



**Liverpool Women's**  
NHS Foundation Trust

# **Liverpool Women's NHS Foundation Trust**

## **Constitution**

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

September 2023

**Version control schedule**

<b>December 2015</b>			
<b>Constitution Reference</b>		<b>Amendment</b>	
1.	Annex 6 section 9; addition of new para 9.2	Amendments made, the effect of which is to allow for the first time, non-executive directors of LWH to hold two NHS directorships simultaneously, subject to consideration by the Council's Nominations Committee and decision by the Council.	
<b>February 2018</b>			
<b>Constitution Reference</b>		<b>From</b>	<b>To</b>
1.	Throughout	Monitor	NHS Improvement or NHSI
2.	Annex 3; 3.4	One governor appointed jointly by: <ul style="list-style-type: none"> <li>Liverpool Hope University</li> <li>Liverpool John Moores University</li> <li>Edge Hill University</li> <li>Merseyside Learning &amp; Skills Council</li> </ul>	One governor appointed jointly by: <ul style="list-style-type: none"> <li>Liverpool Hope University</li> <li>Liverpool John Moores University</li> <li>Edge Hill University</li> </ul>
3.	Annex 3; 3.5	New clause	One Student Governor appointed jointly by the student councils of: <ul style="list-style-type: none"> <li>University of Liverpool</li> <li>Liverpool Hope University</li> <li>Liverpool John Moores University</li> <li>Edge Hill University</li> </ul>
4.	Annex 6; 9	Further provisions as to eligibility to be a Director 9. A person may not become a Director of the Trust, and if already holding such office, will immediately cease to do so if: 9.1 subject to 9.2 below, she is a member of the Council of Governors, or a Governor or Director of an NHS body or another NHS Foundation Trust; 9.2 in the case of a non-executive Director of the Trust, a person so appointed may hold one or more additional non-executive directorships in other NHS bodies;....	Further provisions as to eligibility to be a Director 9 A person may not become a Director of the Trust, and if already holding such office, will immediately cease to do so if: 9.1 she is a member of the Council of Governors, or a Governor of an NHS body or another NHS Foundation Trust;
5.	Annex 7; 37	Quorum for a Council of Governors Meeting: Ten governors shall form a quorum, at least five of whom must be Public Governors.	Quorum for a Council of Governors Meeting: Eight (8) governors shall form a quorum, at least four (4) of whom must be Public Governors.
6.	Annex 8; 31	The composition of the Board shall be: <ul style="list-style-type: none"> <li>A Non-Executive Chair</li> <li>Not more than six other non-executive Directors</li> </ul>	The composition of the Board shall be: <ul style="list-style-type: none"> <li>A Non-Executive Chair</li> <li>Not more than seven other non-executive Directors</li> </ul>
7.	Annex 9; 7&8	Dispute Resolution Procedures 7. Every unresolved dispute which arises out of this constitution between the Trust and: <ul style="list-style-type: none"> <li>a member; or</li> <li>any person aggrieved who has ceased to be a member within the six months prior to the date of the dispute; or</li> <li>any person bringing a claim under this constitution; or</li> <li>an office-holder of the Trust</li> </ul> is to be submitted to an arbitrator agreed by the parties. The arbitrator's decision will be binding and conclusive on all parties. 8. Any person bringing a dispute must, if required to do so, deposit with the Trust a reasonable sum (not exceeding £100) to be determined by the Council of Governors and approved by the Secretary. The arbitrator will decide how the costs of the arbitration will be paid and what should be done with the deposit.	Dispute Resolution Procedures  NEW Clauses 7&8 7. In the event of any dispute about the entitlement to membership, the dispute shall be referred to the Chair who shall make a determination on the point in issue. If the person in dispute is aggrieved at the decision of the Chair she may appeal in writing within 14 days of the Chair's decision to the Council of Governors whose decision shall be final.  8. In the event of any dispute about the eligibility and disqualification of a Governor the dispute shall be referred to the Council of Governors whose decision shall be final.
<b>July 2021</b>			
<b>Constitution Reference</b>		<b>From</b>	<b>To</b>
1.	Annex 6: 8	"...Re-appointment will be for a further term of up to three years. The Council of	"....Re-appointment will be for a further term of up to three years. The Council of Governors may determine,

		Governors may determine, in exceptional circumstances, that a non-executive Director may be re-appointed for a third term.”	in exceptional circumstances, that where a non-executive has served six years, they may be subject to annual re-appointment up to a maximum of nine years in total served.”
<b>July 2023</b>			
Constitution Reference		<b>From</b>	<b>To</b>
1.	Throughout	References to NHSI or NHS Improvement	References to NHSE or NHS England
4.	Powers	Additional provisions from 4.4 onwards	To better reflect the powers conferred to the Trust by virtue of the 2006 Act
Annex 3		Changes to the Public Constituencies	Public constituencies aligning with Liverpool City Council boundary review
Annex 3		Changes to Appointed Governor organisations	Reduction of local authority appointed governors from three to two. One of these being from Liverpool City Council and another being from any other authority in the Trust’s operating footprint but with a connection to the Liverpool City Region Combined Authority.  Addition of an appointed governor from the Central Liverpool Primary Care Network  Removal of long lists of organisations for a) faith b) CVS and c) Young People and replaced with an appointed governor for each from an organisation that can represent a diversity of points of view.

Document owner: Trust Secretary

# Liverpool Women’s NHS Foundation Trust Constitution

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## **1. Interpretation and definitions**

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

**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 feminine gender only shall include the masculine gender; words importing the singular shall import the plural and vice-versa.

### **1.4 Notices**

**1.4.1** Any notice required by this constitution to be given means a notice in writing or a notice 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.

**1.4.2** Proof that an envelope containing a notice was properly addressed, prepaid and posted shall be conclusive evidence that the notice was given. A notice shall be treated as delivered 48 hours after the envelope containing it was posted or, in the case of a notice contained in an electronic communication, 48 hours after it was sent.

**1.5** Headings are for ease of reference only and are not to affect interpretation.

**1.6** In addition, in this constitution:

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

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

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

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;

**Annual Members Meeting** is defined in paragraph 11 of the constitution;

**Appointed Governors** means those Governors appointed by the appointing organisations;

**appointing organisations** means those organisations named in this constitution who are entitled to appoint Governors;

**areas of the Trust** means the six areas specified in Annex 1;

**Board of Directors** means the Board of Directors as constituted in accordance with this constitution;

**constitution** means this constitution and all annexes to it;

**Council of Governors** means the Council of Governors as constituted in accordance with this constitution;

**Director** means a member of the Board of Directors

**Elected Governors** means those Governors elected by the Public Constituencies and the Staff Constituency;

**external auditor** means any external auditor other than the financial auditor appointed under this constitution to review and report upon other aspects of the Trust's performance;

**financial auditor** means the person appointed to audit the accounts of the Trust, who is called the auditor in the 2006 Act;

**financial year** means a period beginning with the date on which the Trust is authorised and ending with the next 31 March and each successive period of twelve months beginning with 1 April;

**Local Authority Governor** means a member of the Council of Governors appointed by one or more local authorities whose area includes the whole or part of one of the areas of the Trust;

**member** means a member of the Trust;

**NHSE is the body corporate known as NHS England, as provided by Section 1H of the 2006 Act;**

**NHS provider licence** means licence number 130062 issued by NHS England to the Trust on 1 April 2023;

**partner** means, in relation to another person, a member of the same household living together as a family unit

**Public Governor** means a member of the Council of Governors elected by the members of one of the public constituencies;

**Secretary** means the Secretary of the Trust or any other person appointed to perform the duties of the Secretary, including a joint, assistant or deputy secretary;

**Staff Governor** means a member of the Council of Governors elected by the members of one of the classes of the staff constituency;

**the Trust** is defined in paragraph 2 of the constitution.

## **2. Name**

The name of the Trust is Liverpool Women's NHS Foundation Trust ("the Trust"). The Trust is a public benefit corporation authorised under the 2006 Act. The Trust will display its name on the outside of its headquarters and every



other place at which it carries on business, and on its business letters, notices, advertisements and other publications.

### **3. Principal purpose**

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

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

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

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

**3.3.2** the promotion and protection of public health.

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

### **4. Powers**

**4.1** The powers of the Trust are set out in the 2006 Act.

**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.

**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 by the trust jointly with one or more of the other organisations mentioned at paragraph 4.5, those organisations and the Trust may:

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

**4.7.2** Arrange for the trust, one or more of those other organisations, or a joint committee of them, to establish and maintain a pooled fund in accordance with section 65Z6 of the 2006 Act.

**4.8** The Trust must exercise its functions effectively, efficiently and economically.

**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 well-being of (including inequalities between) the people of England;

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

**4.9.3** Efficiency and sustainability in relation to the use of

resources by relevant bodies for the purposes of the health service in England.

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

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

**5.1.2** a staff constituency.

**5.2** The Secretary shall make the final decision about which constituency or to which class of a constituency an individual is eligible to be a member.

## **6. Application for membership**

An individual who is eligible to become a member of the Trust may do so on application to the Trust, using a membership application form specified by the Secretary.

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

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

## **9. Automatic membership by default – staff**

An individual who is:

- 9.1** eligible to become a member of the Staff Constituency; and
- 9.2** 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 she informs the Trust that she does not wish to do so.

## **10. Restriction on membership**

**10.1** The members of the Trust are those individuals whose names are entered in the register of members.

**10.2** 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.

- 10.3** 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.
- 10.4** An individual must be over twelve years old to become a member of the Trust.
- 10.5** 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.

## **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.
- 11.2** Further provisions about the Annual Members' Meeting are set out in Annex 9 – Further Provisions.

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

- 12.1** The Trust is to have a Council of Governors, which shall comprise both Elected Governors and Appointed Governors.
- 12.2** The composition of the Council of Governors is specified in Annex 3. The aggregate number of Public Governors is to be more than half of the total number of governors.
- 12.3** The members of the Council of Governors, other than the Appointed Governors, 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. Council of Governors – election of governors**

- 13.1** Public Governors are to be elected by members of their public constituency, and Staff Governors are to be elected by members of their class of the staff constituency. Each class/constituency may elect any of their number to be a governor in accordance with the provisions of this constitution.
- 13.2** Elections for elected members of the Council of Governors shall be conducted in accordance with the Model Election Rules. The single transferable vote method of voting is to be used.
- 13.3** The Model Election Rules as published from time to time by NHS Providers form part of this constitution. The Model Election Rules current at the date of this constitution are attached at Annex 4.
- 13.4** 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 44 of the constitution (amendment of the constitution).
- 13.5** An election, if contested, shall be by secret ballot.

### **14. Council of Governors - tenure**

- 14.1** An elected governor shall normally hold office for a period of three years commencing immediately after the annual members meeting at which their election is announced.
- 14.2** An elected governor shall cease to hold office if she ceases to be a member of the constituency or class by which she was elected.
- 14.3** Subject to 14.7, an elected governor shall be eligible for re-election at the end of her term.

- 14.4** An appointed governor shall normally hold office for a period of three years commencing immediately after the annual members meeting at which their appointment is announced.
- 14.5** An appointed governor shall cease to hold office if the appointing organisation withdraws its sponsorship of her.
- 14.6** Subject to 14.7, an appointed governor shall be eligible for re-appointment at the end of her term.
- 14.7** A Governor (whether elected or appointed) may not hold office for more than six consecutive years, and shall not be eligible for re-election or re-appointment, whichever the case may be, if she has already held office for more than three consecutive years.
- 14.8** For the purposes of these provisions concerning terms of office for Governors, “year” means a period commencing immediately after the conclusion of the annual members meeting, and ending at the conclusion of the next annual members meeting.

## **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, 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 her.

**15.2** Governors must be at least 16 years of age at the date they are nominated for 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 Board of Governors 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 this constitution) or, in her absence, the Vice Chair (appointed in accordance with the provisions of this constitution), or, in her absence, one of the non-executive Directors, shall preside at meetings of the Council of Governors.

**17.2** Meetings of the Council of Governors shall be open to members of

the public. Members of the public may be excluded from all or part of a meeting for special reasons. The Chair may exclude members of the public from a meeting if they are interfering with or preventing the proper conduct of the meeting or for other special reasons.

- 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**

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

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

- 19.1** In this paragraph, “the Panel” means a panel of persons appointed by NHSE to which a governor of the Trust may refer a question as to whether the Trust has failed or is failing:

**19.1.1** to act in accordance with its constitution; or

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

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

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

## **20. Council of Governors - conflicts of interest of governors**

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

## **21. Council of Governors – travel expenses**

The Trust may pay travelling and other expenses to members of the Council of Governors at rates determined by the Trust. Further provisions as to reimbursement of Governors are set out in Annex 5.

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

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** not more than seven other non-executive Directors;  
and

**23.2.3** not more than seven executive Directors.

save that half the Board of Directors including the Chair must at all

times comprise non-executive Directors.

- 23.3** One of the executive Directors shall be the Chief Executive.
- 23.4** The Chief Executive shall be the Accounting Officer.
- 23.5** One of the executive Directors shall be the finance director.
- 23.6** One of the executive Directors is to be a registered medical practitioner or a registered dentist (within the meaning of the Dentists Act 1984).
- 23.7** One of the executive Directors is to be a registered nurse or a registered midwife.

#### **24. Board of Directors – general duty**

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**

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

- 25.1** she is a member of a Public Constituency; or
- 25.2** where any of the Trust's hospitals includes a medical or dental school provided by a university, she exercises functions for the purposes of that university; and
- 25.3** she is not disqualified by virtue of paragraph 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.

**27. Board of Directors – appointment of Vice Chair and Senior Independent Director**

- 27.1** The Council of Governors shall appoint one of the non-executive Directors to be the Vice Chair of the Board of Directors. If the Chair is unable to discharge their office as Chair of the Trust, the Vice Chair of the Board of Directors shall be acting Chair of the Trust.

- 27.2** The Board of Directors may appoint a non-executive Director as a Senior Independent Director. The Senior Independent Director may be the Vice Chair.

- 27.3** Any appointment of a Senior Independent Director pursuant to the preceding paragraph shall require the approval of the Council of Governors.

**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**

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

- 29.1** a person who has been made bankrupt or whose estate has been sequestrated and (in either case) has not been discharged.
- 29.2** a person in relation to whom a moratorium period under a debt relief order applies under Part 7A of the Insolvency Act 1986;
- 29.3** a person who has made a composition or arrangement with, or granted a trust deed for, her creditors and has not been discharged in respect of it.
- 29.4** a person who within the preceding five years has been convicted in the British Islands of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on her.

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 at 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.
- 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.

### **31. Board of Directors – standing orders**

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 32.1.1 is not infringed if:

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

**32.2.2** The matter has been authorised in accordance with the constitution.

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

**32.4** In paragraph 32.1.2, “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 has in any way a direct or indirect interest in a proposed transaction or arrangement with the Trust, the Director must:

- 32.5.1** declare the nature and extent of that interest to the other Directors;
  - 32.5.2** shall withdraw from the meeting and play no part in the relevant discussion or decision; and
  - 32.5.3** shall not vote on the issue (and if by inadvertence she does remain and vote, her vote shall not be counted).
- 32.6** If a declaration under this paragraph proves to be, or becomes, inaccurate, incomplete, a further declaration must be made.
- 32.7** Any declaration required by this paragraph must be made before the Trust enters into the transaction or arrangement.
- 32.8** Details of any such interest shall be recorded in the register of the interests of Directors.
- 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 –
    - 32.10.3.1** By a meeting of the Board of Directors, or
    - 32.10.3.2** By a committee of the Directors appointed for the purpose under the



constitution.

**32.11** If a Director is in any doubt whether an interest should be disclosed she should discuss the position with the Chair.

**32.12** Any Director who fails to disclose any interest required to be disclosed under this paragraph must permanently vacate their office if required to do so by a majority of the remaining Directors and (in the case of a Non-Executive Director) by the requisite majority of the Council of Governors.

### **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.

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

### **34. Registers**

The Trust shall have:

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

**34.2** a register of members of the Council of Governors;

**34.3** a register of interests of governors;

**34.4** a register of Directors; and

**34.5** a register of interests of the Directors.

### **35. Admission to and removal from the registers**

The Secretary shall remove from the register of members the name of any member who ceases to be entitled to be a member under the provisions of this constitution.

### **36. Registers – inspection and copies**

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

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

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

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

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

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

### **37. Documents available for public inspection**

**37.1** The Trust shall make the following documents available on the Trust's website and available for inspection by members of the public free of charge at all reasonable times:

**37.1.1** a copy of the current constitution;

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

**37.1.3** a copy of the latest annual report.

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

**37.2.1** a copy of any order made under section 65D (appointment of trust special administrator), 65J (power to extend time), 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(NHS England's decision), 65KB (Secretary of State's response to NHS England's decision), 65KC (action following Secretary of State's rejection of final report) or 65KD (Secretary of State's response to re-submitted final report) of the 2006 Act.

**37.2.7** a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act.

**37.2.8** a copy of any final report published under section 65I (administrator's final report),

**37.2.9** a copy of any statement published under section 65J (power to extend time) or 65KC (action following Secretary of State's rejection of final report) of the 2006 Act.

**37.2.10** a copy of any information published under section 65M (replacement of trust special administrator) of the 2006 Act.

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

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

### **38. Auditor**

**38.1** The Trust shall have an external auditor.

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

**38.3** The Board of Directors may resolve that external auditors be appointed to review and publish a report on any other aspect of the Trust's performance. Any such auditors are to be appointed by the Council of Governors.

### **39. Audit committee**

The Trust shall establish a committee of non-executive Directors as an audit committee. The audit committee will 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** The functions of the Trust with respect to the preparation of the annual accounts shall be delegated to the Accounting Officer.
- 40.6** The Accounting Officer shall cause the Trust to:
  - 40.6.1** lay a copy of the annual accounts, and any report of the financial auditor on them, before Parliament; and
  - 40.6.2** once it has done so, send copies of those documents to NHSE.

#### **41. Annual report, forward plans and non-NHS work**

- 41.1** The Trust shall prepare an Annual Report and send it to NHSE.
- 41.2** The report is to give:
  - 41.2.1** information on any steps taken by the Trust to secure that (taken as a whole) the actual membership of its public constituencies and of the classes of the staff

constituency is representative of those eligible for such membership; and

**41.2.2** any other information NHSE requires.

**41.3** The Trust is to comply with any decision NHSE makes as to:

**41.3.1** the form of the reports;

**41.3.2** when the reports are to be sent;

**41.3.3** the periods to which the reports are to relate.

**41.4** The Trust shall give information as to its forward planning in respect of each financial year to NHSE.

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

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

**41.7** Each forward plan must include information about:

**41.7.1** 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

**41.7.2** the income it expects to receive from doing so.

**41.8** Where a forward plan contains a proposal that the Trust carry on an activity of a kind mentioned in paragraph 41.7.1 the Council of Governors must:

**41.8.1** determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfillment by the Trust of its principal purpose or the performance of its other functions; and

**41.8.2** notify the Directors of the Trust of its determination.

**41.9** 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, it 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; and

**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 42.1 with the Annual Members' Meeting.

## **43. Instruments, Head Office and Indemnity**

**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.

**43.3** The Trust's headquarters is at Liverpool Women's Hospital, Crown Street, Liverpool L8 7SS.

**43.4** The Trust will maintain a website: [www.lwh.nhs.uk](http://www.lwh.nhs.uk).

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

#### **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 44.1 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.

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.

- 48.4** 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 45.2:

**45.3.1** A transaction is an investment or divestment; and

**45.3.2** A transaction is significant if its value equates to more than 25% of the Trust's:

**45.3.2.1** gross assets;

**45.3.2.2** income; or

**45.3.2.3** gross capital (following completion of the transaction),

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 45.3.1, the term ‘transaction’ shall not include a contract with a commissioning organisation for the provision of services for the purposes of the health service in England or 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** Noting in this paragraph shall prevent the Board of Directors from appropriate engagement with the Council of Governors, as it sees fit, to provide information on any other transaction or arrangement which the Trust may enter, which does not constitute a “significant transaction” as defined within paragraph 45.3.

## **ANNEX 1 – THE PUBLIC CONSTITUENCIES**

1. Central Liverpool comprising the electoral wards set out below
2. North Liverpool comprising the electoral wards set out below
3. South Liverpool comprising the electoral wards set out below
4. Sefton
5. Knowsley
6. The area of England and Wales excluding the five areas mentioned above

### **Electoral Wards for Central Liverpool**

City Centre South

City Centre North ward

Brownlow Hill

Canning

Waterfront South ward

Arundel

Dingle

Princes Park

Toxteth

Kensington and Fairfield

Smithdown

Broadgreen

Church

Edge Hill

Old Swan East

Old Swan West

Penny Lane

Wavertree Garden Suburb

Wavertree Village

### **Electoral Wards for North Liverpool**

Anfield

County ward

Walton

Vauxhall

Everton East

Everton North  
Everton West  
Kirkdale East  
Kirkdale West  
Orrell Park  
Stoneycroft  
Tuebrook Brekside Park  
Tuebrook Larkhill  
Waterfront North ward  
Norris Green  
Yew Tree  
Clubmoor East  
Clubmoor West  
Croxteth  
Croxteth Country Park  
Fazakerley East  
Fazakerley North  
Fazakerley West  
Knotty Ash and Dovecot Park  
Sandfield Park  
West Derby Deysbrook  
West Derby Leyfield  
West Derby Muirhead

Electoral Wards for South Liverpool

Garston  
Speke  
Aigburth  
Festival Gardens  
Grassendale and Cressington  
Greenbank Park  
Mossley Hill  
Sefton Park  
St Michaels  
Belle Vale  
Childwall

Much Woolton and Hunts Cross

Allerton

Calderstones

Gateacre

Springwood

Woolton Village

The minimum number of members of each of the public constituencies is six.

## **ANNEX 2 – THE STAFF CONSTITUENCY**

There are five staff classes:

1. doctors
2. nurses
3. midwives
4. scientists, technicians and allied healthcare professionals
5. administrative, clerical, managers, ancillary and other support staff (non-clinical support staff).

The minimum number of members of each class of the Staff Constituency is to be four.

### **ANNEX 3 – COMPOSITION OF COUNCIL OF GOVERNORS**

The Council of Governors of the Trust is to comprise:

1. Fourteen Public Governors from the following public constituencies:
  - 1.1. Central Liverpool – four Public governors
  - 1.2. North Liverpool - two Public governors
  - 1.3. South Liverpool - two Public governors
  - 1.4. Sefton – two Public governors
  - 1.5. Knowsley – two Public governors
  - 1.6. the rest of England and Wales – two public governors
  
2. Five Staff Governors from the following classes of the staff constituency;
  - 2.1. Doctors – one Staff governor
  - 2.2. Nurses – one Staff governor
  - 2.3. Midwives – one Staff governor
  - 2.4. Scientists, technicians and allied health professionals – one Staff governor
  - 2.5. Administrative, clerical, managers, ancillary and other support staff – one staff governor.
  
3. Appointed Governors appointed by the following appointing organisations (to be reviewed by the Council of Governors every three years) in accordance with a process agreed by those organisations with the Trust Secretary:
  - 3.1. One governor appointed by Liverpool City Council,
  - 3.2. One governor appointed by a local authority that has a role in and/or link with the Liverpool City Region Combined authority
  - 3.3. One governor appointed by University of Liverpool;
  - 3.4. One governor appointed from Central Liverpool Primary Care Network
  - 3.5. One governor appointed by an organisation representing a multi-faith perspective
  - 3.6. One governor appointed from an organisation representing the views of the Community and Voluntary Sector
  - 3.7. One governor appointed from an organisation representing the views of young people
  - 3.8. One governor appointed jointly by:
    - 3.8.1. Liverpool Hope University

3.8.2. Liverpool John Moores University

3.8.3. Edge Hill University



## ANNEX 4 –THE MODEL ELECTION RULES

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# MODEL ELECTION RULES 2014

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### **PART 1: INTERPRETATION**

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### **PART 2: TIMETABLE FOR ELECTION**

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3. Computation of time

### **PART 3: RETURNING OFFICER**

4. Returning officer
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9. Nomination of candidates
10. Candidate's particulars
11. Declaration of interests
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14. Decisions as to validity of nomination forms
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20. The ballot paper
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- 67. Secrecy
- 68. Prohibition of disclosure of vote
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- 70. Delay in postal service through industrial action or unforeseen event

**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 (NHS Improvement, December 2013) 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;

“*Monitor*” means the corporate body known as Monitor (now known as NHS Improvement) as provided by section 61 of the 2012 Act;

“*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 ELECTIONS

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### 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.

**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**

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### **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.

**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
- (e) 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.

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.

**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) that 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 invalid.

*Action to be taken before the poll*

## **22. List of eligible voters**

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 e-mail 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.

- 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;
- (d) 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);
  - (ii) the candidate or candidates for whom the voter has voted; and
  - (iii) 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.

*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 spoiled 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 spoiled 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 spoiled text message vote, the returning officer shall enter in a list (“the list of spoiled text message votes”):
- (a) the name of the voter, and
  - (b) the details of the voter ID number on the spoiled 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**

- 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 and other documents.

### **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:

- (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)<sup>1</sup>**

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.

**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

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

- (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.

**STV41. Interpretation of Part 6**

STV41.1 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,

“*transferred 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:
  - (iii) ballot papers that have been returned; and
  - (iv) 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 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 subparagraphs (a) to (c) of rule STV44.3.

**FPP44. Rejected ballot papers and rejected text voting records**

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,

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 sub-parcel 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 sub-parcel 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 non-transferable 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,

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).

STV9.2 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 sub-parcels 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 sub-parcel 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.

STV9.8 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 sub-parcel 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 non-transferable 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

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### **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 chairman of the NHS Trust, or
  - (ii) in any other case, to the chairman 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 –

- (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 chairman of the NHS Trust, or
- (ii) in any other case, to the chairman 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 chairman of the corporation, and
- (c) give public notice of the name of each candidate who he or she has declared elected.

**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,

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 spoiled ballot papers and the list of spoiled 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, the 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
- (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 chairman 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 Improvement has declared that the vote was invalid.





## PART 9: DEATH OF A CANDIDATE DURING A CONTESTED ELECTION

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### **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:

- (a) countermand notice of the poll, or, if voting information has been issued, direct that the poll be abandoned within that constituency or class, and
- (b) order a new election, on a date to be appointed by him or her in consultation with the corporation, within the period of 40 days, computed in accordance with rule 3 of these rules, beginning with the day that the poll was countermanded or abandoned.

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:

- (a) count and record the number of ballot papers, internet voting records, telephone voting records and text voting records that have been received,
- (b) 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:

- (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.

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 chairman 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

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### *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 Improvement 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 distributed by the returning officer pursuant to rule 24 of these rules.

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.

**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

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- 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 Improvement for the purpose of seeking a referral to the independent election arbitration panel ( IEAP).
- 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 Improvement 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 the independent panel may require.
- 66.5 The application must be presented in writing within 21 days of the declaration of the result of the election. NHS Improvement will refer the application to the independent election arbitration panel appointed by NHS Improvement.
- 66.6 If the independent election arbitration panel requests further information from the applicant, then that person must provide it as soon as is reasonably practicable.
- 66.7 NHS Improvement 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 IEAP 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 The IEAP may prescribe rules of procedure for the determination of an application including costs.

**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**

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**

### **Role and Responsibilities**

1. The roles and responsibilities of the Council of Governors, which are to be carried out in accordance with this constitution and the Trust's authorisation, are:
  - 1.1 at a General Meeting
    - 1.1.1 to appoint or remove the Chair and the other non-executive Directors;
    - 1.1.2 to approve an appointment (by the non-executive Directors) of the Chief Executive;
    - 1.1.3 to decide the remuneration and allowances, and the other terms and conditions of office, of the Chair and the other non-executive Directors;
    - 1.1.4 to appoint or remove the Trust's financial auditor;
    - 1.1.5 to appoint or remove any other external auditor appointed to review and publish a report on any other aspect of the Trust's affairs;
    - 1.1.6 to be presented with the annual accounts, any report of the financial auditor on them and the annual report;
  - 1.2 to provide their views to the Board of Directors when the Board of Directors is preparing the document containing information about the Trust's forward planning;
  - 1.3 to respond as appropriate when consulted by the Board of Directors in accordance with this constitution;
  - 1.4 to undertake such functions as the Board of Directors shall from time to time request;
  - 1.5 to prepare and from time to time review the Trust's membership strategy and its policy for the composition of the Council of Governors and of the non-executive Directors;
  - 1.6 when appropriate to make recommendations for the revision of this constitution.
2. The Council of Governors, subject to the 2006 Act, shall seek to ensure that through the composition of the Council of Governors:

- 2.1 the interests of the community served by the Trust are appropriately represented;
- 2.2 the level of representation of the public constituencies, the classes of the staff constituency and the appointing partnership organisations strikes an appropriate balance having regard to their legitimate interest in the Trust's affairs and to this end, the Council of Governors:
  - 2.2.1 shall at all times maintain a policy for the composition of the Council of Governors which takes account of the membership strategy, and
  - 2.2.2 shall from time to time and not less than every three years review the policy for the composition of the Council of Governors, and
  - 2.2.3 when appropriate shall propose amendments to this constitution.

### **Elected Governors**

3. A member of a Public Constituency may not vote at an election for a Public Governor unless within twenty-one days before she votes, she makes a declaration in the form specified by the Secretary that she is qualified to vote as a member of the relevant Public Constituency. It is an offence to knowingly or recklessly make such a declaration which is false in a material particular.

### **Appointed Governors**

4. The Secretary, in consultation with the respective appointing organisation(s), is to adopt a process for agreeing the appointment of each of the Appointed Governors.

### **Lead Governor**

5. The Council of Governors shall appoint one of the Governors to be Lead Governor of the Council of Governors.

## **Further provisions as to eligibility to be a Governor**

6. A person may not become a Governor of the Trust, and if already holding such office will immediately cease to do so if:
  - 6.1 she is under sixteen years of age at the date she is nominated for election or appointment;
  - 6.2 she is a Director of the Trust;
  - 6.3 she is the spouse, partner, parent or child of a member of the Board of Directors of the Trust;
  - 6.4 she is a member of a Local Authority's Committee which scrutinises health matters
  - 6.5 being a member of one of the public constituencies, she refuses to sign a declaration in the form specified by the Secretary of particulars of her qualification to vote as a member of the Trust, and that she is not prevented from being a governor;
  - 6.6 if she is subject to a sex offender order ;
  - 6.7 she has been adjudged bankrupt or her estate has been sequestrated and in either case she has not been discharged;
  - 6.8 she has made a composition or arrangement with, or granted a trust deed for, her creditors and has not been discharged in respect of it;
  - 6.9 she has within the preceding five years been convicted in the British Islands of any offence:
    - 6.9.1 against a woman or child; or
    - 6.9.2 any other offence for which a sentence of imprisonment (whether suspended or not) for a period of three months or more (without the option of a fine) was imposed;
  - 6.10 being a member of the staff constituency, she is subject to a live disciplinary sanction including verbal warning;
  - 6.11 she has within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with a health service body;
  - 6.12 she is a person whose tenure of office as the Chair or as a member or director of a health service body has been terminated on the grounds that her appointment is not in the interests of the health

service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest.

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

- 7 A person holding office as a Governor shall immediately cease to do so if:
- 7.1. she resigns by notice in writing to the Secretary;
  - 7.2. she fails to attend three consecutive meetings, unless the other governors are satisfied that:
    - 7.2.1. the absences were due to reasonable causes; and
    - 7.2.2. she will be able to start attending meetings of the Trust again within such a period as they consider reasonable.
  - 7.3. in the case of an elected governor, she ceases to be a member of the constituency or class of the constituency by which she was elected;
  - 7.4. in the case of an appointed governor, the appointing organisation terminates the appointment;
  - 7.5. she has refused without reasonable cause to undertake any training which the Council of Governors requires all governors to undertake;
  - 7.6. she has failed to sign and deliver to the Secretary a statement in the form required by the Secretary confirming acceptance of the code of conduct for governors;
  - 7.7. she is removed from the Council of Governors under the following provisions.
- 8 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 on the grounds that:
- 8.1. She has committed a serious breach of the code of conduct, or
  - 8.2. She has acted in a manner detrimental to the interests of the Trust, and
  - 8.3. the Council of Governors consider that it is not in the best interests of the Trust for her to continue as a governor.

### **Vacancies amongst Governors**

- 9 Where a vacancy arises on the Council of Governors for any reason other than expiry of term of office, the following provisions will apply.
- 10 Where the vacancy arises amongst the appointed Governors, the Secretary shall request that the appointing organisation appoints a replacement to hold office for the remainder of the term of office.
- 11 Where the vacancy arises amongst the elected Governors, the Council of Governors shall be at liberty either:
- 11.1. To call an election within three months to fill the seat for the remainder of that term of office unless there is less than six months of the term left; or
- 11.2. to invite the next highest polling candidate for that seat at the most recent election, who is willing to take office, to fill the seat until the next annual election (and, if that candidate should decline, to invite the next highest polling candidate(s) for that seat at the most recent election in descending order), at which time the seat will fall vacant and subject to election for any unexpired period of the term of office.
- 12 For the purposes of eligibility to seek re-election or to be re-appointed as a governor under this constitution, the period between a governor's election or appointment as a governor pursuant to these provisions to fill a vacancy on the Council of Governors and the conclusion of the next Annual Members' Meeting shall be treated as one year.

### **Reimbursement of costs and expenses**

- 13 Governors are not to receive remuneration from the Trust for their role as a governor. However, the Trust may reimburse governors for travelling and other costs and expenses at such rates as the Board of Directors decides. The approved scheme of reimbursement will be published, and reimbursements made to governors are to be disclosed, in the annual report.





## **ANNEX 6 – ADDITIONAL PROVISIONS – BOARD OF DIRECTORS**

### **Appointment of Chairman and other non-executive Directors**

1. The Chairman and the non-executive Directors are to be appointed by the Council of Governors in accordance with paragraph 26 of the constitution using the following procedure.
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.
3. The Board of Directors will be responsible for devising job descriptions and person specifications for the Chair and other Non-Executive Directors, taking advice from an external organisation recognised as expert at appointments to identify the skills and experience required for the Chair and other Non-Executive Directors.
4. Appropriate candidates will be identified by a Nominations Committee through a process of open competition, which take account of the nominations advisory panel, the policy maintained by the Council of Governors and the skills and experience required.
5. The Nominations Committee will comprise:
  - 5.1 in relation to the appointment of the Chair, the Vice Chair of the Trust or, if the Vice Chair is standing for appointment, another non-executive Director;
  - 5.2 in relation to the appointment of other non-executive Directors, the Chair of the Trust
  - 5.3 and, in relation to all appointments, two Elected Governors (including at least one Staff Governor) and one Appointed Governor. The Chair or a non-executive Director of another Foundation Trust will be invited to act as an independent assessor to the Nominations Committee. The Chief Executive will be entitled to attend meetings

of the Nominations Committee unless the Committee decides otherwise and the Committee shall take into account the Chief Executive's views.

### **Removal of Chair and other non-executive Directors**

6. The Chair or another non-executive Director may be removed by the Council of Governors in accordance with paragraph 26 of the constitution, subject to the following procedure:
  - 6.1 Any proposal for removal must be proposed by a governor and seconded by not less than ten governors including at least two Elected Governors and two Appointed Governors.
  - 6.2 Written reasons for the proposal shall be provided to the Chair or non-executive Director in question, who shall be given the opportunity to respond to such reasons.
  - 6.3 In respect of any proposal for removal under this paragraph 6, or response to such a proposal under paragraph 6.1, the Council of Governors may decide that the Nominations Committee may administer and coordinate the process of receiving such proposals and responses.
  - 6.4 Removal of the Chair or another non-executive Director shall require the approval of three-quarters of the members of the Council of Governors.
  
7. In making any decision to remove the Chair or a non-executive Director, the Council of Governors shall take into account the annual appraisal received by its Remuneration Committee. If any proposal to remove the Chair or a non-executive Director is not approved at a meeting of the Council of Governors, no further proposal can be put forward to remove the Chair or such non-executive Director based upon the same reasons within 12 months of the meeting

### **Term of office of non-executive Director**

8. The Chair and the non-executive Directors are to be appointed for a period of office not exceeding three years and in accordance with the terms and

conditions of office, including remuneration and allowances, decided by the Council of Governors at a General Meeting. Any re-appointment of a non-executive Director by the Council of Governors shall be subject to a satisfactory appraisal carried out in accordance with procedures which the Board of Directors have approved. Re-appointment will be for a further term of up to three years. The Council of Governors may determine, in exceptional circumstances, that where a non-executive has served six years, they may be subject to annual re-appointment up to a maximum of nine years in total served.

### **Further provisions as to eligibility to be a Director**

9. A person may not become a Director of the Trust, and if already holding such office, will immediately cease to do so if:
  - 9.1 she is a member of the Council of Governors, or a Governor of an NHS body or another NHS Foundation Trust;
  - 9.2 she is a member of a Local Involvement Network, its successor organisation, Local Healthwatch, or any of its successor organisations;
  - 9.3 she is the spouse, partner, parent or child of a member of the Board of Directors of the Trust;
  - 9.4 she is a member of a Local Authority's committee which scrutinises health matters.;
  - 9.5 she is a Director or member of a Clinical Commissioning Group with whom the Trust contracts;
  - 9.6 she been adjudged bankrupt or her estate has been sequestrated and in either case she has not been discharged;
  - 9.7 she has made a composition or arrangement with, or granted a Trust deed for, her creditors and has not been discharged in respect of it;
  - 9.8 if she is the subject to a sex offender order;
  - 9.9 she has within the preceding five years been convicted in the British Islands of any offence:
    - 9.9.1 against a woman or child; or
    - 9.9.2 any other offence for which a sentence of imprisonment (whether suspended or not) for a period of three months or more (without the option of a fine) was imposed
  - 9.10 she is the subject of a disqualification order made under the

Company Directors Disqualification Act 1986;

- 9.11 in the case of a non-executive Director, she is no longer a member of one of the public constituencies or an individual exercising functions for a University providing a medical or dental school to a hospital of the Trust;
- 9.12 she is a person whose tenure of office as a Chair or as a member or Director of a health service body has been terminated on the grounds that her appointment is not in the interests of the health service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest;
- 9.13 she has within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with a health service body;
- 9.14 in the case of a non-executive Director she has refused without reasonable cause to fulfil any training requirement established by the Board of Directors; or
- 9.15 she has refused to sign and deliver to the Secretary a statement in the form required by the Board of Directors confirming acceptance of the code of conduct for Directors.

#### **Remuneration, allowances and expenses**

- 10. The Trust may reimburse executive Directors' travelling and other costs and expenses at such rates as the remuneration committee of non-executive Directors decides. These are to be disclosed in the annual report.
- 11. The remuneration and allowances for Directors are to be disclosed in bands in the annual report.

#### **Secretary**

- 12. The Trust shall have a Secretary who may be an employee. The Secretary may not be a governor, or the Chief Executive or the finance director.
- 13. The Secretary's functions shall include:
  - 13.1 acting as Secretary to the Council of Governors and the Board of

- Directors, and any committees;
- 13.2 summoning and attending all members meetings, meetings of the Council of Governors and the Board of Directors, and keeping the minutes of those meetings;
  - 13.3 keeping the register of members and other registers and books required by this constitution to be kept;
  - 13.4 having charge of the Trust's seal;
  - 13.5 acting as returning officer in any elections (which function may be delegated to an external polling company appointed for this purpose);
  - 13.6 publishing to members in an appropriate form information which they should have about the Trust's affairs;
  - 13.7 preparing and sending to NHS Improvement and any other statutory body all returns which are required to be made.
14. 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 Secretary or their nominated deputy. Minutes of meetings will be read at the next meeting and signed by the Chair of that meeting. The signed minutes will be conclusive evidence of the events of the meeting.
15. The Secretary is to be appointed and removed by the Board of Directors, subject to the approval of the Council of Governors.

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

### **Introduction and general information**

1. The purpose of the Council Standing Orders is to ensure that the highest standards of corporate governance and conduct are achieved throughout the organisation.
2. The Council of Governors have adopted these Standing Orders covering the proceedings and business of its meetings. It is important that governors are familiar with the Trust's constitution of which these Standing Orders form a part along with other sections of the Trust's corporate governance manual.
3. The Trust is governed by statute, namely the NHS Act 2006 as amended. The Trust is also subject to the conditions in its Licence (Licence Number: 130062) or any document which replaces it.
4. The decision of the Chair of the meeting on questions of order, relevancy and regularity (including procedure on handling motions) and their interpretation of the Standing Orders and Standing Financial Instructions, at the meeting, shall be final.

### **Chair's responsibility**

5. If there is a conflict between these Standing Orders and the Constitution, the Constitution shall prevail.
6. Save as permitted by law, at any meeting, the Chair of the Trust shall be the final authority on the interpretation of Standing Orders (on which they should be advised by the Chief Executive or Secretary of the Board).

### **Commitments**

7. The Accounting Officer (the Chief Executive) has responsibility to see that appropriate advice is tendered to the Council of Governors on all matters of financial propriety and regularity and, more broadly, as to all considerations of prudent and economical administration, efficiency and effectiveness.
8. The Accounting Officer will determine how and in what terms the advice should be tendered, and whether in a particular case to make specific reference to their duty as Accounting Officer to justify, to the Public Accounts Committee, transactions for which they are accountable.
9. The Council of Governors should act in accordance with the requirements of propriety and regularity. If the Council of Governors or the Chair is contemplating a course of action involving a transaction which the Accounting Officer considers would infringe these requirements, she should set out in writing her objection to the proposal and the reasons for the objection. If the Council of Governors or Chair decides to proceed, the Accounting Officer should:
  - a. Seek written instruction to take the action;
  - b. Inform NHS Improvement (if possible prior to the decision).

### **Suspension of Standing Orders**

10. Except where this would contravene any statutory provision or any direction made by the Secretary of State or the rules relating to quorum, any one or more of the Standing Orders may be suspended at any meeting, provided that at least two-thirds of the whole number of the members of the Council of Governors are present and that at least two-thirds of those Governors present signify their agreement to such suspension.
11. The reason for the suspension shall be recorded in the Council's minutes.
12. A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the Chair and members of the Council of Governors.

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

14. The Audit Committee of the Board of Directors shall review every decision to suspend Standing Orders.

#### **Non-compliance with Standing Orders**

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

#### **Variation and amendment to Standing Orders**

16. The Standing Orders may only be varied or amended in accordance with the process set out at paragraph 44 of the Constitution and, in addition, subject to the following requirements that:

- a. notice of a motion to amend the Standing Orders is given;
- b. a written opinion from either the Chair or Chief Executive as to the necessity for these variations/amendments is provided to the Board of Directors;
- c. two thirds of the members of the Council of Governors are present at the meeting where the variation or amendment is being discussed; and
- d. providing that any variation or amendment does not contravene a statutory provision.

#### **Governance**



17. The Trust shall comply with the principles of best practice applicable to corporate governance in the NHS/health sector, any relevant code of practice and with any guidance which may be issued by NHS Improvement.

### **Meetings of the Council of Governors**

18. Meetings of the Council shall be held at regular intervals, at least three times per financial year, at such times and places as the Chair may determine. The Secretary will publish the dates, times and locations of meetings of the Council for the year, six months in advance. Other or emergency meetings of the Council may be called in accordance with the Constitution.

19. The Council of Governors may determine that certain matters shall appear on every agenda.

20. Without prejudice to the Council of Governors powers pursuant to paragraph 17.3 of the Constitution, the Council of Governors may invite the Chief Executive or any other member or members of the Board of Directors, or a representative of the external auditor or other advisors to attend a meeting of the Council of Governors.

21. All meetings of the Council of Governors are to be general meetings, open to members of the public, unless the Council of Governors decides otherwise in relation to all or part of a meeting for reasons of commercial confidentiality or for other special reasons. The Chair may exclude any member of the public from a meeting of the Council of Governors if they are interfering with or preventing the proper conduct of the meeting.

22. All decisions taken in good faith at a meeting of the Council of Governors or of any committee shall be valid even if it is discovered subsequently that there was a defect in the calling of the meeting or the appointment of the governors attending the meeting. Proceedings of the Council of Governors shall not be invalidated by any vacancy of its membership or defect in a governor's appointment.

23. Governors, officers and any employee of the Trust in attendance at a meeting of the Council of Governors shall not reveal or disclose the contents of papers marked 'in confidence' or minutes headed 'items taken in private' outside of the Trust, without the express permission of the Chair. This prohibition shall apply equally to the content of any discussion during the meeting which may take place on such reports or papers.
24. Nothing in these Standing Orders shall be construed as permitting the introduction by the public, or press representatives, of recording, transmitting, video or similar equipment into meetings of the Council of Governors. Such permission shall be granted only upon resolution of the Council of Governors.
25. The names of the Chair and members of the Council of Governors present at the meeting shall be recorded.

#### **Notice of meetings**

26. Save in the case of emergencies or the need to conduct urgent business, the Secretary shall give at least fourteen days written notice of the date and place of every meeting of the Council of Governors together with an agenda and any supporting papers to all governors. Want of service of such a notice on any member shall not affect the validity of the meeting. Notice will also be published in a local newspaper or newspapers circulating in the area served by the Trust, on the Trust's website and displayed at the Trust's principal offices at least three clear days before the meeting.
27. Meetings of the Council of Governors may be called by the Secretary, or by the Chair, or by six governors (including at least three public governors) who give written notice to the Secretary specifying the business to be carried out. The Secretary shall send a written notice to all governors as soon as possible after receipt of such a request. The Secretary shall call a meeting on at least fourteen but not more than twenty-eight days' notice to discuss the specified business. If the Secretary fails to call such a meeting then the Chair or six governors, whichever is the case, shall call such a meeting.

## **Agendas and papers**

28. An agenda, copies of any agenda items on notice and/or motions on notice to be considered at the relevant meeting and any supporting papers shall be sent to each governor so as to arrive with each Governor normally no later than seven days in advance of each meeting. Minutes of the previous meeting will be circulated with these papers for approval and this will be a specific agenda item.
29. A member desiring a matter to be included on an agenda shall make their request in writing to the Chair at least fifteen clear days before the meeting. The request should state whether the item of business is proposed to be transacted in the presence of the public and should include appropriate supporting information. Requests made less than fifteen days before a meeting may be included on the agenda at the discretion of the Chair.
30. No business shall be transacted at the meeting other than that specified on the agenda, or emergency motions.

## **Petitions**

31. Where a petition has been received by the Trust, the Chair shall include the petition as an item for the agenda of the next meeting.

## **Chairing meetings**

32. The Chair of the Trust or, in her absence, the Vice Chair of the Board of Directors or, in her absence, one of the non-executive Directors is to 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 of the Council of Governors will chair that part of the meeting.

## **Reports from Executive Directors**

33. At any meeting, a governor may ask any question through the Chair without notice on any report by an executive Director, or other officer of the Trust, after that report has been received by or while such report is under consideration by the Council at the meeting.
34. Unless the Chair decides otherwise, no statements will be made other than those which are strictly necessary to define any questions posed and in any event no statements will be allowed to last longer than three minutes each. A governor who has put such a question may also put one supplementary question if the supplementary question arises directly out of the reply given to the initial question.
35. The Chair may, in its absolute discretion, reject any question from any governor if in the opinion of the Chair the question is substantially the same and relates to the same subject matter as a question which has already been put to that meeting or a previous meeting.
36. At the absolute discretion of the Chair questions may, at any meeting which is held in public, be asked of the executive Directors present by members of the Trust or any other members of the public present at the meeting.

### **Quorum**

37. Eight (8) governors shall form a quorum, at least four (4) of whom must be Public Governors.
38. The Council of Governors 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.
39. If a governor has been disqualified from participating in the discussion on any matter, and/or from voting on any resolution by reason of declaration of a conflict of interest, 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.

## **Motions**

### ***Motions with notice***

40. Subject to the provision of Standing Orders 41 and 42, a member of the Council of Governors wishing to move a motion shall send a written notice to the Secretary who will ensure that it is brought to the immediate attention of the Chair.
41. The notice shall be delivered at least fifteen clear days before the meeting. The Secretary shall include on the agenda for the meeting all notices so received that are in order and permissible under governing regulations. This Standing Order shall not prevent any motion being withdrawn or moved without notice on any business mentioned on the agenda for the meeting.

### ***Emergency motions***

42. Subject to the agreement of the Chair, and subject also to the provision of Standing Order 43, a member of the Council of Governors may give written notice of an emergency motion after the issue of the notice of meetings and agenda, up to one hour before the time fixed for the meeting. The notice shall state the grounds of urgency. If in order, it shall be declared to the Council of Governors at the commencement of business of the meeting as an additional item included on the agenda. The Chair's decision to include the item shall be final.

### ***Motions – procedure at and during a meeting***

43. *Who may propose* – a motion may be proposed by the Chair of the meeting or any Governor present. It must also be seconded by another Governor.

44. *Contents of motions* – the Chair may exclude from the debate at their discretion any such motion of which notice was not given on the notice summoning the meeting other than a motion relating to:

- a. the receipt of a report
- b. consideration of any item of business before the Council
- c. the accuracy of minutes
- d. that the Council proceed to next business
- e. that the Council adjourn
- f. that the question be now put

45. *Amendments to motions* – a motion for amendment shall not be discussed unless it has been proposed and seconded. Amendments to motions shall be moved if relevant to the motion, and shall not have the effect of negating the motion before the Council. If there are a number of amendments, they shall be considered one at a time. When a motion has been amended, the amended motion shall become the substantive motion before the meeting, upon which any further amendment may be moved.

46. *Amendments* – the mover of an amendment may reply to the debate on her amendment immediately prior to the mover of the original motion, who shall have the right of reply at the close of debate on the amendment, but may not otherwise speak to it.

47. *Substantive/original motion* – the member who proposed the substantive motion shall have a right of reply at the close of any debate on the motion.

48. *Withdrawing a motion* – a motion, or an amendment to a motion, may be withdrawn.

49. *Motions once under debate* – when a motion is under debate, no motion may be moved other than:

- a. an amendment to the motion
- b. the adjournment of the discussion, or the meeting
- c. that the meeting proceed to next business
- d. that the question should be now put

- e. the appointment of an ad hoc committee to deal with a specific item of business
- f. that a governor be not further heard
- g. a motion resolving to exclude the public, including the press

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

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

#### ***Motion to rescind a resolution***

51. Notice of motion to rescind any resolution (or the general substance of any resolution) which has been passed within the preceding six calendar months shall bear the signature of the governor who gives it and also the signature of three other governors, and before considering any such motion of which notice shall have been given, the Council of Governors may refer the matter to any appropriate committee
52. When any such motion has been deal with by the Council of Governors it shall not be competent for any governor other than the Chair to propose a motion to the same effect within six months. This Standing Order shall not apply to motions moved in pursuance of a report or recommendations of a committee or the Chief Executive.

#### **Voting**

53. Questions arising at a meeting of the Council of Governors shall be decided by a majority of votes save that no resolution of the Council of Governors shall be passed if it is opposed by all of the Public Governors present.

54. In case of an equality of votes, the person presiding at or chairing the meeting shall have a casting vote.

55. At the discretion of the Chair, all questions put to the vote shall be determined by oral expression or by a show of hands, unless the Chair directs otherwise, or it is proposed, seconded and carried that a vote be taken by paper ballot.

56. An absent governor may not vote by proxy unless authorised to do so by the Chair. Absence is defined as being absent at the time of the vote

### **Disclosure of interests**

57. Members of the Council of Governors shall disclose to the Council of Governors any interests required to be declared by the Constitution together with any material interests (as defined below) held by a governor, her spouse or partner, which shall be recorded by the Secretary in the register of interests of governors.

58. These details will be kept up-to-date by means of:

- a. immediate notification by governors to the Secretary, when and if their interest/s change
- b. an annual review of the register in which any changes to interests declared during the preceding twelve months will be incorporated.

59. Subject to the exceptions below, a material interest is:

- a. any directorship of a company;
- b. any interest held by a governor in any firm or company or business which, in connection with the matter, is trading with the Trust, or is likely to be considered as a potential trading partner with the Trust;
- c. any interest in an organisation voluntary or otherwise, providing health and social care services to the NHS;
- d. a position of authority in a charity or voluntary organisation in the field of health and social care;



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

60. The exceptions which shall not be treated as material interests are:

- a. shares not exceeding 2% of the total shares in issue held in any company whose shares are listed on any public exchange;
- b. employment contracts held by Staff Governors;
- c. an employment contract with an appointing organisation held by an Appointed Governor.

61. Any governor who has an interest in a matter to be considered by the Council of Governors (whether because the matter involves a firm, company, business or organisation in which the governor or her spouse or partner has a material interest or otherwise) shall declare such interest to the Council of Governors and

- a. shall withdraw from the meeting and play no part in the relevant discussion or decision;
- b. shall not vote on the issue (and if by inadvertence she does remain and vote, her vote shall not be counted).

62. Details of such interests shall be recorded in the register of interests of governors. Any governor who fails to disclose any interest or material interest required to be so disclosed under these provisions must permanently vacate their office if required to do so by a majority of the remaining governors.

### ***Pecuniary interests***

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

- a. she, or her nominee, is a member of a company or other body (not being a public body), with which the contract is made, or to be made or which has a direct pecuniary interest in the same, or

- b. she is a partner, associate or employee of any person with whom the contract is made or to be made or who has a direct pecuniary interest in the same.

64. A person shall not be regarded as having a pecuniary interest in any contract if

- a. neither she or any person connected with her has any beneficial interest in the securities of a company of which she or such person appears as a member;
- b. any interest that she or any person connected with her may have in the contract is so remote or insignificant that it cannot reasonably be regarded as likely to influence them in relation to considering or voting on that contract; or
- c. those securities of any company in which she (or any person connected with her) has a beneficial interest do not exceed 2% of the total issued share capital of the company or of the relevant class of such capital, whichever is the less, provided however, that where this paragraph applies, the person shall nevertheless be obliged to disclose/declare her interest in accordance with these Standing Orders.

65. Any remuneration, compensation or allowance payable to the Chair or member of the Council of Governors by the Trust is a pecuniary interest for the purpose of this Standing Order but the Council of Governors may decide that paragraph 61 does not apply to the extent that the Chair or a governor may be permitted to take part in the consideration or discussion or vote on any question with respect to it.

66. Standing Orders 57 - 65 also applies to a committee or subcommittee and to a joint committee or subcommittee of the Council of Governors as it applies to the Trust and applies to any member of any such committee or subcommittee (whether or not they are also a member of the Trust) as it applies to a governor of the Trust.

67. For the purposes of these Standing Orders:

- a. “spouse” shall include any person who lives with another person in the same household (and any pecuniary interest of one spouse shall, if known to the other spouse, be deemed to be an interest of that other spouse)
- b. “contract” shall include any proposed contract or other course of dealing.

### **Governors Code of Conduct**

68. Governors must comply with the Trust’s Code of Conduct for Governors.

### **Committees appointed by the Council**

69. The Council of Governors may not delegate any of its powers to a committee or subcommittee, but it may appoint committees consisting of governors, Directors of the Trust and other persons to assist the Council in carrying out its functions. The Council of Governors may, through the Secretary, request that advisors assist them or any committee they appoint in carrying out its duties.

70. In making any recommendations, a committee must have due regard to the established policies of the Council and shall not depart from them without due reason and consideration. Any such departure and the reason for it shall be drawn to the attention of the Council at the earliest opportunity.

71. The Council requires its committees to refer back to them for a decision

72. In consideration of any recommendation, a committee must comply with:

- a. the Trust’s Standing Financial Instructions, these Standing Orders, and written procedures. Specific reference to the relevant sections of these documents should be made;
- b. any statutory provisions or requirements; and
- c. In cases of doubt or difficulty and/or where no policy guidelines exist, decisions should be referred back to the Council.

### **Review of these Standing Orders**

73. These Standing Orders shall be reviewed at least every three-years by the Council of Governors. The requirement for review extends to all documents having the effect as if incorporated in Standing Orders.

**Miscellaneous**

74. It is the duty of the Secretary to ensure that existing governors and all new appointees are notified of and understand their responsibilities within these Standing Orders, and the Trust's corporate governance manual.

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

### **Introduction and general information**

- 1 The purpose of the Board Standing Orders is to ensure that the highest standards of corporate governance and conduct are achieved in the Board and throughout the organisation.
- 2 The Board of Directors have adopted these Standing Orders covering the proceedings and business of its meetings.
- 3 The Trust is governed by statute, namely the NHS Act 2006 as amended. The Trust is also subject to the conditions in its Licence (Licence Number: 130062) or any document which replaces it.
- 4 The business of the Trust is to be managed by the Board of Directors who shall exercise all the powers of the Trust, subject to any contrary provisions of the 2006 Act.
- 5 All business shall be conducted in the name of the Trust.
- 6 The Board shall at all times seek to comply with the NHS Improvement's Code of Governance as amended from time to time.

### **Chair's Responsibility**

- 7 If there is a conflict between these Standing Orders and the constitution, the constitution shall prevail.
- 8 Save as permitted by law, at any meeting, the Chair of the Trust shall be the final authority on the interpretation of the Standing Orders (on which they should be advised by the Chief Executive or Secretary of the Board).

## **Commitments**

- 9        The Accounting Officer has responsibility to see that appropriate advice is tendered to the Board of Directors and the Council of Governors on all matters of financial propriety and regularity and, more broadly, as to all considerations of prudent and economical administration, efficiency and effectiveness.
  
- 10       The Accounting Officer will determine how and in what terms the advice should be tendered, and whether in a particular case to make specific reference to her duty as Accounting Officer to justify, to the Public Accounts Committee, transactions for which she is accountable.
  
- 11       The Board of Directors and the Council of Governors of the Trust should act in accordance with the requirements of propriety and regularity. If the Board of Directors or Council of Governors or the Chair is contemplating a course of action involving a transaction which the Accounting Officer considers would infringe these requirements, she should set out in writing her objection to the proposal and the reasons for the objection. If the Board of Directors, Council of Governors or Chair decides to proceed the Accounting Officer should:
  - 11.1.    Seek written instruction to take the action;
  - 11.2.    Inform NHSI (if possible prior to the decision).
  
- 12       If overruled, the action must be complied with, but the objection and the instruction should be communicated to the Trust external auditors and to NHSI.

## **Suspension of Standing Orders**

- 13       Except where this would contravene any statutory provision or any direction made by the Secretary of State or the rules relating to quorum, any one or more of the Standing Orders may be suspended at any meeting, provided that at least two-thirds of the whole number of the members of the Board of Directors are present (including at least one member who is an executive Director of the Trust and one non-executive Director) and that at

least two-thirds of those Directors present signify their agreement to such suspension.

- 14 The reason for the suspension shall be recorded in the Board's minutes.
- 15 No formal business may be transacted while Standing Orders are suspended.
- 16 A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the Chair and members of the Board of Directors.
- 17 The Audit Committee shall review every decision to suspend Standing Orders.

#### **Non-compliance with Standing Orders**

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

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

- 19 The Standing Orders shall not be varied or amended except in accordance with the process set out for amendments to the constitution in paragraph 44 and, in addition, subject to the following requirements that:
  - 19.1. notice of a motion to amend the Standing Orders is given;
  - 19.2. a written opinion from either the Chair or Chief Executive as to the necessity for these variations/amendments is provided to the Board of Directors;

- 19.3. two thirds of the members of the Board of Directors are present at the meeting where the variation or amendment is being discussed;
- 19.4. at least half of the Trust's non-executive Board members vote in favour of the amendment; and
- 19.5. providing that any variation or amendment does not contravene a statutory provision.

### **Corporate Trustee**

- 20 As a body corporate, the Trust has specific powers to contract in its own name and to act as a corporate trustee. The Directors shall appoint trustees (the Charitable Funds Committee) to administer separately charitable funds received by the Trust and for which they are accountable to the Charity Commission.
- 21 The Trust also has a common law duty as a bailee for patients' property held by the Trust on behalf of patients.

### **Compliance and Enforcement**

- 22 The Trust shall comply with:
  - 22.1. any requirements imposed on it under the 2006 Act or any other enactment;
  - 22.2. the conditions of the Licence or any document which replaces it;
  - 22.3. the terms of this constitution; and
  - 22.4. the terms of its contracts with bodies which commission the Trust to provide goods and services (including education and training, accommodation and other facilities) for the purposes of the health service in England.
- 23 The Trust shall comply with any guidance issued by NHS Improvement, unless NHS Improvement has agreed with the Trust that, in the particular circumstances, the Trust is not required to comply.



## **Governance**

- 24 The Trust shall comply with the principles of best practice applicable to corporate governance in the NHS/health sector and with any relevant code of practice.

## **The Board of Directors**

### **Composition**

- 25 The composition of the Board shall be:
- 25.1. A Non-Executive Chair
  - 25.2. Not more than seven other non-executive Directors
  - 25.3. Not more than seven executive Directors including:
    - i. The Chief Executive (who is the Accounting Officer)
    - ii. The finance director
    - iii. A registered medical practitioner or a registered dentist (within the meaning of the Dentists Act 1984)
    - iv. A registered nurse or registered midwife.

### **Vice Chair**

- 26 There will be a Vice Chair elected in accordance with paragraph 27.1 of this Constitution.
- 27 Any non-executive Director so appointed may at any time resign from the office of Vice Chair by giving notice in writing to the Chair. Thereupon, the Council of Governors shall appoint another Vice Chair in accordance with paragraph 27.1 of this Constitution.
- 28 If the Chair is unable to discharge their office as Chair of the Trust, the Vice Chair of the Board of Directors shall be acting Chair of the Trust until a new Chair is appointed or the existing Chair resumes their duties, as the case may be; and references to the Chair in these Standing Orders shall,

so long as there is no Chair able to perform those duties, be taken to include references to the Vice Chair.

### **Joint posts**

- 29 Where more than one person is appointed jointly to a post then those persons may, with the approval of the Board, be appointed as an executive Director jointly, and shall count as one person.

### **Division of responsibilities between Chair and Chief Executive**

- 30 The Board shall approve a formal Letter of Understanding between the Chair and Chief Executive setting out, as clearly as possible, a division of their responsibilities. The Letter shall be reviewed and modified as the Board shall, from time to time, decide.

### **Trust Secretary**

- 31 The Trust shall have a Secretary who may be an employee. The Secretary may not be a governor, the Chief Executive, or the finance director. The Board shall appoint (and remove) a Secretary subject to the approval of the Council of Governors. The Secretary's functions shall include:
- 31.1. acting as Secretary to the Council of Governors and the Board of Directors, and any committees;
  - 31.2. summoning and attending all members meetings, meetings of the Council of Governors and the Board of Directors, and keeping the minutes of those meetings;
  - 31.3. keeping the register of members and other registers and books required by the Constitution to be kept;
  - 31.4. having charge of the Trust's seal;
  - 31.5. acting as returning officer in any elections (which function may be delegated to an external polling company appointed for this purpose);
  - 31.6. publishing to members in an appropriate form information which they should have about the Trust's affairs;

- 31.7. preparing (or ensuring the preparation of) and sending to the NHS Improvement and any other statutory body all returns which are required to be made.

## **Meetings of the Board of Directors**

### ***Proceedings of meetings***

- 32 Proceedings of the Board of Directors shall not be invalidated by any vacancy of its membership, or defect in a Director's appointment.
- 33 Statements of Directors made at meetings of the Trust shall be relevant to the matter under discussion at the material time and the decision of the Chair of the meeting on questions of order, relevancy and regularity (including procedure on handling motions) and their interpretation of the Standing Orders and Standing Financial Instructions, at the meeting, shall be final.
- 34 If a Director persistently disregards the ruling of the Chair or behaves improperly or offensively or deliberately obstructs business, the Chair, in its absolute discretion, may move that the Director's question be not heard further at the meeting in question. If seconded, the motion will be voted on without discussion. If the Director continues to behave improperly after such a motion is carried, the Chair may move that either the Director leaves the meeting room or that the meeting in question is adjourned for a specified period. If seconded, the motion will be voted on without discussion.

### ***Frequency***

- 35 Ordinary meetings of the Board shall be held at regular intervals at such times and places as the Board may determine. The Secretary will publish the dates, times and locations of meetings of the Board in advance.

### ***Calling meetings***

- 36 Meetings of the Board of Directors are called by the Secretary, or by the Chair, or by four Directors who have given written notice to the Secretary specifying the business to be carried out. The Secretary shall send a written notice to all Directors as soon as possible after receipt of such a request. The Secretary shall call a meeting on at least fourteen but not more than twenty-eight days' notice to discuss the specified business. If the Secretary fails to call such a meeting then the Chair or four Directors, whichever is the case, shall call such a meeting.
- 37 Save in the case of emergencies or the need to conduct urgent business, the 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.
- 38 An agenda, copies of any agenda items and any supporting reports shall be sent to each Director so as to arrive with each Director normally no later than seven days in advance of each meeting. Minutes of the previous meeting will be circulated with these papers for approval and this will be a specific agenda item. Copies of the agenda must also be sent to Council of Governors in accordance with paragraph 30.2 of this Constitution.

### ***Setting the agenda***

- 39 There will be a formal schedule of matters specifically reserved for decision by the Board of Directors.
- 40 The Board of Directors may determine that certain matters shall appear on every agenda for a meeting of the Trust and shall be addressed prior to any other business being conducted. The Board of Directors may agree an annual cycle of business which will change from time to time and will be used to inform the agenda.
- 41 A Director desiring a matter to be included on the agenda shall make their request to the Chair and the Secretary at least 10 days in advance of the

meeting. Requests made less than 10 days before a meeting may be included at the discretion of the Chair.

### ***Chairing the meeting***

- 42 The Chair of the Trust shall normally chair the meeting. In the absence of the Chair then the Vice Chair will chair the meeting. If both are incapacitated or unable to attend a properly called meeting of the Board, then the Directors at the meeting will nominate another non-executive Director chair for the duration of the meeting.

### ***Reports from Executive Directors***

- 43 At any meeting, a Director may ask any question through the Chair without notice on any report by an executive Director, or other officer of the Trust, after that report has been received by or while such report is under consideration by the Board at the meeting. The Chair may, in its absolute discretion, reject any question from any Director if in the opinion of the Chair the question is substantially the same and relates to the same subject matter as a question which has already been put to that meeting or a previous meeting.

## **Motions**

### ***Motions with notice***

- 44 Subject to Standing Orders 49 and 50, a motion may only be submitted by Directors and must be received by the Secretary in writing at least 10 days prior to the meeting at which it is proposed to be considered, together with any relevant supporting papers. For the purposes of this Standing Order, receipt of any such motions via electronic means is acceptable. All motions received by the Secretary will be acknowledged by the Secretary in writing to the Directors who have signed or transmitted the same.

## **Scope**

- 45 Motions may only be about matters for which the Board of Directors has a responsibility or which affect the services provided by the Trust.
- 46 The mover of a motion shall have a right of reply at the close of any discussion on the motion or any amendment thereto.
- 47 When a motion is under discussion or immediately prior to discussion it shall be open to a Director to move:
- 47.1. An amendment to the motion
    - b. The adjournment of the discussion or the meeting
    - c. That the meeting proceeds to the next business (\*)
    - d. The appointment of an ad hoc committee to deal with a specific item of business.
    - e. That the motion be now put (\*)

*In the case of sub-paragraphs denoted by (\*) above, to ensure objectivity, motions may only be put by a Director who has not previously taken part in the debate.*

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

## **Motions without notice**

- 49 The following motions may be moved at any meeting without notice:
- 49.1. in relation to the accuracy of the minutes of the previous meeting;
  - 49.2. to change the order of business in the agenda for the meeting;
  - 49.3. to refer a matter discussed at a meeting to an appropriate body or individual;
  - 49.4. to appoint a working group arising from an item on the agenda for the meeting;
  - 49.5. to receive reports or adopt recommendations made by the Board;
  - 49.6. to withdraw a motion;

- 49.7. to amend a motion;
- 49.8. to proceed to the next business on the agenda;
- 49.9. that the question be now put;
- 49.10. to adjourn a debate;
- 49.11. to adjourn a meeting;
- 49.12. to suspend a particular Standing Order contained within these Standing Order (provided that any Standing Order may only be suspended in accordance with Standing Order 13);
- 49.13. to not hear further from a Director or to exclude them from the meeting in question in accordance with Standing Order 33;
- 49.14. to give the consent of the Board to any matter where its consent is required pursuant to the constitution.

#### ***Urgent motions and agenda item***

- 50 Urgent motions or agenda items may only be submitted by a Director and must be received by the Secretary in writing before the commencement of the meeting in question. The Chair shall decide whether the motion or item in question should be tabled.

#### ***Abandoned motions and motions to amend or rescind***

- 51 If a motion, notice of which is specified on the agenda, is not moved either by the Directors who has given notice of the motion, or by another Director nominated on behalf of that Director, it shall be deemed to be abandoned and shall not be moved without fresh notice.
- 52 Notice of 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 shall bear the signature of the Directors who gives it and also the signature of three other Directors. When any such motion has been disposed of by the Trust, it shall not be appropriate for any director other than the Chair to propose a motion to the same effect within six months; however the Chair may do so if she considers it appropriate.

#### **Voting**

- 53 All questions put to the vote shall, at the discretion of the Chair, be decided by a show of hands save that no resolution of the Board of Directors shall be passed if it is opposed by all of the non-executive Directors present or by all of the executive Directors present. A paper ballot may be used if a majority of the Directors present so request.
- 54 In case of an equality of votes the Chair shall have a second and casting vote.
- 55 If at least one third of the Board members present so request, the voting on any question may be recorded so as to show how each member present voted or did not vote (except when conducted by paper ballot). If a Board member so requests, her vote shall be recorded by name.
- 56 In no circumstances may an absent Director vote by proxy. Subject to Standing Order 59, absence is defined as being absent at the time of the vote.
- 57 An officer who has been appointed formally by the Board to act up for an executive Director during a period of incapacity or temporarily to fill an executive Director vacancy, shall be entitled to exercise the voting rights of the executive Director. An officer attending the Board to represent an executive Director during a period of incapacity or temporary absence without formal acting up status may not exercise the voting rights of the executive Director. An officer's status when attending the meeting shall be recorded in the minutes.
- 58 Where an executive Director post is shared by more than one person:
- 58.1. Each person shall be entitled to attend meetings of the Board
  - 58.2. Each of those persons shall be eligible to vote in the case of agreement between them
  - 58.3. In the case of disagreement between them no vote should be case
  - 58.4. The presence of those persons shall count as one person.



## **Attendance**

- 59 The Board of Directors may agree that Directors 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.
- 60 Directors who are unable to attend a meeting shall notify the Secretary in writing in advance of the meeting in question so that their apologies may be submitted.

## **Quorum**

- 61 Six Directors including not less than three executive Directors (one of whom must be the Chief Executive or another executive Director nominated by the Chief Executive) and not less than three non-executive Directors (one of whom must be the Chair or the Vice Chair of the Board of Directors) shall form a quorum.
- 62 An officer in attendance for an executive Director but without formal acting up status may not count towards the quorum.
- 63 If a Director has been disqualified from participating in a discussion on any matter and/or from voting on any resolution by reason of declaration of a conflict of interest, that Director 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 minute of the meeting. The meeting must then proceed to the next business.

## **Speaking**

- 64 This Standing Order applies to all forms of speech/debate by Directors of the Trust and the public in relation to the motion or question under discussion at a meeting.
- 65 Any approval to speak must be given by the Chair. Speeches must be directed to the matter, motion or question under discussion or to a point of order. In the interests of time, the Chair may, in its absolute discretion, limit the number of replies, questions or speeches which are heard at any one meeting
- 66 At the Chair's discretion, a person who has already spoken on a matter at a meeting may not speak again at that meeting in respect of the same matter, except:
- 66.1. in exercise of a right of reply
  - 66.2. on a point of order.

## **Minutes**

- 67 Minutes of every meeting of the Board of Directors shall be kept. The minutes of the proceedings of a meeting shall be drawn up and submitted for agreement at the next ensuing meeting where they will be signed by the person presiding at it.
- 68 No discussion shall take place upon the minutes except upon their accuracy or where the Chair considers discussion appropriate. The signed minutes will be conclusive evidence of the events of the meeting. Any amendment to the minutes shall be agreed and recorded at the next meeting.
- 69 Minutes shall be sent to the Council of Governors pursuant to paragraph 30.2 of this constitution and otherwise circulated in accordance with the Chair's wishes. Where providing a record of a public meeting, the minutes shall be made available to the public.

## **Record of attendance**

- 70 The names of the Directors present at the meeting shall be recorded in the minutes. The names of those in attendance at the meeting shall also be recorded.

## **Dispute between the Board of Directors and the Council of Governors**

- 71 In the event of dispute between the Council of Governors and the Board of Directors:

- 71.1. in the first instance the Chairman on the advice of the Secretary, and such other advice as the Chairman may see fit to obtain, shall seek to resolve the dispute;
- 71.2. if the Chairman is unable to resolve the dispute he or she shall refer the dispute to the Trust Secretary who shall appoint a joint special committee constituted as a committee of the Board of Directors and a committee of the Council of Governors, both comprising equal numbers, 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;
- 71.3. if the recommendations (if any) of the joint special committee are unsuccessful in resolving the dispute, the view of the Board of Directors shall prevail.

nothing in this procedure shall prevent the Council of Governors, if it so desires, from informing NHSI 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 acting in accordance with the terms of its Constitution or not complying with the terms of the 2006 Act.

## **Delegation**

- 72 Subject to the scheme of reservation and delegation, and such directions as may be given by statute, NHS Improvement or the Secretary of State, the Board may make arrangements for the exercise, on behalf of the Trust, of any of its functions by a committee or subcommittee, or by a Director or

an officer of the Trust in each case subject to such restrictions and conditions as the Board thinks fit.

### **Emergency powers**

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

### **Delegation to committees**

- 74 The Board of Directors may delegate any of its powers to a committee of directors, or to an executive Director

- 75 The Board shall agree from time to time to the delegation of executive powers to be exercised by committees or subcommittees, which it has formally constituted in accordance with Standing Order 74. The constitution and terms of reference of these committees, or subcommittees, and their specific executive powers shall be approved by the Board, and incorporated within the Trust's corporate governance manual and/or integrated governance framework. No executive powers may be delegated by a committee to a sub-committee without express authority by the Board.

- 76 In exercising any delegated power, a committee or Director:
- 76.1. Must comply with the Trust's Standing Financial Instructions, Standing Orders and written procedures and specific reference to the relevant sections of these documents should be made;
  - 76.2. Must comply with any statutory provisions or requirements;
  - 76.3. Must not incur expenditure over and above the Trust's annual budget (excluding the Chief Executive in conjunction with the Director of Finance).

- 77 The ultimate responsibility for decisions taken under delegated powers remain with the Board, and the Board must ensure that due regard has been given and can clearly demonstrate it has not come to an unreasonable decision. To avoid possible allegations of unlawful exercise of discretion by the Board, a committee or Director acting under delegated powers should ensure any decision taken is documented in writing and should record the matters which have been taken into account in reaching that decision, especially where significant sums or legal commitments are involved.
- 78 In making any decisions under delegated powers, a committee or Director must have due regard to the established policies of the Trust and shall not depart from them without due reason and consideration. Any such departure and the reason for it shall be drawn to the attention of the Board at the earliest opportunity. The Board requires its committee or Director to report to them any decision taken under delegated powers, as defined within the Standing Orders. The Board may require any particular delegated matter to be referred back to them for a decision.
- 79 In accordance with paragraphs 39 and 33.2 of the Trust's constitution, the Trust shall establish an audit committee and a remuneration committee.
- 80 In addition to the statutory requirements, the Board of Directors may determine other committees as required for the conduct of their business. Where committees are authorised to establish subcommittees they may not delegate executive powers to the subcommittee unless expressly authorised by the Board of Directors.
- 81 The Standing Orders of the Board, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees or subcommittee established by the Board, save that there is no requirement to hold meetings of committees or subcommittees established by the Board in public. In which case, the term 'Chair' is to be read as 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 as the context permits.

- 82 Each such committee or subcommittee shall have such terms of reference and powers, and be subject to such conditions (as to reporting back to the Board), as the Board shall decide. Such terms of reference shall have effect as if incorporated into the Standing Orders. The Board shall approve the appointments to each of the committees which it has formally constituted. Where the Board determines, and regulations permit, that persons, who are neither members nor officers, shall be appointed to a committee, the terms of such appointment shall be determined by the Board as defined by the Secretary of State or NHS Improvement. The Board shall define the powers of such appointees and shall agree allowance, including reimbursement for loss of earnings, and/or expenses in accordance where appropriate with national guidance.
- 83 Where functions are being carried out by a committee or subcommittee, their members, including those who are not Board members, are acting on behalf of the Trust. Members of committees and subcommittees who are not Board members of the Trust may be able to claim certain travelling and other allowances, but are not remunerated for committee or subcommittee membership as such.
- 84 Where the Trust is required to appoint persons to a committee and/or to undertake statutory functions as required by the Secretary of State or NHS Improvement, and where such appointments are to operate independently of the Trust, such appointments shall be made in accordance with the regulations laid down by the Secretary of State.
- 85 The appointment of Board members to committees and subcommittees of the Trust comes to an end on the termination of their term of office as Board members.

## **Delegation to officers**

- 86 Those functions of the Trust which have not been retained as reserved by the Board or delegated to an executive committee or subcommittee shall be exercised on behalf of the Board by the Chief Executive. The Chief Executive shall determine which functions she will perform personally and shall nominate officers to undertake the remaining functions for which she will still retain accountability to the Board.
- 87 The Chief Executive shall prepare a scheme of reservation and delegation identifying proposals which shall be considered and approved by the Board, subject to any amendment agreed during the discussion. The Chief Executive may periodically propose amendments to the scheme of reservation and delegation which shall be considered and approved by the Board as indicated above.
- 88 Nothing in the scheme of reservation and delegation shall impair the discharge of the direct accountability to the Board of the Director of the Finance or of any other executive Director to provide information and advise the Board in accordance with any statutory requirements.
- 89 Outside these statutory requirements, the Director of Finance shall be accountable to the Chief Executive for operational matters.
- 90 The arrangements made by the Board as set out in the scheme of reservation and delegation shall have effect as if incorporated in these Standing Orders.

## **Confidentiality**

- 91 Subject to Standing Order 92, a member of the Board or a committee of the Board shall not disclose a matter dealt with by, or brought before, the Board/committee without its permission or until the committee shall have reported to the Board or shall otherwise have concluded on that matter.

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

## **Disclosure of interests**

### ***Material interests***

- 93 Members of the Board of Directors shall disclose to the Board of Directors any interest required to be declared by the constitution and any other material interests (as defined below) held by a Director, their spouse or partner, which shall be recorded by the Secretary in the register of interests of the Directors.
- 94 These details will be kept up to date by means of an annual review of the register in which any changes to interests declared during the preceding twelve months will be incorporated.
- 95 A material interest is:
- 95.1. any directorship of a company
  - 95.2. any interest (excluding a holding of shares in a company whose shares are listed on any public exchange where the holding is less than 2% of the total shares in issue) held by a Director in any firm, company or business which is trading with the Trust or is likely to be considered as a potential trading partner with the Trust
  - 95.3. any interest in an organisation whether voluntary or otherwise providing health and social care services to the National Health Service
  - 95.4. a position of authority in a charity or voluntary organisation in the field of health and social care
  - 95.5. any connection with any organisation, entity or company considering entering into a financial arrangement with the Trust including but not limited to lenders or banks.



- 96 Any Director who has an interest in a matter to be considered by the Board of Directors (whether because the matter involves a firm, company, business or organisation in which the Director or his spouse or partner has a material interest or otherwise) shall declare such interest to the Board of Directors and:
- 96.1. shall withdraw from the meeting and play no part in the relevant discussion or decision; and
  - 96.2. shall not vote on the issue (and if by inadvertence they do remain and vote, their vote shall not be counted).
- 97 Details of any such interest shall be recorded in the register of interests of the Directors.
- 98 Any Director who fails to disclose any interest or material interest required to be disclosed under these provisions must permanently vacate their office if required to do so by a majority of the remaining Directors and (in the case of a non-executive Director) by a majority of the Council of Governors.
- 99 Any changes in interests should be declared at the next Board of Directors' meeting following the change occurring and recorded in the minutes of that meeting.

***Pecuniary interests***

- 100 Subject to the exceptions set out in this Standing Order, a person shall be treated as having an indirect pecuniary interest in a contract if:
- 100.1. she, or her nominee, is a member of a company or other body (not being a public body), with which the contract is made, or to be made or which has a direct pecuniary interest in the same, or:
  - 100.2. she is a partner, associate or employee of any person with whom the contract is made or to be made or who has a direct pecuniary interest in the same.
- 101 Any Director who has any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter and is present at a meeting of

the Board of Directors at which the contract or other matter is the subject of consideration, she shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not take part in the consideration or discussion of the contract or other matter or vote on any question with respect to it.

102 The Board of Directors may exclude the Chair or a member of the Board from a meeting while any contract, proposed contract or other matter in which they have a pecuniary interest is under consideration.

103 Any remuneration, compensation or allowance payable to the Chair or a Director by the Trust is a pecuniary interest for the purpose of this Standing Order but the Board may decide that paragraph 101 does not apply to the extent that a Director may be permitted to take part in the consideration or discussion of the contract or other matter or vote on any question with respect to it.

104 This Standing Order applies to a committee or subcommittee and to a joint committee or subcommittee as it applies to the Trust and applies to a member of any such committee or subcommittee (whether or not they are also a member of the Trust) as it applies to a Director of the Trust.

#### ***Exception to Pecuniary interests***

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

105.1. neither she or any person connected with her has any beneficial interest in the securities of a company of which she or such person appears as a member, or

105.2. any interest that she or any person connected with her may have in the contract is so remote or insignificant that it cannot reasonably be regarded as likely to influence them in relation to considering or voting on that contract, or

105.3. those securities of any company in which she (or any person connected with her) has a beneficial interest do not exceed two per cent of the total issued share capital of the company or of the

relevant class of such capital, whichever is the less. However the person shall nevertheless be obliged to disclose/declare her interests in accordance with these Standing Orders.

- 106 For the purposes of these Standing Orders:
- 106.1. "spouse" shall include any person who lives with another person in the same household (and any pecuniary interest of one spouse shall, if known to the other spouse, be deemed to be an interest of that other spouse)
- 106.2. "contract" shall include any proposed contract or other course of dealing.

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

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

#### **Co-operation with Others**

- 108 In exercising its functions the Trust shall co-operate with NHS bodies and local authorities, the Care Quality Commission and other organisations as defined by NHS Improvement.
- 109 The Trust shall deal with NHS Improvement in an open and co-operative manner and shall promptly notify NHS Improvement of anything relating to the Trust of which NHS Improvement would reasonably expect prompt notice, including, without prejudice to the foregoing generality, any anticipated failure or anticipated prospect of failure on the part of the Trust to meet its obligations under its Licence or any financial or performance thresholds which NHS Improvement may specify from time to time.

- 110 In conducting its affairs, the Trust shall have regard to the need to provide information to members and conduct its affairs in an open and accessible way.
- 111 The Chair, Chief Executive or any other person giving information to Parliament or to a Member of Parliament on behalf of the Trust shall ensure that they comply with the standards expected of Ministers of the Crown with regard to openness of dealings, the giving of accurate and truthful information and the correction of any inadvertent error at the earliest opportunity. Any question submitted to the Trust by a Member of Parliament shall be responded to by the Trust within the same timescale as that expected of Ministers with respect to Parliamentary questions.

### **Entry and Inspection of Premises**

- 112 The Trust shall allow NHS Improvement, any member, officer or member of staff of the regulator, and any agent acting on behalf of the regulator, to enter and inspect premises owned or controlled by the Trust.

### **Seal and Signing of Documents**

- 113 The Trust is to have a seal. This shall not to be affixed except under the authority of the Board of Directors.
- 114 The common seal of the Trust shall be kept by the Secretary in a secure place.
- 115 It is a requirement to place any property transactions e.g. purchase, sale, lease, under seal. Other contracts/documentation may be approved by an authorised signatory 'under hand' i.e. signed.
- 116 Before any building, engineering, property or capital document is sealed it must be approved and signed by the Director of Finance (or an officer nominated by them) and authorised and countersigned by the Chief Executive (or an officer nominated by them who shall not be within the originating division or department).

- 117 The Chief Executive shall keep a register in which they, or the Trust Secretary as authorised by them, shall enter a record of the sealing of every document. Each entry made shall be numbered consecutively in a book provided for that purpose and shall be signed by the persons who have approved and authorised the document and those who attest the seal.
- 118 A report of all sealings shall be made to the Board of Directors on an annual basis. The report shall contain details of the seal number, the description of the document and date of sealing.

### **Signature of Documents**

- 119 Where any document will be a necessary step in legal proceedings on behalf of the Trust, it shall, unless any enactment otherwise requires or authorises, be signed by the Chief Executive or any executive Director.
- 120 The Chief Executive or nominated officers shall be authorised, by resolution of the Board, to sign on behalf of the Trust any agreement or other document (not required to be executive as a deed) the subject matter of which has been approved by the Board or committee or subcommittee to which the Board has delegated appropriate authority.

### **Miscellaneous**

- 121 It is the duty of the Chief Executive to ensure that existing Directors, officers and all new appointees are notified of and understand their responsibilities within the Standing Orders and Standing Financial Instructions. Updated copies shall be issued to staff designated by the Chief Executive and it is the responsibility of all staff to comply with these rules and regulations, which is freely available to view on the Trust's website. New designated officers shall be informed in writing and shall receive copies where appropriate in Standing Orders.

## **Review of Standing Orders**

- 122 Standing Orders shall be reviewed annually by the Board. The requirement for review extends to documents having the effect as if incorporated in Standing Orders.

## ANNEX 9 – FURTHER PROVISIONS

### Trust powers

1. The Trust may do anything which appears to it to be necessary or desirable for the purposes of or in connection with its functions.
2. In particular it may:
  - 2.1 acquire and dispose of property,
  - 2.2 enter into contracts,
  - 2.3 accept gifts of property (including property to be held on trust for the purposes of the Trust or for any purposes relating to the health service),
  - 2.4 employ staff.
3. Any power of the Trust to pay remuneration and allowances to any person includes the power to make arrangements for providing or securing the provision of pensions or gratuities (including those payable by way of compensation for loss of employment or loss or reduction of pay).
4. The Trust may borrow money for the purposes of or in connection with its functions, subject to any limit published by NHS Improvement from time to time.
5. The Trust may invest money (other than money held by it as trustee) for the purposes of or in connection with its functions. The investment may include investment by:
  - 5.1 forming or participating in forming bodies corporate.
  - 5.2 otherwise acquiring membership of bodies corporate.
6. The Trust may give financial assistance (whether by way of loan, guarantee or otherwise) to any person for the purposes of or in connection with its functions.

## **Dispute Resolution Procedures**

7. In the event of any dispute about the entitlement to membership the dispute shall be referred to the Chair who shall make a determination on the point in issue. If the person in dispute is aggrieved at the decision of the Chair she may appeal in writing within 14 days of the Chair's decision to the Council of Governors whose decision shall be final.
8. In the event of any dispute about the eligibility and disqualification of a Governor the dispute shall be referred to the Council of Governors whose decision shall be final.

## **Members**

9. Members may attend and participate at members meetings, vote in elections to, and stand for election to the Council of Governors, and take such other part in the affairs of the Trust as is provided in this constitution.

## **Disqualification from membership**

10. A person may not become a member of the Trust if:
  - 10.1 within the last five years they have been involved as a perpetrator in a serious incident of violence at any of the hospitals or facilities of the Trust, or any other Foundation Trust or NHS Trust, against any of the employees or other persons who exercise functions for the purposes of the Trust or any other Foundation Trust or NHS Trust or against registered volunteers of the Trust or any other Foundation Trust or NHS Trust; or
  - 10.2 they are subject to a sex offender order.

## **Termination of membership**

11. A member shall cease to be a member if:
  - 11.1 they resign by notice to the Secretary;
  - 11.2 they die;
  - 11.3 they are expelled from membership under this constitution;



- 11.4 they cease to be entitled under this constitution to be a member of any of the public constituencies or of any of the classes of the staff constituency;
  - 11.5 if it appears to the 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.
12. A member may be expelled by a resolution approved by not less than two-thirds of the members of the Council of Governors attending and voting at a General Meeting of the Council of Governors. The following procedure is to be adopted.
- 12.1 Any member may complain to the Secretary that another member has acted in a way detrimental to the interests of the Trust.
  - 12.2 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:
    - 12.2.1 dismiss the complaint and take no further action; or
    - 12.2.2 for a period not exceeding twelve months suspend the rights of the member complained of to attend members meetings and vote under this constitution;
    - 12.2.3 arrange for a resolution to expel the member complained of to be considered at the next General Meeting of the Council of Governors.
  - 12.3 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 of not less than one calendar month before the meeting with an invitation to answer the complaint and attend the meeting.
  - 12.4 At the meeting the Council of Governors will consider evidence in support of the complaint and such evidence as the member complained of may wish to place before them.

- 12.5 If the member complained of fails to attend the meeting without due cause the meeting may proceed in their absence.
- 12.6 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.
- 12.7 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 at a General Meeting of the Council of Governors.

### **Members' Meetings**

- 13. The Trust shall hold an annual meeting of its members (called the Annual Members' Meeting) within nine months of the end of each financial year.
- 14. All members meetings other than annual meetings are called special members meetings.
- 15. Members' meetings are open to all members of the Trust, members of the Council of Governors and Board of Directors, representatives of the external auditor and to members of the public. The Council of Governors may invite representatives of the media and any experts or advisors whose attendance they consider to be in the best interests of the Trust to attend a members meeting.
- 16. All members meetings are to be convened by the Secretary by order of the Council of Governors.
- 17. The Council of Governors may decide where a members' meeting is to be held and may also for the benefit of members:
  - 17.1 arrange for the annual members' meeting to be held in different venues each year:
  - 17.2 make provisions for a members meeting to be held at different venues simultaneously or at different times. In making such provision the Council of Governors 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.

18. At the Annual Members' Meeting:
  - 18.1 at least one member of the Board of Directors shall present to the members:
    - 18.1.1 the annual report and accounts of the Trust
    - 18.1.2 any report of the external auditor
    - 18.1.3 any report of any other external auditor of the Trust's affairs
    - 18.1.4 forward planning information for the next financial year
  - 18.2 at least one member of the Council of Governors shall present to the members:
    - 18.2.1 a report on steps taken to secure that (taken as a whole) the actual membership of its public constituencies and of the classes of the staff constituency is representative of those eligible for such membership;
    - 18.2.2 the progress of the membership strategy
    - 18.2.3 any proposed changes to the policy for the composition of the Council of Governors and of the non-executive Directors
    - 18.2.4 the results of the election and appointment of members of the Council of Governors and the appointment of non-executive Directors to the Board of Directors will be announced.
19. Notice of a members' meeting is to be given:
  - 19.1 by notice to all members;
  - 19.2 by notice prominently displayed at the head office and at all of the Trust's places of business; and
  - 19.3 by notice on the Trust's websiteat least 21 clear days before the date of the meeting.
20. The notice must:

- 20.1 be given to the Council of Governors and the Board of Directors, and to the external auditor;
  - 20.2 state whether the meeting is an annual or special members meeting;
  - 20.3 give the time, date and place of the meeting; and
  - 20.4 indicate the business to be dealt with at the meeting.
21. Before a members meeting can do business there must be a quorum present. Except where this constitution says otherwise a quorum is ten members present from any of the Trust's constituencies.
22. The Trust may make arrangements for members to vote by post, or by using electronic communications.
23. It is the responsibility of the Council of Governors, the Chair of the meeting and the Secretary to ensure that at any members meeting:
  - 23.1 the issues to be decided are clearly explained;
  - 23.2 sufficient information is provided to members in good time to enable rational discussion to take place.
24. The Chair of the Trust, or in their absence the Chair of the Board of Directors, or in their absence another non-executive Director of the Board of Directors, or in their absence the Lead Governor of the Council of Governors, or in their absence one of the other public members of the Council of Governors shall act as Chair at all members' meetings of the Trust. If neither the Chair nor the Vice Chair of the Board of Directors nor another non-executive Director of the Board of Directors nor the Lead Governor of the Council of Governors is present, the members of the Council of Governors present shall elect one of their number to be Chair and if there is only one member of the Council of Governors present and willing to act they shall be Chair.
25. If no quorum is present within half an hour of the time fixed for the start of the meeting, the meeting shall stand adjourned to the same day in the next week at the same time and place or to such time and place as the Council of Governors determine. If a quorum is not present within half an hour of

the time fixed for the start of the adjourned meeting, the number of members present during the meeting is to be a quorum.

26. A resolution put to the vote at a members meeting shall be decided upon by a poll.
27. Every member present and every member who has voted by post or using electronic communications is to have one vote. In the case of an equality of votes the Chair of the meeting is to have a second or casting vote.
28. The result of any vote will be declared by the Chair and entered in the minute book. The minute book will be conclusive evidence of the result of the vote.