Central and North West London NHS
NHS Foundation Trust

Foundation Trust Constitution

Central and North West London NHS Foundation Trust

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1 Name

The name of the Foundation Trust is Central and North West London NHS Foundation Trust (the Trust).

2 Principal Purpose

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

2.2 Without prejudice to the Trust's principal purpose, the further purpose of the Trust shall be to provide goods and services for purposes related to the provision of health care in accordance with its statutory powers and duties and the terms of Monitor's authorisation.

2.3 The Trust may also carry on activities other than those mentioned above subject to any restrictions contained in Monitor's authorisation. These activities shall be for the purpose of making additional income available in order to carry on the Trust's principal purpose better.

2.4 The Trust may carry out research in connection with the provision of health care and make facilities and staff available for the purposes of education, training or research carried out by others.

3 Powers

3.1 The powers of the Trust are set out in the 2006 Act, subject to any restrictions in the terms of Authorisation.

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

3.3 Subject to paragraph 3.4 below, any of these powers may be delegated to a committee of Directors or to an Executive Director.

3.4 Where the Trust is exercising the functions of the managers referred to in section 23 of the Mental Health Act 1983 (as amended), those functions may be exercised by any three or more persons authorised by the Board of Directors, each of whom must be neither an Executive Director of the Board of Directors nor an employee of the Trust.

4 Core Principles

4.1 NHS Core Principles

4.1.1 The NHS will provide a universal service for all based on clinical need, not ability to pay. The NHS will provide a comprehensive range of services. The NHS will shape its services around the needs and preferences of individual patients, their families and their carers.

4.1.2 The NHS will respond to the different needs of different populations.

4.1.3 The NHS will work continuously to improve quality services and to minimise errors.

4.1.4 The NHS will support and value its staff;

4.1.5 Public funds for healthcare will be devoted solely to NHS patients.

4.1.6 The NHS will work together with others to ensure a seamless service for patients.

4.1.7 The NHS will help keep people healthy and work to reduce health inequalities.

4.1.8 The NHS will respect the confidentiality of individual patients and provide open access to information about services, treatment and performance.

4.2 **Trust Core Principles**

4.2.1 The Trust aims to provide the best possible patient care, based on evidence and in a culture that encourages continuous improvement.

4.2.2 The Trust will listen to patients and understand what they have to say and encourage their involvement in decisions about their care.

4.2.3 The Trust will aim to provide a clean, healthy and welcoming service environment at their facilities for patients, visitors and staff.

4.2.4 The Trust will aim to improve the patient's experience of care provided by its services respecting their privacy and preserving their dignity.

4.2.5 The Trust will have open and honest communications between staff and patients.

4.2.6 The Trust will recognise the contribution of staff by developing and supporting them to do their jobs better, and involving them in decision making.

The Trust will aim to provide high quality services through working in partnership.

5 Membership and Constituencies

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

5.1 a public constituency;

5.2 a staff constituency; and

5.3 a service users and carers' constituency, referred to in the 2006 Act as the patients' 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 Appendix 1 as an area for a public constituency may become or continue as a member of the Trust.

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

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

7.4 An eligible individual shall become a member upon entry to the membership register pursuant to an application by them.

7.5 On receipt of an application for membership and subject to being satisfied that the applicant is eligible the Secretary shall cause the applicant's name to be entered in the Trust's Register of Members.

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 the individual 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 the individual 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, and are acknowledged in writing by the Trust as so doing for the purposes of this paragraph, 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 5 descriptions of individuals who are eligible for membership of the Staff Constituency, each description of individuals being specified within Appendix 2 and being referred to as a class within the Staff Constituency.

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

Automatic membership by default – staff

8.6 An individual who is:

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

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

shall become a member of the Trust as a member of the Staff Constituency and appropriate class within the Staff Constituency without an application being made, unless the individual informs the Trust otherwise.

8.7 An eligible individual shall become a member upon entry to the membership register either pursuant to the process set out above or pursuant to an application by them.

8.8 On receipt of an application for membership and subject to being satisfied that the applicant is eligible the Secretary shall cause the applicant's name to be entered in the Trust's Register of Members.

8.9 Where an individual is eligible for admission to more than one class in the Staff Constituency, the individual may select a class in writing to the Secretary (but once such a specification has been made, that individual shall not be entitled to subsequently change classes unless the individual ceases to be entitled to be a member of the class of which the individual has chosen to be a member).

8.10 Until such time as an individual shall specify clearly to the Secretary which class the individual wishes to be allocated to pursuant to paragraph 8.9, that individual shall be allocated to such class as the Secretary shall decide as a matter of the Secretary's absolute discretion.

9 Service Users and Carers' Constituency

9.1 An individual:

9.1.1 whose name is recorded as a patient on the Trust's patient administration system or other record maintained by the Trust for the purpose of identifying patients of the Trust and who has, within the period specified below, attended the Trust as a patient; or

9.1.2 who has within the period specified below, attended the Trust as the carer of a patient,

may become or continue as a member of the Trust.

9.2 The period referred to above shall be the period of 3 years immediately preceding the date of an application by the patient or carer to become a member of the Trust.

9.3 Those individuals who are eligible for membership of the Trust by reason of the previous provisions are referred to collectively as the Service Users and Carers' Constituency.

9.4 The Service Users and Carers' Constituency shall be divided into 2 descriptions of individuals who are eligible for membership of the Service Users and Carers' Constituency, each description of individuals being specified within Appendix 3 and being referred to as a class within the Service Users and Carers' Constituency.

9.5 An individual providing care in pursuance of a contract (including a contract of employment) with a voluntary organisation, or as a volunteer for a voluntary organisation, does not come within the category of those who qualify for membership of the Service Users and Carers' Constituency.

9.6 The minimum number of members in the Service Users and Carers' Constituency is specified in Appendix 3.

9.7 An eligible individual shall become a member upon entry to the membership register pursuant to an application by them.

9.8 Where an individual is eligible for admission to both the Public Constituency and the Service Users and Carers' Constituency the individual may specify which Constituency the individual wishes to belong to, either in the individual's application or subsequently in writing (but once such a specification has been made, the individual shall not be entitled to subsequently change Constituencies unless the individual shall cease to be entitled to be a member of the Constituency of which the individual has chosen to be a member).

9.9 If such an individual does not specify, in accordance with paragraph 9.8 above, or the specification is unclear, the individual will be allocated to the Public Constituency, until such time as the individual shall make a clear specification.

9.10 Where an individual is eligible for admission to more than one class in the Service Users and Carers' Constituency, the individual may select to which they wish to belong to in either the individual's application or subsequently in writing (but once the individual has made such a specification, that person shall not be entitled to subsequently change classes unless the individual ceases to be entitled to be a member of the class of the selected).

9.11 If such an individual does not specify in accordance with paragraph 9.10 above, or the specification is unclear, the individual will be allocated to such class as the Secretary shall decide as a matter of the Secretary's absolute discretion until such time as the individual makes a clear specification.

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 shall not become or continue as a member if:

10.3.1 The individual is less than 16 years of age at the time of the application to become a member;

10.3.2 in the five years prior to the individual's application, the individual has been involved as a perpetrator in a serious incident of violence or harassment of people working for the Trust or any other health service body or any service users or carers of or visitors to the Trust or any other health service body consistent with the Trust's Zero Tolerance Policy;

10.3.3 the individual has been excluded from the Trust's premises;

10.3.4 the individual is ineligible under paragraphs 7, 8 or 9 of this Constitution to be a member;

10.3.5 the individual is a vexatious complainant as determined by the Secretary; or

10.3.6 the Council of Members resolves for reasonable cause that the individual so doing would, or would be likely to:

10.3.6.1 prejudice the ability of the Trust to fulfil its principal purpose or any other of its purposes under this Constitution or otherwise to discharge its duties and functions; or

10.3.6.2 harm the Trust's work with other persons or bodies with whom it is engaged or may be engaged in the provision of goods and services; or

10.3.6.3 adversely affect public confidence in the goods or services provided by the Trust; or

10.3.6.4 otherwise bring the Trust into disrepute.

10.4 A member shall cease to be a member if the individual:

10.4.1 resigns by giving notice in writing to the Secretary;

10.4.2 is deceased; or

10.4.3 ceases to meet the requirements of being a member.

10.5 It is the responsibility of each member to ensure their eligibility at all times and not the responsibility of the Trust to do so on their behalf. A member who becomes aware of their ineligibility shall inform the Trust as soon as practicable and that person shall thereupon be removed forthwith from the Register of Members and shall cease to be a member.

10.6 Where the Trust has reason to believe that a member is ineligible for membership or may be disqualified for membership under this Constitution and Appendixes, the Secretary shall carry out reasonable enquiries to establish if this is the case.

10.7 Where the Secretary considers that there may be reasons for concluding that a member or an applicant for membership may be ineligible or be disqualified for membership, the Secretary shall advise that individual of those reasons in summary form and invite representations from the member or applicant for membership within 21 days or such other reasonable period as the Secretary may as a matter of absolute discretion determine. Any representations received shall be considered by the Secretary whereby a decision on the member's or applicant's eligibility or disqualification shall be made as soon as reasonably practicable and shall give notice in writing of that decision to the member or applicant within 14 days of the decision being made.

10.8 If no representations are received within the said period of 21 days or longer period (if any) permitted under the preceding paragraph, the Secretary shall be entitled nonetheless to proceed and make a decision on the member's or applicant's

eligibility or disqualification notwithstanding the absence of any such representations from the member/applicant.

10.9 Upon a decision being made under paragraphs 10.7 or 10.8 above that the member is ineligible or disqualified for membership the member's name shall be removed from the Register of Members forthwith and the individual shall thereupon cease to be a member.

10.10 Any decision made under this clause 10 to disqualify a member or an applicant for membership may be referred by the member or applicant concerned to the relevant Dispute Resolution Procedure described in paragraph 45.

11 Council of Members – composition

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

11.2 The composition of the Council of Members is specified in Appendix 4.

11.3 The elected Governors of the Council of Members shall be chosen by election by their class within a constituency from the membership of the relevant class. The numbers of Governors to be elected by each class is specified in Appendix 3.

12 Role of the Council of Members

12.1 The roles and responsibilities of the Council of Members are as set out below.

12.2 At a general meeting:

12.2.1 to appoint or remove the Chair and the other Non-Executive Directors in accordance with paragraph 25.

12.2.2 to decide the remuneration and allowances, and the other terms and conditions of office, of the Non-Executive Directors as provided in paragraph 33;

12.2.3 to appoint or remove the Trust's Auditor as provided in paragraph 38.2;

12.2.4 to be presented with the annual accounts, any report of the Auditor on them and the annual report as provided in paragraph 42;

12.2.5 to consider resolutions to remove a Governor pursuant to clause 16.4 and 16.5;

12.2.6 to appoint or remove the Deputy Chair in accordance with paragraph 27 and to appoint or remove the Lead Governor in accordance with paragraph 22.

12.3 At a general meeting or otherwise:

12.3.1 approve (by a majority of the Governors voting) an appointment by the Non-Executive Directors of the Chief Executive as provided in Paragraph 28;

12.3.2 to be consulted by the Board of Directors of the Trust regarding the information to be given to Monitor as to the Trust's forward planning in respect of each financial year and to give their views to the Board of Directors for the purposes of the preparation by the Board of Directors of any document containing such information which is to be given to Monitor;

12.3.3 respond as appropriate when consulted by the Directors.

12.4 The Governors also have the specific role and function to:

12.4.1 support the Board of Directors in setting the longer-term vision for the Trust, to influence proposals to make changes to services and to act in a way that is consistent with NHS and Trust values and the terms of the Trust's authorisation;

12.4.2 engage in dialogue with and provide advice to the Board of Directors with regard to the Trust's future vision and strategy and to act as a source of ideas about how the Trust can provide its services in ways that meet the needs of the community it serves;

12.4.3 review annually the extent to which the Trust is meeting its objective of delivering high quality services;

12.4.4 work with the Board of Directors on such other matters for the benefit of the Trust as may be agreed between them; and/or

12.4.5 exercise other functions at the request of the Board of Directors.

13 Council of Members – election of Governors

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

13.2 The Model Rules for Elections, as may be varied from time to time, form part of this Constitution and the current rules are attached at Appendix 5.

13.3 A variation of the Model Rules by the Department of Health shall not constitute a variation of the terms of this Constitution. For the avoidance of doubt, the Trust cannot amend the Model Rules.

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

14 Council of Members - tenure

14.1 An elected Governor may hold office for a term of up to 3 years and shall, subject to paragraph 14.2 be eligible for re-election at the end of this term.

14.2 An elected Governor will usually not hold office for a total period of more than 9 years unless it is in the interests of the Trust for such period to be extended. The Appointments Committee shall consider such cases and make recommendations to the Council of Members.

14.3 An elected Governor shall cease to hold office if the individual ceases to be a member of the constituency or class by which the individual was elected.

14.4 Notwithstanding the prior provisions of this Constitution, those Governors who are elected to the Initial Council of Members shall hold office initially for those periods determined in accordance with Appendix 6.

14.5 An appointed Governor may hold office for a term of up to [3] years and shall, subject to paragraph 14.6 be eligible for re-appointment at the end of this term.

14.6 An appointed Governor will usually not hold office for a total period of more than [9] years unless it is in the interests of the Trust for such period to be extended. The Appointments Committee shall consider such cases and make recommendations to the Council of Members.

14.7 An appointed Governor shall cease to hold office if the appointing organisation withdraws its sponsorship of him.]

15 Council of Members – qualification and disqualification

15.1 A Governor must be at least 16 years of age at the date they are nominated for election or appointment.

15.2 The following may not become or continue as a Governor:

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

15.2.2 a person who has made a composition or arrangement with, or granted a Trust deed for, the person's creditors and has not been discharged in respect of it;

15.2.3 a person who within the preceding five years has been convicted in the British Isles or any foreign country 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 the person;

15.2.4 the individual is an Executive or Non-Executive Director of the Trust;

15.2.5 Monitor has exercised its powers to remove that person as a Governor of the Trust or has suspended the individual from office or has disqualified the individual from holding office as a Governor of

the Trust for a specified period or Monitor has exercised any of those powers in relation to the person concerned at any other time whether in relation to the Trust or some other NHS Foundation Trust;

15.2.6 the individual has within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with a public service body;

15.2.7 the individual is subject to a Sex Offenders Order;

15.2.8 the individual has been involved in any act of violence against staff, service users, their carers, visitors or a member of the Trust;

15.2.9 the individual is deemed not to be suitable by the Director of Human Resources based on the results of a Criminal Records Bureau check and any information provided by the Independent Safeguarding Authority;

15.2.10 the individual has failed or refused to confirm in writing that the individual will abide by any Code of Conduct for Governors which the Trust shall have published from time to time;

15.2.11 the individual has failed or refused without reasonable cause to undertake any training that the Council of Members requires all Governors to undertake;

15.2.12 the individual is 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 was not in the interests of the health service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest;

15.2.13 the individual has had their name removed other than by reason of resignation from any list prepared under Sections 91, 106, 123 and 146 of the 2006 Act and has not subsequently had their name included on such a list;

15.2.14 (in the case of an elected Governor only) the individual is not or ceases to be a member of the class of the constituency by which they were elected;

15.2.15 the individual is incapable by reason of mental disorder, illness or injury of managing and administering their property and affairs;

15.2.16 .

The individual has acted in a manner prejudicial to the interests of the Trust

15.3 Where an individual has been elected or appointed to be a Governor and they are disqualified for appointment under paragraphs 15.1 or 15.2 above, the individual shall notify the Secretary in writing of such disqualification as soon as practicable and in any event within 14 days of first becoming aware of those matters which

render the individual disqualified. The Secretary shall forthwith remove the individual from the Register of Governors.

15.4 If it comes to the notice of the Secretary that the Governor is disqualified otherwise then pursuant to paragraph 15.3, whether at the time of the Governor's appointment or later, the Secretary shall immediately declare that the individual in question is disqualified and give notice to them in writing to that effect as soon as practicable and in any event within 14 days of the date of the said declaration. In the event that a Governor shall dispute the individual's ineligibility the Governor may refer the matter to the relevant Dispute Resolution Procedure described in paragraph 45 within 28 days of the date upon which notice in writing is given to the Governor.

15.5 Paragraph 4.11 of Appendix 7 sets out further provisions relating to the suspension or termination of a Governor.

16 Council of Members – Termination

16.1 An appointed Governor shall cease to hold office if the organisation which appointed the individual withdraws its appointment of the individual by notice in writing to the Secretary.

16.2 A Governor may resign from that office at any time during the term of that office by giving notice in writing to the Secretary whereupon that individual shall cease to hold office.

16.3 A Governor shall cease to hold office on their death.

16.4 If a Governor fails to attend any meeting of the Council of Members for a consecutive period of six months or alternatively for two successive meetings of the Council of Members, the individual's tenure of office is to be immediately terminated by the Council of Members unless the Council of Members is satisfied that:

16.4.1 the absence was due to reasonable cause; and

16.4.2 that the Governor will be able to start attending meetings of the Council of Members within such a period as it considers reasonable,

provided that the process set out in the Code of Conduct of the Council of Members relating to breaches of the Code of Conduct of the Council of Members has been followed.

16.5 The Council of Members may by a resolution terminate a Governor's tenure of office if for reasonable cause it considers that:

16.5.1 the individual has knowingly or recklessly made a false declaration for any purpose provided for under this Constitution or in the 2006 Act;

16.5.2 the individual has acted in a way that is judged to contravene the Code of Conduct of the Council of Members, provided that the process set out in the Code of Conduct of the Council of Members relating to breaches of the Code of Conduct of the Council of Members has been followed; or

16.5.3 that the individual continuing as a Governor would or would be likely to:

16.5.3.1 prejudice the ability of the Trust to fulfil its principal purpose or other of its purposes under this Constitution or otherwise to discharge its duties and functions; or

16.5.3.2 harm the Trust's work with other persons or bodies with whom it is engaged or may be engaged in the provisions of goods and services; or

16.5.3.3 adversely affect public confidence in the goods or services provided by the Trust; or

16.5.3.4 otherwise bring the Trust into disrepute; or

16.5.3.5 the individual is a vexatious complainant.

16.6 Upon termination or cessation of a Governor's office under paragraph 16.5 the individual's name shall be forthwith removed from the Register of Governors.

16.7 Any decision of the Council of Members to terminate a Governor's tenure of office pursuant to paragraph 16.4 or 16.5 shall be final.

16.8 A Governor whose tenure of office is terminated under paragraphs 16.4 or 16.5 shall not be eligible to stand for re-election for a period of three years from the date of their removal from office or the date upon which any appeal against their removal from office is disposed of, whichever is the later.

17 Vacancies

17.1 Where a Governor's membership of the Council of Members ceases for one of the reasons set out in paragraph 15 or 16 the Governor shall be replaced in accordance with paragraphs 17.2 to 17.4 below.

17.2 Where an elected Governor ceases to hold office during their term of office the Trust shall offer the first reserve candidate the opportunity to assume the vacant office for the unexpired balance of the retiring Governor's term of office, subject to the provisions of paragraph 17.5 below. If that candidate does not accept to fill the vacancy it will then be offered to the next reserve candidate and so on until the vacancy is filled.

17.3 The first reserve candidate shall be the highest polling candidate amongst those candidates neither elected as a Governor in the last election for the relevant class in a Constituency nor appointed as a Governor in the relevant class pursuant to this process in paragraphs 17.2 and 17.3, being alive and having the necessary mental capacity. The next reserve candidate is the next highest polling candidate after the last candidate to be offered the opportunity to fill the vacancy, being alive and having the relevant mental capacity.

17.4 If no reserve candidate is available or willing to fill the vacancy, an election will then be held in accordance with the Model Rules of Election save that if an election is due to be held within 9 months of the vacancy having arisen the office will stand vacant until the next scheduled election unless by so doing this causes the aggregate number of Governors who are Public Governors and Service User and

Carer Governors to be less than half the total membership of the Council of Members. In that event an election will be held in accordance with the Model Rules of Election as soon as reasonably practicable.

17.5 A Governor elected to replace a Governor ceasing to be a Member under paragraph 15 or 16 shall be appointed for the unexpired balance of the retiring Governor's term of office unless it shall be less than a year from election in which case it shall be for such period as the Board of Directors shall determine.

17.6 The Returning Officer under the Model Rules of Election shall maintain a record of votes cast at each election under the Model Rules of Election for the above purposes and the Returning Officer shall conduct or shall oversee the conducting of the process set out in paragraphs 17.4 and 17.5 above.

17.7 No proceedings of a Council of Members shall be invalidated by any vacancy in its membership or any defect in the appointment or election of any Council Governor.

18 Council of Members – meetings of Governors

18.1 The Council of Members shall meet not less than four times each Financial Year.

18.2 The Chair of the Trust (i.e. the Chair of the Board of Directors, appointed in accordance with the provisions of paragraph 25 or paragraph 26.1 below) or, in the individual's absence the Lead Governor appointed in accordance with paragraph 22 or in the absence of the Chair and the Lead Governor the Deputy Chair appointed in accordance with paragraph 27 shall preside at meetings of the Council of Members.

18.3 Meetings of the Council of Members shall be open to the public, save that members of the public may be excluded from all or any part of a meeting by a resolution of the Council of Members on the grounds that publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted or for other special reasons stated in the resolution and arising from the business or nature of the proceedings.

18.4 A Governor elected to the Council of Members may not vote at a meeting of the Council of Members unless within the previous 12 months the individual has made a declaration in the form determined by the Trust stating:

18.4.1 in the case of elected Governors only, the constituency of which the individual is a member;

18.4.2 that the individual is not prevented from being a Governor by paragraph 8 of Schedule 7 to the 2006 Act or otherwise under this Constitution; and

18.4.3 the individual will at all times abide by the Trust's Code of Conduct for Governors as may be adopted by the Trust from time to time.

18.5 The Chair of the meeting of the Council of Members presiding in accordance with the Standing Orders for the practice and procedure of the Council of Members is to have a casting vote in the event of deadlock at a meeting of the Council of Members.

18.6 At a general meeting to take place no later than the end of September in each year the Council of Members shall receive from the Board of Directors in accordance with

paragraph 42 of this Constitution and then consider the Trust's annual accounts, any report of the auditor on them and the Trust's annual report.

19 Council of Members – Standing Orders

The Standing Orders for the practice and procedure of the Council of Members, as may be varied from time to time, are attached at Appendix 7.

20 Council of Members - conflicts of interest of Council 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 Members, the Governor shall disclose that interest to the Governors as soon as they become aware of it. The Standing Orders for the Council of Members and the Code of Conduct of the Council of Members 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 Members – payments to Governors

21.1 The Trust may pay travelling expenses to the Governors at rates determined by the Trust.

21.2 Governors are not to receive remuneration provided that this shall not prevent the remuneration of Governors by their employer.

22 Council of Members – further provisions

22.1 The Council of Members may appoint committees consisting wholly or partly of its Governors to assist it in carrying out its functions. A committee appointed under this paragraph may appoint a sub-committee.

22.2 The Council of Members may appoint Governors to serve on joint committees with the Board of Directors or with committees of the Board of Directors.

22.3 These committees or sub-committees may call upon outside advisers to help them in their tasks, provided that the financial and other implications of seeking outside advisers has been discussed and agreed by the Board of Directors. Any conflict arising between the Council of Members and the Board of Directors under this paragraph will be determined in accordance with the relevant Dispute Resolution Procedure described in paragraph 45.

22.4 The Council of Members may appoint a Terms and Conditions, Remuneration and Appointments Committee consisting of all or some of its members to assist it in carrying out those functions set out in paragraphs 25 and 33.1 of the Constitution below. Their recommendations should be reported back to the Council of Members.

22.5 The Council of Members at a general meeting of the Council of Members shall appoint or remove one of its Governors as a Lead Governor .

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 a maximum of nine other Non-Executive Directors; and

23.2.3 up to a maximum of seven Executive Directors which shall include the Executive Directors described in paragraphs 23.3, 23.5, 23.6 and 23.7.

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.

23.8 The post of Executive Director may be held by two individuals on a job share basis (the executive positions of doctor and nurse cannot be shared between the two professions) but where such an arrangement is in force the two individuals may only exercise one vote between them at any meeting of the Board of Directors.

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

24 Board of Directors – qualification for appointment as a Non-Executive Director

A person may be appointed as a Non-Executive Director only if:

24.1 the individual is a member of the Public Constituency, or

24.2 the individual is a member of the Service Users and Carers' Constituency, or

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

24.4 the individual is not disqualified by virtue of paragraph 30 below.

25 Board of Directors – appointment and removal of Chair and other Non-Executive Directors

25.1 The Council of Members at a general meeting of the Council of Members shall appoint or remove the Chair of the Trust and the other Non-Executive Directors.

25.2 Subject to the provisions of paragraph 26 below, the process for appointing new Non-Executive Directors and the Chair will be as follows:

25.2.1 Not less than six months before the end of the term of office of the Chair or a Non-Executive Director (as the case may be), the Council of Members will appoint an "Appointments Committee" to seek a suitable replacement. The Appointments Committee will be constituted in accordance with paragraphs 25.2.5 and 25.2.6 below;

25.2.2 Where the Appointments Committee considers that the Non-Executive Director coming to the end of his term of office should be reappointed for a further term, the Appointments Committee shall make a recommendation to the Council of Members to this effect;

25.2.3 Where:

25.2.3.1 the Appointments Committee does not make a recommendation that a Non-Executive Director should be reappointed in accordance with paragraph 25.2.2 above; or

25.2.3.2 the Non-Executive Director in question does not wish to be reappointed; or

25.2.3.3 the Council of Members rejects a recommendation that a Non-Executive Director should be reappointed in accordance with paragraph 25.2.2 above,

the Appointments Committee shall initiate a process of open competition for the appointment of the Non-Executive Director, and the post will be advertised.

25.2.4 The Appointments Committee will make recommendations to the Council of Members, including recommendations about pay.

25.2.5 The Appointments Committee for the Non-Executive Directors will consist of the Chair, three Public Governors, two User or Carer Governors, two Staff Governors, and two Appointed Governors. The Chief Executive will attend in an advisory capacity only. If the number of Governors prepared to serve on the Appointments Committee is greater than the number of places available, the committee members will be selected by election by their peer Governors. The Chair will chair the Appointments Committee. Each member of the Appointments Committee will have one vote.

25.2.6 The Appointments Committee for the Chair will consist of the same Governors as set out within Clause 25.2.5 above. The same procedure as set out within Clause 25.2.5 shall apply save that the Deputy Chair (a Governor) will chair the Appointments Committee.

25.2.7 Where the Appointments Committee is considering recommending that a Non-Executive Director should be reappointed for a further term of office in accordance with paragraph 25.2.2 above, it will be supported by appropriate advice from a human resources specialist.

25.2.8 Where the Appointments Committee carries out a process of open competition for the appointment of the Non-Executive Director in

accordance with paragraph 25.2.3 above, it will be supported by appropriate advice from a human resources specialist and an external assessor.

25.3 The Council of Members will not consider nominations for membership of the Board of Directors other than those made by the Appointments Committee.

25.4 Removal of the Chair or another Non-Executive Director shall require the approval of three-quarters of the Governors.

25.5 The initial Chair and the initial Non-Executive Directors are to be appointed in accordance with paragraph 26 below.

26 Board of Directors – appointment of initial Chair and initial other Non-Executive Directors

26.1 The Chair of the applicant NHS Trust shall be appointed by the Governors as the initial Chair of the Trust if the individual wishes to be appointed.

26.2 The power of the Council of Members to appoint the other Non-Executive Directors of the Trust is to be exercised, so far as possible, by appointing as the initial Non-Executive Directors of the Trust any of the Non-Executive Directors of the applicant NHS Trust (other than the Chair) who wish to be appointed.

26.3 The criteria for qualification for appointment as a Non-Executive Director set out in paragraph 24 above (other than disqualification by virtue of paragraph 30 below) do not apply to the appointment of the initial Chair and the initial other Non-Executive Directors in accordance with the procedures set out in this paragraph.

26.4 An individual appointed as the initial Chair or as an initial Non-Executive Director in accordance with the provisions of this paragraph shall be appointed for the unexpired period of the individual's term of office as Chair or (as the case may be) Non-Executive Director of the applicant NHS Trust; but if, on appointment, that period is less than 12 months, the individual shall be appointed for 12 months.

27 Board of Directors – appointment of a Deputy Chair

The Council of Members at a general meeting of the Council of Members shall appoint one of the Non-Executive Directors as a Deputy 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 Members.

28.3 The initial Chief Executive is to be appointed in accordance with paragraph 29 below.

28.4 A committee consisting of the Chair, the Chief Executive and the other Non-Executive Directors shall appoint or remove the other Executive Directors.

29 Absent Directors

29.1 If:

(a) an Executive Director is temporarily unable to perform his/her duties owing to illness or some other reason for absence, and

(b) the Board of Directors agrees that it is inappropriate to terminate the absent director's term of office and appoint a replacement director, and

(c) the Board of Directors agree that the duties of the absent director need to be carried out;

29.2 Then the Chairman (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.

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

29.4 For any period in which an acting director holds office, having been appointed under this paragraph, the absent director shall not exercise the duties and powers of an Executive Director.

29.5 The acting director shall vacate office as soon as the absent director returns to office or, if earlier, the date on which the person entitled to appoint him notifies him that he is no longer to act as an acting director.

30 Vacant Positions

30.1 If:

(a) an Executive Director post is vacant, and

(b) the Board of Directors agrees that the vacant position needs to be filled by an interim postholder pending appointment of a permanent postholder;

30.2 then a committee comprising the Chairman and the Non-Executive Directors (if the vacant position is Chief Executive) and the Chief Executive (in any other case) may appoint another person as an interim director to fill the vacant position pending appointment of a permanent postholder.

30.3 The interim director shall be an Executive Director for the purposes of the 2006 Act.

30.4 The interim director shall vacate office on the appointment of a permanent postholder or, if earlier, the date on which the Chairman (in the case of an interim Chief Executive) or the Chief Executive (in any other case) notifies her/him that he is no longer to act as an interim director.

30.5 Any acting director positions should be reviewed after 6 months.

31 Board of Directors – appointment and removal of initial Chief Executive

31.1 The chief officer of the applicant NHS Trust shall be appointed as the initial Chief Executive of the Trust by the Non-Executive Directors if the individual wishes to be appointed.

31.2 The appointment of the chief officer of the applicant NHS Trust as the initial Chief Executive of the Trust shall not require the approval of the Council of Members.

32 Board of Directors – disqualification

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

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

32.2 a person who has made a composition or arrangement with, or granted a Trust deed for, the individual's creditors and has not been discharged in respect of it;

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

32.4 a person whose tenure of office as a Chair or as a member or Director of a health service body has been terminated on the grounds that the individual's appointment is not in the interests of the public service for non-attendance at meetings or for non disclosure of pecuniary interest;

32.5 a person whose name has been removed other than by reason of resignation from any list prepared under Sections 91, 106, 123 and 146 of the 2006 Act and has not subsequently had the individual's name included on such a list;

32.6 a person who has within the two preceding years been dismissed or otherwise than by reason of redundancy or ill health from any paid employment with a health service body;

32.7 a person who is an Executive or Non-Executive Director of another NHS Foundation Trust or a, Non-Executive, Director, Chair or Chief Executive of another health service body; or

32.8 a Non-Executive Director who no longer satisfies paragraph 24 (except in the case of any appointment of the Chair or a Non-Executive Director under paragraph 29).

33 Board of Directors – Standing Orders

The Standing Orders for the practice and procedure of the Board of Directors, as may be varied from time to time, are attached at Appendix 8.

34 Board of Directors - conflicts of interest of Directors

If a Director has a pecuniary, personal or family interest, whether that interest is actual or potential and whether that interest is direct or indirect, in any proposed contract or other

matter which is under consideration or is to be considered by the Board of Directors, the Director shall disclose that interest to the members of the Board of Directors as soon as the individual becomes aware of it. The Standing Orders for the Board of Directors shall make provision for the disclosure of interests and arrangements for the exclusion of a Director declaring any interest from any discussion or consideration of the matter in respect of which an interest has been disclosed.

35 Board of Directors – remuneration and terms of office

35.1 The Council of Members at a general meeting of the Council of Members shall decide the period of office, remuneration and allowances, and the other terms and conditions of office, of the Chair and the other Non-Executive Directors but pending the establishment of a committee these matters are to be decided in accordance with the period of office, remuneration and allowances of the respective officers as employed by the applicant NHS Trust.

35.2 The Trust shall establish a committee of Non-Executive Directors to decide the period of office, remuneration and allowances, and the other terms and conditions of office, of the Chief Executive and other Executive Directors.

36 Board of Directors – establishment of committees

36.1 The Board of Directors shall also establish the sub-committees referred to in paragraphs 33.2 and 39.

37 Registers

The Trust shall have:

37.1 a Register of Members showing, in respect of each member, the constituency to which the individual belongs and, where there are classes within it, the class to which the individual belongs;

37.2 a Register of Governors;

37.3 a Register of interests of Governors;

37.4 a Register of Directors; and

37.5 a Register of Interests of the Directors.

37.6 The Secretary shall be responsible for compiling and maintaining the registers and the registers may be kept in either paper or electronic form. Removal from any register shall be in accordance with the provisions of this Constitution. The Secretary shall update the registers with new or amended information as soon as is practical and in any event within 14 days of receipt.

38 Registers – inspection and copies

38.1 The Trust shall make the registers specified in paragraph 30 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.

38.2 The Trust shall not make any part of its registers available for inspection by members of the public which shows details of:

38.2.1 any member of the Service Users and Carers' Constituency; or

38.2.2 any other member of the Trust, if the individual so requests.

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

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

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

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 Documents available for public inspection

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

39.1.1 a copy of the current Constitution;

39.1.2 a copy of the current authorisation;

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

39.1.4 a copy of the latest annual report;

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

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

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

39.3 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.

40 Auditor

40.1 The Trust shall have an auditor and is to provide the auditor with every facility and all information which the individual may reasonably require for the purposes of the individual's functions under the 2006 Act.

40.2 The Council of Members shall appoint or remove the auditor at a general meeting of the Council of Members.

40.3 A person may only be appointed auditor if the individual (or in the case of a firm each of its members) is a member of one or more of the bodies referred to in paragraph 23(4) to Schedule 7 to the 2006 Act.

41 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.

42 Accounts

42.1 The Trust shall keep accounts in such form as Monitor may with the approval of HM Treasury direct.

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

42.3 The Trust shall prepare in respect of each financial year Annual Accounts in such form as Monitor may with the approval of the HM Treasury direct.

42.4 The functions of the Trust with respect to the preparation of the Annual Accounts shall be delegated to the Accounting Officer.

43 Annual Report and Forward Plans

43.1 The Trust shall prepare an Annual Report and send it to Monitor.

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

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

43.4 In preparing the document, the Directors shall have regard to the views of the Council of Members.

44 Meeting of Council of Members to Consider Annual Accounts and Reports

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

44.1 the Annual Accounts;

44.2 any report of the auditor on them;

44.3 the Annual Report.

45 Instruments

45.1 The Trust shall have a seal.

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

45.3 A document purporting to be duly executed under the Trust's seal or to be signed on its behalf is to be received in evidence and unless the contrary is proved taken to be so executed or signed.

46 Indemnity

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

46.2 The Trust may make such arrangements as it considers appropriate for the provision of indemnity insurance or similar arrangement for the benefit of the Trust, Governors, Directors and Trust Secretary to meet all or any liabilities which are properly the liabilities of the Trust under paragraph above.

47 Dispute Resolution Procedures

47.1 The Trust shall establish appropriate Dispute Resolution Procedures in regard to disputes:

47.1.1 with members and potential members in relation to matters of eligibility and disqualification, such disputes being resolved in accordance with the Dispute Resolution Procedure set out in paragraph 1 of Appendix 9;

47.1.2 with Governors in relation to matters of eligibility and disqualification, such disputes being resolved in accordance with the Dispute Resolution Procedure set out in paragraph 2 of Appendix 9; and

47.1.3 between the Council of Members and the Board of Directors in relation to the interpretation and application of their respective powers and obligations under this Constitution, such disputes being resolved in accordance with the Dispute Resolution Procedure set out in the Standing Orders for the practice and procedure of the Board of Directors, as may be varied from time to time, as attached at Appendix 8.

48 Amendment of the Constitution

48.1 The Trust may make amendments to this Constitution with the approval of Monitor.

48.2 No proposal for the amendment of this Constitution shall be put to Monitor unless it has been approved by the Board of Directors who shall have consulted with the Council of Members before so doing.

49 Dissolution of the Trust

The Trust may not be dissolved except by Order of the Secretary of State for Health in accordance with the 2006 Act.

50 Interpretation and definitions

Unless a contrary intention is evident or the context requires otherwise, words or expressions contained in this Constitution shall bear the same meaning as in the National Health Service Act 2006.

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.

"**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.

"**Applicant NHS Trust**" means the NHS Trust which made the application to become a NHS Foundation Trust.

"**Chair**" means the Chair of the Trust.

Clear day means a day of the week not including Saturday, Sunday or a public holiday.

"**Council of Members**" means the Council of Members (referred to in the 2006 Act as "the Board of Governors") as constituted in accordance with this Constitution.

"**Dispute Resolution Procedure**" is the dispute resolution procedure to be established by the Trust in accordance with paragraph 45.

"**Governor**" means a person who is a Member of the Council of Members.

"**Health Service Body**" means an NHS Foundation Trust, a Strategic Health Authority, a Special Health Authority, a former Health Authority, an NHS Trust, a Primary Care Trust, the Secretary of State and any other body named as a health service body in Part 2 of the National Health Service Act 2006.

"**Lead Governor**" means the Governor appointed by the Council of Members to take on the Chair's duties if the Chair is absent or unavailable for any reason and to provide a single point of contact on all Governors' issues.

"**Monitor**" is the Independent Regulator of NHS Foundation Trusts, established under Section 31 of the 2006 Act.

"Public Governor" means any and all Governors elected by any of the Public Constituencies in accordance with this Constitution.

"Returning Officer" means the person referred to in paragraph 4(1) of Schedule 5.

"**Secretary**" means the Secretary of the Trust or any other person appointed by the Trust to perform the duties of the Secretary of the Trust including a joint, assistant or deputy Secretary or such other person as may be appointed by the Trust to perform the functions of the Secretary under this Constitution.

"Service User and Carer Governor" means any and all Governors elected by any of the Service Users and Carers' Constituencies in accordance with this Constitution.

"**Terms of authorisation**" are the terms of authorisation issued by Monitor under Section 35 of the 2006 Act.

"**voluntary organisation**" is a body, other than a public or local authority, the activities of which are not carried on for profit.

APPENDIX 1 – THE PUBLIC CONSTITUENCY

(Paragraphs 7.1 and 7.3 of the Constitution)

Area	Minimum Numbers
London Borough of Brent	20
London Borough of Harrow	20
London Borough of Hillingdon	20
Royal Borough of Kensington & Chelsea	20
City of Westminster	20
London Borough of Camden	20
London Boroughs of Ealing, Hounslow and Hammersmith & Fulham	20
All London boroughs within the boundaries of the Greater London Authority excluding those specified above	20

APPENDIX 2 – THE STAFF CONSTITUENCY

(Paragraphs 8.4 and 8.5 of the Constitution)

Area	Minimum Numbers
Nursing staff (including Health Care Assistants)	800
Medical staff	75
Allied Health professionals	200
Social Care	20
Other staff	200

APPENDIX 3 – THE SERVICE USERS AND CARERS CONSTITUENCY

(Paragraphs 9.4 and 9.6)

Class	Minimum Numbers
Service Users from the Boroughs of Hillingdon, Harrow, Brent, Ealing, Hounslow	250
Service Users from the Boroughs of Westminster, Kensington and Chelsea, Hammersmith and Fulham, Camden, Enfield and the rest of the GLA and elsewhere	250
Carers	30

APPENDIX 4– COMPOSITION OF COUNCIL OF MEMBERS

(Paragraphs 11.2 and 11.3)

Elected Governors:

Constituency	Number of Council Governors
Service Users from the Boroughs of Hillingdon, Harrow, Brent, Ealing, Hounslow	5
Service Users from the Boroughs of Westminster, Kensington and Chelsea, Hammersmith and Fulham, Camden, Enfield and the rest of the GLA and elsewhere	5
Carers	3
Public - London Borough of Brent	1
Public - London Borough of Harrow	1
Public - London Borough of Hillingdon	1
Public - Royal Borough of Kensington & Chelsea	1
Public - City of Westminster	1
Public - London Borough of Camden	1 new
Public - London Boroughs of Ealing, Hounslow and Hammersmith & Fulham	1
Public - London boroughs within the boundaries of the Greater London Authority excluding those named above	1
Nursing staff (including Health Care Assistants)	2
Medical staff	1
Allied Health professionals	1
Social Care	1
Other staff	1

Appointed Governors:

Organisation	Number of Council Governors
1 representative from Westminster PCT and 2 representatives from the following PCTs Brent, Harrow, Hillingdon, Kensington and Chelsea and Camden	3*
6 representatives from the following local authorities Brent, Harrow, Hillingdon, Kensington and Chelsea, Westminster and Camden	6
A London University	1
3 representatives from any of the following organisations • HM Prisons • Probation Service • London Ambulance Service • Metropolitan Police • MIND • British Heart Foundation • Diabetes UK • Age UK • Council for Voluntary Services • Rethink • National Care Association • Terrance Higgins Trust	3*

Organisation	Number of Council Governors
• Stroke Association • Council of Ethnic Minority Voluntary organisations • MENCAP	
F)	

***** Where any group of organisations has nomination rights, the Trust Secretary will consult with these organisations as a vacancy arises and will agree with them how such vacancies should be filled

APPENDIX 5 – THE MODEL RULES FOR ELECTIONS

(Paragraph 11.2)

1 Appendix E: Model Election Rules

Part 1 – Interpretation

1 Interpretation

Part 2 – Timetable for election

2 Timetable
3 Computation of time

Part 3 – Returning officer

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

Part 4 – Stages common to contested and uncontested elections

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

Part 5 – Contested elections

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

Action to be taken before the poll

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

The poll

26 Eligibility to vote
27 Voting by persons who require assistance
28 Spoilt ballot papers

29 Lost ballot papers
30 Issue of replacement ballot paper
31 Declaration of identity for replacement ballot papers

Procedure for receipt of envelopes

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

Part 6 – Counting the votes

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

Part 7 – Final proceedings in contested and uncontested elections

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

Part 8 – Disposal of documents

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

Part 9 – Death of a candidate during a contested election

54 Countermand or abandonment of poll on death of candidate

Part 10 – Election expenses and publicity

Expenses

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

Publicity

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

Part 11 – Questioning elections and irregularities

61 Application to question an election

Part 12 – Miscellaneous

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

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Part 1 – Interpretation

1 Interpretation –

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

"**corporation**" means the public benefit corporation subject to this Constitution;

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

"**the regulator**" 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 to the National Health Service Act 2006 have the same meaning in these rules as in that Schedule.

Part 2 – Timetable for election

2 **Timetable** –

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

Proceeding	Time
Publication of notice of election	Not later than the fortieth day before the day of the close of the poll
Final day for delivery of nomination papers to returning officer	Not later than the twenty eighth day before the day of the close of the poll
Publication of statement of nominated candidates	Not later than the twenty seventh day before the day of the close of the poll
Final day for delivery of notices of withdrawals by candidates from election	Not later than twenty fifth day before the day of the close of the poll

Proceeding	Time
Notice of the poll	Not later than the fifteenth day before the day of the close of the poll
Close of the poll	By 5.00pm on the final day of the election

3 **Computation of time** –

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

(a) a Saturday or Sunday;

(b) Christmas Day, Good Friday, or a bank holiday, or

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

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

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

Part 3 – Returning officer

4 **Returning officer** –

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

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

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

6 **Expenditure** – The corporation is to pay the returning officer:

(a) any expenses incurred by that officer in the exercise of the individual's functions under these rules;

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

7 **Duty of co-operation** – The corporation is to co-operate with the returning officer in the exercise of the individual's functions under these rules.

Part 4 - Stages common to contested and uncontested elections

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

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

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

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

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

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

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

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

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

9 **Nomination of candidates** –

(1) Each candidate must nominate themselves on a single nomination paper.

(2) The returning officer:

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

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

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

10 **Candidate's particulars** –

(1) The nomination paper must state the candidate's:

(a) full name;

(b) contact address in full; and

(c) constituency, or class within a constituency, of which the candidate is a member.

11 **Declaration of interests** – The nomination paper must state:

(a) any financial interest that the candidate has in the corporation; and

(b) whether the candidate is a member of a political party, and if so, which party,

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

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

(a) that the individual is not prevented from being a Governor of the Council of Members by paragraph 8 of Schedule 1 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 the individual's qualification to vote as a member of that constituency, or class within that constituency, for which the election is being held.

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

(a) they wish to stand as a candidate;

(b) their declaration of interests as required under rule 11, is true and correct; and

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

14 **Decisions as to the validity of nomination** –

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

(a) decides that the candidate is not eligible to stand;

(b) decides that the nomination paper is invalid;

(c) receives satisfactory proof that the candidate has died; or

(d) receives a written request by the candidate of their withdrawal from candidacy.

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

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

(b) that the paper does not contain the candidate's particulars, as required by rule 10;

(c) that the paper does not contain a declaration of the interests of the candidate, as required by rule 11;

(d) that the paper does not include a declaration of eligibility as required by rule 12; or

(e) that the paper is not signed and dated by the candidate, as required by rule 13.

(3) The returning officer is to examine each nomination paper as soon as is practicable after the individual has received it, and decide whether the candidate has been validly nominated.

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

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

15 **Publication of statement of candidates** –

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

(2) The statement must show:

(a) the name, contact address, and constituency or class within a constituency of each candidate standing; and

(b) the declared interests of each candidate standing,

as given in their nomination paper.

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

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

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

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

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

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

18 **Method of election** –

(1) If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is greater than the number of members to be elected to the Board 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 Board of Governors, those candidates are to be declared elected in accordance with Part 7 of these rules.

(3) If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is less than the number of members to be elected to be Board 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 them in consultation with the corporation.

Part 5 – Contested elections

19 **Poll to be taken by ballot** –

(1) The votes at the poll must be given by secret ballot.

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

20 **The ballot paper** –

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

(2) Every ballot paper must specify:

(a) the name of the corporation;

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

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

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

(e) instructions on how to vote;

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

(g) the contact details of the returning officer.

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

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

21 **The declaration of identity (public and patient constituencies)** –

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

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

(a) that the voter is the person to whom the ballot paper was addressed;

(b) that the voter has not marked or returned any other voting paper in the election; and

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

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

(a) the name of the voter;

(b) the address of the voter;

(c) the voter's signature; and

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

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

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

Action to be taken before the poll

22 **List of eligible voters** –

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

(2) The list is to include, for each member, a mailing address where the individual's ballot paper is to be sent.

23 **Notice of poll** – The returning officer is to publish a notice of the poll stating:

(a) the name of the corporation;

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

(c) the number of Governors of the Council of Members to be elected from that constituency, or class with that constituency;

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

(e) that the ballot papers for the election are to be issued and returned, if appropriate, by post;

(f) the address for return of the ballot papers, and the date and time of the close of the poll;

(g) the address and final dates for applications for replacement ballot papers; and

(h) the contact details of the returning officer.

24 **Issue of voting documents by returning officer** –

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

(a) a ballot paper and ballot paper envelope;

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

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

(d) a covering envelope.

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

25 **Ballot paper envelope and covering envelope** –

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

(2) The covering envelope is to have:

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

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

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

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

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

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

27 **Voting by persons who require assistance** –

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

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

28 **Spoilt ballot papers** –

(1) If a voter has dealt with the individual's 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 the individual can obtain it.

(3) The returning officer may not issue a replacement ballot paper for a spoilt ballot paper unless the individual:

(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 the individual's ballot paper by the fourth day before the close of the poll, that voter may apply to the returning officer for a replacement ballot paper.

(2) The returning officer may not issue a replacement ballot paper for a lost ballot paper unless the individual:

(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), the individual 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 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, the individual 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, the individual is to:

(a) mark the ballot paper “disqualified”;

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

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

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

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

(a) mark the declaration of identity "disqualified";

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

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

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

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

(b) any 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.

Part 6 - Counting the votes

36 **Interpretation of Part 6** – In Part 6 of these rules:

"**continuing candidate**" means any candidate not deemed to be elected, and not excluded;

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

"**deemed to be elected**" means deemed to be elected for the purposes of counting of votes but without prejudice to the declaration of the result of the poll;

"**mark**" means a figure, an identifiable written word, or a mark such as "X";

"**non-transferable vote**" means a ballot paper:

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

(b) which is excluded by the returning officer under rule 44(4) below;

"**preference**" as used in the following contexts has the meaning assigned below:

(a) "**first preference**" means the figure "1" or any mark or word which clearly indicates a first (or only) preference;

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

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

"**quota**" means the number calculated in accordance with rule 41 below;

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

"**stage of the count**" means:

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

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

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

"**transferable paper**" means a ballot paper on which, following a first preference, a second or subsequent preference is recorded in consecutive numerical order for a continuing candidate;

"**transferred vote**" means a vote derived from a ballot paper on which a second or subsequent preference is recorded for the candidate to whom that paper has been transferred; and

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

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

38 **The count** –

(1) The returning officer is to:

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

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

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

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

39 **Rejected ballot papers** –

(1) Any ballot paper:

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

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

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

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

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

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

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

40 **First stage** –

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

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

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

41 **The quota** –

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

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

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

42 **Transfer of votes** –

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

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

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

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

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

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

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

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

(5) Where at the end of any stage of the count involving the transfer of ballot papers, the number of votes for any candidate exceeds the quota, the returning officer is to sort the ballot papers in the sub-parcel of transferred votes which was last received by that candidate into separate sub-parcels so that they are grouped:

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

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

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

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

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

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

whichever is the less.

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

(9) Subject to paragraph (10), the returning officer shall proceed to transfer transferable papers until no candidate who is deemed to be elected has a surplus or all the vacancies have been filled.

(10) Transferable papers shall not be liable to be transferred where any surplus or surpluses which, at a particular stage of the count, have not already been transferred, are:

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

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

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

43 **Supplementary provisions on transfer** –

(1) If, at any stage of the count, two or more candidates have surpluses, the transferable papers of the candidate with the highest surplus shall be transferred first, and if:

(a) The surpluses determined in respect of two or more candidates are equal, the transferable papers of the candidate who had the highest recorded vote at the earliest preceding stage at which they had unequal votes shall be transferred first; and

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

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

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

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

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

(d) compare—

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

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

(3) All ballot papers transferred under rule 42 or 44 shall be clearly marked, either individually or as a sub-parcel, so as to indicate the transfer value recorded at that time to each vote on that paper or, as the case may be, all the papers in that sub-parcel.

(4) Where a ballot paper is so marked that it is unclear to the returning officer at any stage of the count under rule 42 or 44 for which candidate the next preference is recorded, the returning officer shall treat any vote on that ballot paper as a non-transferable vote; and votes on a ballot paper shall be so treated where, for example, the names of two or more candidates (whether continuing candidates or not) are so marked that, in the opinion of the returning officer, the same order of preference is indicated or the numerical sequence is broken.

44 **Exclusion of candidates** –

(1) If:

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

(b) subject to rule 45 below, one or more vacancies remain to be filled,

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

(2) The returning officer shall sort all the ballot papers on which first preference votes are given for the candidate or candidates excluded under paragraph (1) above into two sub-parcels so that they are grouped as:

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

(b) ballot papers on which no such preference is given (thereby including ballot papers on which preferences are given only for candidates who are deemed to be elected or are excluded).

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

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

(5) If, subject to rule 45 below, one or more vacancies still remain to be filled, the returning officer shall then sort the transferable papers, if any, which had been transferred to any candidate excluded under paragraph (1) above into sub-parcels according to their transfer value.

(6) The returning officer shall transfer those papers in the sub-parcel of transferable papers with the highest transfer value to the continuing candidates in accordance with the next available preferences given on those papers (thereby passing over candidates who are deemed to be elected or are excluded).

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

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

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

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

(a) record—

(i) the total value of votes, or

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

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

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

(d) compare—

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

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

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

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

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

(a) regard shall be had to the total number of votes credited to those candidates at the earliest stage of the count at which they had an unequal number of votes and the candidate with the lowest number of votes at that stage shall be excluded; and

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

45 **Filling of last vacancies** –

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

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

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

46 **Order of election of candidates** –

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

(2) A candidate credited with a number of votes equal to, and not greater than, the quota shall, for the purposes of this rule, be regarded as having had the smallest surplus at the stage of the count at which the individual obtained the quota.

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

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

Part 7 – Final proceedings in contested and uncontested elections

47 **Declaration of result for contested elections** –

(1) In a contested election, when the result of the poll has been ascertained, the returning officer is to:

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

(b) give notice of the name of each candidate who the individual has declared elected:

(i) where the election is held under a proposed Constitution pursuant to powers conferred on the Central and North West London Mental Health NHS Foundation Trust by section 33(4) of the 2006 Act, to the Chair of the NHS Trust; or

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

and

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

(2) The returning officer is to make:

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

(b) any transfer of votes;

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

(d) the order in which the successful candidates were elected; and

(e) the number of rejected ballot papers under each of the headings in rule 39(1),

available on request.

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

(a) declare the candidate or candidates remaining validly nominated to be elected;

(b) give notice of the name of each candidate who the individual has declared elected to the Chair of the corporation; and

(c) give public notice of the name of each candidate who the individual 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 corporation to which the election relates; and

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

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

51 **Forwarding of documents received after close of the poll** – Where:

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

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

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

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

52 **Retention and public inspection of documents** –

(1) The corporation is to retain the documents relating to an election that are forwarded to the Chair by the returning officer under these rules for one year, and then, unless otherwise directed by the Regulator, cause them to be destroyed.

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

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

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

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

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

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

(c) any counted ballot papers;

(d) any declarations of identity; or

(e) the list of eligible voters,

by any person without the consent of the Regulator.

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

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

(a) persons;

(b) time;

(c) place and mode of inspection;

(d) production or opening;

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

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

(a) in giving its consent, the regulator; and

(b) making the documents available for inspection,

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

(i) that the individual's vote was given; and

(ii) that the regulator has declared that the vote was invalid.

Part 9 – Death of a candidate during a contested election

54 **Countermand or abandonment of poll on death of candidate** –

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

(a) publish a notice stating that the candidate has died; and

(b) proceed with the counting of the votes as if that candidate had been excluded from the count so that:

(i) ballot papers which only have a first preference recorded for the candidate that has died, and no preferences for any other candidates, are not to be counted; and

(ii) ballot papers which have preferences recorded for other candidates are to be counted according to the consecutive order of those preferences, passing over preferences marked for the candidate who has died.

(2) The ballot papers which have preferences recorded for the candidate who has died are to be sealed with the other counted ballot papers pursuant to rule 49(1)(a).

Part 10 – Election expenses and publicity

Election expenses

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

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

(a) personal expenses;

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

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

57 **Election expenses incurred by other persons** –

(1) No person may:

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

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

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

Publicity

58 **Publicity about election by the corporation** –

(1) The corporation may:

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

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

as it considers necessary.

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

(a) objective, balanced and fair;

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

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

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

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

59 **Information about candidates for inclusion with voting documents** –

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

(2) The information must consist of:

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

(b) a photograph of the candidate.

60 **Meaning of "for the purposes of an election"** –

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

(2) The provision by any individual of the individual's own services voluntarily, on the individual's 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 corporation, the applicant and the members of the constituency (or class within a constituency) including all the candidates for the election to which the application relates.

(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 corporation who has or has not been given a ballot paper or who has or has not voted;

(ii) the unique identifier on any ballot paper;

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

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

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

63 **Prohibition of disclosure of vote** –

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

64 **Disqualification** –

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

(a) a member of the corporation;

(b) an employee of the corporation;

(c) a Director of the corporation; or

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

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

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

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

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

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

APPENDIX 6 – TERM OF OFFICE OF INITIAL COUNCIL OF MEMBERS

(Paragraph 14.4 of the Constitution)

Within in each Relevant Grouping below, those elected Governors who secure the greatest number of votes shall serve for three years and those securing fewer votes shall serve for two years.

Relevant Grouping	Number of Governors who shall serve 2 years	Number of Governors who shall serve 3 years
Service Users and Carers' Constituency - Service Users receiving general adult mental health services class	3	3
Service Users and Carers' Constituency – Service Users receiving other services class	2	2
Service Users and Carers' Constituency - Carers class	1	2
Staff Constituency – Nursing staff (including Health Care Assistants) class	1	1
Staff Constituency – medical staff, Allied Health professionals, Social Care and other staff classes	2	2
Public Constituency – all classes	3	4

APPENDIX 7 – STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE COUNCIL OF MEMBERS

(Paragraph 19)

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1 INTRODUCTION

1.1 The Central and North West London NHS Foundation Trust (the "**Trust**") is a statutory body which became a public benefit corporation on 1st May 2007 following its approval as an NHS Foundation Trust by the Independent Regulator of NHS Foundation Trusts (the "**Independent Regulator**") pursuant to the National Health Service Act 2006 (the "**2006 Act**").

1.2 The principal place of business of the Trust is at Trust Headquarters, Greater London House, Hampstead Road, London, NW1 7QY.

1.3 The Trust is governed by the 2006 Act, its Constitution and its Terms of Authorisation granted by the Independent Regulator (together the "**Regulatory Framework**"). The functions of the Trust are conferred by the Regulatory Framework. The Regulatory Framework requires the Council of Members of the Trust to adopt Standing Orders for the regulation of its proceedings and business and the Code of Conduct is incorporated as part of these Standing Orders and applies to all Governors.

2 DEFINITIONS

2.1 In these Standing Orders:

2006 Act means the National Health Service Act 2006, as amended from time to time.

Board means the Board of Directors of the Trust as constituted in accordance with the Constitution.

Chair means the Chair of the Board appointed in accordance with the Constitution to ensure that the Board and the Council successfully discharge their overall responsibilities for the Trust as a whole. The expression "**the Chair**" shall be deemed to include the Deputy Chair or such other person so appointed if the Chair is absent from a meeting or is otherwise unavailable.

Chief Executive means the Chief Executive officer of the Trust appointed in accordance with the Constitution.

Clear day means a day of the week not including Saturday, Sunday or a public holiday.

Code of Conduct means the Code of Conduct of the Council of Members which is incorporated as part of these Standing Orders.

Constitution means the Constitution of the Trust as authorised by the Independent Regulator.

Council means the Council of Members of the Trust as constituted in accordance with the Constitution.

Deputy Chair means the Non-Executive Director appointed as Deputy Chair by the Council to take on the Chair's or Lead Governor's duties if the Chair or Lead Governor are absent or unavailable for any reason.

Governor means a Governor of the Trust elected or appointed as provided by the Constitution to sit on the Council of Members, but which does not include the Chair.

Independent Regulator means the regulator of NHS Foundation Trusts established under Section 31 of the 2006 Act.

Lead Governor means the Governor appointed by the Council of Members to take on the Chair's duties if the Chair is absent or unavailable for any reason and to provide a single point of contact on all Governors' issues.

Non-Executive Director means a member of the Board appointed as a Non-Executive Director in accordance with the Constitution.

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

Standing Orders or **SOs** means these Standing Orders of the Council of Members.

Trust Secretary means a person appointed by the Trust in accordance with the Constitution to be the Trust Secretary, to act independently of the Council of Members, to provide advice on corporate governance issues to the Council and the Chair and monitor the Trust's compliance with the Regulatory Framework and these Standing Orders.

2.2 Words importing the masculine gender include the feminine gender and vice versa.

2.3 Subject to Standing Order 4.9.2, save as permitted by law, the Chair shall be the final authority on the interpretation of these Standing Orders (on which they shall be advised by the Chief Executive and Director of Finance).

2.4 References to any statute, statutory provision, statutory instrument or guidance in these Standing Orders include references to that statute, provision, instrument or guidance as replaced, amended, extended, re-enacted or consolidated from time to time.

2.5 **General information**

2.5.1 The purpose of these Standing Orders is to ensure that the highest standards of corporate governance and conduct are applied to all Council meetings and associated deliberations. The Council shall at all times seek to comply with the NHS Foundation Trust Code of Governance.

2.5.2 The roles and responsibilities of the Council which are to be carried out in accordance with the Constitution and the Trust's Terms of Authorisation include:

2.5.2.1 to hold the Board to account for the performance of the Trust, including ensuring that the Board acts so that the Trust does not breach its authorisation;

2.5.2.2 to respond as appropriate when consulted by the Board in accordance with the Constitution;

2.5.2.3 to undertake such functions as the Board shall from time to time request;

2.5.2.4 to prepare and from time to time review the Trust's membership strategy and policy; and

2.5.2.5 when appropriate to make recommendations for the revision of the Constitution.

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

2.7 A Governor who has acted honestly and in good faith will not be required to meet out of their personal resources, any personal civil liability which is incurred in the execution or purported execution of their functions, save where they have acted recklessly. Any personal civil liability so arising will be met by the Trust.

3 THE COUNCIL OF MEMBERS

3.1 Certain powers and decisions may only be exercised by the Council in formal session. These powers and decisions are set out in the Constitution and have effect as if incorporated into the Standing Orders. A list of these powers is contained in paragraph 12 of the Constitution.

4 MEETINGS OF THE COUNCIL OF MEMBERS

4.1 Admission of the Public

4.1.1 The public and representatives of the Press shall be afforded facilities to attend all formal meetings of the Council except where it resolves:

(a) That members of the public and representatives of the Press be excluded from the remainder of a meeting having regard to the confidential nature of the business to be transacted or as a result of any publicity which would be prejudicial to the Trust or its business or any of its employees or service users or carers or contractors, to the extent that the Council believes that in the circumstances these are special reasons for excluding the public from the meeting in accordance with the Constitution; and/or

(b) That in the interests of 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 and representatives of the press to record proceedings in any manner whatsoever, other than writing, or to make any oral report of proceedings as they take place, without the prior agreement of the Council.

4.1.3 The Chair may exclude any member of public from the meeting of the Council if he is interfering with or preventing the proper conduct of the meeting.

4.2 Calling Meetings

4.2.1 Meetings of the Council shall be held at such times and places as the Council may determine and there shall be at least 4 meetings in any year including an annual

meeting and any other meetings required of the Governors in order to fulfil their functions in accordance with the Constitution.

4.2.2 The Council may invite the Chief Executive, and other appropriate Directors, to attend any meeting of the Council to enable Governors to raise questions about the Trust's affairs.

4.2.3 The Chair, or in the individual's absence the Deputy Chair, may call a meeting of the Council at any time.

4.2.4 If at least one third of the total number of Governors requisition the Chair to call a meeting and the Chair refuses to call such meeting after the requisition, signed by at least one third of the whole number of the Governors and specifying the business to be transacted at the meeting, has been presented to him, or if, without so refusing, the Chair does not call a meeting within 7 Clear Days after such requisition has been presented to him at the Trust's Headquarters, such one third or more of the Governors may forthwith call a meeting for the purpose of conducting that business.

4.3 **Notice of Meetings**

4.3.1 Save in an emergency, at least seven days before each meeting of the Council, a notice of the meeting, specifying the business proposed to be transacted at it, shall be delivered or posted to the usual place of residence of every Governor.

4.3.2 The notice referred to in SO 4.3.1 shall be signed by the Chair or by an officer authorised by the Chair to sign on his or her behalf. Lack of service of the notice on any one Governor shall not affect the validity of a meeting but failure to serve such a notice on more than three Governors will invalidate the meeting.

4.3.3 In the case of a meeting called by Governors in default of the Chair, the notice shall be signed by those Governors and no business shall be transacted at the meeting other than that specified in the requisition.

4.3.4 Save in an emergency, at least seven days before the meeting, an Agenda shall be delivered or posted to the usual place of residence of every Governor. Supporting papers, whenever possible, shall accompany the agenda.

4.4 **Annual Meeting**

4.4.1 The Council shall hold an annual meeting of the Council in every calendar year so that there is no more than fifteen calendar months between one meeting and the next and shall present to that meeting:

4.4.1.1 A report on the proceedings of its meetings held since the last annual meeting;

4.4.1.2 A report on the progress since the last annual meeting in developing the membership strategy including the steps taken to ensure that the actual membership is fully representative of the persons who are eligible to be members under the Constitution;

4.4.1.3 A report on any change to the Governors which has taken place since the last annual meeting; and

4.4.1.4 A report containing such comments as it wishes to make regarding the performance of the Trust and the accounts of the Trust for its financial year just ended and the future service development plans of the Trust.

4.4.2 The reports for the first annual meeting shall cover the period from the Authorisation of the Trust as a Foundation Trust to the date of that meeting.

4.5 **Setting the Agenda**

4.5.1 The Council may determine that certain matters shall appear on every agenda for a meeting.

4.5.2 A Governor desiring a matter to be included on an agenda, including a formal proposition for discussion and voting on at a meeting, shall make the individual's 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.

4.5.3 A matter may be included on the agenda and a proposition may be moved only if it relates to an issue arising from and relevant to the role and responsibilities of the Council which are set out in the Code of Conduct.

4.6 **Petitions**

4.6.1 Where a petition has been received by the Trust, the Chair shall include the petition as an item for the agenda of the next Council meeting, provided that petition is received more than 10 Clear days before the next Council meeting. Where it is received less than 10 Clear days prior to the meeting the petition may only be heard at the meeting at the discretion of the Chair.

4.7 **Chair of Meeting**

4.7.1 At any Council meeting, the Chair, if present, shall preside, such person being appointed by the Governors in accordance with the provisions of Paragraph 25 of the Constitution.

4.7.2 If the Chair is absent from the meeting or is absent temporarily on the grounds of a declared conflict of interest the Lead Governor shall preside, such person being appointed in accordance with the provisions of Paragraph 22 of the Constitution.

4.7.3 If the Chair and the Lead Governor are absent from the meeting or are absent temporarily on the grounds of a declared conflict of interest, the Deputy Chair shall preside, such person being appointed by the Governors in accordance with the provisions of Paragraph 27 of the Constitution.

4.7.4 If the Chair, the Lead Governor and the Deputy Chair are absent from the meeting or are absent temporarily on the grounds of a declared conflict of interest, a Governor shall be appointed by a simple majority of the Governors present and voting at the meeting to preside the meeting.

4.8 **Agenda Proposals**

Where a Governor has requested inclusion of a matter on the agenda in accordance with Standing Order 4.5.2 above as a matter to be formally proposed for discussion and voting on at the meeting, the provisions of this Standing Order 4.8 shall apply in respect of the proposition:

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

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

4.8.2.1 an amendment to the proposition;

4.8.2.2 the adjournment of the discussion or the meeting;

4.8.2.3 that the meeting proceed to the next business;

4.8.2.4 the appointment of an ad hoc committee to deal with a specific item of business;

4.8.2.5 that the proposition now be put;

4.8.2.6 that the public be excluded from the meeting in relation to the discussion concerning the proposition under Standing Order 4.1.1.

4.8.3 In the case of sub-paragraphs 4.8.2.3 and 4.8.2.5 above, to ensure objectivity these matters may only be put by a Governor who has not previously taken part in the debate and who is eligible to vote.

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

4.8.5 The mover of a proposition shall have a maximum of five minutes to move and three minutes to reply. Once a proposition has been moved, no Governor shall speak more than once or for more than three minutes.

4.8.6 A proposition, once moved and seconded, may be withdrawn by the proposer with the concurrence of the seconder and the consent of the Chair.

4.8.7 Notice of a proposition 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 Governors who give it and also the signature of four other Governors. When any such proposition has been disposed of by the Council it shall not be competent for any Governor, other than the Chair, to propose a proposition to the same effect within six months; however the Chair may do so if he considers it appropriate.

4.9 Chair's Ruling

4.9.1 Statements of Governors 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.

4.9.2 Without prejudice to Standing Order 2.3, save as permitted by law, at any meeting the person presiding shall be the final authority on the interpretation of these Council Standing Orders in relation to that meeting.

4.10 **Voting**

4.10.1 Save for a meeting called in an emergency of less than 7 days notice, a Governor may not vote at a meeting of the Council unless that individual has within the last 12 months, and more than three Clear days prior to the meeting, made a declaration in the form specified within Schedule A of these Standing Orders pursuant to Paragraph 18.4 of the Constitution.

4.10.2 Subject to clause 4.10.4 below, every question at a meeting shall be determined by a majority of the votes of the Chair of the meeting and the Governors present and voting on the question.

4.10.3 Whoever is Chair of the meeting of the Council shall in the case of an equality of votes on any question or proposition have a casting vote.

4.10.4 A resolution for the removal of the Chair or a Non-Executive Director shall be passed only if three quarters of the total number of Governors vote in favour of it.

4.10.5 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 Governors present so request.

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

4.10.7 If a Governor so requests, the individual's vote shall be recorded by name upon any vote (other than by paper ballot).

4.10.8 A Governor may only vote if present at the time of the vote on which the question is to be decided; no Governor may vote by proxy.

4.11 **Suspension or Termination of Office of a Governor**

4.11.1 The Chair shall be authorised to take such action as may be immediately required, including the exclusion of the Governor concerned from a meeting so that any allegation made against a Governor on the following grounds can be investigated:

4.11.1.1 any non-compliance with the Regulatory Framework, Code of Conduct, or these Standing Orders; or

4.11.1.2 any misconduct detrimental to the Trust; or

4.11.1.3 failure to attend two consecutive meetings of the Council or any meetings within a 6 month consecutive period without good reason established to the satisfaction of the Chair and the Council; or

4.11.1.4 if any other of the circumstances set out in paragraph 15 of the Constitution relating to the disqualification or removal of a Governor are applicable.

4.11.2 Where any grounds within this clause are alleged, it shall be for the Chairman on advice from the Governor code of Conduct group to lay a formal charge of non-compliance or misconduct.

4.11.3 The Governor in question will be notified in writing of the allegations, detailing the specific behaviour which is considered to be detrimental to the Trust, and inviting and considering the individual's response within a defined appropriate and reasonable timescale.

4.11.4 The Governor may be invited to address the Council in person if the matter cannot be resolved satisfactorily through correspondence.

4.11.5 The Governors, by a simple majority of those present and voting can decide whether to uphold the charge of non-compliance or misconduct detrimental to the Trust.

4.11.6 For the avoidance of doubt, and save for where the provisions of Paragraph 15.2 of this Constitution apply which lead to an automatic disqualification, the Governors can impose such sanctions as shall be deemed appropriate and as shall be in accordance with the Constitution. Such sanctions will range from the issuing of a written warning as to the Governor's future conduct and consequences, non-payment of expenses and removal of the Governor from office.

4.12 **Minutes**

4.12.1 The Minutes of the proceedings of a meeting shall be drawn up and maintained as a public record by the Trust Secretary and submitted for agreement at the next ensuing meeting where they will be signed by the Chair presiding at it.

4.12.2 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 next meeting.

4.12.3 Minutes shall be circulated to all Governors. The minutes of the meeting shall be made available to the public except for minutes relating to business conducted when members of the public are excluded under the terms of Council Standing Order 4.1 of these Council Standing Orders.

4.13 **Suspension of Standing Orders**

4.13.1 Except where this would contravene any statutory provision or any direction made by the Independent Regulator, any one or more of the Standing Orders may be suspended at any meeting, provided that at least two-thirds of the Governors are present, there is a majority of Governors who are members of the pubic constituency of the Trust, and that a majority of those present vote in favour of suspension.

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

4.13.3 A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the Chair and Governors.

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

4.14 **Variation and Amendment of Standing Orders**

4.14.1 These Standing Orders may be amended only if and to the extent that the Board after consultation with the Council and with the approval of the Independent Regulator so decide. The Board shall consider a request for amendment of these Standing Orders if:

4.14.1.1 a notice of proposal under Standing Order 4.5.2 has been given; and

4.14.1.2 no fewer than half of the Governors present and voting at the meeting voted in favour of amendment; and

4.14.1.3 at least half of the total number of Governors were present at the meeting; and

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

4.15 **Record of Attendance**

4.15.1 The names of the Chair and Governors present at the meeting shall be recorded in the minutes.

4.16 **Quorum**

4.16.1 No business shall be transacted at a meeting unless at least one third of the total number of Governors, including at least 5 Governors who are members of either the public constituency or the service users and carers' constituency, are present.

4.16.2 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 for a number of days to be fixed by the Chair and in any event not exceeding 30 days and upon reconvening, those present shall constitute a quorum.

4.16.3 If a Governor has been disqualified from participating in the discussion on any matter and/or from other voting on any resolution by reason of the declaration of a conflict of interest as provided in Standing Order 7 the individual 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.

4.17 **Role of the Lead Governor**

4.17.1 The Lead Governor shall provide a single point of contact on all Governors' issues and be the primary contact for the Independent Regulator when communicating directly to the Governors.

5 COMMITTEES

5.1 Subject to such directions and guidance as may be issued by the Independent Regulator, the Council may and, if directed by the Independent Regulator, shall appoint committees of

the Council to assist it in the proper performance of its functions under the Constitution and the Regulatory Framework, consisting wholly or partly of the Chair and Governors. For the avoidance of doubt the Council may appoint a committee of the Council to act as a joint special committee with a committee of the Board for the purpose of resolving disputes between the Council and the Board in accordance with the Dispute Resolution Procedure set out in the Standing Orders for the practice and procedure of the Board of Directors, as may be varied form time to time, as attached at Appendix 8 of the Constitution.

5.2 A committee appointed under Standing Order 5 may, subject to such directions as may be given by the Independent Regulator or the Council, appoint sub-committees consisting wholly or partly of members of the committee.

5.3 These Standing Orders, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees established by the Council with the term “Chair” to be read as a reference to the Chair of the committee and the term “Governor” to be read as a reference to a Member of the committee as the context permits.

5.4 Each such committee shall have such terms of reference and powers and be subject to such conditions as the Council shall decide and shall be in accordance with the Regulatory Framework and any direction or guidance issued by the Independent Regulator but the Council shall not delegate to any committee any of the powers or responsibilities which are to be exercised by the Council at a formal meeting. Such terms of reference shall have effect as if incorporated into the Standing Orders.

5.5 Where committees are authorised to establish sub-committees they may not delegate their powers to the sub-committee unless expressly authorised by the Council.

5.6 The Council shall approve the appointments to each of the committees which it has formally constituted.

5.7 Where the Council is required to appoint persons to a committee to undertake statutory functions, and where such appointments are to operate independently of the Council, such appointments shall be made in accordance with applicable statute and regulations and with guidance issued by the Independent Regulator.

5.8 Where the Council determines that persons who are neither Governors, nor members of the Board nor Officers of the Trust, shall be appointed to a committee, the terms of such appointment shall be determined by the Council subject to the payment of travelling expenses and other allowances being in accordance with such sum as may be determined by the Board or the Independent Regulator.

6 Confidentiality

6.1 Subject to Council Standing Order 6.2 below a member of the Council or an attendee on a committee of the Council shall not disclose a matter dealt with by, or brought before, the Council or a committee of the Council without the permission of the Council of such committee (as applicable) until such matter shall have been concluded or in the case of such committee, until the committee shall have reported to the Council.

6.2 A Governor or a non-Governor in attendance at a committee or the Council or of a meeting of the Council shall not disclose any matter dealt with by the committee or the Council, notwithstanding that the matter has been reported or concluded, if the Council or committee resolves that it is confidential.

7 DECLARATIONS OF INTERESTS AND REGISTER OF INTERESTS

7.1 Declaration of Interests

7.1.1 The Regulatory Framework and the Constitution require each Governor to disclose to the other Governors:

7.1.1.1 any actual or potential interest, direct or indirect, which is relevant and material to the business of the Trust, as described in Standing Order 7.2.1; and

7.1.1.2 any actual or potential pecuniary interest, direct or indirect, in any contract, proposed contract or other matter concerning the Trust, as described in Standing Orders 7.2.2 and 7.2.3; and

7.1.1.3 any actual or potential family interest, direct or indirect, of which the Governor is aware, as described in Standing Order 7.2.5.

7.1.2 Such a declaration shall be made either at the time of the Governor's election or appointment or as soon thereafter as the interest arises, but within 5 Clear Days of becoming aware of the existence of that interest, and in such manner as the Trust Secretary may prescribe from time to time.

7.1.3 In addition, if a Governor is present at a meeting of the Council and has an interest of any sort in any matter which is the subject of consideration, the individual shall at the meeting and as soon as practicable after its commencement disclose the fact, withdraw from the meeting and shall not vote on any question with respect to the matter.

7.1.4 Subject to Standing Order 7.2.4, if a Governor has declared a pecuniary interest (as described in Standing Orders 7.2.2 and 7.2.3) the individual shall not take part in the consideration or discussion of the matter. At the time the interests are declared, they should be recorded in the Council's meeting minutes. Any changes in interests should be officially declared at the next relevant meeting following the change occurring.

7.1.5 This Standing Order 7 applies to any committee, sub-committee or joint committee of the Council and applies to any member of any such committee, sub-committee, or joint committee (whether or not the individual is also a Governor).

7.1.6 The interests of Governors in 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.

7.2 Nature of Interests

7.2.1 Interests which should be regarded as "relevant and material" are as follows and are to be interpreted in accordance with guidance issued by the Independent Regulator:

7.2.1.1 directorships, including non-executive directorships held in private companies or public limited companies (with the exception of those of dormant companies); or

7.2.1.2 ownership, part-ownership or directorship of private companies, businesses, consultancies or other organisations likely or possibly seeking to do business with the NHS; or

7.2.1.3 majority or controlling share holdings in organisations likely or possibly seeking to do business with the NHS; or

7.2.1.4 a position of authority in a charity or voluntary organisation in the field of health and social care; or

7.2.1.5 any connection with a voluntary or other organisation contracting for NHS services or commissioning NHS services; or

7.2.1.6 any connection with an organisation, entity or company considering entering into or having entered into a financial agreement with the Trust, including but not limited to, lenders or banks.

7.2.2 A Governor shall be treated as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if:

7.2.2.1 the individual, or a nominee of the individual's, 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

7.2.2.2 the individual 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.

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

7.2.3.1 of the individual's membership of a company or other body, if the individual has no beneficial interest in any securities of that company or other body; or

7.2.3.2 of an interest in any company, body or person with which the individual is connected which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a Governor in the consideration or discussion of or in voting on, any question with respect to that contract or matter; or

7.2.3.3 of any travelling or other expenses or allowances payable to a Governor in accordance with the Constitution.

7.2.4 An interest in the securities of a company or other body shall for the purposes of subparagraph 7.2.3.2 above be regarded as remote or insignificant if:

7.2.4.1 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

7.2.4.2 if the share capital is of more than one class, the total nominal value of shares of any one class in which the individual has a beneficial

interest does not exceed one-hundredth of the total issued share capital of that class.

7.2.5 A family interest is an interest of the spouse or partner or any parent, child, brother or sister of a Governor which if it were the interest of that Governor would be a personal interest or a pecuniary interest of the individual's.

7.2.6 If Governors have any doubt about the relevance or materiality of an interest, this should be discussed with the Chair. Influence rather than the immediacy of the relationship is more important in assessing the relevance of an interest. The interests of partners in professional partnerships including General Practitioners should also be considered.

7.2.7 Any Governor who fails to disclose any interest or material interest required to be disclosed under these provisions must permanently vacate their office if required to do so by a majority of the remaining Governors.

7.3 **Register of Interests**

7.3.1 The Trust Secretary shall keep a Register of Interests of Governors which shall contain the names of each Governor, whether the individual has declared any interest, and if so, the interest declared.

8 STANDARDS OF BUSINESS CONDUCT

8.1 Each Governor shall comply with the Trust's Code of Conduct and any guidance and directions issued by the Independent Regulator.

9 APPOINTMENTS AND RECOMMENDATIONS

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

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

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

9.4 The Chair and every Governor shall disclose to the Chief Executive or the individual's delegated officer any relationship between themselves and a candidate of whose candidature that Governor or Officer is aware. It shall be the duty of the Chief Executive or the individual's delegated officer to report to the Council any such disclosure made.

9.5 On appointment, each Governor should disclose to the Council whether they are related to any other Governor or holder of any office in the Trust.

9.6 Where the relationship to another Governor is disclosed, Standing Order 6 shall apply.

10 MISCELLANEOUS

10.1 The Trust Secretary shall provide a copy of these Standing Orders to each Governor and endeavour to ensure that each Governor understands the individual's responsibilities within these Standing Orders.

10.2 These Standing Orders including all documents having effect as if incorporated in them shall be reviewed annually by the Board and the Council.

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

11 DISPUTE RESOLUTION

12 In the event of any Governors having a query or concern s/he should raise the issue in the first instance with the Trust Secretary who will provide a response to the Governor. Governors may subsequently wish to raise outstanding issues with the Chairman, the Lead Governor or the Senior Independent Director as appropriate.

12.1 In the event of a dispute regarding the entitlement to membership of a Governor, Council members are asked to refer to, and follow, the procedure set out in Annex 9 to this Constitution.

12.2 Where there is a dispute between the Council of Members and the Board of Directors, members are asked to refer to, and follow, the procedure set out in Standing Order 10.3 of the Standing Orders for the Practice and procedure of Directors as set out in Annex 8 of this Constitution.

Schedule A

Declaration to the Trust Secretary of Central and North West London Mental Health NHS Foundation Trust:

I hereby declare that I am at the date of this declaration [a member of the [Public/Staff/Service Users and Carers' Constituency] [an appointed Governor], and I am not prevented from being a member of the Council of Members by reason of any provision in the Constitution.

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

(Paragraph 32)

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INTRODUCTION – REGULATORY FRAMEWORK

The Central and North West London NHS Foundation Trust (the "**Trust**") is a statutory body which became a public benefit corporation on 1st May 2007 following its approval as an NHS Foundation Trust by the Independent Regulator of NHS Foundation Trusts (the "**Independent Regulator**") pursuant to the National Health Service Act 2006 (the "**2006 Act**").

The principal place of business of the Trust is at Trust Headquarters, Greater London House, Hampstead Road, London, NW1 7QY.

The Trust is governed by the 2006 Act, its Constitution and its Terms of Authorisation granted by the Independent Regulator (together the "**Regulatory Framework**"). The functions of the Trust are conferred by the Regulatory Framework. The Regulatory Framework requires the Board Directors of the Trust to adopt Standing Orders for the regulation of certain of its proceedings and business.

These Standing Orders, together with the Scheme of Reservation and Delegation and the Standing Financial Instructions, provide a comprehensive framework for the functions of the Trust. All Executive Directors, Non-Executive Directors and Officers should be aware of the existence of these documents and, where necessary, be familiar with the detailed provisions.

1. INTERPRETATION

1.1 Save as otherwise permitted by law, at any meeting the Chair shall be the final authority on the interpretation of Standing Orders (on which the Chair should be advised by the Chief Executive or Trust Secretary) and the Chair's decision shall be final and binding except in case of manifest error.

1.2 Any expression to which a meaning is given in the National Health Service Act 2006 and other Acts relating to the National Health Service or in the Financial Regulations or any other regulations made under such Acts shall have the same meaning in this interpretation and in addition:

1.2.1 **"2006 Act"** means the National Health Service Act 2006, as amended from time to time.

1.2.2 **"Accounting Officer"** means the officer responsible and accountable for the funds entrusted to the Trust. The individual shall be responsible for ensuring the proper stewardship of public funds and assets. For this Trust it shall be the Chief Executive.

1.2.3 **"Board of Directors"** and (unless the context otherwise requires) "**Board**", means the Board of Directors as constituted by the Constitution.

1.2.4 **"Chair"** means the person appointed in accordance with the Constitution to ensure that the Board of Directors and the Council of Members successfully discharge their overall responsibilities for the Trust as a whole. The expression **"the Chair**" shall be deemed to include the Deputy Chair or such other person so appointed if the Chair is absent from the meeting or is otherwise unavailable.

1.2.5 **"Chief Executive"** means the Chief Executive officer of the Trust appointed in accordance with the Constitution.

1.2.6 **“Constitution”** means the Constitution of the Trust as authorised by the Independent Regulator.

1.2.7 **“Council of Members”** means the Council of Members of the Trust as constituted by the Constitution.

1.2.8 **“Deputy Chair"** means the Non-Executive Director appointed as Deputy Chair by the Council of Members to take on the Chair’s duties if the Chair is absent or unavailable for any reason.

1.2.9 **"Executive Director"** means a Member of the Board appointed as an Executive Director in accordance with the Constitution.

1.2.10 **"Finance Director"** means the chief finance officer of the Trust appointed in accordance with the Constitution.

1.2.11 **"Funds held on Trust"** means those funds which the Trust holds at its date of incorporation, receives on distribution by statutory instrument, or chooses subsequently to accept pursuant to powers derived under the 2006 Act. Such funds may or may not be charitable.

1.2.12 **“Independent Regulator”** means the regulator of NHS Foundation Trusts established under Section 31 of the 2006 Act.

1.2.13 **"Member of the Board"** means an Executive Director or Non-Executive Director (including for the avoidance of doubt the Chair) or both, as the context requires.

1.2.14 **“Non-Executive Director"** means a member of the Board appointed as a Non-Executive Director in accordance with the Constitution.

1.1.15 **“Officer"** means an employee of the Trust or any other person holding a paid appointment or office with the Trust.

1.1.16 **“Scheme of Reservation and Delegation”** means the document containing the Reservation of Powers to the Board and the Scheme of Delegation for the Trust.

1.1.17 **“Senior Independent Director”** means the senior independent Non-Executive Director appointed in accordance with the Constitution.

1.1.18 **“SFIs"** means the Standing Financial Instructions.

1.1.19 **"Standing Orders"** or **“SOs”** means these Standing Orders of Directors.

1.1.20 **"Trust Secretary"** means a person appointed by the Trust in accordance with the Constitution, to act independently of the Board, to provide advice on corporate governance issues to the Board and the Chair and monitor the Trust’s compliance with the Regulatory Framework and these Standing Orders.

1.3 All references in these instructions to the masculine gender shall be read as equally applicable to the feminine gender.

1.4 References to any statute, statutory provision, statutory instrument or guidance in these Standing Orders include references to that statute, provision, instrument or guidance as replaced, amended, extended, re-enacted or consolidated from time to time.

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

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

2.2 All funds received in trust shall be held in the name of the Trust as corporate trustee. In relation to funds held on trust, powers exercised by the Trust as corporate trustee shall be exercised separately and distinctly from those powers exercised as a Trust.

2.3 The Trust has the functions conferred on it by its Terms of Authorisation issued by the Independent Regulator. Members of the Board acting on behalf of the Trust as corporate trustees are acting as quasi-trustees. Accountability for charitable funds held on trust is to the Charity Commission. Accountability for non-charitable funds held on Trust is only to the Independent Regulator.

2.4 The Trust has resolved that certain powers and decisions may only be exercised by the Board in formal session. These powers and decisions are set out in the Scheme of Reservation and Delegation which has effect as if incorporated into the Standing Orders.

2.5 Composition of the Membership of the Board

2.5.1 The composition of the Board will be in accordance with the Constitution and will include:

(a) The Chair and a maximum of nine other Non-Executive Directors; and

(b) A maximum of seven Executive Directors, one of whom shall be the Chief Executive, one of whom shall be the Finance Director, one of whom shall be a registered medical practitioner or a registered dentist and one of whom shall be a registered nurse or registered midwife.

2.6 Appointment of the Chair and other Non-Executive Directors

2.6.1 The Chair and the other Non-Executive Directors are appointed by the Council of Members in accordance with the Constitution.

2.6.2 The Council will make the terms and conditions of appointment of the Non-Executive Directors available for inspection by the Board.

2.7 Appointment of the Deputy Chair

2.7.1 The Council of Members at a general meeting shall appoint one of the Non-Executive Directors to be Deputy Chair, for such period not exceeding the remainder of the individual's term as a Non-Executive Director as they may specify on appointing them.

2.7.2 Any Non-Executive Director so appointed may at any time resign from the office of Deputy Chair by giving notice in writing to the Chair. The Council of Members may thereupon appoint another Non-Executive Director as Deputy Chair in accordance with the provisions of SO 2.7.1.

2.8 Appointment of Senior Independent Director

2.8.1 The Board (in consultation with the Council of Members) may appoint any independent Non-Executive Director as the Senior Independent Director, for such period not exceeding the remainder of the individual's term as a Non-Executive Director as they may specify on appointing them.

2.8.2 Any Non-Executive Director so appointed may at any time resign from the office of Senior Independent Director by giving notice in writing to the Chair. The Board (in consultation with the Council of Members) may thereupon appoint another independent Non-Executive Director as Senior Independent Director in accordance with the provisions of SO 2.8.1.

2.9 Appointment of the Executive Directors

2.9.1 The Chief Executive is appointed by the Non-Executive Directors in accordance with the Constitution. Except in the case of the initial Chief Executive, the appointment of the Chief Executive will be subject to the approval of the Council of Members.

2.9.2 The other Executive Directors are appointed by a committee consisting of the Chair, the other Non-Executive Directors and the Chief Executive in accordance with the Constitution.

2.10 Terms of Office of Members of the Board

2.10.1 The regulations setting out the period of tenure of office of the members of the Board and for the termination or suspension of office of any members of the Board are contained in the Constitution.

2.11 Role of Members of the Board

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

2.11.2 **Executive Directors**

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

2.11.3 **Chief Executive**

2.11.3.1 The Chief Executive shall be responsible for the overall performance of the executive functions of the Trust.

2.11.3.2 The individual is the Accounting Officer and shall be responsible for ensuring the discharge of obligations under all relevant financial directions and guidance issued by the Independent Regulator or any other relevant body, including the NHS Foundation Trust Accounting Officer Memorandum issued in April 2005 and any additional or replacement document in relation to the role of the Accounting Officer.

2.11.4 **Finance Director**

2.11.4.1 The Finance Director 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.

2.11.4.2 The individual shall be responsible, along with the Chief Executive, for ensuring the discharge of obligations under all relevant financial directions and guidance issued by the Independent Regulator or any other relevant body.

2.11.5 **Non-Executive Directors**

2.11.5.1 The Non-Executive Directors shall not be granted nor shall they seek to exercise any individual executive powers on behalf of the Trust.

2.11.5.2 They may, however, exercise collective authority when acting as members of or when chairing a committee of the Trust which has delegated powers.

2.11.6 **Chair**

2.11.6.1 The Chair shall be responsible for the operation of the Board of Directors (and Council of Members), and chair all Board of Directors (and Council of Members) meetings when present. The Chair must comply with the individual's terms of appointment and with these Standing Orders.

2.11.6.2 The Chair shall work in close harmony with the Chief Executive and shall ensure that key and appropriate issues are discussed by the Board in a timely manner with all the necessary information and advice being made available to the Board to inform the debate and ultimate resolutions.

2.11.7 **Deputy Chair**

2.11.7.1 Where the Chair dies or ceases to hold office, or where the individual is unable to perform the individual's duties as Chair owing to illness, conflict of interest or any other cause, the Deputy Chair shall act as Chair and perform the Chair's duties until a new Chair is appointed or the existing Chair resumes the individual's duties, as the case may be.

2.11.8 **Senior Independent Director**

2.11.8.1 The Senior Independent Director shall perform the role set out in "The NHS Foundation Trust Code of Governance" (2006) issued by the Independent Regulator.

2.11.8.2 The Senior Independent Director shall make himself available to Members and Governors who have concerns that they do not feel they can raise with the Chair or any Executive Director of the Trust. Recourse to the Senior Independent Director shall not replace the right

to instigate the dispute resolution procedure at Annex 9 of the Constitution.

2.12 **Joint Executive Directors**

2.12.1 The post of an Executive Director may be held by two individuals on a job-share basis (provided that the executive positions of doctor and nurse cannot be shared between the two professions).

2.12.2 Where such an arrangement is in force, both individuals shall be able to attend a meeting of the Board provided that at any meeting of the Board they may only count as one individual for the purposes of SO 3.12 'Quorum' and may only exercise one vote between them for the purposes of SO 3.11 'Voting'. Where the two individuals disagree as to how to vote at a Board meeting, then no vote shall be cast.

2.13 **Disqualification**

2.13.1 All members of the Board will be subject to the disqualification criteria included at paragraph 30 of the Constitution.

3 MEETINGS OF THE BOARD

3.1 Calling Meetings

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

3.1.2 The Chair may call a meeting of the Board at any time.

3.1.3 One third or more members of the Board 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 forthwith call a meeting.

3.1.4 Meetings of the Board may be held in private.

3.1.5 The Board may agree that its members can participate in its meetings by contemporaneous telephone, video or computer link through which they can hear and take part in proceedings. Participation in a meeting in this manner shall be deemed to constitute presence in person at the meeting.

3.2 Notice of Meetings and the Business to be transacted

3.2.1 Save in an emergency, at least seven days before each meeting of the Board, a written notice of the meeting, specifying the business proposed to be transacted at it, shall be delivered or posted to the usual place of residence of every member of the Board.

3.2.2 The notice referred to in SO 3.2.1 shall be signed by the Chair or by an Officer authorised by the Chair to sign on his or her behalf. Lack of

service of such a notice on any member of the Board shall not affect the validity of a meeting.

3.2.3 In the case of a meeting called by members of the Board in default of the Chair calling the meeting, those members of the Board shall sign the notice, and no business shall be transacted at the meeting other than that specified in the notice or emergency motions allowed under SO 3.8.

3.2.4 Failure to serve such a notice under SO 3.2.3 on more than three members of the Board will invalidate the meeting.

3.3 **Agenda and Supporting Papers**

3.3.1 The Board may determine that certain matters shall appear on every agenda for a meeting of the Trust.

3.3.2 A member of the Board desiring a matter to be included on an agenda shall make his or her request in writing to the Chair at least 14 days before the meeting. The request should include appropriate supporting information. Requests made less than 14 days before a meeting may be included on the agenda at the discretion of the Chair.

3.3.3 Save in an emergency, at least seven days before the meeting an agenda shall be delivered or posted to the usual place of residence of every member of the Board. Supporting papers, whenever possible, shall accompany the agenda.
In respect of Committees and with the prior agreement of the Chair of the relevant Committee, supporting papers may, even in the absence of a special reason for urgency, be dispatched three days prior to the meeting provided such an arrangement is deemed to be in the best interests of the Trust.

3.4 **Petitions**

3.4.1 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 **Chair of Meeting**

3.5.1 At any meeting of the Board, the Chair, if present, shall preside. If the Chair is absent from the meeting, the Deputy Chair (if the Council of Members has appointed one), if present, shall preside.

3.5.2 If the Chair and Deputy Chair are absent, such Non-Executive Director as the members of the Board present choose shall preside.

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

3.6 **Chair's ruling**

3.6.1 The decision of the Chair of the meeting on questions of order, relevancy and regularity (including procedure on handling motions) and

the individual's interpretation of the Standing Orders and Standing Financial Instructions, at the meeting, shall be final.

50.1 Meetings of the Board may be open to the public. When members of the public are admitted they may be excluded from all or any part of a meeting by a resolution of the Board on the grounds that publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted or for other special reasons stated in the resolution and arising from the business or nature of the proceedings.

Members of the public will be allowed, at the conclusion of the open session, to ask questions pertaining to items on the agenda. A total time limit for such questions will be 10 minutes.

3.7 **Notices of Motion**

3.7.1 Subject to the provisions of SO 3.9 'Motions: Procedure at and during a meeting' and SO 3.10 'Motion to Rescind a Resolution', a member of the Board wishing to move a motion shall send a written notice to the Chair.

3.7.2 The notice shall be delivered at least ten Clear days before the meeting. The Chair shall include in the agenda for the meeting all notices so received that are in order and permissible under these Standing Orders. Subject to SO 3.2.3, this Standing Order shall not prevent any motion being moved without notice on any business mentioned on the agenda for the meeting.

3.8 **Emergency Motions**

3.8.1 Subject to the agreement of the Chair, and subject also to the provision of SO 3.9 'Motions: Procedure at and during a meeting', a member of the Board may give written notice of an emergency motion after the issue of the notice of meeting and agenda, up to one hour before the time fixed for the meeting. The notice shall state the grounds of urgency. If in order, it shall be declared to the Board at the commencement of the business of the meeting as an additional item included in the agenda. The Chair's decision to include the item shall be final.

3.9 **Motions: Procedure at and during a meeting**

3.9.1 **Who may propose**

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

3.9.2 **Contents of motions**

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

3.9.2.1.1 the reception of a report;

3.9.2.1.2 consideration of any item of business before the Board;

3.9.2.1.3 the accuracy of minutes;

3.9.2.1.4 that the Board proceed to next business;

3.9.2.1.5 that the Board adjourn;

3.9.2.1.6 that the question be now put.

3.9.3 **Amendments to motions**

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

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

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

3.9.4 **Rights of reply to motions**

3.9.4.1 **Amendments**

3.9.4.1.1 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.

3.9.4.2 **Substantive/original motion**

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

3.9.5 **Withdrawing a motion**

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

3.9.6 **Motions once under debate**

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

3.9.6.1.1 an amendment to the motion;

3.9.6.1.2 the adjournment of the discussion, or the meeting;

3.9.6.1.3 that the meeting proceed to the next business;

3.9.6.1.4 that the question should be now put;

3.9.6.1.6 the appointment of an 'ad hoc' committee to deal with a specific item of business;

3.9.6.1.6 that a member be not further heard.

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

3.9.6.3 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.

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

3.10 Motion to Rescind a Resolution

3.10.1 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 of the Board who gives it and also the signature of three other members of the Board, and before considering any such motion of which notice shall have been given, the Board may refer the matter to any appropriate committee or the Chief Executive for recommendation.

3.10.2 When any such motion has been dealt with by the Board, it shall not be competent for any member of the Board 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.

3.11 Voting

3.11.1 Save as provided in SO 3.13 ‘Suspension of Standing Orders’, SO 3.14 ‘Waiver of Standing Orders’ and SO 3.15 ‘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 of the Board present and voting on the question.

3.11.2 In the case of an equal vote, the Chair or such other person presiding at the meeting shall have a second, and casting vote.

3.11.3 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.

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

3.11.5 If a member of the Board so requests, the individual's name shall be recorded by name upon any vote (other than by paper ballot).

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

3.11.7 An Officer 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 at a Board meeting.

3.11.8 An Officer attending a Board meeting to represent an Executive Director member during a period of incapacity or temporary absence without formal acting up status may not exercise the voting rights of the Executive Director.

3.11.9 An Officer's status when attending a Board meeting shall be recorded in the minutes.

3.12 **Quorum**

3.12.1 No business shall be transacted at a meeting of the Board unless at least two-thirds of the whole number of members of the Board (including at least one Non-Executive Director and one Executive) are present.

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

3.12.3 If a member of the Board 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 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.

3.12.4 The requirement in SO 3.12.1 above for a least one Executive Director to form part of the quorum shall not apply where the Executive Directors are excluded from a meeting.

3.13 **Suspension of Standing Orders**

3.13.1 Except where this would contravene any statutory provision or guidance issued by the Independent Regulator or the rules relating to the Quorum (SO 3.12), any one or more of the Standing Orders may be suspended at any meeting, provided that at least two-thirds of the whole number of the members of the Board are present, including one Executive Director and one Non-Executive Director, and that a majority of those present vote in favour of suspension. The reason for the suspension shall be recorded in the Board's minutes.

3.13.2 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 Board.

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

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

3.14 **Waiver of Standing Orders**

3.14.1 Except where this would contravene any statutory provision or any guidance issued by the Independent Regulator or the rules relating to the Quorum (SO 3.12), any one or more of the Standing Orders may be waived at any meeting, provided that at least two-thirds of the whole number of the members of the Board are present, including one Executive Director and one Non-Executive Director, and that a majority of those present vote in favour of waiver.

3.14.2 A decision to waive Standing Orders shall be recorded in the minutes of the meeting and a separate record of matters discussed relating to the waiver of Standing Orders shall be made and shall be available to the Chair and members of the Board.

3.14.3 The Audit Committee shall review every decision to waive Standing Orders.

3.15 **Variation and amendment of Standing Orders**

3.15.1 These Standing Orders shall be amended only if:

3.15.1.1 a notice of motion under SO 3.7 has been given; and

3.15.1.2 no fewer than half the total of the Non-Executive Directors vote in favour of amendment; and

3.15.1.3 at least two-thirds of the whole number of the members of the Board are present; and

3.15.1.4 the variation proposed does not contravene a statutory provision or guidance issued by the Independent Regulator.

3.16 **Record of Attendance**

3.16.1 The names of the members of the Board present at the meeting shall be recorded.

3.17 **Minutes**

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

3.17.2 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 next meeting.

3.17.3 Minutes shall be circulated in accordance with the wishes of members of the Board. Where providing a record of a public meeting, the minutes shall be made available to the public.

4 ARRANGEMENTS FOR THE EXERCISE OF TRUST FUNCTIONS BY DELEGATION

4.1 Delegation of Functions to Committees, Officers

4.1.1 Subject to the Regulatory Framework and such guidance, if any, as may be given by the Independent Regulator, the Board may make arrangements for the exercise, on behalf of the Board, of any of its functions by a committee of Directors or sub-committee appointed by virtue of Standing Order 5 below or by an Executive Director, in each case subject to such restrictions and conditions as the Board thinks fit.

4.2 Emergency Powers and urgent decisions

4.2.1 The powers which the Board has reserved to itself within these Standing Orders (SO 2.4) 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 for noting.

4.3 Delegation to Committees

4.3.1 The Board shall agree from time to time to the delegation of executive powers to be exercised by other committees, or sub-committees, or joint-committees, which it has formally constituted and which are made up of Directors. The Constitution and terms of reference of these committees, or sub-committees, and their specific executive powers shall be approved by the Board.

4.4 Delegation to an Executive Director

4.4.1 Those functions of the Trust which have not been retained as reserved by the Board, or delegated to a committee or sub-committee, shall be exercised on behalf of the Board by the Chief Executive. The Chief Executive shall determine which functions the individual will perform personally and shall nominate an Executive Director to undertake the remaining functions for which the individual will still retain accountability to the Trust.

4.4.2 The Chief Executive shall prepare a Scheme of Reservation and Delegation identifying the individual's proposals which shall be considered and approved by the Board, subject to any amendment agreed during the discussion. The Chief Executive may from time to time propose amendments to the Scheme of Reservation and Delegation which shall be considered and approved by the Board.

4.4.3 Nothing in the Scheme of Reservation and Delegation shall impair the discharge of the direct accountability to the Board of the Finance Director to provide information and advise the Board in accordance with statutory requirements or any requirements of the Independent Regulator. For all other functions which do not form part of these requirements, the Finance Director shall be accountable to the Chief Executive.

4.5 Schedule of matters reserved to the Board and Scheme of Delegation

4.5.1 The arrangements made by the Board as set out in the Scheme of Reservation and Delegation shall have effect as if incorporated in these Standing Orders.

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

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

5 APPOINTMENT OF COMMITTEES AND SUB-COMMITTEES

5.1 Appointment of Committees and Sub-Committees

5.1.1 Subject to paragraph 3.3 of the Constitution and such directions and guidance as may be issued by the Independent Regulator from time to time, the Board may appoint committees of the Board consisting of one or more members of the Board.

5.1.2 A committee appointed under this SO may, subject to such directions and guidance as may be given by the Independent Regulator or the Board, appoint sub-committees.

5.1.3 The Board shall have the power to dismiss the members of any committee or sub-committee that is established under the power afforded to the Board under Standing Order 5.1.1 above or under the power afforded to committees at Standing Order 5.1.2 above, from that committee or sub-committee as applicable.

5.2 Applicability of Standing Orders and Standing Financial Instructions to Committees and Sub-Committees

5.2.1 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 and sub-committees established by the Board. In which case the term “Chair” is to be read as a reference to the Chair of the committee or sub-committee as the context permits, and the term

"Member of the Board" is to be read as a reference to a member of the committee or sub-committee also as the context permits.

5.3 **Delegation of powers by Committees to Sub-Committees**

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

5.4 **Terms of Reference of Committees**

5.4.1 Each such committee or sub-committee shall have such terms of reference and powers and be subject to such conditions (such as reporting back to the Board) as the Board shall decide. Such terms of reference shall be in accordance with the Regulatory Framework and any directions and guidance issued by the Independent Regulator and shall have effect as if incorporated into the Standing Orders.

5.5 **Approval of Appointments to Committees**

5.5.1 Subject to Standing Order 5.6, the Board shall approve the appointments to each of the committees which it has formally constituted.

5.5.2 Where the Board determines that Directors shall be appointed to a committee the Board shall define the powers of such.

5.5.3 The Board may elect to change the committees and sub committees as necessary without the requirement to amend these Standing Orders. Save that the Trust shall at all times have an audit committee, a Nominations Committee and a Remuneration Committee.

5.6 **Appointments for Statutory Functions**

5.6.1 Where the Board is required by the Constitution, by any applicable statute or regulations or by any directions or guidance issued by the Independent Regulator to appoint persons to a committee to undertake statutory functions, and where such appointments are to operate independently of the Board, such appointments shall be made in accordance with the Constitution or such applicable statute or regulations or such directions or guidance issued by the Independent Regulator.

5.7 **Committees established by the Board**

5.7.1 The committees established by the Board are:

5.7.1.1 Audit Committee;

5.7.1.2 Remuneration Committee;

5.7.1.3 Nominations Committee; and

5.7.1.4 where so required, a committee to act as a joint special committee with a committee of the Council of Members for the purpose of resolving

disputes between the Council and the Board in accordance with the Dispute Resolution Procedure set out in Standing Order 10.3.

5.8 **Other Committees and Sub-Committees**

5.8.1 The Board may also establish and dissolve such other committees and sub-committees as required to discharge the Board's responsibilities.

5.9 **Confidentiality**

5.9.1 A member of a committee shall not disclose a matter dealt with by, or brought before, the committee without its permission until the committee shall have reported to the Board or shall otherwise have concluded on that matter.

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

6 INTERFACE BETWEEN THE BOARD OF DIRECTORS AND THE COUNCIL OF MEMBERS

6.1 The Board will cooperate with the Council of Members as far as possible in order to comply with the Regulatory Framework in all respects and in particular in relation to matters set out in the Constitution including those referred to in SOs 6.2 and 6.3 below.

6.2 The members of the Board, having regard to the views of the Council of Members, are to prepare the information as to the Trust's forward planning in respect of each financial year to be given to the Independent Regulator.

6.3 The members of the Board are to present to the Council of Members at a general meeting the Annual Accounts, any report of the auditor on them, and the Annual Report.

6.4 The Annual Report is to give:

6.4.1 information on any steps taken by the Trust to secure that (taken as a whole) the actual membership of its Public Constituency is representative of those eligible for such membership; and

6.4.2 any other information the Independent Regulator requires.

6.5 In order to comply with the Regulatory Framework in all respects and in particular in relation to the matters which are set out above, the Council of Members may request that a matter which relates to Annual Accounts or forward planning is included on the agenda for a meeting of the Board.

6.6 If the Council of Members so desires such a matter as described within SO 6.5 to be included on an agenda, they shall make their request in writing to the Chair at least 14 Clear days before the meeting of the Board, subject to SO 3.2. The Chair shall decide whether the matter is appropriate to be included on the agenda.

Requests made less than 14 clear days before a meeting may be included on the agenda at the discretion of the Chair.

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

7.1 Policy statements: general principles

7.1.1 The Board will from time to time agree and approve policy statements / procedures which will apply to all or specific groups of staff employed by the Trust. The decisions to approve such policy statements 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.

7.2 Specific Policy statements

7.2.1 Notwithstanding the application of SO 7.1 above, these Standing Orders and Standing Financial Instructions must be read in conjunction with the following Policy statements which shall have effect as if incorporated in these Standing Orders:

7.2.1.1 the Standards of Business Conduct and Conflicts of Interest Policy for Central and North West London NHS Foundation Trust staff; and

7.2.1.2 the Staff Disciplinary and Appeals Procedures adopted by the Trust.

7.3 Standing Financial Instructions

7.3.1 Standing Financial Instructions adopted by the Board in accordance with the financial regulations, directions and guidance issued by the Independent Regulator and any other relevant body shall have effect as if incorporated in these Standing Orders.

7.4 Specific guidance

7.4.1 Notwithstanding the application of SO 7.1 above, these Standing Orders and Standing Financial Instructions must be read in conjunction with any directions and guidance issued by the Independent Regulator and any other relevant body and in accordance with the following:

7.4.1.1 Caldicott Guardian 1997;

7.4.1.2 Human Rights Act 1998; and

7.4.1.3 Freedom of Information Act 2000.

8 DUTIES AND OBLIGATIONS OF MEMBERS OF THE BOARD AND SENIOR MANAGERS UNDER THE STANDING ORDERS AND STANDING FINANCIAL INSTRUCTIONS

8.1 Declaration of Interests

8.1.1 The Regulatory Framework and the Constitution require each member of the Board to disclose to the other members of the Board:

8.1.1.1 any actual or potential interest, direct or indirect, which is relevant and material to the business of the Trust, as described in Standing Order 8.2.1; and

8.1.1.2 any actual or potential pecuniary interest, direct or indirect, in any contract, proposed contract or other matter concerning the Trust, as described in Standing Orders 8.2.2 and 8.2.3; and

8.1.1.3 any actual or potential family interest, direct or indirect, of which the member is aware, as described in Standing Order 8.2.5.

8.1.2 A declaration made pursuant to SO 8.1.1 shall be made as soon as the member of the Board becomes aware of the interest and in any event within 5 days of becoming aware of the interest. The declaration shall be made by completing and signing a form, as prescribed by the Trust Secretary from time to time.

8.1.3 In addition, if a member of the Board is present at a meeting of the Council of Members and has an interest of any sort in any matter which is the subject of consideration, the individual shall at the meeting and as soon as practicable after its commencement disclose the fact, withdraw from the meeting and shall not vote on any question with respect to the matter.

8.1.4 This Standing Order 8 applies to any committee or sub-committee of the Board and applies to any member of any such committee or sub-committee (whether or not the individual is also a member of the Board).

8.1.5 The interests of members of the Board in 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.

8.2 Nature of Interests

8.2.1 Interests which should be regarded as "relevant and material" are as follows and are to be interpreted in accordance with guidance issued by the Independent Regulator:

8.2.1.1 directorships, including non-executive directorships held in private companies or public limited companies (with the exception of those of dormant companies); or

8.2.1.2 ownership, part-ownership or directorship of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS; or

8.2.1.3 majority or controlling share holdings in organisations likely or possibly seeking to do business with the NHS; or

8.2.1.4 a position of authority in a charity, voluntary organisation or other organisation in the field of health and social care; or

8.2.1.5 any connection with a voluntary or other organisation contracting for NHS services or commissioning NHS services; or

8.2.1.6 any connection with an organisation, entity or company considering entering into or having entered into a financial agreement with the Trust, including but not limited to, lenders or banks; or

8.2.1.7 interests in pooled funds that are under separate management.

8.2.2 Subject to SO 8.2.3 and SO 8.2.4, a member of the Board shall be treated as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if:

8.2.2.1 the individual, or a nominee of the individual's, 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

8.2.2.2 the individual 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.

8.2.3 A member of the Board shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only:

8.2.6.1 of the individual's membership of a company or other body, if the individual has no beneficial interest in any securities of that company or other body; or

8.2.3.2 of an interest in any company, body or person with which the individual is connected which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a member of the Board in the consideration or discussion of or in voting on, any question with respect to that contract or matter.

8.2.4 Where a member of the Board:

8.2.4.1 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

8.2.4.2 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

8.2.4.3 if the share capital is of more than one class, the total nominal value of shares of any one class in which the individual has a beneficial interest

does not exceed one-hundredth of the total issued share capital of that class,

the member of the Board shall not be prohibited 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 the individual's duty to disclose the individual's interest.

8.2.5 A family interest is an interest of the spouse or partner or any parent, child, brother or sister of a member of the Board which if it were the interest of that member of the Board would be a personal interest or a pecuniary interest of the individual's.

8.2.6 Any remuneration, compensation or allowances payable to a member of the Board by virtue of the 2006 Act shall not be treated as a pecuniary interest for the purpose of this Standing Order.

8.2.7 If members of the Board have any doubt about the relevance or materiality of an interest, this should be discussed with the Chair. Influence rather than the immediacy of the relationship is more important in assessing the relevance of an interest. The interests of partners in professional partnerships including General Practitioners should also be considered.

8.3 Exclusion in proceedings of the Board

8.3.1 Subject to SO 8.2.4, if a member of the Board has disclosed an interest pursuant to SO 8.1.1 to the other members of the Board, the individual shall not take part in the consideration or discussion of the matter or vote on any question with respect to it. At the time the interests are declared, they should be recorded in the Board's meeting minutes. Any changes in interests should be officially declared at the next relevant meeting following the change occurring.

8.3.2 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.

8.3.3 The Board may exclude any Executive Director from a meeting of the Board where the remuneration and terms of office of that Executive Director are being discussed.

8.4 Register of Interests

8.4.1 The Trust Secretary will ensure that a Register of Interests is established to record formally declarations of interests of members of the Board. In particular the Register will include details of all directorships and other relevant and material interests disclosed by members of the Board pursuant to SO 8.1.1.

8.4.2 These details will be kept up to date by means of no less than a quarterly review of the Register in which any changes to interests declared during the preceding three months will be incorporated.

8.4.3 The Register will be available to the public and the Chief Executive will take reasonable steps to bring the existence of the Register to the attention of local residents and to publicise arrangements for viewing it.

8.4.4 In establishing, maintaining, updating and publicising the Register, the Trust shall comply with all guidance issued from time to time by the Independent Regulator.

8.4.5 Copies of extracts of the Register must be provided to members of the Trust free of charge and within a reasonable time period of the request. A reasonable charge may be imposed on non-members for copies or extracts of the Register.

8.5 Standards of Business Conduct

8.5.1 Members of the Board and Officers must comply with the national guidance contained in HSG(93)5 'Standards of Business Conduct for NHS Staff' and the 'Code of Conduct for NHS Managers (2002)' and any directions and guidance issued by the Independent Regulator or any other relevant body from time to time. In addition, members of the Board and Officers should at all times comply with the principles and standards of public life set out by the Committee on Standards in Public Life and any other relevant bodies. The following provisions should be read in conjunction with these documents and principles.

8.5.2 Any Officer who comes to know that the Trust has entered into or proposes to enter into a contract in which the individual or any person connected with them (as defined in SO 8.2.5) has any pecuniary interest, actual or potential, direct or indirect, the Officer shall declare their interest by giving notice in writing of such fact to the Trust Secretary as soon as practicable.

8.5.3 An Officer should also declare to the Trust Secretary any other employment or business or other relationship of the individual's, or of a cohabiting spouse, that conflicts, or might reasonably be predicted could conflict, with the interests of the Trust.

8.5.4 The Trust requires interests, employment or relationships declared to be entered in a register of interests of staff.

8.6 Canvassing of and recommendations by members of the Board in relation to appointments

8.6.1 Canvassing of members of the Board or members of any committee of the Board directly or indirectly for any appointment under the Trust shall disqualify the candidate for such appointment. The contents of this paragraph of the Standing Order shall be included in application forms or otherwise brought to the attention of candidates.

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

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

8.7 Relatives of members of the Board or Officers

8.7.1 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 member of the Board or the holder of any office under the Trust. Failure to disclose such a relationship shall disqualify a candidate and, if appointed, render them liable to instant dismissal.

8.7.2 Every member of the Board and any Officer shall disclose to the Chief Executive any relationship between themselves and a candidate of whose candidature that member of the Board or Officer is aware. It shall be the duty of the Chief Executive to report to the Board any such disclosure made.

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

8.7.4 Where a relationship is disclosed under SO 8.7.3, SO 8.3 'Exclusion in proceedings of the Board' shall apply.

8.8 External consultants

8.8.1 SOs 8.5 to 8.7 will apply equally to all external consultants or other agents acting on behalf of the Trust. The Scheme of Reservation and Delegation should be adhered to at all times.

8.9 Gifts and hospitality

8.9.1 Members of the Board and Officers of the Trust are expected to maintain high standards of personal conduct in all work related business. Under the Prevention of Corruption Act 2002 they must not accept from any organisation, firm or individual any inducement or reward which might influence them to make a decision not in the best interests of the Trust.

8.9.2 The receipt of gifts or offer of gifts must be dealt with in accordance with the Trust's Standing Financial Instructions and policy on the receipt of hospitality and gifts as approved by the Audit Committee.

8.9.3 Similarly, all offers of hospitality must be treated on the same basis. Visits to contractors or potential contractors or to another site to inspect their installations must be made at the Trust's expense not the contractor's. Exceptions to this rule may be granted by the Chief Executive where reasonable. Otherwise only minimal hospitality should be accepted from a contractor or potential contractor and immediate explanation must be given to the Chief Executive if a

breach of the rules occurs. As with gifts, unless it is of a minor nature, hospitality and entertainment should be declined.

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

9.1 Custody of Seal

9.1.1 The Common Seal of the Trust shall be kept by the Chief Executive or a nominated Officer in a secure place.

9.2 Sealing of Documents

9.2.1 The Common Seal of the Trust shall not be fixed to any documents unless the sealing has been authorised by a resolution of the Board which expression includes, by virtue of the resolution of the Board adopting these Standing Orders, documents approved for sealing by the Chair and either the Chief Executive or another Executive Director.

9.3 Register of Sealing

9.3.1 An entry of every sealing shall be made and numbered consecutively in a book provided for that purpose, and shall be signed by the persons who shall have approved and authorised the document and those who attested the Seal. A report of all sealings shall be made to the Board at least quarterly. The report shall contain details of the seal number, the description of the document and date of sealing.

9.4 Signature of Documents

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

9.4.2 The Chief Executive or nominated officers shall be authorised, by resolution of the Board, to sign on behalf of the Trust any agreement or other document not requested to be executed as a deed, the subject matter of which has been approved by the Board or any committee or sub-committee with delegated authority.

10 MISCELLANEOUS

10.1 Standing Orders to be given to members of the Board and Officers

10.1.1 It is the duty of the Chief Executive to ensure that existing members of the Board and Officers and all new appointees are notified of and understand their responsibilities within Standing Orders and Standing Financial Instructions. Updated copies shall be issued to staff designated by the Chief Executive.

10.1.2 New designated Officers shall be informed in writing and shall receive copies where appropriate in Standing Orders.

10.2 Review of Standing Orders

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

10.3 Dispute Resolution Procedure

10.3.1 In the event of dispute between the Council of Members and the Board of Directors:

(a) in the first instance the Chair on the advice of the Trust Secretary, and such other advice as the Chair may see fit to obtain, shall seek to resolve the dispute;

(b) if the Chair is unable to resolve the dispute the individual shall refer the dispute to the Trust Secretary who shall appoint a joint special committee constituted as a committee of the Board of Directors and a committee of the Council of Members, both comprising equal numbers, to consider the circumstances and to make recommendations to the Council of Members and the Board of Directors with a view to resolving the dispute;

(c) if the recommendations (if any) of the joint special committee are unsuccessful in resolving the dispute, the Chair may refer the dispute back to the Board of Directors who shall make the final decision.

APPENDIX 9 – DISPUTE RESOLUTION PROCEDURE

1. In the event of any dispute about the entitlement to Membership of Constituencies the dispute shall be referred to the Trust Secretary who shall make a determination on the point in issue. If the member is aggrieved at the decision of the Trust Secretary he may appeal in writing within 14 Clear days of the Trust Secretary's decision to the Council of Members whose decision shall be final.

2. In the event that the Council of Members exercises its power to disqualify a Governor pursuant to Paragraphs 15.4, 16.4 or 16.5 of this Constitution then the Governor subject to the resolution may exercise a right of appeal by giving notice in writing to the Chief Executive who shall appoint an independent person to determine the appeal.

3. Except where otherwise specified in the Constitution or the Standing Orders for the Practice and Procedure of the Council of Members or the Governor's code of conduct, questions of eligibility, procedure and administrative matters in relation to Governorship or meetings of Members or Governors shall be determined by the Trust Secretary. There will be a right of appeal to the Chair whose decision shall be final and binding except in the case of manifest error.

4. Except where otherwise specified in this Constitution, the Code of Conduct and the Standing Orders for the Practice and Procedure of the Board of Directors, matters in relation to Directorship or meetings of Directors shall be determined by the Trust secretary, with a right of appeal to the Chairman whose decision shall be final and binding except in the case of manifest error.

5. Pursuant to paragraph 15.4 of the Constitution, where a dispute as to a Governor's ineligibility is made and the provisions of this Appendix 9 apply, if it is the final decision of the Chair that such Governor is ineligible pursuant to the provisions of paragraph 15.2 of the Constitution, the Governor shall upon such determination be forthwith removed from the Register of Governors in accordance with the provisions of Paragraph 15.3 of the Constitution.

6. In the event of a dispute between the Council of Members please refer to Standing Order 10.3 of the Standing Orders for the practice and procedure of Directors in Annex 8 to this Constitution.