

**TRUST BOARD MEETING – PART 1 (*Held in Public*)**  
**Thursday 12 March 2026, 2 – 3pm**  
**Trust Conference Room, Warrington Hospital and via MS Teams**

Agenda Item	Time	Agenda Item	Objective/ Desired Outcome	Process	Presenter
<b>BM/26/03/172</b>	<b>2:00</b>	Welcome, Apologies and Declarations of Interest	<b><i>To note</i></b>	<b><i>Verbal</i></b>	Chair
<b>BM/26/03/173</b>	<b>2:02</b>	Matters Arising	<b><i>To note for assurance</i></b>	<b><i>Verbal</i></b>	Chair
<b>Matters for decision</b>					
<b>BM/26/03/174</b>	<b>2:05</b>	Integration: Transaction documents for approval <ul style="list-style-type: none"> <li>▪ Application Letter</li> <li>▪ New Constitution</li> <li>▪ Transaction Agreement</li> </ul>	<b><i>For approval</i></b>	<b><i>report</i></b>	Chief Strategy and Partnerships Officer
<b>Closing items</b>					
<b>BM/26/03/175</b>		Review of the Meeting	To discuss	<b><i>Verbal</i></b>	Chair
<b>BM/26/03/176</b>		Any Other Business	To discuss	<b><i>Verbal</i></b>	Chair
<b>Date and time of next meeting 1 April 2026, Trust Conference Room, Warrington Hospital</b>					

Supplementary papers are available to members of the public on request by email [whh.foundation@nhs.net](mailto:whh.foundation@nhs.net)

**REPORT TO TRUST BOARD**

<b>AGENDA REFERENCE:</b>	<b>BM/26/03/174</b>			
<b>SUBJECT:</b>	Integration: Transaction documents for approval <ul style="list-style-type: none"> <li>▪ Application Letter</li> <li>▪ New Constitution</li> <li>▪ Transaction Agreement</li> </ul>			
<b>DATE OF MEETING:</b>	12 March 2026			
<b>AUTHOR(S):</b>	Lucy Gardner, Chief Strategy & Partnerships Officer			
<b>EXECUTIVE DIRECTOR SPONSOR:</b>	Lucy Gardner, Chief Strategy & Partnerships Officer			
<b>LINK TO STRATEGIC OBJECTIVE:</b> <i>(Please select as appropriate)</i>	<b>SO1</b> We will.. Always put our patients first delivering safe and effective care and an excellent patient experience		✓	
	<b>SO2</b> We will.. Be the best place to work with a diverse and engaged workforce that is fit for now and the future		✓	
	<b>SO3</b> We will ..Work in partnership with others to achieve social and economic wellbeing in our communities.		✓	
<b>LINK TO RISKS ON THE BOARD ASSURANCE FRAMEWORK (BAF):</b>  <i>(Please DELETE as appropriate)</i>	All			
<b>LINK TO PUBLIC SECTOR EQUALITY DUTIES</b>	<b><i>Please indicate below the Equality considerations for Patients &amp; Service Users and/or Workforce as appropriate:</i></b>			
	1. Eliminate unlawful discrimination, harassment and victimisation, and other prohibited conduct	<b>Yes</b>	<b>No</b>	<b>N/A</b>
				✓
	Further Information:			
	2. Advance equality of opportunity between people who share a relevant protected characteristic and those who do not	<b>Yes</b>	<b>No</b>	<b>N/A</b>
				✓
Further Information:				
3. Foster good relations between people who share a protected characteristic and those who do not	<b>Yes</b>	<b>No</b>	<b>N/A</b>	
	✓			
Further Information:				
<b>EXECUTIVE SUMMARY (KEY ISSUES):</b>	<p>This paper seeks Board approval of the key transaction documents: The Application Letter, the New Constitution and the Transaction Agreement.</p> <p>These documents have been developed with support from the Trusts' legal advisers and were approved in principle by both Trust Boards in February 2026. The application letter and draft constitution were also both approved in principle by both Councils of Governors in February.</p>			

	They have been reviewed and checked by NHS England. The final versions are now presented to the Board for approval prior to submission to NHS England for final authorisation.		
<b>PURPOSE: (please select as appropriate)</b>	<b>Approval</b> ✓	<b>To note</b>	<b>Decision</b>
<b>RECOMMENDATION:</b>	<p>The Trust Board is asked to approve the:</p> <ul style="list-style-type: none"> <li>▪ Application Letter</li> <li>▪ New Constitution</li> <li>▪ Transaction Agreement</li> </ul>		
<b>PREVIOUSLY CONSIDERED BY:</b>	<b>Committee</b>	Trust Board	
	<b>Agenda Ref.</b>		
	<b>Date of meeting</b>	February 2026	
	<b>Summary of Outcome</b>	Approved in principle	
<b>FREEDOM OF INFORMATION STATUS (FOIA):</b>	Release Document in Full		
<b>FOIA EXEMPTIONS APPLIED: (if relevant)</b>	None		

## REPORT TO TRUST BOARD

<b>SUBJECT</b>	Integration: Transaction documents for approval <ul style="list-style-type: none"><li>▪ Application Letter</li><li>▪ New Constitution</li><li>▪ Transaction Agreement</li></ul>	<b>AGENDA REF:</b>	<b>BM/26/03/174</b>
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### 1. BACKGROUND/CONTEXT

The Trust Board is asked to approve the final versions of the three key documents required to progress the proposed transaction:

- Application Letter
- New Constitution
- Transaction Agreement

All documents have been developed with support from the Trusts' legal advisers. They were approved in principle by both Trust Boards in February 2026. The application letter and draft constitution were also both approved in principle by both Councils of Governors in February.

The documents have been subsequently updated to reflect formal feedback from NHS England (NHSE), notably the transaction risk rating of amber.

The final versions are now presented for Board approval prior to submission to NHSE for final authorisation.

#### 1.1 APPLICATION LETTER

The Application Letter is the formal, Board-approved submission to NHSE requesting approval of the proposed transaction.

It confirms that all required planning, due diligence, governance, and assurance processes have been completed and that the Trusts are now seeking NHSE approval to proceed to implementation.

The final version incorporates NHSE confirmed Transaction Rating of Amber.

#### 1.2 NEW CONSTITUTION

A new Constitution is required ahead of the integration to ensure statutory compliance and to provide an effective governance framework for the new organisation post-transaction.

Development of the Constitution was overseen by a joint working group of Governors from both Trusts, supported and led by the Director of Corporate Governance (BCH). This ensured:

- Appropriate Governor representation from both Trusts
- Robust challenge and assurance
- Consistency with statutory requirements and the national Model NHS Constitution
- Coordination of legal advice and NHSE feedback

The draft Constitution has been based on the national Model NHS Constitution, updated with minor amendments from the Trusts' legal advisers and NHSE's legal team.

The Constitution will take effect automatically if NHSE approves the acquisition, in line with the NHS Transactions Guidance.

### **1.3 TRANSACTION AGREEMENT**

The Transaction Agreement is the legally binding contract governing the terms under which WHH acquires BCH. It sets out:

- Assets, services, and obligations transferring
- Responsibilities of each party pre- and post-transaction
- How risks and liabilities will be managed
- Assurance to NHSE that due process and clarity of accountability have been established

The Agreement has been developed by Hill Dickinson, with detailed input from both Trusts and incorporates feedback from NHSE.

## **2. RECOMMENDATIONS**

The Board is asked to approve the Application Letter, new Constitution, and Transaction Agreement for submission to NHS England.

NHS England  
Wellington House,  
133-155 Waterloo Road,  
London,  
SE1 8UG

5 March 2026

**Proposed acquisition of Bridgewater Community Healthcare NHS Foundation Trust by Warrington and Halton Hospitals NHS Foundation Trust (“the Parties”)**

In accordance with section 56A of the National Health Service Act 2006 (‘the Act’) and the enclosed transaction agreement, dated 12 March between the Parties, this letter is the joint application of the Parties to NHS England for their acquisition as described above.

**The Parties request that NHS England:**

- 1) Grants this joint application pursuant to section 56A of the Act to confirm that it is satisfied that the Parties have taken such steps as are necessary to prepare for the acquisition taking effect on 1 April 2026.
- 2) Makes the grant of application pursuant to section 56A of the Act.

In compliance with section 56A of the Act, the Parties enclose:

- 3) A copy of minutes of the meetings of the Warrington and Halton Teaching Hospitals NHS Foundation Trust Council of Governors and of the Bridgewater Community Healthcare NHS Foundation Trust Council of Governors, evidencing the approval by more than half of the members of each Council of Governors to this application.
- 4) A copy of the proposed constitution of North Cheshire and Mersey NHS Foundation Trust

The Parties acknowledge that, in accordance with their guidance ‘*Assuring and supporting complex change: Statutory transactions, including mergers and acquisitions*’ NHS England has rated the transaction AMBER.

Yours faithfully

<p><b>Steve McGuirk, Chair</b> Warrington and Halton Teaching Hospitals NHS Foundation Trust</p> <p><b>Date:</b></p>	<p><b>Martyn Taylor, Chair</b> Bridgewater Community Healthcare NHS Foundation Trust</p> <p><b>Date:</b></p>
<p><b>Nikhil Khashu, Chief Executive Officer</b></p> <p><b>Date:</b></p>	

**NORTH CHESHIRE AND MERSEY NHS FOUNDATION TRUST**

**Commencement Date: 1 April 2026**

## TABLE OF CONTENTS

1.	INTERPRETATION AND DEFINITIONS.....	1
2.	NAME.....	2
3.	PRINCIPAL PURPOSE.....	2
4.	POWERS.....	2
5.	MEMBERSHIP AND CONSTITUENCIES.....	3
6.	APPLICATION FOR MEMBERSHIP.....	3
7.	PUBLIC CONSTITUENCY.....	3
8.	STAFF CONSTITUENCY.....	3
9.	AUTOMATIC MEMBERSHIP BY DEFAULT – STAFF.....	3
10.	NOT USED.....	4
11.	NOT USED.....	4
12.	RESTRICTION ON MEMBERSHIP.....	4
13.	ANNUAL MEMBERS’ MEETING.....	4
14.	COUNCIL OF GOVERNORS – COMPOSITION.....	4
15.	COUNCIL OF GOVERNORS – ELECTION OF GOVERNORS.....	4
16.	COUNCIL OF GOVERNORS - TENURE.....	5
17.	COUNCIL OF GOVERNORS – DISQUALIFICATION AND REMOVAL.....	5
18.	COUNCIL OF GOVERNORS – DUTIES OF GOVERNORS.....	6
19.	COUNCIL OF GOVERNORS – MEETINGS OF GOVERNORS.....	6
20.	COUNCIL OF GOVERNORS – STANDING ORDERS.....	6
21.	COUNCIL OF GOVERNORS – REFERRAL TO THE PANEL.....	6
22.	COUNCIL OF GOVERNORS - CONFLICTS OF INTEREST OF GOVERNORS.....	7
23.	COUNCIL OF GOVERNORS – TRAVEL EXPENSES.....	7
24.	COUNCIL OF GOVERNORS – FURTHER PROVISIONS.....	7
25.	BOARD OF DIRECTORS – COMPOSITION.....	7
26.	BOARD OF DIRECTORS – GENERAL DUTY.....	8
27.	BOARD OF DIRECTORS – QUALIFICATION FOR APPOINTMENT AS A NON-EXECUTIVE DIRECTOR.....	8
28.	BOARD OF DIRECTORS – APPOINTMENT AND REMOVAL OF CHAIR AND OTHER NON-EXECUTIVE DIRECTORS.....	8
29.	NOT USED.....	8
30.	BOARD OF DIRECTORS – APPOINTMENT OF DEPUTY CHAIR.....	8
31.	BOARD OF DIRECTORS - APPOINTMENT AND REMOVAL OF THE CHIEF EXECUTIVE AND OTHER EXECUTIVE DIRECTORS.....	8
32.	NOT USED.....	8
33.	BOARD OF DIRECTORS – DISQUALIFICATION.....	8
34.	BOARD OF DIRECTORS – MEETINGS.....	10
35.	BOARD OF DIRECTORS – STANDING ORDERS.....	10
36.	BOARD OF DIRECTORS – CONFLICTS OF INTEREST OF DIRECTORS.....	10
37.	BOARD OF DIRECTORS – REMUNERATION AND TERMS OF OFFICE.....	11
38.	REGISTERS.....	11

39.	NOT USED.....	12
40.	REGISTERS – INSPECTION AND COPIES.....	12
41.	DOCUMENTS AVAILABLE FOR PUBLIC INSPECTION.....	12
42.	AUDITOR.....	13
43.	AUDIT COMMITTEE.....	13
44.	ACCOUNTS.....	13
45.	ANNUAL REPORT, FORWARD PLANS AND NON-NHS WORK.....	14
46.	PRESENTATION OF THE ANNUAL ACCOUNTS AND REPORTS TO THE GOVERNORS AND MEMBERS.....	14
47.	INSTRUMENTS.....	15
48.	AMENDMENT OF THE CONSTITUTION.....	15
49.	MERGERS ETC. AND SIGNIFICANT TRANSACTIONS.....	15
	ANNEX 1 – THE PUBLIC CONSTITUENCY.....	16
	ANNEX 2 – THE STAFF CONSTITUENCY.....	17
	ANNEX 3 – NOT USED.....	19
	ANNEX 4 – COMPOSITION OF THE COUNCIL OF GOVERNORS.....	20
	ANNEX 5 –THE MODEL ELECTION RULES.....	22
	ANNEX 6 – ADDITIONAL PROVISIONS.....	44
	ANNEX 7 – STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE COUNCIL OF GOVERNORS.....	53
	ANNEX 8 – STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE BOARD OF DIRECTORS.....	63
	ANNEX 9 - MEMBERS - FURTHER PROVISIONS.....	78
	ANNEX 10 – ANNUAL MEMBERS MEETING.....	81

## 1. INTERPRETATION AND DEFINITIONS

Unless otherwise stated, words or expressions contained in this Constitution shall bear the same meaning as in the National Health Service Act 2006 as amended by the Health and Social Care Act 2012 and Health and Social Care Act 2022.

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

the **2006 Act** is the National Health Service Act 2006.

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

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

**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.

**Annual Members' Meeting** is defined in paragraph 13.1 of this Constitution.

**Authorisation** means an authorisation given by NHS England under section 35 of the 2006 Act.

**Board of Directors** is the Board of Directors of the Trust as constituted in accordance with paragraph 25 of this Constitution.

**Chair** takes the meaning given to it in paragraph 19.1 of this Constitution.

**Chief Executive** means the individual nominated in accordance with paragraph 31 of this Constitution

**Code of Conduct for Directors** means the Trust's code of conduct for the Directors as adopted by the Trust from time to time.

**Constitution** means this constitution and all annexes to it.

**Council of Governors** means the council of governors of the Trust as constituted in accordance with this Constitution.

**Deputy Chair** takes the meaning given to it in paragraph 19.1 of this Constitution.

**Director** means a member of the Board of Directors.

**Governor** means a member of the Council of Governors

the **Integrated Care Board** or **ICB** means NHS Cheshire and Merseyside Integrated Care Board.

**Membership Strategy** means the strategy setting out how the Trust will recruit, engage, support and develop a representative membership. The strategy is published on the Trust's website.

**Model Election Rules** means those election rules as published and/or updated by NHS Providers from time to time, the current version (as at the date of this Constitution) of which is attached to this Constitution at Annex 5.

**NHS England** leads the NHS in England to deliver high-quality services for all.

**NHS Providers** means the member owned registered charity (charity no. 1140900 registration no. 07525114) established for promotion of the NHS public provider trusts and foundation trusts.

**Nominations and Remuneration Committee** takes the meaning given to it in paragraph 9 of Annex 6.

**Officer** means an employee of the Trust.

**Public Constituency** means those who live in an area specified in Annex 1 of this Constitution as an area for any public constituency of the Trust as constituted in accordance with paragraph 7 of this Constitution.

**Staff Constituency** means those individuals who come within paragraphs 8.1 and 8.2 of this Constitution and who are referred to collectively as the staff constituency, in accordance with paragraph 8.3 of this Constitution.

the **Regulator, NHS England, previously known as Monitor** is the body provided by Section 61 of the 2012 Act.

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

## 2. **NAME**

The name of the foundation trust is North Cheshire and Mersey NHS Foundation Trust (the **Trust**).

## 3. **PRINCIPAL PURPOSE**

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

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

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

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

3.3.2 the promotion and protection of public health.

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

## 4. **POWERS**

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

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

4.3 Any of these powers may be delegated to a committee of Directors or to an executive Director.

## 5. **MEMBERSHIP AND CONSTITUENCIES**

The Trust shall have members, each of whom shall be a member of one (1) of the following constituencies:

5.1 a Public Constituency;

5.2 a Staff Constituency.

## 6. **APPLICATION FOR MEMBERSHIP**

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

## 7. **PUBLIC CONSTITUENCY**

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

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

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

## 8. **STAFF CONSTITUENCY**

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

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

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

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

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

## 8.4 **NOT USED**

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

9. **AUTOMATIC MEMBERSHIP BY DEFAULT – STAFF**

9.1 An individual who is:

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

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

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

10. **NOT USED**

11. **NOT USED**

12. **RESTRICTION ON MEMBERSHIP**

12.1 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.

12.2 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.

12.3 An individual must be at least 12 years old to become a member of the Trust.

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

13. **ANNUAL MEMBERS' MEETING**

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

13.2 Further provisions about the Annual Members' Meeting are set out in Annex 10 – Annual Members' Meetings.

14. **COUNCIL OF GOVERNORS – COMPOSITION**

14.1 The Trust is to have a Council of Governors, which shall comprise both elected and Appointed Governors.

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

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

## **15. COUNCIL OF GOVERNORS – ELECTION OF GOVERNORS**

- 15.1 Elections for elected members of the Council of Governors shall be conducted in accordance with the Model Election Rules.
- 15.2 The Model Election Rules, as published from time to time by the NHS Providers, form part of this Constitution. The Model Election Rules current at the date of the Trust's Authorisation are attached at Annex 5.
- 15.3 A subsequent variation of the Model Election Rules by NHS Providers, or any other subsequent body with authority to do so, shall not constitute a variation of the terms of this constitution for the purposes of paragraph 48 of this Constitution (amendment of the constitution).
- 15.4 An election, if contested, shall be by secret ballot.

## **16. COUNCIL OF GOVERNORS - TENURE**

- 16.1 An elected Governor may hold office for a period of up to three (3) years.
- 16.2 An elected Governor shall cease to hold office if they cease to be a member of the constituency or class by which they were elected.
- 16.3 An elected Governor shall be eligible for re-election at the end of their initial term, for a further two terms. After this period there must be break of at least one calendar year before becoming eligible for re-election.
- 16.4 An appointed Governor may hold office for a period of up to three (3) years.
- 16.5 An appointed Governor shall cease to hold office if the appointing organisation withdraws its sponsorship of them.
- 16.6 An appointed Governor shall be eligible for re-appointment at the end of their initial term, for a further two terms.

## **17. COUNCIL OF GOVERNORS – DISQUALIFICATION AND REMOVAL**

- 17.1 The following may not become or continue as a member of the Council of Governors:
  - 17.1.1 a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;
  - 17.1.2 a person in relation to whom a moratorium period under a debt relief order applies (under part 7A of the Insolvency Act 1986);
  - 17.1.3 a person who has made a composition or arrangement with, or granted a trust deed for, his/her creditors and has not been discharged in respect of it; and/or
  - 17.1.4 a person who within the preceding five (5) years has been convicted in the British Islands of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three (3) months (without the option of a fine) was imposed on him/her.
- 17.2 Governors must be at least 16 years of age at the date they are nominated for election or appointment.

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

17.4 Provision for the removal of Governors is set out at Annex 5.

## **18. COUNCIL OF GOVERNORS – DUTIES OF GOVERNORS**

18.1 The general duties of the Council of Governors are:

18.1.1 to hold the non-executive Directors individually and collectively to account for the performance of the Board of Directors;

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

18.1.3 to undertake the roles and responsibilities required of Governors as set out in Annex 6.

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

## **19. COUNCIL OF GOVERNORS – MEETINGS OF GOVERNORS**

19.1 The Chair of the Trust (the Chair of the Board of Directors, appointed in accordance with the provisions of this Constitution) or, in their absence the Deputy Chair (appointed in accordance with this Constitution, shall preside at meetings of the Council of Governors.

19.2 Meetings of the Council of Governors shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons.

19.3 The special reasons referred to include, but are not limited to, where the Council of Governors considers that publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted.

19.4 The Chair may exclude any member of the public from the meeting of the Council if they consider that they are interfering with or preventing any conduct of the meeting.

19.5 For the purposes of obtaining information about the Trust's performance of its functions or the Directors' performance of their duties (and deciding whether to propose a vote on the Trust's or Directors' performance), the Council of Governors may require one (1) or more of the Directors to attend a meeting.

## **20. COUNCIL OF GOVERNORS – STANDING ORDERS**

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

## **21. COUNCIL OF GOVERNORS – REFERRAL TO THE PANEL**

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

21.1.1 to act in accordance with its constitution; or

- 21.1.2 to act in accordance with provision made by or under Chapter 5 of the 2006 Act.
- 21.2 A governor may refer a question to the Panel in accordance with section 39A of the 2006 Act only if more than half of the members of the Council of Governors voting approve the referral.
- 21.3 Notwithstanding section 39A of the 2006 Act, as such a panel does not presently exist, the Trust must take steps to secure that governors are able to access support and/or advice, as and where necessary, to enable them to fulfil their duties, as set out above.
- 22. COUNCIL OF GOVERNORS - CONFLICTS OF INTEREST OF GOVERNORS**
- If a Governor has a pecuniary, personal or family interest, whether that interest is actual or potential and whether that interest is direct or indirect, in any proposed contract or other matter which is under consideration or is to be considered by the Council of Governors, the Governor shall disclose that interest to the members of the Council of Governors as soon as they become aware of it. The standing orders for the Council of Governors shall make provision for the disclosure of interests and arrangements for the exclusion of a Governor declaring any interest from any discussion or consideration of the matter in respect of which an interest has been disclosed.
- 23. COUNCIL OF GOVERNORS – TRAVEL EXPENSES**
- The Trust may pay travelling and other expenses to members of the Council of Governors at rates determined by the Trust.
- 24. COUNCIL OF GOVERNORS – FURTHER PROVISIONS**
- Further provisions with respect to the Council of Governors are set out in Annex 6.
- 25. BOARD OF DIRECTORS – COMPOSITION**
- 25.1 The Trust is to have a Board of Directors, which shall comprise both executive and non-executive Directors.
- 25.2 The Board of Directors is to comprise:
- 25.2.1 a non-executive Chair;
- 25.2.2 no less than five (5) other non-executive Directors; and
- 25.2.3 no less than five (5) executive Directors.
- 25.3 One (1) of the executive Directors shall be the Chief Executive.
- 25.4 The Chief Executive shall be the Accounting Officer.
- 25.5 One (1) of the executive Directors shall be the finance director.
- 25.6 One (1) of the executive Directors is to be a registered medical practitioner or a registered dentist (within the meaning of the Dentists Act 1984).
- 25.7 One (1) of the executive Directors is to be a registered nurse or a registered midwife.

**26. BOARD OF DIRECTORS – GENERAL DUTY**

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

**27. BOARD OF DIRECTORS – QUALIFICATION FOR APPOINTMENT AS A NON-EXECUTIVE DIRECTOR**

A person may be appointed as a non-executive Director only if:

- 27.1 they are a member of a public constituency;
- 27.2 NOT USED;
- 27.3 NOT USED;
- 27.4 they are not disqualified by virtue of paragraph 33 below.

**28. BOARD OF DIRECTORS – APPOINTMENT AND REMOVAL OF CHAIR AND OTHER NON-EXECUTIVE DIRECTORS**

- 28.1 The Council of Governors at a general meeting of the Council of Governors shall appoint or remove the Chair of the Trust and the other non-executive Directors.
- 28.2 Removal of the Chair or another non-executive Director shall require the approval of three quarters of the members of the Council of Governors.
- 28.3 The initial Chair and the initial non-executive Directors are to be appointed in accordance with paragraph 29 below.

**29. NOT USED**

**30. BOARD OF DIRECTORS – APPOINTMENT OF DEPUTY CHAIR**

The Council of Governors at a general meeting of the Council of Governors shall appoint one (1) of the non-executive Directors as a Deputy Chair.

**31. BOARD OF DIRECTORS - APPOINTMENT AND REMOVAL OF THE CHIEF EXECUTIVE AND OTHER EXECUTIVE DIRECTORS**

- 31.1 The non-executive Directors shall appoint or remove the Chief Executive.
- 31.2 The appointment of the Chief Executive shall require the approval of the Council of Governors.
- 31.3 NOT USED.
- 31.4 A committee consisting of the Chair, the Chief Executive and the other non-executive Directors shall appoint or remove the other executive Directors.

**32. NOT USED**

**33. BOARD OF DIRECTORS – DISQUALIFICATION**

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

- 33.1 a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;
- 33.2 a person in relation to whom a moratorium period under a debt relief order applies (under part 7A of the Insolvency Act 1986);
- 33.3 a person who has made a composition or arrangement with, or granted a trust deed for, their creditors and has not been discharged in respect of it;
- 33.4 a person who within the preceding five (5) years has been convicted in the British Islands of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on them;
- 33.5 they are a member of the Council of Governors, or a Governor of another NHS Foundation Trust or any other NHS Body;
- 33.6 they have been removed from office as a Governor of the Trust in accordance with the procedure for removal set out in Annex 5;
- 33.7 they are a spouse, partner, parent or child of a member of the Council of Governors or Board of Directors;
- 33.8 they are a member of a local authority's scrutiny committee covering health matters;
- 33.9 on the basis of disclosures obtained through an application to the Criminal Records Bureau, they are not considered suitable by the executive Director responsible for Human Resources;
- 33.10 they have or have been the subject of a Sexual Offences Prevention Order, a Foreign Travel Order or a Risk of Sexual Harm Order made under the provisions of the Sexual Offences Act 2003;
- 33.11 they are the subject of a disqualification order made under the Company Directors Disqualification Act 1986;
- 33.12 they are incapable by reason of mental disorder, illness or injury of managing or administering their property and affairs;
- 33.13 they have had their name removed from any list maintained pursuant to Parts 4, 5, 6 or 7 of the NHS Act 2006 and/or Regulations made under those Parts, and has not subsequently had their name included on such a list, and due to the reason(s) for such removal, they are not considered suitable by the executive Director responsible for Human Resources;
- 33.14 in the case of a non-executive Director, they have refused without reasonable cause to fulfil any training requirements established by the Board of Directors;
- 33.15 they have refused to sign and deliver to the Trust Secretary a statement in the form specified by the Board of Directors confirming acceptance of the Trusts' Code of Conduct for Directors;
- 33.16 in the case of a non-executive Director (excluding the Non-Executive Chair), they are no longer a member of the Public Constituency;

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

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

#### **34. BOARD OF DIRECTORS – MEETINGS**

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

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

#### **35. BOARD OF DIRECTORS – STANDING ORDERS**

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

#### **36. BOARD OF DIRECTORS – CONFLICTS OF INTEREST OF DIRECTORS**

36.1 The duties that a Director of the Trust has by virtue of being a Director include in particular:

36.1.1 a duty to avoid a situation in which the director has (or can have) a direct or indirect interest that conflicts (or possibly may conflict) with the interests of the trust.

36.1.2 a duty not to accept a benefit from a third party by reason of being a director or doing (or not doing) anything in that capacity.

36.2 The duty referred to in sub-paragraph 36.1.1 is not infringed if:

36.2.1 the situation cannot reasonably be regarded as likely to give rise to a conflict of interest; or

36.2.2 the matter has been authorised in accordance with the Constitution.

36.3 The duty referred to in sub-paragraph 36.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.

36.4 In sub-paragraph 36.1.2, “third party” means a person other than:

36.4.1 the Trust; or

36.4.2 a person acting on its behalf.

36.5 If a Director of the Trust has in any way a direct or indirect interest in a proposed transaction or arrangement with the Trust, the Director must declare the nature and extent of that interest to the other Directors.

- 36.6 If a declaration under this paragraph proves to be, or becomes, inaccurate, incomplete, a further declaration must be made.
- 36.7 Any declaration required by this paragraph must be made before the Trust enters into the transaction or arrangement.
- 36.8 This paragraph does not require a declaration of an interest of which the Director is not aware or where the Director is not aware of the transaction or arrangement in question.
- 36.9 A Director need not declare an interest:
- 36.9.1 if it cannot reasonably be regarded as likely to give rise to a conflict of interest;
  - 36.9.2 if, or to the extent that, the directors are already aware of it;
  - 36.9.3 if, or to the extent that, it concerns terms of the Director's appointment that have been or are to be considered:
    - 36.9.3.1 by a meeting of the Board of Directors; or
    - 36.9.3.2 by a committee of the Directors appointed for the purpose under the Constitution.
- 36.10 For the purposes of paragraph 36.2.2:
- 36.10.1 A matter shall have been authorised in accordance with the constitution if it has been approved by the Board of Directors (excluding any Director whose interest is the subject of authorisation) on the basis that to do so would be in the best interests of the Trust.
  - 36.10.2 The Board of Directors may grant any such authorisation in paragraph 36.1.1 subject to such terms and conditions as the Board of Directors thinks fit.
  - 36.10.3 The Board of Directors may decide to revoke or vary any authorisation granted pursuant to paragraph 36.10.1 at any time, but such a decision will not affect anything done by the Director(s) whose interest is the subject of authorisation prior to such revocation or variation.

### **37. BOARD OF DIRECTORS – REMUNERATION AND TERMS OF OFFICE**

- 37.1 The Council of Governors at a general meeting of the Council of Governors shall decide the remuneration and allowances, and the other terms and conditions of office, of the Chair and the other non-executive Directors.
- 37.2 The Trust shall establish a committee of non-executive Directors to decide the remuneration and allowances, and the other terms and conditions of office, of the Chief Executive and other executive Directors.

### **38. REGISTERS**

The Trust shall have:

- 38.1 a register of members showing, in respect of each member, the constituency to which they belong and, where there are classes within it, the class to which they belong;
- 38.2 a register of members of the Council of Governors;
- 38.3 a register of interests of Governors;
- 38.4 a register of Directors; and
- 38.5 a register of interests of the Directors.

39. **NOT USED**

40. **REGISTERS – INSPECTION AND COPIES**

- 40.1 The Trust shall make the registers specified in paragraph 38 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.
- 40.2 The Trust shall not make any part of its registers available for inspection by members of the public which shows details of any member of the Trust, if the member so requests.
- 40.3 So far as the registers are required to be made available:
  - 40.3.1 they are to be available for inspection free of charge at all reasonable times; and
  - 40.3.2 a person who requests a copy of or extract from the registers is to be provided with a copy or extract.
- 40.4 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.

41. **DOCUMENTS AVAILABLE FOR PUBLIC INSPECTION**

- 41.1 The Trust shall make the following documents available for inspection by members of the public free of charge at all reasonable times:
  - 41.1.1 a copy of the current Constitution;
  - 41.1.2 a copy of the latest annual accounts and of any report of the auditor on them; and
  - 41.1.3 a copy of the latest annual report.
- 41.2 The Trust shall also make the following documents relating to a special administration of the Trust available for inspection by members of the public free of charge at all reasonable times:
  - 41.2.1 a copy of any order made under section 65D (appointment of trust special administrator), 65J (power to extend time), 65KC (action following Secretary of State's rejection of final report), 65L(trusts coming out of administration) or 65LA (trusts to be dissolved) of the 2006 Act;

- 41.2.2 a copy of any report laid under section 65D (appointment of trust special administrator) of the 2006 Act;
  - 41.2.3 a copy of any information published under section 65D (appointment of trust special administrator) of the 2006 Act;
  - 41.2.4 a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act;
  - 41.2.5 a copy of any statement provided under section 65F(administrator's draft report) of the 2006 Act;
  - 41.2.6 a copy of any notice published under section 65F(administrator's draft report), 65G (consultation plan), 65H (consultation requirements), 65J (power to extend time), 65KA(NHS England's decision), 65KB (Secretary of State's response to NHS England's decision), 65KC (action following Secretary of State's rejection of final report) or 65KD (Secretary of State's response to re-submitted final report) of the 2006 Act;
  - 41.2.7 a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act;
  - 41.2.8 a copy of any final report published under section 65I (administrator's final report);
  - 41.2.9 a copy of any statement published under section 65J (power to extend time) or 65KC (action following Secretary of State's rejection of final report) of the 2006 Act; and/or
  - 41.2.10 a copy of any information published under section 65M (replacement of trust special administrator) of the 2006 Act.
- 41.3 Any person who requests a copy of or extract from any of the above documents is to be provided with a copy.
- 41.4 If the person requesting a copy or extract is not a member of the Trust, the Trust may impose a reasonable charge for doing so.

## 42. **AUDITOR**

- 42.1 The Trust shall have an auditor.
- 42.2 The Council of Governors shall appoint or remove the auditor at a general meeting of the Council of Governors.

## 43. **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.

## 44. **ACCOUNTS**

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

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

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

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

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

#### **45. ANNUAL REPORT, FORWARD PLANS AND NON-NHS WORK**

45.1 The Trust shall prepare an annual report and send it to NHS England.

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

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

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

45.5 Each forward plan must include information about:

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

45.5.2 the income it expects to receive from doing so.

45.6 Where a forward plan contains a proposal that the Trust carry on an activity of a kind mentioned in sub-paragraph 45.5.1 the Council of Governors must:

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

45.6.2 notify the Directors of the Trust of its determination.

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

#### **46. PRESENTATION OF THE ANNUAL ACCOUNTS AND REPORTS TO THE GOVERNORS AND MEMBERS**

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

46.1.1 the annual accounts;

46.1.2 any report of the auditor on them; and

46.1.3 the annual report.

46.2 The documents shall also be presented to the members of the Trust at the Annual Members' Meeting by at least one (1) member of the Board of Directors.

46.3 The Trust may combine a meeting of the Council of Governors convened for the purposes of sub-paragraph 46.1 with the Annual Members' Meeting.

#### **47. INSTRUMENTS**

47.1 The Trust shall have a seal.

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

47.3 The Trust's headquarters is at: Warrington Hospital, Lovely Lane, Warrington, Cheshire, WA5 1QG

#### **48. AMENDMENT OF THE CONSTITUTION**

48.1 The Trust may make amendments of its Constitution only if:

48.1.1 more than half of the members of the Council of Governors of the Trust voting approve the amendments; and

48.1.2 more than half of the members of the Board of Directors of the Trust voting approve the amendments.

48.2 Amendments made under paragraph 48.1 take effect as soon as the conditions in that paragraph are satisfied, but the amendment has no effect in so far as the Constitution would, as a result of the amendment, not accord with Schedule 7 of the 2006 Act.

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

48.3.1 at least one (1) member of the Council of Governors must attend the next Annual Members' Meeting and present the amendment; and

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

48.4 If more than half of the members voting approve the amendment, the amendment continues to have effect; otherwise, it ceases to have effect and the Trust must take such steps as are necessary as a result.

48.5 Amendments by the Trust of its Constitution are to be notified to NHS England. For the avoidance of doubt, NHS England's functions do not include a power or duty to determine whether or not the Constitution, as a result of the amendments, accords with Schedule 7 of the 2006 Act.

#### **49. MERGERS ETC. AND SIGNIFICANT TRANSACTIONS**

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

- 49.2 The Trust may enter into a significant transaction only if more than half of the members of the Council of Governors of the trust voting approve entering into the transaction.
- 49.3 “Significant transaction” means if its value equates to 25% of either the Foundation Trust’s gross assets, income or gross capital (inclusive of the transaction), calculated with reference to the Foundation Trust’s opening Balance Sheet for the Financial Year in which approval is being sought.

## **ANNEX 1 – THE PUBLIC CONSTITUENCY**

The Public Constituency consists of the two areas specified in the table below:

<b>Area</b>	<b>Constituency</b>	<b>Minimum Members</b>
1	The Borough of Warrington and the Borough of Halton	50
2	Rest of England	50
	<b>Total</b>	100

The minimum number of members required for each area of the Public Constituency is 50.

## **ANNEX 2 – THE STAFF CONSTITUENCY**

### **1 Staff Constituency**

The Staff Constituency is to be divided into 6 classes as follows:

(a) **Medical Staff**

The members of the Medical Staff Class are individuals who are members of the Staff Constituency who are fully registered persons within the meaning of the Medicines Act 1956, who hold a licence to practice and have a post practising within the Trust.

(b) **Nursing & Midwifery Staff**

The members of the Nursing and Midwifery Staff Class are members of the Staff Constituency who hold a professional registration with the Nursing and Midwifery Council and who practise as a nurse or a midwife within the Trust.

(c) **Support Staff**

The members of the Support Staff Class are members of the Staff Constituency who do not fall within paragraphs (a), (b) or (d) but provide services in direct support of registered practitioners or work within Patient Services.

(d) **Clinical Scientist or Allied Health Professionals**

The members of the Clinical Scientist or Allied Health Professional Class are individuals who are members of the Staff Constituency who are registered clinical or health professionals who practise as such within the Trust, and who do not fall within paragraphs (a) or (b).

(e) **Estates, administrative and managerial staff**

The members of the Estates, Administration and Managerial Class are any members of the Staff Constituency who do not come within paragraphs (a), (b), (c) or (d).

(f) **Dental Staff**

The members of the Dental Services Class (both acute and community) who do not fall within paragraphs (a), (b), (c), (d) or (e).

### **2 Staff Members**

Members of the Trust who are members of the Staff Constituency are to be individuals:

- (a) Who are employed under a contract of employment by the Trust which has no fixed term, or has a fixed term of at least 12 months; or
- (b) Have been continuously employed by the Trust under a contract of employment for at least 12 months.

Below is the minimum membership of each class of the Staff Constituency:

<b>Class</b>	<b>Minimum number of members</b>
Class a) – Medical Staff	50
Class b) – Nursing and Midwifery Staff	50
Class c) – Support Staff	50
Class d) - Clinical Scientist or Allied Health Professionals	50
Class e) - Estates, administrative and managerial staff	50
Class f) – Dental staff	50
<b>Total</b>	<b>300</b>

**ANNEX 3 – NOT USED**

## ANNEX 4 – COMPOSITION OF THE COUNCIL OF GOVERNORS

The Council of Governors is to consist of partnership Governors and elected Governors.

The Council of Governors, subject to the 2006 Act, shall seek to ensure that through the composition of the Council of Governors:

- The interests of the community served by the Trust are appropriately represented.
- The level of representation of the Public Constituencies, the classes of the Staff Constituency and the appointing organisations achieves an appropriate balance having regard to their legitimate interest in the Trust's affairs.

The Council of Governors consists of:

**1 Partnership Governors** appointed by:

- (a) Local Authorities for an area which includes the whole or part of an area of a public constituency;
- (b) Partnership organisations, including local Universities and voluntary organisations;

**2 Elected Governors** elected by:

- (a) Members of the Public Constituency;
- (b) Individuals within each class of the Staff Constituency.

More than half of the members of the Council of Governors shall be elected by those in 2(a) above.

### Composition

**3 Partnership Governors**

<b>Partnership Organisations</b>	<b>Number to be appointed</b>
<b>Local Authorities:</b>	
Warrington Borough Council	1
Halton Borough Council	1
Further or Higher Education Institute	1
Religious or Cultural Community Group	1
Voluntary / Charity Group	1
<b>Total Partnership Governors</b>	<b>5</b>

4 **Elected Governors**

<b>Constituency/class electing</b>	<b>Number to be elected</b>
<b>Staff Constituency:</b>	
Class a) – Medical Staff	1
Class b) – Nursing and Midwifery Staff	2
Class c) – Support Staff	1
Class d) – Clinical Scientist or Allied Health Professionals	1
Class e) - Estates, administrative and managerial staff	1
Class f) – Dental Staff	1
<b>Total</b>	<b>7</b>

<b>Public Constituency:</b>	
Area 1 Warrington and Halton	15
Area 2 Rest of England	4
<b>Total Elected Governors</b>	<b>19</b>

5 **Total Membership of Council of Governors**

Partnership Governors	5
Staff Governors	7
Elected Governors	19
<b>Total</b>	<b>31</b>

## **ANNEX 5 –THE MODEL ELECTION RULES**

PART 1 - INTERPRETATION.....	23
1 INTERPRETATION.....	24
PART 2 – TIMETABLE FOR ELECTION.....	24
2 TIMETABLE.....	24
3 COMPUTATION OF TIME.....	24
PART 3 – RETURNING OFFICER.....	25
4 RETURNING OFFICER.....	25
5 STAFF.....	25
6 EXPENDITURE.....	25
7 DUTY OF CO-OPERATION.....	25
PART 4 - STAGES COMMON TO CONTESTED AND UNCONTESTED ELECTIONS.....	25
8 NOTICE OF ELECTION.....	25
9 NOMINATION OF CANDIDATES.....	26
10 CANDIDATE’S PARTICULARS.....	26
11 DECLARATION OF INTERESTS.....	26
12 DECLARATION OF ELIGIBILITY.....	26
13 SIGNATURE OF CANDIDATE.....	26
14 DECISIONS AS TO THE VALIDITY OF NOMINATION.....	27
15 PUBLICATION OF STATEMENT OF CANDIDATES.....	27
16 INSPECTION OF STATEMENT OF NOMINATED CANDIDATES AND NOMINATION PAPERS.....	28
17 WITHDRAWAL OF CANDIDATES.....	28
18 METHOD OF ELECTION.....	28
PART 5 – CONTESTED ELECTIONS.....	29
19 POLL TO BE TAKEN BY BALLOT.....	29
20 THE BALLOT PAPER.....	29
21 THE DECLARATION OF IDENTITY (PUBLIC AND PATIENT CONSTITUENCIES).....	29
ACTION TO BE TAKEN BEFORE THE POLL.....	30
22 LIST OF ELIGIBLE VOTERS.....	30
23 NOTICE OF POLL.....	30
24 ISSUE OF VOTING DOCUMENTS BY RETURNING OFFICER.....	31
25 BALLOT PAPER ENVELOPE AND COVERING ENVELOPE.....	31
THE POLL.....	31
26 ELIGIBILITY TO VOTE.....	31
27 VOTING BY PERSONS WHO REQUIRE ASSISTANCE.....	31
28 SPOILT BALLOT PAPERS.....	32
29 LOST BALLOT PAPERS.....	32
30 ISSUE OF REPLACEMENT BALLOT PAPER.....	32

31	DECLARATION OF IDENTITY FOR REPLACEMENT BALLOT PAPERS (PUBLIC AND PATIENT CONSTITUENCIES).....	33
	PROCEDURE FOR RECEIPT OF ENVELOPES.....	33
32	RECEIPT OF VOTING DOCUMENTS.....	33
33	VALIDITY OF BALLOT PAPER.....	34
34	DECLARATION OF IDENTITY BUT NO BALLOT PAPER (PUBLIC AND PATIENT CONSTITUENCY).....	34
35	SEALING OF PACKETS.....	34
	PART 6 - COUNTING THE VOTES.....	35
36	ARRANGEMENTS FOR COUNTING OF THE VOTES.....	35
37	THE COUNT.....	35
38	REJECTED BALLOT PAPERS.....	35
39	EQUALITY OF VOTES.....	36
	PART 7 – FINAL PROCEEDINGS IN CONTESTED AND UNCONTESTED ELECTIONS. .	36
40	DECLARATION OF RESULT FOR CONTESTED ELECTIONS.....	36
	PART 8 – DISPOSAL OF DOCUMENTS.....	37
41	SEALING UP OF DOCUMENTS RELATING TO THE POLL.....	37
42	DELIVERY OF DOCUMENTS.....	38
43	FORWARDING OF DOCUMENTS RECEIVED AFTER CLOSE OF THE POLL.....	38
44	RETENTION AND PUBLIC INSPECTION OF DOCUMENTS –.....	38
45	APPLICATION FOR INSPECTION OF CERTAIN DOCUMENTS RELATING TO AN ELECTION.....	38
	PART 9 – DEATH OF A CANDIDATE DURING A CONTESTED ELECTION.....	39
46	COUNTERMAND OR ABANDONMENT OF POLL ON DEATH OF CANDIDATE....	39
	PART 10 – ELECTION EXPENSES AND PUBLICITY.....	40
47	ELECTION EXPENSES.....	40
48	EXPENSES AND PAYMENTS BY CANDIDATES.....	40
49	ELECTION EXPENSES INCURRED BY OTHER PERSONS –.....	40
	<i>PUBLICITY</i> .....	41
50	PUBLICITY ABOUT ELECTION BY THE CORPORATION –.....	41
51	INFORMATION ABOUT CANDIDATES FOR INCLUSION WITH VOTING DOCUMENTS.....	41
52	MEANING OF “FOR THE PURPOSES OF AN ELECTION”.....	41
	PART 11 – QUESTIONING ELECTIONS AND THE CONSEQUENCE OF IRREGULARITIES.....	41
53	APPLICATION TO QUESTION AN ELECTION.....	42
	PART 12 – MISCELLANEOUS.....	42
54	SECRECY.....	42
55	PROHIBITION OF DISCLOSURE OF VOTE.....	43
56	DISQUALIFICATION.....	43

57	DELAY IN POSTAL SERVICE THROUGH INDUSTRIAL ACTION OR UNFORESEEN EVENT.....	43
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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 board of governors;

“**the regulator**” means the Independent Regulator for NHS foundation trusts; and

“**the 2006 Act**” means the NHS Act 2006.

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

**Part 2 – Timetable for election**

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

**2 TIMETABLE**

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

**3 COMPUTATION OF TIME**

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

(a) a Saturday or Sunday;

- (b) Christmas Day, Good Friday, or a Bank Holiday; or
- (c) a day appointed for public thanksgiving or mourning,

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

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

### **Part 3 – Returning officer**

#### **4 RETURNING OFFICER**

- (1) Subject to rule 56, 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 56, the returning officer may appoint and pay such staff, including such technical advisers, as he or she considers necessary for the purposes of the election.

#### **6 EXPENDITURE**

The corporation is to pay the returning officer:

- (a) any expenses incurred by that officer in the exercise of his or her functions under these rules,
- (b) such remuneration and other expenses as the corporation may determine.

#### **7 DUTY OF CO-OPERATION**

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

### **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 members of the board of governors to be elected from that constituency, or class within that constituency;
- (c) the details of any nomination committee that has been established by the corporation;

- (d) the address and times at which nomination 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 he or she is not prevented from being a member of the board of governors by paragraph 8 of Schedule 1 of the 2003 Act or by any provision of the constitution; and

- (b) for a member of the public or patient constituency, of the particulars of his or her qualification to vote as a member of that constituency, or class within that constituency, for which the election is being held.

**13 SIGNATURE OF CANDIDATE**

The nomination paper must be signed and dated by the candidate, indicating that:

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

**14 DECISIONS AS TO THE VALIDITY OF NOMINATION**

- (1) Where a nomination paper is received by the returning officer in accordance with these rules, the candidate is deemed to stand for election unless and until the returning officer:
  - (a) decides that the candidate is not eligible to stand;
  - (b) decides that the nomination paper is invalid;
  - (c) receives satisfactory proof that the candidate has died; or
  - (d) receives a written request by the candidate of their withdrawal from candidacy.
- (2) The returning officer is entitled to decide that a nomination paper is invalid only on one of the following grounds:
  - (a) that the paper is not received on or before the final time and date for return of nomination papers, as specified in the notice of the election;
  - (b) that the paper does not contain the candidate's particulars, as required by rule 10;
  - (c) that the paper does not contain a declaration of the interests of the candidate, as required by rule 11;
  - (d) that the paper does not include a declaration of eligibility as required by rule 12; or
  - (e) that the paper is not signed and dated by the candidate, as required by rule 13.
- (3) The returning officer is to examine each nomination paper as soon as is practicable after he or she has received it and decide whether the candidate has been validly nominated.
- (4) Where the returning officer decides that a nomination is invalid, the returning officer must endorse this on the nomination paper, stating the reasons for their decision.

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

## **15 PUBLICATION OF STATEMENT OF CANDIDATES**

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

## **16 INSPECTION OF STATEMENT OF NOMINATED CANDIDATES AND NOMINATION PAPERS**

- (1) The corporation is to make the statements of the candidates and the nomination papers supplied by the returning officer under rule 15(4) available for inspection by members of the public free of charge at all reasonable times.
- (2) If a person requests a copy or extract of the statements of candidates or their nomination papers, the corporation is to provide that person with the copy or extract free of charge.

## **17 WITHDRAWAL OF CANDIDATES**

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

## **18 METHOD OF ELECTION**

- (1) If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is greater than the number of members to be elected to the 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 him or her 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 members of the board of governors to be elected from that constituency, or class within that constituency;
  - (d) the names and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates;
  - (e) instructions on how to vote;
  - (f) if the ballot paper is to be returned by post, the address for its return and the date and time of the close of the poll; and
  - (g) the contact details of the returning officer.
- (3) Each ballot paper must have a unique identifier.
- (4) Each ballot paper must have features incorporated into it to prevent it from being reproduced.

### **21 THE DECLARATION OF IDENTITY (PUBLIC AND PATIENT CONSTITUENCIES)**

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

- (2) The declaration of identity is to include a declaration:
  - (a) that the voter is the person to whom the ballot paper was addressed;
  - (b) that the voter has not marked or returned any other voting paper in the election; and
  - (c) for a member of the public or patient constituency,  
of the particulars of that member's qualification to vote as a member of the constituency or class within a constituency for which the election is being held.
- (3) The declaration of identity is to include space for:
  - (a) the name of the voter;
  - (b) the address of the voter;
  - (c) the voter's signature; and
  - (d) the date that the declaration was made by the voter.
- (4) The voter must be required to return the declaration of identity together with the ballot paper.
- (5) The declaration of identity must caution the voter that, if it is not returned with the ballot paper, or if it is returned without being correctly completed, the voter's ballot paper may be declared invalid.

#### **Action to be taken before the poll**

### **22 LIST OF ELIGIBLE VOTERS**

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

### **23 NOTICE OF POLL**

The returning officer is to publish a notice of the poll stating:

- (a) the name of the corporation;
- (b) the constituency, or class within a constituency, for which the election is being held;
- (c) the number of members of the board of governors to be elected from that constituency, or class with that constituency;
- (d) the names, contact addresses, and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates;

- (e) that the ballot papers for the election are to be issued and returned, if appropriate, by post;
- (f) the address for return of the ballot papers, and the date and time of the close of the poll;
- (g) the address and final dates for applications for replacement ballot papers; and
- (h) the contact details of the returning officer.

**24 ISSUE OF VOTING DOCUMENTS BY RETURNING OFFICER**

- (1) As soon as is reasonably practicable on or after the publication of the notice of the poll, the returning officer is to send the following documents to each member of the 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 51 of these rules; and
  - (d) a covering envelope.
- (2) The documents are to be sent to the mailing address for each member, as specified in the list of eligible voters.

**25 BALLOT PAPER ENVELOPE AND COVERING ENVELOPE**

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

**The poll**

**26 ELIGIBILITY TO VOTE**

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

**27 VOTING BY PERSONS WHO REQUIRE ASSISTANCE**

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

**28 SPOILT BALLOT PAPERS**

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

**29 LOST BALLOT PAPERS**

- (1) Where a voter has not received his or her ballot paper by the fourth day before the close of the poll, that voter may apply to the returning officer for a replacement ballot paper.
- (2) The returning officer may not issue a replacement ballot paper for a lost ballot paper unless he or she:
  - (a) is satisfied as to the voter’s identity;
  - (b) has no reason to doubt that the voter did not receive the original ballot paper; and
  - (c) has ensured that the declaration of identity if required has not been returned.
- (3) After issuing a replacement ballot paper for a lost ballot paper, the returning officer shall enter in a list (“the list of lost ballot papers”):

- (a) the name of the voter; and
- (b) the details of the unique identifier of the replacement ballot paper.

**30 ISSUE OF REPLACEMENT BALLOT PAPER**

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

**31 DECLARATION OF IDENTITY FOR REPLACEMENT BALLOT PAPERS (PUBLIC AND PATIENT CONSTITUENCIES)**

- (1) In respect of an election for a public or patient constituency a declaration of identity must be issued with each replacement ballot paper.
- (2) The declaration of identity is to include a declaration:
  - (a) that the voter has not voted in the election with any ballot paper other than the ballot paper being returned with the declaration; and
  - (b) of the particulars of that member’s qualification to vote as a member of the public or patient constituency, or class within a constituency, for which the election is being held.
- (3) The declaration of identity is to include space for:
  - (a) the name of the voter;
  - (b) the address of the voter;
  - (c) the voter’s signature; and
  - (d) the date that the declaration was made by the voter.
- (4) The voter must be required to return the declaration of identity together with the ballot paper.
- (5) The declaration of identity must caution the voter that if it is not returned with the ballot paper, or if it is returned without being correctly completed, the replacement ballot paper may be declared invalid.

**Procedure for receipt of envelopes**

## 32 **RECEIPT OF VOTING DOCUMENTS**

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

## 33 **VALIDITY OF BALLOT PAPER**

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

**37 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.

**38 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 votes are given for more candidates than the voter is entitled to vote;

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

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

shall, subject to paragraphs (2) and (3) below, be rejected and not counted.

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

(3) A ballot paper on which a vote is marked:

(a) elsewhere than in the proper place;

(b) otherwise than by means of a clear mark;

(c) by more than one mark,

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

(4) The returning officer is to:

(a) endorse the word "rejected" on any ballot paper which under this rule is not to be counted; and

(b) in the case of a ballot paper on which any vote is counted under paragraph (2) or (3) above, endorse the words "rejected in part" on the ballot paper and indicate which vote or votes have been counted.

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

(a) does not bear proper features that have been incorporated into the ballot paper;

(b) voting for more candidates than the voter is entitled to;

(c) writing or mark by which voter could be identified; and

(d) unmarked or rejected because of uncertainty,

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

### 39 **EQUALITY OF VOTES**

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

## **Part 7 – Final proceedings in contested and uncontested elections**

### **40 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 candidate or candidates whom more votes have been given than for the other candidates, up to the number of vacancies to be filled on the board of governors from the constituency, or class within a constituency, for which the election is being held to be elected;
  - (b) give notice of the name of each candidate who he or she has declared elected:
    - (i) where the election is held under a proposed constitution pursuant to powers conferred on the [insert name] NHS Trust by section 4(4) of the 2003 Act, to the chairman of the NHS Trust; or
    - (ii) in any other case, to the chairman of the corporation; and
  - (c) give public notice of the name of each candidate whom he or she has declared elected.
- (2) The returning officer is to make:
  - (a) the total number of votes given for each candidate (whether elected or not); and
  - (b) the number of rejected ballot papers under each of the headings in rule 38 available on request.

## **Part 8 – Disposal of documents**

### **41 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.

#### **42 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.

#### **43 FORWARDING OF DOCUMENTS RECEIVED AFTER CLOSE OF THE POLL**

Where:

- (a) any voting documents are received by the returning officer after the close of the poll; or
- (b) any envelopes addressed to eligible voters are returned as undelivered too late to be resent; or
- (c) any applications for replacement ballot papers are made too late to enable new ballot papers to be issued, the returning officer is to put them in a separate packet, seal it up, and endorse and forward it to the chairman of the corporation.

#### **44 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.

#### **45 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):
- (e) in giving its consent, the regulator; and
  - (f) and making the documents available for inspection, the corporation, must ensure that the way in which the vote of any particular member has been given shall not be disclosed, until it has been established:
    - (i) that his or her vote was given; and
    - (ii) that the regulator has declared that the vote was invalid.

### **Part 9 – Death of a candidate during a contested election**

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

- (2) Where a new election is ordered under paragraph (1), no fresh nomination is necessary for any candidate who was validly nominated for the election where the poll was countermanded or abandoned but further candidates shall be invited for that constituency or class.
- (3) Where a poll is abandoned under paragraph (1)(a), paragraphs (4) to (7) are to apply.
- (4) The returning officer shall not take any step or further step to open envelopes or deal with their contents in accordance with rules 33 and 34 and is to make up separate sealed packets in accordance with rule 35.
- (5) The returning officer is to:
  - (a) count and record the number of ballot papers that have been received; and
  - (b) seal up the ballot papers into packets, along with the records of the number of ballot papers.
- (6) The returning officer is to endorse on each packet a description of:
  - (a) its contents;
  - (b) the date of the publication of notice of the election;
  - (c) the name of the corporation to which the election relates; and
  - (d) the constituency, or class within a constituency, to which the election relates.
- (7) Once the documents relating to the poll have been sealed up and endorsed pursuant to paragraphs (4) to (6), the returning officer is to deliver them to the chairman of the corporation, and rules 52 and 53 are to apply.

## **Part 10 – Election expenses and publicity**

### ***Election expenses***

#### **47 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.

#### **48 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].

49 **ELECTION EXPENSES INCURRED BY OTHER PERSONS**

- (1) No person may:
- (a) incur any expenses or make a payment (of whatever nature) for the purposes of a candidate's election, whether on that candidate's behalf or otherwise; or
  - (b) give a candidate or his or her family any money or property (whether as a gift, donation, loan, or otherwise) to meet or contribute to expenses incurred by or on behalf of the candidate for the purposes of an election.
- (2) Nothing in this rule is to prevent the corporation from incurring such expenses, and making such payments, as it considers necessary pursuant to rules 50 and 51.

***Publicity***

50 **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 51, must be:
- (c) objective, balanced and fair;
  - (d) equivalent in size and content for all candidates;
  - (e) compiled and distributed in consultation with all of the candidates standing for election; and
  - (f) 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.

51 **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.]

52 **MEANING OF “FOR THE PURPOSES OF AN ELECTION”**

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

**Part 11 – Questioning elections and the consequence of irregularities**

53 **APPLICATION TO QUESTION AN ELECTION**

- (1) An application alleging a breach of these rules, including an electoral irregularity under Part 10, may be made to the regulator.
- (2) An application may only be made once the outcome of the election has been declared by the returning officer.
- (3) An application may only be made to the Regulator by:
  - (a) a person who voted at the election or who claimed to have had the right to vote; or
  - (b) a candidate, or a person claiming to have had a right to be elected at the election.
- (4) The application must:
  - (a) describe the alleged breach of the rules or electoral irregularity; and
  - (b) be in such a form as the Regulator may require.
- (5) The application must be presented in writing within 21 days of the declaration of the result of the election.
- (6) If the Regulator requests further information from the applicant, then that person must provide it as soon as is reasonably practicable.
  - (a) The Regulator shall delegate the determination of an application to a person or persons to be nominated for the purpose of the Regulator.
  - (b) The determination by the person or persons nominated in accordance with Rule 52(1) 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.
  - (c) The Regulator may prescribe rules of procedure for the determination of an application including costs.

## Part 12 – Miscellaneous

### 54 **SECRECY**

- (1) The following persons:
  - (a) the returning officer;
  - (b) the returning officer's staff, must maintain and aid in maintaining the secrecy of the voting and the counting of the votes, and must not, except for some purpose authorised by law, communicate to any person any information as to:
    - (i) the name of any member of the corporation who has or has not been given a ballot paper or who has or has not voted;
    - (ii) the unique identifier on any ballot paper;
    - (iii) the candidate(s) for whom any member has voted.
- (2) No person may obtain or attempt to obtain information as to the candidate(s) for whom a voter is about to vote or has voted, or communicate such information to any person at any time, including the unique identifier on a ballot paper given to a voter.
- (3) The returning officer is to make such arrangements as he or she thinks fit to ensure that the individuals who are affected by this provision are aware of the duties it imposes.

### 55 **PROHIBITION OF DISCLOSURE OF VOTE**

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

### 56 **DISQUALIFICATION**

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

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

### 57 **DELAY IN POSTAL SERVICE THROUGH INDUSTRIAL ACTION OR UNFORESEEN EVENT**

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

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

- (b) the return of the ballot papers and declarations of identity, the returning officer may extend the time between the publication of the notice of the poll and the close of the poll, with the agreement of the Regulator.

## **ANNEX 6 – ADDITIONAL PROVISIONS**

### **1 Compliance with the Trust's Code of Conduct**

Governors shall comply with the Trust's Code of Conduct.

### **2 Training**

The Membership Strategy outlines the details of the training programme for Governors. Governors shall comply in so far as is possible with any training requirements identified by the Trust. The training programme set out in the Membership Strategy shall be reviewed from time to time and amended as required.

### **3 Eligibility to be a Governor**

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

- (a) They are a Director of the Trust or any other NHS Body as defined in this constitution;
- (b) They are the spouse, partner, parent or child of a member of the Council of Governors or Board of Directors of the Trust;
- (c) They are under sixteen years of age at the time are nominated for election or appointment;
- (d) They are a member of a local authority's scrutiny committee covering health matters;
- (e) Being a member of the public constituency, they fail to sign a declaration in the form specified by the Council of Governors of the particulars of their qualification to vote as a member of the Trust, and that they are not prevented from being a member of the Council of Governors;
- (f) They fail to agree to comply with the Trust's Code of Conduct for Governors.
- (g) They fail to demonstrate compliance with the Trust's Code of Conduct for Governors.
- (h) Their use of social media does not reflect Trust values or The Nolan principles.
- (i) They have or have been subject to a Sexual Offences Prevention Order, a Foreign Travel Order or a Risk of Sexual Harm Order made under the provisions of the Sexual Offences Act 2003;
- (j) On the basis of disclosures obtained through an application to the Disclosure and Barring Service (including any application to the Criminal Records Bureau made prior to the establishment of the Disclosure and Barring Service), they are not considered suitable by the Trust's Executive Director responsible for Human Resources;
- (k) They are a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;

- (l) They are a person to whom a moratorium period under a debt relief order applies under Part 7A of the Insolvency Act 1986;
- (m) They are incapable by reason of mental disorder, illness or injury of managing or administering their property and affairs;
- (n) They have within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with a health service body;
- (o) They are a person whose tenure of office as the Chair or as a member or Director of a health service body has been terminated on the grounds that his/her appointment is not in the interests of the health service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest;
- (p) They have had their name removed from any list maintained pursuant to Parts 4, 5, 6 or 7 of the NHS Act 2006 and/or Regulations made under those Parts, and has not subsequently had their name included on such a list, and, due to the reason(s) for such removal, they are not considered suitable by the Trust's Executive Director responsible for human resources;
- (q) They have previously been removed from office as a Governor of any Trust in accordance with the provisions of paragraph 8 below under the section titled 'Termination of office and removal of Governors';
- (r) They have been found to be a vexatious complainant, in that, the Board of Directors has unanimously agreed that he/she has persistently and without reasonable grounds, made any unjustified complaint or requests of the Trust (or any of its staff, agents, patients or carers) causing inconvenience, harassment or expense.

#### **4 Requirement of Governor to notify Trust**

Where a person has been elected or appointed to be a Governor and they become disqualified from office under the provisions of this Constitution, they shall notify the Trust Secretary in writing of such disqualification.

#### **5 Termination of office and removal of Governors**

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

- (a) They resign by notice in writing to the Trust Secretary;
- (b) It otherwise comes to the notice of the Trust Secretary at the time the Governor takes office or later that the Governor is disqualified;
- (c) They fail to meet the expected responsibilities laid out in this Annex 6Annex 6.
- (d) If a Governor fails to adhere to the provisions laid out in paragraph 3, this will result in termination of office unless the other Governors are satisfied by a 75% majority that:
  - (i) The absences were due to reasonable causes; and

- (ii) The Governor will resume attendance at meetings of the Council of Governors again within such a period as it considers reasonable.
  - (e) If a Governor has been subject to a decision in their favour under paragraph 4 above and subsequently fails to meet the attendance standards set out in paragraph 3, that Governor's tenure of office is to be terminated immediately.
- 5.2 In the case of an elected Governor, they cease to be a member of the Trust;
- 5.3 In the case of an appointed Governor, the appointing organisation terminates the appointment;
- 5.4 They have refused without reasonable cause to undertake any training, which the Council of Governors requires all Governors to undertake;
- 5.5 they have failed to sign and deliver to the Trust Secretary a statement in the form required by the Council of Governors confirming acceptance of the Trust's Code of Conduct for Governors;
- 5.6 They are removed from the Council of Governors by a resolution approved by a majority of the remaining Governors present and voting at a general meeting on the grounds that:
- (a) They have committed a serious breach of the Trust's Code of Conduct; or
  - (b) They have failed to declare a relevant and material interest in accordance with the Council of Governors Standing Orders; or
  - (c) They have acted in a manner detrimental to the interests of the Trust
  - (d) They have caused harm to the Trust's work with other persons or bodies with whom it is engaged or may be engaged in the provision of services;
  - (e) They have failed to discharge his/her responsibilities as a Governor;
- 5.7 The Governor concerned will be eligible to make representation, in writing, to the Council of Governors but not to vote on any resolution relating to his/her removal or suspension.

## **6 Suspension from office of Staff Governors**

If a staff Governor is suspended from duties for any reason they will also be suspended from their role as Governor for the duration of their suspension. Whilst a staff Governor is under suspension, the staff Governor cannot attend meetings of the Council of Governors in any capacity, but missing any meetings of the Council of Governors will not count as failure to attend for the purposes of paragraph 3 under termination of office and removal as Governor above.

## **7 Vacancies amongst Governors**

- 7.1 Where a vacancy arises on the Council of Governors for any reason other than expiry of term of office, the following provisions will apply.

- 7.2 Where the vacancy arises amongst the appointed Governors, the Trust Secretary shall request that the appointing organisation appoints a replacement to hold office for the remainder of the term of office.
- 7.3 Where the vacancy arises amongst the elected Governors, either:
- (a) Should the vacancy occur within three months of the election, the next highest polling candidate for that seat, who is willing to take office, to fill the seat for any unexpired period of the term of office; or
  - (b) Should the vacancy occur more than three months after the election, the vacancy will remain outstanding until the next annual election, providing that the vacancy shall not be for more than nine months.

## 8 Roles and Responsibilities

### Roles

- 8.1 The Governors have three general roles:
- 8.1.1 Advisory – to communicate to the Board the views and interests of members and the wider community;
  - 8.1.2 Guardianship – to ensure that the Trust is operating in accordance with its authorisation;
  - 8.1.3 Strategic – to advise on the Trust's strategy and deliverance of that strategy.
- 8.2 The Governors shall carry out their roles and responsibilities in accordance with this Constitution and the Trust's Terms of Authorisation.
- 8.3 The roles of the Governors shall include to:
- 8.3.1 Appoint or remove the Chair and the other non-executive Directors. The removal of a non-executive Director requires the approval of three-quarters of the members of the Council of Governors;
  - 8.3.2 Decide the remuneration and allowances, and the other terms and conditions of office, of the non-executive Directors;
  - 8.3.3 Appoint or remove any external auditor and the Trust's financial auditor;
  - 8.3.4 Approve (by a majority of the Council of Governors voting) an appointment of the Chief Executive, other than the initial Chief Executive;
  - 8.3.5 Give the views of the Council of Governors to the Board of Directors for the purposes of the preparation (by the Directors) of the document containing information as to the Trust's forward planning in respect of each financial year.
  - 8.3.6 Consider the annual accounts, any report of the financial auditor on them, and the annual report;
  - 8.3.7 Consult with the Board of Directors on future plans for the services provided by the Trust;

- 8.3.8 Work with the Board of Directors to ensure the Trust operates within the conditions of its licence issued by NHS England
- 8.3.9 Respond to any matter as appropriate when consulted by the Directors;
- 8.3.10 Review the Trust's Membership Strategy from time to time and at least once every three years to develop the membership of the Trust and represent the interests of members, and to review from time to time the Trust's policy for the composition of the Council of Governors and of the non-executive Directors;
- 8.3.11 Establish mechanisms for consulting with the members and partnership organisations they may represent, particularly on developments and significant changes to services provided by the Trust;
- 8.3.12 Act as a source of ideas about how the Trust can provide services which reflect the needs of patients and the wider community;
- 8.3.13 Ensure that the Trust follows its values, as set out in the Trust's Membership Strategy;
- 8.3.14 Monitor the success of the Trust in meeting its planned service objectives;
- 8.3.15 Undertake such functions as the Board of Directors shall from time to time request.

### **Responsibilities**

- 8.4 The responsibilities of Governors shall include to:
  - 8.4.1 Ensure that they do not miss two consecutive Council of Governors meetings in any financial year.
  - 8.4.2 Attend at least two Governor constituency meetings in any financial year.
  - 8.4.3 Attend at least two constituency meetings in any financial year.
  - 8.4.4 Attend at least one Governor observation visit in any financial year.
  - 8.4.5 Use social media responsibly upholding Trust values in line with the Nolan Principles.

## **9 Appointment of non-executive Directors (including Chair and Deputy Chair).**

- 9.1 The Council of Governors shall establish a committee to identify the skills, knowledge and experience required for non-executive Director posts, including the Chair and Deputy Chair of the Trust, and to prepare a suitable job description(s) and personal profile(s), which may be revised from time to time as required (the 'Nominations and Remuneration Committee'). The terms of reference for the Nominations and Remuneration Committee are set out in paragraph 12 of this Annex 6Annex 6.
- 9.2 The Nominations and Remuneration Committee will identify suitable candidates (taking into account the skills, knowledge and experience identified as required for such posts and the job description(s) and personal profile(s) prepared) to assist with the process of selection of non-executive Directors (including the Chair and Deputy

Chair) by the Council of Governors. The terms of reference of the Nominations and Remuneration Committee are set out in below.

## **10 Process for the Appointment of the Auditor**

- 10.1 The Nominations and Remuneration Committee will consult the Chair of the audit committee, non- executive Directors and the Chief Executive regarding the necessary skills required.
- 10.2 The Nominations and Remuneration Committee shall advertise in the national media to seek tenders from organisations they consider appropriate against a specification agreed by the Council of Governors to be appropriate to the task.
- 10.3 The Nominations and Remuneration Committee' shall then shortlist appropriate firms to be considered.
- 10.4 The Nominations and Remuneration Committee shall then consult the Chair of the audit committee, non-executive Directors and Chief Executive on the shortlist.
- 10.5 The Nominations and Remuneration Committee' shall then interview representatives from each firm.
- 10.6 The Nominations and Remuneration Committee' shall then consider those firms and recommend one to the full Council of Governors.
- 10.7 The Council of Governors shall formally convey their decision to the successful firm's representatives and to the Chair of the audit committee and the Chief Executive.

## **11 Duties of Deputy Chair**

Where the Chair of the Trust has died or has otherwise ceased to hold office or where they have been unable to perform their duties as Chair owing to illness, absence from England and Wales or any other cause, references to the Chair shall, so long as there is no Chair able to perform their duties, be taken to include references to the Deputy Chair or the non-executive Director nominated by the Council of Governors to take on the duties of the Chair or Deputy Chair should both be absent from a meeting or otherwise unavailable or unable to perform their duties.

## **12 Council of Governors Nominations and Remuneration Committee**

### **12.1 Purpose**

A Nominations and Remuneration Committee is to be established for the purposes of managing the shortlisting process to make recommendations to the Council of Governors in order to assist them in appointing the Auditor, identifying appropriate candidates for the posts of non-executive Directors (including the Chair and Deputy Chair of the Foundation Trust), for making recommendations to the Council of Governors as to suitable candidates to fill the posts and for making recommendations to the Council of Governors as to the remuneration and allowances and other terms and conditions of office of the non-executive Directors. The Nominations and Remuneration Committee will, taking into account the views of the Board of Directors, identify a balance of individual skills, knowledge and experience that is required at the time a vacancy arises and accordingly draw up a job description and personal profile for each new appointment.

## 12.2 Membership

Membership of the Committee will consist of:

- (a) The Chair of the Foundation Trust (or Deputy Chair when the appointment of the Chair or their remuneration and allowances and other terms and conditions of office are being discussed, or another non-executive Director if the Deputy Chair is standing for Chair);
- (b) One Partnership Governor;
- (c) One Staff Governor; and
- (d) Two Elected Governors.

The Chair of another Foundation Trust may be invited to act as an independent assessor to the Committee to advise the Committee as and when required.

The Chief Executive of the Foundation Trust shall be entitled to attend meetings of the Committee unless the Committee decides otherwise. In carrying out its responsibilities under Section 12.5, the Committee shall take the Chief Executive's views into account.

Members of the Committee may be required to undertake training and development commensurate with their responsibilities.

## 12.3 Chair of the Committee

The Chair of the Committee will be the Chair of the Foundation Trust, unless the discussion relates to the appointment of the Chair or their remuneration and allowances and other terms and conditions of office, in which case the Deputy Chair will chair the Committee. In the event that the Deputy Chair wishes to stand for the appointment of Chair, the Committee will be chaired by another non-executive Director.

## 12.4 Support for the Committee

The Director of Human Resources will provide advice and support to the Committee as required to ensure that the nominations processes are managed in accordance with best practice and that the recommendations made to the Council of Governors on the non-executive Directors' remuneration and allowances and other terms and conditions of office are appropriate and relevant to local circumstances.

## 12.5 Responsibilities of the Committee

*To prepare information detailing the skills, knowledge and experience required for the posts of non-executive Directors and to prepare job descriptions and personal profiles for each post, as may be amended from time to time.*

Where such appointments take place to undertake the selection process for non-executive Directors, elements of which may include: -

- 12.5.1 Making arrangements for advertising and raising local awareness of the post(s);
- 12.5.2 Making arrangements for the short listing of candidates;

### 12.5.3 Making arrangements to conduct formal interviews;

so as to identify, through a process of open competition, suitable candidates and so as to make recommendations to the Council of Governors as to suitable candidates for approval by the Council of Governors. No more than five candidates shall be identified for each vacancy. The Council of Governors shall either appoint the recommended individual(s) or invite the Committee to make an alternative recommendation.

On expiry of the initial non-executive Directors' current terms of and on any subsequent vacancy, to consider whether to recommend to the Council of Governors the reappointment of the retiring non-executive Director. The Committee may not make any such recommendation other than for a first renewal of the appointment of a non-executive Director without first taking the steps outlined in Sections 12.5.1 and 12.5.3 above. If the Council of Governors does not so appoint, or if the individual does not wish to continue, or if the Committee does not consider the reappointment appropriate, then suitable new candidates will be identified by the Committee in accordance with the procedure outlined above.

To make recommendations to the Council of Governors as to the remuneration and allowances and other terms and conditions of office of non-executive Directors.

To make recommendations to the Council of Governors to assist them in appointing an Auditor, in accordance with the following steps:

- (a) Consulting the Chair of the audit committee, non-executive Directors and the Chief Executive regarding the skills required;
- (b) Advertising in the national media to seek tenders from appropriate organisations against an agreed specification;
- (c) Shortlisting the appropriate firms to be considered;
- (d) Consulting the Chair of the audit committee, non-executive Directors and Chief Executive on the shortlist;
- (e) Interviewing the representatives of the shortlisted firms;
- (f) Consider each of those firms and make a recommendation to the Council of Governors.

### 12.6 **Quorum**

The quorum necessary for the transaction of business will be three members of the Committee, comprising the Chair of the Committee and two Governors.

### 12.7 **Frequency of Meetings**

The Committee will meet at least annually and then as required to fulfil its responsibilities, as determined by the Chair.

### 12.8 **Notice of Meetings**

Meetings of the Committee will be called at the request of the Chair by the Trust Secretary.

Details of each meeting, including the agenda and supporting papers will be forwarded to each member of the Committee at least five working days before the date of the meeting.

#### **12.9 Minutes of Meetings**

Minutes of the meetings will be circulated promptly to all members of the Committee and to all other members of the Council of Governors as soon as reasonably practical.

#### **12.10 Reporting Arrangements**

The Chair will report on the proceedings of each meeting to the next meeting of the Council of Governors. This discussion will take place in a private session i.e. not open to members of the public, when the names and details of individuals are being discussed.

The Chair will attend the Annual Members' Meeting to report on the activities of the Committee in the previous 12 months.

#### **12.11 Authority**

The Committee is authorised to seek information and advice either within the Trust or externally on any matters within its terms of reference.

#### **12.12 Review**

The Committee will review its own performance, relevant sections of the Constitution and terms of reference at least once a year to ensure it is operating at maximum effectiveness. Any proposed changes will be submitted by the Committee to the Council of Governors and to the Board of Directors for consideration.

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

1	INTERPRETATION.....	55
2	GENERAL INFORMATION.....	55
3	COMPOSITION OF THE COUNCIL OF GOVERNORS.....	56
4	MEETINGS OF THE COUNCIL OF GOVERNORS.....	56
5	ARRANGEMENTS FOR THE EXERCISE OF FUNCTIONS BY DELEGATION.....	60
6	CONFIDENTIALITY.....	61
7	DECLARATION OF INTERESTS AND REGISTER OF INTERESTS.....	61
8	COMPLIANCE - OTHER MATTERS.....	62
9	RESOLUTION OF DISPUTES WITH BOARD OF DIRECTORS.....	63
10	COUNCIL PERFORMANCE.....	64
11	CHANGES TO STANDING ORDERS.....	64

### 1 INTERPRETATION

1.1 Save as permitted by law, the Chair of the Trust shall be the final authority on the interpretation of Standing Orders (on which they shall be advised by the Chief Executive and Director of Finance).

1.2 Any expression to which a meaning is given in the 2006 Act shall have the same meaning in this interpretation .

“**Board of Directors**” shall mean the Chair and Non-Executive Directors, appointed by the Council of Governors and the Executive Directors appointed by the Appointments Committee of the Board.

“**Chair**” is the person appointed by the Council of Governors in accordance with this Constitution. The expression “the Chair of the Trust” shall be deemed to include the Non-Executive Director appointed by the Council of Governors to take on the Chair’s duties if the Chair is absent or is otherwise unavailable (the Deputy Chair).

“**Chief Executive**” shall mean the Chief Officer of the Trust.

“**Committee**” shall mean a committee appointed by the Council of Governors.

“**Director**” shall mean a person appointed to the Board of Directors in accordance with the Trust’s Constitution and includes the Chair.

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

### 2 GENERAL INFORMATION

2.1 The purpose of the Council of Governors standing orders is to ensure that the highest standards of corporate governance and conduct are applied to all meetings and associated deliberations. The Council of Governors shall at all times seek to comply with the Trust’s Code of Conduct for Governors.

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

2.3 The Board of Directors shall appoint trustees to administer separately charitable funds received by the Trust and for which they are accountable to the Charity Commission.

2.4 A Governor who has acted honestly and in good faith will not have to meet out of his or her own personal resources any personal civil liability which is incurred in the execution or purported execution of his or her functions as a Governor save where the Governor has acted recklessly. On behalf of the Council of Governors, and as part of the Trust's overall insurance arrangements, the Board of Directors shall put in place appropriate insurance provision to cover such indemnity.

### **3 COMPOSITION OF THE COUNCIL OF GOVERNORS**

3.1 The composition of the Council of Governors shall be in accordance with Annex 3 of the Trust's Constitution.

#### **3.2 Role of the Chair**

3.2.1 The Chair is the Chair of the Trust. The Chair is not a member of the Council of Governors. Under the Regulatory Framework, the Chair presides at meetings of the Council of Governors and has a casting vote.

3.2.2 Where the Chair ceases to hold office, or where they has been unable to perform their duties as Chair owing to illness or any other cause, the Deputy Chair (a Non-Executive Director appointed by the Council of Governors) shall act as Chair until a new Chair is appointed or the existing Chair resumes their duties, as the case may be. References to the Chair in these Standing Orders shall, so long as there is no Chair able to perform their duties, be taken to include references to the Deputy Chair.

### **4 MEETINGS OF THE COUNCIL OF GOVERNORS**

#### **4.1 Meetings held in Public**

4.1.1 Ordinary meetings of the Council of Governors shall be held at such times and places as the Chair may determine. At least 4 meetings will be held each year. One such meeting shall be the Annual Members Meeting. Meetings will normally be held in public. However, the Council may resolve to exclude the public where it wishes to discuss particular issues in private session.

4.1.2 The Council of Governors may resolve to exclude members of the public from any meeting or part of a meeting on the grounds that it considers that publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted; or there are special reasons stated in the resolution and arising from the nature of the business of the proceedings. A Governor of the Trust or a member of a working group or a committee shall not reveal or disclose the contents of papers marked 'In Confidence' or minutes headed 'Items Taken in Private' outside of the Trust, without the express permission of the Trust. This prohibition shall apply equally to the content of any discussion during the meeting which may take place on such reports or papers.

- 4.1.3 The Chair may exclude any member of the public from the meeting of the Council if they consider that they are interfering with or preventing any conduct of the meeting.
- 4.1.4 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 **Calling Meetings**

Notwithstanding the above paragraph, the Chair may call a meeting of the Council of Governors at any time. If the Chair refuses to call a meeting after a requisition for that purpose, signed by a majority of the Governors, or if without so refusing the Chair does not call a meeting within fourteen days after requisition to do so, then the Governors may forthwith call a meeting provided they have been requisitioned to do so by more than 50% of their members.

## 4.3 **Notice of Meetings**

- 4.3.1 Before each meeting of the Council of Governors, a notice of the meeting, specifying the business proposed to be transacted at it, and signed by the Chair or by an Officer authorised by the Chair to sign on his/her behalf shall be delivered to every Governor, either by post to the usual place of residence of such Governor, or sent by electronic email to any email address notified to the Trust by such a Governor, so as to be available to them at least five clear days before the meeting.
- 4.3.2 Notwithstanding the above requirement for notice, the Chair may waive notice in case of emergencies or in the case of the need to conduct urgent business.
- 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 calling the meeting and no business shall be transacted at the meeting other than that specified in the notice.
- 4.3.4 Failure to serve notice on more than three quarters of Governors will invalidate any meeting. A notice will be presumed to have been served 48 hours after the envelope containing it was posted or, in the case of a notice contained in an electronic communication, 48 hours after it was sent.

## 4.4 **Setting the Agenda**

- 4.4.1 The Council of Governors may determine that certain matters shall appear on every agenda for a meeting of the Council and shall be addressed prior to any other business being conducted.
- 4.4.2 In the case of a meeting called by the Chair, a Governor desiring a matter to be included on an agenda shall make their request in writing to the Chair at least ten clear days before the meeting. Requests made less than ten days before a meeting may be included on the agenda at the discretion of the Chair.
- 4.4.3 The Chair shall make arrangements to ensure that the final agenda and any supporting papers for the meeting, following the receipt of any

requests in accordance with 4.4.2 above, are delivered to every Governor, by email or by post to the usual place of residence of such Governor, so as to be available to them at least five clear days before the meeting.

#### 4.5 **Chair of Meeting**

At any meeting of the Council of Governors, the Chair, if present, shall preside. If the Chair is absent from the meeting or the Council of Governors is meeting to appoint or remove the Chair or decide their remuneration and allowances and other terms and conditions of office, the Deputy Chair shall preside. Otherwise, another Non-Executive Director shall preside.

#### 4.6 **Notices of Motions**

4.6.1 A Governor of the Trust desiring to move or amend a Motion shall send a written notice thereof at least ten clear days before the meeting to the Chair, who shall insert this in the agenda for the meeting. All notices so received are subject to the notice given being permissible under the appropriate regulations. This paragraph shall not prevent any Motion being moved during the meeting, without notice, on any business mentioned on the agenda subject to these Standing Orders.

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

4.6.3 Notice of Motion to amend or rescind any resolution (or the general substance of any resolution), which has been passed within the preceding six calendar months, shall bear the signature of the Governors who gave it and also the signature of four other Governors. When any such Motion has been disposed of by the Council it shall not be competent for any Governor, other than the Chair, to propose a Motion to the same effect within six months; however the Chair may do so if they consider it appropriate.

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

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

- (a) An amendment to the Motion.
- (b) The adjournment of the discussion or the meeting.
- (c) The appointment of an ad hoc committee to deal with a specific item of business.
- (d) That the meeting proceed to the next business.
- (e) That the Motion be now put.

Such a Motion, if seconded, shall be disposed of before the Motion, which was originally under discussion or about to be discussed. No amendment

to the Motion shall be admitted if, in the opinion of the Chair of the meeting, the amendment negates the substance of the Motion.

In the case of Motions under (d) and (e), to ensure objectivity, Motions may only be put by a Governor who has not previously taken part in the debate.

#### **4.7 Chair's Ruling**

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 observed at the meeting.

#### **4.8 Voting**

4.8.1 Decisions at meetings shall be determined by a majority of the votes of the Governors present and voting. In the case of any equality of votes, the person presiding shall have a second or casting vote.

4.8.2 All decisions 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.

4.8.3 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.

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

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

4.8.6 A Governor who is a member of the Public Constituency may not vote at a meeting of the Council of Governors unless, before attending the meeting, they have made a declaration in the form specified by the Trust Secretary of the particulars of their qualification to vote as a member of the Trust and that they are not prevented from being a member of the Trust. A Governor shall be deemed to have confirmed the declaration upon attending any subsequent meeting of the Governor's Council and every agenda for meetings of the Council of Governors shall draw this to the attention of the Governors.

#### **4.9 Suspension of Standing Orders**

4.9.1 Except where this would contravene any statutory provision or a direction made by the Secretary of State, any one or more of these Standing Orders may be suspended at any meeting, provided that at least two-thirds of members of the Council are present and that a majority of those present vote in favour of suspension.

4.9.2 A decision to suspend standing orders shall be recorded in the minutes of the meeting.

- 4.9.3 A separate record of matters discussed during the suspension of standing orders shall be made and shall be available to the Directors.
- 4.9.4 No formal business may be transacted while standing orders are suspended.
- 4.9.5 The Trust's Audit Committee shall review every decision to suspend standing orders.

#### **4.10 Variation and Amendment of Standing Orders**

These Standing Orders shall be amended only if:

The amendment is approved by a simple majority of both the Board of Directors and the Council of Governors.

#### **4.11 Record of Attendance**

The names of the Governors present at the meeting shall be recorded in the minutes along with the Chair and invited attendees.

#### **4.12 Minutes**

- 4.12.1 The minutes of the proceedings of the meeting shall be drawn up and maintained as a public record. They will be submitted for agreement at the next meeting where they will be signed by the person 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 in accordance with the Governors' wishes. 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 these Standing Orders.

#### **4.13 Quorum**

- 4.13.1 No business shall be transacted at a meeting of the Council of Governors unless at least one-third of all the members, at least five of which are elected Governors, of the Council of Governors are present.
- 4.13.2 If a Governor has been disqualified from participating in the discussion on any matter and from voting on any resolution by reason of the declaration of a conflict of interest they shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business.

### **5 ARRANGEMENTS FOR THE EXERCISE OF FUNCTIONS BY DELEGATION**

- 5.1 Emergency Powers - The powers which the Council of Governors has retained to itself within these Standing Orders may in an emergency be exercised by the Chair

after having consulted at least five elected Governors. The exercise of such powers by the Chair shall be reported to the next formal meeting of the Council for ratification.

- 5.2 Delegation of functions – The Council of Governors may delegate duties to an individual Governor but only under a clear remit approved by the Council. The Council of Governors may appoint working groups of the Council of Governors consisting wholly or partly of members of the Trust (whether or not they include Governors of the Trust) or wholly of persons who are not members of the Trust (whether or not they include Governors of the Trust). The Council of Governors may not delegate any of its powers to a working group but working groups may act in an advisory capacity to assist the Council of Governors in carrying out its functions.
- 5.3 The Nominations and Remuneration Committee shall exercise the functions set out in its Terms of Reference on behalf of the Council.
- 5.4 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 members of the Council have a duty to disclose any non-compliance with these Standing Orders to the Secretary as soon as possible.

## **6 CONFIDENTIALITY**

- 6.1 A member of the Council of Governors shall not disclose a matter dealt with by, or brought before, the Council of Governors under Clause 4.1.2 above without the permission of the Chair and the Council of Governors.
- 6.2 Members of the Nominations and Remuneration Committee shall not disclose any matter dealt with by the Nominations and Remunerations Committee, notwithstanding that the matter has been reported or action has been concluded, if the Council of Governors or Nominations and Remunerations Committee resolves that it is confidential.

## **7 DECLARATION OF INTERESTS AND REGISTER OF INTERESTS**

- 7.1 Declaration of Interests
- 7.1.1 Governors are required to comply with the Trust's Standards of Business Conduct and to declare interests that are relevant and material to the Council of Governors. All Governors should declare such interests on appointment and on any subsequent occasion that a conflict arises.
- 7.1.2 Interests regarded as "relevant and material" include any of the following, held by a Governor, or the spouse, partner, parent or child of a Governor:
- (a) Directorships, including non-executive directorships, held in private companies or PLCs (with the exception of those of dormant companies).
  - (b) Ownership or part-ownership of or employment with private companies, businesses or consultancies likely or possibly seeking to do business with the NHS.

- (c) Significant share holdings (more than 5%) in organisations likely or possibly seeking to do business with the NHS.
  - (d) A position of authority in a charity or voluntary organisation in the field of health and social care.
  - (e) Any connection with a voluntary or other organisation contracting for NHS services.
- 7.1.3 If a Governor has any doubt about the relevance of an interest, they should discuss it with the Chair who shall advise them whether or not to disclose the interest.
- 7.1.4 At the time Governors' interests are declared, they should be recorded in the Council of Governors minutes and entered on a register of interests to be maintained by the Trust Secretary. Any changes in interests should be declared at the next Council of Governors meeting following the change occurring.
- 7.1.5 Governors' directorships of companies likely or possibly seeking to do business with the NHS should be published in the Trust's annual report.
- 7.1.6 During the course of a Council of Governors meeting, if a conflict of interest is established, the Governor concerned shall, unless two thirds of those Governors present agree, otherwise withdraw from the meeting and play no part in the relevant discussion or decision.
- 7.1.7 There is no requirement for the interests of Governors' spouses or partners to be declared except where the Governor is cohabiting with their spouse or partner, whereby any interest of a spouse or partner in a contract shall be declared.

## 7.2 Register of Interests

- 7.2.1 The Trust Secretary will ensure that a register of interests is established to record formally declarations of interests of Governors.
- 7.2.2 Details of the Register will be kept up to date and reviewed annually.
- 7.2.3 The Register will be available to the public.

## 7.3 Voting

- 7.3.1 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 and, in the case of any equality of votes, the Chair or person presiding shall have a second or casting vote.
- 7.3.2 All questions put to the vote shall, at the discretion of the Chair of the meeting, be determined by oral expression or by a show of hands. A secret paper ballot may also be used if a majority of the Governors present so request.

- 7.3.3 If at least one third of the Governors present so request, the voting (other than by secret paper ballot) on any question may be recorded to show how each Governor present voted or abstained.
- 7.3.4 If a Governor so requests their vote shall be recorded by name upon any vote (other than by secret paper ballot).
- 7.3.5 In no circumstances may an absent Governor vote by proxy. Absence is defined as being absent at the time of the vote.

## **8 COMPLIANCE - OTHER MATTERS**

- 8.1 All Governors shall comply with the Standards of Business Conduct set by the Board of Directors for the guidance of all staff employed by the Trust.
- 8.2 All Governors of the Trust shall comply with standing financial instructions prepared by the Director of Finance and approved by the Board of Directors for the guidance of all staff employed by the Trust.
- 8.3 All Governors must behave in accordance with the seven Nolan principles of behaviour in Public Life (and the Trust's Code of Conduct for Governors as amended from time to time):
  - 8.3.1 Selflessness;
  - 8.3.2 Integrity;
  - 8.3.3 Objectivity;
  - 8.3.4 Accountability;
  - 8.3.5 Openness;
  - 8.3.6 Honesty; and
  - 8.3.7 Leadership

## **9 RESOLUTION OF DISPUTES WITH BOARD OF DIRECTORS**

- 9.1 Should a dispute arise between the Council of Governors and the Board of Directors, then the disputes resolution procedure set out below shall be followed.
- 9.2 The Chair, or Deputy Chair (if the dispute involves the Chair), shall first endeavour, through discussion with Governors and Directors or, to achieve the earliest possible conclusion, appropriate representatives of them, to resolve the matter to the reasonable satisfaction of both parties.
- 9.3 Failing resolution under 9.2 above, then the Board of Directors or the Council of Governors, as appropriate, shall at its next formal meeting approve the precise wording of a disputes statement setting out clearly and concisely the issue or issues giving rise to the dispute.
- 9.4 The Chair shall ensure that the disputes statement, without amendment or abbreviation in any way, shall be an agenda item and agenda paper at the next formal meeting of the Board of Directors or Council of Governors as appropriate.

That meeting shall agree the precise wording of a response to the disputes statement.

- 9.5 The Chair or Deputy Chair (if the dispute involves the Chair) shall immediately or as soon as is practical, communicate the outcome to the other party and deliver the written response to the disputes statement. If the matter remains unresolved or only partially resolved, then the procedure outlined above shall be repeated.
- 9.6 If, in the opinion of the Chair or Deputy Chair (if the dispute involves the Chair) and following the further discussions prescribed in 9.5 above, there is no further prospect of a full resolution or, if at any stage in the whole process, in the opinion of the Chair or Deputy Chair, as the case may be, there is no prospect of a resolution (partial or otherwise) then they shall advise the Council of Governors and Board of Directors accordingly.
- 9.7 On the satisfactory completion of this disputes process, the Board of Directors shall implement agreed changes.
- 9.8 On the unsatisfactory completion of this disputes process the view of the Board of Directors shall prevail.
- 9.9 Nothing in this procedure shall prevent the Council of Governors, if it so desires, from informing NHS England that, in the Council of Governor's opinion, the Board of Directors has not responded constructively to concerns of the Council of Governors that the Trust is not meeting the terms of its authorisation.

## 10 **COUNCIL PERFORMANCE**

The Chair shall, at least annually, lead an effectiveness assessment process for the Council of Governors to enable it to review its roles, structure and composition, and procedures, taking into account emerging best practice.

## 11 **CHANGES TO STANDING ORDERS**

- 11.1 For the avoidance of doubt, future amendments to these standing orders are to be regarded as a change to the Constitution.
- 11.2 These standing orders shall be reviewed at least every three years, and more often if there are changes in the regulatory framework.

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

1	INTERPRETATION.....	63
2	GENERAL INFORMATION.....	63
3	COMPOSITION OF THE BOARD.....	64
4	MEETINGS OF THE BOARD OF DIRECTORS.....	65
5	ARRANGEMENTS FOR THE EXERCISE OF FUNCTIONS BY DELEGATION.....	69
6	COMMITTEES.....	70
7	DECLARATION OF INTERESTS AND REGISTER OF INTERESTS.....	72
8	DISABILITY OF DIRECTORS IN PROCEEDINGS ON ACCOUNT OF PECUNIARY INTEREST.....	74
9	COMPLIANCE - OTHER MATTERS.....	75
10	RESOLUTION OF DISPUTES WITH COUNCIL OF GOVERNORS.....	75
11	NOTIFICATION TO NHS ENGLAND AND COUNCIL OF GOVERNORS.....	76
12	BOARD OF DIRECTORS PERFORMANCE.....	76
13	CHANGES TO BOARD STANDING ORDERS.....	76
14	CUSTODY OF SEAL AND SEALING OF DOCUMENTS.....	77
15	SIGNATURE OF DOCUMENTS.....	77

### 1 INTERPRETATION

1.1 Save as permitted by law, the Chair of the Trust shall be the final authority on the interpretation of standing orders (on which they shall be advised by the Chief Executive and Trust Secretary).

1.2 Any expression to which a meaning is given in the 2006 Act shall have the same meaning in this interpretation and in addition:

“**Board of Directors**” shall mean the Chair and Non-Executive Directors, appointed by the Council of Governors and the Executive Directors appointed by the Appointments Committee of the Board.

“**Chief Executive**” shall mean the Chief Officer of the Trust.

“**Committee**” shall mean a committee appointed by the Board of Directors.

“**Director**” shall mean a person appointed to the Board of Directors in accordance with the Trust’s Constitution and includes the Chair.

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

### 2 GENERAL INFORMATION

2.1 The purpose of the Board of Directors standing orders is to ensure that the highest standards of Corporate Governance are achieved in the Board and throughout the organisation. The Board shall at all times seek to comply with the Trust's Code of Conduct for Directors.

- 2.2 All business shall be conducted in the name of the Trust.
- 2.3 The Directors shall appoint trustees to administer separately charitable funds received by the Trust and for which they are accountable to the Charity Commission.
- 2.4 A Director, or Officer of the Trust, who has acted honestly and in good faith will not have to meet out of his or her own personal resources any personal civil liability which is incurred in the execution or purported execution of his or her functions as a Director or Officer, save where the Director or Officer has acted recklessly. On behalf of the Directors and Officers, and as part of the Trust's overall insurance arrangements, the Board of Directors shall put in place appropriate insurance provision to cover such indemnity.

### 3 COMPOSITION OF THE BOARD

- 3.1 The composition of the Board shall be as set out in the Trust's Constitution.
- 3.2 The number of Directors may be increased by the Board, provided always that at least half the Board, excluding the Chair, comprises Non-Executive Directors.
- 3.3 **Appointment and Removal of the Chair and Non-Executive Directors** - The Chair and Non-Executive Directors are appointed/removed by the Council of Governors in accordance with the Trust's Constitution.
- 3.4 **Appointment and Removal of the Executive Directors** – The Appointments Committee of the Board of Directors (excluding the Chief Executive) shall appoint the Chief Executive (which appointment shall be approved by the Council of Governors). The Appointments Committee of the Board of Directors (inclusive of the Chief Executive) shall appoint or remove the other Executive Directors.
- 3.5 **Appointment and Removal of Deputy Chair** – For the purpose of enabling the proceedings of the Trust to be conducted in the absence of the Chair, the Council of Governors of the Trust will appoint one of the Non-Executive Directors to be the Deputy Chair.
- 3.6 **Powers of Deputy Chair** - Where the Chair of the Trust has died or has otherwise ceased to hold office or where they have been unable to perform their duties as Chair owing to illness, absence from England and Wales or any other cause, references to the Chair shall, so long as there is no Chair able to perform their duties, be taken to include references to the Deputy Chair or otherwise to the Non-Executive Director appointed by the Board to preside for the time being over its meetings.
- 3.7 **Joint Directors** - Where more than one person is appointed jointly to a post in the Trust which qualifies the holder for executive directorship or in relation to which an Executive Director is to be appointed, those persons shall become appointed as an Executive Director jointly and shall count as one person.
- 3.8 **Appointment and Powers of Senior Independent Director** - Subject to the standing orders the Chair (in consultation with the Non-Executive Directors and the Council of Governors) may appoint any Director, who is also a Non-Executive Director, to be the Senior Independent Director, for such period, not exceeding the remainder of their term as a Director, as they may specify on appointing them. The Senior Independent Director shall perform the role set out in the Trust's "Senior Independent Director Job Description", as amended from time to time by resolution of the Board of Directors.

- 3.9 Any Director so appointed may at any time resign from the office of Senior Independent Director by giving notice in writing to the Chair. The Chair (in consultation with the Non-Executive Directors and the Council of Governors) may thereupon appoint another Member of the Board of Directors as Senior Independent Director in accordance with the provisions of the Standing Orders.
- 3.10 The posts and duties of the Deputy Chair and Senior Independent Director will not be combined. This decision may be reviewed at any time by the Board of Directors, in consultation with the Council of Governors.
- 3.11 The role of the Senior Independent Director will include acting as a conduit for concerns to be raised by Governors if the usual mechanisms of contact and discussion have been exhausted and, subject to the agreement of the Council of Governors, making arrangements for the annual evaluation of the performance of the Chair. The process to achieve this evaluation and its outcome will be agreed with and reported to the Council of Governors.
- 3.12 Non-Executive Directors may seek external advice or appoint an external advisor on any material matter of concern provided the decision to do so is a collective one by the majority of non-executive Directors.

## **4 MEETINGS OF THE BOARD OF DIRECTORS**

### **4.1 Meetings Held in Public**

- 4.1.1 Ordinary meetings of the Board of Directors shall be held in public at such times and places as the Board of Directors may determine. If, for any reason, the Board of Directors agrees that all or any part of a meeting is to be held in private, the public and representatives of the press will be required to withdraw upon the Board of Directors resolving as follows:

*“That representatives of the press and other members of the public be excluded from the meeting having regard to the confidential nature of the business to be transacted, publicity on which would be prejudicial to the public interest.”*

- 4.1.2 The Chair may exclude any member of the public from the meeting of the Board of Directors if they consider that they are interfering with or preventing proper conduct of the meeting.
- 4.1.3 Meetings of the Board of Directors shall be held at least six times each year at times and places that the Board of Directors may determine.
- 4.1.4 The Board of Directors shall arrange, with the Council of Governors an Annual Members Meeting to be held within 9 months of the end of each financial year.

### **4.2 Calling Meetings**

The Chair may call a meeting of the Board of Directors at any time. If the Chair refuses to call a meeting after a requisition for that purpose, signed by at least one-third of the whole number of Directors, has been presented to him/her, or if, without so refusing, the Chair does not call a meeting within seven days after such requisition has been presented to him/her, at the Trust’s Head Office, such one third or more Directors may forthwith call a meeting.

### **4.3 Notice of Meetings**

- 4.3.1 Notice of a meeting of the Board of Directors, shall be delivered to every Director, or sent by post to the usual place of residence of such Director, so as to be available to him/her at least five clear days before the meeting. Lack of service of the notice on any Director shall not affect the validity of a meeting, subject to paragraph 4.3.4 below.
- 4.3.2 Notwithstanding the above requirement for notice, the Chair may waive notice in the case of emergencies or in the case of the need to conduct urgent business.
- 4.3.3 In the case of a meeting called by Directors in default of the Chair, the notice shall be signed by those Directors and no business shall be transacted at the meeting other than that specified in the notice.
- 4.3.4 Subject to paragraph 4.3.2, failure to serve such a notice on more than three Directors will invalidate the meeting. A notice will be presumed to have been served 48 hours after the envelope containing it was posted or, in the case of a notice contained in an electronic communication, 48 hours after it was sent.

### **4.4 Setting the Agenda**

- 4.4.1 The Board of Directors may determine that certain matters shall appear on every agenda for a meeting of the Board of Directors and shall be addressed prior to any other business being conducted.
- 4.4.2 In the case of a meeting called by the Chair, a Director desiring a matter to be included on an agenda shall make their request in writing to the Chair at least 15 clear days before the meeting. Requests made less than ten days before a meeting may be included on the agenda at the discretion of the Chair.

### **4.5 Chair of Meeting**

At any meeting of the Board of Directors, the Chair, if present, shall preside. If the Chair is absent from the meeting the Deputy Chair appointed by the Council of Governors to take on the Chair's duties shall preside. Otherwise, such Non-Executive Director as the Directors present shall choose shall preside.

### **4.6 Notices of Motions**

- 4.6.1 A Director desiring to move or amend a Motion shall send a written notice thereof at least ten clear days before the meeting to the Chair, who shall insert in the agenda for the meeting all notices so received subject to the notice being permissible under the appropriate regulations. This paragraph shall not prevent any Motion being moved during the meeting, without notice, on any business mentioned on the agenda subject to paragraph 4.3.3 above.
- 4.6.2 A Motion or amendment, once moved and seconded, may be withdrawn by the proposer with the concurrence of the seconder and the consent of the Chair.

- 4.6.3 Notice of Motion to amend or rescind any resolution (or the general substance of any resolution), which has been passed within the preceding six calendar months, shall bear the signature of the Directors who gave it and also the signature of four other Directors. When any such Motion has been disposed of by the Board of Directors it shall not be competent for any Director, other than the Chair, to propose a Motion to the same effect within six months; however the Chair may do so if they consider it appropriate.
- 4.6.4 The mover of a Motion shall have a right of reply at the close of any discussion on the Motion or any amendment thereto.
- 4.6.5 When a Motion is under discussion or immediately prior to discussion it shall be open to a Director to move:
- (a) An amendment to the Motion.
  - (b) The adjournment of the discussion or the meeting.
  - (c) The appointment of an ad hoc committee to deal with a specific item of business.
  - (d) That the meeting proceed to the next business.
  - (e) That the Motion be now put.

Such a Motion, if seconded, shall be disposed of before the Motion, which was originally under discussion or about to be discussed. No amendment to the Motion shall be admitted if, in the opinion of the Chair of the meeting, the amendment negates the substance of the Motion.

In the case of Motions under (d) and (e), to ensure objectivity, Motions may only be put by a Director who has not previously taken part in the debate.

#### 4.7 **Chair's Ruling**

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

#### 4.8 **Voting**

- 4.8.1 Decisions at meetings shall be determined by a majority of the votes of the Directors present and voting. In the case of any equality of votes, the person presiding shall have a second or casting vote.
- 4.8.2 All decisions put to the vote shall, at the discretion of the Chair of the meeting, be determined by oral expression or by a show of hands. A paper ballot may also be used if a majority of the Directors present so request.
- 4.8.3 If at least one-third of the Directors present so request, the voting (other than by paper ballot) on any question may be recorded to show how each Director present voted or abstained.

- 4.8.4 If a Director so requests, their vote shall be recorded by name upon any vote (other than by paper ballot).
- 4.8.5 In no circumstances may an absent Director vote by proxy. Absence is defined as being absent at the time of the vote.
- 4.8.6 An Officer who has been appointed formally by the Board of Directors to act up for an Executive Director during a period of incapacity or temporarily to fill an Executive Director vacancy, shall be entitled to exercise the voting rights of the Executive Director. An Officer attending the Board of Directors to represent an Executive Director during a period of incapacity or temporary absence without formal acting up status may not exercise the voting rights of the Executive Director. An Officer's status when attending a meeting shall be recorded in the minutes.

#### **4.9 Joint Directors**

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

- (a) Each person shall be entitled to attend meetings of the Board of Directors;
- (b) In the case of agreement between them, they shall be eligible to have one vote between them;
- (c) In the case of disagreement between them, no vote should be cast;
- (d) The presence of those persons shall count as one person.

#### **4.10 Suspension of standing orders**

- 4.10.1 4. Except where this would contravene any statutory provision or direction made by the Secretary of State, any one or more of these standing orders may be suspended at any meeting, provided that at least two-thirds of the Board of Directors are present, including two Executive Directors and two Non-Executive Directors, and that a majority of those present vote in favour of suspension.
- 4.10.2 4. A decision to suspend standing orders shall be recorded in the minutes of the meeting.
- 4.10.3 4. A separate record of matters discussed during the suspension of standing orders shall be made and shall be available to the Directors.
- 4.10.4 4. No formal business may be transacted while standing orders are suspended.
- 4.10.5 4. The Audit Committee shall review every decision to suspend standing orders.

#### **4.11 Variation and Amendment of Standing Orders**

These standing orders shall be amended only if:

- 4.11.1 The amendment is approved by a simple majority of both the Board of Directors and the Council of Governors; and

4.11.2 The amendment is approved by Regulator.

#### 4.12 **Record of Attendance**

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

#### 4.13 **Minutes**

4.13.1 The minutes of the proceedings of a meeting shall be drawn up and maintained as a permanent record. They will be submitted for agreement at the next meeting where they will be signed by the person presiding at it.

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

4.13.3 Minutes shall be circulated in accordance with the Directors' wishes. The minutes of any public 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 the Standing Orders.

4.13.4 Before holding a meeting, the Board of Directors shall send a copy of the agenda of the meeting to the Council of Governors and shall, as soon as practicable after holding the meeting, send a copy of the minutes of the meeting to the Council of Governors.

#### 4.14 **Quorum**

4.14.1 No business shall be transacted at a meeting of the Board of Directors unless at least half of the Board of Directors are present including at least two Executive Directors (one of which must be the CEO or Deputy CEO) and two Non-Executive Directors (not including the Chair or Deputy Chair).

4.14.2 A director may join a meeting by electronic means with the Chair's permission. They may count towards the quorum and is entitled to vote if the requirement for their voice to be heard by the other directors present (and vice versa) is met.

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

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

### 5 **ARRANGEMENTS FOR THE EXERCISE OF FUNCTIONS BY DELEGATION**

5.1 The Board of Directors may make arrangements for the exercise, on behalf of the Trust, of any of its functions by a committee or sub-committee of Directors, or by a

Director or an Officer of the Trust in each case subject to such restrictions and conditions as the Board of Directors thinks fit.

- 5.2 **Emergency Powers** - The powers which the Board of Directors has retained to itself within these Standing Orders may in emergency be exercised by the Chief Executive and the Chair after having consulted at least two Non-Executive Directors. The exercise of such powers by the Chief Executive and the Chair shall be reported to the next formal meeting of the Board of Directors for ratification.
- 5.3 **Delegation to Committees** - The Board of Directors shall agree from time to time to the delegation of executive powers to be exercised by committees or sub-committees of Directors, which it has formally constituted. The constitution and terms of reference of these committees, or sub-committees, and their specific executive powers shall be approved by the Board of Directors.
- 5.4 **Delegation to Officers** - Those functions of the Trust which have not been retained as reserved by the Board of Directors or delegated to one of its Committees shall be exercised on behalf of the Board of Directors by the Chief Executive. They shall determine which functions they will perform personally and shall nominate Officers to undertake remaining functions but still retain an accountability for these to the Board of Directors.
- 5.5 The Chief Executive shall prepare a Scheme of Delegation identifying their proposals that shall be considered and approved by the Board of Directors, subject to any amendment agreed during the discussion. The Chief Executive may periodically propose amendment to the Scheme of Delegation, which shall be considered and approved by the Board of Directors as indicated above.
- 5.6 Nothing in the Scheme of Delegation shall impair the discharge of the direct accountability to the Board of Directors to provide information and advise the Board of Directors in accordance with any statutory requirements.
- 5.7 The arrangements made by the Board of Directors as set out in the Schedule of Matters reserved to the Board of Directors and Scheme of Delegation shall have effect as if incorporated in these Standing Orders.
- 5.8 Overriding Standing Orders – If for any reason these Standing Orders are not complied with, full details of the non-compliance and any justification for non-compliance and the circumstances around the non-compliance, shall be reported to the next formal meeting of the Board of Directors for action or ratification. All Directors and staff have a duty to disclose any non-compliance with these Standing Orders to the Chief Executive or Chair of the Audit Committee as soon as possible.

## 6 **COMMITTEES**

### 6.1 **Appointment of Committees**

- 6.1.1 The Board of Directors may appoint other committees of the Board of Directors subject to 5.1 and 5.3, consisting wholly or partly of Directors of the Trust. This may include the appointment of Committees in Common and Joint Committees with other NHS organisations
- 6.1.2 A committee so appointed may appoint sub-committees consisting wholly or partly of members of the committee but consisting of at least one Director.

- 6.1.3 The standing orders of the Board of Directors, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees or sub-committees established by the Board of Directors.
- 6.1.4 Each such committee or sub-committee shall have such terms of reference and powers and be subject to such conditions (as to reporting back to the Board of Directors) as the Board of Directors shall decide from time to time following reviews of the terms of reference, powers and conditions. Such terms of reference shall have effect as if incorporated into these Standing Orders.
- 6.1.5 Committees may not delegate their executive powers to a sub-committee unless expressly authorised by the Board of Directors.
- 6.1.6 The Board of Directors shall approve the appointments to each of the committees that it has formally constituted. Where the Board of Directors determines that persons, who are neither Directors nor Officers, shall be appointed to a committee, the terms of such appointment shall be determined by the Board of Directors.
- 6.1.7 Where the Trust is required to appoint persons to a committee, which is to operate independently of the Trust, such appointment shall be approved by the Board of Directors.

## 6.2 **Committees established by the Board of Directors**

The Board of Directors may establish committees. These will include:

### 6.2.1 **Audit Committee**

In line with legislation and the Code of Governance, the Board of Directors will establish and constitute an Audit Committee to provide the Board of Directors with an independent and objective review of its financial and internal control systems, financial information and compliance with laws, guidance, and regulations governing the NHS. The terms of reference will be approved by the Board of Directors and reviewed on an annual basis.

The Audit Committee will be composed of a minimum of three independent Non-Executive Directors, of which one must have significant, recent and relevant financial experience.

### 6.2.2 **Remuneration and Terms of Service Committee**

A Remuneration and Terms of Service Committee will be established and constituted by the Board of Directors, comprised of a minimum of three independent Non-Executive Directors. The terms of reference of the Committee will be approved by the Board of Directors and reviewed on an annual basis.

The purpose of the Committee will be to decide on the appropriate remuneration, allowances, and terms of and conditions of service for the Chief Executive and other Executive Directors including:

- (a) all aspects of salary (including any performance-related elements/bonuses);

- (b) provisions for other benefits, including pensions and cars; and
- (c) arrangements for termination of employment and other contractual terms.

The Committee may also recommend and monitor the level and structure of remuneration for senior management.

### **6.2.3 Trust and Charitable Funds Committee**

In line with its role as a corporate trustee for any funds held in trust, either as charitable or non-charitable funds, the Board of Directors may establish a Trust and Charitable Funds Committee to administer those funds in accordance with any statutory or other legal requirements or best practice required by the Charities Commission.

### **6.2.4 Appointments Committee**

The Board of Directors shall appoint from time to time an Appointments Committee comprised of the Chair, the other Non-Executive Directors and the Chief Executive. The purpose of the Appointments Committee shall be to appoint the Executive Directors other than the Chief Executive.

### **6.2.5 Other Committees**

The Board of Directors may also establish such other committees as required to discharge its responsibilities, for example a Finance and Investment Committee.

## **6.3 Confidentiality**

- 6.3.1 A member of the Board of Directors shall not disclose a matter dealt with by, or brought before, the Board of Directors without its permission.
- 6.3.2 A member of a committee of the Board of Directors shall not disclose any matter dealt with by, or brought before, the committee, notwithstanding that the matter has been reported or action has been concluded, if the Board of Directors or committee shall resolve that it is confidential.
- 6.3.3 Guidance may be sought from the Trust's Freedom of Information Lead to ensure correct procedure is followed on matters to be included in the exclusion.

## **7 DECLARATION OF INTERESTS AND REGISTER OF INTERESTS**

### **7.1 Declaration of Interests**

- 7.1.1 Directors are required to comply with the Trust's Standards of Business Conduct and to declare interests that are relevant and material to the Board of Directors. All Directors should declare such interests on appointment and on any subsequent occasion that a conflict arises.
- 7.1.2 Interests regarded as "relevant and material" include any of the following, held by a Director, or the spouse, partner, parent or child of a Director:

- (a) Directorships, including non-executive directorships held in private companies or PLCs (with the exception of those of dormant companies).
  - (b) Ownership or part-ownership of or employment with private companies, businesses or consultancies likely or possibly seeking to do business with the NHS.
  - (c) Majority or controlling shareholdings in organisations likely or possibly seeking to do business with the NHS.
  - (d) A position of authority in a charity or voluntary organisation in the field of health and social care.
  - (e) Any connection with a voluntary or other organisation contracting for NHS services.
- 7.1.3 If Directors have any doubt about the relevance of an interest, this should be discussed with the Chair.
- 7.1.4 At the time Directors' interests are declared, they should be recorded in the Board minutes. Any changes in interests should be declared at the next Board of Directors meeting following the change occurring.
- 7.1.5 Directors' directorships of companies likely or possibly seeking to do business with the NHS should be published in the Board of Directors' annual report. The information should be kept up to date for inclusion in succeeding annual reports.
- 7.1.6 During the course of a Board of Directors meeting, if a conflict of interest is established in accordance with this Standing Order, the Director concerned should, unless two thirds of the Directors present agree (including two Executive and two Non-Executive Directors), withdraw from the meeting and play no part in the relevant discussion or decision. If the Director remains present at the meeting on the agreement of two thirds of those Directors present, they shall not be entitled to vote on the issue in respect of which the conflict of interest has been established and may be requested with withdraw from the meeting at the Chair's discretion.

## 7.2 Register of Interests

- 7.2.1 The Chief Executive will ensure that a Register of Interests is established to record formally declarations of interests of Directors. In particular the Register will include details of all directorships and other relevant and material interests that have been declared by both Executive and Non-Executive Directors.
- 7.2.2 These details will be kept up to date by means of an annual review of the Register in which any changes to interests declared during the preceding twelve months will be incorporated.
- 7.2.3 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 the local population and to publicise arrangements for viewing it.

## **8 DISABILITY OF DIRECTORS IN PROCEEDINGS ON ACCOUNT OF PECUNIARY INTEREST**

- 8.1 Subject to the following provisions of this Standing Order, if the Chair or a Director of the Trust has any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter and is present at a meeting of the Board of Directors at which the contract or other matter is the subject of consideration, they shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not take part in the consideration or discussion of the contract or other matter or vote on any question with respect to it.
- 8.2 The Board of Directors shall exclude the Chair or a Director from a meeting of the Board of Directors while any contract, proposed contract or other matter in which they have a pecuniary interest, is under consideration.
- 8.3 The Board of Directors, as it may think fit, may remove any disability imposed by this Standing Order in any case in which it appears to the Board of Directors that, in the interests of the National Health Service, the disability shall be removed. Such action shall have the support of at least two-thirds of the Directors present at the meeting (including two Executive and two Non-Executive Directors).
- 8.4 Any remuneration, compensation or allowances payable to a Director of the Trust by virtue of paragraph 11 of Schedule 4 of the 2006 Act shall not be treated as a pecuniary interest for the purpose of this Standing Order.
- 8.5 For the purpose of this Standing Order the Chair or a Director shall be treated, subject to paragraphs 8.3 and 8.6, as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if:
- (a) They, or their nominee is a director of a company or other body, not being a public body, with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration; or
  - (b) They are a partner of, or is in the employment of a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration; and
  - (c) In the case of persons living together the interest of one partner shall, if known to the other, be deemed for the purposes of this Standing Order to be also an interest of the other.
- 8.6 The Chair or a Director shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only:
- 8.7 Of their membership of a company or other body, if they have no beneficial interest in any securities of that company or other body;
- 8.8 Of an interest in any company, body or person with which they are connected as mentioned above which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a Director in the consideration or discussion of or in voting on, any question with respect to that contract or matter.
- 8.9 Where the Chair or a Director:

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

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

This Standing Order applies to a committee or sub-committee of the Board of Directors as it applies to the Board of Directors and applies to any member of any such committee or sub-committee (whether or they are also a Director of the Trust) as it applies to a Director of the Trust.

## **9 COMPLIANCE - OTHER MATTERS**

- 9.1 All Directors of the Trust shall comply with the Standards of Business Conduct set by the Board of Directors for the guidance of all staff employed by the Trust.
- 9.2 All Directors of the Trust shall comply with Standing Financial Instructions prepared by the Director of Finance and approved by the Board of Directors.
- 9.3 All Directors must behave in accordance with the seven Nolan principles of behaviour in Public Life (and the Trust's Code of Conduct for Directors as amended from time to time):
  - 9.3.1 Selflessness;
  - 9.3.2 Integrity;
  - 9.3.3 Objectivity;
  - 9.3.4 Accountability;
  - 9.3.5 Openness;
  - 9.3.6 Honesty; and
  - 9.3.7 Leadership.

## **10 RESOLUTION OF DISPUTES WITH COUNCIL OF GOVERNORS**

- 10.1 Should a dispute arise between the Board of Directors and the Council of Governors, then the disputes resolution procedure set out below shall be followed.
- 10.2 The Chair, or Deputy Chair (if the dispute involves the Chair), shall first endeavour, through discussion with Governors and Directors or, to achieve the earliest possible conclusion, appropriate representatives of them, to resolve the matter to the reasonable satisfaction of both parties.

- 10.3 Failing resolution under 10.2 above, then the Board of Directors or the Council of Governors, as appropriate, shall at its next formal meeting approve the precise wording of a Disputes Statement setting out clearly and concisely the issue or issues giving rise to the dispute.
- 10.4 The Chair shall ensure that the Disputes Statement, without amendment or abbreviation in any way, shall be an agenda item and agenda paper at the next formal meeting of the Board of Directors or Council of Governors as appropriate. That meeting shall agree the precise wording of a Response to Disputes Statement.
- 10.5 The Chair or Deputy Chair (if the dispute involves the Chair) shall immediately or as soon as is practical, communicate the outcome to the other party and deliver the written Response to Disputes Statement. If the matter remains unresolved or only partially resolved, then the procedure outlined in 10.2 above shall be repeated.
- 10.6 If, in the opinion of the Chair or Deputy Chair (if the dispute involves the Chair) and following the further discussions prescribed in 10.5 above, there is no further prospect of a full resolution or, if at any stage in the whole process, in the opinion of the Chair or Deputy Chair, as the case may be, there is no prospect of a resolution (partial or otherwise) then they shall advise the Council of Governors and Board of Directors accordingly.
- 10.7 On the satisfactory completion of this disputes process, the Board of Directors shall implement agreed changes.
- 10.8 On the unsatisfactory completion of this disputes process the view of the Board of Directors shall prevail.
- 10.9 Nothing in this procedure shall prevent the Council of Governors, if it so desires, from informing the Monitor that, in the Council of Governors' opinion, the Board of Directors has not responded constructively to concerns of the Council of Governors that the Trust is not meeting the terms of its authorisation.

## **11 NOTIFICATION TO NHS ENGLAND AND COUNCIL OF GOVERNORS**

The Board of Directors shall notify NHS England and the Council of Governors of any major changes in the circumstances of the Trust, which have made or could lead to a substantial change to its financial well-being, healthcare delivery performance, or reputation and standing or which might otherwise affect the Trust's compliance with the terms of its authorisation.

## **12 BOARD OF DIRECTORS PERFORMANCE**

The Chair shall, at least annually, lead a performance assessment process for the Board of Directors. This process should act as the basis for determining individual and collective professional development programs for Directors.

## **13 CHANGES TO BOARD STANDING ORDERS**

For the sake of clarity, future amendments to these Standing Orders by the Board of Directors are to be regarded as a change to the Trust's Constitution.

## 14 CUSTODY OF SEAL AND SEALING OF DOCUMENTS

- 14.1 **Custody of Seal** - the Common Seal of the Trust shall be kept by the Trust Secretary in a secure place.
- 14.2 **Sealing of Documents** - where it is necessary that a document shall be sealed, the seal shall be affixed in the presence of two Directors, not from the originating department, and shall be attested by them. A report of all sealings shall be made to the Board of Directors at least quarterly.
- 14.3 **Register of Sealing** – the Secretary shall keep a register in which they, or another manager of the Trust authorised by them, shall enter a record of the sealing of every document.

## 15 SIGNATURE OF DOCUMENTS

- 15.1 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 or their nominated deputy, unless any enactment otherwise requires or authorises, or the Board of Directors shall have given the necessary authority to some other person for the purpose of such proceedings.
- 15.2 In land transactions, the signing of certain supporting documents will be delegated to Managers and set out clearly in the Scheme of Delegation but will not include the main or principal documents effecting the transfer (e.g. sale/purchase agreement, lease, contracts for construction works and main warranty agreements or any document which is required to be executed as a deed), which may only be signed by the Chief Executive or their nominated deputy with a second Director as in the Standing Orders for documents requiring sealing.

## **ANNEX 9 - MEMBERS - FURTHER PROVISIONS**

### **1 Disqualification from Membership**

- 1.1 A person may not become a member of the Trust if within the last five years;
- (a) They have received a red card under the Trust's procedure for care of patients who are violent or abusive; or
  - (b) They have been involved as a perpetrator in a serious incident of violence at any of the Trust's Teaching Hospitals or facilities or against any of the Trust's employees or other persons who exercise functions for the purposes of the Trust, or against volunteers.
- 1.2 A person may not become or continue as a member of the Trust if they are or have been the subject of a sexual offences prevention order, a foreign travel order or a risk of sexual harm order made under the provisions of the Sexual Offences Act 2003.
- 1.3 A person may not become a member of the Trust if they are under 12 years of age.
- 1.4 A person may not become or continue as a member of the Trust if they do not agree to comply with the Trust's aims and values.
- 1.5 Where the Trust is placed on notice that a member may be disqualified from membership, or may no longer be eligible to be a member, the Trust Secretary shall give the member 14 days written notice to show cause why their name should not be removed from the register of members. If such information is not supplied by the member within 14 days, the Trust Secretary may, if they consider it appropriate, remove the member from the register of members. In the event of any dispute the Trust Secretary shall refer the matter to the Council of Governors to determine.
- 1.6 All members of the Trust shall notify the Trust Secretary of any change in their particulars, which may affect their entitlement to be a member.

### **2 Termination of membership**

- 2.1 A member shall cease to be a member if:
- (a) They die;
  - (b) They resign by notice to the Trust Secretary;
  - (c) They cease to be entitled under this Constitution to be a member of any of the Trust's constituencies;
  - (d) They are expelled under this Constitution;
  - (e) It appears to the Trust Secretary that they no longer wish to be a member of the Trust, and after enquiries made in accordance with a process approved by the Council of Governors, they fail to establish that they wish to continue to be a member of the Trust.

### **3 Expulsion**

- 3.1 A member may be expelled by a resolution carried by the votes of two-thirds of the members of the Council of Governors present and voting at a meeting of the Council of Governors.

The following procedure is to be adopted:

- (a) Any member may complain in writing to the Trust Secretary that another member has acted in a way detrimental to the interests of the Trust.
  - (b) If a complaint is made, the Council of Governors may itself consider the complaint having taken such steps as it considers appropriate to ensure that each member's point of view is heard and may either:
  - (c) Dismiss the complaint and take no further action; or
  - (d) Arrange for a resolution to expel the member complained of to be considered at the next meeting of the Council of Governors.
- 3.2 If a resolution to expel a member is to be considered at a meeting of the Council of Governors, details of the complaint must be sent to the member complained of not less than one calendar month before the meeting with an invitation to answer the complaint and attend the meeting.
- 3.3 At the meeting the Council of Governors will consider evidence in support of the complaint and such evidence as the member complained of may wish to place before them.
- 3.4 If the member complained of fails to attend the meeting without due cause the meeting may proceed in their absence.
- 3.5 At the meeting the Council of Governors will consider evidence in support of the complaint and such evidence as the member complained of may wish to place before them.
- 3.6 If the member complained of fails to attend the meeting without due cause the meeting may proceed in their absence.

### **4 Voting at Public Governor Elections**

A person may not vote at a public governor election for an elected Governor unless within the specified period they have made a declaration in the specified form setting out the particulars of their qualification to vote as a member of the Public Constituency. It is an offence to knowingly or recklessly make such a declaration which is false in a material particular.

### **5 Dispute Resolution Procedures**

- 5.1 In the event of any dispute about the entitlement to membership the dispute shall be referred to the Trust Secretary who shall make a determination on the point in issue.
- 5.2 If the Member or applicant (as the case may be) is aggrieved at the decision of the Secretary he may appeal in writing within 14 days of the Trust Secretary's decision to the Council of Governors whose decision shall be final.

- 5.3 In the event of any dispute about the eligibility and disqualification of a Governor the dispute shall be referred to the Council of Governors whose decision shall be final.
- 5.4 In the event of dispute between the Council of Governors and the Board of Directors:
- 5.4.1 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;
- 5.4.2 If the Chair is unable to resolve the dispute he or she shall refer the dispute to the Senior Independent Director; and
- 5.4.3 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.

## **6 Indemnity**

- 6.1 Governors and Directors who act honestly and in good faith will not have to meet out of their personal resources any personal civil liability which is incurred in the execution or purported execution of their Council of Governors or Board of Directors functions, save where they have acted recklessly. Any costs arising in this way will be met by the Trust.
- 6.2 The Trust must make such arrangements as it considers appropriate for the provision of indemnity insurance or similar arrangement for the benefit of the Trust, Governors and Directors to meet all or any liabilities which are properly the liabilities of the Trust under the paragraph above.

## **ANNEX 10 – ANNUAL MEMBERS MEETING**

### **1 Interpretation**

Any expression to which a meaning is given in the National Health Service Act 2006 has the same meaning in this interpretation and in addition:

### **2 Annual Members' Meeting**

2.1 The Trust is to hold an Annual Members Meeting within nine months of the end of each financial year. Members meetings may also be convened at other times in accordance with paragraph 2.5 below.

2.2 Members meetings are open to all members of the Trust, Governors, Directors, representatives of the Trust's financial auditor and members of the public.

2.3 All members meetings, including the Annual Members Meeting shall be convened by the Trust Secretary by order of the Council of Governors.

2.4 At the Annual Members Meeting:

(a) The Board of Directors shall present to members:

- (i) The annual accounts.
- (ii) Any report of the financial auditor.
- (iii) Any report of any other external auditor of the Trust's affairs.
- (iv) Forward planning information for the next financial year.

(b) The Council of Governors shall present to the members:

- (i) a report on steps taken to secure that (taken as a whole) the actual membership of its Public Constituency and of the classes of the Staff Constituency are representative of those eligible for such membership.
- (ii) The progress of the membership strategy.
- (iii) Any proposed changes to the policy for the composition of the Council of Governors and of the non-executive Directors.
- (iv) The results of the election and appointment of Governors and the appointment of non-executive Directors will be announced.

2.5 Notice of members meetings is to be given:

- (a) By notice to all members.
- (b) By notice prominently displayed By notice on the Trust's website, at least 14 clear days before the date of the meeting.
- (c) The notice must be given to the Council of Governors and the Board of Directors and to the financial auditor.

- (d) Give the time, date and place of the meeting; and
  - (e) Indicate the business to be dealt with at the meeting.
- 2.6 Before a members meeting can do business there must be a quorum present. Except where this Constitution says otherwise at least six members present.
- 2.7 The Trust may make arrangements for members to vote by post, or by using electronic communications.
- 2.8 It is the responsibility of the Council of Governors, the Chair of the meeting and the Trust Secretary to ensure that at members meetings:
- (a) The issues to be decided are clearly explained.
  - (b) Sufficient information is provided to members to enable rational discussion to take place.
- 2.9 The Chair, or in his absence the Deputy Chair, or in his absence one of the other non-executive Directors shall preside at all members' meetings of the Trust. If neither the Chair nor the Deputy Chair, nor any other non-executive Directors are present, the meeting shall stand adjourned. The Chair may exclude any member of the public from an Annual Members' Meeting if he is interfering with or preventing the reasonable conduct of the meeting.

### **3 Chair's Ruling**

- 3.1 Statements made by any person at an Annual Members' Meeting 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 observed at the meeting.
- 3.2 If no quorum is present within half an hour of the time fixed for the start of the meeting, the meeting shall stand adjourned to the same day in the next week at the same time and place or to such time and place as the Council of Governors determines. If a quorum is not present within half an hour of the time fixed for the start of the adjourned meeting, the number of members present during the meeting is to be a quorum.

### **4 Minutes**

- 4.1 The Minutes of the proceedings of an Annual Members' Meeting shall be drawn up and maintained as a public record. They will be submitted for agreement at the next Annual Members' Meeting where they will be signed by the person presiding at it.
- 4.2 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.
- 4.3 The Minutes of an Annual Members' Meeting shall be made available to the public on the Trust's website.

## 5 **Voting**

### **Entitlement to Attend and Vote**

- 5.1 Each member of the Trust shall be entitled to attend the Annual Members' Meeting and to exercise one vote on any resolution properly put to the meeting.
- 5.2 The entitlement to vote shall be limited to:
- (a) individuals who are entered on the register of members at the voting record date, as determined by the Trust; and
  - (b) members who satisfy the eligibility requirements set out in this Constitution and any applicable election rules.
  - (c) no person who is not a member of the Trust shall be entitled to vote at the Annual Members' Meeting.

### **Matters on Which Members May Vote**

- 5.3 Members may vote at the Annual Members' Meeting on:
- (a) any resolution concerning amendments to the Constitution which affect the role or responsibilities of the Council of Governors, in accordance with Schedule 7 to the NHS Act 2006; and
  - (b) any other matter which the Chair determines is properly referred to the members for decision.
- 5.4 The presentation of the annual report, annual accounts and auditor's report shall not, of itself, require a vote unless a resolution is expressly proposed.

### **Method of Voting**

- 5.5 The presentation of the annual report, annual accounts and auditor's report shall not, of itself, require a vote unless a resolution is expressly proposed.
- (a) A show of hands of members present;
  - (b) a poll of members present;
  - (c) postal voting;
  - (d) electronic or online voting, including real-time electronic voting at the meeting.
- 5.6 Where voting is conducted by electronic or postal means, the Trust shall take reasonable steps to ensure the security, secrecy and integrity of the voting process.

### **Conduct and Determination of Votes**

- 5.7 Each eligible member shall have one vote only.
- 5.8 A resolution shall be carried if it receives a simple majority of the votes cast, unless a different majority is required by statute.

5.9 In the event of an equality of votes, the Chair of the meeting shall have a casting vote.

5.10 The Chair's declaration of the result of the vote shall be conclusive, and the result shall be recorded in the minutes of the meeting.

## **6 Suspension of Standing Orders**

6.1 Except where this would contravene any statutory provision, any one or more of these standing orders may be suspended at an Annual Members' Meeting, provided that a majority of Members present vote in favour of suspension.

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

6.3 A separate record of matters discussed during the suspension of the standing orders shall be made and shall be available to the members.

6.4 No formal business may be transacted while the standing orders are suspended.

6.5 The Trust's Audit Committee shall review every decision to suspend the standing orders.

## **7 Variation and Amendment of Standing Orders**

7.1 These standing orders may be amended in accordance with the provisions this Constitution.

## **8 Record of Attendance**

8.1 The Secretary shall keep a record of the names of the members present at an Annual Members' Meeting.

Dated

March 2026

(1) WARRINGTON AND HALTON TEACHING HOSPITALS NHS FOUNDATION TRUST  
and  
(2) BRIDGEWATER COMMUNITY HEALTHCARE NHS FOUNDATION TRUST

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**TRANSACTION AGREEMENT  
FOR COMBINING THE BUSINESSES OF  
WARRINGTON AND HALTON TEACHING  
HOSPITALS NHS FOUNDATION TRUST  
AND BRIDGEWATER COMMUNITY  
HEALTHCARE NHS FOUNDATION  
TRUST UNDER SECTION 56A OF THE  
NATIONAL HEALTH SERVICE ACT 2006**

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<b>Draft</b>	<b>Date</b>	<b>Author</b>
V001	7 January 2026	Hill Dickinson
V002	16 January 2026	Hill Dickinson
Final	6 February 2026	Hill Dickinson

## CONTENTS

1	Background.....	3
2	Statutory Process.....	4
3	Approvals.....	5
4	Agreement to Acquire.....	7
5	Pre-Completion Period Obligations.....	8
6	Completion.....	9
7	Post-Completion.....	9
8	Staffing Arrangements.....	9
9	Warranties and Indemnities.....	10
10	Confidentiality and Freedom of Information.....	11
11	Dispute Resolution.....	13
12	General.....	14
13	Notices.....	16
	SCHEDULE 1 GLOSSARY AND INTERPRETATION.....	17
	<b>SCHEDULE 2 CO-OPERATION DURING PRE-COMPLETION PERIOD.....</b>	<b>26</b>

**BETWEEN:**

- (1) **WARRINGTON AND HALTON TEACHING HOSPITALS NHS FOUNDATION TRUST** of Warrington Hospital, Lovely Lane, Warrington, WA5 1QG (**WHFT**); and
- (2) **BRIDGEWATER COMMUNITY HEALTHCARE NHS FOUNDATION TRUST** of Spencer House, Birchwood, Warrington, Cheshire, WA3 7PG (**BCHFT**)

(each a **Party** and together **Parties**).

**1 BACKGROUND**

- 1.1 The Trusts wish to work collaboratively to combine their businesses and have taken steps to date towards achieving this. The intention behind the transaction is to improve healthcare services, achieve better integration between hospital and community care and deliver greater benefits for their patients, people and system partners.
- 1.2 The Trusts wish to transform how healthcare is delivered by uniting acute, secondary and community care into a single organisation to provide care that is truly patient centred and better respond to the evolving needs of their populations.
- 1.3 NHS England is responsible for overseeing the Transaction in its role as regulator of the Trusts by supporting, reviewing and approving the Transaction.
- 1.4 In December 2025 the board of WHFT and the board of BCHFT approved the Business Case for WHFT to acquire all the property and liabilities of BCHFT subject to the consents and approvals set out in Clause 3.
- 1.5 The Trusts have submitted the Business Case to NHS England and shall make the application to NHS England for the acquisition of BCHFT by WHFT under section 56A of the 2006 Act in accordance with the requirements of the Transactions Guidance. Under the Transactions Guidance, this Transaction is a significant transaction.
- 1.6 The Parties have now agreed to enter into this Agreement. Upon completion of this Agreement they will enter into the Pre-Completion Period. The Trusts confirm that they will work together to achieve Completion of the Transaction on the Completion Date.
- 1.7 The Parties acknowledge and agree that the Transaction will be effected by the Grant of Acquisition taking effect.

- 1.8 This Agreement is being entered into prior to the dissolution of BCHFT and prior to the Grant of Acquisition becoming effective to govern the relationship between the Trusts. This Agreement is intended to supplement and has been signed in anticipation of the Grant of Acquisition.
- 1.9 The Parties are entering into this Agreement in order to record:
- 1.9.1 the steps that they have taken in preparation for the Transaction (including approvals, for example the Business Case that has been prepared); and
- 1.9.2 certain matters (including agreements) that have been reached between the Parties in relation to the Transaction that will not be recorded in the Grant of Acquisition.
- 1.10 Unless the context otherwise requires, the definitions and rules of interpretation set out in Schedule 1 apply to this Agreement.

## **2 STATUTORY PROCESS**

- 2.1 In consideration of and subject to the terms of this Agreement, the Parties agree forthwith to make the application jointly to NHS England for the acquisition of BCHFT by WHFT under section 56A of the 2006 Act.
- 2.2 The Parties agree that the Transaction will be effected by NHS England using its powers under sections 56A and 56AA of the NHA to grant the Trusts' joint application for the Transaction by making a Grant of Acquisition (subject to approval of the Secretary of State for Health and Social Care).
- 2.3 On the date that the Grant of Acquisition takes effect in accordance with Clause 6 the following events will occur:
- 2.3.1 the Transferring Property and Liabilities will be transferred to WHFT;
- 2.3.2 WHFT's amended constitution will take effect; and
- 2.3.3 BCHFT will be dissolved.

## **3 APPROVALS**

- 3.1 The Parties acknowledge and agree that the following events have already occurred:
- 3.1.1 A Transaction Board has been established to co-ordinate the Transaction. The Better Care Together Delivery Group meets monthly and provides Board-level oversight of the Integration Programme and the Transaction. References to the "Transaction Board" in this document refer to the Better Care Together Delivery Group

- 3.1.2 an appropriate due diligence exercise in relation to the Transaction has been carried out by WHFT on BCHFT;
  - 3.1.3 the Trusts have submitted the Business Case to NHS England;
  - 3.1.4 NHS England has reviewed the Business Case and completed its risk assessment of the Transaction and notified the Trusts of the risk rating;
  - 3.1.5 the ICB has agreed to support the Transaction and the ICB has agreed arrangements for commissioning of the Transferring Services from Completion in accordance with the terms of the NHSE Standard Services Contract(s);
  - 3.1.6 the Council of Governors and Board of Directors of BCHFT have approved the Transaction and resolved to make the joint application to NHS England, enter into this Agreement and complete the Transaction contemplated by this Agreement having had the opportunity to consider the outcome of NHS England's risk assessment of the Transaction;
  - 3.1.7 the following certifications (as set out in the Transaction Guidance) have been submitted to and approved by NHS England:
    - 3.1.7.1 board certification, together with any additional evidence requested by NHS England; and
    - 3.1.7.2 management letter of representation, together with any additional evidence requested by NHS England.
  - 3.1.8 the Council of Governors and Board of Directors of WHFT have approved the Transaction and the proposed amendments to WHFT's Constitution and resolved to make the joint application to NHS England, enter into this Agreement and complete the Transaction contemplated by this Agreement having had the opportunity to consider the outcome of NHS England's risk assessment of the Transaction including the impact on WHFT's segmentation under NHS England Oversight Framework;
  - 3.1.9 the Council of Governors and Board of Directors of WHFT and BCHFT have approved the Transaction where the Transaction meets the definition of 'significant transaction' as may be contained in WHFT and BCHFT's constitution.
- 3.2 Completion is conditional upon:

- 3.2.1 the Trusts making a joint application to NHS England for the Transaction and submitting evidence of the requisite governor approvals;
  - 3.2.2 a recommendation by NHS England to the Secretary of State for Health and Social Care for approval of the Grant of Acquisition and the Secretary of State for Health and Social Care confirming their satisfaction as to the Transaction in order to approve the Grant of Acquisition;
  - 3.2.3 amendment of WHFT's CQC registration, to take effect on Completion;
  - 3.2.4 amendment of WHFT's membership of the relevant NHS Resolution risk sharing scheme(s), to take effect on Completion;
  - 3.2.5 the Trusts having submitted to NHS England a version of WHFT's constitution with proposed amendments, to take effect on Completion;
  - 3.2.6 NHS England being satisfied that such steps as are necessary to prepare for the Transaction have been taken;
  - 3.2.7 NHS England granting the Grant of Acquisition.
- 3.3 If prior to the Completion Date NHS England has issued the Transaction with a 'red' risk rating or otherwise indicated that it is not prepared to grant the Grant of Acquisition at all, or the Secretary of State for Health and Social Care does not approve the Grant of Acquisition, this Agreement will automatically terminate without liability on any Party (save in respect of any antecedent breaches).
- 3.4 If either:
- 3.4.1 NHS England has indicated that it is not prepared to grant the Grant of Acquisition to take effect on the Proposed Completion Date; or
  - 3.4.2 the Secretary of State for Health and Social Care does not approve the Grant of Acquisition in time for the Transaction to take effect on the Proposed Completion Date; or
  - 3.4.3 without any prior indication or notification by NHS England, the Grant of Acquisition has not been granted in time to take effect on the Proposed Completion Date;

then the Parties will conduct a formal review meeting to be convened by WHFT as soon as practicable with a view to the Parties agreeing the most appropriate way forward which may include a mutual written agreement to vary the Proposed Completion Date to a new date (**Longstop Date**). If no Longstop Date can be agreed or if the Grant of Acquisition has not been granted to take effect on the Longstop

Date (or such later date as may be agreed in writing between the Parties), each Party will unilaterally be entitled to terminate their rights and obligations under this Agreement without liability on any Party (save in respect of any antecedent breaches). For the avoidance of doubt, in exercising the right, the Parties confirm that they will act reasonably having regard to the importance of the continued delivery of the clinical services by BCHFT.

- 3.5 The Parties agree that a breach by one of them of Clause 9 will entitle the other to terminate this Agreement at any time during the Pre-Completion Period and to withdraw the application at any time before the Grant of Acquisition.
- 3.6 For the avoidance of doubt, in exercising the right of termination under this Clause 3, the Parties confirm that they will act reasonably having regard to the importance of the continued delivery of the services by the Trusts.

#### **4 AGREEMENT TO ACQUIRE**

Subject to the terms of this Agreement, WHFT agrees that:

- 4.1 the Transferring Property and Liabilities will transfer to WHFT on the terms of this Agreement in accordance with the Grant of Acquisition;
- 4.2 the Transferring Employees will transfer to WHFT from BCHFT in accordance with the TUPE Regulations; and
- 4.3 NHS England will not be asked to exercise its power in section 56A(4A) of the NHS Act 2012 to make a statutory order providing for the transfer of the Transferring Employees to WHFT.

#### **5 PRE-COMPLETION PERIOD OBLIGATIONS**

- 5.1 The Trusts agree that from the date of this Agreement until the Completion Date or the earlier termination of this Agreement, they will co-operate fully with each other, the ICB and NHS England to comply with their respective obligations in this Clause 5 and to meet the requirements of section 56A to enable NHS England to make the Grant of Acquisition.
- 5.2 The Parties agree that the Transaction Board will continue to operate up to Completion.

- 5.3 During the Pre-Completion Period WHFT will continue to cooperate to ensure safe handover of the Transferring Services, including by ensuring there is a PTIP for the Transaction.
- 5.4 BCHFT covenants with WHFT that until the Completion Date or earlier termination of this Agreement it will operate its business in accordance with the commitments in Schedule 2.
- 5.5 BCHFT recognises that WHFT will continue to require access to certain information to support due diligence, the regulatory process with NHS England and integration planning up to the Completion Date. BCHFT agrees to cooperate with WHFT's reasonable requests and provide reasonable information on an open book basis up until the Completion Date in accordance with Clause 5.6.
- 5.6 Any information provided by BCHFT to WHFT will comply with data protection law and Clause 10.

## **6 COMPLETION**

- 6.1 On the Completion Date the following events will occur:
- 6.1.1 the Transferring Property and Liabilities will transfer to WHFT and the balance sheet of WHFT (after the Transaction) will represent the consolidated position of both the Trusts;
- 6.1.2 the Transferring Employees will transfer to WHFT in accordance with the TUPE Regulations; and
- 6.1.3 BCHFT will be dissolved.

## **7 POST-COMPLETION**

- 7.1 Except as stated to the contrary in this Agreement, WHFT agrees that it will deal with all matters arising in relation to the activities or functions of the Transferring Services and the Transferring Property and Liabilities and Transferring Employees which have not been dealt with by or arise after the Completion Date.
- 7.2 All claims related to Transferring Services will transfer to WHFT whether covered by CNST or not and WHFT will continue membership of CNST (or take out commercial insurance, at its option) in respect of the Transferring Services.

## 8 STAFFING ARRANGEMENTS

### Transferring Employees

- 8.1 The Trusts intend and acknowledge that the Transaction, with respect to the Transferring Employees, constitutes a Relevant Transfer and agree that as a consequence of that Relevant Transfer, the contracts of employment made between BCHFT and the Transferring Employees will have effect from and after Completion, as if originally made between WHFT and the Transferring Employees, including protection of the Transferring Employees' service and terms and conditions of employment.
- 8.2 Notwithstanding the acknowledgement and agreement in Clause 8.1 and in recognition of the possibility that the Transaction contemplated by this Agreement may be determined not to be a Relevant Transfer by a Court or Tribunal, WHFT will with effect from Completion, offer employment to each Transferring Employee on like terms to the terms on which they would have become employed by WHFT had there been a Relevant Transfer or, to the extent that it is not reasonably practicable to do so in respect of any such term, on terms which are not in such respect materially to the detriment of each Transferring Employee.

### Information and Consultation

- 8.3 WHFT acknowledges and agrees that BCHFT has supplied (and in any event will be deemed to have supplied) to WHFT the Employee Liability Information on or before the Completion Date.
- 8.4 WHFT undertakes to comply with the Information Commissioners' Data Protection Good Practice Note "Disclosure of Employee Information under TUPE".
- 8.5 BCHFT will take reasonable steps to comply with its obligations under Regulations 11, 13 and 14 of the TUPE Regulations, prior to the Completion Date including during the Pre-Completion Period.
- 8.6 WHFT will take reasonable steps to comply with its obligations under Regulation 13 of the TUPE Regulations, prior to the Completion Date including during the Pre-Completion Period.

### Apportionments and Payments

- 8.7 BCHFT will be responsible for all Employee Emoluments in respect of the Transferring Employees which are accrued and payable in respect of the period up to Completion.

- 8.8 WHFT will be responsible for all emoluments and outgoings in respect of the Transferring Employees which accrue and / or are payable in the period on and after Completion.
- 8.9 WHFT confirms that WHFT is an NHS Employing Authority for the purposes of membership by the Transferring Employees of the NHS Pension Scheme and that, accordingly, with effect from the Completion Date, the Transferring Employees will continue to be entitled to retain full access to membership of the NHS Pension Scheme. For the avoidance of doubt, such membership will include on-going entitlement to injury, ill-health and premature retirement benefits administered for and on behalf of WHFT by the NHS Pension Scheme.

## **9 WARRANTIES AND INDEMNITIES**

### **9.1 BCHFT warrants to WHFT that:**

- 9.1.1 in responding to due diligence enquiries BCHFT has exercised utmost good faith to identify all material risks and to the best of its knowledge it has fully disclosed to WHFT all material risks;
- 9.1.2 to the best of its knowledge all outstanding material risks are set out in a final risk register; and
- 9.1.3 it will continue to exercise utmost good faith to disclose to WHFT any material risks of which it becomes aware and which have not previously been disclosed.

- 9.2 The Trusts agree to undertake to each other that they will use their best endeavours to mitigate all material risks which are identified in the final risk register.

## **10 CONFIDENTIALITY AND FREEDOM OF INFORMATION**

### **10.1**

The Parties undertake that they will not at any time for a period of five years after the date of this Agreement, use or exploit or disclose to any person any Confidential Information disclosed by a Party and / or its representative to another Party and / or its representatives except as permitted by Clause 10.2 and or Clause 10.3.

- 10.2 The Parties may disclose Confidential Information:

10.2.1 to their employees, agents or consultants who need to know such information for the purpose of discharging their obligations under this

Agreement provided that they will ensure that their employees, agents or consultants to whom they disclose Confidential Information comply with this Clause 10; and

- 10.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 10.3 The Parties will not use each other's Confidential Information for any purpose other than to comply with this Agreement, to complete the Transaction and, in the case of WHFT, to pursue the business of BCHFT after Completion.
- 10.4 Without limitation to the other rights, duties and obligations contained in Clauses Error: Reference source not found and 10.2 it is noted by the Trusts that, if the Transaction does not proceed to completion by the Completion Date or the Longstop Date, WHFT will upon written request from BCHFT return any written information provided by BCHFT without keeping any copies of that information.
- 10.5 The Parties will agree the full particulars and timing of any announcements relating to the Transaction which any of the Parties plan to make.
- 10.6 The Parties acknowledge that they are subject to legal duties under the FOIA which may require them to disclose, on request, information relating to this Agreement and that they are also subject to the *Code of Practice on Openness in the NHS (4 August 2003)*.
- 10.7 If a Party receives a Request for Information (as defined in FOIA) about the Transaction, then, prior to any disclosure of information to which an exemption to FOIA may apply (**Potentially Exempt Information**), it will:
  - 10.7.1 immediately notify the other Parties of such Request for Information;
  - 10.7.2 discuss the Request for Information with the other Parties and the Parties shall consider together whether or not an exemption to FOIA applies and the public interest factors both for and against disclosure (if applicable depending upon the potential exemption) in accordance with FOIA to determine whether the public interest in maintaining the exemption outweighs the public interest in disclosing such Potentially Exempt Information;
  - 10.7.3 take into account any representations made by the other Parties in relation to the Request for Information and any possible exemptions; and

- 10.7.4 consult with the other Parties in relation to any proposed disclosure as to whether any further explanatory material or advice should also be disclosed with the information in question.
- 10.8 Each Party agrees that it will inform the other Parties of any media enquiries which it receives in relation to the Transaction, and that it will consult with the other Parties, and will pay due regard to any comments or representations of the other Parties, in connection with the content of any media statements which it intends to issue.
- 10.9 The Parties will work co-operatively together in relation to the use of personal data and the requirements of the Data Protection Act 2018 including ensuring that appropriate technical and organisational security measures are taken against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.

## **11 DISPUTE RESOLUTION**

- 11.1 In the event of any dispute between any or all of the Parties arising under this Agreement the relevant Parties will attempt to resolve any dispute between themselves by discussion undertaken in good faith at managerial level or higher and by persons within each Party appropriate to conduct such discussions having regard to the nature of the dispute in question.
- 11.2 In the event that the relevant Parties are unable to resolve the dispute in question by recourse to the procedure described in Clause 11.1 within a period of five (5) Business Days of the dispute arising, each of the relevant Parties will attempt to resolve the dispute by discussion undertaken in good faith by their respective Chairs (or other nominated Director).
- 11.3 In the event that the relevant Parties are unable to resolve the dispute in question by recourse to the procedure described in Clause 11.2 within a period of five (5) Business Days of referral to their respective Chairs (or other nominated Director), each of them will attempt to resolve the dispute by discussion undertaken in good faith in consultation with their non-executive directors.
- 11.4 In the event that the Parties in dispute are unable to resolve the dispute in question by recourse to the procedure described in Clause 11.3 within a period of five (5) Business Days, they will submit the dispute to mediation by the CEDR under the Model Mediation Procedure, and if under the Model Mediation Procedure the Parties in dispute do not agree as to the mediator nominated by CEDR then, CEDR will in its discretion appoint a mediator.

- 11.5 The costs of CEDR mediation will be borne equally by the relevant Parties.
- 11.6 For the avoidance of any doubt, unless this Agreement has been repudiated or terminated and notwithstanding that a dispute remains unresolved, the Parties will continue to carry out their respective obligations in accordance with this Agreement.

## 12 **GENERAL**

- 12.1 This Agreement and any documents to be entered into pursuant to this Agreement constitute the whole agreement between the Parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.
- 12.2 Each Party acknowledges that, in entering into this Agreement, it has not relied on, and will have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in this Agreement. Nothing in this Clause will limit or exclude any liability for fraud or for fraudulent misrepresentation.
- 12.3 No variation or waiver of this Agreement or any part of it will be effective unless made in writing, signed by or on behalf of all the Parties and expressed to be such a variation or waiver.
- 12.4 This Agreement and the documents referred to in it are made for the benefit of the Parties and their successors and permitted assigns, and are not intended to benefit, or be enforceable by, anyone else. The rights and obligations of the Parties under this Agreement will continue for the benefit of and will be binding on their respective successors in title and permitted assigns.
- 12.5 Every Party will pay its own costs and expenses in relation to the negotiation, preparation, execution and performance of this Agreement and the Transaction contemplated by this Agreement.
- 12.6 Failure to exercise, or any delay in exercising, any right or remedy provided under this Agreement or by law will not constitute a waiver of that or any other right or remedy, nor will it preclude or restrict any further exercise of that or any other right or remedy.
- 12.7 No single or partial exercise of any right or remedy provided under this Agreement or by law will preclude or restrict the further exercise of that or any other right or remedy.

- 12.8 A Party that waives a right or remedy provided under this Agreement or by law in relation to another Party, or takes or fails to take any action against that Party, does not affect its rights in relation to any other Party.
- 12.9 Except as otherwise provided in this Agreement, no Party may assign, sub-contract or deal in any way with, any of its rights or obligations under this Agreement or any document referred to in it. The rights, benefits and obligations of the Parties under this Agreement may not be assigned, transferred, charged, or otherwise disposed of in whole or in part (nor will any Party enter into any commitment or agreement to do any of the above) without the prior written consent of the other Parties (to be given at the other Parties' absolute discretion).
- 12.10 No person other than a Party to this Agreement will have any rights to enforce any term of this Agreement whether under the Contract (Rights of Third Parties) Act 1999 or otherwise.
- 12.11 At its own expense, each Party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this Agreement.
- 12.12 Each right or remedy of a Party under this Agreement is without prejudice to any other right or remedy of that Party under this Agreement or at law.
- 12.13 Nothing in this Agreement will affect any common law duty of any Party to mitigate its loss and if, in relation to any claim, no such common law duty will apply, such Party nevertheless will act as if such duty did apply.
- 12.14 If any provision of this Agreement is or becomes, or is declared by any competent court or body to be, illegal, invalid or unenforceable, this will not affect or impair the legality, validity or enforceability of the remaining provisions of this Agreement.
- 12.15 This Agreement may be executed in any number of counterparts, each of which when executed will constitute an original of this Agreement, but all the counterparts will together constitute the same Agreement.
- 12.16 This Agreement will be governed by the laws of England and the courts of England will have exclusive jurisdiction.

### 13 **NOTICES**

- 13.1 Any notice or other communication given to a Party under or in connection with this Agreement shall be in writing, addressed to that Party at the address specified in this

Agreement or such other address as that Party may have specified to the other Parties in writing in accordance with this Clause, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, or e-mail.

13.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in Clause 13.1; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or, if sent by e-mail, one Business Day after transmission.

13.3 The provisions of this Clause 13 shall not apply to the service of any proceedings or other documents in any legal action.

The Parties have executed this Agreement as set out below on the date stated at the beginning of it in witness of each Party's intention to be legally bound by the terms of this Agreement.

**SIGNED** by )  
for and on behalf of )

**WARRINGTON AND HALTON TEACHING HOSPITALS NHS FOUNDATION TRUST**

**SIGNED** by )  
for and on behalf of )

**BRIDGEWATER COMMUNITY HEALTHCARE NHS FOUNDATION TRUST**

**SCHEDULE 1**  
**GLOSSARY AND INTERPRETATION**

1. The words, expressions and acronyms set out in the first column of the table below shall have the meanings set out in the second column:

<b>Agreement</b>	this Agreement including all schedules to it
<b>Business Case</b>	the business case submitted to NHS England by the Trusts
<b>Business Day</b>	a day (other than a Saturday, Sunday or public holiday) when banks in the City of London are open for business
<b>CEDR</b>	Centre for Effective Dispute Resolution
<b>CNST</b>	Clinical Negligence Scheme for Trusts
<b>Completion</b>	completion of this Agreement by virtue of the Transaction being effected in accordance with the provisions of Clause 6
<b>Completion Date</b>	00:01 hours on the date on which the Grant of Acquisition takes effect
<b>Confidential Information</b>	<p>information (however recorded, preserved or disclosed) that is directly or indirectly disclosed, whether before or after the date of this Agreement, by a Party or its representatives to the other Parties and / or those Parties' representatives as part of or ancillary to the Transaction; including but not limited to:</p> <p>(a) information relating to the nature, content or substance of any discussions and / or negotiations taking place concerning the Transaction;</p> <p>(b) information contained in any version of a business case of any Party;</p> <p>(c) information contained in any documents</p>

	<p>entered into as part of the Transaction;</p> <p>(d) any other information that the Parties agree in writing is confidential;</p> <p>(e) any information that would be regarded as confidential by a reasonable business person relating to:</p> <ul style="list-style-type: none"> <li>a. the business affairs, patients, customers, clients, suppliers, plans, intentions, or market opportunities of the Party disclosing the information; or</li> <li>b. the operations, processes, product information, know-how, designs, trade secrets or software of the Party disclosing the information;</li> </ul> <p>(f) any information or analysis derived from Confidential Information;</p> <p>(g) any information developed by the Parties in the course of the Transaction.</p> <p>But Confidential Information does not include any information if:</p> <p>(h) the information is, or subsequently becomes, public knowledge other than as a direct or indirect result of the information being disclosed in breach of this Agreement or of any other undertaking of confidentiality addressed to the Party to whom the information relates (except that any compilation of otherwise public information in a form not publicly known will nevertheless be treated as Confidential Information); or</p> <p>(i) a Party can establish, to the reasonable satisfaction of the other Parties, that it found out the information or the</p>
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	<p>information was, is or becomes available to a Party from a source not connected with the other Parties and that such source is not under any obligation of confidence in respect of that information (but for the avoidance of doubt, information that was provided prior to the date of this Agreement but which is covered by (a) above shall be treated as information that was provided under an obligation of confidence);</p> <p>(j) a Party can establish, to the reasonable satisfaction of the other Parties, that the information was known to the Party or lawfully in the possession of the Party before the date of this Agreement and that it was not under any obligation of confidence in respect of that information;</p> <p>(k) the Parties agree in writing that it is not confidential or may be disclosed; or</p> <p>(l) a Party can establish, to the reasonable satisfaction of the other Parties, that it developed the information independently of the Confidential Information.</p>
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<b>CQC</b>	the Care Quality Commission
<b>Employee Emoluments</b>	all employment related outgoings including salaries, wages, bonus or commission, holiday pay, expenses; Pay Supplements, national insurance and pension contributions and any liability to taxation
<b>Employee Liability Information</b>	such information as is referred to as “employee liability information” in Regulation 11 of the TUPE Regulations
<b>FOIA</b>	the Freedom of Information Act 2000
<b>Grant of Acquisition</b>	the grant of the application by NHS England under section 56A(4) of the NHA, subject to Secretary of State approval for WHFT to acquire BCHFT
<b>ICB</b>	NHS Cheshire and Merseyside Integrated Care Board
<b>Longstop Date</b>	has the meaning given in Clause 3.4 of this Agreement
<b>Model Mediation Procedure</b>	the Model Mediation Procedure of the CEDR as amended and updated from time to time
<b>NHSA</b>	the National Health Service Act 2006
<b>NHSE</b>	NHS England established under the NHA
<b>NHS England Oversight Framework</b>	NHS England’s Oversight Framework 2025/26 as annually updated
<b>NHSE Standard Services Contract</b>	NHSE’s Standard Services Contract for commissioning of NHS funded healthcare services (as updated or amended from time to time)
<b>NHS Resolution</b>	the operating name for the National Health Service Litigation Authority
<b>Pay Supplements</b>	any payments supplemental to basic salary

	including but not limited to Agenda for Change on-call payments, waiting list payments and retention and recruitment premia
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<b>Pre-Completion Period</b>	the period from the date of this Agreement until Completion
<b>Proposed Completion Date</b>	1 April 2026
<b>PTIP</b>	post transaction integration plan
<b>Relevant Transfer</b>	a transfer pursuant to and governed by the TUPE Regulations
<b>Transaction</b>	the transfer of the Transferring Services, Transferring Property and Liabilities, Transferring Employees to WHFT in accordance with the terms of this Agreement
<b>Transaction Board</b>	the joint project board established to oversee the Transaction, known as the Better Care Together Programme Board
<b>Transactions Guidance</b>	NHS England guidance " <i>Assuring and supporting complex change Statutory transactions, including mergers and acquisitions (October 2022)</i> " and " <i>Assuring and supporting complex change Statutory transactions, including mergers and acquisitions Appendices (October 2022)</i> "
<b>Transferring Property and Liabilities</b>	all of BCHFT's property and liabilities (including criminal liabilities)
<b>Transferring Employees</b>	all employees of BCHFT, whose employment is expected to transfer under the TUPE Regulations on the Completion Date in accordance with this Agreement
<b>Transferring Services</b>	all of BCHFT's services commissioned by the Commissioners and any other commissioners as at Completion
<b>Trusts</b>	WHFT and BCHFT
<b>TUPE Regulations</b>	the Transfer of Undertakings (Protection of

2. References to any statute, statutory instrument, regulations, directions or guidance are references to those as from time to time amended, replaced, extended or consolidated and includes any subordinate legislation for the time being in force made under it except to the extent that any amendment or modification made after the date of this Agreement would increase any liability or impose any additional obligation under this Agreement.
3. References to a particular organisation will be deemed to include a reference to any assign(s) of or successor(s) to such organisation or any organisation which has taken over any or all of either or both of the functions or responsibilities of that organisation. References to other persons will include their successors and permitted transferees and assigns.
4. Clause and Schedule headings will not affect the interpretation of this Agreement.
5. References to Clauses and Schedules are to the clauses and schedules of this Agreement; references to paragraphs are to paragraphs of the relevant schedule.
6. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assigns.
7. Words in the singular will include the plural and vice versa; words denoting the masculine gender include the feminine gender; words denoting persons include bodies corporate and unincorporated associations and partnerships.
8. Any obligation in this Agreement on a person not to do something includes an obligation not to agree or allow that thing to be done.
9. Except to the extent that the context otherwise requires in this Agreement, any reference to any other agreement or document is a reference to the relevant agreement or document, as the case may be, as from time to time amended, supplemented, novated or replaced as permitted and includes a reference to any document which so amends, supplements, novates, replaces or is entered into, made or given or pursuant to, or in accordance with, any of the terms of, as the case may be, the relevant agreement or document.
10. The Parties acknowledge and agree that, save to the extent otherwise stated in this Agreement, in the event there is any inconsistency between the Grant of Acquisition and this Agreement, the terms set out in the Grant of Acquisition will have precedence.

## **SCHEDULE 2**

### **CO-OPERATION DURING PRE-COMPLETION PERIOD**

In recognition of the commitment of both Trusts to the Transaction, both Trusts have agreed to the following restrictions in carrying out the management of its own organisation from the date of the Agreement. For the avoidance of doubt any asset disposal plans/capital plans that have already been agreed by each Trust Board will proceed without further need for consultation:

#### **BCHFT restrictions**

- 1 Until the Transaction is completed BCHFT will not:
  - 1.1 Acquire any unplanned asset or make any unplanned disposal of any asset listed on its Asset Register, above a value of £250,000;
  - 1.2 Commit, plan to, or spend, any capital money in excess of £250,000;
  - 1.3 Enter into, materially alter or terminate any contract for the provision of services by either Trust, above an annual value of £1,000,000; or
  - 1.4 Enter into, materially alter or terminate any contract for the provision of goods and services (excluding items funded from Capital resources) to either Trust where:
    - 1.4.1 The annual value of the contract is above £1,000,000; or
    - 1.4.2 The cumulative value of the unexpired portion of the contract is above £1,000,000,without the formal notification and consultation with the other Trust.
- 2 Until the Transaction is completed BCHFT will keep WHFT informed of any matters that materially affect the delivery of any services that they are commissioned to deliver or rely on to deliver its own services.
- 3 Until the Transaction is completed BCHFT will not appoint or engage any member of staff to a substantive post without prior consultation with WHFT to ensure that no additional redundancy risk is created or to confirm that no other joint working can remove the need for recruitment. Any fixed term offer of employment should be mindful of the Planned Completion Date of the Transaction and the impact of any potential TUPE or redundancy claim. A substantive post in this context is any non-clinical post, any post graded at Agenda for Change Band 8c and above, any permanent medical post and includes all VSM posts.

#### **WHFT restrictions**

- 1 Until the Transaction is completed WHFT will notify BCHFT as soon as reasonably practicable of any material changes to WHFT which may or may not have a direct impact on the proposed Transaction, which includes but is not limited to changes to WHFT's strategy, board, senior management, financial performance or quality metrics.

