

**CONSTITUTION OF**  
**SOUTH WARWICKSHIRE UNIVERSITY NHS FOUNDATION TRUST**  
**(A PUBLIC BENEFIT CORPORATION)**  
  
**(updated as per the Health and Social Care Act 2012)**

Approved at CoG 8 September 2022  
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(Constitution V18.3, BoD SOs V17.5)

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## 1. **Interpretation and Definitions**

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

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

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

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

**Annual Members Meeting** is defined in paragraph 10 of the Constitution.

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

**NHS England** is the body corporate known as NHS England, as provided by Section 61 of the 2022 Act.

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

the **University** means the University of Warwick.

the **Vice-Chairperson** is the name the Trust gives to its deputy Chairperson.

## 2. **Name**

The name of the foundation trust is South Warwickshire University NHS Foundation Trust (the trust).

## 3. **Principal Purpose**

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

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

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

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

3.3.2 the promotion and protection of public health.

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

#### **4. Powers**

- 4.1 The powers of the Trust are set out in the 2006 Act.
- 4.2 All the powers of the Trust shall be exercised by the Board of Directors on behalf of the Trust.
- 4.3 Any of these powers may be delegated to a committee of directors or to an executive director.
- 4.4 The Trust may enter arrangements for the carrying out, on such terms as the Trust considers appropriate, any of its functions jointly with any other person or body corporate.
- 4.5 The Trust acknowledges that NHS England may publish an order imposing a limit on the Trust's capital expenditure in respect of a financial year. Such an order will set out to the Trust:
  - 4.5.1 the capital expenditure limit, and
  - 4.5.2 the financial year the limit applies to.
- 4.6 For the purposes of this clause 4, "capital expenditure" means expenditure of the Trust which falls to be capitalised in the Trust's annual accounts.

#### **5. Membership and Constituencies**

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

- 5.1 a public constituency, and
- 5.2 a staff constituency.

#### **6. Application for Membership**

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

#### **7. Public Constituency**

- 7.1 An individual who lives in an area specified in Annex 1 as an area for a public constituency may become or continue as a member of the Trust.
- 7.2 Those individuals who live in an area specified 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 they are employed by the Trust under a contract of employment which has no fixed term or has a fixed term of at least 12 months; or
  - 8.1.2 they have been continuously employed by the Trust under a contract of employment for at least 12 months.
- 8.2 Individuals who exercise functions for the purposes of the Trust otherwise than under a contract of employment with the Trust, may become or continue as members of the staff constituency provided such individuals have exercised these functions continuously for a period of at least 12 months. Those exercising functions in a voluntary capacity are not eligible to join the staff constituency but may join the public constituency subject to the membership conditions for that constituency.
- 8.3 Those individuals who are eligible for membership of the Trust by reason of the previous provisions are referred to collectively as the Staff Constituency.
- 8.4 The Staff Constituency shall be divided into five descriptions of individuals who are eligible for membership of the Staff Constituency, each description of individuals being specified within Annex 2 and being referred to as a class within the Staff Constituency.
- 8.5 The minimum number of members in each class of the Staff Constituency is specified in Annex 2.

### **Automatic Membership by Default – Staff**

- 8.6 An individual who is:
- 8.6.1 eligible to become a member of the Staff Constituency, and
  - 8.6.2 invited by the Trust to become a member of the Staff Constituency and a member of the appropriate class within the Staff Constituency,

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

## **9. Restriction on Membership**

- 9.1 An individual, who is a member of a Trust constituency, or of a class within a Trust constituency, may not while membership of that Trust constituency or class continues, be a member of any other constituency or class. Trust constituency, being either the public constituency or the staff constituency.

9.2 An individual who satisfies the criteria for membership of the Staff Constituency may not become or continue as a member of any constituency other than the Staff Constituency.

9.3 An individual must be at least 16 years old to become a Member of the Trust.

9.4 Further provisions as to the circumstances in which an individual may not become or continue as a member of the Trust are set out in Annex 8 – Miscellaneous Provisions.

## **10. Annual Members' Meeting**

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

## **11. Council of Governors – Composition**

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

11.2 The composition of the Council of Governors is specified in Annex 3.

11.3 The members of the Council of Governors, other than the appointed members, shall be chosen by election by their constituency or, where there are classes within a constituency, by their class within that constituency. The number of governors to be elected by each constituency, or, where appropriate, by each class of each constituency, is specified in Annex 3.

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

12.1 Elections for elected members of the Council of Governors shall be conducted in accordance with the current Model Election Rules that apply at the time the election is called, as referred to in Appendix 4, using the single transferable vote method.

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

## **13. Council of Governors - Tenure**

13.1 An elected governor may hold office for a period of up to 3 years.

13.2 An elected governor shall cease to hold office if they cease to be a member of the constituency or class by which they were elected.

13.3 An elected governor shall be eligible for re-election at the end of their term.

13.4 An Appointed Governor may hold office for a period of up to 3 years.

13.5 An Appointed Governor shall cease to hold office if the appointing organisation withdraws its sponsorship of them.



13.6 An Appointed Governor shall be eligible for reappointment at the end of their term.

13.7 Further provisions as to tenure for appointed Governors are set out at Annex 5.

#### **14. Council of Governors – Disqualification and Removal**

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

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

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

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

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

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

14.3 Further provisions as to the circumstances in which an individual may not become or continue as a member of the Council of Governors are set out in Annex 5.

14.4 Provisions for the removal of Governors are made in Annex 5.

#### **15. Council of Governors – Duties of Governors**

15.1 The general duties of the Council of Governors are: -

15.1.1 to hold the non-executive directors individually and collectively to account for the performance of the Board of Directors, and

15.1.2 to represent the interests of the members of the Trust as a whole and the interests of the public.

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

#### **16. Council of Governors – Meetings of Governors**

16.1 The Chairperson of the Trust (i.e. the Chairperson of the Board of Directors, appointed in accordance with the provisions of paragraph 25.1) or, in their absence, the Vice-Chairperson (appointed in accordance with the provisions of paragraph 26 below), shall preside at meetings of the Council of Governors.

16.2 Meetings of the Council of Governors shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons, as identified in the Standing Orders for the Practice and Procedure of the Council of Governors.

16.3 For the purposes of obtaining information about the Trust's performance of its functions or the directors' performance of their duties (and deciding whether to propose a vote on the Trust's or directors' performance), the Council of Governors may require one or more of the directors to attend a meeting, however all non-executive directors are expected to attend whenever possible.

## **17. Council of Governors – Standing Orders**

The standing orders for the practice and procedure of the Council of Governors, are attached at Annex 6.

## **18. Council of Governors – Referral to the Panel**

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

18.1.1 to act in accordance with its constitution, or

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

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

## **19. Council of Governors - Conflicts of Interest of Governors**

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

## **20. Council of Governors – Travel Expenses**

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

## **21. Council of Governors – Further Provisions**

Further provisions with respect to the Council of Governors are set out in Annex 5.

## **22. Board of Directors – Composition**

22.1 The Trust is to have a Board of Directors, which shall comprise both executive and non-executive directors.

22.2 The Board of Directors is to comprise:

22.2.1 a non-executive Chairperson

22.2.2 subject to paragraph 22.8, a non-executive director nominated by the University of Warwick;

22.2.3 no fewer than 4 and no more than 6 other non-executive directors; and

22.2.4 no fewer than 4 and no more than 6 executive directors.

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

22.4 The Chief Executive shall be the Accounting Officer.

22.5 One of the executive directors shall be the finance director.

22.6 One of the executive directors is to be a registered medical practitioner or a registered dentist (within the meaning of the Dentists Act 1984).

22.7 One of the executive directors is to be a registered nurse or a registered midwife.

22.8 In recognition of the status of the Trust as a University NHS Foundation Trust and in association with the University of Warwick, the University of Warwick is entitled to nominate one individual who satisfies the criteria set out in paragraph 24 of the Constitution to stand for appointment as a Non-Executive Director.

## **23. Board of Directors – General Duties**

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

23.2 In the exercise of the Trust's functions, the Board of Directors and of each director individually, must have regard to:

23.2.1 the health and wellbeing of the people of England,

23.2.2 the quality of the services provided to individuals,

- 23.2.3 the efficiency and sustainability in relation to the Trust's resources for the purposes of the health service in England,
- 23.2.4 guidance published by NHS England,
- 23.2.5 compliance with s. 1 of the Climate Change Act 2008 (UK net zero emissions target),
- 23.2.6 compliance with s. 5 of the Environment Act 2021 (environmental targets), and
- 23.2.7 changes in the predicted impacts of climate change identified under s. 56 of the Climate Change Act 2008.

**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 they are a member of the Public Constituency, or
- 24.2 where any of the Trust's hospitals includes a medical or dental school provided by a university, they exercise functions for the purposes of that university, and
- 24.3 they are not disqualified by virtue of paragraph 29 below.

**25. Board of Directors – Appointment and Removal of Chairperson and other Non-Executive Directors**

- 25.1 The Council of Governors at a general meeting of the Council of Governors shall appoint or remove the Chairperson of the Trust and the other non-executive directors (including, for the avoidance of doubt, any non-executive director that holds their position after being nominated by the University of Warwick).
- 25.2 Removal of the Chairperson or another non-executive director shall require the approval of three-quarters of the members of the Council of Governors and in cases where the removal relates to behaviour which is not in the interests of the Foundation Trust, and/or is not in line with the Trust's values, advice should be sought from the Chairperson and Chief People Officer, or in the case of the Chairperson, the Senior Independent Director and Chief People Officer. The taking of such advice shall not be a condition precedent to the approval of the members of the Council of Governors.
- 25.3 Should a proposal to remove the Chairperson or another non-executive director, be considered, as in paragraph 25.2 above, the Chairperson of the Nominations and Remuneration Committee shall be informed as soon as possible.
- 25.4 Should a proposal to change the voting rights of a non-executive director be considered, the Chairperson shall submit a proposal to the Nominations and Remuneration Committee for consideration and if supported, make a recommendation to the Council of Governors for approval. The Board of Directors will be subsequently informed of the change. If an urgent decision is required then the process would be undertaken electronically with a report to the next Nominations and Remuneration Committee for formal record.

**26. Board of Directors – Appointment of Vice-Chairperson**

The Council of Governors at a general meeting of the Council of Governors shall appoint one of the non-executive directors as a vice-Chairperson of the Trust., which would be recommended by the Chairperson.

**27. Board of Directors - Appointment and Removal of the Chief Executive and other Executive Directors**

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

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

27.3 The initial Chief Executive is to be appointed in accordance with paragraph 28 below.

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

**28. Board of Directors – Appointment and Removal of Initial Chief Executive**

Provision spent.

**29. Board of Directors – Disqualification**

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

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

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

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

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

29.5 a person who the Board of Directors determines does not meet all of the requirements prescribed in regulations for a director of a Care Quality Commission-registered service provider, and

29.6 a person who persistently fails (as defined by the Chairperson) to uphold the Nolan Principles.

29.7 a person who ceases to satisfy the qualification criteria set out in paragraph 24 of this Constitution.

### **30. Board of Directors – Meetings**

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

30.2 Before holding a meeting, the Board of Directors must send a copy of the agenda of the meeting to the Council of Governors. As soon as practicable after holding a meeting, the Board of Directors must send a copy of the minutes of the meeting to the Council of Governors. Distribution by electronic media is deemed acceptable for those Governors so agreeing.

### **31. Board of Directors – Standing Orders**

The standing orders for the practice and procedure of the Board of Directors, are attached at Annex 7.

### **32. Board of Directors - Conflicts of Interest of Directors**

32.1 The duties that a director of the Trust has by virtue of being a director include in particular:

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

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

32.2 The duty referred to in sub-paragraph 32.1.1 is not infringed if:

32.2.1 The situation cannot reasonably be regarded as likely to give rise to a conflict of interest, or

32.2.2 The matter has been authorised in accordance with the Constitution.

32.3 The duty referred to in sub-paragraph 32.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.

32.4 In sub-paragraph 32.1.2, 'third party' means a person other than:

33.4.1 The Trust, or

33.4.2 A person acting on its behalf.

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

32.6 If a declaration under this paragraph proves to be, or becomes, inaccurate, incomplete, a further declaration must be made.

32.7 Any declaration required by this paragraph must be made before the Trust makes a decision on the transaction or arrangement.

32.8 This paragraph does not require a declaration of an interest of which the director is not aware or where the director is not aware of the transaction or arrangement in question.

32.9 A director need not declare an interest:

32.9.1 If it cannot reasonably be regarded as likely to give rise to a conflict of interest;

32.9.2 If, or to the extent that, the directors are already aware of it based on a past declaration;

32.9.3 If, or to the extent that, it concerns terms of the director's appointment that have been or are to be considered:

33.9.3.1 By a meeting of the Board of Directors, or

33.9.3.2 By a committee of the directors appointed for the purpose under the Constitution.

### **33. Board of Directors – Remuneration and Terms of Office**

33.1 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 Chairperson and the other non-executive directors (including any non-executive director who holds their position after being nominated by the University of Warwick), following discussion at the Nominations and Remuneration Committee.

33.2 The Trust shall establish a committee of non-executive directors to decide the remuneration and allowances, and the other terms and conditions of office, of the Chief Executive and other executive directors.

### **34. Registers**

The Trust shall have:

34.1 a register of members showing, in respect of each member, the constituency to which they belong and, where there are classes within it, the class to which they belong;

34.2 a register of members of the Council of Governors;

34.3 a register of interests of governors;

34.4 a register of directors; and

34.5 a register of interests of the directors.

**35. Admission to and Removal from the Registers**

35.1 The Secretary (or officer acting on their behalf) shall make appropriate admissions and removals from the registers specified in paragraph 35 above.

**36. Registers – Inspection and Copies**

36.1 The Trust shall make the registers specified in paragraph 34 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.

36.2 The Trust shall not make any part of its registers available for inspection by members of the public which shows details of any member of the Trust, if the member so requests.

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

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

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

36.4 If the person requesting a copy or extract is not a member of the Trust, the Trust may impose a reasonable charge for doing so.

**37. Documents Available for Public Inspection**

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

37.1.1 a copy of the current constitution;

37.1.2 a copy of the latest annual accounts and of any report of the auditor on them, and

37.1.3 a copy of the latest annual report.

37.2 The Trust shall also make the following documents relating to a special administration of the Trust available for inspection by members of the public free of charge at all reasonable times:

37.2.1 A copy of any order made under section 65D (appointment of Trust special administrator) 65J (power to extend time) 65K (action following Secretary of State's rejection of final report) 65L (Trusts coming out of administration) or 65LA (Trusts to be dissolved) of the 2006 Act:

37.2.2 A copy of any report laid under section 65D (appointment of Trust special administrator) of the 2006 Act.



- 37.2.3 A copy of any information published under section 65D (appointment of Trust special administrator) of the 2006 Act;
- 37.2.4 A copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act:
- 37.2.5 A copy of any statement provided under section 65F (administrator's draft report) of the 2006 Act;
- 37.2.6 A copy of any notice published under section 65F (administrator's draft report) 65G (consultation plan), 65H (consultation requirements), 65J (power to extend time), 65KA (NHS England's decision), 65B (Secretary of State's response to NHS England's decision), 65KC (action following Secretary of State's rejection of final report) or 65KD (Secretary of State's response to re-submitted final report) of the 2006 Act.
- 37.2.7 A copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act;
- 37.2.8 A copy of any final report published under section 65I (administrator's final report);
- 37.2.9 A copy of any statement published under section 65J (power to extend time), or 65KC (action following Secretary of State's rejection of final report) of the 2006 Act;
- 37.2.10 A copy of any information published under section 65M (replacement of Trust special administrator) of the 2006 Act.

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

37.4 If the person requesting a copy or extract is not a member of the Trust, the Trust may impose a reasonable charge for doing so.

### **38. Auditor**

38.1 The Trust shall have an auditor.

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

### **39. Audit Committee**

The Trust shall establish a committee of non-executive directors as an audit committee to perform such monitoring, reviewing and other functions as are appropriate. The Chair of the audit committee must be a qualified accountant.

#### **40. Annual Accounts**

- 40.1 The Trust must keep proper accounts and proper records in relation to the accounts.
- 40.2 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.
- 40.3 The accounts are to be audited by the Trust's auditor.
- 40.4 The Trust shall prepare in respect of each financial year annual accounts in such form as NHS England may with the approval of the Secretary of State direct.
- 40.5 The functions of the Trust with respect to the preparation of the annual accounts shall be delegated to the Accounting Officer.

#### **41. Annual Report, Forward Plans and Non-NHS Work**

- 41.1 The Trust shall prepare an Annual Report and send it to NHS England.
- 41.2 The Trust shall give information as to its forward planning in respect of each financial year to NHS England.
- 41.3 The document containing the information with respect to forward planning (referred to above) shall be prepared by the directors.
- 41.4 In preparing the document, the directors shall have regard to the views of the Council of Governors, through discussions at the Roundtable meetings, or such similar meetings, as defined by the Chairperson.
- 41.5 Each forward plan must include information about –
  - 41.5.1 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
  - 41.5.2 the income it expects to receive from doing so.
- 41.6 Where a forward plan contains a proposal that the Trust carry on an activity of a kind mentioned in sub-paragraph 41.5.1 the Council of Governors must:
  - 41.6.1 determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfilment by the Trust of its principal purpose or the performance of its other functions, and
  - 41.6.2 notify the Board of Directors of its determination.
- 41.7 Where the Trust proposes to increase by 5% or more the proportion of its total income in any financial year attributable to activities other than the provision of goods and services for the purposes of the health service in England the

proposal shall not be implemented unless more than half of the members of the Council of Governors of the Trust voting approve its implementation.

41.8 Before the start of each financial year, the Trust shall, in partnership with the relevant NHS Trust and integrated care board, publish a plan detailing their capital resource use (to include expenditure, consumption or reduction in value). The plan must:

41.8.1 relate to such period as may be directed by the Secretary of State,

41.8.2 adhere to any guidance published by NHS England from time to time, and

41.8.3 adhere to the accounting directions provided by NHS England within the financial year that the plan relates to.

41.9 If the Trust revises the plan prepared in accordance with paragraph 41.8, then it must:

41.9.1 publish a document setting out the changes, and

41.9.2 provide a copy to the integrated care partnership, each relevant Health and Wellbeing Board, and NHS England.

## **42. Presentation of the Annual Accounts and Report to the Governors and Members**

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

42.1.1 the annual accounts

42.1.2 any report of the auditor on them

42.1.3 the annual report.

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

42.3 The Trust may combine a meeting of the Council of Governors convened for the purposes of sub-paragraph 42.1 with the Annual Members' Meeting.

## **43. Instruments**

43.1 The Trust shall have a seal.

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

## **44. Amendment of the Constitution**

44.1 The Trust may make amendments to its Constitution only if –

- 44.1.1 More than half of the members of the Council of Governors of the Trust voting approve the amendments, and
  - 44.1.2 More than half of the members of the Board of Directors of the Trust voting approve the amendments.
- 44.2 Amendments made under paragraph 44.1 take effect as soon as the conditions in that paragraph are satisfied, but the amendments have no effect in so far as the Constitution would, as a result of the amendments, not accord with Schedule 7 of the 2006 Act.
- 44.3 Where an amendment is made to the Constitution in relation to the powers or duties of the Council of Governors (or otherwise with respect to the role that the Council of Governors has as part of the Trust):
- 44.3.1 At least one member of the Council of Governors must attend the next Annual Members' Meeting and present the amendment, and
  - 44.3.2 The Trust must give the members an opportunity to vote on whether they approve the amendment.
- If more than half of the members voting approve the amendment, the amendment continues to have effect: otherwise, it ceases to have effect and the Trust must take such steps as are necessary as a result.
- 44.4 Amendments by the Trust of its Constitution are to be notified to NHS England. For the avoidance of doubt, NHS England's functions do not include a power or duty to determine whether or not the Constitution as a result of the amendments, accords with Schedule 7 of the 2006 Act.

## **45. Mergers etc and Significant Transactions**

- 45.1 The Trust may only apply for a merger, acquisition, separation or dissolution with the approval of more than half of the members of the Council of Governors.
- 45.2 The Trust may enter into a significant transaction only if more than half of the members of the Council of Governors of the Trust voting approve entering into the transaction.
- 45.3 The definition of a significant transaction is set out in Annex 10.

## **Annex 1 – The Public Constituency**

The Trust shall have five public constituency areas as follows: -

**a) Warwick and Leamington Towns**

Comprising the following electoral wards:

Warwick District Council Wards – Warwick All Saints & Woodloes, Warwick Aylesford, Warwick Myton & Heathcote, Warwick Saltisford, Leamington Clarendon, Leamington Lillington, Leamington Milverton, Leamington Brunswick, Leamington Willes

Minimum number of members – 20

**b) Warwick District and Borders**

Comprising the following electoral wards:

Warwick District Council Wards – Abbey and Arden, Bishops Tachbrook, Budbrooke, Cubbington and Leek Wootton, Park Hill, Radford Semele, St John's, Stoneleigh, Whitnash

Solihull Metropolitan Borough Council Wards – Bickenhill, Blythe, Castle Bromwich, Chelmsley Wood, Dorridge & Hockley Heath, Elmdon, Kingshurst and Fordbridge, Knowle, Lyndon, Meriden, Olton, Shirley East, Shirley South, Shirley West, Silhill, Smith's Wood, St Alphege.

Coventry City Council Wards – Binley and Willenhall, Cheylesmore, Earlsdon, Wainbody, Westwood.

Bromsgrove District Council – Drakes Cross, Hollywood, Wythall East, Wythall West

Rugby Borough Council Wards - Dunsmore, Leam Valley, Wolston and the Lawfords.

Daventry District Council Wards - Barby and Kilsby, Braunston and Welton

Minimum number of members – 20

**c) West Stratford and Borders**

Comprising the following electoral wards

Bromsgrove District Council – Alvechurch South and Alvechurch Village

Redditch Borough Council – Abbey, Astwood Bank and Feckenham, Batchley and Brockhill, Central, Church Hill, Crabbs Cross, Greenlands, Headless Cross and Oakenshaw, Lodge Park, Matchborough, West, Winyates.

Stratford District Council Wards – Alcester Rural, Alcester Town, Avenue, Barnt Green and Hopwood, Bishopton, Bidford East, Bidford West, Bridgetown, Clopton, Guildhall, Hathaway, Henley in Arden, Kinwarton, Shottery, Snitterfield, Studley with Mappleborough Green, Studley with Sambourne, Tanworth in Arden, Tiddington, Welcombe, Welford on Avon, Wootton Wawen

Wychavon District Council Wards – Harvington and Norton, Honeybourne and Pebworth, Inkberrow, The Littletons.

Minimum number of members – 20

**d) East Stratford and Borders**

Comprising the following electoral wards:

Stratford District Council Wards – Bishops Itchington, Brailes and Compton, Ettington, Harbury, Kineton, Long Itchington and Stockton, Quinton, Shipston North, Shipston South, Southam North, Southam South, Napton and Fenny Compton, Red Horse, Welford on Avon, Wellsbourne East, Wellsbourne West;

Daventry District Council Wards - Woodford

South Northants District Council Ward - Danvers and Wardoun

Cherwell District Council Wards - Cropredy Sibfords and Wroxton,

Cotswold District Council Wards - Campden-Vale, Moreton East, Moreton West Fossebridge, Blockley

West Oxfordshire District Council Ward - Kingham Rollright and Enstone

Minimum number of members – 20

**e) Northern Warwickshire, Coventry and Rugby**

Comprising the following electoral wards:

Rugby Borough Council Wards – Admirals and Cawson, Benn, Bilton, Clifton, Coton and Boughton, Eastlands, Hillmorton, New Bilton, Newbold and Brownsover, Paddock, Revel and Binley Woods, Rokeby and Overslade, Wolvey and Shilton.

Nuneaton and Bedworth Borough Council – Abbey, Arbury, Attleborough, Bar Pool, Bede, Bulkington, Camp Hill, Exhall, Galley Common, Heath, Kingswood, Poplar, Slough, Weddington, Wem Brook, Whitestone.

North Warwickshire Borough Council – Arley and Whitacre, Atherstone Central, Atherstone North, Atherstone South and Mancetter, Baddesley and Grendon, Coleshill North, Coleshill South, Curdworth, Dordon, Fillongley, Hartshill, Hurley and Wood End, Kingsbury, Newton Regis and Warton, Polesworth East, Polesworth West, Water Orton.

Coventry City Council Wards – Bablake, Foleshill, Henley, Holbrook, Longford, Lower Stoke, Radford, St Michael's, Sherbourne, Upper Stoke, Whoberley, Woodlands, Wyken

## **Annex 2 – The Staff Constituency**

The Trust shall have one staff constituency comprising five classes as follows: -

- Medical and dental
- Nursing and midwifery Acute (including unqualified staff)
- Nursing and Midwifery Community (including unqualified staff)
- Clinical support staff (including scientific, technical and therapeutic groups)
- Non-clinical support staff (including managerial and administrative staff)

The minimum number for all classes is to be 20.

## **Annex 3 – Composition of Council of Governors**

### Elected Governors – 23

#### Public Governors – 16

- Warwick and Leamington Towns Constituency - 4
- Warwick District and Borders Constituency – 4
- West Stratford and Borders Constituency – 3
- East Stratford and Borders Constituency – 3
- Northern Warwickshire, Coventry and Rugby Constituency - 2

#### Staff Governors – 7

- Medical and dental - 1
- Nursing and Midwifery acute (including unqualified staff) – 2
- Nursing and Midwifery community (including unqualified staff) - 2
- Clinical support staff (including scientific, technical and therapeutic groups) - 1
- Non-Clinical support staff (including managerial and administrative staff) – 1

Staff governors who were elected by the former Warwickshire Community Health (staff working within the Community Services Division) class of the Trust's staff constituency become governors in the class set out in Annex 2 of which they are a member.

### Appointed Governors – 4

Warwickshire County Council – 1  
Warwick District Council – 1  
Stratford District Council – 1  
The University of Warwick – 1

Total - 27



## **Annex 4**

**Model Election Rules produced by the Foundation Trust Network (2014)  
and/or any subsequent model election rules in force at the time of an election.**

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## **Annex 5 – Additional Provisions – Council of Governors**

### **1. The Governor Role**

- 1.1 All Governors will act in accordance with the two general duties of their role, defined in paragraph 15.1 of the Constitution (to hold the Non-Executive Directors individually and collectively to account, and to represent and express the interests of the members of the Trust and the public). This is in contrast to the Non-Executive Director role, which is to act as a Director of the Trust, exercising the Trust's powers as part of a unitary Board.

### **2. Elected Governors**

- 2.1 A Public Governor shall hold office for a period of three years, except as otherwise provided in this Annex. An ordinary election, at which all Public Governor seats fall vacant and subject to election, shall be held at intervals of three years.
- 2.2 A Staff Governor shall hold office for a period of three years, except as otherwise provided in this Annex. An ordinary election, at which all Staff Governor seats fall vacant and subject to election, shall be held at intervals of three years.
- 2.3 Vacancies arising at other times, where a Governor resigns or becomes disqualified or is removed from office, shall be filled in accordance with paragraph 5 of this Annex 5.

### **3. Further Provisions as to Eligibility to be a Governor**

- 3.1 A person may not become a Governor of the Trust, and if already holding office shall immediately cease to do so, if:
- (a) they are a Director of the Trust or a Governor or director of an NHS body (unless they are appointed by one of the appointing organisations which is an NHS body);
  - (b) they are the spouse, partner, parent or child of a member of the Board of Directors of the Trust;
  - (c) they are a member of a local authority's Scrutiny Committee covering health matters;
  - (d) being a member of the public constituency, they refuse to sign a declaration in the form specified by the Secretary of particulars of their qualification to vote as a member of the Trust, and that they are not prevented from being a member of the Council of Governors;
  - (e) they have within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with an NHS body;
  - (f) they are a person whose tenure of office as the Chairperson or as a member or director of an NHS body has been terminated on the grounds that their

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

- (g) they have been subject to an Order under the Sexual Offences Act 2003;
- (h) they are included in the barred list under the Safeguarding Vulnerable Adults Act 2006;
- (i) they have been classified as a vexatious complainant under the Trust's Complaint's Policy,
- (j) they are not considered to be a fit and proper person, as defined by the Trust's Fit and Proper Persons' Procedure which can be requested from the Trust Secretary.

3.2 A staff Governor whose employment has been suspended shall not be entitled to attend meetings of the Council of Governors in their capacity as a staff Governor. A staff Governor whose employment is suspended for more than six months shall cease to hold office.

3.3 In the event of dispute regarding a person's eligibility to become or continue as a Governor the Secretary shall convene an appeal panel comprising the Chairperson and not less than two Non-Executive Directors to make a determination on the point at issue, and the decision of the appeal panel shall be final.

#### **4. Termination of a Governor's Tenure**

4.1 Where a person has been elected or appointed to be a Governor and they become disqualified from office under paragraphs 13 or 14 of the Constitution or under paragraphs 4 or 5 of this Annex, they shall notify the Secretary in writing of such disqualification as soon as practicable and in any event within 14 days of first becoming aware of those matters which render them disqualified.

4.2 If it comes to the notice of the Secretary that a Governor is disqualified under paragraphs 13 or 14 of the Constitution or under paragraphs 4 or 5 of this Annex, whether at the time of the Governor's election or appointment or later, the Secretary shall immediately declare that the individual in question is disqualified and give them notice in writing to that effect as soon as practicable and in any event within 14 days. In the event that the Governor shall dispute that they are disqualified the Governor may refer the matter to the appeal procedure set out in paragraph 3.3 of this Annex within 14 days of the date upon which the notice was given to the Governor.

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

- (a) they resign by notice in writing to the Secretary;
- (b) they have failed within a reasonable period to sign and deliver to the Secretary a statement in the form required by the Trust confirming acceptance of the code of conduct for Governors;
- (c) they are removed from the Council of Governors under the following provisions.

- 4.4 A Governor may be removed from office by a resolution of the Council of Governors approved by not less than three-quarters of the remaining Governors present and voting on the grounds that:
- (a) they fail to attend two consecutive meetings of the Council of Governors, unless the Chairperson is satisfied that:
    - the absences were due to reasonable causes, and
    - they will be able to start attending meetings of the Council of Governors again within a reasonable period;
- or
- (b) they have refused without reasonable cause to undertake any training which the Council of Governors requires all Governors to undertake; or
  - (c) they have committed a serious breach of the code of conduct for Governors (as defined by the Chairperson); or
  - (d) they have acted in a manner detrimental to the interests of the Trust (as defined by the Chairperson); or
  - (e) it is not in the best interests of the Trust for them to continue as a Governor (as defined by the Chairperson).
- 4.5 In the event of an allegation being made against a Governor on a matter which may render the Governor liable for removal from office under the provisions of paragraph 10 of this Annex, the Chairperson is authorised to take such action as may be immediately required, including but not limited to exclusion of the Governor concerned from meetings of the Council of Governors, to allow investigation of such allegation.
- 4.6 The Governor in question shall be notified in writing of the allegation, detailing the specific behaviour which is considered to be detrimental to the Trust and inviting their response within a defined and reasonable timescale.
- 4.7 If the matter cannot be resolved satisfactorily through correspondence, the Governor shall be invited to address the Council of Governors in person prior to any vote on a resolution to remove the Governor from office.
- 4.8 A Governor removed from office by resolution of the Council of Governors may appeal against removal in writing to the Secretary within 14 days of the date upon which notice of the Council of Governors' decision is given to the Governor concerned, and on receipt of such an appeal the Secretary shall follow the procedure set out in paragraph 3.3 of this Annex.
- 4.9 Upon resignation or disqualification or removal of a Governor, the Secretary shall cause their name to be removed immediately from the Register of Governors.
- 4.10 A Governor who resigns shall not be eligible to be re-appointed or to stand for re-election as a Governor for a period of three years.

- 4.11 A Governor who is disqualified or removed from office shall not be eligible to be re-appointed from the date of their disqualification or removal from office or the date upon which any appeal against their disqualification or removal from office is disposed of whichever is later, for a period of 3-years.

## **5. Vacancies Amongst Governors**

- 5.1 Where a vacancy arises on the Council of Governors for any reason other than expiry of term of office, the following provisions will apply.
- 5.2 Where the vacancy arises amongst the appointed Governors, the Secretary shall request that the appointing organisation appoints a replacement.
- 5.3 Where the vacancy arises amongst the elected Governors, the Council of Governors shall at its discretion either:
- (a) invite the candidate for that seat at the most recent election who of those not elected received the highest number of first preference votes, who is willing to take office, to fill the seat until the next ordinary election; or
  - (b) hold a by-election as soon as practicably possible but within six months to fill the seat until the next ordinary election; or
  - (c) if the next ordinary election is due to be held within the period of twelve months commencing with the date on which the vacancy arises, leave the seat vacant until the next ordinary election.

## **6. Declaration**

- 6.1 An elected Governor may not vote at a meeting of the Council of Governors unless, before attending their first 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 Council of Governors. An elected 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 will draw this to the attention of elected Governors.

## **7. Election Process for Lead Governor**

- 7.1 The Council of Governors will select a 'Lead Governor' on an annual basis, and directly following an ordinary election as appropriate, who will fulfil the role defined in the Lead Governor job description, as amended from time to time. Any Governor is eligible to nominate themselves for the post of Lead Governor.
- 7.2 The following selection process will be used for the selection of the Lead Governor:
- (a) All Governors will be asked if they wish to nominate themselves for Lead Governor and if so, will prepare a short-written statement (no more than 250 words) explaining why they would like the role.

- (b) Nominations and accompanying statements will be emailed to the Secretary by a set deadline. Late submissions will not be considered.
- (c) The Secretary will email out the nominees' statements to all Governors, and Governors will email the Secretary with a single name of their chosen candidate for Lead Governor, by a set deadline. Late votes will not be included.
- (d) In the event of a tie, point (c) above will be repeated, with the names of the tied nominees only.

7.3 Any complaints/issues regarding, either the process used or the results, shall be addressed to the Chairperson, who shall be the final arbiter on these matters.

7.4 All Governors through the process of the Lead Governor election will behave in a manner consistent with supporting the Lead Governor to be effective in their role and will not seek to adversely influence the outcome of the election.

## **8. Appointment of Governors to the Council of Governors' Committees**

8.1 At the first meeting of the Council of Governors following a full election of Governors, the Council has to appoint Governors to each of its Committees. The process of doing so will be as follows:

- (a) Governors will be expected to volunteer for the individual Committees.
- (b) If, based on the Committee's terms of reference, sufficient Governors have volunteered then the Committee will have appropriate membership.
- (c) If insufficient Governors have volunteered to join a Committee, then the Chairperson will invite Governors to join the Committee.
- (d) If too many Governors have volunteered to join a Committee, then the Chairperson will invite Governors to withdraw their nomination to join the Committee. If there still remains too many Governors after this process, then the Chairperson will decide, and their decision will be final.
- (e) Governors who are members of Sub-committees will be expected to attend meetings of those Committees to ensure they are quorate.
- (f) At the first meeting of each Committee, the Governors of the Committee will elect a Chair with the exception of the General Purposes Committee, as the Lead Governor is automatically the Chair of the General Purposes Committee.
- (g) The Lead Governor will also be a member of the Nominations and Remuneration Committee.

8.2 Thereafter the role of appointing Governors to the Council of Governors' Committees will be undertaken by the General Purposes Committee (or any other Committee the Council elects for that purpose), until the next full elections. Governor representatives for any other Committees/groups etc, will be determined by the General Purposes Committee.

- 8.3 The General Purposes Committee will review Committee memberships each year, so there is an opportunity to refresh the membership, if felt appropriate.
- 8.4 The first agenda of the Council of Governors after a full election will be set by the Chairperson and such first meeting of the newly elected Council of Governors shall be held within 6-weeks of the declaration of the results of such election.

## Annex 6 – Standing Orders for the Practice and Procedure of the Council of Governors

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## 1. INTRODUCTION

- 1.1 The South Warwickshire University NHS Foundation Trust (“the Trust”) became a Public Benefit Corporation on 1 March 2010 (under the name South Warwickshire NHS Foundation Trust) following authorisation by the Independent Regulator of NHS Foundation Trusts (the “Independent Regulator” and the office now known as NHS England) pursuant to the National Health Service Act 2006 (the “2006 Act”).
- 1.2 The principal place of business of the Trust is currently at Lakin Road, Warwick, Warwickshire, CV34 5BW.
- 1.3 The Trust is governed by the 2006, 2012 and 2022 Acts and its Constitution (the Regulatory Framework). The functions of the Trust are conferred by the Regulatory Framework. The Regulatory Framework requires the Council of Governors of the Trust to adopt Standing Orders for the regulation of its proceedings and business and to adhere at all times to the Code of Conduct for Governors.

## 2. DEFINITIONS

- 2.1 In these Standing Orders:

**"Board of Directors"**

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

**"Chairperson"**

means the Chairperson of the Trust appointed in accordance with the Constitution to ensure that the Council of Governors and the Board of Directors successfully discharge their overall responsibilities for the Trust as a whole;

**"Chief Executive"**

means the Chief Executive of the Trust;

**"Clear Day"**

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

**"Constitution"**

means the Constitution of the Trust;

**"Vice-Chairperson"**

means one of the Non-Executive Directors appointed by the Council of Governors, either generally or for a specific meeting, to preside at a meeting of the Council of Governors in the absence of the Chairperson;

**"Governor"**

means a member of the Council of Governors elected or appointed as provided by the Constitution;

**"Council of Governors"**

means the Council of Governors as constituted in this Constitution;

**"Non-Executive Director"**

means a Director, including the Chairperson, who does not hold an executive office of the Trust;

**"Executive"**

means a person holding an office with responsibility for managing or performing the functions of the Trust;

**"Officer"**

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

**"Secretary"**

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

**3. THE COUNCIL OF GOVERNORS**

- 3.1 The roles and responsibilities of the Governors are set out in the Constitution and also have effect as if incorporated into the Standing Orders.
- 3.2 In the performance of their roles and responsibilities, the Governors shall have regard to The NHS Foundation Trust Code of Governance published by NHS England as revised or superseded from time to time.

**4. MEETINGS OF THE COUNCIL OF GOVERNORS**

**4.1 Admission of the Public**

- 4.1.1 The public and representatives of the Press shall be afforded facilities to attend all formal meetings of the Council of Governors except where it resolves that members of the public and representatives of the Press be excluded from all or part of a meeting on the grounds that:
  - 4.1.1.1 any publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted or
  - 4.1.1.2 for other reasons stated in the resolution and arising from the nature of the business or the proceedings that the Council of Governors believes are special reasons for excluding the public from the meeting in accordance with the Constitution.
- 4.1.2 Nothing in these Standing Orders shall require the Council of Governors to allow members of the public and representatives of the press to record proceedings in any manner whatsoever, other than writing, or to make any oral report of proceedings as they take place, without the prior agreement of the Council of Governors. This does not prevent the Council of Governors from

filming, streaming or in any other way recording or broadcasting its proceedings via electronic means, if it so chooses.

## **4.2 Calling Meetings**

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

4.2.1.1 an annual meeting in each year, when the Council of Governors are to receive and consider the annual accounts, any report by the Auditor and the annual report; and

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

4.2.2 The Secretary, in discussion with the Chairperson, may call a meeting of the Council of Governors at any time. If the Secretary refuses to call a meeting after a requisition for that purpose, signed by at least one third of the whole number of the Governors and specifying the business to be transacted at the meeting, has been presented to them, or if, without so refusing, the Secretary does not call a meeting within 5 Clear Days after such requisition has been presented to them at the Trust's Headquarters, such one third or more of the Governors may forthwith call a meeting for the purpose of conducting that business.

## **4.3 Notice of Meetings**

4.3.1 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 Chairperson or by an officer authorised by the Chairperson to sign on their behalf, shall be delivered to, or sent electronically or by post to the usual place of residence of every Governor, so as to be available to them at least 5 clear days before the meeting save in the case of emergencies. Before each meeting of the Council of Governors a public notice of the time and place of the meeting, and the public part of the agenda, shall, insofar as it is available, be displayed at the Trust's Headquarters and on the Trust's website, at least 3 clear days before the meeting.

4.3.2 Want of service of the notice on any Governor shall not affect the validity of a meeting, but failure to serve the notice on more than three Governors shall invalidate the meeting. A notice shall be presumed to have been served at the time at which the notice would be delivered in the ordinary course of posting.

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

4.3.4 Agendas will be sent to Governors before the meeting and supporting papers, whenever possible, shall accompany the Agenda, but will certainly be dispatched no later than 3 clear days before the meeting, save in the case of

emergencies. Distribution through electronic media is deemed acceptable for those Governors so agreeing.

#### **4.4 Annual Meeting**

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

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

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

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

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

#### **4.5 Setting the Agenda**

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

4.5.2 The Chairperson and Secretary will draft the agenda of Council of Governors meetings, which will be reviewed and agreed by the General Purposes Committee.

4.5.3 A Member of the Council of Governors desiring a matter to be included on an agenda, including a formal proposition for discussion and voting on at a meeting, shall make their request in writing to the Chairperson at least 10 clear days before the meeting. The request should state whether the item of business is proposed to be transacted in the presence of the public and should include appropriate supporting information. Requests made less than 10 clear days before a meeting may be included on the agenda at the discretion of the Chairperson.

#### **4.6 Petitions**

4.6.1 Where a petition signed by not less than 1% of the Members has been received by the Trust, the Chairperson shall include the petition as an item for the agenda of the next Council of Governors meeting.

## **4.7 Chairperson of Meeting**

- 4.7.1 At any Council of Governors meeting, the Chairperson, if present, shall preside.
- 4.7.2 If the Chairperson is absent from the meeting or is absent temporarily on the grounds of a declared conflict of interest the Vice-Chairperson shall preside.
- 4.7.3 If the Vice-Chairperson is absent from the meeting or is absent temporarily on the grounds of a declared conflict of interest, another Non-Executive Director as shall be appointed by the Council of Governors shall preside.

## **4.8 Agenda Proposals**

- 4.8.1 Where a Governor has requested inclusion of a matter on the agenda in accordance with Standing Order 4.5.3 above as a matter to be formally proposed for discussion and voting on at the meeting, the provisions of this Standing Order 4.8 shall apply in respect of the proposition:
- 4.8.2 The mover of the proposition shall have a right of reply at the close of any discussion on the proposition or any amendment thereto.
- 4.8.3 When a proposition is under discussion or immediately prior to discussion it shall be open to a Governor to move:
  - 4.8.3.1 an amendment to the proposition;
  - 4.8.3.2 the adjournment of the discussion or the meeting;
  - 4.8.3.3 that the meeting proceed to the next business;
  - 4.8.3.4 the appointment of an ad hoc committee to consider and make recommendations on a specific item of business;
  - 4.8.3.5 that the motion be now put;
  - 4.8.3.6 that the public be excluded from the meeting in relation to the discussion concerning the proposition under Standing Order 4.1.1.
- 4.8.4 In the case of sub-paragraphs 4.8.3.3 and 4.8.3.5 above, to ensure objectivity these matters may only be put by a Governor who has not previously taken part in the debate and who is eligible to vote.
- 4.8.5 No amendment to the proposition shall be admitted if, in the opinion of the Chairperson of the meeting, the amendment negates the substance of the proposition.
- 4.8.6 The mover of a proposition shall have a maximum of five minutes to move and three minutes to reply. Once a proposition has been moved, no Governor shall speak more than once or for more than three minutes.

## **4.9 Chairperson's Ruling**

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

## **4.10 Voting**

4.10.1 A Governor may not vote at a meeting of the Council of Governors unless at the beginning of their tenure or at a time subsequent to that to be agreed by the Secretary, they have made a declaration in the form specified within Schedule A of these Standing Orders, that they are a member of the constituency which elected them and is not prevented from being a member of the Council of Governors by paragraph 8 of Schedule 7 to the 2006 Act or under the Constitution. Where a Governor's circumstances in respect of their declaration have changed, they shall make a new declaration in the form specified within Schedule A of these Standing Orders within seven days.

4.10.2 Subject to paragraph 4.10.4 below, every question at a meeting shall be determined by a majority of the votes of the Governors present and voting on the question, unless otherwise determined in the Constitution.

4.10.3 The Chairperson of the meeting shall not ordinarily vote on any question or proposal before the meeting, but in the case of an equality of votes the Chairperson shall have a casting vote.

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

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

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

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

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

4.10.9 In certain circumstances which must be approved in advance by the Council of Governors and which may be included in a Schedule to these Standing Orders, the Chairperson may specify in a notice of a meeting any matter which requires approval by a written resolution and such a matter may be approved in writing provided that at least three quarters of the Governors, and a majority

of Governors who are members of the public constituency of the Trust, approve the resolution in writing within the timescale imposed in such a notice.

#### **4.11 Minutes**

4.11.1 The Minutes of the proceedings of a meeting shall be drawn up by the Secretary and submitted for agreement at the next ensuing meeting where they will be signed by the Chairperson presiding at it. The General Purposes Committee will review the draft minutes when setting the agenda for the next Council of Governors meeting.

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

#### **4.12 Suspension of Standing Orders**

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

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

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

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

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

4.13.1 Variations and amendments to these Standing Orders shall be treated as an amendment to the Constitution as per paragraph 44.

#### **4.14 Record of Attendance**

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

#### **4.15 Quorum**

4.15.1 No business shall be transacted at a meeting unless the following Governors are present: at least 5 Governors who are members of the public constituency, at least 2 Governors who are members of the staff constituency, and at least 1 appointed Governor.

4.15.2 If at any meeting there is no quorum present within 30 minutes of the time fixed for the start of the meeting, the meeting shall continue, and all

recommendations shall be submitted to the next meeting for approval and ratification.

4.15.3 If a Governor has been disqualified from participating in the discussion on any matter and/or from other voting on any resolution by reason of the declaration of a conflict of interest as provided in Standing Order 5 they shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business.

#### **4.16 Committees**

4.16.1 The Council of Governors may appoint committees of the Council of Governors to assist it in the proper performance of its functions.

4.16.2 These Standing Orders, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees established by the Council of Governors with the terms "Chairperson" to be read as a reference to the Chairperson of the committee, and the term "Governor" to be read as a reference to a member of the committee as the context permits, except that where a Governor is a Chairperson of a committee that Governor shall be a voting member of the committee notwithstanding paragraph 4.10.3.

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

4.16.4 Any committee established under this Standing Order may call upon Directors or officers of the Trust or outside advisers to assist them with their tasks, subject to the advance agreement of the Chairperson in respect of any expenses thereby incurred.

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

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

4.16.7 The Council of Governors may, if so invited by the Board of Directors, appoint members to serve on joint committees with the Board of Directors or committees of the Board of Directors.



4.16.8 In agreement with the Chairperson, Governors can attend Board of Directors' sub-committees as a participant or an observer.

## **5. DECLARATIONS OF INTERESTS AND REGISTER OF INTERESTS**

### **5.1 Declaration of Interests**

5.1.1 The Regulatory Framework and the Constitution require each Governor to declare to the Secretary:

5.1.1.1 any actual or potential interest, direct or indirect, which is relevant and material to the business of the Trust, as described in Standing Order 5.2.1; and

5.1.1.2 any actual or potential pecuniary interest, direct or indirect, in any contract, proposed contract or other matter concerning the Trust, as described in Standing Orders 5.2.2 and 5.2.3; and

5.1.1.3 any actual or potential family interest, direct or indirect, of which the Member is aware, as described in Standing Order 5.2.5.

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

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

5.1.4 Subject to Standing Order 5.2.4, if a Governor has declared a pecuniary interest (as described in Standing Orders 5.2.2 and 5.2.3) they shall not take part in the consideration or discussion of the matter. At the time the interests are declared, they should be recorded in the Governor's meeting minutes. Any changes in interests should be officially declared at the next relevant meeting following the change occurring.

5.1.5 This Standing Order 5 applies to any committee, sub-committee or joint committee of the Council of Governors and applies to any member of any such committee, sub-committee, (whether or not they are also a Governor).

5.1.6 The interests of Governors in companies likely or possibly seeking to do business with the NHS should be published in the Trust's Annual Report. The information should be kept up to date for inclusion in succeeding Annual Reports.

## 5.2 Nature of Interests

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

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

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

5.2.1.3 majority or controlling shareholdings in organisations likely or possibly seeking to do business with the NHS; or

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

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

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

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

5.2.2.1 they, or their nominee, is a director of a company or other body, not being a public body, with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration; or

5.2.2.2 they are a partner of or are 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.

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

5.2.3.1 of their membership of a company or other body, if they have no beneficial interest in any securities of that company or other body; or

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

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

#### 5.2.4 Where a Governor:

5.2.4.1 has an indirect pecuniary interest in a contract, proposed contract or other matter by reason only of a beneficial interest in securities of a company or other body, and

5.2.4.2 the total nominal value of those securities does not exceed £5,000 or one-hundredth of the total nominal value of the issued share capital of the company or body, whichever is the less, and

5.2.4.3 if the share capital is of more than one class, the total nominal value of shares of any one class in which they have a beneficial interest does not exceed one-hundredth of the total issued share capital of that class,

The Governor shall not be prohibited from taking part in the consideration or discussion of the contract or other matter or from voting on any question with respect to it, without prejudice however to their duty to disclose their interest.

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

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

### **5.3 Register of Governors**

5.3.1 The Register of Governors shall list the names of Governors, their category of membership of the Council of governors and an address through which they may be contacted by the Secretary.

### **5.4 Register of Governors' Interests**

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

## **6. STANDARDS OF BUSINESS CONDUCT**

6.1 The Council of Governors shall adopt a Governors' Code of Conduct and shall review it annually. Amendments to the Code shall be approved as per paragraph 44 of the Constitution.

6.2 Members of the Council of Governors shall comply with the Governors' Code of Conduct and the Trust's Fit and Proper Persons Procedure.

## **7. APPOINTMENTS AND RECOMMENDATIONS**

- 7.1 A Governor shall not solicit for any person any appointment under the Trust or recommend any person for such appointment but this paragraph of this Standing Order shall not preclude a Governor from giving written testimonial of a candidate's ability, experience or character for submission to the Trust in relation to any appointment.
- 7.2 The Chairperson and every Governor shall disclose to the Secretary any relationship between themselves and a candidate for appointment as a Director of the Trust of whose candidature that Governor is aware. It shall be the duty of the Secretary to report any such disclosure to the Council of Governors.
- 7.3 On appointment, a Governor shall disclose to the Council of Governors any relationship to another Governor or to a holder of any office in the Trust.

## **8. SENIOR INDEPENDENT DIRECTOR**

- 8.1 The Council of Governors is entitled to be consulted by the Board of Directors on the appointment of the Trust's Senior Independent Director.
- 8.2 The role of the Senior Independent Director is as set out in the Trust's 'Senior independent Director job description', as amended from time to time.

## **9. MISCELLANEOUS**

- 9.1 The Secretary shall provide a copy of these Standing Orders, and the Constitution as a whole, to each Governor and endeavour to ensure that each Governor understands their responsibilities within these Standing Orders.
- 9.2 If for any reason these Standing Orders are not complied with, full details of the non-compliance and any justification for non-compliance and the circumstances around the non-compliance, shall be reported to the next formal meeting of the Council of Governors for action or ratification. All Governors have a duty to disclose any non-compliance with these Standing Orders to the Chairperson as soon as possible.

**Schedule A**

**Declaration to the Secretary of South Warwickshire University NHS Foundation Trust**

I hereby declare that I am at the date of this declaration:

- a) a member of the [Public/Staff] Constituency, and
- b) I am not prevented from being a member of the Council of Governors by reason of any provisions of paragraph 8 of Schedule 7 to the 2006 Act or the Constitution.

Signed:

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Date

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## Annex 7 – Standing Orders for the Practice and Procedure of the Board of Directors

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## INTRODUCTION

### Statutory Framework

The South Warwickshire University NHS Foundation Trust (the Trust) is a public benefit corporation authorised by the Independent Regulator of NHS Foundation Trusts (under the name of South Warwickshire NHS Foundation Trust) under the National Health Service Act 2006.

The principal place of business of the Trust is: Warwick Hospital, Lakin Road, Warwick, CV34 5BW.

NHS Foundation Trusts are governed by statute, mainly the National Health Service Acts 2006, 2012 and 2022, and by their Constitution.

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

The Constitution requires the Board of Directors to adopt Standing Orders (SOs) for the regulation of its proceedings and business.

### 1. INTERPRETATION

- 1.1 At any meeting the Chairperson of the Trust shall be the final authority on the interpretation of Standing Orders (on which they should be advised by the Chief Executive and Secretary).
- 1.2 Any expression to which a meaning is given in the National Health Service Act 2006 or in a Regulation or Order made under that Act shall have the same meaning in this interpretation and in addition:
  - 1.2.1 **"Accounting Officer"** means the NHS Officer responsible and accountable for funds entrusted to the Trust. The officer shall be responsible for ensuring the proper stewardship of public funds and assets. For this Trust it shall be the Chief Executive.
  - 1.2.2 **"Trust"** means" South Warwickshire University NHS Foundation Trust.
  - 1.2.3 **"Board"** means the Board of Directors.
  - 1.2.4 **"Budget"** means 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.
  - 1.2.5 **"Budget holder"** means the director or employee with delegated authority to manage finances (Income and Expenditure) for a specific area of the organisation.
  - 1.2.6 **"Chairperson of the Board (or Trust)"** is the person appointed by the Council of Governors to lead the Board and to ensure that it successfully discharges its overall responsibility for the Trust as a whole. The expression "the Chairperson of the Trust"



shall be deemed to include the Vice-Chairperson of the Trust if the Chairperson is absent from the meeting or is otherwise unavailable.

- 1.2.7 **"Chief Executive"** means the chief officer of the Trust.
- 1.2.8 **"Commissioning"** means the process for determining the need for and for procuring the supply of healthcare and related services by the Trust within available resources.
- 1.2.9 **"Committee"** means a committee or sub-committee created and appointed by the Board.
- 1.2.10 **"Committee members"** means persons formally appointed by the Board to sit on or to chair specific committees.
- 1.2.11 **"Contracting and procuring"** means the systems for obtaining the supply of goods, materials, manufactured items, services, building and engineering services, works of construction and maintenance and for disposal of surplus and obsolete assets.
- 1.2.12 **"Council of Governors"** means the Council of Governors of the Trust as constituted by the Constitution.
- 1.2.13 **"Chief Finance Officer"** means the Chief Financial Officer of the Trust.
- 1.2.14 **"Funds held on trust"** shall mean those funds, which the Trust holds on date of incorporation, receives on distribution by statutory instrument or chooses subsequently to accept. Such funds may or may not be charitable.
- 1.2.15 **"Managing Director"** means the Executive Director that supports the Chief Executive Officer to fulfil the role of Accounting Officer at the Trust by leading the Trust on a day-to-day basis. The Managing Director ensures that there is constant and visible Trust-wide leadership to direct and lead the Executive Team, to ensure delivery of its performance, financial and governance requirements.
- 1.2.16 **"Nominated officer"** means an officer charged with the responsibility for discharging specific tasks within Standing Orders and Standing Financial Instructions
- 1.2.17 **"Non-Executive Director"** means a Director, including the Chairperson, who does not hold an executive office at the Trust.
- 1.2.18 **"Executive"** means a person holding an office with responsibility for managing or performing the functions of the Trust.
- 1.2.19 **"Secretary"** means a person appointed to act independently of the Board to provide advice on corporate governance issues to the Board and the Chairperson and monitor the Trust's compliance with the law, Standing Orders, and the Regulatory Framework.
- 1.2.20 **"SFIs"** means Standing Financial Instructions.
- 1.2.21 **"SOs"** means Standing Orders.

1.2.22 **"Vice-Chairperson"** means the Non-Executive Director appointed by the Council of Governors to take on the Chairperson's duties if the Chairperson is absent for any reason.

## **2. THE TRUST**

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

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

2.3 The Trust has resolved that certain powers and decisions may only be exercised or made by the Trust in formal session. These powers and decisions are set out in Annex 9 – Schedule of Matters Reserved to the Board which has effect as if incorporated into the Standing Orders.

2.4 **The composition of the Board** shall be in accordance with the Constitution.

2.5 **Appointment of the Chairperson and Directors** shall be in accordance with the Constitution.

2.6 **Terms of Office of the Chairperson and Directors.** The Chairperson and Non-Executive Directors are to be appointed for a period of office in accordance with the Constitution.

2.7 **Appointment of Vice Chairperson.** For the purpose of enabling the proceedings of the Trust to be conducted in the absence of the Chairperson, the Chairperson shall submit a proposal to the Nominations and Remuneration Committee for consideration and if supported, make a recommendation to the Council of Governors on the appointment of a Non-Executive Director to be the Vice Chairperson for such period, not exceeding the remainder of their terms as Non-Executive Director for the Trust, as they may specify on appointment. If the Chairperson is unable to discharge their office as Chairperson of the Trust the Vice-Chairperson of the Board of Directors shall be the acting Chairperson for the Trust.

2.8 Any Non-Executive Director so elected may at any time resign from the office of Vice-Chairperson by giving notice in writing to the Chairperson and the Council of Governors may thereupon appoint another Non-Executive Director as Vice-Chairperson.

2.9 **Powers of Vice Chairperson.** Where the Chairperson of the Trust has died or has ceased to hold office, or where they have been unable to perform their duties as Chairperson owing to illness or any other cause, the Vice-Chairperson shall act as Chairperson until a new Chairperson is appointed or the existing Chairperson resumes their duties, as the case may be; and references to the Chairperson in these Standing Orders shall, so long as there is no Chairperson able to perform those duties, be taken to include references to the Vice-Chairperson.

- 2.10 **Appointment and Powers of Senior Independent Director** – Subject to Standing Order 2.11 below, the Board of Directors may in consultation with the Council of Governors appoint a Non-Executive Director to be the Senior Independent Director for such period, not exceeding the remainder of their term as a Member of the Board of Directors, as they may specify on appointment. The Senior Independent Director shall perform the role set out in the Trust’s ‘Senior Independent Director job description’, as amended from time to time by resolution of the Board of Directors.
- 2.11 Any Member of the Board of Directors so appointed may at any time resign from the office of Senior Independent Director by giving notice in writing to the Chairperson. The Board of Directors may thereupon in consultation with the Council of Governors appoint another Non-Executive Director as Senior Independent Director.
- 2.12 **Appointment of the nominated non-executive director** – in recognition of the status of the Trust as a University NHS Foundation Trust and in association with the University of Warwick the said University, on behalf of its Medical School, is entitled to nominate one individual who satisfies the criteria set out in paragraph 24 of the Constitution to stand for appointment as a Non-Executive Director.
- 2.13 Any individual nominated by the University of Warwick to stand for appointment pursuant to paragraph 2.12 shall, where appointed by the Council of Governors in accordance with the Constitution, be appointed for a term of 3 years and shall be eligible to be reappointed for a further term up to a maximum tenure of 9 years. They shall not be eligible to be reappointed after a break in service.
- 2.14 Any Non-Executive Director that holds their position after being nominated by the University of Warwick shall be subject to the same annual appraisal regimen as the Trust’s other Non-Executive Directors.
- 2.15 Without prejudice to the right for the Council of Governors to remove any Non Executive Director pursuant to paragraph 25.1 of the Constitution (including any Non Executive Director that holds their position after being nominated by the University of Warwick), if the Nominations and Remuneration Committee of the Council of Governors shall so recommend the Chairperson of the Trust shall invite the University of Warwick to reconsider their nomination, recall their existing nomination and nominate a substitute.

### **3. MEETINGS OF THE TRUST**

#### **3.1 Calling meetings**

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

### **3.2 Notice of Meetings and the Business to be transacted**

- (1) Before each meeting of the Board a formal written notice of the time and place of the meeting shall be given to every director, or sent electronically or by post to the usual place of residence of each director, so as to be delivered at least five working days before the meeting. The notice shall be approved by the Chairperson or by an officer authorised by the Chairperson to approve it on their behalf. Failure to serve such a notice on more than three directors shall invalidate the meeting. A notice shall be presumed to have been delivered one day after sending.
- (2) The agreed draft agenda shall be circulated to all directors at least 14 working days before the meeting (either in hard copy or electronically).
- (3) The agenda shall be sent to directors at least 3 working days before the meeting (either in hard copy or electronically) and supporting papers shall accompany the agenda, save in emergency. Want of delivery of the agenda or papers to any director shall not affect the validity of a meeting.
- (4) In the case of a meeting called by directors in default of the Chairperson calling the meeting, the notice shall be signed by those directors.
- (5) No business shall be transacted at the meeting other than that specified on the agenda, or emergency motions allowed under Standing Order 3.4.
- (6) A director desiring a matter to be included on an agenda shall make their request in writing to the Chairperson at least 10 clear days before the meeting. Requests made less than 10 days before a meeting may be included on the agenda at the discretion of the Chairperson.

### **3.3 Notice of Motion**

- (1) Subject to the provision of Standing Orders 3.5 'Motions: Procedure at and during a meeting' and 3.6 'Motions to rescind a resolution', a director of the Board wishing to move a motion shall send a written notice to the Secretary who will ensure that it is brought to the immediate attention of the Chairperson.
- (2) The notice shall be delivered at least 10 clear days before the meeting. The Secretary shall include in the agenda for the meeting all notices so received that are in order and permissible under appropriate regulations. This Standing Order shall not prevent any motion being withdrawn or moved without notice on any business mentioned on the agenda for the meeting.

### **3.4 Emergency Motions**

Subject to the agreement of the Chairperson, and subject also to the provision of Standing Order 3.5 'Motions: Procedure at and during a meeting', a member of the Board may give written notice of an emergency motion after the issue of the notice of meeting and agenda, up to one hour before the time fixed for the meeting. The notice shall state the grounds of urgency. If in order, it shall be declared to the Board of Directors at the commencement of the business of the meeting as an additional item included in the agenda. The Chairperson's decision to include the item shall be final.

### **3.5 Motions: Procedure at and during a meeting**

#### **i) Who may propose**

A motion may be proposed by the Chairperson of the meeting or any director present. It must also be seconded by another director.

#### **ii) Contents of motions**

The Chairperson may exclude from the debate at their discretion any such motion of which notice was not given on the notice summoning the meeting other than a motion relating to:

- the reception of a report;
- consideration of any item of business before the Board;
- the accuracy of minutes;
- that the Board proceed to next business;
- that the Board adjourn;
- that the question be now put.

#### **iii) Amendments to motions**

A motion for amendment shall not be discussed unless it has been proposed and seconded.

Amendments to motions shall be moved relevant to the motion and shall not have the effect of negating the motion before the Board.

If there are several amendments, they shall be considered one at a time. When a motion has been amended, the amended motion shall become the substantive motion before the meeting, upon which any further amendment may be moved.

#### **iv) Rights of reply to motions**

##### **a) Amendments**

The mover of an amendment may reply to the debate on their amendment immediately prior to the mover of the original motion, who shall have the right of reply at the close of debate on the amendment but may not otherwise speak on it.

##### **b) Substantive/original motion**

The director who proposed the substantive motion shall have a right of reply at the close of any debate on the motion.

#### **v) Withdrawing a motion**

A motion, or an amendment to a motion, may be withdrawn by its proposer.

#### vi) **Motions once under debate**

When a motion is under debate, no motion may be moved other than:

- an amendment to the motion;
- the adjournment of the discussion, or the meeting;
- that the meeting proceed to the next business;
- that the question should be now put;
- the appointment of an 'ad hoc' committee to deal with a specific item of business;
- that a member be not further heard;

In those cases where the motion is either that the meeting proceeds to the 'next business' or 'that the question be now put' in the interests of objectivity these should only be put forward by a director of the Board who has not taken part in the debate and who is eligible to vote.

If a motion to proceed to the next business or that the question be now put, is carried, the Chairperson should give the mover of the substantive motion under debate a right of reply, if not already exercised. The matter should then be put to the vote.

### **3.6 Motion to Rescind a Resolution**

- (1) Notice of motion to rescind any resolution (or the general substance of any resolution) which has been passed within the preceding six calendar months shall bear the signature of the director who gives it and also the signature of three other directors, and before considering any such motion of which notice shall have been given, the Board may refer the matter to any appropriate Committee or the Chief Executive for recommendation.
- (2) When any such motion has been dealt with by the Board it shall not be competent for any director other than the Chairperson to propose a motion to the same effect within six months. This Standing Order shall not apply to motions moved in pursuance of a report or recommendations of a Committee or the Chief Executive.

### **3.7 Chairperson of meeting**

- (1) At any meeting of the Board the Chairperson, if present, shall preside. If the Chairperson is absent from the meeting, the Vice-Chairperson (if the Board has appointed one), if present, shall preside.
- (2) If the Chairperson and Vice-Chairperson are absent, such Non-Executive Director as the members present shall choose shall preside.

### **3.8 Chairperson's ruling**

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

### **3.9 Quorum**

- (i) No business shall be transacted at a meeting of the Board unless not less than two Executive Directors (one of whom must be either the Chief Executive, Managing Director or the Chief Finance Officer) and not less than three Non-Executive Directors are present. The Chairperson, if present, shall count as one of the Non-Executive Directors.
- (ii) An Officer in attendance for an Executive Director but without formal acting up status may not count towards the quorum.
- (iii) If the Chairperson or a director has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of a declaration of a conflict of interest (see SO 7.9.2) that person shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business.

### **3.10 Voting**

- (i) Save as provided in Standing Orders 3.11 - Waiver of Standing Orders and 3.12 - Variation and Amendment of Standing Orders, every question put to a vote at a meeting shall be determined by a majority of the votes of directors present and voting on the question. In the case of an equal vote, the person presiding (ie: the Chairperson of the meeting) shall have a second, and casting vote.
- (ii) At the discretion of the Chairperson all questions put to the vote shall be determined by oral expression or by a show of hands, unless the Chairperson directs otherwise, or it is proposed, seconded and carried that a vote be taken by paper ballot.
- (iii) If at least one third of the directors present so request, the voting on any question may be recorded so as to show how each director present voted or did not vote (except when conducted by paper ballot).
- (iv) If a director so requests, their vote shall be recorded by name.
- (v) In no circumstances may an absent director vote by proxy. Absence is defined as being absent at the time of the vote.
- (vi) An Officer who has been formally appointed to act up for an Executive Director during a period of incapacity or temporarily to fill an Executive Director vacancy, under paragraph 9 or paragraph 13 of Annex 8, shall be entitled to exercise the voting rights of the Executive Director.
- (vii) An Officer attending the Board meeting to represent an Executive Director during a period of incapacity or temporary absence without formal acting up status may not exercise the voting rights of the Executive Director. An Officer's status when attending a meeting shall be recorded in the minutes.

### **3.11 Waiver of Standing Orders**

- (i) Except where this would contravene any statutory provision or the rules relating to the Quorum (SO 3.9), any one or more of the Standing Orders may be waived at any meeting, provided that at least two-thirds of the whole number of the directors of the Board are present (including at least one executive director and one Non-Executive Director) and that a majority of those directors present signify their agreement to such waiver. The reason for the waiver shall be recorded in the Board's minutes.
- (ii) A separate record of matters discussed during the waiver of Standing Orders shall be made and shall be available to the Chairperson and directors.
- (iii) The Audit Committee shall review every decision to waive Standing Orders.

### **3.12 Variation and amendment of Standing Orders**

These standing orders may be amended only as provided in paragraph 44 of the Constitution.

### **3.13 Record of Attendance**

The names of the Chairperson and directors present at the meeting shall be recorded.

### **3.14 Minutes**

The minutes of the proceedings of a meeting shall be drawn up and submitted for agreement at the next ensuing meeting where they shall be signed by the person presiding at it.

No discussion shall take place upon the minutes except upon their accuracy or where the Chairperson considers discussion appropriate.

## **4. APPOINTMENT OF COMMITTEES AND SUB-COMMITTEES**

### **4.1 Appointment of Committees**

Subject to the Constitution and such directions as may be given by the Independent Regulator NHS England, the Board may appoint committees of the Trust.

The Trust shall determine the membership and terms of reference of committees and sub-committees and shall if it requires to, receive and consider reports of such committees.

### **4.2 Applicability of Standing Orders to Committees**

These Standing Orders, as far as they are applicable, shall apply to meetings of any committees established by the Board, and in such meetings the term "Chairperson" is to be read as a reference to the Chairperson of the committee as the context permits.



### **4.3 Terms of Reference**

Each such committee shall have such terms of reference and powers and be subject to such conditions (as to reporting back to the Board), as the Board shall decide. Such terms of reference shall have effect as if incorporated into the Standing Orders.

### **4.4 Delegation of Powers by Committees to Sub-Committees**

Where committees established by the Board with delegated powers are authorised to establish sub-committees, they may not delegate these executive powers to a sub-committee unless expressly authorised by the Board.

### **4.5 Approval of Appointments to Committees**

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

### **4.6 Appointments for Statutory Functions**

Where the Board is required to appoint persons to a committee and/or to undertake statutory functions as required by NHS England, and where such appointments are to operate independently of the Board such appointment shall be made in accordance with applicable statute and regulations and with the guidance issued by NHS England.

### **4.7 Committees Established by the Board**

The committees established by the Board are:

- (1) Audit Committee
- (2) Appointments and Remuneration Committee
- (3) Clinical Governance Committee
- (4) Foundation Group Strategy Committee

The Board may also establish such other committees as it sees fit to discharge the Trust's responsibilities.

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

- 5.1 Subject to such guidance as may be issued by the Independent Regulator NHS England, the Board may make arrangements for the exercise, on behalf of the Board, of any of its functions by a committee of directors appointed by virtue of Standing Order 4, or by an Executive Director of the Trust, in each case subject to such restrictions and conditions as the Board thinks fit.

## **5.2 Emergency Powers and urgent decisions**

- 5.2.1 The powers which the Board has reserved to itself within these Standing Orders may in emergency or for an urgent decision be exercised by the Chief Executive or Managing Director and the Chairperson after having consulted at least two Non-Executive Directors. The exercise of such powers by the Chief Executive or Managing Director and Chairperson shall be reported to the next formal meeting of the Board.
- 5.2.2 The Chairperson may convene at short notice a meeting of the Board to consider a matter requiring an urgent decision, and such a meeting shall be deemed to be a committee as provided in paragraph 5.3.2. Any decision to be made at such a meeting on a matter reserved to the Board shall be the responsibility of the Chairperson and Chief Executive/Managing Director under the emergency powers provided in paragraph 5.2.1.
- 5.2.3 If the Chief Executive is absent or has a conflict of interest, their powers under this Standing Order may be exercised by the Managing Director. If the Chairperson is absent or has a conflict of interest, their powers under this Standing Order may be exercised by the Vice-Chairperson.

## **5.3 Delegation to Committees**

- 5.3.1 The Board shall agree from time to time to the delegation of executive powers to be exercised by a committee of directors which it has formally constituted. The constitution and terms of reference of these committees and their specific powers shall be approved by the Board.
- 5.3.2 When the Board is meeting other than under the terms of section 3, it shall operate as a committee and may only exercise such powers as may have been delegated to it by the Board in formal session.

## **5.4 Delegation to Officers**

- 5.4.1 Those functions which have not been reserved to the Board or delegated to a committee of directors or a specified Executive Director shall be exercised on behalf of the Board by the Chief Executive. The Chief Executive shall determine which functions they will perform personally and shall nominate officers to undertake the remaining functions for which the Chief Executive will still retain accountability to the Board.
- 5.4.2 The Chief Executive shall prepare a Scheme of Delegation identifying their proposals for the delegation of powers not reserved to the Board, which shall be considered and approved by the Board. The Chief Executive may periodically propose amendment to the Scheme of Delegation which shall be considered and approved by the Board.
- 5.4.3 Nothing in the Scheme of Delegation shall impair the discharge of the direct accountability to the Board of the Chief Finance Officer to provide information and advise the Board in accordance with any statutory requirements. Outside these

statutory requirements the role of the Chief Finance Officer shall be accountable to the Chief Executive for operational matters.

## **5.5 Schedule of Matters Reserved to the Board**

- 5.5.1 The arrangements made by the Board as set out in Annex 9 – Schedule of Matters Reserved to the Board” shall have effect as if incorporated in these Standing Orders.

## **5.6 Duty to report non-compliance with Standing Orders**

If for any reason these Standing Orders are not complied with, full details of the non-compliance and any justification for non-compliance and the circumstances around the non-compliance shall be reported to the next formal meeting of the Board for action or ratification. All directors and staff have a duty to disclose any non-compliance with these Standing Orders to the Chief Executive or Managing Director as soon as possible.

The Trust Secretary to report any decision to waive the Board of Directors’ Standing Orders to the next meeting of the Audit Committee. Also, an annual report to be submitted to the Audit Committee in April of each year to outline any decision to waive the Standing Orders.

## **6. INTERFACE BETWEEN THE BOARD OF DIRECTORS AND THE COUNCIL OF GOVERNORS**

- 6.1 The Board of Directors will cooperate with the Council of Governors as far as possible in order to comply with the Regulatory Framework in all aspects and in particular in relation to the following matters which are set out specifically within the constitution.
- 6.2 The Directors, having regard to the views of the Council of Governors, are to prepare the information as to the Trust’s forward planning in respect of each financial year to be given to the Independent Regulator NHS England.
- 6.3 The Directors are to present to the Council of Governors at a general meeting the annual accounts, any report of the Auditor on them, and the annual report.
- 6.4 The annual report is to give:
- 6.4.1 information on any steps taken by the Trust to secure that (taken as a whole) the actual membership of its public constituency is representative of those eligible for such membership, and
- 6.4.2 any other information required by the Independent Regulator NHS England.
- 6.5 The Annual Report must review how the Trust has exercised its functions in accordance with:
- 6.5.1 the joint forward plans for integrated care boards and its partners,
- 6.5.2 the joint capital resource use plan for integrated care boards and its partners, and

6.5.3 NHS England's views about how functions relating to inequalities information should be exercised.

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

### **7.1 Declaration of Interests**

The regulatory framework requires the Board of Directors to declare interests, which are relevant and material to the Foundation Trust of which they are a director. All existing directors should declare such interests. Any directors appointed subsequently should do so on appointment.

### **7.2 Interests which should be regarded as relevant and material are:**

- a) Directorships, including non-executive directorships held in private companies or PLCs (with the exception of those of dormant companies);
- b) Ownership, part-ownership or directorships of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS;
- c) Majority or controlling shareholdings in organisations likely or possibly seeking to do business with the NHS;
- d) A position of authority in a charity or voluntary organisation in the field of health and social care;
- e) Any connection with a voluntary or other organisation contracting for NHS services;
- f) Research funding/grants that may be received by an individual or their department;
- g) Interests in pooled funds that are under separate management.
- h) Any connection with an organisation, entity or company considering entering into a financial arrangement with the Trust, including but not limited to, lenders or banks.

7.3 A director who comes to know that the Trust has entered into or proposes to enter into a contract in which they or any person connected with them (as defined in Standing Order 8.5 below and elsewhere) has any pecuniary interest, direct or indirect, shall declare their interest by giving notice to the Trust Secretary in writing of such fact as soon as practicable.

### **7.4 Advice on Interests**

If directors have any doubt about the relevance of an interest, this should be discussed with the Chairperson of the Trust.

### **7.5 Recording of Interests in Board Minutes**

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 and recorded in the minutes of that meeting.

## **7.6 Publication of declared interests in the Annual Report**

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

## **7.7 Conflicts of interest which arise during the course of a meeting**

During the course of a Board meeting, if a conflict of interest is established, the director concerned should withdraw from the meeting and play no part in the relevant discussion or decision. (See overlap with SO 7.3)

## **7.8 Register of Interests**

7.8.1 In accordance with the constitution, the Secretary will ensure that a Register of Interests is established to record formally declarations of interests of Directors. In particular the Register will include details of all directorships and other relevant and material interests (as defined in SO 7.2) which have been declared by both executive and non-executive Board directors, including voting members and non-voting attendees.

7.8.2 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.

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

## **7.9 Exclusion of Chairperson and Directors in proceedings on account of pecuniary interest**

### **7.9.1 Definition of terms used in interpreting 'Pecuniary' interest**

For the sake of clarity, the following definition of terms is to be used in interpreting this Standing Order:

- (i) "spouse" shall include any person who lives with another person in the same household (and any pecuniary interest of one spouse shall, if known to the other spouse, be deemed to be an interest of that other spouse);
- (ii) "contract" shall include any proposed contract or other course of dealing.
- (iii) "Pecuniary interest"

Subject to the exceptions set out in this Standing Order, a person shall be treated as having an indirect pecuniary interest in a contract if:-

- a) the individual, or their nominee, is a member of a company or other body (not being a public body), with which the contract is made, or to be made or which has a direct pecuniary interest in the same, or
- b) the individual is a partner, associate or employee of any person with whom the contract is made or to be made or who has a direct pecuniary interest in the same.

iv) Exception to Pecuniary interests

A person shall not be regarded as having a pecuniary interest in any contract if:-

- a) neither the individual or any person connected with them has any beneficial interest in the securities of a company of which they or such person appears as a member, or
- b) any interest that the individual or any person connected with them may have in the contract is so remote or insignificant that it cannot reasonably be regarded as likely to influence the individual in relation to considering or voting on that contract, or
- c) those securities of any company in which the individual (or any person connected with them) has a beneficial interest do not exceed £5,000 in nominal value or one per cent of the total issued share capital of the company or of the relevant class of such capital, whichever is the less.

Provided however, that where paragraph (c) above applies the person shall nevertheless be obliged to disclose/declare their interest in accordance with Standing Order 7.1.

### **7.9.2 Exclusion in Proceedings of the Board**

- (i) Subject to the following provisions of this Standing Order, if the Chairperson or a director 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, they shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not take part in the consideration or discussion of the contract or other matter or vote on any question with respect to it.
- (ii) The Board may exclude the Chairperson or a director from a meeting of the Board while any contract, proposed contract or other matter in which the Chairperson or director has a pecuniary interest is under consideration.
- (iii) Any remuneration, compensation or allowance payable to the Chairperson or director by virtue of paragraph 18 of Schedule 7 to the 2006 Act shall not be treated as a pecuniary interest for the purpose of this Standing Order.
- (iv) This Standing Order applies to a committee or sub-committee as it applies to the Board and applies to a member of any such committee or sub-committee (whether or not the member is also a director).

## **8. STANDARDS OF BUSINESS CONDUCT**

### **8.1 Policy**

Directors and officers shall comply with the Trust's Disciplinary Policy, the national guidance contained in HSG(93)5 on 'Standards of Business Conduct for NHS staff' and the 'Code of Conduct for NHS Managers 2002'. Directors, both Executive and Non-Executive, should also ensure they are compliant with the Fit and Proper Person Regulations (Health and Social Care Act 2008 (Regulated Activities) Regulations 2014: Regulation 5 Fit and Proper Persons: Directors).

### **8.2 Interest of Directors and Employees in Contracts**

- i) Any director or officer of the Trust who comes to know that the Trust has entered into or proposes to enter into a contract in which the person or any person connected with them (as defined in SO 8.5) has any pecuniary interest, direct or indirect, the individual shall declare their interest by giving notice in writing of such fact to the Chief Executive, or Managing Director or Secretary as soon as practicable.
- ii) A director or officer should also declare to the Chief Executive or Managing Director any other employment or business or other relationship of theirs, or of a cohabiting spouse, that conflicts, or might reasonably be predicted could conflict with the interests of the Trust.
- iii) The Trust will require interests, employment or relationships so declared by directors to be entered in the register of directors' interests.

### **8.3 Canvassing of and Recommendations by Directors in Relation to Appointments**

- i) Canvassing of directors or members of any Committee of the Board directly or indirectly for any appointment under the Trust shall disqualify the candidate for such appointment. The contents of this paragraph of the Standing Order shall be included in application forms or otherwise brought to the attention of candidates.
- ii) A director shall not solicit for any person any appointment under the Trust or recommend any person for such appointment; but this paragraph of this Standing Order shall not preclude a director from giving written testimonial of a candidate's ability, experience or character for submission to the Trust, in relation to any appointment

### **8.4 Relatives of Directors or Officers**

- i) A director shall disclose to the Chief Executive or Managing Director any relationship between them self and a candidate for an appointment under the Trust of whose candidature that director is aware. It shall be the duty of the Chief Executive or Managing Director to report to the Board any such disclosure made.

- ii) A director on appointment (and prior to acceptance of an appointment in the case of an Executive Director) shall disclose to the Board any relationship to another director or to a holder of any office in the Trust.

## **8.5 Persons Connected with Directors**

For the purposes of these Standing Orders, a person is connected with a Director if they are:

- i) a cohabiting spouse, civil partner or common law husband or wife (“life partner”) of the Director; or
- ii) a child adopted or stepchild or any other cohabiting relative of the Director or their or her life partner.

## **9. CUSTODY OF SEAL, SEALING OF DOCUMENTS AND SIGNATURE OF DOCUMENTS**

### **9.1 Custody of Seal**

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

### **9.2 Sealing of Documents**

Where it is necessary that a document shall be sealed, the seal shall be affixed in the presence of the Chief Executive and one other Executive Director or two Executive Directors duly authorised by the Chief Executive, and not also from the originating department, and shall be attested by them.

### **9.3 Register of Sealing**

The Chief Executive shall keep a register in which they, or another manager of the Trust authorised by the Chief Executive, shall enter a record of the sealing of every document.

### **9.4 Signature of documents**

Where any document will be a necessary step in legal proceedings on behalf of the Trust, it shall, unless any enactment otherwise requires or authorises, be signed by the Chief Executive or any Executive Director.

In land transactions, the signing of certain supporting documents will be delegated to officers and set out clearly in the Scheme of Delegation but will not include the main or principal documents effecting the transfer (e.g. sale/purchase agreement, lease, contracts for construction works and main warranty agreements or any document which is required to be executed as a deed).

## **10. REVIEW OF STANDING ORDERS**

Standing Orders shall be reviewed annually by the Trust. The requirement for review extends to all documents having effect as if incorporated into these Standing Orders.



## **Annex 8 – Miscellaneous Provisions**

### **1. Eligibility for Membership**

- 1.1 An individual may not become a Member of the Trust if they are under 16 years of age.
- 1.2 An individual may not become or continue as a Member of the Trust if within the last five years 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 any of the Trust's registered volunteers.
- 1.3 In the event of dispute about a person's eligibility for membership of the Trust the dispute shall be referred to the Secretary who shall make a determination on the point at issue. If the person is dissatisfied with the decision of the Secretary, they may appeal in writing within 14 days of the decision to the Council of Governors, whose decision shall be final.

### **2. Termination of Membership**

- 2.1 A Member shall cease to be a Member if:
  - (a) they resign by notice to the Secretary;
  - (b) they die;
  - (c) they are expelled from membership under this Constitution;
  - (d) they cease to be entitled under this Constitution to be a Member of the public constituency or of any of the classes of the staff constituency.
- 2.2 It is the responsibility of each Member to ensure their eligibility at all times and not the responsibility of the Trust to do so on their behalf. A Member who becomes aware of their ineligibility shall inform the Trust as soon as practicable and that Member's name shall thereupon be removed from the Register of Members and they shall cease to be a Member.

### **3. Expulsion from Membership**

- 3.1 A Member may be expelled by a resolution approved by not less than two-thirds of the Council of Governors present and voting at a general meeting. The following procedure is to be adopted:
  - (a) Any Member may complain to the Secretary in writing (signed by the complainant) that another Member has acted in a way detrimental to the interests of the Trust.
  - (b) The Secretary shall report the complaint to the Council of Governors, or to an appropriate sub-committee of the Council of Governors, which shall consider the complaint and, having taken such advice and made such enquiries as it considers appropriate, may either:

- (i) dismiss the complaint and take no further action; or
  - (ii) instruct the Secretary to write to the Member complained of to explain the concerns arising from the complaint but that no further action is being taken; or
  - (iii) temporarily suspend the membership rights of the Member complained of and arrange for a resolution to expel the Member complained of to be considered at the next general meeting of the Council of Governors.
- (c) If a resolution to expel a Member is to be considered at a general meeting of the Council of Governors, details of the complaint shall 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.
- (d) At the meeting the Council of Governors shall consider evidence in support of the complaint and such evidence as the Member complained of may wish to place before them.
- (e) If the Member complained of fails to attend the meeting without due cause the meeting may proceed in their absence.
- (f) The Member complained of shall cease to be a Member upon the declaration of the Chairperson of the meeting that the resolution to expel the Member is carried.
- (g) If the resolution to expel the Member is not carried, the membership rights of the Member shall be restored with immediate effect.
- 3.2 No person who has been expelled from membership shall be re-admitted except by a resolution carried by the votes of two-thirds of the Council of Governors present and voting at a general meeting.

#### **4. 'Director'**

- 4.1 The Trust may confer on a senior officer the title 'Director' as an indication of their corporate responsibility within the Trust and not in one of the specific roles prescribed in paragraph 22 of the Constitution. Such an officer shall not be an Executive Director of the Trust within the meaning of the 2006 Act and this Constitution unless so determined by resolution of the Board.

#### **5. Absent Directors**

##### 5.1 If:

- (a) an Executive Director is temporarily unable to perform their duties owing to illness or some other reason for absence, and
- (b) the Board of Directors agrees that it is inappropriate to terminate the absent director's term of office and appoint a replacement director, and
- (c) the Board of Directors agree that the duties of the absent director need to be carried out;

Then the Chairperson (if the absent director is the Chief Executive) or the Chief Executive (in any other case) may appoint an acting director as an additional director to carry out the absent director's duties temporarily.

5.2 The acting director shall be an Executive Director for the purposes of the 2006 Act. They shall be responsible for their own acts and defaults and shall not be deemed to be the agent of the absent director.

5.3 For any period in which an acting director holds office, having been appointed under paragraph 9 of this Annex, the absent director shall not exercise the duties and powers of an Executive Director.

5.4 The acting director shall vacate office as soon as the absent director returns to office or, if earlier, the date on which the person entitled to appoint them under paragraph 9 notifies them that they are no longer to act as an acting director.

## **6. Vacant Positions**

6.1 If:

(a) an Executive Director post is vacant, and

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

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

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

6.3 The interim director shall vacate office on the appointment of a permanent postholder or, if earlier, the date on which the Chairperson (in the case of an interim Chief Executive) or the Chief Executive (in any other case) notifies them that they are no longer to act as an interim director.

## **7. Indemnity**

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

7.2 The Trust may purchase and maintain insurance against this liability for its own benefit and for the benefit of members of the Council of Governors and the Board of Directors and the Secretary.

## **8. Appointment of Chief Executive**

- 8.1 In the event that a new Chief Executive is to be appointed the Chairperson shall convene a joint nominations committee, comprising the Non-Executive Directors and an equal number of Governors, to review the applications for the position and agree a short list of acceptable candidates.
- 8.2 The Chairperson shall invite the Council of Governors to nominate one Governor to be a member of the panel to interview the short-listed candidates.
- 8.3 An appointments committee comprising the Chairperson and the Non-Executive Directors shall receive the recommendation of the interview panel and determine which candidate (if any) is to be appointed.
- 8.4 The appointment shall be submitted for approval at the next general meeting of the Council of Governors.

## **9. Secretary**

- 9.1 The Trust shall have a Secretary, whose function shall be to ensure compliance with proper corporate governance procedures and to support and advise the Board of Directors and the Council of Governors. The Secretary may be an employee but shall not be a Governor or a Director.
- 9.2 The Secretary is to be appointed and removed by the Chairperson and Chief Executive acting jointly.

## **Annex 9 – Schedule of Matters Reserved to the Board**

### **General Enabling Provision**

The Board of Directors may determine any matter for which the Trust has statutory authority, including at its discretion any matter that the Board has delegated to a committee or a director.

### **Matters Reserved to the Board**

The powers and duties set out below in this Annex shall not be delegated by the Board, and shall be exercised only by the Board meeting formally in accordance with section 3 of Standing Orders (SOs).

#### **1. Regulation and Control**

- (a) Approve any proposed amendment to the Constitution or an Annex to the Constitution, to be submitted for approval by the Council of Governors.
- (b) Suspend Standing Orders, subject to SO 3.11.
- (c) Ratify any urgent decision taken by the Chairperson and Chief Executive in accordance with SO 5.2.
- (d) Approve Standing Financial Instructions for the regulation of the Trust's business.
- (e) Approve a Scheme of Delegation of powers from the Board to committees and directors.
- (f) Require and receive the declaration of Board members' interests that may conflict with those of the Trust and determine the extent to which a member may remain involved with a matter under consideration.
- (g) Require and receive the declaration of officers' interests that may conflict with those of the Trust.
- (h) Approve arrangements for dealing with complaints.
- (i) Adopt the structure of the organisation at major divisional/departmental level and the job descriptions of Executive Directors, and approve modifications thereto.
- (j) Define terms of reference and reporting arrangements for all committees and sub-committees that are established by the Board.
- (k) Receive reports from committees, including those that the Trust is required by statute or regulatory authority to establish, and take appropriate action thereon.
- (l) Approve the recommendations of the Board's committees where the committees do not have the relevant powers.
- (m) Approve arrangements relating to the discharge of the Trust's responsibilities as a corporate trustee for funds held on trust.
- (n) Approve arrangements relating to the discharge of the Trust's responsibilities as a bailer for patients' property.
- (o) Authorise the use of the seal.
- (p) Ratify or otherwise any action taken in breach of Standing Orders brought to the Chief Executive's attention in accordance with SO 5.6.

- (q) Determine the action to be taken against any member of the Board who has acted in breach of SOs or Standing Financial Instructions.
- (r) Approve statutory declarations to regulatory bodies in the name of the Trust.

## **2. Appointments/Dismissal**

- (a) Appoint the Senior Independent Director.
- (b) Determine which officer appointments, other than those prescribed in paragraph 22 of the Constitution, have the standing of Executive Director.
- (c) Appoint or remove the members of committees that are directly accountable to the Board.
- (d) Appoint or rescind the appointment of officers as members of outside bodies where their role is to represent the views or intentions of the Trust.
- (e) Approve the appointment and removal of Internal Auditors.

## **3. Strategy, Plans and Budgets**

- (a) Define the strategic aims and objectives of the Trust.
- (b) Approve the Trust's policies and procedures for the management of risk.
- (c) Approve annual income and expenditure budgets and annual capital expenditure budgets.
- (d) Approve any proposal for unbudgeted revenue expenditure, write off of losses or special payment amounting to, or likely to amount to, more than 0.5% of the Trust's annual revenue expenditure budget.
- (e) Approve any proposal for acquisition, disposal or change of use of land and/or buildings.
- (f) Approve any PFI proposals.
- (g) Approve the opening of bank accounts.
- (h) Approve any proposal for a capital investment project amounting to or likely to amount to more than 1% of the Trust's annual revenue expenditure budget.
- (i) Approve any proposal for a contract for provision or procurement of supplies or services of a capital or revenue nature, amounting to or likely to amount to more than 1% of the Trust's annual revenue expenditure budget.
- (j) Approve any proposal for a partnership agreement whereby the Trust makes an arrangement with another body or bodies for joint provision of a service or for other joint activity where benefits and risks are shared.
- (k) Approve any proposal for action on litigation against or on behalf of the Trust.
- (l) Review the use of NHSLA or other risk pooling schemes.

## **4. Annual Reports and Accounts**

- (a) Approve the Trust's Annual Report, Annual Accounts and Statement of Internal Control.
- (b) Approve the Annual Report and Accounts for funds held on trust.

## Annex 10 – Significant Transaction Definition

Significant Transaction means a transaction, as follows:

- 1) Assets – where the gross assets\* subject to the transaction divided by the gross assets of the foundation trust are 10% or greater, or
- 2) Income – where the annual income attributable to the assets or the contract (excluding contracts with NHS bodies commissioning NHS services from the trust) associated with the transaction divided by the annual income of the foundation trust is 10% or greater, or
- 3) Expenditure – where the annual expenditure attributable to the assets or the contract associated with the transaction divided by the annual income of the foundation trust is 5% or greater, or
- 4) Capital – where the gross capital\*\* of the organisation being acquired/divested divided by the total capital\*\*\* of the foundation trust following completion is 10% or greater.

\*Gross assets is the total of fixed assets and current assets

\*\*Gross capital equals the market value of the target's shares and debt securities, plus the excess of current liabilities over current assets

\*\*\* Total capital of the foundation trust equals taxpayers' equity