

PUBLIC – Board of Directors
30th September 2025

Report	Agenda Item 27.	Fit and Proper Persons Policy Update					
Purpose of the Report	Decision	X	Ratification		Assurance		Information
Accountable Executive	Karan Wheatcroft			Director of Governance, Risk & Improvement			
Author(s)	Nusaiba Cleuvenot			Head of Corporate Governance			
Board Assurance Framework	BAF 1 Quality BAF 2 Safety BAF 3 Operational BAF 4 People BAF 5 Finance BAF 6 Capital BAF 7 Digital BAF 8 Governance BAF 9 Partnerships BAF 10 Research			X	BAF impact – Linked to all areas of the BAF but specifically the actions within BAF 8.		
Strategic goals	Patient and Family Experience People and Culture Purposeful Leadership Adding Value Partnerships Population Health						X
CQC Domains	Safe Effective Caring Responsive Well led						X
Previous considerations	Not applicable						
Executive summary	The Board of Directors holds overarching responsibility for ensuring compliance with the Fit and Proper Persons Test (FPPT), as set out in the Health and Care Act. Following a recent internal audit by MIAA, it was identified that the Trust's policy lacked a formal dispute resolution mechanism. In response, the policy has been updated to reflect NHS England's 2023 Fit and Proper Framework, incorporating a clear dispute resolution process for Board members who wish to challenge FPPT assessments or data held about them. Additional updates include enhanced guidance on mandatory annual checks and director responsibilities for completing self-attestation forms. The full policy with tracked changes is appended to the report for review.						
Recommendations	The Board is asked to review and approve the Fit and Proper Persons Policy.						

Corporate Impact Assessment	
Statutory/regulatory requirements	Meets the requirements of the Health and Social Care Act 2008 and in line with the Trust's Constitution, Code of Governance and regulatory requirements.
Risk	As outlined within the risk management policy document.
Equality & Diversity	Meets Equality Act 2010 duties & PSED 2 aims and does not directly discriminate against protected characteristics.
Communication	Not confidential.



Fit and Proper Persons Policy

Date of approval — 30th September
2025~~7th May 2024~~

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~~Review Date - As appropriate or
when there are changes to
regulation / guidance / best
practice~~



Document Control Page

Name of policy	Fit and Proper Persons Policy
Name of linked policies or procedures	Information Governance Policy , Freedom to Speak Up Policy , Disciplinary Policy
Accountable Director and Job Title	Ms K Wheatcroft - Director of Governance, Risk and Improvement
Author and Job Title	Mrs L Leadsom N Cleuvenot Deputy Director of Head of Corporate Governance and Risk
Status (draft/ratified)	Ratified by the People & Organisation Development Committee (Via email) sent on 1st May 2024 with responses re approval on 7th May 2024. Draft policy. To be reviewed and ratified by Board of Directors on 30th September 2025.
Name of Ratifying Committee	Board of Directors People & Organisation Development Committee
Date Ratified	30th September 2025 7th May 2024
Review date	Every 3 years or as appropriate or when there are changes to regulation / guidance / best practice
Brief description of changes following review	The 'fit and proper persons' test set out in Regulation 5 of the <i>Health and Social Care Act 2008 (Regulated Activities) Regulations 2014</i> (updated 2022) came into force on the 27th November 2014 and is aimed at making sure that those individuals who have authority in organisations that deliver care are responsible for the overall quality and safety of that care, and as such can be held accountable if standards of care do not meet legal requirements. The 2014 regulations were introduced in response to the failings at the Winterbourne View Hospital and the Francis Inquiry into Mid Staffordshire NHS Foundation Trust. A new Fit and Proper Framework was introduced by NHS England in 2023. This Policy applies to all Board Directors – Executive and Non-Executive; Associate (non-voting) attendees of the Board and Governors. It applies to all permanent, acting, and interim Board level positions.
Date Equality Impact Assessment Completed	

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Version Control

Version Number	Date	Author	Status	Comment	Formatted Table
4.0	May 2024	Deputy Director of Risk and Governance	Ratified	Reviewed as appropriate or when there are changes to regulation / guidance / best practice	
5.0	August 2025	Head of Corporate Governance	Draft	Updated in response to the MIAA Audit to incorporate a dispute resolution process. The document now provides clear guidance on the mandatory annual checks and outlines the directors' responsibility to complete self-attestation form fully and accurately.	Formatted: Font: (Default) Arial, 12 pt Formatted: Indent: First line: 0 cm Formatted: Line spacing: Multiple 1.15 li Formatted: Font: (Default) Arial, 12 pt Formatted: Font: (Default) Arial, 12 pt

Contents Page

Section	Title	Page Number
1.	Policy Statement	5
2.	Roles & Responsibilities	6
3.	Procedure	8
4.	Policy Implementation Plan	11
5.	Monitoring Compliance	11
6.	Appendices	11
7.	Record of Change	20

Policy statement

The 'fit and proper persons' test set out in Regulation 5 of the *Health and Social Care Act 2008 (Regulated Activities) Regulations 2014* (updated 2022) came into force on the 27th November 2014 and is aimed at making sure that those individuals who have authority in organisations that deliver care are responsible for the overall quality and safety of that care, and as such can be held accountable if standards of care do not meet legal requirements.

The 2014 regulations were introduced in response to the failings at the Winterbourne View Hospital and the Francis Inquiry into Mid Staffordshire NHS Foundation Trust. A new Fit and Proper Framework was introduced by NHS England in 2023.

This Policy applies to all Board Directors – Executive and Non-Executive; Associate (non-voting) attendees of the Board and Governors. It applies to all permanent, acting, and interim Board level positions.

Whilst providers have a general obligation to ensure that they only employ individuals who are fit for their role, the 'fit and proper persons' test must be applied for all new Directors and Governors; and there must be systems and processes in place to provide ongoing assurance that the requirements are met. There is a duty on the organisation to take such action as is necessary and proportionate to ensure ongoing compliance.

The requirements are that:

- (a) The individual is of good character.
- (b) The individual has the qualifications, competence, skills, and experience which are necessary for the relevant office or position or the work for which they are employed.
- (c) The individual is able by reason of their health, after reasonable adjustments are made, of properly performing tasks which are intrinsic to the office or position for which they are appointed or to the work for which they are employed.
- (d) The individual has not been responsible for, contributed to or facilitated any serious misconduct or mismanagement (whether unlawful or not) while carrying out a regulated activity or providing a service elsewhere which, if provided in England, would be a regulated activity; and
- (e) None of the grounds of unfitness specified in part 1 of Schedule 4 apply to the Individual.

The grounds of unfitness specified in Part of Schedule 4 to the Regulated Activities Regulations are:

- (a) the person is an undischarged bankrupt or a person whose estate has had sequestration awarded in respect of it and who has not been discharged.
- (b) the person is the subject of a bankruptcy restrictions order or an interim bankruptcy restrictions order or an order to like effect made in Scotland or Northern Ireland.
- (c) the person is a person to whom a moratorium period under a debt relief order applies under Part VIIA (debt relief orders) of the Insolvency Act 1986.
- (d) the person has made a composition or arrangement with, or granted a trust deed for, creditors and not been discharged in respect of it.
- (e) the person is included in the children's barred list or the adults' barred list maintained under section 2 of the Safeguarding Vulnerable Groups Act 2006, or in any corresponding list maintained under an equivalent enactment in force in Scotland or Northern Ireland.
- (f) the person is prohibited from holding the relevant office or position, or in the case of an individual for carrying on the regulated activity, by or under any enactment.

The good character requirements referred to in Regulation 5 as specified in Part 2 of Schedule 4 to the Regulated Activities Regulations relate to:

- (a) whether the person has been convicted in the United Kingdom of any offence or been convicted elsewhere of any offence which, if committed in any part of the United Kingdom, would constitute an offence
- (b) whether the person has been erased, removed or struck off a register of professionals maintained by a regulator of health care or social work professionals.

1. Roles and Responsibilities

The Chair

The Trust Chair is accountable for taking all reasonable steps to ensure the FPPT process is effective and that the desired culture of their NHS organisation is maintained to support an effective FPPT regime. As such, chairs' responsibilities are:

- a) Ensure the NHS organisation has proper systems and processes in place so it can make the robust assessments required by the FPPT.
- b) Ensure the results of the full FPPT, including the annual self-attestations for each board member, are retained by the employing NHS organisation.

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- c) Ensure that the FPPT data fields within ESR are accurately maintained in a timely manner.
- d) Ensure that the board member references/pre-employment checks (where relevant) and full FPPT (including the annual self-attestation) are complete and adequate for each board member.
- e) Ensure an appropriate programme is in place to identify and monitor the development needs of board members.
- f) On appointment of a new board member, consider the specific competence, skills, and knowledge of board members to carry out their activities, and how this fits with the overall board.
- g) Conclude whether the board member is fit and proper.
- h) Chairs will also complete an annual self-attestation that they themselves are in continued adherence with the FPPT requirements. On an annual basis, chairs should confirm that all board members have completed their own FPPT self-attestation and that the FPPT is being effectively applied in their NHS organisation.
- i) Ensure that for any board member approved to commence work or continue in post despite there being concerns about a particular aspect of the FPPT, they document the reason(s) as to why there has been an issue about whether a board member might not be fit and proper and the measures taken to address this. A local record of this should be retained. A summary of this should also be included in the annual FPPT submission form to the relevant NHS England regional director.

Senior Independent Director

Annually, the senior independent director (SID) will review and ensure that the chair is meeting the requirements of the FPPT

All Directors (Executive, Non-Executive, Associate (non-voting), Permanent, Acting, Interim) and Governors

To make annual self-declarations in a form prescribed by the Chair and to provide any additional information or evidence requested in order to demonstrate compliance with Fit and Proper Persons requirements.

The Director of Governance, Risk and Improvement (Company Secretary)

Must inform the Chair of any concerns relating to individual self-declarations or arising from other checks such as insolvency registers and registers of disqualified directors.

Chief People Officer

It is the responsibility of the Chief People Officer to:

- maintain oversight and due diligence in respect of appointment processes including pre- employment checks and adequacy of references.

- ensure that employment contracts (T&Cs for NEDs) refer to the requirement to comply with the Regulations and Code of Conduct for Board Directors.
- ensure DBS checks are conducted on appointment and thereafter at intervals of no greater than 3 years for all Board members.

Remuneration & Nominations Committee

The Trust has a Remuneration & Nominations Committee dealing with the appointment of Non-Executive Directors and Executive Directors respectively. These Committees are responsible for ensuring the assessment of candidates for Board positions and in the case of Non-Executive Directors, the recommendation of candidates for appointment by the Council of Governors. Each committee must ensure that the appropriate due diligence is undertaken in respect of the preferred candidate, prior to appointment. Where any issue comes to light, this must be investigated and documented in support of the final recruitment decision.

For issues arising in respect of existing Directors, the Chair may refer any concerns of on-going tenure to the relevant Nominations Committee. Any interim arrangements required pending a Fit and Proper Person investigation will be considered by the relevant Nominations Committee.

The removal of an Executive/Associate Director will be a decision for the Nomination & Remuneration Committee (Executive).

Council of Governors

The removal of a Non-Executive Director will be a decision for the Council of Governors following a recommendation from the Remuneration & Nominations Committee (Non- Executive Directors).

2. Procedure

2.1 New appointments

In order to confirm that the individual is of good character, the Trust will make pre-employment checks which will include the following:

- Full employment history with documented explanation of any gaps
- Obtaining two references (using the Board member reference template), one of which should be from the most recent employer.
- qualification and professional registration checks.
- right to work checks.
- proof of identity.
- occupational health clearance.
- appropriate DBS clearance.
- search of insolvency and bankruptcy register.
- due diligence in relation to (or privy to) previous misconduct, mismanagement, or professional disqualification

The selection process for all Director posts will be robust ensuring that the specific skills and experience required for the role are set out in a person specification and thoroughly tested.

The above will be overseen jointly by the Director of Governance, Risk &

Improvement and the Chief People Officer and evidence of the checks will be documented on the individual's personal file.

On appointment, the individual will be required to complete a 'Fit and Proper Persons' self-declaration (Appendix 1). This will be retained on the individual's personal file.

2.2 On-going Review of Existing Directors

An assessment of on-going fitness will be undertaken each year as part of the annual appraisal process and all Directors will be required to update their self-declarations (Appendix 1) annually. DBS clearance will also be renewed every three years for all Board members. The Chair is accountable for maintaining oversight of ongoing fitness, via the Director of Governance, Risk & Improvement.

The appraisal process will capture training and development updates and progress as well as confirmation of compliance with professional registration where appropriate.

Directors are responsible for ensuring the timely and accurate completions of the annual self-attestation forms.

In addition, the following checks will be conducted on an annual basis:

- Social Media Checks (evidence stored locally and recorded on ESR)
- Professional Registration Verification (conducted by HR where appropriate, and recorded on ESR)
- Insolvency Check (evidence stored locally and recorded on ESR)
- Disqualified Directors Check ((evidence stored locally and recorded on ESR)
- Disqualification of being a Charity Trustee Check (evidence stored locally and recorded on ESR)
- Employment Tribunal Check (evidence stored locally and recorded on ESR)

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2.3 Joint appointments across different NHS organisations

For joint appointments across different NHS organisations, the full FPPT would need to be completed by the designated host/employing NHS organisation and in concluding their assessment they will need input from the chair of the other contracting NHS organisation to ensure that the board member is fit and proper to perform both roles.

The host/employing NHS organisation will then provide a 'letter of confirmation' to the other contracting NHS organisation to confirm that the board member in question has met the requirements of the FPPT.

The chair of the other contracting NHS organisation has the responsibility to keep the host/employing NHS organisation abreast of changes and any matters that may impact the FPPT assessment of the board member.

For the avoidance of doubt, where two or more organisations employ or appoint (in the case of a chair or NED) an individual for two or more separate roles at the same

time, each organisation has a responsibility to complete the FPPT.

If the FPPT assessment at one organisation finds an individual not to be FPP, the chair should update their counterpart of any other NHS organisation(s) where the individual has a board-level role and explain the reason. To note, the issue at one organisation may be one of role-specific competence, which may not necessarily mean the individual is not FPP at the other organisation

2.4 Dealing with Concerns

If the Trust discovers at any point, information that suggests an individual Director does not meet the 'Fit and Proper Persons' criteria, the matter shall be referred immediately to the Chair (or the Senior Independent Director if the concern relates to the Chair).

The Chair shall take appropriate and timely action to investigate and rectify the matter, taking expert advice as necessary and ensuring any issues are dealt with in accordance with the Trust's HR policies. Any concerns will be referred to the relevant Remuneration & Nominations Committee. Where appropriate, findings in relation to a person's fitness may be referred to the relevant professional/regulatory body/bodies.

The Chair, in discussion with the relevant Remuneration & Nominations Committee, will put in place interim arrangements, if required, during any period of investigation. The removal of any Director will be in accordance with the Trust's Constitution, with decision to remove resting with the Remuneration & Nominations Committee (Executive) for Executive/Associate Directors and Council of Governors for Non-Executive Directors.

Removal of a Governor will be in accordance with the Trust's Constitution.

2.5 Personal Data

Personal data relating to the FPPT assessment will be retained in local record systems and specific data fields in the NHS Electronic Staff Record (ESR).

FPPT outcomes must be entered onto ESR and ESR FPPT Dashboard generated for Chair review. Once satisfied with the test the Chair must update and sign off each Board member on ESR. An annual submission form will be generated for Chair sign off and submitted to the NHS England (NHSE) Regional Director. The NHSE FPPT central team will collate records from NHSE regions.

2.6 Dispute Resolution

Data and information

Where a board member identifies an issue with data held about them in relation to the FPPT, they should request a review which should be conducted in accordance with local policies in the first instance.

Where this does not lead to a satisfactory resolution for the board member, the following options are available:

- For NHS England-appointed board members (NHS trust chairs and NEDs and ICB Chairs) – the matter should be escalated to the NHS England Appointments Team.
- For chairs not appointed by NHS England – a further request for review can be made to the SID or deputy chair who would establish a process proportionate to the matter being considered; for example, establishing a panel with at least one independent member.
- For all other board members (including NHS England-appointed board members, and chairs not appointed by NHS England where the above processes have not led to a satisfactory conclusion), the options could include:
 - referring the matter to the ICO
 - (For executive director roles only*) taking the matter to an employment tribunal (ET)
 - instigating civil proceedings.

Outcome of FPPT assessment

Where a board member disagrees with the outcome of the FPPT assessment and they have been deemed 'not fit and proper,' the following options are available:

- For NHS England-appointed board member roles – the matter should be escalated to the NHS England Appointments Team for investigation in accordance with extant policy and procedure.
 - Where this results in a board member being terminated from their appointed role, a BMR** must be completed and retained by the local organisation in accordance with the Framework.
- For non-NHS England-appointed roles (executive and non-executive) – local policy and constitution arrangements should be followed first.
 - NHS organisations may wish to take their own legal advice or seek advice from NHS England.

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2.76 Board Member Reference Request

NHS organisations will need to request board member references (Appendix 2), and store information relating to these references so that it is available for future checks; and use it to support the full FPPT assessment on initial appointment.

NHS organisations should maintain complete and accurate board member references at the point where the board member departs, irrespective of whether there has been a request from another NHS employer and including in circumstances of retirement. Both the initial and board member references should be retained locally on ESR.

Board member references will apply as part of the FPPT assessment when there are new board member appointments, either internal to a particular NHS organisation,

internal to the NHS, or external to the NHS. This applies whether permanent or temporary where greater than six weeks; specifically:

- a. New appointments that have been promoted within an NHS organisation.
- b. Existing board members at one NHS organisation who move to another NHS organisation in the role of a board member.
- c. Individuals who join an NHS organisation in the role of board member for the first time from an organisation that is outside of the NHS.
- d. Individuals who have been a board member in an NHS organisation and join another NHS organisation not in the role of board member, that is, they take a non-Board level role.

3. Policy Implementation Plan

The Director of Governance, Risk and Improvement and the Chief People Officer will jointly maintain this policy and oversee implementation, conducting an audit of personal files for all existing Directors for review to sign off by the Trust Chair.

The Director of Governance, Risk and Improvement will manage the annual self-declaration process on behalf of the Chair.

4. Monitoring of Compliance

The Director of Governance, Risk and Improvement will maintain the policy and support the Chair in compiling an evidence checklist for each Director; and will maintain a system of annual review of self-declarations by the Board of Directors.

5. Appendices

APPENDIX 1 - Annual/ new starter self-attestation

APPENDIX 2 - Board Member Reference Template

Appendix 1 Fit and Proper Persons Test - Annual/new starter self-attestation

Fit and Proper Person Test annual/new starter* self-attestation Countess of Chester Hospital NHS Foundation Trust

I declare that I am a fit and proper person to carry out my role. I:

- am of good character
- have the qualifications, competence, skills and experience which are necessary for me to carry out my duties
- where applicable, have not been erased, removed or struck-off a register of professionals maintained by a regulator of healthcare or social work professionals
- am capable by reason of health of properly performing tasks which are intrinsic to the position
- am not prohibited from holding office (e.g. directors disqualification order)
- within the last five years:
 - I have not been convicted of a criminal offence and sentenced to imprisonment of three months or more
 - been un-discharged bankrupt nor have been subject to bankruptcy restrictions, or have made arrangement/compositions with creditors and has not discharged
 - nor is on any 'barred' list.
- have not been responsible for, contributed to or facilitated any serious misconduct or mismanagement (whether unlawful or not) in the course of carrying on a regulated activity or providing a service elsewhere which, if provided in England, would be a regulated activity.

The legislation states: if you are required to hold a registration with a relevant professional body to carry out your role, you must hold such registration and must have the entitlement to use any professional titles associated with this registration. Where you no longer meet the requirement to hold the registration, any if you are a healthcare professional, social worker or other professional registered with a healthcare or social care regulator, you must inform the regulator in question.

Should my circumstances change, and I can no longer comply with the Fit and Proper Person Test (as described above), I acknowledge that it is my duty to inform the chair.

Name and job title/role:	
Professional registrations held (ref no):	
Date of DBS check/re-check (ref no):	
Signature:	

Date of last appraisal, by whom:	
Signature of board member:	
Date of signature of board member:	
For chair to complete	
Signature of chair to confirm receipt:	
Date of signature of chair:	



Appendix 2: The board member reference template

STANDARD REQUEST: To be used only AFTER a conditional offer of appointment has been made.

[Date]

Human resources officer/name of referee

Recruitment officer

External/NHS organisation receiving request

HR department initiating request

Dear [HR officer's/referee's name]

Re: [applicant's name] - [ref. number] – [Board Member position]

The above-named person has been offered the board member position of [post title] at the [name of the NHS organisation initiating request]. This is a high-profile and public facing role which carries a high level of responsibility. The purpose of NHS boards is to govern effectively, and in so doing build patient, staff, public and stakeholder confidence that the public's health and the provision of healthcare are in safe hands.

Taking this into account, I would be grateful if you could complete the attached confirmation of employment request as comprehensively as possible and return it to me as soon as practically possible to ensure timely recruitment.

Please note that under data protection laws and other access regimes, applicants may be entitled to information that is held on them.

Thank you in advance for your assistance in this matter.

Yours sincerely

[Recruitment officer's name]

Board Member Reference request for NHS Applicants: To be used only AFTER a conditional offer of appointment has been made. Information provided in this reference reflects the most up to date information available at the time the request was fulfilled.		
1. Name of the applicant (1)		
2. National Insurance number or date of birth		
3. Please confirm employment start and termination dates in each previous role <i>A: (if you are completing this reference for pre-employment request for someone currently employed outside the NHS, you may not have this information, please state if this is the case and provide relevant dates of all roles within your organisation)</i> <i>B: (As part of exit reference and all relevant information held in ESR under Employment History to be entered)</i>		
Job Title: From: To: Job Title From: To: Job Title: From: To:		
4. Please confirm the applicant's current/most recent job title and essential job functions (if possible, please attach the Job Description or Person Specification as Appendix A): <i>(This is for Executive Director board positions only, for a Non-Executive Director, please just confirm current job title)</i>		
5. Please confirm Applicant remuneration in current role <i>(this question only applies to Executive Director board positions applied for)</i>	<u>Starting:</u>	<u>Current:</u>

6. Please confirm all Learning and Development undertaken during employment: <i>(this question only applies to Executive Director board positions applied for)</i>		
7. How many days absence (other than annual leave) has the applicant had over the last two years of their employment, and in how many episodes? <u><i>(only applicable if being requested after a conditional offer of employment)</i></u>	<u>Days</u> <u>Absent:</u>	<u>Absence</u> <u>Episodes:</u>
8. Confirmation of reason for leaving:		
9. Please provide details of when you last completed a check with the Disclosure and Barring Service (DBS) <i>(This question is for Executive Director appointments and non-Executive Director appointments where they are already a current member of an NHS Board)</i>		
Date DBS check was last completed. Please indicate the level of DBS check undertaken (basic/standard/enhanced without barred list/or enhanced with barred list) If an enhanced with barred list check was undertaken, please indicate which barred list this applies to	Date Level Adults ☐ Children ☐ Both ☐	

10. Did the check return any information that required further investigation?	Yes ☐	No ☐
If yes, please provide a summary of any follow up actions that need to/are still being actioned:		
11. Please confirm if all annual appraisals have been undertaken and completed (This question is for Executive Director appointments and non-Executive Director appointments where they are already a current member of an NHS Board)	Yes ☐	No ☐
Please provide a summary of the outcome and actions to be undertaken for the last 3 appraisals:		
12. Is there any relevant information regarding any outstanding, upheld or discontinued complaint(s) or other matters tantamount to gross misconduct or serious misconduct or mismanagement including grievances or complaint(s) under any of the Trust's policies and procedures (for example under the Trust's Equal Opportunities Policy)? (For applicants from outside the NHS please complete as far as possible considering the arrangements and policy within the applicant's current organisation and position)	Yes ☐	No ☐
If yes, please provide a summary of the position and (where relevant) any findings and any remedial actions and resolution of those actions:		
13. Is there any outstanding, upheld or discontinued disciplinary action under the	Yes ☐	No ☐

Trust's Disciplinary Procedures including the issue of a formal written warning, disciplinary suspension, or dismissal tantamount to gross or serious misconduct that can include but not be limited to: • Criminal convictions for offences leading to a sentence of imprisonment or incompatible with service in the NHS • Dishonesty • Bullying • Discrimination, harassment, or victimisation • Sexual harassment • Suppression of speaking up • Accumulative misconduct (For applicants from outside the NHS please complete as far as possible considering the arrangements and policy within the applicant's current organisation and position)		
If yes, please provide a summary of the position and (where relevant) any findings and any remedial actions and resolution of those actions:		
14. Please provide any further information and concerns about the applicant's fitness and propriety, not previously covered, relevant to the Fit and Proper Person Test to fulfil the role as a director, be it executive or non-executive. Alternatively state Not Applicable. (Please visit links below for the CQC definition of good characteristics as a reference point) (7)(12) <u>Regulation 5: Fit and proper persons: directors - Care Quality Commission (cqc.org.uk)</u> <u>The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 (legislation.gov.uk)</u>		

15. The facts and dates referred to in the answers above have been provided in good faith and are correct and true to the best of our knowledge and belief.

Referee name (please print): Signature:

.....

Referee Position Held:

Email address:

Telephone number:

Date:

Data Protection:

This form contains personal data as defined by the Data Protection Act 2018 and UK implementation of the General Data Protection Regulation). This data has been requested by the Human Resources/ Workforce Department for the purpose of recruitment and compliance with the Fit and Proper Person requirements applicable to healthcare bodies. It must not be used for any incompatible purposes. The Human Resources/Workforce Department must protect any information disclosed within this form and ensure that it is not passed to anyone who is not authorised to have this information.



6. Record of Change

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Section Number	Version Number	Date of Change	Description of Amendment	Description of Deletion	Description of Addition	Reason
All	4.0	April 2024	Chairs responsibilities expanded. New self-attestation form. Annual submission to NHSE.	-	New Board member reference. Use of ESR for records. Arrangements for joint appointments.	Updates to reflect new NHS England FPPT framework
<u>2.2</u>	<u>5.0</u>	<u>August 2025</u>			<u>The document now provides clear guidance on the mandatory annual checks and outlines the directors' responsibility to complete self-attestation form</u>	

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<u>2.6</u>					<u>fully and accurately.</u> <u>Updated in response to the MIAA Audit to incorporate a dispute resolution process.</u>	
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PUBLIC - Board of Directors
30th September 2025

Report	Agenda Item 28.	Terms of Reference Update – Operational Management Board					
Purpose of the Report	Decision		Ratification	X	Assurance		Information
Accountable Executive	Karan Wheatcroft			Director of Governance, Risk & Improvement			
Author(s)	Nusaiba Cleuvenot			Head of Corporate Governance			
Board Assurance Framework	BAF 1 Quality BAF 2 Safety BAF 3 Operational BAF 4 People BAF 5 Finance BAF 6 Capital BAF 7 Digital BAF 8 Governance BAF 9 Partnerships BAF 10 Research			X	BAF impact – Linked to all areas of the BAF but specifically the actions within BAF 8.		
Strategic goals	Patient and Family Experience People and Culture Purposeful Leadership Adding Value Partnerships Population Health						X X X X X X
CQC Domains	Safe Effective Caring Responsive Well led						X X X X X
Previous considerations	The Terms of References have been reviewed and approved at Operational Management Board (OMB)						
Executive summary	The Board has an overarching responsibility to review the adequacy and effectiveness of its governance systems and responsibilities it discharges to the Assurance Committees. The OMB Terms of Reference have been reviewed and the key changes 1re: - Addition of responsibility to monitor workforce and quality and safety. - Amendment of wording to better reflect role of the committee. - Amendment to the membership. The Terms of Reference with tracked changes are attached for review.						
Recommendations	The Board is asked to ratify the Terms of References for OMB.						

Corporate Impact Assessment	
Statutory/regulatory requirements	Meets the requirements of the Health and Social Care Act 2008 and in line with the Trust's Constitution, Code of Governance and regulatory requirements.
Risk	Supports the assurance for BAF 8 effective governance arrangements.
Equality & Diversity	Meets Equality Act 2010 duties & PSED 2 aims and does not directly discriminate against protected characteristics.
Communication	Not confidential

OPERATIONAL MANAGEMENT BOARD TERMS OF REFERENCE

1. Remit

The Operational Management Board is established by the Board of Directors of Countess of Chester Hospital NHS Foundation Trust and has responsibility for the oversight of implementation of the Trust's operational strategies and objectives. It provides assurance to the Board of Directors that effective performance management is being discharged through the Operational Management Board, ensuring delivery of the Trust's plans and operational targets.

The Operational Management Board is a vital part of the Trust's governance arrangements and is the principal forum at which the leadership team come together to fulfil their shared governance responsibilities.

2. Authority

The Operational Management Board has executive decision-making powers as defined in the Scheme of Reservation and Delegation which is approved by the Board of Directors

Trust Standing Orders and Standing Financial instructions apply.

3. Objectives and Duties

The Operational Management Board oversees the implementation of the Trust's operational and strategic objectives and is where divisions are held to account for their performance. The Operational Management Board will drive delivery of the annual plan and make informed decisions (within approved delegated limits) in relation to business investment/disinvestment and the development of the estate.

The Operational Management Board will:

- i) Ensure the operational implementation and delivery of strategies and objectives as directed by the Board of Directors, including oversight and implementation of the Trust's:
 - Annual plan and underpinning operational plans (including financial, capacity and workforce plans)
 - Estates plan and capital programme
 - Digital and data programme
 - Strategic objectives
- ii) Monitor the operational performance of the Trust (service, ~~and~~ financial, workforce and quality & safety), at a Trust and Divisional level including improvement plans as required, and satisfy itself and the providing assurance to the Board of Directors ~~that the operational performance of the Trust is adequate.~~

- iii) Review the wider system developments and collaborations in respect of positioning, influence and impact for the Trust.
- iv) Share and cascade Organisational Learning including learning from deaths and ~~serious~~ incidents and demonstrate action and embedding.
- v) Review the completeness and accuracy of the ~~Corporate~~ Risk Register and provide appropriate challenge and resolution to the sufficiency of mitigating action plans.
- vi) Approve relevant business cases, service changes and investments as per SORD
- vii) Review and approve relevant Trust-wide policies and procedures.
- viii) Review the impact of new & emerging guidance from regulators and external agencies and prepare the Trust's response.

4. Integration

Ensure that equality and diversity and due consideration to the Human Rights Act are regarded in all aspects of the Operational Management Board's work. This will include review of any equity analyses that are commissioned against the Trust's clinical services portfolio.

In addition the Operational Management Board will have regard for NHS constitution in delivering its objectives.

The Operational Management Board will support the integration of clinical, organisational and financial governance across the Trust.

5. Membership

Chief Executive (Chair)
 Chief Finance Officer
 Director of Nursing & Quality/ Deputy CEO
 Medical Director
 Chief Operating Officer
 Chief Digital ~~and Data~~ Information Officer
~~Director of People and Organisation Development~~ Chief People Officer
~~Director of Corporate Affairs~~ Director of Governance, Risk and Improvement
~~Director of Strategy and Partnerships~~
 Director of Pharmacy and Medicines Management
 Clinical Lead for Cancer
 Clinical Lead for Education
 Clinical Lead for Research
Deputy Medical Director
Deputy Director of Nursing, Quality and Governance
Deputy Director of Nursing and Quality
 Associate Medical Director – Planned Care
 Divisional Director of Nursing - Planned Care
 Divisional Director of Operations – Planned Care
 Associate Medical Director – Urgent ~~and Emergency~~ Care
 Divisional Director of Nursing - Urgent ~~and Emergency~~ Care
 Divisional Director of Operations – Urgent ~~and Emergency~~ Care
 Associate Medical Director – Women's and Children's

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Director of Midwifery
 Divisional Director of Operations – Women’s and Children’s
 Associate Medical Director – Diagnostics and Clinical Support
 Divisional Director of Operations – Diagnostics and Clinical Support
 Associate Medical Director – Therapies and Integrated Community Services
 Associate Director of Therapies - Therapies and Integrated Community Services
 Divisional Director of Operations – Therapies and Integrated Community Services
Divisional Director of Nursing - Therapies and Integrated Community Services
 Director of Performance and Operational Improvement
Deputy Chief Operating Officer
 Associate Director of Estates and Facilities
Head of Communications

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Each member and attendee is required to nominate a deputy to attend in his/her absence as agreed with the Chair.

6. Quorum and Frequency

To be quorate, the meeting requires the attendance of the Chair or Vice Chair; plus an additional 9 members of the Committee to include at least one member from each of the 3 Divisional Leadership Teams. However, should the meeting not be quorate, the Chair reserves the right to continue with the meeting with responsibility for the implementation of any decisions made, subject to ratification at the next quorate meeting.

Attendance may be in person or via video conferencing.

The Operational Management Board will meet formally at least 7 times each year. In addition, a full day strategic development session with all clinical leads will be held at least 3 times each year. This will allow dedicated time for strategic work and/or Operational Management Board development.

Where there is a need for formal or urgent business, a formal business meeting may be convened during any of the strategic full day sessions, at the discretion of the Chair.

The work of the Operational Management Board will be supported by ‘deep dive’ ~~Divisional~~ reviews between each of the Divisional Leadership teams and members of the Executive Team in accordance with the Trust’s performance governance arrangements. The frequency and focus of these meetings will be determined by the Chair of the Operational Management Board (the CEO) in accordance with organisational priorities ~~and will take the form of scheduled Quarterly Divisional Review meetings and/or along with~~ ad hoc items brought to the weekly Executive Directors Group meeting. The Chief Executive reserves the right to suspend or change the timing/frequency of Divisional reviews to fit with organisational priorities. The performance governance process enables timely escalation and response to any area of adverse performance.

7. Reporting

The Operational Management Board will provide minutes and ~~regular summary~~ Chair’s reports to the Board of Directors to provide assurance that it is effectively discharging its responsibilities. In addition, the Board of Directors routinely receives Strategic and Operational dashboards ~~and top high~~ risks and BAF updates directly to ensure that it is sighted on all aspects of operational delivery.

The Operational Management Board will determine the format, frequency and content of the information it requires from each Reporting Sub Committee e.g. minutes, action logs and/or exception reports.

8. Conduct of Meetings

The Chair of the Operational Management Board will ensure that the appropriate processes are followed:

- Minutes, action log and reports of the Operational Management Board to the Board of Directors are accurate, comprehensive and timely.
- The agenda and supporting papers are sent out to members 4 working days prior to the meeting, unless authorised by the Chair for exceptional circumstances.
- The agenda, in terms of items and their delivery will be prepared using a risk-based approach to prioritisation. Divisions are expected to be proactive in identifying agenda items that they wish to be considered.
- Authors of papers presented must use the required template. Attention should particularly be given to the following:
 - Limit the size of papers to a minimum set of information.
 - Have clarity on the "must do's" with a focus on decisions not discussion. Communicate what is expected to be achieved from the agenda item and what input is expected from those attending.
 - Make it explicit on the agenda the specific information or preparation work that members need to have ready.
 - Be clear on where a paper has been before, where it is going and what value the Operational Management Board is expected to add. If the paper duplicates what has been considered elsewhere be clear on what is to be separately achieved by it being considered by the Operational Management Board.
- Presenters of papers can expect all members to have read the papers and should keep to an executive summary that outlines the purpose of their paper/report and key issues. Verbal updates and presentations should be kept to a minimum.
- For the avoidance of doubt, Trust employees who attend the Operational Management Board do so not only to represent or advocate their division or service area but to act in the interests of the Trust as a whole and as part of a Trust-wide governance structure.
- All Operational Management Board members and those in regular attendance should actively participate in discussions pertaining to the agenda, ensuring that solutions and action plans have Multidisciplinary perspectives and consideration of Trust-wide impact.
- Behaviours at meetings should reflect the Trust's values. In particular, all members should treat each other with respect and be "present" in the room e.g. no checking of emails.
- The Chair will regularly review the effectiveness of meetings and make any recommendations regarding changes to these Terms of Reference to the Board of Directors as and when required. In addition, at each meeting there will be an evaluation focusing on what went well and what might be improved for the future
- Meetings may be held face to face, via MS Teams or a combination of the two, at the discretion of the Chair. Any participant joining by videoconferencing will be deemed present and count towards the quoracy.
- MS Teams etiquette must be observed in respect of participation via video conferencing and meetings may be recorded for the purpose of support for minute taking.

PUBLIC – Board of Directors
30th September 2025

Report	Agenda Item 29.	Proposal to Amend the Trust's Constitution (September 2025)					
Purpose of the Report	Decision	X	Ratification		Assurance		Information
Accountable Executive	Karan Wheatcroft			Director of Governance, Risk & Improvement			
Author(s)	Karan Wheatcroft			Director of Governance, Risk & Improvement			
Board Assurance Framework	BAF 1 Quality BAF 2 Safety BAF 3 Operational BAF 4 People BAF 5 Finance BAF 6 Capital BAF 7 Digital BAF 8 Governance BAF 9 Partnerships BAF 10 Research			X	BAF impact – Linked to all areas of the BAF but specifically the actions within BAF 8.		
Strategic goals	Patient and Family Experience People and Culture Purposeful Leadership Adding Value Partnerships Population Health						X
CQC Domains	Safe Effective Caring Responsive Well led						X
Previous considerations	Not applicable						
Executive summary	The proposal is to amend the Trust's Constitution. This includes: - Update of the composition on the Board to reflect the number of Executive and Non Executive Directors. - inclusion of a University appointed Non Executive Director which aligns with our ambition to be designated as a teaching and the university hospital. - Simplified the Governor membership of the Nominations Committee to enable the composition of the four Governors to be from cross the public and partner Governors (this reflects our current arrangements).						

	Minor amends to ensure accuracy of paragraph reference numbers within the document and replacement of a remaining reference to NHS Improvement which no longer exists. Changes to the constitution require approval by the Board of Directors and Council of Governors.
Recommendations	The Board of Directors is asked to review and approve the proposed changes to the Trust Constitution

Corporate Impact Assessment	
Statutory/regulatory requirements	Meets the requirements of the Health and Social Care Act 2008 and in line with the Trust's Constitution, Code of Governance and regulatory requirements.
Risk	As outlined within the risk management policy document.
Equality & Diversity	Meets Equality Act 2010 duties & PSED 2 aims and does not directly discriminate against protected characteristics.
Communication	Not confidential.

Proposal to Amend the Trust's Constitution

1. Introduction

The purpose of this report is to seek approval to make a number of amendments to the Trust's Constitution.

This proposed amendments to the Constitution have been reviewed by Hill Dickinson LLP to ensure compliance with legal requirements.

A small number of minor amendments have also been made to update accuracy.

2. Proposed Amendments to the Constitution

The amendments are also included below - A copy of the full updated Constitution detailing all proposed amendments is also provided.

Amendment 1: Board of Directors Composition – To reflect the number of executive and non-executive directors on the Board and provision for of a University of Chester appointed Non Executive Director

23.2 *The Board of Directors is to comprise:*

23.2.1 *a non-executive Chair;*

23.2.2 *at least 5 other non-executive directors, one of which at the discretion of the Council of Governors will be appointed by the University of Chester, such appointments being subject to approval of the Council of Governors at a general meeting; and*

23.2.3 *at least 5 executive directors.*

The qualification for appointment as a Non-Executive Director has been amended to align with this.

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

25.1.1 he/she is a member of a Public Constituency *or an individual exercising functions for or the University of Chester;*

Amendment 2: Appointment and Removal of Chair and Other Non-Executive

Directors – To simplify the Governor membership of the Nominations Committee to enable the composition of the four Governors to be from across all public and partner Governors (this reflects our current arrangements).

1.3 The (governor) nominations committee will comprise the Chair of the trust (or, when a chair is being appointed, the Vice Chair +/- the Senior Independent Director unless he/she is standing for appointment, in which case another non-executive director), and four public or partnership ~~elect~~ governors (~~comprising Lead Governor, Deputy Lead Governor and one staff governor~~) and one appointed governor. The chair of another foundation trust may be invited to act as an independent assessor to the nominations committee but shall not be a member of such committee.

This section has also been amended to reflect the University appointed Non-executive Director.

- 1.1 *With the exception of the University appointed Non-executive Director, a nominations committee of the Council of Governors with external advice, as appropriate, shall be responsible for the identification and nomination of non-executive directors.*
- 1.8 *With the exception of the University appointed Non-executive Director, suitable candidates (not more than five for each vacancy) will be identified by the nominations committee through a process of open competition. Once suitable candidates have been identified, the nominations committee shall make recommendations to the Council of Governors.*
- 1.9 *In respect of a University appointed Non-executive Director, the nominations committee will consider the nominated candidate and make recommendation to the Council of Governors. Should the nominated candidate not be approved for appointment by the Council of Governors, the University will be asked to nominate an alternative candidate.*

Amendment 3: Minor amends –The only other amendments are minor changes to reference numbers and replacement remaining referenced to NHS Improvement with NHS England.

3. Process for approving the changes to the Constitution

The process for amending the Constitution is set out in section 44 of the Constitution (included below for reference):

- 44.1 *The trust may make amendments of its constitution only if:*
- 44.1.1 *more than half of the members of the Council of Governors of the trust voting approve the amendments; and*
 - 44.1.2 *more than half of the members of the Board of Directors of the trust voting approve the amendments.*

The proposed amendments are not in relation to the powers of duties of the Council of Governors and therefore will not require a vote by members at the Annual Members Meeting. The intention is to report on these amendments at the Annual Members Meeting for transparency.

4. Recommendations

The Board of Directors is asked to review and **Approve** the proposed amendments to the Constitution.

Following the Trust Board approval, the amendments will also need to be approved by the Council of Governors, in line with its duties.

CONSTITUTION OF COUNTESS OF CHESTER HOSPITAL NHS FOUNDATION TRUST

**Updated as per the Health and Social Care Act 2012 and the Health
and Care Act 2022**

1	INTERPRETATION AND DEFINITIONS	4
2	NAME	4
3	PRINCIPAL PURPOSE	5
4	POWERS	5
5	MEMBERSHIP AND CONSTITUENCIES	6
6	APPLICATION FOR MEMBERSHIP	6
7	PUBLIC CONSTITUENCY	6
8	STAFF CONSTITUENCY	7
9	AUTOMATIC MEMBERSHIP BY DEFAULT – STAFF	7
10	RESTRICTION ON MEMBERSHIP	7
11	ANNUAL MEMBERS' MEETING	7
12	THE COUNCIL OF GOVERNORS – COMPOSITION	8
13	THE COUNCIL OF GOVERNORS – ELECTION OF GOVERNORS	8
14	COUNCIL OF GOVERNORS - TENURE	8
15	COUNCIL OF GOVERNORS – DISQUALIFICATION AND REMOVAL	9
16	COUNCIL OF GOVERNORS – DUTIES OF GOVERNORS	9
17	COUNCIL OF GOVERNORS – MEETINGS OF GOVERNORS	9
18	COUNCIL OF GOVERNORS – STANDING ORDERS	10
19	COUNCIL OF GOVERNORS – SUPPORT/ADVICE	10
20	COUNCIL OF GOVERNORS - CONFLICTS OF INTEREST OF GOVERNORS	10
21	COUNCIL OF GOVERNORS – EXPENSES	10
22	COUNCIL OF GOVERNORS – FURTHER PROVISIONS	10
23	BOARD OF DIRECTORS – COMPOSITION	10
24	BOARD OF DIRECTORS – GENERAL DUTY	11
25	BOARD OF DIRECTORS – QUALIFICATION FOR APPOINTMENT AS A NON-EXECUTIVE DIRECTOR	11
26	BOARD OF DIRECTORS – APPOINTMENT AND REMOVAL OF CHAIR AND OTHER NON- EXECUTIVE DIRECTORS	11
27	BOARD OF DIRECTORS – APPOINTMENT OF DEPUTY CHAIR	12
28	BOARD OF DIRECTORS - APPOINTMENT AND REMOVAL OF THE CHIEF EXECUTIVE AND OTHER EXECUTIVE DIRECTORS	12
29	BOARD OF DIRECTORS – DISQUALIFICATION	12
30	BOARD OF DIRECTORS – MEETINGS	12
31	BOARD OF DIRECTORS – STANDING ORDERS	13
32	BOARD OF DIRECTORS - CONFLICTS OF INTEREST OF DIRECTORS	13
33	BOARD OF DIRECTORS – REMUNERATION AND TERMS OF OFFICE	14
34	REGISTERS	14
35	ADMISSION TO AND REMOVAL FROM THE REGISTERS	14
36	REGISTERS – INSPECTION AND COPIES	14
37	DOCUMENTS AVAILABLE FOR PUBLIC INSPECTION	15
38	AUDITOR	16
39	AUDIT COMMITTEE	16
40	ACCOUNTS	16
41	ANNUAL REPORT, FORWARD PLANS AND NON-NHS WORK	16
42	PRESENTATION OF THE ANNUAL ACCOUNTS AND REPORTS TO THE GOVERNORS AND MEMBERS	17
43	INSTRUMENTS	17
44	AMENDMENT OF THE CONSTITUTION	17

Countess of Chester Hospital NHS Foundation Trust Constitution – Updated ~~November 2023~~ August 2025

45	MERGERS ETC AND SIGNIFICANT TRANSACTIONS	18
	ANNEX 1 – THE PUBLIC CONSTITUENCIES	19
	ANNEX 2 – THE STAFF CONSTITUENCY	20
	ANNEX 3 – COMPOSITION OF THE COUNCIL OF GOVERNORS	21
	ANNEX 4 – THE MODEL ELECTION RULES	22
	ANNEX 5 - ADDITIONAL PROVISIONS – COUNCIL OF GOVERNORS	69
	ANNEX 6 - ADDITIONAL PROVISIONS – BOARD OF DIRECTORS	75
	ANNEX 7 – STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE COUNCIL OF GOVERNORS	78
	ANNEX 8 – STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE BOARD OF DIRECTORS	89
	ANNEX 9 – FURTHER PROVISIONS - MEMBERS	104
	ANNEX 10 – FURTHER PROVISIONS	108
	VERSION CONTROL LOG	109

1 INTERPRETATION AND DEFINITIONS

- 1.1 Unless otherwise stated words or expressions contained in this Constitution shall bear the same meaning as all references are to paragraph numbers in Schedule 7 of the 2006 Act as amended by the 2012 Act and 2022 Act.
- 1.2 A reference to legislation or to a legislative provision shall be to that legislation or legislative provision as it is in force, amended or re-enacted from time to time.
- 1.3 Words importing the masculine gender only shall include the feminine gender; words importing the singular shall import the plural and vice-versa.
- 1.3.1 **the 2006 Act** is the National Health Service Act 2006.
- 1.3.2 **the 2012 Act** is the Health and Social Care Act 2012.
- 1.3.3 **the 2022 Act** is the Health and Care Act 2022.
- 1.3.4 **the Accounting Officer** is the person who from time to time discharges the functions specified in paragraph 25(5) of Schedule 7 to the 2006 Act.
- 1.3.5 **Annual Members' Meeting** is defined in Paragraph 11 of the constitution.
- 1.3.6 **Appointed Governor** means a governor appointed by one of the appointing organisations listed in paragraph 2.3 of Annex 3.
- 1.3.7 **the Board** means the Board of Directors.
- 1.3.8 **Constitution** means this constitution and all annexes to it.
- 1.3.9 **Lead Governor** means the governor appointed by the Council of Governors to fulfil the role described at Paragraph 8 of Annex 5.
- 1.3.10 **Deputy Lead Governor** means the governor appointed by the Council of Governors to fulfil the role described at Paragraph 9 of Annex 5.
- 1.3.11 **NHS Commissioning Board** is the body corporate established pursuant to Section 1H of the 2006 Act, known as NHS England.
- 1.3.12 **NHS England** is the NHS Commissioning Board.
- 1.3.13 **Partnership Organisation** means an organisation specified in paragraph 2.3 of Annex 3 who may appoint an 'Appointed Governor'.
- 1.3.14 **Public Governor** means a governor elected by the members of one of the Public Constituencies.
- 1.3.15 **Staff Governor** means a governor elected by the members of one of the classes of the Staff Constituency.
- 1.3.16 **the Trust** means the Countess of Chester Hospital NHS Foundation Trust.
- 1.3.17 **Trust Secretary** means the secretary of the Trust or any other person appointed to perform the duties of the secretary including a secretarial assistant.

2 NAME

- 2.1 The name of the foundation trust is the Countess of Chester Hospital NHS Foundation 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 to better carry on its principal purpose.

4 POWERS

- 4.1 The powers of the trust are set out in the 2006 Act.
- 4.2 All the powers of the trust shall be exercised by the Board of Directors on behalf of the trust.
- 4.3 Any of these powers may be delegated to a committee of directors or to an executive director.
- 4.4 The trust may enter into arrangements for the carrying out, on such terms as the trust considers appropriate, of any of its functions jointly with any other person.
- 4.5 The trust may arrange for any of the functions exercisable by the trust to be exercised by or jointly with any one or more of the following:
- 4.5.1 A relevant body;
 - 4.5.2 A local authority within the meaning of section 2B of the 2006 Act;
 - 4.5.3 A combined authority (as outlined within Section 65Z5 of the 2006 Act)
- 4.6 The trust may also enter into arrangements to carry out the functions of another relevant body, whether jointly or otherwise,
- 4.7 Where a function is exercisable jointly with one or more of the other organisations mentioned at paragraph 4.5, those organisations and the trust may;
- 4.7.1 Arrange for the function to be exercised by a joint committee of theirs;
 - 4.7.2 Arrange for the trust, one or more of those other organisations, or a joint committee of them, to establish and maintain a pooled fund in accordance with section 65Z6 of the 2006 Act.
- 4.8 The trust must exercise its functions effectively, efficiently and economically, in line with Section 63 of the 2006 Act.
- 4.9 In making a decision about the exercise of its functions, the trust must have regard to all likely effects of the decision in relation to:
- 4.9.1 The health and wellbeing of (including inequalities between) the people of England;

- 4.9.2 The quality of services provided to (including inequalities between benefits obtained by) individuals by or in pursuance of arrangements made by relevant bodies for or in connection with the prevention, diagnosis or treatment of illness, as part of the health service in England;
- 4.9.3 Efficiency and sustainability in relation to the use of resources by relevant bodies for the purposes of the health service in England
- 4.10 In the exercise of its functions, the trust must have regard to its duties under section 63B of the 2006 Act (complying with targets under section 1 of the Climate Change Act 2008 and section 5 of the Environmental Act 2021, and to adapt any current or predicted impacts of climate change in the most recent report under section 56 of the Climate Change Act 2008).
- 4.11 For the purposes of this section "relevant body" means NHSE, an integrated care board, an NHS trust, a NHS foundation trust (including the trust) or such other body as may be prescribed under section 655(2). "Relevant bodies" means two or more of these organisations as the context requires.
- 4.12 The arrangements under this paragraph 4 shall be in accordance with:
- 4.12.1 any applicable requirements imposed by the 2006 Act or regulations made under that Act;
- 4.12.2 any applicable statutory guidance that has been issued and
- 4.12.3 otherwise on such terms as the trust sees fit.
- 5 MEMBERSHIP AND CONSTITUENCIES**
- 5.1 The trust shall have members, each of whom shall be a member of one of the following constituencies:
- 5.1.1 a public constituency;
- 5.1.2 a staff constituency.
- 5.2 Youth Associates may also become involved with the trust. Youth Associates are individuals who are at least 11 years of age, but less than 16 years of age, who, apart from their age, are otherwise entitled to become a member of one of the public constituencies and apply to the trust to become a Youth Associate by completing an application form in whatever form the Trust Secretary determines from time to time.
- 5.3 Youth Associates shall not be members of the trust and shall not have a right to vote, but they shall be permitted to attend members meetings and receive any members newsletter or other literature that is distributed to members from time to time, at the discretion of the Council of Governors.
- 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 for a public constituency are referred to collectively as a Public Constituency.

Countess of Chester Hospital NHS Foundation Trust Constitution – Updated ~~November 2023~~August 2025

7.3 The minimum number of members in each Public Constituency is specified in Annex 1.

8 STAFF CONSTITUENCY

8.1 An individual who is employed by the trust under a contract of employment with the trust may become or continue as a member of the trust provided:

8.1.1 he/she is employed by the trust under a contract of employment which has no fixed term or has a fixed term of at least 12 months; or

8.1.2 he/she has 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. For the avoidance of doubt, this does not include those who assist or provide services to the trust on a voluntary basis.

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 4 descriptions of individuals who are eligible for membership of the Staff Constituency, each description of individuals being specified within Annex 2 and being referred to as a class within the Staff Constituency.

8.5 The minimum number of members in each class of the Staff Constituency is specified in Annex 2.

9 AUTOMATIC MEMBERSHIP BY DEFAULT – STAFF

9.1 An individual who is:

9.1.1 eligible to become a member of the Staff Constituency, and

9.1.2 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 he/she informs the trust that he/she does not wish to do so.

10 RESTRICTION ON MEMBERSHIP

10.1 An individual who is a member of a constituency, or of a class within a constituency, may not while membership of that constituency or class continues, be a member of any other constituency or class.

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

10.3 An individual must be at least 16 years old to become a member of the trust.

10.4 Further provisions as to the circumstances in which an individual may not become or continue as a member of the trust are set out in Annex 9 (Further Provisions – Members).

11 ANNUAL MEMBERS' MEETING

11.1 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.

Countess of Chester Hospital NHS Foundation Trust Constitution – Updated ~~November 2023~~August 2025

- 11.2 Further provisions about the Annual Members Meeting are set out in Annex 9.

12 THE COUNCIL OF GOVERNORS – COMPOSITION

- 12.1 The trust is to have a Council of Governors, which shall comprise both elected and appointed governors.
- 12.2 The composition of the Council of Governors is specified in Annex 3.
- 12.3 The composition of the Council of Governors shall seek to ensure that the interests of the community served by the trust are appropriately represented and that the level of representation of the Public Constituencies, the Staff Constituency and the partnership organisations strikes an appropriate balance having regard to their legitimate interest in the trust's affairs. To this end, the Council of Governors shall:
- 12.3.1 at all times maintain a policy for the composition of the Council of Governors which takes account of the membership strategy; and
 - 12.3.2 from time to time, and not less than every three years, review the policy and, where appropriate, propose amendments to it and amendments to this constitution.
- 12.4 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.

13 THE COUNCIL OF GOVERNORS – ELECTION OF GOVERNORS

- 13.1 Elections for elected members of the Council of Governors shall be conducted in accordance with the Model Election Rules.
- 13.2 The Model Election Rules as published from time to time by NHS Providers form part of this constitution. The 2014 version of the Model Election Rules is attached at Annex 4.
- 13.3 A subsequent variation of the Model Election Rules by NHS Providers shall not constitute a variation of the terms of this constitution for the purposes of paragraph 46 of the constitution (amendment of the constitution).
- 13.4 An election, if contested, shall be by secret ballot.
- 13.5 A member may not vote at an election for a Public Governor unless within the specified period he/she has made a declaration in the specified form that he/she is a member of the Public Constituency and stating the particulars of his/her qualification to vote as a member of that Public Constituency for which an election is being held. It is an offence knowingly or recklessly to make such a declaration which is false in a material particular.
- 13.6 The form and content of the declaration and the period for making such a declaration for the purposes of paragraph 13.5 above shall be specified and published by the trust from time to time and shall be so published not less than 14 days prior to an election.

14 COUNCIL OF GOVERNORS - TENURE

- 14.1 An elected governor may hold office for a period of up to 3 years.
- 14.2 An elected governor shall cease to hold office if he/she ceases to be a member of the constituency or class by which he/she was elected.
- 14.3 An elected governor shall be eligible for re-election at the end of his/her term, but may not hold office for longer than nine consecutive years.

Countess of Chester Hospital NHS Foundation Trust Constitution – Updated ~~November 2023~~August 2025

- 14.4 An appointed governor may hold office for a period of up to 3 years.
- 14.5 An appointed governor shall cease to hold office if the appointing organisation withdraws its sponsorship of him/her.
- 14.6 An appointed governor shall be eligible for re-appointment at the end of his/her term, but may not hold office for longer than nine consecutive years.
- 14.7 Further provisions as to the tenure of governors are contained in paragraph 1 of Annex 5 of this constitution.

15 COUNCIL OF GOVERNORS – DISQUALIFICATION AND REMOVAL

- 15.1 The following may not become or continue as a member of the Council of Governors:
 - 15.1.1 a person who has been made bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;
 - 15.1.2 a person in relation to whom a moratorium period under a debt relief order applies (under Part 7A of the Insolvency Act 1986);
 - 15.1.3 a person who has made a composition or arrangement with, or granted a trust deed for, his/her creditors and has not been discharged in respect of it;
 - 15.1.4 a person who within the preceding five years has been convicted in the British Islands of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him/her.
- 15.2 Governors must be at least 16 years of age at the closing date for nominations for their election or appointment.
- 15.3 Further provisions as to the circumstances in which an individual may not become or continue as a member of the Council of Governors and provision for the removal of Governors in certain circumstances are set out in Annex 5.

16 COUNCIL OF GOVERNORS – DUTIES OF GOVERNORS

- 16.1 The general duties of the Council of Governors are:
 - 16.1.1 to hold the non-executive directors individually and collectively to account for the performance of the Board of Directors; and
 - 16.1.2 to represent the interests of the members of the trust as a whole and the interests of the public.
- 16.2 The trust must take steps to secure that the governors are equipped with the skills and knowledge they require in their capacity as such.

17 COUNCIL OF GOVERNORS – MEETINGS OF GOVERNORS

- 17.1 The Chair of the trust (i.e. the Chair of the Board of Directors, appointed in accordance with the provisions of paragraph 26.1 or paragraph 27.1 below) or, in his/her absence the Vice Chair (appointed in accordance with the provisions of paragraph 28 below), or in his/her absence the Deputy Chair shall preside at meetings of the Council of Governors. If the person presiding at any such meeting has a conflict of interest in relation to the business being discussed, the Lead Governor will chair that part of the meeting.

17.2 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 in accordance with Standing Order 3.1.2 of Annex 7.

17.3 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.

18 COUNCIL OF GOVERNORS – STANDING ORDERS

18.1 The standing orders for the practice and procedure of the Council of Governors are attached at Annex 7.

19 COUNCIL OF GOVERNORS – SUPPORT/ADVICE

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

19.1.1 to act in accordance with its constitution, or

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

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

19.3 Without prejudice to the ability of a governor to make a referral to Panel, the trust must take steps to secure that governors are able to access support and / or advice, as and where necessary, to enable them to fulfil their duties. **This reflects section 39A of the 2006 Act – Note that this panel has been disbanded as no referrals were received in over 3 years. However, these provisions should remain as they are still in force within the 2006 Act. In principle, if a referral was made, NHSE could establish a panel again at that point. However, paragraph 21.3 recognises that Trusts may need to provide access to support/advice to governors through alternative routes.*

20 COUNCIL OF GOVERNORS - CONFLICTS OF INTEREST OF GOVERNORS

20.1 If a governor, or their spouse or partner, has a relevant and material 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. The Standing Orders for the Council of Governors shall make provision for the disclosure of interests and arrangements for the appropriate management of any conflicts of interest.

21 COUNCIL OF GOVERNORS – EXPENSES

21.1 The trust may reimburse governors for travel costs and any other costs and expenses at such rates as the trust may determine.

21.2 Governors are not to receive remuneration for their role.

22 COUNCIL OF GOVERNORS – FURTHER PROVISIONS

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

23 BOARD OF DIRECTORS – COMPOSITION

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

23.2 The Board of Directors is to comprise:

23.2.1 a non-executive Chair;

23.2.2 at least 57 other non-executive directors, one of which at the discretion of the Council of Governors will be appointed by the University of Chester, such appointments being subject to approval of the Council of Governors at a general meeting; and

23.2.3 at least 57 executive directors.

23.3 At least half of the Board of Directors, excluding the Chair, shall be comprised of non-executive directors.

23.4 If, at any time, there is an equal number of executive directors and non-executive directors (including the Chair) on the Board then the Chair shall have an additional and casting vote.

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

23.6 The Chief Executive shall be the Accounting Officer.

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

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

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

23.10 The trust may appoint individuals to be Associate Non-Executive Directors. For the avoidance of doubt, individuals appointed to this role are not members of the Board of Directors and have no voting rights. However, they shall be permitted to attend meetings of the Board of Directors, receive relevant papers and participate in discussions at meetings, at the discretion of the Board of Directors.

24 BOARD OF DIRECTORS – GENERAL DUTY

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

25 BOARD OF DIRECTORS – QUALIFICATION FOR APPOINTMENT AS A NON-EXECUTIVE DIRECTOR

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

25.1.1 he/she is a member of a Public Constituency or an individual exercising functions for or the University of Chester; and

25.1.2 he/she is not disqualified by virtue of paragraph 34-29 below.

26 BOARD OF DIRECTORS – APPOINTMENT AND REMOVAL OF CHAIR AND OTHER NON-EXECUTIVE DIRECTORS

26.1 The Council of Governors at a general meeting of the Council of Governors shall appoint or remove the Chair of the trust and the other non-executive directors.

26.2 Removal of the Chair or another non-executive director shall require the approval of three-quarters of the members of the Council of Governors.

Countess of Chester Hospital NHS Foundation Trust Constitution – Updated November 2023August 2025

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- 26.3 Further provisions relating to the appointment and removal of the Chair of the trust and the other non-executive directors are set out in paragraphs 1 and 2 of Annex 6 to this constitution and paragraph 3.1 of Annex 8.

27 BOARD OF DIRECTORS – APPOINTMENT OF DEPUTY CHAIR

- 27.1 The Council of Governors at a general meeting of the Council of Governors shall appoint one of the non-executive directors as a deputy Chair. The deputy Chair shall be called the “Vice Chair”.
- 27.2 The Deputy Chair should not chair the Audit Committee.
- 27.3 The Senior Independent Director ideally should not chair the Audit Committee.
- 27.4 The Council of Governors should raise issues to the Chair or in the case of the Chair to the Senior Independent Director prior to formal action to remove a non-executive director or the Chair.

28 BOARD OF DIRECTORS - APPOINTMENT AND REMOVAL OF THE CHIEF EXECUTIVE AND OTHER EXECUTIVE DIRECTORS

- 28.1 The non-executive directors shall appoint or remove the Chief Executive.
- 28.2 The appointment of the Chief Executive shall require the approval of the Council of Governors.
- 28.3 A committee consisting of the Chair, the Chief Executive and the other non-executive directors shall appoint or remove the other executive directors.

29 BOARD OF DIRECTORS – DISQUALIFICATION

- 29.1 The following may not become or continue as a member of the Board of Directors:
- 29.1.1 a person who has been made bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;
- 29.1.2 a person in relation to whom a moratorium period under a debt relief order applies (under Part 7A of the Insolvency Act 1986);
- 29.1.3 a person who has made a composition or arrangement with, or granted a trust deed for, his/her creditors and has not been discharged in respect of it;
- 29.1.4 a person who within the preceding five years has been convicted in the British Islands of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him/her.
- 29.2 Further provisions as to the circumstances in which an individual may not become or continue as a member of the Board of Directors are set out in Annex 6.

30 BOARD OF DIRECTORS – MEETINGS

- 30.1 Meetings of the Board of Directors shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons in accordance with Standing Order 4.16 of Annex 8.
- 30.2 Before holding a meeting, the Board of Directors must send a copy of the agenda of the meeting to the Council of Governors. As soon as practicable after holding a meeting, the Board of Directors must send a copy of the minutes of the meeting to the Council of Governors. Agendas and minutes of public meetings will be available on the trust’s website. Minutes shall be published in approved form.

Countess of Chester Hospital NHS Foundation Trust Constitution – Updated ~~November 2023~~August 2025

31 BOARD OF DIRECTORS – STANDING ORDERS

- 31.1 The standing orders for the practice and procedure of the Board of Directors are attached at Annex 8.

32 BOARD OF DIRECTORS - CONFLICTS OF INTEREST OF DIRECTORS

- 32.1 The duties that a director of the trust has by virtue of being a director include in particular:
- 32.1.1 a duty to avoid a situation in which the director has (or can have) a direct or indirect interest that conflicts (or possibly may conflict) with the interests of the trust;
 - 32.1.2 a duty not to accept a benefit from a third party by reason of being a director or doing (or not doing) anything in that capacity.
- 32.2 The duty referred to in paragraph 34.1.1 is not infringed if:
- 32.2.1 the situation cannot reasonably be regarded as likely to give rise to a conflict of interest; or
 - 32.2.2 the matter has been authorised in accordance with the constitution.
- 32.3 The duty referred to in paragraph 34.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- 32.4 In paragraph 34.1.2, “third party” means a person other than:
- 32.4.1 the trust; or
 - 32.4.2 a person acting on its behalf.
- 32.5 If a director, or their spouse or partner, has a relevant and material 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 trust or Board of Directors, the director shall disclose that interest to the other directors. The Standing Orders for the Board of Directors contains further provision on the disclosure of interests and arrangements for the appropriate management of any conflicts of interest.
- 32.6 Any interest that is disclosed by a director pursuant to this constitution shall be recorded in a register of interests of directors maintained by the Trust Secretary.
- 32.7 If a declaration under this paragraph proves to be, or becomes, inaccurate or incomplete, a further declaration must be made.
- 32.8 Any declaration required by this paragraph must be made before the trust enters into the transaction or arrangement.
- 32.9 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.
- 32.10 A director need not declare an interest:
- 32.10.1 if it cannot reasonably be regarded as likely to give rise to a conflict of interest;
 - 32.10.2 if, or to the extent that, the directors are already aware of it;
 - 32.10.3 if, or to the extent that, it concerns terms of the director's appointment that have been or are to be considered –

35.9.3.1 by a meeting of the Board of Directors; or

35.9.3.2 by a committee of the directors appointed for the purpose under the constitution.

- 32.11 A matter shall have been authorised for the purposes of paragraph 34.2.2 if it has previously been approved by the Board of Directors at a meeting and the minutes of the meeting shall be conclusive evidence of such approval having been given.

33 BOARD OF DIRECTORS – REMUNERATION AND TERMS OF OFFICE

- 33.1 The Council of Governors at a general meeting of the Council of Governors shall decide the remuneration and allowances, and the other terms and conditions of office, of the Chair and the other non-executive directors, subject to the provisions on terms of office contained in paragraph 3.1 of Annex 8 of this constitution.
- 33.2 The trust shall establish a committee of non-executive directors (the **Remuneration and Nominations Committee**) to decide the remuneration and allowances, and the other terms and conditions of office, of the Chief Executive and other executive directors.

34 REGISTERS

- 34.1 The trust shall have:

- 34.1.1 a register of members showing, in respect of each member, the constituency to which he/she belongs and, where there are classes within it, the class to which he/she belongs;
- 34.1.2 a register of members of the Council of Governors;
- 34.1.3 a register of interests of governors;
- 34.1.4 a register of directors; and
- 34.1.5 a register of interests of the directors.

35 ADMISSION TO AND REMOVAL FROM THE REGISTERS

- 35.1 The Trust Secretary shall be responsible for establishing registers and for keeping these registers up-to-date.
- 35.2 The Council of Governors shall review the registers listed at Paragraphs 36.1.1 to 36.1.3 (inclusive) at least annually.
- 35.3 The Board of Directors shall review the registers listed at Paragraphs 36.1.4 to 36.1.5 (inclusive) at least annually.
- 35.4 The removal of any member from the register of members shall be undertaken in accordance with the provisions of paragraph 2 of Annex 9 to this constitution.

36 REGISTERS – INSPECTION AND COPIES

- 36.1 The trust shall make the registers specified in paragraph 36 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed.
- 36.2 The trust shall not make any part of its register referred to in paragraph 36.1.1 available for inspection by members of the public which shows details of any member of the trust, if he/she so requests.

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

37 DOCUMENTS AVAILABLE FOR PUBLIC INSPECTION

- 37.1 The trust shall make the following documents available for inspection by members of the public free of charge at all reasonable times:
- 37.1.1 a copy of the current constitution;
 - 37.1.2 a copy of the latest annual accounts and of any report of the auditor on them;
 - 37.1.3 a copy of the latest annual report.
- 37.2 The trust shall also make the following documents relating to a special administration of the trust available for inspection by members of the public free of charge at all reasonable times:
- 37.2.1 a copy of any order made under section 65D (appointment of trust special administrator), 65J (power to extend time), 65KC (action following Secretary of State's rejection of final report), 65L(trusts coming out of administration) or 65LA (trusts to be dissolved) of the 2006 Act;
 - 37.2.2 a copy of any report laid under section 65D (appointment of trust special administrator) of the 2006 Act;
 - 37.2.3 a copy of any information published under section 65D (appointment of trust special administrator) of the 2006 Act;
 - 37.2.4 a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act;
 - 37.2.5 a copy of any statement provided under section 65F(administrator's draft report) of the 2006 Act;
 - 37.2.6 a copy of any notice published under section 65F(administrator's draft report), 65G (consultation plan), 65H (consultation requirements), 65J (power to extend time), 65KA (NHSE's decision), 65KB (Secretary of State's response to NHSE's decision), 65KC (action following Secretary of State's rejection of final report) or 65KD (Secretary of State's response to re-submitted final report) of the 2006 Act;
 - 37.2.7 a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act;
 - 37.2.8 a copy of any final report published under section 65 I (administrator's final report) of the 2006 Act;
 - 37.2.9 a copy of any statement published under section 65J (power to extend time) or 65KC (action following Secretary of State's rejection of final report) of the 2006 Act;
 - 37.2.10 a copy of any information published under section 65M (replacement of trust special administrator) of the 2006 Act.

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

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

38 AUDITOR

38.1 The trust shall have an auditor.

38.2 A person may only be appointed as the auditor if he/she meets the requirements referred to in paragraph 23 of Schedule 7 to the 2006 Act.

38.3 The auditor is to carry out their duties in accordance with the provisions of the 2006 Act, in particular Schedule 10 to the 2006 Act, and in accordance with any directions given by NHS England on standards, procedures and techniques to be adopted.

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

39 AUDIT COMMITTEE

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

40 ACCOUNTS

40.1 The trust must keep proper accounts and proper records in relation to the accounts.

40.2 NHSE may with the approval of the Secretary of State give directions to the trust as to the content and form of its accounts.

40.3 The accounts are to be audited by the trust's auditor.

40.4 The trust shall prepare in respect of each financial year annual accounts in such form as NHSE may with the approval of the Secretary of State direct.

40.5 In preparing its annual accounts, the trust must comply with any directions given by NHS England with the approval of the Secretary of State as to the methods and principles according to which the accounts must be prepared and the content and form of the accounts.

40.6 The functions of the trust with respect to the preparation of the annual accounts shall be delegated to the Accounting Officer.

41 ANNUAL REPORT, FORWARD PLANS AND NON-NHS WORK

41.1 The trust shall prepare an annual report and send it to NHS England.

41.2 The trust shall give information as to its forward planning in respect of each financial year to NHS England.

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

41.4 In preparing the document, the directors shall have regard to the views of the Council of Governors.

41.5 Each forward plan must include information about:

Countess of Chester Hospital NHS Foundation Trust Constitution – Updated ~~November 2023~~August 2025

- 41.5.1 the activities other than the provision of goods and services for the purposes of the health service in England that the trust proposes to carry on, and
- 41.5.2 the income it expects to receive from doing so.
- 41.6 Where a forward plan contains a proposal that the trust carry on an activity of a kind mentioned in paragraph 43.5.1 the Council of Governors must:
 - 41.6.1 determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfilment by the trust of its principal purpose or the performance of its other functions, and
 - 41.6.2 notify the directors of the trust of its determination.
- 41.7 If the trust proposes to increase by 5% or more the proportion of its total income in any financial year attributable to activities other than the provision of goods and services for the purposes of the health service in England, the trust may implement the proposal only if more than half of the members of the Council of Governors of the trust voting approve its implementation.
- 42 PRESENTATION OF THE ANNUAL ACCOUNTS AND REPORTS TO THE GOVERNORS AND MEMBERS**
- 42.1 The following documents are to be presented to the Council of Governors at a general meeting of the Council of Governors:
 - 42.1.1 the annual accounts;
 - 42.1.2 any report of the auditor on them;
 - 42.1.3 the annual report.
- 42.2 The documents shall also be presented to the members of the trust at the Annual Members Meeting by at least one member of the Board of Directors in attendance.
- 42.3 The trust may combine a meeting of the Council of Governors convened for the purposes of paragraph 44.1 with the Annual Members Meeting.
- 43 INSTRUMENTS**
- 43.1 The trust shall have a seal.
- 43.2 The seal shall not be affixed except under the authority of the Board of Directors.
- 44 AMENDMENT OF THE CONSTITUTION**
- 44.1 The trust may make amendments of its constitution only if:
 - 44.1.1 more than half of the members of the Council of Governors of the trust voting approve the amendments; and
 - 44.1.2 more than half of the members of the Board of Directors of the trust voting approve the amendments.
- 44.2 Amendments made under paragraph 46.1 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.

- 44.3 Where an amendment is made to the constitution in relation to the powers or duties of the Council of Governors (or otherwise with respect to the role that the Council of Governors has as part of the trust):
- 44.3.1 at least one member of the Council of Governors must attend the next Annual Members Meeting and present the amendment; and
 - 44.3.2 the trust must give the members an opportunity to vote on whether they approve the amendment.
- 44.4 If more than half of the members voting approve the amendment, the amendment continues to have effect; otherwise, it ceases to have effect and the trust must take such steps as are necessary as a result.
- 44.5 Amendments by the trust of its constitution are to be notified to NHSE. For the avoidance of doubt, NHSE's functions do not include a power or duty to determine whether or not the constitution, as a result of the amendments, accords with Schedule 7 of the 2006 Act.

45 MERGERS ETC AND SIGNIFICANT TRANSACTIONS

- 45.1 The trust may only apply for a merger, acquisition, separation or dissolution with the approval of more than half of the members of the Council of Governors.
- 45.2 The trust may enter into a significant transaction only if more than half of the members of the Council of Governors of the trust voting approve entering into the transaction.
- 45.3 For the purposes of paragraph 47.2:
- 45.3.1 a transaction is an investment or disinvestment; and
 - 45.3.2 a transaction is significant if it falls within the definition of a 'significant transaction' as set out in NHS ~~Improvement's~~ England Transactions Guidance (~~November 2017~~) calculated with reference to the trust's opening balance sheet for the financial year in which approval is being sought.
- 45.4 For the avoidance of doubt, for the purposes of paragraph 47.2, the term 'transaction' shall not include the renewal of an existing contract with a commissioning organisation for the provision of services for the purposes of the health service in England and Wales.
- 45.5 If more than half of the members of the Council of Governors voting decline to approve a significant transaction or any part of it, the Council of Governors must approve a written Statement of Reasons for its rejection, to be provided to the Board of Directors.
- 45.6 Nothing in this paragraph 47 shall prevent the Board of Directors from engaging with the Council of Governors, as it sees fit, about any other transaction or arrangement which the trust may enter into, which does not constitute a "significant transaction" within the meaning of this paragraph.
- 45.7 In taking decisions on significant transactions, mergers, acquisitions, separations or dissolutions, Governors need to be assured that the process undertaken by the Board was appropriate, and that the interests of the public at large were considered. A Council of Governors may disagree with the merits of a particular decision of the Board on a transaction, but still give its consent because due diligence has been followed and assurance received. To withhold its consent, the Council of Governors would need to provide evidence that due diligence was not undertaken.

ANNEX 1 – THE PUBLIC CONSTITUENCIES

Name of the Public Constituency	Area of the Public Constituency (confirmation of electoral area or areas)	Minimum number of members	Number of governors to elect
Ellesmere Port and Neston	The following electoral wards within Cheshire West & Chester Local Authority, England: Parkgate Neston Little Neston Willaston & Thornton Netherpool Ledsham & Manor Strawberry Sutton Villages Whitby Groves Whitby Park Central & Grange Westminster Wolverham.	4	4
Chester and rural Cheshire	The electoral wards within the Cheshire West & Chester Local Authority boundary not listed within the Ellesmere Port and Neston constituency (above).	4	8
Flintshire	The electoral wards within the unitary authority of Flintshire, Wales.	4	3
Rest of England and Wales	All electoral areas in England not covered by the other public constituencies in this Annex, and the country of Wales	4	1
Total		16	16

ANNEX 2 – THE STAFF CONSTITUENCY

Staff classes within the Staff Constituency	Individuals eligible for membership of the relevant class	Minimum number of members	Number of governors to elect
Medical staff	Those members of staff employed by the trust who are registered with a medical regulatory body to practise	4	1
Nursing and midwifery staff	Those members of staff employed by the trust who are registered nurses or midwives	4	2
Allied health professionals and technical/scientific staff	Those members of staff who are recognised in the NHS as being AHPs (as regulated by the Health and Care Professions Council or the General Osteopathic Council) and technical and scientific staff who hold recognised technical or scientific qualifications (with the exception of those with recognised medical or nursing/midwifery qualifications)	4	1
Other	Anyone who is eligible for membership of the Staff Constituency but does not fall within any of the other 3 classes	4	1
Total		16	5

In the case of any query as to which class of the Staff Constituency a member of staff is eligible to be a member of, the Trust Secretary shall be responsible for determining which one of the four classes of the Staff Constituency, shown in this Annex, the member of staff is eligible to be a member of. If any member of staff is eligible to be a member of more than one class of the Staff Constituency, he/she shall select one class to be a member of or, where he/she fails to do so (including where he/she fails to notify the Trust Secretary of his/her selection), the Trust Secretary shall determine the class that the member of staff shall be a member of and shall notify the member of that determination in writing.

ANNEX 3 – COMPOSITION OF THE COUNCIL OF GOVERNORS

The composition of the Council of Governors shall be as follows-

COMPOSITION

- 1 The aggregate number of Public Governors is to be more than half of the total number of members of the Council of Governors.
- 2 The Council of Governors shall be comprised of the following governors:
 - 2.1 16 Public Governors from the following public constituencies:
 - 2.1.1 Chester and rural Cheshire – 8 Public Governors
 - 2.1.2 Ellesmere Port and Neston – 4 Public Governors
 - 2.1.3 Flintshire – 3 Public Governors
 - 2.1.4 Rest of England and Wales – 1 Public Governor.
 - 2.2 5 Staff Governors from the following classes of the Staff Constituency:
 - 2.2.1 Medical staff – 1 Staff Governor
 - 2.2.2 Nursing and midwifery staff – 2 Staff Governors
 - 2.2.3 Allied health professionals and technical/scientific staff – 1 Staff Governor
 - 2.2.4 Other – 1 Staff Governor.
 - 2.3 6 Appointed Governors (Partnership Governors) who may be appointed by the following partnership organisations – 1 Appointed Governor to be appointed by each partnership organisation:
 - 2.3.1 Betsi Cadwaladr University Health Board;
 - 2.3.2 Chester University;
 - 2.3.3 Cheshire West and Chester Council;
 - 2.3.4 North Wales Community Health Council – Local Flintshire Committee;
 - 2.3.5 Council for Voluntary Services;
 - 2.3.6 Organisation with strategic responsibility for commissioning NHS provider services

The Partnership Governors are to be appointed by the partnership organisations in accordance with a process agreed with the Trust Secretary. In the event that partnership governor appointments are not taken up, the Council of Governors shall at its discretion consider the appointment of other appropriate partnership governors, subject to the overall limit of six appointed partnership governors. The partnership governor position should be reviewed on an annual basis.

ANNEX 4 – THE MODEL ELECTION RULES

PART 1 Interpretation

1. Interpretation

PART 2 Timetable for election

2. Timetable
3. Computation of time

PART 3 Returning officer

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

PART 4 Stages common to contested and uncontested elections

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

PART 5 Contested elections

19. Poll to be taken by ballot
20. The ballot paper
21. The declaration of identity (public and patient constituencies)

Action to be taken before the poll

- 22. List of eligible voters
- 23. Notice of poll
- 24. Issue of voting information by returning officer
- 25. Ballot paper envelope and covering envelope
- 26. E-voting systems

The poll

- 27. Eligibility to vote
- 28. Voting by persons who require assistance
- 29. Spoilt ballot papers and spoilt text message votes
- 30. Lost voting information
- 31. Issue of replacement voting information
- 32. ID declaration form for replacement ballot papers (public and patient constituencies)
- 33. Procedure for remote voting by internet
- 34. Procedure for remote voting by telephone
- 35. Procedure for remote voting by text message

Procedure for receipt of envelopes, internet votes, telephone vote and text message votes

- 36. Receipt of voting documents
- 37. Validity of votes
- 38. Declaration of identity but no ballot (public and patient constituency)
- 39. De-duplication of votes
- 40. Sealing of packets

PART 6 Counting the votes

- STV41. Interpretation of Part 6
 - 42. Arrangements for counting of the votes
 - 43. The count
 - STV44. Rejected ballot papers and rejected text voting records
 - FPP44. Rejected ballot papers and rejected text voting records
 - STV45. First stage
 - STV46. The quota
- Countess of Chester Hospital NHS Foundation Trust Constitution – Updated ~~November 2023~~August 2025

STV47 Transfer of votes

STV48. Supplementary provisions on transfer

STV49. Exclusion of candidates

STV50. Filling of last vacancies

STV51. Order of election of candidates

FPP51. Equality of votes

PART 7 Final proceedings in contested and uncontested elections

FPP52. Declaration of result for contested elections

STV52. Declaration of result for contested elections

53. Declaration of result for uncontested elections

PART 8 Disposal of documents

54. Sealing up of documents relating to the poll

55. Delivery of documents

56. Forwarding of documents received after close of the poll

57. Retention and public inspection of documents

58. Application for inspection of certain documents relating to election

PART 9 Death of a candidate during a contested election

FPP59. Countermand or abandonment of poll on death of candidate

STV59. Countermand or abandonment of poll on death of candidate

PART 10 Election expenses and publicity

Expenses

60. Election expenses

61. Expenses and payments by candidates

62. Expenses incurred by other persons

Publicity

63. Publicity about election by the corporation

Countess of Chester Hospital NHS Foundation Trust Constitution – Updated ~~November 2023~~August 2025

64. Information about candidates for inclusion with voting information

65. Meaning of “for the purposes of an election”

PART 11 Questioning elections and irregularities

66. Application to question an election

PART 12 Miscellaneous

67. Secrecy

68. Prohibition of disclosure of vote

69. Disqualification

70. Delay in postal service through industrial action or unforeseen event

PART 1 - INTERPRETATION

1. Interpretation

1.1 In these rules, unless the context otherwise requires:

"2006 Act" means the National Health Service Act 2006;

"corporation" means the public benefit corporation subject to this constitution;

"council of governors " means the council of governors of the corporation;

"declaration of identity" has the meaning set out in rule 21.1;

"election" means an election by a constituency, or by a class within a constituency, to fill a vacancy among one or more posts on the council of governors;

"e-voting" means voting using either the internet, telephone or text message;

"e-voting information" has the meaning set out in rule 24.2;

"ID declaration form" has the meaning set out in Rule 21.1; *"internet voting record"* has the meaning set out in rule 26.4(d);

"internet voting system" means such computer hardware and software, data other equipment and services as may be provided by the returning officer for the purpose of enabling voters to cast their votes using the internet;

"lead governor" means the governor nominated by the corporation to fulfil the role described in Appendix B to The NHS Foundation Trust Code of Governance) or any later version of such code.

"list of eligible voters" means the list referred to in rule 22.1, containing the information in rule 22.2;

"method of polling" means a method of casting a vote in a poll, which may be by post, internet, text message or telephone;

"numerical voting code" has the meaning set out in rule 64.2(b)

"polling website" has the meaning set out in rule 26.1;

"postal voting information" has the meaning set out in rule 24.1;

"telephone short code" means a short telephone number used for the purposes of submitting a vote by text message;

"telephone voting facility" has the meaning set out in rule 26.2;

"telephone voting record" has the meaning set out in rule 26.5 (d);

"text message voting facility" has the meaning set out in rule 26.3;

"text voting record" has the meaning set out in rule 26.6 (d);

"the telephone voting system " means such telephone voting facility as may be provided by the returning officer for the purpose of enabling voters to cast their votes by telephone;

"the text message voting system" means such text messaging voting facility as may be provided by the returning officer for the purpose of enabling voters to cast their votes by text message;

“voter ID number” means a unique, randomly generated numeric identifier allocated to each voter by the Returning Officer for the purpose of e-voting;

“voting information” means postal voting information and/or e-voting information.

- 1.2 Other expressions used in these rules and in Schedule 7 to the NHS Act 2006 have the same meaning in these rules as in that Schedule.

PART 2 - TIMETABLE FOR ELECTION

2. Timetable

2.1 The proceedings at an election shall be conducted in accordance with the following timetable:

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

3. Computation of time

3.1 In computing any period of time for the purposes of the timetable:

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

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

3.2 In this rule, "bank holiday" means a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in England and Wales.

PART 3 – RETURNING OFFICER

4. Returning Officer

- 4.1 Subject to rule 69, the returning officer for an election is to be appointed by the corporation.
- 4.2 Where two or more elections are to be held concurrently, the same returning officer may be appointed for all those elections.

5. Staff

- 5.1 Subject to rule 69, the returning officer may appoint and pay such staff, including such technical advisers, as he or she considers necessary for the purposes of the election.

6. Expenditure

- 6.1 The corporation is to pay the returning officer:
- a) any expenses incurred by that officer in the exercise of his or her functions under these rules,
 - b) such remuneration and other expenses as the corporation may determine.

7. Duty of co-operation

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

PART 4 – STAGES COMMON TO CONTESTED AND UNCONTESTED ELECTIONS

8. Notice of election

8.1 The returning officer is to publish a notice of the election stating:

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

9. Nomination of candidates

9.1 Subject to rule 9.2, each candidate must nominate themselves on a single nomination form.

9.2 The returning officer:

- a) is to supply any member of the corporation with a nomination form, and
- b) is to prepare a nomination form for signature at the request of any member of the corporation, but it is not necessary for a nomination to be on a form supplied by the returning officer and a nomination can, subject to rule 13, be in an electronic format.

10. Candidate's particulars

10.1 The nomination form must state the candidate's:

- a) full name,
- b) contact address in full (which should be a postal address although an e-mail address may also be provided for the purposes of electronic communication), and
- c) constituency, or class within a constituency, of which the candidate is a member.

11. Declaration of interests

11.1 The nomination form must state:

- a) any financial interest that the candidate has in the corporation, and
- b) whether the candidate is a member of a political party, and if so, which party, and if the candidate has no such interests, the paper must include a statement to that effect.

Countess of Chester Hospital NHS Foundation Trust Constitution – Updated ~~November 2023~~August 2025

12. Declaration of eligibility

12.1 The nomination form must include a declaration made by the candidate:

- a) that he or she is not prevented from being a member of the council of governors by paragraph 8 of Schedule 7 of the 2006 Act or by any provision of the constitution; and,
- b) for a member of the public or patient constituency, of the particulars of his or her qualification to vote as a member of that constituency, or class within that constituency, for which the election is being held.

13. Signature of candidate

13.1 The nomination form must be signed and dated by the candidate, in a manner prescribed by the returning officer, indicating that:

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

13.2 Where the return of nomination forms in an electronic format is permitted, the returning officer shall specify the particular signature formalities (if any) that will need to be complied with by the candidate.

14. Decisions as to the validity of nomination

14.1 Where a nomination form is received by the returning officer in accordance with these rules, the candidate is deemed to stand for election unless and until the returning officer:

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

14.2 The returning officer is entitled to decide that a nomination form is invalid only on one of the following grounds:

- a) that the paper is not received on or before the final time and date for return of nomination forms, as specified in the notice of the election,
- b) that the paper does not contain the candidate's particulars, as required by rule 10;
- c) that the paper does not contain a declaration of the interests of the candidate, as required by rule 11, (d) that the paper does not include a declaration of eligibility as required by rule 12, or
- d) that the paper is not signed and dated by the candidate, if required by rule 13.

14.3 The returning officer is to examine each nomination form as soon as is practicable after he or she has received it, and decide whether the candidate has been validly nominated.

Countess of Chester Hospital NHS Foundation Trust Constitution – Updated ~~November 2023~~ August 2025

14.4 Where the returning officer decides that a nomination is invalid, the returning officer must endorse this on the nomination form, stating the reasons for their decision.

14.5 The returning officer is to send notice of the decision as to whether a nomination is valid or invalid to the candidate at the contact address given in the candidate's nomination form. If an e-mail address has been given in the candidate's nomination form (in addition to the candidate's postal address), the returning officer may send notice of the decision to that address.

15. Publication of statement of candidates

15.1 The returning officer is to prepare and publish a statement showing the candidates who are standing for election.

15.2 The statement must show:

- a) the name, contact address (which shall be the candidate's postal address), and constituency or class within a constituency of each candidate standing, and
- b) the declared interests of each candidate standing,

as given in their nomination form.

15.3 The statement must list the candidates standing for election in alphabetical order by surname.

15.4 The returning officer must send a copy of the statement of candidates and copies of the nomination forms to the corporation as soon as is practicable after publishing the statement.

16. Inspection of statement of nominated candidates and nomination forms

16.1 The corporation is to make the statement of the candidates and the nomination forms supplied by the returning officer under rule 15.4 available for inspection by members of the corporation free of charge at all reasonable times.

16.2 If a member of the corporation requests a copy or extract of the statement of candidates or their nomination forms, the corporation is to provide that member with the copy or extract free of charge.

17. Withdrawal of candidates

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

18. Method of election

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

PART 5 – CONTESTED ELECTIONS

19. Poll to be taken by ballot

- 19.1 The votes at the poll must be given by secret ballot.
- 19.2 The votes are to be counted and the result of the poll determined in accordance with Part 6 of these rules.
- 19.3 The corporation may decide that voters within a constituency or class within a constituency, may, subject to rule 19.4, cast their votes at the poll using such different methods of polling in any combination as the corporation may determine.
- 19.4 The corporation may decide that voters within a constituency or class within a constituency for whom an e-mail address is included in the list of eligible voters may only cast their votes at the poll using an e-voting method of polling.
- 19.5 Before the corporation decides, in accordance with rule 19.3 that one or more e-voting methods of polling will be made available for the purposes of the poll, the corporation must satisfy itself that:
- a) if internet voting is to be a method of polling, the internet voting system to be used for the purpose of the election is:
 - (i) configured in accordance with these rules; and
 - (ii) will create an accurate internet voting record in respect of any voter who casts his or her vote using the internet voting system;
 - b) if telephone voting to be a method of polling, the telephone voting system to be used for the purpose of the election is:
 - (i) configured in accordance with these rules; and
 - (ii) will create an accurate telephone voting record in respect of any voter who casts his or her vote using the telephone voting system;
 - c) if text message voting is to be a method of polling, the text message voting system to be used for the purpose of the election is:
 - (i) configured in accordance with these rules; and
 - (ii) will create an accurate text voting record in respect of any voter who casts his or her vote using the text message voting system.

20. The ballot paper

- 20.1 The ballot of each voter (other than a voter who casts his or her ballot by an e-voting method of polling) is to consist of a ballot paper with the persons remaining validly nominated for an election after any withdrawals under these rules, and no others, inserted in the paper.
- 20.2 Every ballot paper must specify:

- a) the name of the corporation,
- b) the constituency, or class within a constituency, for which the election is being held,
- c) the number of members of the council of governors to be elected from that constituency, or class within that constituency,
- d) the names and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
- e) instructions on how to vote by all available methods of polling, including the relevant voter's voter ID number if one or more e-voting methods of polling are available,
- f) if the ballot paper is to be returned by post, the address for its return and the date and time of the close of the poll, and
- g) the contact details of the returning officer.

20.3 Each ballot paper must have a unique identifier.

20.4 Each ballot paper must have features incorporated into it to prevent it from being reproduced.

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

21.1 The corporation shall require each voter who participates in an election for a public or patient constituency to make a declaration confirming:

- a) what the voter is the person:
 - (i) to whom the ballot paper was addressed, and/or
 - (ii) to whom the voter ID number contained within the e-voting information was allocated,
- b) that he or she has not marked or returned any other voting information in the election, and
- c) the particulars of his or her qualification to vote as a member of the constituency or class within the constituency for which the election is being held,

("declaration of identity")

and the corporation shall make such arrangements as it considers appropriate to facilitate the making and the return of a declaration of identity by each voter, whether by the completion of a paper form ("ID declaration form") or the use of an electronic method.

21.2 The voter must be required to return his or her declaration of identity with his or her ballot.

21.3 The voting information shall caution the voter that if the declaration of identity is not duly returned or is returned without having been made correctly, any vote cast by the voter may be declared

Action to be taken before the poll invalid.

22. List of eligible voters

Countess of Chester Hospital NHS Foundation Trust Constitution – Updated ~~November 2023~~August 2025

22.1 The corporation is to provide the returning officer with a list of the members of the constituency or class within a constituency for which the election is being held who are eligible to vote by virtue of rule 27 as soon as is reasonably practicable after the final date for the delivery of notices of withdrawals by candidates from an election.

22.2 The list is to include, for each member:

- a) a postal address; and,
- b) the member's e-mail address, if this has been provided

to which his or her voting information may, subject to rule 22.3, be sent.

22.3 The corporation may decide that the e-voting information is to be sent only by e-mail to those members in the list of eligible voters for whom an e-mail address is included in that list.

23. Notice of poll

23.1 The returning officer is to publish a notice of the poll stating:

- a) the name of the corporation,
- b) the constituency, or class within a constituency, for which the election is being held,
- c) the number of members of the council of governors to be elected from that constituency, or class with that constituency,
- d) the names, contact addresses, and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
- e) that the ballot papers for the election are to be issued and returned, if appropriate, by post,
- f) the methods of polling by which votes may be cast at the election by voters in a constituency or class within a constituency, as determined by the corporation in accordance with rule 19.3,
- g) the address for return of the ballot papers,
- h) the uniform resource locator (url) where, if internet voting is a method of polling, the polling website is located;
- i) the telephone number where, if telephone voting is a method of polling, the telephone voting facility is located,
- j) the telephone number or telephone short code where, if text message voting is a method of polling, the text message voting facility is located,
- k) the date and time of the close of the poll,
- l) the address and final dates for applications for replacement voting information, and
- m) the contact details of the returning officer.

24. Issue of voting information by returning officer

24.1 Subject to rule 24.3, as soon as is reasonably practicable on or after the publication of the notice of the poll, the returning officer is to send the following information by post to each member of the corporation named in the list of eligible voters:

- a) a ballot paper and ballot paper envelope,

- b) the ID declaration form (if required),
- c) information about each candidate standing for election, pursuant to rule 61 of these rules, and
- d) a covering envelope;

("postal voting information").

24.2 Subject to rules 24.3 and 24.4, as soon as is reasonably practicable on or after the publication of the notice of the poll, the returning officer is to send the following information by e-mail and/ or by post to each member of the corporation named in the list of eligible voters whom the corporation determines in accordance with rule 19.3 and/ or rule 19.4 may cast his or her vote by an e-voting method of polling:

- a) instructions on how to vote and how to make a declaration of identity (if required),
- b) the voter's voter ID number,
- c) information about each candidate standing for election, pursuant to rule 64 of these rules, or details of where this information is readily available on the internet or available in such other formats as the Returning Officer thinks appropriate,
- d) contact details of the returning officer,

("e-voting information").

24.3 The corporation may determine that any member of the corporation shall:

- a) only be sent postal voting information; or
- b) only be sent e-voting information; or
- c) be sent both postal voting information and e-voting information;

for the purposes of the poll.

24.4 If the corporation determines, in accordance with rule 22.3, that the e-voting information is to be sent only by e-mail to those members in the list of eligible voters for whom an email address is included in that list, then the returning officer shall only send that information by e-mail.

24.5 The voting information is to be sent to the postal address and/ or e-mail address for each member, as specified in the list of eligible voters.

25. Ballot paper envelope and covering envelope

25.1 The ballot paper envelope must have clear instructions to the voter printed on it, instructing the voter to seal the ballot paper inside the envelope once the ballot paper has been marked.

25.2 The covering envelope is to have:

- a) the address for return of the ballot paper printed on it, and
- b) pre-paid postage for return to that address.

Countess of Chester Hospital NHS Foundation Trust Constitution – Updated ~~November 2023~~ August 2025

25.3 There should be clear instructions, either printed on the covering envelope or elsewhere, instructing the voter to seal the following documents inside the covering envelope and return it to the returning officer –

- a) the completed ID declaration form if required, and
- b) the ballot paper envelope, with the ballot paper sealed inside it.

26. E-voting systems

26.1 If internet voting is a method of polling for the relevant election then the returning officer must provide a website for the purpose of voting over the internet (in these rules referred to as "the polling website").

26.2 If telephone voting is a method of polling for the relevant election then the returning officer must provide an automated telephone system for the purpose of voting by the use of a touch-tone telephone (in these rules referred to as "the telephone voting facility").

26.3 If text message voting is a method of polling for the relevant election then the returning officer must provide an automated text messaging system for the purpose of voting by text message (in these rules referred to as "the text message voting facility").

26.4 The returning officer shall ensure that the polling website and internet voting system provided will:

- a) require a voter to:
 - (i) enter his or her voter ID number; and
 - (ii) where the election is for a public or patient constituency, make a declaration of identity;

in order to be able to cast his or her vote;

- b) specify:
 - (i) the name of the corporation,
 - (ii) the constituency, or class within a constituency, for which the election is being held,
 - (iii) the number of members of the council of governors to be elected from that constituency, or class within that constituency,
 - (iv) the names and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
 - (v) instructions on how to vote and how to make a declaration of identity,
 - (vi) the date and time of the close of the poll, and
 - (vii) the contact details of the returning officer;
- c) prevent a voter from voting for more candidates than he or she is entitled to at the election;
- d) create a record ("internet voting record") that is stored in the internet voting system in respect of each vote cast by a voter using the internet that comprises of-

- (i) the voter's voter ID number;
 - (ii) the voter's declaration of identity (where required);
 - (iii) the candidate or candidates for whom the voter has voted; and
 - (iv) the date and time of the voter's vote,
- e) if the voter's vote has been duly cast and recorded, provide the voter with confirmation of this; and
- f) prevent any voter from voting after the close of poll.

26.5 The returning officer shall ensure that the telephone voting facility and telephone voting system provided will:

- a) require a voter to
- (i) enter his or her voter ID number in order to be able to cast his or her vote; and
 - (ii) where the election is for a public or patient constituency, make a declaration of identity;
- b) specify:
- (i) the name of the corporation,
 - (ii) the constituency, or class within a constituency, for which the election is being held,
 - (iii) the number of members of the council of governors to be elected from that constituency, or class within that constituency,
 - (iv) instructions on how to vote and how to make a declaration of identity,
 - (v) the date and time of the close of the poll, and
 - (vi) the contact details of the returning officer;
- c) prevent a voter from voting for more candidates than he or she is entitled to at the election;
- d) create a record ("telephone voting record") that is stored in the telephone voting system in respect of each vote cast by a voter using the telephone that comprises of:
- (i) the voter's voter ID number;
 - (ii) the voter's declaration of identity (where required);
 - (iii) the candidate or candidates for whom the voter has voted; and
 - (iv) the date and time of the voter's vote
- e) if the voter's vote has been duly cast and recorded, provide the voter with confirmation of this;
- f) prevent any voter from voting after the close of poll.

26.6 The returning officer shall ensure that the text message voting facility and text messaging voting system provided will:

- a) require a voter to:
- (i) provide his or her voter ID number; and
 - (ii) where the election is for a public or patient constituency, make a declaration of identity; in order to be able to cast his or her vote;

- b) prevent a voter from voting for more candidates than he or she is entitled to at the election;
- c) create a record ("text voting record") that is stored in the text messaging voting system in respect of each vote cast by a voter by text message that comprises of:
 - (i) the voter's voter ID number;
 - (ii) the voter's declaration of identity (where required);
 - (iii) the candidate or candidates for whom the voter has voted; and
 - (iv) the date and time of the voter's vote
- d) if the voter's vote has been duly cast and recorded, provide the voter with confirmation of this;
- e) prevent any voter from voting after the close of poll.

The poll

27. Eligibility to vote

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

28. Voting by persons who require assistance

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

29. Spoilt ballot papers and spoilt text message votes

- 29.1 If a voter has dealt with his or her ballot paper in such a manner that it cannot be accepted as a ballot paper (referred to as a "spoilt ballot paper"), that voter may apply to the returning officer for a replacement ballot paper.
- 29.2 On receiving an application, the returning officer is to obtain the details of the unique identifier on the spoilt ballot paper, if he or she can obtain it.
- 29.3 The returning officer may not issue a replacement ballot paper for a spoilt ballot paper unless he or she:
- a) is satisfied as to the voter's identity; and
 - b) has ensured that the completed ID declaration form, if required, has not been returned.

29.4 After issuing a replacement ballot paper for a spoilt ballot paper, the returning officer shall enter in a list ("the list of spoilt ballot papers"):

- a) the name of the voter, and
- b) the details of the unique identifier of the spoilt ballot paper (if that officer was able to obtain it), and
- c) the details of the unique identifier of the replacement ballot paper.

29.5 If a voter has dealt with his or her text message vote in such a manner that it cannot be accepted as a vote (referred to as a "spoilt text message vote"), that voter may apply to the returning officer for a replacement voter ID number.

29.6 On receiving an application, the returning officer is to obtain the details of the voter ID number on the spoilt text message vote, if he or she can obtain it.

29.7 The returning officer may not issue a replacement voter ID number in respect of a spoilt text message vote unless he or she is satisfied as to the voter's identity.

29.8 After issuing a replacement voter ID number in respect of a spoilt text message vote, the returning officer shall enter in a list ("the list of spoilt text message votes"):

- a) the name of the voter, and
- b) the details of the voter ID number on the spoilt text message vote (if that officer was able to obtain it), and
- c) the details of the replacement voter ID number issued to the voter.

30. Lost voting information

30.1 Where a voter has not received his or her voting information by the tenth day before the close of the poll, that voter may apply to the returning officer for replacement voting information.

30.2 The returning officer may not issue replacement voting information in respect of lost voting information unless he or she:

- a) is satisfied as to the voter's identity,
- b) has no reason to doubt that the voter did not receive the original voting information,
- c) has ensured that no declaration of identity, if required, has been returned.

30.3 After issuing replacement voting information in respect of lost voting information, the returning officer shall enter in a list ("the list of lost ballot documents"):

- a) the name of the voter
- b) the details of the unique identifier of the replacement ballot paper, if applicable, and
- c) the voter ID number of the voter.

31. Issue of replacement voting information

Countess of Chester Hospital NHS Foundation Trust Constitution – Updated ~~November 2023~~August 2025

- 31.1 If a person applies for replacement voting information under rule 29 or 30 and a declaration of identity has already been received by the returning officer in the name of that voter, the returning officer may not issue replacement voting information unless, in addition to the requirements imposed by rule 29.3 or 30.2, he or she is also satisfied that that person has not already voted in the election, notwithstanding the fact that a declaration of identity if required has already been received by the returning officer in the name of that voter.
- 31.2 After issuing replacement voting information under this rule, the returning officer shall enter in a list ("the list of tendered voting information"):
- a) the name of the voter,
 - b) the unique identifier of any replacement ballot paper issued under this rule;
 - c) the voter ID number of the voter.

32. ID declaration form for replacement ballot papers (public and patient constituencies)

- 32.1 In respect of an election for a public or patient constituency an ID declaration form must be issued with each replacement ballot paper requiring the voter to make a declaration of identity.

Polling by internet, telephone or text

33. Procedure for remote voting by internet

- 33.1 To cast his or her vote using the internet, a voter will need to gain access to the polling website by keying in the url of the polling website provided in the voting information.
- 33.2 When prompted to do so, the voter will need to enter his or her voter ID number.
- 33.3 If the internet voting system authenticates the voter ID number, the system will give the voter access to the polling website for the election in which the voter is eligible to vote.
- 33.4 To cast his or her vote, the voter will need to key in a mark on the screen opposite the particulars of the candidate or candidates for whom he or she wishes to cast his or her vote.
- 33.5 The voter will not be able to access the internet voting system for an election once his or her vote at that election has been cast.

34. Voting procedure for remote voting by telephone

- 34.1 To cast his or her vote by telephone, the voter will need to gain access to the telephone voting facility by calling the designated telephone number provided in the voter information using a telephone with a touch-tone keypad.
- 34.2 When prompted to do so, the voter will need to enter his or her voter ID number using the keypad.

- 34.3 If the telephone voting facility authenticates the voter ID number, the voter will be prompted to vote in the election.
- 34.4 When prompted to do so the voter may then cast his or her vote by keying in the numerical voting code of the candidate or candidates, for whom he or she wishes to vote.
- 34.5 The voter will not be able to access the telephone voting facility for an election once his or her vote at that election has been cast.

35. Voting procedure for remote voting by text message

- 35.1 To cast his or her vote by text message the voter will need to gain access to the text message voting facility by sending a text message to the designated telephone number or telephone short code provided in the voter information.
- 35.2 The text message sent by the voter must contain his or her voter ID number and the numerical voting code for the candidate or candidates, for whom he or she wishes to vote.
- 35.3 The text message sent by the voter will need to be structured in accordance with the instructions on how to vote contained in the voter information, otherwise the vote will not be cast.

Procedure for receipt of envelopes, internet votes, telephone votes and text message votes

36. Receipt of voting documents

- 36.1 Where the returning officer receives:
 - a) a covering envelope, or
 - b) any other envelope containing an ID declaration form if required, a ballot paper envelope, or a ballot paper,

before the close of the poll, that officer is to open it as soon as is practicable; and rules 37 and 38 are to apply.
- 36.2 The returning officer may open any covering envelope or any ballot paper envelope for the purposes of rules 37 and 38, but must make arrangements to ensure that no person obtains or communicates information as to:
 - a) the candidate for whom a voter has voted, or
 - b) the unique identifier on a ballot paper.
- 36.3 The returning officer must make arrangements to ensure the safety and security of the ballot papers

37. Validity of votes

- 37.1 A ballot paper shall not be taken to be duly returned unless the returning officer is satisfied that it has been received by the returning officer before the close of the poll, with an ID declaration form if required that has been correctly completed, signed and dated.
- 37.2 Where the returning officer is satisfied that rule 37.1 has been fulfilled, he or she is to: and other documents.
- a) put the ID declaration form if required in a separate packet, and
 - b) put the ballot paper aside for counting after the close of the poll.
- 37.3 Where the returning officer is not satisfied that rule 37.1 has been fulfilled, he or she is to:
- a) mark the ballot paper "disqualified",
 - b) if there is an ID declaration form accompanying the ballot paper, mark it "disqualified" and attach it to the ballot paper,
 - c) record the unique identifier on the ballot paper in a list of disqualified documents (the "list of disqualified documents"); and
 - d) place the document or documents in a separate packet.
- 37.4 An internet, telephone or text message vote shall not be taken to be duly returned unless the returning officer is satisfied that the internet voting record, telephone voting record or text voting record (as applicable) has been received by the returning officer before the close of the poll, with a declaration of identity if required that has been correctly made.
- 37.5 Where the returning officer is satisfied that rule 37.4 has been fulfilled, he or she is to put the internet voting record, telephone voting record or text voting record (as applicable) aside for counting after the close of the poll.
- 37.6 Where the returning officer is not satisfied that rule 37.4 has been fulfilled, he or she is to:
- a) mark the internet voting record, telephone voting record or text voting record (as applicable) "disqualified",
 - b) record the voter ID number on the internet voting record, telephone voting record or text voting record (as applicable) in the list of disqualified documents; and
 - c) place the document or documents in a separate packet.
- 38. Declaration of identity but no ballot paper (public and patient constituency)¹**
- 38.1 Where the returning officer receives an ID declaration form if required but no ballot paper, the returning officer is to:
- a) mark the ID declaration form "disqualified",
 - b) record the name of the voter in the list of disqualified documents, indicating that a declaration of identity was received from the voter without a ballot paper, and
 - c) place the ID declaration form in a separate packet.

¹ It should not be possible, technically, to make a declaration of identity electronically without also submitting a vote.

39. De-duplication of votes

- 39.1 Where different methods of polling are being used in an election, the returning officer shall examine all votes cast to ascertain if a voter ID number has been used more than once to cast a vote in the election.
- 39.2 If the returning officer ascertains that a voter ID number has been used more than once to cast a vote in the election he or she shall:
- a) only accept as duly returned the first vote received that was cast using the relevant voter ID number; and
 - b) mark as "disqualified" all other votes that were cast using the relevant voter ID number
- 39.3 Where a ballot paper is disqualified under this rule the returning officer shall:
- a) mark the ballot paper "disqualified",
 - b) if there is an ID declaration form accompanying the ballot paper, mark it "disqualified" and attach it to the ballot paper,
 - c) record the unique identifier and the voter ID number on the ballot paper in the list of disqualified documents;
 - d) place the document or documents in a separate packet; and
 - e) disregard the ballot paper when counting the votes in accordance with these rules.
- 39.4 Where an internet voting record, telephone voting record or text voting record is disqualified under this rule the returning officer shall:
- a) mark the internet voting record, telephone voting record or text voting record (as applicable) "disqualified",
 - b) record the voter ID number on the internet voting record, telephone voting record or text voting record (as applicable) in the list of disqualified documents;
 - c) place the internet voting record, telephone voting record or text voting record (as applicable) in a separate packet, and
 - d) disregard the internet voting record, telephone voting record or text voting record (as applicable) when counting the votes in accordance with these rules.

40. Sealing of packets

- 40.1 As soon as is possible after the close of the poll and after the completion of the procedure under rules 37 and 38, the returning officer is to seal the packets containing:
- a) the disqualified documents, together with the list of disqualified documents inside it,
 - b) the ID declaration forms, if required,
 - c) the list of spoilt ballot papers and the list of spoilt text message votes,
 - d) the list of lost ballot documents,
 - e) the list of eligible voters, and (f) the list of tendered voting information

and ensure that complete electronic copies of the internet voting records, telephone voting records and text voting records created in accordance with rule 26 are held in a device suitable for the purpose of storage.

PART 6 – COUNTING THE VOTES

STV41. Interpretation of Part 6

41.1 In Part 6 of these rules:

“ballot document” means a ballot paper, internet voting record, telephone voting record or text voting record.

“continuing candidate” means any candidate not deemed to be elected, and not excluded,

“count” means all the operations involved in counting of the first preferences recorded for candidates, the transfer of the surpluses of elected candidates, and the transfer of the votes of the excluded candidates,

“deemed to be elected” means deemed to be elected for the purposes of counting of votes but without prejudice to the declaration of the result of the poll,

“mark” means a figure, an identifiable written word, or a mark such as “X”,

“non-transferable vote” means a ballot document: (a) on which no second or subsequent preference is recorded for a continuing candidate, or (b) which is excluded by the returning officer under rule STV49,

“preference” as used in the following contexts has the meaning assigned below:

(a) *“first preference”* means the figure “1” or any mark or word which clearly indicates a first (or only) preference,

(b) *“next available preference”* means a preference which is the second, or as the case may be, subsequent preference recorded in consecutive order for a continuing candidate (any candidate who is deemed to be elected or is excluded thereby being ignored); and

(c) in this context, a *“second preference”* is shown by the figure “2” or any mark or word which clearly indicates a second preference, and a third preference by the figure “3” or any mark or word which clearly indicates a third preference, and so on,

“quota” means the number calculated in accordance with rule STV46,

“surplus” means the number of votes by which the total number of votes for any candidate (whether first preference or transferred votes, or a combination of both) exceeds the quota; but references in these rules to the transfer of the surplus means the transfer (at a transfer value) of all transferable ballot documents from the candidate who has the surplus,

“stage of the count” means:

(a) the determination of the first preference vote of each candidate,

(b) the transfer of a surplus of a candidate deemed to be elected, or (c) the exclusion of one or more candidates at any given time,

“transferable vote” means a ballot document on which, following a first preference, a second or subsequent preference is recorded in consecutive numerical order for a continuing candidate,

“transfer red vote” means a vote derived from a ballot document on which a second or subsequent preference is recorded for the candidate to whom that ballot document has been transferred, and

“transfer value” means the value of a transferred vote calculated in accordance with rules STV47.4 or STV47.7.

42. Arrangements for counting of the votes

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

42.2 The returning officer may make arrangements for any votes to be counted using vote counting software where:

- a) the board of directors and the council of governors of the corporation have approved:
 - (i) the use of such software for the purpose of counting votes in the relevant election, and
 - (ii) a policy governing the use of such software, and
- b) the corporation and the returning officer are satisfied that the use of such software will produce an accurate result.

43. The count

43.1 The returning officer is to:

- a) count and record the number of:
 - (i) ballot papers that have been returned; and
 - (ii) the number of internet voting records, telephone voting records and/or text voting records that have been created, and
- b) count the votes according to the provisions in this Part of the rules and/or the provisions of any policy approved pursuant to rule 42.2(ii) where vote counting software is being used.

43.2 The returning officer, while counting and recording the number of ballot papers, internet voting records, telephone voting records and/or text voting records and counting the votes, must make arrangements to ensure that no person obtains or communicates information as to the unique

Countess of Chester Hospital NHS Foundation Trust Constitution – Updated ~~November 2023~~ August 2025

identifier on a ballot paper or the voter ID number on an internet voting record, telephone voting record or text voting record

43.3 The returning officer is to proceed continuously with counting the votes as far as is practicable.

STV44. Rejected ballot papers and rejected text voting records

STV44.1 Any ballot paper:

- a) which does not bear the features that have been incorporated into the other ballot papers to prevent them from being reproduced,
- b) on which the figure "1" standing alone is not placed so as to indicate a first preference for any candidate,
- c) on which anything is written or marked by which the voter can be identified except the unique identifier, or
- d) which is unmarked or rejected because of uncertainty,

shall be rejected and not counted, but the ballot paper shall not be rejected by reason only of carrying the words "one", "two", "three" and so on, or any other mark instead of a figure if, in the opinion of the returning officer, the word or mark clearly indicates a preference or preferences.

STV44.2 The returning officer is to endorse the word "rejected" on any ballot paper which under this rule is not to be counted.

STV44.3 Any text voting record:

- a) on which the figure "1" standing alone is not placed so as to indicate a first preference for any candidate,
- b) on which anything is written or marked by which the voter can be identified except the unique identifier, or
- c) which is unmarked or rejected because of uncertainty,

shall be rejected and not counted, but the text voting record shall not be rejected by reason only of carrying the words "one", "two", "three" and so on, or any other mark instead of a figure if, in the opinion of the returning officer, the word or mark clearly indicates a preference or preferences.

STV44.4 The returning officer is to endorse the word "rejected" on any text voting record which under this rule is not to be counted.

STV44.5 The returning officer is to draw up a statement showing the number of ballot papers rejected by him or her under each of the subparagraphs (a) to (d) of rule STV44.1 and the number of text voting records rejected by him or her under each of the sub-paragraphs (a) to (c) of rule STV44.3.

FPP44. Rejected ballot papers and rejected text voting records

Countess of Chester Hospital NHS Foundation Trust Constitution – Updated ~~November 2023~~August 2025

- FPP44.1 Any ballot paper:
- a) which does not bear the features that have been incorporated into the other ballot papers to prevent them from being reproduced,
 - b) on which votes are given for more candidates than the voter is entitled to vote,
 - c) on which anything is written or marked by which the voter can be identified except the unique identifier, or
 - d) which is unmarked or rejected because of uncertainty,
- shall, subject to rules FPP44.2 and FPP44.3, be rejected and not counted.
- FPP44.2 Where the voter is entitled to vote for more than one candidate, a ballot paper is not to be rejected because of uncertainty in respect of any vote where no uncertainty arises, and that vote is to be counted.
- FPP44.3 A ballot paper on which a vote is marked:
- a) elsewhere than in the proper place,
 - b) otherwise than by means of a clear mark,
 - c) by more than one mark,
- is not to be rejected for such reason (either wholly or in respect of that vote) if an intention that the vote shall be for one or other of the candidates clearly appears, and the way the paper is marked does not itself identify the voter and it is not shown that he or she can be identified by it.
- FPP44.4 The returning officer is to:
- a) endorse the word "rejected" on any ballot paper which under this rule is not to be counted, and
 - b) in the case of a ballot paper on which any vote is counted under rules FPP44.2 and FPP 44.3, endorse the words "rejected in part" on the ballot paper and indicate which vote or votes have been counted.
- FPP44.5 The returning officer is to draw up a statement showing the number of rejected ballot papers under the following headings:
- a) does not bear proper features that have been incorporated into the ballot paper,
 - b) voting for more candidates than the voter is entitled to,
 - c) writing or mark by which voter could be identified, and
 - d) unmarked or rejected because of uncertainty,
- and, where applicable, each heading must record the number of ballot papers rejected in part.
- FPP44.6 Any text voting record:

- a) on which votes are given for more candidates than the voter is entitled to vote,
- b) on which anything is written or marked by which the voter can be identified except the voter ID number, or
- c) which is unmarked or rejected because of uncertainty,
- d) shall, subject to rules FPP44.7 and FPP44.8, be rejected and not counted.

FPP44.7 Where the voter is entitled to vote for more than one candidate, a text voting record is not to be rejected because of uncertainty in respect of any vote where no uncertainty arises, and that vote is to be counted.

FPP44.8 A text voting record on which a vote is marked:

- a) otherwise than by means of a clear mark,
- b) by more than one mark,

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

FPP44.9 The returning officer is to:

- a) endorse the word "rejected" on any text voting record which under this rule is not to be counted, and
- b) in the case of a text voting record on which any vote is counted under rules FPP44.7 and FPP 44.8, endorse the words "rejected in part" on the text voting record and indicate which vote or votes have been counted.

FPP44.10 The returning officer is to draw up a statement showing the number of rejected text voting records under the following headings:

- a) voting for more candidates than the voter is entitled to,
- b) writing or mark by which voter could be identified, and
- c) unmarked or rejected because of uncertainty,

and, where applicable, each heading must record the number of text voting records rejected in part.

STV45. First stage

STV45.1 The returning officer is to sort the ballot documents into parcels according to the candidates for whom the first preference votes are given.

STV45.2 The returning officer is to then count the number of first preference votes given on ballot documents for each candidate, and is to record those numbers.

- STV45.3 The returning officer is to also ascertain and record the number of valid ballot documents.
- STV46. The quota**
- STV46.1 The returning officer is to divide the number of valid ballot documents by a number exceeding by one the number of members to be elected.
- STV46.2 The result, increased by one, of the division under rule STV46.1 (any fraction being disregarded) shall be the number of votes sufficient to secure the election of a candidate (in these rules referred to as “the quota”).
- STV46.3 At any stage of the count a candidate whose total votes equals or exceeds the quota shall be deemed to be elected, except that any election where there is only one vacancy a candidate shall not be deemed to be elected until the procedure set out in rules STV47.1 to STV47.3 has been complied with.
- STV47. Transfer of votes**
- STV47.1 Where the number of first preference votes for any candidate exceeds the quota, the returning officer is to sort all the ballot documents on which first preference votes are given for that candidate into sub- parcels so that they are grouped:
- a) according to next available preference given on those ballot documents for any continuing candidate, or
 - b) where no such preference is given, as the sub-parcel of non-transferable votes.
- STV47.2 The returning officer is to count the number of ballot documents in each parcel referred to in rule STV47.1.
- STV47.3 The returning officer is, in accordance with this rule and rule STV48, to transfer each subparcel of ballot documents referred to in rule STV47.1(a) to the candidate for whom the next available preference is given on those ballot documents.
- STV47.4 The vote on each ballot document transferred under rule STV47.3 shall be at a value (“the transfer value”) which:
- a) reduces the value of each vote transferred so that the total value of all such votes does not exceed the surplus, and
 - b) is calculated by dividing the surplus of the candidate from whom the votes are being transferred by the total number of the ballot documents on which those votes are given, the calculation being made to two decimal places (ignoring the remainder if any).
- STV47.5 Where at the end of any stage of the count involving the transfer of ballot documents, the number of votes for any candidate exceeds the quota, the returning officer is to sort the ballot documents in the sub-parcel of transferred votes which was last received by that candidate into separate sub-parcels so that they are grouped:

- a) according to the next available preference given on those ballot documents for any continuing candidate, or
- b) where no such preference is given, as the sub-parcel of non-transferable votes.

STV47.6 The returning officer is, in accordance with this rule and rule STV48, to transfer each subparcel of ballot documents referred to in rule STV47.5(a) to the candidate for whom the next available preference is given on those ballot documents.

STV47.7 The vote on each ballot document transferred under rule STV47.6 shall be at:

- a) a transfer value calculated as set out in rule STV47.4(b), or
 - b) at the value at which that vote was received by the candidate from whom it is now being transferred,
- whichever is the less.

STV47.8 Each transfer of a surplus constitutes a stage in the count.

STV47.9 Subject to rule STV47.10, the returning officer shall proceed to transfer transferable ballot documents until no candidate who is deemed to be elected has a surplus or all the vacancies have been filled.

STV47.10 Transferable ballot documents shall not be liable to be transferred where any surplus or surpluses which, at a particular stage of the count, have not already been transferred, are:

- a) less than the difference between the total vote then credited to the continuing candidate with the lowest recorded vote and the vote of the candidate with the next lowest recorded vote, or
- b) less than the difference between the total votes of the two or more continuing candidates, credited at that stage of the count with the lowest recorded total numbers of votes and the candidate next above such candidates.

STV47.11 This rule does not apply at an election where there is only one vacancy.

STV48. Supplementary provisions on transfer

STV48.1 If, at any stage of the count, two or more candidates have surpluses, the transferable ballot documents of the candidate with the highest surplus shall be transferred first, and if:

- a) The surpluses determined in respect of two or more candidates are equal, the transferable ballot documents of the candidate who had the highest recorded vote at the earliest preceding stage at which they had unequal votes shall be transferred first, and
- b) the votes credited to two or more candidates were equal at all stages of the count, the returning officer shall decide between those candidates by lot, and the transferable ballot documents of the candidate on whom the lot falls shall be transferred first.

STV48.2 The returning officer shall, on each transfer of transferable ballot documents under rule STV47:

- a) record the total value of the votes transferred to each candidate,
- b) add that value to the previous total of votes recorded for each candidate and record the new total,
- c) record as non-transferable votes the difference between the surplus and the total transfer value of the transferred votes and add that difference to the previously recorded total of non-transferable votes, and
- d) compare:
 - (i) the total number of votes then recorded for all of the candidates, together with the total number of non-transferable votes, with
 - (ii) the recorded total of valid first preference votes.

STV48.3 All ballot documents transferred under rule STV47 or STV49 shall be clearly marked, either individually or as a sub-parcel, so as to indicate the transfer value recorded at that time to each vote on that ballot document or, as the case may be, all the ballot documents in that sub-parcel.

STV48.4 Where a ballot document is so marked that it is unclear to the returning officer at any stage of the count under rule STV47 or STV49 for which candidate the next preference is recorded, the returning officer shall treat any vote on that ballot document as a nontransferable vote; and votes on a ballot document shall be so treated where, for example, the names of two or more candidates (whether continuing candidates or not) are so marked that, in the opinion of the returning officer, the same order of preference is indicated or the numerical sequence is broken.

STV49. Exclusion of candidates

STV49.1 If:

- a) all transferable ballot documents which under the provisions of rule STV47 (including that rule as applied by rule STV49.11) and this rule are required to be transferred, have been transferred, and
- b) subject to rule STV50, one or more vacancies remain to be filled,
 - i. the returning officer shall exclude from the election at that stage the candidate with the then lowest vote (or, where rule STV49.12 applies, the candidates with the then lowest votes).

STV49.2 The returning officer shall sort all the ballot documents on which first preference votes are given for the candidate or candidates excluded under rule STV49.1 into two subparcels so that they are grouped as:

- a) ballot documents on which a next available preference is given, and
- b) ballot documents on which no such preference is given (thereby including ballot documents on which preferences are given only for candidates who are deemed to be elected or are excluded).

- STV49.3 The returning officer shall, in accordance with this rule and rule STV48, transfer each subparcel of ballot documents referred to in rule STV49.2 to the candidate for whom the next available preference is given on those ballot documents.
- STV49.4 The exclusion of a candidate or of two or more candidates together, constitutes a further stage of the count.
- STV49.5 If, subject to rule STV50, one or more vacancies still remain to be filled, the returning officer shall then sort the transferable ballot documents, if any, which had been transferred to any candidate excluded under rule STV49.1 into sub- parcels according to their transfer value.
- STV49.6 The returning officer shall transfer those ballot documents in the sub-parcel of transferable ballot documents with the highest transfer value to the continuing candidates in accordance with the next available preferences given on those ballot documents (thereby passing over candidates who are deemed to be elected or are excluded).
- STV49.7 The vote on each transferable ballot document transferred under rule STV49.6 shall be at the value at which that vote was received by the candidate excluded under rule STV49.1.
- STV49.8 Any ballot documents on which no next available preferences have been expressed shall be set aside as non-transferable votes.
- STV49.9 After the returning officer has completed the transfer of the ballot documents in the subparcel of ballot documents with the highest transfer value he or she shall proceed to transfer in the same way the sub-parcel of ballot documents with the next highest value and so on until he has dealt with each sub-parcel of a candidate excluded under rule STV49.1
- STV49.10 The returning officer shall after each stage of the count completed under this rule:
- a) record:
 - (i) the total value of votes, or
 - (ii) the total transfer value of votes transferred to each candidate,
 - b) add that total to the previous total of votes recorded for each candidate and record the new total,
 - c) record the value of non-transferable votes and add that value to the previous nontransferable votes total, and
 - d) compare:
 - (i) the total number of votes then recorded for each candidate together with the total number of non-transferable votes, with
 - (ii) the recorded total of valid first preference votes.
- STV49.11 If after a transfer of votes under any provision of this rule, a candidate has a surplus, that surplus shall be dealt with in accordance with rules STV47.5 to STV47.10 and rule STV48.
- STV49.12 Where the total of the votes of the two or more lowest candidates, together with any surpluses not transferred, is less than the number of votes credited to the next lowest

candidate, the returning officer shall in one operation exclude such two or more candidates.

STV49.13 If when a candidate has to be excluded under this rule, two or more candidates each have the same number of votes and are lowest:

- a) regard shall be had to the total number of votes credited to those candidates at the earliest stage of the count at which they had an unequal number of votes and the candidate with the lowest number of votes at that stage shall be excluded, and
- b) where the number of votes credited to those candidates was equal at all stages, the returning officer shall decide between the candidates by lot and the candidate on whom the lot falls shall be excluded.

STV50. Filling of last vacancies

STV50.1 Where the number of continuing candidates is equal to the number of vacancies remaining unfilled the continuing candidates shall thereupon be deemed to be elected.

STV50.2 Where only one vacancy remains unfilled and the votes of any one continuing candidate are equal to or greater than the total of votes credited to other continuing candidates together with any surplus not transferred, the candidate shall thereupon be deemed to be elected.

STV50.3 Where the last vacancies can be filled under this rule, no further transfer of votes shall be made.

STV51. Order of election of candidates

STV51.1 The order in which candidates whose votes equal or exceed the quota are deemed to be elected shall be the order in which their respective surpluses were transferred, or would have been transferred but for rule STV47.10.

STV51.2 A candidate credited with a number of votes equal to, and not greater than, the quota shall, for the purposes of this rule, be regarded as having had the smallest surplus at the stage of the count at which he obtained the quota.

STV51.3 Where the surpluses of two or more candidates are equal and are not required to be transferred, regard shall be had to the total number of votes credited to such candidates at the earliest stage of the count at which they had an unequal number of votes and the surplus of the candidate who had the greatest number of votes at that stage shall be deemed to be the largest.

STV51.4 Where the number of votes credited to two or more candidates were equal at all stages of the count, the returning officer shall decide between them by lot and the candidate on whom the lot falls shall be deemed to have been elected first.

FPP51. Equality of votes

- FPP51.1 Where, after the counting of votes is completed, an equality of votes is found to exist between any candidates and the addition of a vote would entitle any of those candidates to be declared elected, the returning officer is to decide between those candidates by a lot, and proceed as if the candidate on whom the lot falls had received an additional vote.

PART 7 – FINAL PROCEEDINGS IN CONTESTED AND UNCONTESTED ELECTIONS

FPP52. Declaration of result for contested elections

- FPP52.1 In a contested election, when the result of the poll has been ascertained, the returning officer is to:

- a) declare the candidate or candidates whom more votes have been given than for the other candidates, up to the number of vacancies to be filled on the council of governors from the constituency, or class within a constituency, for which the election is being held to be elected,
- b) give notice of the name of each candidate who he or she has declared elected:
 - (i) where the election is held under a proposed constitution pursuant to powers conferred on the [insert name] NHS Trust by section 33(4) of the 2006 Act, to the Chair of the NHS Trust, or
 - (ii) in any other case, to the Chair of the corporation; and
- c) give public notice of the name of each candidate whom he or she has declared elected.

- FPP52.2 The returning officer is to make:

- a) the total number of votes given for each candidate (whether elected or not), and
- b) the number of rejected ballot papers under each of the headings in rule FPP44.5,
- c) the number of rejected text voting records under each of the headings in rule FPP44.10,

available on request.

STV52. Declaration of result for contested elections

- STV52.1 In a contested election, when the result of the poll has been ascertained, the returning officer is to:

- a) declare the candidates who are deemed to be elected under Part 6 of these rules as elected,
- b) give notice of the name of each candidate who he or she has declared elected –

Countess of Chester Hospital NHS Foundation Trust Constitution – Updated ~~November 2023~~ August 2025

- (i) where the election is held under a proposed constitution pursuant to powers conferred on the [insert name] NHS Trust by section 33(4) of the 2006 Act, to the Chair of the NHS Trust, or
- (ii) in any other case, to the Chair of the corporation, and
- c) give public notice of the name of each candidate who he or she has declared elected.

STV52.2 The returning officer is to make:

- a) the number of first preference votes for each candidate whether elected or not,
- b) any transfer of votes,
- c) the total number of votes for each candidate at each stage of the count at which such transfer took place,
- d) the order in which the successful candidates were elected, and
- e) the number of rejected ballot papers under each of the headings in rule STV44.1,
- f) the number of rejected text voting records under each of the headings in rule STV44.3,

available on request.

53. Declaration of result for uncontested elections

53.1 In an uncontested election, the returning officer is to as soon as is practicable after final day for the delivery of notices of withdrawals by candidates from the election:

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

PART 8 – DISPOSAL OF DOCUMENTS

54. Sealing up of documents relating to the poll

54.1 On completion of the counting at a contested election, the returning officer is to seal up the following documents in separate packets:

- a) the counted ballot papers, internet voting records, telephone voting records and text voting records,
- b) the ballot papers and text voting records endorsed with “rejected in part”,
- c) the rejected ballot papers and text voting records, and
- d) the statement of rejected ballot papers and the statement of rejected text voting records,
- e) and ensure that complete electronic copies of the internet voting records, telephone voting records and text voting records created in accordance with rule 26 are held in a device suitable for the purpose of storage.

54.2 The returning officer must not open the sealed packets of:

- a) the disqualified documents, with the list of disqualified documents inside it,
- b) the list of spoilt ballot papers and the list of spoilt text message votes,
- c) the list of lost ballot documents, and
- d) the list of eligible voters,

or access the complete electronic copies of the internet voting records, telephone voting records and text voting records created in accordance with rule 26 and held in a device suitable for the purpose of storage.

54.3 The returning officer must endorse on each packet a description of:

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

55. Delivery of documents

55.1 Once the documents relating to the poll have been sealed up and endorsed pursuant to rule 56, returning officer is to forward them to the Chair of the corporation.

56. Forwarding of documents received after close of the poll

56.1 Where:

- a) any voting documents are received by the returning officer after the close of the poll,
- or

Countess of Chester Hospital NHS Foundation Trust Constitution – Updated ~~November 2023~~ August 2025

- b) any envelopes addressed to eligible voters are returned as undelivered too late to be resent, or
- c) any applications for replacement voting information are made too late to enable new voting information to be issued,

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

57. Retention and public inspection of documents

- 57.1 The corporation is to retain the documents relating to an election that are forwarded to the Chair by the returning officer under these rules for one year, and then, unless otherwise directed by the board of directors of the corporation, cause them to be destroyed.
- 57.2 With the exception of the documents listed in rule 58.1, the documents relating to an election that are held by the corporation shall be available for inspection by members of the public at all reasonable times.
- 57.3 A person may request a copy or extract from the documents relating to an election that are held by the corporation, and the corporation is to provide it, and may impose a reasonable charge for doing so.

58. Application for inspection of certain documents relating to an election

- 58.1 The corporation may not allow:

- a) the inspection of, or the opening of any sealed packet containing – (i) any rejected ballot papers, including ballot papers rejected in part, (ii) any rejected text voting records, including text voting records rejected in part, (iii) any disqualified documents, or the list of disqualified documents, (iv) any counted ballot papers, internet voting records, telephone voting records or text voting records, or (v) the list of eligible voters, or
- b) access to or the inspection of the complete electronic copies of the internet voting records, telephone voting records and text voting records created in accordance with rule 26 and held in a device suitable for the purpose of storage,

by any person without the consent of the board of directors of the corporation.

- 58.2 A person may apply to the board of directors of the corporation to inspect any of the documents listed in rule 58.1, and the board of directors of the corporation may only consent to such inspection if it is satisfied that it is necessary for the purpose of questioning an election pursuant to Part 11.
- 58.3 The board of directors of the corporation's consent may be on any terms or conditions that it thinks necessary, including conditions as to –

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

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

58.4 On an application to inspect any of the documents listed in rule 58.1 the board of directors of the corporation must:

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

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

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

PART 9 – DEATH OF A CANDIDATE DURING A CONTESTED ELECTION

FPP59. Countermand or abandonment of poll on death of candidate

- FPP59.1 If at a contested election, proof is given to the returning officer's satisfaction before the result of the election is declared that one of the persons named or to be named as a candidate has died, then the returning officer is to:
- countermand notice of the poll, or, if voting information has been issued, direct that the poll be abandoned within that constituency or class, and
 - order a new election, on a date to be appointed by him or her in consultation with the corporation, within the period of 40 days, computed in accordance with rule 3 of these rules, beginning with the day that the poll was countermanded or abandoned.
- FPP59.2 Where a new election is ordered under rule FPP59.1, no fresh nomination is necessary for any candidate who was validly nominated for the election where the poll was countermanded or abandoned but further candidates shall be invited for that constituency or class.
- FPP59.3 Where a poll is abandoned under rule FPP59.1(a), rules FPP59.4 to FPP59.7 are to apply.
- FPP59.4 The returning officer shall not take any step or further step to open envelopes or deal with their contents in accordance with rules 38 and 39, and is to make up separate sealed packets in accordance with rule 40.
- FPP59.5 The returning officer is to:
- count and record the number of ballot papers, internet voting records, telephone voting records and text voting records that have been received,
 - seal up the ballot papers, internet voting records, telephone voting records and text voting records into packets, along with the records of the number of ballot papers, internet voting records, telephone voting records and text voting records and
- ensure that complete electronic copies of the internet voting records telephone voting records and text voting records created in accordance with rule 26 are held in a device suitable for the purpose of storage.
- FPP59.6 The returning officer is to endorse on each packet a description of:
- its contents,
 - the date of the publication of notice of the election,
 - the name of the corporation to which the election relates, and
 - the constituency, or class within a constituency, to which the election relates.

FPP59.7 Once the documents relating to the poll have been sealed up and endorsed pursuant to rules FPP59.4 to FPP59.6, the returning officer is to deliver them to the Chair of the corporation, and rules 57 and 58 are to apply.

STV59. Countermand or abandonment of poll on death of candidate

STV59.1 If, at a contested election, proof is given to the returning officer's satisfaction before the result of the election is declared that one of the persons named or to be named as a candidate has died, then the returning officer is to:

- a) publish a notice stating that the candidate has died, and
- b) proceed with the counting of the votes as if that candidate had been excluded from the count so that –
 - (i) ballot documents which only have a first preference recorded for the candidate that has died, and no preferences for any other candidates, are not to be counted, and
 - (ii) ballot documents which have preferences recorded for other candidates are to be counted according to the consecutive order of those preferences, passing over preferences marked for the candidate who has died.

STV59.2 The ballot documents which have preferences recorded for the candidate who has died are to be sealed with the other counted ballot documents pursuant to rule 54.1(a).

PART 10 – ELECTION EXPENSES AND PUBLICITY

Election expenses

60. Election expenses

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

61. Expenses and payments by candidates

- 61.1 A candidate may not incur any expenses or make a payment (of whatever nature) for the purposes of an election, other than expenses or payments that relate to:

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

62. Election expenses incurred by other persons

- 62.1 No person may:

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

- 62.2 Nothing in this rule is to prevent the corporation from incurring such expenses, and making such payments, as it considers necessary pursuant to rules 63 and 64.

Publicity

63. Publicity about election by the corporation

- 63.1 The corporation may:

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

as it considers necessary.

63.2 Any information provided by the corporation about the candidates, including information compiled by the corporation under rule 64, must be:

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

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

64. Information about candidates for inclusion with voting information

64.1 The corporation must compile information about the candidates standing for election, to be

64.2 The information must consist of:

- a) a statement submitted by the candidate of no more than 250 words,
- b) if voting by telephone or text message is a method of polling for the election, the numerical voting code allocated by the returning officer to each candidate, for the purpose of recording votes using the telephone voting facility or the text message voting facility ("numerical voting code"), and
- c) a photograph of the candidate, distributed by the returning officer pursuant to rule 24 of these rules.

65. Meaning of "for the purposes of an election"

65.1 In this Part, the phrase "for the purposes of an election" means with a view to, or otherwise in connection with, promoting or procuring a candidate's election, including the prejudicing of another candidate's electoral prospects; and the phrase "for the purposes of a candidate's election" is to be construed accordingly.

65.2 The provision by any individual of his or her own services voluntarily, on his or her own time, and free of charge is not to be considered an expense for the purposes of this Part.

PART 11 – QUESTIONING ELECTIONS AND THE CONSEQUENCE OF IRREGULARITIES

66. Application to question an election

- 66.1 An application alleging a breach of these rules, including an electoral irregularity under Part 10, may be made to NHS England.
- 66.2 An application may only be made once the outcome of the election has been declared by the returning officer.
- 66.3 An application may only be made to NHS England by:
- a) a person who voted at the election or who claimed to have had the right to vote, or
 - b) a candidate, or a person claiming to have had a right to be elected at the election.
- 66.4 The application must:
- a) describe the alleged breach of the rules or electoral irregularity, and
 - b) be in such a form as NHS England may require.
- 66.5 The application must be presented in writing within 21 days of the declaration of the result of the election.
- 66.6 If NHS England requests further information from the applicant, then that person must provide it as soon as is reasonably practicable.
- 66.7 NHS England shall delegate the determination of an application to a person or panel of persons to be nominated for the purpose.
- 66.8 The determination by the person or panel of persons nominated in accordance with rule 66.7 shall be binding on and shall be given effect by the corporation, the applicant and the members of the constituency (or class within a constituency) including all the candidates for the election to which the application relates.
- 66.9 NHS England may prescribe rules of procedure for the determination of an application including costs.

PART 12 - MISCELLANEOUS

67. Secrecy

67.1 The following persons:

- a) the returning officer,
- b) the returning officer's staff,

must maintain and aid in maintaining the secrecy of the voting and the counting of the votes, and must not, except for some purpose authorised by law, communicate to any person any information as to:

- (i) the name of any member of the corporation who has or has not been given voting information or who has or has not voted,
- (ii) the unique identifier on any ballot paper,
- (iii) the voter ID number allocated to any voter,
- (iv) the candidate(s) for whom any member has voted.

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

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

68. Prohibition of disclosure of vote

68.1 No person who has voted at an election shall, in any legal or other proceedings to question the election, be required to state for whom he or she has voted.

69. Disqualification

69.1 A person may not be appointed as a returning officer, or as staff of the returning officer pursuant to these rules, if that person is:

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

70. Delay in postal service through industrial action or unforeseen event

Countess of Chester Hospital NHS Foundation Trust Constitution – Updated ~~November 2023~~ August 2025

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

- a) the delivery of the documents in rule 24, or
- b) the return of the ballot papers,

the returning officer may extend the time between the publication of the notice of the poll and the close of the poll by such period as he or she considers appropriate.

ANNEX 5 - ADDITIONAL PROVISIONS – COUNCIL OF GOVERNORS

1 TENURE FOR GOVERNORS

Appointed governors

- 1.1 An appointed governor:
- 1.1.1 shall hold office for a period of up to three years commencing immediately after the Annual Members Meeting at which his/her appointment is announced save where such term of office commences pursuant to the exercise of paragraph 6.2 of this Annex 5 below on the occasion of a vacancy, in which case the relevant term of office shall commence on the date of such appointment and shall expire on the expiry of the remainder of the term of office of the governor who has vacated the seat;
 - 1.1.2 shall be eligible for re-appointment at the end of his/her term of office;
 - 1.1.3 may not hold office for longer than nine consecutive years.
- 1.2 For the purposes of these provisions concerning terms of office for appointed governors, “year” means a period commencing on the date the appointed governor took office and ending twelve (12) calendar months later.
- 1.3 An appointed governor shall cease to hold office if the organisation which appointed him/her terminates his/her employment or contract for services or withdraws its sponsorship of him/her.

Elected Governors

- 1.4 An elected governor:
- 1.4.1 shall hold office for a period of up to three years commencing on the date notified to him/her by the trust following the election process save where such term of office commences pursuant to the exercise of paragraph 6.3 of this Annex 5 below on the occasion of a vacancy, in which case the relevant term of office shall commence on the date of such appointment and shall expire on the expiry of the remainder of the term of office of the governor who has vacated the seat;
 - 1.4.2 shall be eligible for re-election at the end of his/her term of office;
 - 1.4.3 may not hold office for longer than nine consecutive years.
- 1.5 For the purposes of these provisions concerning terms of office for elected governors, “year” means a period commencing on the date the elected governor took office and ending twelve (12) calendar months later.
- 1.6 An elected governor shall cease to hold office if they cease to be a member of the constituency or class of the constituency by which they were elected.

2 FURTHER PROVISIONS AS TO ELIGIBILITY TO BE A GOVERNOR

- 2.1 A person may not become a governor of the trust, and if already holding such office will immediately cease to do so, if:
- 2.1.1 they are a Director of the trust or a director or governor of any other NHS body (unless they are appointed by an appointing organisation which is an NHS body);
 - 2.1.2 they are the spouse, partner, parent or child of a member of the Board of Directors of the trust;

- 2.1.3 they are a member of a local authority's scrutiny committee covering health matters;
 - 2.1.4 they are a director (or equivalent) of the trust's Local Healthwatch (unless they are appointed by such an organisation);
 - 2.1.5 they have previously been removed as a governor pursuant to paragraph 4 or 5 of this Annex 5;
 - 2.1.6 they are under 16 years of age at the closing date for nominations for their election or appointment;
 - 2.1.7 they refuse to sign a declaration in the form specified by the Trust Secretary confirming that they are not prevented by this constitution from being a member of the Council of Governors;
 - 2.1.8 they fail to sign and deliver to the Trust Secretary a statement in the form required by the Trust Secretary confirming acceptance of the code of conduct for governors;
 - 2.1.9 they have previously been or are currently subject to a sex offender order and/or required to register under the Sexual Offences Act 2003 or have committed a sexual offence prior to the requirement to register under current legislation;
 - 2.1.10 they have within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with an NHS body;
 - 2.1.11 they are a person whose tenure of office as the chair or as a member or governor or director of an NHS body has been terminated on the grounds that their appointment is not in the interests of the health service, reasons including non-attendance at meetings or for non-disclosure of a pecuniary interest;
 - 2.1.12 on the basis of disclosures obtained through an application to the Disclosure and Barring Service, they are not considered suitable by the trust's director responsible for human resources;
 - 2.1.13 they are a person who has had his/her name removed or been suspended from any list (including any performers list maintained by NHS England) prepared under the 2006 Act or under any related subordinate legislation or who has otherwise been suspended or disqualified from any healthcare profession, and has not subsequently had his/her name included in such a list or had his/her suspension lifted or qualification reinstated;
 - 2.1.14 NHS England has exercised its powers to remove that person as a governor of an NHS foundation trust or has suspended him/her from such office or has disqualified him/her from holding office as a governor for a specified period or NHS England has exercised any of those powers concerned at any time;
 - 2.1.15 he/she lacks capacity within the meaning of the Mental Capacity Act 2005;
 - 2.1.16 they are an unfit person within the meaning of the trust's provider licence, save where NHS England has provided approval in writing to them becoming or continuing as a governor.
- 2.2 The Trust Secretary shall, at his/her entire discretion, determine whether an individual is eligible to become or continue as a governor under the provisions of paragraph 2.1 above.

3 TERMINATION OF OFFICE AND REMOVAL OF GOVERNORS

- 3.1 A person holding office as a governor shall immediately cease to do so if:
 - 3.1.1 they resign by notice in writing to the Trust Secretary;

- 3.1.2 they fail to attend three consecutive meetings of the Council of Governors, unless a majority of the other governors are satisfied that:
 - 3.1.2.1 the absences were due to reasonable causes; and
 - 3.1.2.2 they will be able to start attending meetings of the Council of Governors again within such a period as the other governors consider reasonable;
- 3.1.3 they have refused without reasonable cause to undertake any training which the Council of Governors requires all governors to undertake;
- 3.1.4 they have failed to sign and deliver to the Trust Secretary a statement in the form required by the Trust Secretary confirming acceptance of the code of conduct for governors;
- 3.1.5 they are removed from the Council of Governors under the provisions of paragraphs 4 or 5 of this Annex 5;
- 3.1.6 they are expelled from membership of the trust or in the case of any elected governor cease to be a member of the trust for any other reason.

4 TERMINATION OF OFFICE AND REMOVAL OF GOVERNOR – FAILURE TO DISCLOSE A DECLARABLE INTEREST

- 4.1 Any governor who fails to disclose any interest required to be disclosed under this constitution must permanently vacate their office if required to do so by a majority of the remaining governors.

5 TERMINATION OF OFFICE AND REMOVAL OF GOVERNORS – PROCESS FOR REMOVAL BY THE COUNCIL OF GOVERNORS

- 5.1 A governor may be removed from the Council of Governors by a resolution approved by not less than three quarters of the remaining governors present and voting at the meeting on grounds including but not limited to that:

- 5.1.1 they have committed a material breach of any code of conduct for governors; or
- 5.1.2 they have acted in a manner detrimental to the interests of the trust; or
- 5.1.3 the Council of Governors considers that it is not in the best interests of the trust for them to continue as a governor;

and there is a recommendation from a working group formed under paragraph 5.2 below for them to be removed from office.

- 5.2 There shall be a working group of the Council of Governors whose function shall be to receive and consider concerns about the conduct of any governor and to make recommendations to the Council of Governors. The working group shall be made up of two governors from the Public Constituencies, one governor from the Staff Constituency and one Appointed Governor. Each member of the working group shall be appointed by the Council of Governors and shall serve until they are otherwise removed or resign. The quorum of the working group shall be three (3) governors. No governor may consider any concern of which they are the subject.
- 5.3 If any governor, director or member of the trust has concerns about the conduct of any governor, including but not limited to where such conduct involves:
 - 5.3.1 a breach of any governors' code of conduct;

- 5.3.2 causing disruption to meetings of the Council of Governors, Board of Directors, members meetings, any working group of the Council of Governors or any committee of the trust;
- 5.3.3 threatening any individual;
- 5.3.4 jeopardising the health or welfare of any patient;
- 5.3.5 causing disruption to the operations of the trust; or
- 5.3.6 causing damage to the reputation of the trust;

he/she may make a complaint in writing about that governor to the working group of governors established pursuant to paragraph 5.2 above, which shall investigate the complaint and make recommendations to the Council of Governors as to any action the working group considers necessary, which may include a recommendation that a governor is removed from office pursuant to paragraph 5.1 above.

- 5.4 A governor may resign from office by giving notice in writing to the Trust Secretary, to take effect immediately or following such period of notice as may be specified in the notice. For the avoidance of doubt, any such resignation does not need to be accepted by the Trust Secretary to be effective.

6 VACANCIES AMONGST GOVERNORS

- 6.1 Where a vacancy arises on the Council of Governors for any reason other than expiry of term of office, the following provisions will apply.
- 6.2 Where the vacancy arises amongst the appointed governors, the Trust Secretary shall request that the appointing organisation appoints a replacement to hold office for the remainder of the term of office.
- 6.3 Where the vacancy arises amongst the elected governors, the Trust Secretary shall, having consulted the Chair, either:
 - 6.3.1 call an election within three months to fill the seat for the remainder of that term of office; or
 - 6.3.2 invite the next highest polling candidate for that seat at the most recent election, who is willing to take office, to fill the seat until the next election, at which time the seat will fall vacant and subject to election; or
 - 6.3.3 leave the seat vacant until the next elections are held provided that during such period, the Council of Governors will continue to meet the requirement at paragraph 1 of Annex 3 of this constitution and can continue to meet the quorum requirements at paragraph 3.11 of Annex 7 of this constitution.

7 GOVERNORS' CODE OF CONDUCT

- 7.1 The trust may from time to time publish a governors' code of conduct and each governor shall be required, on his/her appointment, to provide written confirmation that he/she will abide by any such code of conduct.
- 7.2 The Trust Secretary, in consultation with the Chair, shall draw up any code of conduct for approval by the Board of Directors. Any amendment to the code of conduct shall be made using the same process.

8 LEAD GOVERNOR

Countess of Chester Hospital NHS Foundation Trust Constitution – Updated ~~November 2023~~August 2025

- 8.1 The Council of Governors shall appoint one of the governors as the Lead Governor. Subject to paragraphs 8.2 and 8.3 below, such governor shall fulfil the role of the Lead Governor for a period of 24 months.
- 8.2 The Council of Governors may reappoint a governor to the position of Lead Governor at the end of any 24 month period, if he/she wishes to be so reappointed for a further 24 month period, subject to a continuing term of office.
- 8.3 If the Lead Governor notifies the Council of Governors, prior to the end of his/her term in office, that he/she no longer wishes to be the Lead Governor then the Council of Governors shall appoint another governor as the Lead Governor.
- 8.4 The role and responsibilities of the Lead Governor will be determined by the trust and set out in a written role description. They shall include but not be limited to:
 - 8.4.1 leading the Council of Governors where it would be inappropriate for the Chair or Vice Chair to do so, such circumstances to be determined by the senior independent director;
 - 8.4.2 providing input to the senior independent director, on behalf of the Council of Governors, in respect of the evaluation of the Chair; and
 - 8.4.3 liaising with NHS England where it would be inappropriate for the Chair to do so.
- 8.5 The Lead Governor will act in accordance with the written role description for the Lead Governor produced by the trust, as may be updated from time to time.
- 8.6 The Lead Governor shall lead the Council of Governors in the event that:
 - 8.6.1 neither the Chair or Vice Chair is present at a meeting; or
 - 8.6.2 both the Chair and the Vice Chair are disqualified from voting by virtue of a conflict of interest.

9 DEPUTY LEAD GOVERNOR

- 9.1 The Council of Governors shall appoint one of the governors as the Deputy Lead Governor. Subject to paragraphs 9.2 and 9.3 below, such governor shall fulfil the role of the Deputy Lead Governor for a period of 24 months.
- 9.2 The Council of Governors may reappoint a governor to the position of Deputy Lead Governor at the end of any 24 month period, if he/she wishes to be so reappointed for a further 24 month period, subject to a continuing term of office..
- 9.3 If the Deputy Lead Governor notifies the Council of Governors, prior to the end of his/her term in office, that he/she no longer wishes to be the Deputy Lead Governor then the Council of Governors shall appoint another governor as the Deputy Lead Governor.
- 9.4 The role and responsibilities of the Deputy Lead Governor will be determined by the trust and are set out in a written role description for the Lead Governor for whom they will be deputising. They shall include but not be limited to:
 - 9.4.1 in the absence of the Lead Governor, leading the Council of Governors where it would be inappropriate for the Chair or Vice Chair to do so, such circumstances to be determined by the senior independent director;
 - 9.4.2 in the absence of the Lead Governor, providing input to the senior independent director, on behalf of the Council of Governors, in respect of the evaluation of the Chair; and

9.4.3 in the absence of the Lead Governor, liaising with NHS England where it would be inappropriate for the Chair to do so.

9.5 The Deputy Lead Governor will act in accordance with the written role description for the Lead Governor / Deputy Lead Governor produced by the trust, as may be updated from time to time.

9.6 In the absence of the Lead Governor, the Deputy Lead Governor shall lead the Council of Governors in the event that:

9.6.1 neither the Chair or Vice Chair is present at a meeting; or

9.6.2 both the Chair and the Vice Chair are disqualified from voting by virtue of a conflict of interest,

and

9.6.3 where paragraphs 9.6.1 and 9.6.2 apply and the Lead Governor is in attendance but the Lead Governor themselves are disqualified from voting by virtue of a conflict of interest.

10 COMMUNICATIONS FROM GOVERNORS

10.1 Any communications to the members as a whole from individual governors shall be approved by the Council of Governors or, where such communication is requested between meetings of the Council of Governors, the communication may be approved by the Chair.

10.2 Any communications which are approved in accordance with paragraph 10.1 above, shall be distributed to the members by the trust acting through the Trust Secretary.

10.3 The trust shall facilitate communications between a governor and the members in his constituency on no more than two (2) occasions per annum. Any such communications shall be distributed by the trust acting through the Trust Secretary.

10.4 Any communication produced by a governor for the purposes set out above, must make clear that the views or opinions expressed therein are those of that governor and not necessarily those of the trust. The Trust Secretary shall have the right to insert such a provision in any communication where such a provision is lacking.

10.5 Individual governors may, by making a request to the Chair, request that the trust circulates information to the other governors. Subject to paragraph 10.6 below, the Chair shall circulate the requested information to the governors, via the Trust Secretary, where the Chair considers that the information relates to the business of the Council of Governors.

10.6 The Chair or Trust Secretary may decline to circulate the information requested to be circulated under the provisions of this paragraph 10 for reasons including but not limited to:

10.6.1 the volume of information to be circulated;

10.6.2 the frequency of such requests;

10.6.3 the nature of the information to be circulated; or

10.6.4 the administrative cost to the trust of circulating such information.

10.7 For the avoidance of doubt, the trust shall not provide to any governor the contact details of any member who has requested that his details, as recorded in the register of members, are not available for inspection by the public.

ANNEX 6 - ADDITIONAL PROVISIONS – BOARD OF DIRECTORS

1 APPOINTMENT AND REMOVAL OF CHAIR AND OTHER NON-EXECUTIVE DIRECTORS

- 1.1 With the exception of the University appointed Non-executive Director, Aa nominations committee of the Council of Governors with external advice, as appropriate, shall be responsible for the identification and nomination of non-executive directors.
- 1.2 The Council of Governors will maintain a policy for the composition of the non-executive directors which takes account of the membership strategy, and which they shall review from time to time and not less than every three years.
- 1.3 The (governor) nominations committee will comprise the Chair of the trust (or, when a chair is being appointed, the Vice Chair +/- the *Senior Independent Director* unless he/she is standing for appointment, in which case another non-executive director), and four public or partnership elected governors ~~(comprising Lead Governor, Deputy Lead Governor and one staff governor) and one appointed governor~~. The chair of another foundation trust may be invited to act as an independent assessor to the nominations committee but shall not be a member of such committee.
- 1.4 The nominations committee may work with an external organisation recognised as expert at appointments to identify the skills and experience required for non-executive directors.
- 1.5 The nominations committee shall regularly review the structure, size and composition of the Board of Directors and make recommendations for change in relation to non-executive directors, where appropriate.
- 1.6 Review and make recommendations to the Council of Governors to ensure that the Trust Chair and Non-Executive Directors are fairly rewarded for their contribution to the organisation, having proper regard to the organisation's circumstances and performance and to the provisions of any appropriate guidance and/or legislation.
- 1.7 The nominations committee shall prepare a description of the role and capabilities required for any new non-executive director appointment and an assessment of the time commitment required. The nominations committee shall take into account the views of the Board of Directors on the qualifications, skills and experience required for the position.
- 1.8 With the exception of the University appointed Non-executive Director, sSuitable candidates (not more than five for each vacancy) will be identified by the nominations committee through a process of open competition. Once suitable candidates have been identified, the nominations committee shall make recommendations to the Council of Governors.
- 4.81.9 In respect of a University appointed Non-executive Director, the nominations committee will consider the nominated candidate and make recommendation to the Council of Governors. Should the nominated candidate not be approved for appointment by the Council of Governors, the University will be asked to nominate an alternative candidate.

2 THE REMOVAL OR RESIGNATION OF THE CHAIR AND OTHER NON-EXECUTIVE DIRECTORS

- 2.1 Any proposal for removal of the Chair or another non-executive director must be proposed by a governor and seconded by not less than ten governors including at least two elected governors and two appointed governors.
- 2.2 Written reasons for the proposal shall be provided to the non-executive director in question, who shall be given the opportunity to set out his/her position in response.
- 2.3 In making any decision to remove the Chair or another non-executive director, the Council of Governors shall take into account the most recent annual appraisal carried out in respect of the Chair or other non-executive director.

Countess of Chester Hospital NHS Foundation Trust Constitution – Updated November 2023/August 2025

2.4 Removal of the Chair or any other non-executive director shall require the approval of three-quarters of the members of the Council of Governors. If any proposal to remove a non-executive director is not approved at a meeting of the Council of Governors, no further proposal can be put forward to remove such non-executive director based upon the same reasons within twelve months of the meeting.

2.5 The Chair or any other non-executive director may resign from office by giving notice in writing to the Chief Executive, to take effect immediately or following such period of notice as may be specified. For the avoidance of doubt, any such resignation does not need to be accepted by either the Chief Executive or the Council of Governors to be effective.

3 FURTHER PROVISIONS AS TO ELIGIBILITY TO BE A DIRECTOR

3.1 A person may not become or continue as a director of the trust if:

- 3.1.1 they are a member of the Council of Governors;
- 3.1.2 they are a governor of another NHS body;
- 3.1.3 they are the spouse, partner, parent or child of a member of the Board of Directors of the trust;
- 3.1.4 they are a member of a local authority's scrutiny committee covering health matters;
- 3.1.5 they are a person whose tenure of office as a chair or as a member or director of an NHS body has been terminated on the grounds that their appointment is not in the interests of the health service, for non-attendance at meetings, or for the non-disclosure of a pecuniary interest;
- 3.1.6 they have within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with an NHS body;
- 3.1.7 they are the subject of a disqualification order made under the Company Directors Disqualification Act 1986;
- 3.1.8 in the case of a non-executive director, they are no longer a member of one of the Public Constituencies;
- 3.1.9 in the case of a non-executive director they have refused without reasonable cause to fulfil any training requirement for members of the Board of Directors;
- 3.1.10 they have refused to sign and deliver to the Trust Secretary a statement in the form required by the Board of Directors confirming acceptance of any code of conduct for directors;
- 3.1.11 on the basis of disclosures obtained through an application to the Disclosure and Barring Service, they are not considered suitable by the trust's director responsible for human resources;
- 3.1.12 they are a person who has had their name removed or been suspended from any list (including any performers list prepared under the 2006 Act or under any related subordinate legislation) or who has otherwise been suspended or disqualified from any healthcare profession, and has not subsequently had their name included in such a list or had their suspension lifted or qualification reinstated;
- 3.1.13 they are a person who fails to satisfy the fit and proper persons requirements for directors as detailed in Regulation 5 of The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014, as may be amended from time to time; or

- 3.1.14 they have previously been or are currently subject to a sex offender order and/or required to register under the Sexual Offences Act 2003 or have committed a sexual offence prior to the requirement to register under current legislation.

4 REFERENCES TO THE CHAIR

- 4.1 Where the Vice Chair or a non-executive director appointed under a paragraph of this constitution to deputise for the Chair, are performing any deputising role then any relevant reference to the Chair in this constitution shall be deemed to include the Vice Chair or the non-executive director so appointed.
- 4.2 For the avoidance of doubt, the "Chairman" in the 2006 Act and other applicable legislation and guidance is referred to in this constitution and its annexes as the "Chair".

ANNEX 7 – STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE COUNCIL OF GOVERNORS

1 INTERPRETATION

- 1.1 Subject to Standing Order 3.6.2 of this Annex 7, save as permitted by law, the Chair shall be the final authority on the interpretation of these Standing Orders (on which they shall be advised by the Chief Executive and Trust Secretary).
- 1.2 References to any statute, statutory provision, statutory instrument or guidance in these Standing Orders include reference to that statute, provision, instrument or guidance as replaced, amended, extended, re-enacted or consolidated from time to time.

2 GENERAL INFORMATION

- 2.1 The purpose of these Standing Orders is to ensure that the highest standards of corporate governance and conduct are applied to all Council of Governors meetings.
- 2.2 The roles and responsibilities of the Council of Governors which are to be carried out in accordance with this constitution include:
 - 2.2.1 to respond as appropriate when consulted by the Board of Directors in accordance with this constitution;
 - 2.2.2 to undertake such functions as the Board of Directors shall from time to time request;
 - 2.2.3 to prepare and from time to time review the trust's membership strategy and the policy for the composition of the Council of Governors and of the non-executive directors;
 - 2.2.4 when appropriate to make recommendations for the revision of the constitution.

3 MEETINGS OF THE COUNCIL OF GOVERNORS

3.1 Meetings held in public

- 3.1.1 Meetings of the Council of Governors shall be open to the public subject to Standing Order 3.1.2 below.
- 3.1.2 The Council of Governors may resolve to exclude members of the public from any meeting or part of a meeting on the grounds that:
 - 3.1.2.1 publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted; or
 - 3.1.2.2 there are special reasons stated in the resolution and arising from the nature of the business of the proceedings.
- 3.1.3 The Chair may exclude any member of the public from the meeting of the Council of Governors if he/she is interfering with or preventing the proper conduct of the meeting.
- 3.1.4 Nothing in these Standing Orders shall be construed as permitting the introduction by any person of any recording, transmitting, video or similar apparatus into meetings of the Council of Governors.
- 3.1.5 Where the public have been excluded from a meeting in accordance with Standing Order 3.1.2 above then the matters dealt with following such exclusion shall be confidential to the governors and directors of the trust. No governor, director, officer or employee of the trust in attendance at such meeting shall reveal or disclose any

information concerning such matters to any other person or disclose the contents of any papers presented to such meeting or minutes taken of such a meeting to any other person.

- 3.1.6 Meetings of the Council of Governors shall be held regularly and at least four times each financial year.
- 3.1.7 Notwithstanding paragraph 17.3 of the constitution, the Council of Governors may invite the Chief Executive, or any other director, or a representative of the auditor to attend any meeting of the Council of Governors to enable governors to raise questions about the trust's affairs. For the avoidance of doubt, any such attendee shall not have the right to vote at such a meeting.
- 3.1.8 The Chief Executive and/or any other member of the Board of Directors may attend and address any meeting of the Council of Governors but shall not have the right to vote at such meetings.

3.2 Calling meetings

- 3.2.1 Without prejudice to Standing Order 3.2.3 below, meetings of the Council of Governors shall be called by the Trust Secretary, or in the Trust Secretary's absence, by the Chair and shall be held on such dates and at such times and such places as he/she shall determine.
- 3.2.2 The Council of Governors may agree that its members can participate in its meetings via electronic means (video, telephone or computer link). Participation in a meeting in this manner shall be deemed to constitute presence in person at the meeting.
- 3.2.3 Save in the case of emergencies or the need to conduct urgent business, the Trust Secretary shall give to all governors at least 14 days written notice of the date and place of every meeting of the Council of Governors. In the event of an emergency or the need to conduct urgent business the Trust Secretary may reduce the period of notice given to such period as he/she, having consulted where possible with the Chair, deems reasonable in the circumstances. Notice will be published on the trust's website.
- 3.2.4 Additional meetings of the Council of Governors shall be called by the Trust Secretary on the written request of at least 10 governors (including at least 2 elected governors and 2 appointed governors) who shall specify the business to be carried out. The Trust Secretary shall call a meeting of the Council of Governors on at least fourteen but not more than twenty-eight days written notice to discuss the specified business. If the Trust Secretary fails to call such a meeting within fourteen days of receipt of the written notice then the relevant governors may call such a meeting on not less than fourteen days written notice to all governors.

3.3 Notice of meetings

- 3.3.1 The notice for each meeting of the Council of Governors shall:
 - 3.3.1.1 specify the business proposed to be transacted at the meeting;
 - 3.3.1.2 be signed by the Chair, or by an officer of the trust authorised by the Chair to sign on his behalf; and
 - 3.3.1.3 be delivered in person to each governor, sent by post to the usual place of residence of each such governor or sent by electronic mail to the address provided by any governor for such purposes.
- 3.3.2 The lack of service of notice on any governor shall not affect the validity of a meeting subject to Standing Order 3.3.3.

Countess of Chester Hospital NHS Foundation Trust Constitution – Updated ~~November 2023~~August 2025

- 3.3.3 In the case of a meeting called by governors in default of the Trust Secretary pursuant to Standing Order 3.2.3 above, the notice shall be signed by those governors calling the meeting and no business shall be transacted at the meeting other than that specified in the notice. Failure to serve such a notice on more than three quarters of governors will invalidate the meeting.

3.4 Setting the agenda

- 3.4.1 The Council of Governors may determine that certain matters shall appear on every agenda for meetings of the Council of Governors and shall be addressed prior to any other business being conducted.
- 3.4.2 Subject to Standing Order 3.4.1 of this Annex 7, the Trust Secretary shall be responsible for producing the agenda for meetings in conjunction with the Chair. The Chair shall determine the order of items on the agenda and the expression of such items, including any agenda items requested pursuant to Standing Order 3.4.4 below.
- 3.4.3 Save in the case of an emergency or the need to conduct urgent business, the agenda for each meeting of the Council of Governors shall be sent to all governors no later than 7 days before the meeting. Supporting papers shall accompany the agenda.
- 3.4.4 A governor desiring a matter to be included on an agenda shall make his request in writing to the Chair at least 10 days before the meeting. The governor should indicate whether the item of business is to be transacted in the presence of the public and should provide the appropriate paper, document or supporting information. Where a request for an item of business to be included on an agenda is made less than 10 days but more than 5 days before a meeting such item of business may, at the discretion of the Chair, be included on the agenda and shall be tabled as an agenda item at the commencement of the relevant meeting.

3.5 Notices of motions

- 3.5.1 A governor desiring to move or amend a motion shall send a written notice thereof at least 10 days before the meeting to the Chair, who shall insert it into the agenda for the meeting. This Standing Order 3.5.1 shall not prevent any motion or amendment being moved during the meeting, without notice, on any business mentioned on the agenda for that meeting.
- 3.5.2 A motion or amendment, once moved at a meeting of the Council of Governors, may be withdrawn by the proposer with the consent of the Chair.
- 3.5.3 Only the Chair may propose a motion to amend or rescind any resolution or the general substance of any resolution, which has been passed within the preceding 6 calendar months by the Council of Governors.
- 3.5.4 The mover of a motion shall have a right of reply at the close of any discussion on the motion or any amendment thereto.
- 3.5.5 When a motion is under discussion or immediately prior to discussion it shall be open to a governor to move:
- 3.5.5.1 an amendment to the motion;
 - 3.5.5.2 the adjournment of the discussion or the meeting;
 - 3.5.5.3 the appointment of an ad hoc committee to deal with a specific item of business;
 - 3.5.5.4 that the meeting proceed to the next business;

3.5.5.5 that the motion be now put; or

3.5.5.6 a motion resolving to exclude the public, including the press.

Such a motion shall be disposed of before the motion which was originally under discussion or about to be discussed. No amendment to the original motion shall be admitted if, in the opinion of the Chair of the meeting, the amendment negates the substance of the original motion. In the case of motions under 3.5.5.4 and 3.5.5.5, to ensure objectivity, motions may only be put by a governor who has not previously taken part in the debate on the original motion.

3.6 Chair's ruling

3.6.1 Statements of governors made at meetings of the Council of Governors must 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 final and observed at the meeting.

3.6.2 Without prejudice to Standing Order 1.1, save as permitted by law, at any meeting the person presiding shall be the final authority on the interpretation of these Standing Orders in relation to that meeting.

3.7 Voting

3.7.1 No governor may vote at a meeting of the Council of Governors unless, prior to attending the meeting, they have made a declaration in the form specified by the Trust Secretary confirming that they are not prevented by this constitution from being a member of the Council of Governors. Each governor shall be deemed to have confirmed this declaration upon attending any subsequent meeting of the Council of Governors, and every agenda for meetings of the Council of Governors will draw this to the attention of the governors.

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

3.7.3 No resolution of the Council of Governors shall be passed if it is opposed by all of the Public Governors present.

3.7.4 All decisions put to the vote shall, at the discretion of the person presiding as Chair, be determined by oral expression or by a show of hands. A paper ballot may be used if a majority of the governors present so request.

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

3.7.6 If a governor so requests, his/her vote (other than by paper ballot) on any question shall be recorded by name.

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

3.8 Suspension and Variation of Standing Orders

3.8.1 Except where this would contravene any statutory provision, any direction made by NHS England or any term of this constitution any one or more of these Standing Orders may be suspended at any meeting, provided that at least two-thirds of the members of the Council of Governors are present and that a majority of those present vote in favour of suspension.

Countess of Chester Hospital NHS Foundation Trust Constitution – Updated ~~November 2023~~ August 2025

- 3.8.2 A decision to suspend any Standing Order shall be recorded in the minutes of the meeting.
- 3.8.3 A separate record of matters discussed during the suspension of any Standing Order shall be made and shall be available to the directors and governors.
- 3.8.4 No formal business may be transacted while any Standing Orders are suspended.
- 3.8.5 The trust's audit committee shall review every decision to suspend any Standing Order.
- 3.8.6 Except where this would contravene any statutory provision, any direction made by NHS England, or any provision of this constitution, any one or more of these Standing Orders may be varied, provided that more than half of the members of the Council of Governors of the trust who are present at the meeting at which the variation is being discussed vote in favour of the variation. A variation of any Standing Order in accordance with this paragraph shall not constitute an amendment to the constitution for the purposes of paragraph 46, save for the procedure set out in paragraphs 46.3 and 46.4 shall apply where the variation is in relation to the powers or duties of the Council of Governors (or otherwise with respect to the role that the Council of Governors has as part of the trust).

3.9 **Record of attendance**

- 3.9.1 The names of the governors present at each meeting shall be recorded in the minutes.

3.10 **Minutes**

- 3.10.1 The minutes of the proceedings of each meeting of the Council of Governors shall be drawn up and presented for agreement at the next meeting of the Council of Governors. The approved minutes will be conclusive evidence of the events of that meeting. Subject to Standing Order 3.10.4, the minutes shall be maintained as a public record once agreed.
- 3.10.2 No discussion shall take place at a Council of Governors meeting regarding the minutes except upon their accuracy or where the Chair considers discussion appropriate, at his/her sole discretion. Any agreed amendment to the minutes of a preceding meeting shall be recorded in writing.
- 3.10.3 Minutes shall be circulated to the governors in draft form within two weeks of the date of the meeting.
- 3.10.4 The minutes of meetings of the Council of Governors shall be made available to the public except for minutes relating to the business conducted when members of the public have been excluded from the meeting pursuant to Standing Order 3.1.2 of these Standing Orders.

3.11 **Quorum**

- 3.11.1 No business shall be transacted at a meeting of the Council of Governors unless at least half of the Governors in post on the date of the meeting (as determined by the Trust Secretary) are present.
- 3.11.2 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 he/she shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business.

- 3.11.3 Subject to Standing Order 3.11.2 above, if the Council of Governors is quorate at the start of a meeting in accordance with Standing Order 3.11.1 above, the Council of Governors shall be regarded as quorate for the duration of the meeting and shall be able to transact business accordingly, even if governors subsequently leave the meeting.
- 3.11.4 The Council of Governors may agree that governors can participate in its meeting by telephone, video or computer link. Participation in a meeting in this manner shall be deemed to constitute presence in person at the meeting.
- 3.11.5 For the avoidance of any doubt, the Chair of the Trust (who usually presides at a meeting of the Council of Governors) shall not count towards the quorum for the meeting.

4 ARRANGEMENTS FOR THE EXERCISE OF FUNCTIONS BY DELEGATION

- 4.1 The Council of Governors may not delegate any of its powers to a committee or sub-committee, but it may appoint committees, working groups and/or sub-groups consisting of members of the Council of Governors, directors, and/or other persons to assist it in carrying out its functions. The Council of Governors may, through the Trust Secretary, request that advisers assist it or any committee, working group or sub-group it appoints in carrying out its duties.

5 COMMITTEES AND WORKING GROUPS

- 5.1 These Standing Orders, as far as they are applicable, shall as appropriate apply to meetings of any committees or working groups established by the Council of Governors.
- 5.2 Each such committee, working group or sub-group shall have such terms of reference and remit and be subject to such conditions (as to reporting back to the Council of Governors) as the Council of Governors shall decide. Such terms of reference shall have effect as if incorporated into these Standing Orders.
- 5.3 The Council of Governors shall approve the membership of all committees, working groups and sub-groups that it has formally constituted and shall appoint the chair of each such committee, working group or sub-group.

6 CONFIDENTIALITY

- 6.1 Subject to Standing Order 6.3 below no governor or member of any committee or working group of the Council of Governors or attendee at a meeting of the Council of Governors or any committee or working group shall disclose details of any matter dealt with by, or brought before, the Council of Governors or a committee or working group of the Council of Governors without the permission of the Council of Governors or the relevant committee or working group (as applicable) until such matter has been concluded or until the committee or working group has reported to the Council of Governors.
- 6.2 The Council of Governors and any committee or working group of the Council of Governors shall make governors, the members of any committee or working group and any other attendees at meetings of the Council of Governors and/or its committees or working groups aware of the confidential nature of the business being transacted and their duty of confidentiality as set out at Standing Order 6.1.
- 6.3 No governor or attendee at any meeting of the Council of Governors or any committee or working group of the Council of Governors shall disclose any matter dealt with by the Council of Governors or the committee or working group (as applicable), notwithstanding that the matter has been reported or action has been concluded, if the Council of Governors or committee or working group resolves that it is confidential.

7 DECLARATION OF INTERESTS AND REGISTER OF INTERESTS

Countess of Chester Hospital NHS Foundation Trust Constitution – Updated ~~November 2023~~August 2025

- 7.1 Without prejudice to the generality of paragraph 20.1 of this constitution, each governor shall disclose to the Council of Governors any relevant and material interests (as defined below) held by them, their spouse or partner. Any interest that is disclosed by a governor pursuant to this constitution shall be recorded in a register of interests of governors maintained by the Trust Secretary.
- 7.2 The responsibility for declaring an interest is solely that of the governor concerned and shall be declared to the Trust Secretary:
- 7.2.1 within 14 days of election or appointment; or
 - 7.2.2 if arising later, as soon as the governor becomes aware of the interest.
- 7.3 Subject to the exceptions in Standing Order 7.4 below, a relevant and material interest is:
- 7.3.1 any directorship of a company;
 - 7.3.2 any interest or position in any organisation (including any charitable or voluntary organisation) which has, is likely to have or which is proposing to enter into a trading or commercial relationship with the trust;
 - 7.3.3 any interest in an organisation providing (or seeking to provide) health and social care services to the National Health Service;
 - 7.3.4 any position of authority in any organisation (including a charity or voluntary organisation) in the field of health and social care; or
 - 7.3.5 any connection with any organisation considering entering into a financial arrangement with the trust including but not limited to lenders or banks.
- 7.4 The exceptions which shall not be treated as relevant and material interests for the purposes of these provisions are as follows:
- 7.4.1 shares held in any company whose shares are listed on any public exchange not exceeding 2% of the total number of shares issued;
 - 7.4.2 an employment contract with the trust held by a Staff Governor;
 - 7.4.3 an employment contract with or other position of authority within a partnership organisation held by an Appointed Governor.
- 7.5 Any governor who has an interest in a matter to be considered by the Council of Governors and who is present at a meeting at which that matter is to be the subject of consideration shall declare such interest to the Council of Governors at that meeting and as soon as practicable after its commencement and;
- 7.5.1 shall withdraw from the meeting and play no part in the relevant discussion or decision; and
 - 7.5.2 shall not vote on the issue (and if by inadvertence they do remain and vote, their vote shall not be counted); and
 - 7.5.3 details of the interest shall be recorded in the minutes of the meeting.
- 7.6 Any governor who fails to disclose any interest required to be disclosed under this constitution must permanently vacate their office if required to do so by a majority of the remaining governors.
- 7.7 If a governor has any doubt about the relevance of an interest, he/she should discuss it with the Chair who shall advise him/her whether or not to disclose the interest.

- 7.8 A governor shall comply with any Conflicts of Interest policy that the trust may have in place from time to time.

8 COMPLIANCE – OTHER MATTERS

- 8.1 All decisions taken in good faith at a meeting of the Council of Governors or of any committee or working group shall be valid even if there is any vacancy in its membership or it is discovered subsequently that there was a defect in the calling of the meeting, or the appointment of the governors attending the meeting.
- 8.2 Governors shall comply with standing financial instructions prepared by the Director of Finance and approved by the Board of Directors for the guidance of all staff employed by the trust.
- 8.3 Governors shall act at all times in accordance with the trust's schedule of reservation and delegation of powers.
- 8.4 Governors must conduct themselves at all times in accordance with the NHS Foundation Trust Code of Governance and any other guidance issued by NHS England in relation to the role and functions of the governors of a foundation trust, as may be in force from time to time. Governors must:
- 8.4.1 actively support the vision and aims of the trust in developing as a successful NHS Foundation Trust;
 - 8.4.2 contribute to the work of the Council of Governors in order for it to fulfil its role as defined in the trust's constitution, including as set out in these Standing Orders;
 - 8.4.3 recognise that the Council of Governors has no managerial role within the trust;
 - 8.4.4 value and respect governor colleagues, and all members of staff of the trust they come into contact with;
 - 8.4.5 respect the confidentiality of information they receive in their role as a governor;
 - 8.4.6 act in the best interests of the trust, at all times without any expectation of personal benefit;
 - 8.4.7 attend meetings of the Council of Governors and all training events for governors, on a regular basis;
 - 8.4.8 conduct themselves in a manner that reflects positively on the trust, acting as an ambassador for the trust;
 - 8.4.9 abide by the trust's policies and procedures;
 - 8.4.10 recognise that the trust is an apolitical organisation and act in an apolitical way in their role as governor;
 - 8.4.11 if they are a member of any trade union, political party or other organisation, recognise that they do not, in their role as governor, represent those organisations (or the views of those organisations) but represent the interests of the constituency that elected them;
 - 8.4.12 be honest and act with integrity and probity at all times;
 - 8.4.13 respect and treat with dignity and fairness, members of the public, patients, relatives, carers, NHS staff and partners in other agencies;
 - 8.4.14 accept responsibility for their own actions;

Countess of Chester Hospital NHS Foundation Trust Constitution – Updated ~~November 2023~~ August 2025

- 8.4.15 show their commitment to working as a team member by working with all their colleagues in the NHS and the wider community;
 - 8.4.16 ensure that the trust's membership and its partner organisations receive appropriate information about the work of the Council of Governors and that their views are fed back to the Council of Governors;
 - 8.4.17 ensure that no one is discriminated against because of their religion, belief, race, colour, gender, marital status, disability, sexual orientation, age, social and economic status or national origin;
 - 8.4.18 respect the confidentiality of individual patients;
 - 8.4.19 not make, permit or knowingly allow to be made, any untrue or misleading statement relating to their own duties or the functions of the trust;
 - 8.4.20 ensure that the best interests of the public and patients/clients are upheld in decision making and that decisions are not improperly influenced by gifts or inducements; and
 - 8.4.21 support and assist the Chief Executive of the trust in his/her responsibility to answer to NHS Improvement^{England}, commissioners and the public in terms of declaring and explaining the use of resources and the performance of the trust.
- 8.5 Each governor must uphold the seven principles of public life as detailed by the Nolan Committee:
- 8.5.1 Selflessness
Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.
 - 8.5.2 Integrity
Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.
 - 8.5.3 Objectivity
In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.
 - 8.5.4 Accountability
Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.
 - 8.5.5 Openness
Holders of public office should be as open as possible about all the decisions and actions they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.
 - 8.5.6 Honesty
Holders of public office have a duty to declare any private interest relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

8.5.7 Leadership

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

9 RESOLUTION OF DISPUTES WITH THE BOARD OF DIRECTORS

9.1 Should a dispute arise between the Council of Governors and the Board of Directors then the disputes resolution procedure set out below shall be utilised.

9.1.1 The Chair, or Vice Chair (if the dispute involves the Chair) shall first endeavour through discussion with appropriate representatives of the governors and the directors to achieve the earliest possible resolution of the matter in dispute to the reasonable satisfaction of both parties.

9.1.2 Failing resolution under Standing Order 9.1.1 above then the Board of Directors or the Council of Governors, as appropriate, shall at its next formal meeting approve the precise wording of a disputes statement setting out clearly and concisely the issue or issues giving rise to the dispute.

9.1.3 The Chair or Vice Chair (if the dispute involves the Chair) shall ensure that the disputes statement produced in accordance with Standing Order 9.1.2 above, without amendment or abbreviation in any way, shall be an agenda item and agenda paper at the next formal meeting of the Board of Directors or Council of Governors as appropriate (i.e. the body that does not issue the disputes statement). That meeting shall agree the precise wording of a response to the disputes statement.

9.1.4 The Chair or Vice Chair (if the dispute involves the Chair) shall immediately or as soon as is practical, communicate the outcome to the other party and deliver the written response to the disputes statement. If the matter remains unresolved or only partially resolved then the procedure outlined in Standing Order 9.1.1 above shall be repeated.

9.1.5 If, in the opinion of the Chair or Vice Chair (if the dispute involves the Chair), and following the further discussions prescribed in Standing Order 9.1.1, there is no further prospect of a full resolution or, if at any stage in the whole process, in the opinion of the Chair or Vice Chair (as the case may be), there is no prospect of a resolution (partial or otherwise) then he/she shall appoint a special committee comprising equal numbers of directors and governors to consider the circumstances and to make recommendations to the Council of Governors and the Board of Directors with a view to resolving the dispute.

9.1.6 On the satisfactory completion of this disputes process the Board of Directors shall implement any agreed changes.

9.1.7 If the recommendations (if any) of the special committee are unsuccessful in resolving the dispute, the Chair may refer the dispute to an external mediator as he/she considers appropriate.

9.2 Nothing in this procedure shall prevent the Council of Governors, if it so desires, from informing NHS England that, in the Council of Governors' opinion, the Board of Directors has not responded constructively to concerns of the Council of Governors that the trust is not meeting the terms of its licence.

10 COUNCIL OF GOVERNORS PERFORMANCE

10.1 The Chair shall, at least annually, lead a performance assessment process for the Council of Governors to enable the Council of Governors to review its roles, structure, composition and procedures taking into account emerging best practice.

11 AVAILABILITY OF STANDING ORDERS

Countess of Chester Hospital NHS Foundation Trust Constitution – Updated ~~November 2023~~ August 2025

- 11.1 The Trust Secretary shall ensure that on appointment all governors are notified of their responsibilities as set out in these Standing Orders.

ANNEX 8 – STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE BOARD OF DIRECTORS

FOREWORD

These Standing Orders together with the trust's Standing Financial Instructions and Scheme of Delegation and Reservation of Powers (that provide respectively further detail of administrative practice and procedure, and record delegations and reservations of powers and functions, but do not form part of this constitution), provide a governance framework for the conduct of business by the trust. All directors and all staff should be aware of the existence of these documents and, where necessary, be familiar with their detailed provisions to the extent required for the proper conduct of their duties.

1 INTERPRETATION AND DEFINITIONS

- 1.1 Save as otherwise permitted by law, at any meeting the Chair of the trust shall be the final authority on the interpretation of these Standing Orders (on which he/she shall be advised by the Chief Executive and Trust Secretary).

2 STATUTORY FRAMEWORK

- 2.1 The principal place of business of the trust is the Countess of Chester Health Park, Liverpool Road, Chester, Cheshire, CH2 1UL.
- 2.2 An NHS Foundation Trust is governed by a regulatory framework that confers the functions and powers of the Trust and comprises: Acts of Parliament and in particular the National Health Service Act 2006 (as amended by the Health and Social Care Act 2012), its authorisation, constitution and its licence as granted by NHS England.
- 2.3 The Board of Directors is responsible for ensuring compliance by the trust with its authorisation, its licence, this constitution, mandatory guidance issued by NHS England, relevant statutory requirements and contractual obligations.
- 2.4 As a statutory body the trust has specified powers to contract in its own name and to act as a corporate trustee. In the latter role the trust is accountable to the Charity Commission for those funds deemed to be charitable.

3 THE BOARD

3.1 Terms of office

- 3.1.1 The Chair and the non-executive directors will:
- 3.1.1.1 serve terms of office of no longer than three (3) years;
 - 3.1.1.2 be eligible for re-appointment at the end of a term of office provided that service of a further term is consistent with Standing Order 3.1.3 below; but
 - 3.1.1.3 shall not hold office for longer than nine consecutive years.
- 3.1.2 For the avoidance of doubt the number of years service as a non-executive director of the applicant trust will not count towards the total number of years of service as a non-executive director of the trust.
- 3.1.3 Where the Council of Governors wishes to re-appoint the Chair or a non-executive director for a term of office that would mean that such individual's total years of office will exceed six (6) years or where such individual's total years of office already exceeds six (6) years at the time of such re-appointment, then the Council of Governors may do so where in reaching such a decision they:

- 3.1.3.1 take into account the current skill set requirements of the Board of Directors;
- 3.1.3.2 take into account the annual performance of the applicant non-executive director;
- 3.1.3.3 take into account the need for the progressive refreshing of the Board of Directors;
- 3.1.3.4 take into account the need to maintain at least half of the Board of Directors (excluding the Chair) as independent non-executive directors; and
- 3.1.3.5 consider that there are exceptional circumstances justifying such a term of office;

provided that any such term of office must be subject to annual re-appointment by the Council of Governors in accordance with this Standing Order 3.1 at the end of each year of an individual's term of office where such individual's total years in office exceeds six (6) years or will exceed six (6) years during the next year of that individual's term of office, and must be subject to paragraph 3.1.1.3 above.

- 3.1.4 The Chief Executive and the other executive directors will normally hold non time limited contracts of employment.

3.2 Vice Chair

- 3.2.1 If the Chair is unable to discharge his office as Chair of the trust, the Vice Chair shall be acting Chair of the trust.
- 3.2.2 Any member of the Board of Directors (the "Board") so appointed may at any time resign from the office of Vice Chair by giving notice in writing to the Chair. The Council of Governors shall thereupon appoint another non-executive director as Vice Chair in accordance with this constitution.

3.3 Joint Board Members

- 3.3.1 Where more than one person is appointed jointly as a member of the Board, those persons shall count for the purpose of Standing Order 4.11 (voting) as one person.
- 3.3.2 Where the office of a member of the Board is shared jointly by more than one person:
 - 3.3.2.1 Either or both those persons may attend or take part in meetings of the Board;
 - 3.3.2.2 If both are present at a meeting they should cast one vote if they agree;
 - 3.3.2.3 In the case of disagreements no vote should be cast;
 - 3.3.2.4 The presence of either or both those persons should count as the presence of one person for the purpose of Standing Order 4.15 (quorum).

3.4 Role of Board Members

- 3.4.1 The Board will function as a corporate decision-making body. Executive and non-executive directors will be full and equal members. Their role as director will be to consider the key strategic and managerial issues facing the trust in carrying out its statutory and other functions.

- 3.4.1.1 Executive Directors - executive directors shall exercise their authority within the terms of these Standing Orders, the trust's Standing Financial Instructions and Scheme of Delegation and Reservation of Powers.
- 3.4.1.2 Chief Executive - the Chief Executive shall be responsible for the overall performance of the executive functions of the trust. He/she is the accounting officer for the trust and shall be responsible for ensuring the discharge of obligations under any relevant guidance from NHS England.
- 3.4.1.3 Director of Finance - the Director of Finance shall be responsible for the provision of financial advice to the trust and for the supervision of financial control and accounting systems. He/she shall be responsible along with the Chief Executive for ensuring the discharge of obligations under any relevant guidance from NHS England.
- 3.4.1.4 Non-Executive Directors - the non-executive directors shall not be granted nor shall they seek to exercise any individual executive powers on behalf of the trust. They may however, exercise collective authority when acting as members of or when chairing a committee of the trust which has delegated powers.
- 3.4.1.5 Chair - the Chair shall be responsible for the operation of the Board and chair all Board meetings when present. The Chair has certain delegated executive powers. The Chair must comply with the terms of his/her appointment and with these Standing Orders. The Chair shall liaise with the Council of Governors over the appointment of non-executive directors and once appointed shall take responsibility either directly or indirectly for their induction, their portfolios of interests and assignments, and their performance. The Chair shall work in close harmony with the Chief Executive and shall ensure that key and appropriate issues are discussed by the Board in a timely manner with all the necessary information and advice being made available to the Board to inform the debate and ultimate resolutions.
- 3.4.1.6 Senior Independent Director - the Chair shall, following consultation with the Council of Governors, appoint one of the non-executive directors to be the senior independent director. The senior independent director shall make himself available to directors and governors who have concerns that they do not feel they can raise with the Chair or any executive director of the trust. Recourse to the senior independent director shall not replace the right to instigate the dispute resolution procedures at Annex 7 and 10 of this constitution. The senior independent director shall, at least annually, lead a process to evaluate the performance of the Chair.

3.5 Corporate role of the Board

- 3.5.1 All business shall be conducted in the name of the trust.

3.6 Charitable Funds

- 3.6.1 All charitable funds shall be held in the name of the trust as corporate trustee. In relation to funds held on trust, powers exercised by the Board in discharge of the trust's responsibilities as corporate trustee shall be exercised separately and distinctly from those powers exercised as the Board of the trust.
- 3.6.2 The Board shall discharge the trust's responsibility to act as corporate trustee to administer charitable funds received by the trust and for which the trust is accountable to the Charity Commission.

4 MEETINGS OF THE BOARD

Countess of Chester Hospital NHS Foundation Trust Constitution – Updated ~~November 2023~~ August 2025

4.1 Calling a meeting

- 4.1.1 The Board of Directors shall meet sufficiently regularly to discharge its duties effectively and shall meet at least six (6) times in public in each financial year. Ordinary meetings of the Board shall be held at such times and places as the Board may determine.
- 4.1.2 Meetings of the Board of Directors shall be called by the Trust Secretary, or in the Trust Secretary's absence, by the Chair.
- 4.1.3 Save in the case of emergencies or the need to conduct urgent business, the Trust Secretary shall give to all directors at least fourteen days written notice of the date and place of every meeting of the Board of Directors. In the event of an emergency or the need to conduct urgent business, the Trust Secretary may reduce the period of notice given to such period as he/she, having consulted where possible with the Chair, deems reasonable in the circumstances.
- 4.1.4 Additional meetings of the Board of Directors shall be called by the Trust Secretary on the written request of at least four directors who shall specify the business to be carried out. The Trust Secretary shall call a meeting of the Board of Directors on at least fourteen but not more than twenty-eight days' notice to discuss the specified business. If the Trust Secretary fails to call such a meeting within fourteen days of receipt of the written notice then the relevant directors may call such a meeting on not less than fourteen days written notice to all directors.
- 4.1.5 Meetings of the Board shall be open to members of the public unless the Board decides otherwise in accordance with Standing Order 4.16.
- 4.1.6 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 in writing, or to make any oral report of proceedings as they take place, without the prior agreement of the Board.
- 4.1.7 The Board may agree that its members can participate in its meetings by telephone, video or computer link. Participation in a meeting in this manner shall be deemed to constitute presence in person at the meeting.
- 4.1.8 Meetings of the Board shall be open to those employed or engaged by the trust, who are not members of the Board of Directors, and any other individuals whose presence at a meeting is deemed by the Board or by the Trust Secretary to be necessary or desirable in view of the matters to be discussed at the meeting. Individuals attending meetings in this capacity may be given access to meeting papers, and shall be permitted to participate in discussions, but, for the avoidance of doubt, shall not be deemed to be members of the Board of Directors and shall not have any right to vote.

4.2 Notice of meetings

- 4.2.1 The notice for each meeting of the Board shall:
 - 4.2.1.1 specify the business to be transacted at the meeting;
 - 4.2.1.2 be signed by the Chair or by an officer authorised by the Chair to sign on his behalf; and
 - 4.2.1.3 shall be delivered to each Board member to the usual place of residence of such Board member, or sent by electronic mail to any address provided by such member for such purposes.

- 4.2.2 In the case of a meeting called by Board members in default of the Trust Secretary, the notice shall be signed by those Board members calling the meeting pursuant to

Countess of Chester Hospital NHS Foundation Trust Constitution – Updated ~~November 2023~~ August 2025

Standing Order 4.1.4 above, and no business shall be transacted at the meeting other than that specified in the relevant notice.

4.3 Agenda

- 4.3.1 Agendas will be sent to members at least five clear days before the meeting. Supporting papers shall accompany the agenda, save in an emergency.
- 4.3.2 The Board shall use its annual reporting cycle, annual business cycle and actions arising from previous Board meetings to determine the main content of the agenda.
- 4.3.3 Subject to Standing Order 4.3.2 above, the Trust Secretary shall be responsible for producing the agenda for board meetings in conjunction with the Chair. The Chair shall determine the order of items on the agenda and the expression of such items, including any agenda items requested under Standing Order 4.3.4 below.
- 4.3.4 A Board member desiring other matters to be included on an agenda shall make his request known to the Chair in writing at least fourteen days before the meeting. The Board member should indicate whether the item of business is to be transacted in the presence of the public and should provide the appropriate paper, document or supporting information. Where a request for an item of business to be included on an agenda is made less than fourteen days but more than five days before a meeting such item of business may, at the discretion of the Chair, be included and shall be tabled as an agenda item at the commencement of the relevant meeting.

4.4 Petitions

- 4.4.1 Where a petition has been received by the trust the Chair shall include it as an item for the agenda of the next Board meeting.

4.5 Chairing of meetings

- 4.5.1 The Chair of the trust or, in his absence, the Vice Chair is to chair meetings of the Board. If both the Chair and the Vice Chair are absent, the Board members present shall choose a non-executive director who is present to chair the meeting.
- 4.5.2 If the Chair stands down temporarily, on the grounds of a declared conflict of interest, the Vice Chair, if present, shall chair that part of the meeting. If the Chair and Vice Chair are both absent, or disqualified from participating on the grounds of a declared conflict of interest, the Board members present shall choose a non-executive director who is present to chair the meeting.

4.6 Notices of motion

- 4.6.1 A member of the Board desiring to move or amend a motion shall send a written notice thereof at least ten days before the meeting to the Chair. The Chair shall insert in the agenda for the meeting all notices so received. This Standing Order 4.6 shall not prevent any motion or amendment being moved during the meeting, without notice, on any business mentioned on the agenda.

4.7 Withdrawal of motion or amendments

- 4.7.1 A motion or amendment once moved may be withdrawn by the proposer with the consent of the Chair.

4.8 Motion to rescind a resolution

- 4.8.1 Only the Chair may propose a motion to amend or rescind any resolution or the general substance of any resolution, which has been passed within the preceding six calendar months by the Board.

4.9 Motions

- 4.9.1 The mover of a motion shall have a right of reply at the close of any discussion on the motion or any amendment thereto.
- 4.9.2 When a motion is under discussion, or immediately prior to discussion, it shall be open to a Board member to move:
- 4.9.2.1 an amendment to the motion;
 - 4.9.2.2 the adjournment of the discussion or the meeting;
 - 4.9.2.3 the appointment of an ad hoc committee to deal with a specific item of business;
 - 4.9.2.4 that the meeting proceed to the next business;
 - 4.9.2.5 that the motion be now put; or
 - 4.9.2.6 a motion resolving to exclude the public, including the press.

Such a motion shall be disposed of before the motion which was originally under discussion or about to be discussed. No amendment to the original motion shall be admitted if, in the opinion of the chair of the meeting, the amendment negates the substance of the original motion. In the case of motions under Standing Order 4.9.2.4 and Standing Order 4.9.2.5, to ensure objectivity motions may only be put by a Board member who has not previously taken part in the debate on the original motion.

4.10 Chair's ruling

- 4.10.1 Statements of directors made at meetings of the Board must be relevant to the matter under discussion at the material time and the decision of the chair of the meeting on questions of order, relevancy, regularity and any other matters shall be final and observed at the meeting.

4.11 Voting

- 4.11.1 Subject to the following provisions of this Standing Order 4.11, questions arising at a meeting of the Board shall be decided by a majority of votes.
- 4.11.2 In case of an equality of votes, the person presiding as chair shall have a second and casting vote.
- 4.11.3 No resolution of the Board shall be passed if it is opposed by all of the non-executive directors present or by all of the executive directors present.
- 4.11.4 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 be used if a majority of the Board members present so request.
- 4.11.5 If at least one-third of the Board members present so request, the voting (other than by paper ballot), on any question may be recorded to show how each member present voted or abstained.

- 4.11.6 If a Board member so requests, his vote (other than by paper ballot) on any question shall be recorded by name.
- 4.11.7 In no circumstances may an absent Board member vote by proxy. Absence is defined as being absent at the time of the vote.
- 4.11.8 An officer who has been appointed formally by the Board to act up for an executive director of the Board during his absence, or to cover a vacant executive director post, shall be entitled to exercise the voting rights of the executive director. An officer attending the Board to represent an executive director 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.

4.12 Minutes

- 4.12.1 Minutes of every meeting of the Board must be kept by the Trust Secretary. Minutes of meetings will be presented at the next meeting for approval. The approved minutes will be conclusive evidence of the events of that meeting.
- 4.12.2 No discussion shall take place regarding the minutes except upon their accuracy or where the Chair considers discussion appropriate. Any amendment to the minutes of a preceding meeting shall be recorded in writing.
- 4.12.3 Minutes shall be circulated to Board members in draft form within two weeks of the date of the meeting. The minutes of the meeting shall be made available to the public except for minutes relating to business conducted when members of the public are excluded under the terms of Standing Order 4.16.

4.13 Suspension and Variation of Standing Orders by the Board

- 4.13.1 Except where this would contravene any statutory provision, any direction made by NHS England, or any provision of this constitution, any one or more of these Standing Orders may be suspended at any meeting, provided that at least two-thirds of the Board are present, including at least two executive directors and two non-executive directors, and that a majority of those present vote in favour of suspension.
- 4.13.2 A decision to suspend any Standing Order shall be recorded in the minutes of the meeting.
- 4.13.3 A separate record of matters discussed during the suspension of any Standing Orders shall be made and shall be available to the Chair and members of the Board.
- 4.13.4 No formal business may be transacted while Standing Orders are suspended.
- 4.13.5 The audit committee shall review every decision to suspend any Standing Orders.
- 4.13.6 Except where this would contravene any statutory provision, any direction made by NHS England, or any provision of this constitution, any one or more of these Standing Orders may be varied, provided that more than half of the members of the Board of Directors who are present at the meeting at which the variation is being discussed vote in favour of the variation. A variation of any Standing Order in accordance with this paragraph shall not constitute an amendment to the constitution for the purposes of paragraph 46.
- 4.13.7 Should the emergency powers in paragraph 5.2.1 of these Standing Orders be exercised to vary any one or more of these Standing Orders, the variation must be subsequently approved in accordance with paragraph 4.13.6 above. If the variation is not so approved, the variation shall cease to have effect.

4.14 Record of Attendance at Board Meetings

- 4.14.1 The names of the chair, the Board members present, and individuals in attendance at each Board meeting shall be recorded and this record shall be made available to the Council of Governors upon its request.

4.15 Quorum

- 4.15.1 Four (4) Board members, including not less than two (2) executive directors, one of whom must be the Chief Executive or another executive director nominated by the Chief Executive, and not less than two (2) non-executive directors, one of whom must be the Chair or the Vice Chair, shall form a quorum.
- 4.15.2 An officer in attendance for an executive director but without formal acting up status shall not count towards the quorum.
- 4.15.3 If the Chair or any other member has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of the declaration of a conflict of interest, he/she 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 requirement at 4.15.1 for at least two executive directors to form part of the quorum shall not apply where the executive directors are excluded from a meeting, or part of a meeting; for example when the Board considers the recommendations of the remuneration committee.

4.16 Admission of public to board meetings

- 4.16.1 The Board may resolve to exclude members of the public from any meeting or part of a meeting on the grounds that:
- 4.16.1.1 publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted; or
- 4.16.1.2 there are special reasons stated in the resolution and arising from the nature of the business of the proceedings.
- 4.16.2 The Chair may exclude any member of the public from a meeting of the Board if they are interfering with or preventing the proper conduct of the meeting.
- 4.16.3 Nothing in these Standing Orders shall be construed as permitting the introduction by any person of any recording, transmitting, video or similar apparatus into meetings of the Board or of a committee or sub-committee of the Board.
- 4.16.4 Where the public have been excluded from a meeting in accordance with Standing Order 4.16.1 above then the matters dealt with following such exclusion shall be confidential to the directors of the trust. No director, officer or employee of the trust in attendance at such meeting shall reveal or disclose any information concerning such matters to any other person or disclose the contents of any papers presented to such meeting or minutes taken of such a meeting to any other person.

5 ARRANGEMENTS FOR THE EXERCISE OF FUNCTIONS BY DELEGATION

- 5.1 Subject to such directions or guidance as may be given by NHS England, the Board may make arrangements for the exercise, on behalf of the Board, of any of its functions:
- 5.1.1 by a committee appointed by virtue of Standing Order 6.1 below; or

5.1.2 by an executive director of the trust;

in each case subject to such restrictions and conditions as the Board thinks fit.

5.2 Emergency powers

5.2.1 The powers which the Board has retained to itself within these Standing Orders may, in emergency, be exercised by the Chief Executive and the Chair, after having consulted with at least two non-executive directors. The exercise of such powers by the Chief Executive and Chair shall be reported to the next formal meeting of the board in public session for ratification.

5.3 Delegation to committees

5.3.1 The Board may agree, from time to time, to the delegation of executive powers to committees, formally constituted in accordance with Standing Order 6.1. The constitution and terms of reference of these committees or sub-committees and their specific executive powers shall be approved by the Board.

5.4 Delegation to officers

5.4.1 Those functions of the trust which have not been retained as reserved by the Board or delegated to a committee shall be exercised on behalf of the trust by the Chief Executive. The Chief Executive shall determine which functions he/she will perform personally and shall nominate officers to assist him in undertaking and discharging the remaining functions for which he/she will still retain accountability to the Board. For the avoidance of doubt whilst the Chief Executive can nominate officers to assist him/ her in undertaking and discharging any functions, the Chief Executive can only delegate functions to one or more executive directors.

5.4.2 The Chief Executive shall prepare a scheme of delegation identifying his proposals, which shall be considered and approved by the Board, subject to any amendments agreed during the discussion. The Chief Executive may periodically propose amendments to the scheme of delegation that shall also be considered and approved by the Board.

5.4.3 Nothing in the scheme of delegation shall impair the discharge of the direct accountability to the Board of the Director of Finance to provide information and advise the Board in accordance with any statutory requirements and any requirements of NHS England.

5.5 Non-compliance with Standing Orders

5.5.1 If for any reason these standing orders are not complied with, full details of the non-compliance, any justification for non-compliance and the circumstances surrounding the non-compliance, shall be reported to the next formal meeting of the Board for action or ratification. All members of the Board and staff have a duty to disclose any non-compliance with these standing orders to the Chief Executive as soon as possible.

6 COMMITTEES

6.1 Appointment

6.1.1 Subject to such directions or guidance as may be given by NHS England the Board may establish committees, reporting to the Board, composed of members of the Board.

6.1.2 A committee appointed under Standing Order 6.1.1 above may appoint sub-committees consisting wholly or partly of members of the committee or wholly of persons who are not members of the committee but who are members of the Board to

assist and support the relevant committee with the discharge of its functions, but it may not delegate any function to such sub-committee.

6.1.3 The Board may appoint committees consisting wholly or partly of persons who are not executive directors or non-executive directors of the trust for any purpose that is calculated or likely to contribute to or assist it in the exercise of its powers but it may not delegate the exercise of any of its powers to any such committee.

6.1.4 The Board shall have the power to dismiss the members of any committee or sub-committee that is established under Standing Orders 6.1.1 to 6.1.3 inclusive above.

6.2 Applicability of standing orders

6.2.1 The standing orders of the trust, so far as they are applicable, shall apply with appropriate alteration to meetings of any committees established by the Board and to the meetings of any sub-committee, in which case the term Chair is to be read as a reference to the chair of the committee as the context permits, and the term member is to be read as a reference to a member of the committee also as the context permits. There is no requirement for committees or sub-committees to hold meetings in public.

6.3 Terms of reference

6.3.1 Each committee established by the Board and each sub-committee shall have such terms of reference and powers and be subject to such conditions, such as to reporting back to the Board, as the Board shall decide and shall act in accordance with any legislation and any regulation or direction issued by NHS England. Such terms of reference shall have effect as if incorporated into these Standing Orders.

6.4 Delegation of powers to sub-committee

6.4.1 Where committees established by the Board are authorised to establish sub-committees they may not delegate functions to the sub-committee.

6.5 Approval of appointments

6.5.1 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 members of the Board nor officers shall be appointed to a committee, the Board shall define the powers of such appointees and may agree allowances for such appointees, including reimbursement for loss of earnings, and/or expenses.

6.6 Committees Established by the Board

6.6.1 The committees to be established by the Board shall include the following:

6.6.1.1 Audit Committee - an audit committee comprised of non-executive directors will be established and constituted to provide the Board with an independent and objective review of its financial systems, financial information and compliance with relevant laws and guidance. The Terms of Reference will be approved by the Board and reviewed on a periodic basis. The non-executive directors appointed to the committee shall all be independent non-executive directors and at least one shall have significant, recent and relevant financial experience.

6.6.1.2 Remuneration and Nominations Committee - a remuneration and nominations committee will be established and constituted by the Board. The committee shall be comprised exclusively of non-executive directors, including at least three independent non-executive directors. The committee shall nominate candidates for executive director posts in accordance with its terms of reference and decide the remuneration and

allowances, and the other terms and conditions of office, of the executive directors.

6.7 Confidentiality

- 6.7.1 Subject to Standing Order 6.7.3 below, no director of the trust or member of any committee or sub-committee of the Board or attendee at a meeting of the Board or any such committee or sub-committee shall disclose any matter dealt with by, or brought before the Board or committee or sub-committee without the permission of the Board or the relevant committee or sub-committee (as applicable) until such matter has been concluded or, in the case of a committee or sub-committee, until the committee or sub-committee has reported to the Board.
- 6.7.2 The Board and any committee or sub-committee of the Board shall make the directors of the trust, the members of any committee and sub-committee and any other attendees at meetings of the Board and/or its committees or sub-committees aware of the confidential nature of the business being transacted and their duty of confidentiality as set out in this Standing Order 6.7.
- 6.7.3 No director of the trust or member of any committee or sub-committee or attendee at any meeting of the Board or any committee or sub-committee of the Board shall disclose any matter reported to the Board or otherwise dealt with by the Board or the committee or sub-committee (as applicable) notwithstanding that the matter has been reported or action has been concluded if the Board or committee or sub-committee resolves that it is confidential.

7 DECLARATIONS OF INTERESTS AND REGISTERS OF INTERESTS

- 7.1 Each director of the trust shall declare any interests that he/she is required to declare under paragraph 34 of the constitution.
- 7.2 The responsibility for declaring an interest is solely that of the director concerned and shall be declared to the Trust Secretary:
 - 7.2.1 within 14 days of appointment; or
 - 7.2.2 if arising later, as soon as the director becomes aware of the interest.
- 7.3 Subject to the exception in Standing Order 7.4 below, a relevant and material interest is:
 - 7.3.1 any directorship of a company;
 - 7.3.2 any interest or position in any organisation (including any charitable or voluntary organisation) which has, is likely to have or which is proposing to enter into a trading or commercial relationship with the trust;
 - 7.3.3 any interest in an organisation providing (or seeking to provide) health and social care services to the National Health Service;
 - 7.3.4 any position of authority in any organisation (including a charity or voluntary organisation) in the field of health and social care; or
 - 7.3.5 any connection with any organisation considering entering into a financial arrangement with the trust including but not limited to lenders or banks.
- 7.4 The exception which shall not be treated as a relevant and material interest for the purposes of these provisions is shares held in any company whose shares are listed on any public exchange not exceeding 2% of the total number of shares issued.

- 7.5 Any director who has a relevant and material interest in a matter to be considered by the Board and who is present at a meeting at which that matter is to be the subject of consideration shall declare such interest to the Board at that meeting and as soon as practicable after its commencement, and:
- 7.5.1 shall withdraw from the meeting and play no part in the relevant discussion or decision;
 - 7.5.2 shall not vote on the issue (and if by inadvertence they do remain and vote, their vote shall not be counted); and
 - 7.5.3 details of the interest shall be recorded in the minutes of the meeting.
- 7.6 Any director who fails to disclose any interest required to be disclosed under this constitution must permanently vacate their office if:
- 7.6.1 in the case of a non-executive director, he/she is required to do so by a resolution made pursuant to paragraph 26 of this constitution; and
 - 7.6.2 in the case of an executive director, he/she is required to do so by a resolution made pursuant to paragraph 29 of this constitution.
- 7.7 If a director has any doubt about the relevance of an interest, this should be discussed with the Chair.
- 7.8 A director shall comply with any Conflicts of Interest policy that the trust may have in place from time to time.

8 DEFECTS IN PROCESS OR APPOINTMENT

- 8.1 All decisions taken in good faith at a meeting of the Board of Directors or of any committee or sub-committee shall be valid even if there is any vacancy in its membership or it is discovered subsequently that there was a defect in the calling of the meeting, or the appointment of the directors attending the meeting.

9 STANDARDS OF BUSINESS CONDUCT POLICY

- 9.1 Directors of the trust shall comply with standing financial instructions prepared by the Director of Finance and approved by the Board for the guidance of all staff employed by the trust.
- 9.2 Directors of the trust must conduct themselves at all times in accordance with the NHS Foundation Trust Code of Governance, as may be in force from time to time.
- 9.3 Each director will uphold the seven principles of public life as detailed by the Nolan Committee:
- 9.3.1 Selflessness
Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.
 - 9.3.2 Integrity
Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.
 - 9.3.3 Objectivity

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

9.3.4 Accountability

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

9.3.5 Openness

Holders of public office should be as open as possible about all the decisions and actions they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

9.3.6 Honesty

Holders of public office have a duty to declare any private interest relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

9.3.7 Leadership

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

9.4 Canvassing of and recommendations by members of the Board in relation to appointments

9.4.1 Canvassing of members of the Board or of any committee or sub-committee of the Board, either directly or indirectly, for any appointment under the trust shall disqualify the candidate for such appointment. The contents of this Standing Order 9.4 shall be included in application forms or otherwise brought to the attention of applicants.

9.4.2 A member of the Board shall not solicit for any person any appointment under the trust or recommend any person for such appointment. This Standing Order 9.4 shall not, however, preclude a member of the Board from giving written testimonial of a candidate's ability, experience or character for submission to the trust.

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

9.5 Relatives of members of the board or officers of the trust

9.5.1 Candidates for any appointment under the trust shall, when making an application, disclose in writing to the trust whether they are related to any member of the Board 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.

9.5.2 The Chair and every member of the Board and officer of the trust shall disclose to the Chief Executive any relationship between himself and a candidate of whose candidature that member or officer is aware. It shall be the duty of the Chief Executive to report to the board any such disclosure made.

9.5.3 Prior to acceptance of an appointment, members of the Board should disclose to the Board whether they are related to any other member of the Board or holder of any office in the trust.

9.6 Gifts and hospitality

- 9.6.1 Members of the Board and officers of the trust are expected to maintain high standards of personal conduct in all work related business. Under the Bribery Act 2010 they must not accept from any organisation, firm or individual any inducement or reward which might influence them to make a decision that is not in the best interests of the trust. Any breach of the Act renders any employee liable to instant dismissal.
- 9.6.2 Any gifts received from or offer of gifts by a contractor or potential contractor must be declined and reported immediately in accordance with the trust's policy on gifts and hospitality, which is contained in the trust's Conflicts of Interest policy, as may be in place from time to time. Contractor means any supplier of goods, and/or services to the trust.
- 9.6.3 All members of the Board and officers of the trust must comply with relevant NHS guidance in force from time to time in relation to gifts and hospitality and the trust's policy on gifts and hospitality.

10 CUSTODY OF SEAL AND SEALING OF DOCUMENTS

10.1 Custody of seal

- 10.1.1 The common seal of the trust shall be kept by the Trust Secretary in a secure place.

10.2 Sealing of documents

- 10.2.1 The seal of the trust shall not be affixed to any document unless the sealing has been authorised by a resolution of the Board or of a committee established by the Board where the Board has delegated its powers to such a committee to authorise the application of the trust's seal.
- 10.2.2 Before any building, engineering, property or capital document is sealed it must be approved by the director of finance, or an officer nominated by him/her, with such approval being evidenced in writing and authorised in writing by the chief executive, or an officer nominated by him who shall not be within the originating directorate.
- 10.2.3 All deeds entered into by the trust and all documents conveying an interest in land must be executed by the application of the trust's seal.

10.3 Register of sealing

- 10.3.1 A record of the sealing of every document shall be made and numbered consecutively in a register established for that purpose, and shall be signed by the persons who have approved and authorised the document and those who attested the seal. A report of all sealings shall be made to the Board at least annually. The report shall contain details of the seal number, the description of the document and date of sealing.

11 SIGNATURE OF DOCUMENTS

- 11.1 Where any document becomes a necessary step in legal proceedings involving the trust, it shall be signed by the Chief Executive or any executive director nominated by the Chief Executive.
- 11.2 The Chief Executive or any executive director nominated by the Chief Executive 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 any committee established by the Board with delegated authority.

12 MISCELLANEOUS

12.1 Standing orders to be given to members of the board and officers of the trust

- 12.1.1 It is the duty of the Chief Executive to ensure that existing Board members and officers of the trust and all new appointees are notified of and understand their responsibilities within the Standing Orders, Standing Financial Institutions, Scheme of Reservation and Delegation of Powers.

12.2 **Review of standing orders**

- 12.2.1 These Standing Orders shall be reviewed periodically by the Board. The requirement for review extends to all documents having effect as if incorporated in the Standing Orders.

ANNEX 9 – FURTHER PROVISIONS - MEMBERS

1 DISQUALIFICATION FROM MEMBERSHIP

- 1.1 An individual may not become, or continue to be, a member of the trust if:
- 1.1.1 they are under 16 years of age; or
 - 1.1.2 within the last five (5) years they have been involved as a perpetrator in a serious incident of physical or verbal aggression at any of the trust's sites or facilities or against any of the trust's employees or other persons who exercise functions for the purposes of the trust, or against any registered volunteer.

2 TERMINATION OF MEMBERSHIP

- 2.1 A member shall cease to be a member if:
- 2.1.1 they resign by notice to the Trust Secretary;
 - 2.1.2 they die;
 - 2.1.3 they are expelled from membership under this constitution;
 - 2.1.4 they cease to be eligible under this constitution to be a member of any of the Public Constituencies or of any classes of the Staff Constituency;
 - 2.1.5 it appears to the Trust Secretary that they no longer wish to be a member of the trust, and after enquiries made in accordance with a process approved by the Council of Governors, they fail to demonstrate that they wish to continue to be a member of the trust.
- 2.2 A member may be expelled by a resolution approved by not less than two thirds of the governors present and voting at a meeting of the Council of Governors. The following procedure is to be adopted.
- 2.2.1 Any member may complain to the Trust Secretary that another member has acted in a way that is detrimental to the interests of the trust;
 - 2.2.2 If a complaint is made, the Council of Governors may itself consider the complaint, having taken such steps as it considers appropriate to ensure that each member's point of view is heard and may either:
 - 2.2.2.1 dismiss the complaint and take no further action; or
 - 2.2.2.2 for a period not exceeding twelve months suspend the right of the member complained about to attend members meetings and vote under this constitution; or
 - 2.2.2.3 arrange for a resolution to expel the member complained about to be considered at the next general meeting of the Council of Governors.
 - 2.2.3 If a resolution to expel a member is to be considered at a general meeting of the Council of Governors, details of the complaint must be sent to the member complained about not less than one calendar month before the meeting with an invitation to answer the complaint and attend the meeting.
 - 2.2.4 At the meeting the Council of Governors will consider evidence in support of the complaint and such evidence as the member complained about may wish to place before them.

2.2.5 If the member complained about fails to attend the meeting without due cause the meeting may proceed in their absence.

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

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

3 MEMBERS MEETINGS

3.1 The trust is to hold a members meeting (the **Annual Members Meeting**) within nine months of the end of each financial year.

3.2 Any members meetings other than Annual Members Meetings shall be called Special Members Meetings.

3.3 The Annual Members Meeting shall be open to members of the public. Special Members Meetings are open to all members of the trust, governors and directors, and representatives of the auditor, but not to members of the public unless the Council of Governors decides otherwise. The Council of Governors may invite representatives of the media and any experts or advisors whose attendance they consider to be in the best interests of the trust to attend a members meeting.

3.4 All members meetings are to be convened by the Trust Secretary.

3.5 The Trust Secretary shall decide where a members meeting is to be held and may also for the benefit of members:

3.5.1 arrange for the Annual Members Meeting to be held in different venues each year;

3.5.2 make provision for a members meeting to be held at different venues simultaneously or at different times. In making such provision the Trust Secretary shall also fix an appropriate quorum for each venue, provided that the aggregate of the quorum requirements shall not be less than the quorum set out below.

3.6 At the Annual Members Meeting:

3.6.1 the Board of Directors shall present to the members:

3.6.1.1 the annual accounts;

3.6.1.2 any report of the auditor;

3.6.1.3 forward planning information for the next financial year;

3.6.2 the Council of Governors shall present to the members a report on:

3.6.2.1 steps taken to secure that (taken as a whole) the actual membership of:

3.6.2.1.1 the Public Constituency; and

3.6.2.1.2 the classes of the Staff Constituency;

is representative of those eligible for such membership;

3.6.2.2 the progress of the membership strategy and any changes proposed; and

- 3.6.2.3 any proposed changes to the policy for the composition of the Council of Governors and of the non-executive directors;
- 3.6.3 the results of the election and appointment of governors and the appointment of non-executive directors will be announced.
- 3.7 Notice of a members meeting is to be given by the Trust Secretary:
 - 3.7.1 by written notice to all members;
 - 3.7.2 by notice prominently displayed at the trust's head office and at all of the trust's places of business;
 - 3.7.3 by notice on the trust's website; and
 - 3.7.4 is to be given in writing to the Council of Governors and the Board of Directors, and to the auditor;

at least 14 days before the date of the meeting. The notice must:

 - 3.7.5 state whether the meeting is an Annual Members Meeting or a Special Members Meeting;
 - 3.7.6 give the time, date and place of the meeting; and
 - 3.7.7 indicate the business to be dealt with at the meeting.
- 3.8 The lack of service of notice on any member shall not affect the validity of any meeting.
- 3.9 Before a members meeting can do business there must be a quorum present. Except where this constitution says otherwise a quorum is one member present from each of the trust's constituencies.
- 3.10 The trust may make arrangements for members to vote by post, or by using electronic communications.
- 3.11 It is the responsibility of the Council of Governors, the chair of the meeting and the Trust Secretary to ensure that at any members meeting:
 - 3.11.1 the issues to be decided are clearly explained; and
 - 3.11.2 sufficient information is provided to members to enable meaningful discussion to take place.
- 3.12 The Chair, or in their absence the Vice Chair, or in their absence one of the other non-executive directors shall chair all members meetings. If neither the Chair nor the Vice Chair nor another non-executive director is present, the members of the Council of Governors present at the meeting shall elect one of their number to be chair and if there is only one governor present and willing to act they shall be chair. If no governor is willing to act as chair or if no governor is present within fifteen minutes after the time appointed for the start of the meeting, the members present and entitled to vote shall choose one of their number present to be chair.
- 3.13 If no quorum is present within half an hour of the time fixed for the start of the meeting, the meeting shall stand adjourned to the same day in the next week at the same time and place or to such time and place as the Trust Secretary, having consulted with the Chair, shall determine. If a quorum is not present within half an hour of the time fixed for the start of the adjourned meeting, the number of members present during the meeting is to be a quorum.

- 3.14 A resolution put to the vote at a members meeting shall be decided by a majority of votes of those members present and voting.
- 3.15 Every member present and every member who has voted by post or using electronic communications is to have one vote. In the case of an equality of votes the chair of the meeting is to have a second and casting vote.
- 3.16 The result of any vote will be declared by the Chair and entered in the minutes. The minutes will be conclusive evidence of the result of the vote.

4 DECISIONS ON ELIGIBILITY FOR MEMBERSHIP

- 4.1 It is the responsibility of each member to ensure his/her eligibility to become or continue as a member of a constituency or class of a constituency at all times and not the responsibility of the trust to do so on his/her behalf. A member who becomes aware of his/her ineligibility shall inform the trust as soon as practicable and that person shall thereupon be removed forthwith from the register of members and shall cease to be a member.
- 4.2 Where the trust has reason to believe that a member is ineligible for membership or may be disqualified from membership, the Trust Secretary shall carry out reasonable enquiries to establish if this is the case.
- 4.3 Where the Trust Secretary considers that there may be reasons for concluding that a member or an applicant for membership may be ineligible or be disqualified from membership he/she shall advise that individual of those reasons in summary form and invite representations from the member or applicant for membership within 28 days or such other reasonable period as the Trust Secretary may in his/her absolute discretion determine. Any representations received shall be considered by the Trust Secretary and he/she shall make a decision on the member's or applicant's eligibility or disqualification as soon as reasonably practicable and shall give notice in writing of that decision to the member or applicant within 28 days of the decision being made.
- 4.4 If no representations are received within the said period of 28 days or such longer period (if any) permitted under the preceding paragraph, the Trust Secretary shall be entitled nonetheless to proceed and make a decision on the member's or applicant's eligibility or disqualification notwithstanding the absence of any such representations from him/her.
- 4.5 Any decision to disqualify a member or an applicant for membership may be referred by the member or applicant concerned to the dispute resolution procedure described in Annex 10.

ANNEX 10 – FURTHER PROVISIONS

1 REPRESENTATIVE MEMBERSHIP

- 1.1 The trust shall at all times strive to ensure that taken as a whole its actual membership is representative of those eligible for membership. To this end the trust shall at all times have in place and pursue a membership strategy which shall be approved by the Council of Governors, and shall be reviewed by them from time to time, and at least every three years.

2 TRUST SECRETARY

- 2.1 The trust shall have a Trust Secretary who may be an employee. The Trust Secretary may not be a governor, or the Chief Executive or the Director of Finance. All directors and governors will have access to the advice and services of the Trust Secretary. The Trust Secretary's functions shall include:
- 2.1.1 acting as secretary to the Council of Governors, the Board of Directors and any committees, giving independent advice on governance and always acting in the best interests of the trust;
 - 2.1.2 ensuring good information flows between the Board of Directors and its committees and between the Board of Directors, the Council of Governors and senior management;
 - 2.1.3 calling and attending all members meetings, meetings of the Council of Governors and of the Board of Directors, and taking the minutes of those meetings;
 - 2.1.4 being available to give advice and support to individual directors and governors, particularly in relation to the induction of new directors and governors and assistance with professional development;
 - 2.1.5 keeping the register of members and other registers and books required by this constitution to be kept;
 - 2.1.6 keeping the trust's seal;
 - 2.1.7 publishing to members in an appropriate form information which they should have about the trust's affairs;
 - 2.1.8 preparing and sending to NHS England and any other statutory body all returns which are required to be made.
- 2.2 Minutes of every members meeting, of every meeting of the Council of Governors and of every meeting of the Board of Directors are to be kept by the Trust Secretary.
- 2.3 The Trust Secretary shall be responsible for making any determination required on the interpretation of this constitution (having sought and received legal advice if required) where any query as to the interpretation of this constitution is raised by any governor, director or member.
- 2.4 A determination made in accordance with paragraph 2.3 above shall be binding on the Council of Governors, the Board of Directors and the members.
- 2.5 The Trust Secretary is to be appointed and removed by the Board of Directors.
- 2.6 The Board of Directors of the applicant NHS trust shall appoint the first secretary of the trust.

3 INDEMNITY

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

4 DISPUTE RESOLUTION PROCEDURES

- 4.1 Every unresolved dispute which arises out of this constitution between the trust and:

- 4.1.1 a member; or
- 4.1.2 an applicant for membership; or
- 4.1.3 any person aggrieved who has ceased to be a member within the six months prior to the date of the dispute; or
- 4.1.4 any person bringing a claim under this constitution; or
- 4.1.5 an office-holder of the trust;

is to be submitted to an arbitrator agreed by the parties or in the absence of agreement to be nominated by the Chair. The arbitrator's decision will be binding and conclusive on all parties, including as to cost.

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

5 NOTICES

- 5.1 Any notice required by this constitution to be given shall be given in writing or shall be given using electronic communications to an address for the time being notified for that purpose. "Address" in relation to electronic communications includes any number or address used for the purposes of such communications.

- 5.2 Proof that:

- 5.2.1 in the case of a notice sent by post, the envelope containing the notice was properly addressed, prepaid and posted; and
- 5.2.2 in the case of a notice sent by electronic communication, the electronic communication was dispatched to the correct address;

shall be conclusive evidence that the notice was given. A notice shall be treated as delivered 2 days after the envelope containing it was posted or, in the case of a notice contained in an electronic communication, 1 day after it was sent.

Approved at the Board of Directors held on 28th November 2023.

Approved at the Council of Governors held on 11th January 2024 (subject to minor amendment to the line 27.3) as agreed by the Council of Governors.

Countess of Chester Hospital NHS Foundation Trust Constitution – Updated ~~November 2023~~August 2025