



**Alder Hey Children's**  
NHS Foundation Trust

# **CONSTITUTION**

**Version 13**

**November 2023**

**(updated as per the Health and Social Care Act 2012 and the  
Health and Care Act 2022)**

## FOREWORD

The Alder Hey Children's NHS Foundation Trust ("the Trust") is a public benefit corporation established in accordance with the provisions of the National Health Service Act 2006 ("the 2006 Act").

As a body corporate, the Trust has specific powers to contract in its own name. The Trust also has a common law duty as a bailee for patients' property held on behalf of patients.

The principal place of business of the Trust is Alder Hey Children's Hospital.

This Constitution is for the regulation of the Trust's governance and the proceedings of its Council of Governors and Board of Directors.

The Trust provides care on more than 350,000 occasions each year to children, young people and their families. The Trust is proud to be a family-centered organisation. Our values reflect the fact that we see the children, young people and families we serve at the centre of the services we provide and we recognise that we can learn much from them, which helps us to improve what we do continuously.

Directors and Governors are expected to observe the Nolan principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership, and adhere to the "children values".

The Council of Governors and Board of Directors shall at all times seek to comply with the Trust's Codes of Conduct for Governors and Directors.

There should be sufficient transparency about the Trust's activities to promote confidence between the Trust and its staff, patients and the public.

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## 1. Interpretation and definitions

- 1.1 Unless the contrary intention appears or the context otherwise requires, words or expressions contained in this Constitution bear the same meaning as in the National Health Service Act 2006, as amended by the Health and Social Care Act 2012 and Health and Care Act 2022.
- 1.2 References in this Constitution to legislation or to a legislative provision include all amendments, replacements, or re-enactments of such legislation.
- 1.3 Headings are for ease of reference only and are not to affect interpretation.
- 1.4 In this Constitution:

“the 2006 Act”	means the National Health Service Act 2006;
“the 1977 Act”	means the National Health Service Act 1977;
“the 2012 Act”	means the Health and Social Care Act 2012.
“the 2022 Act”	means the Health and Social Care Act 2022
“appointed Governors”	means those Governors appointed by the appointing organisations;
“appointing organisations”	means those organisations named in this Constitution who are entitled to appoint Governors;
“areas of the Trust”	means the areas specified in Annex 1;
“authorisation”	means an authorisation given by the Regulator;
“Board of Directors”	means the Board of Directors as constituted in accordance with this Constitution;
“carer”	means a person who provides regular and substantial care and support to an individual who:  requires such care because of age, vulnerability, disability or illness; and  is under the age of 20 years  or, in the case of a deceased individual, who would be under the age of 20 years had s/he survived;  has at any time attended at any of the Trust’s hospitals as a patient; and  provided that such person is not providing care in pursuance of a contract (including a contract of employment) or as a volunteer for a voluntary organisation (being a body, other than a public or local authority, the activities of which are not carried on for profit) and provided that such person has attended at

	any of the Trust's hospitals as the carer of that individual within the period of twenty years immediately preceding the date of his/her application to become a member of the Trust.
"Council of Governors"	means the Council of Governors as constituted in accordance with this Constitution (which shall have the same meaning as the 'Council of Governors' in the 2006 Act).
"Director"	means a member of the Board of Directors.
"elected Governors"	means those Governors elected by the Public Constituency, the classes of the Staff Constituency and the classes of the Patients' Constituency.
"external auditor"	means any external auditor, other than the financial auditor, appointed under this Constitution to review and report upon aspects of the Trust's performance.
"financial auditor"	means the person appointed to audit the accounts of the Trust (referred to as the auditor in the 2006 Act).
"financial year"	means (a) the period beginning with the date on which the Trust is authorised and ending with the next 31 <sup>st</sup> March; and (b) each successive period of twelve months beginning with 1 <sup>st</sup> April.
"Local Authority Governor"	means a Governor appointed by one or more local authorities whose area includes the whole or part of one of the areas of the Trust.
"member"	means a member of the Trust.
"the NHS Trust"	means the Alder Hey Children's NHS Trust which made the application to become an NHS foundation trust.
"Other clinical staff" (for the purpose of Class 3 of the Staff Constituency)	means an individual who is eligible to be a member of the Staff Constituency who does not fall within Class 1 or 2 of the Staff Constituency, but who is registered with and/or a member of one or more of the following professional bodies: the Health Professions Council the British Psychological Society the Association for Family Therapy The Association of Child Psychotherapists The United Kingdom Council for Psychotherapy The British Confederation of Psychotherapists the Royal Pharmaceutical Society of Great Britain.
"Other staff" (for the purpose of Class 4 of the Staff Constituency)	means an individual who is eligible to be a member of the Staff Constituency, but who does not fall within Classes 1, 2 or 3 of the

	Staff Constituency;
“partner”	means, in relation to another person, a member of the same household living together as a family unit.
“Partnership Governor”	means a Governor appointed by a partnership organisation;
“Patients’ Constituency”	means collectively those members comprising the three classes of the Patients’ Constituency.
“Patient Governor”	means a Governor elected by the members of one of the classes of the Patients’ Constituency.
“Public Constituency”	means collectively those members living in one of the areas of the Trust.
“Public Governor”	means a Governor elected by the members of one of the Public Constituencies.
Lead Governor	means the governor elected by the Council of Governors as the main link between the governors and the Chair of the Trust, and in exceptional circumstances, the link to NHS England.
Senior Independent Director	means an independent Non-Executive Director with the responsibility to work with the governors to understand their issues and act on their behalf at Board level.
“Staff Constituency”	means collectively those members of the classes comprising the Staff Constituency.
“Staff Governor”	means a Governor elected by the members of one of the classes of the Staff Constituency.
“registered dentist”	means a registered dentist within the meaning of the Dentists Act 1984.
“registered medical practitioner”	means a fully registered person within the meaning of the Medical Act 1983 who holds a licence to practice under that Act.
“registered nurse”	means a person who is registered to practice as a nurse with the Nursing and Midwifery Council.
“the Regulator”	NHSE is the body corporate known as NHS England, as provided by Section 1H of the 2006 Act.
“the Trust”	means the Alder Hey Children’s NHS Foundation Trust.
“Trust volunteers” (for the purpose of Class 4 of the Staff Constituency)	means individuals who are eligible to become a member of the Staff Constituency by virtue of paragraph 8.3 of this Constitution.

## 2. Name and status

The name of the Trust is the **Alder Hey** Children’s NHS Foundation Trust. The Trust is a public benefit corporation authorised under the provisions of the 2006 Act.

### **3. Principal purpose**

- 3.1 The principal purpose of the trust is the provision of goods and services for the purposes of the health service in England<sup>1</sup>.
- 3.2 The trust does not fulfil its principal purpose unless, in each financial year, its total income from the provision of goods and services for the purposes of the health service in England is greater than its total income from the provision of goods and services for any other purposes.
- 3.3 The trust may provide goods and services for any purposes related to:
  - 3.3.1. the provision of services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness, and
  - 3.3.2. the promotion and protection of public health.
- 3.4 The trust may also carry on activities other than those mentioned in the above paragraph for the purpose of making additional income available in order better to carry on its principal purpose.

### **4. Powers**

- 4.1 The Trust may do those things, which appear to it to be necessary or desirable for the purposes of or in connection with its functions, subject to the provisions of the 2006 Act and any restrictions set out in the Trust's authorisation.
  - 4.2 The powers of the Trust shall be exercised by the Board of Directors on behalf of the Trust.
  - 4.3 Any of these powers may be delegated to a committee of Directors or to an Executive Director.
  - 4.4 The trust may enter into arrangements for the carrying out, on such terms as the trust considers appropriate, of any of its functions jointly with any other person.
  - 4.5 The trust may arrange for any of the functions exercisable by the trust to be exercised by or jointly with any one or more of the following:
    - 4.5.1. A relevant body;
    - 4.5.2. A local authority within the meaning of section 2B of the 2006 Act;
    - 4.5.3. A combined authority.
  - 4.6 The trust may also enter into into arrangements to carry out the
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functions of another relevant body, whether jointly or otherwise.

- 4.7 Where a function is exercisable by the trust jointly with one or more of the other organisations mentioned at paragraph 4.5, those organisations and the trust may:

4.7.1 Arrange for the function to be exercised by a joint committee of theirs;

4.7.2 Arrange for the trust, one or more of those other organisations, or a joint committee of them, to establish and maintain a pooled fund

in accordance with section 65Z6 of the 2006 Act.

- 4.8 The trust must exercise its functions effectively, efficiently and economically.<sup>2</sup>

- 4.9 In making a decision about the exercise of its functions,<sup>3</sup> the trust must have regard to all likely effects of the decision in relation to:

4.9.1 The health and well-being of (including inequalities between) the people of England;

4.9.2 The quality of services provided to (including inequalities between benefits obtained by) individuals by or in pursuance of arrangements made by relevant bodies for or in connection with the prevention, diagnosis or treatment of illness, as part of the health service in England;

4.9.3 Efficiency and sustainability in relation to the use of resources by relevant bodies for the purposes of the health service in England.

- 4.10 In the exercise of its functions, the trust must have regard to its duties under section 63B of the 2006 Act (complying with targets under section 1 of the Climate Change Act 2008 and section 5 of the Environment Act 2021, and to adapt any current or predicted impacts of climate change in the most recent report under section 56 of the Climate Change Act 2008).

- 4.11 For the purposes of this section, “relevant body” means NHSE, an integrated care board, an NHS trust, an NHS foundation trust (including the trust) or such other body as may be prescribed under section 65Z5(2). “Relevant bodies” means two or more of these

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<sup>2</sup> Section 63 2006 Act

<sup>3</sup> Section 63A

organisations as the context requires.

4.12 The arrangements under this paragraph 4 shall be in accordance with:

4.12.1 any applicable requirements imposed by the 2006 Act or regulations made under that Act;

4.12.2 any applicable statutory guidance that has been issued and

4.12.3 otherwise on such terms as the trust sees fit.

## **5. Membership and constituencies**

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

5.1.1. The Public Constituency;

5.1.2. The Staff Constituency;

5.1.3. The Patients' Constituency.

5.2 The names of members shall be entered in the register of members.

5.3 Members may attend and participate in members meetings, vote in elections to, and 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.

### **Eligibility for membership**

5.4 Members shall:

5.4.1. be seven years of age or over; and

5.4.2. meet the criteria for membership of one or more of the Trust's Constituencies.

5.5 Individuals who meet the criteria for membership of the Public Constituency and also for membership of one of the classes of the Patients' Constituency shall choose which Constituency s/he would like to apply for membership of.

### **Representative membership**

5.6 The Trust shall take reasonable steps to ensure that its membership is representative of those eligible for membership. To this end, the Trust shall comply with its Membership Strategy.

5.7 The Membership Strategy shall be reviewed from time to time by the Council of Governors, and at least every three years.

5.8 The Council of Governors shall present to each Annual Members Meeting:

- 5.8.1. a report on steps taken to ensure that the Trust's membership is representative of those eligible for membership;
- 5.8.2. any changes to the Membership Strategy.

### **Conditions of membership**

- 5.9 Members:
  - 5.9.1. will not receive payment or any fees associated with becoming or remaining a member of the Trust;
  - 5.9.2. will not receive any preferential care or treatment as a consequence of being a member;
  - 5.9.3. can resign their membership at any time;
  - 5.9.4. can be members of more than one Trust.

## **6. Application for Membership**

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

## **7. Public Constituency**

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

## **8. Staff Constituency**

- 8.1 An individual who is employed by the Trust under a contract of employment with the Trust may become or continue as a member of the Trust provided:
  - 8.1.1. s/he is employed by the Trust under a contract of employment which has no fixed term or has a fixed term of at least 12 months; or
  - 8.1.2. s/he has been continuously employed by the Trust under a contract of employment for at least 12 months.
- 8.2 An individual who exercises functions for the purposes of the Trust, otherwise than under a contract of employment with the Trust, may

become or continue as a member of the Trust provided s/he has exercised those functions continuously for a period of at least 12 months. Such individuals may include, but shall not be limited to, locum and bank staff, staff who have a joint contract with either Liverpool University, John Moores University or Edge Hill University and the Trust, and University employees who have honorary contracts with the Trust.

- 8.3 An individual who provides services and exercises functions for the purposes of the Trust under a Trust Volunteer Agreement is eligible to become or continue as a member of the Trust provided s/he has provided such services continuously under that Agreement for a period of at least 12 months.
- 8.4 Those individuals who are eligible for membership of the Trust by reason of the previous provisions are referred to collectively as the Staff Constituency.
- 8.5 The Staff Constituency shall be divided into four classes of individuals who are eligible for membership of the Constituency, each class of individuals being specified within Annex 2.
- 8.6 The minimum number of members in each class of the Staff Constituency is specified in Annex 2.
- 8.7 An individual who is:
  - 8.7.1. eligible to become a member of the Staff constituency; and
  - 8.7.2. invited by the Trust to become a member of the Staff Constituency and a member of the appropriate class within the Staff Constituency, shall become a member of the Trust as a member of the Staff Constituency and appropriate class within the Staff Constituency without an application being made, unless s/he informs the Trust that s/he does not wish to do so within 14 days of being so invited.

## **9. Patients' Constituency**

- 9.1 An individual who is under the age of 20 years and has at any time during the preceding 20 years immediately preceding the date of their application attended at any of the Trust's hospitals as a patient may become or continue as a member of the Trust.
- 9.2 The natural parents of, or any person with parental responsibility for, an individual who is under the age of 20 years or, in the case of a deceased individual, who would be under the age of 20 years had s/he survived and who has at any time attended at any of the Trust's hospitals as a patient, may become or continue as a member of the Trust, provided that such persons have attended at any of the Trust's hospitals as the carer of that individual within the period of twenty years immediately preceding the date of their application to become a member of the Trust.

- 9.3 A carer of an individual who is under the age of 20 years or, in the case of a deceased individual, who would be under the age of 20 years had s/he survived and who has at any time attended at any of the Trust's hospitals as a patient, may become or continue as a member of the Trust, provided that such person is not providing care in pursuance of a contract (including a contract of employment) or as a volunteer for a voluntary organisation (being a body, other than a public or local authority, the activities of which are not carried on for profit), and provided that such person has attended at any of the Trust's hospitals as the carer of that individual within the period of twenty years immediately preceding the date of his/her application to become a member of the Trust.
- 9.4 Those individuals who are eligible for membership of the Trust by reason of the previous provisions are referred to collectively as the Patients' Constituency.
- 9.5 An individual providing care in pursuance of a contract (including a contract of employment) with a voluntary organisation, or as a volunteer for a voluntary organisation, does not come within the category of those who qualify for membership of the Patients' Constituency, but may qualify as a member of the Public Constituency if s/he lives within one of the areas of the Trust.
- 9.6 When an individual no longer meets the criteria for membership of the patients' classes of the Patients' Constituency, s/he will be given the opportunity to transfer their membership to the parents and carers class of the Constituency, if s/he meets the criteria for membership of that class, or to the Public Constituency, if s/he meets the criteria for membership of that Constituency.
- 9.7 When an individual no longer meets the criteria for membership of the parents and carers class of the Patients' Constituency, s/he will be given the opportunity to transfer their membership to the Public Constituency, if s/he meets the criteria for membership of that Constituency.
- 9.8 The Patients' Constituency shall be divided into three classes of individuals who are eligible for membership of the Constituency, each class of individuals being specified within Annex 3.
- 9.9 The minimum number of members in each class of the Patients' Constituency is specified in Annex 3.

## **10. Restriction on membership**

- 10.1 An individual who is a member of a Constituency, or of a class within a Constituency, may not while membership of that Constituency or class continues, be a member of any other Constituency or class.
- 10.2 An individual who satisfies the criteria for membership of the Staff Constituency may not become or continue as a member of any Constituency other than the Staff Constituency.

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

**11. Members meetings**

11.1 The Trust is to hold a members meeting (called the Annual Members Meeting) within 9 months of the end of each financial year and additional members meetings may be held as and when considered necessary.

11.2 Members meetings are open to all members of the Trust, Governors and Directors, representatives of the financial auditor and any external auditors, and members of the public. The Council of Governors may invite representatives of the media and any experts or advisors whose attendance they consider to be in the best interests of the Trust to attend a members meeting.

11.3 All members' meetings are to be convened by the Secretary by order of the Council of Governors.

11.4 The Council of Governors may decide whether a members meeting is to be held and may also for the benefit of members arrange for the Annual Members Meeting to be held in different venues each year.

11.5 At the Annual Members Meeting: -

11.5.1 At least one member of the board of directors of the corporation must attend the meeting and present the following documents to the members at the meeting: -

the annual accounts;

any report of the financial auditor;

any report of any other external auditor of the Trust's affairs;

the forward planning information provided to the Regulator for that financial year in accordance with paragraph 38 of this Constitution;

the Annual Report prepared in accordance with paragraph 38 of this Constitution.

11.5.2 the Council of Governors shall present to the members: -

any proposed changes to the composition of the Council of Governors;

the results of any election, the appointment of Governors and the appointment of Non-Executive Directors;

the matters set out in paragraph 5.8 of this Constitution.

- 11.6 Notice of a members meeting is to be given: -
- by notice to all members;
  - by notice prominently displayed at the Trust's Head Office; and
  - by notice on the Trust's website,
- at least 14 clear days before the date of the meeting. The notice must:
- be given to the Council of Governors and to the Board of Directors, and to the financial auditor and any external auditors;
  - state whether the meeting is an Annual Members Meeting;
  - give the time, date and place of the meeting; and
  - indicate the business to be dealt with at the meeting.
- 11.7 Before a members' meeting can undertake business there must be a quorum present. Except where this Constitution says otherwise, a quorum is one member present from each of the Trust's Constituencies. In the case of the Annual Members Meeting, a quorum shall be one member present from each of the Trust's Constituencies, one Governor elected from each of the Trust's Constituencies, one appointed Governor, one Executive Director, the Chair (or, in his/her absence, the Vice Chair, or, in his/her absence, a Non-Executive Director appointed by the Council of Governors to fulfil the role of Chair) and one other Non-Executive Director.
- 11.8 The Trust may make arrangements for members to vote by post, or by using electronic communications.
- 11.9 It is the responsibility of the Chair of the meeting to ensure that at any members meeting: -
- the issues to be decided are clearly explained;
  - sufficient information is provided to members to enable rational discussion to take place.
- 11.10 The Chair of the Trust or, in their absence, the Vice Chair, or, in their absence, one of the Non-Executive Directors shall act as Chair at all members' meetings of the Trust.
- 11.11 If no quorum is present within half an hour of the time fixed for the start of the meeting, the meeting shall stand adjourned to the same day in the next week at the same time and place or to such time and place as the Council of Governors determine. If a quorum is not present within half an hour of the time fixed for the start of the adjourned meeting, the number of members present during the meeting is to be a quorum.
- 11.12 A resolution put to the vote at a members meeting shall be decided upon by a poll.

- 11.13 Every member present and every member who has voted by post or using electronic communications is to have one vote. In the case of an equality of votes, the Chair of the meeting is to have a second or casting vote.
- 11.14 The result of any vote will be declared by the Chair and entered in the minutes. The minutes will be conclusive evidence of the result of the vote.

## **12. Council of Governors – composition**

- 12.1 The Trust is to have a Council of Governors, which shall comprise both elected and appointed Governors.
- 12.2 The composition of the Council of Governors is specified in Annex 4.
- 12.3 The members of the Council of Governors, other than the appointed members, shall be chosen by election by their Constituency or, where there are classes within a Constituency, by their class within that Constituency. The number of Governors to be elected by each Constituency, or, where appropriate, by each class of each Constituency, is specified in Annex 4.
- 12.4 A Lead Governor will be elected by the Council of Governors as the main link between the Governors and the Chair of the Trust and, in exceptional circumstances, the link to NHS England.

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

- 13.1 Elections for elected members of the Council of Governors shall be conducted on a 'First Past the Post' basis and in accordance with the Model Rules for Elections, as may be varied from time to time.
- 13.2 The Model Rules for Elections, as may be varied from time to time, form part of this Constitution (current at May 2023) and are attached at Annex 5.
- 13.3 A variation of the Model Rules by NHS Providers, other than a unilateral variation by the Trust, shall not constitute a variation of the terms of this Constitution.
- 13.4 Elections for the Council of Governors shall be conducted in accordance with any regulations, which may be made under Section 59 of the 2006 Act.
- 13.5 An election, if contested, shall be by secret ballot.

## **14. Council of Governors – appointment of Governors**

- 14.1 The Board of Directors has approved a process for agreeing the appointment of Local Authority Governors, and Partnership



Governors. The approved process has been adopted by the Secretary so as to confirm the appointments.

**15. Council of Governors – tenure**

- 15.1 A Governor may hold office for a period of up to three years, subject to paragraph 15.4.
- 15.2 An elected Governor shall cease to hold office if s/he ceases to be a member of the Constituency or class by which s/he was elected.
- 15.3 A Governor shall be eligible for re-election or re-appointment at the end of his/her three year term, but may not hold office for more than nine consecutive years.
- 15.6 Those Governors elected from the patients' classes of the Patients' Constituency shall be eligible for re-election provided that he/she continues to meet the eligibility criteria within this class. Governors reaching age twenty will be given the opportunity to apply for membership of the appropriate Constituency for which s/he meets the criteria for membership and will be eligible for election in that constituency when a vacancy occurs.

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

- 16.1 The following may not become or continue as a member of the Council of Governors:
  - 16.1.1. a person who has been made bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;
  - 16.1.2. a person in relation to whom a moratorium period under a debt relief order applies (under Part 7A of the Insolvency Act 1986);
  - 16.1.3. a person who has made a composition or arrangement with, or granted a trust deed for, his/her creditors and has not been discharged in respect of it;
  - 16.1.4. a person who within the preceding five years has been convicted in the British Isles or elsewhere 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/her.
- 16.2 Further provisions as to the circumstances in which an individual may not become or continue as a member of the Council of Governors are set out in Annex 6.

- 16.3 The Constitution is to make provision for the removal of Governors. Such provision is set out in Annex 6.

**17. Council of Governors – meetings of Governors**

- 17.1 The Chair of the Trust or, in his/her absence the Vice Chair, shall preside at meetings of the Council of Governors or if the Council of Governors is meeting to appoint or remove the Chair of the Trust or decide his/her remuneration and allowances and other terms and conditions of office, the Senior Governor shall preside. Otherwise, another Non Executive Director shall preside.
- 17.2 Meetings of the Council of Governors shall be open to members of the public. Members of the public may be excluded from all or part of any meeting by resolution of the Council of Governors on the grounds that the Council considers that publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted or for other special reasons stated in the resolution and arising from the nature of the business or the proceedings. The Chair may exclude any member of the public from a meeting of the Council of Governors if s/he considers that they are interfering with or preventing the proper conduct of the meeting.
- 17.3 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 corporation's or directors' performance), the council of governors may require one or more of the directors to attend a meeting.
- 17.4 Further provisions as to meetings of the Council of Governors are set out in the Council of Governors' Standing Orders at Annex 7.

**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 7.

**19. Council of Governors – referral to the Panel**

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

19.1.1. to act in accordance with its constitution, or

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

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

19.3 Without prejudice to the ability of a governor to make a referral to the Panel, the trust must take steps to secure that governors are able to access support and / or advice, as and where necessary, to enable them to fulfil their duties.

**20. Council of Governors – conflicts of interest of Governors**

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

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

21.1 The Trust may reimburse members of the Council of Governors travel and other expenses reasonably and necessarily incurred in carrying out their duties, subject to the provisions of the Trust's policy on the reimbursement of such expenses, which shall be approved by the Board of Directors and reviewed by the Board from time to time as considered necessary.

21.2 Governors shall not receive remuneration in respect of carrying out their role as a Governor.

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

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

**23. Board of Directors – composition**

23.1 The Trust is to have a Board of Directors.

23.2 The Board of Directors shall be composed of not less than:

23.2.1. a Non-Executive Chair;

23.2.2. five-eight other Non-Executive Directors; and

23.2.3. five-seven Executive Directors.

23.3 One of the Executive Directors shall be the Chief Executive.

23.4 The Chief Executive shall be the Accounting Officer.

23.5 One of the Executive Directors shall be the Finance Director.

23.6 One of the Executive Directors is to be a registered medical practitioner or a registered dentist.

23.7 One of the Executive Directors is to be a registered nurse.

23.8 The number of Directors on the Board of Directors may be increased to seven, provided always that at least half of the Board, excluding the Chair, comprises Non-Executive Directors.

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

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

24.1 S/he is a member of the Public Constituency; or

24.2 S/he is a member of the parent and carer class of the Patients' Constituency; or

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

24.4 S/he is not disqualified by virtue of paragraph 28 below.

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

25.1 The Council of Governors shall approve by a majority vote the recommendations of the Nominations Committee to appoint the Chair of the Trust and the other Non-Executive Directors, including the Senior Independent Director.

25.2 Removal of the Chair or another Non-Executive Director/Senior Independent Director shall require the approval of two thirds of the Council of Governors.

24.3 Membership of the Nominations Committee will consist of: -

The Chair of the Trust (or Vice Chair when the appointment of the Chair and his/her remuneration and allowances and other terms and conditions of office are being discussed);

One Appointed Governor;

Two Elected Governors (one of whom to be a staff Governor)

An external assessor, with the appropriate skills and experience, will be appointed by the Committee to advise the Committee as and when required.

The Trust Chief Executive will participate in the activities of the Committee in an advisory capacity.

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

A quorum shall be at least two Governors.

24.4 Responsibilities of the Committee

To prepare job descriptions and/or person specifications detailing the skills, knowledge and experience required for the posts of Non-Executive Directors, taking into account the views of the Board of Directors and in particular the Chief Executive.

To determine and undertake the recruitment and selection process for Non-Executive Directors, which is rigorous and inclusive in nature.

To make recommendations to the Council of Governors as to suitable candidates for approval by the Council of Governors. The Council of Governors shall either appoint the recommended individual(s) or invite the Committee to make an alternative recommendation.

To consider whether to recommend to the Council of Governors the reappointment of the retiring Non-Executive Director.

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

**26. Board of Directors – appointment of Vice Chair**

The Nominations Committee shall advise the Council of Governors re the appointment of one of the Non-Executive Directors as Vice Chair of the Trust.

**27. Board of Directors – appointment and removal of the Chief Executive and other Executive Directors**

27.1 The Appointments and Remuneration Committee of the Board of Directors (excluding the Chief Executive) 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 The Appointments and Remuneration Committee of the Board of Directors (inclusive of the Chief Executive) shall appoint or remove the other Executive Directors.

**28. Board of Directors – disqualification**

A person may not become or continue as a member of the Board of Directors if:

28.1 S/he has been removed from office as a Governor of the Trust; in accordance with the provisions set out in Annex 6 paragraph 8 of the section titled “Termination of office and removal of Governors”.

28.2 S/he is a spouse, partner, parent or child of a member of the Council of Governors or Board of Directors;

28.3 S/he is a member of a local authority’s scrutiny committee covering health matters;

28.4 S/he has been made bankrupt or his/her estate has been sequestrated and (in either case) has not been discharged;

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

28.6 S/he has made a composition or arrangement with, or granted a trust deed for, his/her creditors and has not been discharged in respect of it;

28.7 S/he has, within the preceding five years, been convicted in the British Isles or elsewhere of any offence and 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/her;

- 28.8 On the basis of disclosures obtained through an application to the Criminal Records Bureau, s/he is not considered suitable by the Trust's Director responsible for Human Resources;
- 28.9 S/he is or has been the subject of a sex offender order;
- 28.10 S/he is the subject of a disqualification order made under the Company Directors Disqualification Act 1986;
- 28.11 S/he is incapable by reason of mental disorder, illness or injury of managing or administering his/her property and affairs;
- 28.12 In the case of a Non-Executive Director, s/he is no longer a member of the Public Constituency or the parent and carer class of the Patients' Constituency;
- 28.13 S/he has within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with a health service body;
- 28.14 S/he is a person whose tenure of office as the Chair or as a member or Director of a health service body has been terminated on the grounds that his/her appointment is not in the interests of the health service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest;
- 28.15 S/he has had his/her name removed from any list prepared under Part II of the NHS Act 1977 and, due to the reason(s) for such removal, s/he is not considered suitable by the Trust's Director responsible for Human Resources;
- 28.16 In the case of a Non-Executive Director, s/he has refused without reasonable cause to fulfil any training requirements established by the Board of Directors;
- 28.17 S/he has refused to sign and deliver to the Secretary a statement in the form specified by the Board of Directors confirming acceptance of the Trusts' Code of Conduct for Directors.

**29. 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 8.

**30. Board of Directors – conflicts of interest of Directors**

- 29.1 If a Director has an interest, which is relevant and material to a matter to be discussed or considered by the Board of Directors, whether that interest is actual or potential and whether that interest is direct or indirect, the Director shall disclose that interest to the members of the Board of Directors as soon as s/he becomes aware of it. The Standing Orders for the Board of Directors shall make provision for the disclosure of interests and arrangements for the exclusion of a

Director declaring any interest from any discussion or consideration of the matter in respect of which an interest has been disclosed.

29.2 The duties that a director of a public benefit corporation has by virtue of being a director include in particular—

(a) 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 corporation;

(b) 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.

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

31.1 The Council of Governors at a general meeting of the Council of Governors shall decide the remuneration and allowances, and the other terms and conditions of office, of the Chair and the other Non-Executive Directors following recommendations from the Nominations Committee.

31.2 The Appointments and Remuneration Committee of the Board of Directors shall decide the remuneration and allowances, and the other terms and conditions of office, of the Chief Executive and other Executive Directors (save that the Committee shall not include the Chief Executive when his/her remuneration and allowances and other terms and conditions of office are being considered).

**32. Secretary**

32.1 The Trust shall have a Secretary who may be an employee. The Secretary may not be a Governor, or the Chief Executive or the Finance Director.

32.2 The Secretary's functions shall include, but shall not be limited to:

32.2.1. Acting as Secretary to the Council of Governors and the Board of Directors, and any committees;

32.2.2. Attending all members meetings, meetings of the Council of Governors and the Board of Directors and ensure that accurate minutes are taken at those meetings;

32.2.3. Maintaining and keeping up to date the register of members and other registers and books required by this Constitution;

32.2.4. Taking charge of the Trust's seal;



32.2.5. Publishing to members in an appropriate form relevant information about the Trust's affairs;

32.2.6. Preparing and sending to the Regulator and any other statutory body all returns which are required to be made.

32.3 The Secretary shall be appointed and removed by the Board of Directors in consultation with the Council of Governors.

### **33. Registers**

The Trust shall have:

33.1 A register of members showing, in respect of each member, the Constituency to which s/he belongs and, where there are classes within it, the class to which s/he belongs;

33.2 A register of members of the Council of Governors;

33.3 A register of interests of Governors;

33.4 A register of Directors; and

33.5 A register of interests of the Directors.

The registers may be kept in either paper or electronic form.

#### **Registers – inspection and copies**

33.6 The Trust shall make the registers specified in paragraph 33 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.

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

33.7.1. any member of the Patients' Constituency; or

33.7.2. any other member of the Trust, if s/he so requests.

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

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

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

33.9 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.

**34. Documents available for public inspection**

- 34.1 The Trust shall make the following documents available for inspection by members of the public free of charge at all reasonable times:
- 34.1.1. a copy of the current Constitution;
  - 34.1.2. a copy of the current authorisation;
  - 34.1.3. a copy of the latest annual accounts and of any report of the financial auditor on them;
  - 34.1.4. a copy of the report of any other external auditor of the Trust's affairs appointed by the Council of Governors;
  - 34.1.5. a copy of the latest annual report;
  - 34.1.6. a copy of the latest information as to its forward planning; and
  - 34.1.7. a copy of any notice given under Section 52 of the 2006 Act.
- 34.2 Any person who requests a copy of or extract from any of the above documents is to be provided with a copy.
- 34.3 If the person requesting a copy or extract is not a member of the Trust, the Trust may impose a reasonable charge for doing so.

**35. Auditors**

- 35.1 The Trust shall have a financial auditor and shall provide the financial auditor with every facility and all information, which s/he may reasonably require for the purpose of fulfilling his/her functions under the 2006 Act.
- 35.2 A person may only be appointed as the financial auditor if s/he (or in the case of a firm each of its members) are a member of one or more of the bodies referred to in paragraph 23(4) of Schedule 7 to the 2006 Act.
- 35.3 The Council of Governors shall appoint or remove the financial auditor at a general meeting of the Council of Governors.
- 35.4 An officer of the Audit Commission may be appointed as the financial auditor with the agreement of the Audit Commission.
- 35.5 The financial auditor is to carry out his/her duties in accordance with Schedule 10 to the 2006 Act and in accordance with any directions given by the Secretary of State on standards, procedures and techniques to be adopted.
- 35.6 The Board of Directors may resolve that external auditors be appointed to review and publish a report on any other aspect of the

Trust's performance. Any such auditors are to be appointed by the Council of Governors.

**36. Audit committee**

36.1 The Trust shall establish a committee of Non-Executive Directors as an audit committee to perform such monitoring, reviewing and other functions as are appropriate.

**37. Annual accounts**

37.1 The Trust must keep proper accounts and proper records in relation to the accounts.<sup>4</sup>

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

37.3 The Accounting Officer of the Trust shall cause to be prepared in respect of each financial year annual accounts in such form as the Regulator may, with the approval of the Secretary of State direct

37.4 The annual accounts shall be audited by the Trust's financial auditor.

**Annual report and forward plans and non-NHS work**

**38.**

38.1 The Trust shall prepare an Annual Report, including the Quality Report and send it to the Regulator.

38.2 The Trust shall give information as to its forward planning in respect of each financial year to the Regulator.

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

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

38.5 Each forward plan must include information about –

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

38.5.2. the income it expects to receive from doing so.

38.6 Where a forward plan contains a proposal that the trust carry on an activity of a kind mentioned in sub-paragraph 38.5.1 the Council of Governors must –

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

38.6.2. notify the directors of the trust of its determination.

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

**39. 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:

39.1 The annual accounts;

39.2 Any report of the financial auditor on them;

39.3 The annual report.

**40. Instruments**

40.1 The Trust shall have a seal

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

**41. Dispute resolution procedures**

41.1 Every unresolved dispute which arises out of this Constitution between the Trust and:

41.1.1. a member;

41.1.2. any person aggrieved who has ceased to be a member within the six months prior to the date of the dispute; or

41.1.3. any person bringing a claim under this Constitution;

is to be submitted to an arbitrator agreed by the parties or, in the absence of agreement, to be nominated by the relevant Strategic Health Authority. The arbitrator's decision will be binding and conclusive on all parties.

41.2 Any person bringing a dispute must, if required to do so, deposit with the Trust a reasonable sum (not exceeding £250) to be determined by the Council of Governors and approved by the Secretary. The arbitrator will decide how the costs of the arbitration will be paid and what should be done with the deposit.

## **42. Amendment of the Constitution**

42.1 No amendment shall be made to this Constitution unless:

42.1.1. it has been approved by a majority of those Directors present and eligible to vote at a meeting of the Board of Directors; and

42.1.2. it has been approved by a majority of governors present and eligible to vote at a meeting of the Council of Governors

42.2 Where an amendment is made to the constitution in relation to the powers or duties of the Council of Governors of a public benefit corporation (or otherwise with respect to the role that the council has as part of the corporation)—

(a) at least one member of the Council of Governors must attend the next meeting to be held under this paragraph and present the amendment, and

(b) the corporation must give the members an opportunity to vote on whether they approve the amendment.

41.3 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 corporation must take such steps as are necessary as a result.

41.4 The Trust must inform the regulator of amendments made in accordance with the provisions set out above.

## **43. Mergers**

43.1 The Trust may, in accordance with Section 56 of the 2006 Act, apply to the Regulator jointly with another NHS Foundation Trust or another NHS Trust for authorisation of the dissolution of the Trust and the transfer of some or all of its property and liabilities to a new NHS Foundation Trust established under that Section. Such application shall only be made if a majority of those Directors present and voting

at a meeting of the Board of Directors shall have approved the making of such an application.

**44. Significant Transactions**

44.1 The Trust may enter into a significant transaction only if more than half of the members of the Council of Governors of the Trust present and eligible to vote approve entering into the transaction. The governors have agreed a definition of 'significant transaction' consistent with the thresholds used by Monitor in its Compliance Framework and REID (Risk Evaluation for Investment Decisions by NHS Foundation Trusts) guidance, ie.

- >25% of gross assets subject to the transaction divided by the gross assets of the trust; or
- >25% of the income attributable to the assets or the contract associated with the transaction, divided by the income of the trust, or
- >25% of the company or business being acquired or divested, divided by the total capital of the trust following completion or the effects on the total capital of the foundation trust resulting from a transaction.

**45. Head Office**

The Trust's Head Office will be at Alder Hey Children's Hospital or such other place as the Board of Directors shall decide.

**46. Notices**

46.1 Any notice required by this Constitution to be given shall be given in writing to an address for the time being notified for that purpose.

46.2 A notice shall be treated as delivered 48 hours after the envelope containing it was posted or in the case of a notice contained in an electronic communication, 48 hours after it was sent.

## ANNEX 1 – THE PUBLIC CONSTITUENCY

The Public Constituency consists of the Local Government electoral wards specified in the table below.

The electoral wards are grouped into 5 areas as shown below, together with the minimum membership of each area. Members in each area shall elect Governors in accordance with Annex 4 to represent them on the Council of Governors.

<b>Area 1 Merseyside</b>	<b>Area 2 Cheshire</b>	<b>Area 3 Wider North West</b>		<b>Area 4 – Rest of England</b>	<b>Area5 – North Wales</b>
Liverpool	Warrington	Carlisle		Any electoral area in England not already specified	Conwy
Wirral	Halton	Allerdale			Denbighshire
Sefton		Eden			Flintshire
Knowsley	Cheshire West and Chester	Copeland			Gwynedd
St Helens		South Lakeland			Isle of Anglesey
		Lancaster			Wrexham
		Ribble Valley			
		Wyre			
	Cheshire East	Fleetwood			
		Blackpool			
		Fylde			
		Preston			
		South Ribble			
		West Lancashire			
		Chorley			
		Pendle			
		Burnley			
		Hyndburn			
		Blackburn			
		Rossendale			
		Wigan			
		Bolton			
		Bury			
		Rochdale			
		Oldham			

		Tameside			
		Manchester			
		Salford			
		Trafford			
		Stockport			

**Minimum membership**

<b>20</b>	<b>10</b>	<b>10</b>		<b>5</b>	<b>5</b>



## ANNEX 2 – THE STAFF CONSTITUENCY

The Staff Constituency is to be divided into four classes, as shown below, together with the minimum membership of each class.

<b>Class</b>	<b>Minimum number of members</b>
Class 1 - Registered medical practitioners and registered dentists*	20
Class 2 - Registered nurses*	20
Class 3 - Other clinical staff *	20
Class 4 - Other staff and Trust volunteers* **	20
<b>Total</b>	<b>80</b>

\*Including individuals who exercise functions for the purpose of the Trust otherwise than under a contract of employment with the Trust, to include individuals who exercise such functions under a joint contract with the Trust and Liverpool University, John Moores University or Edge Hill University, or under an honorary contract with the Trust.

\*\*Trust volunteers shall come within Class 4 of the Staff Constituency regardless of whether or not they also satisfy the criteria for membership of any other Class of the Constituency.

### ANNEX 3 – THE PATIENTS’ CONSTITUENCY

The Patients Constituency will be divided into three classes, as shown below, together with the minimum membership of each class.

<b>Class</b>	<b>Minimum membership</b>
Class 1 – Patients in Merseyside*	10
Class 2 – Patients in the Rest of England and North Wales*	8
Class 3 – Parents and carers	20
<b>Total</b>	<b>38</b>

\*Those patients (past and current) ordinarily resident in Area 1 as specified in Annex 1 will come within Class 1 of the Patients’ Constituency. Those patients (past and current) ordinarily resident in Areas 2-6 as specified in Annex 1, will come within Class 2 of the Patients’ Constituency.

## ANNEX 4 – COMPOSITION OF COUNCIL OF GOVERNORS

The Council of Governors consists of:

(1) Governors appointed by:

- (a) Stakeholders to represent the Trust’s main stakeholders;;
- (b) Other Local Authorities (Liverpool City Region) for an area which includes the whole or part of an area of a public constituency;
- (c) Partnership organisations, including local Universities and voluntary, local interest and community groups.

(2) Governors elected by;

- (a) Members of the public or patients, parents and carers in each of the Constituencies defined in Annexes 1 and 3 of this Constitution;
- (b) Individuals within each class of the Staff Constituency defined in Annex 2 of this Constitution.

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

### **Composition**

#### **Appointed Governors**

Organisation appointing	Number to be appointed	Role
	1	
<b>Other Local Authorities</b> (Liverpool City Region)		
<b>Local Authorities:</b>		
Liverpool City Council	2	To represent key local non-NHS health economy partners, one of whom should be the senior officer with responsibility for children’s services
Any local authority within the Alder Hey catchment (Public Health)	1	To provide public health expertise to the Council of Governors, preferably at director level
<b>Partnership Organisations:</b>		
<b>Local Universities:</b>		
Liverpool University	1	To ensure a strong teaching and research partnership to ensure that the Trust continues to provide training for children’s specialist clinicians and continues to undertake research into childhood illnesses.
John Moores University and Edge Hill University	1 (can be appointed on a rotational basis)	As above.

<b>Voluntary/ Local Interest / Community Groups:</b>		
Voluntary organisations Representatives chosen from the list attached at Annex 4A	2	To ensure the representation of a wide range of organisations with an interest in children's services.
Stakeholders	2	To represent the Trust's main stakeholders
<b>Total Appointed Governors</b>	<b>10</b>	

### **Elected Governors**

<b>Constituency/class electing</b>	<b>Number to be elected</b>	<b>Role</b>
<b>Staff Constituency</b>		
Class 1 – Registered medical practitioners and registered dentists	1	To assist the Trust in developing the services it provides and ensure active representation from those who deliver those services.
Class 2 – Registered nurses	2	As above.
Class 3 – Other clinical staff	1	As above.
Class 4 – Other staff and Trust volunteers	2	As above.
	6	
<b>Public Constituency</b>		
Area 1 – Merseyside	4	To represent the public and patients living in areas served by the Trust.
Area 2 – Cheshire	1	As above.
Area 3 – Cumbria and Lancashire	1	As above.
Area 4 – Greater Manchester	1	As above.
Area 5 - Rest of England	1	As above.
Area 6 – North Wales	1	As above.
<b>Patients' Constituency</b>		
Class 1 – Merseyside patients	3	To represent the views and interests of current and past patients of the Trust.
Class 2 – Rest of England and North Wales patients	1	As above.
Class 3 – Parents and carers	6	To represent the views and interests of parents and carers of and those with parental responsibility for, current and past patients of the Trust.
	19	

<b>Total Elected Governors</b>	<b>25</b>	
<b>Total membership of Council of Governors</b>		
<b>Appointed Governors</b>	<b>10</b>	
<b>Elected Governors</b>	<b>25</b>	
<b>Total</b>	<b>35</b>	

**VOLUNTARY ORGANISATIONS WORKING WITH ALDER HEY CHILDREN'S  
NHS FOUNDATION TRUST**

Alder Hey Children's Charity  
CLIC Sargent (children & young people with cancer)  
Alder Hey Kidney Fund  
Cystic Fibrosis Trust  
Ronald McDonald House  
Zoe's Place  
Claire House  
Barnardos  
CHICKS (Children's Cancer Support Group)  
Winston's Wish  
The Children's Heart Association  
LFC Foundation  
Everton in the Community  
NCPCC  
Owen McVeigh Foundation  
Roald Dahl Marvellous Children's Charity  
Rays of Sunshine Children's Charity  
Dame Kelly Holmes Trust  
Park Palace Ponies  
Everyman Theatre  
Tate Liverpool  
Cascade Music  
Lagan's Foundation  
Small Things Dance Collective  
The Children's Orthopaedic and Trauma Fund

*This list is not intended to be exhaustive and is subject to change depending on new partnerships formed*

## **ANNEX 5 – MODEL ELECTION RULES**

### **Part 1 - Interpretation**

1. Interpretation

### **Part 2 – Timetable for election**

2. Timetable
3. Computation of time

### **Part 3 – Returning officer**

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

### **Part 4 - Stages Common to Contested and Uncontested Elections**

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

### **Part 5 – Contested elections**

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

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

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

### **The poll**

26. Eligibility to vote
27. Voting by persons who require assistance
28. Spoilt ballot papers
29. Lost ballot papers
30. Issue of replacement ballot papers
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**

- 37. Arrangements for counting of the votes
- 38. The count
- fpp39. Rejected ballot papers
- fpp46. Equality of votes

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

- fpp47. 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**

- fpp54. 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

In these rules, unless the context otherwise requires -

“the 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;

“the 2006 Act” means the National Health Service Act 2006.

Other expressions used in these rules and in Schedule 1 to the National Health Service Act 2006 shall 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 s/he 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 s/he is not prevented from being a member of the Council of Governors by paragraph 8 of Schedule 7 of the 2006 Act or by any provision of the Constitution; and
- (b) for a member of the Public or Patients' 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 s/he 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 the 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 Patients' Constituencies)**

- (1) In respect of an election for a Public or Patients' 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 Patients' 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 s/he considers necessary to enable that voter to vote.

### **28. Spoilt ballot papers**

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

## **29. Lost ballot papers**

- (1) Where a voter has not received his or her ballot paper by the fourth day before the close of the poll, that voter may apply to the returning officer for a replacement ballot paper.
- (2) The returning officer may not issue a replacement ballot paper for a lost ballot paper unless s/he –
  - (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), s/he 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 Patients' Constituencies)**

- (1) In respect of an election for a Public or Patients' 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 Patients' 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, s/he 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, s/he 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 Patients’ 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 spoilt ballot papers,
- (d) the list of lost ballot papers,
- (e) the list of eligible voters, and
- (f) the list of tendered ballot papers.

## **Part 6 - Counting the votes**

### **36. Arrangements for counting of the votes**

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

### **37. The count**

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

### **38. Rejected ballot papers**

- (1) Any ballot paper –
  - (a) which does not bear the features that have been incorporated into the other ballot papers to prevent them from being reproduced,
  - (b) on which votes are given for more candidates than the voter is entitled to vote,
  - (c) on which anything is written or marked by which the voter can be identified except the unique identifier, or
  - (d) which is unmarked or rejected because of uncertainty,shall, subject to paragraphs (2) and (3) below, be rejected and not counted.
- (2) Where the voter is entitled to vote for more than one candidate, a ballot paper is not to be rejected because of uncertainty in respect of any vote where no uncertainty arises, and that vote is to be counted.
- (3) A ballot paper on which a vote is marked –
  - (a) elsewhere than in the proper place,
  - (b) otherwise than by means of a clear mark,
  - (c) by more than one mark,

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

#### **41. 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 NHS Trust by section 33(4) of the 2006 Act, to the Chair of the NHS Trust, or
  - (ii). in any other case, to the Chair of the Corporation; and
- (c) give public notice of the name of each candidate whom s/he 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.

#### **42. 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 s/he has declared elected to the Chair of the Corporation, and
- (c) give public notice of the name of each candidate who s/he has declared elected.

### **Part 8 – Disposal of documents**

#### **43. 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.

#### **44. Delivery of documents**

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

#### **45. Forwarding of documents received after close of the poll**

Where –

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

#### **46. Retention and public inspection of documents**

- (1) The Corporation is to retain the documents relating to an election that are forwarded to the Chair by the returning officer under these rules for one year, and then, unless otherwise directed by the Regulator, cause them to be destroyed.
- (2) With the exception of the documents listed in rule 53(1), the documents relating to an election that are held by the Corporation shall be available for inspection by members of the public at all reasonable times.



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

**47. 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**

### **48. 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 Chair of the Corporation, and rules 52 and 53 are to apply.

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

### **Election expenses**

#### **49. 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.

#### **50. 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 £25.

#### **51. 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**

#### **52. 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.

### **53. 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.

### **54. 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**

### **55. Application to question an election**

- (1) An application alleging a breach of these rules, including an electoral irregularity under Part 10, may be made to the Regulator.
- (2) An application may only be made once the outcome of the election has been declared by the returning officer.
- (3) An application may only be made to the Regulator by –

- (a) a person who voted at the election or who claimed to have had the right to vote, or
  - (b) a candidate, or a person claiming to have had a right to be elected at the election.
- (4) The application must –
  - (a) describe the alleged breach of the rules or electoral irregularity, and
  - (b) be in such a form as the Regulator may require.
- (5) The application must be presented in writing within 21 days of the declaration of the result of the election.
- (6) If the Regulator requests further information from the applicant, then that person must provide it as soon as is reasonably practicable.
  - (a) The Regulator shall delegate the determination of an application to a person or persons to be nominated for the purpose of the Regulator.
  - (b) The determination by the person or persons nominated in accordance with Rule 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.
  - (c) The Regulator may prescribe rules of procedure for the determination of an application including costs.

## **Part 12 – Miscellaneous**

### **56. 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 s/he thinks fit to ensure that the individuals who are affected by this provision are aware of the duties it imposes.

#### **57. 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 s/he has voted.

#### **58. 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.

#### **59. Delay in postal service through industrial action or unforeseen event**

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

- (a) the delivery of the documents in rule 24, or
- (b) the return of the ballot papers and declarations of identity, the returning officer may extend the time between the publication of the notice of the poll and the close of the poll, with the agreement of the Regulator.

## **ANNEX 6 – ADDITIONAL PROVISIONS – COUNCIL OF GOVERNORS**

### **Compliance with Code of Conduct**

Governors shall comply with the Trust's Code of Conduct for Governors, as may be varied from time to time.

### **Training**

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

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

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

1. S/he is a Director of the Trust, or a Governor or Director of another NHS Foundation Trust or any other NHS body, unless such Foundation Trust or NHS body is an appointing organisation which is appointing him/her under this Constitution;
2. S/he is the spouse, partner, parent or child of a member of the Council of Governors or Board of Directors of the Trust;
3. S/he is under sixteen years of age at the time s/he is nominated for election or appointment;
4. S/he is a member of a local authority's scrutiny committee covering health matters;
5. Being a member of one of the public constituencies or one of the classes of the Patients' Constituency, s/he fails to sign a declaration in the form specified by the Council of Governors of the particulars of his/her qualification to vote as a member of the Trust, and that s/he is not prevented from being a member of the Council of Governors;
6. S/he fails to agree to comply with the Trust's Code of Conduct for Governors;
7. S/he is or has been subject to a sex offender order;
8. On the basis of disclosures obtained through an application to the Criminal Records Bureau, s/he is not considered suitable by the Trust's Executive Director responsible for Human Resources;
9. S/he is incapable by reason of mental disorder, illness or injury of managing or administering his/her property and affairs;
10. S/he has within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with a health service body;
11. S/he is a person whose tenure of office as the Chair or as a member or Director of a health service body has been terminated on the grounds that his/her

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

12. S/he has had his/her name removed from any list prepared under Part II of the NHS Act 1977 and, due to the reason(s) for such removal, s/he is not considered suitable by the Trust's Executive Director responsible for Human Resources;
13. S/he has previously been removed from office as a Governor of the Trust in accordance with the provisions of paragraph 8 below under the section titled 'Termination of office and removal of Governors'.

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

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

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

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

1. S/he resigns by notice in writing to the Secretary;
2. It otherwise comes to the notice of the Secretary at the time the Governor takes office or later that the Governor is disqualified;
3. S/he fails to attend two meetings in any financial year, unless the other Governors are satisfied that:
  - a. the absences were due to reasonable causes; and
  - b. s/he will be able to start attending meetings of the Trust again within such a period as they consider reasonable;
4. In the case of an elected Governor, s/he ceases to be a member of the Trust;
5. In the case of an appointed Governor, the appointing organisation terminates the appointment;
6. S/he has refused without reasonable cause to undertake any training, which the Council of Governors requires all Governors to undertake;
7. S/he has failed to sign and deliver to the Secretary a statement in the form required by the Council of Governors confirming acceptance of the Trust's Code of Conduct for Governors;
8. S/he is removed from the Council of Governors by a resolution approved by a majority of the remaining Governors present and voting at a general meeting on the grounds that:
  - a. s/he has committed a serious breach of the Trust's Code of Conduct; or
  - b. s/he has failed to declare a relevant and material interest in accordance with the Council of Governor's Standing Orders; or
  - c. s/he has acted in a manner detrimental to the interests of the Trust; or
  - d. the Council of Governors consider that it is not in the best interests of the Trust for him/her to continue as a Governor.



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### **Vacancies amongst Governors**

1. Where a vacancy arises on the Council of Governors for any reason other than expiry of term of office, the following provisions will apply.
2. Where the vacancy arises amongst the appointed Governors, the Secretary shall request that the appointing organisation appoints a replacement to hold office for the remainder of the term of office.
3. Where the vacancy arises amongst the elected Governors, the Council of Governors shall be at liberty either:
  - to call an election within three months to fill the seat for the remainder of that term of office, or
  - to invite the next highest polling candidate for that seat at the most recent election, who is willing to take office, to fill the seat for any unexpired period of the term of office; or
  - to leave the vacancy outstanding until the next annual election, providing that the vacancy shall not be for more than nine months.

### **Roles and Responsibilities**

The Governors have three general roles:

- Advisory – to communicate to the Board the views and interests of members and the wider community;
- Guardianship – to ensure that the Trust is operating in accordance with its authorisation;
- Strategic – to advise on the Trust's strategy and deliverance of that strategy.

The Governors shall carry out their roles and responsibilities in accordance with this Constitution and the Trust's authorisation.

The roles and responsibilities of the Governors shall include to:

1. Appoint or remove the Chair and the other Non-Executive Directors. The removal of a Non-Executive Director requires the approval of two thirds of the Council of Governors ;
2. Decide the remuneration and allowances, and the other terms and conditions of office, of the Non-Executive Directors;
3. Appoint or remove any external auditor and the Trust's financial auditor;
4. Approve (by a majority of the Council of Governors voting) an appointment (by the Appointments and Remuneration Committee of the Board of Directors, excluding the Chief Executive) of the Chief Executive;

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5. Give the views of the Council of Governors to the Board of Directors for the purposes of the preparation (by the Directors) of the document containing information as to the Trust's forward planning in respect of each financial year to be given to the Regulator;
6. Consider the annual accounts, any report of the financial auditor on them, and the annual report;
7. Consult with the Board of Directors on future plans for the services provided by the Trust;
8. Work with the Board of Directors to ensure the Trust operates within its terms of authorisation;
9. Respond to any matter as appropriate when consulted by the Directors;
10. Review the Trust's Membership Strategy from time to time and at least once every three years to develop the membership of the Trust and represent the interests of members, and to review from time to time the Trust's policy for the composition of the Council of Governors;
11. Establish mechanisms for consulting with the members and partnership organisations they may represent, particularly on developments and significant changes to services provided by the Trust;
12. Act as a source of ideas about how the Trust can provide services which reflect the needs of patients and the wider community;
13. Ensure that the Trust follows its values, as set out in the Trust's Membership Strategy;
14. Monitor the success of the Trust in meeting its planned service objectives;
15. Undertake such functions as the Board of Directors shall from time to time request.

### **Appointment of Non-Executive Directors (including Chair, Vice Chair, Senior Independent Director and Chair of Audit)**

1. The Board of Directors will identify the skills and experience required for Non-Executive Director posts, including the Chair, Vice Chair, Chair of Audit and Senior Independent Director of the Trust, and will prepare a suitable job description(s), which may be revised by the Board from time to time as required.
2. The Council of Governors shall establish a Nominations Committee to prepare job descriptions (taking into account the views of the Board regarding skills and experience) and identify suitable candidates to assist with the process of selection of Non-Executive Directors by the Council of Governors.

**ANNEX 7 – COUNCIL OF GOVERNORS STANDING ORDERS**

**FOREWORD**

The Alder Hey Children's NHS Foundation Trust ("the Trust") is a public benefit corporation established in accordance with the provisions of the National Health Service Act 2006 ("the 2006 Act").

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

The principal place of business of the Trust is Alder Hey Children's Hospital.

These Standing Orders are for the regulation of the proceedings of the Council of Governors.

The Trust provides care on more than 350,000 occasions each year to children, young people and their families. The Trust is proud to be a family-centered organisation. Our values reflect the fact that we see the children, young people and families we serve at the centre of the services we provide and we recognise that we can learn much from them, which helps us to improve what we do continuously. Directors and Governors are expected to observe the Nolan principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

The Council of Governors and Board of Directors shall at all times seek to comply with the Trust's Codes of Conduct for Governors and Directors.

There should be sufficient transparency about the Trust's activities to promote confidence between the Trust and its staff, patients and the public.

# Alder Hey Children's NHS Foundation Trust

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## Alder Hey Children's NHS Foundation Trust

### 1. Interpretation

- 1.1. Save as permitted by law, the Chair of the Trust shall be the final authority on the interpretation of Standing Orders (on which s/he shall be advised by the Chief Executive and Director of Finance).
- 1.2. Any expression to which a meaning is given in the 2006 Act shall have the same meaning in this interpretation and in addition:

"ACCOUNTING OFFICER" shall be the Officer responsible and accountable for funds entrusted to the Trust. S/he shall be responsible for ensuring the proper stewardship of public funds and assets. For this Trust it shall be the Chief Executive.

"BOARD" shall mean the Chair and Non-Executive Directors, appointed by the Council of Governors, and the Executive Directors appointed by the Appointments and Remuneration Committee of the Board.

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

"CHAIR" is the person appointed by the Council of Governors in accordance with paragraphs 24 and 25 of this Constitution. The expression "the Chair of the Trust" shall be deemed to include the Non-Executive Director appointed by the Council of Governors to take on the Chair's duties if the Chair is absent or is otherwise unavailable (the Vice Chair).

"CHIEF EXECUTIVE" shall mean the chief officer of the Trust.

"COMMITTEE" shall mean a committee appointed by the Council of Governors.

"COMMITTEE MEMBERS" shall be persons formally appointed by the Council of Governors to sit on or to chair specific committees.

"DIRECTOR" shall mean a person appointed to the Board of Directors in accordance with the Trust's Constitution and includes the Chair.

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

"NOMINATED OFFICER" means an Officer charged with the responsibility for discharging specific tasks within Standing Orders.

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"OFFICER" means an employee of the Trust.

"SENIOR INDEPENDENT DIRECTOR" means an independent Non Executive Director with the responsibility to work with the Governors to understand their issues and act on their behalf at Board level

"SOS" mean Standing Orders.

"TRUST" means the Alder Hey Children's NHS Foundation Trust.

### 2. General Information

- 2.1. The purpose of the Council of Governors Standing Orders is to ensure that the highest standards of corporate governance and conduct are applied to all Council meetings and associated deliberations. The Council shall at all times seek to comply with the Trust's Code of Conduct for Governors.
- 2.2. All business shall be conducted in the name of the Trust.
- 2.3. The Board of Directors shall appoint trustees to administer separately charitable funds received by the Trust and for which they are accountable to the Charity Commission.
- 2.4. A Governor who has acted honestly and in good faith will not have to meet out of his or her own personal resources any personal civil liability which is incurred in the execution or purported execution of his or her functions as a Governor save where the Governor has acted recklessly. On behalf of the Council of Governors, and as part of the Trust's overall insurance arrangements, the Board of Directors shall put in place appropriate insurance provision to cover such indemnity.

### 3. Composition of the Council of Governors

- 3.1. The composition of the Council of Governors shall be in accordance with paragraph 12 of the Trust's Constitution.
- 3.2. **Appointment and Removal of the Chair and Vice Chair of the Council of Governors** - These appointments shall be made by the Governors in accordance with paragraph 24 of the Trust's Constitution.
- 3.3. **Duties of Vice Chair** - Where the Chair of the Trust has died or has otherwise ceased to hold office or where s/he has been unable to perform his/her duties as Chair owing to illness, absence from England and Wales or any other cause, references to the Chair shall, so long as there is no Chair able to perform his/her duties, be taken to include references to the Vice Chair or the Non-Executive Director nominated by the Council of Governors to take on the duties of the

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Chair or Vice Chair should both be absent from a meeting or otherwise unavailable or unable to perform his/her duties.

### **4. Meetings of the Council of Governors**

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

4.1.1 Meetings of the Council of Governors must be open to the public, subject to paragraphs 4.1.2 and 4.1.3 below.

4.1.2 The Council of Governors may resolve to exclude members of the public from any meeting or part of a meeting on the grounds that it considers that:

publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted; or

there are special reasons stated in the resolution and arising from the nature of the business of the proceedings.

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

4.1.4 Meetings of the Council of Governors shall be held at least three times each year at times and places that the Council of Governors may determine.

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

#### **4.2 Calling Meetings**

Notwithstanding paragraph 4.1.4 above, the Chair may call a meeting of the Council of Governors at any time. If the Chair refuses to call a meeting after a requisition for that purpose, signed by a majority of the Governors, or if without so refusing the Chair does not call a meeting within fourteen days after requisition to do so, then the Governors may forthwith call a meeting provided they have been requisitioned to do so by more than 50% of their members.

#### **4.3 Notice of Meetings**

4.3.1 Before each meeting of the Council of Governors, a notice of the meeting, specifying the business proposed to be transacted at it, and signed by the Chair or by an Officer of the Trust authorised by the Chair to sign on his/her behalf [subject to paragraphs 4.3.2 and 4.3.3 below] shall be delivered to every Governor, or sent by post to the usual place of residence of such Governor, so as to be available to him/her at least twenty-one clear days before the meeting. Lack of service of

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the notice on any Governor shall not affect the validity of a meeting, subject to paragraph 4.3.4 below.

4.3.2 Notwithstanding the above requirement for notice, the Chair may waive notice in the case of emergencies or in the case of the need to conduct urgent business.

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

4.3.4 Subject to paragraph 4.3.2, failure to serve notice on more than three quarters of Governors will invalidate any meeting. A notice will be presumed to have been served 48 hours after the envelope containing it was posted or, in the case of a notice contained in an electronic communication, 48 hours after it was sent.

### **4.4 Setting the Agenda**

4.4.1 The Council of Governors may determine that certain matters shall appear on every agenda for a meeting of the Council and shall be addressed prior to any other business being conducted.

4.4.2 In the case of a meeting called by the Chair, a Governor desiring a matter to be included on an agenda shall make his/her request in writing to the Chair at least ten clear days before the meeting. Requests made less than ten days before a meeting may be included on the agenda at the discretion of the Chair.

4.4.3 The Chair shall make arrangements to ensure that the final agenda and any supporting papers for the meeting, following the receipt of any requests in accordance with 4.4.2 above, are delivered to every Governor, or sent by post to the usual place of residence of such Governor, so as to be available to him/her at least five clear days before the meeting.

### **4.5 Chair of Meeting**

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

### **4.6 Notices of Motions**

4.6.1 A Governor of the Trust desiring to move or amend a motion shall send a written notice thereof at least ten clear days before the meeting to the Chair, who shall insert this in the agenda for the meeting. All notices so received are subject to the notice given being permissible under the appropriate regulations. This



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paragraph shall not prevent any motion being moved during the meeting, without notice, on any business mentioned on the agenda subject to section 4.3.3 of these Standing Orders.

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

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

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

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

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

### **4.8 Voting**

- 4.8.1 Decisions at meetings shall be determined by a majority of the votes of the Governors present and voting. In the case of any

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equality of votes, the person presiding shall have a second or casting vote.

- 4.8.2 All decisions put to the vote shall, at the discretion of the Chair of the meeting, be determined by oral expression or by a show of hands. A paper ballot may also be used if a majority of the Governors present so request.
- 4.8.3 If at least one-third of the Governors present so request, the voting (other than by paper ballot) on any question may be recorded to show how each Governor present voted or abstained.
- 4.8.4 If a Governor so requests, his/her vote shall be recorded by name upon any vote (other than by paper ballot).
- 4.8.5 In no circumstances may an absent Governor vote by proxy. Absence is defined as being absent at the time of the vote.
- 4.8.6 A Governor who is a member of the Public Constituency or one of the classes of the Patients' Constituency may not vote at a meeting of the Council of Governors unless, before attending the meeting, they have made a declaration in the form specified by the Secretary of the particulars of their qualification to vote as a member of the Trust and that they are not prevented from being a member of the Trust. A Governor shall be deemed to have confirmed the declaration upon attending any subsequent meeting of the Council of Governors and every agenda for meetings of the Council of Governors shall draw this to the attention of the Governors.

### **4.9 Suspension of Standing Orders (SOs)**

- 4.9.1 Except where this would contravene any statutory provision, any one or more of these Standing Orders may be suspended at any meeting, provided that at least two-thirds of members of the Council are present and that a majority of those present vote in favour of suspension.
- 4.9.2 A decision to suspend SOs shall be recorded in the minutes of the meeting.
- 4.9.3 A separate record of matters discussed during the suspension of SOs shall be made and shall be available to the Directors.
- 4.9.4 No formal business may be transacted while SOs are suspended.
- 4.9.5 The Trust's Audit Committee shall review every decision to suspend SOs.

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

These Standing Orders shall be amended only if:

- a notice of motion has been given; and
- no fewer than two thirds of the total number of Governors approve the variation/amendment; and
- the variation/amendment proposed does not contravene a statutory requirement.

### **4.11 Record of Attendance**

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

### **4.12 Minutes**

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

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

4.12.3 Minutes shall be circulated in accordance with the Governors' wishes. The minutes of the meeting shall be made available to the public except for minutes relating to business conducted when members of the public are excluded under the terms of section 4.1 of these Standing Orders (Code of Practice on Openness in the NHS adopted voluntarily by the Trust).

### **4.13 Quorum**

4.13.1 No business shall be transacted at a meeting of the Council of Governors unless at least one-third of all the members of the Council of Governors are present.

4.13.2 If a Governor has been disqualified from participating in the discussion on any matter and from voting on any resolution by reason of the declaration of a conflict of interest s/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.

## **5. Arrangements for the Exercise of Functions by Delegation**

- 5.1 **Emergency Powers** - The powers which the Council of Governors has retained to itself within these Standing Orders may in an emergency be exercised by the Chair after having consulted at least five elected Governors. The exercise of such powers by the Chair shall be reported to the next formal meeting of the Council for ratification.
- 5.2 **Delegation to a Governor** – The Council of Governors may delegate duties to an individual Governor but only under a clear remit approved by the Council.
- 5.3 The Nominations Committee of the Council of Governors, the Terms of Reference for which are set out in its Terms of Reference on behalf of the Council.

## **6. Confidentiality**

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

## **7. Declaration of Interests and Register of Interests**

### **7.1 Declaration of Interests**

Governors are required to comply with the Trust's Standards of Business Conduct and to declare interests that are relevant and material to the Council. All Governors should declare such interests on appointment and on any subsequent occasion that a conflict arises.

7.1.1 Interests regarded as "relevant and material" include any of the following, held by a Governor, or the spouse, partner, parent or child of a Governor:

- a) Directorships, including non-executive directorships, held in private companies or PLCs (with the exception of those of dormant companies).
- b) Ownership or part-ownership of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS.
- c) Employment with any private company, business or consultancy.
- d) Significant share holdings (more than 5%) in organisations likely or possibly seeking to do business with the NHS.

## **Alder Hey Children's NHS Foundation Trust**

- e) A position of authority in a charity or voluntary organisation in the field of health and social care.
- f) Any connection with a voluntary or other organisation contracting for NHS services.

7.1.2 If a Governor has any doubt about the relevance of an interest, s/he should discuss it with the Chair who shall advise him/her whether or not to disclose the interest.

7.1.3 At the time Governors' interests are declared, they should be recorded in the Council of Governors minutes and entered on a Register of Interests of Governors to be maintained by the Secretary. Any changes in interests should be declared at the next Council meeting following the change occurring.

7.1.4 Governors' directorships of companies likely or possibly seeking to do business with the NHS should be published in the Trust's annual report.

7.1.5 During the course of a Council meeting, if a conflict of interest is established, the Governor concerned shall, unless two thirds of those Governors present agree, otherwise withdraw from the meeting and play no part in the relevant discussion or decision. If the Governor remains present at the meeting on the agreement of two thirds of those Governors present, s/he shall not be entitled to vote on the issue in respect of which the conflict of interest has been established.

### **7.2 Register of Interests**

7.2.1 The Trust Secretary will ensure that a Register of Interests is established to record formally declarations of interests of Governors.

7.2.2 Details of the Register will be kept up to date and reviewed annually.

7.2.3 The Register will be available to the public.

## **8. Compliance - Other Matters**

8.1 All Governors of the Council shall comply with the Standards of Business Conduct set by the Board of Directors for the guidance of all staff employed by the Trust.

8.2 All Governors of the Trust shall comply with Standing Financial Instructions prepared by the Director of Finance and approved by the Board of Directors for the guidance of all staff employed by the Trust.

8.3 All Governors must behave in accordance with the seven Nolan principles of behaviour in Public Life (and the Trust's Code of Conduct for Governors as amended from time to time): -

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- Selflessness;
- Integrity;
- Objectivity;
- Accountability;
- Openness;
- Honesty, and
- Leadership.

### **9. Resolution of Disputes with Board of Directors**

9.1 The council has three main roles:

9.1.1 Strategic – to use the breadth of experience of the governors to help determine the trust's future direction and support it in delivering its plans and to hold the non-executive directors individually and collectively to account for the performance of the board of directors

9.1.2 Advisory – to act as a critical friend providing support, feedback and advice.

9.1.3 Representative – to represent the interests of the members of the corporation as a whole and the interests of the public and to use the views of their electorate or organisation to enhance and inform the work of the trust.

9.2 The board has overall responsibility for running the affairs of the trust. Its role is to:

9.2.1 Set a strategic direction.

9.2.2 Set organisational and operational targets.

9.2.3 Minimise risk.

9.2.4 Assess achievement against the above objectives.

9.2.5 Ensure that action is taken to eliminate or minimise, as appropriate, adverse deviations from objectives.

9.2.6 Ensure that the highest standards of corporate governance are applied throughout the organisation.

9.2.7 Act with a view to promoting the success of the corporation so as to maximise the benefits for the members of the corporation as a whole and for the public

## **Alder Hey Children's NHS Foundation Trust**

- 9.3 Should a dispute arise between the council and the board then the disputes resolution procedure set out below recognises the different roles of the council and the board as described above.
- 9.3.1 The chair, or Senior Independent Director (if the dispute involves the chair) shall first endeavour through discussion with appropriate representatives of the governors and the directors to achieve the earliest possible resolution of the matter in dispute to the reasonable satisfaction of both parties.
- 9.3.2 Failing resolution under council standing order 9.3.1 above then the board or the council, as appropriate, shall at its next formal meeting approve the precise wording of a disputes statement setting out clearly and concisely the issue or issues giving rise to the dispute.
- 9.3.3 The chair or Senior Independent Director (if the dispute involves the chair) shall ensure that the disputes statement produced in accordance with council standing order 9.3.2 above, without amendment or abbreviation in any way, shall be an agenda item and agenda paper at the next formal meeting of the board or council as appropriate (i.e the body that does not issue the disputes statement). That meeting shall agree the precise wording of a response to the disputes statement.
- 9.3.4 The chair or Senior Independent Director (if the dispute involves the chair) shall immediately or as soon as is practical, communicate the outcome to the other party and deliver the written response to the disputes statement.
- 9.3.5 If, in the opinion of the chair or Senior Independent Director (if the dispute involves the chair), and following the further discussions prescribed in council standing order 9.3.4, there is no further prospect of a full resolution or, if at any stage in the whole process, in the opinion of the chair or Senior Independent Director (as the case may be), there is no prospect of a resolution (partial or otherwise) then he or she shall appoint a special committee comprising equal numbers of directors and governors under the chairmanship of the senior independent director to consider the circumstances and to make recommendations to the Council and the board with a view to resolving the dispute.
- 9.3.6 On the satisfactory completion of this disputes process the board shall implement agreed changes.
- 9.3.7 If the recommendations (if any) of the special committee are unsuccessful in resolving the dispute, the chair may refer the dispute to an external mediator as he or she considers appropriate.
- 9.4 Nothing in this procedure shall prevent the council, if it so desires, from informing NHS England that, in the council's opinion, the board has not responded constructively to concerns of the council that the trust is not meeting the terms of its authorisation.

**10. Council Performance**

The Trust must take steps to secure that the governors are equipped with the skills and knowledge they require in their capacity as such. The Chair shall, at least annually, lead a performance assessment process for the Council to enable the Council to review its roles, structure and composition, and procedures, taking into account emerging best practice.

**11. Changes to Standing Orders**

**For the sake of clarity, future amendments to these Standing Orders by the Council must be regarded as a change to the Trust's Constitution.**



# **Alder Hey Children's NHS Foundation Trust**

## **ANNEX 8**

### **BOARD STANDING ORDERS**

#### **FOREWORD**

The Alder Hey Children's NHS Foundation Trust ("the Trust") is a public benefit corporation established in accordance with the provisions of the National Health Service Act 2006 ("the 2006 Act").

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

The principal place of business of the Trust is Alder Hey Children's Hospital.

These Standing Orders are for the regulation of the proceedings of the Board of Directors.

The Trust provides care on more than 350,000 occasions each year to children, young people and their families. The Trust is proud to be a family-centred organisation. Our values reflect the fact that we see the children, young people and families we serve at the centre of the services we provide and we recognise that we can learn much from them, which helps us to improve what we do continuously. Directors and Governors are expected to observe the Nolan principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership.

The Council of Governors and Board of Directors shall at all times seek to comply with the Trust's Codes of Conduct for Governors and Directors.

There should be sufficient transparency about the Trust's activities to promote confidence between the Trust and its staff, patients and the public.

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## Alder Hey Children's NHS Foundation Trust

### 1. Interpretation

- 1.1. Save as permitted by law, the Chair of the Trust shall be the final authority on the interpretation of Standing Orders (on which s/he shall be advised by the Chief Executive and Director of Finance).
- 1.2. Any expression to which a meaning is given in the 2006 Act shall have the same meaning in this interpretation and in addition:

"ACCOUNTING OFFICER" shall be the Officer responsible and accountable for funds entrusted to the Trust. S/he shall be responsible for ensuring the proper stewardship of public funds and assets. For this Trust it shall be the Chief Executive.

"BOARD" shall mean the Chair and Non-Executive Directors, appointed by the Council of Governors, and the Executive Directors appointed by the Appointments and Remuneration Committee of the Board.

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

"CHAIR" is the person appointed by the Council of Governors in accordance with paragraph 24 of this Constitution. The expression "the Chair" shall be deemed to include the Vice Chair or otherwise a Non-Executive Director appointed by the Board to preside for the time being over its meetings.

"CHIEF EXECUTIVE" shall mean the chief officer of the Trust.

"COMMITTEE" shall mean a committee appointed by the Board.

"COMMITTEE MEMBERS" shall be persons formally appointed by the Board of Directors to sit on or to chair specific committees.

"DIRECTOR" shall mean a person appointed to the Board of Directors in accordance with the Trust's Constitution and includes the Chair.

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

"NOMINATED OFFICER" means an Officer charged with the responsibility for discharging specific tasks within Standing Orders.

"OFFICER" means an employee of the Trust.

"SOS" mean Standing Orders.

"TRUST" means the Alder Hey Children's NHS Foundation Trust.

## Alder Hey Children's NHS Foundation Trust

### 2. General Information

- 2.1. The purpose of the Board Standing Orders is to ensure that the highest standards of Corporate Governance are achieved in the Board and throughout the organisation. The Board shall at all times seek to comply with the Trust's Code of Conduct for Directors.
- 2.2. All business shall be conducted in the name of the Trust.
- 2.3. The Directors shall appoint trustees to administer separately charitable funds received by the Trust and for which they are accountable to the Charity Commission.
- 2.4. A Director, or Officer of the Trust, who has acted honestly and in good faith will not have to meet out of his or her own personal resources any personal civil liability which is incurred in the execution or purported execution of his or her functions as a Director save where the Director has acted recklessly. On behalf of the Directors, and as part of the Trust's overall insurance arrangements, the Board of Directors shall put in place appropriate insurance provision to cover such indemnity.

### 3. Composition of the Board

- 3.1. The composition of the Board shall be as a minimum:

The Chair of the Trust  
Five - Seven Non-Executive Directors  
Five – Seven Executive Directors

The number of Directors may be increased by the Board, provided always that at least half the Board, excluding the Chair, comprises Non-Executive Directors.

- 3.2. **Appointment and Removal of the Chair and Non-Executive Directors** - The Chair and Non-Executive Directors are appointed and removed by the Council of Governors in accordance with the Trust's Constitution.
- 3.3. **Appointment and Removal of the Executive Directors** – The Appointments and Remuneration Committee of the Board of Directors (excluding the Chief Executive) shall appoint the Chief Executive (which appointment shall be approved by the Council of Governors). The Appointments and Remuneration Committee of the Board of Directors (inclusive of the Chief Executive) shall appoint or remove the other Executive Directors.
- 3.4. **Appointment and Removal of the Vice Chair** – For the purpose of enabling the proceedings of the Trust to be conducted in the absence of the Chair, the Council of Governors of the Trust will appoint one of the Non-Executive Directors to be the Vice Chair.
- 3.5. **Powers of Vice Chair** - Where the Chair of the Trust has died or has otherwise ceased to hold office or where s/he has been unable to perform his/her duties as Chair owing to illness, absence from England

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and Wales or any other cause, references to the Chair shall, so long as there is no Chair able to perform his/her duties, be taken to include references to the Vice Chair or otherwise to the Non-Executive Director appointed by the Board to preside for the time being over its meetings.

- 3.6. **Joint Directors** - Where more than one person is appointed jointly to a post in the Trust which qualifies the holder for executive directorship or in relation to which an Executive Director is to be appointed, those persons shall become appointed as an Executive Director jointly, and shall count as one person.
- 3.7. Non-Executive Directors may seek external advice or appoint an external advisor on any material matter of concern provided the decision to do so is a collective one by the majority of Non-Executive Directors.

### **4. Meetings of the Board**

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

4.1.1. Meetings of the Board must be open to the public, subject to paragraphs 4.1.2 and 4.1.3 below.

4.1.2. The Board may resolve to exclude members of the public from any meeting or part of a meeting on the grounds that it considers that:

(a) publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted; or

(b) there are special reasons stated in the resolution and arising from the nature of the business of the proceedings.

4.1.3. The Chair may exclude any member of the public from the meeting of the Board if s/he considers that s/he is interfering with or preventing any conduct of the meeting.

4.1.4. Meetings of the Board shall be held at least three times each year at times and places that the Board may determine.

4.1.5. The Board shall arrange for an annual public meeting to be held within 9 months of the end of each financial year. The registers and documents set out in paragraphs 32 and 33 of the Trust's Constitution shall be available for inspection at the meeting.

#### **4.2. Calling Meetings**

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

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at the Trust's Head Office, such one third or more Directors may forthwith call a meeting.

### **4.3. Notice of Meetings**

4.3.1. Before each meeting of the Board, a notice of the meeting, specifying the business proposed to be transacted at it, and signed by the Chair or by an Officer of the Trust authorised by the Chair to sign on his/her behalf shall be delivered to every Director, or sent by post to the usual place of residence of such Director, so as to be available to him/her at least twenty-one clear days before the meeting. Lack of service of the notice on any Director shall not affect the validity of a meeting, subject to paragraph 4.3.4 below.

4.3.2. Notwithstanding the above requirement for notice, the Chair may waive notice in the case of emergencies or in the case of the need to conduct urgent business or on written receipt of the agreement of at least two-thirds of Directors (Executive and Non-Executive Directors taken together) but to include a minimum of two Executive Directors and two Non-Executive Directors.

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

4.3.4. Subject to paragraph 4.3.2, failure to serve such a notice on more than three Directors will invalidate the meeting. A notice will be presumed to have been served 48 hours after the envelope containing it was posted or, in the case of a notice contained in an electronic communication, 48 hours after it was sent.

### **4.4. Setting the Agenda**

4.4.1. The Board may determine that certain matters shall appear on every agenda for a meeting of the Board and shall be addressed prior to any other business being conducted.

4.4.2. In the case of a meeting called by the Chair, a Director desiring a matter to be included on an agenda shall make his/her request in writing to the Chair at least ten clear days before the meeting. Requests made less than ten days before a meeting may be included on the agenda at the discretion of the Chair.

4.4.3. The Chair shall make arrangements to ensure that the final agenda and any supporting papers for the meeting, following the receipt of any requests in accordance with 4.4.2 above, are delivered to every Director, or sent by post to the usual place of residence of such Director, so as to be available to him/her at least five clear days before the meeting.

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4.4.4. Before holding a meeting, the board of directors must send a copy of the agenda of the meeting to the council of governors.

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

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

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

4.6.1. A Director 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 paragraph 4.3.3 above.

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

4.6.3. Notice of motion to amend or rescind any resolution (or the general substance of any resolution), which has been passed within the preceding six calendar months, shall bear the signature of the Directors who gave it and also the signature of four other Directors. When any such motion has been disposed of by the Board 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 s/he considers it appropriate.

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

4.6.5. When a motion is under discussion or immediately prior to discussion it shall be open to a Director to move:

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

Such a motion, if seconded, shall be disposed of before the motion, which was originally under discussion or about to be

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

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

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

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

### **4.8. Voting**

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

4.8.2. All decisions put to the vote shall, at the discretion of the Chair of the meeting, be determined by oral expression or by a show of hands. A paper ballot may also be used if a majority of the Directors present so request.

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

4.8.4. If a Director so requests, his/her vote shall be recorded by name upon any vote (other than by paper ballot).

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

4.8.6. An officer who has been appointed formally by the Board to act up for an Executive Director during a period of incapacity or temporarily to fill an Executive Director vacancy, shall be entitled to exercise the voting rights of the Executive Director. An Officer attending the Board 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.



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### **4.9. Joint Directors**

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

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

### **4.10. Suspension of Standing Orders (SOs)**

4.10.1. Except where this would contravene any statutory provision, any one or more of these Standing Orders may be suspended at any meeting, provided that at least two-thirds of the Board are present, including two Executive Directors and two Non-Executive Directors, and that a majority of those present vote in favour of suspension.

4.10.2. A decision to suspend SOs shall be recorded in the minutes of the meeting.

4.10.3. A separate record of matters discussed during the suspension of SOs shall be made and shall be available to the Directors.

4.10.4. No formal business may be transacted while SOs are suspended.

4.10.5. The Audit Committee shall review every decision to suspend SOs.

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

These Standing Orders shall be amended only if:

- a notice of motion has been given; and
- no fewer than two-thirds of the number of members of the Board approve the variation/amendment; and
- the variation/amendment proposed does not contravene a statutory provision.

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

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

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### 4.13. Minutes

- 4.13.1. The minutes of the proceedings of a meeting shall be drawn up and maintained as a permanent record. They will be submitted for agreement at the next meeting where they will be signed by the person presiding at it.
- 4.13.2. No discussion shall take place upon the minutes except upon their accuracy or where the Chair considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the next meeting.
- 4.13.3. Minutes shall be circulated in accordance with the Directors' wishes. The minutes shall be made available to the public except for minutes relating to business conducted when members of the public are excluded under the terms of section 4.1 of these Standing Orders (required by Code of Practice on Openness in the NHS).
- 4.13.4. As soon as practicable after holding a meeting, the board of directors must send a copy of the minutes of the meeting to the council of governors

### 4.14. Quorum

- 4.14.1. No business shall be transacted at a meeting of the Board unless at least one-third of the whole number of the Directors are present including at least one Executive Director and one Non-Executive Director.
- 4.14.2. An Officer in attendance for an Executive Director but without formal acting up status may not count towards the quorum.
- 4.14.3. If a Director has been disqualified from participating in the discussion on any matter and from voting on any resolution by reason of the declaration of a conflict of interest s/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.

## 5. Arrangements for the Exercise of Functions by Delegation

- 5.1. The Board may make arrangements for the exercise, on behalf of the Trust, of any of its functions by a committee or sub-committee, or by a Director or an Officer of the Trust in each case subject to such restrictions and conditions as the Board thinks fit.
- 5.2. **Emergency Powers** - The powers which the Board has retained to itself within these Standing Orders may in emergency be exercised by the Chief Executive and the Chair after having consulted at least two Non-Executive Directors. The exercise of such powers by the Chief

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Executive and the Chair shall be reported to 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 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** - Those functions of the Trust which have not been retained as reserved by the Board or delegated to one of its Committees shall be exercised on behalf of the Board by the Chief Executive. S/he shall determine which functions s/he will perform personally and shall nominate Officers to undertake remaining functions but still retain accountability for these to the Board.
- 5.5. The Chief Executive shall prepare a Scheme of Delegation identifying his/her proposals that shall be considered and approved by the Board, subject to any amendment agreed during the discussion. The Chief Executive may periodically propose amendment to the Scheme of Delegation, which shall be considered and approved by the Board as indicated above.
- 5.6. Nothing in the Scheme of Delegation shall impair the discharge of the direct accountability to the Board of the Executive Directors to provide information and advise the Board in accordance with any statutory requirements.
- 5.7. The arrangements made by the Board as set out in the "Scheme of Delegation" shall have effect as if incorporated into these Standing Orders.

## **6. Committees**

### **6.1. Appointment of Committees**

- 6.1.1. The Board may appoint committees of the Board, consisting wholly or partly of Directors of the Trust or wholly of persons who are not Directors of the Trust.
- 6.1.2. A committee so appointed may appoint sub-committees consisting wholly or partly of members of the committee (whether or not they include Directors of the Trust) or wholly of persons who are not members of the committee (whether or not they include Directors of the Trust).
- 6.1.3. The Standing Orders of the Board, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees or sub-committees established by the Board.
- 6.1.4. Each such committee or sub-committee shall have such terms of reference and powers and be subject to such conditions (as to reporting back to the Board) as the Board shall decide from time to time following reviews of the terms of reference, powers and

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conditions. Such terms of reference shall have effect as if incorporated into these Standing Orders.

6.1.5. Committees may not delegate their executive powers to a sub-committee unless expressly authorised by the Board.

6.1.6. The Board shall approve the appointments to each of the committees that it has formally constituted. Where the Board determines that persons, who are neither Directors nor Officers, shall be appointed to a committee, the terms of such appointment shall be determined by the Board.

6.1.7. Where the Trust is required to appoint persons to a committee, which is to operate independently of the Trust, such appointment shall be approved by the Board.

### **6.2. Confidentiality**

6.2.1. A member of the Board shall not disclose a matter dealt with by, or brought before, the Board without its permission.

6.2.2. A member of a committee of the Board shall not disclose any matter dealt with by, or brought before, the committee, notwithstanding that the matter has been reported or action has been concluded, if the Board or committee shall resolve that it is confidential.

## **7. Declaration of Interests and Register of Interests**

### **7.1. Declaration of Interests**

7.1.1. Directors are required to comply with the Trust's Standards of Business Conduct and to declare interests that are relevant and material to the Board. All Directors should declare such interests on appointment and on any subsequent occasion that a conflict arises.

7.1.2. Interests regarded as "relevant and material" include any of the following, held by a Director, or the spouse, partner, parent or child of a Director:

- a) Directorships, including non-executive directorships held in private companies or PLCs (with the exception of those of dormant companies).
- b) Ownership or part-ownership of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS.
- c) Employment with any private company, business or consultancy.
- d) Majority or controlling share holdings in organisations likely or possibly seeking to do business with the NHS.

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- e) A position of authority in a charity or voluntary organisation in the field of health and social care.
- f) Any connection with a voluntary or other organisation contracting for NHS services.

7.1.3. If Directors have any doubt about the relevance of an interest, this should be discussed with the Chair.

7.1.4. At the time Directors' interests are declared, they should be recorded in the Board minutes. Any changes in interests should be declared at the next Board meeting following the change occurring.

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

7.1.6. During the course of a Board meeting, if a conflict of interest is established in accordance with this Standing Order, the Director concerned should, unless two thirds of the Directors present agree (including two Executive and two Non-Executive Directors), withdraw from the meeting and play no part in the relevant discussion or decision. If the Director remains present at the meeting on the agreement of two thirds of those Directors present, s/he shall not be entitled to vote on the issue in respect of which the conflict of interest has been established.

### **7.2. Register of Interests**

7.2.1. The Chief Executive will ensure that a Register of Interests is established to record formally declarations of interests of Directors. In particular the Register will include details of all directorships and other relevant and material interests that have been declared by both Executive and Non-Executive Directors.

7.2.2. These details will be kept up to date by means of an annual review of the Register in which any changes to interests declared during the preceding twelve months will be incorporated.

7.2.3. The Register will be available to the public and the Chief Executive will take reasonable steps to bring the existence of the Register to the attention of the local population and to publicise arrangements for viewing it.

## **8. Disability of Directors in Proceedings on Account of Pecuniary Interest**

8.1. Subject to the following provisions of this Standing Order, if the Chair or a Director of the Trust has any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter and is present at a meeting of the Board at which the contract or other matter is the subject of consideration, s/he shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not take part in the

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consideration or discussion of the contract or other matter or vote on any question with respect to it.

- 8.2. The Board shall exclude the Chair or a Director from a meeting of the Board while any contract, proposed contract or other matter in which s/he has a pecuniary interest, is under consideration.
- 8.3. The Board, as it may think fit, may remove any disability imposed by this Standing Order in any case in which it appears to the Board that, in the interests of the National Health Service, the disability shall be removed. Such action shall have the support of at least two-thirds of the Directors present at the meeting (including two Executive and two Non-Executive Directors).
- 8.4. Any remuneration, compensation or allowances payable to a Director of the Trust by virtue of paragraph 9 of Schedule 2 to the NHS and Community Care Act 1990 shall not be treated as a pecuniary interest for the purpose of this Standing Order.
- 8.5. For the purpose of this Standing Order the Chair or a Director shall be treated, subject to paragraphs 8.3 and 8.6, as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if:
  - (a) s/he, or his/her nominee is a director of a company or other body, not being a public body, with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration; **or**
  - (b) s/he is a partner of, or is in the employment of a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration; **and**

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

- 8.6. The Chair or a Director shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only:
  - (a) of his/her membership of a company or other body, if s/he has no beneficial interest in any securities of that company or other body;
  - (b) of an interest in any company, body or person with which s/he is connected as mentioned above which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a Director in the consideration or discussion of or in voting on, any question with respect to that contract or matter.

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8.7. Where the Chair or a Director:

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

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

8.8. This Standing Order applies to a committee or sub-committee of the Board as it applies to the Board and applies to any member of any such committee or sub-committee (whether or not s/he is also a Director of the Trust) as it applies to a Director of the Trust.

### **9. Compliance - Other Matters**

9.1. All Directors of the Trust shall comply with the Standards of Business Conduct set by the Board for the guidance of all staff employed by the Trust.

9.2. All Directors of the Trust shall comply with Standing Financial Instructions prepared by the Director of Finance and approved by the Board.

9.3. All Directors must behave in accordance with the seven Nolan principles of behaviour in Public Life (and the Trust's Code of Conduct for Directors as amended from time to time): -

- Selflessness;
- Integrity;
- Objectivity;
- Accountability;
- Openness;
- Honesty; and
- Leadership.

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### **10. Resolution of Disputes with Council of Governors**

- 10.1 Should a dispute arise between the Board of Directors and the Council of Governors, then the disputes resolution procedure set out below shall be followed.
- 10.2 The Chair, or Senior Independent Director (if the dispute involves the Chair), shall first endeavour, through discussion with appropriate representatives of the Governors and Directors to achieve the earliest possible resolution of the matter in dispute to the reasonable satisfaction of both parties.
- 10.3 Failing resolution under 10.2 above, then the Board or the Council, as appropriate, shall at its next formal meeting approve the precise wording of a Disputes Statement setting out clearly and concisely the issue or issues giving rise to the dispute.
- 10.4 The Chair or Senior Independent Director (if the dispute involves the Chair) shall ensure that the Disputes Statement produced in accordance with 10.3 above, without amendment or abbreviation in any way, shall be an agenda item and agenda paper at the next formal meeting of the Board or Council as appropriate (ie. the body that does not issue the disputes statement). That meeting shall agree the precise wording of a Response to Disputes Statement.
- 10.5 The Chair or Senior Independent Director (if the dispute involves the Chair) shall immediately or as soon as is practical, communicate the outcome to the other party and deliver the written Response to Disputes Statement.
- 10.6 If, in the opinion of the Chair or Senior Independent Director (if the dispute involves the Chair) and following the further discussions prescribed in 10.5 above, there is no prospect of a resolution (partial or otherwise) then he or she will appoint a special committee comprising equal numbers of directors and governors under the chairmanship of the senior independent director to consider the circumstances and to make recommendations to the Council and the Board with a view to resolving the dispute.
- 10.7 On the satisfactory completion of this disputes process, the Board of Directors shall implement agreed changes.
- 10.8 On the unsatisfactory completion of this disputes process the view of the Board of Directors shall prevail.
- 10.9 Nothing in this procedure shall prevent the Council, if it so desires, from informing the Regulator that, in the Council's opinion, the Board has not responded constructively to concerns of the Council that the Trust is not meeting the terms of its authorisation.

### **11. Notification to the Regulator and Council of Governors**

The Board shall notify the Regulator and the Council of Governors of any major changes in the circumstances of the Trust, which have made or could



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lead to a substantial change to its financial well-being, healthcare delivery performance, or reputation and standing or which might otherwise affect the Trust's compliance with the terms of its authorisation.

### **12. Board Performance**

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

### **13. Changes to Board Standing Orders**

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

**ANNEX 9 – MEMBERS - FURTHER PROVISIONS**

**Disqualification from membership**

1. A person may not become a member of the Trust if within the last five years;
  - a. they have received a Red Card under the Trust's Procedure for Care of Patients who are Violent or Abusive; or
  - b. they have been involved as a perpetrator in a serious incident of violence at any of the Trust's hospitals or facilities or against any of the Trust's employees or other persons who exercise functions for the purposes of the Trust, or against volunteers.
2. A person may not become or continue as a member of the Trust if s/he is subject to a sex offender order.
3. A person may not become a member of the Trust if s/he is under 7 years of age.
4. A person may not become or continue as a member of the Trust if s/he does not agree to comply with the Trust's aims and values.
5. Where the Trust is placed on notice that a member may be disqualified from membership, or may no longer be eligible to be a member, the Secretary shall give the member 14 days written notice to show cause why his/her name should not be removed from the register of members. If such information is not supplied by the member within 14 days, the Secretary may, if s/he considers it appropriate, remove the member from the register of members. In the event of any dispute the Secretary shall refer the matter to the Council of Governors to determine.
6. All members of the Trust shall notify the Secretary of any change in their particulars, which may affect their entitlement to be a member.

**Termination of membership**

A member shall cease to be a member if:

1. S/he dies;
2. S/he resigns by notice to the Secretary;
3. S/he ceases to be entitled under this Constitution to be a member of any of the Trust's Constituencies;
4. S/he is expelled under this Constitution;
5. It appears to the Secretary that s/he no longer wishes to be a member of the Trust, and after enquiries made in accordance with a process approved by the Council of Governors, s/he fails to establish that s/he wishes to continue to be a member of the Trust.

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### **Expulsion**

A member may be expelled by a resolution carried by the votes of two-thirds of the members of the Council of Governors present and voting at a meeting of the Council. The following procedure is to be adopted:

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

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

No person who has been expelled from membership is to be re-admitted except by a resolution carried by the votes of two-thirds of the members of the Council of Governors present and voting at a meeting of the Council.

### **Voting at Patient and Public Governor Elections**

A person may not vote at a patient or public election for an elected governor unless within the specified period s/he has made a declaration in the specified form setting out the particulars of his/her qualification to vote as a member of the Constituency for which the election is being held. It is an offence to knowingly or recklessly make such a declaration which is false in a material particular.