means each period of twelve months beginning with 1 April and ending with the next 31 March.
- 1.15 “**Governor Year**” means the year which runs from the Annual Members Meeting to Annual Members Meeting (September to September).

- 1.16 “**Local Authority Governor**” means a member of the Council of Governors appointed by Devon County Council;
- 1.17 “**Member**” means a member of the Trust;
- 1.18 “**Public Governor**” means a member of the Council of Governors elected by the members of one of the public constituencies;
- 1.19 “**Secretary**” means the Secretary of the Trust or any other person appointed to perform the duties of the Secretary, including a joint, assistant or deputy secretary;
- 1.20 “**Staff Governor**” means a member of the Council of Governors elected by the members of the staff constituency;
- 1.21 “**the Trust**” means the Royal Devon University Healthcare NHS Foundation Trust ;
- 1.22 “**University Governor**” means a member of the Council of Governors appointed by University of Exeter Medical School.

2 Name

- 2.1 The name of this Trust is to be “Royal Devon University Healthcare NHS Foundation Trust” (“**The Trust**”).

3 Principal Purpose

- 3.1 The Trust’s principal purpose is the provision of goods and services for the purposes of the health service in England.
- 3.2 The Trust does not fulfil its principal purpose unless, in each financial year, its total income from the provision of goods and services for the purposes of the health service in England is greater than its total income from the provision of goods and services for any other purposes.
- 3.3 The Trust may provide goods and services for any purposes related to the provision of services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness and the promotion and protection of public health.
- 3.4 The Trust may also carry on activities other than those mentioned in the above paragraph for the purpose of making additional income available in order to better carry on its principal purpose.

4 Powers

- 4.1 The powers of the Trust are set out in the 2006 Act. All the powers of the Trust shall be exercised by the Board of Directors on behalf of the Trust.
- 4.2 Any of these powers may be delegated to a committee of Directors or to an Executive Director.

5 Membership – General

- 5.1 The members of the Trust are those individuals whose names are entered in the register of members. The Trust shall at all times strive to ensure that taken as a whole its actual membership is representative of those eligible for membership. To this end the Trust shall

at all times have in place and pursue a membership strategy which shall be reviewed from time to time, and at least every three years.

6 Eligibility for Membership

- 6.1 Every member is to be either a member of one of the public constituencies, or a member of the staff constituency.
- 6.2 Subject to this Constitution, membership is open to any individual who:
 - 6.2.1 is over twelve years of age;
 - 6.2.2 is entitled under this Constitution to be a member of one of the public constituencies, or the staff constituency; and
 - 6.2.3 in the case of public constituencies, completes a membership application form.

7 Application for membership

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

8 Public Constituencies

- 8.1 There are three public constituencies corresponding to the three areas of the Trust specified in Annex 1. Those individuals who live in an area specified as an area for any public constituency are referred to collectively as the Public Constituency. Membership of a public constituency is open to individuals who:
 - 8.1.1 live in the relevant area of the Trust;
 - 8.1.2 are not a member of another public constituency; and
 - 8.1.3 are not eligible to be members of the staff constituency.
- 8.2 The minimum number of members in each of the public constituencies is to be six.

9 Staff Constituency

- 9.1 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:
 - 9.1.1 they are employed under a contract of employment by the Trust which has no fixed term or a fixed term of at least 12 months; or
 - 9.1.2 they have been continuously employed by the Trust for at least 12 months; or
 - 9.1.3 they are not so employed but who nevertheless exercise functions for the purposes of the Trust; and who have exercised the functions for the purposes of the Trust for a continuous period of at least 12 months. For the avoidance of doubt, this does not include those who assist or provide services to the Trust on a voluntary basis.
- 9.2 Those individuals who are eligible for membership of the Trust by reason of the previous provisions are referred to collectively as the Staff Constituency.

9.3 The minimum number of members in the Staff Constituency is to be 20.

10 Automatic membership by default – staff

10.1 An individual who is:

10.1.1 eligible to become a member of the Staff Constituency; and

10.1.2 invited by the Trust to become a member of the Staff Constituency; shall become a member of the Trust as a member of the Staff Constituency without an application being made, unless he informs the Trust that he does not wish to do so.

11 Termination of membership

11.1 A member shall cease to be a member if:

11.1.1 they resign by notice to the Secretary;

11.1.2 they cease to be entitled under this Constitution to be a member of any of the public constituencies or the staff constituency; or

11.1.3 it appears to the Secretary that they no longer wish to be a member of the Trust, and after enquiries, they fail to establish that they wish to continue to be a member of the Trust.

11.2 A member may be expelled by a resolution approved by not less than two-thirds of those Governors present and voting at a meeting of the Council of Governors.

11.3 No person who has been expelled from membership is to be re-admitted except by a resolution carried by the votes of two-thirds of the members of the Council of Governors present and voting at a meeting of the Council of Governors.

11.4 No person expelled from membership is to be re-admitted within five years of the date of the expulsion.

12 Annual Members' Meeting

12.1 The Trust shall hold an annual meeting of its members ('Annual Members' Meeting'). The Annual Members' Meeting shall be open to members of the public.

13 Council of Governors

13.1 The Trust is to have a Council of Governors, which shall comprise both elected and appointed Governors. It is to consist of Public Governors, Staff Governors, a Local Authority Governor, and a University Governor.

13.2 The Trust shall seek to ensure, subject to the 2006 Act, that the composition of the Council of Governors meets the following requirements:

13.2.1 the interests of the community served by the Trust are appropriately represented;

13.2.2 more than half the members of the Council of Governors will be elected by members of the public constituencies; and

13.2.3 the level of representation of the public constituencies, the staff constituency and the appointing organisations strikes an appropriate balance having regard to their legitimate interest in the Trust's affairs.

14 Composition of the Council of Governors

14.1 The Council of Governors of the Trust is to comprise twenty two Public Governors, from the following public constituencies:

14.1.1 Mid Devon, North Devon, Torrington, West Devon, Cornwall and the Isles of Scilly (to be known as the Northern constituency) - nine Public Governors;

14.1.2 Exeter, Teignbridge, Torbay, South Hams and Plymouth (to be known as the Southern constituency) eight Public Governors; and

14.1.3 East Devon, Dorset, Somerset and the Rest of England (to be known as the Eastern constituency) – five Public Governors;

In the event of changes to local authority boundaries, the public constituency boundaries will automatically be altered to accord with these changes.

14.2 Seven Staff Governors from the staff constituency.

14.3 One local authority Governor to be appointed by Devon County Council.

14.4 One University Governor to be appointed by University of Exeter Medical School.

14.5 The members of the Council of Governors, other than the appointed members, shall be chosen by election by their constituency.

15 Process for electing Public and Staff Governors

15.1 Public Governors are to be elected by the members of their public constituencies, and Staff Governors are to be elected by the members of the staff constituency.

15.2 If contested, the elections must be by secret ballot.

15.3 Elections shall be carried out in accordance with the rules set out in Annex 2 using the first past the post system.

15.4 A member of a public constituency may not vote at an election unless, before they vote, they have made a declaration in the form specified by the Council of Governors that they are qualified to vote as a member of the relevant constituency. It is an offence knowingly or recklessly to make such a declaration that is false in a material particular.

15.5 For the first election held under this Constitution after 1 April 2022 for the Staff constituency and notwithstanding any other provision of this Constitution including Annex 2, two seats shall be reserved for candidates who are employed by the Trust by reason of their previous primary or principle employment with NDHT (the "Employment Condition") and obtain the most votes among all candidates who meet the Employment Condition. The two candidates with the most votes among those who meet the Employment Condition shall automatically be declared elected and for these purposes will be regarded as having obtained one more vote than all other candidates who do not meet the Employment Condition. The remaining candidates will be declared elected (or not) in accordance with the election rules set out in

Annex 2. If there are no candidates who meet the Employment Condition this provision shall be disregarded.

16 Appointment of Local Authority Governor

16.1 A Local Authority Governor is to be appointed by Devon County Council, in accordance with a process agreed with the Secretary.

17 Appointment of University Governor

17.1 A University Governor is to be appointed by the University of Exeter College of Medicine and Health, in accordance with a process agreed with the Secretary.

18 Appointment of alternate Governors

18.1 At the time of appointing an appointed Governor the appointing body may also appoint a named alternate Governor who may attend any meeting of the Governors in the place of the appointed Governor and exercise all the rights of the appointed Governor. Any change to the alternate Governor shall be notified in writing to the Secretary.

19 Election of Lead Governor and Deputy Lead Governor of the Council of Governors

19.1 The Council of Governors shall elect one of the Public Governors to be Lead Governor of the Council of Governors and another one of the Public Governors to be Deputy Lead Governor of the Council of Governors.

20 Council of Governors – Tenure

20.1 Subject to paragraphs, 20.2 and 24.3 below, all Governors may hold office for a period of up to 3 years. Each term of office shall begin and end at the Annual Members Meeting.

20.2 The Chair may, having consulted the Lead Governor, exercise their discretion, acting reasonably in all the circumstances, apply a term of office shorter than 3 years for a new elected or appointed Governor to ensure that turnover of Governors at future elections will not be excessive, provided that notice of this decision is given before the election or appointment of the new Governors and that in the case of elected Governors shorter terms are applied in the order in which candidates receive votes at the election.

20.3 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.

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

20.5 An elected Governor shall be eligible for re-election at the end of their term.

20.6 An appointed Governor shall be eligible for re-appointment at the end of their term.

20.7 A Governor may, if re-elected or re-appointed for more than one term of office, hold office for a maximum of nine years.

20.8 Notwithstanding the other provisions of paragraph 20, the term of office of elected Governors which would have expired in September 2020 shall be extended for a period of one year to

September 2021.

21 Eligibility to be an Elected/Appointed Governor

21.1 A person may not become a Governor of the Trust, and if already holding such office, will immediately cease to do so, if:

21.1.1 Save for the Chair, they are a Director of the Trust, or a Governor or Director of another NHS Foundation Trust;

21.1.2 they are under sixteen years of age;

21.1.3 being a member of a public constituency, they are or were entitled to be a member of the staff constituency at any point during the preceding two years;

21.1.4 they have been made bankrupt or their estate has been sequestrated and in either case they have not been discharged;

21.1.5 they are a person in relation to whom a moratorium period under a debt relief order applies (under Part 7A of the Insolvency Act 1986)

21.1.5 they have made a composition or arrangement with, or granted a Trust deed for, their creditors and have not been discharged in respect of it;

21.1.6 they have within the preceding five years been convicted in the British Islands of any offence, if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on them;

21.1.7 they are the subject of a sex offender order;

21.1.8 they have within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with a health service body;

21.1.9 they are a person whose tenure of office as the Chair or as a member or Director of a health service body has been terminated on the grounds that their appointment is not in the interests of the health service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest;

21.1.10 they have been removed from office as a Governor by any NHS Foundation Trust within the last five (5) years; or

21.1.11 they are no longer a member of the Trust.

22 Council of Governors – duties of Governors

22.1 The general duties of the Council of Governors are:

22.1.1 to hold the Non-Executive Directors individually and collectively to account for the performance of the Board of Directors; and

22.1.2 to represent the interests of the members of the Trust as a whole and the interests of the public

22.1.3 to appoint the Chair and Non-Executive Directors

22.1.4 to appoint the External Auditors

22.1.5 to approve Mergers and Significant Transactions.

22.2 The Trust must take steps to secure that the governors are equipped with the skills and knowledge they require in their capacity as such.

23 Termination of office and removal of Governors

23.1 A person holding office as a Governor shall cease to do so if any of the disqualifications in paragraph 21 apply or if:

23.1.1 they resign by notice in writing to the Secretary;

23.1.2 in the case of an elected Governor, they cease to be a member of the Trust;

23.1.3 in the case of an appointed Governor, the appointing organisation terminates the appointment;

23.1.4 they are removed from the Council of Governors under the provisions of 23.2 or 23.4 below;

23.1.5 they refuse without reasonable cause to undertake any training which the Council of Governors require all Governors to undertake; or

23.1.6 they fail to abide by the Governors' Code of Conduct; or

23.1.7 they fail without reasonable cause to sign and deliver to the Secretary a statement confirming their continuing eligibility to vote.

23.2 A Governor who:

23.2.1 fails to attend at least two meetings of the Council of Governors in any Governor Year shall cease to be a Governor, unless the other Governors are satisfied that;

23.2.1.1 the absences were due to reasonable causes; and

23.2.1.2 they will be able to start attending meetings of the Trust again within such a period as the other Governors consider reasonable.

23.3 The Council of Governors Coordinating Committee shall monitor attendance for this purpose and report to the Council of Governors.

23.4 A Governor may be removed from the Council of Governors by a resolution approved by not less than two-thirds of those Governors present and voting at a Council meeting on the grounds that they fail to adhere to the Governors' Code of Conduct

24 Vacancies amongst Governors

24.1 Where a vacancy arises on the Council of Governors for any reason other than the expiry of term of office, the provisions of 24.2 and 24.3 apply.

24.2 Where the vacancy arises amongst the appointed Governors, the Secretary shall request that the appointing organisation appoints a replacement.

- 24.3 Where the vacancy arises amongst the elected Governors, the Council of Governors shall be at liberty:
- 24.3.1 to defer the by-election until the next round of routine elections; or
 - 24.3.2 having regard to the number of Governors remaining in post to represent that constituency, to call a by-election to fill the seat for the remainder of that term of office.
- 24.4 To allow scope for a possible reorganisation of the membership constituencies in 2021-2022 and notwithstanding any other provision of this Constitution, one seat in each public constituency shall be omitted from any elections in 2021 and remain vacant until elections in 2022.

25 Expenses and Remuneration of Governors

- 25.1 The Trust will reimburse Governors for reasonable travelling and other costs and expenses incurred while carrying out agreed duties as a Governor at such rates as determined by the Governors' Expenses Policy.
- 25.2 Governors are not entitled to receive remuneration.

26 Meetings of the Council of Governors

- 26.1 The Council of Governors is to meet formally at least four times a year in each Governor year. Save in the case of emergencies or the need to conduct urgent business, the Secretary shall give at least seven days written notice of the date and place of every meeting of the Council of Governors to all Governors. If the matter to be discussed is a confidential matter, papers may not be available before the meeting. Notice will also be published on the Trust's website.
- 26.2 Meetings of the Council of Governors shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons. The Chair may exclude anyone other than a Governor from a meeting of the Council of Governors if they are interfering with or preventing the proper conduct of the meeting.
- 26.3 Ten governors shall comprise a quorum.
- 26.4 The Chair of the Trust or, in their absence, the Vice-Chair of the Trust, shall preside at the meetings of the Council of Governors. In the absence of the Chair and Vice Chair of the Trust, the Lead Governor shall preside at meetings of the Council of Governors. If the person presiding at any such meeting has a conflict of interest in relation to the business being discussed, the Lead Governor of the Council of Governors will chair that part of the meeting. If, in these circumstances, neither the Chair of the Trust nor the Lead Governor of the Council of Governors is available, those Governors present shall elect one of their number to be Chair for the item under discussion.
- 26.5 The Council of Governors may invite the Chief Executive or any other member or members of the Board of Directors, or a representative of the Trust's external auditors or other advisors to attend a meeting of the Council of Governors.
- 26.6 For the purposes of obtaining information about the Trust's performance of its functions or the Directors' performance of their duties (and deciding whether to propose a vote on the Trust's or Directors' performance), the Council of Governors may require one or more of the Directors to attend a meeting.

- 26.7 Subject to this Constitution, including the following provisions of this paragraph, questions arising at a meeting of the Council of Governors shall be decided by a majority of votes.
- 26.7.1 If any majority required is not met, any question arising at a meeting will fail.
- 26.7.2 No resolution of the Council of Governors shall be passed if it is unanimously opposed by all of the Public Governors present.
- 26.8 The Council of Governors may appoint committees consisting of its members, Directors, and other persons to assist the Council in carrying out its functions.
- 26.9 The Council of Governors may, through the Secretary, request that advisors assist them or any committee they appoint in carrying out their functions.
- 26.10 All decisions taken in good faith at a meeting of the Council of Governors or of any committee shall be valid even if it is discovered subsequently that there was a defect in the calling of the meeting, or the appointment of the Governors attending the meeting.
- 26.11 The Council of Governors may approve or amend procedures for the conduct of its own business, including a Governors' Code of Conduct, which shall have effect under and subject to the other provisions of this Constitution.

27 Disclosure of Interest

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

28 Board of Directors

- 28.1 The Trust is to have a Board of Directors. It is to consist of Executive and Non-Executive Directors. At all times, the Non-Executive Directors including the Chair shall comprise the majority of the Board. The Board is to comprise:
- 28.1.1 the following Non-Executive Directors:
- 28.1.1.1 a Chair, who is to be appointed by the Council of Governors at a meeting;
- 28.1.1.2 further Non-Executive Directors who are to be appointed (and may be removed) by the Council of Governors at a meeting, and one of whom is ratified by the Council of Governors as Vice Chair of the Trust following the recommendation of the Board of Directors. A Non-Executive Director shall be appointed as Senior Independent Director by the Board of Directors in consultation with the Council of Governors.

In each case subject to the approval of a majority of the Council of Governors (in the case of an appointment) present and voting at the meeting.

28.1.2 the following Executive Directors:

28.1.2.1 a Chief Executive (who is the Accounting Officer), who is to be appointed (and may be removed) by the Non-Executive Directors, and whose appointment is subject to the approval of a majority of the members of the Council of Governors present and voting at a meeting;

28.1.2.2 a Finance Director, a registered medical practitioner or a registered dentist (within the meaning of the Dentists Act 1984), a registered nurse or registered midwife, and other Executive Directors as necessary with the appropriate skills and experience, all of whom are to be appointed by a committee comprising the Chair, the Chief Executive and the other Non-Executive Directors.

28.2 If the Chair is unable to discharge their office as Chair of the Trust, the Vice Chair shall be acting Chair of the Trust.

29 Board of Directors – General Duty

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

30 Qualification for Appointment as a Non-Executive Director

30.1 Only a member of a public constituency is eligible for appointment as a Non-Executive Director.

31 Procedure for Appointment of Chair and Other Non-Executive Directors

31.1 Non-Executive Directors are to be appointed by the Council of Governors using the following procedure:

31.1.1 The Council of Governors will maintain a policy for the composition of the Non-Executive Directors. When vacancies arise the Board shall make recommendations on the skills and experience required for Non-Executive Directors.

31.1.2 The Council of Governors will elect a Nominations Committee to select candidates to be Chair and Non-Executive Directors, for subsequent recommendation to, and if approved, appointment by, the Council of Governors. The Nominations Committee will take account of the policy maintained by the Council of Governors and the skills and experience required. The Nominations Committee will be advised by the Chief Executive and one or two independent assessors.

32 Procedure for the Appointment of Chief Executive and Other Executive Directors

32.1 The Non-Executive Directors shall appoint the Chief Executive with the approval of a majority of the Council of Governors voting at a meeting.

32.2 A committee comprising the Chair, the Chief Executive and the other Non-Executive Directors shall appoint the other Executive Directors.

33 Procedure for the Removal of Directors

33.1 Executive and Non-Executive Directors may be removed as follows:

34.1.1 the Chair or any other Non-Executive Director may be removed upon the approval of three quarters of the members of the Council of Governors voting at a meeting;

33.1.1 the Chief Executive may be removed by the Non-Executive Directors;

33.1.2 the Executive Directors (other than the Chief Executive) may be removed by a committee comprising the Chair, the Chief Executive and the other Non-Executive Directors.

34 Directors' Terms Of Office

34.1 The Chair and the Non-Executive Directors:

34.1.1 shall hold office for a period of three years;

34.1.2 are eligible for re-appointment by the Council of Governors at the end of that period. Any re-appointment of a Non-Executive Director shall be subject to the procedures in 31 above and satisfactory appraisal;

34.1.3 shall not normally remain in office for more than six years;

34.1.4 in exceptional circumstances may be re-appointed beyond the usual six years maximum for up to a further year with the approval of the Council of Governors or a further term at the request and approval of the Regulator subject to ratification by the Council of Governors.

34.1.5 Should a Non-Executive Director apply to become Chair of the Trust and be appointed, their term of office as Chair starts when taking up their new role.

34.2 The other terms and conditions for Chair and Non-Executive Directors shall be decided by the Council of Governors at a meeting following recommendations by a Non-Executive Director Remuneration Committee elected by the Council of Governors.

35 Disqualification

35.1 A person may not become or continue as a Director of the Trust if:

35.1.1 they are a member of the Council of Governors;

35.1.2 they have been made bankrupt or their estate has been sequestrated and in either case they have not been discharged;

35.1.3 they have made a composition or arrangement with, or granted a Trust deed for, their creditors and have not been discharged in respect of it;

35.1.4 they have within the preceding five years been convicted in the British Islands of any criminal offence, when a sentence of imprisonment (whether suspended or not) for a period of three months or more (without the option of a fine) was imposed;

35.1.5 they are the subject of a sex offender order;

- 35.1.6 they are the subject of a disqualification order made under the Company Directors Disqualification Act 1986;
 - 35.1.7 they are a person whose tenure of office as a Chair or as a member or Director of a health service body has been terminated on the grounds that their appointment is not in the interests of the health service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest;
 - 35.1.8 they have within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with a health service body;
 - 35.1.9 in the case of a Non-Executive Director they have refused without reasonable cause to fulfil any training requirement established by the Board of Directors;
 - 35.1.10 they have failed without reasonable cause to sign and deliver to the Secretary a statement in the form required by the Board of Directors confirming acceptance of the code of conduct for Directors;
 - 35.1.11 they are unable or unwilling to sign an annual declaration that they continue to meet the Care Quality Commission's Fit and Proper Person regulations.
- 35.2 If a Non-Executive Director ceases to be a member of a public constituency, they must resign but can remain as a Board member until a replacement is appointed, for a period up to a maximum of six months.

36 Committees and Delegation

- 36.1 The Board of Directors may delegate any of its powers to a committee of Directors or to an Executive Director.
- 36.2 The Board of Directors shall appoint a committee of Non-Executive Directors as an audit committee to perform such monitoring, reviewing and other functions as are appropriate.
- 36.3 The Board of Directors shall appoint an executive remuneration committee of Non-Executive Directors to decide the remuneration and allowances, and the other terms and conditions of office, of the Executive Directors.

37 Meeting of Directors

- 37.1 Save in the case of emergencies or the need to conduct urgent business, the Secretary shall give to all Directors at least fourteen days written notice of the date and place of every meeting of the Board of Directors.
- 37.2 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.
- 37.3 Before holding a meeting, the Board of Directors will publish a copy of the agenda of the meeting on the Trust's website and notify the Council of Governors. As soon as practicable after holding a meeting, the Board of Directors must send a copy of the minutes of the meeting to the Council of Governors.
- 37.4 Meetings of the Board of Directors are called by the Secretary, or by the Chair, or by four Directors who give written notice to the Secretary specifying the business to be carried out. The Secretary shall send a written notice to all Directors as soon as possible after receipt of such a request. The Secretary shall call a meeting on at least fourteen but not more than

twenty-eight days' notice to discuss the specified business. If the Secretary fails to call such a meeting then the Chair or four Directors, whichever is the case, shall call such a meeting.

- 37.5 A quorum shall be formed from 50% of the Directors, the majority of which are NEDs.
- 37.6 The Board of Directors may agree that its members can participate in its meetings by telephone, video or computer link. Participation in a meeting in this manner shall be deemed to constitute presence in person at the meeting.
- 37.7 The Chair of the Trust or, in their absence, the Vice Chair of the Trust, and in their absence one of the other Non-Executive Directors in attendance, is to chair meetings of the Board of Directors.
- 37.8 Subject to the following provisions of this paragraph, questions arising at a meeting of the Board of Directors shall be decided by a majority of votes.
- 37.8.1 In case of an equality of votes the Director chairing the meeting shall have a second and casting vote.
- 37.8.2 No resolution of the Board of Directors shall be passed by a majority composed only of Executive Directors or Non-Executive Directors.
- 37.9 The Board of Directors is to adopt Standing Orders covering the proceedings and business of its meetings. The proceedings shall not however be invalidated by any vacancy of its membership, or defect in a Director's appointment.
- 37.10 The Board of Directors may approve or amend procedures for the conduct of its own business which shall have effect under and subject to the other provisions of this Constitution.

38 Board of Directors – Conflicts of Interest of Directors

- 38.1 The duties that a Director of the Trust has by virtue of being a Director include in particular:
- 38.1.1 A duty to avoid a situation in which the Director has (or can have) a direct or indirect interest that conflicts (or possibly may conflict) with the interests of the Trust.
- 38.1.2 A duty not to accept a benefit from a third party by reason of being a Director or doing (or not doing) anything in that capacity.
- 38.2 The duty referred to in sub-paragraph 38.1.1 is not infringed if:
- 38.2.1 The situation cannot reasonably be regarded as likely to give rise to a conflict of interest, or
- 38.2.2 The matter has been authorised in accordance with the Constitution.
- 38.3 The duty referred to in sub-paragraph 38.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- 38.4 In sub-paragraph 38.1.2, "third party" means a person other than:
- 38.4.1 The Trust, or
- 38.4.2 A person acting on its behalf.

- 38.5 If a Director of the Trust has in any way a direct or indirect interest in a proposed transaction or arrangement with the Trust, the Director must declare the nature and extent of that interest to the other Directors.
- 38.6 If a declaration under this paragraph proves to be, or becomes, inaccurate or incomplete, a further declaration must be made.
- 38.7 Any declaration required by this paragraph must be made before the Trust enters into the transaction or arrangement.
- 38.8 This paragraph does not require a declaration of an interest of which the Director is not aware or where the Director is not aware of the transaction or arrangement in question.
- 38.9 A Director need not declare an interest:
- 38.9.1 If it cannot reasonably be regarded as likely to give rise to a conflict of interest;
 - 38.9.2 If, or to the extent that, the Directors are already aware of it;
 - 38.9.3 If, or to the extent that, it concerns terms of the Director's appointment that have been or are to be considered:
 - 38.9.3.1 By a meeting of the Board of Directors, or
 - 38.9.3.2 By a committee of the Directors appointed for the purpose under the Constitution.

39 Board of Directors – Remuneration and Terms of Office

- 39.1 The Council of Governors at a 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 after considering recommendations from its Non-Executive Director Remuneration Committee.
- 39.2 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.

40 Registers

- 40.1 The Trust is to have:
- 40.1.1 a register of members showing, in respect of each member, the constituency to which they belong, and, where there are classes, the class to which they belong;
 - 40.1.2 a register of members of the Council of Governors;
 - 40.1.3 a register of Directors;
 - 40.1.4 a register of interests of members of the Council of Governors; and
 - 40.1.5 a register of interests of the Directors.
- 40.2 The registers shall be made available for inspection by members of the public, except in circumstances prescribed by regulations; and so far as they are required to be available, they are to be available free of charge at all reasonable times.

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

41 Documents Available for Public Inspection

41.1 The following documents of the Trust are to be available on the Trust's website and for inspection by members of the public free of charge at all reasonable times:

41.1.1 a copy of the current Constitution;

41.1.2 a copy of the current Licence;

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

41.1.4 a copy of the report of any other auditors appointed by the Council of Governors to review and publish a report on any other aspect of the Trust's affairs;

41.1.5 a copy of the latest annual report;

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

41.1.7 a copy of the Trust's policy for the composition of the Non-Executive Directors; and

41.1.8 a copy of any notice given under section 52 of the 2006 Act (regulator's notice to failing NHS Foundation Trust).

41.2 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:

41.2.1 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;

41.2.2 a copy of any report laid under section 65D (appointment of trust special administrator) of the 2006 Act;

41.2.3 a copy of any information published under section 65D (appointment of trust special administrator) of the 2006 Act;

41.2.4 a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act;

41.2.5 a copy of any statement provided under section 65F (administrator's draft report) of the 2006 Act;

41.2.6 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;

- 41.2.7 a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act;
- 41.2.8 a copy of any final report published under section 65I (administrator's final report);
- 41.2.9 a copy of any statement published under section 65J (power to extend time) or 65KC (action following Secretary of State's rejection of final report) of the 2006 Act; and
- 41.2.10 a copy of any information published under section 65M (replacement of trust special administrator) of the 2006 Act.

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

41.4 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.

42 Auditors

42.1 The Trust shall have an external auditor.

42.2 The Council of Governors shall appoint or remove the Trust's external auditor.

43 Accounts

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

43.2 The Regulator may, with the approval of the Secretary of State, give directions to the Trust as to the content and form of its accounts.

43.3 The accounts are to be audited by the Trust's external auditor.

43.4 The Trust is to prepare, in respect of each financial year, annual accounts in such form as the Regulator may, with the approval of the Secretary of State, direct.

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

44 Annual Report

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

45 Forward Plans

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

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

45.3 In preparing the document, the Directors shall have regard to the views of the Council of Governors.

45.4 Each forward plan must include information about:

45.4.1 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

45.4.2 the income it expects to receive from doing so.

45.5 Where a forward plan contains a proposal that the Trust carry on an activity of a kind mentioned in sub-paragraph 46.4.1 the Council of Governors must:

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

45.5.2 notify the Directors of the Trust of its determination.

46 Non-NHS Work

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

47 Meeting of the Council of Governors to Consider Annual Accounts and Reports

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

47.1.1 the annual accounts;

47.1.2 any report of the external auditor on them; and

47.1.3 the annual report.

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

47.3 The Trust may combine a meeting of the Council of Governors convened for the purposes of sub-paragraph 47.1 with the Annual Members' Meeting.

48 Procedures and Protocols

48.1 The Board of Directors shall adopt such procedures and protocols as it shall deem to be appropriate for the good governance of the Trust from time to time.

49 Indemnity

49.1 Members of the Council of Governors and the Board of Directors and the Secretary who act honestly and in good faith will not have to meet out of their personal resources any personal civil liability which is incurred in the execution or purported execution of their functions, save where they have acted recklessly. Any costs arising in this way will be met by the Trust. The Trust may purchase and maintain insurance against any such liability for its own benefit and the benefit of members of the Council of Governors and the Board of Directors.

50 Execution of Documents

- 50.1 The Trust is to have a seal, but this is not to be affixed except under the authority of the Board of Directors.
- 50.2 A document purporting to be duly executed under the Trust's seal or to be signed on its behalf is to be received in evidence and, unless the contrary is proved, taken to be so executed or signed.

51 Mergers etc. and Significant Transactions

- 51.1 The Trust may only apply for a merger, acquisition, separation or dissolution with the approval of more than half of the members of the Council of Governors.
- 51.2 The Trust may enter into a significant transaction only if more than half of the members of the Council of Governors of the Trust voting approve entering into the transaction.
- 51.3 In paragraph 51.2, the following words have the following meanings:

"Significant transaction" means a transaction which meets any one of the tests below:

- 51.3.1 the fixed asset test; or
- 51.3.2 the turnover test; or
- 51.3.3 the gross capital test (relating to acquisitions or divestments).

The fixed asset test:

- 51.3.4 is met if the assets which are the subject of the transaction exceed 25% of the fixed assets of the NHS Foundation Trust;

The turnover test:

- 51.3.5 is met if, following the completion of the relevant transaction, the gross income of the NHS Foundation Trust will increase or decrease by more than 25%;

The gross capital test:

- 51.3.6 is met if the gross capital of the company or business being acquired or divested represents more than 25% of the capital of the Trust following completion (where "gross capital" is the market value of the relevant company or business's shares and debt securities, plus the excess of current liabilities over current assets, and the Trust's capital is determined by reference to its balance sheet);
- 51.3.7 For the purposes of calculating the tests in this paragraph, figures used to classify assets and profits must be the figures shown in the latest published audited consolidated accounts.

A transaction:

- 51.3.8 is any agreement (including an amendment to an agreement) entered into by the NHS Foundation Trust in respect of the acquisition of a business or services or the disposal of a business or service

- 51.3.9 excludes a transaction in the ordinary course of business, including the renewal, extension or entering into an agreement in respect of healthcare services carried out by the NHS Foundation Trust;
- 51.3.10 excludes any agreement or changes to healthcare services carried out by the NHS Foundation Trust following a reconfiguration of services led by the commissioners of such services;
- 51.3.11 excludes any grant of public dividend capital or the entering into of a working capital facility or other loan, which does not involve the acquisition or disposal of any fixed asset of the NHS Foundation Trust.

52 Amendment of the Constitution

- 52.1 The Trust may make amendments of its Constitution only if:
 - 52.1.1 more than half of the members of the Council of Governors of the Trust voting approve the amendments; and
 - 52.1.2 More than half of the members of the Board of Directors of the Trust voting approve the amendments.
- 52.2 Amendments made under paragraph 52.1 take effect as soon as the conditions in that paragraph are satisfied, but the amendment has no effect in so far as the Constitution would, as a result of the amendment, not accord with schedule 7 of the 2006 Act.
- 52.3 Where an amendment is made to the Constitution in relation to the powers or duties of the Council of Governors (or otherwise with respect to the role that the Council of Governors has as part of the Trust):
 - 52.3.1 At least one member of the Council of Governors must attend the next Annual Members' Meeting and present the amendment; and
 - 52.3.2 The Trust must give the members an opportunity to vote on whether they approve the amendment.
 - 52.3.3 If more than half of the members voting approve the amendment, the amendment continues to have effect; otherwise it ceases to have effect and the Trust must take such steps as are necessary as a result.
- 52.4 Amendments by the Trust of its Constitution are to be notified to the Regulator. For the avoidance of doubt, the Regulator's functions do not include a power or duty to determine whether or not the Constitution, as a result of the amendments, accords with Schedule 7 of the 2006 Act.

ANNEX 1 – PUBLIC CONSTITUENCIES

- (1) Mid Devon, North Devon, Torrington, West Devon, Cornwall and the Isles of Scilly (to be known as the Northern constituency)
- (2) Exeter, Teignbridge, Torbay, South Hams and Plymouth (to be known as the Southern constituency)
- (3) East Devon, Dorset, Somerset and the rest of England (to be known as the Eastern constituency)

ROYAL DEVON UNIVERSITY HEALTHCARE NHS FOUNDATION TRUST

The Election Rules

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1. Interpretation

1.1 In these rules, unless the context otherwise requires:

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

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

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

“*declaration of identity*” has the meaning set out in rule 22.1;

“*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 25.2;

“*ID declaration form*” has the meaning set out in Rule 22.1; “*internet voting record*” has the meaning set out in rule 27.4(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 23.1, containing the information in rule 23.2;

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

“*Monitor*” means the corporate body known as Monitor as provided by section 61 of the 2012 Act;

“*numerical voting code*” has the meaning set out in rule 58.2(b)

“*polling website*” has the meaning set out in rule 27.1;

“*postal voting information*” has the meaning set out in rule 25.1;

“*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 27.2;

“*telephone voting record*” has the meaning set out in rule 27.5(d);

“*text message voting facility*” has the meaning set out in rule 27.3;

“text voting record” has the meaning set out in rule 27.6(c);

“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.

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.

4. Returning Officer

- 4.1 Subject to rule 63, 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 63, 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 14, 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. Subscription of nomination form

- 11.1 The nomination form must be subscribed by two supporters.
- 11.2 Each supporter must:
- (a) be a member of the same constituency, or class within a constituency, to which the candidate belongs, and
 - (b) state his or her constituency, or class within a constituency, on the nomination form.
- 11.3 A member of the corporation must not subscribe more than one nomination form.
- 11.4 If a member of the corporation subscribes more than one nomination form in contravention of paragraph 11.3, then the second and any further subscriptions received by the returning officer are invalid.
- 11.5 Where a member of the corporation subscribes a nomination form and the candidate nominated in the form dies or withdraws before the form is received by the returning officer, then nothing in paragraphs 11.3 or 11.4 prevents that member from subscribing the nomination form of another candidate.

Declaration of interests

- 12.1 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.

13. Declaration of eligibility

- 13.1 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.

14. Signature of candidate

- 14.1 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 12, is true and correct, and
 - (c) their declaration of eligibility, as required under rule 13, is true and correct.

14.2 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.

15. Decisions as to the validity of nomination

15.1 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.

15.2 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 is not subscribed as required by rule 11,
- (d) that the paper does not contain a declaration of the interests of the candidate, as required by rule 12,
- (e) that the paper does not include a declaration of eligibility as required by rule 13, or
- (f) that the paper is not signed and dated by the candidate, if required by rule 14.

15.3 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.

15.4 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.

15.5 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.

16. Publication of statement of candidates

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

- 16.2 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.

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

16.4 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.

17. Inspection of statement of nominated candidates and nomination forms

17.1 The corporation is to make the statement of the candidates and the nomination forms supplied by the returning officer under rule 16.4 available for inspection by members of the corporation free of charge at all reasonable times.

17.2 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.

18. Withdrawal of candidates

18.1 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.

19. Method of election

19.1 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.

19.2 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.

19.3 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.

20. Poll to be taken by ballot

20.1 The votes at the poll must be given by secret ballot.

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

20.3 The corporation may decide that voters within a constituency or class within a constituency, may, subject to rule 20.4, cast their votes at the poll using such different methods of polling in any combination as the corporation may determine.

20.4 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.

20.5 Before the corporation decides, in accordance with rule 20.3 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.

21. The ballot paper

21.1 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.

21.2 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.

21.3 Each ballot paper must have a unique identifier.

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

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

22.1 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.

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

22.3 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

23. List of eligible voters

23.1 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 28 as soon as is reasonably practicable after the final date for the delivery of notices of withdrawals by candidates from an election.

23.2 The list is to include, for each member:

(a) a postal address; and,

(b) the member's e-mail address, if this has been provided

to which his or her voting information may, subject to rule 23.3, be sent.

23.3 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.

24. Notice of poll

24.1 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 20.3,

(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.

25. Issue of voting information by returning officer

25.1 Subject to rule 25.3, 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 58 of these rules, and
- (d) a covering envelope;

("postal voting information").

25.2 Subject to rules 25.3 and 25.4, 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 20.3 and/ or rule 20.4 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 58 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").

25.3 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.

25.4 If the corporation determines, in accordance with rule 23.3, 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.

25.5 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.

26. Ballot paper envelope and covering envelope

26.1 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.

26.2 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.

26.3 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.

27. E-voting systems

27.1 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").

27.2 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").

27.3 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").

27.4 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.

27.5

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:
 - (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.

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

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

The poll

28. Eligibility to vote

28.1 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.

29. Voting by persons who require assistance

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

29.2 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.

30. Spoilt ballot papers and spoilt text message votes

30.1 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.

30.2 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.

30.3 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.

30.4 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.

30.5 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.

30.6 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.

30.7 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.

30.8 After issuing a replacement voter ID number in respect of a spoilt text message vote, the returning officer shall enter in a list (“the list of spoilt text message votes”):

- (a) the name of the voter, and
- (b) the details of the voter ID number on the spoilt text message vote (if that officer

was able to obtain it), and

(c) the details of the replacement voter ID number issued to the voter.

31. Lost voting information

31.1 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.

31.2 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.

31.3 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.

32. Issue of replacement voting information

32.1 If a person applies for replacement voting information under rule 30 or 31 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 30.3 or 31.2, 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.

32.2 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.

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

33.1 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.

34. Procedure for remote voting by internet

- 34.1 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.
- 34.2 When prompted to do so, the voter will need to enter his or her voter ID number.
- 34.3 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.
- 34.4 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.
- 34.5 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.

35. Voting procedure for remote voting by telephone

- 35.1 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.
- 35.2 When prompted to do so, the voter will need to enter his or her voter ID number using the keypad.
- 35.3 If the telephone voting facility authenticates the voter ID number, the voter will be prompted to vote in the election.
- 35.4 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.
- 35.5 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.

36. Voting procedure for remote voting by text message

- 36.1 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.
- 36.2 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.
- 36.3 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

37. Receipt of voting documents

37.1 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 38 and 39 are to apply.

37.2 The returning officer may open any covering envelope or any ballot paper envelope for the purposes of rules 38 and 39, 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.

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

38. Validity of votes

38.1 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.

38.2 Where the returning officer is satisfied that rule 38.1 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.

38.3 Where the returning officer is not satisfied that rule 38.1 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.

38.4 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.

38.5 Where the returning officer is satisfied that rule 38.4 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.

38.6 Where the returning officer is not satisfied that rule 38.4 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.

39. Declaration of identity but no ballot paper (public and patient constituency)¹

39.1 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.

40. De-duplication of votes

40.1 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.

40.2 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

40.3 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

¹ It should not be possible, technically, to make a declaration of identity electronically without also submitting a vote.

“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.

40.4 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.

41. Sealing of packets

41.1 As soon as is possible after the close of the poll and after the completion of the procedure under rules 38, 39 and 40, 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 27 are held in a device suitable for the purpose of storage.

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:
 - (i) ballot papers that have been returned; and
 - (ii) 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(a)(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.

44. Rejected ballot papers and rejected text voting records

44.1 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 44.2 and 44.3, be rejected and not counted.

44.2 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.

44.3 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.

44.4 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 44.2 and 44.3, endorse the words “rejected in part” on the ballot paper and indicate which vote or votes have been counted.

44.5 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.

44.6 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 44.7 and 44.8, be rejected and not counted.

44.7 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.

44.8 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.

44.9 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 44.7 and 44.8, endorse the words "rejected in part" on the text voting record and indicate which vote or votes have been counted.

44.10 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.

45. Equality of votes

45.1 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

46. Declaration of result for contested elections

46.1 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 to the Chairman of the corporation
- (c) give public notice of the name of each candidate whom he or she has declared elected.

46.2 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 44.5,
- (c) the number of rejected text voting records under each of the headings in rule 44.10,

available on request.

47. Declaration of result for uncontested elections

47.1 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.

48. Sealing up of documents relating to the poll

48.1 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 declarations of identity
- (c) the ballot papers and text voting records endorsed with “rejected in part”,
- (d) the rejected ballot papers and text voting records, and
- (e) 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.

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

- (a) the disqualified documents, with the list of disqualified documents inside it,
- (b) the declarations of identity
- (c) the list of spoiled ballot papers and the list of spoiled text message votes,
- (d) the list of lost ballot documents, and
- (e) 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.

48.3 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.

49. Delivery of documents

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

50. Forwarding of documents received after close of the poll

50.1

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.

51. Retention and public inspection of documents

51.1

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.

51.2

With the exception of the documents listed in rule 52.1, 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.

51.3

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.

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

52.1

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,
 - (v) any declarations of identity, or
 - (vi) 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 27 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.

52.2

A person may apply to the board of directors of the corporation to inspect any of the

documents listed in rule 52.1, 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.

52.3 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.

52.4 On an application to inspect any of the documents listed in rule 52.1 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 Monitor has declared that the vote was invalid.

PART 9: DEATH OF A CANDIDATE DURING A CONTESTED ELECTION

53. Countermand or abandonment of poll on death of candidate

53.1 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.

53.2 Where a new election is ordered under rule 53.1, 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.

53.3 Where a poll is abandoned under rule 53.1(a), rules 53.4 to 53.7 are to apply.

53.4 The returning officer shall not take any step or further step to open envelopes or deal with their contents in accordance with rules 38, 39 and 40, and is to make up separate sealed packets in accordance with rule 41.

53.5 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.

53.6 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.

53.7

Once the documents relating to the poll have been sealed up and endorsed pursuant to rules 53.4 to 53.6, the returning officer is to deliver them to the chairman of the corporation, and rules 51 and 52 are to apply.

Election expenses

54. Election expenses

54.1 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 Monitor under Part 11 of these rules.

55. Expenses and payments by candidates

55.1 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.

56. Election expenses incurred by other persons

56.1 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.

56.2 Nothing in this rule is to prevent the corporation from incurring such expenses, and making such payments, as it considers necessary pursuant to rules 57 and 58.

Publicity

57. Publicity about election by the corporation

57.1 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.

57.2 Any information provided by the corporation about the candidates, including information compiled by the corporation under rule 58, 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.

57.3 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.

58. Information about candidates for inclusion with voting information

58.1 The corporation must compile information about the candidates standing for election, to be distributed by the returning officer pursuant to rule 25 of these rules.

58.2 The information must consist of:

- (a) a statement submitted by the candidate of no more than a specified number of 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”),
- (c) a photograph of the candidate and
- (d) Additionally, where a candidate is seeking re-election, a statement of actual attendance at Council of Governor meetings compared with Council of Governor meetings held during the candidate’s period of office.

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

59.1 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.

59.2 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

60. Application to question an election

- 60.1 An application alleging a breach of these rules, including an electoral irregularity under Part 10, may be made to Monitor for the purpose of seeking a referral to the independent election arbitration panel (IEAP).
- 60.2 An application may only be made once the outcome of the election has been declared by the returning officer.
- 60.3 An application may only be made to Monitor by:
- (a) a person who voted at the election or who claimed to have had the right to vote, or
 - (b) a candidate, or a person claiming to have had a right to be elected at the election.
- 60.4 The application must:
- (a) describe the alleged breach of the rules or electoral irregularity, and
 - (b) be in such a form as the independent panel may require.
- 60.5 The application must be presented in writing within 21 days of the declaration of the result of the election. Monitor will refer the application to the independent election arbitration panel appointed by Monitor.
- 60.6 If the independent election arbitration panel requests further information from the applicant, then that person must provide it as soon as is reasonably practicable.
- 60.7 Monitor shall delegate the determination of an application to a person or panel of persons to be nominated for the purpose.
- 60.8 The determination by the IEAP shall be binding on and shall be given effect by the corporation, the applicant and the members of the constituency (or class within a constituency) including all the candidates for the election to which the application relates.
- 60.9 The IEAP may prescribe rules of procedure for the determination of an application including costs.

61. Secrecy

61.1 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.

61.2 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.

61.3 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.

62. Prohibition of disclosure of vote

62.1 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.

63. Disqualification

63.1 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.

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

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

- (a) the delivery of the documents in rule 25, 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.

COUNCIL OF GOVERNORS MEETINGS

RULES OF PROCEDURE

Version:	7
Sponsor:	Director of Governance
Approval authority:	Council of Governors
Date of approval:	29 November 2021
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Date of next review:	August 2024

**RULES OF PROCEDURE
FOR
COUNCIL OF GOVERNORS MEETINGS**

1. AUTHORITY

These rules of procedure have been agreed by the Council of Governors (Council). Subsequent amendments will be made in accordance with Rule 20.

2. ELECTRONIC MEDIA

Where appropriate, electronic media may be used to conduct meetings, give any notice and distribute papers and these Rules shall be construed accordingly.

3. MEETINGS

Council of Governors' scheduled meetings will normally be held four times per year. The Trust Secretary will publish the dates, times and locations of meetings for the year in advance, which may however be changed if necessary provided at least 14 days' notice of the new meeting details are given.

Extraordinary Governors' meetings may be called by the Trust Secretary, giving at least 7 days' notice if possible but less in an emergency or the need to conduct urgent business

Extraordinary meetings of the Council may also be called by a group of at least ten Governors (including not less than five Public Governors) who give notice to the Trust Secretary specifying the business to be carried out. The Trust Secretary shall send a notice to all Governors as soon as possible after receipt of such a request. The Trust Secretary shall call a meeting on at least fourteen but not more than twenty-eight days' notice to discuss the specified business. If the Trust Secretary fails to call such a meeting then the group of Governors may call such a meeting giving at least 14 days' notice to all Governors.

4. QUORUM AT GENERAL MEETINGS OF THE COUNCIL OF GOVERNORS

Ten Governors shall form a quorum at meetings of the Council.

5. AGENDAS AND PAPERS

Agendas and supporting papers will normally be issued to arrive with Governors no later than 7 days in advance of a meeting. This will also include a copy of the minutes of the previous meeting for approval as a specific agenda item. All papers will normally be sent by email but any Governor may request hard copies to be posted to them.

6. DISCLOSURE OF INTERESTS

If a Governor has any pecuniary, personal or family interest, actual or potential, direct or indirect, in any contract, proposed contract or other matter and is present at a meeting of the Trust or the Council at which the contract, proposed 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.

They shall not take part in the consideration or discussion of the contract or other

matter or count towards quoracy or vote on any questions with respect to it.

The Chair may exclude a Governor from a meeting of the Trust while any contract, proposed contract or other matter in which they have a pecuniary, personal or family interest, is under consideration.

7. REPORTS FROM THE DIRECTORS OR OFFICERS

A Governor may ask any question through the Chair without notice upon a report from a Director, or other officer of the Trust, when that item is being received or under consideration by the Council. Unless the Chair decides otherwise no statements will be made other than those which are strictly essential to define the question, which should last no longer than three minutes.

Up to two supplementary questions may be asked but only if the supplementary question arises directly out of the reply given. The Chair may reject any question from any Governor if in their opinion the question is substantially the same as a question which has already been put to that meeting or a recent meeting of the Council. At the discretion of the Chair, questions may also be asked of the Directors by members of the Trust or the public.

8. QUESTIONS ON NOTICE AT COUNCIL OF GOVERNORS MEETINGS

Questions on notice are defined as questions from Governors about significant matters over which the Council has powers or duties or which affect the services provided by the Trust. Subject to the constraints of this paragraph a Governor may ask questions of:

- the Chair; or
- another Governor; or
- a Director; or
- the Chair of any CoG sub-committee or working group present

A Governor may ask a question on notice provided they have given at least 14 days' notice in writing of the question to the Secretary.

9. RESPONSE TO QUESTIONS ON NOTICE

An answer to a Question on Notice may take the form of:

- (a) a direct oral answer;
- (b) where the desired information is in a publication of the Trust or other published work, a reference to that publication; or
- (c) where the reply cannot conveniently be given orally, a written answer will be circulated prior to the meeting, during the meeting or as soon as possible after the meeting to the questioner and to the COG. If the answer to the question is likely to take longer than 14 days to prepare, the CoG should be so advised at the meeting.

Supplementary questions for clarification may be asked at the discretion of the Chair.

10. MOTIONS, AMENDMENTS OR ALTERATIONS OR WITHDRAWALS OF MOTIONS – GENERAL PROVISIONS

The rules which follow in relation to the moving, amendment, alteration or withdrawal of motions shall in no way operate at any time to avoid or circumvent compliance with any other approved rules of committee and shall be construed

accordingly.

11. MOTIONS ON NOTICE

Motions may only be submitted by Governors or officers of the Trust and must be received by the Trust Secretary in writing at least 14 days prior to the meeting at which they are to be considered, together with any relevant supporting paper.

Motions must be about matters for which the Council has a responsibility or which affect the services provided by the Trust.

A motion or question which would ordinarily require notice may be moved or asked as urgent business with the agreement of the Chair and the support of the Lead Governor (or the Deputy Lead Governor in their absence) provided the details are received by the Trust Secretary before the commencement of the meeting.

12. MOTIONS WITHOUT NOTICE

The following motions may be moved without notice:

- (a) in relation to the accuracy of the minutes;
- (b) to change the order of business in the agenda;
- (c) to refer something to an appropriate body or individual;
- (d) to appoint a working group arising from an item on the agenda for the meeting;
- (e) to receive reports or adopt recommendations made by the Board of Directors;
- (f) to withdraw a motion;
- (g) to amend a motion;
- (h) to proceed to the next business;
- (i) that the question be now put;
- (j) to adjourn a debate;
- (k) to adjourn a meeting;
- (l) to suspend a particular Council Procedure Rule; a rule may be suspended by motion on notice or without notice if at least one half of the whole number of Governors of the Council are present. Suspension can only be for the duration of the meeting.
- (m) To exclude the public and press. The motion shall read "To exclude the press and public from the remainder of the meeting, owing to the confidential nature of the business to be transacted, namely (**here insert brief description of the matter to be discussed**)."
- (n) To not hear further from a Governor or to exclude them from the meeting: If a Governor persistently disregards the ruling of the Chair by behaving improperly or offensively or deliberately obstructs business or does not

comply with the Code of Conduct, the Chair may move that the Governor be not heard further. If seconded, the motion will be voted on without discussion. If the Governor continues to behave improperly after such a motion is carried, the Chair may move either that the Governor leaves the meeting room or that the meeting is adjourned for a specified period. If seconded, the motion will be voted on without discussion.

- (o) to give the consent of the Council where its consent is required by the Constitution.

13. SPEAKING RULES

This rule applies to all forms of speech/debate by Governors or members of the Trust and public in relation to the motion or question under discussion.

Approval to speak will be given by the Chair. Governors will be heard first, and after their debate is complete the Chair may ask for any questions/comments from members of the Trust and the public in that order. Speeches must be directed to the matter, motion or question under discussion or to a personal explanation or point of order. Unless in the opinion of the Chair it would not be desirable or appropriate to time limit speeches on any topic to be discussed having regard to its nature complexity or importance, no proposal speech, nor any reply, may exceed three minutes. In the interests of time the Chair may limit the number of replies which are heard.

A person who has spoken on a matter may not speak again whilst it is the subject of debate, except:

- a) in exercise of a right of reply;
- b) on a point of order;
- c) on a point of fact

Any speaker may be asked to state their name and role, e.g. Governor, before starting to speak to ensure the accuracy of the minutes.

14. ATTENDANCE

Governors who are unable to attend meetings of the Council must advise the Trust Secretary in advance of the meeting so that their apologies may be recorded. Governors who fail to do this will be recorded as "Did not attend" in the minutes. Governors should be aware of the requirements of paragraph 23 of the Trust's Constitution which covers the termination of office and removal of Governors in the event of poor attendance, and the CoG Coordinating Committees terms of reference, which are available on the Trust's website.

In addition, Governors who are unable to attend development days or members meetings must inform the secretary or organiser of the event of this fact.

Attendance records will be kept for all Council of Governors meetings, development days and Members meetings.

Governors seeking re-election will have a statement, in a form which has been approved by the CoG Coordinating Committee, reporting on their attendance at Council meetings, added to their re-election application.

The attendance record of Governors at Council meetings will be published in the Annual Report.

15. CHAIRING MEETINGS OF THE COUNCIL OF GOVERNORS

The Council of Governors will be chaired by the Chair of the Trust or in their absence as provided in the Constitution. For the avoidance of doubt, if the CoG is dealing with matters of succession of the Chair, that will be regarded as a conflict of interest for the Chair and Vice Chair and accordingly the Lead Governor will preside. If the Lead Governor is not available in these circumstances the meeting will be chaired, for that part of the meeting only, by the Deputy Lead Governor or a public Governor selected from among those present.

16. AMENDMENTS TO RULES OF PROCEDURE

These rules of procedure may only be amended at a Council meeting. The CoG Effectiveness Working Group may propose amendments for this purpose. Any other motion to change the rules of procedure must be reviewed and approved by a majority of Governors and submitted to the Trust Secretary in writing at least 14 days before the meeting.

The CoG Effectiveness Working Group will review this document at intervals not exceeding three years.

ANNEX A

APPROVED COMMITTEES OF THE COUNCIL OF GOVERNORS

A1. NOMINATIONS COMMITTEE (NC)

The Constitution, at paragraph 32.1.3, makes provision for the creation of a Nominations Committee for the appointment of the Chair and Non- Executive Directors. The terms of reference for this committee will be approved by the Council of Governors. The committee will consist of Governors. As stated in the Constitution, the committee will be advised by the Chief Executive and one or two independent advisors. The Chief Executive may arrange for advice, in particular on HR and governance matters, to be provided by nominating any appropriate officers or staff of the Trust to attend a meeting. The committee will be chaired by the Chair of the Council of Governors, except when discussing matters relating to the Chair when the Lead Governor will preside. The Governor members on the committee will be elected by their fellow Governors in accordance with a process agreed by them. The committee will make recommendations on the appointment of suitable candidates for approval by the Council of Governors.

A2. NON-EXECUTIVE DIRECTOR REMUNERATION COMMITTEE (NEDRC)

The Constitution, at paragraph 40.1, makes provision for the creation of the NEDRC whose function is to recommend the remuneration of the Chair of the Council of Governors and the Non-Executive Directors. The terms of reference for the NEDRC will be approved by the Council of Governors. The NEDRC will be chaired by the Lead Governor and comprise Governors as laid down in the terms of reference. The committee members will be elected by Governors in accordance with an election process which they will approve. The committee will make recommendations on appropriate levels of remuneration to Council of Governors for their approval.

A3 CoG Coordinating Committee

Both the Constitution, at paragraphs 23.2 & 23.3, and paragraph 14 to these rules of procedure, describe the minimum attendance requirements by Governors at Council of Governors meetings, development days and members meetings and the sanctions which may be applied for poor attendance. The responsibility for monitoring attendance lies with the CoG Coordinating Committee which comprises: Chair of the Council of Governors, Chairs of working groups, Lead Governor, Deputy Lead Governor, a Staff Governor and an appointed Governor. The committee operates in accordance with terms of reference which are approved by the Council of Governors.

**ROYAL DEVON UNIVERSITY HEALTHCARE NHS
FOUNDATION TRUST
STANDING ORDERS**

Version:	6
Sponsor:	Chief Financial Officer
Approval authority:	Board of Directors
Date of approval:	28 September 2022
Date of last approval:	29 November 2017
Date of next review:	November 2025

ROYAL DEVON UNIVERSITY HEALTHCARE NHS FOUNDATION TRUST

STANDING ORDERS

Approved by the Board of Directors on 29 November 2006 and
amended 26 November 2014 and 29 November 2017,
28 September 2022

FOREWORD

Within the License issued by NHS England/NHS Improvement (NHSE/I), the Independent Regulator of NHS Foundation Trusts, NHS Foundation Trusts are required to demonstrate appropriate arrangements to provide comprehensive governance arrangements in accordance with the National Health Service Act 2006.

Standing Orders regulate the proceedings and business of the Trust and are part of its corporate governance arrangements. In addition, as part of accepted Codes of Conduct and Accountability arrangements, Boards are expected to adopt schedules of reservation of powers and delegation of powers. These "Scheme of Delegation" schedules are incorporated within the Trust's Standing Financial Instructions.

This document, together with Standing Financial Instructions, Standards of Business Conduct, Budgetary Control Procedures, the Fraud and Corruption Policy and the procedures for the Declaration of Interests provide a regulatory framework for the business conduct of the Trust. They fulfil the dual role of protecting the Trust's interests and protecting staff from possible accusation that they have acted less than properly.

The Standing Orders, Budgetary Control Procedures and Standing Financial Instructions, which includes the Scheme of Delegation, provide a comprehensive business framework that can be applied to all activities. Members of the Board of Directors and all members of staff should be aware of the existence of and work to these documents.

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1. INTRODUCTION

1.1 Statutory Framework

The Royal Devon University Healthcare NHS Foundation Trust (here after referred to as Royal Devon) is a public benefit corporation which was established under the National Health Service Act 2006 (the 2006 Act). The principal place of business of the Trust is the Royal Devon and Exeter Hospital (Wonford) in Exeter and North Devon District Hospital in Barnstaple.

NHS Foundation Trusts are governed by statute namely the National Health Service Act 2006. The statutory functions conferred on the Trust are set out in the 2006 Act and in the Trust's License and Constitution.

As a public benefit corporation the Trust has specific powers to do anything which appears to be necessary or desirable for the purposes of, or in connection with, its functions. It is also 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 NHS Constitution requires the Trust to adopt Standing Orders (SOs) for the regulation of its proceedings and business. When compiling their accounts, the sector regulator for health services in England (NHSE/I) requires that Foundation Trusts comply with International Financial Reporting Standards. NHSE/I produces a Foundation Trust Annual Reporting Manual which also provides guidance for foundation trusts, consistent with the requirements of the Financial Reporting Advisory Board.

NHSI's Code of Governance requires that, among other things, Boards draw up a schedule of matters reserved to the board, and ensure that management arrangements are in place to enable responsibility to be clearly delegated to senior executives (a scheme of delegation). The Constitution also requires the establishment of Audit and Remuneration Committees with formally agreed terms of reference. The Trust also operates a Code of Conduct for Directors.

1.2 Delegation of Powers

Under the Standing Orders relating to the Arrangements for the Exercise of Functions (Standing Order 4) the Board exercises its powers to make arrangements for the exercise, on behalf of the Trust, of any of its functions by a committee or sub-committee appointed by virtue of Standing Order 4.1. This may also be exercised by an officer of the Trust, in each case subject to such restrictions and conditions as the Board thinks fit or as the Independent Regulator may direct. Delegated Powers are covered in a separate document (Matters Reserved for the Board and Delegation of Powers). That document has effect as if incorporated into the Standing Orders.

1.3 Conflict with the Trust's Constitution

Where any conflict arises between the Constitution and these Standing Orders, the Constitution shall have primacy.

1.4 Final authority in the interpretation of Standing Orders

The Chair of the Trust shall be the final authority in the interpretation of Standing Orders on which they shall be advised by the Chief Executive and in the case of Standing Financial Instructions (SFIs) by the Chief Financial Officer

1.5 Definitions

Throughout these Standing Orders, if not inconsistent with the context:

"**Trust**" means the Royal Devon.

"**Board**" means the Board of Directors and comprises the Chair and Non-Executive Directors, appointed by the Council of Governors (CoG), and Executive Directors appointed by the relevant committee of the Trust.

"**Chair**" is the person appointed by the CoG to lead the Board and the Council of Governors and to ensure that it successfully discharges its overall responsibility for the Trust. The expression "The Chair of the Trust" shall be deemed to include the Vice-Chair of the Trust if the Chair is absent from the meeting or is otherwise unavailable.

"**Vice-Chair**" means the Non-Executive Director appointed by the CoG to take on the Chair's duties if the Chair is absent for any reason. The Constitution contains further guidance on the selection of the Vice Chair.

"**Director**" means a person appointed as an *Executive or Non-Executive* Director, and whose post carries with it Board membership status, and includes the Chair. It does not include either corporate directors or anyone else whose job title includes the word 'director'. The official register of Directors will be posted on the Trust and NHSE/I's website.

"**Senior Independent Director**" means the non-executive director appointed by the Board to provide a sounding board for the Chair and to serve as an intermediary for the other directors when necessary. The Senior Independent Director should also be available to Governors.

"**Chief Executive**" means the Chief Executive Officer of the Trust.

"**Chief Financial Officer**" means the Chief Finance Officer of the Trust.

"**Officer**" means any person whose contract of employment is held by the Trust.

"**Authorised Officer**" means the person(s) specified in the schemes of delegation document next to the appropriate paragraph as being the person(s) authorised for that purpose.

"**Accountable Officer**" shall be the officer responsible and accountable for funds entrusted to the Trust. They shall be responsible for ensuring the proper stewardship of public funds and assets. For the Trust this shall be the Chief Executive.

"**Budget**" shall mean a resource, expressed in financial terms, proposed by the board for the purpose of carrying out, for a specific period, any or all functions of the Trust.

"**Committee**" shall mean a committee appointed by the Trust.

"**Committee Members**" shall be persons formally appointed by the Trust to sit on or to chair specific committees.

“Constitution” shall mean the Constitution, approved by NHSI (the sector regulator for health services in England), and which describes the operation of the Foundation Trust.

“Funds held on Trust” shall mean those funds which the Trust holds at its date of incorporation, receives on distribution by statutory instrument, or chooses subsequently to accept under Schedule 2 Part II Para 16.1.c NHS & Community Care Act 1990. Such funds may or may not be charitable.

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

“Secretary” means a person appointed by the Trust (the Foundation Trust Secretary) to act independently of the Board and monitor the Trust’s compliance with the law, Standing Orders and observance of Constitution and License.

“SFIs” means Standing Financial Instructions.

“SOs” means Standing Orders.

“Council of Governors” means that body of elected and appointed Governors, authorised to be members of the Council of Governors and act in accordance with the Constitution. **“CoG”** means the Council of Governors.

“Member” means any person registered as a Member of the Trust, and authorised to vote in elections to elect Governors.

2. THE TRUST

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

All Trust staff and members must comply with the Trust’s Standards of Business Conduct and Conflicts of Interest Policy and the national guidance contained in HSG(93)5 on ‘Standards of Business Conduct for NHS staff’.

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 Trust as a corporate trustee shall be exercised separately and distinctly from those powers exercised as a Trust.

The Trust has the functions conferred on it by the Health and Social Care (Community Health and Standards) Act 2003, and by its License, which include the Constitution.

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. Accountability for non-charitable funds held on trust is only to NHSE/I.

The Trust has resolved that certain powers and decisions may only be exercised or made by the Board in formal session. These powers and decisions are set out in “Matters Reserved for the Board” contained within the Trust’s SFIs and have effect as if incorporated into the Standing Orders.

2.1 Composition of the Board of Directors

In accordance with the Constitution the composition of the Board of Directors of the Trust shall be:

- The Chair of the Trust;
- 7 Non-Executive Directors; and
- 7 Executive Directors including:
 - Chief Executive;
 - Chief Financial Officer;
 - Medical or Dental practitioner; and
 - Registered Nurse or Midwife.

2.2 Appointment of the Chair and Directors

The regulations for such appointments are laid down in the Constitution and are summarised as follows. The Chair and Non-Executive Directors are appointed by the CoG. The CoG shall appoint a committee (the Nominations Committee), whose members shall be laid down in terms of reference, to select suitable candidates for their approval. The Chief Executive will be appointed and removed by the Non-Executive Directors, and this appointment is subject to approval by the CoG. Executive Directors, except for the Chief Executive, will be appointed or removed by a Committee whose members shall be the Chair and the Non-Executive Directors.

2.3 Terms of office of the Chair and Non-Executive Directors

The regulations governing the period of tenure of office of the Chair and Non-Executive Directors and the termination or suspension of office of the Chair and Non-Executive Directors are contained in the Constitution.

2.4 Appointment of the Vice-Chair

2.4.1 For the purpose of enabling the proceedings of the Trust to be conducted in the absence of the Chair, the Board of Directors will recommend one of the Non-Executive Directors to be the Vice-Chair of the Trust. The Council of Governors will be asked to ratify this recommendation. This appointment as Vice-Chair will be for such a period, not exceeding the remainder of their term as Non-Executive Director of the Trust.

2.4.2 Any Non-Executive Director so appointed may at any time resign from the office of Vice-Chair by giving notice in writing to the Chair and the Directors of the Trust may thereupon recommend another Non-Executive Director to be Vice-Chair in accordance with Standing Order 2.4.1. The Constitution contains further advice on occasions when the Council of Governors is discussing matters relating to the Chair.

2.5 Powers of the Vice-Chair

Where the Chair of the Trust has died or otherwise ceased to hold office, or where the individual has been unable to perform the duties as Chair owing to illness, absence or any other cause, references to the Chair shall, so long as the Chair is unable to perform the duties, be taken to include references to the Vice-Chair.

2.6 Senior Independent Director

In consultation with the Council of Governors, the Board should appoint one of the independent Non-Executive Directors to be the Senior Independent Director (SID). The SID should provide a sounding board for the Chair and to serve as an intermediary for the other Directors when necessary. The SID should be available to Governors if they have concerns that contact through the normal channels of Chair, Chief Executive, Chief Financial Officer or Trust Secretary has failed to resolve, or for which such contact is inappropriate.

2.7 Joint Directors

Where one or more persons is appointed jointly to a post in the Trust which qualifies the holder for executive directorship, those persons shall become appointed as an Executive Director jointly, and shall count for the purpose of Standing Order 2.1 as one person.

2.8 Relationship between the Board of Directors and the Council of Governors

The Constitution describes the duties of these two bodies in more detail. In summary the Board of Directors manage the business of the Trust (in accordance with the Constitution), and the CoG conduct a number of tasks, among them:

- to approve the appointment of the Non-Executive Director members of the Board (after selection by the Nominations Committee);
- where necessary and appropriate remove Non-Executive Directors and/or the Chair
- to decide their remuneration and terms and conditions of office;
- to appoint the external auditors; and
- to review various periodic reports listed in the constitution, presented to them by the Board.

The CoG will also represent the views of their constituency, staff group or stakeholder, so that the needs of the local health economy are taken into account when deciding the Trust's strategic direction and other relevant matters.

In situations where any conflict arises between the Board of Directors and the CoG, then the decision of the Chair shall normally be final. However, there may be circumstances where the Chair feels unable to decide owing to a conflict of interest. In such a situation, the Chair will initiate an investigation and make recommendations. Normally this will be achieved by inviting the Chair of another Foundation Trust to conduct the investigation, and the choice of individual will be agreed by both the CoG and the Board.

The SID shall be available to the CoG for any concerns regarding the Board, in particular the Chair and Non-Executive Directors.

3. MEETINGS

Please see Appendix 1 for Committees and Sub-Committees of the Board of Directors and the Trust's Governance Performance System.

3.1 Calling meetings

3.1.1 Ordinary meetings

Ordinary meetings of the Board of Directors shall be held at regular intervals at such times and places as the Board of Directors may determine. Normally this will

be monthly, except for August and December, on the last Wednesday of the month. The Chair may decide, taking into account business needs, to hold Board meetings in August and December if appropriate.

3.1.2 Extraordinary meetings

The Chair 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 four 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, such four or more Directors may forthwith call a meeting.

3.2 **Notice of meetings**

Before each meeting of the Board of Directors, a notice of meeting, specifying the business proposed to be transacted at it, shall be issued by the Secretary. This notice shall be delivered to every Director (including by email), or sent by post to their usual place of residence or other address nominated by the Director, so as to normally be available to all Directors at least seven days before the meeting. The agenda and wherever possible the accompanying papers will be dispatched to Board members no later than five working days before the meeting, save in an emergency.

3.3 **Setting the Board agenda**

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

A Director desiring a matter to be included on the agenda shall make their request in writing to the Chair at least twelve days before the meeting, subject to Standing Order 3.2. Requests made less than twelve days before a meeting may be included on the agenda at the discretion of the Chair.

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

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.

3.4 **Public Meetings**

The Trust recognises that it should be as open as possible and to this end it will hold ordinary Board of Directors meetings in public, subject to the public and press being excluded on the grounds of the confidential nature of the business to be discussed (as per the provisions of section 1(2) of the Admission to Public Meetings Act 1960). The Trust will also hold its general CoG meetings in public, subject to confidential business needing to be discussed. CoG meetings are usually held quarterly and the rules for the calling and conduct of meetings of the CoG are contained in the Constitution and the CoG Rules of Procedure.

The public and representatives of the press shall be afforded facilities to attend the meetings in public of the Board of Directors and the Council of Governors.

3.5 Annual Members meeting

Requirements for the Annual Members Meeting are laid down in the Constitution and the Members Meeting Rules of Procedure. The Trust will hold an Annual Members Meeting within 8 months of the end of each financial year at which it will present its annual report, audited annual accounts, the report made on those accounts by the auditor and membership and forward planning information. An additional public Members Meeting will be called if the auditor issues a report in the public interest other than at the end of the financial year.

3.6 Procedures at Board of Directors meetings

3.6.1 Notice of motion

A Director desiring to move a motion shall send a notice thereof at least twelve clear days before the meeting to the Trust Chair. The Chair shall insert in the agenda for the meeting all notices so received that are in order. This Standing Order shall not prevent any motion being withdrawn, or moved without notice, on any business mentioned on the agenda for the meeting. Such withdrawals, or moving of motions without notice, shall be at the discretion of the Chair of the meeting, pursuant to the powers per Standing Order 3.10.

3.6.2 Withdrawal of motion or amendments

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

3.6.3 Petitions

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

3.6.4 Emergency motions

Subject to agreement by the Chair and of Standing Order 3.6.1, a member of the Board may give written notice of an emergency motion after the issue of the notice of the meeting and the agenda, up to one hour before the time fixed for the meeting. The notice shall state the grounds of urgency. If in order, the Chair shall declare the item to the Board at the commencement of the business of the meeting as an additional item included in the agenda. The Chair's decision to include the item shall be final.

3.6.5 Motion to rescind a resolution

Notice of motion to amend or rescind any resolution which has been passed within the preceding six calendar months shall bear the signatures of the Directors who give it and also the signature of four other Directors. When any such motion has been disposed of by the Trust, it shall not be competent for any Director other than the Chair to propose a motion to the same effect within six months. However, the Chair may do so if they consider it appropriate.

3.6.6 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.

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

- An amendment to the motion;
- The adjournment of the discussion or the meeting;

- That the meeting proceed to the next business (*);
- The appointment of an ad hoc committee to deal with a specific item of business; and
- That the motion be now put (*);

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

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.

3.7 Chair of meetings

At any meeting of the Board of Directors the Chair, if present, shall preside. If the Chair is absent from the meeting the Vice-Chair, if present, shall preside. If the Chair and Vice-Chair are absent, such Non-Executive Director as the Directors present shall choose, shall preside.

If the Chair is absent from a meeting of the Board temporarily on the grounds of a declared conflict of interest the Vice-Chair, if present, shall preside. If the Chair and the Vice-Chair are absent, or are disqualified from participating, such Non-Executive Director as the Directors present shall choose will preside.

3.8 Record of attendance

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

3.9 Quorum

No business shall be transacted at a meeting unless 50% of the Directors, the majority of which are Non-Executive Directors, are present.

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

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 3.14 & 3.15) they shall no longer count towards the quorum. If a quorum is not then 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 Trust will decide what arrangements and terms and conditions it feels appropriate to offer in extending an invitation to observers to attend any of the Trust's Board meetings. The Chair will decide on attendance at Board meetings by officers or invited attendees, taking into account whether it is a Board meeting in public or a Board meeting to transact confidential business.

3.10 Chair's ruling

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

3.11 Voting

Every question at a meeting shall be determined by a majority of the votes of the Chair and Directors present and voting on the question. In the case of any equality of votes, the person presiding shall have a second or casting vote. No resolution of the Board of Directors shall be passed by a majority composed only of Executive Directors or only of Non-Executive Directors.

In a situation where the office of Executive Director is shared by more than one person their attendance and voting at meetings will be in accordance with Standing Order 3.13.

Where the Chair so directs, or where it is proposed, seconded and carried to do so, a vote shall be taken by paper ballot. Otherwise, all questions put to the vote shall, at the discretion of the Chair, be determined by oral expression or by a show of hands.

If at least four of the Directors present so request, the voting on any question may be recorded so as to show how each Director present voted or did not vote.

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

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

An officer, who has been appointed formally by the Board to act up for an Executive Director during a period of incapacity, or temporarily to fill an Executive Director vacancy, shall be entitled to exercise the voting rights of the Executive Director. An officer's status when attending a meeting shall be recorded in the minutes.

3.12 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.

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

Minutes shall be circulated in accordance with Chair's wishes.

3.13 Joint Directors

Where a post of Executive Director is shared by more than one person:

- a) both persons shall be entitled to attend meetings of the Trust;
- b) either of those persons shall be eligible to vote in the case of an agreement between them;
- c) In the case of disagreement between them no vote should be cast; and
- d) the presence of either or both of those persons shall count as one person for the purposes of Standing Order 3.9 above.

3.14 Declaration of Board Members' interests

The Constitution requires Board members to declare interests which are relevant and material to the Board of which they are a member, and lists those interests to be declared. All Board members should be guided by this and declare any such interests.

Any such interests should be declared by Board members to the Secretary, who will report it at the next Board meeting. If Board members have any doubts about the relevance of an interest, this should be discussed with the Chair. There will be an annual check of the register of interests in advance of the production of the Annual Report.

There is no requirement for the interests of Board members' spouses, partners or close relatives to be declared. Members may, however, wish to voluntarily disclose such interests where they are known to the member and would be classed as relevant and material interests if they were the interests of the member themselves.

At the time Board members' interests are declared, they should be recorded in the Board's Minutes. The Minutes containing information about the interests of Board members should be drawn to the attention of the Trust's internal and external auditors. Any changes to members' interests should also be declared within four weeks of the change occurring, and recorded in Board Minutes.

Board 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. A register of directors' interests is also to be maintained on the Trust's website.

3.15 Interest of Directors in contracts and other matters at meetings of the Board of Directors

- 3.15.1 Subject to the provisions of Standing Order 3.15.3, if a Director has any pecuniary, personal or family 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, proposed 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 questions with respect to it.
- 3.15.2 The Chair should consider whether to exclude a Director from a meeting of the Trust while any contract, proposed contract or other matter in which they have a pecuniary, personal or family interest, is under consideration.
- 3.15.3 For the purpose of this Standing Order the Chair or a Director shall be treated, subject to Standing Order 3.15.6, as having an indirect 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;
 - b) they are a partner of, or in the employment of, a person with whom a contract was made or is proposed to be made, or who has a direct pecuniary interest in the other matter under consideration; and/or

- c) in the case of married persons, or those living together, the interest of one partner shall, if known to the other, be deemed for the purposes of this regulation to also be an interest of the other.

3.15.4 Any remuneration, compensation or allowances payable to a Director by virtue of paragraph 9 of Schedule 2 to the National Health Service and Community Care Act 1990 shall not be treated as a pecuniary interest for the purpose of this Standing Order.

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

- a) of their membership of a company or other body if they have no beneficial interest in any securities of that company or body; and/or
- b) of an interest in any company, other body or connected person (as defined in Standing Order 3.15.4.) 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 voting on any question with respect to that contract, proposed contract or other matter.

3.15.6 Where a Director:

- a) has an indirect pecuniary interest in a contract, proposed contract or other matter by reason only of a beneficial interest in securities of a company or body; and
- b) the total nominal value of the securities does not exceed 2% 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 he has a beneficial interest does not exceed 2% of the total issued share capital of that class.

This Standing Order shall neither prohibit them from taking part in the consideration or discussion of the contract or other matter nor from voting on any question with respect to it without prejudice however to their duty to disclose their interest.

3.15.7 Standing Order 3.15 applies to a committee or sub-committee of the Trust as it applies to the Trust, and applies to any member of such a committee or sub-committee (whether or not they are also a Director of the Trust) as it applies to a Director of the Trust.

3.16 Register of Interests

The Chief Executive will ensure that a Register of Interests is established to formally record declaration of interests of Directors and officers in line with the requirements of the Constitution, and the Trust's Policy for the Standards of Business Conduct. In particular, the Register will include details of all directorships and other relevant and material interests which have been declared by both Executive and Non-Executive Directors of the Trust as defined in the Constitution. Directors should notify the Secretary when their previous declaration changes. In addition Directors' details will be kept up to date by means of an annual review of the Register to be conducted by the Secretary in April of each year prior to production of the Annual Report.

In accordance with the Constitution, the Register of Directors and the Board's Register of Interests will be made available on the Trust's website and in hard copy upon request to the Secretary. Details will also be made available in the Annual Report.

4. **ARRANGEMENTS FOR THE EXERCISE OF TRUST FUNCTIONS**

Subject to any directions to the contrary by NHSE/I or the Trust itself, the Trust may make arrangements for the exercise of any of its functions, by a committee, sub-committee or joint committee with another corporate body, or by an officer of the Trust.

The Board has approved the following arrangements for the exercise of its functions:

- **Matters Reserved for the Board** - details of these are set out under "Matters Reserved for the Board" within the Trust's Standing Financial Instructions document.
- **Emergency Powers** - the powers which the Board has retained to itself 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 the Chair shall be reported to the next formal meeting of the Board for ratification.
- **Committees of the Trust** - the general appointment and constitution requirements for Trust Committees are detailed in Standing Orders 4.1 and 4.2. Appendix 1 details the Committees of the Trust as at May 2022.
- **Scheme of Delegation** - as set out in the Scheme of Delegation schedules, which are contained within the Trust's SFIs, these show the Authorised Officer(s) with delegated responsibility for deciding particular matters and those who may act in their absence.
- **Chief Executive** - the responsibilities of the Chief Executive are set out in Standing Order 4.4 below.

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

Nothing in the Scheme of Delegation shall impair the discharge of the direct accountability to the Board of the Chief Financial Officer or other Executive Director to provide information and advise the Board in accordance with any statutory requirements.

The arrangements made by the Board as set out in the "Matters Reserved for the Board", which is contained within the Trust's SFIs, shall affect as if incorporated in these Standing Orders.

4.1 **Appointment of Board Committees and Sub-Committees**

Subject to Standing Order 2.2 and such directions as may be given by NHSE/I, the Board may appoint committees of the Trust, consisting wholly or partly of Directors of the Trust or wholly of persons who are not Directors of the Trust.

The Board approved list of committees, together with their designated functions, as at May 2022, are detailed in Appendix 1 to these Standing Orders.

A Committee appointed under Para 1 Standing Order 4.1 may, subject to such directions as may be given by NHSE/I or the Trust, appoint sub-committees consisting wholly or partly of members of the committee (whether or not they include Directors of the Trust) or wholly of persons who are not members of the committee (whether or not they include Directors of the Trust).

The Standing Orders of the Trust, shall apply, subject to any appropriate alterations, to meetings of any committees established by the Trust.

The Board will either set terms of reference for committees, or will specify the arrangements for so doing. Committees may not delegate their executive powers to a sub-committee unless expressly authorised by the Board.

The Board shall approve the appointment of each committee which it has formally constituted. Where the Board determines that persons, who are neither Directors nor officers, shall be appointed to a committee, the terms of such an appointment shall be determined by the Board subject to the payment of travelling and other allowances being in accordance with current regulations in force across the Trust.

Where the Trust is required to appoint persons to a committee and/or to undertake statutory functions, and where such appointments are to operate independently of the Trust such appointment shall be made in accordance with the regulations laid down by the relevant authority.

4.1.1 Committee for appointing Chief Executive as Director

As laid down in the Trust's Constitution, the Chair and Non-Executive Directors of the Trust will appoint the Chief Executive as a Director of the Trust, subject to approval by the CoG.

4.1.2 Committee for appointing Executive Directors other than the Chief Executive

As laid down in the Trust's Constitution, a Committee, whose members shall be the Chair, the Non-Executive Directors and the Chief Executive of the Trust, will appoint the Executive Directors of the Trust other than the Chief Executive.

4.1.3 Committees for exercising of specific functions

The Board of Directors may appoint a Committee to exercise specific functions on its behalf, subject to reporting to a meeting or meetings of the full Board of Directors as the Trust shall direct. If the Chair deems it necessary to set up such a committee urgently, they shall report their action to the next full meeting of the Board of Directors.

4.2 Board Committee and Sub-Committees: Constitution

The Chair and members of each Board Committee shall be specified in the Committee's Terms of Reference.

Any Board Committee shall be summoned on the request of its Chair.

4.3 Board Committee and Sub-Committees: Confidentiality

A member of any Board Committee shall not disclose any 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 have otherwise have concluded action on that matter.

If the Board resolves that a matter reported to the Board or otherwise dealt with by Committee is confidential, then members of the Board of Directors or the Committee in question shall not disclose any such matter.

4.4 Chief Executive

The Chief Executive shall be personally accountable to the CoG and Board of Directors for the discharge of the general management function of the Trust. This includes responsibility for planning, implementation, control and managerial performance. It also includes responsibilities for the implementation of financial policies, after taking account of advice given by the Chief Financial Officer on all such matters. The Chief Financial Officer will also be accountable to the Board of Directors for this advice.

The Chief Executive will ensure that the Board of Directors is provided with the range of advice and information it needs to formulate policies, decide priorities, set objectives and monitor progress.

5. CUSTODY OF AND SEALING OF DOCUMENTS

5.1 Custody of seal

The Common Seal of the Trust shall be kept by the Chief Executive or an officer authorised by them in a secure place in accordance with arrangements approved by the Trust.

5.2 Sealing of documents

The Board of Directors approves that the seal should be affixed to the following documents:

- Purchase or Sale of Land;
- JCT Form of Contract with contractors;
- Appointment of architects, surveyors and engineers; and
- All leases.

The Seal shall be affixed in the presence of the Chair or a Non-Executive Director and the Chief Executive or an Executive Director, and shall be attested by those present. The form of attestation shall read,

"The Common Seal of the Royal Devon University Healthcare National Health Service Foundation Trust was hereunto affixed as a deed in the presence of

.....
(Chair / Non-Executive Director)

.....
(Chief Executive / Authorised Officer)

5.3. Register of Sealings

The Chief Executive shall keep a Register of Sealings, in which they or another Authorised Officer shall enter a record of the sealing of every document. All such

entries shall be consecutively numbered, and shall be signed by those present when the document is sealed. The Register can be viewed by Directors upon request.

6. OFFICERS: APPOINTMENTS AND DECLARATIONS OF INTERESTS

6.1 Canvassing of and recommendations by Directors

Canvassing of Trust Directors or any Board Committee directly or indirectly for any Trust appointment shall disqualify the candidate from such appointment. The details of this prohibition shall be included in any form of application or otherwise brought to the attention of candidates. Contact with Trust Directors or any Board Committee by a candidate in the course of their normal duties will not be interpreted as canvassing.

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

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

6.2 Relatives of Directors or officers

Candidates for any Trust appointment shall be advised that, when making their application, they must disclose in writing to the Trust whether to their knowledge they are related to any Director or Senior Officer of the Trust.

In addition, candidates on appointment should disclose in writing any beneficial interest in line with HSG(93)5 "Standards of Business Conduct for NHS staff" and the Trust's Policy for the Standards of Business Conduct.

Failure to disclose any such relationship shall disqualify a candidate and, if appointed, render him liable to instant dismissal.

Every Director and Senior Officer of the Trust shall disclose in writing to the Chief Executive any relationship between himself and a candidate of whose candidature that Director or Senior Officer is aware.

It shall be the duty of the Chief Executive to report in writing any such disclosure made pursuant to Standing Order 6.2 paragraphs 1 to 4 to the appropriate Committee considering the appointment of the candidate.

Where a relationship to a Director is disclosed Standing Order 3.15 shall apply.

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

Standing Order 6.2 applies where either the applicant or applicant's spouse (including civil partner or common law husband or wife) has any of the following relationships to either a Director or Director's spouse or a Senior Officer or Senior Officers' spouse:

- first degree relatives (including half and step relations); and

- second degree relatives (including half and step relations).

6.3 Interest of officers in contracts

The rules for the declaration of interests by Directors are contained in the Constitution

If it comes to the knowledge of any Trust Officer 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 Trust of the fact of their interest. In the case of married persons living together, the interest of one spouse shall, if known to the other, be deemed to be also the interest of that other spouse.

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

The Trust will require interests, employment or relationships to be declared by staff to be entered in a Register of Interests of Staff. This is to be held by the Trust's Secretary.

7 MISCELLANEOUS

7.1 Suspension of Standing Orders

The meetings and proceedings of The Trust shall be conducted in accordance with the Constitution.

Subject to those Regulations and any other statutory provision or any direction made by NHSE/I, the Trust may, by resolution, suspend, vary or revoke any one or more of the Standing Orders at any meeting. For such a resolution to be valid at least eight of the whole number of the Directors of the Trust must be present and at least eight of the Directors present must signify their agreement.

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

A separate record of matters discussed during the suspension of Standing Orders shall be made separately available to the Directors.

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

7.2 Variation and amendments of Standing Orders

These Standing Orders shall only be amended if:

- a notice of motion under Standing Order 3.6.1 has been given; and
- at least eight of the whole number of the Directors of the Trust must be present and at least eight of the Directors present must signify their agreement; and
- the variation proposed does not contravene a statutory provision or direction made by NHSE/I or the Secretary of State.

The proceedings of the Trust shall not be invalidated by any vacancy in its membership or by any defect in a Director's appointment.

7.3 Standing Orders to be given to Directors and officers

The Chief Executive shall give a copy of the Standing Orders to each Director of the Trust and appropriate officers, including all Authorised Officers so designated per the Schemes of Delegation schedules.

7.4 Documents having the standing of Standing Orders

SFIs, Reservations of Power to the Board and Delegation of Powers shall have the effect as if incorporated into Standing Orders.

7.5 Review of Standing Orders

Standing Orders shall be reviewed every three years by the Trust. The requirement for review extends to all documents that have the effect as if incorporated in Standing Orders.

7.6 Signature of legal documents

Where any document will be a necessary step in legal proceedings on behalf of the Trust it shall, unless any enactment otherwise requires or authorises, be signed by the Chief Executive or an officer duly authorised by them for this purpose.

The Chief Executive or nominated officer shall be authorised, by resolution of the Board, to sign on behalf of the Trust any agreement or other document the subject matter of which has been approved by the Board or Committee or Sub-Committee to which the Board has delegated appropriate authority.

7.7 Standing Financial Instructions

SFIs adopted by the Trust shall have effect as if incorporated in these Standing Orders.

7.8 Urgent decisions

Where urgent decisions are required, the Chief Executive, in consultation with the Chair (or, in their absence, the Vice-Chair) may authorise urgent action in respect of a matter on behalf of the Trust which would normally have been considered by the Trust itself. Such action shall be recorded by the Chief Executive in a permanent record, and shall be reported to the next meeting of the Trust.

7.9 Limits of Delegation to Officers

Standing Order	Limit of Authority	Duly Authorised Officer
3.2	Notice of Trust meetings	Foundation Trust Secretary
3.16	Board's Register of Interests	Foundation Trust Secretary
5.1	Custody of Seal	Foundation Trust Secretary
5.3	Register of Sealings	Chief Financial Officer
6.3	Register of Interests of Staff	Foundation Trust Secretary
7.6	Signature of legal documents	Executive Directors

7.10 Non-Executive Directors' attendance at meetings

If a Non-Executive Director has not attended a meeting of the Board of Directors for a period of six months, the Board shall report the absence to NHSE/I and the CoG. Unless the CoG is satisfied that the absence was due to reasonable cause, the Non-Executive Director's place on the Board of Directors shall be declared

vacant and on the making of such a declaration that person shall cease to be a Non-Executive Director.

7.11 Operation of shared services by the Trust

Where Trust staff are operating a shared service then for the provision of the service that organisation's Standing Orders should be followed. That is assuming the shared service is resourced to do so, where this is not the case the organisation will be informed. The conduct of the staff and the systems used to provide the service is governed by the Trust governance arrangements.

APPENDIX 1 – COMMITTEES AND SUB-COMMITTEES OF THE BOARD OF DIRECTORS

The diagram below shows, pursuant to Standing Orders 4.2 and 4.3, the Committees and Sub-Committees (where formed) of the Board of Directors as at May 2022.

