

**Wirral Community Health & Care NHS Foundation Trust**

**Constitution**

April 2019

# Wirral Community Health & Care NHS Foundation Trust Constitution

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## **Interpretation and definitions**

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

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

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

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

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

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

**Monitor** is the body corporate known as Monitor, as provided by Section 61 of the 2012 Act.

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

## **2. Name**

The name of the foundation trust is Wirral Community Health & Care NHS Foundation Trust (the trust).

## **3. Principal purpose**

- 3.1** The principal purpose of the trust is the provision of goods and services for the purposes of the health service in England.
- 3.2** The trust does not fulfil its principal purpose unless, in each financial year, its total income from the provision of goods and services for the purposes of the health service in England is greater than its total income from the provision of goods and services for any other purposes.
- 3.3** The trust may provide goods and services for any purposes related to -
  - 3.3.1** the provision of services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness, and
  - 3.3.2** the promotion and protection of public health.
- 3.4** The trust may also carry on activities other than those mentioned in the above paragraph for the purpose of making additional income available in

order better to carry on its principal purpose.

#### **4. Powers**

- 4.1 The powers of the trust are set out in the 2006 Act.
- 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.

#### **5. Membership and constituencies**

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

- 5.1 a public constituency; or
- 5.2 a staff constituency.

#### **6. Application for membership**

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

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

- 7.1 An individual who lives in an area specified in Annex 1 as an area for a public constituency may become or continue as a member of the trust.
- 7.2 Those individuals who live in an area specified 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** Those individuals who are eligible for membership of the trust by reason of the previous provisions are referred to collectively as the Staff Constituency.

**8.3** The minimum number of members in the Staff Constituency is specified in Annex 2.

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

**9.1** An individual who is:

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

**9.1.2** invited by the trust to become a member of the Staff Constituency ,

shall become a member of the trust as a member of the Staff Constituency without an application being made, unless he informs the trust that he does not wish to do so.

## **10. Restriction on membership**

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

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

**10.3** An individual must be at least 13 years old to become a member of the trust.

**10.4** Further provisions as to the circumstances in which an individual may not become or continue as a member of the trust are set out in Annex 8.

## **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.

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

- 12.1 The trust is to have a Council of Governors, which shall comprise both elected and appointed governors.
- 12.2 The composition of the Council of Governors is specified in Annex 3.
- 12.3 The members of the Council of Governors, other than the appointed members, shall be chosen by election by their constituency or, where there are classes within a constituency, by their class within that constituency. The number of governors to be elected by each constituency, or, where appropriate, by each class of each constituency, is specified in Annex 3.

## **13. Council of Governors – election of governors**

- 13.1 Elections for elected members of the Council of Governors shall be conducted in accordance with the Model Election Rules.
- 13.2 The Model Election Rules form part of this constitution. The Model Election Rules current at the date of the trust's Authorisation are attached at Annex 4.
- 13.3 A subsequent variation of the Model Election Rules by the Department of Health shall not constitute a variation of the terms of this constitution for the purposes of paragraph 44 of the constitution (amendment of the constitution).
- 13.4 An election, if contested, shall be by secret ballot.

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

- 14.1 An elected governor may hold office for a period of up to 3 years.
- 14.2 An elected governor shall cease to hold office if he ceases to be a member of the constituency or class by which he was elected.
- 14.3 An elected governor shall be eligible for re-election at the end of his term.
- 14.4 An appointed governor may hold office for a period of up to 3 years.

**14.5** An appointed governor shall cease to hold office if the appointing organisation withdraws its sponsorship of him.

**14.6** An appointed governor shall be eligible for re-appointment at the end of his term.

## **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 adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;

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

**15.1.3** a person who has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it;

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

**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.

**15.4** Provisions as to the circumstances in which a governor may be removed, and the process for appeal against removal, 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.

### **Council of Governors – meetings of governors**

**16.3** The Chairman of the trust (i.e. the Chairman of the Board of Directors, appointed in accordance with the provisions of paragraph 25.1 or paragraph 26.1 below) or, in his absence, the Deputy Chairman (appointed in accordance with the provisions of paragraph 27 below), shall preside at meetings of the Council of Governors.

**16.4** Meetings of the Council of Governors shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons.

**16.5** 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.

### **17. Council of Governors – standing orders**

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

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

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

**18.1.1** to act in accordance with its constitution, or

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

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

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

If a governor has a pecuniary, personal or family interest, whether that interest is actual or potential and whether that interest is direct or indirect, in any proposed contract or other matter which is under consideration or is to be considered by the Council of Governors, the governor shall disclose that interest to the members of the Council of Governors as soon as he 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.

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

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

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

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

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

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

**22.2** The Board of Directors is to comprise:

**22.2.1** a non-executive Chairman

**22.2.1.1** at least four, but not more than six other non-executive directors; and

**22.2.2** at least four, but not more than six executive directors provided that, at all times, at least half the Board of Directors, excluding the Chairman, should comprise non-executive directors.

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

**22.4** The Chief Executive shall be the Accounting Officer.

**22.5** One of the executive directors shall be the Director of Finance & Resources.

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

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

### **23. 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.

### **24. Board of Directors – qualification for appointment as a non-executive director**

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

**24.1** he is a member of a Public Constituency, or

**24.2** he is not disqualified by virtue of paragraph 30 below.

### **25. Board of Directors – appointment and removal of chairman and other non-executive directors**

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

**25.2** Removal of the chairman or another non-executive director shall require the approval of three-quarters of the members of the Council of Governors.

**25.3** The initial chairman and the initial non-executive directors are to be appointed in accordance with paragraph 26 below.

### **26. Board of Directors – appointment of initial chairman and initial other non-executive directors**

**26.1** The Council of Governors shall appoint the chairman of the applicant NHS Trust as the initial chairman of the trust, if he wishes to be appointed.

**26.2** The power of the Council of Governors to appoint the other non-executive directors of the trust is to be exercised, so far as possible, by appointing as the initial non-executive directors of the trust any of the non-executive directors of the applicant NHS Trust (other than the Chairman) who wish to be appointed.

**26.3** The criteria for qualification for appointment as a non-executive director set out in paragraph 24 above (other than disqualification by virtue of paragraph 30 below) do not apply to the appointment of the initial

chairman and the initial other non-executive directors in accordance with the procedures set out in this paragraph.

- 26.4** An individual appointed as the initial chairman or as an initial non-executive director in accordance with the provisions of this paragraph shall be appointed for the unexpired period of his term of office as Chairman or (as the case may be) non-executive director of the applicant NHS Trust; but if, on appointment, that period is less than 12 months, he shall be appointed for 12 months.

### **27. Board of Directors – appointment of deputy chairman**

The Council of Governors at a general meeting of the Council of Governors shall appoint one of the non-executive directors as a deputy chairman.

### **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** The initial Chief Executive is to be appointed in accordance with paragraph 29 below.
- 28.4** A committee consisting of the Chairman, the Chief Executive and the other non-executive directors shall appoint or remove the other executive directors.

### **29. Board of Directors – appointment and removal of initial Chief Executive**

- 29.1** The non-executive directors shall appoint the chief officer of the applicant NHS Trust as the initial Chief Executive of the trust, if he wishes to be appointed.
- 29.2** The appointment of the chief officer of the applicant NHS Trust as the initial Chief Executive of the trust shall not require the approval of the Council of Governors.

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

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

- 30.1** a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged.

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

### **31. Board of Directors – meetings**

- 31.1** 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.
- 31.2** 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.

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

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

### **33. Board of Directors - conflicts of interest of directors**

- 33.1** The duties that a director of the trust has by virtue of being a director include in particular –
  - 33.1.1** 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.
  - 33.1.2** 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.
- 33.2** The duty referred to in sub-paragraph 33.1.1 is not infringed if –
  - 33.2.1** The situation cannot reasonably be regarded as likely to give rise to a conflict of interest, or
  - 33.2.2** The matter has been authorised in accordance with the constitution.

- 33.3** The duty referred to in sub-paragraph 33.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- 33.4** In sub-paragraph 33.1.2, “third party” means a person other than –
- 33.4.1** The trust, or
  - 33.4.2** A person acting on its behalf.
- 33.5** If a director of the trust has in any way a direct or indirect interest in a proposed transaction or arrangement with the trust, the director must declare the nature and extent of that interest to the other directors.
- 33.6** If a declaration under this paragraph proves to be, or becomes, inaccurate or incomplete, a further declaration must be made.
- 33.7** Any declaration required by this paragraph must be made before the trust enters into the transaction or arrangement.
- 33.8** This paragraph does not require a declaration of an interest of which the director is not aware or where the director is not aware of the transaction or arrangement in question.
- 33.9** A director need not declare an interest –
- 33.9.1** If it cannot reasonably be regarded as likely to give rise to a conflict of interest;
  - 33.9.2** If, or to the extent that, the directors are already aware of it;
  - 33.9.3** If, or to the extent that, it concerns terms of the director’s appointment that have been or are to be considered –
    - 33.9.3.1** By a meeting of the Board of Directors, or
    - 33.9.3.2** By a committee of the directors appointed for the purpose under the constitution.
- 33.10** A matter shall have been authorised for the purposes of paragraph 33.2.2 according to the provisions made in section 7 of the Standing Orders for the Practice and Procedure of the Board of Directors, attached at Annex 7.

#### **34. Board of Directors – remuneration and terms of office**

- 34.1** 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 Chairman and the other non-executive directors.

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

### **35. Registers**

The trust shall have:

- 35.1** a register of members showing, in respect of each member, the constituency to which he belongs and, where there are classes within it, the class to which he belongs;
- 35.2** a register of members of the Council of Governors;
- 35.3** a register of interests of governors;
- 35.4** a register of directors; and
- 35.5** a register of interests of the directors.

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

- 36.1** The trust shall make the registers specified in paragraph 35 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.
- 36.2** The trust shall not make any part of its registers available for inspection by members of the public which shows details of any member of the trust, if the member so requests.
- 36.3** So far as the registers are required to be made available:
  - 36.3.1** they are to be available for inspection free of charge at all reasonable times; and
  - 36.3.2** a person who requests a copy of or extract from the registers is to be provided with a copy or extract.
- 36.4** If the person requesting a copy or extract is not a member of the trust, the trust may impose a reasonable charge for doing so.

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

- 37.1** The trust shall make the following documents available for inspection by members of the public free of charge at all reasonable times:
  - 37.1.1** a copy of the current constitution,
  - 37.1.2** a copy of the latest annual accounts and of any report of the

auditor on them, and

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

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

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

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

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

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

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

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

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

## **38. Auditor**



**38.1** The trust shall have an auditor.

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

### **39. Audit committee**

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

### **40. Accounts**

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

**40.2** Monitor 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 Monitor may with the approval of the Secretary of State direct.

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

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

**41.1** The trust shall prepare an Annual Report and send it to Monitor.

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

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

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

**41.5** Each forward plan must include information about –

**41.5.1** the activities other than the provision of goods and services for the purposes of the health service in England that the

trust proposes to carry on, and  
**41.5.2** the income it expects to receive from doing so.

**41.6** Where a forward plan contains a proposal that the trust carry on an activity of a kind mentioned in sub-paragraph 41.5.1 the Council of Governors must –

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

**41.6.2** notify the directors of the trust of its determination.

**41.7** A trust which proposes to increase by 5% or more the proportion of its total income in any financial year attributable to activities other than the provision of goods and services for the purposes of the health service in England may implement the proposal only if more than half of the members of the council of governors of the trust voting approve its implementation.

## **42. Presentation of the annual accounts and reports to the governors and members**

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

**42.1.1** the annual accounts

**42.1.2** any report of the auditor on them

**42.1.3** the annual report.

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

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

## **43. Instruments**

**43.1** The trust shall have a seal.

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

## **44. Amendment of the constitution**

- 44.1** The trust may make amendments 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.

- 44.4** Amendments by the trust of its constitution are to be notified to Monitor. For the avoidance of doubt, Monitor'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 constitution does not contain any descriptions of the term 'significant transaction' for the purposes of section 51A of the 2006 Act (Significant Transactions).

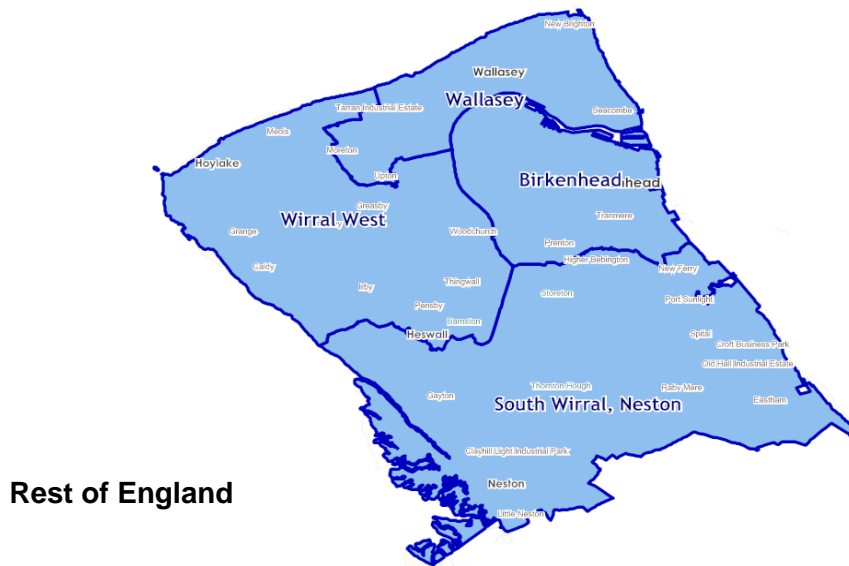
## **ANNEX 1 – THE PUBLIC CONSTITUENCIES**

(Paragraph 7)

### **Minimum numbers of patients in each Public Constituency area**

The Public Constituencies of Wirral Community Health & Care NHS Foundation Trust are as shown below:

Name	Minimum number of members
Birkenhead	50
Wallasey	50
Wirral West	50
Wirral South and Neston	50
Rest of England	50



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

(Paragraph 8)

### **Minimum numbers of staff within the Staff Constituency**

All staff will be members of a single Staff Constituency. The minimum number of members of the Staff Constituency is 50.

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

(Paragraph 12)

1. The trust constituencies will have governors elected in accordance with the table below

Public constituency	Number of governors
Birkenhead	3
Wallasey	3
Wirral West	2
Wirral South and Neston	2
Rest of England	1

Staff constituency	3
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2. The appointed governors shall be appointed in accordance with the table below. They are specified for the purposes of sub-paragraph 9(7) of Schedule 7.

Appointed governors	
Wirral Borough Council	1
Wirral Clinical Commissioning Group	1
Healthwatch Wirral	1
Community Action Wirral	1
University of Chester	1
Housing Association (TBC)	1

3. The Secretary, having consulted with the individual partner organisations, is to adopt a process for agreeing the appointment of governor(s) to represent those organisations.

## **ANNEX 4 –THE MODEL ELECTION RULES (2014)**

(Paragraph 13)

### **PART 1: INTERPRETATION**

1. Interpretation

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

2. Timetable
3. Computation of time

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

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

### **PART 4: STAGES COMMON TO CONTESTED AND UNCONTESTED ELECTIONS**

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

### **PART 5: CONTESTED ELECTIONS**

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

*Action to be taken before the poll*

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

*The poll*

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

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

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

#### **PART 6: COUNTING THE VOTES**

- STV41. Interpretation of Part 6
42. Arrangements for counting of the votes
43. The count
- STV44. Rejected ballot papers and rejected text voting records
- FPP44. Rejected ballot papers and rejected text voting records
- STV45. First stage
- STV46. The quota
- STV47. Transfer of votes
- STV48. Supplementary provisions on transfer
- STV49. Exclusion of candidates
- STV50. Filling of last vacancies
- STV51. Order of election of candidates
- FPP51. Equality of votes

#### **PART 7: FINAL PROCEEDINGS IN CONTESTED AND UNCONTESTED ELECTIONS**

- FPP52. Declaration of result for contested elections
- STV52. Declaration of result for contested elections
53. Declaration of result for uncontested elections

#### **PART 8: DISPOSAL OF DOCUMENTS**

54. Sealing up of documents relating to the poll
55. Delivery of documents
56. Forwarding of documents received after close of the poll
57. Retention and public inspection of documents
58. Application for inspection of certain documents relating to election



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

FPP59. Countermand or abandonment of poll on death of candidate

STV59. Countermand or abandonment of poll on death of candidate

## **PART 10: ELECTION EXPENSES AND PUBLICITY**

### *Expenses*

60. Election expenses

61. Expenses and payments by candidates

62. Expenses incurred by other persons

### *Publicity*

63. Publicity about election by the corporation

64. Information about candidates for inclusion with voting information

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

## **PART 11: QUESTIONING ELECTIONS AND IRREGULARITIES**

66. Application to question an election

## **PART 12: MISCELLANEOUS**

67. Secrecy

68. Prohibition of disclosure of vote

69. Disqualification

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

**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 (Monitor, 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 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 spoiled 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
- (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

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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.

- 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 spoiled ballot papers and the list of spoiled 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 sub-paragraphs (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 Wirral Community Health & Care NHS Foundation 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 Wirral Community Health & Care NHS Foundation 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 spoilt ballot papers and the list of spoilt text message votes,
- (c) the list of lost ballot documents, and
- (d) the list of eligible voters,

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

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

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

**55. Delivery of documents**

55.1 Once the documents relating to the poll have been sealed up and endorsed pursuant to rule 56, 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 Monitor 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 Monitor 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 Monitor 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 Monitor 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. Monitor will refer the application to the independent election arbitration panel appointed by Monitor.
- 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 Monitor 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**

(Paragraph 15)

### **1. Eligibility to be a Governor**

A person may not become a governor of the trust, and if already holding such office will immediately cease to do so, if:

- 1.1 they are a Director of the trust, an executive director or chair of a health service body or a director of a local authority (save for in the case of an appointed governor to whom such criteria do not apply)
- 1.2 they are the spouse, partner, parent or child of a member of the Board of Directors of the trust
- 1.3 they are a member of a local authority's scrutiny committee covering health matters
- 1.4 being a member of one of the public constituencies, they refuse to sign a declaration, in the form specified by the Secretary, of particulars of their qualification to vote as a member of the trust, and that they are not prevented from being a member of the Council of Governors
- 1.5 they are subject to a sex offender order
- 1.6 they are a person to whom a moratorium period under a debt relief order applies (under part 7A of the Insolvency Act 1986)
- 1.7 they have within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with a health service body
- 1.8 they are a person whose tenure of office as the Chairman or as a member or director of a health service body has been terminated on the grounds that their appointment is not in the interests of the health service, for non-attendance at meetings, or for nondisclosure of a pecuniary interest
- 1.9 they are a member of the Staff Constituency and they are subject to a final written warning in connection with any position of employment held by them.
- 1.10 they refuse to undergo a Disclosure & Barring Service Check (DBS) check
- 1.11 the results of a Disclosure & Barring Service Check (DBS) check, in the opinion of the Chairman, renders them unsuitable to become or continue as a governor of the trust.

### **2. Termination of office and removal of governors**

- 2.1 A person holding office as a governor shall immediately cease to do so if:
  - 2.1.1 they resign by notice in writing to the Secretary
  - 2.1.2 they fail to attend three consecutive meetings, unless the other governors are satisfied that:
    - (a) the absences were due to reasonable causes; and
    - (b) they will be able to start attending meetings of the Council of Governors again within such a period as the other governors consider reasonable
  - 2.1.3 in the case of an elected governor, they cease to be a member of the constituency or class of the constituency by which they were elected
  - 2.1.4 in the case of an appointed Governor, the appointing organisation terminates the appointment
  - 2.1.5 they have refused without reasonable cause to undertake any training which the Council of Governors requires all governors to undertake
  - 2.1.6 they have 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
  - 2.1.7 they are removed from the Council of Governors under paragraph 2.2.
- 2.2 The trust will implement a clear policy and fair process, agreed and adopted by the Council of Governors, for the removal of a Governor 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:
  - 2.2.1 they have committed a serious breach of the code of conduct,
  - 2.2.2 they have acted in a manner detrimental to the interests of the trust, or
  - 2.2.3 the Council of Governors consider that it is not in the best interests of the trust for them to continue as a governor.

### **3. Appeal against removal**

- 3.1 Where there is any disagreement as to whether the proposal for removal is justified, an independent assessor agreeable to both parties will be requested to consider the evidence and determine whether the proposed removal is reasonable or otherwise.

#### **4. Vacancies amongst governors**

- 4.1 Where a vacancy arises on the Council of Governors for any reason other than expiry of term of office, paragraphs 3.2 and 3.3 will apply.
- 4.2 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 (such replacement to be appointed in accordance with the process which has been previously agreed with the Secretary).
- 4.3 Where the vacancy arises amongst the elected governors, the Council of Governors shall be at liberty to:
  - 4.3.1 if the most recent election for that seat was within the last six months, invite the next highest polling candidate for that seat at that election, who is willing to take office, to fill the seat for the remainder of that term of office and, if that candidate should decline to take office, the Council of Governors is at liberty to approach each of the remaining next highest polling candidates in descending order, until the seat is filled in accordance with this paragraph; or
  - 4.3.2 if the remainder of the term of office is less than six months, leave the seat vacant until the next planned election; or
  - 4.3.3 call an election within three months to fill the seat for the remainder of the term of office.

#### **5. Election of governors**

- 5.1 The initial elected governors of the trust will hold terms of either two or three years based on the numbers of votes received at the first election as follows:
  - 5.1.1 The governor elected with the lowest number of votes in respect of each public constituency area specified in Annex 1 (a total of 4 governors) will serve a term of two years.
  - 5.1.2 The governor elected with the lowest number of votes in respect of the Staff Constituency will serve a term of two years.
  - 5.1.3 All other governors will serve a term of three years.
- 5.2 At the initial election, if in any Public or Staff Constituency there is the

same number of prospective governors as there are vacant seats, drawing of lots shall be used to determine which governor serves a term of two years. The drawing of lots shall be supervised by the Returning Officer.

**ANNEX 6 – STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE  
COUNCIL OF GOVERNORS**

(Paragraph 17)

**1. Interpretation**

- 1.1. Any expression to which a meaning is given in the National Health Service Act 2006 has the same meaning in this interpretation and in addition:

Accounting Officer is the Chief Executive of the trust.

Board means the Board of Directors, formally constituted in accordance with this Constitution and consisting of the Chairman, and non-executive directors, appointed by the Council of Governors, and the executive directors, appointed by the Chair and the non-executive directors and (except for his own appointment) by the Chief Executive.

Budget means a resource, expressed in financial terms, approved by the Board for the purpose of carrying out, for a specific period, any or all of the functions of the trust;

Chairman is the person appointed by the Council of Governors to lead the Board and to ensure that it successfully discharges its overall responsibility for the trust as a whole. The Chairman shall be deemed to include the non-executive director appointed by the Council of Governors to take on the Chairman's duties if the Chairman is absent from the meeting or is otherwise unavailable.

Committee of the Board means a committee appointed by the Board with specific terms of reference, chair, and membership approved by the Board.

Committee of the Council means a committee appointed by the Council of Governors with specific terms of reference, chair, and membership approved by the Council of Governors.

Council means the Council of Governors, formally constituted in accordance with this Constitution, meeting in public and presided over by the Chairman.

Director means a person appointed to the Board in terms of paragraphs 25, 26, 28 and 29 of this Constitution.

Governor means a person elected or appointed to the Council in terms of paragraphs 12 and 13 of this Constitution.

Member means a person registered as a member of a constituency in terms of paragraphs 5 - 9 of this Constitution.

Motion means a formal proposition to be discussed and voted on during the course of a meeting.

Officer means an employee of the trust.

Trust means the Wirral Community Health & Care NHS Foundation Trust.

Working Day means any day other than a Saturday, Sunday or public holiday in the United Kingdom.

Save as permitted by law, the Chairman of the trust shall be the final authority on the interpretation of Standing Orders (on which he/she shall be advised by the Chief Executive and Director of Finance).

## **2. General Information**

- 2.1. The purpose of the Council Standing Orders is to ensure that the highest standards of corporate governance and conduct are applied to all Council meetings and associated deliberations. The Council shall at all times seek to comply with the NHS Foundation Trust Code of Governance, which is founded on "The Combined Code" and the trust's Code of Conduct for Governors.
- 2.2. All business shall be conducted in the name of the trust.
- 2.3. The Board shall appoint Trustees to administer, separately, charitable funds received by the trust and for which they are accountable to the Charity Commission.
- 2.4. A Governor who has acted honestly and in good faith will not have to meet out of his or her own personal resources any personal civil liability which is incurred in the execution or purported execution of his or her function as a Governor save where the Governor has acted recklessly. On behalf of the Council and as part of the trust's overall insurance arrangements the Board shall put in place appropriate insurance provision to cover such indemnity.

## **3. Composition of the Council of Governors**

- 3.1. The composition of the Council shall be in accordance with Annex 3 of this Constitution.
- 3.2. Appointment and Removal of the Chairman and Deputy Chairman of the trust - The Chairman or Deputy Chairman of the trust will preside over meetings of the Council, such persons being appointed and removed by the Governors in accordance with the provisions of paragraphs 25 and 27 of the Constitution.
- 3.3. Duties of Deputy Chairman - Where the Chairman of the trust has died or has otherwise ceased to hold office or where he is unable to perform his duties as Chairman owing to illness, absence from England and Wales or any other cause, references to the Chairman shall, so long as there is no Chairman able to perform his duties, be taken to include references to the Deputy Chairman.

## **4. Meetings of the Council of Governors**

### **4.1. Meetings in Public**

- 4.1.1. Meetings of the Council must be open to the public subject to the provisions of paragraph 4.1.2 below.
- 4.1.2. The Council may resolve to exclude members of the public from any meeting or part of a meeting on the grounds that:

- 4.1.2.1. publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted; or
  - 4.1.2.2. there are special reasons stated in the resolution and arising from the nature of the business of the proceedings.
  - 4.1.3. The Chairman may exclude any member of the public from the meeting of the Council if he is interfering with or preventing the reasonable conduct of the meeting.
  - 4.1.4. Meetings of the Council shall be held a minimum of four times each year, at such times and places that the Council may determine.
  - 4.1.5. No record of meetings of the Council shall be made in any manner whatsoever, other than in writing, to make any oral report of proceedings as they take place, without the prior agreement of the Council.
  - 4.1.6. The Council may request the Chief Executive, and other appropriate directors, to attend any meeting of the Council to enable governors to raise questions about the trust affairs.
- 4.2. **Calling Meetings** - Notwithstanding, paragraph 4.1.4 above, the Chairman may, in exceptional circumstances, call a meeting of the Council at any time. If the Chairman refuses to call a meeting after a requisition for that purpose, signed by half of the governors, or if, without so refusing, the Chairman does not call a meeting within fourteen days after requisition to do so, then the governors may forthwith call a meeting provided they have been requisitioned to do so by at least half of the governors.

#### 4.3. **Notice of Meetings**

- 4.3.1. Before each meeting of the Council, a notice of the meeting, specifying the business proposed to be transacted at it, and signed by the Chairman, or by an Officer of the trust authorised by the Chairman to sign on his behalf, shall be displayed at the trust's offices and delivered to every governor, or sent by post to the usual place of residence of such governor, so as to be available to him at least three clear Working Days before the meeting. Lack of service of the notice on any governor shall not affect the validity of a meeting subject to paragraph 4.3.3.
- 4.3.2. Notwithstanding the above requirement for notice, the Chairman may waive notice on written receipt of the agreement of at least 50% of governors.
- 4.3.3. In the case of a meeting called by the governors in default of the Chairman, the notice shall be signed by those governors calling the meeting and no business shall be transacted at the meeting other than that specified in the notice. Failure to serve such a notice on more than three quarters of governors will invalidate the meeting. A notice will be presumed to have been served at the time at which the notice would be delivered in the ordinary course of the post.

#### 4.4. **Setting the Agenda**

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

4.4.2. A governor desiring a matter to be included on an agenda shall make his request in writing to the Chairman at least ten clear days before the meeting. The request should state whether the matter is proposed to be transacted in the presence of the public and should include appropriate supporting information. Requests made less than ten clear days before a meeting may be included on the agenda at the discretion of the Chairman.

**4.5. Chairman of Meeting** - At any meeting of the Council, the Chairman, if present, shall preside. If the Chairman is absent from the meeting, the Deputy Chairman shall preside. Otherwise, such non-executive director as the governors shall choose shall preside. If the person presiding at any such meeting has a conflict of interest in relation to the business being discussed, he/she shall not chair that part of the meeting and another chair shall be appointed for that/those item(s) in accordance with this paragraph.

#### **4.6. Notices of Motions**

4.6.1. A governor desiring to move or amend a motion shall send a written notice thereof at least ten clear days before the meeting to the Chairman, who shall insert it in the Agenda for the meeting. This paragraph shall not prevent any motion being moved during the meeting, without notice, on any business mentioned on the agenda subject to paragraph 4.3 of these Standing Orders.

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

4.6.3. Notice of motion to amend or rescind any resolution (or the general substance of any resolution), which has been passed within the preceding six calendar months, shall bear the signature of the governors who give it and also the signature of four other governors. When any such motion has been disposed of by the Council it shall not be competent for any governor, other than the Chairman, to propose a motion to the same effect within six months; however the Chairman may do so if he considers it appropriate.

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

4.6.5. When a motion is under discussion or immediately prior to discussion it shall be open to a governor to move:

4.6.5.1. An amendment to the motion.

4.6.5.2. The adjournment of the discussion or the meeting.

4.6.5.3. The appointment of an ad hoc committee to deal with a specific item of business.



4.6.5.4. That the meeting proceeds to the next business.

4.6.5.5. That the motion be now put.

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

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

In the case of motions under 4.6.5.4 and 4.6.5.5, to ensure objectivity, such motions may only be put by a governor who has not previously taken part in the debate.

**4.7. Chairman's Ruling** - Statements of governors made at meetings of the Council shall be relevant to the matter under discussion at the material time and the decision of the Chairman of the meeting on questions of order, relevancy, regularity and any other matters shall be observed at the meeting.

#### **4.8. Voting**

4.8.1. Except where otherwise provided within the constitution, decisions at meetings shall be determined by a majority of the votes of the governors present and voting. In the case of any equality of votes, the person presiding shall have a second or casting vote.

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

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

4.8.4. If a governor so requests, his vote shall be recorded by name upon any vote (other than by paper ballot).

4.8.5. In no circumstances may an absent governor vote by proxy although the Council may agree that its governors may participate in its meetings by telephone, video or video media link. Subject to participation in a meeting in this manner (which shall be deemed to constitute presence in person at the meeting) absence is defined as being absent at the time of the vote.

#### **4.9. Suspension of Standing Orders**

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

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

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

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

4.9.5. The trust's Audit Committee shall review every decision to suspend the Standing Orders.

4.10. **Variation and Amendment of Standing Orders** – Without prejudice to the terms of this Constitution, these Standing Orders shall be amended only if:

4.10.1. notice of motion has been given;

4.10.2. no fewer than half the total of the governors vote in favour of amendment;

4.10.3. at least two-thirds of the governors are present; and

4.10.4. the variation proposed does not contravene a statutory provision.

4.11. **Record of Attendance** - The names of the governors present, any apologies received and the person presiding at the meeting shall be recorded in the minutes.

4.12. **Minutes**

4.12.1. The minutes of the proceedings of the meeting shall be drawn up and maintained as a public record. They will be submitted for agreement at the next meeting where they will be signed by the person presiding at it.

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

4.12.3. Minutes shall be circulated in accordance with the governors' wishes.

4.13. **Quorum**

4.13.1. No business shall be transacted at a meeting of the Council unless at least one third of the governors are present including at least one of the appointed governors

4.13.2. If a governor has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of the declaration of a conflict of interest he 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.

## 5. **Arrangements for the Exercise of Functions by Delegation**

- 5.1. **Emergency Powers** - The powers which the Council has retained to itself within these Standing Orders may in emergency be exercised by the Chairman after having consulted at least five elected governors. The exercise of such powers by the Chairman shall be reported to the next formal meeting of the Council for ratification.
- 5.2. **Delegation to Committees** - The Council may agree from time to time to the delegation of its duties to committees, which it has formally constituted. To ensure clarity of purpose, the terms of reference and membership of these committees, or sub-committees, and their specific powers shall be laid out in accordance with trust policy and approved by the Council.
- 5.3. **Delegation to a governor** – The Council may delegate duties to an individual governor but only under a clear remit approved by the Council.
- 5.4. **Governance Manual** – The trust shall produce a Governance Manual which shall provide details of the matters that the Council has delegated to Committees of the Council (including the terms of reference and membership of each Committee of the Council). The Governance Manual shall also include the Code of Conduct for Governors, details of the matters that the Board has, for the time being, reserved for itself and/or delegated to Committees of the Board and/or delegated to the Chief Executive and Executive Directors of the trust and the trust's Standing Financial Instructions. The Governance Manual shall be reviewed at least every two years and, if necessary, amended. Any provisions relating to the terms of reference and membership of a Committee of the Council may be amended only with the agreement of the Council.

## 6. **Committees of the Council**

- 6.1. The Council may appoint committees of the Council consisting of governors and/or persons who are not governors.
- 6.2. These Standing Orders, as far as they are applicable, shall apply also, with appropriate alteration, to meetings of any committees or sub-committees so established by the Council.
- 6.3. Each such committee shall have such terms of reference and powers and be subject to such conditions (as to reporting back to the Council) as the Council shall decide. Such terms of reference shall have effect as if incorporated into these Standing Orders.
- 6.4. The Council shall approve the membership to all committees that it has formally constituted and shall determine the Chairman of each committee.

## **7. Confidentiality**

7.1. Except as required by law and/or any obligations that an individual has or may have to raise concerns about patient safety and care with regulatory or other appropriate statutory bodies pursuant to any applicable professional and/or ethical obligations, a governor or a non-governor in attendance at a committee shall not disclose a matter dealt with by, or brought before, the committee without its permission or until the committee shall have reported to the Council or shall otherwise have concluded on that matter.

7.2. Except as required by law and/or any obligations that an individual has or may have to raise concerns about patient safety and care with regulatory or other appropriate statutory bodies pursuant to any applicable professional and/or ethical obligations, a governor or a non-governor in attendance at a committee shall not disclose any matter dealt with by the committee, notwithstanding that the matter has been reported or action has been concluded, if the Council or committee resolves that it is confidential.

## **8. Declaration of Interests and Register of Interests**

### **8.1. Declaration of Interests**

8.1.1. Governors are required to comply with the trust's standards of business conduct and to declare interests in accordance with the Constitution and any other interests that are relevant and material to the Council. All governors should declare such interests on appointment and on any subsequent occasion that a conflict arises.

8.1.2. Interests regarded as "relevant and material" are:

- 8.1.2.1. Directorships, including non-executive directorships held in private companies or PLCs (with the exception of those of dormant companies);
- 8.1.2.2. Ownership or part-ownership of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS;
- 8.1.2.3. Employment with any private company, business or consultancy;
- 8.1.2.4. Significant share holdings (more than 5%) in organisations likely or possibly seeking to do business with the NHS;
- 8.1.2.5. A position of authority in a charity or voluntary organisation in the field of health and social care; or
- 8.1.2.6. Any connection with a voluntary or other organisation contracting for NHS services.

8.1.3. If a governor has any doubt about the relevance of an interest, he should discuss it with the Chairman who shall advise him whether or not to disclose the interest.

8.1.4. At the time Governors' interests are declared, they should be recorded in the Council minutes and entered on a Register of Interests of Governors to be maintained by the Secretary. Any changes in interests should be declared at the next Council meeting following the change occurring.

8.1.5. Governors' directorships of companies likely or possibly seeking to do business with the NHS should be published in the trust's annual report.

8.1.6. During the course of a Council meeting, if a conflict of interest is established, the Governor concerned shall, unless two thirds of those governors present agree otherwise, withdraw from the meeting and play no part in the relevant discussion or decision.

8.1.7. There is no requirement for the interests of governors' spouses or partners to be declared except where a governor is cohabiting with his spouse or partner, whereby any interest of a spouse or partner in a contract shall be declared.

## **8.2. Register of Interests**

8.2.1. The Registrar will ensure that a Register of Interests is established to record formally declarations of interests of governors.

8.2.2. Details of the Register will be kept up to date and reviewed monthly.

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

## **9. Compliance - Other Matters**

9.1. Governors of the trust shall comply with Standing Financial Instructions prepared by the Director of Finance and approved by the Board for the guidance of all staff employed by the trust.

9.2. Governors must behave in accordance with the trust's Code of Conduct as amended from time to time and the seven Nolan principles of behaviour in Public Life:

9.2.1. selflessness;

9.2.2. integrity;

9.2.3. objectivity;

9.2.4. accountability;

- 9.2.5. openness;
- 9.2.6. honesty; and
- 9.2.7. leadership.

## **10. Resolution of Disputes with the Board**

- 10.1. The Council has three main roles:
  - 10.1.1. Advisory - It communicates to the Board the wishes of Members and the wider community.
  - 10.1.2. Guardianship - It ensures that the trust is operating in accordance with its Statement of Purpose and is compliant with its Provider Licence. In this regard it acts in a Trustee role for the welfare of the organisation.
  - 10.1.3. Strategic - It advises on a longer term direction to help the Board effectively determine its policies.
  
- 10.2. The Board has overall responsibility for running the affairs of trust. Its role is to:
  - 10.2.1. Take advice from the Council;
  - 10.2.2. Set a strategic direction;
  - 10.2.3. Set organisational and operational targets;
  - 10.2.4. Minimise risk;
  - 10.2.5. Assess achievement against the above objectives;
  - 10.2.6. Ensure that action is taken to eliminate or minimise, as appropriate, adverse deviations from objectives; and
  - 10.2.7. Ensure that the highest standards of Corporate Governance are applied throughout the organisation.
  
- 10.3. Should a dispute arise between the Council and the Board then the dispute resolution procedure set out below recognises the different roles of the Council and the Board as described above.
  - 10.3.1. The Chairman (or Deputy Chairman if the dispute involves the Chairman) shall first endeavour through discussion with governors and Directors or, to achieve the earliest possible conclusion, appropriate representatives of them, to resolve the matter to the reasonable satisfaction of both parties.
  - 10.3.2. Failing resolution under 10.3.1 above then the Board or the Council, as appropriate, shall at its next formal meeting approve the precise wording of a Disputes Statement setting out clearly and concisely the issue or issues giving rise to the dispute.
  - 10.3.3. The Chairman shall ensure that the Disputes Statement, without amendment or abbreviation in any way, shall be an Agenda Item and Agenda Paper at the next formal meeting of the Board or Council as appropriate. That meeting shall agree the precise wording of a Response to Disputes Statement.

- 10.3.4. The Chairman or Deputy Chairman (if the dispute involves the Chairman) shall immediately or as soon as is practical, communicate the outcome to the other party and deliver the written Response to Disputes Statement. If the matter remains unresolved or only partially resolved then the procedure outlined in 10.3.1 above shall be repeated.
  - 10.3.5. If, in the opinion of the Chairman or Deputy Chairman (if the dispute involves the Chairman), and following the further discussions prescribed in 10.3.4, there is no further prospect of a full resolution or, if at any stage in the whole process, in the opinion of the Chairman or Deputy Chairman, as the case may be, there is no prospect of a resolution (partial or otherwise) then he shall advise the Council and the Board accordingly.
  - 10.3.6. On the satisfactory completion of this disputes process the Board shall implement agreed changes.
  - 10.3.7. On the unsatisfactory completion of this disputes process the view of the Board shall prevail.
- 10.4. Nothing in this procedure shall prevent the Council, if it so desires, from informing Monitor that, in the Council's opinion, the Board has not responded constructively to concerns of the Council that the trust is not meeting the terms of its Provider Licence.

## **11. Council Performance**

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

12. The validity of any act of the Council is not affected by any vacancy among the governors or by any defect in the appointment of any governor.

## **13. Standing Orders to be given to governors**

It is the duty of the Secretary to the trust to ensure that existing Governors and all new appointees are notified of their responsibilities within these Standing Orders. New governors shall be informed in writing and shall receive copies where appropriate of these Standing Orders.

# 1. INTRODUCTION

## 1.1 Statutory Framework

Wirral Community Health & Social Care NHS Foundation Trust (the Trust) is a public benefit corporation which came into existence on 1 May 2016 following approval by the Independent Regulator (Monitor) pursuant to the Health and Social Care (Community Health and Standards) Act 2006 (the 2006 Act). The Trust's licence number is 130162.

The Head Office of the Trust is at St Catherine's Health Centre, Derby Road, Birkenhead, Wirral, CH42 0LQ.

NHS Foundation Trusts are governed by Acts of Parliament, mainly the National Health Service Act 1977 (NHS Act 1977), the National Health Service and Community Care Act 1990 (NHS & CC Act 1990) as amended by the Health Authorities Act 1995, the Health Act 1999 and the Health and Social Care Act 2001 and 2003 and the 2006 Act. The functions of the Trust are conferred by this legislation.

As a public benefit corporation, the Trust has specific powers to contract in its own name and to act as a corporate trustee. In the latter role it is accountable to the Charity Commission for those funds deemed to be charitable.

The Trust will also be bound by such other statutes and legal provisions which govern the conduct of its affairs.

## 1.2 NHS Framework

The NHS Regulatory Framework requires the Trust to adopt Standing Orders for the regulation of its proceedings and business. The Trust must also adopt Standing Financial Instructions (SFIs) as an integral part of Standing Orders setting out the responsibilities of individuals.

The Board of Directors will ensure that it follows the NHS Foundation Trust Code of Governance.

The Code of Accountability requires that, inter alia, Boards draw up a schedule of decisions reserved to the Board, and ensure that management arrangements are in place to enable responsibility to be clearly delegated to senior executives (a scheme of delegation). The code also requires the establishment of audit and remuneration committees with formally agreed terms of reference. The Codes of Conduct makes various requirements concerning possible conflicts of interest of Board members.

The Code of Practice on Openness in the NHS sets out the requirements for public access to information on the NHS.

All NHS bodies are required by law to take account of the NHS Constitution (updated in August 2014) in their decisions. The NHS Constitution aims to safeguard the enduring principles and values of the NHS by setting out clear expectations about behaviours of both staff and patients. It is intended to empower the public, patients and staff by setting out legal rights. The Constitution also sets out clear expectations about the behaviours of both staff and patients.



### 1.3 Delegation of Powers

The Trust has powers to delegate and make arrangements for delegation. The Standing Orders set out the detail of these arrangements.

Under the Standing Order relating to the Arrangements for the Exercise of Functions (SO6) the Trust is given powers to "make arrangements for the exercise, on behalf of the Trust of any of their functions by a committee, sub-committee or joint committee appointed by virtue of Standing Order 4 or by an officer of the Trust, in each case subject to such restrictions and conditions as the Board of Directors thinks fit.

Delegated Powers are covered in a separate document entitled - '*Schedule of Matters reserved to the Board and Scheme of Delegation*' and have effect as if incorporated into the Standing Orders and Standing Financial Instructions.

### 1.4 Integrated Governance

Integrated Governance is a co-coordinating principle. It does not seek to replace or supersede clinical, financial or any other governance domain; rather it highlights their vital importance and their inter-dependence and interconnectivity.

It is;

- Underpinned by intelligent information and public/patient engagement
- Is intended to move organisations towards good governance
- Moves governance out of individual silos into a coherent and complementary set of challenges
- Requires boards to focus on strategic objectives, but also to know when and how to drill down to critical areas of delivery
- Requires the development of robust assurance and reporting of delegated clinical and operational decision-making in line with well-developed controls

(The Integrated Governance Handbook, March 2011)

## 2. THE TRUST

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

**2.2** All the powers of the Trust shall be exercised by the Board of Directors on behalf of the Trust.

**2.3** The Board of Directors has resolved that certain powers and decisions may only be exercised by the Board of Directors in formal session. These powers and decisions are set out in [Reservation of Powers to the Board Directors and Scheme of Delegation] and have effect as if incorporated into the Standing Orders.

**2.4 Composition of the Board of Directors** - In accordance with the Constitution (para22) the composition of the Board of Directors shall comprise both Executive and Non-Executive Directors;

- a) A non-executive Chairman
- b) At least four, but not more than six other non-executive directors

- c) At least four, but not more than six executive directors provided that at all times at least half the Board of Directors, excluding the Chairman should comprise Non-Executive Directors.
- d) One of the executive directors shall be the Chief Executive and the Chief Executive shall be the Accounting Officer
- e) One of the executive directors shall be the Chief Finance Officer
- f) One of the executive directors is to be a registered medical practitioner or a registered dentist
- g) One of the executive directors is to be a registered nurse or a registered midwife

**2.5 Appointment of Chairman and Non-Executive Directors** - The Chair and Non- Executive Directors are appointed by the Council of Governors. Otherwise the appointment, removal and tenure of office of the Chair and Non-Executive Directors are set out in the Constitution (para 24 & 25) and subsequent amendments.

**2.6 Appointment of the Chief Executive and other Executive Directors** - The Chief Executive and Executive Directors are appointed by the Non-Executive Directors. Otherwise the appointment and removal of the Chief Executive and Executive Directors are set out in the Constitution (para 28) and subsequent amendments.

**2.7 Terms of Office of the Chair and Directors** - The regulations setting out the period of tenure of office of the Chair and Directors and for the termination or suspension of office of the Chair and Directors are contained in the Constitution (para 26-30)

**2.8 Appointment and Powers of Deputy Chairman** - The Council of Governors shall appoint one of the non-executive directors as deputy chairman, as set out in para 27 of the Constitution.

- a) Any Non-Executive Director so appointed may at any time resign from the office of Deputy Chairman by giving notice in writing to the Chair and the Council of Governors.
- b) Where the Chair of the Trust ceases to hold office, or where they have been unable to perform their duties as Chair owing to illness or any other cause, the Deputy Chairman shall act as Chairman until a new Chairman is appointed or the existing Chairman resumes their duties, as the case may be; and references to the Chairman in these Standing Orders shall, so long as there is no Chairman able to perform those duties, be taken to include references to the Deputy Chairman.

**2.9 Joint Directors** - Where more than one person is appointed jointly to a post mentioned in the Constitution, those persons shall count for the purpose of SO2.4 as one person.

- a) Where the office of a member of the Board is shared jointly by more than one person:
  - Either or both of those persons may attend or take part in meetings of the Board;

- If both are present at a meeting they should cast one vote if they agree;
- In the case of disagreements no vote should be cast;
- The presence of either or both of those persons should count as the presence of one person for the purposes of Standing Order 3.16 quorum.

**2.10 Role of Directors** - The Board of Directors shall function as a corporate decision-making body, Executive and Non-Executive Directors will be full and equal members. Their role as members of the Board of Directors will be to consider the key strategic and managerial issues facing the Trust in carrying out its statutory and other functions.

### **2.11 Executive Directors**

Executive Directors shall exercise their authority within the terms of these Standing Orders and Standing Financial Instructions and the Scheme of Delegation.

### **2.12 Chief Executive**

The Chief Executive shall be responsible for the overall performance of the executive functions of the Trust. They are the Accounting Officer for the Trust and shall be responsible for ensuring the discharge of obligations under Financial Directions and in line with the requirements of the Accounting Officer Memorandum for NHS Foundation Trust Chief Executives.

### **2.13 Chief Finance Officer**

The Chief Finance Officer shall be responsible for the provision of financial advice to the Trust and to its members and for the supervision of financial control and accounting systems. They shall be responsible along with the Chief Executive for ensuring the discharge of obligations under relevant Financial Directions.

### **2.14 Non-Executive Directors**

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

### **2.15 Chairman**

- a) The Chairman shall be responsible for the operation of the Board of Directors and chair all Board meetings when present. The Chairman has certain delegated executive powers. The Chairman must comply with the terms of appointment as confirmed by the Council of Governors and with these Standing Orders.
- b) The Chairman shall liaise with the Council of Governors over the appointment and re-appointment of Non-Executive Directors and once appointed shall take responsibility either directly or indirectly for their induction, their portfolios of interests and assignments, and their performance which shall be reported to the Council of Governors annually as per the FT Code of Governance.

- c) The Chairman shall work in close harmony with the Chief Executive and shall ensure that key and appropriate issues are discussed by the Board in a timely manner with all the necessary information and advice being made available to the Board to inform the debate and ultimate resolutions.

### **3. MEETINGS OF THE BOARD OF DIRECTORS**

#### **3.1 Calling Meetings**

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

#### **3.2 Notice of Meetings**

- a) Before each meeting of the Board of Directors a notice specifying the business proposed to be transacted shall be delivered to every member, or sent by post to the usual place of residence of each member, so as to be available to members at least three clear days before the meeting. The notice shall be signed by the Chair or by an officer authorised by the Chair to sign on their behalf.
- b) Failure to receive the notice by any Director shall not affect the validity of a meeting. c) In the case of a meeting called by Directors in default of the Chair calling the meeting, the notice shall be signed by those members and no business shall be transacted at the meeting other than that specified in the notice.
- c) Agendas will be sent to Directors three working days before the meeting (plus a weekend) and supporting papers shall accompany the agenda, but will certainly be dispatched no later than three clear days before the meeting, save in emergency.

#### **3.3 Calling a virtual meeting**

- a) In order to facilitate the Board of Directors undertaking the business required of it, there may on occasion be a need for this to be conducted outside of its scheduled meetings in circumstances where it would not be practical to convene a meeting 'in person'.
- b) In such circumstances the Board of Directors is authorised by its Terms of Reference to conduct business via a process of 'e-governance'. The rules to be observed when conducting business in this manner are as follows;
  - The business to be conducted must be set out in formal papers accompanied by the usual cover sheets which clearly set out the nature of the business to be conducted and the proposal which members are being asked to consider.

- The papers will be forwarded by the Director of Corporate Affairs via e-mail to all members of the Board of Directors who, subject to their availability, are expected to respond by e-mail to the same distribution list with their views within three working days of receipt of the papers.
- For the conclusion of the Board to be valid, responses must be received from a quorum (at least one third of the whole number of voting directors) of Board membership and in instances where the approval of the Board of Directors is sought; all such responses should support the proposal.
- In the event that there is not a unanimous agreement of all responding Members, the proposal shall be considered not to be approved.
- The Director of Corporate Affairs will summarise the conclusions reached for the agreement of the Chair and this summary will be presented to the next scheduled meeting of the Board following which it will be appended to the minutes of that meeting.

### **3.4 Setting the Agenda**

- a) The Board of Directors may determine that certain matters shall appear on every agenda for a meeting and shall be addressed prior to any other business being conducted.
- b) A Director desiring a matter to be included on an agenda shall make their request in writing to the Chair at least 10 clear days before the meeting. The request should state whether the item of business is proposed to be transacted in the presence of the public and should include appropriate supporting information. Requests made less than 10 days before a meeting may be included on the agenda at the discretion of the Chair.
- c) Before each meeting of the Board of Directors a public notice of the time and place of the meeting, and the public part of the agenda, shall be displayed at the Trust's principal offices at least three clear days before the meeting.

**3.5 Petitions** - Where a petition has been received by the Trust, the Chair of the Board of Directors shall include the petition as an item for the agenda of the next meeting.

### **3.6 Chair of the Meeting**

- a) At any meeting of the Board of Directors, the Chairman, if present, shall preside. If the Chairman is absent from the meeting, the Vice-Chairman (if the Board has appointed one), if present, shall preside.
- b) If the Chair is absent temporarily on the grounds of a declared conflict of interest the Vice-Chairman, if present, shall preside. If the Chair and Deputy Chair are absent, or are disqualified from participating, such Non-Executive Directors present shall choose who shall preside.

**3.7 Notices of Motion** - A Director of the Board desiring to move or amend a motion shall send a written notice thereof at least 10 clear days before the meeting to the Chair, who shall insert in the agenda for the meeting all notices so received

subject to the notice being permissible under the appropriate regulations. This paragraph shall not prevent any motion being moved during the meeting, without notice on any business mentioned on the agenda.

**3.8 Withdrawal of Motion or Amendments** - A motion or an amendment to a motion once moved and seconded may be withdrawn by the proposer with the concurrence of the seconder and the consent of the Chair.

**3.9 Motion to Rescind a Resolution** - Notice of motion to amend or rescind any resolution (or the general substance of any resolution) which has been passed within the preceding 6 calendar months shall bear the signature of the Director who gives it and also the signature of 4 other Directors. When any such motion has been disposed of by the Board of Directors, it shall not be competent for any Director other than the Chair to propose a motion to the same effect within 6 months; however the Chair may do so if he/she considers it appropriate.

**3.10 Motions** - The mover of a motion shall have a right of reply at the close of any discussion on the motion of any amendment thereto.

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

- an amendment to the motion;
- the adjournment of the discussion, or the meeting;
- that the meeting proceed to the next business (\*);
- that the question should be now put (\*);
- the appointment of an 'ad hoc' committee to deal with a specific item of business;
- that a member/director be not further heard;
- a motion under Section I (2) or Section I (8) of the Public Bodies (Admissions to Meetings) Act 1960 resolving to exclude the public, including the press (see Standing Order 3.16).

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 and who is eligible to vote.

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

### **3.11 Procedure at and during a meeting**

#### a) Who may propose

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

#### b) 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:

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

c) Amendments to motions

A motion for amendment shall not be discussed unless it has been proposed and seconded. Amendments to motions shall be moved relevant to the motion, and shall not have the effect of negating the motion before the Board. If there are 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.

d) Rights of reply to motions

- Amendments

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

- 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.

**3.12 Emergency motions** - Subject to the agreement of the Chair, and subject also to the provision of Standing Order 3.10 '*Motions: Procedure at and during a meeting*', a member of the Board may give written notice of an emergency motion after the issue of the notice of meeting and agenda, up to one hour before the time fixed for the meeting. The notice shall state the grounds of urgency. If in order, it shall be declared to the Board of Directors at the commencement of the business of the meeting as an additional item included in the agenda. The Chair's decision to include the item shall be final.

**3.13 Chair's ruling** - the decision of the Chairman of the meeting on questions of order, relevancy and regularity (including procedure on handling motions) and their interpretation of the Standing Orders and Standing Financial Instructions, at the meeting, shall be final.

**3.14 Voting** - every question put to a vote at a meeting shall be determined by a majority of the votes of members present and voting on the question. In the case of an equal vote, the Chair shall have a second, and casting vote.

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

- b) If at least one-third of the Directors present so request, the voting (other than by paper ballot) on any question may be recorded so as to show how each Director present voted or abstained.
- c) If a Director so requests, his/her vote shall be recorded by name.
- d) In no circumstances may an absent Director vote by proxy. Absence is defined as being absent at the time of the vote.
- e) An officer who has been appointed formally by the Board of Directors 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 of Directors to represent an Executive Director during a period of incapacity or temporary absence without formal acting up status may not exercise the voting rights of the Executive Director. An officer's status when attending a meeting shall be recorded in the minutes.

### **3.15 Minutes**

- a) The minutes of the proceedings of a meeting shall be drawn up and submitted for agreement at the next ensuing meeting where they shall be signed by the Chair presiding at it.
- b) No discussion shall take place upon the minutes except upon their accuracy or where the Chair considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the next meeting.
- c) Minutes shall be circulated in accordance with Directors' wishes. Where providing a record of a public meeting the minutes shall be made available to the public as required by Code of Practice on Openness in the NHS.

### **3.16 Quorum**

- a) No business shall be transacted at a meeting of the Board of Directors unless at least one-third of the whole number of the Chair and Directors appointed (including at least one Non-Executive and one Executive Director) is present.
- b) An Officer in attendance for an Executive Director but without formal acting up status may not count towards the quorum.
- c) If the Chair or Director has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of a declaration of a conflict of interest (see SO8) that person shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business.
- d) Attendance by telephone link, agreed in advance with the Chair of the meeting, by any member of the Board of Directors will count towards quorum and such attendance will be recorded as being present.

**3.17 Record of Attendance** - The names of the Chairman and Directors present at the meeting shall be recorded in the minutes.



### **3.18 Suspension of Standing Orders**

- a) Except where this would contravene any provision of the constitution or any direction made by the Independent Regulator of NHS Foundation Trusts any one or more of the Standing Orders may be suspended at any meeting, provided that at least two-thirds of the Board of Directors are present including one Executive Director Member of the Trust and one Non-Executive Director and that at least two-thirds of those present signify their agreement to such suspension. The reason for the suspension shall be recorded in the Trust Board's minutes.
- b) A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the Chair and Board of Directors.
- c) No formal business may be transacted while Standing Orders are suspended.
- d) The Audit Committee shall review every decision to suspend Standing Orders within a timeframe agreed by the Trust Chair.

### **3.19 Variation and amendment of Standing Orders** - These standing orders shall be amended only if;

- Upon a notice of motion under Standing Order 3.9
- Upon a recommendation of the Chair or Chief Executive included on the agenda for the meeting;
- That two-thirds of the Board members are present at the meeting where the variation or amendment is being discussed, and that at least half of the Trust's Non-Executive Directors vote in favour of the amendment;
- Providing that any variation or amendment does not contravene a statutory provision or direction made by the Independent Regulator of NHS Foundation Trusts.

### **3.20 Admission of the public and press**

In accordance with paragraph 31.1 of the constitution 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.

- a) The Board of Directors shall decide the arrangement and terms and conditions it feels appropriate to offer in extending an invitation to observers to attend and address any of the Board of Directors' meeting and may change, alter or vary these terms and conditions as it deems fit.
- b) Use of Mechanical or Electrical Equipment for Recording or Transmission of Meetings.

Nothing in these Standing Orders shall be construed as permitting the introduction by the public, or press representatives, of recording, transmitting, video or similar apparatus into meetings of the Trust thereof. Such permission shall be granted only upon resolution of the Trust.

- c) Observers at Trust meetings

The Trust will decide what arrangements and terms and conditions it feels are appropriate to offer in extending an invitation to observers to attend and address any of the Trust Board's meetings and may change, alter or vary these terms and conditions as it deems fit.

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

### **4.1 Appointment of Committees**

- a) Subject to such directions as may be given by the Independent Regulator of Foundation Trusts, the Board of Directors may appoint committees of the Trust.
- b) The Board of Directors shall determine the membership and terms of reference of committees and sub-committees and shall, receive and consider reports of such committees.

### **4.2 Joint Committees**

- a) Joint committees may be appointed by the Board of Directors by joining together with one or more other health service bodies consisting of, wholly or partly of the Chairman and the Board of Directors or other health service bodies, or wholly of persons who are not members of the Board of Directors or other health service bodies in question.
- b) Any committee or joint committee appointed under this Standing Order may, subject to such directions as may be given by the Independent Regulator of Foundation Trusts or the Board of Directors or other health bodies in question, appoint sub-committees consisting wholly or partly of members of the committees or joint committee (whether or not they are Directors of the Board or health bodies in question) or wholly of persons who are not Directors of the Board or health bodies in question or the committee of the Trust or health bodies in question.

### **4.3 Applicability of Standing Orders and Standing Financial Instructions to Committees**

The Standing Orders and Standing Financial Instructions of the Board of Directors, as far as they are applicable, shall as appropriate apply to meetings and any committees established by the Board of Directors. In which case the term "Chairman" is to be read as a reference to the Chairman of other committee as the context permits, and the term "member" is to be read as a reference to a member of other committee also as the context permits. There is no requirement to hold meetings of committees established by the Trust in public.

### **4.4 Terms of Reference**

Each such committee shall have terms of reference and powers and be subject to such conditions (as to reporting back to the Board of Directors), as the Board of Directors shall decide and shall be in accordance with any legislation and regulation or direction issued by the Independent Regulator of Foundation Trusts. Such terms of reference shall have effect as if incorporated into the Standing Orders.

#### **4.5 Delegation of powers by Committees to Sub-Committees**

Where committees are authorised to establish sub-committees they may not delegate executive powers to the sub-committee unless expressly authorised by the Board of Directors.

#### **4.6 Approval of Appointments to Committees**

The Board of Directors shall approve the appointments to each of the committees which it has formally constituted. Where the Board of Directors 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 within the powers of the Board of Directors as defined by the Independent Regulator of Foundation Trusts. The Board of Directors shall define the powers of such appointees and shall agree allowances, including reimbursement for loss of earnings, and/or expenses in accordance where appropriate with national guidance.

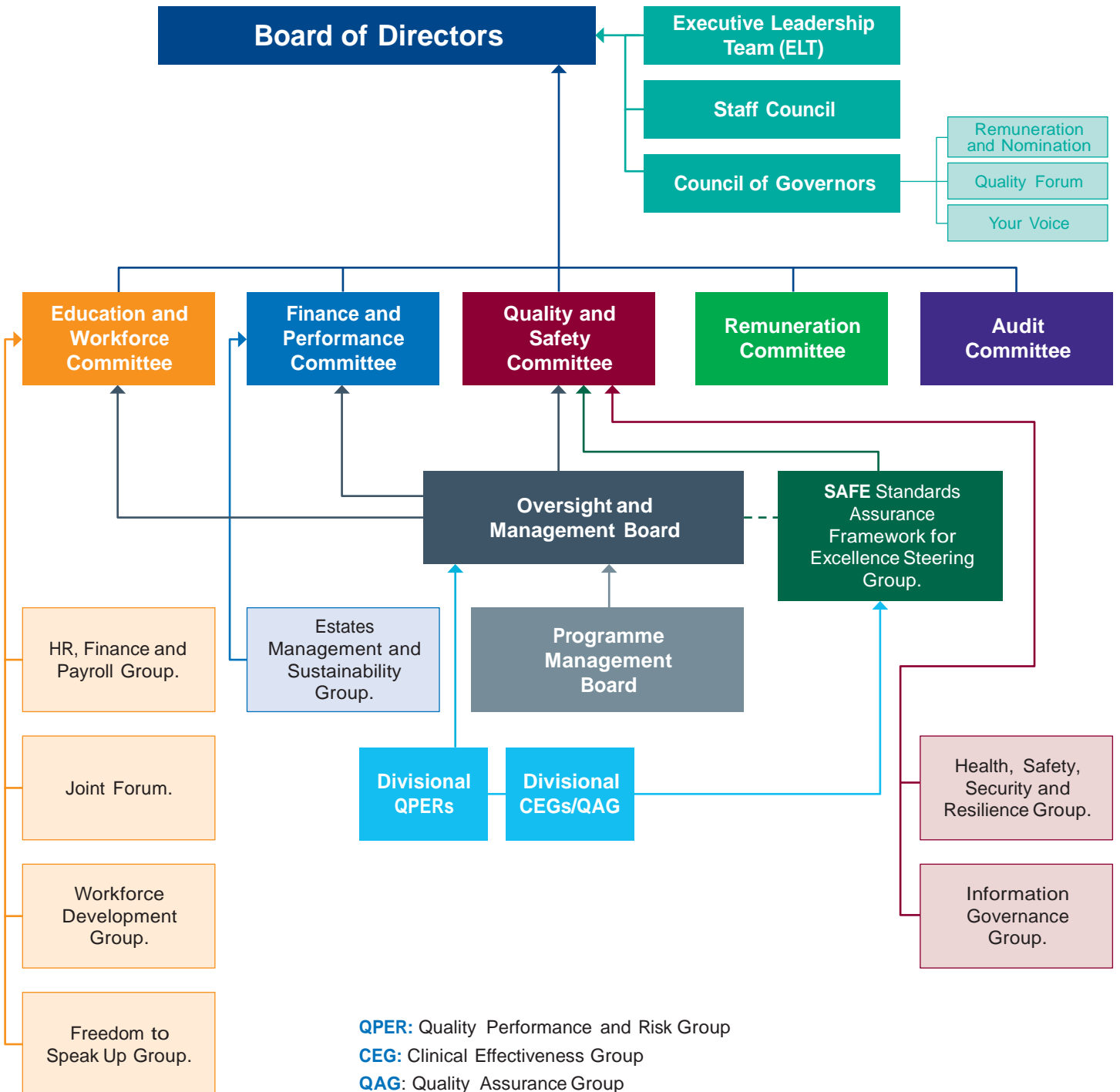
#### **4.7 Committees established by the Board of Directors**

The committees established by the Board of Directors are;

- Audit Committee
- Remuneration and Terms of Service Committee
- Quality and Safety Committee
- Finance and Performance Committee
- Education and Workforce Committee
- Other Committees

**The Board of Directors may establish other committees, sub committees and joint committees, including ad hoc committees, sub committees and joint committees at its discretion without requirement to amend these standing orders.**

# Governance structure



## **5. CONFIDENTIALITY**

- 5.1 A Director or appointee of a committee, sub-committee or joint committee shall not disclose a matter dealt with by, or brought before, the relevant committee without its permission until the committee shall have reported to the Board of Directors or shall otherwise have concluded on that matter.
- 5.2 A Director or an appointee of a committee, sub-committee or joint committee shall not disclose any matter reported to the Board of Directors or otherwise dealt with by the relevant committee, notwithstanding that the matter has been reported or action has been concluded, if the Board of Directors or committee shall resolve that it is confidential.

## **6. ARRANGEMENTS FOR THE EXERCISE OF TRUST FUNCTIONS BY DELEGATION**

### **6.1 Delegation of Functions to Committee, Officers or other bodies**

- a) Subject to the Constitution and Terms of Authorisation and such directions as may be given by the Independent Regulator of NHS Foundation Trusts, the Board of Directors may make arrangements for the exercise, on behalf of the Board of Directors, of any of its functions by a committee, sub-committee appointed by virtue of SO4, or by an officer of the Trust, or by another body as defined in SO6.1b) below, in each case subject to such restrictions and conditions as the Trust thinks fit.

In accordance with The Trust's (Membership, Procedure and Administration Arrangements) Regulations 2003 the functions of the Trust may also be carried out in the following ways:

- by another Trust;
  - jointly with any one or more of the following: NHS Trusts, NHS Foundation Trusts, special health authorities;
  - by arrangement with the appropriate Trust, by a joint committee or joint sub-committee of the Trust and one or more other health service bodies;
  - in relation to arrangements made under S63(1) of the Health Services and Public Health Act 1968, jointly with one or more Special Health Authorities, NHS Trusts or local health board.
- b) Where a function is delegated by these Regulations to another Trust, then that Trust or health service body exercises the function in its own right; the receiving Trust has responsibility to ensure that the proper delegation of the function is in place. In other situations, i.e. delegation to committees, sub committees or officers, the Trust delegating the function retains full responsibility.

### **6.2 Emergency Powers and urgent decisions**

The powers which the Board of Directors has reserved to itself within these Standing Orders may in emergency or for an urgent decision be

exercised by the Chief Executive and the Chairman after having consulted at least two Non-Executive Directors. The exercise of such powers by the Chief Executive and Chairman shall be reported to the next formal meeting of the Board of Directors for formal ratification.

### **6.3 Delegation to Committees**

- a) The Board of Directors shall agree from time to time to the delegation of executive powers to be exercised by committees, or sub-committees, or joint-committees, which it has formally constituted in accordance with directions issued by the Independent Regulator of NHS Foundation Trusts. The constitution and terms of reference of these committees, or sub-committees, or joint committees, and their specific executive powers shall be approved by the Board of Directors in respect of its sub-committees.
- b) When the Board of Directors is not meeting as the Trust in public session it shall operate as a committee and may only exercise such powers as may have been delegated to it by the Trust in public session.

### **6.4 Delegation to Officers**

- a) Those functions of the Trust which have not been retained as reserved by the Board of Directors or delegated to a committee or sub-committee or joint-committee shall be exercised on behalf of the Trust by the Chief Executive. The Chief Executive shall determine which functions they will perform personally and shall nominate Executive Directors to undertake the remaining functions for which they will still retain accountability to the Board of Directors.
- b) The Chief Executive shall prepare a Scheme of Delegation identifying their proposals which shall be considered and approved by the Board of Directors, subject to any amendment agreed during the discussion. The Chief Executive may periodically propose amendment to the Scheme of Delegation which shall be considered and approved by the Board of Directors as indicated above.
- c) Nothing in the Scheme of Delegation shall impair the discharge of the direct accountability to the Board of Directors of the Chief Finance Officer/Deputy Chief Executive or other Executive Directors to provide information and advise the Board of Directors in accordance with the Constitution, Terms of Authorisation, any statutory requirements or provisions required by the Independent Regulator of NHS Foundation Trusts. Outside these statutory requirements the roles of the Chief Finance Officer/Deputy Chief Executive shall be accountable to the Chief Executive for operational matters.

### **6.5 Schedule of Matters Reserved to the Trust and Scheme of Delegation of powers**

The arrangements made by the Board of Directors as set out in the *Schedule of Matters reserved to the Board and Scheme of Delegation* shall have effect as if incorporated in these Standing Orders.

### **6.6 Duty to report non-compliance with Standing Orders and Standing Financial Instructions**

If for any reason these Standing Orders or the Standing Financial Instructions 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 Audit Committee and the Board of Directors for action or ratification. All members of the Board of Directors and Audit Committee and staff have a duty to disclose any non-compliance with these Standing Orders to the Chief Executive as soon as possible.

## **7. OVERLAP WITH OTHER TRUST POLICY STATEMENTS / PROCEDURES, REGULATIONS AND THE STANDING FINANCIAL INSTRUCTIONS**

### **7.1 Policy statements: general principles**

The Board of Directors will from time to time agree and approve Policy statements/procedures which will apply to all or specific groups of staff employed by the Trust. The decisions to approve such policies and procedures will be recorded in an appropriate Trust Board minute and will be deemed where appropriate to be an integral part of the Trust's Standing Orders and Standing Financial Instructions.

### **7.2 Specific Policy statements**

- a) Notwithstanding the application of SO No. 7.1 above, these Standing Orders and Standing Financial Instructions must be read in conjunction with the following Policy statements:
- Managing Conflicts of Interest (GP7)
  - Standards of Business Conduct for NHS staff.
  - Code of Conduct for NHS Managers (see Appendices).
  - ABPI Code of Professional Conduct relating to hospitality/gifts from pharmaceutical/external industry.
  - The Standards of Conduct and Disciplinary Policy (HRP01) and the Policy for Handling Individual & Collective Grievances (HRP2) adopted by the Trust both of which shall have effect as if incorporated in these Standing Orders.
  - Anti-Fraud, Bribery & Corruption Policy

### **7.3 Standing Financial Instructions**

The Standing Financial Instructions (SFIs) adopted by the Board of Directors in accordance with the Financial Regulations shall have effect as if incorporated in these Standing Orders.

### **7.4 Specific guidance**

Notwithstanding the application of SO7.1 above, these Standing Orders and the approved Standing Financial Instructions must be read in conjunction with the following guidance and any other issued by the Independent Regulator for NHS Foundation Trusts:

- a) Human Rights Act 2000

- b) General Data Protection Regulation (GDPR)
- 2018 c) Freedom of Information Act 2000
- d) Equality Act 2010
- e) The National Health Service Trusts (Membership and Procedure) Regulations 1990 (updated in April 2014)
- f) Fit and Proper Persons Health and Social Care Act 2008 (Regulated Activities) Regulations 2014: Regulation 5
- g) The Bribery Act 2010 h) The Fraud Act 2006

## 8. DECLARATION OF INTEREST AND REGISTER OF INTERESTS

### 8.1 Declaration of Interests

#### a) Definition

A conflict of interest is defined as “a set of circumstances by which a reasonable person would consider that an individual’s ability to apply judgement or act, in the context of delivering, commissioning or assuring taxpayer funded health and care services is, or could be, impaired or influenced by another interest they hold”. (NHS England, June 2017)

A conflict of interest may be ‘actual’ where there is a material conflict between one or more interests or ‘potential’ where there is the possibility of a material conflict between one or more interests in the future.

#### b) Requirements for Declaring Interests and applicability to members of the Board of Directors

The FT constitution and FT Code of Governance requires Directors to declare interests which are relevant and material to the Board of Directors. All existing Directors should declare such interests annually and any Directors appointed subsequently should do so, on appointment.

#### c) Interests which are relevant and material

Interests fall into the following categories;

- **Financial Interests**

Where an individual may get direct financial benefit from the consequences of a decision they are involved in making

E.g. A director of senior employee in another organisation which is doing, or is likely to do business with an organisation in receipt of NHS funding, a shareholder, partner or owner of an organisation

- **Non-financial professional interests**

Where an individual may obtain non-financial professional benefit from the consequences of a decision they are involved in making, such as increasing their professional reputation or promoting their professional career



E.g. A clinician with a special interest, an advisor for the CQC or NICE

- **Non-financial personal interests**

Where an individual may benefit personally in ways which are not directly linked to their professional career and do not give rise to a direct financial benefit, because of decisions they are involved in making in their professional career

E.g. A member of a voluntary sector board or has a position of authority within a voluntary sector organisation

- **Indirect interests**

Where an individual has a close association with another individual who has a financial interest, a non-financial interest or a non-financial personal interest who would stand to benefit from a decision they are involved in making

E.g. close family members and relatives, close friends and associates, business partners. Any member of the Board of Directors who comes to know that the Trust has entered into or proposes to enter into a contract in which they or any person connected with them (as defined in SO8.3 below and elsewhere) has any pecuniary interest, direct or indirect, the Director shall declare their interest by giving notice in writing of such fact to the Trust as soon as practicable.

d) **Advice on Interests**

If Directors have any doubt about the relevance of an interest, this should be discussed with the Chair of the Trust, or with the Director of Corporate Affairs.

International Accounting Standard 24 (issued by the International Accounting Standards Board) specifies that influence rather than the immediacy of the relationship is more important in assessing the relevance of an interest. The interests of partners in professional partnerships including general practitioners should also be considered.

e) **Recording of Interests in Trust Board minutes**

At the time Directors' interests are declared, they should be recorded in the Trust Board minutes.

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.

f) **Publication of declared interests in Annual Report**

Board members' interests should be published in the Trust's annual report. The information should be kept up to date for inclusion in succeeding annual reports.

g) **Conflicts of interest which arise during the course of a meeting**

During the course of a Board of Directors meeting, if a conflict of interest is established, the member concerned should withdraw from the meeting and play no part in the relevant discussion or decision. (See overlap with SO 8.3b)

## **8.2 Register of Interests**

- a) The Chief Executive will ensure that a Register of Interests is established to record formally declarations of interests of the Board of Directors and decision making staff (as defined in policy GP7 Managing Conflicts of Interest). In particular the Register will include details of all relevant and material interests (as defined in SO 8.1c).
- b) These details will be kept up to date on a continuous basis as and when new declarations are made. The register will then be presented to the next Board of Directors meeting or, where no changes have occurred, on an annual basis. In addition to the requirement for the register to be presented to the Board of Directors whenever there are changes, the Audit Committee is able to request a copy of the register at any time.
- c) The Register will be available to the public and the Chief Executive will take reasonable steps to bring the existence of the register to the attention of local residents and to publicise arrangements for viewing it.

## **8.3 Exclusion of Chairman and Directors in proceedings on account of pecuniary interest**

### **a) Interpretation of 'Pecuniary' interest**

For the sake of clarity in interpreting this Standing Order:

- "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);
- "contract" shall include any proposed contract or other course of dealing
- 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;
  - they, or a nominee of theirs, is a member of a company or other body (not being a public body), with which the contract is made, or proposed to be made or which has a direct pecuniary interest in the same, or
  - they are a partner, associate or employee of any person with whom the contract is made or proposed to be made or who has a direct pecuniary interest in the same.
- a person shall not be regarded as having a pecuniary interest in any contract if;
  - neither they or any person connected with them has any beneficial interest in the securities of a company of which they or such person appears as a member, or

- any interest that they or any person connected with them may have in the contract is so remote or insignificant that it cannot reasonably be regarded as likely to influence a Director in relation to consideration of or discussion of or in voting on, any question with respect to that contract, or
- those securities of any company in which they (or any person connected with them) has a beneficial interest do not exceed £5,000 in nominal value or one per cent of the total issued share capital of the company or of the relevant class of such capital, whichever is the less. Provided however, that where this applies, the person shall nevertheless be obliged to disclose/declare their interest in accordance with SO 8.1b).

**b) Exclusion in proceedings of the Board of Directors**

Subject to the following provisions of this Standing Order, if the Chairman or a member of the Board of Directors 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, they shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not take part in the consideration or discussion of the contract or other matter or vote on any question with respect to it.

The Independent Regulator for NHS Foundation Trusts may, subject to such conditions as they may think fit to impose, remove any disability imposed by this Standing Order in any case in which it appears to them in the interests of the National Health Service that the disability should be removed. (See SO 8.3c) on the 'waiver' which has been approved by the Independent Regulator for NHS Foundation Trusts.

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

Any remuneration, compensation or allowance payable to the Chairman or a Director by virtue of the National Health Service Act 2012 (pay and allowances) shall not be treated as a pecuniary interest for the purpose of this Standing Order.

This Standing Order applies to a committee or sub-committee and to a joint committee or sub-committee as it applies to the Trust and applies to a member of any such committee or sub-committee (whether or not he is also a Director of the Trust) as it applies to a Director of the Trust.

**c) Waiver of Standing Orders made by the Independent Regulator for NHS Foundation Trusts**

Under regulation 11(2) of the NHS (Membership and Procedure Regulations SI 1999/2024 ("the Regulations"), there is a power for the Independent Regulator for

NHS Foundation Trusts to issue waivers if it appears to the Independent Regulator for NHS Foundation Trusts in the interests of the health service that the disability in regulation 11 (which prevents a chairman or a member from taking part in the consideration or discussion of, or voting on any question with respect to, a matter in which he has a pecuniary interest) is removed. A waiver has been agreed in line with 8.3e below.

**d) Definition of ‘Chairman’ for the purpose of interpreting this waiver**

For the purposes of paragraph 8.3e below, the ‘relevant chairman’ is, at a meeting of the Board of Directors, the Chair of that Trust.

**e) Application of waiver**

A waiver will apply in relation to the disability to participate in the proceedings of the Trust on account of a pecuniary interest.

It will apply to:

- A Director of the Trust, who is a healthcare professional, within the meaning of regulation 5(5) of the Regulations, and who is providing or performing, or assisting in the provision or performance, of:
  - services under the National Health Service Act 2006; or
  - services in connection with a pilot scheme under the National Health Service Act 2006; for the benefit of persons for whom the Trust is responsible.
- Where the pecuniary interest of the member in the matter which is the subject of consideration at a meeting at which he is present:
  - arises by reason only of the member’s role as such a professional providing or performing, or assisting in the provision or performance of, those services to those persons;
  - has been declared by the relevant chairman as an interest which cannot reasonably be regarded as an interest more substantial than that of the majority of other persons who:
    - are members of the same profession as the member in question;
    - are providing or performing, or assisting in the provision or performance of, such of those services as he provides or performs, or assists in the provision or performance of, for the benefit of persons for whom the Trust is responsible.

**f) Conditions which apply to the waiver and the removal of having a pecuniary interest**

The removal is subject to the following conditions:

- the member must disclose the interest as soon as practicable after the commencement of the meeting and this must be recorded in the minutes;

- the relevant chairman must consult the Chief Executive before making a declaration in relation to the member in question pursuant to paragraph 8.3 d) above, except where that member is the Chief Executive;
- in the case of a meeting of the Board of Directors:
  - the Director may take part in the consideration or discussion of the matter which must be subjected to a vote and the outcome recorded; but
  - may not vote on any question with respect to it.

**g) Standards of Business Conduct**

All Trust staff and the Board of Directors must comply with;

- the Standards of Business Conduct and Disciplinary Policy (HRP01)
- the Anti-Fraud, Bribery and Corruption Policy
- the Managing Conflicts of Interest Policy (GP7)
- National guidance contained in 'Standards of Business Conduct for NHS staff', the Code of Conduct for NHS Managers and the ABPI Code of Professional Conduct relating to hospitality/gifts from pharmaceutical/external industry.

**h) Interest of Officers in Contracts**

Any officer or employee of the Trust who comes to know that the Trust has entered into or proposes to enter into a contract in which they or any person connected with them has any pecuniary interest, direct or indirect, the Officer shall declare their interest by giving notice in writing of such fact to the Chief Executive or Director of Corporate Affairs as soon as practicable.

An Officer should also declare to the Chief Executive any other employment or business or other relationship of theirs, or of a cohabiting spouse, that conflicts, or might reasonably be predicted could conflict with the interests of the Trust.

The Trust will require interests, employment or relationships so declared to be entered in a register of interests of staff.

**i) Canvassing of and Recommendations by Directors in Relation to Appointments**

Canvassing of Directors or of any Committee of the Trust directly or indirectly for any appointment under the Trust shall disqualify the candidate for such appointment. The contents of this paragraph of the Standing Order shall be included in application forms or otherwise brought to the attention of candidates.

Directors of the Trust shall not solicit for any person any appointment under the Trust or recommend any person for such appointment; but this paragraph of this Standing Order shall not preclude a member from giving written testimonial of a candidate's ability, experience or character for submission to the Trust.

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

**j) Relatives of Directors or Officers**

Candidates for any staff appointment under the Trust shall, when making an application, disclose in writing to the Trust whether they are related to any member or the holder of any office under the Trust. Failure to disclose such a relationship shall disqualify a candidate and, if appointed, render them liable to instant dismissal.

The Chairman and every Director and officer of the Trust shall disclose to the Board of Directors any relationship between themselves and a candidate of whose candidature that Director or officer is aware. It shall be the duty of the Chief Executive to report to the Board of Directors any such disclosure made.

On appointment, Directors (and prior to acceptance of an appointment in the case of Executive Directors) should disclose to the Trust whether they are related to any other member or holder of any office under the Trust.

Where the relationship to a Director of the Trust is disclosed, the Standing Order headed 'Exclusion of Chairman and Directors in proceedings on account of pecuniary interest' shall apply.

**8.4 Fit and Proper Persons Test (FPPT)**

The Health and Social Care Act 2008 (Regulated Activities), Regulations 2014, sets out requirements for Directors of NHS providers to meet a fit and proper persons test.

**a) Fit and Proper persons; Executive and Non-Executive Directors of the Board**

- The regulations (Regulation 5) stipulate that individuals who have authority in organisations that deliver care are responsible for the overall quality and safety of that care and, as such, can be held accountable if standards of care do not meet legal requirements.
- The new regulation will bar individuals who are prevented from holding office (for example, under a directors' disqualification order) and significantly, exclude from office people who: 'have been responsible for, been privy to, contributed to or facilitated any serious misconduct or mismanagement (whether unlawful or not) in the course of carrying out a regulated activity, or discharging any functions relating to any office or employment with a service provider'.

**b) Regulation 5 criteria that a Director must meet. They must;**

- Be of good character
- Have the qualifications, skills and experience necessary for the relevant position
- Be capable of undertaking the relevant position, after any reasonable adjustments under the Equality Act 2010

- Not have been responsible for any misconduct or mismanagement in the course of any employment with a CQC registered provider
  - Not be prohibited from holding the relevant position under any other law e.g. under the Companies Act or the Charities Act
- c) According to Regulation 5, a Director will be deemed 'unfit' if they;
- Have been sentenced to imprisonment for three months or more within the last five years, (CQC could remove this bar on application)
  - Are an undischarged bankrupt
  - Are the subject of a bankruptcy order or an interim bankruptcy order
  - Have an undischarged arrangement with creditors
  - Are included on any barring list preventing them from working with children or vulnerable adults
- d) A Director will fail the 'good character' test, if they;
- Have been convicted in the United Kingdom of any offence or been convicted elsewhere of any offence which, if committed in any part of the United Kingdom, would constitute an offence
  - Have been erased, removed or struck-off a register of professionals maintained by a regulator of health or social care
- e) Enforcement

It will be the responsibility of the Chair, to ensure that all Directors meet the fitness test and do not meet any of the 'unfit' criteria.

The CQC will require the Chair of the Board of Directors to:

- Confirm that the fitness of all (new) directors has been assessed in line with the regulations
- Declare in writing that they are satisfied that they are fit and proper individuals for that role

Where a Director is appointed or in post that CQC considers to be unfit, CQC could impose a condition of registration requiring the removal of that Director. Breach of such a condition would itself be an offence and could result in cancellation of registration.

- f) Requirements for Declaring Compliance with the Fit and Proper Persons Test and applicability to Board Members;
- All existing Board members will be required to complete an annual declaration formally declaring compliance with the Fit and Proper Persons Test. Any Board members appointed subsequently should do so on appointment.
  - The Director of Corporate Affairs will maintain a register of returns for inspection by the Chairman and regulatory bodies as required.
  - All Executive and Non-Executive Directors will be subject to current (standard) Disclosure and Barring Service (DBS) checks. Any Board members appointed subsequently will be subject to a DBS check on appointment.

- All existing Board members will be subject to a check of Companies House Directorships list and an Employers credit check. Any Board members appointed subsequently will be subject to such checks on appointment.

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

### **9.1 Custody of Seal**

The common seal of the Trust shall be kept by the Director of Corporate Affairs on behalf of the Chief Executive in a secure place.

### **9.2 Sealing of Documents**

- a) Where it is necessary that a document shall be sealed, the seal shall be affixed in the presence of two Executive Directors duly authorised by the Chief Executive, and not also from the originating department, and shall be attested by them.
- b) Before any building, engineering, property or capital document is sealed, it must be approved and signed by the Chief Finance Officer/Deputy Chief Executive (or an officer nominated by them) and authorised and counter-signed by the Chief Executive (or an officer nominated by them who shall not be within the originating Directorate).

### **9.3 Register of Sealing**

- a) The Chief Executive shall keep a register in which they or the Director of Corporate Affairs shall enter a record of the sealing of every document.
- b) Entries in the register are to be consecutively numbered and signed by the officers who have approved and authorised the document and those who attested the seal.
- c) A report of all sealings shall be made to the next meeting of the Board of Directors. The report shall contain details of the seal number, a description of the document and the date of sealing.

### **9.4 Use of Seal - General guide**

The following are examples of uses for the seal:

- a) All contracts for the purchase/lease of land and/or building

All contracts for capital works exceeding £100,000

All lease agreements where the annual lease charge exceeds £10,000 per annum and the period of the lease exceeds beyond five years

Any other lease agreement where the total payable under the lease exceeds £100,000

Any contract or agreement with organisations other than NHS or other government bodies including local authorities where the annual costs exceed or are expected to exceed £100,000



## **9.5 Signature of documents**

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

## **10. STANDARDS OF BUSINESS CONDUCT**

All staff should comply with the Foundation Trust constitution, the Standards of Business Conduct and Disciplinary Policy (HRP01) and national guidance contained in NHS England 'Standards of Business Conduct Policy' published in 2017.

## **11. MISCELLANEOUS**

### **Joint Finance Arrangements**

The Board may confirm contracts to purchase from a voluntary organisation or a local authority using its powers under the NHS Act 2006. The Board may confirm contracts to transfer money from the NHS to the voluntary sector or the health related functions of local authorities where such a transfer is to fund services to improve the health of the local population more effectively than equivalent expenditure on NHS services, using its powers under the NHS Act 2006.

## **ANNEX 8 – FURTHER PROVISIONS**

(Paragraph 10)

### **1. Eligibility of members**

- 1.1 Membership of the trust will be open to any person who lives in an area specified in Annex 1 as an area for the Public Constituency and is 13 years of age or older.
- 1.2 Providing members meet these eligibility criteria the only exclusions to membership of Wirral Community Health & Care NHS Foundation Trust are when someone has:
  - 1.2.1 Previously been expelled as a member from the trust
  - 1.2.2 Been involved in a serious incident of violence at the trust's premises or against one of the trust's employees or volunteers
  - 1.2.3 Previously been dismissed from employment by the trust
  - 1.2.4 Been placed on a register of the Sexual Offences Act 2003 or the Children and Young Person's Acts and the conviction has not been spent
  - 1.2.5 Previously been identified by the trust as a vexatious complainant, as decided by the Chief Executive
- 1.3 If, after a member has joined the trust, it is found that one of the exclusions above (1.2.1 – 1.2.5) applies then their membership will cease without further action being required under paragraph 3, below.

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

A member shall cease to be a member if:

- 2.1 they resign by notice to the Secretary
- 2.2 they die
- 2.3 they are expelled from membership under this constitution
- 2.4 they cease to be entitled under this constitution to be a member of any of the public constituencies or of the Staff Constituency
- 2.5 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.

### **3. Expulsion of members**

A member may be expelled by a resolution approved by not less than two thirds of the Governors present and voting at a General Meeting. The following procedure is to be adopted:

- 3.1 Any member may complain to the Secretary that another member has acted in a way detrimental to the interests of the trust.
- 3.2 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:
  - 3.2.1 dismiss the complaint and take no further action;
  - 3.2.2 for a period not exceeding twelve months suspend the rights of the member complained of to attend members meetings and vote under this constitution; or
  - 3.2.3 arrange for a resolution to expel the member complained of to be considered at the next General Meeting of the Council of Governors.
- 3.3 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.
- 3.4 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.
- 3.5 If the member complained of fails to attend the meeting without due cause the meeting may proceed in their absence.
- 3.6 A person expelled from membership will cease to be a member upon the declaration by the Chairman of the meeting that the resolution to expel them is carried.
- 3.7 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 present and voting at a General Meeting.

## **ANNEX 9 – ANNUAL MEMBERS MEETING**

(Paragraph 11)

## Annual Members' Meeting

- 1.1 The trust is to hold a members meeting (called the annual members meeting) within nine months of the end of each financial year.
- 1.2 All members meetings other than annual meetings are called special members meetings.
- 1.3 Members meetings are open to all members of the trust, Governors and Directors, representatives of the financial auditor, and to members of the public. The Council of Governors may, with the prior agreement of the Chairman, 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.
- 1.4 All members meetings are to be convened by the Secretary by order of the Council of Governors.
- 1.5 The Council of Governors may decide where a members meeting is to be held.
- 1.6 At the annual members meeting:
  - 1.6.1 the Board of Directors shall present to the members:
    - 1.6.1.1 the annual accounts;
    - 1.6.1.2 any report of the financial auditor;
    - 1.6.1.3 forward planning information for the next financial year;
  - 1.6.2 the Council of Governors shall present to the members:
    - 1.6.2.1 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;
    - 1.6.2.2 the progress of the membership strategy;
    - 1.6.2.3 any proposed changes to the policy for the composition of the Council of Governors and of the non-executive Directors;
  - 1.6.3 the results of the election and appointment of Governors and the appointment of non-executive Directors will be announced.
- 1.7 Notice of a members meeting is to be given:

- 1.7.1 by notice to all members;
- 1.7.2 by notice prominently displayed at the head office and at all of the trust's places of business; and
- 1.7.3 by notice on the trust's website at least 14 clear days before the date of the meeting. The notice must:
  - 1.7.4 be given to the Council of Governors and the Board of Directors, and to the financial auditor;
  - 1.7.5 state whether the meeting is an annual or special members meeting;
  - 1.7.6 give the time, date and place of the meeting; and
  - 1.7.7 indicate the business to be dealt with at the meeting.
- 1.8 Before a members meeting can do business there must be a quorum present. Except where this constitution says otherwise a quorum is one member present from each of the trust's constituencies.
- 1.9 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.
- 1.10 It is the responsibility of the Council of Governors, the Chairman of the meeting and the Secretary to ensure that at any members meeting:
  - 1.10.1 the issues to be decided are clearly explained;
  - 1.10.2 sufficient information is provided to members to enable rational discussion to take place.
- 1.11 The Chairman of the trust, or in their absence the Vice-chairman of the Board of Directors, or in their absence one of the other non-executive Directors shall act as chairman at all members meetings of the trust.
- 1.12 A resolution put to the vote at a members meeting shall be decided upon by a poll.
- 1.13 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 Chairman of the meeting is to have a second or casting vote.

- 1.14 The trust may make arrangements for members to vote by post, or by using electronic communications.
  
- 1.15 The result of any vote will be declared by the Chairman and entered in the minute book. The minute book will be conclusive evidence of the result of the vote.