



A lifetime of specialist care

Royal Brompton & Harefield **NHS**
NHS Foundation Trust

Royal Brompton & Harefield NHS Foundation Trust

(A Public Benefit Corporation)

Constitution

May 2018

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Royal Brompton & Harefield NHS Foundation Trust Constitution

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1. Name

The name of the foundation trust is Royal Brompton & Harefield NHS Foundation Trust (the Trust).

2. Principal purpose

- 2.1.** The principal purpose of the Trust is the provision of goods and services for the purposes of the health service in England ("the Principal Purpose").
- 2.2.** The Trust may provide goods and services for any purposes related to:
 - i. the provision of services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness; and
 - ii. the promotion and protection of public health.
- 2.3.** Subject to the requirements of paragraph 41, the Trust may also carry on other activities for the purpose of making additional income available in order better to carry on the Principal Purpose.
- 2.4.** The Trust does not fulfill the 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. Powers

- 3.1** The powers of the Trust are set out in the National Health Service Act 2006.
- 3.2** The powers of the Trust shall be exercised by the Board of Directors on behalf of the Trust.
- 3.3** Any of these powers may be delegated to a committee of directors or to an executive director.

4. Membership and constituencies

- 4.1** The Trust shall have members, each of whom shall be a member of one of the following constituencies:
 - 4.1.1** a public constituency
 - 4.1.2** a staff constituency and
 - 4.1.3** a patients' constituency
- 4.2** At all times the Trust will take steps to secure that taken as a whole the actual membership of the public constituency and the patient's constituency is representative of those eligible for such membership.
- 4.3** The Trust shall have in place and pursue a representative membership strategy which shall be approved and adopted by the Council of Governors and which shall be reviewed on an annual basis.
- 4.4** In deciding which areas are to be areas for public constituencies, or in deciding whether there should continue to be a patients' constituency, the Trust shall have regard to the need for those eligible for such membership to be representative of those to whom the Trust provides services.
- 4.5** All members will agree to act in the best interest of the Trust and will comply with the constitution.

5. Application for membership

An individual who is eligible to become a member of the Trust may do so upon completion of the application process. Membership of the Trust is effective once the applicant is entered onto the Register of Members and membership shall terminate effective from the date of removal of the name from the Register of Members in accordance with this Constitution.

6. Public Constituency

- 6.1** An individual who lives in an area specified in Annex 1 as an area for the public constituency and who has reached the minimum age of 16 years may become or continue as a member of the Trust.
- 6.2** Those individuals who live in any area specified as an area for a public constituency are referred to collectively as the Public Constituency.
- 6.3** The minimum number of members in each area for the Public Constituency is specified in Annex 1.

7. Staff Constituency

- 7.1** 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:
- 7.1.1** he is employed by the Trust under a contract of employment which has no fixed term, or has a fixed term of at least 12 months; or
 - 7.1.2** he has been continuously employed by the Trust under a contract of employment for at least 12 months.
- 7.2** Members of staff who fall within sub-paragraphs 7.1.1 and 7.1.2, and who have not informed the Trust that they do not wish to do so, shall automatically be members by default. Members of the staff constituency under this clause 7.2 may opt out of staff membership at any time through notification to the Trust Secretary or membership office.
- 7.3** Individuals who exercise functions for the purposes of the Trust, otherwise than under a contract of employment with the Trust, may become or continue as members of the staff constituency, provided such individuals have exercised these functions continuously for a period of at least 12 months. For the avoidance of doubt, individuals who exercise functions for the purposes of the Trust include a person who is:
- 7.3.1** employed by a university or any other NHS Trust and who holds an honorary contract with the Trust; or
 - 7.3.2** a contractor as evidenced through written acknowledgement from the Trust; or
 - 7.3.3** employed by contractors of the Trust as evidenced through written acknowledgement from the Trust.
- 7.4** Chapter 1 of Part XIV of the Employment Rights Act 1996 applies in determining whether an individual has been continuously employed by the Trust for the purposes of paragraph 7.1.2 above or has continuously exercised functions for the purposes of the Trust for the purpose of paragraph 7.3 above.
- 7.5** Those individuals who are eligible for membership of the Trust by reason of the provisions in clauses 7.1, 7.2 and 7.3 are referred to collectively as the Staff Constituency.
- 7.6** Volunteers to the Trust do not qualify for membership under the Staff Constituency.
- 7.7** The minimum number of members of the Staff Constituency is specified in Annex 2.

8. Patients' Constituency

- 8.1** An individual who has, within the period specified in 8.2 below, attended any of the Trust's hospitals as either a patient or as the carer of a patient and who has reached a minimum age of 16 years may become or continue as a member of the Trust.
- 8.2** The period referred to above shall be the period of 3 years immediately preceding the date of an application by the patient or carer to become a member of the Trust.
- 8.3** Those individuals who are eligible for membership of the Trust by reason of the provisions in clauses 8.1 and 8.2 are referred to collectively as the Patients' Constituency.
- 8.4** The Patients' Constituency shall be divided into 5 descriptions of individuals who are eligible for membership of the Patients' Constituency, each description of individuals being specified in Annex 3 and referred to as a class within the Patients' Constituency.
- 8.5** An individual providing care in pursuance of a contract (including a contract of employment) with a voluntary organisation, or as a volunteer for a voluntary organisation, does not come within the category of those who qualify for membership of the Patients' Constituency.
- 8.6** The minimum number of members of each class of the Patients' Constituency is specified in Annex 3.

9. Restriction on membership

- 9.1** An individual who is a member of a constituency, or of a class within a constituency, may not be a member of any other constituency or class while membership of that constituency or class continues.
- 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** An individual who is deemed (by a majority of the Governors present and voting at a meeting of the Council of Governors) to be following an agenda to the detriment of the interests of the Trust, and in particular members who form special interest groups that are not prepared to comply with the Trust's obligations for representative membership, may not continue as member(s) of the Trust.

- 9.4** An individual who exhibits inappropriate conduct (as agreed by a majority of the Governors present and voting at a meeting of the Council of Governors), including those who have been identified as the perpetrators of a serious incident involving violence, assault or harassment against Trust staff, may not continue as a member of the Trust.
- 9.5** Members' disputes arising from the constitution are to be referred in the first instance to a meeting of the Council of Governors for resolution. If the Council of Governors fails to reach a decision, disputes will be referred to a dispute resolution process conducted by an arbitrator agreed upon by the parties. The arbitrator's decision will be binding and conclusive on all parties and the cost of arbitration will be borne by the parties in accordance with the decision of the arbitrator.

10. Role and Function of Members

- 10.1** All members may attend and participate at members' meetings; vote in elections for the Council of Governors; stand for election to the Council of Governors, and take such other part in the affairs of the Trust as is provided for in this constitution and set out in the membership strategy.
- 10.2** Public and patient members will be eligible to apply to be appointed as non-executive Directors or the Chairman provided that they meet the qualifying criteria.
- 10.3** Public and Patient members may not vote or stand at an election for the Council of Governors unless they have made a declaration, in the specified form, of eligibility to vote as a member of the constituency or class within a constituency. It is an offence to knowingly or recklessly make a declaration which is false.

11. Disqualification and Termination of Membership

- 11.1.** A person shall not become or continue as a member if he does not fall within the criteria set within clauses 6, 7 and 8 above.
- 11.2.** Where the Governors resolve that any member's continued membership would be prejudicial to the ability of the Trust to fulfil its Principal Purpose or interfere with the Trust's compliance with this constitution or in any other way harm the Trust's work or public confidence in the Trust's work, then that member shall be disqualified from membership of this Trust.
- 11.3.** Where the Trust Secretary considers that there may be reasons for concluding that a member or an applicant for membership is

ineligible for membership or disqualified from membership, he shall inform that person of the reasons and invite representations which are to be received within 28 days of the decision being made.

- 11.4.** Where no representations are received or where the decision to disqualify the member stands, then that member's name shall be removed from the Register of Members forthwith and he shall thereupon cease to be a member.
- 11.5.** Any decision made under this clause 11 to disqualify a member or an applicant for membership may be referred by the member or applicant concerned to the dispute resolution procedure set out in clause 9.5.
- 11.6.** A member shall cease to be a member if he:
 - 11.6.1.** Resigns by giving notice in writing to the Trust Secretary;
 - 11.6.2.** Ceases to fulfil the requirements of clauses 6,7 and 8 above;
 - 11.6.3.** Is disqualified by a decision of the Council of Governors under clauses 9.3 and/or 9.4 above;
 - 11.6.4.** Is disqualified as set out in this clause 11; or
 - 11.6.5.** Is deceased.
- 11.7.** In all cases where a person ceases to be a member, the Trust Secretary shall cause their name to be removed from the Register of Members and they shall thereupon cease to be a member.

12. Council of Governors – composition

- 12.1** The Trust is to have a Council of Governors, which shall comprise both elected and appointed Governors.
- 12.2** The composition of the Council of Governors is specified in Annex 4.
- 12.3** The members of the Council of Governors, other than the Appointed Governors, shall be chosen through an 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.
- 12.4** The Trust will agree a process for the appointment of appointed members of the Council of Governors with the organisations identified in Annex 4.

13. Council of Governors – Role and Functions

- 13.1** The specific responsibilities of the Governors in a general meeting are set out in the Standing Orders for the Council of Governors (Annex 6, section 2.5).
- 13.2** The Trust will take steps to secure that Governors are equipped with the skills and knowledge they require in their capacity as such.

14. Council of Governors – election of Governors

- 14.1** Elections for elected members of the Council of Governors shall be conducted on a “First Past the Post” basis in accordance with the Model Election Rules.
- 14.2** The Model Election Rules as published from time to time by the Department of Health form part of this constitution. The Model Election Rules current at the date of the Trust’s Authorisation are attached at Annex 5.
- 14.3** A variation of the Model Rules by the Department of Health shall not constitute a variation of the terms of this constitution for the purposes of paragraph 49 (amendment of the constitution).
- 14.4** An election, if contested, shall be by secret ballot.

- 14.5** A person may not vote at an election for or stand for election as an Elected Governor unless within the specified period stated in the Model Rules for Elections he has made a declaration in the specified form setting out the particulars of his qualification to vote or stand as a member of the constituency for which the election is being held. It is an offence (other than in relation to the Staff Constituency) to knowingly or recklessly make such a declaration which is false in a material particular.

14.6 Election of Lead Governor

The Council of Governors shall elect one of the Governors to be Lead Governor. The term of office will be 2 years and may be renewed once, for a further period of 2 years'. Should the Lead Governor be re-elected as a Governor during his/her term of office as Lead Governor they can continue in that role until the term of Lead Governor comes to an end. Otherwise he/she will stand down at the end of their term as an elected Governor and the Council of Governors will appoint a new Lead Governor.

14.7 Process for election of Lead Governors

- 14.7.1 From the date of the announcement of the election; Governors will have two weeks within which to submit their self-nomination and supporting statement. Following this and;
- 14.7.2 Not less than 6 clear days before the Council of Governors meeting at which the election is to be held, meeting papers will be circulated including an item on the election of a Lead Governor including supporting statements;
- 14.7.3 If there is more than one self-nomination, each candidate will make a short presentation (maximum 3 minutes) to the Council of Governors. There will be an opportunity for members of the Council of Governors to ask the candidates questions, following which a secret ballot will be held.
- 14.7.4 Only those governors present at the meeting can vote;
- 14.7.5 At the end of the meeting the result of the Lead Governor election will be announced;
- 14.7.6 The Lead Governor's term will commence the following calendar day.

15. Council of Governors – tenure

- 15.1** An elected Governor may hold office for a period of up to 3 years.
- 15.2** 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.
- 15.3** An elected Governor shall be eligible for re-election at the end of his term, subject to a total maximum tenure of 6 years.
- 15.4** In the event that a vacancy arises for an elected Governor on the Council of Governors for any reason other than expiry of the term of office then the Trust Secretary shall endeavour to fill that vacancy by appointing the next highest polling candidate in that class or constituency who accepts the appointment to that vacancy; failing this, the Trust Secretary shall call an election within 3 months of the vacancy arising in accordance with the model election rules set out in Annex 5 of this constitution, unless with the agreement of the Council of Governors, the vacancy is held over to the next round of planned elections in order to ensure best value is obtained in the expenditure of public monies.
- 15.5** An appointed Governor may hold office for a period of up to 3 years and shall be eligible for re-appointment at the end of that period. If an appointed Governor has held office for 6 consecutive years, further re-appointment(s) may be for up to 1 year only.

16. Council of Governors – eligibility, disqualification and removal

These criteria are set out in the Standing Orders of the Council of Governors (Annex 6, section 2.4).

17. Council of Governors – meetings of Governors

- 17.1** The Chairman, appointed in accordance with the provisions of paragraph 24.1 below) or, in his absence, the Deputy Chairman, appointed in accordance with the provisions of paragraph 25 below) or, in the absence of both the Chairman and the Deputy Chairman, the Senior Independent Director (appointed in accordance with the provisions of paragraph 26 below), shall preside at meetings of the Council of Governors.

17.2 The Council of Governors is to meet at least 4 times in each financial year. Meetings of the Council of Governors shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons as identified in the Council of Governors' Standing Orders.

18. Council of Governors – standing orders

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 6.

19. Council of Governors – conflicts of interest of Governors

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

20. Council of Governors – travel expenses

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

21. Board of Directors – composition

21.1 The Trust is to have a Board of Directors, which shall comprise both Executive and Non-executive directors.

21.2 The Board of Directors is to comprise:

21.2.1 a non-executive Chairman;

21.2.2 up to eight other non-executive directors; and

21.2.3 up to six executive directors

21.3 The maximum number of members of the Board of Directors is fifteen (15).

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

21.5 The Chief Executive shall be the Accounting Officer.

- 21.6 One of the executive directors shall be the finance director.
- 21.7 One of the executive directors is to be a registered medical practitioner.
- 21.8 One of the executive directors is to be a registered nurse.

22 Board of Directors – Role and Functions

These are set out in the Standing Orders of the Board of Directors (Annex 7).

23 Board of Directors – qualification for appointment as Non-executive Director

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

- 23.1 he is a member of the Public Constituency, or
- 23.2 he is a member of the Patients' Constituency or
- 23.3 where any of the Trust's hospitals includes a medical or dental school provided by a university, he exercises functions for the purposes of that university, and
- 23.4 he is not disqualified by virtue of paragraph 29 below.

24 Board of Directors – appointment and removal of Chairman and other non-executive directors

- 24.1 The Council of Governors at a general meeting of the Council of Governors shall appoint or remove the Chairman of the Trust and the other Non-executive directors.
- 24.2 Removal of the Chairman or another non-executive director shall require the approval of three-quarters of the members of the Council of Governors.

25 Board of Directors – appointment of Deputy Chairman

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

26 Board of Directors – appointment of Senior Independent Director

The Board of Directors, in consultation with the Council of Governors, shall appoint one of the non-executive directors as the Senior Independent Director.

27 Board of Directors – appointment and removal of the Chief Executive and other executive directors

27.1 The Chairman and non-executive directors shall appoint or remove the Chief Executive.

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

27.3 Not Used.

27.4 A committee comprising the Chairman, the Chief Executive and the other non-executive directors shall appoint or remove the other executive directors.

28 Board of Directors – General Duty

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

29 Board of Directors – disqualification criteria

These are set out in the Standing Orders of the Board of Directors (Annex 7, section 2.11).

30 Board of Directors – standing orders

The Standing Orders for the practice and procedure of the Board of Directors, as may be varied from time to time, are attached at Annex 7.

31 Board of Directors – conflicts of interest of directors

31.1 Each Director has 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. This duty is not infringed if the situation cannot reasonably be regarded as likely to give rise to a conflict of interest, or if the matter has been authorised in accordance with this Constitution.

31.2 Each Director has 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. This duty is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.

31.3 If a Director is aware that he has in any way a direct or indirect interest in a proposed transaction or arrangement with the Trust, he shall disclose the nature and extent of that interest to the

other Directors as soon as he is aware of it and in all cases, before the Trust enters into the transaction or arrangement. If any declaration proves to be or becomes inaccurate or incomplete, the Director shall make a further declaration.

- 31.4** A Director need not declare an interest:
- 31.4.1** if it cannot reasonably be regarded as likely to give rise to a conflict of interest;
 - 31.4.2** if, or to the extent that, the Directors are already aware of it;
 - 31.4.3** if, or to the extent that, it concerns terms of the Director's appointment that have been or are to be considered:
 - 31.4.3.1** by a meeting of the Board of Directors; or
 - 31.4.3.2** by a committee of the Directors appointed for that purpose under this Constitution.
- 31.5** The Board of Directors shall adopt Standing Orders specifying the arrangements for excluding Directors from discussion or consideration of the contract or other matter as appropriate.

32 Board of Directors – remuneration and terms of office

- 32.1** The Council of Governors shall, at a general meeting of the Council of Governors, decide the remuneration and allowances, and other terms and conditions of office, of the Chairman and the other Non-executive directors.
- 32.2** The Board of Directors shall establish a committee of non-executive directors to decide the remuneration and allowances, and the other terms and conditions of office, of the Chief Executive and other executive directors.

33 External Expert Advisers

- 33.1** The Trust may make arrangements, from time to time, to engage the assistance of external experts to advise the Board of Directors and/or the Council of Governors in the performance of their respective roles.
- 33.2** Such advisers do not need to be members of the Trust and do not have any executive authority to govern the Trust in any way.

34 Registers

The Trust shall have:

- 34.1** a register of members showing, in respect of each member, the constituency to which he belongs and, where there are classes within it, the class to which he belongs;
- 34.2** a register of members of the Council of Governors;
- 34.3** a register of interests of Governors;
- 34.4** a register of directors; and
- 34.5** a register of interests of the directors.

35 Admission to and removal from the registers

- 35.1** All members will be admitted to the Register of Members within 14 days of receipt of completed application forms.
- 35.2** All Governors will be admitted to the Register of Governors within 14 days of election or appointment.
- 35.3** All Directors will be admitted to the Register of Directors within 14 days of appointment.
- 35.4** Maintenance and update of entries onto these Registers is the responsibility of the Trust Secretary.
- 35.5** All other rules relating to maintenance and removal of registration from the Trust Registers are contained in the Board of Directors' Standing Orders (Annex 7, section 6).

36 Registers – inspection and copies

- 36.1** The Trust shall make the registers specified in paragraph 34 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.
- 36.2** The Trust shall not make any part of its registers available for inspection by members of the public which shows details of:
 - 36.2.1** any member of the Patients' Constituency; or
 - 36.2.2** any other member of the Trust, if he so requests.

- 36.3** So far as the registers are required to be made available:
- 36.3.1** they are to be available for inspection free of charge at all reasonable times; and
 - 36.3.2** a person who requests a copy of or extract from the registers is to be provided with a copy or extract.
- 36.4** If the person requesting a copy or extract is not a member of the Trust, the Trust may impose a reasonable charge for doing so.

37 Documents available for public inspection

- 37.1** The Trust shall make the following documents available 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 latest annual accounts and of any report of the auditor on them; and
 - 37.1.3** a copy of the latest annual report.
- 37.2** The Trust shall also make the following documents relating to a special administration of the Trust available for inspection by members of the public free of charge at all reasonable times:
- 37.2.1** a copy of any order made under section 65D (appointment of trust special administrator), 65J (power to extend time), 65KC (action following Secretary of State's rejection of final report), 65L (trusts coming out of administration) or 65LA (trusts to be dissolved) of the 2006 Act;
 - 37.2.2** a copy of any report laid under section 65D (appointment of trust special administrator) of the 2006 Act;
 - 37.2.3** a copy of any information published under section 65D (appointment of trust special administrator) of the 2006 Act;
 - 37.2.4** a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act;
 - 37.2.5** a copy of any statement provided under section 65F (administrator's draft report) of the 2006 Act;

- 37.2.6** a copy of any notice published under section 65F (administrator's draft report), 65G (consultation plan), 65H (consultation requirements), 65J (power to extend time), 65KA (NHS Improvement decision), 65KB (Secretary of State's response to NHS Improvement decision), 65KC (action following Secretary of State's rejection of final report) or 65KD (Secretary of State's response to re-submitted final report) of the 2006 Act;
 - 37.2.7** a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act;
 - 37.2.8** a copy of any final report published under section 65I (administrator's final report) of the 2006 Act;
 - 37.2.9** a copy of any statement published under section 65J (power to extend time) or 65KC (action following Secretary of State's rejection of final report) of the 2006 Act; and
 - 37.2.10** a copy of any information published under section 65M (replacement of trust special administrator) of the 2006 Act.
- 37.3** Any person who requests a copy of or extract from any of the above documents is to be provided with a copy.
- 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 Auditor

- 38.1** The Trust shall have an auditor.
- 38.2** The Council of Governors shall appoint or remove the auditor at a general meeting of the Council of Governors.

39 Audit committee

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

40 **Accounts**

- 40.1** The Trust shall keep proper accounts and proper records in relation to the accounts, which shall comply with any directions made by NHS Improvement with the approval of the Secretary of State, as to the content and form of the Trust's accounts.
- 40.2** The accounts shall be audited by the Trust's auditor.
- 40.3** The following documents shall be made available to the Comptroller and Auditor General for examination at his request:
- 40.3.1** the accounts;
 - 40.3.2** the records relating to them; and
 - 40.3.3** any report of the auditor on them.
- 40.4** The Trust (through its Chief Executive and Accounting Officer) 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.
- 40.5** The Trust shall comply with any directions given by NHS Improvement with the approval of the Secretary of State as to:
- 40.5.1** the period or periods in respect of which the Trust should prepare accounts; and
 - 40.5.2** the audit requirements of any such accounts.
- 40.6** In preparing accounts the Trust shall comply with any directions given by NHS Improvement with the approval of the Secretary of State as to:
- 40.6.1** the methods and principles according to which the accounts are to be prepared; and
 - 40.6.2** the content and form of the accounts.
- 40.7** The Trust shall:
- 40.7.1** lay a copy of the annual accounts, and any report of the auditor on them, before Parliament;
 - 40.7.2** send copies of those documents to NHS Improvement within such period as NHS Improvement may direct; and

- 40.7.3** send copies of any accounts prepared pursuant to paragraph 40.5, and any report of an auditor on them to NHS Improvement within such period as NHS Improvement may direct.

41 Annual report and forward plans

- 41.1** The Trust shall prepare Annual Reports and send them to NHS Improvement.
- 41.2** The reports shall give information on:
 - 41.2.1** the impact that income received by the Trust from Non Principal Purpose Activities has had on the Principal Purpose.
 - 41.2.2** any steps taken by the Trust to secure that (taken as a whole) the actual Membership of its Public Constituency and its Patients' Constituency is representative of those eligible for such Membership;
 - 41.2.3** any exercise by the Council of Governors of its power to require a Director to attend a meeting;
 - 41.2.4** the Trust's policy on pay, on the work of the committee of non-executive Directors established to decide the remuneration and allowances and the other terms and conditions of office of the executive Directors, and on such other procedures as the Trust has on pay;
 - 41.2.5** the remuneration of the Directors and on the expenses of the Governors and the Directors; and
 - 41.2.6** any other information NHS Improvement requires.
- 41.3** The Trust shall comply with any decision NHS Improvement makes as to:
 - 41.3.1** the form of the reports;
 - 41.3.2** when the reports are to be sent to it; and
 - 41.3.3** the periods to which the reports are to relate.
- 41.4** The Trust shall give information to NHS Improvement as to its forward planning in respect of each financial year. The document containing the information with respect to forward

planning shall be prepared by the Board of Directors who in doing so shall have regard to the views of the Council of Governors.

- 41.5** The forward planning information shall include information on:
 - 41.5.1** the Non Principal Purpose Activities that the Trust proposes to carry on; and
 - 41.5.2** the income that the Trust expects to receive from doing so.
- 41.6** Where the forward planning information contains a proposal that the Trust carry out Non Principal Purpose Activities, the Council of Governors shall:
 - 41.6.1** determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfilment by the Trust of the Principal Purpose or the performance of its other functions; and
 - 41.6.2** notify the Board of Directors of its determination.
- 41.7** The Trust may not implement a proposal for Non Principal Purpose Activities if the Council of Governors has:
 - 41.7.1** determined that it is not satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfilment by the Trust of the Principal Purpose or the performance of its other functions; and
 - 41.7.2** notified the Board of Directors of that determination.
- 41.8** The Trust may only implement any proposal to increase by 5% or more the proportion of its total income in any financial year attributable to Non Principal Purpose Activities if more than half of the members of the Council of Governors voting approve the proposal's implementation.

42 Significant Transactions

42.1 The Trust may enter into a Significant Transaction only if more than half of the members of the Council of Governors voting approve entering into the transaction.

42.2 “Significant Transaction” means:

42.2.1 the acquisition of, or an agreement to acquire, whether contingent or not, assets the value of which is more than 10% of the value of the Trust's gross assets before the acquisition; or

42.2.2 the disposition of, or an agreement to dispose of, whether contingent or not, assets of the Trust the value of which is more than 10% of the value of the Trust's gross assets before the disposition; or

42.2.3 a transaction that has or is likely to have the effect of the Trust acquiring rights or interests or incurring obligations or liabilities, including contingent liabilities, the value of which is more than 10% of the value of the Trust's gross assets before the transaction.

42.3 For the purpose of this paragraph 42:

42.3.1 "gross assets" means the total of fixed assets and current assets;

42.3.2 in assessing the value of any contingent liability for the purposes of sub-paragraph 42.2.3, the Directors:

42.3.2.1 must have regard to all circumstances that the Directors know, or ought to know, affect, or may affect, the value of the contingent liability; and

42.3.2.2 may rely on estimates of the contingent liability that are reasonable in the circumstances; and

42.3.2.3 may take account of the likelihood of the contingency occurring.

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

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

- 43.1** the annual accounts;
- 43.2** any report of the auditor on them;
- 43.3** the annual report.

44 Annual Public Meeting

- 44.1** The Trust shall hold a public meeting of its members each year. This meeting may be combined with the general meeting of the Council of Governors referred to in paragraph 43.
- 44.2** At least one Director shall attend the meeting and present the following documents to the members at the meeting:
 - 44.2.1** the annual accounts;
 - 44.2.2** any report of the auditor on them; and
 - 44.2.3** the annual report.
- 44.3** Where an amendment has been made to this 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), at least one Governor shall attend the next annual public meeting to be held, at which the Governor shall present the amendment and the members shall be entitled to vote on whether they approve the amendment.
- 44.4** If more than half the members voting approve the amendment, the amendment shall continue to have effect; otherwise it shall cease to have effect and the Trust shall take such steps as are necessary as a result.
- 44.5** Members meetings are open to all members, Council of Governors, Board of Directors and representatives of the Trust's appointed financial auditors and are to be chaired by the Chairman, the Deputy Chairman or the Senior Independent Director. The meetings are a forum for the discussion of matters pertaining to the Trust with an agenda set and approved by the Council of Governors through the Trust Secretary. The Council of Governors will use this forum to report back to the members

on their activities within the preceding period as dated from the last members' meeting.

- 44.6** At least 14 days' clear written notice will be provided for members' meetings and this will be sent out to all members through the regular members' communications, the Trust website announcements and e-mail notification.

45 Trust Secretary

- 45.1** The Trust shall have a Trust Secretary who shall be an employee of the Trust but not a member of the Board of Directors or the Council of Governors.
- 45.2** The Trust Secretary is secretary to the Board of Directors and the Council of Governors and is responsible for providing advice on all corporate governance matters pertaining to the Trust.
- 45.3** Under the direction of the Chairman, the Trust Secretary is to ensure that there is good information flow between the Board of Directors and Council of Governors and their committees as well as to all directors and Governors.
- 45.4** The Trust Secretary is responsible for summoning and attending all members' meetings, meetings of the Council of Governors and the Board of Directors and keeping minutes of those meetings.
- 45.5** The Trust Secretary is responsible for keeping all the registers and books required to be kept by this constitution.
- 45.6** Subject to this constitution the Trust Secretary shall prepare and send to NHS Improvement and any other statutory body all returns which are required to be made.
- 45.7** The appointment and removal of the Trust Secretary is a matter for the Chairman and Chief Executive jointly.

46 Instruments

- 46.1** The Trust shall have a seal.
- 46.2** The seal shall not be affixed except under the authority of the Board of Directors.

47 Indemnity

47.1 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 own personal resources, any personal civil liability which is incurred in the execution or purported execution of their functions unless they have acted recklessly. Any costs arising will be met by the Trust, except as a result of reckless acts or omissions.

47.2 The Trust may make such arrangements as it considers appropriate for the provision of indemnity insurance or similar arrangements for the benefit of the Trust, Council of Governors or Board of Directors, to meet all or any liabilities which are properly the liabilities of the Trust under clause 47.1 above.

48 Mergers, acquisitions, separations and dissolution

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.

49 Amendment of the Constitution

49.1 The Trust may make amendments of its constitution only if:

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

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

49.2. Amendments made under paragraph 49.1 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.

49.3. 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):

49.3.1.At least one member of the Council of Governors must attend the next annual members meeting and present the amendment, and

49.3.2.The Trust must give the members an opportunity to vote on

whether they approve the amendment.

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

- 49.4.** Amendments by the Trust of its constitution are to be notified to NHS Improvement. For the avoidance of doubt, NHS Improvement functions do not include a power or duty to determine whether or not the constitution, as a result of the amendments, accords with Schedule 7 of the 2006 Act.

50 **Interpretation and definitions**

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

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

the 2006 Act is the National Health Service Act 2006.

the 2012 Act means the Health and Social Care Act 2012;

NHS Improvement is the corporate body known as NHS Improvement, as provided in section 61 of the 2012 Act.

Non Principal Purpose Activities

means activities other than the provision of goods and services for the purposes of the National Health Service in England;

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

the **Accounting Officer** is the person who from time to time discharges the functions specified in paragraph 25(5) of Schedule 7 to the 2006 Act.

Audit Committee is a committee of non-executive directors of the Board charged with reviewing any aspect of the Trust's affairs and functions in order to provide appropriate assurance to the Board

ANNEX 1 – THE PUBLIC CONSTITUENCY

(Paragraphs 6.1 and 6.3)

There are to be four areas within the constituency as follows:

Area	Number of Governors	Minimum Number of Members
1. North West London Comprising the following electoral areas: Harrow; Hillingdon; Brent; Ealing; Hounslow; Westminster; Kensington & Chelsea and Hammersmith & Fulham.	1	75
2. Bedfordshire and Hertfordshire Comprising the following electoral areas: Bedford Borough; Bedford County; Luton Borough; Mid Bedfordshire; South Bedfordshire; Broxbourne; Dacorum; East Herts; Hertsmere; North Herts; St Albans; Stevenage; Three Rivers; Watford and Welwyn Hatfield.	1	75
3. South of England Comprising the following electoral areas: Southwark; Lambeth; Lewisham; Bromley; Greenwich; Bexley; Richmond Upon Thames; Wandsworth; Kingston upon Thames; Merton; Sutton; Croydon; Cherwell; Oxford City Council; Oxfordshire; South Oxfordshire; Vale of White Horse; West Oxfordshire; Aylesbury; Buckinghamshire; Chiltern; Milton Keynes; South Bucks; Wycombe; Bracknell Forest; Reading; Slough; West Berkshire; Windsor & Maidenhead; Wokingham; East Sussex; Brighton & Hove; Eastbourne; Hastings; Lewes; Rother; Wealden; West Sussex; Adur; Arun; Chichester; Crawley; Horsham; Mid Sussex; Worthing; Surrey; Elmbridge; Epsom & Ewell; Guildford; Mole Valley; Reigate & Banstead; Runnymede; Spelthorne; Surrey Heath; Tandridge; Waverley; Woking; Medway; Ashford; Canterbury City; Dartford, Dover; Gravesham; Maidstone; Sevenoaks; Shepway; Swale; Thanet; Tonbridge & Malling; Tunbridge Wells	1	75

4. Rest of England & Wales Comprising all other electoral wards and boroughs not included above in North West London, Bedfordshire & Hertfordshire and South of England.	1	75
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ANNEX 2 – THE STAFF CONSTITUENCY

(Paragraphs 7.4 and 7.5)

The minimum number of members in the staff constituency is 400.

The selection of Governors for this constituency shall be the five candidates polling the highest number of votes in the elections consistent with paragraph 47 of the model elections rules.

Staff members may vote for any candidate irrespective of their own or the candidate's hospital base.

ANNEX 3 – THE PATIENTS’ CONSTITUENCY

(Paragraphs 8.4 and 8.6)

Class	Number of Governors	Minimum number of Members
Patients – North West London (as Annex 1)	2	150
Patients – Bedfordshire and Hertfordshire (as Annex 1)	2	150
Patients – South of England (as Annex 1)	1	75
Patients – Elsewhere	2	150
Carers	1	75

ANNEX 4 – COMPOSITION OF COUNCIL OF GOVERNORS

(Paragraphs 12.2, 12.3 and 12.4 and Notes 13 to 18)

The Council of Governors of the Trust is to be made up of a total of 21 Governors comprised as follows:

17 elected Governors

- 4 Governors from the Public constituency drawn from the following geographical areas:
 - North West London 1 Governor
 - Bedfordshire and Hertfordshire 1 Governor
 - South of England 1 Governor
 - Rest of England & Wales 1 Governor

- 5 Governors from the Staff Constituency

- 8 Governors from the Patient Constituency drawn from the following patient classes:
 - 'North West London' Patient Class 2 Governors
 - 'Bedfordshire and Hertfordshire' Patient Class 2 Governors
 - 'South of England' Patient Class 1 Governor
 - 'Elsewhere' Patient Class 2 Governors
 - Carers' class 1 Governor

4 appointed Governors

The following organisations are specified organisations for the purposes of sub-Paragraph 9(7) of Schedule 7 to the 2006 Act) and will each be asked to nominate a member or officer to serve on the Council of Governors

- Local Authorities
 - Royal Borough of Kensington & Chelsea 1 Governor
 - London Borough of Hillingdon 1 Governor
- Higher Education Institutions (HEIs)*
 - Academic partner chosen by the Board 1 Governor
 - Academic partner chosen by the Board 1 Governor

* The Board of Directors will select which of the following HEIs to approach to appoint a Governor in advance of authorisation, and subsequently as vacancies arise:

- Imperial College
- University of London
- University of Oxford
- University of Cambridge

The same academic partner may be approached to nominate both Governors.

ANNEX 5 – THE MODEL RULES FOR ELECTIONS

(Paragraph 14.2)

This Trust will adopt the ‘first past the post’ method under the model election rules for determining election results

Part 1 - Interpretation

1. Interpretation

Part 2 – Timetable for election

2. Timetable
3. Computation of time

Part 3 – Returning officer

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

Part 4 - Stages Common to Contested and Uncontested Elections

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

Part 5 – Contested elections

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

Action to be taken before the poll

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

The poll

26. Eligibility to vote
27. Voting by persons who require assistance
28. Spoilt ballot papers
29. Lost ballot papers
30. Issue of replacement ballot paper
31. Declaration of identity for replacement ballot papers

Procedure for receipt of envelopes

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

Part 6 - Counting the votes

36. Not used
37. Arrangements for counting of the votes
38. The count
39. Rejected ballot papers
40. Not used
41. Not used
42. Not used
43. Not used
44. Not used
45. Not used
46. Equality of votes

Part 7 – Final proceedings in contested and uncontested elections

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

Part 8 – Disposal of documents

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

Part 9 – Death of a candidate during a contested election

54. Countermand or abandonment of poll on death of candidate

Part 10 – Election expenses and publicity

Expenses

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

Publicity

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

Part 11 – Questioning elections and irregularities

- 61. Application to question an election

Part 12 – Miscellaneous

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

Part 1 - Interpretation

1. Interpretation – (1) In these rules, unless the context otherwise requires -

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

“election” means an election by a constituency, or by a class within a constituency, to fill a vacancy among one or more posts on the Council of Governors;

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

“the 2003 Act” means the Health and Social Care (Community Health and Standards) Act 2003.

(2) Other expressions used in these rules and in Schedule 1 to the Health and Social Care (Community Health and Standards) Act 2003 have the same meaning in these rules as in that Schedule.

Part 2 – Timetable for election

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

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

3. Computation of time - (1) In computing any period of time for the purposes of the timetable -

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

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

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

Part 3 – Returning officer

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

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

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

6. Expenditure - The corporation is to pay the returning officer –

- (a) any expenses incurred by that officer in the exercise of his or her functions under these rules,

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

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

Part 4 - Stages Common to Contested and Uncontested Elections

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

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

9. Nomination of candidates – (1) Each candidate must nominate themselves on a single nomination paper.

(2) The returning officer-

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

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

10. Candidate's particulars – (1) The nomination paper must state the candidate's -

- (a) full name,
- (b) contact address in full, and

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

11. Declaration of interests – The nomination paper must state –

- (a) any financial interest that the candidate has in the corporation, and
- (b) whether the candidate is a member of a political party, and if so, which party,

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

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

- (a) that he or she is not prevented from being a member of the Council of Governors by paragraph 8 of Schedule 1 of the 2003 Act or by any provision of the constitution; and,
- (b) for a member of the public or patient constituency, of the particulars of his or her qualification to vote as a member of that constituency, or class within that constituency, for which the election is being held.

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

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

14. Decisions as to the validity of nomination – (1) Where a nomination paper is received by the returning officer in accordance with these rules, the candidate is deemed to stand for election unless and until the returning officer-

- (a) decides that the candidate is not eligible to stand,
- (b) decides that the nomination paper is invalid,
- (c) receives satisfactory proof that the candidate has died, or
- (d) receives a written request by the candidate of their withdrawal from candidacy.

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

- (a) that the paper is not received on or before the final time and date for return of nomination papers, as specified in the notice of the election,
 - (b) that the paper does not contain the candidate's particulars, as required by rule 10;
 - (c) that the paper does not contain a declaration of the interests of the candidate, as required by rule 11,
 - (d) that the paper does not include a declaration of eligibility as required by rule 12, or
 - (e) that the paper is not signed and dated by the candidate, as required by rule 13.
- (3) The returning officer is to examine each nomination paper as soon as is practicable after he or she has received it, and decide whether the candidate has been validly nominated.
- (4) Where the returning officer decides that a nomination is invalid, the returning officer must endorse this on the nomination paper, stating the reasons for their decision.
- (5) The returning officer is to send notice of the decision as to whether a nomination is valid or invalid to the candidate at the contact address given in the candidate's nomination paper.

15. Publication of statement of candidates –

- (1) The returning officer is to prepare and publish a statement showing the candidates who are standing for election.
- (2) The statement must show –
- (a) the name, contact address, and constituency or class within a constituency of each candidate standing, and
 - (b) the declared interests of each candidate standing,

as given in their nomination paper.

- (3) The statement must list the candidates standing for election in alphabetical order by surname.
- (4) The returning officer must send a copy of the statement of candidates and copies of the nomination papers to the corporation as soon as is practicable after publishing the statement.

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

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

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

18. Method of election –

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

Part 5 – Contested elections

19. Poll to be taken by ballot –

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

20. The ballot paper –

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

- (2) Every ballot paper must specify –
 - (a) the name of the corporation,
 - (b) the constituency, or class within a constituency, for which the election is being held,
 - (c) the number of members of the Council of Governors to be elected from that constituency, or class within that constituency,
 - (d) the names and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
 - (e) instructions on how to vote,
 - (f) if the ballot paper is to be returned by post, the address for its return and the date and time of the close of the poll, and
 - (g) the contact details of the returning officer.
- (3) Each ballot paper must have a unique identifier.
- (4) Each ballot paper must have features incorporated into it to prevent it from being reproduced.

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

- (1) In respect of an election for a public or patient constituency a declaration of identity must be issued with each ballot paper.
- (2) The declaration of identity is to include a declaration –
 - (a) that the voter is the person to whom the ballot paper was addressed,
 - (b) that the voter has not marked or returned any other voting paper in the election, and
 - (c) for a member of the public or patient constituency, of the particulars of that member's qualification to vote as a member of the constituency or class within a constituency for which the election is being held.
- (3) The declaration of identity is to include space for –
 - (a) the name of the voter,
 - (b) the address of the voter,
 - (c) the voter's signature, and
 - (d) the date that the declaration was made by the voter.

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

Action to be taken before the poll

22. List of eligible voters –

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

23. Notice of poll - The returning officer is to publish a notice of the poll stating–

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

24. Issue of voting documents by returning officer –

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

- (b) a declaration of identity (if required),
 - (c) information about each candidate standing for election, pursuant to rule 59 of these rules, and
 - (d) a covering envelope.
- (2) The documents are to be sent to the mailing address for each member, as specified in the list of eligible voters.

25. Ballot paper envelope and covering envelope –

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

The poll

26. Eligibility to vote –

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

27. Voting by persons who require assistance –

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

28. Spoilt ballot papers

- (1) – If a voter has dealt with his or her ballot paper in such a manner that it cannot be accepted as a ballot paper (referred to a “spoilt ballot paper”),

that voter may apply to the returning officer for a replacement ballot paper.

- (2) On receiving an application, the returning officer is to obtain the details of the unique identifier on the spoiled ballot paper, if he or she can obtain it.
- (3) The returning officer may not issue a replacement ballot paper for a spoiled ballot paper unless he or she –
 - (a) is satisfied as to the voter's identity, and
 - (b) has ensured that the declaration of identity, if required, has not been returned.
- (4) After issuing a replacement ballot paper for a spoiled ballot paper, the returning officer shall enter in a list ("the list of spoiled ballot papers") –
 - (a) the name of the voter, and
 - (b) the details of the unique identifier of the spoiled ballot paper (if that officer was able to obtain it), and
 - (c) the details of the unique identifier of the replacement ballot paper.

29. Lost ballot papers –

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

30. Issue of replacement ballot paper–

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

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

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

Procedure for receipt of envelopes

32. Receipt of voting documents –

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

33. Validity of ballot paper –

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

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

Where the returning officer receives a declaration of identity if required but no ballot paper, the returning officer is to –

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

35. Sealing of packets –

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

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

Part 6 - Counting the votes

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

38. The count – (1) The returning officer is to –

- (a) count and record the number of ballot papers that have been returned, and
- (b) count the votes according to the provisions in this Part of the rules.

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

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

39. Rejected ballot papers – (1) Any ballot paper –

- (a) which does not bear the features that have been incorporated into the other ballot papers to prevent them from being reproduced,
- (b) on which votes are given for more candidates than the voter is entitled to vote,
- (c) on which anything is written or marked by which the voter can be identified except the unique identifier, or
- (d) which is unmarked or rejected because of uncertainty,

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

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

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

- (a) elsewhere than in the proper place,
- (b) otherwise than by means of a clear mark,
- (c) by more than one mark,

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

(4) The returning officer is to –

- (a) endorse the word “rejected” on any ballot paper which under this rule is not to be counted, and
- (b) in the case of a ballot paper on which any vote is counted under paragraph (2) or (3) above, endorse the words “rejected in part” on the ballot paper and indicate which vote or votes have been counted.

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

- (a) does not bear proper features that have been incorporated into the ballot paper,
- (b) voting for more candidates than the voter is entitled to,
- (c) writing or mark by which voter could be identified, and
- (d) unmarked or rejected because of uncertainty,

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

40. Not used

41. Not used

42. Not used

43. Not used

44. Not used

45. Not used

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

Part 7 – Final proceedings in contested and uncontested elections

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 candidate or candidates whom more votes have been given than for the other candidates, up to the number of vacancies to be filled on the Council of Governors from the constituency, or class within a constituency, for which the election is being held to be elected,
- (b) give notice of the name of each candidate who he or she has declared elected–
 - (i) where the election is held under a proposed constitution pursuant to powers conferred on the Royal Brompton & Harefield NHS Trust by section 4(4) of the 2003 Act, to the chairman of the NHS Trust, or
 - (ii) in any other case, to the chairman of the corporation; and
- (c) give public notice of the name of each candidate whom he or she has declared elected.

(2) The returning officer is to make –

- (a) the total number of votes given for each candidate (whether elected or not), and
- (b) the number of rejected ballot papers under each of the headings in rule fpp39(5),

available on request.

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

- (a) declare the candidate or candidates remaining validly nominated to be elected,
- (b) give notice of the name of each candidate who he or she has declared elected to the chairman of the corporation, and
- (c) give public notice of the name of each candidate who he or she has declared elected.

Part 8 – Disposal of documents

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

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

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

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

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

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

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

51. Forwarding of documents received after close of the poll – Where –

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

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

52. Retention and public inspection of documents – (1) The corporation is to retain the documents relating to an election that are forwarded to the Chairman by the returning officer under these rules for one year, and then, unless otherwise directed by the regulator, cause them to be destroyed.

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

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

53. Application for inspection of certain documents relating to an election – (1) The corporation may not allow the inspection of, or the opening of any sealed packet containing –

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

by any person without the consent of the Regulator.

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

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

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

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

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

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

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

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

Part 9 – Death of a candidate during a contested election

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

(2) Where a new election is ordered under paragraph (1), no fresh nomination is necessary for any candidate who was validly nominated for the election where the poll was countermanded or abandoned but further candidates shall be invited for that constituency or class.

(3) Where a poll is abandoned under paragraph (1)(a), paragraphs (4) to (7) are to apply.

(4) The returning officer shall not take any step or further step to open envelopes or deal with their contents in accordance with rules 33 and 34, and is to make up separate sealed packets in accordance with rule 35.

- (5) The returning officer is to –
- (a) count and record the number of ballot papers that have been received, and
 - (b) seal up the ballot papers into packets, along with the records of the number of ballot papers.
- (6) The returning officer is to endorse on each packet a description of –
- (a) its contents,
 - (b) the date of the publication of notice of the election,
 - (c) the name of the corporation to which the election relates, and
 - (d) the constituency, or class within a constituency, to which the election relates.
- (7) Once the documents relating to the poll have been sealed up and endorsed pursuant to paragraphs (4) to (6), the returning officer is to deliver them to the chairman of the corporation, and rules 52 and 53 are to apply.

Part 10 – Election expenses and publicity

Election expenses

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

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

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

57. Election expenses incurred by other persons – (1) No person may -

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

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

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

Publicity

58. Publicity about election by the corporation – (1) The corporation may:

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

as it considers necessary.

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

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

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

59. Information about candidates for inclusion with voting documents -

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

(2) The information must consist of –

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

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

(2) The provision by any individual of 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.

b. The Regulator shall delegate the determination of an application to a person or persons to be nominated for the purpose of the Regulator.

c. The determination by the person or persons nominated in accordance with Rule 61(7) shall be binding on and shall be given effect by the corporation, the applicant and the members of the constituency (or class within a constituency) including all the candidates for the election to which the application relates.

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

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

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

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

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.

**ANNEX 6 – STANDING ORDERS FOR THE PRACTICE AND PROCEDURE
OF THE COUNCIL OF GOVERNORS**

Royal Brompton & Harefield NHS Foundation Trust

**Standing Orders
of the
Council of Governors**

May 2018

SECTION A – STANDING ORDERS

1 Statutory Framework

Royal Brompton & Harefield NHS Foundation Trust ("the Trust") is a Public Benefit Corporation which came into existence on 1 June 2009 in accordance with the provisions of the National Health Service Act 2006 ("the Act").

- 1.1 The principal place of business (headquarters) of the Trust is Royal Brompton Hospital, Sydney Street, London SW3 6NP.
- 1.2 An NHS Foundation Trust is established under the Act as a public benefit corporation, and day-to-day management of the organisation is with the Board of Directors who are governed by the constitution, regulated by NHS Improvement and accountable to Foundation Trust members through the Council of Governors.
- 1.3 The functions of the Trust are conferred by the Act and all business is conducted in the name of the Trust.
- 1.4 As a body corporate, the Trust has 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.
- 1.5 The Trust adopts these Standing Orders for the regulation of the proceedings and business of the Council of Governors in fulfilment of its requirements to be legally constituted.
- 1.6 The Trust is also bound by such other statutes and legal provisions that govern the conduct of its affairs.
- 1.7 The Trust remains part of the NHS and is subject to NHS standards, performance ratings and systems of inspection. It has the principal purpose of providing goods and services for the National Health Service in England.

2. The Council of Governors

2.1 Composition of the Council of Governors

The composition of the Council of Governors shall be in accordance with paragraph 12 and Annex 4 of the Constitution of the Trust.

2.2 Role of the Chairman

The Chairman is not a member of the Council of Governors but presides at meetings of the Council of Governors and has a casting vote.

- 2.3 Where the Chairman of the Trust has died or has ceased to hold office, or where he has been unable to perform his duties as Chairman owing to

illness or any other cause, the Deputy Chairman shall act as Chairman until a new Chairman is appointed or the existing Chairman resumes his 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 duties, be taken to include the Deputy Chairman. In the absence of the Chairman and the Deputy Chairman the Senior Independent Director shall act as Chairman.

2.4 Council of Governors – eligibility, disqualification and removal

2.4.1 The following may not become or continue as a member of the Council of Governors:

- 2.4.1.1 A person who is an executive or non-executive Director of the Trust or a Governor or director of any other NHS Foundation Trust or NHS Trust;
- 2.4.1.2 a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;
- 2.4.1.3 a person who has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it;
- 2.4.1.4 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;
- 2.4.1.5 A person who is the subject of a sex offender order;
- 2.4.1.6 A person who within the preceding two years has been dismissed, otherwise than by reason of redundancy, from any paid employment with a health service body;
- 2.4.1.7 A person who is deceased;
- 2.4.1.8 A person whose tenure of office as the chairman or as a member or director of any health service body has been terminated in the preceding two years on the grounds that their appointment is not in the best interests of the health service for non-attendance at meetings or for non-disclosure of a pecuniary interest;
- 2.4.1.9 A person who is incapable by reason of mental disorder, illness or injury of managing or administering his property or affairs;
- 2.4.1.10 A person who has issued a claim against the Trust and legal proceedings have ensued as a result of such claim or they are classed as a vexatious complainant;
- 2.4.1.11 A person who fails to abide by this constitution;
- 2.4.1.12 An 'unfit person' as defined in the Trust's provider licence (as may be amended from time to time).

2.4.2 Governors must be at least 16 years of age at the date they are nominated for election or appointment.

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

- 2.4.3.1 They resign by notice in writing to the Secretary;
- 2.4.3.2 They fail to attend 2 meetings in any financial year, unless the other Governors are satisfied that the absences were due to reasonable causes and that the Governor will be able to start attending meetings within such a period as it considers reasonable;
- 2.4.3.3 They cease to be a member of the Trust;
- 2.4.3.4 As an appointed Governor, their appointment is withdrawn by their employer or they are no longer an employee of that organisation;
- 2.4.3.5 They consistently refuse to comply with the Trust's training requirements;
- 2.4.3.6 They fail to complete the required declaration accepting the code of conduct of Governors;
- 2.4.3.7 They are removed from the Council of Governors by a resolution approved by not less than two-thirds of the remaining Governors present and voting at a General meeting of the Council of Governors on the grounds that
 - They have committed a serious breach of the code of conduct; or
 - They have acted in a manner detrimental to the interests of the Trust, and the Council of Governors considers that it is not in the best interests of the Trust for them to continue as a Governor.

2.4.4 Where an individual has been elected or appointed to be a Governor and he becomes disqualified from that appointment, he shall notify the Trust Secretary in writing of such disqualification as soon as practicable and in any event within 14 days of first becoming aware of those matters which render him disqualified.

2.4.5 If it comes to the notice of the Trust Secretary that the Governor is disqualified, whether at the time of the Governor's appointment or later, the Trust Secretary shall immediately declare that the individual in question is disqualified and give notice to him in writing to that effect as soon as practicable and in any event within 14 days of the date of the said declaration.

2.4.6 Upon the giving of notice under clauses 2.4.4 and 2.4.5 above that individual's tenure of office, if any, shall be terminated forthwith and he shall cease to be a Governor and his name shall be removed from the Register of Governors.

2.5 Council of Governors – Role and Functions

2.5.1 The Council of Governors shall:

- 2.5.1.1 hold the non-executive Directors individually and collectively to account for the performance of the Board of Directors; and
- 2.5.1.2 represent the interests of the members of the Trust as a whole and the interests of the public.

2.5.2 The roles and responsibilities of the Governors are:

- 2.5.2.1 to appoint or remove the Chairman and the other Non-executive Directors of the Trust;
- 2.5.2.2 to approve the appointment of the Chief Executive;
- 2.5.2.3 To decide the remuneration and expenses and the other terms and conditions of the Non-executive Directors;
- 2.5.2.4 To appoint or remove the Trust's Auditors;
- 2.5.2.5 To receive and consider the Trust's annual accounts, any auditor's reports on those annual accounts and the annual report from the Board of Directors;
- 2.5.2.6 To provide views to the Board of Directors in respect of the preparation of forward plans for each financial year (in line with paragraph 41 of the Constitution);
- 2.5.2.7 To be consulted by the Board of Directors and provide a response on strategic matters affecting the Trust;
- 2.5.2.8 To approve and review the membership strategy;
- 2.5.2.9 To exercise such other powers and to discharge such other duties as may be conferred on the Council of Governors under this constitution;
- 2.5.2.10 To require one or more Directors to attend a meeting of the Council of Governors for the purpose of obtaining information about the Trust's performance of its functions or the Directors' performance of their duties (and deciding whether

to propose a vote on the Trust's or Directors' performance); and

2.5.2.11 to approve any merger, acquisition, separation or dissolution application in respect of the Trust before the application is made to NHS Improvement.

2.6 Subject to the Act and this constitution, the exercise of these powers may be delegated to a committee of Governors, or a committee so appointed under this paragraph may appoint a sub-committee.

2.7 If NHS Improvement has appointed a panel for advising governors, a Governor may refer a question to that panel as to whether the Trust has failed or is failing to act in accordance with this Constitution or Chapter 5 of the 2006 Act. A Governor may only refer a question under this paragraph if more than half of the members of the Council of Governors voting approve the referral.

3 Meetings of the Council of Governors

3.1 Admission of the Public

Members of the public are entitled to attend all meetings of the Council of Governors except for special reasons where the Council of Governors resolves as follows:

- (a) that members of the public should 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 public order the meeting adjourn for a period to be specified in such resolution to enable the Council of Governors to complete business without the presence of the public.

3.2 Nothing in these Standing Orders shall require the Council of Governors 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 of Governors.

3.3 Calling Meetings

- (1) Council of Governors meetings are to take place at least 4 times in a year at such time and place as the Chairman shall convene.
- (2) One third or more of the Council of Governors may requisition a meeting in writing. If the Chairman refuses or fails to call a meeting

within seven days of a requisition being presented, the Governors signing the requisition may forthwith call a meeting.

- (3) The Council of Governors will publicise and hold an Annual Members' Meeting in accordance with the terms of the Constitution.
- (4) The Annual Members' Meeting will be convened by the Trust Secretary by order of the Council of Governors

3.4 Notice of Meetings and the Business to be transacted

- (1) Before each meeting of the Council of Governors, a written notice specifying the business proposed to be transacted shall be delivered to every Governor, or sent by post to the usual place of residence of each Governor, so as to be available to Governors at least three clear days before the meeting. The notice shall be signed by the Chairman or by an officer authorised by the Chairman to sign on their behalf. Want of service of such a notice on any Governor shall not affect the validity of a meeting.
- (2) In the case of a meeting called by Governors in default of the Chairman calling the meeting, the notice shall be signed by those Governors.
- (3) No business shall be transacted at the meeting other than that specified on the agenda, or emergency motions allowed under these standing orders.
- (4) Before each meeting of the Council of Governors a public notice of the time and place of the meeting, and the public part of the agenda, shall be displayed at the Trust's principal offices at least three clear days before the meeting

3.5 Agenda and Supporting Papers

- (1) The agenda and supporting papers will be sent to Governors six days before the meeting whenever possible, but will certainly be dispatched no later than three clear days before the meeting, save in emergency.
- (2) A Governor desiring a matter to be included on an agenda shall make the request in writing to the Chairman at least 10 clear days before the meeting. The request should include appropriate supporting information. Requests made less than 10 days before a meeting may be included on that agenda at the discretion of the Chairman.

3.6 Notice of Motion

A Governor desiring to move or amend a motion shall send a written notice thereof at least ten clear days before the meeting to the Trust Secretary, 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.

3.7 Withdrawal of Motion or Amendments

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

3.8 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 six calendar months shall bear the signature of the Governor(s) who gives it and also the signature of four other Governors. When any such motion has been disposed of by the Trust, it shall not be competent for any Governor other than the Chair to propose a motion to the same effect within six months; however the Chair may do so if he considers it appropriate.

3.9 Motions

- (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.
- (2) When a motion is under discussion or immediately prior to discussion it shall be open to a Governor 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.
- (3) No amendment to the motion shall be admitted if, in the opinion of the Chair of the meeting, the amendment negates the substance of the motion.

3.10 Chairman of meeting

- (1) At any meeting of the Council of Governors the Chairman, if present, shall preside. If the Chairman is absent from the meeting, the Deputy Chairman (if the Board has appointed one), if present, shall preside. If the Chairman and the Deputy Chairman are both absent, the Senior Independent Director (if the Board has appointed one), if present, shall preside.
- (2) If the Chairman, Deputy Chairman and Senior Independent Director are absent, and no other Non-executive Director has accepted to replace them, the Council of Governors meeting shall be chaired by

whomsoever the majority of Governors present at a meeting shall appoint.

3.11 Voting

- (1) Subject to any specific requirements relating to particular decisions set out in the Constitution, decisions at a meeting shall be determined by a majority of the votes of the Governors present and voting on the question and in the case of the number of votes for and against a motion being equal the person presiding shall have a second or casting vote.
- (2) All decisions 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 the majority of the Governors present so request.
- (3) If at least one third of the Governors present so request, the voting (other than the paper ballot) on any question may be recorded to show how each Governor present voted or abstained.
- (4) If a Governor so requests, his/her vote shall be recorded by name upon any vote (other than by paper ballot).
- (5) In no circumstances may an absent Governor vote by proxy. Absence is defined as being absent at the time of the vote.
- (6) A Governor may only vote if:
 - a. he or she has made a declaration of the particulars of his or her qualification to be a member of the Trust; and
 - b. he or she is not prevented from being a member of the Council of Governors under paragraph 2.4 above.

3.12 Minutes

- (1) The Minutes of the proceedings of a meeting shall be drawn up and maintained as a public record. They will be submitted for agreement at the next meeting where they will be signed by the presiding Chairman.
- (2) 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) Minutes shall be circulated in accordance with the Governors' wishes. The Minutes of the meeting shall be made available to the public except for those parts of the meeting or those meetings where the public have been excluded under Standing Order 3.1 above.

3.13 Record of Attendance

The names of the Governors present at the meeting shall be recorded in the Minutes.

3.14 Quorum

- (1) No business shall be transacted at a meeting unless at least one third of the total number of Governors (7) is present, of which at least one is a public Governor, at least one is a patient (or carer) Governor and at least one is a staff Governor. If at any meeting there is no quorum present within 30 minutes of the time fixed for the start of the meeting, the meeting shall stand adjourned for 7 days (or such other term as is required by the Trust Secretary). Upon reconvening, those present shall constitute a quorum.
- (2) If a Governor has been disqualified from participating in the discussion on any matter and/or from other voting on any resolution by reason of the declaration of a conflict of interest (Standing Order 5) he shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business.

4. Delegation of Function and Status of Standing Orders

- 4.1 Subject to the Act and this constitution, the Council of Governors may agree from time to time on the delegation of certain duties to committees or sub-committees which it has formally constituted. The terms of reference of these committees shall be clearly laid out and approved by the Council of Governors.
- 4.2 Subject to the Act and this constitution, delegation of certain duties to an individual Governor may occur upon the agreement of the Council of Governors in formal session.
- 4.3 If for any reason these Standing Orders are not complied with, full details of the non-compliance and any justification for non-compliance and the circumstances around the non-compliance, shall be reported to the next formal meeting of the Council of Governors for action or ratification. All Members of the Council of Governors and staff have a duty to disclose any non-compliance with these Standing Orders to the Trust Secretary as soon as possible.
- 4.4 The Standing Orders of the Council of Governors, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees established by the Council of Governors. In which case the term "Chairman" is to be read as a reference to the Chairman of the committee as the context permits, and the term "Member of the

Council of Governors” is to be read as a reference to a member of the committee also as the context permits.

5. Declaration of Interests and Register of Interests

5.1 The regulatory framework requires Governors to declare interests which are relevant and material to the Council of Governors of which they are a Member. These declarations should be made upon appointment or election, and upon any subsequent occasion that a conflict arises.

5.2 The following interests which should be regarded as "relevant and material" are to be entered into the Register of Interests

- a) Directorships, including non-executive directorships held in private companies or public limited companies (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 Trust or other NHS body.
- c) Majority or controlling share holdings in organisations likely or possibly seeking to do business with the Trust or other NHS body.
- 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.

5.3 At the time Governors' interests are declared, they should be recorded in the Council of Governors minutes. Any changes in interests should be declared at the next Council of Governors meeting following the change occurring.

5.4 Governors' directorships of companies likely or possibly seeking to do business with the Trust or other NHS body should be published in the Trust's Annual Report. The information should be kept up to date for inclusion in succeeding annual reports.

- 5.5 During the course of a Council of Governors meeting, if a conflict of interest is established, the Governor concerned should withdraw from the meeting and play no part in the relevant discussion or decision.
- 5.6 If Council of Governors members have any doubt about the relevance of an interest; this should be discussed with the Chairman and or Trust Secretary.
- 5.7 The Trust Secretary will ensure that a Register of Interests is established to formally record Governors' declarations of interests. In particular, the Register will include details of all directorships and other relevant and material interests, which have been declared by Governors, as defined in Standing Order 5.2.
- 5.9 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 month will be incorporated.
- 5.10 The Register will be available to the public and the Chairman 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.
- 5.11 In establishing, maintaining, updating and publicising the Register, the Trust shall comply with all guidance issued from time to time by NHS Improvement.

6. Standards of Business Conduct Policy

- 6.1 Governors should comply with the Trust Principles (as set out in the Constitution), the FT Code of Conduct, the Trust's Code of Conduct, the Standing Financial Instructions prepared by the Director of Finance & Performance; the requirements of the regulatory framework, including the Constitution, and any applicable guidance issued by NHS Improvement.
- 6.2 Interest of Governors in Contracts
If it comes to the knowledge of a Governor that a contract in which he has any pecuniary interest (not being a contract to which he is himself a party), has been, or is proposed to be, entered into by the Trust he shall, at once, give notice in writing to the Trust Secretary of the fact that he 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.
- 6.3 A Governor should also declare to the Trust Secretary any other employment or business or other relationship of his, or of a cohabiting spouse, that conflicts, or might reasonably be predicted could conflict with the interests of the Trust. The Trust and the Regulatory

Framework require declared interests, employment or relationships, to be entered in a register of Governors' interests.

- 6.4 Canvassing of Governors of the Trust or of any Committee of the Trust directly or indirectly for any appointment under the Trust shall disqualify the candidate from such appointment.
- 6.5 A Governor shall not solicit for any person any appointment under the Trust or recommend any person for such appointment: but this paragraph shall not preclude a Governor from giving written testimonial of a candidate's ability, experience or character for submission to the Trust.
- 6.6 Informal discussions outside appointments panels or committees, whether solicited or unsolicited, should be declared to the panel or committee.
- 6.7 Candidates for any staff appointment under the Trust shall, when making application, disclose in writing to the Trust whether they are related to any Governor. Failure to disclose such a relationship may disqualify a candidate and, if appointed, may render him liable to instant dismissal.
- 6.8 The Chairman and every Governor shall disclose to the Chief Executive any relationship between himself and a candidate of whose candidature that Governor is aware.
- 6.9 On appointment Governors should disclose to the Council of Governors whether they are related to any other Member of the Board or holder of any office in the Trust.

7. Compliance

- 7.1 Governors agree to attend training programmes and induction programmes prepared for their benefit.
- 7.2 Governors must comply with the seven Nolan principles of behaviour in public life.
- 7.3 Governors must comply with the NHS Foundation Trust Code of Governance.

8 Resolution of Disputes between Council of Governors and Board of Directors

- 8.1 It is the responsibility of the Board of Directors to direct the business of the Trust in accordance with the constitution. The powers of the Council of Governors are detailed in the constitution and in these Standing Orders for the Council of Governors. The Governors will also

represent the views of the members of their constituencies and ensure the needs of the relevant health community are taken into account when advising on the Trust's strategic direction.

- 8.2 In situations where any conflict arises between the Council of Governors and the Board of Directors, the decision of the Senior Independent Director shall normally be final. However there may be circumstances where the Senior Independent Director feels unable to decide, owing to a conflict of interest. In such situations the Senior Independent Director will initiate an independent review to investigate and make recommendations. Normally this will be achieved by inviting the Chairman of another Foundation Trust to conduct the review and the choice of the individual will be agreed by both the Board of Directors and the Council of Governors.

9. Miscellaneous

- 9.1 It is the duty of the Trust Secretary to ensure that existing Governors and all new appointees are notified of and understand their responsibilities within these Standing Orders.
- 9.2 Standing Orders shall be reviewed from time to time by the Council of Governors. The requirement for review extends to all documents having the effect as if incorporated into the Council of Governors Standing Orders. A proposed change to the Standing Orders shall be regarded as a change to the Constitution.
- 9.3 These Standing Orders shall not be varied except in the following circumstances:
- (i) upon a notice of motion under Standing Order 3.6;
 - (ii) upon a recommendation of the Chairman included on the agenda for the meeting;
 - (iii) that two thirds of the Council of Governors members are present at the meeting where the variation or amendment is being discussed, and that at least half of those present and voting vote in favour of the amendment;
 - (iv) providing that any variation or amendment does not contravene a statutory provision.

SECTION B

1. INTERPRETATION AND DEFINITIONS FOR STANDING ORDERS

- 1.1 The Chairman shall be the final authority (save as otherwise permitted by law) at any meeting on the interpretation of Standing Orders. In this regard he should be advised by the Trust Secretary and be guided by the Constitution.
- 1.2 Words importing the masculine gender only shall include the feminine gender; words importing the singular shall include the plural and vice versa.
- 1.3 Definition of terms
- 1.3.1 "Accounting Officer" means the Chief Executive of the Trust as designated by the National Health Service Act 2006. He has the duty to prepare the accounts in accordance with the Act and the personal duty of signing the Trust accounts.
- 1.3.2 "The Act" means the National Health Service Act 2006.
- 1.3.3 "The Trust" means Royal Brompton & Harefield NHS Foundation Trust
- 1.3.4 "Council of Governors" and "Council" mean Governors of the Trust as set out in the Constitution and in accordance with the Act.
- 1.3.5 "Board of Directors" means the Chairman, Executive and Non-executive Directors of the Trust, as set out in the Constitution and in accordance with the Act.
- 1.3.6 "Chairman" 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 Chairman also presides at meetings of the Council of Governors. The expression "the Chairman" shall be deemed to include the Deputy Chairman (if the Board has appointed one), if the Chairman is absent from the meeting or is otherwise unavailable, and shall be deemed to include the Senior Independent Director if the Chairman and the Deputy Chairman are both absent from the meeting or otherwise unavailable.
- 1.3.7 "Chief Executive" means the chief officer of the Trust.
- 1.3.8 "Committee" means a committee or sub-committee created and appointed by the Council of Governors in accordance with the constitution.

- 1.3.9 "Committee members" means persons formally appointed by the Council of Governors to sit on or to chair specific committees.
- 1.3.10 "Constitution" means the most recently amended version of the constitution of the Royal Brompton & Harefield NHS Foundation Trust.
- 1.3.11 "Director of Finance" or "Director of Finance & Performance" means the Chief Financial Officer of the Trust.
- 1.3.12 "Funds held on trust" shall mean those funds which the Trust holds on date of incorporation, receives on distribution by statutory instrument or chooses subsequently to accept. Such funds may or may not be charitable.
- 1.3.13 "Officer" means employee of the Trust or any other person holding a paid appointment or office with the Trust.
- 1.3.14 "Trust Secretary" means a person appointed to act independently of the Council of Governors and the Directors to provide advice on corporate governance issues to the Council of Governors, the Chairman and the Directors, and to monitor the Trust's compliance with the law, Standing Orders, and other regulatory guidance.
- 1.3.15 "SOs" means Standing Orders.
- 1.3.16 "Senior Independent Director" means the non-executive Director appointed by the Board in consultation with the Council of Governors to be the first point of contact for concerns to be raised with the Board by the Governors; and/or to take on the Chairman's duties if the Chairman and Deputy Chairman are absent for any reason.
- 1.3.17 "Audit & Risk Committee" means Audit Committee

**ANNEX 7 – STANDING ORDERS FOR THE PRACTICE AND PROCEDURE
OF THE BOARD OF DIRECTORS**

**Royal Brompton & Harefield NHS Foundation
Trust**

**Standing Orders
of the
Board of Directors**

September 2017

SECTION A – STANDING ORDERS

1 Statutory Framework

Royal Brompton & Harefield NHS Foundation Trust (the Trust) is a Public Benefit Corporation, which came into existence on 1 June 2009 in accordance with the provisions of the National Health Service Act 2006 (the Act).

- 1.1 The principal place of business (headquarters) of the Trust is Royal Brompton Hospital, Sydney Street, London SW3 6NP.
- 1.2 A NHS Foundation Trust is established under the Act as a public benefit corporation, governed by its constitution and accountable to its members through the Council of Governors and regulated by NHS Improvement.
- 1.3 The functions of the Trust are conferred by the Act.
- 1.4 As a body corporate, the Trust has 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.
- 1.5 The Trust adopts these Standing Orders for the regulation of the proceedings and business of the Board of Directors in fulfilment of its requirements to be legally constituted and the Trust will also adopt and maintain Standing Financial Instructions (SFIs) setting out the responsibilities of individuals.
- 1.6 The Trust will also be bound by such other statutes and legal provisions which govern the conduct of its affairs.
- 1.7 The Trust remains part of the NHS and is subject to NHS standards, performance rating and systems of inspection. It has the principal purpose of providing goods and services for the National Health Service in England.

2. The Board of Directors

- 2.1 The Composition of the Board of Directors shall be in accordance with the Act and as set out in the constitution.
- 2.2 Appointment of Chair
The Chair shall be a non-executive director appointed by the Governors in accordance with the provisions set out in the constitution and the Standing Orders for the Council of Governors.
- 2.3 Terms of Office of the Chair and Non-executive Directors
The Council of Governors shall, at a general meeting of the Council of Governors, decide the remuneration and allowances, and other terms

and conditions of office, of the Chair and the other Non-executive directors.

2.4 Appointment and Powers of Senior Independent Director

- (1) The Chair and members of the Board of Directors will, after consulting with the Council of Governors, appoint one of the Non-executive Directors to be Senior Independent Director, for such period as they may specify on appointing them, not exceeding the remainder of their term as a member of the Board.
- (2) Any member so appointed may at any time resign from the office of Senior Independent Director by giving notice in writing to the Chair. The Chair and members of the Board may thereupon, after consulting with the Council of Governors, appoint another non-executive Director as Senior Independent Director.
- (3) Where the Chair of the Trust and the Deputy Chair have died or ceased to hold office, or where they have been unable to perform the duties of Chair owing to illness or any other cause, the Senior Independent Director shall act as Chair until a new Chair is appointed or the existing Chair resumes his duties (or the Deputy Chair becomes available to deputise); and references to the Chair in these Standing Orders shall, so long as there is no Chair or Deputy Chair able to perform those duties, be taken to include the Senior Independent Director.

2.5 Joint Directors

- (1) Where there is a joint appointment (e.g. job-share) to a post of Director those persons shall count, for the purpose of these Standing Orders, as one person.
- (2) Where the office of a member of the Board is jointly shared by more than one person:
 - (a) either or both of those persons may attend or take part in meetings of the Board;
 - (b) if both are present at a meeting they should cast one vote if they agree;
 - (c) in the case of disagreements no vote should be cast;
 - (d) the presence of either or both of those persons should count as the presence of one person for the purposes of Standing Order 3.11 Quorum.

2.6 Roles of members of the Board

- 2.6.1 The Board of Directors is appointed to exercise all of the powers of the Trust on its behalf.
- 2.6.2 Any of these powers may be delegated to a committee of Directors or to an Executive Director. A committee appointed under this paragraph may appoint a Sub-Committee.
- 2.6.3 An Audit (or Audit & Risk) committee shall be established which shall be made up of non-executive Directors who will monitor, review and carry out other functions in relation to the Auditor as appropriate.
- 2.6.4 It is for the non-executive directors to appoint or remove the Chief Executive and such appointment (but not removal) shall be subject to the approval of the Council of Governors (subject to paragraph 28).
- 2.6.5 A committee of the Chair, Chief Executive and the other non-executive Directors is to appoint or remove the other executive directors.
- 2.6.6 The Board of Directors is to establish a remuneration committee of non-executive Directors to decide the remuneration and allowances and the other terms and conditions of office of the Executive Directors.
- 2.6.7 The Board of Directors, having regard to the views of the Council of Governors, is to prepare information relating to the Trust's forward planning in respect of each financial year to be given to NHS Improvement.
- 2.6.8 The Board of Directors is to present to the Council of Governors at a General Meeting the annual accounts, any report of the Auditor on the annual accounts and the annual report.
- 2.6.9 The Board will function as a corporate decision-making body, Executive and Non-executive Members will be full and equal members. Their role as members of the Board of Directors will be to consider the key strategic and managerial issues facing the Trust in carrying out its statutory and other functions.

2.6.10 *Executive Directors*

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

2.6.11 *Chief Executive*

The Chief Executive shall be responsible for the overall performance of the executive functions of the Trust. S/he is the **Accounting Officer** for the Trust and shall be responsible for ensuring the discharge of obligations under Standing Financial Instructions and in line with the requirements of the NHS Foundation Trust Accounting Officer Memorandum as published by NHS Improvement.

2.6.12 *Director of Finance*

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

2.6.13 *Non-executive Directors*

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

2.6.14 *Chair*

The Chair shall be responsible for the operation of the Board and chair all meetings of the Board of Directors and Council of Governors, when present. The Chair must comply with the terms of appointment, constitution and with these Standing Orders. The Chair shall work in close harmony with the Chief Executive and the Trust Secretary and shall ensure that key and appropriate issues are discussed by the Board in a timely manner with all the necessary information and advice being made available to the Board to inform the debate and ultimate resolutions.

2.7 Corporate role of the Board

- (1) All business shall be conducted in the name of the Trust.
- (2) All funds received in trust shall be held in the name of the Trustees as corporate trustee.
- (3) The powers of the Trust established under statute shall be exercised by the Board except as otherwise provided for in Standing Order No. 5.
- (4) The Board shall define and regularly review the functions it exercises on behalf of the Trust.

- 2.8 Schedule of Matters reserved to the Board and Scheme of Delegation
The Board has resolved that certain powers and decisions may only be exercised by the Board in formal session. These powers and decisions are set out in the 'Schedule of Matters Reserved to the Board' and shall have effect as if incorporated into the Standing Orders. Those powers, which it has delegated to officers and other bodies, are contained in the Scheme of Delegation.
- 2.9 Interaction/Relationship between the Board of Directors and the Council of Governors
It is the responsibility of the Board to direct the business of the Trust in accordance with the constitution. The powers of the Council of Governors are detailed in the constitution and in the Standing Orders for the Council of Governors. The Governors will also represent the views of the members of their constituency and ensure the needs of the local health community are taken into account when advising on the Trust's strategic direction.
- 2.10 Conflict Resolution Between Board of Directors and Council of Governors
In situations where any conflict arises between the Council of Governors and the Board of Directors, the decision of the Senior Independent Director shall normally be final. However there may be circumstances where the Senior Independent Director feels unable to decide owing to a conflict of interest. In such situations s/he will initiate an independent review to investigate and make recommendations. Normally this will be achieved by inviting the Chair of another Foundation Trust to conduct the review and the choice of the individual will be agreed by both the Board of Directors and the Council of Governors.
- 2.11 Disqualification criteria for Board of Directors
The following may not become or continue as a member of the Board of Directors:
- 2.11.1 a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;
 - 2.11.2 a person who has made a composition or arrangement with, or granted a Trust deed for, his creditors and has not been discharged in respect of it;
 - 2.11.3 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;
 - 2.11.4 a person who is currently sitting as a member of the Council of Governors;

- 2.11.5 a person who is the subject of a disqualification order under the Company Director's Disqualification Act 1986;
- 2.11.6 in the case of a non-executive director, if they are no longer a member of a public or patient constituency;
- 2.11.7 a person whose tenure of office as a Chair or as a member or director of a health service body has been terminated within the preceding two years on the grounds that their appointment is not in the interests of the health service for non-attendance at meetings, or for non-disclosure of a pecuniary interest;
- 2.11.8 a person who has been dismissed within the preceding two years from any paid employment with a health service body otherwise than by reason of redundancy;
- 2.11.9 a person who is incapable, by reason of mental disorder, illness or injury, of managing or administering his property and affairs;
- 2.11.10 a person who fails to attend three consecutive Board of Director meetings and the Board of Directors in formal meeting decide that the absence is not reasonable and can no longer be sustained;
- 2.11.11 a person who has issued a claim against the Trust and legal proceedings have ensued as a result of such claim or they are classed as a vexatious complainant;
- 2.11.12 A person who fails to abide by the constitution;
- 2.11.13 An 'unfit person' as defined in the Trust's provider licence (as may be amended from time to time).

3. Board Meetings

3.1 Admission of the Public

Members of the public are entitled to attend all meetings of the Board of Directors except for special reasons where the Board of Directors resolves as follows:

- (a) that members of the public should 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 public order the meeting adjourn for a period to be specified in such resolution to enable the Board of Directors to complete business without the presence of the public.

3.2 Nothing in these Standing Orders shall require the Board of Directors 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 Board of Directors.

3.3 Calling meetings

- (1) Ordinary meetings of the Board shall be held at regular intervals at such times and places as the Board may determine.
- (2) The Chair of the Trust may call a meeting of the Board at any time.
- (3) One third or more members of the Board Directors may requisition a meeting in writing. If the Chair refuses or fails to call a meeting within seven days of a requisition being presented, the Directors signing the requisition may forthwith call a meeting.

3.4 Notice of Meetings and the Business to be transacted

- (1) Before each meeting of the Board a written notice specifying the business proposed to be transacted shall be delivered to every Director, or sent by post to the usual place of residence of each Director, so as to be available at least three clear days before the meeting. The notice shall be signed by the Chair or by an officer authorised by the Chair to sign on their behalf. Want of service of such a notice on any member shall not affect the validity of a meeting.
- (2) In the case of a meeting called by Directors in default of the Chair calling the meeting, the notice shall be signed by those Directors.
- (3) No business shall be transacted at the meeting other than that specified on the agenda, or emergency motions allowed under Standing Order 3.6.
- (4) 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.

3.5 Agenda and Supporting Papers

- (1) The agenda and supporting papers will be sent to Directors six days before the meeting whenever possible, but will certainly be dispatched no later than three clear days before the meeting, save in emergency.
- (2) Before holding a meeting, the Board of Directors will send a copy of the agenda (but not supporting papers) to the Council of Governors.
- (3) The Board may determine that certain matters should appear on every agenda for a meeting and shall be addressed prior to any other business being conducted. (Such matters may be identified within these Standing Orders or following subsequent resolution shall be listed in an Appendix to the Standing Orders).

- (4) A member of the Board desiring a matter to be included on an agenda shall make the request in writing to the Chair at least 10 clear days before the meeting. The request should include appropriate supporting information. Requests made less than 10 days before a meeting may be included on the agenda at the discretion of the Chair.

3.6 Petitions

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

3.7 Notice of Motion

A Director of the Trust desiring to move or amend a motion shall send a written notice thereof at least ten clear days before the meeting to the Chair, who shall insert 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 3.8.

3.8 Withdrawal of Motion or Amendments

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

3.9 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 six calendar months shall bear the signature of the Director(s) who gives it and also the signature of four other Directors. When any such motion has been disposed of by the Trust, it shall not be competent for any Director other than the Chair to propose a motion to the same effect within six months; however the Chair may do so if he considers it appropriate.

3.8 Motions

- (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.
- (2) When a motion is under discussion or immediately prior to discussion it shall be open to a Director to move:
- an amendment to the motion;
 - the adjournment of the discussion or the meeting;
 - that the meeting proceed to the next business; (*)
 - the appointment of an ad hoc committee to deal with a specific item of business;
 - that the motion be now put. (*)
 - a motion resolving to exclude the public (including the press).

* 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.

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

3.9 Chair of meeting

- (1) At any meeting of the Board the Chair, if present, shall preside. If the Chair is absent from the meeting, the Deputy Chair, if present, shall preside. If the Chair and the Deputy Chair are both absent, the Senior Independent Director if present, shall preside.
- (2) If the Chair, Deputy Chair and Senior Independent Director are absent, such member (who is not also an Executive Director of the Trust) as the members present shall choose shall preside.

3.10 Chair's ruling

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

3.11 Quorum

- (1) No business shall be transacted at a meeting unless at least one-third of the whole number of the Chair and other members of the Board (including at least one Non-executive Director and one Executive Director) are present. This requirement for at least one Executive Director to form part of the quorum for the Board shall not apply where the Executive Directors have been excluded from the meeting as a class (e.g. when the Board considers the recommendations of the Remuneration Committee). The above requirement for at least one Non-executive Director to form part of the quorum of the Board shall not apply where the Non-executive Directors are excluded from a meeting as a class (e.g. when the Board considers provisions of the Constitution relating to the interests of the Non-executive Directors as a class).
- (2) An Officer in attendance for an Executive Director but without formal 'acting-up' status may not count towards the quorum.
- (3) If the Chair or a Director has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of a declaration of a conflict of interest (see SO No.7) that person shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a

position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business.

3.12 Voting

- (1) Every question put to a vote at a meeting shall be determined by a majority of the votes of members present and voting on the question including the Chair. In the case of an equal vote, the person presiding (i.e. the Chair of the meeting) shall have a second and casting vote.
- (2) At the discretion of the Chair all questions put to the vote shall be determined by oral expression or by a show of hands, unless the Chair directs otherwise, or it is proposed, seconded and carried that a vote be taken by paper ballot.
- (3) If at least one third of the members present so request, the voting on any question may be recorded so as to show how each member present voted or did not vote (except when conducted by paper ballot).
- (4) If a member so requests, their vote shall be recorded by name.
- (5) In no circumstances may an absent member of the Board vote by proxy. Absence is defined as being absent at the time of the vote.
- (6) A manager who has been formally appointed to act up for an Executive Director during a period of incapacity or temporarily to fill an Executive Director vacancy shall be entitled to exercise the voting rights of the Executive Director.
- (7) A manager attending the Board meeting to represent an Executive Director during a period of incapacity or temporary absence without formal 'acting-up' status may not exercise the voting rights of the Executive Director. An Officer's status when attending a meeting shall be recorded in the minutes.
- (8) For the voting rules relating to joint members see Standing Order 2.5.

3.13 Suspension of Standing Orders

- (1) Except where this would contravene any statutory provision or any guidance issued by NHS Improvement any one or more of the Standing Orders may be suspended at any meeting, provided that at least two-thirds of the whole number of the members of the Board are present (including at least one Executive and one Non-executive Director) and that at least two-thirds of those members present signify their agreement to such suspension. The reason for the suspension shall be recorded in the Board's minutes.

- (2) A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the Chair and members of the Trust.
 - (3) No formal business may be transacted while Standing Orders are suspended.
 - (4) The Audit Committee shall review every decision to suspend Standing Orders.
- 3.14 Record of Attendance
The names of the Chair and Directors and officers present at the meeting shall be recorded.

3.15 Minutes

- (1) The minutes of the proceedings of a meeting shall be drawn up and submitted for agreement at the next ensuing meeting where they shall be signed by the person presiding at it.
- (2) No discussion shall take place upon the minutes except upon their accuracy or where the Chair considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the next meeting.
- (3) Minutes shall be circulated in accordance with the Directors' wishes. When providing a record of a public meeting, the minutes shall be made available to the public.
- (4) As soon as practicable after holding a meeting, the Board of Directors shall send a copy of the minutes of the meeting to the Council of Governors.

4. APPOINTMENT OF COMMITTEES AND SUB-COMMITTEES

4.1 Appointment of Committees

- (1) In accordance with the constitution the Board may make arrangements for the exercise of any of its functions by committee or sub-committee consisting wholly of Directors.
- (2) The Trust shall determine the membership and terms of reference of committees and sub-committees and shall, if it requires to, receive and consider reports of such committees.

4.2 Applicability of Standing Orders and Standing Financial Instructions to Committees

The Standing Orders and Standing Financial Instructions of the Trust, as far as they are applicable, shall as appropriate apply to meetings and any committees established by the Board. In such cases the term "Chair" is to be read as a reference to the Chair of a committee as the context permits, and the term "member" is to be read as a reference to a member of a committee also as the context permits.

4.3 Terms of Reference

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

4.4 Delegation of powers by Committees to Sub-Committees

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

4.5 Approval of Appointments to Committees

- (1) The Board shall approve the appointments to each of the committees which it has formally constituted. The Chair of each Board sub-committee shall be a Non-executive Director.

4.6 Committees established by the Board

The committees, sub-committees, and joint-committees established by the Board are:

1. **Audit Committee**

In line with the Act an Audit Committee of Non-executive Directors will be established and constituted to provide the Board with an independent and objective review of its financial systems, financial information and compliance with laws, guidance, and regulations governing the Trust. The Terms of Reference will be approved by the Board and reviewed on a periodic basis.

2. **Risk and Safety Committee**

A Risk and Safety Committee of Non-executive Directors will be established and constituted to provide the Board with an independent and objective review of its risk and safety systems, risk and safety information and compliance with laws, guidance, and regulations governing the Trust. The Terms of Reference will be approved by the Board and reviewed on a periodic basis.

3. Nominations & Remuneration Committee

In line with the Act a Nomination & Remuneration Committee of Non-executive Directors will be established and constituted to decide the remuneration and allowances and the other terms and conditions of office of the Executive Directors.

The Committee will decide the remuneration and allowances and other conditions of office for the Chief Executive and other Executive Directors including:

- (i) all aspects of salary (including any performance-related elements/bonuses);
- (ii) provisions for any other benefits, including pensions and cars;
- (iii) arrangements for termination of employment and other contractual terms.

4. Finance Committee

A Finance Committee, with a membership drawn from both the Non-executive and Executive members of the Trust Board, will be established and constituted to provide the Board with an independent and objective review of financial decision making and investment strategy. The Terms of Reference will be approved by the Board and reviewed on a periodic basis.

5. Other Committees

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

4.7 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 has reported back to the Board or shall otherwise have concluded the matter.

A Director of the Trust or a member of a committee shall not disclose any matter reported to the Board or otherwise dealt with by the committee notwithstanding that the matter has been reported or action has been concluded if the Board or committee shall resolve that it is confidential.

5. Arrangements for the Exercise of Trust Functions by Delegation

5.1 Delegation of Functions to Committees, Officers or other bodies

The Board may make arrangements for the exercise of any of its functions by a committee or sub-committee appointed by virtue of Standing Order 4, or by a Director of the Trust subject to the constitution and such restrictions and conditions as the Trust thinks fit.

5.2 Emergency Powers and urgent decisions

The powers which the Board has reserved to itself within these Standing Orders (see Standing Order 2.8) may in emergency or for an urgent decision be exercised by the Chief Executive and the Chair after having consulted at least two Non-executive Directors. The exercise of such powers by the Chief Executive and Chair shall be reported to the next formal meeting of the Board in the next formal meeting of the Board for ratification.

5.3 Delegation to Committees

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

5.4 Delegation to Officers

- (1) Those functions of the Trust which have not been retained as reserved by the Board or delegated to other committees, sub-committees or joint committees shall be exercised on behalf of the Trust by the Chief Executive. The Chief Executive shall determine which functions s/he will perform personally and shall nominate officers to undertake the remaining functions for which he will retain accountability to the Board.
- (2) The Chief Executive shall prepare a Scheme of Delegation identifying his/her proposals which shall be considered and approved by the Board. The Chief Executive may periodically propose amendment to the Scheme of Delegation which shall be considered and approved by the Board.
- (3) Nothing in the Scheme of Delegation shall impair the discharge of the direct accountability to the Board of the Director of Finance or other Executive Director to provide information and advise the Board in accordance with any statutory requirement or guidance from NHS Improvement. Outside these requirements the Director of Finance shall be accountable to the Chief Executive.

5.5 Schedule of Matters Reserved to the Board and Scheme of Delegation
The arrangements made by the Board as set out in the "Reservation of Powers to the Board" and "Delegation of Powers" shall have effect as if incorporated in these Standing Orders.

5.6 Duty to report non-compliance with Standing Orders and Standing Financial Instructions
If for any reason these Standing Orders are not complied with, full details of the non-compliance and any justification for non-compliance and the circumstances around the non-compliance, shall be reported to the next 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 Chief Executive or Trust Secretary as soon as possible.

6. Declaration of Interests and Register of Interests

6.1 Requirements for Declaring Interests and applicability to Board Members

The 2006 Act requires Board Members to declare interests which are relevant and material to the Board of which they are a member. All existing Board members should declare such interests. Any Board members appointed subsequently should do so on appointment.

6.2 Relevant and material interests

Interests, which should be regarded as "relevant and material" are:

- (i) Directorships, including Independent Directorships held in private companies or plcs (with the exception of those of dormant companies);
- (ii) Ownership, part-ownership or directorship of private companies, businesses or consultancies likely or possibly seeking to do business with the Trust or any other NHS body;
- (iii) Majority or controlling share holdings in organisations likely or possibly seeking to do business with the Trust or any other NHS body;
- (iv) A position of authority in a charity or voluntary organisation in the field of health and social care;
- (v) Any connection with a voluntary or other organisation contracting for NHS services or commissioning NHS services;
- (vi) Research funding/grants that may be received by an individual or their department;
- (vii) Interests in pooled funds that are under separate management;
- (viii) 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;
- (ix) Membership of clubs, societies or organisations whose purpose may include furthering the business or personal interests of their members by undeclared or informal means. Such organisations include Masonic lodges and religious societies whose membership consists of professional and business people.
- (x) Any member of the Board who comes to know that the Trust has entered into or proposes to enter into a contract in which he/she or any person connected with him/her (as defined in these Standing Orders) has any pecuniary interest, direct or indirect, shall declare his/her interest by giving notice in writing of such fact to the Trust as soon as practicable.

6.3 Advice on Interests

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

6.4 Recording of Interests in Board minutes

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

6.5 Publication of declared interests in Annual Report

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

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

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

6.7 Interests of Directors' spouses or partners

There is no requirement for the interests of directors' spouses or partners to be declared. However SO 6.3 which is based on the regulations requires that the interest of Directors' spouses or partners (if living together) in contracts should be declared. Therefore the interests of Directors' spouses and co-habiting partners should be regarded as relevant.

6.8 Register of Interests

- (1) The Trust Secretary will ensure that a Register of Interests is established to formally record declarations of interests of Board or Committee members. The Register will include details of all relevant and material interests (as defined in SO 6.2) which have been declared by both Executive and Non-executive Directors.

- (2) These details will be kept up to date by means of a monthly review of the Register by the Trust Secretary in which any changes to interests declared during the preceding month will be incorporated.
- (3) The Register will be available to the public in accordance with the Act and the constitution. In establishing, maintaining, updating and publicizing the Register the Trust shall comply with all guidance issued from time to time by NHS Improvement.

6.9 Standards of Business Conduct

- (1) All Trust staff and members must comply with the Trust's Standards of Business Conduct and any guidance issued by NHS Improvement.
- (2) **Canvassing of and Recommendations by Members in Relation to Appointments**
 - i) Canvassing of Directors or officers of the Trust or of any Committee of the Trust directly or indirectly for any appointment under the Trust shall disqualify the candidate from such appointment. The contents of this paragraph of the Standing Order shall be included in application forms or otherwise brought to the attention of candidates.
 - ii) A Director or officer 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 from giving written testimonial of a candidate's ability, experience or character for submission to the Trust.
 - iii) Informal discussions outside appointment panels or committees, whether solicited or unsolicited, should be declared to the panel or committee.
- (3) **Relatives of Members or Officers**
 - i) Candidates for any staff appointment under the Trust shall, when making an application, disclose in writing to the Trust whether they are related to any member or the holder of any office under the Trust. Failure to disclose such a relationship shall disqualify a candidate and, if appointed, render him liable to instant dismissal.
 - ii) The Chair and every Director and officer of the Trust shall disclose to the Board any relationship between himself and a candidate of whose candidature that member or officer is aware. It shall be the duty of the Chief Executive to report to the Trust Board any such disclosure made.
 - iii) On appointment, members (and prior to acceptance of an appointment in the case of Executive Directors) should disclose to the Trust whether they are related to any other member or holder of any office under the Trust.
- (4) Directors must comply with the seven Nolan principles of public life.

7. Custody of Seal, Sealing of Documents and Signature of Documents

7.1 Custody of Seal

The common seal of the Trust shall be kept by the Chief Executive or a nominated Manager by him in a secure place.

7.2 Sealing of Documents

The Seal of the Trust shall not be fixed to any documents unless the sealing has been authorized by a resolution of the Board or of a committee thereof, or where the Board has delegated its powers. The fixing of the Seal of the Trust shall be authenticated by the signature of the Chair or Deputy Chair in the absence of the Chair, and of either the Chief Executive or another Executive Director.

7.3 Register of Sealing

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 authorized the document and those who attested the seal. A report of all sealing shall be made to the Board at regular intervals and at least annually. (The report shall contain details of the seal number, the description of the document and the date of sealing).

7.4 Signature of documents

- (1) Where any document will be a necessary step in legal proceedings on behalf of the Trust, it shall be signed by the Chief Executive (unless any statute or regulation otherwise requires or authorizes) or the Board shall have given the necessary authority to some other Executive Director for the purpose of such proceedings.
- (2) In land transactions, the signing of certain supporting documents will be delegated to Managers and set out clearly in the Scheme of Delegation but will not include the main or principal documents effecting the transfer (e.g. sale/purchase agreement, lease, contracts for construction works and main warranty agreements or any document which is required to be executed as a deed).
- (3) 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.

8. Miscellaneous

8.1 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 Standing Financial Instructions. Updated copies shall be issued to staff designated by the Chief Executive. New Directors shall be informed in writing and shall receive copies where appropriate of Standing Orders.

8.2 Documents having the standing of Standing Orders

Standing Financial Instructions and Reservation of Powers to the Board and Delegation of Powers shall have effect as if incorporated into Standing Orders.

8.3 Review of Standing Orders

Standing Orders shall be reviewed from time to time by the Board of Directors. The requirement for review extends to all documents having the effect as if incorporated in Standing Orders.

8.4 Variation and amendment of Standing Orders

These Standing Orders shall not be varied except in the following circumstances:

- (i) upon a notice of motion under Standing Order 3.6;
- (ii) upon a recommendation of the Chair or Chief Executive included on the agenda for the meeting;
- (iii) that two thirds of the Board members are present at the meeting where the variation or amendment is being discussed, and that at least half of the Trust's Non-executive Directors vote in favour of the amendment;
- (iv) providing that any variation or amendment does not contravene a statutory provision

8.5 Dispute resolution

Questions and disputes regarding the interpretation of these Standing Orders and the procedure to be followed at meetings of the Board of Directors shall be resolved in accordance with the procedure set out in the Constitution.

SECTION B

1. INTERPRETATION AND DEFINITIONS FOR STANDING ORDERS

- 1.1 The Chair shall be the final authority (save as otherwise permitted by law) at any meeting on the interpretation of Standing Orders. In this regard s/he should be advised by the Chief Executive or Trust Secretary.
- 1.2 Words importing the masculine gender only shall include the feminine gender; words importing the singular shall include the plural and vice versa.
- 1.3 Definition of terms:
- 1.3.1 "**Accounting Officer**" means the Chief Executive of the Trust as designated by the National Health Service Act 2006. s/he has the duty to prepare the accounts in accordance with the Act and the personal duty of signing the Trust accounts.
- 1.3.2 "**Trust**" means Royal Brompton & Harefield NHS Foundation Trust
- 1.3.3 "**Board**" means the Board of Directors of the Trust as set out in the constitution and in accordance with the Act.
- 1.3.4 "**Chair**" is the person appointed by the Council of Governors in accordance with the constitution to lead the Board and to ensure that it successfully discharges its overall responsibility for the Trust as a whole. The Chair also presides at meetings of the Council of Governors. The expression "the Chair" shall be deemed to include the Deputy Chair if the Chair is absent from the meeting or is otherwise unavailable and shall be deemed to include the Senior Independent Director if the Chair and Deputy Chair are both absent from the meeting or otherwise unavailable.
- 1.3.5 "**Chief Executive**" means the chief officer of the Trust.
- 1.3.6 "**Committee**" means a committee or sub-committee created and appointed by the Board in accordance with the constitution.
- 1.3.7 "**Committee members**" means persons formally appointed by the Board to sit on or to chair specific committees.
- 1.3.8 "**Director of Finance**" or "**Director of Finance & Performance**" means the Chief Financial Officer of the Trust.
- 1.3.9 "**Funds held on trust**" shall mean those funds which the Trust holds on date of incorporation, receives on distribution by statutory instrument or chooses subsequently to accept. Such funds may or may not be charitable.
- 1.3.10 "**Officer**" means employee of the Trust or any other person holding a paid appointment or office with the Trust.

- 1.3.11 **"Trust Secretary"** (or **"Director of Corporate & Legal Affairs"**) means a person appointed to act independently of the Board to provide advice on corporate governance issues to the Board and the Chair (and the Council of Governors) and NHS Improvement the Trust's compliance with the law, Standing Orders, and other relevant guidance.
- 1.3.12 **"SOs"** means Standing Orders.
- 1.3.13 **"Senior Independent Director"** means the Non-executive Director appointed by the Board in consultation with the Council of Governors to act as first point of contact with the Council of Governors; and to take on the Chair's duties if the Chair and Deputy Chair are absent for any reason.
- 1.3.14 **"Audit & Risk Committee"** means Audit Committee.

Royal Brompton & Harefield NHS Foundation Trust

Council of Governors Code of Conduct May 2018

1. Introduction

1.1 This Code of Conduct (hereinafter referred to as “the Code”) is intended to promote and maintain high standards of behaviour by the Council of Governors and its elected and appointed Governors whenever they are carrying out the business of the Trust or representing the Trust.

1.2 All Governors are expected to adopt and promote the Corporate Vision and Values of the Trust as set out in the attached Appendix 1 and as may be subsequently formally amended and observe the Nolan Principles of Public Life as set out in Appendix 2.

1.3 This Code shall operate in conjunction with the provisions of the Trust Constitution (hereinafter referred to as “the Constitution”) including the Standing Orders of the Council of Governors (hereinafter referred to as “the Standing Orders”) and the NHS Foundation Trust Code of Governance.

2. The Council of Governors, governors’ duties and liabilities

2.1 In accordance with Clause 2.5 of the Standing Orders, the Council of Governors shall hold the non-executive directors individually and collectively to account for the performance of the Trust Board and represent the interests of the members of the Trust as a whole, its patients and the public.

2.2 The role and responsibilities of the Governors are as set out in Clause 2.5.2 of the Standing Orders.

3. Undertaking & Compliance

3.1 It is the duty and responsibility of the Trust Secretary to ensure that existing elected and appointed Governors and all new appointees are notified of and understand their responsibilities within the Constitution including the Standing Orders and the Code.

3.2 Following their election or appointment each Governor is required at their induction to:

3.2.1 confirm that he/she understands the role and responsibilities of a Governor;

3.2.2 shall give an undertaking that he/she will comply with the provisions of the Standing Orders and the Code; and

3.2.3 certify that they are “a fit and proper person” in accordance with Clause 6 of the Code.

3.3 If for any reason the provisions of the Standing Orders or the Code are not complied with, full details of any non-compliance and any justification and the circumstances around the non-compliance, shall be reported to the next formal meeting of the Council of Governors.

3.4 The circumstances in which a Governor shall immediately cease to hold office are set out in sections 2.4.3.1 to 2.4.3.6 in the Standing Orders. Governors may also be removed from the Council of Governors by a resolution approved by not less than two-thirds of the remaining Governors present (Standing Orders 2.4.3.7).

4. Personal Conduct

4.1 Governors shall conduct themselves in a manner that reflects positively on the Trust and not conduct themselves in a manner that could reasonably be regarded as bringing their office or the Trust into disrepute.

4.2 Governors can expect to be treated and in turn must treat each other, the directors and Trust staff with respect and fairness at all times and not act in any way which a reasonable person would regard as bullying or intimidatory.

4.3 Governors must not seek to use their position improperly to confer an advantage or disadvantage on any person and must comply with the foundation trust's rules on the use of its resources.

4.4 Governors must have regard to advice provided by the Chair and Trust Secretary pursuant to their duties.

5. Confidentiality

5.1 All Governors have a responsibility to safeguard and protect all confidential information of the Trust. For the purposes of this Code confidential information means all non-public information that is entrusted to any Governor that might be harmful to The Trust and/or where disclosure is prohibited by law.

5.2 Nothing contained in this clause precludes Governors from making a protected disclosure within the meaning of the Public Disclosure Act 1998 or preventing a person from gaining access to information to which they are legally entitled.

5.3 Governors shall treat all electronic communications initiated by Governors and exclusively between Governors as confidential by default. This shall be extended to cover follow on conversations started by any member of the Trust Board including the Chair.

5.4 Governors may where it is considered appropriate use social media to assist the Trust in its activities and promoting its values. Any such posts or articles submitted by an individual Governor shall state that it is the views of that individual only. Any such communication must fully comply with Clause 4 above.

6. Fit & Proper Person

6.1 Each Governor serving on the Council of Governors must be a 'fit and proper person'. Condition G4 of the NHS Provider Licence, issued by NHS Improvement, sets out the requirements of the 'fit and proper person test'.

6.2 Where an elected or appointed Governor becomes disqualified, he/she shall notify the Trust Secretary in writing of such disqualification as soon as practicable and in any event within 14 days of first becoming aware of those matters which render him/her disqualified. Where it is confirmed that a Governor is no longer a fit and proper person their membership of the Council of Governors shall be terminated immediately.

7. Conflict of Interest

7.1 Governors must avoid a situation in which they have a direct or indirect interest that conflicts or may conflict with the interests of the Trust.

7.2 Governors must not accept any benefit from a third party by reason of being a Governor for doing (or not doing) anything in that capacity. Governors must also not offer any benefit to a third party by reason of being a Governor for doing (or not doing) anything in that capacity.

7.3 Governors shall declare the nature and extent of any potential conflict of interest at the earliest opportunity and within 14 days for any new interest. If such a declaration proves to be, or becomes, inaccurate or incomplete, a further declaration must be made. It is then for the Chair to advise whether it is necessary for the Governor to refrain from participating in discussion of the item or withdraw from the meeting.

8. Register of interests

8.1 The Trust must have regard to *Managing Conflicts of Interests in the NHS: Guidance for Staff and Organisations*, published by NHS England and which came into force 1 June 2017 through its incorporation into the NHS Standard Contract pursuant to General Condition 27. It is the duty and responsibility of the Trust Secretary to circulate promptly these and any related documents together with any subsequent material amendments to all Governors.

8.2 In accordance with Clause 5 of the Standing Orders, Governors are required to register all relevant interests in the Trust's Register of Interests which shall be kept up to date by the Trust Secretary. In line with the Trust policy on Conflict of Interest, any change in interests shall be notified to the Trust Secretary and declared at the next Council of Governors meeting following the change occurring.

9. Meetings

9.1 Governors have a responsibility to attend formal meetings of the Council of Governors and of any committee or sub-committee to which they are

appointed. When this is not possible apologies of absence shall be submitted to the Trust Secretary and/or the Lead Governor in advance of the meeting or where applicable the Chair of the relevant committee or sub-committee. Persistent absence from formal Council of Governors meetings without good reason is likely to constitute a breach of this Code.

10. Lead Governor Election

10.1 During the period leading up to the election of the Lead Governor, other than in compliance with the published official election process there shall be no canvassing or lobbying for support which could lead to any perception that this has been conducted to influence Governors on whether they choose to stand for election or how they might vote.

11. Training and development

11.1 The Trust shall regularly provide Governors with details of appropriate training and development opportunities to enable them to carry out their role effectively. Governors are encouraged to participate in these opportunities.

12. Amendment or Revision of the Code

12.1 The Code was formally approved by the passing of a formal resolution by the majority of the Governors present at the Council of Governors Meeting held on [8th May] 2018. Any subsequent amendment or revision to the Code shall require the approval of a formal resolution by not less than two-thirds of the Governors present at a formal Council of Governors Meeting.

13. Interpretation

13.1 The Chair shall be the final authority (save as otherwise permitted by law) on the interpretation of the Constitution including the Standing Orders and this Code of Conduct.

14. Declaration

I hereby confirm that I will adopt and comply with this Governors' Code of Conduct.

Signed:

Name:

Date:

Appendix 1

Corporate vision and values

Our vision

To be the UK's leading specialist centre for heart and lung disease, developing services through research and clinical practice to improve the health of people across the world.

The Trust will achieve this mission by:

improving patient safety and satisfaction

providing world class specialist treatments that others cannot offer

bringing innovation to clinical practice through our research partnerships

attracting, developing and retaining world class clinical leaders

investing in services, technologies and facilities to support new service models at both sites.

We are supported in this by active patient and community groups who enthusiastically encourage and challenge us to deliver our goals.

Our values

At the heart of any organisation are its values: belief systems that are reflected in thought and behaviour. When values are successfully integrated throughout an organisation, the result is a shared outlook and consequent strength, from performance through the style of communications to the behaviour of employees.

Our values were developed by staff for staff.

We have three core patient-facing values and four others which support them. Our three core values are:

We care

We believe our patients deserve the best possible specialist treatment for their heart and lung condition in a clean, safe place.

We respect

We believe that patients should be treated with respect, dignity and courtesy and that they should be well informed and involved in decisions about their care. We always have time to listen.

We are inclusive

We believe in making sure our specialist services can be used by everyone who needs them, and we will act on any comments and suggestions which can help us improve the care we offer.

And the following values support us in achieving them:

We believe in our staff

We believe our staff should feel valued and proud of their work and know that we will attract and keep the best people by understanding and supporting them.

We are responsible

We believe in being open about where our money goes, and in making our hospitals environmentally sustainable.

We discover

We believe it is our duty to find and develop new treatments for heart and lung disease, both for today's patients and for future generations.

We share our knowledge

We believe in sharing what we know through teaching, so that what we learn can help patients everywhere.

Appendix 2

The Nolan Principles - The Seven Principles of Public Life

Selflessness

Holders of public office should act solely in terms of the public interest. They should not do so in order 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.

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.

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.

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.

Leadership

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