

**CONSTITUTION OF THE ROYAL ORTHOPAEDIC HOSPITAL NHS
FOUNDATION TRUST**

(Updated as per the Health and Social Care Act 2012)

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Constitution of The Royal Orthopaedic Hospital NHS Foundation Trust

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1. **Interpretation and definitions**

Unless otherwise stated, words or expressions contained in this constitution shall bear the same meaning as in the National Health Service Act 2006 as amended by the Health and Social Care Act 2012

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

the 2006 Act is the National Health Service Act 2006.

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

Annual Members Meeting is defined in paragraph 11 of the constitution

constitution means this constitution and all annexes to it.

Monitor is the body corporate known as Monitor, as provided by Section 61 of the 2012 Act.

NHS Improvement is the successor body to Monitor who acts as the principal regulator of NHS foundation trusts and have worked closely as a single organisation with NHS England since April 2019

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.

2. **Name**

The name of the foundation trust is The Royal Orthopaedic Hospital NHS Foundation Trust (the Trust).

3. **Principal purpose**

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

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

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

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

3.3.2 the promotion and protection of public health.

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

4. **Powers**

4.1 The powers of the Trust are set out in the 2006 Act.

4.2 All the powers of the Trust shall be exercised by the Board of Directors on behalf of the Trust.

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

5. **Membership and constituencies**

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

5.1.1 a public constituency

5.1.2 the staff constituency

6. **Application for membership**

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

7. **Public Constituency**

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

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

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

8. **Staff Constituency**

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

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

months; or

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

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

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

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

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

9. **Automatic membership by default – staff**

9.1 An individual who is:

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

9.1.2 invited by the Trust to become a member of the Staff Constituency and a member of the appropriate class within the Staff Constituency,

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

10 **Restriction on membership**

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

10.2 An individual who satisfies the criteria for membership of the Staff Constituency may not become or continue as a member of any constituency other than the Staff Constituency.

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

10.4 Further provisions as to the circumstances in which an individual may not become or continue as a member of the Trust are set out in Annex 9 – Further Provisions.

11. **Annual Members' Meeting**

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.

12. **Council of Governors – composition**

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

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

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

13. **Council of Governors – election of governors**

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

13.2 The Model Election Rules as published from time to time by the Department of Health form part of this constitution. The Model Election Rules current at the date of the Trust's Authorisation are attached at Annex 5.

13.3 A subsequent variation of the Model Election Rules by the Department of Health shall not constitute a variation of the terms of this constitution for the purposes of paragraph 45 of the constitution (amendment of the constitution).

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

13.5 In order to assist prospective governors in deciding whether to nominate themselves for election the Trust shall publish a description of the requirements of the role, which shall be reviewed by the Council of Governors from time to time.

14. **Council of Governors - tenure**

14.1 An elected governor may hold office for a period of up to 3 years.

- 14.2 An elected governor shall cease to hold office if they cease to be a member of the constituency or class by which they were elected.
- 14.3 An elected governor shall be eligible for re-election at the end of their term.
- 14.4 An appointed governor may hold office for a period of up to 3 years.
- 14.5 An appointed governor shall cease to hold office if the appointing organisation withdraws its sponsorship of them.
- 14.6 An appointed governor shall be eligible for re-appointment at the end of their term.

15. **Council of Governors – disqualification and removal**

- 15.1 The following may not become or continue as a member of the Council of Governors:
 - 15.1.1 a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;
 - 15.1.2 a person in relation to whom a moratorium under a debt relief order applies (under Part 7A of the Insolvency Act 1986);
 - 15.1.3 a person who has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it;
 - 15.1.4 a person who within the preceding five years has been convicted in the British Islands of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him.
- 15.2 Governors must be at least 16 years of age at the date they are nominated for election or appointment.
- 15.3 Further provisions as to the circumstances in which an individual may not become or continue as a member of the Council of Governors are set out in Annex 6.
- 15.4 Annex 6 makes provision for the removal of Governors.

16. **Council of Governors – duties of governors**

- 16.1 The general duties of the Council of Governors are –

16.1.1 to hold the non-executive directors individually and collectively to account for the performance of the Board of Directors, and

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

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

17. Council of Governors – meetings of governors

17.1 The Chair of the Trust (i.e. the Chair of the Board of Directors, appointed in accordance with the provisions of paragraph 26) or, in his absence, the Vice Chair (appointed in accordance with the provisions of paragraph 27 below), shall preside at meetings of the Council of Governors unless they have a conflict of interest. If the Chair and Vice Chair are absent or have conflicts of interest, such Non-Executive Director as the Members of the Council present shall choose shall preside unless he/she has a conflict of interest. Where the Chair of the Trust, the Vice Chair and other Non-Executive Directors are all absent or have a conflict of interest, the Lead Governor (as defined in the Standing Orders of the Council of Governors) shall preside unless he/she is absent or has a conflict of interest in which case the Council of Governors shall select one of their number that does not have a conflict of interest to preside at the meeting. The person presiding at the meeting shall have a casting vote.

17.2 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.

17.3 For the purposes of obtaining information about the Trust's performance of its functions or the directors' performance of their duties (and deciding whether to propose a vote on the Trust's or directors' performance), the Council of Governors may require one or more of the directors to attend a meeting.

18. Council of Governors – standing orders

The standing orders for the practice and procedure of the Council of Governors are attached at Annex 7.

19 Council of Governors – referral to the Panel

19.1 In this paragraph, the Panel means a panel of persons appointed by NHS Improvement to which a governor of an NHS foundation trust may refer a question as to whether the Trust has failed or is failing—

19.1.1 to act in accordance with its constitution, or

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

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

20. **Council of Governors - conflicts of interest of governors**

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

21. **Council of Governors – travel expenses**

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

22. **Council of Governors – further provisions**

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

23. **Board of Directors – composition**

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

23.2 The Board of Directors is to comprise:

23.2.1 a non-executive Chair

23.2.2 up to 7 other non-executive directors; and

23.2.3 up to 7 executive directors.

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

23.4 The Chief Executive shall be the Accounting Officer

23.5 One of the executive directors shall be the finance director

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

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

24. **Board of Directors – general duty**

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.

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

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

25.1 they are a member of a Public Constituency, or

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

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

26. **Board of Directors – appointment and removal of Chair and other non-executive directors**

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

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

27. **Board of Directors – appointment of vice Chair**

The Council of Governors at a general meeting of the Council of Governors shall appoint one of the non-executive directors as a Vice Chair.

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

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

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

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

29. **Board of Directors – disqualification**

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

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

29.2 a person in relation to whom a moratorium under a debt relief order applies (under Part 7A of the Insolvency Act 1986);

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

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

30. **Board of Directors – meetings**

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

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

31. **Board of Directors – standing orders**

The standing orders for the practice and procedure of the Board of Directors are attached at Annex 8.

32. **Board of Directors - conflicts of interest of directors**

32.1 The duties that a director of the Trust has by virtue of being a director include in particular –

32.1.1 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.

- 32.1.2 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.
- 32.2 The duty referred to in sub-paragraph 32.1.1 is not infringed if –
 - 32.2.1 The situation cannot reasonably be regarded as likely to give rise to a conflict of interest, or
 - 32.2.2 The matter has been authorised in accordance with the constitution.
- 32.3 The duty referred to in sub-paragraph 32.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- 32.4 In sub-paragraph 32.1.2, “third party” means a person other than –
 - 32.4.1 The trust, or
 - 32.4.2 A person acting on its behalf.
- 32.5 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.
- 32.6 If a declaration under this paragraph proves to be, or becomes, inaccurate, incomplete, a further declaration must be made.
- 32.7 Any declaration required by this paragraph must be made before the Trust enters into the transaction or arrangement.
- 32.8 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.
- 32.9 A director need not declare an interest –
 - 32.9.1 If it cannot reasonably be regarded as likely to give rise to a conflict of interest;
 - 32.9.2 If, or to the extent that, the directors are already aware of it;
 - 32.9.3 If, or to the extent that, it concerns terms of the director’s appointment that have been or are to be considered –

32.9.3.1 By a meeting of the Board of Directors, or

32.9.3.2 By a committee of the directors appointed for the purpose under the constitution.

32.10 A matter shall have been authorised for the purposes of paragraph 32.2.2 above if:

32.10.1 The Board of Directors, in accordance with the requirements set out in this paragraph 32.10, authorise any matter or situation proposed to them by any director which would, if not authorised, involve a director (an “Interested Director”) breaching his duty under paragraph 32.1.1 above to avoid Conflicts;

32.10.2 The matter in question shall have been proposed by any director for consideration in the same way that any other matter may be proposed to the Board of Directors under the provisions of this Constitution;

32.10.3 Any requirement as to the quorum for consideration of the relevant matter is met without counting the Interested Director or any other Interested Director; and

32.10.4 The matter was agreed to without the Interested Director voting or would have been agreed to if the Interested Director’s and any other Interested Director’s vote had not been counted.

33. **Board of Directors – remuneration and terms of office**

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

33.2 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.

34. **Registers**

The Trust shall have:

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

34.2 a register of members of the Council of Governors;

- 34.3 a register of interests of governors;
- 34.4 a register of directors; and
- 34.5 a register of interests of the directors.

35 Admission to and removal from the registers

- 35.1 Any person entitled to be a Member who, as appropriate, applies or is entitled to become a Member, shall have their name and the constituency or class to which they belong added to the register of Members.
- 35.2 The register of Governors shall list the names of Governors, their category of membership of the Council of Governors and an address through which they may be contacted (which may be the Secretary), their date of becoming a member of the Council of Governors, the anticipated length of their term and the date of their ceasing to be a member of the Council of Governors.
- 35.3 The Register of Directors shall list the names of Directors, their capacity on the Board of Directors and an address through which they may be contacted (which may be the Secretary)

36 Registers – inspection and copies

- 36.1 The Trust shall make the registers specified in paragraph 34 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.
- 36.2 The Trust shall not make any part of its registers available for inspection by members of the public which shows details of any member of the Trust, if the member so requests.
- 36.3 So far as the registers are required to be made available:
 - 36.3.1 they are to be available for inspection free of charge at all reasonable times; and
 - 36.3.2 a person who requests a copy of or extract from the registers is to be provided with a copy or extract.
- 36.4 If the person requesting a copy or extract is not a member of the Trust, the Trust may impose a reasonable charge for doing so.

37 Transition

- 37.1 With effect from the end of the 30th July 2014 (Effective Date) the

following provisions of this paragraph 37 shall take effect:

- 37.1.1 Public members who on the Effective Date live in an electoral area comprised in a Birmingham public constituency or in the Solihull electoral area of the Other West Midlands public constituency as described in Part A of Annex 1 shall become members of the Birmingham and Solihull public constituency as described in Part B of Annex 1;
- 37.1.2 Public members who on the Effective Date live in an electoral area comprised in the Rest of England and Wales public constituency or in the Other West Midlands public constituency (excluding Solihull) as described in Part A of Annex 1 shall become members of the Rest of England public constituency as described in Part B of Annex 1;
- 37.1.3 Public governors who on the Effective Date live in an electoral area comprised in a Birmingham public constituency or in the Solihull electoral area of the Other West Midlands public constituency as described in Part A of Annex 1 shall become governors in the Birmingham and Solihull public constituency as described in Part B of Annex 1, unless they have indicated to the Trust that they do not wish to do so;
- 37.1.4 Public governors who on the Effective Date live in an electoral area comprised in the Rest of England and Wales public constituency or in the Other West Midlands public constituency (excluding Solihull) as described in Part A of Annex 1 shall become governors in the Rest of England public constituency as described in Part B of Annex 1, unless they have indicated to the Trust that they do not wish to do so;
- 37.1.5 If the number of governors for any public constituency following implementation of the preceding provisions of this paragraph would exceed the number of governors allowed for that constituency, then the governors in that constituency shall draw lots to determine which of their number shall retire

38. Documents available for public inspection

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

- 38.1.1 a copy of the current constitution,

- 38.1.2 a copy of the latest annual accounts and of any report of the auditor on them, and
- 38.1.3 a copy of the latest annual report.
- 38.2 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:
 - 38.2.1 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.
 - 38.2.2 a copy of any report laid under section 65D (appointment of trust special administrator) of the 2006 Act.
 - 38.2.3 a copy of any information published under section 65D (appointment of trust special administrator) of the 2006 Act.
 - 38.2.4 a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act.
 - 38.2.5 a copy of any statement provided under section 65F(administrator's draft report) of the 2006 Act.
 - 38.2.6 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.
 - 38.2.7 a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act.
 - 38.2.8 a copy of any final report published under section 65I (administrator's final report),
 - 38.2.9 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.
 - 38.2.10 a copy of any information published under section 65M (replacement of trust special administrator) of the 2006 Act.
- 38.3 Any person who requests a copy of or extract from any of the above

documents is to be provided with a copy.

38.4 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.

39. **Auditor**

39.1 The Trust shall have an auditor.

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

40. **Audit committee**

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

41. **Accounts**

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

41.2 NHS Improvement may with the approval of the Secretary of State give directions to the Trust as to the content and form of its accounts.

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

41.4 The Trust shall prepare in respect of each financial year annual accounts in such form as NHS Improvement may with the approval of the Secretary of State direct.

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

42. **Annual report, forward plans and non-NHS work**

42.1 The Trust shall prepare an Annual Report and send it to NHS Improvement.

42.2 The Trust shall give information as to its forward planning in respect of each financial year to NHS Improvement.

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

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

42.5 Each forward plan must include information about –

42.5.1 the activities other than the provision of goods and services for the purposes of the health service in England that the Trust proposes to carry on, and

42.5.2 the income it expects to receive from doing so.

42.6 Where a forward plan contains a proposal that the Trust carry on an activity of a kind mentioned in sub-paragraph 42.5.1 the Council of Governors must –

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

42.6.2 notify the directors of the Trust of its determination.

42.7 A trust which proposes to increase by 5% or more the proportion of its total income in any financial year attributable to activities other than the provision of goods and services for the purposes of 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.

43. **Presentation of the annual accounts and reports to the governors and members**

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

43.1.1 the annual accounts;

43.1.2 any report of the auditor on them;

43.1.3 the annual report.

43.2 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.

43.3 The Trust may combine a meeting of the Council of Governors convened for the purposes of sub-paragraph 43.1 with the Annual Members' Meeting.

44. **Instruments**

44.1 The Trust shall have a seal.

44.2 The seal shall not be affixed except under the authority of the Board

of Directors.

45. **Amendment of the constitution**

45.1 The Trust may make amendments of its constitution only if –

45.1.1 More than half of the members of the Council of Governors of the Trust voting approve the amendments, and

45.1.2 More than half of the members of the Board of Directors of the Trust voting approve the amendments.

45.2 Amendments made under paragraph 45.1 take effect as soon as the conditions in that paragraph are satisfied, but the amendment has no effect in so far as the constitution would, as a result of the amendment, not accord with schedule 7 of the 2006 Act.

45.3 Where an amendment is made to the constitution in relation to the powers or duties of the Council of Governors (or otherwise with respect to the role that the Council of Governors has as part of the Trust) –

45.3.1 At least one member of the Council of Governors must attend the next Annual Members' Meeting and present the amendment, and

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

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.

45.4 Amendments by the Trust of its constitution are to be notified to NHS Improvement. For the avoidance of doubt, NHS Improvement'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.

46. **Mergers etc. and significant transactions**

46.1 The Trust may only apply for a merger, acquisition, separation or dissolution with the approval of more than half of the members of the Council of Governors.

46.2 The constitution does not contain any descriptions of the term 'significant transaction' for the purposes of section 51A of the 2006 Act (Significant Transactions).

ANNEX 1 – THE PUBLIC CONSTITUENCIES

(Paragraphs 7.1 and 7.3)

PART A (until the Effective Date – see paragraph 37)

There are five public constituencies reflecting the populations the Trust serves:

- South Birmingham
- Heart of Birmingham
- Eastern and Northern Birmingham
- Other West Midlands
- Rest of England and Wales

The Public Constituency will comprise members of the public, including patients, in the following local government electoral areas:

South Birmingham Public Constituency:

Bartley Green
Billesley
Bournville
Brandwood
Edgbaston
Hall Green
Harborne
King's Norton
Longbridge
Moseley
Northfield
Quinton
Selly Oak
Weoley

Heart of Birmingham

Aston
Bordesley Green
Handsworth Wood
East Handsworth
Ladywood
Lozells
Nechells

Small Heath
Soho
Sparkbrook
Sparkhill
Springfield

Eastern and Northern Birmingham

Northern Birmingham:
Kingstanding
Perry Barr
Oscott
Sutton Four Oaks
Sutton New Hall
Sutton Vesey

Eastern Birmingham:
Acocks Green
Erdington
Hodge Hill
Kingsbury
Shard End
Sheldon
Stockland Green
Washwood Heath
Yardley.

Other West Midlands - comprising the metropolitan boroughs of:

Coventry
Dudley
Sandwell
Solihull
Walsall
Wolverhampton

Rest of England and Wales

Initially the Trust will utilise the details of patients from the Patient Administration System as information to support membership recruitment within the Public Constituency in addition to other recruitment efforts.

The Trust intends to develop membership numbers in the Public Constituency over time; however the minimum number of members in the public constituency described above is to be 100 persons split across the 5 constituencies as follows:

Public Constituency	Minimum Number
South Birmingham	41
Heart of Birmingham	9
Eastern and Northern Birmingham	13
Other West Midlands	31
Rest of England and Wales	6
Total	100

PART B (with effect from the Effective Date– see paragraph 37)

Two public constituencies reflecting the populations the Trust serves:

- **Birmingham and Solihull**
- Rest of England and Wales

The Public Constituency will comprise members of the public, including patients, in the following local government electoral areas:

Birmingham and Solihull

The electoral areas listed in Part A of this Annex for the three former Birmingham constituencies plus Solihull.

Rest of England and Wales

The electoral areas in England and Wales not comprised in the Birmingham and Solihull constituency. The minimum number of members for each Public Constituency is as follows:

Public Constituency	Minimum Number
Birmingham and Solihull	67
Rest of England and Wales	33
Total	100

ANNEX 2 – THE STAFF CONSTITUENCY

(Paragraphs 8.4 and 8.5)

All Staff eligible for membership as described in paragraph 0 of the constitution will automatically become members of the Staff Membership Constituency upon Authorisation. Staff will have the right to opt out of automatic membership if they so wish.

There will be two classes of Staff Membership which will be:

- Clinical—comprising Medical, Nursing, Allied Health Professionals and Scientists
- Non-Clinical – comprising all staff not included in the clinical class.

There will be a minimum of 25% of total staff within each class, as specified below:

Staff Membership Class	Number of Staff in Post	Minimum Number in Constituency
Clinical	779	195
Non-Clinical	481	120

ANNEX 3 – THE PATIENTS’ CONSTITUENCY

The Trust will not have a Patient Constituency; patients of the Trust may become members within the Public Constituency providing they fulfil the membership criteria.

ANNEX 4 – COMPOSITION OF COUNCIL OF GOVERNORS

(Paragraphs 12.2 and 12.3)

PART A (until the Effective Date)

The Council of Governors is to comprise:

Elected Members

13 elected Members from the Public Constituency as follows:

Public Constituency	Elected Members
South Birmingham	5
Heart of Birmingham	1
Eastern and Northern Birmingham	2
Other West Midlands	4
Rest of England and Wales	1
Total	13

3 elected Members from the Staff Constituency as follows:

Staff Constituency Class	Elected Members
Clinical	2
Non-Clinical	1
Total	3

In order to take into account the changing nature of the local health economy at the commissioning level, the Trust intends to retain the flexibility to increase the staff Members of Council and the Nominated Members of Council. Any increases in Staff Members of Council will require an increase in Public Members of Council in order to ensure that the relative proportion of Staff members to other Constituencies remain constant.

Appointed Members

Nominating Organisation (Including partnership organisations)	Appointed Members
South Birmingham PCT	1
Heart of Birmingham (Teaching) PCT	1
Birmingham City Council	1
University of Birmingham	1
University of Central England	1
Patient Support Group Representative	1
Birmingham Council of Faiths Representative	1
Local Member of Parliament Representative	1
Bournville Village Trust	1
Total	9

PART B (with effect from the Effective Date – see paragraph 37

Elected Members

10 elected Members from the Public Constituency as follows:

Public Constituency	Elected Members
Birmingham and Solihull	5
Rest of England and Wales	5
Total	10

4 elected Members from the Staff Constituency as follows:

Staff Constituency Class	Elected Members
Clinical	2
Non-Clinical	2
Total	4

Appointed Members

Nominating Organisation (Including partnership organisations)	Appointed Members
Birmingham City Council	1
Birmingham City University	1
Local community partnership	1
University of Birmingham	1
Bournville Village Trust	1
Total	5

ANNEX 5 –THE MODEL ELECTION RULES

(Paragraph13)

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1. Interpretation

Part 2-Timetable for election

2. Timetable
3. Computation of time

Part 3-Returning officer

4. Returning officer
5. Staff
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Part 4-Stages Common to Contested and Uncontested Elections

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10. Candidate's consent and particulars
11. Declaration of interests
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Part 8–Disposal of documents

- 49. Sealing up of documents relating to the poll
- 50. Delivery of documents
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Part 9–Death of a candidate during a contested election

- 54. Countermand or abandonment of poll on death of candidate

Part 10 – Election expenses and publicity

Expenses

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

Publicity

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

Part 11 – Questioning elections and irregularities

- 61. Application to question an election

Part 12 – Miscellaneous

- 62. Secrecy
- 63. Prohibition of disclosure of vote
- 64. Disqualification
- 65. Delay in postal service through industrial action or unforeseen event
- 66. Effect of administrative or clerical errors on election

Part 1 - Interpretation

1. Interpretation

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

“the Trust”	Means the Royal Orthopaedic Hospital NHS Foundation Trust;
“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;
“Monitor”	Means the Independent Regulator for NHS foundation trusts; and
“the 2006 Act”	Means the National Health Service Act 2006.

(2) Other expressions used in these rules and in Schedule 7 of the National Health Service Act 2006 have the same meaning in these rules as in that Schedule.

Part 2 – Timetable for election

2. Timetable

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

3. Computation of time

(1) In computing any period of time for the purposes of the timetable:

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

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

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

Part 3 – Returning officer

4. Returning officer

- (1) Subject to rule 64, the returning officer for an election is to be appointed by the Trust.
- (2) Where two or more elections are to be held concurrently, the same returning officer may be appointed for all those elections.

5. Staff

- (1) Subject to rule 64, 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

- (1) The Trust is to pay the returning officer:
 - (a) any expenses incurred by that officer in the exercise of his or her functions under these rules; and
 - (b) such remuneration and other expenses as the Trust may determine.

7. Duty of co-operation

- (1) The Trust 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

- (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 Trust;
- (d) the address and times at which nomination papers may be obtained;
- (e) the address for return of nomination papers and the date and time by which they must be received by the returning officer;
- (f) the date and time by which any notice of withdrawal must be received by the returning officer;
- (g) the contact details of the returning officer; and
- (h) the date and time of the close of the poll in the event of a contest.

9. Nomination of candidates

- (1) Each candidate must nominate themselves on a single nomination paper.
- (2) The returning officer:
 - (a) is to supply any member of the Trust with a nomination paper; and
 - (b) is to prepare a nomination paper for signature at the request of any member of the Trust,

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

10. Candidate's particulars

- (1) The nomination paper must state the candidate's:
 - (a) full name;
 - (b) contact address in full; and
 - (c) constituency, or class within a constituency, of which the candidate is a member.

11. Declaration of interests

- (1) The nomination paper must state:
 - (a) any financial interest that the candidate has in the Trust; and
 - (b) whether the candidate is a member of a political party, and if so, which party,

and if the candidate has no such interests, the paper must include a statement to that effect.

12. Declaration of eligibility

- (1) The nomination paper must include a declaration made by the candidate:
 - (a) that he or she is not prevented from being a member of the Council of Governors by paragraph 8 of Schedule 7 of the 2006 Act or by any provision of the constitution; and,
 - (b) for a member of the public or patient constituency, of the particulars of his or her qualification to vote as a member of that constituency, or class within that constituency, for which the election is being held.

13. Signature of candidate

- (1) The nomination paper must be signed and dated by the candidate, indicating that:
 - (a) they wish to stand as a candidate;
 - (b) their declaration of interests as required under rule 11, is true and correct; and
 - (c) their declaration of eligibility, as required under rule 12, is true and correct.

14. Decisions as to the validity of nomination

- (1) Where a nomination paper is received by the returning officer in accordance with these rules, the candidate is deemed to stand for election unless and until the returning officer:
 - (a) decides that the candidate is not eligible to stand;
 - (b) decides that the nomination paper is invalid;
 - (c) receives satisfactory proof that the candidate has died; or
 - (d) receives a written request by the candidate of their withdrawal from candidacy.
- (2) The returning officer is entitled to decide that a nomination paper is invalid only on one of the following grounds:
 - (a) that the paper is not received on or before the final time and date for return of nomination papers, as specified in the notice of the election;
 - (b) that the paper does not contain the candidate's particulars, as

required by rule 10;

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

15. Publication of statement of candidates

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

16. Inspection of statement of nominated candidates and nomination papers

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

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

17. Withdrawal of candidates

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

18. Method of election

- (1) If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is greater than the number of members to be elected to the Council of Governors, a poll is to be taken in accordance with Parts 5 and 6 of these rules.
- (2) If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is equal to the number of members to be elected to the Council of Governors, those candidates are to be declared elected in accordance with Part 7 of these rules.
- (3) If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is less than the number of members to be elected to be Council of Governors, then –
 - (a) the candidates who remain validly nominated are to be declared elected in accordance with Part 7 of these rules, and
 - (b) the returning officer is to order a new election to fill any vacancy which remains unfilled, on a day appointed by him or her in consultation with the Trust.

Part 5 – Contested elections

19. Poll to be taken by ballot

- (1) The votes at the poll must be given by secret ballot.
- (2) The votes are to be counted and the result of the poll determined in accordance with Part 6 of these rules.

20. The ballot paper

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

(2) Every ballot paper must specify:

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

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

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

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

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

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

- (a) that the voter is the person to whom the ballot paper was addressed;
- (b) that the voter has not marked or returned any other voting paper in the election; and
- (c) for a member of the public or patient constituency, of the particulars of that member's qualification to vote as a member of the constituency or class within a constituency for which the election is being held.

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

- (a) the name of the voter;
- (b) the address of the voter;
- (c) the voter's signature; and

- (d) the date that the declaration was made by the voter.
- (4) The voter must be required to return the declaration of identity together with the ballot paper.
- (5) The declaration of identity must caution the voter that, if it is not returned with the ballot paper, or if it is returned without being correctly completed, the voter's ballot paper may be declared invalid.

Action to be taken before the poll

22. List of eligible voters

- (1) The Trust is to provide the returning officer with a list of the members of the constituency or class within a constituency for which the election is being held who are eligible to vote by virtue of rule 26 as soon as is reasonably practicable after the final date for the delivery of notices of withdrawals by candidates from an election.
- (2) The list is to include, for each member, a mailing address where his or her ballot paper is to be sent.

23. Notice of poll

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

24. Issue of voting documents by returning officer

- (1) As soon as is reasonably practicable on or after the publication of the notice of the poll, the returning officer is to send the following documents to each member of the Trust named in the list of eligible voters:
 - (a) a ballot paper and ballot paper envelope;
 - (b) a declaration of identity (if required);
 - (c) information about each candidate standing for election, pursuant to rule 59 of these rules; and
 - (d) a covering envelope.
- (2) The documents are to be sent to the mailing address for each member, as specified in the list of eligible voters.
- (3) The returning officer shall have the right to edit or not publish any election statement if it exceeds the permitted number of words or because it contains statements which he reasonably believes are factually inaccurate, offensive or libellous.

25. Ballot paper envelope and covering envelope

- (1) The ballot paper envelope must have clear instructions to the voter printed on it, instructing the voter to seal the ballot paper inside the envelope once the ballot paper has been marked.
- (2) The covering envelope is to have:
 - (a) the address for return of the ballot paper printed on it; and
 - (b) pre-paid postage for return to that address.
- (3) There should be clear instructions, either printed on the covering envelope or elsewhere, instructing the voter to seal the following documents inside the covering envelope and return it to the returning officer –
 - (a) the completed declaration of identity if required; and
 - (b) the ballot paper envelope, with the ballot paper sealed inside it.

The poll

26. Eligibility to vote

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

27. Voting by persons who require assistance

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

28. Spoilt ballot papers

- (1) If a voter has dealt with his or her ballot paper in such a manner that it cannot be accepted as a ballot paper (referred to a “spoilt ballot paper”), that voter may apply to the returning officer for a replacement ballot paper.
- (2) On receiving an application, the returning officer is to obtain the details of the unique identifier on the spoilt ballot paper, if he or she can obtain it.
- (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 declaration of identity, if required, has not been returned.
- (4) After issuing a replacement ballot paper for a spoilt ballot paper, the returning officer shall enter in a list (“the list of spoilt ballot papers”):
 - (a) the name of the voter; and
 - (b) the details of the unique identifier of the spoilt ballot paper (if that officer was able to obtain it); and
 - (c) the details of the unique identifier of the replacement ballot paper.

29. Lost ballot papers

- (1) Where a voter has not received his or her ballot paper by the fourth day before the close of the poll, that voter may apply to the returning officer for a replacement paper.
- (2) The returning officer may not issue a replacement ballot paper for a lost ballot paper 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 ballot paper; and

- (c) has ensured that the declaration of identity if required has not been returned.
- (3) After issuing a replacement ballot paper for a lost ballot paper, the returning officer shall enter in a list ("the list of lost ballot papers"):
 - (a) the name of the voter; and
 - (b) the details of the unique identifier of the replacement ballot paper.

30. Issue of replacement ballot paper

- (1) If a person applies for a replacement ballot paper under rule 28 or 29 and a declaration of identity has already been received by the returning officer in the name of that voter, the returning officer may not issue a replacement ballot paper unless, in addition to the requirements imposed rule 28(3) or 29(2), he or she is also satisfied that that person has not already voted in the election, notwithstanding the fact that a declaration of identity if required has already been received by the returning officer in the name of that voter.
- (2) After issuing a replacement ballot paper under this rule, the returning officer shall enter in a list ("the list of tendered ballot papers"):
 - (a) the name of the voter; and
 - (b) the details of the unique identifier of the replacement ballot paper issued under this rule.

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

- (1) In respect of an election for a public or patient constituency a declaration of identity must be issued with each replacement ballot paper.
- (2) The declaration of identity is to include a declaration:
 - (a) that the voter has not voted in the election with any ballot paper other than the ballot paper being returned with the declaration; and
 - (b) of the particulars of that member's qualification to vote as a member of the public or patient constituency, or class within a constituency, for which the election is being held.
- (3) The declaration of identity is to include space for:
 - (a) the name of the voter;
 - (b) the address of the voter;

- (c) the voter's signature; and
- (d) the date that the declaration was made by the voter.
- (4) The voter must be required to return the declaration of identity together with the ballot paper.
- (5) The declaration of identity must caution the voter that if it is not returned with the ballot paper, or if it is returned without being correctly completed, the replacement ballot paper may be declared invalid.

Procedure for receipt of envelopes

32. Receipt of voting documents

- (1) Where the returning officer receives a:
 - (a) covering envelope; or
 - (b) any other envelope containing a declaration of identity if required, a ballot paper envelope, or a ballot paper,before the close of the poll, that officer is to open it as soon as is practicable; and rules 33 and 34 are to apply.
- (2) The returning officer may open any ballot paper envelope for the purposes of rules 33 and 34, but must make arrangements to ensure that no person obtains or communicates information as to:
 - (a) the candidate for whom a voter has voted; or
 - (b) the unique identifier on a ballot paper.
- (3) The returning officer must make arrangements to ensure the safety and security of the ballot papers and other documents.

33. Validity of ballot paper

- (1) A ballot paper shall not be taken to be duly returned unless the returning officer is satisfied that it has been received by the returning officer before the close of the poll, with a declaration of identity if required that has been correctly completed, signed, and dated.
- (2) Where the returning officer is satisfied that paragraph (1) has been fulfilled, he or she is to:
 - (a) put the declaration of identity if required in a separate packet; and
 - (b) put the ballot paper aside for counting after the close of the poll.

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

- (a) mark the ballot paper “disqualified”;
- (b) if there is a declaration of identity accompanying the ballot paper, mark it as “disqualified” and attach it to the ballot paper;
- (c) record the unique identifier on the ballot paper in a list (the “list of disqualified documents”); and
- (d) place the document or documents in a separate packet.

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

(1) Where the returning officer receives a declaration of identity if required but no ballot paper, the returning officer is to:

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

35. Sealing of packets

(1) As soon as is possible after the close of the poll and after the completion of the procedure under rules 33 and 34, the returning officer is to seal the packets containing:

- (a) the disqualified documents, together with the list of disqualified documents inside it;
- (b) the declarations of identity if required;
- (c) the list of spoilt ballot papers;
- (d) the list of lost ballot papers;
- (e) the list of eligible voters; and
- (f) the list of tendered ballot papers.

Part 6 - Counting the votes

36. Interpretation of Part 6

(1) In Part 6 of these rules:

“continuing candidate”	Means any candidate not deemed to be elected, and not excluded;
“count”	Means all the operations involved in counting of the first preferences recorded for candidates, the transfer of the surpluses of elected candidates, and the transfer of the votes of the excluded candidates;
“deemed to be elected”	Means deemed to be elected for the purposes of counting of votes but without prejudice to the declaration of the result of the poll;
“mark”	Means a figure, an identifiable written word, or a mark such as “X”;
“non- transferable vote”	Means a ballot paper— (a) on which no second or subsequent preference is recorded for a continuing candidate, or (b) which is excluded by the returning officer under rule 44(4) below;
“preference”	As used in the following contexts has the meaning assigned below— (a) “first preference” means the figure “1” or any mark or word which clearly indicates a first (or only) preference, (b) “next available preference” means a preference which is the second, or as the case may be, subsequent preference recorded in consecutive order for a continuing candidate (any candidate who is deemed to be elected or is excluded thereby being ignored); and (c) in this context, a “second preference” is shown by the figure “2” or any mark or word which clearly indicates a second preference, and a third preference by the figure “3” or any mark or word which clearly indicates a third preference, and so on;
“quota”	Means the number calculated in accordance with rule 41 below;

“surplus”	Means the number of votes by which the total number of votes for any candidate (whether first preference or transferred votes, or a combination of both) exceeds the quota; but references in these rules to the transfer of the surplus means the transfer (at a transfer value) of all transferable papers from the candidate who has the surplus;
“stage of the count”	means— (a) the determination of the first preference vote of each candidate, (b) the transfer of a surplus of a candidate deemed to be elected, or (c) the exclusion of one or more candidates at any given time;
“transferable paper”	Means a ballot paper on which, following a first preference, a second or subsequent preference is recorded in consecutive numerical order for a continuing candidate;
“transferred vote”	means a vote derived from a ballot paper on which a second or subsequent preference is recorded for the candidate to whom that paper has been transferred; and
“transfer value”	Means the value of a transferred vote calculated in accordance with paragraph(4) or (7) of rule 42 below.

37. Arrangements for counting of the votes

- (1) The returning officer is to make arrangements for counting the votes as soon as is practicable after the close of the poll.

38. The count

- (1) The returning officer is to:
 - (a) count and record the number of ballot papers that have been returned; and
 - (b) count the votes according to the provisions in this Part of the rules.
- (2) The returning officer, while counting and recording the number of ballot papers and counting the votes, must make arrangements to ensure that no person obtains or communicates information as to the unique identifier on a ballot paper.
- (3) The returning officer is to proceed continuously with counting the votes as far as is practicable.

39. Rejected ballot papers

(1) Any ballot paper:

- (a) which does not bear the features that have been incorporated into the other ballot papers to prevent them from being reproduced;
- (b) on which the figure “1” standing alone is not placed so as to indicate a first preference for any candidate;
- (c) on which anything is written or marked by which the voter can be identified except the unique identifier; or
- (d) which is unmarked or rejected because of uncertainty,

Shall be rejected and not counted, but the ballot paper shall not be rejected by reason only of carrying the words “one”, “two”, “three” and soon, or any other mark instead of a figure if, in the opinion of the returning officer, the word or mark clearly indicates a preference or preferences.

- (2) The returning officer is to endorse the word “rejected” on any ballot paper which under this rule is not to be counted.
- (3) The returning officer is to draw up a statement showing the number of ballot papers rejected by him or her under each of the subparagraphs (a) to (d) of paragraph (1).

40. First stage

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

41. The quota

- (1) The returning officer is to divide the number of valid ballot papers by a number exceeding by one the number of members to be elected.
- (2) The result, increased by one, of the division under paragraph (1) above (any fraction being disregarded) shall be the number of votes sufficient to secure the election of a candidate (in these rules referred to as “the quota”).
- (3) At any stage of the count a candidate whose total votes equals or exceeds the quota shall be deemed to be elected, except that any election where there is only one vacancy a candidate shall not be deemed to be elected until the procedure set out in paragraphs (1) to (3) of rule 44 has been

complied with.

42. Transfer of votes

- (1) Where the number of first preference votes for any candidate exceeds the quota, the returning officer is to sort all the ballot papers on which first preference votes are given for that candidate into sub-parcels so that they are grouped:
 - (a) according to next available preference given on those papers for any continuing candidate; or
 - (b) where no such preference is given, as the sub-parcel of non-transferable votes.
- (2) The returning officer is to count the number of ballot papers in each parcel referred to in paragraph (1) above.
- (3) The returning officer is, in accordance with this rule and rule 43 below, to transfer each sub-parcel of ballot papers referred to in paragraph (1) (a) to the candidate for whom the next available preference is given on those papers.
- (4) The vote on each ballot paper transferred under paragraph (3) above shall bear a value ("the transfer value") which:
 - (a) reduces the value of each vote transferred so that the total value of all such votes does not exceed the surplus; and
 - (b) is calculated by dividing the surplus of the candidate from whom the votes are being transferred by the total number of the ballot papers on which those votes are given, the calculation being made to two decimal places (ignoring the remainder if any).
- (5) Where at the end of any stage of the count involving the transfer of ballot papers, the number of votes for any candidate exceeds the quota, the returning officer is to sort the ballot papers in the sub-parcel of transferred votes which was last received by that candidate into separate sub-parcels so that they are grouped:
 - (a) according to the next available preference given on those papers for any continuing candidate; or
 - (b) where no such preference is given, as the sub-parcel of non-transferable votes.
- (6) The returning officer is, in accordance with this rule and rule 43 below, to transfer each sub-parcel of ballot papers referred to in paragraph (5) (a) to the candidate for whom the next available preference is given on those papers.

- (7) The vote on each ballot paper transferred under paragraph (6) shall be at:
- (a) a transfer value calculated as set out in paragraph (4)(b) above; or
 - (b) at the value at which that vote was received by the candidate from whom it is now being transferred, whichever is the less.
- (8) Each transfer of a surplus constitutes a stage in the count.
- (9) Subject to paragraph (10), the returning officer shall proceed to transfer transferable papers until no candidate who is deemed to be elected has a surplus or all the vacancies have been filled.
- (10) Transferable papers shall not be liable to be transferred where any surplus or surpluses which, at a particular stage of the count, have not already been transferred, are:
- (a) less than the difference between the total vote then credited to the continuing candidate with the lowest recorded vote and the vote of the candidate with the next lowest recorded vote; or
 - (b) less than the difference between the total votes of the two or more continuing candidates, credited at that stage of the count with the lowest recorded total numbers of votes and the candidate next above such candidates.
- (11) This rule does not apply at an election where there is only one vacancy.

43. Supplementary provisions on transfer

- (1) If, at any stage of the count, two or more candidates have surpluses, the transferable papers of the candidate with the highest surplus shall be transferred first, and if:
- (a) The surpluses determined in respect of two or more candidates are equal, the transferable papers of the candidate who had the highest recorded vote at the earliest preceding stage at which they had unequal votes shall be transferred first; and
 - (b) the votes credited to two or more candidates were equal at all stages of the count, the returning officer shall decide between those candidates by lot, and the transferable papers of the candidate on whom the lot falls shall be transferred first.
- (2) The returning officer shall, on each transfer of transferable papers under rule 42 above:
- (a) record the total value of the votes transferred to each candidate;

- (b) add that value to the previous total of votes recorded for each candidate and record the new total;
 - (c) record as non-transferable votes the difference between the surplus and the total transfer value of the transferred votes and add that difference to the previously recorded total of non-transferable votes; and
 - (d) compare
 - (i) the total number of votes then recorded for all of the candidates, together with the total number of non-transferable votes; with
 - (ii) the recorded total of valid first preference votes.
- (3) All ballot papers transferred under rule 42 or 44 shall be clearly marked, either individually or as a sub-parcel, so as to indicate the transfer value recorded at that time to each vote on that paper or, as the case may be, all the papers in that sub-parcel.
- (4) Where a ballot paper is so marked that it is unclear to the returning officer at any stage of the count under rule 42 or 44 for which candidate the next preference is recorded, the returning officer shall treat any vote on that ballot paper as a non-transferable vote; and votes on a ballot paper shall be so treated where, for example, the names of two or more candidates (whether continuing candidates or not) are so marked that, in the opinion of the returning officer, the same order of preference is indicated or the numerical sequence is broken.

44. Exclusion of candidates

- (1) If:
- (a) all transferable papers which under the provisions of rule 42 above (including that rule as applied by paragraph (11) below) and this rule are required to be transferred, have been transferred; and
 - (b) subject to rule 45 below, one or more vacancies remain to be filled,

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

- (2) The returning officer shall sort all the ballot papers on which first preference votes are given for the candidate or candidates excluded under paragraph (1) above into two sub-parcels so that they are grouped as:
- (a) ballot papers on which a next available preference is given; and
 - (b) ballot papers on which no such preference is given (thereby including

ballot papers on which preferences are given only for candidates who are deemed to be elected or are excluded).

- (3) The returning officer shall, in accordance with this rule and rule 43 above, transfer each sub-parcel of ballot papers referred to in paragraph(2)(a) above to the candidate for whom the next available preference is given on those papers.
- (4) The exclusion of a candidate, or of two or more candidates together, constitutes a further stage of the count.
- (5) If, subject to rule 45 below, one or more vacancies still remain to be filled, the returning officer shall then sort the transferable papers, if any, which had been transferred to any candidate excluded under paragraph (1) above into sub-parcels according to their transfer value.
- (6) The returning officer shall transfer those papers in the sub-parcel of transferable papers with the highest transfer value to the continuing candidates in accordance with the next available preferences given on those papers (thereby passing over candidates who are deemed to be elected or are excluded).
- (7) The vote on each transferable paper transferred under paragraph (6) above shall be at the value at which that vote was received by the candidate excluded under paragraph (1) above.
- (8) Any papers on which no next available preferences have been expressed shall be set aside as non-transferable votes.
- (9) After the returning officer has completed the transfer of the ballot papers in the sub-parcel of ballot papers with the highest transfer value he or she shall proceed to transfer in the same way the sub-parcel of ballot papers with the next highest value and soon until he has dealt with each sub-parcel of a candidate excluded under paragraph (1) above.
- (10) The returning officer shall after each stage of the count completed under this rule:
 - (a) record:
 - (i) the total value of votes; or
 - (ii) the total transfer value of votes transferred to each candidate;
 - (b) add that total to the previous total of votes recorded for each candidate and record the new total;
 - (c) record the value of non-transferable votes and add that value to the previous non-transferable votes total; and

- (d) compare:
 - (i) the total number of votes then recorded for each candidate together with the total number of non-transferable votes; with
 - (ii) the recorded total of valid first preference votes.
- (11) If after a transfer of votes under any provision of this rule, a candidate has a surplus, that surplus shall be dealt with in accordance with paragraphs (5) to (10) of rule 42 and rule 43.
- (12) Where the total of the votes of the two or more lowest candidates, together with any surpluses not transferred, is less than the number of votes credited to the next lowest candidate, the returning officer shall in one operation exclude such two or more candidates.
- (13) If when a candidate has to be excluded under this rule, two or more candidates each have the same number of votes and are lowest:
 - (a) regard shall be had to the total number of votes credited to those candidates at the earliest stage of the count at which they had an unequal number of votes and the candidate with the lowest number of votes at that stage shall be excluded; and
 - (b) where the number of votes credited to those candidates was equal at all stages, the returning officer shall decide between the candidates by lot and the candidate on whom the lot falls shall be excluded.

45. Filling of last vacancies

- (1) Where the number of continuing candidates is equal to the number of vacancies remaining unfilled the continuing candidates shall there upon be deemed to be elected.
- (2) Where only one vacancy remains unfilled and the votes of anyone continuing candidate are equal to or greater than the total of votes credited to other continuing candidates together with any surplus not transferred, the candidate shall there upon be deemed to be elected.
- (3) Where the last vacancies can be filled under this rule, no further transfer of votes shall be made.

46. Order of election of candidates

- (1) The order in which candidates whose votes equal or exceed the quota are deemed to be elected shall be the order in which the respective surpluses were transferred, or would have been transferred but for rule 42 (10) above.
- (2) A candidate credited with a number of votes equal to, and not greater

than, the quota shall, for the purposes of this rule, be regarded as having had the smallest surplus at the stage of the count at which he obtained the quota.

- (3) Where the surpluses of two or more candidates are equal and are not required to be transferred, regard shall be had to the total number of votes credited to such candidates at the earliest stage of the count at which they had an unequal number of votes and the surplus of the candidate who had the greatest number of votes at that stage shall be deemed to be the largest.
- (4) Where the number of votes credited to two or more candidates were equal at all stages of the count, the returning officer shall decide between them by lot and the candidate on whom the lot falls shall be deemed to have been elected first.

47. Declaration of result for contested elections

- (1) In a contested election, when the result of the poll has been ascertained, the returning officer is to:
 - (a) declare the candidates who are deemed to be elected under Part 6 of these rules as elected;
 - (b) give notice of the name of each candidate who he or she has declared elected:
 - (i) where the election is held under a proposed constitution pursuant to powers conferred on the North Staffordshire Combined Healthcare NHS Trust by section 4(4) of the 2003 Act, to the Chair of the NHS Trust; or
 - (ii) in any other case, to the Chair of the Trust; and
 - (c) give public notice of the name of each candidate who he or she has declared elected.
- (2) The returning officer is to make a list including:
 - (a) the number of first preference votes for each candidate whether elected or not;
 - (b) any transfer of votes;
 - (c) the total number of votes for each candidate at each stage of the count at which such transfer took place;
 - (d) the order in which the successful candidates were elected, and
 - (e) the number of rejected ballot papers under each of the headings in rule 39(1), available on request.

48. Declaration of result for uncontested elections

- (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 Chair of the Trust; and
 - (c) give public notice of the name of each candidate who he or she has declared elected.

Part 8 – Disposal of documents

49. Sealing up of documents relating to the poll

- (1) On completion of the counting at a contested election, the returning officer is to seal up the following documents in separate packets:
 - (a) the counted ballot papers;
 - (b) the ballot papers endorsed with “rejected in part”;
 - (c) the rejected ballot papers; and
 - (d) the statement of rejected ballot papers.
- (2) The returning officer must not open the sealed packets of:
 - (a) the disqualified documents, with the list of disqualified documents inside it;
 - (b) the declarations of identity;
 - (c) the list of spoilt ballot papers;
 - (d) the list of lost ballot papers;
 - (e) the list of eligible voters; and
 - (f) the list of tendered ballot papers.
- (3) The returning officer must endorse on each packet a description of –
 - (a) its contents;

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

50. Delivery of documents

- (1) Once the documents relating to the poll have been sealed up and endorsed pursuant to rule 49, the returning officer is to forward them to the Chair of the Trust.

51. Forwarding of documents received after close of the poll

- (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 ballot papers are made too late to enable new ballot papers to be issued,

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

52. Retention and public inspection of documents

- (1) The Trust is to retain the documents relating to an election that are forwarded to the Chair by the returning officer under these rules for one year, and then, unless otherwise directed by the regulator, cause them to be destroyed.
- (2) With the exception of the documents listed in rule 53(1), the documents relating to an election that are held by the Trust shall be available for inspection by members of the public at all reasonable times.
- (3) A person may request a copy or extract from the documents relating to an election that are held by the Trust, and the Trust is to provide it, and may impose a reasonable charge for doing so.

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

- (1) The Trust may not allow the inspection of, or the opening of any sealed packet containing:

- (a) any rejected ballot papers, including ballot papers rejected in part;
- (b) any disqualified documents, or the list of disqualified documents,
- (c) any counted ballot papers;
- (d) any declarations of identity; or
- (e) the list of eligible voters,

By any person without the consent of the regulator.

- (2) A person may apply to the regulator to inspect any of the documents listed in (1), and the regulator may only consent to such inspection if it is satisfied that it is necessary for the purpose of questioning an election pursuant to Part 11.
- (3) The regulator's consent may be on any terms or conditions that it thinks necessary, including conditions as to:
 - (a) persons;
 - (b) time;
 - (c) place and mode of inspection;
 - (d) production or opening,

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

- (4) On an application to inspect any of the documents listed in paragraph (1):
 - (a) in giving its consent, the regulator;
 - (b) and in making the documents available for inspection, the Trust,

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

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

Part 9 – Death of a candidate during a contested election

54. Countermand or abandonment of poll on death of candidate

- (1) If, at a contested election, proof is given to the returning officer's

satisfaction before the result of the election is declared that one of the persons named or to be named as a candidate has died, then the returning officer is to:

- (a) publish a notice stating that the candidate has died; and
 - (b) proceed with the counting of the votes as if that candidate had been excluded from the count so that:
 - (i) ballot papers which only have a first preference recorded for the candidate that has died, and no preferences for any other candidates, are not to be counted; and
 - (ii) ballot papers which have preferences recorded for other candidates are to be counted according to the consecutive order of those preferences, passing over preferences marked for the candidate who has died.
- (2) The ballot papers which have preferences recorded for the candidate who has died are to be sealed with the other counted ballot papers pursuant to rule 49(1)(a).

Part 10 – Election expenses and publicity

Election expenses

55. Election expenses

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

56. Expenses and payments by candidates

- (1) A candidate may not incur any expenses or make a payment (of whatever nature) for the purposes of an election.
- (2) Nothing in this rule is to prevent the Trust from incurring such expenses, and making such payments, as it considers necessary pursuant to rules 58 and 59.

57. Election expenses incurred by other persons

- (1) No person may:
 - (a) incur any expenses or make a payment (of whatever nature) for the purposes of a candidate's election, whether on that candidate's behalf or otherwise; or

- (b) give a candidate or his or her family any money or property (whether as a gift, donation, loan, or otherwise) to meet or contribute to expenses incurred by or on behalf of the candidate for the purposes of an election.
- (2) Nothing in this rule is to prevent the Trust from incurring such expenses, and making such payments, as it considers necessary pursuant to rules 58 and 59.

Publicity

58. Publicity about election by the Trust

- (1) The Trust may:
 - (a) compile and distribute such information about the candidates; and
 - (b) organise and hold such meetings to enable the candidates to speak and respond to questions,

as it considers necessary.

- (2) Any information provided by the Trust about the candidates, including information compiled by the Trust under rule 59, must be:
 - (a) objective, balanced and fair;
 - (b) (as far as the information provided by the candidates so allows) equivalent in size and content for all candidates,
 - (c) compiled and distributed in consultation with all of the candidates standing for election; and
 - (d) must not seek to promote or procure the election of a specific candidate or candidates, at the expense of the electoral prospects of one or more other candidates.
- (3) Where the Trust proposes to hold a meeting to enable the candidates to speak, the Trust must ensure that all of the candidates are invited to attend, and in organising and holding such a meeting, the Trust must not seek to promote or procure the election of a specific candidate or candidates at the expense of the electoral prospects of one or more other candidates.

59. Information about candidates for inclusion with voting documents

- (1) The Trust must compile information about the candidates standing for election, to be distributed by the returning officer pursuant to rule 24 of

these rules.

(2) The information must consist of:

- (a) a statement submitted by the candidate of no more than 250 words (if supplied by the candidate); and
- (b) a photograph of the candidate (if supplied by the candidate).

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

- (1) In this Part, the phrase “for the purposes of an election” means with a view to, or otherwise in connection with, promoting or procuring a candidate’s election, including the prejudicing of another candidate’s electoral prospects; and the phrase “for the purposes of a candidate’s election” is to be construed accordingly.
- (2) The provision by any individual of his or her own services voluntarily, on his or her own time, and free of charge is not to be considered an expense for the purposes of this Part.

Part 11 – Questioning elections and the consequence of irregularities

61. Application to question an election

- (1) An application alleging a breach of these rules, including an electoral irregularity under Part 10, may be made to the regulator.
- (2) An application may only be made once the outcome of the election has been declared by the returning officer.
- (3) An application may only be made to the regulator by:
 - (a) a person who voted at the election or who claimed to have had the right to vote; or
 - (b) a candidate, or a person claiming to have had a right to be elected at the election.
- (4) The application must:
 - (a) describe the alleged breach of the rules or electoral irregularity; and
 - (b) be in such a form as the regulator may require.
- (5) The application must be presented in writing within 21 days of the declaration of the result of the election.
- (6) If the regulator requests further information from the applicant, then that person must provide it as soon as is reasonably practicable.

- (7) The regulator shall delegate the determination of an application to a person or persons to be nominated for the purpose of the regulator.
- (8) The determination by the person or persons nominated in accordance with Rule 61(7) shall be binding on and shall be given effect by the Trust, the applicant and the members of the constituency (or class within a constituency) including all the candidates for the election to which the application relates.
- (9) The regulator may prescribe rules of procedure for the determination of an application including costs.

Part 12 – Miscellaneous

62. Secrecy

- (1) The following persons:
 - (a) the returning officer; and
 - (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 Trust who has or has not been given a ballot paper or who has or has not voted;
 - (ii) the unique identifier on any ballot paper; and
 - (iii) the candidate(s) for whom any member has voted.
- (2) No person may obtain or attempt to obtain information as to the candidate(s) for whom a voter is about to vote or has voted, or communicate such information to any person at any time, including the unique identifier on a ballot paper given to a voter.
- (3) The returning officer is to make such arrangements as he or she thinks fit to ensure that the individuals who are affected by this provision are aware of the duties it imposes.

63. Prohibition of disclosure of vote

- (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.

64. Disqualification

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

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

- (1) If industrial action, or some other unforeseen event, results in a delay in:
 - (a) the delivery of the documents in rule 24; or
 - (b) the return of the ballot papers and declarations of identity,

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

66. Effect of administrative or clerical errors on election

- (1) Elections shall not be invalidated by any administrative or clerical error on the part of the Trust or any acts or omissions of the returning officer acting in good faith on the basis of such error.

ANNEX 6 – ADDITIONAL PROVISIONS – COUNCIL OF GOVERNORS

(Paragraph 22)

1. The Council of Governors will meet at least three times per year.
2. Any Member of Council judged by the Council of Governors to have acted in a manner which brings the Trust into disrepute will not be permitted to continue as a Member of Council.
3. NOT USED
4. The number of full terms of office for Elected Members of Council will be 3.
5. Under Paragraph 26.2 of the Constitution, 75% of all the Members of Council have to be in support in order to remove the Chair or Non-Executive Directors
6. The following may not become or continue as a member of the Council of Governors:
 - 6.1 They are a Director of the Trust, or a Governor, Member of Council or Director of another NHS Body, or of an independent/private sector health care provider whose activities compete with those of the Trust. These restrictions do not apply to Appointed Partnership Members of Council;
 - 6.2 they are under sixteen years of age;
 - 6.3 being a member of a public constituency, they were or were entitled to be a member of one of the classes of the staff constituency at any point during the preceding two years;
 - 6.4 being a member of one of the public constituencies, they refuse to sign a declaration in the form specified by the Council of Governors of the particulars of their qualification to vote as a member of the Trust, and that they are not prevented from being a member of the Council of Governors;
 - 6.5 they are currently on the sex offenders register.
 - 6.6 they have within the preceding two years been dismissed, otherwise than by reason of redundancy, expiry of a fixed term contract, disability, ill health or age from any paid employment with a health service body. In other cases of dismissal, such as capability, an individual may be permitted to become a Member of Council, at the discretion of the Trust, and subject to full disclosure of the relevant circumstances and facts concerning that dismissal;
 - 6.7 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;

- 6.8 they have had their name removed, by a direction under section 46 of the 1977 NHS Act from any list prepared under Part II of that Act or have otherwise been disqualified or suspended from any healthcare profession, and have not subsequently had their name included in such a list or had their qualification re-instated or suspension lifted (as applicable);
 - 6.9 they are incapable by reason of mental disorder, illness or injury of managing and administering their property and affairs;
 - 6.10 they are an elected Member of Council and they cease to be a member of the constituency or class by which they were elected. This may include, but is not restricted to, the reasons for ceasing to be a member identified in Annex 9;
 - 6.11 they are a Member of Council appointed by a partnership organisation and they cease to be sponsored by their partnership organisation;
 - 6.12 they are a member of the Patient and Public Involvement Forum (Healthwatch) relating to this Foundation Trust or anybody succeeding it in this role;
 - 6.13 they fail to or indicate that they are unwilling to act in the best interests of the Trust and in accordance with The Seven Principles of Public Life laid out by the Committee on Standards in Public Life in its First Report as amended from time to time;
 - 6.14 they fail to agree (or, having agreed, fail) to abide by the values of the Trust set out in Annex 10.
7. A member of the Council of Governors shall immediately cease to be so if:
- 7.1 they resign in writing to the secretary;
 - 7.2 they fail to attend at least half of the meetings of the Council of Governors in any financial year, unless the majority of the Council of Governors are satisfied that;
 - 7.2.1 their absences were due to reasonable causes, and
 - 7.2.2 they will be able to start attending meetings of the Council of Governors again within such a period as the majority of Members of the Council of Governors consider reasonable.

7.2.3 if any of the provisions in paragraph 6 above apply.

7.2.4 without good reason they fail to undertake any training which the Council of Governors requires all members of the Council of Governors to undertake.

8. Members of the Council of Governors from elected staff who are subject to on-going formal disciplinary action in respect of their employment or engagement with the Trust, will be suspended from their membership of the Council of Governors pending the outcome of disciplinary action.
9. A Member of the Council of Governors may be removed from the Council of Governors by a resolution approved by not less than two-thirds of the remaining members of the Council of Governors present and voting at a general meeting of the Council of Governors on the grounds that:
 - 9.1 they have committed a serious breach of the Trust Principles set out in Annex 10, or
 - 9.2 they have acted in a manner detrimental to the interests of the Trust, and
 - 9.3 the Council of Governors consider that it is not in the best interests of the Trust for them to continue as a member of the Council of Governors.
10. Where a vacancy arises from any reason (other than expiry of term of office) amongst the appointed member of the Council of Governors the Secretary shall request that the appointing organisation appoints a replacement to hold office for the remainder of the term of office.
11. Vacancies amongst the elected members of the Council of Governors will be dealt with under paragraph 9 of Annex 9.

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

(Paragraph 18)

**ROYAL ORTHOPAEDIC HOSPITAL NHS
FOUNDATION TRUST**

**Standing Orders
Council of Governors**

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1. INTRODUCTION

1.1 Statutory Framework

- 1.1.1 The Royal Orthopaedic Hospital NHS Foundation Trust is a statutory body which became a public benefit corporation on 1 February 2007 following approval by Monitor pursuant to the National Health Service Act 2006 (the “2006 Act”).
- 1.1.2 The principal places of business of the Trust is:
- The Royal Orthopaedic Hospital, Bristol Road South, Northfield, Birmingham B31 2AP.
- 1.1.3 NHS Foundation Trusts are governed by, the 2006 Act as amended by the 2012 Act, their constitutions and their NHS provider licences issued by Monitor (Regulatory Framework).
- 1.1.4 The functions of the Trust are conferred by the Regulatory Framework. As a body corporate it has specific powers to contract in its own name and to act as a corporate trustee. In the latter role it is accountable to the Charity Commission for those funds deemed to be charitable. The Trust also has a common law duty as a bailee for patients' property held by the Trust on behalf of patients.
- 1.1.5 The Regulatory Framework requires the Council of Governors to adopt Standing Orders (SOs) for the regulation of its proceedings and business.

2. INTERPRETATION

- 2.1 Save as permitted by law and subject to the Constitution, at any meeting the Chair of the Trust shall be the final authority on the interpretation of Standing Orders (on which he/she should be advised by the Company Secretary).
- 2.2 Any expression to which a meaning is given in the 2006 Act (as amended by the Health and Social Care Act 2012 Act) or in the Regulations or Orders made under the 2006 Act shall have the same meaning in the interpretation and in addition:

"TRUST" means the Royal Orthopaedic Hospital NHS Foundation Trust.

"COUNCIL OF GOVERNORS" means the Council of Governors of the Trust as defined in the Constitution.

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

"CHAIR OF THE BOARD" or "Chair of the Trust" is the person appointed by the Council of Governors to lead the Board of Directors and to ensure

that it successfully discharges its overall responsibility for the Trust as a whole. The expressions “the Chair of the Board” and “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 so otherwise unavailable.

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

“COMMITTEE” means a committee of the Council of Governors

“CONSTITUTION” means the constitution of the Trust.

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

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

“FT CODE OF GOVERNANCE” means the NHS Foundation Trust Code of Governance issued by Monitor from time to time.

“LEAD GOVERNOR” means a Member of the Council elected by the Council of Governors to hold that office for a term determined by the Council of Governors who may also be removed from office by a resolution of the Council of Governors.

“MEMBER OF THE COUNCIL” means a Governor of the Trust. (Member of the Council in relation to the Council of Governors does not include the Chair).

“NHS IMPROVEMENT” means the body corporate responsible for the regulation of NHS foundation trusts

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

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

“SOs” means these Standing Orders.

“SCHEME OF DELEGATION” means the schedule of matters reserved to the Board of Directors and the Delegation of Powers, as approved by the Board of Directors and reviewed from time to time.

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

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

“CLEAR DAYS” means in any period the duration of which is determined by a starting and finishing event, all complete days in that period excluding the day when the event referred to as starting the period occurs (for example sending out an Agenda) and the day on which the event referred to as ending the period occurs (for example the date of the meeting). For the avoidance of doubt clear days include weekends and public holidays. As an example an Agenda sent out on a Friday for a meeting on a Wednesday represents four clear days: Friday and Wednesday are excluded so that Saturday, Sunday, Monday and Tuesday are the four clear days.

3. THE COUNCIL OF GOVERNORS

3.1 Composition of the Council of Governors

3.1.1 In accordance with the Constitution of the Foundation Trust, the composition of the Council of Governors after the Effective Date shall be:

- 10 Public representatives
- 4 Staff representatives
- 5 nominated representatives comprising
 - 1 University of Birmingham representative
 - 1 Birmingham City University representative
 - 1 Birmingham City Council representative
 - 1 local community partnership representative
 - 1 Bournville Village Trust representative

3.2 Role of the Chair

3.2.1 The Chair is not a member of the Council of Governors. However under the Regulatory Framework, he/she presides at meetings of the Council of Governors and has a casting vote.

3.2.2 Where the Chair of the Trust has died or has ceased to hold office, or where he/she has been unable to perform his/her duties as Chair owing to illness or any other cause, the Vice Chair shall act as Chair until a new Chair is appointed or the existing Chair resumes his/her duties, as the case may be; and references to the Chair in these Standing Orders shall, so long as there is no Chair able to perform his/her duties, be taken to include references to the Vice Chair.

3.3 Role and Responsibilities of the Council of Governors

3.3.1 The role and responsibilities of the Council of Governors, to be undertaken in accordance with the Trust Constitution, are:

- To appoint or remove the Chair and other Non-Executive Directors of the Foundation Trust at a members' general meeting (except for the initial Chair and Non-Executive Directors)
- To approve (by a majority of members of the Council of Governors) the appointment by the Non-Executive Directors of the Chief Executive (except for the initial Chief Executive)
- To appoint or remove the auditor at a general meeting of the Council of Governors.
- To be consulted by the Trust's Board of Directors on forward plans and to have the Council of Governors' views taken into account
- To be presented with at a general meeting of the Council of Governors, the Annual Report and Accounts and the report of the Trust's auditor

3.3.2 The 2006 Act provides that all the powers of the Foundation Trust are to be exercised by its Directors. The Council of Governors does not have the right to veto decisions made by the Board of Directors.

3.3.3 The Council of Governors, and individual Members of Council, are not empowered to speak on behalf of the Trust, and must seek the advice and views of the Chair concerning any contact from the media or any invitation to speak publicly about the Trust or their role within it.

4. MEETINGS OF THE COUNCIL

4.1 Admission of the Public

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

- (a) That members of the public be excluded from the remainder of a meeting having regard to the confidential nature of the business to be transacted, publicity on which would be prejudicial to the public interest; and/or
- (b) That in the interests of the public order the meeting adjourn for a period to be specified in such resolution to enable the Council to complete business without the presence of the public.

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

Council.

4.2 Calling Meetings

- 4.2.1 Ordinary meetings of the Council shall be held at such times and places as the Council may determine and there shall be not less than 3 or more than 4 formal meetings in any year except in exceptional circumstances.
- 4.2.2 The Chair of the Foundation Trust may call a meeting of the Council at any time. If the Chair refuses to call a meeting after a requisition for that purpose, signed by at least one third of the whole number of Members of the Council, has been presented to him/her, or if, without so refusing, the Chair does not call a meeting within seven days after such requisition has been presented to him at Trust's Headquarters, such one third or more Members of the Council may forthwith call a meeting.

4.3 Notice of Meetings

- 4.3.1 Before each meeting of the Council, a notice of the meeting, specifying the business proposed to be transacted at it, and signed by the Chair or by an officer authorised by the Chair to sign on his/her behalf shall be delivered to every Member of the Council, or sent by post to the usual place of residence of such Member of the Council, so as to be available to him at least three Clear Days before the meeting.
- 4.3.2 Want of service of the notice on any Member of the Council shall not affect the validity of a meeting.
- 4.3.3 In the case of a meeting called by Members of the Council in default of the Chair, the notice shall be signed by those Members of the Council and no business shall be transacted at the meeting other than specified in the notice.
- 4.3.4 Agendas will be sent to Members of the Council before the meeting and supporting papers, whenever possible, shall accompany the agenda, but will certainly be despatched no later than three Clear Days before the meeting, save in emergency. Failure to despatch the agenda and supporting papers within the above timescales shall not affect the validity of a meeting unless the consequences of such failure were to reduce attendance at the meeting below a level at which the meeting was quorate.
- 4.3.5 Before each meeting of the Council a public notice of the time and place of the meeting shall be displayed at the Trust's offices and on the Trust's website and the public part of the agenda shall be displayed on the Trust's website at least three Clear Days before the meeting, save in the case of emergencies.

4.4 Setting the agenda

- 4.4.1 The Council may determine that certain matters shall appear on every agenda for a meeting and shall be addressed prior to any other business being conducted.
- 4.4.2 A Member of the Council desiring a matter to be included on an agenda shall make his/her request in writing to the Chair at least 10 Clear Days before the meeting. The request should state whether the item of business is proposed to be transacted in the presence of the public and should include appropriate supporting information. Requests made less than 10 Clear Days before a meeting may be included on the agenda at the discretion of the Chair.

4.5 Petitions

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

4.6 Chair of Meeting

- 4.6.1 At any meeting of the Council, the Chair of the Trust, if present, shall preside, unless he/she has a conflict of interest. If the Chair is absent from the meeting or has a conflict of interest the Vice Chair, if he/she is present, shall preside, unless he/she also has a conflict of interest. If the Chair and Vice Chair are absent or have conflicts of interest, such Non-Executive Director as the Members of the Council present shall choose shall preside unless he/she has a conflict of interest. Where the Chair of the Trust, the Vice Chair and other Non-Executive Directors are all absent or have a conflict of interest, the Lead Governor (as defined in the Standing Orders of the Council of Governors) shall preside unless he/she is absent or has a conflict of interest in which case the Council of Governors shall select one of their number that does not have a conflict of interest to preside at the meeting. The person presiding at the meeting shall have a casting vote.

4.7 Notices of Motion

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

4.8 Withdrawal of Motion or Amendments

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

4.9 Motion to Rescind a Resolution

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

4.10 Motions

- 4.10.1 The mover of a motion shall have a right of reply at the close of any discussion on the motion or any amendment thereto.
- 4.10.2 When a motion is under discussion or immediately prior to discussion it shall be open to a Member of the Council 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 adhoc committee to deal with a specific item of business
 - That the motion be now put.(*)
 - A motion resolving to exclude the public under SO4.1.1.

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

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

4.11 Chair's Ruling

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

4.12 Voting

- 4.12.1 If a question is put to the vote, it shall be determined by a majority of the votes of the Members of the Council present and voting on the question and, in the case of number of votes for and against a motion being equal, the Chair of the meeting shall have a second or casting vote.
- 4.12.2 All questions put to the vote shall, at the discretion of the Chair of the meeting, be determined by oral expression or by a show of hands. A paper ballot may also be used if a majority of the Members of the Council present so request.
- 4.12.3 If at least one-third of the Members of the Council present so request, the voting (other than by paper ballot) on any question may be recorded to show how each Member of the Council present voted or abstained.
- 4.12.4 If a Member of the Council so requests, his/her vote shall be recorded by name upon any vote (other than paper ballot).
- 4.12.5 In no circumstances may an absent Member of the Council vote by proxy. A Member of the Council may only vote if present at the time of the vote on which the question is to be decided. A Member of the Council is considered to be present at a meeting in the circumstances outlined in Standing Orders 4.13 below.

- 4.13 Any Governor or member of a committee of the council of Governors may participate in a meeting of the council of Governors or such Committee by conference, telephone, computer or video link whereby all persons participating in the meeting can hear each other and participation in the meeting in this manner shall be deemed to constitute presence, in person at such meeting and in the event of a vote count toward that vote.

4.14 Minutes

- 4.14.1 The minutes of the proceedings of a meeting shall be drawn up and submitted for agreement at the next ensuing meeting where they will be signed by the person presiding at it.
- 4.14.2 No discussion shall take place upon the minutes except upon their accuracy or where the Chair considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the meeting.
- 4.14.3 Minutes shall be circulated in accordance with the members' wishes.

4.15 Suspension of Standing Orders

- 4.15.1 Except where this would contravene any provision of the Regulatory Framework, any one or more of the Standing Orders may be suspended at any meeting, provided that at least two-thirds of the Council are present, including one public Member of Council and that a majority of those present vote in favour of suspension.
- 4.15.2 A decision to suspend Standing Orders shall be recorded in the minutes of the meeting.
- 4.15.3 A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the Chair and Members of the Council.
- 4.15.4 No formal business may be transacted while Standing Orders are suspended.

4.16 Variation and Amendment of Standing Orders

- 4.16.1 These Standing Orders shall be amended only if the variation proposed does not contravene the Regulatory Framework any statutory provisions, guidance or best practice advice issued by Monitor and is approved in accordance with paragraph 45 of the Trust's Constitution.

4.17 Record of Attendance

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

4.18 Quorum

- 4.18.1 No business shall be transacted at a meeting unless at least six Members of Council are present of which at least two are public Members of Council.
- 4.18.2 If at any meeting there is no quorum present within 30 minutes of the time fixed for the start of the meeting, the meeting shall stand adjourned at the discretion of the Chair and the Trust Secretary shall give or shall procure the giving of notice to all Members of the Council of the date, time and place of the adjourned meeting. Notwithstanding Standing Order 4.18.1 above, upon convening, those present shall constitute a quorum.
- 4.18.3 If a Member of the Council has been disqualified from participating in the discussion on any matter and/or from other voting on any resolution by reason of the declaration of a conflict of interest (see Standing Order 6, 7 or 8) he/she shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or

the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business.

5. COMMITTEES

- 5.1 Subject to the Regulatory Framework, the Council may appoint committees of the Council to assist the Council in the proper performance of its functions under the Constitution and the Regulatory Framework, consisting wholly of the Chair and Members of the Council of Governors.
- 5.2 A committee appointed under this regulation may, subject to any restriction imposed by the Council, appoint sub-committees consisting wholly of members of the committee.
- 5.3 The Standing Orders of the Council, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees established by the Council. In which case the term “Chair” is to be read as a reference to the Chair of the Committee as the context permits, and the term “Member of the Council” is to be read as a reference to a member of the committee also as the context permits.
- 5.4 Subject to Standing Order 5.5, each sub-committee shall have such terms of reference and power and be subject to such conditions (as to reporting back to the Council), as the Council shall decide and shall be in accordance with the Regulatory Framework and any guidance for Governors issued by NHS Improvement. Such terms of reference shall have effect as if incorporated into the Standing Orders.
- 5.5 The Council may not delegate any decision-making or executive powers to any committee or sub-committee.
- 5.6 The Council shall approve the appointments to each of the committees which it has formally constituted.
- 5.7 The committees and sub-committees established by the Council shall be such committees as are required to assist the Council in discharging its responsibilities.
- 5.8 A member of a committee shall not disclose a matter dealt with by, or brought before, the committee without its permission until the committee shall have reported to the Council of Governors or shall otherwise have concluded on that matter.
- 5.9 A Governor or a member of a committee shall not disclose any matter reported to the Council or otherwise dealt with by the

committee notwithstanding that the matter has been reported or action has been concluded, if the Council of Governors or committee shall resolve that it is confidential.

- 5.10 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 members of the Council of Governors attending the meeting.

6. DECLARATIONS OF INTERESTS AND REGISTER OF INTERESTS

6.1 Declaration of Interests

- 6.1.1 The Regulatory Framework requires Council Members to declare interests which are relevant and material to the Council of which they are a Member. All existing Council Members should declare such interests. Any Council Members appointed subsequently should do so on appointment.

- 6.1.2 Interests which should be regarded as “relevant and material” are defined in the Trust’s Constitution as follows:

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

- 6.1.3 At the time Council members’ interests are declared, they should be recorded in the Council minutes. Any changes in interests should be declared at the next Council meeting following the change occurring.

- 6.1.4 Council members’ directorships of companies likely or possibly seeking to do business with the NHS should be published in the Trust’s Annual Report. The information should be kept up to date for inclusion in succeeding annual reports.

- 6.1.5 During the course of a Council Meeting, if a conflict of interest is established, the Member of the Council concerned should withdraw from the meeting and play no part in the relevant discussion or decision.

- 6.1.6 There is no requirement for the interests of Council members’ spouses or partners to be declared. However Standing Order 7, which is based on the regulations, requires that the interests of Members of the Council’s spouses, if living together, in contracts should be declared. Therefore the interests of Council Members’ spouses and cohabiting partners should also be regarded as relevant.

- 6.1.7 If Council members have any doubt about the relevance of an interest, this should be discussed with the Chair. Financial Reporting Standard No 8 (issued by the Accounting Standards Board) specifies that influence rather than the immediacy of the relationship is more important in assessing the relevance of an interest. The interests of partners in professional partnerships including general practitioners should also be considered.

6.2 Register of Interests

- 6.2.1 The Company Secretary to the Trust will ensure that a Register of Interests is established to record formally declarations of interests of Council Members. In particular the Register will include details of all directorships and other relevant and material interests which have been declared by Council Members, as defined in Standing Order 6.1.2.
- 6.2.2 These details will be kept up to date by means of a monthly review of the Register in which any changes to interests declared will be incorporated.
- 6.2.3 The Register will be available to the public and the Company Secretary will take reasonable steps to bring the existence of the Register to the attention of the local population and to publicise arrangements for viewing it.
- 6.2.4 In establishing, maintaining, updating and publicising the Register, the Trust shall comply with the Regulatory Framework.

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

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

pecuniary interest in a contract, proposed contract or other matter, if:

- (a) he/she, or a nominee of theirs, is a Director of a company or other body, not being a public body, with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration;
- or
- (b) he/she, is a partner of, or is in the employment of a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration.

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

7.4 The Chair or a member of the Council shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only:

- (a) of his/her membership of a company or other body, if he/she has no beneficial interest in any securities of that company or other body;
- (b) of an interest in a company, body or person with which he/she is connected as mentioned in SO 7.3 above which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a Member of the Council in the consideration or discussion of or in voting on, any question with respect to that contract or matter.

7.5 Where a Member of Council:

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

this Standing Order shall not prohibit him/her from taking part

in the consideration or discussion of the contract or other matter or from voting on any question with respect to it without prejudice however to his/her duty to disclose his/her interest.

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

8. STANDARDS OF BUSINESS CONDUCT POLICY

Members of Council should comply with the Trust Constitution, the NHS principles of conduct, the NHS Foundation Trust Code of Governance, published by Monitor, the requirements of the Regulatory Framework, and any guidance for Governors issued by NHS Improvement.

8.1 Interest of Members of Council in Contracts

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

8.1.2 A Member of Council should also declare to the Company Secretary of the Trust any other employment or business or other relationship of his/hers, or of cohabitating spouse, which might reasonably be predicted could conflict with the interests of the Corporation.

8.2 Canvassing of and recommendations by Members of the Council in Relation to Appointments

8.2.1 Canvassing of Members of Council of the Trust or of any Committee of the Council of Governors directly or indirectly for any appointment under the Trust shall disqualify the candidate for such appointment.

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

8.2.3 Informal discussions outside appointments panels or committees,

whether solicited or unsolicited, should be declared to the panel or committee.

8.3 Relatives of Members of the Council or Officers

- 8.3.1 Candidates for any staff appointment under the Trust, shall when making application, disclose in writing to the Trust whether they are related to any Member of the Board of Directors or Council of Governors or the holder of any office under the Trust. Failure to disclose such a relationship shall disqualify a candidate and, if appointed, render him liable to instant dismissal.
- 8.3.2 The Chair and every Member of the Council and officer of the Trust shall disclose to the Chief Executive any relationship between him/herself and a candidate of whose candidature that Member of the Council or Officer is aware.
- 8.3.3 On appointment, Members of the Council (and prior to acceptance of an appointment in the case of officer members) should disclose to the Council whether they are related to any other Member of the Council or holder of any office in the Trust.
- 8.3.4 Where the relationship to a Member of the Council of the Trust is disclosed, the Standing Order headed Disability of Chair and Members of the Board in proceedings on account of pecuniary interest (SO 7) shall apply.

9. MISCELLANEOUS

9.1 Interface between the Board of Directors and the Council of Governors

- 9.1.1 The Board of Directors will co-operate with the Council of Governors in order to comply with the Regulatory Framework in all respects and in particular in relation to the following matters which are set out specifically within the Constitution:
 - (i) The Directors, having regard to the views of the Council of Governors, are to prepare the information as to the Trust's forward planning in respect of each financial year to be given to NHS Improvement.
 - (ii) The Directors are to present to the Council of Governors at a general meeting the annual accounts, any report of the Auditor on them, and the annual report. This requirement may be satisfied by at least one Executive Director being present at the relevant meeting to discharge these responsibilities

9.2 Standing Orders to be given to Members of the Council

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

9.3 **Review of Standing Orders**

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

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

(Paragraph 31)

**ROYAL ORTHOPAEDIC HOSPITAL NHS
FOUNDATION TRUST**

Board of Directors

STANDING ORDERS

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SECTION A

1. INTERPRETATION AND DEFINITIONS FOR STANDING ORDERS AND STANDING FINANCIAL INSTRUCTIONS

- 1.1 Save as otherwise permitted by law, and subject to the Constitution at any meeting the Chair of the Trust shall be the final authority on the interpretation of Standing Orders (on which they should be advised by the Company Secretary to the Board of Directors, or in their absence the Chief Executive or Director of Finance)
- 1.2 Any expression to which a meaning is given in the 2006 Act or in the Regulations and Orders made under the Act shall have the same meaning in these Standing Orders and Standing Financial Instructions, unless the context otherwise requires and in addition:
 - 1.2.1 **"the 2006 Act"** is the National Health Service Act 2006 as amended by the 2012 Act.
 - 1.2.2 **"the 2012 Act"** is the Health and Social Care Act 2012.
 - 1.2.3 **"Accounting Officer"** means the person who from time to time discharges the Functions specified in paragraph 25(5) of Schedule 7 to the 2006 Act. For this Trust it shall be the Chief Executive.
 - 1.2.4 **"Board of Directors"** means the Board of Directors as constituted in accordance with the Constitution.
 - 1.2.5 **"Chair of the Board of Directors"** is the person appointed by the Council of Governors to lead the Board of Directors and to ensure that it successfully discharges its overall responsibility for the Trust as a whole. The expressions "the Chair of the Board" and "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. The Chair is also the Chair of the Council of Governors.
 - 1.2.6 **"Chief Executive"** means the Chief Executive Officer of the Trust.
 - 1.2.7 **"Clear Days"** means in any period the duration of which is determined by a starting and finishing event, all complete days in that period excluding the day when the event referred to as starting the period occurs (for example sending out an Agenda) and the day on which the event referred to as ending the period occurs (for example the date of the meeting). For the avoidance of doubt clear days include weekends and public holidays. As an example an Agenda sent out on a Friday for a meeting on a Wednesday represents four clear days: Friday and Wednesday are excluded so that Saturday, Sunday, Monday and Tuesday are the four clear days.

- 1.2.8 "**Clinical Governance Committee**" means a committee whose functions are concerned with the arrangements for scrutiny and monitoring and improving the quality of healthcare for which the Trust has responsibility.
- 1.2.9 "**Committee**" means a formal committee or sub-committee created and appointed by the Board of Directors.
- 1.2.10 "**Committee members**" means members formally appointed by the Board of Directors to sit on or to chair specific committees.
- 1.2.11 "**Constitution**" means this constitution and all annexes to it.
- 1.2.12 "**Council of Governors**" means the Council of Governors of the Trust as constituted in accordance with Annex 4 of the Constitution.
- 1.2.13 "**Director of Finance**" means the chief financial officer of the Trust appointed to discharge the usual functions of its chief financial officer..
- 1.2.14 "**Executive Director**" means a member of the Board of Directors who holds an executive office of the Trust.
- 1.2.15 "**FT Code of Governance**" means the NHS Foundation Trust Code of Governance issued by Monitor from time to time.
- 1.2.16 "**Funds held on trust**" shall mean those funds which the Trust holds on incorporation, receives on distribution by statutory instrument or chooses subsequently to accept under the Regulatory Framework. Such funds may or may not be charitable.
- 1.2.17 "**Member**" means Executive Director or Non-Executive Director of the Board of Directors as the context permits.
- 1.2.18 "**NHS Improvement**" means the body corporate acting as the principal regulator of foundation trusts.
- 1.2.19 "**Nominated Officer**" means an Officer charged with the responsibility for discharging specific tasks within Standing Orders and Standing Financial Instructions.
- 1.2.20 "**Non-Executive Director**" means a member of the Board of Directors who does not hold an executive office with the Trust and is appointed by the Council of Governors.
- 1.2.21 "**Staff**" means any employee of the Trust who is not a Director, or any other person who is the equivalent of an employee at the Trust and who in the discretion of senior management should be treated as an employee.
- 1.2.22 "**Regulatory Framework**" means the 2006 Act, the Trust's NHS

provider licence and the Trust's constitution.

- 1.2.23 "**SFIs**" means Standing Financial Instructions approved by the Board of Directors and reviewed by it from time to time..
- 1.2.24 "**SOs**" means Standing Orders.
- 1.2.25 "**Scheme of Delegation**" means the schedule of matters reserved to the Board of Directors and the Delegation of Powers, as approved by the Board of Directors and reviewed from time to time.
- 1.2.26 "**Trust**" means the Royal Orthopaedic Hospital NHS Foundation Trust.
- 1.2.27 "**Company Secretary**" means a person appointed by the Trust in accordance with the Constitution to be the Trust Secretary to act independently of the Board of Directors and the Council of Governors to provide advice relating to the governance of the Trust and monitor the Trust's compliance with the Regulatory Framework.
- 1.2.28 "**Vice Chair**" means the Non-Executive Director appointed by the Council of Governors in general meeting from the Non- Executive Directors as Vice Chair to take on the Chair's duties in his capacity as Chair if the Chair is absent for any reason.

SECTION B – STANDING ORDERS

1. INTRODUCTION

- (1) The Royal Orthopaedic Hospital NHS Foundation Trust is a statutory body which became a public benefit corporation on 1 February 2007 following approval by Monitor pursuant to the 2006 Act.
- (2) The principal place of business of the Trust is Royal Orthopaedic Hospital NHS Trust, Bristol Road South, Northfield, Birmingham, B31 2AP.
- (3) NHS Foundation Trusts are governed by the 2006 Act, their constitutions and their NHS provider licences issued by Monitor (the Regulatory Framework).
- (4) The functions of the Trust are conferred by the Regulatory Framework.
- (5) As a body corporate, the Trust has specified powers to contract in its own name and to act as a corporate trustee. In the latter role it is accountable to the Charity Commission for those funds deemed to be charitable. The Trust also has a common law duty as a bailee for patients property held by the Trust on behalf of patients
- (6) The Regulatory Framework requires the Trust to adopt Standing Orders for the regulation of its proceedings and business.
- (7) The Trust will also be bound by such other statutes and legal provisions which govern the conduct of its affairs.
- (8) The Scheme of Delegation and the Standing Financial Instructions provide a comprehensive business framework for the administration of the Trust's affairs and need to be read in conjunction with the Constitution. All Directors and Nominated Officers should be aware of the existence of these documents and where necessary familiar with the detailed provisions contained in them.

1.2 Monitor and the NHS Framework

- (1) In addition to the statutory requirements, Monitor's provider licence requires the Trust to comply with best practice in the NHS.
- (2) The Regulatory Framework requires that, inter alia, Boards draw up a schedule of decisions reserved to the Board of Directors, and ensure that management arrangements are in place to enable responsibility to be clearly delegated to senior executives (a scheme of delegation). The framework also requires the establishment of audit and remuneration and nominations committees with formally agreed terms of reference.

- (3) The Code of Practice on Openness in the NHS sets out the requirements for public access to information on the NHS.

1.3 Delegation of Powers – Scheme of Delegation

The Trust has powers to delegate and make arrangements for delegation. Under SO5 (Arrangements for the Exercise of Trust Functions by Delegation) the Board of Directors exercises its powers to make arrangements for the exercise, on behalf of the Board of Directors of any of its functions by a committee of the Board of Directors or sub-committee appointed by virtue of SO 4 or by an Officer of the Trust, in each case subject to such restrictions and conditions as the Trust thinks fit. Delegated Powers are covered in the Scheme of Delegation.

2. THE BOARD OF DIRECTORS: COMPOSITION OF MEMBERS AND TENURE

2.1 Composition of the Membership of the Board of Directors and principles for the appointment of members and role of the Nominations and Remuneration Committees

- (1) In accordance with the Trust's constitution, the composition of the Board of Directors shall be:

- (i) A non-executive Chair who is also the Chair of the Council of Governors;
- (ii) Up to 7 Non-Executive Directors;
- (iii) Up to 7 Executive Directors;

such that at least half the Board of Directors, (excluding the Chair), shall be Non-Executive Directors.

- (2) The Board will determine whether the Director is independent in character and judgement and whether there are relationships or circumstances which are likely to affect, or could appear to affect, the director's judgement. Such factors will include whether the Director:

- (i) has been an employee of the NHS Trust within the last five years;
- (ii) has had within the last three years, a material business relationship with the Trust either directly, or as a partner shareholder, director or senior employee of a body that has such a relationship with the Trust;
- (iii) has received or is receiving additional remuneration from the Trust apart from a director's fee, participates in the Trust's performance-related pay scheme, or is a member of the Trust's pension scheme;

- (iv) has close family ties with any of the Trust's advisers, directors or senior employees;
 - (v) holds cross-directorships or has significant links with other directors through involvement in other companies or bodies;
 - (vi) has served on the board of the Trust for more than six years from the date of their first appointment.
- (3) One of the Executive Directors shall be:
- (i) the Chief Executive (whose appointment is to be approved by the Council of Governors except the initial Chief Executive);
 - (ii) the Director of Finance;
 - (iii) a Medical Practitioner
 - (iv) a Registered Nurse
- (4) In consultation with the Council of Governors, the Board will appoint one of the Non-Executive Directors who is deemed by the Board of Directors to be independent by reference to FT Code of Governance to be the Senior Independent Director. The term of office of the Senior Independent Director shall be specified by the Board of Directors on appointing him or her but shall not exceed the remainder of his or her term as a Non-Executive Director.
- (5) The Senior Independent Director shall perform the role set out in the FT Code for senior independent directors and in SO10(2), and otherwise as summarised in a role description agreed between the Board of Directors and the Council of Governors which shall as a minimum include:
- (i) providing a sounding board for the Chair and serving as an intermediary for other Directors where necessary;
 - (ii) leading the Non-Executive Directors in the evaluation of the Chair as part of process agreed with the Council of Governors;
 - (iii) Being available to governors if they have concerns which contact through the normal channels of Chair, Chief Executive or Director of Finance has failed to resolve or for which such contact is inappropriate; and
 - (iv) Attending sufficient meetings with Governors to listen to their views in order to help develop a balanced understanding of the issues and concerns of Governors.

The role description of the Senior Independent Director will be updated from time to time to reflect any changes to the role of Senior Independent Governor in the FT Code from time to time.

2.2 Appointment, re-appointment and removal of the Chair and Non-Executive Directors

As provided by paragraph 26 of the Constitution, the Council of Governors at a general meeting of the Council of Governors shall appoint, re-appoint or remove the Chair of the Trust and the other Non-Executive Directors.

2.3 Remuneration and terms of office of the Chair and Non-Executive Directors

- (1) The Chair and the Non-Executive Directors are to be appointed by the Council of Governors at a general meeting at which the Council of Governors shall decide (taking into account the views of the Council of Governors' Nominations and Remuneration Committee);
 - (i) the period of office;
 - (ii) the remuneration and allowances; and
 - (iii) the other terms and conditions of office of the Chair and other Non-Executive Directors.

2.4 Appointment and removal of Chief Executive and other Executive Directors

- (1) As provided by paragraph 29 of the Constitution, the Non-Executive Directors shall appoint or remove the Chief Executive, save that the appointment of the Chief Executive (other than the initial Chief Executive) shall require the approval of a majority of the Governors present and voting at a general meeting of the Council of Governors.
- (2) The Nominations & Remuneration Committee of the Board of Directors shall appoint or remove the other Executive Directors

2.5 Remuneration and terms of office of the Chief Executive and the Executive Directors

- (1) The Nominations & Remuneration Committee of the Board shall decide:
 - (i) The period of office;
 - (ii) The remuneration and allowances; and
 - (iii) The other terms and conditions of office of the Chief Executive and other Executive Directors.
- (2) The Trust may reimburse Directors' travelling and other costs and

expenses incurred in carrying out their duties at rates determined by the Nominations & Remuneration Committee of the Board above. These are to be disclosed in the annual report.

2.6 Appointment and Powers of Vice Chair

- (1) Subject to Standing Order 2.6(2) below, the Chair and members of the Trust may appoint one of their number who is not also an Executive Director, to be Vice-Chair, for such period, not exceeding the remainder of his/her term as a member of the Trust, as they may specify on appointing him.
- (2) Any member so appointed may at any time resign from the office of Vice-Chair by giving notice in writing to the Chair. The Chair and members may there upon appoint another member as Vice-Chair in accordance with the provisions of Standing Order 2.6 (1).
- (3) Where the Chair of the Trust has died or has ceased to hold office, or where he/she have been unable to perform his or her duties as Chair owing to illness or any other cause, the Vice-Chair shall act as Chair until a new Chair is appointed or the existing Chair resumes their duties, as the case maybe; and references to the Chair in these Standing Orders shall, so long as there is no Chair able to perform those duties, be taken to include references to the Vice-Chair.

2.7 ROLE OF THE BOARD

2.7.1 Role of Members

- (1) The Board is collectively responsible for the performance of the Trust. 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 organisation so as to maximise the benefits for the members of the Trust as a whole and for the public.
- (2) The Board of Directors will:
 - (i) provide entrepreneurial leadership of the Trust within a framework of prudent and effective controls, which enables risk to be assessed and managed.
 - (ii) be responsible for ensuring compliance by the Trust with its licence, its constitution, mandatory guidance issued by NHS Improvement, relevant statutory requirements and contractual obligations.
 - (iii) develop and articulate a clear “vision” for the Trust which will be a formally agreed statement of the organisation’s purpose and intended outcomes which can be used as a

basis for the organisation's overall strategy, planning and other decisions.

- (iv) set the Trust's strategic aims at least annually taking into consideration the views of the Council of Governors, ensuring that the necessary financial and human resources are in place for the Trust to meet its priorities and objectives and, then, periodically reviewing progress and management performance.
- (v) as a whole be responsible for ensuring the quality and safety of health care services, education, training and research delivered by the Trust and applying the principles and standards of clinical governance set out by the Department of Health (DH), NHS Improvement/England, the Care Quality Commission (CQC) and other relevant NHS bodies.
- (vi) ensure that the Trust functions effectively, efficiently and economically.
- (vii) set the Trust's vision, values and standards of conduct and ensure that its obligations to its members are understood, clearly communicated and met

(3) All Directors:

- (i) will take decisions objectively in the best interests of the Trust and avoid conflicts of interest.
- (ii) have joint responsibility for every decision of the Board regardless of their individual skills or status. This does not impact upon the particular responsibilities of the Chief Executive as the Accounting Officer.
- (iii) have a responsibility to constructively challenge during Board discussions and help develop proposals on priorities, risk mitigation, values, standards and strategy.

- (4) Non-Executive Directors will scrutinise the performance of the executive management in meeting agreed goals and objectives, receive adequate information and monitor the reporting of performance. They will satisfy themselves as to the integrity of financial, clinical and other information, and make sure that financial and clinical quality controls, and systems of risk management and governance, are robust and implemented. They are responsible for determining appropriate levels of remuneration of executive directors and have a prime role in appointing and, where necessary, removing executive directors, and in succession planning.

2.7.2 Executive Directors

Executive Directors shall exercise their authority within the terms of these Standing Orders and the Standing Financial Instructions and the Scheme of Delegation.

2.7.3 Chief Executive

The Chief Executive shall be responsible for the overall performance of the executive functions of the Trust. He/she shall be the Accounting Officer for the Trust and shall be responsible to Monitor under the NHS Foundation Trust Accounting Officer Memorandum.

2.7.4 Director of Finance

The Director of Finance shall be responsible for the provision of financial advice to the Trust and to its members and for the supervision of financial control and accounting systems. He/she shall be responsible along with the Chief Executive for ensuring the discharge of obligations under relevant Financial Directions.

2.7.5 Non-Executive Directors

The Non-Executive Directors shall not be granted nor shall they seek to exercise any individual executive powers on behalf of the Trust. They may however, exercise collective authority when acting as members of or when chairing a committee of the Trust which has delegated powers.

2.7.6 Chair

- (1) The Chair shall be responsible for the operation of the Board of Directors and chair all Board meetings when present. The Chair has certain delegated executive powers. The Chair must comply with their terms of appointment and with these Standing Orders.
- (2) The Chair shall work in close harmony with the Chief Executive and shall ensure that key and appropriate issues are discussed by the Board of Directors in a timely manner with all the necessary information and advice being made available to the Board of Directors to inform the debate and ultimate resolutions.
- (3) The Chair will also be the Chair of the Council of Governors.

2.8 Corporate Approach to Trust Business

- (1) All business shall be conducted in the name of the Trust.
- (2) All funds received in trust shall be held in the name of the Trust as corporate trustee.

2.9 Schedule of Matters Reserved to the Board of Directors and Scheme of Delegation

The Board of Directors has resolved that certain powers and decisions may only be exercised by the Board of Directors in formal session. These powers and decisions are set out in the 'Schedule of Matters Reserved to the Board' and shall be read in conjunction with these Standing Orders. Those powers which it has delegated to officers and other bodies are contained in the Scheme of Delegation.

2.10 Lead Roles for Board Members

The Chair will ensure that the designation of Lead roles or appointments of Board members as set out in any statutory or other guidance binding on the Trust will be made in accordance with that guidance or statutory requirement (e.g. appointing a Lead Board Member with responsibilities for Infection Control or Child Protection Services etc.).

3. MEETINGS OF THE TRUST

3.1 Calling meetings

- (1) 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.
- (2) The Chair of the Trust may call a meeting of the Board of Directors at any time.
- (3) One third or more members of the Board of Directors may requisition a meeting in writing. If the Chair refuses, or fails, to call a meeting within seven days of a requisition being presented, the members signing the requisition may forth with call a meeting.
- (4) Ordinary meetings of the Board of Directors shall be held in public.

3.2 Notice of Meetings and the Business to be transacted

- (1) Before each meeting of the Board of Directors a written notice specifying the business proposed to be transacted shall be delivered to every member, or sent by post to the usual place of residence of each member, so as to be available to members at least three Clear Days before the meeting. The notice shall be signed by the Chair or by an officer authorised by the Chair to sign on their behalf. Want of service of such a notice on any one member shall not affect the validity of a meeting.
- (2) In the case of a meeting called by members in default of the Chair calling the meeting, the notice shall be signed by those members.

- (3) No business shall be transacted at the meeting other than that specified on the agenda, or emergency motions allowed under Standing Order 3.6.
- (4) A member desiring a matter to be included on an agenda shall make his/her request in writing to the Chair at least 10 Clear Days before the meeting. The request should state whether the item of business is proposed to be transacted in the presence of the public and should include appropriate supporting information. Requests made less than 10 days before a meeting may be included on the agenda at the discretion of the Chair.
- (5) Before each public meeting of the Board of Directors a notice of the time and place of the meeting shall be displayed at the Trust's principal offices and on the Trust's website; and the public part of the agenda shall be displayed on the Trust's website at least three Clear Days before the meeting.

3.3 Agenda and Supporting Papers

The Agenda and supporting papers, will be sent to Members no later than three Clear Days before the meeting, save in emergency. Failure to despatch the agenda and supporting papers within the above timescales shall not affect the validity of a meeting unless the consequences of such failure were to reduce attendance at the meeting below a level at which the meeting was quorate.

3.4 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.

3.5 Notice of Motion

- (1) Subject to the provision of Standing Orders 3.7 'Motions: Procedure at and during a meeting' and 3.8 'Motions to rescind a resolution', a member of the Board of Directors wishing to move a motion shall send a written notice to the Chief Executive who will ensure that it is brought to the immediate attention of the Chair.
- (2) The notice shall be delivered at least 10 Clear Days before the meeting. The Chief Executive shall include in the agenda for the meeting all notices so received that are in order and permissible under governing regulations. This Standing Order shall not prevent any motion being withdrawn or moved without notice on any business mentioned on the agenda for the meeting.

3.6 Emergency Motions

Subject to the agreement of the Chair, and subject also to the provision of

Standing Order 3.7 'Motions: Procedure at and during a meeting', a member of the Board of Directors may give written notice of an emergency motion after the issue of the notice of meeting and agenda, up to one hour before the time fixed for the meeting. The notice shall state the grounds of urgency. If in order, it shall be declared to the Board of Directors 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.

3.7 Motions: Procedure at and during a meeting

(i) Who may propose

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

(ii) Contents of motions

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

- the reception of a report;
- consideration of any item of business before the Board of Directors;
- the accuracy of minutes;
- that the Board proceed to next business;
- that the Board adjourn;
- that the question be now put.

(iii) Amendments to motions

A motion for amendment shall not be discussed unless it has been proposed and seconded.

Amendments to motions shall be moved relevant to the motion, and shall not have the effect of negating the motion before the Board of Directors.

If there are a number of amendments, they shall be considered one at a time. When a motion has been amended, the amended motion shall become the substantive motion before the meeting, upon which any further amendment may be moved.

(iv) Rights of reply to motions

(a) Amendments

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

(b) Substantive/original motion

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

(v) **Withdrawing a motion**

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

(vi) **Motions once under debate**

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

- an amendment to the motion;
- the adjournment of the discussion, or the meeting;
- that the meeting proceed to the next business (*);
- that the question should be now put (*);
- the appointment of an 'ad hoc' committee to deal with a specific item of business;
- that a member/director be not further heard;
- a motion resolving to exclude the public, including the press.

(*) In those cases where the motion is either that the meeting proceeds to the 'next business' or 'that the question be now put' in the interests of objectivity these should only be put forward by a member of the Board of Directors who has not taken part in the debate and who is eligible to vote.

If a motion to proceed to the next business or that the question be now put, is carried, the Chair should give the mover of the substantive motion under debate a right of reply, if not already exercised. The matter should then be put to the vote.

3.8 Motion to Rescind a Resolution

- (1) Notice of motion to rescind any resolution (or the general substance of any resolution) which has been passed within the preceding six calendar months shall bear the signature of the member who gives it and also the signature of three other members, and before considering any such motion of which notice shall have been given, the Board of Directors may refer the matter to any appropriate Committee or the Chief Executive for recommendation.
- (2) When any such motion has been dealt with by the Board of Directors it shall not be competent for any director other than the Chair to propose a motion to the same effect within six months. This Standing Order shall not apply to motions moved in pursuance of a report or recommendations of a Committee or the Chief Executive

3.9 Chair of meeting

- (1) 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 the Board of Directors has appointed one), if present, shall preside.
- (2) If the Chair and Vice-Chair are absent, such member (who is not also an Executive Director of the Trust) as the members present shall choose shall preside.

3.10 Chair's ruling

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

3.11 Quorum

- (1) No business shall be transacted at a meeting unless at least one-third of the whole number of the Chair and Members (including at least one Member who is also an Executive Director of the Trust and one Non-Executive Director) is present.
- (2) An Officer in attendance for an Executive Director but without formal acting up status may not count towards the quorum.
- (3) If at any meeting there is no quorum present within 30 minutes of the time fixed for the start of the meeting, at the discretion of the Chair the meeting shall stand adjourned and the Company Secretary shall give or shall procure the giving of notice to all Members of the date, time and place of the adjourned meeting. Notwithstanding Standing Order 3.11(1) above, upon convening, those present shall constitute a quorum.
- (4) If the Chair or member has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of a declaration of a conflict of interest (see SO No.7) that person shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business.

3.12 Voting

- (1) Save as provided in Standing Orders 3.13 - Suspension of Standing Orders and 3.13 - Variation and Amendment of Standing Orders, every question put to a vote at a meeting shall be determined by a majority of the votes of members present and voting on the question. In the case of an equal vote, the person presiding (i.e. the Chair of the meeting

shall have a second, and casting vote.

- (2) At the discretion of the Chair all questions put to the vote shall be determined by oral expression or by a show of hands, unless the Chair directs otherwise, or it is proposed, seconded and carried that a vote be taken by paper ballot.
- (3) If at least one third of the members present so request, the voting on any question may be recorded so as to show how each member present voted or did not vote (except when conducted by paper ballot).
- (4) If a member so requests, their vote shall be recorded by name.
- (5) In no circumstances may an absent member vote by proxy. A Member may only vote if present at the time of the vote on which the question is to be decided. A Member is considered to be present at a meeting in the circumstances outlined in SO 3.16 below.
- (6) A manager who has been formally appointed 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.
- (7) A manager attending the Board of Directors meeting to represent an Executive Director during a period of incapacity or temporary absence without formal acting up status may not exercise the voting rights of the Executive Director. An Officer's status when attending a meeting shall be recorded in the minutes.

3.13 Suspension of Standing Orders

- (1) Except where this would contravene any statutory provision or rules relating to the quorum (SO 3.11), any one or more of the Standing Orders may be suspended at any meeting, provided that at least two-thirds of the whole number of the members of the Board of Directors are present (including at least one member who is an Executive Director of the Trust and one Non-Executive who is not) and that at least two-thirds of those members present signify their agreement to such suspension. The reason for the decision to suspend Standing Orders shall be recorded in the Board's minutes.
- (2) A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the Chair and members of the Trust.
- (3) Formal business can only be transacted while standing orders have been suspended with the written agreement of the Audit Committee.
- (4) The Audit Committee shall review every decision to suspend Standing Orders.

3.14 Variation and amendment of Standing Orders

These Standing Orders shall be amended only if the variation proposed does not contravene the Regulatory Framework any guidance or best practice advice issued by NHS Improvement and is approved in accordance with paragraph 45 of the Trust's Constitution

3.15 Record of Attendance

- (1) The names of the Chair and Directors present at the meeting shall be recorded.

3.16 Participation in Meetings

- (1) Any Director or Member of a Committee of the Board of Directors may participate in a meeting of the Board of Directors or such committee by telephone, computer or video link whereby all persons participating in the meeting can hear each other participate in the meeting in this manner shall be deemed to constitute presence, to count towards a quorum and in the event of a vote count toward that vote.
- (2) All decisions taken in good faith at a meeting of the Board of Directors or at any Committee of the Board shall be valid and shall not be invalidated even if it is discovered subsequently that there was a defect in the calling of the meeting, or by any vacancy of its membership or defect in a Director's appointment.

3.17 Minutes

- (1) The minutes of the proceedings of a meeting shall be drawn up and submitted for agreement at the next ensuing meeting where they shall be signed by the person presiding at it.
- (2) No discussion shall take place upon the minutes except upon their accuracy or where the Chair considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the meeting.

3.18 Admission of public and the press

- (i) **Admission and exclusion on grounds of confidentiality of business to be transacted**

The public and representatives of the press may attend all public meetings of the Trust, but shall be required to withdraw upon the Board of Directors deciding as follows:

- 'that representatives of the press, and other members of the public, be excluded from the remainder of this meeting having regard to

the confidential nature of the business to be transacted, publicity on which would be prejudicial to the public interest' - Guidance should be sought from the NHS Trust's Freedom of Information Lead to ensure correct procedure is followed on matters to be included in the exclusion.

(ii) General disturbances

The Chair (or Vice -Chair if one has been appointed) or the person presiding over the meeting shall give such directions as he thinks fit with regard to the arrangements for meetings and accommodation of the public and representatives of the press such as to ensure that the Trust's business shall be conducted without interruption and disruption and, without prejudice to the power to exclude on grounds of the confidential nature of the business to be transacted, the public will be required to withdraw upon the Board of Directors resolving as follows:

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

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

Matters to be dealt with by the Board of Directors following the exclusion of representatives of the press, and other members of the public, as provided in (i) and (ii) above, shall be confidential to the members of the Board.

Members or any employee of the Trust in attendance shall not reveal or disclose the contents of papers marked 'In Confidence' or minutes marked as 'Private' or 'Confidential' outside of the Trust, without the express permission of the Trust. This prohibition shall apply equally to the content of any discussion during the Board meeting which may take place on such reports or papers.

(iv) (Use of Mechanical or Electrical Equipment for Recording or Transmission of Meetings

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

3.19 Observers at Board of Directors meetings

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

4. APPOINTMENT OF COMMITTEES AND SUB-COMMITTEES

4.1 Appointment of Committees

- (1) Subject to the Regulatory Framework, the Board of Directors may appoint committees consisting of Directors.
- (2) The Trust shall determine the membership and terms of reference of committees and sub-committees and shall if it requires to, receive and consider reports of such committees.

4.2 Applicability of Standing Orders and Standing Financial Instructions to Committees

The Standing Orders and Standing Financial Instructions of the Trust, as far as they are applicable, shall as appropriate apply to meetings and any committees established by the Trust. In which case the term "Chair" is to be read as a reference to the Chair of other committees as the context permits, and the term "member" is to be read as a reference to a member of other committees also as the context permits. (There is no requirement to hold meetings of committees established by the Board of Directors in public.)

4.3 Confidentiality

- 4.3.1 A Member of a Committee shall not disclose a matter dealt with, by, or brought before, the Committee without its permission until the Committee shall have reported to the Board of Directors or shall otherwise have concluded on that matter.
- 4.3.2 A Director or a Member of a Committee shall not disclose any matter reported to the Board of Directors or otherwise dealt with by the Committee, notwithstanding that the matter has been reported or action has been concluded, if the Board of Directors or Committee shall resolve that it is confidential.

4.4 Terms of Reference

Each such Committee shall have such terms of reference and powers and be subject to such conditions (as to reporting back to the Board of Directors), as the Board of Directors shall decide and shall be in accordance with any legislation. Such terms of reference shall have effect as if incorporated into the Standing Orders.

4.5 Delegation of powers by Committees to Sub-Committees

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

4.6 Approval of Appointments to Committees

The Board of Directors shall approve the appointments to each of the committees which it has formally constituted. The Board of Directors shall define the powers of such appointees and shall agree allowances, including reimbursement for loss of earnings, and/or expenses in accordance where appropriate with national guidance.

4.7 Appointments for Statutory functions

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

4.8 Committees established by the Board of Directors

4.8.1 The committees and sub-committees established by the Board of Directors are:

- (i) Nominations & Remuneration Committee;
- (ii) Quality & Safety Committee
- (iii) Staff Experience & Organisational Development Committee
- (iv) Finance & Performance Committee; and
- (v) Audit Committee.

4.8.2 The constitution and terms of reference of Committees referred to in SO 4.8.1 shall be as set out in terms of reference to be agreed by the Board of Directors.

4.8.3 Other Committees

The Board of Directors may also establish such other committees as required to discharge the Trust's responsibilities

5. ARRANGEMENTS FOR THE EXERCISE OF TRUST FUNCTIONS BY DELEGATION

5.1 Delegation of Functions to Committees, Officers or other bodies

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

5.2 Emergency Powers and urgent decisions

The powers which the Board of Directors has reserved to itself within these Standing Orders (see Standing Order 2.9) may in emergency or for an urgent decision be exercised by the Chief Executive and the Chair after having consulted at least two Non-Executive Directors. The exercise of such powers by the Chief Executive and Chair shall be reported to the next formal meeting of the Board of Directors for noting.

5.3 Delegation to Committees

5.3.1 The Board of Directors shall agree from time to time to the delegation of executive powers to be exercised by other committees or sub-committees, which it has formally constituted in accordance with the Constitution. The constitution and terms of reference of these committees, or sub-committees and their specific executive powers shall be approved by the Board of Directors.

5.4 Delegation to Nominated Officers

5.4.1 Those functions of the Trust which have not been retained as reserved by the Board of Directors or delegated to other committee or sub-committee or joint-committee shall be exercised on behalf of the Trust by the Chief Executive. The Chief Executive shall determine which functions they will perform personally and shall nominate officers to undertake the remaining functions for which they will still retain accountability to the Trust.

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

5.4.3 Nothing in the Scheme of Delegation shall impair the discharge of the direct accountability to the Board of Directors of the Director of Finance to provide information and advise the Board of Directors in accordance with statutory or Department of Health requirements. Outside these statutory requirements the roles of the Director of

Finance shall be accountable to the Chief Executive for operational matters.

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

5.5.1 The arrangements made by the Board of Directors as set out in the "Schedule of Matters Reserved to the Board" and "Scheme of Delegation" of powers shall be read in conjunction with these Standing Orders.

5.6 Duty to report non-compliance with Standing Orders and Standing Financial Instructions

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

6. OVERLAP WITH OTHER TRUST POLICY STATEMENTS/ PROCEDURES, REGULATIONS AND THE STANDING FINANCIAL INSTRUCTIONS

6.1 Policy statements: general principles

The Board of Directors will from time to time agree and approve Policy statements/procedures which will apply to all or specific groups of staff employed by the Royal Orthopaedic Hospital NHS Foundation Trust. The decisions to approve such policies and procedures will be recorded in an appropriate Board minute and will be deemed where appropriate to be an integral part of the Trust's Standing Orders and Standing Financial Instructions.

6.2 Specific Policy statements

Notwithstanding the application of SO 6.1 above, these Standing Orders and Standing Financial Instructions must be read in conjunction with the following Policy statements:

- the Conflicts of Interest Policy for the Royal Orthopaedic Hospital NHS Foundation Trust staff
- the staff Disciplinary and Grievance Policy adopted by the Trust both of which shall have effect as if incorporated in these Standing Orders.

6.3 Standing Financial Instructions

Standing Financial Instructions adopted by the Board of Directors in accordance with the Financial Regulations shall have effect as if incorporated in these Standing Orders.

6.4 Specific guidance

Notwithstanding the application of SO 6.1 above, these Standing Orders and Standing Financial Instructions must be read in conjunction with the following guidance and any other issued by the Secretary of State for Health:

- Caldicott Guardian 1997;
- Human Rights Act 1998;
- Freedom of Information Act 2000.
- UK General Data Protection Regulation

7. DUTIES AND OBLIGATIONS OF BOARD MEMBERS/DIRECTORS AND STAFF UNDER THESE STANDING ORDERS

7.1 Declaration of Interests

7.1.1 Requirements for Declaring Interests and applicability to the Board of Directors

The Regulatory Framework requires members of the Board of Directors to declare interests which are relevant and material to the Board of Directors of which they are a member. All existing Board members should declare such interests. Any Board members appointed subsequently should do so on appointment. All interests should be "re-declared" at least annually

7.1.2 Interests which are relevant and material

- (1) Interests which should be regarded as "relevant and material" are as follows and are to be interpreted in accordance with guidance and best practice advice issued by NHS Improvement:
 - (i) Directorships, or equivalent held in private companies, public limited companies, (with the exception of those of dormant companies), NHS organisations, government departments, local authorities, charities or voluntary organisations. This includes positions of authority which are comparable to a director in a company, such as a trustee of a charity or voluntary organisation and partnerships (including membership of LLPs).

- (ii) Subject to SO 7.3.(1) (iv) any pecuniary interest in a contract within the meaning of SO 7.3 (1) (iii) other than those pecuniary interests that are not regarded as such under SO7.3(1)(iv) (Exception to Pecuniary Interests).
 - (iii) Direct ownership or part-ownership of private companies, public limited companies, partnerships (including membership of LLPs) or sole trader businesses in the field of health and social care, for example pharmaceuticals, medical devices, and some consultancy or IT. For the avoidance of doubt interests held via pooled investments such as investment trusts, unit trusts and pension funds managed by an independent manager should be excluded under this heading.
 - (iv) Direct ownership or part-ownership of private companies, public limited companies, partnerships (including membership of LLPs) or sole trader businesses likely to do business with the Trust. For the avoidance of doubt interests held via pooled investments such as investment trusts, unit trusts and pension funds managed by an independent manager should be excluded under this heading.
 - (v) Any employment, volunteer position or fee generating relationship with an organisation in the field of health or social care.
 - (vi) Research funding/ grants that may be received by an individual or their employer or organisation of which they are a director to fund work that they are directly involved or which any private or public company, business or consultancy which is owned in whole or part by them is directly involved in.
- (2) If any member of the Board of Directors comes to know that the Trust has entered into or proposes to enter into a contract in which they or any person connected with them (as defined in Standing Order 7.3 below and elsewhere) has any pecuniary interest, direct or indirect, the Board member should have declared their interest under 7.1.2 (1) (ii) but if they have not already done so, they should do so by giving notice in writing of such fact to the Trust as soon as practicable. In addition, they should alert the Chair of any such interest at the beginning of every Board meeting at which such contract is likely to be material to any Board discussion, notwithstanding that such interest has already been declared and recorded on the Register of Director's interests.

7.1.3 Advice on Interests

- (1) If Board members have any doubt about the relevance of an interest, this should be discussed with the Chair of the Board of Directors or with the Trust's Company Secretary.

- (2) Financial Reporting Standard No 8 (issued by the Accounting Standards Board) specifies that influence rather than the immediacy of the relationship is more important in assessing the relevance of an interest.

7.1.4 Recording of Interests in Board minutes

- (1) At the time Board members' interests are declared, they should be recorded in the Board minutes.
- (2) Any changes in interests should be declared at the next Board of Directors meeting following the change occurring and recorded in the minutes of that meeting.

7.1.5 Publication of declared interests in Annual Report

Board members' directorships of companies likely or possibly seeking to do business with the NHS should be published in the Trust's annual report. The information should be kept up to date for inclusion in succeeding annual reports.

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

During the course of a Board meeting, if a conflict of interest is established, the Board member concerned should withdraw from the meeting and play no part in the relevant discussion or decision. (See overlap with SO 7.3)

7.2 Register of Interests

- (1) The Company Secretary will ensure that a Register of Interests is established to record formally declarations of interests of Board members. The Register shall include the names of each Director, whether he has declared any interests and, if so, the interests declared and details of the business of the organisations declared.
- (2) These details will be kept up to date by means of an annual review of the Register in which any changes to interests declared during the preceding twelve months will be incorporated.
- (3) The Register will be available to the public and the Company Secretary will take reasonable steps to bring the existence of the Register to the attention of local residents and to publicise arrangements for viewing it.

7.3 Exclusion of Chair and Members in proceedings on account of Pecuniary Interest

- (1) **Definition of terms used in interpreting 'Pecuniary' interest**

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

- (i) "spouse" shall include any person who lives with another person in the same household (and any pecuniary interest of one spouse shall, if known to the other spouse, be deemed to be an interest of that other spouse);
- (ii) "contract" shall include any proposed contract or other course of dealing.
- (iii) "Pecuniary interest" subject to the exceptions set out in this Standing Order, a person shall be treated as having an indirect pecuniary interest in a contract if:-
 - (a) they, or a nominee of theirs, is a member of a company or other body (not being a public body), with which the contract is made, or to be made or which has a direct pecuniary interest in the same, or
 - (b) they are a partner, associate or employee of any person with whom the contract is made or to be made or who has a direct pecuniary interest in the same.
- (iv) Exception to Pecuniary interests

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

- (a) neither they or any person connected with them has any beneficial interest in the securities of a company of which they or such person appears as a member, or
- (b) any interest that they or any person connected with them may have in the contract is so remote or insignificant that it cannot reasonably be regarded as likely to influence them in relation to considering or voting on that contract, or
- (c) those securities of any company in which they (or any person connected with them) has a beneficial interest do not exceed £5,000 in nominal value or one percent of the total issued share capital of the company or of the relevant class of such capital, whichever is the less.

Provided however, that where paragraph(c) above applies the person shall nevertheless be obliged to disclose/declare their interest in accordance with Standing Order 7.1.2 (ii).

7.3.2 Exclusion in proceedings of the Board of Directors

- (1) Subject to the following provisions of this Standing Order, if the Chair or a member of the Board of Directors has any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter and is present at a meeting of the Board of Directors at which the contractor other matter is the subject of consideration, they shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not take part in the consideration or discussion of the contract or other matter or vote on any question with respect to it.
- (2) The Board of Directors may exclude the Chair or a member of the Board from a meeting of the Board of Directors while any contract, proposed contractor other matter in which they have a pecuniary interest is under consideration.
- (3) Any remuneration, compensation or allowance payable to the Chair or a Member in their capacity as Chair or member of the Board of Directors as agreed by the Nominations & Remuneration Committee shall not be treated as a pecuniary interest for the purpose of this Standing Order.
- (4) This Standing Order applies to a committee or sub-committee as it applies to the Board.

7.4 Standards of Business Conduct

7.4.1 Trust Policy and Guidance

Directors must comply with the Trust's Constitution, the requirements of the Regulatory Framework and any guidance and best practice advice issued by NHS Improvement or any policies issued by the Trust.

7.4.2 Interests of Staff

- (i) Any member of Staff of the Trust who comes to know that the Trust has entered into or proposes to enter into a contract in which they or any person connected with them (as defined in SO 7.3) has any pecuniary interest, direct or indirect, the member of Staff shall declare their interest by giving notice in writing of such fact to the Company Secretary or Chief Executive as soon as practicable.
- (ii) Any member of Staff should also declare to the Company Secretary any other employment or business or other relationship of theirs, or of a cohabiting spouse, that conflicts, or might reasonably be predicted could conflict with the interests of the Trust. This could include any significant opportunity for personal gain, financial or otherwise associated with the member of Staff's status as an member of Staff of the Trust and access to the Trust's resources, for

example relating to IP, wider know how, brand and reputation.

- (iii) The Trust will require interests, employment or relationships of members of Staff so declared to be entered in a register of interests of Staff. All declarations across the Trust should be “re-declared” at least annually. Trust management shall have discretion regarding which members of Staff or which staff groups are required to add an entry in the register of interests of Staff. For example management may decide that it is not a proportionate approach to risk management to require junior staff with no budgetary responsibility to add their entry to the register of interests of Staff.

7.4.3 Canvassing of and Recommendations by Members in Relation to Appointments

- (i) Canvassing of members of the Trust or of any Committee of the Trust directly or indirectly for any appointment under the Trust shall disqualify the candidate for such appointment. The contents of this paragraph of the Standing Order shall be included in application forms or otherwise brought to the attention of candidates.
- (ii) Members of the Trust shall not solicit for any person any appointment under the Trust or recommend any person for such appointment; but this paragraph of this Standing Order shall not preclude a Director from giving written testimonial of a candidate’s ability, experience or character for submission to the Trust

7.4.4 Relationships of Directors or Officers

- (i) Candidates for any staff appointment under the Trust shall, when making an application, disclose in writing to the Trust whether they are related to any Director or Officer of the Trust. Failure to disclose such a relationship shall disqualify a candidate and, if appointed, render him liable to instant dismissal.
- (ii) The Chair and every Executive and Non-Executive Director of the Trust shall disclose to the Board of Directors any relationship between himself and a candidate of whose candidature that member or officer is aware. It shall be the duty of the Chief Executive to report to the Board of Directors any such disclosure made.
- (iii) On appointment, Non-Executive 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 member or holder of any office under the Trust.
- (iv) Where the relationship to a member of the Trust is disclosed, the Standing Order headed “Disability of Chair and members in proceedings on account of pecuniary interest” (SO 7) shall apply.

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

8.1 Custody of Seal

The common seal of the Trust shall be kept by the Company Secretary or a nominated manager by them in a secure place.

8.2 Sealing of Documents

Where it is necessary that a document shall be sealed, the seal shall be affixed in the presence of two senior managers duly authorised by the Chief Executive, and not also from the originating department, and shall be attested by them.

8.3 Register of Sealing

The Company Secretary shall keep a register in which they, or another manager of the Authority authorised by them, shall enter a record of the sealing of every document.

8.4 Signature of documents

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

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

9. INTERFACE BETWEEN THE BOARD OF DIRECTORS AND THE COUNCIL OF GOVERNORS

(1). The Board of Directors will co-operate with the Council of Governors in order to comply with the Regulatory Framework in all respects and in particular in relation to the following matters which are set out specifically within the Constitution:

- (i) The Directors, having regard to the views of the Council of Governors, are to prepare the information as to the Trust's forward planning in respect of each financial year to be given to NHS Improvement.
- (ii) The Directors are to present to the Council of Governors at a general meeting the annual accounts, any reports of the Auditor on them, and the annual report. This requirement may be

satisfied by at least one Executive Director being present at the relevant meeting to discharge these responsibilities

10. COMMUNICATION AND CONFLICT

- (1) These Standing Orders describe the processes intended to ensure a successful and constructive relationship between the Council of Governors and the Board of Directors. It emphasises the importance of informal and formal communication, and confirms the formal arrangements for communication within the Trust. It suggests an approach to informal communications, and sets out the formal arrangements for resolving conflicts between the Council of Governors and the Board of Directors.
- (2) Informal and frequent communication between the Governors and the Directors is an essential feature of a positive and constructive relationship designed to benefit the Trust and the services it provides. The Senior Independent Director or Chair will encourage informal methods of communication on behalf of the Board of Directors including: discussions between Governors and the Chair, the Chief Executive or a Director, through the office of the Chief Executive or any other person appointed to perform the duties of the Chief Executive to the Board.
- (3) Formal communications are defined by the constitutional roles and responsibilities of the Council of Governors and the Board of Directors respectively. Communications initiated by the Council of Governors, and intended for the Board of Directors, will be conducted as follows:-
 - (i) Specific requests by the Council of Governors will be made through the Chair, to the Board of Directors;
 - (ii) Any Governor has the right to raise specific issues at a duly constituted meeting of the Council of Governors through the Chair. In the event of disagreement, two thirds of the Governors present must approve the request. The Chair will raise the matter with the Board of Directors and provide the response to the Council of Governors.
 - (iii) Joint informal meetings will take place between the Council of Governors and the Board of Directors as and when necessary.
- (4) The following formal methods of communication will also be used:-
 - (i) Provision of formal reports or presentations by Executive Directors to a meeting of the Council of Governors.
 - (ii) Reporting the views of the Council of Governors to the Board of Directors through the Chair or Vice Chair.

- (5) The Council of Governors and the Board of Directors must be committed to developing and maintaining a constructive and positive relationship. The aim at all times is to resolve any potential or actual differences of opinion quickly, through discussion and negotiation.
- (6) If through informal efforts the Chair cannot achieve resolution of a disagreement or conflict, the Chair will follow the dispute resolution procedure as described in Annex 9.

11 MISCELLANEOUS (see overlap with SFI No.21.3)

11.1 Standing Orders to be given to Board of Directors

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

11.2 Review of Standing Orders

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

ANNEX 9 – FURTHER PROVISIONS

(Paragraph10.4)

1. Disqualification

1.1 A person may not become a member of the Trust if within the last five years they have been involved as a perpetrator in an incident of violence or abuse:

- 1.1.1 at any NHS hospitals or facilities;
- 1.1.2 against any NHS employees or other persons who exercise functions for the purposes of the NHS;
- 1.1.3 against registered volunteers;
- 1.1.4 against patients or the public on NHS premises.

2. Expulsion from membership of the Trust

2.1 A Member shall cease to be a Member if:

- 2.1.1 they resign by notice to the Company Secretary;
- 2.1.2 they die;
- 2.1.3 they are expelled from membership under this Constitution;
- 2.1.4 they cease to be entitled under this Constitution to be a member of any of the Public Constituencies or of any of the classes of the Staff Constituency;
- 2.1.5 if after enquiries made in accordance with a process approved by the Council of Governors, they fail to establish that they wish to continue to be a Member.

2.2 A Member may be expelled by a resolution approved by not less than two- thirds of the members of the Council of Governors present and voting at a meeting of the Council of Governors. The following procedure is to be adopted:

- 2.2.1 Any Member may complain to the Company Secretary that another Member has acted in away detrimental to the interests of the Trust, or is otherwise disqualified as set out in paragraph 2 above.
- 2.2.2 The Chair of the Council of Governors, assisted by the Company Secretary, will judge the manner in which the

complaint should be managed.

2.2.3 If appropriate, the Council of Governors will consider the complaint having taken such steps as it considers appropriate to ensure that the point of view of the Members involved is heard and may either:

2.2.3.1 dismiss the complaint and taken no further action; or

2.2.3.2 arrange for the complaint to be considered at the next meeting of the Council of Governors.

2.2.4 Details of the complaint must be sent to the Member complained of not less than one calendar month before the meeting with an invitation to answer the complaint and attend the next meeting of the Council of Governors.

2.2.5 At the meeting the Council of Governors will consider evidence in support of the complaint and such evidence as the Member complained of may wish to place before them.

2.2.6 If the Member complained of fails to attend the meeting without reasonable cause the meeting may proceed in their absence.

2.2.7 The Council of Governors will take a view on the complaint and may decide to expel the Member from membership of the Foundation Trust. To effect expulsion from membership, the Council of Governors will adopt a resolution approved by not less than two-thirds of the members of the Council of Governors present and voting at a meeting of the Council of Governors.

2.2.8 A person expelled from membership will cease to be a member upon the declaration by the Chair of the meeting that the resolution to expel that person has been carried.

A member who is expelled may apply for re-admission to membership. This application is to be made in writing to the Chair, who will arrange for the application to be considered by the next meeting of the Council of Governors. 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.

3. Trust Secretary

3.1 The Trust may have a Company Secretary, who shall be appointed and removed by the Chair and Chief Executive acting jointly.

4. Indemnity

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

5. Vacancies

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

6. Directors

6.1 If:

- 6.1.1 an Executive Director is temporarily unable to perform their duties due to illness or some other reason(the "Absent Director");and
- 6.1.2 the Board of Directors agree that it is inappropriate to terminate the Absent Director's term of office and appoint a replacement director; and
- 6.1.2 the Board of Directors agree that the duties of the Absent Director need to be carried out;

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

- 6.2 For the purposes of paragraph 6.1 of this Annex, the maximum number of directors that may be appointed under paragraph 23 of the Constitution shall be relaxed accordingly.
- 6.3 The Acting director will vacate office as soon as the Absent Director returns to office or, if earlier, the date on which the person entitled to appoint them under this paragraph notifies them that they are no longer to act as an Acting director.
- 6.4 An Acting director shall be an Executive Director for the purposes of the 2006 Act. He/she shall be responsible for their own acts and defaults and he/she shall not be deemed to be the agent of the Absent Director.

7. Vacant Executive Director Positions

7.1 If:

7.1.1 an Executive Director post is vacant ("Vacant Position");and

7.1.2 the Board of Directors agree that the Vacant Position needs to be filled by an interim post holder pending appointment of a permanent post holder,

then the Chair (if the Vacant Position is the Chief Executive) or the Chief Executive (in any other case) may appoint a director as an interim director ("Interim Director") to fill the Vacant Position pending appointment of a permanent post holder.

7.2 The Interim Director will vacate office on the appointment of a permanent post holder or, if earlier, the date on which the persons entitled to appoint them under this paragraph notifies them that they no longer wish them to act as an Interim Director.

7.3 An Interim Director shall be an Executive Director for the purposes of the 2006 Act including purposes such as counting toward the quorum and voting rights.

8. **Vacant Council of Governor positions**

8.1 When a vacancy arises for one or more elected Members of Council, the Council of Governors shall have the option:

8.1.1 to take from the list of members who stood for election at the most recent election of Members of Council for the class or constituency in question whichever member who was not elected as a Member of Council at the recent election but had secured the next most votes at that time. This procedure, which shall be an uncontested election for the purposes of the Model Rules for Elections as they apply to the Trust, shall be available to the Members of Council on 2 occasions within 12 months of the previous election. Members of Council appointed in this way shall hold office for a minimum of 6 months from their appointment but, subject thereto, shall hold office until the earlier of the conclusion of the next election of Members of Council and (except where the vacancy arose through expiry of a term of office) the date on which would have expired the term of office of that Member of Council whose cessation of office gave rise to the vacancy;

8.1.2 to hold the post vacant until the next scheduled annual election of Members of Council; or

8.1.3 proceed to call an election for the vacant post.

ANNEX 10 – TRUST PRINCIPLES

Trust values

The Trust's values aim to create a culture of excellent patient care by ensuring all at the Trust:

- Respect and listen to everyone
- Have compassion for all
- Work together and deliver excellence
- Have pride in and contribute fully to patient care
- Be open, honest and challenge ourselves to deliver the best
- Learn, innovate and improve to continually develop orthopaedic care

Members of Council

As to qualities of Members of Council:

- Honesty and integrity
- Demonstrates the Trust Values and is able to act and take decisions in accordance with the Trusts Equality and Diversity Policy and the Equality Act 2010 in particular to have due regard for factors in relation to the following protected characteristics as specified in the Equality Act of patients and staff:
 - age;
 - disability;
 - gender reassignment;
 - marriage and civil partnership;
 - pregnancy and maternity;
 - race;
 - religion or belief;
 - sex;
 - sexual orientation.
- Representation of broad public constituency
- Awareness of community diversity and a willingness to be trained in that context

The Council of Governors may from time to time amend or vary such statement of principles as it thinks fit.