

FOUNDATION TRUST CONSTITUTION

June 2019

The Dudley Group NHS Foundation Trust Constitution

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1. **Interpretation and definitions**

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

Words importing the 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.

Board of Directors - The Board of Directors comprises non-executive and executive directors is led by the Chairman. The Board provides effective and proactive leadership of the Trust; to set the strategic aims of the Trust, ensuring the quality, safety and effectiveness of the services provided as well as ensuring that the Trust is well-governed in every aspect of its activities.

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 has the meaning given in paragraph 10 of this constitution

CQC is the Care Quality Commission

Constitution means this constitution and all annexes contained within it

Council of Governors means the Council of Governors as constituted in this constitution, which has the same meaning as 'Council of Governors' in the 2006 Act.

NHS Improvement is the regulator that replaced Monitor who was previously the independent regulator, as provided by Section 61 of the 2012 Act.

Terms of Authorisation are the terms of authorisation issued by NHS Improvement to give an organisation Foundation Trust status

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

2. Name

The name of the foundation trust is The Dudley Group 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 fulfill its principal purpose unless, in each financial year, its total income from the provision of goods and services for the purposes of the health service in England is greater than its total income from the provision of goods and services for any other purposes.
- 3.3 The Trust may provide goods and services for any purposes related to –
 - 3.3.1 the provision of services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness, and
 - 3.3.2 the promotion and protection of public health.
- 3.4 The Trust may also carry on activities other than those mentioned in the above paragraph for the purpose of making additional income available in order to better carry on its principal purpose.

4. Powers

- 4.1 The powers of the Trust are set out in the 2006 Act, subject to any restrictions in the Terms of Authorisation.
- 4.2 All 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 of the following constituencies:

- 5.1 a public constituency or
- 5.2 the staff constituency

6. Application for membership

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

7. Public Constituency

- 7.1 An individual who lives in an area specified in Annex 1 as an area for a public constituency may become or continue as a member of the Trust.
- 7.2 Those individuals who live in an area specified for any public constituency are referred to collectively as the Public Constituency.
- 7.3 The minimum number of Members in each area for the Public Constituency is specified in Annex 1.

8. Staff Constituency

- 8.1 An individual who is employed by the Trust under a contract of employment with the Trust may become or continue as a member of the Trust provided:
 - 8.1.1 he or she is employed by the Trust under a contract of employment which has no fixed term or has a fixed term of at least 12 months; or
 - 8.1.2 he or she has been continuously employed by the Trust under a contract of employment for at least 12 months.
- 8.2 Individuals from Partner Organisations who exercise functions for the purposes of the Trust, otherwise than under a contract of employment with the Trust, and who work in The Dudley Group premises or in premises specifically serving 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. Organisations whose employees may be entitled to become Members of the staff constituency, as at the date of adoption of this constitution, by virtue of exercising functions for the Trust include those listed at Annex 2.
- 8.3 Those individuals who are eligible for membership of the Trust by reason of the previous provisions are referred to collectively as the Staff Constituency.
- 8.4 The Staff Constituency shall be divided into 5 descriptions of individuals who are eligible for membership of the Staff Constituency, each description of individuals being specified within Annex 2 and being referred to as a class within the Staff Constituency.
- 8.5 The minimum number of Members in each class of the Staff Constituency is specified in Annex 2.

Automatic membership by default – staff

An individual who is not from a partner organisation and is identified as eligible as set out below, shall become a member of the Trust as a member of the Staff Constituency

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

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

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

9. Restriction on membership

- 9.1 An individual who is a member of a constituency, or of a class within a constituency, may not while membership of that constituency or class continues, be a member of any other constituency or class.
- 9.2 An individual who satisfies the criteria for membership of the Staff Constituency may not become or continue as a member of any constituency other than the Staff Constituency.
- 9.3 Further provisions as to the circumstances in which an individual may not become or continue as a member of the trust are set out in Annex 9 – Further Provisions.

10. Annual Members Meeting

- 10.1 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.
- 10.2 Further provision about the Annual Members Meeting is set out in Annex 12 Annual Members Meeting.

11. Council of Governors – composition

- 11.1 The Trust is to have a Council of Governors, which shall comprise both elected and appointed Governors.
- 11.2 The composition of the Council of Governors is specified in Annex 4.
- 11.3 The members of the Council of Governors, other than the appointed members, shall be chosen by election by their constituency or, where there are classes within a constituency, by their class within that constituency. The number of Governors to be elected by each constituency, or, where appropriate, by each class of each constituency, is specified in Annex 4.

12. Council of Governors – election of Governors

- 12.1 Elections for elected Members of the Council of Governors shall be conducted in accordance with the Model Rules for Elections, as may be varied from time to time.
- 12.2 The Model Rules for Elections, as may be varied from time to time, form part of this constitution and are attached at Annex 5.

- 12.3 A variation of the Model Rules by the Department of Health shall not constitute a variation of the terms of this constitution. For the avoidance of doubt, the Trust cannot amend the Model Rules.
- 12.4 An election, if contested, shall be by secret ballot.
- 12.5 A vacant governor post may be filled without an election where permitted by the Model Rules as they apply to the Trust or by paragraph 8 on Annex 9.

13. Council of Governors - tenure

- 13.1 An elected governor and appointed governor may hold office for an initial term of up to 3 years.
- 13.2 An elected governor shall cease to hold office if he ceases to be a member of the constituency or class by which he was elected.
- 13.3 An elected governor shall be eligible for re-election at the end of his or her term, subject to a maximum period of office of 9 years.
- 13.4 An appointed Governor may hold office for an initial period of up to 3 years.
- 13.5 An appointed governor shall cease to hold office if the appointing organisation withdraws its sponsorship of him/her.
- 13.6 An appointed governor shall be eligible for a re-appointment at the end of his or her term (subject to a maximum period of office of 6 years).

14. Council of Governors – disqualification and removal

- 14.1 The following may not become or continue as a member of the Council of Governors:
- 14.1.1 a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;
 - 14.1.2 a person who has made a composition or arrangement with, or granted a trust deed for, his or her creditors and has not been discharged in respect of it;
 - 14.1.3 a person who within the preceding five years has been convicted in the British Isles of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him or her.
- 14.2 Governors must be at least 16 years of age at the date they are nominated for election or appointment.
- 14.3 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.
- 14.4 The constitution is to make provision for the removal of Governors set out in Annex 6.

15. Council of Governors – meetings of Governors

- 15.1 The Chairman of the Trust (i.e. the Chairman of the Board of Directors, appointed in accordance with the provisions of paragraph 20.1 or paragraph 21.1 below) or, in his or her absence, the Deputy Chairman (appointed in accordance with the provisions of paragraph 22 below), shall preside at meetings of the Council of Governors.
- 15.2 Meetings of the Council of Governors shall normally be open to members of the public. Members of the public may be excluded from the whole or part of a meeting for special reasons, either by resolution of the Council of Governors or at the discretion of the chair of the meeting.

16. Council of Governors – duties

The general duties of the Council of Governors are:

- 16.1 to hold the non-executive directors individually and collectively to account for the performance of the Board of Directors.
- 16.2 to represent the interests of the members of the Trust as a whole and the interests of the public
- 16.3 To appoint, and if required, to remove the Trust Chair.

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

17. Council of Governors – standing orders

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

18. Council of Governors – referral to the Panel

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

18.1.1. to act in accordance with its Constitution, or

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

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

19. Council of Governors - conflicts of interest of governors

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

Council of Governors shall make provision for the disclosure of interests and arrangements for the exclusion of a governor declaring any interest from any discussion or consideration of the matter in respect of which an interest has been disclosed.

20. Council of Governors – expenses

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

21. Council of Governors – further provisions

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

22. Board of Directors – composition

- 22.1 The Trust is to have a Board of Directors, which shall comprise both executive and non-executive directors.
- 22.2 Subject to paragraph 2.6 of Annex 8, the Board of Directors is to comprise:
- 22.2.1 a non-executive chairman
 - 22.2.2 Not less than 5 and no greater than 8 other non-executive directors; and
 - 22.2.3 a chief executive and not less than 4 and no more than 7 executive directors
 - 22.2.3 at least half of the Board of Directors, excluding the Chair, will comprise of non-executive directors determined to be independent.
- 22.3 One of the executive directors shall be the chief executive.
- 22.4 The chief executive shall be the Accounting Officer.
- 22.5 One of the executive directors shall be the finance director, with qualifications approved by the Consultative Committee of Accountancy Bodies (CCAB).
- 22.6 One of the executive directors is to be a registered medical practitioner or a registered dentist (within the meaning of the Dentists Act 1984).
- 22.7 One of the executive directors is to be a registered nurse or a registered midwife.
- 22.8 The Board may determine that other Trust officers may attend meeting of the Board of Directors as, and when, required to provide operational advice and support to the Board to assist the Board in the discharge of its responsibility. For the avoidance of doubt, such an officer attending will not be a Director of the purpose of the 2006 Act. Nor will they be able to vote and will bear no responsibility or liability for an action of decision of the Board of Directors

23. Board of Directors – general duties

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.

24. Board of Directors – qualification for appointment as a non-executive Director

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

24.1 he or she is a member of the Public Constituency,

24.2 he or she is not disqualified by virtue of paragraph 25 below.

25. Annual Report

25.1 the Board will publish in its annual report, each non-executive director it considers to be independent. At least half the Board, excluding the Chair, will comprise non-executive directors determined by the Board to be independent.

26. Board of Directors – appointment and removal of chairman, deputy chairman and other non-executive directors

26.1 A nominations committee shall be established to make recommendations to the Council of Governors in respect of the appointment made of chairman, deputy chairman and other non-executive directors; only at a general meeting of the Council of Governors can appointment or removal of the chair, deputy chairman of the trust and the other voting non-executive directors be undertaken.

26.2 Removal of the chairman, deputy chairman or another voting non-executive director shall require the approval of three-quarters of the members of the Council of Governors.

26.3 The chairman and the voting non-executive directors are to be appointed in accordance with paragraph 27 below.

27. Board of Directors – appointment of chairman, senior independent director and deputy chair and other voting non-executive directors

27.1 The Council of Governors has the power to appoint other voting non-executive directors of the Trust.

27.2 The criteria for qualification for appointment as a voting and non-voting non-executive director is set out in paragraph 19 above (other than disqualification by virtue of paragraph 25).

27.3 The power of the Council of Governors to re-appoint non-executive directors is to be exercised, so far as possible, by re-appointing up to a maximum of nine years terms and for exceptional approval would be required in cases that exceed this period.

27.4 The Council of Governors will appoint an independent non-executive director to be the senior independent director and one other non-executive director to the position of Deputy Chair in consultation with the Trust Chair.

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

28.1 The voting non-executive directors shall appoint or remove the chief executive.

28.2 The appointment of the chief executive shall require the approval of the Council of Governors.

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

28.4 A person is deemed to be fit and proper when meeting the criteria set out by the CQC Fit and Proper Persons regulation (FPPR), except with the approval in writing of NHS Improvement. Removal is triggered “if” a person fails to meet the fit and proper requirements, which includes the competence, experience and qualifications to perform the role.

29. Board of Directors – disqualification

An individual cannot become, or continue to be, a director or a member of the Board of Directors if the individual is disqualified or otherwise prevented from being a director under the Directors Disqualification Act 1986”. The following may not become, or continue as, a member of the Board of Directors:

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

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

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

29.4 a person who is, or is the spouse or partner of, a member of a clinical commissioning group (for the purposes of the Health and Social Care Act 2012 established to commission NHS funded services) that commissions services from the Trust.

29.5 Removal may be triggered when a person fails to meet the requirements of the FPPR (see 28.4).

30. Board of Directors Meetings

- 30.1** Meetings of the Board of Directors shall be open to Members of the public. Members of the public may be excluded from a meeting for special reasons". As per the provision laid out in the Act.
- 30.2** Before holding a meeting, the Board of Directors must send a copy of the agenda of the meeting to the Council of Governors. As soon as practicable after holding a meeting, the Board of Directors must send a copy of the minutes of the meeting to the Council of Governors.

31. Board of Directors Voting

- 31.1** Only eligible members of the Board of Directors shall be entitled to participate in, and exercise a vote of the Board of Directors.
- 31.2** Save where expressly set out to the contrary in this constitution, a resolution or motion of the Board of Directors shall be passed when:
- 31.2.1** A simple majority of eligible non-executive and executive directors voting on that resolution or motion vote in favour of the resolution or motion;
- 31.2.2** If there is an equality of votes, the chairman shall have a further or casting vote.
- 31.3** A director shall be eligible if he would be entitled to vote at the relevant meeting and on the relevant matter at that meeting of the Board of Directors (but excluding any director whose vote is not to be counted in respect of the particular matter).

32. Board of Directors – standing orders

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

33. Board of Directors - conflicts of interest of directors

- 33.1.** The duties that a director of the Trust has by virtue of being a director include in particular:
- 33.1.1.** 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;
- 33.1.2.** 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.
- 33.2.** The duty referred to in sub paragraph 31.1.1 is not infringed if –
- 33.2.1.** the situation cannot reasonably be regarded as likely to give rise to a conflict of interest, or

- 33.2.2. the matter has been authorised in accordance with the Constitution
- 33.3. The duty referred to in sub-paragraph 31.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- 33.4. In sub-paragraph 31.1.2 “third party” means a person other than –
- 33.4.1. the Trust, or
 - 33.4.2. a person acting on its behalf
- 33.5. 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.
- 33.6. If a declaration under this paragraph proves to be, or becomes, inaccurate, incomplete, a further declaration must be made
- 33.7. Any declaration required by this paragraph must be made before the Trust enters into the transaction or arrangement
- 33.8. 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.
- 33.9. A director needs not declare an interest –
- 33.9.1. if it cannot reasonably be regarded as likely to give rise to a conflict of interest;
 - 33.9.2. if, or to the extent that, the directors are already aware of it;
 - 33.9.3. if, or to the extent that, it concerns terms of the director’s appointment that have been or are to be considered
 - 33.9.3.1. by a meeting of the Board of Directors, or
 - 33.9.3.2. by a committee of the directors appointed for the purpose under the constitution
- 33.10 A matter shall be ‘authorised’ for the purposes of paragraph 33.2.2
- 33.10.1 the director’s interest cannot reasonably be regarded as likely to give rise to a conflict of interest, or
 - 33.10.2 the director’s conflict of interest arises from a permitted cause (as determined by the ‘Board of Directors’) from time to time.

34. Board of Directors – remuneration and terms of office

- 34.1 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 chairman and the other voting non-executive directors in light of any recommendations made by the Council of Governors Appointments and Remuneration Committee.

- 34.2 The Trust shall establish a committee of voting non-executive directors to decide the remuneration and allowances, and the other terms and conditions of office, of the chief executive and other executive directors.
- 34.3 The terms of office shall be reflective of any guidance issued by NHS Improvement.

35. Registers

The Trust shall maintain:

- 35.1 a register of Members showing, in respect of each member, the constituency to which he belongs and, where there are classes within it, the class to which he belongs;
- 35.2 a register of members of the Council of Governors;
- 35.3 a register of interests of Governors;
- 35.4 a register of board members; and
- 35.5 a register of interests of board members.

36. Admission to and removal from the registers

- 36.1 Any person entitled to be a Member who, as appropriate, applies or is invited to become a Member, shall have their name added to the register of Members. Such person's membership of the Trust shall commence from the date of their name being added to the register of Members.
- 36.2 The Secretary shall remove from the register of members the name of any member who ceases to be entitled to be a member and if:
- 36.2.1. the Member is no longer eligible under the provisions of this constitution or is disqualified
- 36.2.2. the Member is deceased.
- 36.3 The register of Governors shall list the names of Governors, their category of membership of the Council of Governors and an address through which they may be contacted (which may be the Secretary).
- 36.4 The register of interests of Governors shall contain the name of each Governor, whether he has declared any interests and, if so, the interests declared in accordance with this Constitution or the standing orders for Governors.

- 36.5. The register of Board members shall list the names of Directors, their capacity on the Board of Directors and an address through which they may be contacted (which may be the Secretary).
- 36.6. The register of interests of Directors shall contain the names of each Director, whether he has declared any interests and, if so, the interests declared in accordance with this constitution on the standing orders for Directors.

37. Registers – inspection and copies

- 37.1 The Trust shall make the registers specified in paragraph 35 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.
- 37.2 The Trust shall not make any part of its register of member available for inspection by members of the public, if the member so requests.
- 37.3 So far as the registers are required to be made available:
- 37.3.1 they are to be available for inspection free of charge at all reasonable times; and,
- 37.3.2 a person who requests a copy of or extract from the registers is to be provided with a copy or extract.
- 37.4 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.

38. Documents available for public inspection

- 38.1 The Trust shall make the following documents available at the Trust Headquarters for inspection by members of the public free of charge at all reasonable times:
- 37.1.1 a copy of the current constitution;
- 37.1.2 a copy of the current authorisation;
- 37.1.3 a copy of the latest annual accounts and of any report of the auditor on them;
- 37.1.4 a copy of the latest annual report and quality accounts;
- 37.1.5 a copy of the latest information as to its forward planning; and
- 37.1.6 a copy of any notice given under section 52 of the 2006 Act.
- 38.2 Any person who requests a copy of or extract from any of the above documents is to be provided with a copy.
- 38.3 If the person requesting a copy or extract is not a member of the Trust, the trust may impose a reasonable charge for doing so.

39. External Auditor

39.1 The Trust shall have an external auditor.

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

40. Audit committee

40.1 The Trust shall establish a committee of voting non-executive directors as an Audit Committee to perform such monitoring, reviewing and other functions as is appropriate.

41. Accounts

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

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

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

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

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

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

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

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

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

42.4 In preparing the document, the directors shall have regard to the views of the Council of Governors. Each forward plan must include information about:

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

42.4.2 the income it expects to receive from doing so.

42.5 Where a forward plan contains a proposal that the Trust carry on an activity of a kind mentioned in sub paragraph 3.1, the Council of Governors must:

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

42.5.2 notify the directors of the Trust of its determination.

42.6 Where the Trust 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, this shall not be implemented unless more than half of the members of the Council of Governors of the Trust approve its implementation.

42.7 For a statutory transaction more than three quarters of the members of the Council of Governors must approve any application by the Trust to:

- merge with or acquire another trust
- separate the Trust into two or more new foundation trusts
- be dissolved

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

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

- 43.1.1 the annual accounts
- 43.1.2 any report of the auditor on them
- 43.1.3 the annual report and quality account

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

44. Instruments

44.1 The Trust shall have a seal.

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

45. Amendment of the Constitution

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

45.1.2 more than three quarters of the Council of Governors of the Trust voting to approve the amendments; and,

45.1.2 more than three quarters of the members of the eligible voting Board of Directors of the Trust approve the amendments.

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

- 45.3. Where an amendment is made to the Constitution in relation to the powers or duties of the Council of Governors (or otherwise with respect to the role that the Council of Governors has as part of the Trust)
- 45.3.1 at least one member of the Council of Governors must attend the next Annual Members' Meeting and present the amendment; and,
- 45.3.2. the Trust must give the members an opportunity to vote on whether they approve the amendment; and
- 45.3.3 if more than three quarters of the members voting approve the amendment, the amendment continues to have effect; otherwise, it ceases to have effect and the Trust must take such steps as are necessary as a result.
- 45.4 An amendment initially made pursuant to paragraph 45.1 but which later fails to achieve the approval of more than half of the members voting, and any actions taken pursuant to that amendment, shall be valid from the approvals pursuant to paragraph 45.1 until the time of the vote at which the approval of more than half of the members voting was not achieved pursuant to paragraph 45.3.3 (the time of the vote at which the approval of more than half of the members voting was not achieved pursuant to paragraph 45.3.3 being the "**Rescission Date**"). As from the Rescission Date, the relevant amendment shall cease to have effect and the Constitution shall revert to its pre-amendment state. The constitution shall be amended accordingly and notified to NHS Improvement.

46. Indemnity

- 46.1. Members of the Board of Directors and Council of Governors 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 of their functions, any costs arising in this way will be met by the Trust. This does not apply when the relevant person has acted recklessly.
- 46.2. The Trust may purchase and maintain for members of the Council of Governors and Board of Directors insurance in respect of directors' and officers' liability, including, without limitation, liability arising by reason of the Trust acting as a corporate trustee of an NHS charity.

47. Procedures and protocols

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

48. Mergers etc. and Significant Transactions

- 48.1 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.

- 48.2 The Trust may enter into a significant transaction only if more than three quarters of the members of the Council of Governors of the Trust voting approve entering into the transaction.
- 48.3 “Significant transaction” a transaction or arrangement under which any income or expenditure attributable to the transaction and/or the contract associated with the transaction is greater than either 25% of the operating income of the Trust, any increase or decrease in the fixed assets of the Trust is greater than 25% of the fixed assets of the Trust or any increase or decrease in the capital of the Trust is greater than 25% of the capital of the Trust, all as set out in the preceding Financial Year's annual accounts.
- 48.3.1 the total of the fixed assets and current assets subject to the transaction represents more than 25% of the value of the total fixed assets and current assets of the Trust;
- 48.3.2 the increase or decrease in income attributable to:
- 48.3.2.1 the assets; or
 - 48.3.2.2 the contract associated with the transaction represents more than 25% of the value of the Trust's income; or
 - 48.3.2.3 the gross capital of the company or business being acquired/divested represents more than 25% of the total capital of the Trust following completion (where gross capital is the market value of the relevant company or business's shares and debt securities, plus the excess of current liabilities over current assets).

ANNEX 1 – THE PUBLIC CONSTITUENCIES

(Paragraphs 7.1 and 7.3)

Eligibility to become a member of the Public Constitution is open to people living within the defined catchment area of the Trust. This will include residents from the following Local Authority electoral areas (as defined for the purpose of Local Authority elections). The Public Constituency may also include volunteers providing support to the Trust who will be a member of the constituency in which they ordinarily reside. An individual is only eligible for membership of the public constituency if he/she lives in an area specified in the Constitution for a public constituency.

| Constituency | Minimum Number of Members | Number of Governors to be elected from that Constituency |
|-------------------------------------|----------------------------------|---|
| Dudley | | |
| Brierley Hill | 50 | 2 |
| Central Dudley | 50 | 2 |
| North Dudley | 50 | 2 |
| Stourbridge | 50 | 2 |
| Halesowen | 50 | 2 |
| Others | | |
| Tipton and Rowley Regis | 24 | 1 |
| | | |
| South Staffordshire and Wyre Forest | 24 | 1 |
| | | |
| Rest of the West Midlands | 12 | 1 |

ANNEX 2 – THE STAFF CONSTITUENCY

(Paragraphs 8.1 and 8.2)

Eligibility to become a member of the Staff Constituency is defined in paragraph 8 of the Constitution. The table below details the minimum number of staff within each class.

The staff constituency will include all staff employed by the Trust who have a contract of employment which does not have a fixed term or if does have a fixed term is at least 12 months duration, or they have been employed continuously for 12 months subject to any member of staff deciding to opt out. The constituency will also include independent contractors working at DGFT. Only individuals who fulfil these criteria will be eligible to be staff members, see paragraph 8.2. Staff membership will be on an opt-out basis.

| Class | Minimum Number of Members | Number of Staff Governors |
|---|---------------------------|---------------------------|
| Medical and Dental | 44 | 1 |
| Nursing and Midwifery | 157 | 3 |
| Allied Health Professionals and Healthcare Scientists | 79 | 2 |
| Non-Clinical Staff | 58 | 1 |
| Partner Organisations' Employees from for example: Summit Healthcare (Dudley) Limited Interserve fm Siemens Healthcare Systems Commissioners– Dudley, Sandwell, Worcestershire, South Staffordshire Local Authorities – Dudley MBC, Sandwell MBC, Wyre Forest District Council, South Staffordshire District Council | 10 | 1 |

Medical:

The members of the Medical staff class shall include individuals who are eligible as members of the Staff Constituency and who are persons who are included in the register of medical practitioners maintained in accordance with Section 2 of the Medical Act 1983 and who hold a licence to practice if and when this is required by legislation to enable such a person to practice.

For the avoidance of doubt, the Medical staff class shall include junior doctors who have been registered provisionally in the register of medical practitioners.

Nursing and Midwifery:

The members of the Nursing and Midwifery staff class shall include individuals who are eligible as members of the Staff Constituency who do not fall within the Medical staff class but whose regulatory body is the Nursing and Midwifery Council. For the avoidance of doubt, the Nursing and Midwifery staff class shall also include nursing auxiliaries and health care assistants.

Allied Health Professionals and Clinical Support Staff:

The members of the Allied Health Professionals and Clinical Support Staff class shall include individuals who are eligible as members of the Staff Constituency who do not fall within the Medical

and Dental Practitioners staff class or the Nursing and Midwifery staff class but whose regulatory body is within the remit of the Council for Healthcare Regulatory Excellence or who are otherwise designated by the trust from time to time as eligible to be members of this class.

Management, Administrative and Support Staff (including eligible contractors):

The members of the Management, Administrative and Support Staff class shall include individuals who are eligible as members of the Staff Constituency but do not fall within any of the other staff classes mentioned above. The Management, Administrative and Support Staff class shall include individuals who are not employed by the Trust but carry out the functions of the Trust through an independent contractor.

ANNEX 3 – THE PATIENTS’ CONSTITUENCY

The Trust has no patients’ constituency.

ANNEX 4 – COMPOSITION OF COUNCIL OF GOVERNORS

(Paragraphs 11.1 and 11.3)

The composition of the Council of Governors is as set out below, provided always that the number of Public Governors shall be more than half the total membership of the Council of Governors.

| Constituency/Class | No. of Governors |
|---|------------------|
| <u>Public</u> | |
| Brierley Hill Ward | 2 |
| Central Dudley Ward | 2 |
| North Dudley Ward | 2 |
| Stourbridge Ward | 2 |
| Halesowen Ward | 2 |
| Rowley Regis and Tipton Ward | 1 |
| South Staffordshire and Wyre Forest Ward | 1 |
| Rest of the West Midlands | 1 |
| <i>Total Public</i> | 13 |
| <u>Staff</u> | |
| Medical and Dental | 1 |
| Nursing and Midwifery | 3 |
| Allied Health Professionals and Healthcare Scientists | 2 |
| Non-clinical Staff | 1 |
| Partner Organisations' staff | 1 |
| <i>Total Staff</i> | 8 |
| <u>Appointed (by a statutory or partnership organisation)</u> | |
| Dudley Clinical Commissioning Group | 1 |
| Dudley Metropolitan Borough Council | 1 |
| University of Birmingham Medical School | 1 |
| Governor appointed by Dudley Council for Voluntary Service, who may be a Dudley Group NHS Foundation Trust Hospital Volunteer | 1 |
| <i>Total Appointed</i> | 4 |
| Grand Total | 25 |

Note: Appointed governors are appointed by a statutory or partnership organisation in accordance with the 2006 Act Schedule 7 para 9(7) and 2012 Act.

ANNEX 5 –THE MODEL RULES FOR ELECTIONS

Model Rules for Elections

Reviewed April 2019

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PART 1 - INTERPRETATION

1.1 Interpretation

1.1 In these rules, unless the context otherwise requires –

| | |
|--------------------------------------|---|
| “the Trust” | means the public benefit corporation subject to this constitution; |
| “election” | means an election by a constituency, or by a class within a constituency, to fill a vacancy among one or more posts on the Council of Governors; |
| “the regulator” | means the Independent Regulator for NHS foundation trusts; and |
| “the 2006 Act” | means the National Health Service Act 2006. |
| “ <i>council of governors</i> ” | means the council of governors of the Trust; |
| “ <i>declaration of identity</i> ” | has the meaning set out in rule 21.1; |
| “ <i>e-voting</i> ” | means voting using either the internet, telephone or text message; |
| “ <i>e-voting information</i> ” | has the meaning set out in rule 24.2; |
| “ <i>ID declaration form</i> ” | has the meaning set out in Rule 21.1; |
| “internet voting record” | has the meaning set out in rule 26.4(d); |
| “ <i>internet voting system</i> ” | means such computer hardware and software, data other equipment and services as may be provided by the returning officer for the purpose of enabling voters to cast their votes using the internet; |
| “ <i>lead governor</i> ” | means the governor nominated by the corporation to fulfil the role described in Appendix B to The NHS Foundation Trust Code of Governance (Monitor, December 2013) or any later version of such code. “ <i>list of eligible voters</i> ” means the list referred to in rule 22.1, containing the information in rule 22.2; |
| “ <i>method of polling</i> ” | means a method of casting a vote in a poll, which may be by post, internet, text message or telephone; |
| “ <i>numerical voting code</i> ” | has the meaning set out in rule 64.2(b) |
| “ <i>polling website</i> ” | has the meaning set out in rule 26.1; |
| “ <i>postal voting information</i> ” | has the meaning set out in rule 24.1; |
| “ <i>telephone short code</i> ” | means a short telephone number used for the purposes of submitting a vote by text message; |
| “ <i>voter ID number</i> ” | means a unique, randomly generated numeric identifier allocated to each voter by the Returning Officer for the purpose of e-voting, |
| “ <i>voting information</i> ” | means postal voting information and/or e-voting information |

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

PART 2 – TIMETABLE FOR ELECTION

2 Timetable

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

| Proceeding | Time |
|--|--|
| Publication of notice of election | Not later than the fortieth day before the day of the close of the poll. |
| Final day for delivery of nomination 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

- 3.1 In computing any period of time for the purposes of the timetable –

- (a) Saturday or Sunday;
- (b) Christmas day, Good Friday, or a bank holiday, or
- (c) A day appointed for public thanksgiving or mourning, shall be disregarded, and any such day shall not be treated as a day for the purpose of any proceedings up to the completion of the poll, nor shall the returning officer be obliged to proceed with the counting of votes on such a day.

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

PART 3 – RETURNING OFFICER

4. Returning officer

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

5. Staff

Subject to rule 64, the returning officer may appoint and pay such staff, including such technical advisers, as he or she considers necessary for the purposes of the election.

6. Expenditure

The Trust is to pay the returning officer –

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

7. Duty of co-operation

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

PART 4 - STAGES COMMON TO CONTESTED AND UNCONTESTED ELECTIONS

8. Notice of election

The returning officer is to publish a notice of the election stating –

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

9. Nomination of candidates

9.1 Each candidate must nominate themselves on a single nomination paper.

9.2 The returning officer-

- (a) is to supply any member of the Trust with a nomination paper, and
- (b) is to prepare a nomination paper for signature at the request of any member of the Trust, but it is not necessary for a nomination to be on a form supplied by the returning officer.

10. Candidate's consent and particulars

The nomination paper must state the candidate's –

- (a) full name,
- (b) contact address in full (which should be a postal address), and constituency or class within a constituency, of which the candidate is a member. An e-mail address may also be provided for the purposes of electronic communication).
- (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 Trust, and
 - (b) whether the candidate is a member of a political party, and if so, which party,
- and if the candidate has no such interests, the paper must include a statement to that effect.

12. Declaration of eligibility

The nomination paper must include a declaration made by the candidate–

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

13. Signature of candidate

13.1 The nomination 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.

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

14. Decisions as to the validity of nomination

14.1 Where a nomination 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,

- (b) receives satisfactory proof that the candidate has died, or
 - (d) receives a written request by the candidate of their withdrawal from candidacy.
- 14.2 The returning officer is entitled to decide that a nomination 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.
- 14.3 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.
- 14.4 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.
- 14.5 The returning officer is to send notice of the decision as to whether a nomination is valid or invalid to the candidate at the contact address given in the candidate's nomination paper. If an email address has been given in the candidates nomination form (in addition to the candidates postal address), the returning officer may send notice of the decision to that address.
- 15. Publication of statement of nominated candidates –**
 - 15.1 The returning officer is to prepare and publish a statement showing the candidates who are standing for election.
 - 15.2 The statement must show –
 - (a) the name, contact address, 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.
 - 15.3 The statement must list the candidates standing for election in alphabetical order by surname.
 - 15.4 The returning officer must send a copy of the statement of candidates and copies of the nomination papers to the Trust as soon as is practicable after publishing the statement.
- 16. Inspection of statement of nominated candidates and nomination papers**
 - 16.1 The Trust is to make the statements of the candidates and the nomination papers supplied by the returning officer under rule 15 (4) available for inspection by members of the public free of charge at all reasonable times.
 - 16.2 If a person requests a copy or extract of the statements of candidates or their nomination papers, the Trust is to provide that person with the copy or extract free of charge.

17. Withdrawal of candidates

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

18. Method of election

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

PART 5 – CONTESTED ELECTIONS

19. Poll to be taken by ballot

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

20. The ballot paper

- 20.1 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.
- 20.2 Every ballot paper must specify –
 - (a) the name of the Trust,
 - (b) the constituency, or class within a constituency, for which the election is being held,
 - (c) the number of members of the council of Governors to be elected from that constituency, or class within that constituency,
 - (d) the names and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
 - (e) instructions on how to vote,
 - (f) if the ballot paper is to be returned by post, the address for its return and the date and time of the close of the poll, and
 - (g) the contact details of the returning officer.

20.3 Each ballot paper must have a unique identifier.

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

21. The declaration of identity public constituency

21.1 In respect of an election for a public constituency a declaration of identity must be issued with each ballot paper.

21.2 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 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.

21.3 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.

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

21.5 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

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

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

24. Issue of voting documents by returning officer

- 24.1 As soon as is reasonably practicable on or after the publication of the notice of the poll, the returning officer is to send the following documents to each member of the Trust named in the list of eligible voters—
- (a) a ballot paper and ballot paper envelope,
 - (b) a declaration of identity (if required),
 - (c) information about each candidate standing for election, pursuant to rule 59 of these rules, and
 - (d) a covering envelope.
- 24.2 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

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

26. E-voting systems

- 26.1.1 If internet voting is a method of polling for the relevant election then the returning officer must provide a website for the purpose of voting over the internet (in these rules referred to as "the polling website").
- 26.1.2 If telephone voting is a method of polling for the relevant election then the returning officer must provide an automated telephone system for the purpose of voting by the use of a touch-tone telephone (in these rules referred to as "the telephone voting facility").
- 26.1.3 If text message voting is a method of polling for the relevant election then the returning officer must provide an automated text messaging system for the purpose of voting by text message (in these rules referred to as "the text message voting facility").
- 26.1.4 The returning officer shall ensure that the polling website and internet voting system provided will:
- (a) require a voter to:
 - (i) enter his or her voter ID number; and
 - (ii) where the election is for a public or patient constituency, make a declaration of identity;
- in order to be able to cast his or her vote;

- (b) specify:
 - (i) the name of the corporation,
 - (ii) the constituency, or class within a constituency, for which the election is being held,
 - (iii) the number of members of the council of governors to be elected from that constituency, or class within that constituency,
 - (iv) the names and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
 - (v) instructions on how to vote and how to make a declaration of identity,
 - (vi) the date and time of the close of the poll, and
 - (vii) the contact details of the returning officer;
- (c) prevent a voter from voting for more candidates than he or she is entitled to at the election;
- (d) create a record ("internet voting record") that is stored in the internet voting system in respect of each vote cast by a voter using the internet that comprises of-
 - (i) the voter's voter ID number;
 - (ii) the voter's declaration of identity (where required);
 - (iii) the candidate or candidates for whom the voter has voted; and
 - (iv) the date and time of the voter's vote,
- (e) if the voter's vote has been duly cast and recorded, provide the voter with confirmation of this; and
- (f) prevent any voter from voting after the close of poll.

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

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

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

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

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

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

The poll

27. Eligibility to vote

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

28. Voting by persons who require assistance

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

29. Spoilt ballot papers

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

30. Lost voting information

- 30.1 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.
- 30.2 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.
- 30.3 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.

31. Issue of replacement ballot paper

- 31.1 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.

- 31.2 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.

32. Declaration of identity for replacement ballot papers public constituency

- 32.1 In respect of an election for a public constituency a declaration of identity must be issued with each replacement ballot paper.
- 32.2 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 constituency, or class within a constituency, for which the election is being held.
- 32.3 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.
- 32.4 The voter must be required to return the declaration of identity together with the ballot paper.
- 32.5 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

33. Receipt of voting documents

- 33.1 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.
- 33.2 The returning officer may open any ballot paper envelope, 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.
- 33.3 The returning officer must make arrangements to ensure the safety and security of the ballot papers and other documents.

34. Validity of ballot

- 34.1 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.

- 34.2 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.
- 34.3 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.
- 34.4 An internet, telephone or text message vote shall not be taken to be duly returned unless the returning officer is satisfied that the internet voting record, telephone voting record or text voting record (as applicable) has been received by the returning officer before the close of the poll, with a declaration of identity if required that has been correctly made.
- 34.5 Where the returning officer is satisfied that rule 34.4 has been fulfilled, he or she is to put the internet voting record, telephone voting record or text voting record (as applicable) aside for counting after the close of the poll.
- 34.6 Where the returning officer is not satisfied that rule 34.4 has been fulfilled, he or she is to:
- (a) mark the internet voting record, telephone voting record or text voting record (as applicable) “disqualified”,
 - (b) record the voter ID number on the internet voting record, telephone voting record or text voting record (as applicable) in the list of disqualified documents; and
 - (c) place the document or documents in a separate packet.

35. Declaration of identity but no ballot paper public 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.

36. 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 spoilt ballot papers,
- (d) the list of lost ballot papers,
- (e) the list of eligible voters, and
- (f) the list of tendered ballot papers.

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

PART 6 - COUNTING THE VOTES

37. Interpretation of Part 6

In Part 6 of these rules –

“continuing candidate” means any candidate not deemed to be elected, and not excluded,

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

“deemed to be elected” means deemed to be elected for the purposes of counting of votes but without prejudice to the declaration of the result of the poll,

“mark” means a figure, an identifiable written word, or a mark such as “X”,

“non-transferable vote” means a ballot paper –

- (a) on which no second or subsequent preference is recorded for a continuing candidate, or
- (b) which is excluded by the returning officer under rule 44 (4) below,

“preference” as used in the following contexts has the meaning assigned below–

- (a) “first preference” means the figure “1” or any mark or word which clearly indicates a first (or only) preference,
- (b) “next available preference” means a preference which is the second, or as the case may be, subsequent preference recorded in consecutive order for a continuing candidate (any candidate who is deemed to be elected or is excluded thereby being ignored); and
- (c) in this context, a “second preference” is shown by the figure “2” or any mark or word which clearly indicates a second preference, and a third preference by the figure “3” or any mark or word which clearly indicates a third preference, and so on,

“quota” means the number calculated in accordance with rule 41 below,

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

“stage of the count” means –

- (a) the determination of the first preference vote of each candidate,
- (b) the transfer of a surplus of a candidate deemed to be elected, or
- (c) the exclusion of one or more candidates at any given time,

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

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

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

38. Arrangements for counting of the votes

- 38.1 The returning officer is to make arrangements for counting the votes as soon as is practicable after the close of the poll.
- 38.2 The returning officer may make arrangements for any votes to be counted using vote counting software where:
- (a) the board of directors and the council of governors of the corporation have approved:
 - (i) the use of such software for the purpose of counting votes in the relevant election, and
 - (ii) a policy governing the use of such software, and
 - (b) the corporation and the returning officer are satisfied that the use of such software will produce an accurate result.

39. The count

- 39.1 The returning officer is to –
- (a) count and record the number of ballot papers that have been returned;
 - (b) the number of internet voting records, telephone voting records and/or text voting records that have been created; and
 - (c) count the votes according to the provisions in this Part of the rules.
- 39.2 The returning officer, while counting and recording the number of ballot papers, internet voting records, telephone voting records and/or text voting records and counting the votes, must make arrangements to ensure that no person obtains or communicates information as to the unique identifier on a ballot paper or the voter ID number on an internet voting record, telephone voting record or text voting record.
- 39.3 The returning officer is to proceed continuously with counting the votes as far as is practicable.

40. Rejected ballot papers

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

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

- 40.2 The returning officer is to endorse the word “rejected” on any ballot paper which under this rule is not to be counted.
- 40.3 The returning officer is to draw up a statement showing the number of ballot papers rejected by him or her under each of the subparagraphs (a) to (d) of paragraph (1).
- 40.4 Any text voting record:
- (a) on which the figure “1” standing alone is not placed so as to indicate a first preference for any candidate, or
 - (b) on which anything is written or marked by which the voter can be identified except the unique identifier
- 40.5 The returning officer is to endorse the word “rejected” on any text voting record which under this rule is not to be counted.
- 40.6 The returning officer is to draw up a statement showing the number of ballot papers rejected by him or her under each of the subparagraphs (a) to (b) of rule STV 40.4.

41. First stage

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

42. The quota

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

43. Transfer of votes

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

- (a) according to next available preference given on those papers for any continuing candidate, or
- (b) where no such preference is given, as the sub-parcel of nontransferable votes.

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

(3) The returning officer is, in accordance with this rule and rule 44 below, to transfer each sub-parcel of ballot papers referred to in paragraph (1) (a) to the candidate for whom the next available preference is given on those papers.

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

- (a) reduces the value of each vote transferred so that the total value of all such votes does not exceed the surplus, and
- (b) is calculated by dividing the surplus of the candidate from whom the votes are being transferred by the total number of the ballot papers on which those votes are given, the calculation being made to two decimal places (ignoring the remainder if any).

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

- (a) according to the next available preference given on those papers for any continuing candidate, or
- (b) where no such preference is given, as the sub-parcel of nontransferable votes.

(6) The returning officer is, in accordance with this rule and rule 44 below, to transfer each sub-parcel of ballot papers referred to in paragraph (5) (a) to the candidate for whom the next available preference is given on those papers.

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

- (a) a transfer value calculated as set out in paragraph (4) (b) above, or
- (b) at the value at which that vote was received by the candidate from whom it is now being transferred,

whichever is the less.

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

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

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

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

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

44. Supplementary provisions on transfer

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

- (a) The surpluses determined in respect of two or more candidates are equal, the transferable papers of the candidate who had the highest recorded vote at the earliest preceding stage at which

they had unequal votes shall be transferred first, and

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

(2) The returning officer shall, on each transfer of transferable papers under rule 43 above –

- (a) record the total value of the votes transferred to each candidate,
- (b) add that value to the previous total of votes recorded for each candidate and record the new total,
- (c) record as non-transferable votes the difference between the surplus and the total transfer value of the transferred votes and add that difference to the previously recorded total of non-transferable votes, and
- (d) compare—
 - (i) the total number of votes then recorded for all of the candidates, together with the total number of non-transferable votes, with
 - (ii) the recorded total of valid first preference votes.

(3) All ballot papers transferred under rule 43 or 45 shall be clearly marked, either individually or as a sub-parcel, so as to indicate the transfer value recorded at that time to each vote on that paper or, as the case may be, all the papers in that sub-parcel.

(4) Where a ballot paper is so marked that it is unclear to the returning officer at any stage of the count under rule 43 or 45 for which candidate the next preference is recorded, the returning officer shall treat any vote on that ballot paper as a nontransferable vote; and votes on a ballot paper shall be so treated where, for example, the names of two or more candidates (whether continuing candidates or not) are so marked that, in the opinion of the returning officer, the same order of preference is indicated or the numerical sequence is broken.

44. Exclusion of candidates

(1) If:

- (a) all transferable papers which under the provisions of rule 43 above (including that rule as applied by paragraph (11) below) and this rule are required to be transferred, have been transferred, and
- (b) subject to rule 46 below, one or more vacancies remain to be filled,

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

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

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

(3) The returning officer shall, in accordance with this rule and rule 44 above, transfer each sub-parcel of ballot papers referred to in paragraph (2)(a) above to the candidate for whom the next available preference is given on those papers.

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

(5) If, subject to rule 46 below, one or more vacancies still remain to be filled, the returning officer shall then sort the transferable papers, if any, which had been transferred to any candidate excluded under paragraph (1) above into sub-parcels according to their transfer value.

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

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

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

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

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

- (a) record —
 - (i) the total value of votes, or
 - (ii) the total transfer value of votes transferred to each candidate,
- (b) add that total to the previous total of votes recorded for each candidate and record the new total,
- (c) record the value of non-transferable votes and add that value to the previous non-transferable votes total, and
- (d) compare —
 - (i) the total number of votes then recorded for each candidate together with the total number of non-transferable votes, with
 - (ii) the recorded total of valid first preference votes.

(11) If after a transfer of votes under any provision of this rule, a candidate has a surplus, that surplus shall be dealt with in accordance with paragraphs (5) to (10) of rule 43 and rule 44.

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

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

- (a) regard shall be had to the total number of votes credited to those candidates at the earliest stage of the count at which they had an unequal number of votes and the candidate with the lowest number of votes at that stage shall be excluded, and
- (b) where the number of votes credited to those candidates was equal at all stages, the returning officer shall decide between the candidates by lot and the candidate on whom the lot falls shall be excluded.

45. Filling of last vacancies

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

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

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

46. Order of election of candidates

(1) The order in which candidates whose votes equal or exceed the quota are deemed to be elected shall be the order in which their respective surpluses were transferred, or would have been transferred but for rule 43 (10) above.

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

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

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

Part 7 – Final proceedings in contested and uncontested elections

47. Declaration of result for contested elections

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

- (a) declare the candidates who are deemed to be elected under Part 6 of these rules as elected,
- (b) give notice of the name of each candidate who he or she has declared elected –
 - (i) where the election is held under a proposed constitution pursuant to powers conferred on the Dudley Group of Hospitals NHS Trust by section 4(4) of the 2006 Act, to the chairman of the NHS Trust, or
 - (ii) in any other case, to the chairman of the Trust, and
- (c) give public notice of the name of each candidate who he or she has declared elected.

(2) The returning officer is to make available on request:

- (a) the number of first preference votes for each candidate whether elected or not,
- (b) any transfer of votes,
- (c) the total number of votes for each candidate at each stage of the count at which such transfer took place,
- (d) the order in which the successful candidates were elected, and
- (e) the number of rejected ballot papers under each of the headings in rule 40 (1),

48. Declaration of result for uncontested elections

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

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

- (b) give notice of the name of each candidate who he or she has declared elected to the chairman of the Trust, and
- (c) give public notice of the name of each candidate who he or she has declared elected.

Part 8 – Disposal of documents

49. Sealing up of documents relating to the poll

(1) On completion of the counting at a contested election, the returning officer is to seal up the following documents in separate packets –

- (a) the counted ballot papers,
- (b) the ballot papers endorsed with “rejected in part”,
- (c) the rejected ballot papers, and
- (d) the statement of rejected ballot papers

(2) The returning officer must not open the sealed packets of –

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

(3) The returning officer must endorse on each packet a description of –

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

50. Delivery of documents

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

51. Forwarding of documents received after close of the poll

Where –

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

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

52. Retention and public inspection of documents

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

(2) With the exception of the documents listed in rule 54 (1), the documents relating to an election that are held by the Trust shall be available for inspection by members of the public at all reasonable times.

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

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

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

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

by any person without the consent of the regulator.

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

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

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

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

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

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

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

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

Part 9 – Death of a candidate during a contested election

54. Countermand or abandonment of poll on death of candidate

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

- (a) publish a notice stating that the candidate has died, and
- (b) proceed with the counting of the votes as if that candidate had been excluded from the count so that –
 - (i) ballot papers which only have a first preference recorded for the candidate that has died, and no preferences for any other candidates, are not to be counted, and

- (ii) ballot papers which have preferences recorded for other candidates are to be counted according to the consecutive order of those preferences, passing over preferences marked for the candidate who has died.
- (2) The ballot papers which have preferences recorded for the candidate who has died are to be sealed with the other counted ballot papers pursuant to rule 50 (1) (a).

Part 10 – Election expenses and publicity

55. Election expenses

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

56. Expenses and payments by candidates

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

- (a) personal expenses,
- (b) travelling expenses, and expenses incurred while living away from home, and
- (c) expenses for stationery, postage, telephone, internet (or any similar means of communication) and other petty expenses, to a limit of £100 (to be reviewed after first elections).

These expenses are to be met by the candidate, not by the Trust.

57. Election expenses incurred by other persons

(1) No person may –

- (a) incur any expenses or make a payment (of whatever nature) for the purposes of a candidate's election, whether on that candidate's behalf or otherwise, or
- (b) give a candidate or his or her family any money or property (whether as a gift, donation, loan, or otherwise) to meet or contribute to expenses incurred by or on behalf of the candidate for the purposes of an election.

(2) Nothing in this rule is to prevent the Trust from incurring such expenses, and making such payments, as it considers necessary pursuant to rules 59 and 60.

Publicity

58. Publicity about election by the Trust

(1) The Trust may –

- (a) compile and distribute such information about the candidates, and
- (b) organise and hold such meetings to enable the candidates to speak and respond to questions, as it considers necessary.

(2) Any information provided by the Trust about the candidates, including information compiled by the Trust under rule 60, must be –

- (a) objective, balanced and fair,
- (b) equivalent in size and content for all candidates (as far as the information provided by the

- candidates so allows),
- (c) compiled and distributed in consultation with all of the candidates standing for election, and
- (d) must not seek to promote or procure the election of a specific candidate or candidates, at the expense of the electoral prospects of one or more other candidates.

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

59. Information about candidates for inclusion with voting documents

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

(2) The information must consist of –

- (a) a statement submitted by the candidate of no more than 200 words, and
- (b) a passport type photograph of the candidate

if provided by the candidate.

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

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

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

Part 11 – Questioning elections and the consequence of irregularities

61. Application to question an election

(1) An application alleging a breach of these rules, including an electoral irregularity under Part 10, may be made to the regulator.

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

(3) An application may only be made to the regulator by –

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

(4) The application must –

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

(5) The application must be presented in writing within 21 days of the declaration of the result of the election.

(6) If the regulator requests further information from the applicant, then that person must provide it as

soon as is reasonably practicable.

- (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 62(7) shall be binding on and shall be given effect by the Trust, the applicant and the Members of the constituency (or class within a constituency) including all the candidates for the election to which the application relates.
- (c) The regulator may prescribe rules of procedure for the determination of an application including costs.

Part 12 – Miscellaneous

62. Secrecy

(1) The following persons –

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

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

- (i) the name of any member of the Trust who has or has not been given a ballot paper or who has or has not voted,
- (ii) the unique identifier on any ballot paper,
- (iii) the candidate(s) for whom any member has voted.

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

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

63. Prohibition of disclosure of vote

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

64. Disqualification

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

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

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

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

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

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

66. Effect of administrative or clerical errors on election

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

ANNEX 6 – ADDITIONAL PROVISIONS – COUNCIL OF GOVERNORS

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

1. they are a director of the Trust, or a governor or director of another NHS Body, or of an independent/private sector health care provider. These restrictions do not apply to Appointed Partnership Governors;
2. they are under sixteen years of age;
3. being a member of a public constituency, they were or were entitled to be a member of one of the classes of the staff constituency at any point during the preceding two years;
4. being a member of one of the public constituencies, they refuse to sign a declaration in the form specified by the Council of Governors of the particulars of their qualification to vote as a member of the Trust, and that they are not prevented from being a member of the Council of Governors;
5. they are the subject of a sex offender order;
6. they have within the preceding two years been dismissed, otherwise than by reason of redundancy, expiry of a fixed term contract, disability, ill health or age from any paid employment with a health service body. In other cases of dismissal, such as capability, an individual may be permitted to become a governor, at the discretion of the trust, and subject to full disclosure of the relevant circumstances and facts concerning that dismissal;
7. they are a person whose tenure of office as the Chairman 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 nonattendance at meetings, or for non-disclosure of a pecuniary interest;
8. they have had their name removed, by a direction under section 46 of the 1977 NHS Act from any list prepared under Part II of that Act or have otherwise been disqualified or suspended from any healthcare profession, and have not subsequently had their name included in such a list or had their qualification re-instated or suspension lifted (as applicable);
9. they are incapable by reason of mental disorder, illness or injury of managing and administering their property and affairs;
10. they are an elected governor and they cease to be a member of the constituency or class by which they were elected. This may include, but is not restricted to, the reasons for ceasing to be a member identified in Annex 9;
11. they are a non-elected governor and they cease to be sponsored by their organisation. A person who ceases to be a governor could continue to attend the Council of Governors in an advisory capacity, if the Council of Governors so wishes, although they would not have voting rights;
12. they are the spouse, partner, parent or child of a member of the Board of Directors of the Trust;

13. they are a member of a local authority's Overview and Scrutiny Committee covering health matters;
14. they are a member of the Healthwatch organisation relating to this Foundation Trust;
15. they fail to or indicate that they are unwilling to act in the best interests of the Trust and in accordance with The Seven Principles of Public Life laid out by the Committee on Standards in Public Life in its First Report as amended from time to time.
16. they fail to agree (or, having agreed, fail) to abide by the values of the Trust Principles set out in Annex 10.
17. Governors are required to attend mandatory training, as defined from time to time, provided by the Trust on their role and function.
18. consistently and unjustifiably fail to maintain attendance at Full Council of Governor meetings as defined within the Code of Conduct for Governors.
19. if in applying for a Staff Governor position their contract of employment is shorter than the prescribed term of office for that role.

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

(Paragraph 14)

**Standing Orders
of the
Council of Governors**

June 2019

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1. INTRODUCTION

Statutory Framework

The Dudley Group NHS Foundation Trust is a statutory body which became a public benefit corporation following its approval as an NHS Foundation Trust by the Independent Regulator of NHS Foundation Trusts (Independent Regulator) pursuant to the National Health Service Act 2006 (the 2006 Act).

The principal places of business of the Trust are:

- Russells Hall Hospital, Pensnett Road, Dudley, West Midlands, DY1 2HQ
- Corbett Outpatients Centre, Vicarage Road, Stourbridge, West Midlands, DY8 4JB
- Guest Outpatients Centre, Tipton Road, Dudley, West Midlands, DY1 4SE

NHS Foundation Trusts are governed by Acts of Parliament, mainly the 2006 and 2012 Act, by their constitutions and by terms of their authorisation granted by the Independent Regulator (Regulatory Framework).

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

The Regulatory Framework requires the Council of Governors to adopt Standing Orders (SOs) for the regulation of its proceedings and business.

2. INTERPRETATION

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

"TRUST" means The Dudley Group NHS Foundation Trust.

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

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

"CHAIR OF THE BOARD" or "Chair of the Trust" is the person appointed by the Council of Governors to lead the Board of Directors and to ensure that it successfully discharges its overall responsibility for the Trust as a whole. The expressions "the Chair of the Board" and

“the Chair of the Trust” shall be deemed to include the Deputy Chair of the Trust if the Chair is absent from the meeting or is otherwise unavailable.

“**CHIEF EXECUTIVE**” means the Chief Executive Officer of the Trust.

“**COMMITTEE**” means a committee of the Council of Governors

“**CONSTITUTION**” means the constitution of the Foundation Trust.

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

“**DEPUTY CHAIR**” means the non-executive director appointed by the Council of Governors to take on the Chairman’s duties if the Chairman is absent for any reason.

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

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

“**NON-EXECUTIVE DIRECTOR**” means a member of the Board of Directors who does not hold an executive office with the Trust. These may be referred to as voting and non-voting where appropriate.

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

“**SOs**” means these Standing Orders.

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

3. THE COUNCIL OF GOVERNORS

3.1 Composition of the Council of Governors

3.1.1 In accordance with the Constitution of the Foundation Trust, the composition of the Council of Governors shall be reviewed from time to time and currently comprises:

- 13 Public Governors
- 8 Staff Governors
- 1 Primary Care Trust Governor
- 1 Local Authority Governor
- 1 University Governor
- 1 Voluntary organisation Governor

3.2 Role of the Chair

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

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

3.3 Role and Responsibilities of the Council of Governors

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

- To appoint and remove the Chair and other voting non-executive directors of the Foundation Trust at a general meeting. To approve (by three quarters of members of the Council of Governors) the appointment by the non-executive directors of the Chief Executive
- To appoint or remove the auditor at a general meeting
- To be consulted by the Trust's Board of Directors on forward planning and to have the Council of Governors' views taken into account
- To be presented with, at a Members' general meeting, the Annual Report and Accounts and the report of the auditor

3.3.2 The 2006 and 2012 Act provides that all the powers of the Foundation Trust are to be exercised by its Directors. The Council of Governors does not have the right to veto decisions made by the Board of Directors.

3.3.3 The Council of Governors, and individual Governors, are not empowered to speak on behalf of the Trust, and must seek the advice and views of the chair concerning any contact from the media or any invitation to speak publicly about the Trust or their role within it. For the avoidance of doubt, in this context the chair acts as chair of the Trust not as chair of the

Council of Governors and in his or her absence Governors should seek the advice and views of the deputy chair of the Trust or another non-executive director of the Trust.

4. MEETINGS OF THE COUNCIL

4.1 Admission of the Public

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

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

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

4.2 Calling Meetings

4.2.1 Ordinary meetings of the Council shall be held at such times and places as the Board may determine and there shall be not less than 3 or more than 4 formal meetings in any year except in exceptional circumstances.

4.2.2 The chair of the Trust may call a meeting of the Council at any time. If the chair refuses to call a meeting after a requisition for that purpose, signed by at least one third of the whole number of members of the Council, has been presented to him or her, or if, without so refusing, the chair does not call a meeting within seven days after such requisition has been presented to him or her at the Trust's Headquarters, such one third or more members of the Council may forthwith call a meeting.

4.3 Notice of Meetings

4.3.1 Before each meeting of the Council, a notice of the meeting, specifying the business proposed to be transacted at it, and signed by the chair or by an officer authorised by the chair to sign on his or her behalf shall be delivered to every Member of the Council, or sent by post to the usual place of residence of such Member of the Council, so as to be available to him or her at least three working days before the meeting.

4.3.2 Want of service of the notice on any Member of the Council shall not affect the validity of a meeting.

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

- 4.3.4 Agendas will be sent to Members of the Council before the meeting and supporting papers, whenever possible, shall accompany the agenda, but will certainly be despatched no later than three clear days before the meeting, save in emergency.
- 4.3.5 Before each meeting of the Council a public notice of the time and place of the meeting shall be displayed at the Trust's offices at least three clear days before the meeting.

4.4 Setting the Agenda

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

4.5 Petitions

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

4.6 Chair of Meeting

- 4.6.1 At any meeting of the Council, the chair of the Trust, if present, shall preside. If the chair is absent from the meeting the deputy chair, if he or she is present, shall preside. If the chair and deputy chair are absent such non-executive director as the Members of the Council present shall choose shall preside. Where the chair of the Trust, deputy chair and other non-executive directors are all absent or have a conflict of interest, the Council of Governors shall select one of their number to preside at the meeting. The person presiding at the meeting shall have a casting vote.
- 4.6.2 If the chair is absent temporarily on the grounds of a declared conflict of interest the deputy chair, if present, shall preside. If the chair and deputy chair are absent, or are disqualified from participating, such non-executive director as the Members of the Council present shall choose, shall preside. Where the chair, deputy chair, lead governor and other non-executive directors are all absent or have a conflict of interest, an appropriate representative will be appointed from amongst the Council of Governors to preside at the meeting and have a casting vote.

4.7 Notices of Motion

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

4.8 Withdrawal of Motion or Amendments

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

4.9 Motion to Rescind a Resolution

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

4.10 Motions

- 4.10.1 The mover of a motion shall have a right of reply at the close of any discussion on the motion or any amendment thereto.

- 4.10.2 When a motion is under discussion or immediately prior to discussion it shall be open to a Member of the Council to move:

- an amendment to the motion
- the adjournment of the discussion or the meeting
- that the meeting proceed to the next business (*)
- the appointment of an ad hoc committee to deal with a specific item of business
- that the motion be now put. (*)
- a motion resolving to exclude the public under SO 4.1.1.

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

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

4.11 Chair's ruling

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

4.12 Voting

- 4.12.1 If a question is put to the vote, it shall be determined by a majority of the votes of the Members of the Council present and voting on the question and, in the case of number of votes for and against a motion being equal, the Chair of the meeting shall have a second or casting vote.

- 4.12.2 All questions put to the vote shall, at the discretion of the chair of the meeting, be determined by oral expression or by a show of hands. A paper ballot may also be used if a majority of the Members of the Council present so request.
- 4.12.3 If at least one-third of the Members of the Council present so request, the voting (other than by paper ballot) on any question may be recorded to show how each Member of the Council present voted or abstained.
- 4.12.4 If a Member of the Council so requests, his or her vote shall be recorded by name upon any vote (other than paper ballot).
- 4.12.5 In no circumstances may an absent Member of the Council vote by proxy. Absence is defined as being absent at the time of the vote.

4.13 Minutes

- 4.13.1 The minutes of the proceedings of a meeting shall be drawn up and submitted for agreement at the next ensuing meeting where they will be signed by the person presiding as chair at it.
- 4.13.2 No discussion shall take place upon the minutes except upon their accuracy or where the chair considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the meeting.
- 4.13.3 Minutes shall be circulated in accordance with the members' wishes. Minutes will be published on the Trust website within six weeks of the full Council of Governors meeting.

4.14 Suspension of Standing Orders

- 4.14.1 Except where this would contravene any statutory provision or any direction made by the Independent Regulator, any one or more of the Standing Orders may be suspended at any meeting, provided that at least two-thirds of the Council are present, including two public Governors, and that a majority of those present vote in favour of suspension.
- 4.14.2 A decision to suspend Standing Orders shall be recorded in the minutes of the meeting.
- 4.14.3 A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the chair and Members of the Council.
- 4.14.4 No formal business may be transacted while Standing Orders are suspended.

4.15 Variation and Amendment of Standing Orders

- 4.15.1 These Standing Orders shall be amended only if:

- a notice of a motion under Standing Order 4.7 has been given; and
- no fewer than half the total of the Corporation's Governors vote in favour of amendment; and
- at least two-thirds of the Council Members are present; and

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

4.16 Record of Attendance

- 4.16.1 The names of the chair and Members of the Council present at the meeting shall be recorded in the minutes. Apologies received from Members of the Council shall also be recorded in the minutes.

4.17 Quorum

- 4.17.1 No business shall be transacted at a meeting unless at least eight Governors are present of which at least five are public Governors.
- 4.17.2 If a Member of the Council has been disqualified from participating in the discussion on any matter and/or from other voting on any resolution by reason of the declaration of a conflict of interest (see Standing Order 6, 7 or 8) he or she shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business.

5. COMMITTEES

- 5.1 Subject to the Regulatory Framework and such guidance as may be issued by the Independent Regulator, the Council may, and if so required by the Independent Regulator, shall, appoint committees of the Council to assist the Council in the proper performance of its functions under the Constitution and the Regulatory Framework, consisting wholly of the chair and Members of the Council of Governors.
- 5.2 A committee appointed under this regulation may, subject to such guidance as may be given by the Independent Regulator or restriction imposed by the Council, appoint sub-committees consisting wholly of members of the committee.
- 5.3 The Standing Orders of the Council, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees established by the Council. In which case the term “Chair” is to be read as a reference to the Chair of the Committee as the context permits, and the term “Member of the Council” is to be read as a reference to a member of the committee also as the context permits.
- 5.4 Subject to Standing Order 5.5, each sub-committee shall have such terms of reference and power and be subject to such conditions (as to reporting back to the Council), as the Council shall decide and shall be in accordance with the Regulatory Framework and any guidance issued by the Independent Regulator. Such terms of reference shall have effect as if incorporated into the Standing Orders.
- 5.5 The Council may not delegate any decision-making or executive powers to any committee or sub-committee.

- 5.6 The Council shall approve the appointments to each of the committees which it has formally constituted.
- 5.7 The committees and sub-committees established by the Council shall be such committees as are required to assist the Council in discharging its responsibilities.

6. DECLARATIONS OF INTERESTS AND REGISTER OF INTERESTS

6.1 Declaration of Interests

- 6.1.1 The Regulatory Framework requires Council Members to declare interests which are relevant and material to the Council of which they are a Member. All existing Council Members should declare such interests. Any Council Members appointed subsequently should do so on appointment.
- 6.1.2 Interests which should be regarded as “relevant and material” are defined in the Trust’s Constitution as follows:
- any pecuniary, personal or family interest, whether that interest is actual or potential and whether that interest is direct or indirect, in any proposed contract or other matter which is under consideration or is to be considered by the Council of Governors
- 6.1.3 At the time Council Members’ interests are declared, they should be recorded in the Council minutes. Any changes in interests should be declared at the next Council meeting following the change occurring.
- 6.1.4 Council Members’ directorships of companies likely or possibly seeking to do business with the NHS should be published in the Trust’s Annual Report. The information should be kept up to date for inclusion in succeeding annual reports.
- 6.1.5 There is no requirement for the interests of Council Members’ spouses or partners to be declared. However Standing Order 7, which is based on the regulations, requires that the interests of Members of the Council’s spouses, if living together, in contracts should be declared. Therefore the interests of Council Members’ spouses and cohabiting partners should also be regarded as relevant.
- 6.1.6 If during the course of any meeting, a conflict of interest arises as defined at para 6.1.2, it is the responsibility of the chair to ensure the meeting is held in such a way as to ensure free and full debate, without undue or improper influence from any interested party, and that all parties present are fully aware of the interests of all other Governors of the Foundation Trust.
- 6.1.7 In pursuance of the above the chair may take any or all of the following steps;
1. The chair may remind the meeting of the role and responsibility of the Governors, as set out in the FT Constitution and these Standing Orders.
 2. The chair may require any Governor to remind the meeting of his or her interest.
 3. The chair may require any Governor that the chair considers has a conflict to play no part during any discussion on the relevant issue.
 4. The chair may require any Governor that the chair considers has a conflict to withdraw from the meeting room during the relevant discussion or debate.

Before taking the steps 3 or 4, the chair shall allow representations from the Governor concerned. The decision of the chair on these matters is final.

- 6.1.8 If any person believes that any Governor has any conflict of interest that has not been declared, or is trying to exert undue or improper influence on any other person in any way, in any matter connected with the Foundation Trust, that person may make representations to the Trust chair. Representations may be verbal or in writing and shall detail the nature of the alleged conflict or undue influence complained of.
- 6.1.9 Upon receipt of such a representation, the chair will communicate with the Governor concerned, and allow that Governor an opportunity to respond fully to the representation. Upon receipt of the response he or she shall make a decision about the contribution of that Governor at subsequent meetings, and shall have the range of options as detailed at para. 6.1.7 above.

6.2 Register of Interests

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

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

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

- (a) he or she, or a nominee of theirs, is a director of a company or other body, not being a public body, with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration;
Or
- (b) he or she, is a partner of, or is in the employment of a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration. And in the case of married persons living together or persons living together as partners, the interest of one partner shall, if known to the other, be deemed for the purposes of this Standing Order to be also the interest of that partner.

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

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

7.5 Where a Governor:

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

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

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

8. STANDARDS OF BUSINESS CONDUCT POLICY

8.1 Governors should comply with the Trust Constitution, the NHS principles of conduct, as defined by the NHS Leadership Academy, the NHS Constitution, the NHS Foundation Trust Code of Governance published by the Independent Regulator, the requirements of the Regulatory Framework, the Trust's Code of Conduct for Governors, and any guidance and directions issued by the Independent Regulator. In addition, they must adhere to the Trust's Principles, given as Annex 10 to the Foundation Trust Constitution and the Trust's Policy on Business Conduct.

8.2 Interest of Governors in Contracts

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

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

8.3 Canvassing of and Recommendations by Members of the Council in Relation to Appointments

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

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

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

8.4 Relatives of Members of the Council or Officers

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

8.4.2 The chair and every Member of the Council and officers of the Trust shall disclose to the Chief Executive any relationship between him or herself and a candidate of whose candidature that Member of the Council or officer is aware.

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

9. MISCELLANEOUS

9.1 Standing Orders to be given to Members of the Council

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

9.2 Review of Standing Orders

- 9.2.1 Standing Orders shall be reviewed annually. The requirements for review extend to all documents having the effect as if incorporated in Standing Orders.

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

(Paragraph 26 and Note 26)

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

March 2019

FOREWORD

NHS foundation trusts are obliged by NHS Improvement (NHSI) to have Standing Orders for their Board of Directors in relation to the disclosure of interests and arrangements for exclusion of a director disclosing an interest from discussion or consideration of the matter in respect of which an interest has been disclosed. It is also suggested by NHSI that Standing Orders be adopted relating to other aspects of the Board's practice and procedure.

The following Standing Orders and attached Scheme of Delegation, provide a regulatory framework for the business conduct of the Trust. They fulfill the dual role of protecting the Trust's interests and protecting staff from any possible accusation that they have acted less than properly.

The Standing Orders and Scheme of Delegation provide a comprehensive business framework. All executive directors and voting and non-voting non-executive directors, and all members of staff, should be aware of the existence of these documents and, where necessary, be familiar with the detailed provisions.

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INTRODUCTION

Statutory Framework

The Dudley Group NHS Foundation Trust (the Trust) is a body corporate which became a public benefit corporation following its approval as an NHS Foundation Trust by the Independent Regulator of NHS Foundation Trusts (Independent Regulator) pursuant to the National Health Service Act 2006 (the 2006 Act).

The principal places of business of the Trust are Russells Hall Hospital, Corbett Outpatients Centre, Guest Outpatients Centre and the Community of Dudley.

NHS Foundation Trusts are governed by Acts of Parliament, mainly the 2006 and 2012 Health Acts, by their constitutions and by the terms of their authorisation granted by the Independent Regulator (the Regulatory Framework).

The functions of the Corporation are conferred by the Regulatory Framework.

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

Delegation of Powers

Under the Standing Orders relating to the Arrangements for the Exercise of Functions (SO 4) the Board exercises its powers to make arrangements for the exercise, on behalf of the Trust, of any of its functions by a committee or sub-committee appointed by virtue of SO 5 or by an officer of the Trust, in each case subject to such restrictions and conditions as the Board thinks fit. Delegated Powers are covered in a separate document (Scheme of Delegation). That document has effect as if incorporated into the Standing Orders.

1 INTERPRETATION

- 1.1 Save as permitted by law and subject to the Constitution, at any meeting the chair of the Trust shall be the final authority on the interpretation of Standing Orders (on which he or she should be advised by the Trust Secretary).
- 1.2 Any expression to which a meaning is given in the Health Service Acts or in the Regulations or Orders made under the Acts shall have the same meaning in this interpretation and where there is a conflict between the 2006 and 2012 Acts and another legislative provision the 2006 Act interpretation shall prevail (unless, in either case, the context otherwise requires) and in addition:

"ACCOUNTING OFFICER" shall be the Officer responsible and accountable for funds entrusted to the Trust. He or she shall be responsible for ensuring the proper stewardship of public funds and assets and performing the functions delegated to him or her by the Constitution in relation to the Trust's accounts. For this Trust it shall be the chief executive.

"TRUST" means The Dudley Group NHS Foundation Trust.

"BOARD OF DIRECTORS" and (unless the context otherwise requires) **"BOARD"** shall mean the chair and other non-executive directors, and the executive directors appointed by the relevant committee of the Trust.

"BOARD OF GOVERNORS" means the Council of Governors of the Trust.

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

"Chairman" is the person appointed by the Council of Governors to lead the Board and to ensure that it successfully discharges its overall responsibility for the Trust as a whole. The expression "the chair of the Trust" shall be deemed to include the deputy chair of the Trust if the chair is absent from the meeting or is otherwise unavailable.

"Chief Executive" shall mean the chief executive officer of the Trust.

"Committee" shall mean a committee of the Board of Directors.

"Committee members" shall be the directors formally appointed by the Trust to sit on or to chair specific committees.

"CONSTITUTION" means this Constitution of the Trust and its annexes.

"Deputy chairman" means the non-executive director appointed by the Council of Governors to take on the chair's duties if the chair is absent for any reason.

"Director" shall mean a person appointed as a director in accordance with the Constitution and includes the chair.

"Finance Director" shall mean the chief finance officer of the Trust.

"Funds held on Trust" shall mean those funds which the Trust holds on trust at its date of authorisation as an NHS Foundation Trust or chooses subsequently to accept. Such funds may or may not be charitable.

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

"Nominated officer" means an officer charged with the responsibility for discharging specific tasks within SOs and SFIs.

"Officer" means an employee of the Trust.

"SFIs" means Standing Financial Instructions.

"SOs" means Standing Orders.

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

2. THE TRUST

- 2.1 All business shall be conducted in the name of the Trust.
- 2.2 The Trust has the functions conferred on it by the Regulatory Framework.
- 2.3 All funds received in trust shall be in the name of the Trust as corporate trustee. In relation to funds held on trust, powers exercised by the Trust as corporate trustee shall be exercised separately and distinctly from those powers exercised as a Trust.
- 2.4 Directors acting on behalf of the Trust as a corporate trustee are acting as quasi-trustees. Accountability for charitable funds held on trust is to the Charity Commission.
- 2.5 The Trust has resolved that certain powers and decisions may only be exercised or made by the Board in formal session. Those powers and decisions delegated by the Board are set out in the "Scheme of Delegation", which has effect as if incorporated into the Standing Orders.
- 2.6 **Composition of the Board** - In accordance with, but always subject to, the provisions of the Constitution, the composition of the Board shall be:
- The Chairman of the Trust
 - between 5 and 8 non-executive directors excluding the chairperson
 - 5 Executive directors including:
 - The chief executive (and accounting officer)
 - The director of finance
 - A medical or dental practitioner
 - A registered nurse
 - The director of operations
- 2.7 **Appointment of the Chairman and other voting and Non-executive Directors** - The chair and the other voting and non-executive Directors are appointed by the Council of Governors.
- 2.8 **Appointment of the Executive Directors** - The chief executive is appointed by the non-executive Directors, subject to the approval of the Council of Governors. The other executive directors are appointed by a committee consisting of the chair, the other non-executive directors and the chief executive.
- 2.9 **Terms of Office of the Chairman and other Directors** - The regulations setting out the period of tenure of office of the chairman and other directors and for the termination or suspension of office of the chair and other directors are contained in the Constitution of the Trust.
- 2.10 **Appointment of Deputy Chairman** - Subject to SO 2.11 below, the Council of Governors will appoint one of the non-executive directors to be deputy chair, for such period, not exceeding the remainder of his or her term as a director, as they may specify on appointing him or her.
- 2.11 Any director so appointed may at any time resign from the office of deputy chair by giving notice in writing to the chair. The Council of Governors may thereupon appoint another non-executive director as deputy chair in accordance with the provisions of Standing Order 2.10

- 2.12 **Powers of Deputy Chairman** - Where the chair of the Trust has died or has ceased to hold office, or where he or she has been unable to perform his or her duties as chair owing to illness or any other cause, the deputy chairman shall act as chair until a new chair is appointed or the existing chair resumes his or her duties, as the case may be; and references to the chairman in these Standing Orders shall, so long as there is no chairman able to perform his or her duties, be taken to include references to the deputy chairman.
- 2.13 **Appointment and Powers of Senior Independent Director** - Subject to SO 2.14 below, the chairman (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 his or her term as a director, as they may specify on appointing him or her. 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.
- 2.14 Any director so appointed may at any time resign from the office of senior independent director by giving notice in writing to the chairman. The chairman (in consultation with the non-executive directors and the Council of Governors) may thereupon appoint another Member of the Board as senior independent director in accordance with the provisions of Standing Order 2.13.
- 2.15 The role of the deputy chairman will include deputising for the chairman during absences. The senior independent director will act as a conduit for concerns to be raised by Governors if the usual mechanisms of contact and discussion have been exhausted, and making arrangements for the annual evaluation of the performance of the chairman. The process to achieve this evaluation and its outcome will be agreed with and reported to the Council of Governors.
- 2.16 If the senior independent director is also the deputy chairman and he or she is acting in the capacity of the chairman, another non-executive director will be identified by the Board of Directors as fulfilling the role of senior independent director on a temporary basis. Where there is a need for the deputy chairman to act in the capacity of chairman for an extended period, the Board of Directors will agree the appointment of a different senior independent director with the Council of Governors, until the deputy chairman is able to resume this role.

3. MEETINGS OF THE TRUST

- 3.1 **Calling Meetings** - Ordinary meetings of the Board shall be held at such times and places as the Board may determine.
- 3.2 The chairman may call a meeting of the Board at any time. If the chairman 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 or her, or if, without so refusing, the chairman does not call a meeting within seven days after such requisition has been presented to him or her, at the Trust's Headquarters, such one third or more directors may forthwith call a meeting.
- 3.3 **Notice of Meetings** - Before each meeting of the Board, a notice of the meeting, specifying the business proposed to be transacted at it, and signed by the chairman or by an officer of the Trust authorised by the chairman to sign on his or her behalf shall be delivered to every director, so as to be available to him or her at least three clear working days before the meeting.
- 3.4 Lack of service of the notice on any director shall not affect the validity of a meeting.
- 3.5 In the case of a meeting called by directors in default of the chairman, the notice shall be signed by those directors and no business shall be transacted at the meeting other than that specified in the notice.
- 3.6 Failure to serve such a notice on more than three directors will invalidate the meeting. A notice shall be presumed to have been served at the time at which the notice would be delivered in the ordinary course of the post.
- 3.7 **Setting the Agenda** - The Board may determine that certain matters shall appear on every agenda for a meeting of the Board and shall be addressed prior to any other business being conducted.
- 3.8 A director desiring a matter to be included on an agenda shall make his or her request in writing to the chairman at least 10 clear days before the meeting, subject to Standing Order 3.3. Requests made less than 10 days before a meeting may be included on the agenda at the discretion of the chairman.
- 3.9 **Chairman of Meeting** - At any meeting of the Board, the chairman, if present, shall preside. If the chairman is absent from the meeting the deputy chairman, if there is one and he or she is present, shall preside. If the chairman and deputy chairman are absent such non-executive director as the directors present shall choose shall preside.
- 3.10 If the chairman is absent from a meeting temporarily on the grounds of a declared conflict of interest the deputy chairman, if present, shall preside. If the chairman and deputy chairman are absent, or are disqualified from participating, such non-executive director as the directors present shall choose shall preside.
- 3.11 **Notices of Motion** - A director of the Board desiring to move or amend a motion shall send a written notice thereof at least 10 clear days before the meeting to the chairman, who shall insert in the agenda for the meeting all notices so received subject to the notice being permissible under the appropriate regulations. This paragraph shall not prevent any motion being moved

during the meeting, without notice on any business mentioned on the agenda subject to Standing Order 3.5.

- 3.12 **Withdrawal of Motion or Amendments** - A motion or amendment once moved and seconded may be withdrawn by the proposer with the concurrence of the seconder and the consent of the chairman.
- 3.13 **Motion to Rescind a Resolution** - Notice of motion to amend or rescind any resolution (or the general substance of any resolution) which has been passed within the preceding 6 calendar months shall bear the signature of the director(s) who gives it and also the signature of 3 other directors. When any such motion has been disposed of by the Board, it shall not be competent for any director other than the chairman to propose a motion to the same effect within 6 months; however the chairman may do so if he or she considers it appropriate.
- 3.14 **Motions** - The mover of a motion shall have a right of reply at the close of any discussion on the motion or any amendment thereto.
- 3.15 When a motion is under discussion or immediately prior to discussion it shall be open to a director to move:
- An amendment to the motion.
 - The adjournment of the discussion or the meeting.
 - That the meeting proceeds to the next business. (*)
 - The appointment of an ad hoc committee to deal with a specific item of business.
 - That the motion be now put. (*)

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

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

- 3.16 **Chairman's Ruling** - Statements of directors made at meetings of the Board shall be relevant to the matter under discussion at the material time and the decision of the chairman of the meeting on questions of order, relevance, regularity and any other matters shall be observed at the meeting.
- 3.17 **Voting** - Every question at a meeting shall be determined by a majority of the votes of the directors present and voting on the question. If there is an equality of votes, the chairman shall have a further or casting vote.
- 3.18 All questions put to the vote shall, at the discretion of the chairman of the meeting, be determined by oral expression or by a show of hands. A paper ballot may also be used if a majority of the directors present so request.

- 3.19 If at least one-third of the directors present so request, the voting (other than by paper ballot) on any question may be recorded to show how each director present voted or abstained.
- 3.20 If a director so requests, his or her vote shall be recorded by name upon any vote (other than by paper ballot).
- 3.21 In no circumstances may an absent director vote by proxy. Absence is defined as being absent at the time of the vote.
- 3.22 **Minutes** - The Minutes of the proceedings of a meeting shall be drawn up and submitted for agreement at the next ensuing meeting where they will be signed by the person presiding at it.
- 3.23 No discussion shall take place upon the minutes except upon their accuracy or where the chairman considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the next meeting.
- 3.24 Minutes shall be circulated in accordance with directors' wishes.
- 3.25 **Waiver of Standing Orders** - Except where this would contravene any statutory provision or any guidance issued by the Independent Regulator, any one or more of the Standing Orders may be waived at any meeting, provided that at least two-thirds of the Board are present, including one executive director and one non-executive director, and that a majority of those present vote in favour of suspension.
- 3.26 A decision to waive Standing Orders shall be recorded in the minutes of the meeting.
- 3.27 The Audit Committee shall review every decision to waive Standing Orders.
- 3.28 **Suspension of Standing Orders** - Except where this would contravene any statutory provision or any guidance issued by the Independent Regulator, any one or more of the Standing Orders may be suspended at any meeting, provided that at least two-thirds of the Board are present, including one executive director and one non-executive director, and that a majority of those present vote in favour of suspension.
- 3.29 A decision to suspend Standing Orders shall be recorded in the minutes of the meeting.
- 3.30 A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the directors.
- 3.31 No formal business may be transacted while Standing Orders are suspended.
- 3.32 The Audit Committee shall review every decision to suspend Standing Orders.
- 3.33 **Variation and Amendment of Standing Orders** - These Standing Orders shall be amended only if:
- a notice of motion under Standing Order 3.11 has been given; and
 - no fewer than half the total of the Trust's non-executive directors vote in favour of amendment; and

- at least two-thirds of the directors are present; and
- the variation proposed does not contravene a statutory provision or guidance issued by the Independent Regulator.

3.34 **Record of Attendance** - The names and titles of the directors present at the meeting shall be recorded in the minutes.

3.35 **Quorum** - No business shall be transacted at a meeting of the Trust unless at least one-third of the whole numbers of the directors are present including at least one executive director and one non-executive director.

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

4. **ARRANGEMENTS FOR THE EXERCISE OF FUNCTIONS BY DELEGATION**

4.1 Subject to the Regulatory Framework and such guidance as may be issued by the Independent Regulator, the Board may make arrangements for the exercise, on behalf of the Trust, of any of its functions by a committee or sub-committee, appointed by virtue of SO 5.1 or 5.2 below or by a director or an officer of the Trust in each case subject to such restrictions and conditions as the Board thinks fit.

4.2 **Emergency Powers** - The powers which the Board has retained to itself within these Standing Orders (SO 2.5) may in emergency be exercised by the chief executive and the chairman. The exercise of such powers by the chief executive and the chairman shall be reported to the next formal meeting of the Board for minuting.

4.3 **Delegation to Committees** - The Board shall agree from time to time to the delegation of executive powers to be exercised by committees or sub-committees, 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.

4.4 The chief executive shall prepare a **Scheme of Delegation** (Annex 11) identifying his or her proposals which shall be considered and approved by the Board, 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 as indicated above.

4.5 Nothing in the Scheme of Delegation shall impair the discharge of the direct accountability to the Board of the finance director or other executive director to provide information and advise

the Board in accordance with any statutory requirements or guidance issued by the Independent Regulator.

- 4.6 The arrangements made by the Board as set out in the "Scheme of Delegation" shall have effect as if incorporated in these Standing Orders.
- 4.7 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 for action or ratification. All Members of the Board and staff have a duty to disclose any non-compliance with these Standing Orders to the Trust Secretary as soon as possible.

5. COMMITTEES

- 5.1 **Appointment of Committees** - Subject to the Regulatory Framework and any guidance as may be issued by the Independent Regulator; the Board may and, if so required by the Independent Regulator, shall appoint committees of the Board, consisting wholly of directors of the Board.
- 5.2 A committee appointed under SO 5.1 may, subject to any guidance issued by the Independent Regulator and to any restriction imposed by the Board, appoint sub-committees consisting wholly of one or more members of the committee.
- 5.3 The Standing Orders of the Board, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees or sub-committee established by the Board.
- 5.4 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), as the Board shall decide. Such terms of reference shall have effect as if incorporated into the Standing Orders.
- 5.5 Committees may not delegate their executive powers to a sub-committee unless expressly authorised by the Board.
- 5.6 The Board shall approve the appointments to each of the committees which it has formally constituted.
- 5.7 **Confidentiality** - A member of a committee shall not disclose a matter dealt with by, or brought before, the committee without its permission until the committee shall have reported to the Board or shall otherwise have concluded on that matter.
- 5.8 A director shall not disclose any matter reported to the Board or otherwise dealt with by the committee, notwithstanding that the matter has been reported or action has been concluded, if the Board or committee shall resolve that it is confidential.

6. DECLARATIONS OF INTERESTS AND REGISTER OF INTERESTS

- 6.1 **Declaration of Interests** - The Regulatory Framework requires directors to declare interests which are relevant and material to the board of which they are a director. All existing directors should declare such interests. Any directors appointed subsequently should do so on appointment.
- 6.2 Interests which should be regarded as "relevant and material" are to be interpreted in accordance with the Regulatory Framework:
- 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 private companies, businesses or consultancies likely or possibly seeking to do business with the NHS.
 - c) Majority or controlling shareholdings in organisations likely or possibly seeking to do business with the NHS.
 - d) A position of trust in a charity or voluntary organisation in the field of health and social care.
 - e) Any connection with a voluntary or other organisation contracting for NHS services.
 - f) To the extent not covered above, any connection with an organisation, entity or company considering entering into or having entered into a financial arrangement with the Trust, including but not limited to lenders or banks.
 - g) Any other commercial interest in the decision before the meeting.
- 6.3 If directors have any doubt about the relevance of an interest, this should be discussed with the chairman.
- 6.4 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 meeting following the change occurring.
- 6.5 Directors' directorships of companies likely or possibly seeking to do business with the NHS should be published in the board's annual report. The information should be kept up to date for inclusion in succeeding annual reports.
- 6.6 During the course of a board meeting, if a conflict of interest is established, the director concerned should withdraw from the meeting and play no part in the relevant discussion or decision.
- 6.7 There is no requirement for the interests of board directors' spouses or partners to be declared. [Note however that SO 7 requires that the interest of directors' spouses, if living together, in contracts should be declared].
- 6.8 **Register of Interests** - The trust secretary 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 which have been declared by both executive and non-executive directors, as defined in SO 6.2.

- 6.9 These details will be kept up to date by means of a monthly review of the Register in which any changes to interests declared during the preceding twelve month will be incorporated.
- 6.10 The Register will be available to the public and the Trust Secretary will take reasonable steps to bring the existence of the Register to the attention of the local population and to publicise arrangements for viewing it.
- 6.11 In establishing, maintaining, updating and publicising the Register, the Trust shall comply at all times with the Regulatory Framework and any guidance issued by the Independent Regulator. In the event of conflict between these Standing Orders and the Regulatory Framework or guidance issued by the Independent Regulator, the latter shall prevail.
- 6.12 Standing Order 6 applies to a committee or sub-committee of the Board as it applies to the Board.

7. DISABILITY OF DIRECTORS IN PROCEEDINGS ON ACCOUNT OF PECUNIARY INTEREST

- 7.1 Subject to the following provisions of this Standing Order, if 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 Trust at which the contract or other matter is the subject of consideration, he or she shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not take part in the consideration or discussion of the contract or other matter or vote on any question with respect to it.
- 7.2 The Board shall exclude a director from a meeting of the Board while any contract, proposed contract or other matter in which he or she has a pecuniary interest, is under consideration.
- 7.3 Any remuneration, compensation or allowances payable to a director by the Trust or otherwise by virtue of paragraph 9 of Schedule 2 to the NHS & CC Act 1990 shall not be treated as a pecuniary interest for the purpose of this Standing Order.
- 7.4 For the purpose of this Standing Order a director shall be treated, subject to SO 7.5, as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if:
- (a) he or she, or a nominee of his or her, is a director of a company or other body, not being a public body, with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration;
 - Or
 - (b) he or she is a partner of, or is in the employment of a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration and in the case of married persons living together or persons living together as partners, the interest of one partner shall, if known to the other, be deemed for the purposes of this Standing Order to be also the interest of that partner.
- 7.5 A director shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only:

- (a) of his or her membership of a company or other body, if he or she has no beneficial interest in any securities of that company or other body;
- (b) of an interest in any company, body or person with which he or she is connected as mentioned in SO 7.4 above which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a director in the consideration or discussion of or in voting on, any question with respect to that contract or matter.

7.5 Where a director:

- (a) has an indirect pecuniary interest in a contract, proposed contract or other matter by reason only of a beneficial interest in securities of a company or other body, and
- (b) all significant shareholding and other ownership interests in any publicly listed, private or not-for-profit company, business, partnership or consultancy which is, or might do business with the NHS
- (c) if the share capital is of more than one class, the total nominal value of shares of any one class in which he or she has a beneficial interest does not exceed one-hundredth of the total issued share capital of that class,

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

7.6 Standing Orders 7 apply to a committee or sub-committee of the Board as it applies to the Board.

8. STANDARDS OF BUSINESS CONDUCT

- 8.1 **Policy** - Staff must comply with the Trust's Policy on Business Conduct which embraces national guidance and requirements, and any guidance issued by the Independent Regulator. In addition, they must adhere to the Trust Principles as stated in Annex 10 of the Foundation Trust Constitution.
- 8.2 **Interest of Officers in Contracts** - If it comes to the knowledge of a director or an officer of the Trust that a contract in which he has any pecuniary interest not being a contract to which he is himself or herself a party, has been, or is proposed to be, entered into by the Trust he or she shall, at once, give notice in writing to the Chief Executive of the fact that he or she is interested therein. In the case of married persons or persons living together as partners, the interest of one partner shall, if known to the other, be deemed to be also the interest of that partner.
- 8.3 An officer must also declare to the Chief Executive any other employment or business or other relationship of his or her, or of a cohabiting spouse, that conflicts, or might reasonably be predicted could conflict with the interests of the Trust. The Chief Executive will ensure that such declarations are formally recorded.
- 8.4 **Canvassing of and Recommendations by, Directors in Relation to Appointments** - Canvassing of directors or Governors of the Trust or members of any committee of the Trust directly or indirectly for any appointment under the Trust shall disqualify the candidate for such

appointment. The contents of this paragraph of the Standing Order shall be included in application forms or otherwise brought to the attention of candidates.

- 8.5 A director of the Trust shall not solicit for any person any appointment under the Trust or recommend any person for such appointment: but this paragraph of this Standing Order shall not preclude a director from giving written testimonial of a candidate's ability, experience or character for submission to the Trust.
- 8.6 Informal discussions outside appointments panels or committees, whether solicited or unsolicited, should be declared to the panel or committee.
- 8.7 **Relatives of Directors or Officers** - Candidates for any staff appointment shall when making application disclose in writing whether they are related to any director or the holder of any office under the Trust. Failure to disclose such a relationship shall disqualify a candidate and, if appointed, render him or her liable to instant dismissal.
- 8.8 The directors and every officer of the Trust shall disclose to the Chief Executive any relationship with a candidate of whose candidature that director or officer is aware. It shall be the duty of the Chief Executive to report to the Trust any such disclosure made.
- 8.9 On appointment, directors (and prior to acceptance of an appointment in the case of executive directors) should disclose to the Trust whether they are related to any other director or holder of any office within the Trust.
- 8.10 Where the relationship of an officer or another director to a director of the Trust is disclosed, the Standing Order headed 'Disability of directors in proceedings on account of pecuniary interest' (SO 7) shall apply.

9. TENDERING AND CONTRACT PROCEDURE

- 9.1 **Duty to comply with Standing Orders** - The procedure for making all contracts by or on behalf of the Trust shall comply with these Standing Orders (except where SO 3.26 (Waiver of SOs) is applied).
- 9.2 **EU Directives Governing Public Procurement** - Directives by the Council of the European Union promulgated by the Department of Health (DH) prescribing procedures for awarding all forms of contracts shall have effect as if incorporated in these Standing Orders.
- 9.3 The Trust shall comply as far as is practicable with the requirements of the DH "Capital Investment Manual". In the case of management consultancy contracts the Trust shall comply as far as is practicable with DH and Treasury guidance. In all cases, the Trust shall comply with any relevant guidance issued by NHS Improvement.
- 9.4 **Formal Competitive Tendering** - The Trust shall ensure that competitive tenders are invited for the supply of goods, materials and manufactured articles and for the rendering of services including all forms of management consultancy services; for the design, construction and maintenance of building and engineering works (including construction and maintenance of grounds and gardens); and for disposals.

- 9.5 Formal tendering procedures may be waived by officers to whom powers have been delegated by the Chief Executive, as identified in the schedule "Authorised Limits" appended to Standing Financial Instructions. This authority is subject to formal identification of the reason for such waiver, which would normally be one or more of the following reasons:-
- (a) where the supply is proposed under special arrangements negotiated by the DH in which event the said special arrangements must be complied with; or
 - (b) the timescale genuinely precludes competitive tendering. Failure to plan the work properly is not a justification for single tender; or
 - (c) specialist expertise or products is required and is available from only one source; or
 - (d) the task is essential to complete the project, and arises as a consequence of a recently completed assignment and engaging different consultants for the new task would be inappropriate; or
 - (e) there is a clear benefit to be gained from maintaining continuity with an earlier project. However in such cases the benefits of such continuity must outweigh any potential financial advantage to be gained by competitive tendering; or

The limited application of the waiver rules should not be used to avoid competition or for administrative convenience or to award further work to a consultant originally appointed through a competitive procedure.

- 9.6 Except where SO 9.5, or a requirement under SO 9.2, applies, the Board shall ensure that invitations to tender are sent to a sufficient number of firms/individuals to provide fair and adequate competition as appropriate, in most cases this will mean a minimum of four firms/individuals but this may differ when there are a limited number of firms/individuals in a specific product/service marketplace, having regard to their capacity to supply the goods or materials or to undertake the services or works required.
- 9.7 The Board shall ensure that normally the firms/individuals invited to tender (and where appropriate, quote) are among those on approved lists (see Annex Section 5). Where in the opinion of the officer responsible for procuring the supply it is desirable to seek tenders from firms not on the approved lists, the reason shall be recorded in writing to the Chief Executive (see Annex).
- 9.8 Tendering procedures are set out in the Annex.
- 9.9 **Quotations** - where the intended expenditure or income is in line with the sum agreed by the Board and incorporated into the Appendix 1 ("Authorised Limits") to the Trust's Standing Financial Instructions.
- 9.10 Where quotations are required under SO 9.9 they should be obtained from at least three firms/individuals as per the Annex based on specifications or terms of reference prepared by, or on behalf of, the Board.

- 9.11 Quotations should be in writing unless the chief executive or his or her nominated officer determines that it is impractical to do so in which case quotations may be obtained by telephone. Confirmation of telephone quotation should be obtained as soon as possible and the reasons why the telephone quotation was obtained should be set out in a permanent record.
- 9.12 All quotations should be treated as confidential and should be retained for inspection.
- 9.13 The chief executive or his or her nominated officer should evaluate the quotations and select the one which gives the best value for money. If this is not the lowest then this fact and the reasons why the lowest quotation was not chosen should be in a permanent record.

9.15 **Where tendering or competitive quotation is not required**

Where tenders or quotations are not required, because expenditure is below the threshold referred to in 9.9 above the Trust shall procure goods and services in accordance with procurement procedures approved by the Board.

- 9.16 The chief executive shall be responsible for ensuring that best value for money can be demonstrated for all services provided under contract or in-house. The Board may also determine from time to time that in-house services should be market tested by competitive tendering (SO 11).
- 9.17 **Private Finance** - When the Board proposes, or is required, to use finance provided by the private sector the following should apply:
- (a) The chief executive shall demonstrate that the use of private finance represents value for money and genuinely transfers risk to the private sector.
 - (b) The proposal must be specifically agreed by the Board of Directors in the light of such professional advice as should reasonably be sought in particular with regard to vires.
 - (c) The selection of a contractor/finance company must be on the basis of competitive tendering or quotations.
- 9.18 **Contracts** - The Trust may only enter into contracts within its statutory powers and shall comply with:
- (a) these Standing Orders;
 - (b) the Trust's SFIs;
 - (c) EU Directives and other statutory provisions;
 - (d) any relevant directions issued by the Regulator;
 - (e) such of the NHS Standard Contract Conditions as are applicable.

Where appropriate contracts shall be in or embody the same terms and conditions of contract as was the basis on which tenders or quotations were invited.

- 9.19 In all contracts made by the Trust, the Board shall endeavour to obtain best value for money. The chief executive shall nominate an officer who shall oversee and manage each contract on behalf of the Trust.
- 9.20 **Personnel and Agency or Temporary Staff Contracts** - The chief executive shall nominate officers with delegated authority to enter into contracts for the employment of and to authorise regrading of staff, and to enter into contracts for the employment of agency staff or temporary staff.
- 9.21 **Healthcare Services Contracts** - Unlike contracts made by an NHS Trust, contracts made between an NHS Foundation Trust and other NHS bodies do give rise to contractual rights and liabilities. This rule applies to all types of contract, including for example partnership agreements and contracts for the supply of healthcare.
- 9.22 The chief executive shall nominate officers with power to negotiate for the provision of healthcare services with purchasers of healthcare.
- 9.23 **Other Contracts for Services provided by the Trust** - the chief executive shall nominate officers with powers to negotiate such contracts and will ensure that contract documentation is signed by a duly authorised officer.
- 9.24 **Cancellation of Contracts** - Except where specific provision is made in model Forms of Contracts or standard Schedules of Conditions approved or adopted for use by the Trust and in accordance with Standing Orders 9.2 and 9.3, there shall be inserted in every written contract a clause empowering the Trust to cancel the contract and to recover from the contractor the amount of any loss resulting from such cancellation, if the contractor shall have offered, or given or agreed to give, any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of the contract or any other contract with the Trust, or for showing or forbearing to show favour or disfavour to any person in relation to the contracts or any other contract with the Trust, or if the like acts shall have been done by any person employed by him or her or acting on his or her behalf (whether with or without the knowledge of the contractor), or if in relation to any contract with the Trust the contractor or any person employed by him or her or acting on his or her behalf shall have committed any offence under the Prevention of Corruption Acts 1889 and 1916 and other appropriate legislation.
- 9.25 **Determination of Contracts for Failure to Deliver Goods or Material** - There shall be inserted in every written contract for the supply of goods or materials a clause to secure that, should the contractor fail to deliver the goods or materials or any portion thereof within the time or times specified in the contract, the Trust may without prejudice determine the contract either wholly or to the extent of such default and purchase other goods, or material of similar description to make good (a) such default, or (b) in the event of the contract being wholly determined the goods or materials remaining to be delivered. The clause shall further secure that the amount by which the cost of so purchasing other goods or materials exceeds the amount which would have been payable to the contractor in respect of the goods or materials shall be recoverable from the contractor.
- 9.26 **Contracts Involving Funds Held on Trust** – shall do so individually to a specific named fund. Such contracts involving charitable funds shall comply with the requirements of the Charities Acts.

10. DISPOSALS

Competitive tendering or quotation procedures shall not apply to the disposal of:

- (a) any matter in respect of which a fair price can be obtained only by negotiation or sale by auction as determined (or pre-determined in a reserve) by the chief executive or his or her nominated officer;
- (b) obsolete or condemned articles and stores, which may be disposed of in accordance with the procurement policy of the Trust;
- (c) items to be disposed of with an estimated sale value of less than £1,000.
- (d) items arising from works of construction, demolition or site clearance, which should be dealt with in accordance with the relevant contract;
- (e) land or buildings concerning which guidance has been issued by the Independent Regulator but subject to compliance with such guidance.
- (f) Pharmaceutical and hazardous waste.
- (g) IT equipment where disposal requires the specialised removal or destruction of sensitive information stored on such devices.

11. IN-HOUSE SERVICES

- 11.1 In all cases where the Trust determines that in-house services should be subject to competitive tendering the following groups shall be set up:
- (a) Specification group, comprising the chief executive or nominated officer(s) and specialist(s).
 - (b) In-house tender group, comprising representatives of the in-house team, a nominee of the chief executive and technical support.
 - (c) Evaluation group, comprising at minimum, a specialist officer, a procurement officer and a representative of the finance director. The requirement for Trust Board representation in the evaluation group will be determined by the potential contract value and by reference to the Appendix ("Authorised Limits") to the Trust's Standing Financial Instructions.
- 11.2 All groups should work independently of each other but individual officers may be a member of more than one group. No member of the in-house tender group may, however, participate in the evaluation of tenders.
- 11.3 The evaluation group shall make recommendations to the Board.
- 11.4 The chief executive shall nominate an officer to oversee and manage the contract.

12. CUSTODY OF SEAL AND SEALING OF DOCUMENTS

- 12.1 **Custody of Seal** - The Common Seal of the Trust shall be kept by the trust secretary in a secure place.
- 12.2 **Sealing of Documents** - The Seal of the Trust shall not be fixed to any documents unless the sealing has been authorised by a resolution of the Board or otherwise under the authority of the Board through a resolution of the Board formally delegating such authorisation.
- 12.3 The seal shall be attested by at least two directors and the authorisation may specify which directors shall attest the seal on that occasion.
- 12.4 **Register of Sealing** – The trust secretary will ensure that an entry of every sealing shall be made and numbered consecutively in a book provided for that purpose, and shall be signed by the persons who shall have approved and authorised the document and those who attested the seal. A report of all sealing shall be made to the Trust at least quarterly. (The report shall contain details of the seal number, the description of the document and date of sealing).

13. SIGNATURE OF DOCUMENTS

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

14. MISCELLANEOUS

- 14.1 **Standing Orders to be given to Directors and Officers** - It is the duty of the chief executive to ensure that existing directors and officers and all new appointees are notified of and understand their responsibilities within Standing Orders and SFIs. Updated copies shall be issued to staff designated by the chief executive. New designated officers shall be informed in writing and shall receive copies where appropriate of SOs.
- 14.2 **Documents having the standing of Standing Orders** - Standing Financial Instructions and Scheme of Delegation shall have the effect as if incorporated into SOs.
- 14.3 **Review of Standing Orders** - Standing Orders shall be reviewed annually by the Trust. The requirement for review extends to all documents having the effect as if incorporated in SOs.

Annex

TENDERING PROCEDURE

1. Invitation to Tender

- 1.1 All invitations to tender on a formal competitive basis shall state that no tender will be considered for acceptance unless submitted in either:
- (a) a plain, sealed package bearing a pre-printed label supplied by the Trust (or bearing the word 'Tender' followed by the subject to which it relates and the latest date and time for the receipt of such tender); or
 - (b) in a special envelope supplied by the Trust to prospective tenderers and the tender envelopes/packages shall not bear any names or marks indicating the sender.
- 1.2 Every tender for goods, materials, manufactured articles supplied as part of a works contract and services shall embody such of the main contract conditions as may be appropriate in accordance with the contract forms described in Section 1.3 and 1.4 below.
- 1.3 Every tender for building and engineering works, except for maintenance work only where Estmancode guidance should be followed, shall embody or be in the terms of the current edition of the appropriate Joint Contracts Tribunal (JCT) or Department of the Environment (GC/Wks) standard forms of contract amended to comply with Concode. When the content of the works is primarily engineering, tenders shall embody or be in the terms of the General Conditions of Contract recommended by the Institutions of Mechanical Engineers and the Association of Consulting Engineers (Form A) or, in the case of civil engineering work, the General Conditions of Contract recommended by the Institution of Civil Engineers. The standard documents should be amended to comply with Concode and, in minor respects, to cover special features of individual projects. Tendering based on other forms of contract may be used only after prior consultation with the DH.
- 1.4 Every tender for goods, materials, services (including consultancy services) or disposals shall embody such of the NHS Standard Contract Conditions as are applicable. Every tenderer must have given or give a written undertaking not to engage in collusive tendering or other restrictive practice.

2. Receipt, Safe Custody and Record of Formal Tenders

- 2.1 Formal competitive tenders shall be addressed to the chief executive.
- 2.2 The date and time of receipt of each tender shall be endorsed on the unopened tender envelope/package.
- 2.3 The chief executive shall designate an officer or officers, not from the originating department, to receive tenders on his or her behalf and to be responsible for their endorsement and safe custody until the time appointed for their opening, and for the records maintained in accordance with Section 3.

3. Opening Formal Tenders

- 3.1 As soon as practicable after the date and time stated as being the latest time for the receipt of tenders they shall be opened in the presence of two senior officers designated by the chief executive and not from the originating department.
- 3.2 Every tender received shall be stamped with the date of opening and initialed by two of those present at the opening.
- 3.3 A permanent record shall be maintained to show for each set of competitive tender invitations dispatched:
 - (a) the names of firms/individuals invited;
 - (b) the names of and the number of firms/individuals from which tenders have been received;
 - (c) closing date and time;
 - (d) date and time of opening;

and the record shall be signed by the persons present at the opening.

- 3.4 Except as in Section 3.5 below, a record shall be maintained of all price alterations on tenders, i.e. where a price has apparently been altered, and the final price shown shall be recorded. Every price alteration appearing on a tender and the record should be initialed by two of those present at the opening.
- 3.5 A report shall be made in the record if, on any one tender, price alterations are so numerous as to render the procedure Section 3.4 unreasonable.

4. Admissibility and Acceptance of Formal Tenders

- 4.1 In considering which tender to accept, if any, the designated officers shall have regard to whether value for money will be obtained by the Trust and whether the number of tenders received provides adequate competition. In cases of doubt they shall consult the chief executive.
- 4.2 Tenders received after the due time and date will not be considered unless it is clear that the reason for late receipt is due entirely to an internal failing within the Trust.
- 4.3 Incomplete tenders (i.e. those from which information necessary for the adjudication of the tender is missing) and amended tenders (i.e. those amended by the tenderer upon his or her own initiative either orally or in writing after the due time for receipt) should be dealt with in the same way as late tenders under Section 4.2.
- 4.4 Where examination of tenders reveals errors which would affect the tender figure, the tenderer is to be given details of such errors and afforded the opportunity of confirming or withdrawing his or her offer.
- 4.5 Necessary discussions with a tenderer of the contents of his or her tender, in order to elucidate technical points etc., before the award of a contract, need not disqualify the tender.

- 4.6 While decisions as to the admissibility of late, incomplete, or amended tenders are under consideration and while re-tenders are being obtained, the tender documents shall remain strictly confidential and kept in safekeeping by an officer designated by the chief executive.
- 4.7 Where only one tender/quotation is received the Trust shall, as far as practicable, ensure that the price to be paid is fair and reasonable.
- 4.8 A tender other than the lowest (if payment is to be made by the Trust), or other than the highest (if payment is to be received by the Trust) shall not be accepted unless for good and sufficient reason the Board or a delegated officer decides otherwise and record that decision in their minutes.
- 4.9 Where the form of contract includes a fluctuation clause all applications for price variations must be submitted in writing by the tenderer and shall be approved by the Chief Executive or nominated officer.
- 4.10 All Tenders should be treated as confidential and should be retained for inspection in line with the Trust's retention documents policy.

5. Lists of Approved Firms

- 5.1 The Trust shall compile and maintain, and the officers responsible for procuring the supply shall keep, lists of approved firms and individuals from whom tenders may be invited, as provided for in SO 9.7, and shall keep these under review. The lists shall be selected from all firms which have applied for permission to tender provided that:
 - (a) in the case of building, engineering and maintenance works, the chief executive is satisfied on their capacity, conditions of labour, etc., and that the finance director is satisfied that their financial standing is adequate.
 - (b) in the case of the supply of goods, materials and related services, and consultancy services the chief executive or the nominated officer is satisfied as to their technical competence etc., and that the finance director is satisfied that their financial standing is adequate.
 - (c) in the case of the provision of healthcare services to the Trust by a private sector provider, the finance director is satisfied as to their financial standing and the chief executive is satisfied as to their technical/medical competence.
- 5.2 The Trust shall arrange for advertisements to be issued as may be necessary, in trade journals, OJEU Website and national newspapers inviting applications from firms for inclusion in the prescribed lists.
- 5.3 If in the opinion of the chief executive or the finance director it is impractical to use a list of approved firms/individuals (for example where specialist services or skills are required and there are insufficient suitable potential contractors on the list), the chief executive should ensure that appropriate checks are carried out as to the technical and financial capability of firms invited to tender or quote.
- 5.4 A permanent record should be made of the reasons for inviting a tender or quote other than from an approved list.

ANNEX 9 – FURTHER PROVISIONS

1. A person may not become a member of the Foundation Trust if within the last five years they have been involved as a perpetrator in an incident of violence or abuse at any NHS hospital or facilities; against any NHS employees or other persons who exercise functions for the purposes of the NHS; against registered volunteers; against patients or the public on NHS premises; or if they are the subject of a security alert. Also, any person may not become or remain a member of the NHS Foundation Trust if in the opinion of the Council of Governors; there are reasonable grounds to believe that they are likely to behave in a way detrimental to the interests of the Trust.
2. A member shall cease to be a member if:
 - they resign by notice to the Secretary;
 - they die;
 - they are expelled from membership under this constitution;
 - they cease to be entitled under this constitution to be a member of any of the public constituencies or of any of the classes of the staff constituency;
 - if after enquiries made in accordance with a process approved by the Council of Governors, they fail to establish that they wish to continue to be a member of the Trust.
3. A member may be expelled by a resolution approved by not less than two-thirds of the members of the Council of Governors present and voting at a General Meeting. The following procedure is to be adopted:
 - Any member may complain to the Trust Secretary that another member has acted in a way detrimental to the interests of the Trust.
 - The Chair of the Council of Governors, assisted by the Trust Secretary, will judge the manner in which the complaint should be managed.
 - If appropriate, the Council of Governors will consider the complaint having taken such steps as it considers appropriate to ensure that the point of view of the members involved is heard and may either:
 - dismiss the complaint and take no further action; or
 - arrange for the complaint to be considered at the next General 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 next General Meeting of the Council of Governors.
 - 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.
 - If the member complained of fails to attend the meeting without reasonable cause the meeting may proceed in their absence.
 - The Council of Governors will take a view on the complaint and may decide to expel the member from membership of the Foundation Trust. To effect expulsion from membership, the Council of Governors will adopt a resolution approved by not less than two-thirds of the members of the Council of Governors present and voting at a General Meeting.
 - A person expelled from membership will cease to be a member upon the declaration by the Chairman of the meeting that the resolution to expel them is carried.

4. A member who is expelled may apply for re-admission to membership. This application is to be made in writing to the Chairman, who will arrange for the application to be considered by the next General meeting of the Council of Governors. No person who has been expelled from membership is to be re-admitted except by a resolution carried by the votes of two-thirds of the members of the Council of Governors present and voting at a General Meeting.
5. The Trust will have a Trust Secretary, who may be appointed and removed by resolution of the Chair and Chief Executive jointly.
6. The Trust Secretary and members of the Council of Governors and Board of Directors who act honestly and in good faith will not have to meet out of their personal resources any personal civil liability which is incurred in the execution or purported execution of their functions, save where they have acted recklessly and the Trust may also take out and maintain for their benefit insurance against such risks. Any costs arising in this way will be met by the Trust.
 - 6.1. The Council may make amendments to this Constitution but where these cannot be agreed with both the Board and Council then these will be made subject to approval of NHS Improvement, subject to paragraph 6.2 below.
 - 6.2. No proposals for amendment of this Constitution will be put to NHS Improvement unless it has been approved by three quarters of those Governors present and voting at a meeting of the Council of Governors.
7. The validity of any act of the Trust is not affected by any vacancy among the directors or the Governors or by any defect in the appointment of any director or governor.
 - 7.1 If:
 - (a) an executive director is temporarily unable to perform his or her duties due to illness or some other reason (the "Absent Director"); and
 - (b) the board of directors agree that it is inappropriate to terminate the Absent Director's term of office and appoint a replacement director; and
 - (c) the board of directors agree that the duties of the Absent Director need to be carried out;
then the non-executive directors may appoint an acting director as an additional director to carry out the Absent Director's duties temporarily.
 - 7.2. For the purposes of paragraph 8.1 of this Annex, the maximum number of directors that may be appointed under paragraph 18.2 of the Constitution shall be relaxed accordingly.
 - 7.3. The acting director will vacate office as soon as the Absent Director returns to office.
 - 7.4. An acting director shall be responsible for his or her own acts and defaults and he or she shall not be deemed to be the agent of the Absent Director.
8. When a vacancy arises for one or more elected Governors, the Council of Governors shall have the option to take from the list of members who stood for election at the most recent election of Governors for the class or constituency in question whichever member who was

not elected as a governor at the recent election but had secured the next most votes at that time. This procedure, which shall be an uncontested election for the purposes of the Model Rules for Elections as they apply to the Trust, shall be available to the Governors on 2 occasions within 12 months of the previous election. Governors appointed in this way shall hold office for a minimum of 6 months from their appointment but, subject thereto, shall hold office until the earlier of the conclusion of the next election of Governors and (except where the vacancy arose through expiry of a term of office) the date on which would have expired the term of office of that Governor whose cessation of office gave rise to the vacancy.

9. The minimum age for membership of this Trust is 14 years old. There is no upper age limit.

ANNEX 10 – TRUST PRINCIPLES

Trust Principles of Conduct

The Seven Principles of Public Life, also known as the ‘Nolan Principles’ of selflessness, integrity, objectivity, accountability, openness, honesty and leadership should be upheld by all employees and elected and appointed Governors of the Dudley Group of Hospitals NHS Foundation Trust

The **Seven Principles of Public Life** which apply to everyone engaged in public service are:

Selflessness Holders of public office should act solely in terms of the public interest. They should not seek to gain financial or other benefits for themselves, their family or their friends.

Integrity Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might seek to influence them in the performance of their official duties.

Objectivity In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit. This includes a commitment to promote racial and religious tolerance, and to be aware of community diversity and to be trained in that context.

Accountability Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office. Everything done by those who work in the Trust must be able to stand the test of parliamentary scrutiny, public judgments on propriety and professional codes of conduct.

Openness Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands. There should be sufficient transparency about the Trust’s activities to promote confidence between the Trust and its staff, patients and the public.

Honesty Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest. There should be an absolute standard of honesty in dealing with the assets of the Trust: integrity should be the hallmark of all personal conduct in decisions affecting patients, staff and suppliers, and in the use of information acquired in the course of employment.

Leadership Holders of public office should promote and support these principles by leadership and example.

It is an offence under the Prevention of Corruption Acts 1906 and 1916 for an employee corruptly to accept any inducement or reward for doing, or refraining from doing anything, in his or her official capacity, or corruptly showing favour, or disfavour, in the handling of contracts

Further Guidance

Employees and Governors are expected to:

- ensure that the interests of patients remain paramount at all times

- act impartially in all their work
- adhere to the regulations as set out in the prevailing legislation relating to the Bribery Act
- refuse gifts, benefits, hospitality or sponsorship of any kind (including attendance at conferences) which might reasonably be seen to compromise their personal judgment or integrity, and to avoid seeking to exert influence to obtain preferential consideration. All such gifts should be returned and hospitality refused
- declare and register gifts, benefits, or sponsorship of any kind, in accordance with time limits agreed locally, (provided that they are worth at least £25), whether refused or accepted. In addition gifts should be declared if several small gifts worth a total of over £100 are received from the same or closely related source in a 12-month period
- declare and record financial or personal interest (e.g. company shares, research grant) in any organisation with which they have to deal, and be prepared to withdraw from those dealings if required, thereby ensuring that their professional judgment is not influenced by such considerations
- make it a matter of policy that offers of sponsorship that could possibly breach these principles and guidance will be reported to the Board
- not misuse their official position or information acquired in the course of their official duties, to further their private interests or those of others
- ensure professional registration (if applicable) and/or status are not used in the promotion of commercial products or services
- beware of bias generated through sponsorship, where this might impinge on professional judgment and impartiality
- neither agree to practice under any conditions which compromise professional independence or judgment, nor impose such conditions on other professionals.

Anyone requiring further advice should contact their line manager in the first instance, or for Governors, the Foundation Trust Secretary. If the line manager is unable to decide then the Foundation Trust Secretary should be consulted.

Failure to adhere to the Trust's rules may lead to disciplinary action up to and including dismissal, or for Governors, disqualification from becoming or continuing as a Governor.

RESERVATION OF POWERS AND SCHEME OF DELEGATION

June 2019

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- 1 Introduction
- 2 Purpose
- 3 Reservation of Powers to the Board of Directors
- 4 Reservation of power Delegated by the Board to Committees
- 5 Summary of delegated authorities (accountable officer memorandum)
- 6 Scheme of delegation derived from the code of conduct and accountability

Definitions

NHSI is the NHS improvement

CCG is the Dudley Clinical Commissioning Group

Reservation of powers and scheme of delegation

1. Introduction

This document sets out the powers reserved to the Board of Directors and the Scheme of Delegation. Notwithstanding any specific delegation, the Board of Directors remains accountable for all of its functions, including those which have been delegated. Therefore the Board of Directors expect to receive information about the exercise of delegated functions to enable it to maintain a monitoring role. It is consistent with the Scheme of Delegation with the NHS Code of Conduct and Accountability.

All powers of the Trust which have not been retained as reserved by the Board of Directors or delegated to a Board Committee shall be exercised on behalf of the Board of Directors by the chief executive or other executive directors. The Scheme of Delegation identifies any functions which the chief executive shall perform personally and those delegated to other directors or officers. All powers delegated by the chief executive can be re-assumed by him/her should the need arise.

2. Purpose

The purpose of this document is to clearly identify the control framework set by the Board and identifies the powers and functions and who will perform these as in the:

- Decisions Reserved for the Board
- Decisions and duties delegated by the Board to committees
- Standing Financial instructions
- Standing Orders

3. RESERVATION OF POWER TO THE BOARD OF DIRECTORS

| Reserved to/ Delegated to | Reserved / Delegated Matter |
|------------------------------|--|
| Trust Board | Ratify Reservation of Powers to the Board of Directors and Council of Governors, Schedule of Decisions/Duties Delegated by the Board of Directors |
| Trust Board | The Board may determine any matter, for which it has delegated or statutory authority, it wishes in full session within its statutory powers |
| Trust Board | Approve a scheme of delegation of powers from the Board to Committees |
| Trust Board | Adopt the Standing Financial Instructions which set out the responsibilities of individuals |
| Trust Board | Approve Standing Orders, a schedule of matters reserved to the Board and Standing Financial Instructions for the Regulation of its proceedings and business |
| Trust Board | Annually review Standing Orders, a schedule of matters reserved to the Board and Standing Financial Instructions for the Regulation of its proceedings and business |
| Trust Board | Adopt the organisation structures, processes and procedures to facilitate the discharge of business by the Trust and to agree modifications thereto |
| Trust Board | Suspend Standing Orders |
| Trust Board | Vary or amend a Standing Order |
| Trust Board | Approve variations or amendments to the Trusts constitution in conjunction with the Council of Governors |
| Trust Board | Ratify any urgent decisions taken by the chair and chief executive in Public session |
| Trust Board | Require and receive the declaration of Board members interests that may conflict with those of the Trust and determining the extent to which that Member may remain involved in the matter under consideration |
| Trust Board | At the next formal meeting of the Board of Directors ratify any urgent decisions taken by the chair of the Trust and chief executive |
| Trust Board | Approve arrangements for dealing with complaints |
| Trust Board | Determine the independence of the non-executive directors |
| Trust Board | Regularly review and at all times maintain and ensure the capacity and capability of the Trust to provide the mandatory goods and services as per the Provider License. (SFIs para 7.1) |
| Trust Board | Appoint and disband the sub-committees that are directly accountable to the Board of Directors |
| Trust Board | Receive reports from its sub-committees including those that the Trust is required to establish and take appropriate action |
| Trust Board | Confirm the recommendations of the Trust's sub-committees where they do not have the power to make such a decision |
| Trust Board | Ratify the terms of reference and reporting arrangements of all sub-committees that are formally established by the Board of Directors |
| Trust Board | Discipline members of the Board or employees who are in breach of statutory requirement of the Trusts constitution |
| Trust Board | Ratify a memorandum of understanding between the chair of the Trust and the chief executive setting out a division of responsibilities, review any modifications to that memorandum |

| Reserved to/ Delegated to | Reserved / Delegated Matter |
|------------------------------|---|
| Trust Board | Approve the wording of any statement of the Board of Directors pertaining to a dispute between the Council of Governors and the Board of Directors |
| Trust Board | Approve and monitor the Trust's risk management framework |
| Trust Board | Decide on whether the Trust will insure through the risk pooling schemes administered by the NHS Litigation Authority |
| Trust Board | Make any arrangements it considers appropriate to the provision of indemnity insurance or similar arrangements for the benefit of the Trust or directors to meet all or any liability which are properly the liability of the Trust recognising the Public Benefit Corporation status |
| Trust Board | Approve any recording by members of the public of any public Board of Directors' meeting |
| Trust Board | Resolve to exclude members of the public from any meeting or part of a meeting |
| Trust Board | Determine that certain matters appear on each agenda of the Board of Directors' meeting |
| Trust Board | Provide permission that governors, directors, officers or any employee or representative of the Trust in attendance at a private meeting or private part of a meeting of the Board of Directors may disclose the contents of the papers or any discussion |
| Trust Board | Send a copy of the agenda of the meeting of the Board of Directors to the Council of Governors |
| Trust Board | Send a copy of the minutes of the public Board of Directors' meeting to the Council of Governors |
| Trust Board | Determine the times and places for the meetings of the Board of Directors |
| Trust Board | Approval of the Trust's banking arrangements |
| Trust Board | Approve arrangements relating to the discharge of the Trusts responsibilities as a corporate trustee for funds held on Trust |
| Trust Board | Approve arrangements relating to the discharge of the Trusts responsibilities for patients property |
| Trust Board | Ratify any changes to the overall number of non-executive directors and executive directors |
| Trust Board | Appoint one of the independent non-executive directors as the senior independent director |
| Trust Board | Appoint, appraise, discipline and dismiss executive directors |
| Trust Board | Advise a partner organisation of concerns regarding any individual that an organisation may appoint to the Council of Governors (i.e. an appointed governor) |
| Trust Board | Approve the appointment of any advisor to assist or advise the Council of Governors |
| Trust Board | Appoint and dismiss the trust secretary |
| Trust Board | Consider and approve proposals presented by the chief executive for setting remuneration and conditions of service for those employees and officers not covered by the Remuneration Committee |
| Trust Board | Approve procedures presented by the chief executive for the determination of commencing pay rates, condition of service etc. for employees |
| Trust Board | Approve the directors' Code of Conduct |
| Trust Board | Appoint and dismiss Committees (and individual members) that are directly accountable to the Board |
| Trust Board | Confirm appointment of members of any committee of the Trust as representatives on outside bodies |
| Trust Board | Approve proposals of the Remuneration Committee regarding directors and the senior employees and those of the chief executive for staff not covered by the Remuneration Committee |

| Reserved to/ Delegated to | Reserved / Delegated Matter |
|------------------------------|--|
| Trust Board | Define the aim, goals and strategic objectives of the Trust |
| Trust Board | Ratify any supporting (underpinning) strategies |
| Trust Board | Approve the capital programme and capital budgets annually |
| Trust Board | Ratify proposal for acquisition, disposal or change of use of land and/or buildings |
| Trust Board | Approve the annual Business Plan and Annual Business Plan |
| Trust Board | Approve any new capital investments / business cases of £500k or more |
| Trust Board | Approve annual revenue budgets as set out in the Budgetary Control Framework and any variations of £500k or more per annum and ensure these are consistent with the plans outlined in the operational plan. |
| Trust Board | Ratify proposals for acquisition, disposal or change of use of land and/or buildings of £1m or more |
| Trust Board | Approve any new Private Finance Initiative (PFI) contract and/or significant changes to PFI contracts of £500k or more (for avoidance of doubt this would include any refinancing agreements). |
| Trust Board | Approve proposals in individual cases for the write-off of losses or making of special payments of £10k or more and all those of a novel or contentious nature |
| Trust Board | Ratify the introduction or discontinuance of any significant activity or operation. An activity or operation shall be regarded as significant where it is of a novel or contentious nature, or if it has a gross annual income in excess of £1m per annum |
| Trust Board | Approve orders for items of expenditure in respect of service directorate and corporate budgets where the value is for £500k or more |
| Trust Board | Approve individual compensation payment over £10k except where these are made in accordance with the NHS Litigation authority instruction |
| Trust Board | Approve the Care Quality Commission Registration Declaration |
| Trust Board | Ratify the Trust's Quality Report prior to submission |
| Trust Board | Ratify any monitoring returns prior to submission to Regulators, ensuring these are submitted at such frequency as is required |
| Trust Board | Ratify the Trust's forward plan prior to submission to commissioners, ensuring that it has regard to the views of the Council of Governors |
| Trust Board | Receipt and adoption of the Trust's Annual Report and Annual Accounts |
| Trust Board | Receive recommendations from the evaluation team on matters regarding in-house services that are subject to competitive tendering |
| Trust Board | Receive reports from the chief financial officer on financial performance against budget and plans |
| Trust Board | Approve annually Trusts proposed organisational development proposals |
| Trust Board | Review the use of NHS Litigation Authority Risk Pooling Schemes |
| Trust Board | Approve the annual Letter of Representation to the external auditors and agreement of proposed action, taking account of the advice, where appropriate of the Audit Committee |
| Trust Board | Receive from the external auditor any Public Interest Report, taking account of advice, where appropriate of the Audit Committee |
| Trust Board | Continuously appraise the affairs of the Trust by means of the provision to the Board reports as it may require from directors, committees, and officers of the Trust, including performance against contractual, regulatory and internal targets, standards and |

| Reserved to/ Delegated to | Reserved / Delegated Matter |
|------------------------------|---|
| | measures. |
| Trust Board | Receipt of reports as the Board sees fit from committees in respect of their exercise of powers delegated |
| Trust Board | To receive Trust wide annual report for example clinical governance and infection control |
| Trust Board | Authorise the use of the Trust seal |

4. RESERVATION OF POWER DELEGATED BY THE BOARD TO COMMITTEES

| Details/ reference | Reserved to/ Delegated to | Reserved / Delegated Matter |
|-----------------------|------------------------------|--|
| | Audit Committee | <p>The Committee will:</p> <ul style="list-style-type: none"> • Review the establishment and maintenance of an effective system of integrated governance, risk management and internal control (clinical and non-clinical) • Advise the Board on internal and external audit services • Monitor compliance with Standing Orders and Standing Financial Instruction • Review the adequacy of underlying assurance process that indicate the degree of achievement of corporate objectives • Review the adequacy of all risk and control related disclosure statements prior to endorsement by the Board of Directors <ul style="list-style-type: none"> • annual governance statement • Head of Internal Audit Statement • External Audit Opinion • Other appropriate independent assurances • Review the adequacy of policies for ensuring compliance with relevant regulatory, legal and code of conduct requirements and related reporting and self-certification • Will seek assurance over the effectiveness of the Trust Whistleblowing processes • Will ensure there is an effective internal audit function that meets government internal Audit Standards and provides independent assurance to the Board • Will review the work and findings of the external auditors and consider the implications and management responses • Review the findings of other significant assurance functions, both internal and external to the Trust and consider the implications for the governance of the organisation • Committee shall satisfy itself that the organisation has adequate arrangements in place for countering fraud and shall review the outcomes of counter fraud work • Monitor the integrity of the financial statements of the Trust and any formal announcements relating to the Trust's financial performance |

| Details/ reference | Reserved to/ Delegated to | Reserved / Delegated Matter |
|-----------------------|--|---|
| | | <ul style="list-style-type: none"> • Ensure that the systems for financial reporting to the Board, including those of budgetary control, are subject to review as to completeness and accuracy of the information provided to the Board • Review the Annual Report, Quality Accounts, Clinical Audit plan and financial statements before submission to the Board |
| | Remuneration and Nominations Committee | <p>The Committee will:</p> <ul style="list-style-type: none"> • Advise the Board about appropriate remuneration and terms of service for chief executive and other executives including: <ul style="list-style-type: none"> • All aspects of salary • Provisions for other benefits, including pensions and care • Arrangements for the termination of employment and other contractual terms • Determine any monetary severance arrangements for the Trust's chief executive and executive directors. • Review and determine expenses payable to governors • Evaluate the balance of skills, knowledge and experience on the Board of Directors and to identify those required for appointments of the Trust chair, non-executive directors, chief executive and executive directors • For the appointment of the chief executive and executive directors, to agree a job description and person specification for the role and capabilities required • To agree and manage the nominations, appointments and re-appointments processes for: <ul style="list-style-type: none"> o chief executive o executive directors • To meet, without the chair, chief executive and director of human resources, to review the performance of the Chair on a regular basis • To explore any reported concerns and compliance relating to the Trust's chief executive and non-executive directors in relation to Fit and Proper Person demands |
| | Clinical Quality Safety and Patient Experience Committee | <p>The Committee will:</p> <ul style="list-style-type: none"> • Identify and advise on quality improvement priorities of service areas, receive exception reports and external reviews of provider services and ensure appropriate action is identified and monitored • Ensure that the Trust fulfils its obligations with regard to the Health Act (2009) and NHSI in the production of an Annual Quality Account and Report • Scrutinise Quality and Patient Safety within the organisation and provide assurance to the Board, including actions in place to drive improvements and mitigate risks • Review, drive improvement and learn from patient experience and complaints across the organisation • Review quarterly claims report, identifying trends and themes and lessons learned, being assured of learning and completed actions • Review and monitor compliance with new and existing statutory and accreditation standards and legislative requirements • Review assurances received on clinical practice and be advised of the progress of any major quality initiatives in the Trust |

| Details/ reference | Reserved to/ Delegated to | Reserved / Delegated Matter |
|-----------------------|--|---|
| | | <ul style="list-style-type: none"> • Review the effectiveness of the Trust's arrangements for the systematic monitoring of mortality and other patient outcomes • Review and monitor compliance the Quality priority targets prior to reporting progress to the Trust Board • Monitor the effectiveness, investigation and learning from incidents, including Serious Incidents (SIs), Near Misses and other incidents • Review the outcomes of investigations and external inspections, triangulating information from several sources to ensure that there is sufficient detail to enable systemic failings in patient care to be identified • Review, scrutinise and challenge clinical unit compliance with national safety alerts (e.g. National Patient Safety Agency, Medical Device Alert) • Review the Trust's research and development plans ensuring there is adequate linkage and relevance to the Trust's quality priorities and evidence of developments and improvements in care • Review Clinical audit plans to ensure that programmes are progressing as planned, providing challenge as necessary for any shortfalls in compliance with the plans and receive assurance of improvements in care as a result of the identified outcomes • Review and scrutinise the Trust's compliance with medicine management, investigate variances and review and approve proposed actions to remediate any shortfalls, holding senior staff to account • Review and scrutinise where necessary the quality components of the PFI (Private Finance Initiative) estates contract compliance • Discuss key risks relating to quality and safety practices; to consider, challenge as necessary and monitor plans for mitigation to maintain the risks at their lowest realistic level and advise the Board as appropriate |
| | Workforce and Staff Engagement Committee | <p>The Committee will:</p> <ul style="list-style-type: none"> • Ensure the completion of workforce strategy and the key strategic initiatives to deliver it • Monitor and scrutinize workforce planning priorities are addressed and progressed from annual business planning process • Review the establishment and maintenance of an effective system of Human Resources and Workforce Planning • Review Human Resources, Workforce Planning and Learning and Development and staff engagement to ensure adequate evaluation and monitoring within the Trust and to ensure local and national priorities are being addressed • Review, challenge and agree progress against the workforce key performance indicators (staff appraisals and mandatory training) • Approve the annual workforce data prior to submission to the LETC/B. (Local Education Training Council/Board). • Discuss key strategic risks relating to workforce and employment practice • Review regular reports and plans, on Organisational Development including leadership capability, medical and non- medical education priorities and challenge progress as necessary • Ensure that feedback from the National and other Staff Surveys is appropriately analysed, reported and actions identified and taken |

| Details/ reference | Reserved to/ Delegated to | Reserved / Delegated Matter |
|-----------------------|-----------------------------------|---|
| | | <ul style="list-style-type: none"> • Oversee the development and implementation of a comprehensive education and training strategy to include corporate learning and development requirements • Oversee the development and implementation of the Equality and Diversity Strategy and Health and Wellbeing Strategy and Trusts Staff Engagement Strategy • Monitor compliance with CQC standards that relate to employment • Oversee the adequacy of arrangements for the management of and compliance with the Health and Safety at Work Act 1974 and subsequent amendments including the reporting of non-clinical workforce related incidents and Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (RIDDORS) |
| | Finance and Performance Committee | <p>The Committee will:</p> <ul style="list-style-type: none"> • Undertake detailed scrutiny of processes for the preparation and the content of Strategic and Business Plans (including the local CCG (Clinical Commissioning Group) contract) and Annual Revenue and Capital Budgets • Review, discuss and challenge the Trust Annual Plan and Annual Budgets before submission to the Board of Directors. Monitoring these and investigate variances • Consider and advise on financial aspects of Business Cases for significant revenue or capital expenditure prior to submission to the Board of Directors. Undertaking PIR (post implementation review) of all Business Cases for return on investment/benefits realization • Review opportunities for increasing activity/income from market intelligence analyses • Review minutes of all performance review meetings (including financial performance) held by Directors of the Trust with Clinical Units or Directorates ensuring appropriate challenge has been made and evidence of actions to manage variances in performance detailed • Consider performance against external performance targets set by the Care Quality Commission, NHSI and as agreed in legally binding contracts. In addition review the Trust compliance with relevant financial and performance CQC standards, • Undertake detailed scrutiny of the PFI contract performance with Summit Healthcare (Dudley) Ltd • Review and challenge reports in respect of Transformation and Cost Improvement Programmes • Review and approve local delivery plans (including CQUIN) • Consider regular reports of Trust and Directorate performance in respect of contracts agreed with third party organisations and to take appropriate action • Consider and provide advice to the Board on detailed expenditure, cash flow and working capital plans and forecasts • Commission and consider various financial reports and analyse • Consider and provide advice to the Board on regular financial performance reports and forecasts, focusing particularly on risks and assumptions and provide advice on the short to medium term impact on current performance of internal and external business risks • Review NHSI's risk rating and instigate appropriate action • Undertake detailed financial assessment of the Trust's strategic risks in conjunction with the Board of Directors and monitor trends and progress in reducing financial exposure |

| Details/ reference | Reserved to/ Delegated to | Reserved / Delegated Matter |
|-----------------------|------------------------------|---|
| | | <ul style="list-style-type: none"> Monitor the financial and operational performance of any subsidiary companies wholly or partly owned by the Trust |

5. SUMMARY OF DELGATED AUTHORITIES (Accountable Officer Memorandum)

| Reserved to/ Delegated to | Reserved / Delegated Matter | Details / Reference |
|---|--|--------------------------------------|
| Chief Executive | <ul style="list-style-type: none"> Accountable through the NHS accounting officer to parliament for stewardship of the Trust resources | Accountable Officer Memorandum |
| Chief Executive and Director of Finance | <ul style="list-style-type: none"> Ensure the accounts of the Trust are prepared under principles and in a format directed by NHSI. Accounts must disclose a true and fair view of the Trust income and expenditure and its state of affairs Sign the accounts on behalf of the Board | Accountable Officer Memorandum |
| Chief Executive | <ul style="list-style-type: none"> Sign a statement in the accounts outlining responsibilities as the accounting officer Sign a statement in the accounts outlining responsibilities in respect of Internal Control | Accountable Officer Memorandum |
| Chief Executive | <ul style="list-style-type: none"> Ensure effective management systems that safeguard public funds and assist the Trust chairman to implement requirements of corporate governance including ensuring managers: <ul style="list-style-type: none"> Have a clear view of their objectives and the means to assess achievements in relation to those objectives; Be assigned well defined responsibilities for making best use of resources; and, Have the information, training and access to the expert advice they need to exercise their responsibilities effectively | Accountable Officer Memorandum |
| Chair | <ul style="list-style-type: none"> Implement requirements of corporate governance. | Accountable Officer Memorandum |
| Chief Executive | <ul style="list-style-type: none"> Achieve value for money from the resources available to the Trust and avoid waste and extravagance in the organisation's activities Follow through the implementation of any recommendations affecting good practice as set out on reports from such bodies as the Audit Commission, the National Audit Office (NAO) and Regulators | Accountable Officer Memorandum |
| Director of Finance | <ul style="list-style-type: none"> Operational responsibility for effective and sound financial management and information | Accountable Officer Memorandum |

| Reserved to/ Delegated to | Reserved / Delegated Matter | Details / Reference |
|--|---|--------------------------------------|
| Chief Executive | <ul style="list-style-type: none"> Primary duty to see that director of finance discharges this function | Accountable Officer Memorandum |
| Chief Executive | <ul style="list-style-type: none"> Ensuring that expenditure by the Trust complies with Parliamentary requirements | Accountable Officer Memorandum |
| Chief Executive & Director of Finance | <ul style="list-style-type: none"> The chief executive, supported by director of finance, to ensure appropriate advice is given to the Board on all matters of probity, regularity, prudent and economical administration, efficiency and effectiveness | Accountable Officer Memorandum |
| Chief Executive | <ul style="list-style-type: none"> If the chief executive considers the Board or chairman is doing something that might infringe probity or regularity, he/she should set this out in writing to the chairman and the Board. If the matter is unresolved, he/she should ask the Audit Committee to inquire and if necessary the Board. | Accountable Officer Memorandum |
| Chief Executive | <ul style="list-style-type: none"> If the Board is contemplating a course of action that raises an issue not of formal propriety or regularity but affects the chief executive's responsibility for value for money, the chief executive should draw the relevant factors to the attention of the Board. | Accountable Officer Memorandum |

6. SCHEME OF DELEGATION DERIVED FROM THE CODE OF CONDUCT AND ACCOUNTABILITY

| Reserved to/ Delegated to | Reserved / Delegated Matter |
|--|--|
| Trust Board | <ul style="list-style-type: none"> Approve procedure for declaration of hospitality and sponsorship |
| Trust Board | <ul style="list-style-type: none"> Ensure proper and widely publicised procedures for voicing complaints, concerns about misadministration, breaches of Code of Conduct, and other ethical concerns |
| All Trust Board Members | <ul style="list-style-type: none"> Subscribe to Code of Conduct |
| Board | <ul style="list-style-type: none"> Board Members share corporate responsibility for all decisions of the Board |
| Chairman and non-executive / Officer Members | <ul style="list-style-type: none"> Chairman and Non Officer Members are responsible for monitoring the executive management of the organisation and are responsible to the Secretary of State for the discharge of those responsibilities |
| Board Member non-executive Directors | <ul style="list-style-type: none"> The Trust's most Senior Managers (as defined by the board) are required to meet the Fit & Proper Person requirements including completion of a Fit & Proper Persons Declaration |

| Reserved to/ Delegated to | Reserved / Delegated Matter |
|------------------------------|---|
| Trust Board | <ul style="list-style-type: none"> The Board has six key functions for which it is held accountable: <ul style="list-style-type: none"> To ensure effective financial stewardship through value for money, financial control and financial planning and strategy; To ensure that high standards of corporate governance and personal behaviour are maintained in the conduct of the business of the whole organisation; To appoint, appraise and remunerate senior executives; To ratify the strategic direction of the organisation within the overall policies and priorities of the Government and the NHS, define its annual and longer term objectives and agree plans to achieve them; To oversee the delivery of planned results by monitoring performance against objectives and ensuring corrective action is taken when necessary; and, To ensure effective dialogue between the organisation and the local community on its plans and performance and that these are responsive to the community's needs |
| Trust Board | <ul style="list-style-type: none"> It is the Board's duty to: <ul style="list-style-type: none"> Act within statutory financial and other constraints; Be clear what decisions and information are appropriate to the Board and draw up Standing Orders, a schedule of decisions reserved to the Board and Standing Financial Instructions to reflect these; Ensure that management arrangements are in place to enable responsibility to be clearly delegated to senior executives for the main programmes of action and for performance against programmes to be monitored and senior executives held to account; Establish performance and quality measures that maintain the effective use of resources and provide value for money; Specify its requirements in organising and presenting financial and other information succinctly and efficiently to ensure the Board can fully undertake its responsibilities; and, Establish Audit and Remuneration Committees on the basis of formally agreed terms of reference that set out the membership of the sub-Committees, the limit to their powers, and the arrangements for reporting back to the main Board |
| Chairman | <ul style="list-style-type: none"> It is the Chairman's role to: <ul style="list-style-type: none"> Provide leadership to the Board; Enable all Board Members to make a full contribution to the Board's affairs and ensure that the Board acts as a team; Ensure that key and appropriate issues are discussed by the Board in a timely manner; Ensure the Board has adequate support and is provided efficiently with all the necessary data on which to base informed decisions; Lead non-executive Board Members through a formally-appointed Remuneration Committee of the main Board on |

| Reserved to/ Delegated to | Reserved / Delegated Matter |
|------------------------------|---|
| | <p>the appointment, appraisal and remuneration of the chief executive and (with the latter) other executive Board Members;</p> <ul style="list-style-type: none"> • Appoint non- executive Board Members to an Audit Committee of the main Board; and, • Advise the Secretary of State on the performance of non-executive Board Members |
| Chief Executive | <ul style="list-style-type: none"> • The chief executive is accountable to the chairman and non-executive Members of the Board for ensuring that its decisions are implemented, that the organisation works effectively, in accordance with Government policy and public service values and for the maintenance of proper financial stewardship <ul style="list-style-type: none"> • The chief executive should be allowed full scope, within clearly defined delegated powers, for action in fulfilling the decisions of the Board • The other duties of the chief executive as Accountable Officer are laid out in the Accountable Officer Memorandum |
| Non-executive Directors | <ul style="list-style-type: none"> • Non-executive directors are appointed in accordance with the Constitution to bring independent judgement to bear on issues of strategy, performance, key appointments and accountability through the Governors to stakeholders and to the local community |
| Chairman and Directors | <ul style="list-style-type: none"> • Declaration of conflict of interests |
| Trust Board | <ul style="list-style-type: none"> • NHS Boards must comply with legislation and guidance issued by Regulators, respect agreements entered into by themselves or in on their behalf and establish terms and conditions of service that are fair to the staff and represent good value for taxpayers' money |

ANNEX 12 – ANNUAL MEMBERS’ MEETING

1. ANNUAL MEMBERS’ MEETINGS

- 1.1. The Trust shall hold a members’ meeting for all members (called the “Annual Members’ Meeting”) within six months of the end of each financial year of the Trust.
- 1.2. Annual Members’ Meetings shall be open to all members of the Trust, members of the Council of Governors and members of the Board of Directors, together with representatives of the Trust’s auditors, and open to members of the public. The Trust may invite representatives of the media and any experts or advisors whose attendance they consider to be in the best interests of the Trust to attend any such meeting.
- 1.3. The Board of Directors (or at least one member thereof) shall present to the members at the Annual Members’ Meeting:
 - 1.3.1 the annual accounts;
 - 1.3.2 any report of the auditor on them;
 - 1.3.3 the annual report (including Quality Account);
 - 1.3.4 the results of any election and appointments to the Council Governors, and any other reports or documentation it considers necessary.
 - 1.3.5 If there has been an amendment to the Trusts Constitution which relates to the powers, duties or roles of the Council of Governors, at least one Governor must attend the next Annual Members Meeting and present the amendment/s to member. Members have the right to vote on and veto these types of constitutional amendments.
- 1.4. The Chair of Governors shall give notice to all members’ of the scheduled meeting:
 - 1.4.1 by giving not less than 21 days’ notice
 - 1.4.2. by notice prominently displayed at the Trust’s headquarters and at all sites operated by the Trust
 - 1.4.3 by notice on the Trust’s website; and to the Council of Governors, the Board of Directors, and to the Trust’s auditors, stating the meeting is an Annual Members Meeting including the time, date, place of the meeting, and the business to be dealt with at the meeting at least at least 21 days before the date of the relevant meeting.
 - 1.4.5 meeting papers and any associated documentation to be made available on the Trust website not less than three working days before the meeting
- 1.5. An accidental omission to give notice of a members’ meeting or to send, supply or make available any document or information relating to the meeting, or the non-receipt of any such notice, document or information by a person entitled to receive any such notice, document or information shall not invalidate the proceedings at that meeting.

- 1.6. The chair, or in his or her absence, the deputy chair shall preside at all members' meetings of the Trust. If neither the chair nor the deputy chair is present, the governors present shall elect one of their members to act as chair.
- 1.7. The quorum for a members' meeting shall be 8 (eight) Council members present and entitled to vote. If a quorum is not present within thirty minutes from the time appointed for the meeting, the meeting shall stand adjourned for a minimum of seven days until such time as the Council of Governors determine.
- 1.8. The chair may, with the consent of a members' meeting at which a quorum is present (and shall, if so directed by the meeting); adjourn a members' meeting from time-to-time and from place to place or for an indefinite period.
- 1.9. A resolution put to the vote of a members' meeting shall be decided on a show of hands.
- 1.10. No business shall be transacted at an adjourned meeting other than business which might properly have been transacted at the meeting had the adjournment not taken place.
- 1.11. If the Board of Directors, in its absolute discretion, considers that it is impractical or unreasonable for any reason to hold a members' meeting at the time, date or place specified in the notice calling that meeting, it may move and/or postpone the general meeting to another time, date and/or place.
- 1.12. In the case that a members' meeting is adjourned or postponed for 14 days or more, at least seven working days' notice shall be given specifying the time and place of the adjourned members' meeting and the general nature of the business to be transacted.
- 1.13. The Board of Directors may make any arrangement and impose any restrictions it considers appropriate to ensure the security of a members' meeting.
- 1.14. Any approval to speak at a members' meeting must be given by the chair. Speeches must be directed to the matter, motion or question under discussion or to a point of order. Unless, in the opinion of the chair, it would not be appropriate or desirable to time limit speeches on any topic to be discussed having regard to its nature, complexity or importance, no proposal, speech or any reply may exceed three minutes. In the interests of time, the chair may, in his or her absolute discretion, and where that discretion is exercised reasonably, limit the number of replies, questions or speeches which are heard at any one members' meeting.
- 1.15. A person who has already spoken on a matter at a members' meeting may not speak again at that meeting in respect of the same matter except (i) in exercise of a right of reply, or (ii) on a point of order.
- 1.16. The Board of Directors shall ensure that minutes to be made and kept, in writing, of all proceedings at the Annual Members' Meeting.

Change History

| Date | Reason | Change summary | Review date | Approval |
|----------------|-----------------|---|----------------|--|
| March 2013 | Monitor request | To reflect changes as set out the Health and Social Care Act 2012 | April 2013 | 2nd May 2013 Council of Governors |
| April 2013 | Annual review | Minor amendments to update Appointed Governor organisation names | April 2014 | 12th September 2013 Annual Members Meeting |
| April 2014 | Annual Review | | | |
| September 2015 | Annual Review | | | |
| May 2016 | Annual Review | To reflect changes to include electronic voting | | 5 th May 2016 Council of Governors |
| October 2017 | Annual Review | To reflect change from Monitor to NHS Improvement, Elections nominations process to no longer require supporters and to allow the use of non-voting non executives. To remove references to 'initial' pre FT activity relating to appointment of execs and NEDS. To adjust the size of the Board from 11 to 13 (an additional ONE NED and ONE exec) | | 7 th December 2017 |
| March 2019 | Review | To reflect current best practice on conflicts of interest and the addition of new Annex 11 & 12 | August 2019 | |
| August 2019 | Review | Minor amendments, mostly cosmetic in nature to ensure document flows better | August 2020 | |
| October 2019 | Proofing review | To ensure correct numbering | September 2020 | |