

Medway NHS Foundation Trust

Constitution

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1. Interpretation and definitions

- 1.1 Unless a contrary intention is evident or the context requires otherwise, words or expressions contained in this constitution shall bear the same meaning as in the National Health Service Act 2006 as amended by the Health and Social Care Act 2012 and the Health and Care Act 2022.
- 1.2 Words importing the masculine gender only shall include the feminine gender; words importing the singular shall include the plural and vice-versa.

1 In this constitution:

3	The 2006 Act	Means the National Health Service Act 2006.
	The 2012 Act	Means the Health and Social Care Act 2012.
	The 2022 Act	Means the Health and Care Act 2022.
	Accounting officer/Accountable?? officer	means the person who from time to time discharges the functions specified in paragraph 25 (5) of Schedule 7 to the 2006 Act
	Annual Members Meeting	is defined in paragraph 10 of the constitution
	Auditor	means the person appointed to audit the accounts of the Foundation Trust, who is called the auditor in the 2006 Act
	Board of Directors	means the Board of Directors as constituted in accordance with this constitution
	Constitution	means this constitution and all annexes to it
	Co-opted Governor	means those governors appointed by partners of the Foundation Trust
	Council of Governors	means the Council of Governors as constituted in accordance with this constitution, which has the same meaning as the board of governors in the 2006 Act
	Director	means a member of the Board of Directors
	Elected Governors	means those Governors elected by the public and the classes of the staff constituency

Financial year	means each successive period of 12 months beginning on 1 April
The Trust	means Medway NHS Foundation Trust
Health Service Body	shall have the meaning ascribed to it in Section 65 (1) of the 2006 Act
License	2006 Act means a license issued by NHS England under Section 88 of the Health and Social Care Act 2012
Member	Means a member of the Foundation Trust
NHS Foundation Trust Code of Governance	means the Code of Governance published by NHS England or such similar or further guidance as may be published from time to time
Public Governor	means a Governor elected by the members of one of the public constituencies
Registered dentist	means a registered dentist within the meaning of the Dentists Act 1984
Registered medical practitioner	means a fully registered person within the meaning of the Medicines Act 1983 who holds a licence to practice under that Act
Regulatory framework	means the 2006 Act, the 2012 Act, the constitution and the Trust's licence as granted by NHS England
Secretary	means the Company Secretary of the Foundation Trust or any other person appointed to perform the duties of the Company Secretary, including a joint, assistant or deputy secretary
Significant Transaction	Means investments, divestments or other transactions comprising more than 25% of the assets, income or capital of the NHS foundation Trust in line with NHS England's Compliance Framework.
Staff constituency	means (collectively) those members comprising the staff constituency
Staff governor	means a Governor elected by the members of one of the classes of the staff constituency

2. Name

- 2.1 The name of this foundation Trust is Medway 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, 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, the 2012 Act and the 2022 Act.
- 4.2 The powers of the Trust shall be exercised by the Board of Directors on behalf of the Trust.
- 4.3 Any of these powers may be delegated to a committee of directors or to an executive director.

5. Membership and constituencies

- 5.1 The Trust shall have members, each of whom shall be a member of one of the following constituencies:
- 5.1.1 A public constituency
 - 5.1.2 A staff constituency

6. Application for membership

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

7. Public Constituency

- 7.1 An individual who lives in an area specified in Annex 1 as an area for a public constituency may become or continue as a member of the Trust.
- 7.2 Those individuals who live in an area specified 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.
- 7.4 Membership of a public constituency is subject to Section 9 (Restriction on membership and Termination of Membership).

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 they:
 - 8.1.1 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 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.
- 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 nine descriptions of individuals who are eligible for membership of the Staff Constituency, each description of individuals being specified in 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.
- 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.

- 8.7 Membership of the staff constituency is subject to Section 9 (Restriction on membership and Termination of Membership).

9. Restriction on membership and Termination of membership

- 9.1 An individual who is a member of a constituency or of a class within a constituency, may not while membership of that constituency or class continues, be a member of any other constituency or class.
- 9.2 An individual who ceases to reside in any area specified in Annex 1 shall cease to be a member of the constituency.
- 9.3 A person may not become or continue as a member of the Trust if they;
- 9.3.1 are under 16 years of age;
 - 9.3.2 are detained at one of Her Majesty's prisons;
 - 9.3.3 have had his/her name added to and not removed from a list prepared under the Sexual Offenders Act 1997;
 - 9.3.4 fail or cease to fulfil the criteria for membership of any of the constituencies;
 - 9.3.5 have been involved in an act of violence against staff or other members of the Trust or an act of damage against its property;
 - 9.3.6 have been identified as a vexatious complainant against the Trust;
 - 9.3.7 do not uphold the values of the Trust;
 - 9.3.8 have been previously expelled from membership and have not been subsequently re-admitted by the Council of Governors.
- 9.4 The Trust's decision is final as to whether or not an individual qualifies for membership of the constituency.
- 9.5 A member of the Trust will cease to be a member if they;
- 9.5.1 resign by notice to the Membership Officer;
 - 9.5.2 fail to demonstrate that they wish to continue as a member following enquiries made in accordance with a process approved by the Council of Governors;

9.5.3 dies;

9.5.4 are expelled from membership by a resolution of two-thirds of the Council of Governors. Once expelled no person will be re-admitted as a member unless a resolution to that effect is approved by a resolution of more than half of the Council of Governors.

9.6 It is the responsibility of each member to ensure that they are and remain eligible for membership of the Trust and if a member becomes aware of their ineligibility they should inform the Trust as soon as practicable. However, if the Trust is on notice that a member may be disqualified from membership, the Trust shall make reasonable enquiries to establish the case.

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

10. 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 Model Rules for Elections.

12.2 The Model Rules for Elections, as published from time to time by the Department of Health, form part of this constitution. The Model Election Rules should be read in conjunction with this constitution.

12.3 A subsequent variation of the Model Election Rules by the Department of Health shall not constitute a variation of the terms of this constitution for the purposes of paragraph 41 of the constitution (amendment of the constitution).

12.4 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 three years.
- 13.2 An elected Governor shall be eligible for re-election at the end of his/her three-year term.
- 13.3 An elected Governor shall only be able to serve a maximum of two terms or six years.
- 13.4 An elected Governor shall cease to hold office if they cease to be a member of the constituency or class by which they was elected.
- 13.5 An appointed Governor may hold office for a period of up to three years.
- 13.6 An appointed Governor shall be eligible for re-appointment at the end of his/her three-year term.
- 13.7 An appointed Governor shall only be able to serve a maximum of two terms or six years.
- 13.8 An appointed Governor shall cease to hold office if the appointing organisation withdraws its sponsorship of him/her.

14. Council of Governors - disqualification and removal

- 14.1 A person may not become or continue as a member of the Council of Governors if they have, or are:
 - 14.1.1 been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged.
 - 14.1.2 had a moratorium period under a debt relief order applied (under Part 7A of the Insolvency Act).
 - 14.1.3 made a composition or arrangement with, or granted a Trust deed for, his/her creditors and has not been discharged in respect of it.
 - 14.1.4 within the preceding five years been convicted in the British Isles of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him/her.
 - 14.1.5 failed to attend three general meetings of the Council of Governors in a 12 month period, unless the Council of Governors is satisfied that the absences were due to reasonable causes and that attendance at future meetings will begin again immediately or within a reasonable period of time.
 - 14.1.6 been dismissed within the preceding two years, otherwise than by reasons of redundancy, from employment with a public body (paid or otherwise).
 - 14.1.7 been appointed as an executive or non-executive Director of the

Trust or a Governor, non-executive Director, Chair or Chief Executive of another NHS organisation.

- 14.1.8 the spouse, partner, parent or child of a Governor.
- 14.1.9 a member of a Local Authority's Scrutiny Committee covering health matters.
- 14.1.10 a person who is a medical practitioner and who has been removed from the register of medical practitioners held by the General Medical Council in accordance with the Medical Act 1983, or has been suspended from that register, and not subsequently had his/her name returned to that register.
- 14.1.11 incapable by reason of continuing mental incapacity, illness or injury of managing and administering his/her property and affairs.
- 14.1.12 refused to sign a declaration in the form specified by the nominated Member's Office of the particulars of their qualification to vote as a member and that they are not prevented from being a member.
- 14.1.13 refused to undertake without reasonable cause any training that the Council of Governors requires all Governors to undertake.
- 14.1.14 failed to sign and deliver to the Nominated Officer a statement in the prescribed form confirming acceptance of the Code of Conduct for Governors.
- 14.1.15 any conflicts of interest that may make them unsuitable.
- 14.1.16 fail to disclose any conflict of interest required to be disclosed in meetings of the Council of Governors.
- 14.1.17 a person whose name has been added to and not removed from a list prepared under the Sexual Offences Act 1997.
- 14.1.18 no longer eligible to be a member of a constituency or if appointed, that person is no longer sponsored by the relevant organisation.
- 14.1.19 had their name removed from a relevant list of medical practitioners pursuant to Paragraph 10 of the National Health Service (Performers Lists) Regulations 2004 or Section 151 of the 2006 Act (or similar provision elsewhere), and has not subsequently had their name included in such a list.
- 14.1.20 subject to disqualification under the Company Directors Disqualification Act 1986.
- 14.1.21 been convicted of an offence under the Bribery Act 2010, the modern Slavery Act 2015 or a crime involving dishonesty.
- 14.2 Governors must be at least 16 years of age at the date that they are nominated for election or appointment.

- 14.3 A Governor may resign from office at any time during his/her term of office by giving notice in writing to the Chair such notice specifying the date of resignation.
- 14.4 A Governor may be removed from office by resolution of two-thirds of governors present at a Council of Governors General Meeting in the following circumstances:
- 14.4.1 For any of the reasons listed in section 14.1 above.
 - 14.4.2 They is found to act in way which contravenes the Code of Conduct.
 - 14.4.3 They acts in a way that is incompatible with the values of the Trust or is prejudicial to the reputation of the Trust or the NHS or fails to discharge his/her responsibilities as a Governor.
- 14.5 A staff Governor who is suspended from staff duties for any reason will also be suspended from their role as a Governor for the duration of their suspension. Whilst a staff Governor is under suspension, They cannot attend meetings of the Council of Governors in any capacity, but missing any meetings of the Council of Governors will not count as failure to attend for the purpose of 14.1.5 above

15. Appointment of a Lead Governor

- 15.1 The Trust may appoint a Lead Governor.
- 15.2 The duties of the Lead Governor shall be:
- 15.2.1 To lead the Council of Governors only in circumstances where it is not appropriate for the Chair, the Deputy-Chair / Senior Independent Director or other non- executive Director to do so.
 - 15.2.2 To act as the point of contact for the regulator in circumstances where it would inappropriate for the regulator to contact the Chair.
- 15.3 The Lead Governor shall have no other duties unless agreed otherwise by the Board of Directors and the Council of Governors.
- 15.4 The Lead Governor shall normally hold office for a period of two years

16. Casual Vacancies

- 16.1 A casual vacancy is a vacancy that arises because a Governor does not complete his/her term of office for any reason. A vacancy that arises because the term of office of a governor has expired and they has not been re-elected or re-appointed is not a casual vacancy.
- 16.2 The validity of any act of the Council of Governors is not affected by any vacancy amongst the Council of Governors or by any defect in the appointment of any Governor.

- 16.3 Where there is a casual vacancy of the Council of Governors for whatever reason:

- 16.3.1 Where the vacancy is for an appointed Governor, the appointing organisation will be requested to appoint a replacement to hold office for the remainder of the term in accordance with the agreed appointment processes; and
- 16.3.2 Where the vacancy is for an elected Governor, the next highest polling candidate at the most recent elections to fill the seat will be invited to take up the seat for the remainder of the period of office at which time they may seek re-election.

17. Indemnity

- 17.1 Members of the Council of Governors who act honestly and in good faith will not have to meet out of their personal resources any personal civil liability which is incurred in the execution or purported execution of their official functions, save where they have acted recklessly. Any costs arising in this way will be met by the Trust. The Trust may purchase and maintain insurance against this liability for its own benefit and for the benefit of the members of the Council of Governors.

18. Dispute resolution procedure

- 18.1 The Trust is to establish a dispute resolution procedure in respect of any disputes arising between the Council of Governors and the Board of Directors that shall be approved by both the Council of Governors and the Board of Directors.

19. Council of Governors – duties of Governors

- 19.1 The duties of the Council of Governors as set out in the amendments to the 2006 Act made by the 2012 Act are:
- 19.1.1 To hold the non-executive directors individually and collectively to account for the performance of the Board of Directors. Refer to the Terms of Reference for the Council of Governors for further detail on the mechanisms which enable the Non-Executive Directors to be held to account.
- 19.1.2 To represent the interests of the members of the Trust as a whole and the interests of the public.
- 19.2 The duties of the Council of Governors as set out in the 2006 Act are:
- 19.2.1 To appoint or remove the Chair and the other non-executive directors at a general meeting.
- 19.2.2 Decide the remuneration and allowances, and the other terms and conditions of office, of the non-executive directors.

- 19.2.3 Appoint or remove the auditor at a general meeting.
- 19.2.4 Approve the appointment of a chief executive.
- 19.2.5 Receive the annual accounts, any report of the auditor relating to the annual accounts, and the annual report at a general meeting.
- 19.2.6 Provide their views to the Board of Directors in relation to the forward plan for the Trust.
- 19.2.7 Approve significant transactions.
- 19.2.8 Approve mergers, acquisitions or dissolutions.
- 19.2.9 Consider and vote on amendments to the constitution.
- 19.3 The Trust must take steps to secure that the Governors are equipped with the skills and knowledge they require in their capacity as such.

20. Council of Governors - meetings of Governors

- 20.1 The Chair of the Trust (ie the Chair of the Board of Directors, appointed in accordance with the provisions of paragraph 24) or, in his/her absence, the Deputy Chair (appointed in accordance with the provisions of paragraph 25), shall preside at meetings of the Council of Governors.
- 20.2 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.
- 20.3 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.
- 20.4 The standing orders for the practice and procedure of the Council of Governors, as may be varied from time to time, are attached at Annex 4.

21. Council of Governors - travel expenses

- 21.1 Governors shall not receive remuneration for acting as Governors but the Trust may pay travelling and other expenses to members of the Council of Governors at rates determined by the Board of Directors.

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 Director Chair

- 22.2.2 No fewer than six nor more than seven other non-executive Directors; and
- 22.2.3 A maximum of five executive Directors.
- 22.3 The Chief Executive shall be the Accounting Officer.
- 22.4 One of the Executive Directors shall be the Chief Finance Officer.
- 22.5 One of the Executive Directors is to be a registered medical practitioner or a registered dentist (within the meaning of the Dentists Act 1984).
- 22.6 One of the Executive Directors is to be a registered nurse or a registered midwife.
- 22.7 The Board of Directors should include an appropriate combination of Executive and Non-Executive Directors (and in particular, independent Non-Executive Directors) such that the Non-Executive Directors should be in a majority.
- 22.8 The Board of Directors may appoint suitable persons from Academic institutions or from industry or commerce as Associate Non-Executive Directors as required from time to time to assist the Board and its Committees. The Associate Non-Executive Directors shall not be voting members of the Board nor count towards a quorum and attend only by invitation from the Board.

23. Board of Directors – General Duty

- 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 Trust as a whole and for the public.
- 23.2 The Board of Directors will also have regard to the content of the NHS Foundation Trust Code of Governance 2014 and any future versions.

24. Board of Directors - appointment and removal of Non-Executive Directors, Associate Non-Executive Directors, including the Chair

- 24.1 A person may be appointed as a Non-Executive Director, Associate Non-Executive Director only if:
 - 24.1.1 They are a member of the Public or patient Constituency, or
 - 24.1.2 They are not disqualified by virtue of paragraph 27 below.
- 24.2 The Council of Governors at a general meeting of the Council of Governors shall appoint the Chair of the Trust and the other Non-Executive Directors, Associate Non-Executive Directors, by approval of a majority of those present.
- 24.3 Removal of the Chair or another Non-Executive Director, Associate Non-Executive Director shall require the approval of two-thirds of those present at a Council of Governors' General Meeting.

- 24.4 The appointment and terms of appointment of a Non-Executive Director, Associate Non-Executive Director, including the Chair, will be overseen by a Governors Nominations and Remuneration Committee as set out in Annex 4 of this constitution and will be overseen by the Chair of Council of Governors.
- 24.5 Non-Executive Directors, Associate Non-Executive Director, including the Chair, should be determined as independent on appointment. The Chair's independence on appointment to the role of Chair should consider any previous tenure served as a non-Executive Director. The criteria for independence are set out in the NHS Foundation Trust Code of Governance.
- 24.6 The Council of Governors should keep the independence of Non-Executive Directors and Associate Non-Executive Directors under review. This will predominantly be undertaken by the Governors Nominations and Remuneration Committee, overseen by the Council of Governors.
- 24.7 Non-Executive Directors and Associate Non-Executive Directors should serve a maximum of two three-year terms. Only in exceptional circumstances should a further term of 12 months be granted. If a Non-Executive Director is appointed as Chair through the process described in this Constitution then the term for appointment is reset.
- 24.8 A Governors Nominations and Remuneration Committee overseen by the Chair will review the appointments process in advance of each recruitment process, however this will include as a minimum:
- 24.8.1 A shortlisting and interview panel comprised of four to six Governors.
 - 24.8.2 Inclusion of non-voting panel members at each stage of the process to include an external advisor, the Chief People Officer (or deputy), the Chair or Senior Independent Director, and Company Secretary (or deputy).

25. Board of Directors – appointment of the Deputy Chair

- 25.1 The Non-Executives and the Council of Governors will be consulted by the Chair in relation to the appointment of a Deputy Chair.

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

- 26.1 The Non-Executive Directors shall appoint or remove the Chief Executive.
- 26.2 The appointment of the Chief Executive shall require the approval of a simple majority of the Council of Governors.
- 26.3 The Trust Nominations and Remuneration Committee shall appoint or remove the other Executive Directors.

27. Board of Directors – disqualification

- 27.1 A person may not become or continue as a member of the Board of Directors who:

- 27.1.1 has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged.
- 27.1.2 a moratorium period under a debt relief order applied (under Part 7A of the Insolvency Act 1986).
- 27.1.3 has made a composition or arrangement with, or granted a Trust deed for, his/her creditors and has not been discharged in respect of it.
- 27.1.4 within the preceding five years has been convicted in the British Isles of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him;
- 27.1.5 Is a member of the Council of Governors;
- 27.1.6 Is the spouse, partner, parent or child of a member of the Board of Directors;
- 27.1.7 Is the subject of a disqualification order made under the Company Directors Disqualification Act 1986;
- 27.1.8 is a medical practitioner and who has been removed from the register of medical practitioners held by the General Medical Council in accordance with the Medical Act 1983, or has been suspended from that register, and not subsequently had his/her name returned to that register;
- 27.1.9 In the case of a non-executive Directors they are no longer a member of one of the public or patient constituencies;
- 27.1.10 has within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with a health service body;
- 27.1.11 has had a tenure of office as a Chair or as a member or Director of a health service body 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;
- 27.1.12 In the case of a non-executive Director they have refused without reasonable cause to fulfil any training requirement established by the Board of Directors;
- 27.1.13 has refused to sign and deliver to the Nominated Officer a statement in the prescribed format confirming acceptance of a Code of Conduct for Directors.

28. Board of Directors – meetings

- 28.1 Meetings of the Board of Directors shall be held in public unless the Board determines otherwise.
- 28.2 Before holding a meeting in public, 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 in public, the Board of Directors must send a copy of the minutes of the meeting to the Council of Governors.
- 28.3 The standing orders for the practice and procedure of the Board of Directors are attached at Annex 5.

29 Board of Directors – conflicts of interest of Directors

- 29.1 The duties that a Director of the Trust has by virtue of being a director include the 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. 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:

- 29.3.1 The duty referred to in sub-paragraph 29.1 is not infringed; if
- 29.3.2 The situation cannot reasonably be regarded as likely to give rise to a conflict of interest; or
- 29.3.3 The matter has been authorized in accordance with the constitution
- 29.3.4 The duty referred to in sub-paragraph 29.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- 29.3.5 In sub-paragraph 29.2, “third party” means a person other than:
 - 29.1.1.1 The Trust
 - 29.1.1.2 A person acting on its behalf
- 29.3.6 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.
- 29.3.7 If a declaration under this paragraph proves to be, or becomes, inaccurate, incomplete, a further declaration must be made.
- 29.3.8 Any declaration required by this paragraph must be made before the Trust enters into the transaction or arrangement.
- 29.3.9 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.
- 29.3.10 A director need not declare an interest:
 - 29.1.1.3 If it cannot reasonably be regarded as likely to give rise to a conflict of interest.

29.1.1.4 If, or the extent that, the directors are already aware of it.

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

- By a meeting of the Board of Directors, or
- By a committee of the directors appointed for the purpose under the constitution

30 Board of Directors – remuneration and terms of office

30.1 The Council of Governors at a general meeting of the Council of Governors shall decide the remuneration and allowances, and the other terms and conditions of office, of the Chair and the other non-executive Directors.

30.2 The Trust Nomination and Remuneration Committee shall decide the remuneration and allowances, and the other terms and conditions of office, of the Chief Executive and other executive directors.

31 Registers

31.1 The Trust shall have:

31.1.1 a register of members showing, in respect of each member, the constituency to which They belongs and, where there are classes within it, the class to which They belongs;

31.1.2 A register of members of the Council of Governors;

31.1.3 A register of interests of Governors;

31.1.4 A register of Directors and Non-Executive Directors; and

31.1.5 A register of interests of the Directors and Non-Executive Directors.

32 Admission to and removal from the registers

32.1 The Secretary will oversee the arrangements for additions and removals from the registers.

33 Registers - inspection and copies

33.1 The Trust shall make the registers specified in paragraph 31 above available for inspection by members of the public, except in the circumstances set out at paragraph 34 or as otherwise prescribed by regulations.

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

33.2.1 Any other member of the Trust, if they so requests.

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

33.3.1 They are to be available for inspection free of charge at all

reasonable times; and

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

33.4 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.

34 Documents available for public inspection

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

- i. A copy of the current constitution;
- ii. A copy of the latest annual accounts and of any report of the auditor on them;
- iii. A copy of the latest annual report;

34.2 All documents required by paragraphs 22(1)(g) to 22(10)(p) inclusive of Schedule 7 to the 2006 Act (relating to special administration) shall be available for inspection by members of the public free of charge at all reasonable times.

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

34.4 If the person requesting a copy or extract under this paragraph is not a Member of the Trust, the Trust may impose a reasonable charge for providing the copy or extract.

35 Auditor

35.1 The Trust shall have an auditor.

35.2 The Council of Governors shall appoint or remove the auditor at a general meeting of the Council of Governors by approval of a simple majority of those present.

36 Audit and Risk committee

36.1 The Trust shall establish a committee of non-executive Directors as an Audit and Risk Committee to perform such monitoring, reviewing and other functions as are appropriate.

37 Annual accounts

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

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

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

37.4 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.

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

38 Annual report, forward plans and non-NHS work

- 38.1 The Trust shall prepare an Annual Report and send it to NHS England.
- 38.2 The Trust shall give information as to its forward planning in respect of each financial year to NHS England and the Integrated Care Board.
- 38.3 The document containing the information with respect to forward planning referred to in paragraph 38.5 shall be prepared by the directors.
- 38.4 In preparing the document, the directors shall have regard to the views of the Council of Governors.
- 38.5 Each forward plan must include information about –
- i. 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
 - ii. The income it expects to receive from doing so.
- 38.6 Where a forward plan contains a proposal that the Trust carry on an activity of a kind mentioned in sub-paragraph 38.5.1 the Council of Governors must:
- i. 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
 - ii. Notify the directors of the Trust of its determination.
- 38.7 A Trust which 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 may implement the proposal only if more than half of the members of the Council of Governors of the Trust voting approve its implementation.

39 Presentation of the Annual Accounts and Reports to the Governors and members

- 39.1 The following documents are to be presented to the Council of Governors at a general meeting of the Council of Governors:
- i. The annual accounts
 - ii. Any report of the auditor on them
 - iii. The annual report

39.2 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.

39.3 The Trust may combine a meeting of the Council of Governors with the Annual Members' Meeting.

40 Instruments

40.1 The Trust shall have a seal.

40.2 The seal shall not be affixed except under the authority of the Company Secretary or the Chief Executive of the Trust.

41 Amending the Constitution

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

- i. More than half of the members of the Council of Governors of the Trust voting approve the amendments, and
- ii. More than half of the members of the Board of Directors of the Trust voting approve the amendments.
- iii. Amendments made under paragraph 41.1 take effect as soon as the conditions in that paragraph are satisfied, but the amendment has no effect in so far as the constitution would, as a result of the amendment, not accord with schedule 7 of the 2006 Act.
- iv. Where an amendment is made to the constitution in relation 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):
 1. At least one member of the Council of Governors must attend the next Annual Members' Meeting and present the amendment, and
 2. The Trust must give the members an opportunity to vote on whether they approve the amendment.
 3. If more than half of the members voting approve the amendment, the amendment continues to have effect; otherwise, it ceases to have effect and the Trust must take such steps as are necessary as a result.
 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.

42 Mergers etc, significant transactions

- 42.1 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.
- 42.2 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 transition.
- 42.3 In paragraph 42.2, the following words have the following meanings:
- i. “Significant Transaction” means a transaction which meets all of any one of the tests below:
 1. The fixed asset test; or
 2. The turnover test; or
 3. The gross capital test (relating to acquisitions or divestments).
 - ii. The fixed asset test is met if the assets which are subject of the transaction exceed 25% of the fixed assets of the Trust.
 - iii. The turnover test is met if, following the completion of the relevant transaction, the income of the Trust will increase or decrease by more than 25%.
 - iv. The gross capital test is met if the gross capital of the company or business being acquired or divested represents more than 25% of the capital of the Trust following completion (where “gross capital” is the market value of the relevant company or business shares and debt securities, plus the excess of current liabilities over current assets, and the Trust’s capital is determined by reference to its balance sheet).
 - v. For the purposes of calculating the tests in this paragraph 42, figures used to classify assets and profits must be the figures shown in the latest published audited consolidated accounts.
 - vi. A transaction:
 1. Includes all agreements (including amendments to agreements) entered into by the Trust.
 2. Excludes a transaction in the ordinary course of business (including the renewal, extension or entering into an agreement in respect of healthcare services carried out by the Trust).
 3. Excludes any agreement or changes to healthcare services

carried out by the Trust following a reconfiguration of services led by the commissioners of such services.

4. Excludes any grant of public dividend capital or the entering into of a working capital facility or other loan, which does not involve the acquisition or disposal of any fixed asset of the Trust.

ANNEX 1 - THE PUBLIC CONSTITUENCY

1.1 The Trust has three public constituencies. Members of the public shall be eligible for membership of the Public Constituencies as shown in the table below:

Area	Minimum number of members
Medway	70
Swale	30
Rest of England and Wales	10

The overall number of public members will not fall below 400 in total nor below the minimum in each area identified in this Annex.

ANNEX 2 - THE STAFF CONSTITUENCY

2.1 The minimum number of Members for the Staff Constituency is set out below:

Staff Constituency	Minimum number
Total	1,950

ANNEX 3 - COMPOSITION OF COUNCIL OF GOVERNORS

3.1 The Council of Governors will consist of 25 Governors, which shall comprise of both elected Governors and appointed Governors as set out below:

Appointed Governors	Number
Local Authority (represented by a member of the Kent Health and Wellbeing Board)	1
Local Authority (represented by a member of the Medway Health and Wellbeing Board)	1
Local Authority – Swale Borough Council	1
University of Kent	1
Canterbury Christ Church University	1
University of Greenwich	1
Charity Representative (League of Friends)	1
Elected Governors (staff members)	Number
Staff Members	5
Elected Governors	Number
Medway	9
Swale	4
Rest of England and Wales	1

ANNEX 4 - STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE COUNCIL OF GOVERNORS

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- 9. Disputes between the Council of Governors and Board of Directors**
- 10. Variation and Amendment of Standing Orders**

1. **STATUTORY AUTHORITY**

- 1.1. Medway NHS Foundation Trust is a public benefit corporation established under the NHS Act 2006 and authorised by NHS England on 1 August 2006 to act as an NHS Foundation Trust.
- 1.2. The Constitution requires the Council of Governors to adopt Standing Orders for the regulation of its procedures and business. These Standing Orders have been agreed by the Board of Directors and the Council of Governors and have been approved by NHS England.
- 1.3. Governors are required to comply with the requirements of these Standing Orders at all times.

2. **INTERPRETATION**

- 2.1. Save as permitted by law, at any meeting the Chair 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 Trust Secretary).
- 2.2. Words importing the masculine gender only shall include the feminine gender and words importing the singular shall import the plural and vice-versa.
- 2.3. Any expression to which a meaning is given in the Health Service Acts or in the Regulations or Orders made under the Acts shall have the same meaning in this interpretation and in addition:
 - a) **Accounting OFFICER** shall be the officer responsible and accountable for funds entrusted to the Trust. They shall be responsible for ensuring the proper stewardship of public funds and assets. For this Trust it shall be the Chief Executive.
 - b) **BOARD** means the Board of Directors, formally constituted in accordance with this Constitution and consisting of a Chair, and Non-executive Directors, appointed by the Council of Governors and the Executive Directors, appointed by the Non-executive Directors and (except for his/her own appointment) by the Chief Executive.
 - c) **BUDGET** shall mean a resource, expressed in financial terms, proposed by the Board for the purpose of carrying out, for a specific period, any or all of the functions of the Trust.
 - d) **CHAIR** is the person appointed by the Council of Governors as a Non-Executive Chair to lead the Board of Directors, and Council of Governors, to ensure it successfully discharges its overall responsibility for the Trust as a whole.
 - e) **CHIEF EXECUTIVE** shall mean the Accounting officer of the Trust.
 - f) **COMMITTEE OF THE COUNCIL OF GOVERNORS** means a committee formed by the Council of Governors with specific

Terms of Reference, chair and membership.

- g) **COMMITTEE OF THE BOARD** means a committee formed by the Board with specific Terms of Reference, Chair and Membership.
- h) **DIRECTOR** means a person appointed to the Board of Directors
- i) **DIRECTOR OF FINANCE** shall mean the Chief Finance Officer of the Trust who will ensure compliance with Standing Financial Instructions.
- j) **FUNDS HELD ON TRUST** shall mean those funds which the Trust holds at its date of incorporation, receives on distribution by statutory instrument, or chooses subsequently to accept under powers derived under Schedule 3 and 4 para 14.1c National Health Service Act 2006. Such funds may or may not be charitable.
- k) **GOVERNOR** means a person elected or appointed to the Council of Governors.
- l) **COUNCIL OF GOVERNORS** means the Council of Governors, formally constituted in accordance with this Constitution meeting in public and presided over by the Chair.
- m) **MEMBER** means a person registered as a member of one of the constituencies of the Trust as outlined in this Constitution.
- n) **NHS ENGLAND** is the body corporate known as NHS England under the 2022 Act.
- o) **MOTION** means a formal proposition to be discussed and voted on during the course of a meeting.
- p) **NOMINATED OFFICER** means an officer charged with the responsibility for discharging specific tasks within Standing Orders in line with the Health Acts.
- q) **NON-EXECUTIVE DIRECTOR** is a person appointed by the Council of Governors to be a member of the Board of Directors. This includes the Chair of the Trust.
- r) **OFFICER** means an employee of the Trust
- s) **SOs** means Standing Orders
- t) **SFIs** means Standing Financial Instructions
- u) **TRUST** means Medway NHS Foundation Trust.
- v) **TRUST SECRETARY** this role will act as independent adviser to the Board and NHS England the Trust's compliance with its terms of authorisation and constitution.

- w) **DEPUTY-CHAIR** means the Non-Executive Director appointed by the Council of Governors to carry out the duties of the Chair if they is absent for any reason.

3. COMPOSITION OF THE COUNCIL OF GOVERNORS

- 3.1 The composition of the Council of Governors shall be in accordance with the Trust's Constitution.

3.2 Role of the Chair of the Trust

The Chair shall not be a member of the Council of Governors however, in accordance with the regulatory framework; they will preside over meetings of the Council of Governors.

3.3 Role of the Deputy-Chair of the Trust

In respect of meetings of the Council of Governors, where the Chair has died or has otherwise ceased to hold office or where they have been unable to perform his/her duties as a Chair owing to illness, absence from England and Wales or any other cause, references to the Chair shall, so long as there is no Chair able to perform his/her duties, be taken to include to the Deputy-Chair.

3.4 Removal of the Chair or Deputy-Chair of the Trust

It shall be for the Council of Governors to determine the period of office for the Chair and Deputy-Chair, which shall normally be for a period of up to three years after which the Council of Governors shall review the appointment. Should there be the requirement to remove the Chair or Deputy-Chair of the Council of Governors this shall be carried out in accordance with SO 4.9.6.

4. MEETINGS OF THE COUNCIL OF GOVERNORS

4.1 Frequency of Meetings

The Council of Governors will meet in a general meeting on no less than four occasions each year at times and places that the Council of Governors may determine.

4.2 Duration of Meetings

The business of meetings will be conducted efficiently and in a timely manner and will not last longer than three hours. Any business not conducted within three hours will be adjourned until the next meeting.

4.3 Admission of the Public and Press

- 4.3.1 Meetings shall be open to members of the public and the press. Members of the public and press shall be required to withdraw from the meeting upon the Council of Governors resolving as follows:

"Representatives of the press and other members of the public be excluded from the remainder of this meeting having regard to the

confidential nature of business to be transacted, publicity on which would be prejudicial to the public interest.”

- 4.3.2 The Chair shall give such directions as They thinks fit in regard to the arrangements for meetings and accommodation of the public and the press so as to ensure that the business of the Council of Governors is conducted without interruption and disruption. Without prejudice to the power to exclude on the grounds of the confidential nature of the business to be transacted, the public will be required to withdraw upon the Council of Governors resolving as follows:

“That in the interests of public order the meeting adjourn for [the period specified] to enable the Council of Governors to complete business without the presence of the public.”

- 4.3.3 The Chair may exclude any member of the public from a meeting of the Council of Governors if they are interfering with or preventing the reasonable conduct of the meeting.
- 4.3.4 Nothing in these Standing Orders shall require the Council of Governors to allow members of the public or press to record proceedings in any manner, other than in writing, or to make any oral report of proceedings as they take place without the prior agreement of the Council of Governors.
- 4.3.5 The Council of Governors may invite the Chief Executive and Directors of the Trust to attend any meeting of the Council of Governors to respond to questions from Governors on the affairs of the Trust.

4.4 Calling Meetings

Notwithstanding section 4.1 above, the Chair may call a meeting of the Council of Governors at any time. If the Chair refuses to call a meeting after a requisition for that purpose, signed by at least one-third of the whole number of Governors, has been presented to him, or if without so refusing, the Chair does not call a meeting within fourteen days after such requisition to do so, such one-third or more Governors may call a meeting forthwith. A requisition from Governors under this section may be submitted electronically provided that such requisition includes the names and electronic signatures of the Governors issuing it.

4.5 Notice of Meetings

- 4.5.1 Before each meeting of the Council of Governors, a notice of the meeting, specifying the business proposed to be transacted at it and signed by the Chair or by an officer of the Trust authorised by the Chair to sign on his/her behalf, shall be delivered to every Governor or sent by post to the normal place of residence of such Governor to arrive at least five clear working days before the meeting.
- 4.5.2 Lack of service of the notice on any Governor shall not affect the validity of the meeting.
- 4.5.3 In the case of a meeting called by the Governors in default of the Chair, the notice shall be signed by those Governors and no business shall be

transacted at the meeting other than that specified in the notice.

- 4.5.4 Before each meeting of the Council of Governors a public notice of the time and place of the meeting, along with the agenda, shall be available on the Trust's website, at least seven days before the meeting.

4.6 Setting the Agenda

- 4.6.1 The Council of Governors may determine that certain matters shall appear on every agenda for a meeting of the Council of Governors.
- 4.6.2 A Governor who wishes for an item to be included on an agenda for a meeting of the Council of Governors shall make a written request to the Chair at least ten clear working days before the meeting. Requests made less than ten clear working days before a meeting may be included on the agenda solely at the discretion of the Chair.
- 4.6.3 The Council of Governors will agree an annual schedule of work proposed by the Board of Directors to ensure that the Council of Governors discharge their statutory responsibilities as Governors.

4.7 Chair of the Meeting

- 4.7.1 At any meeting of the Council of Governors, the Chair, if present, shall preside. If the Chair is absent from the meeting, or if they are disqualified from participating because of a declared conflict of interest, the Deputy-Chair, if they are present, shall preside. If both the Chair and Deputy-Chair are absent or disqualified, the Council of Governors may choose an appropriate individual from among the remaining non-executive Directors or the Lead Governor to preside.

4.8 Notice of Questions

- 4.8.1 Governors may ask the Chair, a Non-Executive Director, another Governor or Executive Director questions about matters which are directly in relation to a matter over which the Council of Governors has powers or duties or which affects the area covered by the Trust.
- 4.8.2 A Governor may only ask a question under paragraph 4.8.1 if either;
- a) they have given at least 14 working days' notice in writing of the question to the Trust Secretary. For the purposes of this Standing Order, receipt of any such questions via electronic means is considered acceptable;
 - b) the question relates to urgent matters, they have the consent of the person to whom the question is to be put and the content of the question is given to the Company Secretary by 10.00am on the day of the meeting (if the meeting is scheduled for the afternoon) or by 2.00pm on the preceding day (if the meeting is scheduled for the morning). Urgent is defined as a matter which will adversely affect the Trust within the next seven days.

- 4.8.3 A Governor may ask any question through the Chair without notice upon a report from an Executive Director, or other officer of the Trust, when that item is being received or under consideration by the Council of Governors. Unless the Chair decides otherwise no statements will be made other than those which are strictly essential to define the question, which should last no longer than three minutes. The Chair may reject any question from any Governor if in his/her opinion the question is substantially the same as the question which has already been put to the meeting or a previous meeting of the Council of Governors.
- 4.8.4 An answer may take the form of a direct oral answer; where the desired information is in a publication of the Trust or other published work, a reference to that publication; where the reply cannot conveniently be given orally, a written answer circulated later to the questioner; or a brief oral answer supplemented by a written answer circulated later to the Governor who has raised the question.
- 4.8.5 A Governor asking a question under paragraphs 4.8.1 above may ask one supplementary question (lasting no longer than three minutes) without notice of the person to whom the first question was asked. The supplemental question must arise directly out of the reply

4.9 Notices of Motion

- 4.9.1 A Governor of the Trust desiring to move a motion shall send a written notice thereof at least ten clear days before the meeting to the Chair, who shall insert in the agenda for the meeting all notices so received subject to the notice being permissible under the appropriate regulations. This paragraph shall not prevent any motion being moved during the meeting, without notice on any business mentioned on the agenda, subject to SO 4.5.
- 4.9.2 A motion or amendment once moved and seconded may be withdrawn by the proposer with the concurrence of the seconder and the consent of the Chair.
- 4.9.3 Notice of motion to amend or rescind any resolution (or the general substance of any resolution), which has been passed within the preceding six calendar months, shall bear the signature of the members of the Council of Governors who give it and also the signature of four other members of the Council of Governors. When any such motion has been disposed of by the Council of Governors it shall not be competent for any member of the Council of Governors, other than the Chair, to propose a motion to the same effect within six months.
- 4.9.4 The mover of a motion shall have a right of reply at the close of any discussion on the motion or any amendment thereto. The mover of a motion shall have strictly no more than five minutes to move a motion and strictly no more than three minutes for a right of reply.
- 4.9.5 When a motion is under discussion or immediately prior to discussion it shall be open to a member of the Council of Governors to move:
 - a) An amendment to the motion.

- b) The adjournment of the discussion or the meeting.
- c) That the meeting proceeds to the next business.
- d) That the motion shall be now put.

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

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

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

4.9.6 A motion to remove the Chair or a non-executive Director must be seconded by 10 members of the Council of Governors.

4.9.7 The following motions may be moved without notice:

- a) in relation to the accuracy of the minutes;
- b) to change the order of business in the agenda;
- c) to refer something to an appropriate body or individual;
- d) to appoint a working group arising from an item on the agenda for the meeting;
- e) to receive reports or adopt recommendations made by the Board of Directors;
- f) to withdraw a motion;
- g) to amend a motion;
- h) to proceed to the next business;
- i) that the question be now put;
- j) to adjourn a debate;
- k) to adjourn a meeting;
- l) to suspend a particular Standing Order; a rule may be suspended by motion on notice or without notice if at least one half of the whole number of Governors of the Council of Governors are present. Suspension can only be for the duration of the meeting;
- m) to exclude the public and press in accordance with Standing Orders 4.3

- n) to not hear further a Governor, or to exclude them from the meeting. If a Governor persistently disregards the ruling of the Chair by behaving improperly or offensively or deliberately obstructs business, the Chair may move that the Governor be not heard further. If seconded, the motion will be voted on without discussion. If the Governor continues to behave improperly after such a motion is carried, the Chair may move that either the Governor leaves the meeting room or that the meeting is adjourned for a specified period. If seconded, the motion will be voted on without discussion;
- o) to give the consent of the Council of Governors where its consent is required by the Constitution.

4.10 Chair's Ruling

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

4.11 Voting

- 4.11.1 Every question at a meeting shall be determined by a majority of the votes of the Governors present and voting on the question with the exception of a decision to remove the Chair or a non-executive Director which requires the approval of two thirds of the Governors present and voting.
- 4.11.2 In the case of an equality of votes, the person presiding over the meeting shall have a second or casting vote.
- 4.11.3 All questions put to the vote shall, at the discretion of the Chair of the meeting, be determined by oral expression or by a show of hands. A paper ballot may also be used if a majority of the Governors present so request.
- 4.11.4 If at least one-third of the Governors present so request, the voting on any question may be recorded to show how each Governor present voted or abstained.
- 4.11.5 In no circumstances may a Governor, who is absent at the time of the vote, vote by proxy.

4.12 Minutes

- 4.12.1 The minutes of the proceedings of a meeting shall be drawn up and submitted for agreement at the next ensuing meeting where they will be signed by the person presiding at it.
- 4.12.2 No discussion shall take place upon the minutes except upon their accuracy or where the Chair considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the next meeting.

- 4.12.3 Minutes shall be circulated to all Governors. The minutes of meetings shall be made available to the public except for minutes relating to business conducted when members of the public are excluded under the terms of section 4.3 of these Standing Orders.

4.13 Suspension of Standing Orders

- 4.13.1 Except where this would contravene any statutory provision, any one or more of the Standing Orders may be suspended at any meeting, providing that at least two-thirds of the Governors are present and that a majority of those present vote in favour of suspension.
- 4.13.2 A decision to suspend Standing Orders shall be recorded in the minutes of the meeting.
- 4.13.3 A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the Governors.
- 4.13.4 No formal business may be transacted while Standing Orders are suspended.
- 4.13.5 The Audit and Risk Committee shall review every decision to suspend Standing Orders.

4.14 Record of Attendance

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

4.15 Quorum

- 4.15.1 No formal business shall be transacted at a general meeting of the Council of Governors unless at least one-third of the Governors are present including at least one-third of the Governors from the public constituency.
- 4.15.2 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, they shall no longer count towards the quorum. If a quorum is not then 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 the meeting. Such a position shall be recorded in the minutes of the meeting. The meeting will then proceed to the next business.
- 4.15.3 For the clarification of doubt, the requirements of this section will not apply to development meetings of the Council of Governors, held for briefing and training purposes, unless such a meeting intends to act as a general meeting and transact formal business. In that event these Standing Orders apply in full to the consideration of any such business.
- 4.15.3 The Chair of a meeting of the Council of Governors may adjourn a meeting of the body if a quorum is either not present within thirty minutes of the appointed time of commencement or is not maintained for the

duration of the meeting.

5. ARRANGEMENTS FOR THE EXERCISE OF FUNCTIONS BY DELEGATION

5.1 Emergency Powers

- 5.1. The powers which the Council of Governors has retained to itself within these Standing Orders may in emergency be exercised by the Chair after having consulted at least five elected members of the Council of Governors. The exercise of such powers by the Chair shall be reported to the next formal meeting of the Council of Governors for ratification.

5.2 Appointment of Committees

- 5.2.1 The Council of Governors may appoint to the committees described in section 5.2.5 of these Standing Orders, consisting wholly of Governors.
- 5.2.2 The Standing Orders of the Council of Governors, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees or sub-committees established by the Council of Governors.
- 5.2.3 Each committee shall have such terms of reference and powers and be subject to such conditions as the Council of Governors shall determine. Such terms of reference shall have effect as if incorporated into the Standing Orders.
- 5.2.4 The Council of Governors shall approve the appointments to each of the committees it has constituted.
- 5.2.5 The standing committees to be established by the Council of Governors are:
- a) (Governors) Nominations, Remuneration Committee

6 CONFIDENTIALITY

- 6.1 A member of the Council of Governors or an attendee on a committee of the Council of Governors shall not disclose a matter dealt with by, or brought before, the committee without its permission or until the committee shall have reported to the Council of Governors or shall otherwise have concluded on that matter.
- 6.2 A member of the Council of Governors or a non-member of the Council of Governors in attendance at a committee shall not disclose any matter dealt with by the committee, notwithstanding that the matter has been reported or action has been concluded, if the Council of Governors or committee resolves that it is confidential.

7 DECLARATIONS OF INTERESTS AND REGISTER OF INTERESTS

7.1 Declaration of Interests

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 becomes aware of it.

- 7.1.1 Interests referred to in 7.1 which should be regarded as “relevant and material” include but are not restricted to:
- a) Directorships, including non-executive directorships held in limited companies (with the exception of dormant companies);
 - b) Ownership, part-ownership or directorships of companies, businesses or consultancies that carry out or are likely to carry out business with the Trust;
 - c) Majority or controlling shareholdings in an organisation that carries out business with the Trust or is likely to carry out business with the Trust;
 - d) A position of authority in a charity or voluntary organisation in the field of health or social care that carries out business with the Trust or is likely to carry out business with the Trust;
 - e) Any connection with a voluntary or other organisation contracting or likely to contract for Trust 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.
- 7.1.2 If Governors have any doubt about the relevance of an interest, this should be discussed with the Chair or Trust Secretary who will advise on whether or not the interest should be disclosed.
- 7.1.3 For the avoidance of doubt, the above relevant and material interests extend to the spouse or partner of a Governor and declaration of such interests will be required.
- 7.1.4 At the time Governors’ interests are declared, they should be recorded in the minutes of the Governor Body meetings. Any changes in interests should be declared at the next board meeting following the change occurring.
- 7.1.5 During the course of a meeting, if a conflict of interest is established, the Governor concerned should withdraw from the meeting and play no part in the relevant discussion or decision.

7.2 Register of Interests

- 7.2.1 The Chief Executive will ensure that a Register of Interests is established to record formally declarations of interests of Governors. The Register will include details of all directorships and other relevant and material interests which have been declared by Governors, as defined in SO 7.1.
- 7.2.2 Governors must notify the Trust Secretary of any changes to their declared

interests. Such notification must be made to the Trust Secretary within seven days of the change becoming known.

7.2.3 The Trust Secretary will ensure that such notifications are entered into the Register within seven days.

7.2.4 The Trust Secretary will conduct an annual review of the Register and report the outcome to the Council of Governors

7.2.5 The Register will be available for inspection by members of the public at the Trust's headquarters.

8. DISABILITY OF GOVERNORS IN PROCEEDINGS ON ACCOUNT OF PECUNIARY INTEREST

8.1 Subject to the following provisions of this Standing Order, if a Governor has any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter and is present at a meeting of the Council of Governors 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.

8.2 The Trust shall exclude a Governor from a meeting of the Council of Governors while any contract, proposed contract or other matter in which They has a pecuniary interest, is under consideration.

8.3 For the purpose of this Standing Order a Governor shall be treated, subject to SO 8.4, as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if:

- They, or a nominee of his/her, is a Director of a company or other body, not being a public body, with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration; or
- They is a partner of, or is in the employment of a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration; and
- In the case of married persons living together the interest of one spouse shall, if known to the other, be deemed for the purposes of this Standing Order to be also an interest of the other.

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

- Of his/her membership of a company or other body, if they have no beneficial interest in any securities of that company or other body.
- Of an interest in any company, body or person with which They is connected as mentioned in SO 7.3 above which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a director in the

consideration or discussion of or in voting on, any question with respect to that contract or matter.

8.5 Where a Governor:

- 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
- The total nominal value of those securities does not exceed 5% of the total nominal value of the issued share capital of the company or body.
- If the share capital is of more than one class, the total nominal value of shares of any one class in which They has a beneficial interest does not exceed one- hundredth of the total issued share capital of that class
- This Standing Order shall not prohibit him from taking part in the consideration or discussion of the contract or other matter or from voting on any question with respect to it without prejudice however to his/her duty to disclose his/her interest.

8.6 Standing Order 8 applies to a committee or sub-committee of the Council of Governors as it applies to the Council of Governors itself and applies to any member of any such committee or sub-committee (whether or not They is also a Governor) as it applies to a Governor.

9 DISPUTES BETWEEN THE COUNCIL OF GOVERNORS AND THE BOARD OF DIRECTORS

9.1 Conflicts between the Board of Directors and the Council of Governors will be resolved through the Trust's Dispute Resolution Procedure.

10. VARIATION AND AMENDMENT OF STANDING ORDERS

10.1 These Standing Orders shall be amended only if:

10.1.1 A notice of motion under Standing Order 4.8 has been given; and

10.1.2 A majority of three-quarters of Governors present at the meeting at which the matter is put vote in favour of the changes; and

10.1.3 The variation proposed does not contravene a statutory provision or a direction made by the Regulator of NHS Foundation Trusts; and

10.1.4 The amendment is agreed by the Board of Directors; and

10.1.5 The amendments agreed by the Board of Directors are approved by NHS England.

ANNEX 5 - STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE BOARD OF DIRECTORS

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1. Introduction

a) Statutory Framework

The Medway NHS Foundation Trust (the Trust) is a public benefit corporation which is established under the NHS Act 2006 and authorised by NHS England on 1 August 2006 to act as a NHS Foundation Trust. The principal places of business of the Trust is Medway Maritime Hospital.

The Constitution requires the Board to adopt Standing Orders for the regulation of its proceedings and business. In addition the “Directions on Financial Management in England” (HSG (96)12) require health bodies to adopt Standing Financial Instructions setting out the responsibility of individuals. Although not mandatory on NHS Foundation Trusts, the Board will continue to apply them as a key element of its governance arrangements.

b) Delegation of Powers

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

2. Standing Orders

SO1 Interpretation

- 1.1 Save as permitted by law, at any meeting the Chair 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 Company Secretary).
- 1.2 Words importing the masculine gender only shall include the feminine gender and words importing the singular shall import the plural and vice-versa.
- 1.3 Any expression to which a meaning is given in the Health Service Acts or in the Regulations or Orders made under the Acts shall have the same meaning in this interpretation and in addition:
 - a) **ACCOUNTABLE OFFICER** shall be the officer responsible and accountable for funds entrusted to the Trust. They shall be responsible for ensuring the proper stewardship of public funds and assets. For this Trust it shall be the Chief Executive.
 - b) **BOARD** means the Board of Directors, formally constituted in accordance with this Constitution and consisting of a Chair, and Non-Executive Directors, appointed by the Governors’ Body and the Executive Directors, appointed by the Non-Executive Directors and (except for his/her own appointment) by the Chief Executive.

- c) **BUDGET** shall mean a resource, expressed in financial terms, proposed by the Board for the purpose of carrying out, for a specific period, any or all of the functions of the Trust.
- d) **CHAIR** is the person appointed by the Council of Governors as a Non-Executive Chair to lead the Board of Directors, and Council of Governors, to ensure it successfully discharges its overall responsibility for the Trust as a whole.
- e) **CHIEF EXECUTIVE** shall mean the accountable officer of the Trust.
- f) **COMMITTEE OF THE COUNCIL OF GOVERNORS** means a committee formed by the Council of Governors with specific Terms of Reference, chair and membership.
- g) **COMMITTEE OF THE BOARD** means a committee formed by the Board with specific Terms of Reference, Chair and Membership.
- h) **DIRECTOR** means a person appointed to the Board of Directors
- i) **DIRECTOR OF FINANCE** shall mean the Chief Finance Officer of the Trust who will ensure compliance with Standing Financial Instructions.
- j) **FUNDS HELD ON TRUST** shall mean those funds which the Trust holds at its date of incorporation, receives on distribution by statutory instrument, or chooses subsequently to accept under powers derived under Schedule 3 and 4 para 14.1c National Health Service Act 2006. Such funds may or may not be charitable.
- k) **GOVERNOR** means a person elected or appointed to the Council of Governors.
- l) **COUNCIL OF GOVERNORS** means the Council of Governors, formally constituted in accordance with this Constitution meeting in public and presided over by the Chair.
- m) **MEMBER** means a person registered as a member of one of the constituencies of the Trust as outlined in this Constitution.
- n) **NHS ENGLAND** is the Independent Regulator of NHS Foundation Trusts appointed under the Health and Care Act 2022.
- o) **MOTION** means a formal proposition to be discussed and voted on during the course of a meeting.
- p) **NOMINATED OFFICER** means an officer charged with the responsibility for discharging specific tasks within Standing Orders in line with the Health

Act.

- q) **NON-EXECUTIVE DIRECTOR** is a person appointed by the Council of Governors to be a member of the Board of Directors. This includes the Chair of the Trust.
- r) **OFFICER** means an employee of the Trust
- s) **SOs** means Standing Orders
- t) **SFIs** means Standing Financial Instructions
- u) **TRUST** means Medway NHS Foundation Trust.
- v) **TRUST/COMPANY SECRETARY** this role will act as independent advisor to the Board and NHS England on the Trust's compliance with its terms of authorisation and constitution.
- w) Trust Nominations and Remuneration Committee means a Committee of the Non-Executive Directors.
- x) **DEPUTY-CHAIR** means the Non-Executive Director appointed by the Chair to carry out the duties of the Chair if they are absent for any reason.

SO2 The Board of Director

- 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 the functions conferred on it by the NHS Act 2006, 2012 and 2022 and by its authorisation.
- 2.4 The Board of Directors is the Corporate Trustee for the Charity. Accountability for charitable funds held on Trust is to the Charity Commission and to the Secretary of State for Health. Accountability for non-charitable funds held on Trust is only to NHS England.
- 2.5 The Trust has resolved that certain powers and decisions may only be exercised or made by the Board in formal session. These powers and decisions are set out in "Reservation of Powers to the Board" and have effect as if incorporated into the Standing Orders.

2.6 The Board of Directors will function as a unitary Board. The Board is collectively responsible for discharging the powers and for the performance of the Trust. Executive and non-executive Directors will have joint responsibility for every decision of the Board regardless of their individual skills or status.

2.7 The Role of Directors:

2.7.1 The role of the Directors as members of the Board is to set the direction of the Trust and NHS England and manage its performance in carrying out its statutory and other functions.

2.7.2 The executive Directors will exercise their authority in accordance with the terms of these Standing Orders, the Trust's Standing Financial Instructions, the Scheme of Reservation and Delegation.

2.7.3 The Chief Executive is responsible for the overall performance of the executive functions of the Trust. They is the Accounting Officer for the Trust and is responsible for ensuring that the requirements of the NHS Accounting Officer Memorandum are met.

2.7.4 The Chief Finance Officer is responsible for the provision of financial advice to the Trust and for the supervision of systems for financial accounting and control.

2.7.5 The Non-Executive Directors will not be granted nor seek to exercise any individual executive powers on behalf of the Trust. They may exercise authority when acting as members of, or when chairing, a committee of the Trust which has delegated powers.

2.7.6 The Chair is responsible for the operation and performance of the Board and will chair meetings of the Board when present. The Chair has certain delegated powers and must act within the terms of his/her appointment, the Standing Orders and the Standing Financial Instructions in exercising those powers and carrying out his/her duties.

2.7.7 The Chair will ensure that the business of the Board is dealt with in an effective and timely manner and that the Board is provided with appropriate information and advice to inform debate and decision.

2.7.8 The Board shall approve and keep under review a Statement of Division of Responsibility between the Chair and the Chief Executive which sets out the division of responsibility between them.

2.7.9 The Chair is also responsible for the leadership of the Council of Governors

and for ensuring that it and the Board work effectively together.

2.8 Composition of the Board of Directors

2.8.1 The composition of the Board of Directors is set out in section 22 of the Trust's Constitution:

- A non-executive Director Chair
- A maximum of seven other non-executive Directors; and
- A maximum of five executive Directors including:
 - The Chief Executive (the Chief Accounting Officer)
 - One Executive Director of Finance (the Chief Finance Officer)
 - One Executive Director who is a registered medical or dental practitioner
 - One Executive Director who is a registered nurse or midwife

2.8.2 The Trust Secretary (or nominated deputy) will be in attendance at all meetings of the Board.

2.8.3 Other officers of the Trust may attend meetings of the Board by invitation.

2.9 Appointment of the Chair and Directors

2.9.1 The Chair and Non-Executive Directors are appointed by the Governors Nominations and remuneration Committee overseen by the Lead Governor of the Council of Governors.

2.9.2 The Trust Nominations and Remuneration Committee will appoint the Chief Executive of the Trust subject to the approval of the Council of Governors.

2.9.3 The Trust Nominations and Remuneration Committee will appoint the Executive Directors.

2.10 Terms of Office of the Chair and Directors

2.10.1 The remuneration and terms of office of the Chair and Non-Executive Directors shall be decided by the Governors Nominations and Remuneration Committee.

- 2.10.2 The remuneration and terms of office of the Executive Directors will be determined by Trust Nominations and Remuneration Committee.

2.11 Appointment of Deputy – Chair and Senior Independent Director

- 2.11.1 The Chair may appoint one of the Non-Executive Directors to be Deputy-Chair for such a period, not exceeding the remainder of their term as Non-Executive Director of the Trust, as they may specify on appointing him/her.
- 2.11.2 The Chair may appoint one of the Non-Executive Directors to be Senior Independent Director for such a period, not exceeding the remainder of their term as Non-Executive Director of the Trust, as they may specify on appointing him/her.
- 2.11.3 Any Non-Executive Director so elected to the above roles, may at any time resign from the office by giving notice in writing to the Chair, and the Directors of the Trust may thereupon appoint another Non-Executive Director as Deputy-Chair and/or Senior Independent Director in accordance with paragraph 2.9.

2.12 Powers of the Deputy Chair

Where the Chair of an NHS Trust has died or has otherwise ceased to hold office or where They has been unable to perform their duties as Chair owing to illness, absence from England and Wales or any other cause, references to the Chair in these Standing Orders shall, so long as there is no Chair able to perform their duties, be taken to include references to the Deputy-Chair. The Deputy Chair will normally be the chair of the Trust Nominations and Remuneration Committee and the Governors Nominations and Remuneration Committee.

2.13 The role of the Senior Independent Director

- 2.13.1 The Senior Independent Director ('SID') is a role undertaken by one of the Trust's independent Non-Executive Directors. The SID should be available to all stakeholders, particularly governors and members, should they have concerns which they feel unable to resolve via normal channels, such as through contact with the Chair or Chief Executive, or in circumstances in which such contact would be inappropriate.
- 2.13.2 The Senior Independent Director shall meet with the Trust Chair at least annually to evaluate their performance.

2.14 Joint Directors

Where more than one person is appointed jointly to a post in the Trust which qualifies the holder for executive directorship or in relation to which an executive Director is to be appointed, those persons shall become appointed as an executive Director jointly, and shall count as one person for the purpose of Standing Order 2.9.

3 MEETINGS OF THE BOARD OF DIRECTORS

3.1 The Board will meet at sufficient intervals to properly discharge its duties. Meetings of the Board will be held in public unless the Board determines otherwise.

3.2 The public and representatives of the press shall be afforded the opportunity to attend all formal public meetings of the Board of Directors but shall be required to withdraw upon the Board resolving as follows:

3.2.1 "That representatives of the press and other members of the public be excluded from the remainder of the meeting having regard to the confidential nature of the business to be transacted, publicity on which would be prejudicial to the public interest" (Section 1 (2) Public Bodies (Admission to Meetings) Act 1960)."

3.2.2 The Chair shall give such direction as seen fit in regard to the arrangements for meetings and accommodation of the public and representatives of the press such as to ensure that the Board's business shall be conducted without interruption and disruption and, without prejudice to the power to exclude on the grounds of the confidential nature of the business to be transacted, the public will be required to withdraw upon the Board resolving as follows:

3.2.3 "That in the interests of public order, the meeting adjourn for (the period) to enable the Board to complete business without the presence of the public" (Section 1(8) Public Bodies (Admission to Meetings) Act 1960)."

3.3 Nothing in these Standing Orders shall require the Board to allow members of the public or 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 Board.

3.4 Where the public is invited to attend a meeting of the Board, the Chair may exclude any member of the public from that meeting if they are interfering with or preventing the proper and reasonable conduct of the meeting.

3.5 Attendance at meetings by members of the press or public does not confer any right to ask questions or otherwise participate in the meeting unless invited to do so by the Chair.

3.6 Calling Meetings

3.6.1 Meetings of the Board shall be held at such times and places as the Board may determine.

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

3.7 Notice of Meetings

- 3.7.1 Before each meeting of the Board, a notice of the meeting, specifying the business proposed to be transacted at it, and signed by the Chair or by an officer of the Trust authorised by the Chair to sign on his/her behalf shall be delivered to every Director, or sent by post to the usual place of residence of such Director, so as to be available to him at least five clear working days before the meeting.
- 3.7.2 Lack of service of the notice on any Director shall not affect the validity of a meeting.
- 3.7.3 In the case of a meeting called by Directors in default of the Chair, the notice shall be signed by those Directors and no business shall be transacted at the meeting other than that specified in the notice.
- 3.7.4 Failure to serve such a notice on more than three Directors will invalidate the meeting. A notice shall be presumed to have been served at the time at which the notice would be delivered in the ordinary course of the post.
- 3.7.5 A public notice of the time and place of the meeting shall be displayed on the Trust's website at least five working days before the meeting.
- 3.7.6 Before holding a meeting, the Board of Directors will 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.

3.8 Setting the Agenda

- 3.8.1 The Board may determine that certain matters shall appear on every agenda for a meeting of the Board and shall be addressed prior to any other business being conducted.
- 3.8.2 A director desiring a matter to be included on an agenda shall make his/her request in writing to the Chair at least ten clear working days before the meeting, subject to Standing Order 3.6. Requests made less than ten days before a meeting may be included on the agenda at the discretion of the Chair.

3.9 Chair of Meeting

- 3.9.1 At any meeting of the Board, the Chair, if present, shall preside. If the Chair is absent from the meeting the Deputy-Chair, if there is one and they is present, shall preside. If the Chair and Deputy-Chair are absent such Non-Executive Director as the Directors present shall choose shall preside.
- 3.9.2 If the Chair is absent from a meeting temporarily on the grounds of a declared conflict of interest the Deputy-Chair, if present, shall preside. If the Chair and Deputy-Chair are absent, or are disqualified from participating, such Non-Executive Director as the Directors present shall choose shall preside.

3.10 Annual Members Meeting

3.10.1 The Trust will publicise and hold an annual members meeting, in accordance with the terms of the Constitution.

3.11 Notices of Motion

3.11.1 A Director desiring to move or amend a motion shall send a written notice thereof at least ten clear days before the meeting to the Chair, who shall insert in the agenda for the meeting all notices so received subject to the notice being permissible under the appropriate regulations. This paragraph shall not prevent any motion being moved during the meeting, without notice on any business mentioned on the agenda subject to Standing Order 3.6.

3.12 Withdrawal of Motion or Amendments

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

3.13 Motion to Rescind a Resolution

Notice of motion to amend or rescind any resolution (or the general substance of any resolution) which has been passed within the preceding six calendar months shall bear the signature of the Director(s) who gives it and also the signature of four other Directors. When any such motion has been disposed of by the Board, it shall not be competent for any Director other than the Chair to propose a motion to the same effect within six months

3.14 Motions

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

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

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

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

3.15 Chair's Ruling

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

3.16 Voting

3.16.1 Every question at a meeting shall be determined by a majority of the votes of the Directors present and voting on the question and, in the case of any equality of votes, the person presiding shall have a second or casting vote.

3.16.2 The arrangements for the casting of votes by joint Directors is set out in 3.17 below

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

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

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

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

3.16.7 An officer who has been appointed formally by the Board to act up for an executive Director during a period of incapacity or temporarily to fill an executive Director vacancy, shall be entitled to exercise the voting rights of the executive Director. An officer attending the Board to represent an executive Director during a period of incapacity or temporary absence without formal acting up status may not exercise the voting rights of the executive Director. An officer's status when attending a meeting shall be recorded in the minutes.

3.16.8 Directors on the Board of Directors will have no formal voting rights on a decision nor the personal accountabilities associated with full Board membership.

3.16.9 No resolution shall be passed if it is opposed by all the Non-Executive Directors present or by all of the executive Directors present.

3.17 Joint Directors - Where a post of executive Director is shared by more than one person:

3.17.1 Both persons shall be entitled to attend meetings of the Trust; either of those persons shall be eligible to vote in the case of agreement between them;

3.17.2 In the case of disagreement between them no vote should be cast;

3.17.3 The presence of either or both of those persons shall count as one person for the purposes of determining the quorum of the meeting.

3.18 Minutes

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

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

3.18.3 Minutes shall be circulated in accordance with the wishes of the Board and made available to the public.

3.19 Suspension of Standing Orders

3.19.1 Except where this would contravene any statutory provision or any direction made by NHS England, any one or more of the Standing Orders may be suspended at any meeting, provided that at least two-thirds of the Board are present, including one executive Director and one non-executive Director, and that a majority of those present vote in favour of suspension.

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

3.19.3 A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the Directors.

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

3.19.5 The Audit Committee shall review every decision to suspend Standing Orders.

3.20 Variation and Amendment of Standing Orders

3.20.1 These Standing Orders shall be amended only if:

- A notice of motion under Standing Order 3.11 has been given;
- No fewer than half the total of the Trust's non-executive Directors vote in favour of amendment;
- At least two-thirds of the voting Directors are present;
- The variation proposed does not contravene a statutory provision or provision of the authorisation or of the Constitution

3.21 Record of Attendance

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

3.22 Quorum

- 3.22.1 No business shall be transacted at a meeting of the Board unless at least one- third of the whole number of the voting Directors are present including at least one executive Director and one non-executive Director.
- 3.22.2 An officer in attendance for an executive Director but without formal acting up status may not count towards the quorum.
- 3.22.3 If a Director has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of the declaration of a conflict of interest (see Standing Order 6 and 7) 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. The above requirement for at least one executive Director to form part of the quorum shall not apply where the executive Directors are excluded from a meeting (for example, when the Board considers the recommendations of the Remuneration and Terms of Service Committee).
- 3.22.4 The Chair may adjourn a meeting of the Board if a quorum is either not present within thirty minutes of the appointed time of commencement or is not maintained for the duration of the meeting.

4. ARRANGEMENTS FOR THE EXERCISE OF FUNCTIONS BY DELEGATION

4.1 General Provision

Subject to a provision in the authorisation or the Constitution, the Board may make arrangements for the exercise, on behalf of the Trust, of any of its functions by a committee or sub-committee, appointed by virtue of SO 5 below or by a Director or an officer of the Trust in each case subject to such restrictions and conditions as the Board thinks fit.

4.2 Emergency Powers

The powers which the Board has retained to itself within these Standing Orders (SO 2) may in emergency be exercised by the Chief Executive and the Chair after having consulted at least two non-executive Directors. The exercise of such powers by the Chief Executive and the Chair shall be reported to the next formal meeting of the Board for ratification.

4.3 Delegation to Committees

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

4.4 Delegation to Officers – Scheme of Delegation and Reservation of Powers

- 4.4.1 Those functions of the Trust which have not been retained as reserved by the Board or delegated to an executive committee or sub-committee 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 they will still be accountable to the Board.
- 4.4.2 The Chief Executive shall prepare a Scheme of Delegation identifying his/her proposals which shall be considered and approved by the Board, subject to any amendment agreed during the discussion. The Chief Executive may periodically propose amendment to the Scheme of Delegation which shall be considered and approved by the Board as indicated above.
- 4.4.3 Nothing in the Scheme of Delegation shall impair the discharge of the direct accountability to the Board or the Director of Finance or other executive Directors to provide information and advise the Board in accordance with any statutory requirements.
- 4.4.4 The arrangements made by the Board as set out in the "Reservation of Powers to the Board and Delegation of Powers" shall have effect as if incorporated in these Standing Orders.

5. COMMITTEES

5.1 Appointment of Committees

- 5.1.1 Subject to SO 2 and such directions as may be given by the regulator, the Trust may and, if directed by him, shall appoint committees of the Trust, consisting
wholly or partly of Directors of the Trust or wholly of persons who are not Directors of the Trust.
- 5.1.2 A committee appointed under SO 5.1.1 may, subject to such directions as may be given by the regulator or the Board appoint sub-committees consisting wholly or partly of members of the committee (whether or not they include Directors of the Trust) or wholly of persons who are not members of the Board committee (whether or not they include Directors of the Trust).
- 5.1.3 The Standing Orders of the Board, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees or sub-committee established by the Board.
- 5.1.4 Each such committee or sub-committee shall have such terms of reference and powers and be subject to such conditions, as the Board shall decide. Such terms of reference shall have effect as if incorporated into the Standing Orders.
- 5.1.5 Committees may not delegate their executive powers to a sub-committee unless expressly authorised by the Board.
- 5.1.6 The Board shall approve the appointments to each of the committees which it has formally constituted. Where the Board determines that persons, who

are neither Directors nor officers, shall be appointed to a committee, the terms of such appointment shall be determined by the Board.

5.1.7 Where the Board is required to appoint persons to a committee and/or to undertake statutory functions as required by the Secretary of State or NHS England, and where such appointments are to operate independently of the Trust such appointment shall be made in accordance with the regulations laid down by the Secretary of State.

5.1.8 Without prejudice to the formation of any other committees or sub-committees as the Board may see fit, the following committees shall be established by the Board:

- Audit and Risk Committee
- Trust Nominations and Remuneration Committee
- Charitable Funds Committee

5.2 Confidentiality

5.2.1 A member of a committee shall not disclose a matter dealt with by, or brought before, the committee without its permission until the committee shall have reported to the Board or shall otherwise have concluded on that matter.

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

6. DECLARATIONS OF INTERESTS AND REGISTER OF INTERESTS

6.1 Declaration of Interests

6.1.1 If a Director 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 Board, the Director shall disclose that interest to the Board as soon as They becomes aware of it.

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

- a) Directorships, including non-executive directorships held in limited companies (with the exception of dormant companies);
- b) Ownership, part-ownership or directorships of companies, businesses or consultancies that carry out or are likely to carry out business with the Trust;
- c) Majority or controlling shareholdings in an organisation that carries out business with the Trust or is likely to carry out business with the Trust;
- d) A position of authority in a charity or voluntary organisation in the field of health or social care that carries out business with the Trust or is likely to carry out business with the Trust;
- e) Any connection with a voluntary or other organisation contracting or

- likely to contract for Trust 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.

- 6.1.3 If Directors have any doubt about the relevance of an interest, this should be discussed with the Chair.
- 6.1.4 At the time Directors' interests are declared, they should be recorded in the board minutes. Any changes in interests should be declared at the next board meeting following the change occurring.
- 6.1.5 Board directors' directorships of companies likely or possibly seeking to do business with the NHS should be published in the board's annual report.
- 6.1.6 During the course of a board meeting, if a conflict of interest is established, the Director concerned should withdraw from the meeting and play no part in the relevant discussion or decision.

6.2 Register of Interests

- 6.2.1 The Chief Executive will ensure that a Register of Interests is established to record formally declarations of interests of Directors. The Register will include details of all directorships and other relevant and material interests which have been declared by Directors, as defined in SO 6.1.
- 6.2.2 Directors must notify the Trust Secretary of any changes to their declared interests. Such notification must be made to the Trust Secretary within ten days of the change becoming known.
- 6.2.3 The Trust Secretary will ensure that such notifications are entered into the Register within seven days.
- 6.2.4 The Trust Secretary will conduct an annual review of the Register and will report the outcome to the Board.
- 6.2.5 The Register will be available for inspection by the public at the Trust's headquarters.

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

- 7.1 Subject to the following provisions of this Standing Order, if a Director 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.

7.2 The Board shall exclude a Director from a meeting of the Board while any contract, proposed contract or other matter in which They has a pecuniary interest, is under consideration.

7.3 For the purpose of this Standing Order a Director shall be treated, subject to SO 7.4, as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if:

- They, or a nominee of his/her, is a director of a company or other body, not being a public body, with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration; or
- They is a partner of, or is in the employment of a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration; and
- In the case of married persons living together the interest of one spouse shall, if known to the other, be deemed for the purposes of this Standing Order to be also an interest of the other.

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

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

7.5 Where a Director:

- 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
- The total nominal value of those securities does not exceed 5% of the total nominal value of the issued share capital of the company or body, and
- If the share capital is of more than one class, the total nominal value of shares of any one class in which he/her has a beneficial interest does not exceed 5% of the total issued share capital of that class,

7.6 Standing Order 7 applies to a committee or sub-committee of the Board as it applies to the Board itself and applies to any member of any such committee or sub-committee (whether or not he/her is also a Director of the Trust) as it applies to a Director of the Trust.

8. STANDARDS OF BUSINESS CONDUCT

8.1 All staff must comply with the requirements of the Trust's Policy on Business Conduct and Ethical Standards for Commercial Sponsorship. The following provisions should be read in conjunction with this document.

- 8.2 If it comes to the knowledge of a Director or an officer of the Trust that a contract in which he/her has any pecuniary interest not being a contract to which he/her is himself a party, has been, or is proposed to be, entered into by the Trust he/her shall, at once, give notice in writing to the Chief Executive of the fact that he/her is interested therein. In the case of married persons [or persons] living together as partners, the interest of one partner shall, if known to the other, be deemed to be also the interest of that partner.
- 8.3 An officer must also declare to the Chief Executive any other employment or business or other relationship of his/her, or of a cohabiting spouse, that conflicts, or might reasonably be predicted could conflict with the interests of the Trust.
- 8.4 The Chief Executive will ensure that the interests, employment or relationships declared by staff shall be entered in a register of interests of staff. The Register of Interests of Staff will be maintained by the Trust Secretary.
- 8.5 Canvassing of Directors of the Trust or members of any committee of the Trust directly or indirectly for any appointment under the Trust shall disqualify the candidate for such appointment. The contents of this paragraph of the Standing Order shall be included in application forms or otherwise brought to the attention of candidates.
- 8.6 A Director of the Trust shall not solicit for any person any appointment under the Trust or recommend any person for such appointment: but this paragraph of this Standing Order shall not preclude a Director from giving written testimonial of a candidate's ability, experience or character for submission to the Trust.
- 8.7 Informal discussions outside appointments panels or committees, whether solicited or unsolicited, should be declared to the panel or committee.
- 8.8 Candidates for any staff appointment shall when making application disclose in writing whether they are related to any director or the holder of any office under the Trust. Failure to disclose such a relationship shall disqualify a candidate and, if appointed, render him liable to instant dismissal.
- 8.9 The Directors and every officer of the Trust shall disclose to the Chief Executive any relationship with a candidate of whose candidature that director or officer is aware. It shall be the duty of the Chief Executive to report to the Trust any such disclosure made.
- 8.10 On appointment, Directors (and prior to acceptance of an appointment in the case of executive Directors) should disclose to the Trust whether they are related to any other Director or holder of any office under the Trust.
- 8.11 Where the relationship of an officer or another director to a Director of the Trust is disclosed, the Standing Order headed 'Disability of Directors in proceedings on account of pecuniary interest' (SO 7) shall apply.

9. CUSTODY OF SEAL AND SEALING OF DOCUMENTS

- 9.1 The Common Seal of the Trust shall be kept by the Trust Secretary in a secure place.
- 9.2 The Seal of the Trust shall not be fixed to any documents unless the sealing has

been authorised by a resolution of the Board, or of a committee thereof, or where the Board has delegated its powers.

- 9.3 Before any building, engineering, property or capital document is sealed it must be approved and signed by the Director of Finance (or an officer nominated by him) and authorised and countersigned by the Chief Executive (or an officer nominated by him who shall not be within the originating directorate).
- 9.4 An entry of every sealing shall be made and numbered consecutively in a book provided for that purpose, and shall be signed by the persons who shall have approved and authorised the document and those who attested the seal. A report of all sealing shall be made to the Trust at least quarterly. (The report shall contain details of the seal number, the description of the document and date of sealing).

10. SIGNATURE OF DOCUMENTS

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

11. MISCELLANEOUS

- 11.1 It is the duty of the Chief Executive to ensure that existing Directors and officers and all new appointees are notified of and understand their responsibilities within Standing Orders and SFIs. Updated copies shall be issued to staff designated by the Chief Executive. New designated officers shall be informed in writing and shall receive copies where appropriate of SOs.
- 11.2 Standing Financial Instructions and Reservation of Powers to the Board and Delegation of Powers shall have the effect as if incorporated into Standing Orders.
- 11.3 Standing Orders shall be reviewed annually by the Trust. The requirement for review extends to all documents having the effect as if incorporated in Standing Orders.