

**ANNEX 7 OF THE CONSTITUTION**

**ESSEX PARTNERSHIP UNIVERSITY NHS FOUNDATION TRUST**

**STANDING ORDERS FOR THE PRACTICE AND PROCEDURE  
OF THE  
COUNCIL OF GOVERNORS**

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## INTRODUCTION

### Regulatory Framework

Essex Partnership University NHS Foundation Trust (the Trust) is a public benefit corporation. It was established on xxx, following the grant of an application pursuant to Section 56 of the National Health Service Act 2006 (the 2006 Act), by Monitor - Independent Regulator of NHS Foundation Trusts.

The functions of the Trust are conferred by this legislation and the Trust will exercise its functions in accordance with the terms of its provider licence (no: xxx) and all relevant legislation and guidance.

These standing orders add clarity and detail where appropriate. Nothing in these standing orders shall override the Trust's constitution, the National Health Service Act 2006 and the Health & Social Care Act 2012.

The constitution at paragraph 20 requires the Council of Governors to adopt standing orders for the regulation of its proceedings and business. The Trust's standing orders and wider governance arrangements are further supported by various policies and procedures.

The principal place of business of the Trust is The Lodge, The Chase, Wickford, Essex SS11 7XX.

<b>1. INTERPRETATION</b>
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- 1.1 Save as otherwise permitted by law, at any meeting of the Council of Governors the Chair of the Trust shall be the final authority on the interpretation of these standing orders (on which they should be advised by the Trust Secretary)
- 1.2 Any expression to which a meaning is given in the National Health Service Act 2006 or regulations made under it shall have the same meaning in these standing orders and in addition:
- 1.2.1 **2006 Act** means the National Health Service Act 2006 (as amended by the Health and Social Care Act 2012)
- 1.2.2 **2012 Act** means the Health & Social Care Act 2012
- 1.2.3 **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
- 1.2.4 **Board of Directors” or Board or Board Member or Member of the Board** means the Chair, Executive and Non-Executive Directors of the Trust collectively as a body in accordance with the constitution. This term is used interchangeably with the term **Director**
- 1.2.5 **Chair of the Board or Chair of the Trust** means the person appointed under paragraph 28 of the constitution by the Council of Governors to lead the Board of Directors and to ensure that it successfully discharges its responsibility for the Trust as a whole. The expression “the Chair of the Trust” shall be deemed to include the Vice-Chair of the Trust if the Chair is absent from a meeting or is otherwise unavailable
- 1.2.6 **Chief Executive** is the person appointed as the Chief Executive Officer (the Accounting Officer) of the Trust under paragraph 31 of the constitution
- 1.2.7 **Committee** means a committee appointed by the Council of Governors
- 1.2.8 **Committee members** means persons formally appointed by the Council of Governors to sit on or to chair specific committees
- 1.2.9 **Constitution** means the Trust’s constitution which has effect in accordance with Section 56(11) of the 2006 Act
- 1.2.10 **Council of Governors or Council** means the Council of Governors of the Trust as described in paragraphs 14 and 18 of the constitution
- 1.2.11 **Directors** means the Executive and Non-Executive members of the Board of Directors
- 1.2.12 **Executive Director** means a member of the Board of Directors, including the Chief Executive, appointed under paragraph 31 of the constitution
- 1.2.13 **Lead Governor** is the person appointed by the Council of Governors in accordance with Monitor’s *NHS Foundation Trust Code of Governance* (July 2014)

- 1.2.14 **Licence** means the Trust's provider licence (no: xxx) issued by Monitor on xxx
  - 1.2.15 **Monitor** means the body corporate known as Monitor, as part of NHS Improvement, as provided by Section 61 of the 2012 Act
  - 1.2.16 **Motion** means a formal proposition to be discussed and voted on during the course of a meeting
  - 1.2.17 **Non-Executive Director** means a member of the Board of Directors, including the Chair, appointed by the Council of Governors under paragraph 28 of the constitution
  - 1.2.18 **SOs** mean these Standing Orders (for the Council of Governors)
  - 1.2.19 **Trust** means Essex Partnership University NHS Foundation Trust
  - 1.2.20 **Trust Secretary** means a person appointed by the Chair and Chief Executive as the Trust Secretary
  - 1.2.21 **Vice-Chair** means the Non-Executive Director appointed under paragraph 30 of the constitution
  - 1.2.22 **Working days** a day that is not a Saturday or Sunday, Christmas Day, Good Friday or any day that is a bank holiday
- 1.2 Words importing the masculine gender only shall include the feminine gender; words importing the singular shall import the plural and vice-versa
- 1.3 Any reference to an Act shall, where appropriate, include any Act amending or consolidating that Act and any regulation or order made under any such Act.

<b>2. COUNCIL OF GOVERNORS ROLES AND RESPONSIBILITIES</b>
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- 2.1 The purpose of these SOs is to ensure that the highest standards of corporate governance and conduct are applied to all Council meetings and associated deliberations.
- 2.2 The roles and responsibilities of the Council which are to be carried out in accordance with the Trust's constitution, licence and Monitor's *NHS Foundation Trust Code of Governance* (July 2014) (and any subsequent versions) are:

**General Duties**

- 2.2.1 To hold the Non-Executive Directors individually and collectively to account for the performance of the Board, including ensuring that the Board acts so that the Trust does not breach the terms of its licence. "Holding the Non-Executive Directors to account" includes scrutinising how well the Board is working, challenging the Board in respect of its effectiveness, and asking the Board to demonstrate that it has sufficient quality assurance in respect of the overall performance of the Trust, questioning Non-Executive Directors about the performance of the Board and of the Trust and making sure to represent the interests of the Trust's members and of the public in doing so
- 2.2.2 To represent the interests of the members of the Trust and the interests of the public.

**Chair and Non-Executive Directors**

- 2.2.3 To approve the policies and procedures for the appointment and removal of the Chair and/or Non-Executive Directors in accordance with any guidance issued by Monitor and on the recommendation of the Council's Nominations Committee
- 2.2.4 To appoint and remove the Chair and other Non-Executive Directors. The Council should only exercise its power to remove the Chair or any other Non-Executive Directors after exhausting all means of engagement with the Board
- 2.2.5 To approve the policies and procedures for the appraisal of the Chair and Non-Executive Directors on the recommendation of the Council's Remuneration Committee. The performance of Non-Executive Directors should be subject to regular appraisal and review. All Non-Executive Directors should be submitted for re-appointment at regular intervals. The Council should ensure planned and progressive refreshing of the Non-Executive Directors
- 2.2.6 To decide the remuneration, allowances and other terms of office for the Chair and Non-Executive Directors having regard to the recommendations of the Council's Remuneration Committee. Professional advisers should be consulted to market test the remuneration levels of the Chair and other Non-Executives Directors at least once every three years and when there is a material change to the remuneration of the Chair or another Non-Executive Director.

**Chief Executive**

- 2.2.7 To approve the appointment of the Chief Executive of the Trust.

### **Auditors**

- 2.2.8 To approve the criteria for the appointment, removal and re-appointment of the auditor
- 2.2.9 To appoint, remove and reappoint the auditor having regard to the recommendation of the Trust's Audit Committee.

### **Strategy Planning**

- 2.2.10 To provide feedback to the Board on the development of the strategic direction of the Trust, as appropriate
- 2.2.11 To collaborate with the Board in the development of the Trust's forward plan
- 2.2.12 Where the forward plan contains a proposal that the Trust will carry out activities other than the provision of goods and services for the purpose of the NHS in England, to determine whether it is satisfied that the carrying out 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 notify its determination to the Board
- 2.2.13 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 purpose of the NHS in England, approve such a proposal
- 2.2.14 To approve entering into any significant transactions (as defined under paragraph 49 and Annex 9 of the constitution) in accordance with the 2006 Act and the constitution
- 2.2.15 To approve proposals from the Board for merger, acquisition, dissolution or separation in accordance with 2006 Act and the constitution
- 2.2.16 When appropriate, to make recommendations for the revision of the constitution and approve any amendments to the constitution in accordance with the 2006 Act and the constitution
- 2.2.17 To receive the Trust's annual accounts, any report of the auditor on them, and the annual report at a general meeting of the Council.

### **Representing Members and the Public**

- 2.2.18 To prepare and from time to time review the Trust's membership engagement strategy and policy
- 2.2.19 To notify Monitor, via the Lead Governor, if the Council is concerned that the Trust is at risk of breaching the terms of its licence, and if these concerns cannot be resolved at local level
- 2.2.20 To report to the members annually on the performance of the Council
- 2.2.21 To promote membership of the Trust and contribute to opportunities to recruit and engage members in accordance with the membership strategy
- 2.2.22 To seek the views of stakeholders and feed back to the Board

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

### 3.0 THE COUNCIL OF GOVERNORS

#### 3.1 Composition of the Council

The composition of the Council shall be in accordance with paragraph 14 of the constitution.

#### 3.2 Appointment of the Chair

The Chair is appointed by the Council as set out in paragraph 28 of the constitution.

#### 3.3 Terms of Office of the Chair

The provisions governing the period of tenure of office of the Chair are set out in Board of Directors SO 2.8.

#### 3.4 Role of the Chair

3.4.1 The Chair is not a member of the Council. However, under the regulatory framework, he presides at meetings of the Council and has a second or casting vote

3.4.2 Where the Chair has died or has ceased to hold office, or where he is unable to perform his duties as Chair owing to illness or any other cause, the Vice-Chair of the Board shall act as Chair until a new Chair is appointed or the existing Chair resumes his duties, as the case may be; and references to the Chair in these SOs shall, so long as there is no Chair able to perform his duties, be taken to include references to the Vice-Chair.

#### 3.5 Role of the Lead Governor

3.5.1 The Lead Governor shall be appointed by the Council

3.5.2 The Lead Governor will facilitate communication between Monitor and the Council where Governors have concerns about the leadership provided to the Trust by the Board or in circumstances where it would be inappropriate for the Chair to contact Monitor, or vice versa (for example, regarding concerns about the appointment or removal of the Chair)

3.5.3 Having a Lead Governor does not prevent any other Governor from making contact with Monitor directly if they feel this is necessary. For the avoidance of doubt, a person holding the role of Lead Governor shall not assume greater power or responsibility than other Governors. Where the Trust chooses to broaden the Lead Governor's role, the Chair and the Council should agree what powers should be included.

#### 3.6 Termination of Office and Removal of Governors

Paragraph 17 and Annex 6 paragraph 5 of the constitution sets out the period of tenure of office of Governors and provisions relating to the termination or suspension of office of Governors.

#### 3.7 Vacancies Amongst Governors

3.7.1 Where a vacancy arises amongst the appointed Governors, the Trust Secretary shall request that the appointing organisation appoints a replacement

3.7.2 Where a vacancy arises amongst the elected Governors within the first year of their term of office, the Trust Secretary shall offer the next highest polling

candidate in the election for that post the opportunity to assume the vacant office for the unexpired balance of the retiring member's term of office. If that candidate does not wish to fill the vacancy, it will then be offered to the next highest polling candidate and so on until the vacancy is filled.

## **4 MEETINGS OF THE COUNCIL**

4.1 Subject to SOs 4.2.1 and 4.2.2 below and any other provisions of these SOs, the Council may only exercise any powers and make decisions when in formal session. The Council may be advised by committees appointed by the Council but may not devolve any decision making powers to these committees, which, for the avoidance of doubt, shall operate as working groups of the Council.

### **4.2 Admission of the Public and the Press**

4.2.1 The meetings of the Council shall be open to members of the public and the press

4.2.2 Members of the public and the press may be excluded from a meeting for special reasons. Special reasons include for reasons of commercial confidentiality. The Council will resolve that:

*“In accordance with paragraph 34.1 of the constitution and paragraph 13(2) of Schedule 7 of the 2006 Act, the Council of Governors resolves that there are special reasons to exclude members of the public from Part 2 of this meeting having regard to commercial sensitivity and/or confidentiality and/or personal information and/or legal professional privilege in relation to the business to be discussed.”*

4.2.3 The Chair may exclude any person from a meeting of the Council if that person is interfering with or preventing the proper conduct of the meeting

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

4.2.5 Matters discussed at a meeting following the exclusion of the public and representatives of the media shall be confidential to the Council and shall not be disclosed by any person attending the meeting without the consent of the Chair of the meeting

4.2.6 All decisions taken in good faith at a meeting of the Council or of any committee shall be valid even if there is any vacancy in its membership or it is discovered subsequently that there was a defect in the calling of the meeting, or the appointment of the Governors attending the meeting.

### **4.3 Calling Meetings**

4.3.1 Ordinary meetings of the Council shall be held at such times and places as the Council may determine

4.3.2 There shall be not less than four meetings in any year except in exceptional circumstances

4.3.3 Meetings of the Council may be called by the Trust Secretary, or by the Chair. Not less than one-third of the Governors in office can requisition the Trust

Secretary to call a meeting at any time by giving written notice to the Trust Secretary stating the business to be considered at the meeting.

#### **4.4 Notice of Meetings**

- 4.4.1 The Trust Secretary shall give to all Governors at least 10 (ten) working days written notice of the date and place of every meeting of the Council
- 4.4.2 The Trust Secretary will call a meeting at the request of the Chair. The Trust Secretary will call the meeting as soon as reasonably possible after receipt of such a request
- 4.4.3 If the Trust Secretary does not call a meeting of the Council of Governors within ten (10) working days of receiving a requisition from Governors pursuant to SO 4.3.3, the Governors who made the requisition may convene the meeting themselves by giving written notice to all Governors; this notice must be signed by all of the Governors who signed the requisition. A meeting called under this SO may only consider the business set out in the requisition
- 4.4.4 Agendas will be sent to Governors not later than three (3) working days before the meeting and supporting papers, whenever possible, shall accompany the agenda, save in the case of the need to conduct urgent business
- 4.4.5 A notice or other document(s) to be served upon a Governor under these SOs shall be delivered by hand or sent by post to the Governor at the place of residence which he shall have last notified to the Trust, or where sent by email, to the address which he shall have last notified to the Trust as the address to which a notice or other document may be sent by electronic means
- 4.4.6 A notice or other document(s) where delivered by hand or sent by post shall be presumed to have been served on the next working day following the day it was sent and where it was sent by email at the time at which the email is sent
- 4.4.7 Failure to serve notice and supporting papers on any Governor shall not affect the validity of the meeting
- 4.4.8 Save in the case of urgent meetings, for each meeting of the Council a public notice of the time and place of the meeting, and the public part of the agenda, shall be displayed at the Trust's office and on the Trust's internet site for general access at least three working days before the meeting.

#### **4.5 Notice of Urgent Meetings**

- 4.5.1 At the request of the Chair or not less than one-third of Governors, the Trust Secretary shall send written notice of a meeting to all Governors as soon as possible after receipt of such a request. The Trust Secretary shall give Governors as much notice of the meeting as is practicable in light of the urgency of the request
- 4.5.2 If the Trust Secretary fails to call such a meeting within three (3) working days, then the Chair or at least one-third of Governors shall call such a meeting
- 4.5.3 In the case of a meeting called under SO 4.4 or 4.5, the notice shall be signed by the Chair or by at least one-third of Governors in office
- 4.5.4 No business at a meeting called under SO 4.4 or 4.5 shall be transacted at that meeting other than that specified in the notice. Agendas will be sent to

Board members three (3) working days before the meeting and supporting papers, shall accompany the agenda, save in the case of urgent meetings

4.5.5 In the case of a meeting called under SOs 4.4 and 4.5 failure to serve such a notice on more than three (3) Governors will invalidate the meeting.

#### 4.6 **Setting the Agenda**

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

4.6.2 A Governor desiring a matter to be included on an agenda shall make his request in writing to the Chair at least seven (7) working 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 (ten) working days before a meeting may be included on the agenda at the discretion of the Chair.

#### 4.7 **Motions**

4.7.1 **Notices of motion:** A Governor desiring to move or amend a motion shall send a written notice thereof at least seven (7) working days before the meeting to the Chair who shall insert in the agenda for the meeting all notices so received subject to the notice being permissible under the appropriate regulations. This SO shall not prevent any motion being moved during the meeting, without notice on any business mentioned on the agenda

4.7.2 **Withdrawal of motion or amendment:** A motion or amendment once moved and seconded may be withdrawn by the proposer with the concurrence of the seconder and the consent of the Chair

4.7.3 **Motion to Rescind a Resolution:** Notice of motion to amend or rescind any resolution (or the general substance of any resolution) which has been passed within the preceding six calendar months shall bear the signature of the Governor who gives it and also the signature of four other Governors. Such notice shall be sent to the Chair at least 10 (ten) working days before the meeting, who shall insert it in the agenda for the meeting. When any such motion has been disposed of by the Council, it shall not be competent for any member other than the Chair to propose a motion to the same effect within six months. However, the Chair may do so if he considers it appropriate

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

4.7.5 When a motion is under discussion or immediately prior to discussion, it shall be open to a Governor to move one of the following motions:

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

provided that in the case of sub-paragraphs denoted by \* above and to ensure objectivity, motions may only be put by a Governor who has not previously taken part in the debate

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

**4.8 Petitions**

Where a petition has been received by the Trust not less than 10 (ten) working days before a meeting of the Council, the Chair of the Council shall include the petition as an item for the agenda of the next meeting of the Council.

**4.9 Chair of Meeting**

4.9.1 At any meeting of the Council the Chair, if present, shall preside. If the Chair is absent from the meeting, the Vice-Chair or another Non-Executive Director, if there is one present, shall preside

4.9.2 If the Chair, Vice-Chair and all Non-Executive Directors are absent, the Lead Governor, if present, shall preside. If the Lead Governor is not present, such Governor to be appointed from amongst the Council present shall preside.

**4.10 Chair's Ruling**

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

**4.11 Record of Attendance**

4.11.1 The names of the Chair and Governors present at a meeting shall be recorded in the minutes. Board Directors who attend a meeting will be recorded in the minutes as 'in attendance'

4.11.2 Governors who are unable to attend a Council meeting should advise the Trust Secretary in advance of the meeting so that their apologies may be submitted

4.11.3 A meeting of the Council refers to officers being physically present or officers being present via the use of technology, as defined in SO 4.12.6.

**4.12 Quorum**

4.12.1 The quorum for every meeting of the Council shall be one-third of the total number of Governors in office on the date of the meeting, a majority of whom must be Public Governors

4.12.2 If at the time of the meeting no quorum is present:

- (a) The Chair shall announce a 30 minute delay
- (b) If after the delay a quorum is present, the meeting shall proceed
- (c) If a quorum is not present after the delay, the meeting shall stand adjourned to the same day in the next week at the same time and place or to such a time and place as the Chair shall determine and a notice of the adjourned meeting shall be circulated to Council members. When the meeting reconvenes, if a quorum is not present within half an hour of the time fixed for the start of the adjourned

meeting, the number of Governors present during the meeting is to be a quorum

- 4.12.3 Where during a meeting of Council a quorum is no longer present:
- (a) The Chair shall announce a five (5) minute delay
  - (b) If after the delay there remains no quorum, the Council meeting shall be adjourned
- 4.12.4 Where the Council is adjourned under SO 4.12.3(b), the Trust Secretary shall list the uncompleted business from the meeting as the first items for consideration at the next following meeting of Council
- 4.12.5 If a Governor has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of the declaration of a conflict of interest, he shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or 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
- 4.12.6 Governors may participate (and vote) in its meetings by telephone, teleconference, video or computer link in accordance with SO 4.19 below. Participation in a meeting in this manner shall be deemed to constitute presence in person at the meeting.

#### 4.13 **Voting and Decisions**

- 4.13.1 At the end of a discussion on business not subject to a decision, the Chair may summarise the view of the Council for recording in the minutes
- 4.13.2 On any matter requiring a decision, Council shall determine its position by voting
- 4.13.3 Subject to statutory or constitutional requirements, a decision of the Council is reached by a majority of Governors present and voting. Votes in abstention shall not be counted in determining a majority. In the case of the number of votes for and against a motion being equal, the Chair of the meeting shall have a second or casting vote. No resolution can be passed if it is opposed by all of the Public Governors present and voting
- 4.13.4 In no circumstances may an absent Governor vote by proxy. Absence is defined as being absent at the time of the vote
- 4.13.5 All questions put to the vote shall, at the discretion of the Chair of the meeting, be determined by oral expression or by a show of hands
- 4.13.6 On the request of the one-third of the Governors present, a recorded vote shall be taken:
- (a) The Trust Secretary will call the names of all Governors
  - (b) Each Governor shall declare their vote as 'In Favour', 'Against' or 'Abstain'
  - (c) The vote of each Governor shall be recorded in the minutes accordingly

- 4.13.7 On the request of the majority of Governors present at the meeting, a vote may be taken by secret ballot:
- (a) Each Governor shall be issued with a ballot paper allowing a vote of 'In Favour', 'Against' or 'Abstain'
  - (b) Each Governor shall have the opportunity to vote in secret
  - (c) The Trust Secretary shall count the ballots, and record the number of votes cast for each option on the minutes
  - (d) Governors may not record their vote in the minutes if a secret ballot is taken.

**4.14 Voting by Paper Ballot**

- 4.14.1 If the Chair of the Trust calls an extraordinary meeting of the Council he may, subject to SO 4.16.2 below, determine that any Governor may cast his vote on the matter(s) to be dealt with at the meeting by paper ballot in accordance with the process set out at SOs 4.16.3 - 4.16.5 (inclusive) below
- 4.14.2 The Chair may only determine that Governors may cast their vote by paper ballot on any matter where this is compatible with the 2006 Act
- 4.14.3 Where the Chair makes a determination pursuant to SO 4.14.1 in respect of any extraordinary meeting of the Council, the Trust Secretary shall circulate a ballot paper to all of the Governors together with the papers for the meeting
- 4.14.4 Any Governor may cast his vote at the meeting or by:
- (a) marking the ballot paper, in accordance with the instructions on the ballot paper, to show how he wishes to vote
  - (b) subject to SO 4.14.6, signing the ballot paper
  - (c) returning the ballot paper to the Trust Secretary so that it arrives before the date and time stipulated on the ballot paper
- 4.14.5 Governors must return the ballot paper by hand, by email or by post. Any ballot paper received on or after the date and time stipulated shall be rejected
- 4.14.6 If a Governor returns a ballot paper to the Trust Secretary by email, the ballot paper does not have to be signed by the relevant Governor provided that it is returned from an email address that the Governor has previously notified to the Trust Secretary. Any such notification must be in writing and must be signed by the relevant Governor
- 4.14.7 Any votes duly cast by paper ballot shall be added to the votes cast by Governors voting in person at the meeting. Unless otherwise provided by the Trust's constitution or by law, every matter shall be determined by a majority of votes cast and, in the case of the number of votes for and against a motion being equal, the Chair of the meeting shall have a second or casting vote. No resolution can be passed if it is opposed by all of the Public Governors voting, whether at the meeting or by paper ballot
- 4.14.8 The Trust Secretary shall ensure that the Trust keeps a record, in writing, of all ballot papers for at least six (6) years from the date of the meeting in respect of which the votes were cast.

**4.15 Prevention of Disorder at a Meeting**

If there is disorder in the public gallery at a meeting of the Council:

- 4.15.1 The Chair may direct those causing the disorder to leave the meeting, and they shall thereupon leave and not return to the meeting
- 4.15.2 The Chair may suspend the meeting to a stated time (not longer than 30 minutes from the time of the suspension) to allow order to be restored
- 4.15.3 If those causing disorder refuse to comply with the Chair's direction, the Chair may move *that the public gallery be cleared to allow the Council to proceed in proper order*
- 4.15.4 A motion under SO 4.15.3 shall be voted on immediately and without debate
- 4.15.5 If Council agrees to a motion under SO 4.15.3, the Chair shall suspend proceedings until the public gallery is cleared; the gallery shall remain cleared for the remainder of the meeting, unless the Council shall otherwise decide.

**4.16 Written Resolution Process**

- 4.16.1 Subject to SO 4.16.2, the Council may use the process for adopting a written resolution set out in this SO 4.16 to enable it to transact business between meetings of the Council. The process for adopting a written resolution shall not be used to replace meetings of the Council
- 4.16.2 The Council may only use a written resolution for transacting business where this is compatible with the 2006 Act.

**Proposing written resolutions**

- 4.16.3 At the Chair's request, the Trust Secretary shall propose a written resolution to the Governors
- 4.16.4 A written resolution is proposed by giving notice of the proposed resolution to the Governors. Such notice shall stipulate:
  - (a) the proposed resolution; and
  - (b) the long-stop date by which the written resolution is to be adopted, which shall be not less than ten (10) days from the date the written resolution is dispatched by the Trust Secretary
  - (c) Notice of a proposed written resolution must be given in writing to each Governor. Notice by email or post is permitted.

**Adopting written resolutions**

- 4.16.5 Unless otherwise provided by the Trust's constitution or by law and subject to SO 4.16.7 below, a proposed written resolution shall be adopted when it has been signed and returned to the Trust Secretary by hand, by email or by post by a majority of the Governors
- 4.16.6 If a Governor returns a written resolution to the Trust Secretary by email, the written resolution does not have to be signed by the relevant Governor provided that it is returned from an email address that the Governor has previously notified to the Trust Secretary. Any such notification must be in writing and must be signed by the relevant Governor
- 4.16.7 For the avoidance of doubt, the proposed written resolution shall lapse if it has not been returned by the requisite number of Governors pursuant to SO 4.16.6 above, by the longstop date

- 4.16.8 Once a written resolution has been adopted, it shall be treated as if it had been a decision taken at a Council of Governors' meeting in accordance with these SOs
- 4.16.9 The Trust Secretary shall ensure that the Trust keeps a record, in writing, of all written resolutions for at least six (6) years from the date of their adoption.
- 4.17 Meetings: Electronic Communication**
- 4.17.1 In this SO, 'communication' and 'electronic communication' shall have the meanings as set out in the Electronic Communications Act 2000 or any statutory modification or re-enactment thereof
- 4.17.2 A Governor in electronic communication with the Chair and all other parties to a meeting of the Council or of a committee of the Council shall be regarded for all purposes as being present and personally attending such a meeting provided that, and only for so long as, at such a meeting he has the ability to communicate interactively and simultaneously with all other parties attending the meeting including all persons attending by way of electronic communication
- 4.17.3 A meeting at which one or more of the Governors attends by way of electronic communication shall be deemed to be held at such place at which the Chair is physically present
- 4.17.4 Meetings held in accordance with this SO are subject to SO 12 (Quorum). For such a meeting to be valid, a quorum must be present and maintained throughout the meeting
- 4.17.5 The minutes of a meeting held in this way must state that it was held (whether wholly or partly) by electronic communication and that the Governors were all able to hear each other and were present throughout the meeting.
- 4.18 Waiver or Suspension of Standing Orders**
- 4.18.1 Except where this would contravene any statutory provision or any guidance issued by Monitor or the rules relating to the Quorum, any one or more of the SOs may be waived at any meeting (for any specified period of time), provided that at least half of the whole number of the members of the Council are present at the meeting and that a majority of those present vote in favour of the waiver
- 4.18.2 A decision to suspend these SOs shall be recorded in the minutes of the meeting and a separate record of matters discussed relating to the waiver of the SOs shall be made and shall be available to the Chair and members of the Council
- 4.18.3 No formal business may be transacted while SOs are suspended
- 4.18.4 The Board Audit Committee shall review every decision to waive the SOs.
- 4.19 Minutes**
- 4.19.1 The minutes of the proceedings of a meeting shall be drawn up and submitted for agreement at the next meeting where they will be signed by the person presiding at it

- 4.19.2 No discussion shall take place upon the minutes except upon their accuracy or where the Chair considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the next meeting
- 4.19.3 Minutes shall be retained in the Trust Secretary's office
- 4.19.4 Minutes shall be circulated in accordance with Governors' wishes. Where providing a record of a public meeting the minutes shall be made available to the public.
- 4.20 **Additional Powers**
- 4.20.1 The Council may require one or more of the Directors to attend a Council meeting to obtain information about the Trust's performance of its functions or the directors' performance of their duties, and to help the Council to decide whether to propose a vote on the Trust's or Directors' performance
- 4.20.2 The Trust may choose to involve Governors in hospital/service visits or volunteering. However, Governors acknowledge that they do not have a right to inspect Trust property or services and they are not under a duty to meet patients and conduct quality reviews
- 4.20.3 Governors may refer a question concerning whether the Trust has failed, or is failing, to act in accordance with its constitution, or Chapter 5 of the 2006 Act to the Panel for Advising Governors appointed by Monitor under the 2006 Act.
- 4.21 **Variation and Amendment of Standing Orders**
- 4.21.1 Any variation of these SOs shall not constitute a variation of the constitution. These SOs shall be amended only if:
- (a) unless proposed by the Chair, a notice of motion under SO 4.7 has been given; and
  - (b) not fewer than half of the Trust's Governors vote in favour of amendment; and
  - (c) at least half of the Governors are present at the meeting at which the amendment is considered; and
  - (d) the variation proposed does not contravene a statutory provision or requirement, condition or notice issued by Monitor; and
  - (e) the amendment is approved by the Council.

<b>5 ARRANGEMENTS FOR THE EXERCISE OF COUNCIL FUNCTIONS</b>
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- 5.1 The Council may not delegate its functions to any committee of the Council. Subject to the constitution and any requirements of Monitor, the Council may appoint committees to assist the Council in the proper performance of its functions under the constitution and the regulatory framework, consisting wholly of the Chair and members of the Council.
- 5.2 A committee appointed under this SO 5 may, subject to such requirements, conditions or notices as may be given by Monitor or such directions as may be issued by the Council, appoint sub-committees consisting wholly of members of the committee.
- 5.3 The SOs of the Council, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees established by the Council. In which case

the term “Chair” is to be read as a reference to the chair of the committee as the context permits, and the terms “member of the Council” or “Governor” is to be read as a reference to a member of the committee also as the context permits.

- 5.4 There is no requirement to hold meetings of committees established by the Council in public.
- 5.5 Each such committee shall have such terms of reference and be subject to such conditions (as to reporting back to the Council), as the Council shall decide and shall be in accordance with the regulatory framework and any requirement, condition, notice or guidance issued by Monitor. Such terms of reference shall have effect as if incorporated into the SOs.
- 5.6 The Council shall approve the terms of reference and appointments to each of the committees which it has formally constituted.
- 5.7 The committees established by the Council shall be such committees as are required to assist the Council in discharging its responsibilities.
- 5.8 A Governor and/or a member of a committee of the Council and/ or any non-Governor shall not disclose a matter dealt with by, or brought before, the Council or a committee of the Council without the permission of the Council or such committee (as applicable) until such matter shall have been concluded or in the case of such committee, until the committee shall have reported to the Council.
- 5.9 A Governor or a non-Governor in attendance at a committee or of a meeting of the Council shall not disclose any matter dealt with by the committee or the Council, notwithstanding that the matter has been reported or concluded, if the Council or committee resolves that it is confidential.
- 5.10 The Trust Secretary or his deputy or assistant will attend all meetings of the committees in support of them.
- 5.11 Notwithstanding anything in these SOs, the Chair and Governors may meet informally or as a committee of the Council at any time and from time to time, and shall not be required to admit any member of the public or any representative of the media to any such meeting or to send a copy of the agenda for that meeting or any draft minutes of that meeting to any other person or organisation. For the avoidance of doubt, no business shall be conducted at such meetings.

## **6 PREVENTION OF CONFLICTS OF INTEREST**

### **6.1 Declaration of Interests**

- 6.1.1 The Trust recognises that, as volunteers, Governors may have private interests that could conflict with those of the Trust. It is the responsibility of Governors to ensure that any potential conflicts of interest are registered and declared at meetings in accordance with this SO and paragraph 22 of the constitution
- 6.1.2 Governors must declare interests which are relevant and material to the Council. All existing Governors should declare such interests. Any Governors appointed subsequently should do so on appointment
- 6.1.3 Interests which should be regarded as “relevant and material” are to be interpreted in accordance with any guidance issued by Monitor:

- (a) Directorships, including Non-Executive Directorships held in private companies or public limited companies (which the exception of those of dormant companies)
- (b) Ownership or part-ownership of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS
- (c) Majority or controlling shareholdings in organisations likely or possibly seeking to do business with the NHS
- (d) A position of 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) To the extent not covered above, any connection with an organisation, entity or company considering entering into or having entered into a financial arrangement with the Trust, including, but not limited to lenders or banks
- (g) Any other commercial interest in the decision before the meeting

6.1.4 At the time Governor's interests are declared they should be recorded in the Council register of interests and in the minutes of the relevant meeting at which the declaration is made. Any changes in interests should be declared at the next meeting following the change occurring

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

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

6.1.7 The interests of Governors' spouses or partners if living together, in contracts are to be declared. If Governors have any doubt about the relevance of an interest, this should be discussed with the Chairman. Financial Reporting Standard No 8 (issued by the Accounting Standards Board) specifies that influence rather than the immediacy of the relationship is more important in assessing the relevance of an interest. The interests of partners in professional partnerships including general practitioners should also be considered.

## 6.2 Register of Interests

6.2.1 The Trust Secretary will ensure that a register of interests is established to record formally declarations of interests of Governors. In particular the register will include details of all directorships and other relevant and material interests which have been declared by Governors, as defined in paragraphs 22 of the constitution and SO 6.1.3

6.2.2 The Trust Secretary shall keep these details up to date by means of an annual review of the register, for which Governors will be required to complete a further declaration. It is the responsibility of each Governor to provide an update to the Trust Secretary of their register entry if their interests change

6.2.3 The register will be available to the public and the Trust Secretary will take reasonable steps to bring the existence of the register to the attention of the local population and to publicise arrangements for viewing it

6.2.4 In establishing, maintaining, updating and publicising the register, the Trust shall comply with all guidance issued from time to time by the Monitor.

### 6.3 **Interests of Relatives, Spouses and Partners**

6.3.1 A Governor is required to declare, as if it was their own interest, interests owned or otherwise held by:

- (a) Their spouse or civil partner
- (b) Any person with whom they have a long-term relationship as a couple on a domestic basis
- (c) Their children, step-children or other minors living in the same household as them
- (d) Any parent, grandparent, uncle or aunt living in the same household as them

6.3.2 Where a declaration is made under SO 6.3, the Governor shall declare and the Trust Secretary shall note on the Register:

- (a) The name of the individual having the interest
- (b) Their relationship to the Governor making the declaration.

### 6.4 **Interest of Governors in Contracts**

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

6.4.2 A Governor should also declare to the Trust Secretary any other employment or business or other relationship of his, or of a cohabiting spouse, that conflicts, or might reasonably be predicted could conflict with the interests of the Trust. Interests, employment or relationships declared, are to be entered in a register of Governor's interests.

### 6.5 **Definitions of Interests**

6.5.1 Governors have a general duty to declare all interests, including non-financial ones

6.5.2 Without restricting the scope of SO 6.5.1, Governors should particularly declare:

- (a) All employment relationships
- (b) All self-employments, where the clients have a relationship with the Trust
- (c) All holdings in limited companies where the holding is above 5%
- (d) All positions of responsibility in organisations with an interest in the NHS, including Directorships, Committee office, or similar.

6.6 This SO 6 applies to a committee or sub-committee as it applies to the Council.

## 7 STANDARDS OF BUSINESS CONDUCT

### 7.1 Standards of Conduct

7.1.1 The Council shall agree, from time to time, codes of conduct for the proper execution of the office of Governor

7.1.2 Governors must comply with the Council's *Code of Conduct*, the requirements of the regulatory framework, the constitution and any guidance, requirement condition or notice issued by Monitor.

### 7.2 Canvassing of, and Recommendations by, Members of the Council of Governors in Relation to Appointments

7.2.1 Except in relation to the appointment of a person as a member of the Trust, a Governor shall not solicit for any person any appointment under the Trust or recommend any person for such appointment, but this SO shall not preclude a Governor from giving written testimonial of a candidate's ability, experience or character for submission to the Trust

7.2.2 This SO does not prevent a Governor from contributing to the appointment of a Non-Executive Director to the Trust or the Chief Executive in accordance with the statutory requirements

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

## 8 MISCELLANEOUS

### 8.1 Standing Orders to be given to all Governors

It is the duty of the Trust Secretary to ensure that existing Governors and all new appointees are notified of and understand their responsibilities within these SOs.

### 8.2 Review of Standing Orders

The SOs shall be reviewed annually by the Council. The requirement for review extends to all documents having the effect as if incorporated in the SO.

### 8.3 Potential Inconsistency

In the event of any conflict or inconsistency between these SOs and any of the legislation and guidance listed in these SOs, the legislation shall prevail. In the event of any conflict or inconsistency between these SOs and the licence and/or the constitution, the licence and/or the constitution shall prevail.

## 9 DISPUTE RESOLUTION

9.1 Where there is a dispute between the Council of Governors and the Board of Directors, Governors shall follow the procedure set out in the current *Council of Governors Policy for Engagement with the Board of Directors where there is disagreement and/or concerns regarding performance*.

9.2 Where a dispute arises out of or in connection with the constitution, including the interpretation of these SOs and the procedure to be followed at meetings of the Board, the Trust and the parties to that dispute shall use all reasonable endeavours to resolve the dispute as quickly as possible.

- 9.3 Where a dispute arises that involves the Chair, the dispute shall be referred to the Senior Independent Director who will use all reasonable efforts to mediate a settlement to the dispute.
- 9.4 For the avoidance of doubt, the Trust Secretary shall deal with any membership queries and other similar questions in the first place including any voting or legislation issues and shall otherwise follow a process for resolving such matters in accordance with any procedures agreed by the Board.

<b>10 RELATIONSHIP BETWEEN THE BOARD OF DIRECTORS AND THE COUNCIL OF GOVERNORS</b>
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- 10.1 Governors should discuss and agree with the Board how they will undertake their statutory roles and responsibilities, and any other additional roles, giving due consideration to the circumstances of the Trust and the needs of the local community and emerging good practice.
- 10.2 Governors should work closely with the Board and must be presented with, for consideration, the annual report and accounts (including any report of the auditor on them) and the annual plan at a general meeting. The Governors must be consulted on the development of forward plans for the Trust and any significant changes to the delivery of the Trust's business plan.
- 10.3 The annual report should state how performance evaluation of the Board, its committees, and its Directors, including the Chairman is conducted and the reason why the Trust adopted a particular method of performance evaluation.
- 10.4 The annual report should identify the members of the Council, including a description of the constituency or organisation that they represent, whether they were elected or appointed, and the duration of their appointments. The annual report should also identify the appointed Lead Governor. A record should be kept of the number of meetings of the Council and the attendance of individual Governors and Directors and it should be made available to members on request.
- 10.5 If the Council so desires such a matter as described within SO 11.3 to be included on an agenda, they shall make their request in writing to the Chair at least 10 (ten) working days before the meeting of the Board. The Chair shall decide whether the matter is appropriate to be included on the agenda. Requests made less than 10 (ten) working days before a meeting may be included on the agenda at the discretion of the Chair.
- 10.6 The Council should take the lead in agreeing with the Audit Committee the criteria for appointing, re-appointing and removing external auditors. The Council will need to ensure they have the skills and knowledge to choose the right external auditor and monitor their performance. However, they should be supported in this task by the Audit Committee, which provides information to the Governors on the external auditor's performance as well as overseeing the Trust's internal financial reporting and internal auditing.
- 10.7 If the Council does not accept the Audit Committee's recommendations, the Board should include in the annual report a statement from the Audit Committee explaining the recommendation and should set out reasons why the Council has taken a different position.

10.8 The annual report should describe the process followed by the Council in relation to appointments of the Chair and Non-Executive Directors.