

Northamptonshire Healthcare NHS Foundation Trust Constitution

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1 **Interpretation and definitions**

- 1.1 Unless a contrary intention is evident or the context requires otherwise, words or expressions contained in this Constitution shall bear the same meaning as in the 2006 Act.
- 1.2 Words importing the singular shall import the plural and vice-versa.
- 1.3 References in this Constitution to legislation include all amendments, replacements or re-enactments made and include all subordinate legislation made thereunder.
- 1.4 Headings are for ease of reference only and are not to affect interpretation.
- 1.5 All annexes and appendices referred to in this Constitution form part of it.
- 1.6 References to paragraphs are to paragraphs of this Constitution save that where there is a reference to a paragraph in an annex or appendix to this Constitution it shall be a reference to a paragraph in that annex or appendix unless the contrary is expressly stated, or the context otherwise so requires.
- 1.7 In this Constitution:

the **2006 Act** is the National Health Service Act 2006 (as amended);

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

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

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

Annual Members Meeting is defined in paragraph 10A of the Constitution.

Appointed Governor is defined as an individual selected by an organisation listed in Annex 4 to fulfil the role as set out in paragraphs 11.2 and 11.3;

Board of Directors means the body set out within this Constitution and pursuant with Paragraphs 15 to 18 of Schedule 7 of the 2006 Act.

British Islands has the meaning ascribed to it in Schedule 1 of the Interpretation Act 1978 (as amended);

Commencement Date means 24 April 2023;

Constitution means this Constitution together with all annexes and appendices attached hereto pursuant with paragraph 1(1) of Schedule 7 of the 2006 Act;

Council of Governors means the body set out within this Constitution and pursuant with Paragraphs 7 to 14 of Schedule 7 of the 2006 Act;

Executive Director means a person appointed to the Board, pursuant with paragraph 16 (1) (a) of Schedule 7 of the 2006 Act, and further described in this Constitution; they have voting rights at a Board of Directors meeting;

Model Rules for Elections means the election rules published by NHS Providers from time to time and incorporated into Annex 4 of this Constitution;

NHS England means the body established under Section 1H of the 2006 Act;

Non-Executive Director means a person appointed to the Board, pursuant with paragraph 16 (1) (b) of Schedule 7 of the 2006 Act, and further described in this Constitution; they have voting rights at a Board of Directors meeting;

Patients' and Carers' Constituency has the meaning ascribed to it in paragraph 9.3 of this Constitution;

Principal Purpose means the purpose set out in Section 43(1) of the 2006 Act;

Provider Licence means the licence issued by NHS England to the Trust pursuant to Section 88 of the 2012 Act, as amended by Section 61 of the 2022 Act, as may be varied by NHS England from time to time;

Public Constituency has the meaning ascribed to it in paragraph 7.2 of this Constitution;

Regulated Activities Regulations means the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014;

Staff Constituency has the meaning ascribed to it in paragraph 8.3 of this Constitution, and;

Trust Secretary means an officer of the Trust appointed to undertake the duties set out in this Constitution and described in the Code of Governance for NHS provider trusts (NHS England, 2022), or any subsequent version of this code.

2 Name

The name of the foundation trust is Northamptonshire Healthcare 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 paragraph 3.3 above for the purpose of making additional income available in order to better carry on its Principal Purpose.

4 Powers

- 4.1 The powers of the Trust are set out in the 2006 Act.
- 4.2 The powers of the Trust shall be exercised by the Board of Directors on behalf of the Trust.
- 4.3 Subject to paragraph 4.4 below, any of these powers may be delegated to a committee of directors or to an executive director.
- 4.4 Where the Trust is exercising functions of the managers pursuant to Section 23 of the Mental Health Act 1983 (as amended), those functions may be exercised by any three or more persons authorised by the Board of Directors, each of whom must be neither an executive director of the Trust nor an employee of the Trust.

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;
- 5.2 a Staff Constituency; and,
- 5.3 a Patients' and Carers' 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 as set out in paragraphs 7 to 9 below.

7 Public Constituency

- 7.1 An individual who lives in an area specified in Annex 1 as an area for a public constituency may become or continue as a member of the Trust.
- 7.2 Those individuals who live in an area specified as an area for any public constituency are referred to collectively as the Public Constituency.
- 7.3 For the purpose of this paragraph "live(s) in" means an individual's principal place of residence (i.e., the address where the individual normally resides).
- 7.4 The minimum number of members in each area for the Public Constituency is specified in Annex 1.
- 7.5 An eligible individual shall become a member upon entry to the Trust's register of members pursuant to an application by them. The Trust Secretary may require any individual to supply supporting evidence to confirm eligibility.
- 7.6 On receipt of an application for membership as described in paragraph 6 above, and subject to being satisfied that the applicant is eligible, the Trust Secretary shall cause the applicant's name to be entered in the Trust's register of members.

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 they are employed by the Trust under a contract of employment which has no fixed term or has a fixed term of at least 12 months; or
- 8.1.2 they have 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 Staff Constituency shall be divided into five descriptions of individuals who are eligible for membership of the Staff Constituency, each description of individuals being specified within Annex 2 and being referred to as a class within the Staff Constituency.
- 8.4 The minimum number of members in each class of the Staff Constituency is specified in Annex 2.

9 **Patients' and Carers' Constituency**

- 9.1 An individual who has, within the period specified below, attended any of the Trust's hospitals as either a patient or as the carer of a patient who has accessed the services of the Trust, or its predecessor bodies may become a member of the Trust.
- 9.2 The period referred to above shall be the period of 10 years immediately preceding the date of an application by the patient or carer to become a member of the Trust.
- 9.3 Those individuals who are eligible for membership of the Trust by reason of the previous provisions are referred to collectively as the **"Patients' and Carers' Constituency"**.
- 9.4 Up until (and including) 23 April 2023, the Patients' and Carers' Constituency was divided into three descriptions of individuals who are eligible for membership of the Patients' and Carers' Constituency, each description of individuals being specified within Annex 3 and being referred to as a class within the Patients' and Carers' Constituency.
- 9.5 An individual providing care in pursuance of a contract (including a contract of employment) with a voluntary organisation, or as a volunteer for a voluntary organisation, does not come within the category of those who qualify for membership of the Patients' and Carers' Constituency.
- 9.6 Subject to paragraph 9.7 below, the minimum number of members in each class of the Patients' and Carers' Constituency is specified in Part A of Annex 3.
- 9.7 With effect from the Commencement Date:
 - 9.7.1 the Patients' and Carers' Constituency shall cease to be divided into classes and Part A of Annex 3 shall cease to apply; and
 - 9.7.2 the minimum number of members of the Patients' and Carers' Constituency shall be the number specified in Part B of Annex 3.

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** Further provisions as to the circumstances in which an individual may not become or continue as a member of the Trust are set out in Annex 9 – Further Provisions.

10A. Annual Members' Meeting

- 10A.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.
- 10A.2** The standing orders for the practice and procedure of Annual Members' Meetings, as may be varied from time to time, are attached at Annex 10.

11 Council of Governors – composition

- 11.1** The Trust is to have a Council of Governors, which shall comprise both elected and appointed governors.
- 11.2** The composition of the Council of Governors, up until (and including) 23 April 2023, is specified in Part A of Annex 4. With effect from the Commencement Date:
 - 11.2.1** the composition of the Council of Governors shall be as specified in Part B of Annex 4; and
 - 11.2.2** part A of Annex 4 shall cease to apply.
- 11.3** The members of the Council of Governors, other than the appointed members, shall be chosen by election by their constituency or, where there are classes within a constituency, by their class within that constituency. The number of governors to be elected by each constituency, or, where appropriate, by each class of each constituency, is specified:
 - 11.3.1** up until (and including) 23 April 2023, in Part A of Annex 4; and
 - 11.3.2** with effect from the Commencement Date, in Part B of Annex 4.

12 Council of Governors – election of governors

- 12.1** Elections for elected members of the Council of Governors shall be conducted in accordance with the Model Rules for Elections on the basis of single transferable vote (STV) polling and the Model Rules for Elections shall be construed accordingly.
- 12.2** The Model Rules for Elections, as published from time to time by NHS Providers, form part of this Constitution. The Model Rules for Elections current at the date of their adoption under this Constitution are attached at Annex 5.

- 12.3** A subsequent variation of the Model Rules for Elections by NHS Providers shall not constitute a variation of the terms of this Constitution for the purposes of paragraph 41 (Amendment of the Constitution).

13 Council of Governors - tenure

- 13.1** An elected governor may hold office for a period of up to 3 years provided that the term of office shall end by no later than 23 April in the third year of office.
- 13.2** An elected governor shall cease to hold office if they cease to be a member of the constituency or class by which they were elected.
- 13.3** An elected governor shall be eligible for re-election at the end of their term unless since 24 April 2012 they have held office for more than eight consecutive years before their next term of office would otherwise commence. Years of office are consecutive unless there is a break of at least one year between them. For the avoidance of doubt, no individual may be an elected governor for more than a total of three terms of office (nine years).
- 13.4** An appointed governor may hold office for a period of up to 3 years.
- 13.5** An appointed governor shall cease to hold office if the appointing organisation withdraws its sponsorship of them.
- 13.6** An appointed governor shall be eligible for re-appointment at the end of their term.

14 Council of Governors – disqualification and removal

- 14.1** The following may not become or continue as a member of the Council of Governors:
- 14.1.1** a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;
 - 14.1.2** a person in relation to whom a moratorium period under a debt relief order applies (under Part 7A of the Insolvency Act 1986);
 - 14.1.3** a person who has made a composition or arrangement with, or granted a trust deed for, their creditors and has not been discharged in respect of it;
 - 14.1.4** 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 them;
 - 14.1.5** a person whose tenure as a governor has been terminated in accordance with section 6 of Annex 6 of this Constitution;
 - 14.1.6** a person whose tenure as a governor of another foundation trust has been terminated for cause;
 - 14.1.7** subject to paragraph 14.2 below, a person who is an unfit person within the meaning of the Trust's Provider Licence.
- 14.2** A person who falls within paragraph 14.1.7 above may become or continue as a member of the Council of Governors with the approval in writing of NHE England.

- 14.3 Governors must be at least 16 years of age at the date they are nominated for election or appointment.
- 14.4 Further provisions as to the circumstances in which an individual may not become or continue as a member of the Council of Governors are set out in Annex 6.
- 14.5 The process for the removal of governors is set out in Annex 6.
- 14.6 Where a governor is removed as a result of non-attendance caused by ill-health, they may stand for election again when they are able to do so, subject to them remaining eligible in all other regards.

14A. Council of Governors – duties of governors

14A.1 The general duties of the Council of Governors are –

- 14.A1.1 to hold the non-executive directors individually and collectively to account for the performance of the Board of Directors, and
- 14.A1.2 to represent the interests of the members of the Trust as a whole and the interests of the public.

14B. Council of Governors – skills and knowledge

The Trust must take steps to secure that the governors are equipped with the skills and knowledge they require in their capacity as such.

15 Council of Governors – meetings of governors

- 15.1 The Chair of the Trust (i.e., the Chair of the Board of Directors, appointed in accordance with the provisions of paragraph 22.1 below) or, in their absence, the Deputy Chair (appointed in accordance with the provisions of paragraph 24 below), shall preside at meetings of the Council of Governors.
- 15.2 Meetings of the Council of Governors shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons.
- 15.3 For the purposes of obtaining information about the Trust's performance of its functions or the directors' performance of their duties (and deciding whether to propose a vote on the Trust's or directors' performance), the Council of Governors may require one or more of the directors to attend a meeting.

16 Council of Governors – standing orders

The Standing Orders for the practice and procedure of the Council of Governors are attached at Annex 7.

16A Council of Governors – referral to the Panel

- 16A.1 In this paragraph, the Panel means a panel of persons appointed by NHS England to which a governor of an NHS foundation trust may refer a question as to whether the Trust has failed or is failing—
 - 16A.1.1 to act in accordance with its constitution, or

16A.1.2 to act in accordance with provision made by or under Chapter 5 of Part 2 of the 2006 Act.

16A.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.

17 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 they become 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.

18 Council of Governors – travel expenses

The Trust may pay traveling expenses and reimburse other expenses to members of the Council of Governors at rates determined by the Trust.

19 Council of Governors – further provisions

Further provisions with respect to the Council of Governors are set out in Annex 6.

20 Board of Directors – composition

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

20.2 The Board of Directors is to comprise:

20.2.1 a non-executive Chair

20.2.2 up to 8 and not fewer than 4 other non-executive directors; and

20.2.3 up to 8 but not fewer 4 executive directors.

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

20.4 The Chief Executive shall be the Accounting Officer.

20.5 One of the executive directors shall be the Finance Director.

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

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

20.8 One of the executive directors shall be the Managing Director.

20.9 The Board shall be constituted so that at any given time the number of Non-Executive Directors (including the Chair) shall be at least one greater than the number of Executive Directors.

20.10 The Trust can appoint Associate Non-Executive Directors; however, they will not constitute a voting member of the Board.

- 20.11 The validity of any act of the Trust is not affected by any vacancy among the directors or by any defect in the appointment of any director.

20.A 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.

21 Board of Directors – qualification for appointment as a non-executive director

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

- 21.1 they are a member of the Public Constituency, or
- 21.2 they are a member of the Patients' and Carers' Constituency, and
- 21.3 they are not disqualified by virtue of paragraph 27 below.

22 Board of Directors – appointment and removal of Chair and other non-executive directors

- 22.1 The Council of Governors at a general meeting of the Council of Governors shall appoint or remove the Chair of the Trust and the other non-executive directors.
- 22.2 Removal of the Chair or another non-executive director shall require the approval of three-quarters of the members of the Council of Governors.
- 22.3 [sub-paragraph no longer in use].

23 [Paragraph no longer in use]

24 Board of Directors – appointment of Deputy Chair

- 24.1 The Council of Governors at a general meeting or otherwise of the Council of Governors shall appoint one of the non-executive directors as a Deputy Chair giving due consideration to the views of the Board of Directors, for such period, not exceeding their term of office as a non-executive director, as the Council of Governors may specify on appointing him.
- 24.2 Any non-executive director so appointed under paragraph 24.1 above may at any time resign from the office of Deputy Chair by giving notice in writing to the Trust Secretary. The Council of Governors may thereupon appoint another non-executive director as Deputy Chair in accordance with paragraph 24.1 above.
- 24.3 If the Chair is unable to discharge their functions as Chair of the Trust, the Deputy Chair will be the "acting Chair" of the Trust until such time as the Chair is able to discharge their functions as Chair of the Trust, or a new Chair of the Trust is appointed by the Council of Governors in accordance with paragraph 22 above.

25 Board of Directors - appointment and removal of the Chief Executive and other executive directors

- 25.1 The non-executive directors shall appoint or remove the Chief Executive.

25.2 The appointment of the Chief Executive shall require the approval of the Council of Governors.

25.3 [Sub-paragraph no longer in use]

25.4 A committee consisting of the Chair, the Chief Executive and the other non-executive directors shall appoint or remove the other executive directors.

26 **[Paragraph no longer in use]**

27 **Board of Directors – disqualification**

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

27.1.1 a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;

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

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

27.1.4 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;

27.1.5 subject to paragraph 27.2 below, a person who is an unfit person within the meaning of the Trust's Provider Licence;

27.1.6 a person who fails to satisfy the requirements of Regulation 5(3) of the Regulated Activities Regulations.

27.2 A person who falls within paragraph 27.1.5 above may become or continue as a member of the Board of Directors with the approval in writing of NHS England.

27.A **Board of Directors – meetings**

27A.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.

27A.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.

28 **Board of Directors – standing orders**

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

29 **Board of Directors - conflicts of interest of directors**

29.1 The duties that a director of the Trust has by virtue of being a director include

in particular –

- 29.1.1** 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.
- 29.1.2** 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.
- 29.2** The duty referred to in sub-paragraph 29.1.1 is not infringed if –
 - 29.2.1** The situation cannot reasonably be regarded as likely to give rise to a conflict of interest, or
 - 29.2.2** The matter has been authorised in accordance with the constitution.
- 29.3** The duty referred to in sub-paragraph 29.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- 29.4** In sub-paragraph 29.1.2, “third party” means a person other than –
 - 29.4.1** The Trust, or
 - 29.4.2** A person acting on its behalf.
- 29.5** 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.
- 29.6** If a declaration under this paragraph proves to be, or becomes, inaccurate, incomplete, a further declaration must be made.
- 29.7** Any declaration required by this paragraph must be made before the Trust enters into the transaction or arrangement.
- 29.8** 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.
- 29.9** A director need not declare an interest –
 - 29.9.1** If it cannot reasonably be regarded as likely to give rise to a conflict of interest;
 - 29.9.2** If, or to the extent that, the directors are already aware of it;
 - 29.9.3** If, or to the extent that, it concerns terms of the director’s appointment that have been or are to be considered –
 - 29.9.3.1** By a meeting of the Board of Directors, or
 - 29.9.3.2** By a committee of the directors appointed for the purpose under the Constitution.

30. Board of Directors – remuneration and terms of office

- 30.1** The Council of Governors at a general meeting of the Council of Governors shall, having first considered any guidance issued by NHS England, decide the

remuneration and allowances, and the other terms and conditions of office, of the Chair and the other non-executive directors.

- 30.2** The Trust shall establish a committee of non-executive directors to decide, having first considered any guidance issued by NHS England, the remuneration and allowances, and the other terms and conditions of office, of the Chief Executive and other executive directors.

31. Registers

The Trust shall have:

- 31.1** a register of members showing, in respect of each member, the constituency to which they belong and, where there are classes within it, the class to which they belong;
- 31.2** a register of members of the Council of Governors;
- 31.3** a register of interests of governors;
- 31.4** a register of directors; and
- 31.5** a register of interests of the directors.

32. Admission to and removal from the registers

- 32.1** The Trust Secretary will be responsible for making arrangements for additions and removals from the registers.
- 32.2** The registers will be updated as and when required and presented annually to the Trust Board of Directors.

33. Registers – inspection and copies

- 33.1** The Trust shall make the registers specified in paragraph 31 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.
- 33.2** The Trust shall not make any part of its registers available for inspection by members of the public which shows details of –
 - 33.2.1** any member of the Patients' and Carers' Constituency; or
 - 33.2.2** any other member of the Trust, if they so request.
- 33.3** So far as the registers are required to be made available:
 - 33.3.1** they are to be available for inspection free of charge at all reasonable times; and
 - 33.3.2** a person who requests a copy of or extract from the registers is to be provided with a copy or extract.
- 33.4** If the person requesting a copy or extract is not a member of the Trust, the Trust may impose a reasonable charge for doing so.

34. Documents available for public inspection

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

- 34.1.1** a copy of the current Constitution;
 - 34.1.2** a copy of the latest annual accounts and of any report of the auditor on them;
 - 34.1.3** a copy of the latest annual report;
- 34.1A** 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:
- 34.1A.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.
 - 34.1A.2** a copy of any report laid under section 65D (appointment of trust special administrator) of the 2006 Act.
 - 34.1A.3** a copy of any information published under section 65D (appointment of trust special administrator) of the 2006 Act.
 - 34.1A.4** a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act.
 - 34.1A.5** a copy of any statement provided under section 65F (administrator's draft report) of the 2006 Act.
 - 34.1A.6** a copy of any notice published under section 65F (administrator's draft report), 65G (consultation plan), 65H (consultation requirements), 65J (power to extend time), 65KA (NHS England's decision), 65KB (Secretary of State's response to NHS England's decision), 65KC (action following Secretary of State's rejection of final report) or 65KD (Secretary of State's response to re-submitted final report) of the 2006 Act.
 - 34.1A.7** a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act.
 - 34.1A.8** a copy of any final report published under section 65I (administrator's final report),
 - 34.1A.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.
 - 34.1A.10** a copy of any information published under section 65M (replacement of trust special administrator) of the 2006 Act.
- 34.2** Any person who requests a copy of or extract from any of the above documents is to be provided with a copy.
- 34.3** 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.

35. Auditor

35.1 The Trust shall have an auditor.

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

36. 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.

37. Accounts and records

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

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

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

37.3 The following documents will be made available to the Comptroller and Auditor General for examination at their request:

37.3.1 the accounts;

37.3.2 any records relating to them; and

37.3.3 any report of the Auditor on them.

37.4 The Trust is to prepare in respect of each financial year annual accounts in such form as NHS England may with the approval of the Secretary of State for Health direct.

37.5 NHS England may with the approval of the Secretary of State for Health direct the Trust:

37.5.1 to prepare accounts in respect of such period or periods as may be specified in the directions; and /or

37.5.2 that any accounts prepared by it by virtue of paragraph 37.3.1 above are to be audited in accordance with such requirements as may be specified in the direction.

37.6 In preparing its annual accounts or in preparing any accounts by virtue of paragraph 37.3.1 above, the Trust must comply with any directions given by NHS England with the approval of the Secretary of State for Health as to:

37.6.1 the methods and principles according to which the annual accounts must be prepared; and/or

37.6.2 the content and form of the annual accounts.

37.7 The Trust must:

37.7.1 lay a copy of the annual accounts, and any report of the auditor on them, before Parliament; and

37.7.2 send copies of the annual accounts, and any report of the auditor on them to NHS England within such a period as NHS England may direct.

37.8 The Trust must send a copy of any accounts prepared by virtue of paragraph 37.3.1 above and a copy of any report of the auditor to NHS England within such a period as NHS England may direct.

37.9 The functions of the Trust referred to in this paragraph 37 shall be delegated to the Accounting Officer.

38. Annual report, forward plans and non-NHS work

38.1 The Trust is to prepare annual reports and send them to NHS England.

38.2 Not used.

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

38.4 The forward plan shall be prepared by the Board of Directors.

38.5 In preparing the forward plan, the Board of Directors shall have regard to the view of the Council of Governors.

38.6 Each forward plan must include information about:

38.6.1 the activities other than the provision of goods and services for the purposes of the health services in England that the Trust proposes to carry on; and

38.6.2 the income that it expects to receive from doing so.

38.7 Where a forward plan contains a proposal that the Trust carry on an activity of a kind mentioned in paragraph 38.6.1 above, the Council of Governors must:

38.7.1 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

38.7.2 notify the Board of Directors of the Trust of its determination.

38.8 The Trust may implement a proposal to increase by 5% or more the proportion of its total income in any financial year attributable to activities other than the fulfillment of the Principal Purpose only if more than half of the members of the Council of Governors present and voting approve the implementation of the proposal.

39. Presentation of the annual accounts and reports to the Governors and Members

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

39.1.1 the annual accounts

39.1.2 any report of the auditor on them

39.1.3 the annual report.

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

39.3 The Trust may combine a meeting of the Council of Governors convened for the purposes of sub-paragraph 39.1 with the Annual Members' Meeting.

40. Instruments

40.1 The Trust shall have a seal.

40.2 The seal shall be affixed under the authority of the Board of Directors as set out within the Scheme of reservation and delegation.

41. Amendment of the Constitution

41.1 Amendments by the Trust of its Constitution are to be notified to NHS England. For the avoidance of doubt, NHS England's functions do not include a power or duty to determine whether or not the constitution, as a result of the amendments, accords with Schedule 7 of the 2006 Act.

41.2 The Trust may make amendments of its constitution only if –

41.2.1 more than half of the members of the Council of Governors of the Trust voting approve the amendments; and

41.2.2 more than half of the members of the Board of Directors of the Trust voting approve the amendments.

41.3 Amendments made under paragraph 41.2 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.

41.4 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):

41.4.1 at least one member of the Council of Governors must attend the next Annual Members' Meeting and present the amendment,

41.4.2 the Trust must give the members an opportunity to vote on whether they approve the amendment, and

41.4.3 if more than half of the members voting approve the amendment, the amendment continues to have effect; otherwise, it ceases to have effect and the Trust must take such steps as are necessary as a result.

42. Significant transactions

42.1 This constitution does not contain any descriptions of transaction or arrangement for the purposes of section 51A(2) of the 2006 Act.

42.2 The Trust shall have a policy for the Board of Directors to consult the Council of Governors about transactions that are within the description of significant transaction set out in the policy.

43. Mergers, acquisitions, separations and dissolution

The Trust may make an application under section 56 (Mergers), 56A (Acquisitions), 56B (Separations) or 57A (Dissolution) of the 2006 Act to NHS England only with the approval of more than half of the members of the Council of Governors.

ANNEX 1 – THE PUBLIC CONSTITUENCY

(Paragraphs 7.1, 7.3 and 7.4)

Name of Constituency	Area	Minimum Number of Members
Kettering and Corby	The electoral ward areas comprising the areas covered by the North Northamptonshire Council and, for the avoidance of doubt, comprising any successor authority of North Northamptonshire Council.	40
Daventry and South Northamptonshire	The electoral ward areas comprising the areas covered by the West Northamptonshire Council and, for the avoidance of doubt, any successor authority of the West Northamptonshire Council.	40
Wellingborough and East Northamptonshire	The electoral ward areas comprising the areas covered by the North Northamptonshire Council and, for the avoidance of doubt, any successor authority of the North Northamptonshire Council.	40
Northampton	The electoral ward areas comprising the area covered by the West Northamptonshire Council and, for the avoidance of doubt, any successor organisation of the West Northamptonshire Council.	40
Rest of England	All of the electoral wards in England that are not covered by any other area of the Public Constituency.	10

ANNEX 2 – THE STAFF CONSTITUENCY

(Paragraphs 8.3 and 8.4)

Classes within the Staff Constituency	Minimum number of members in each class
Doctors and Dentists	20
Registered Nurses	10
Unregistered Nurses	10
Other Clinical staff	20
Non Clinical staff	20

ANNEX 3 - THE PATIENTS' AND CARERS' CONSTITUENCY

(Paragraphs 9.4 and 9.6)

Part A

Classes within the Patients' and Carers' Constituency	Minimum number of members in each class
Young Service Users	10
Adult Service Users	30
Carers	20

The age range for:

- (a) Young Service User members is 12 to 24;
- (b) Adult Service User members is 25 and over.

To be a Young Service User governor, a member would need to be between 16 and 24 when elected. A Young Service User governor would be able to complete their full term of office as a governor even if they go beyond 24 years of age, so long as they were between 16 and 24 when elected.

To be an Adult Service User governor, a member would need to be between 25 and over when elected.

Part B

The minimum number of members of the Patients' and Carers' Constituency shall be [60].

ANNEX 4 – COMPOSITION OF COUNCIL OF GOVERNORS

(Paragraphs 11.2 and 11.3)

Part A

Constituency	Class	Number of governors to be elected
Public – 13	Kettering and Corby	3
	Daventry and South Northamptonshire	3
	Wellingborough and East Northamptonshire	3
	Northampton	3
	Rest of England	1
Patients – 11	Younger Service Users	1
	Adult Service Users	7
	Carers	3
Staff – 5	Doctors and Dentists	1
	Registered Nurses	1
	Unregistered Nurses	1
	Other Clinical staff	1
	Non Clinical staff	1
Total		29

Appointed Governors	Number of Governor seats
North Northamptonshire Council	1
West Northamptonshire Council	1
University of Northampton	1
Criminal Justice - Youth	1
REACH Collaboration	1
Northamptonshire Rights and Equality Council	1
Older People – Age UK	1
Northamptonshire Carer	1
Total	8

Part B

Constituency	Class	Number of governors to be elected
Public – 11	Kettering and Corby	2
	Daventry and South Northamptonshire	3
	Wellingborough and East Northamptonshire	2
	Northampton	3
	Rest of England	1
Patients' and Carers' – 9		9 *
Staff – 5	Doctors and Dentists	1
	Registered Nurses	1
	Unregistered Nurses	1
	Other Clinical staff	1
	Non Clinical staff	1
Total		25
Appointed Governors		Number of Governor seats
North Northamptonshire Council		1
West Northamptonshire Council		1
University of Northampton		1
REACH Collaboration		1
Older People – Age UK Northamptonshire		1
Carer		1
Total		6

- * As at the Commencement Date, there will be three governors in post that were elected by the former Adult Service User class of the Patients' and Carers' Constituency. These governors shall remain in post until the expiry (or earlier termination) of their respective terms of office. With effect from the Commencement Date, these governors shall be known as "Patient and Carer governors".

ANNEX 5 –THE MODEL RULES FOR ELECTIONS

(Paragraph 12.2)

Northamptonshire Healthcare NHS foundation trusts (Council of Governors)¹ Model Election Rules

PART 1: INTERPRETATION

1. Interpretation

PART 2: TIMETABLE FOR ELECTION

2. Timetable
3. Computation of time

PART 3: RETURNING OFFICER

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

PART 4: STAGES COMMON TO CONTESTED AND UNCONTESTED ELECTIONS

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

PART 5: CONTESTED ELECTIONS

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

Action to be taken before the poll

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

The poll

27. Eligibility to vote
28. Voting by persons who require assistance

- 29. Spoilt ballot papers and spoilt text message votes
- 30. Lost voting information
- 31. Issue of replacement voting information
- 32. ID declaration form for replacement ballot papers (public and patient constituencies)
- 33. Procedure for remote voting by internet
- 34. Procedure for remote voting by telephone
- 35. Procedure for remote voting by text message

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

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

PART 6: COUNTING THE VOTES

- STV41. Interpretation of Part 6
- 42. Arrangements for counting of the votes
- 43. The count
- STV44. Rejected ballot papers and rejected text voting records
- FPP44. Rejected ballot papers and rejected text voting records
- STV45. First stage
- STV46. The quota
- 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 All references in this Annex 5 to “Corporation” shall bear the same meaning as “the trust” in the Constitution.

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 Code of Governance for NHS provider trusts (NHS England, October 2022) 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 formally 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.

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

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

The poll

27. Eligibility to vote

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

28. Voting by persons who require assistance

28.1 The returning officer is to put in place arrangements to enable requests for assistance to vote to be made.

28.2 Where the returning officer receives a request from a voter who requires assistance to vote, the returning officer is to make such arrangements as he or

she considers necessary to enable that voter to vote.

29. Spoilt ballot papers and spoilt text message votes

29.1 If a voter has dealt with his or her ballot paper in such a manner that it cannot be accepted as a ballot paper (referred to as a “spoilt ballot paper”), that voter may apply to the returning officer for a replacement ballot paper.

29.2 On receiving an application, the returning officer is to obtain the details of the unique identifier on the spoilt ballot paper, if he or she can obtain it.

29.3 The returning officer may not issue a replacement ballot paper for a spoilt ballot paper unless he or she:

- (a) is satisfied as to the voter’s identity; and
- (b) has ensured that the completed ID declaration form, if required, has not been returned.

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

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

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

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

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

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

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

30. Lost voting information

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

30.2 The returning officer may not issue replacement voting information in respect of

lost voting information unless he or she:

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

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

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

31. Issue of replacement voting information

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)²

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 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

² It should not be possible, technically, to make a declaration of identity electronically without also submitting a vote.

record (as applicable) when counting the votes in accordance with these rules.

40. Sealing of packets

40.1 As soon as is possible after the close of the poll and after the completion of the procedure under rules 37 and 38, the returning officer is to seal the packets containing:

- (a) the disqualified documents, together with the list of disqualified documents inside it,
- (b) the ID declaration forms, if required,
- (c) the list of spoilt ballot papers and the list of spoilt text message votes,
- (d) the list of lost ballot documents,
- (e) the list of eligible voters, and
- (f) the list of tendered voting information

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

STV41 Interpretation of Part 6

STV41.1 In Part 6 of these rules:

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

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

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

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

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

“non-transferable vote” means a ballot document:

(a) on which no second or subsequent preference is recorded for a continuing candidate,

or

(b) which is excluded by the returning officer under rule STV49,

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

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

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

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

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

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

the candidate who has the surplus,

“stage of the count” means:

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

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

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

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

42. Arrangements for counting of the votes

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

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

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

43. The count

43.1 The returning officer is to:

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

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

FPP52. Declaration of result for contested elections

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

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

FPP52.2 The returning officer is to make:

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

available on request.

STV52. Declaration of result for contested elections

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

- (a) declare the candidates who are deemed to be elected under Part 6 of these rules as elected,
- (b) give notice of the name of each candidate who he or she has declared elected –
 - (i) where the election is held under a proposed constitution pursuant to powers conferred on the [insert name] NHS Trust by section 33(4) of the 2006 Act, to the Chair of the NHS Trust, or
 - (ii) in any other case, to the Chair of the corporation, and
- (c) give public notice of the name of each candidate who he or she has declared elected.

STV52.2 The returning officer is to make:

- (a) the number of first preference votes for each candidate whether elected or

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

available on request.

53. Declaration of result for uncontested elections

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

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

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 Chair of the corporation.

57. Retention and public inspection of documents

57.1 The corporation is to retain the documents relating to an election that are forwarded to the chair by the returning officer under these rules for one year, and then, unless otherwise directed by the board of directors of the corporation, cause them to be destroyed.

57.2 With the exception of the documents listed in rule 58.1, the documents relating to an election that are held by the corporation shall be available for inspection by members of the public at all reasonable times.

57.3 A person may request a copy or extract from the documents relating to an election that are held by the corporation, and the corporation is to provide it, and may impose a reasonable charge for doing so.

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

58.1 The corporation may not allow:

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

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

58.2 A person may apply to the board of directors of the corporation to inspect any of the documents listed in rule 58.1, and the board of directors of the corporation may only consent to such inspection if it is satisfied that it is necessary for the purpose of questioning an election pursuant to Part 11.

58.3 The board of directors of the corporation's consent may be on any terms or

conditions that it thinks necessary, including conditions as to –

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

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

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

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

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

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

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 Chair of the corporation, and rules 57 and 58 are to apply.

STV59. Countermand or abandonment of poll on death of candidate

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

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

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

Election expenses

60. Election expenses

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

61. Expenses and payments by candidates

- 61.1 A candidate may not incur any expenses or make a payment (of whatever nature) for the purposes of an election, other than expenses or payments that relate to:
- (a) personal expenses,
 - (b) travelling expenses, and expenses incurred while living away from home, and
 - (c) expenses for stationery, postage, telephone, internet (or any similar means of communication) and other petty expenses, to a limit of £100.

62. Election expenses incurred by other persons

- 62.1 No person may:
- (a) incur any expenses or make a payment (of whatever nature) for the purposes of a candidate's election, whether on that candidate's behalf or otherwise, or
 - (b) give a candidate or his or her family any money or property (whether as a gift, donation, loan, or otherwise) to meet or contribute to expenses incurred by or on behalf of the candidate for the purposes of an election.
- 62.2 Nothing in this rule is to prevent the corporation from incurring such expenses, and making such payments, as it considers necessary pursuant to rules 63 and 64.

Publicity

63. Publicity about election by the corporation

- 63.1 The corporation may:
- (a) compile and distribute such information about the candidates, and
 - (b) organise and hold such meetings to enable the candidates to speak and respond to questions,
- as it considers necessary.
- 63.2 Any information provided by the corporation about the candidates, including

information compiled by the corporation under rule 64, must be:

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

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

64. Information about candidates for inclusion with voting information

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

66. Application to question an election

- 66.1 An application alleging a breach of these rules, including an electoral irregularity under Part 10, may be made to NHS England for the purpose of seeking a referral to the independent election arbitration panel (IEAP).
- 66.2 An application may only be made once the outcome of the election has been declared by the returning officer.
- 66.3 An application may only be made to NHS England by:
- (a) a person who voted at the election or who claimed to have had the right to vote, or
 - (b) a candidate, or a person claiming to have had a right to be elected at the election.
- 66.4 The application must:
- (a) describe the alleged breach of the rules or electoral irregularity, and
 - (b) be in such a form as the independent panel may require.
- 66.5 The application must be presented in writing within 21 days of the declaration of the result of the election. NHS England will refer the application to the independent election arbitration panel appointed by NHS England.
- 66.6 If the independent election arbitration panel requests further information from the applicant, then that person must provide it as soon as is reasonably practicable.
- 66.7 NHS England shall delegate the determination of an application to a person or panel of persons to be nominated for the purpose.
- 66.8 The determination by the 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 6 – ADDITIONAL PROVISIONS – COUNCIL OF GOVERNORS

(Paragraph 14.1, 14.4, 14.5 and 19)

1. Roles and Responsibilities of the Council of Governors

1.1 The general responsibilities of the Council of Governors shall be:

- 1.1.1 to support the Board of Directors in setting the longer-term vision for the Trust, to influence proposals to make changes to services and to act in a way that is consistent with NHS principles and values and the terms of the Trust's Authorisation;
- 1.1.2 to engage in dialogue with and provide advice to the Board of Directors with regard to the Trust's future vision and strategy and to act as a source of ideas about how the Trust can provide its services in ways that meet the needs of the community it serves;
- 1.1.3 to review annually the extent to which the Trust is meeting its objective of delivering high quality services;
- 1.1.4 to work with the Board of Directors on such other matters for the benefit of the Trust as may be agreed between them;
- 1.1.5 to exercise other functions at the request of the Board of Directors;
- 1.1.6 to be consulted by the Board of Directors of the Trust regarding the information to be given to NHS England or any subsequent regulator as to the Trust's forward planning in respect of each financial year and to give their views to the Board of Directors for the purposes of the preparation by the Board of Directors of any document containing such information which is to be given to NHS England or any subsequent regulator;
- 1.1.7 to respond as appropriate when consulted by the Board of Directors;
- 1.1.8 to hold the Non-Executive Directors individually and collectively to account for the performance of the Board of Directors;
- 1.1.9 to represent the interests of the members of the Trust as a whole and the interests of the public; and
- 1.1.10 to exercise such other powers and to discharge such other duties as may be conferred on the Council of Governors under this Constitution.

- 1.2 The Council of Governors shall meet in full at least four times each financial year including one Annual General Meeting.
- 1.3 At a general meeting each year the Council of Governors shall receive from the Board of Directors in accordance with paragraph 38 of this Constitution and shall then consider the Trust's annual accounts, any report of the auditor on them and the Trust's annual report.
- 1.4 A governor elected to the Council of Governors by the Public Constituency or the Patients' and Carers' Constituency may not vote at a meeting of the Council of Governors unless within the previous 12 months they have made a declaration stating the constituency of which they are a governor and that they are not prevented from being a governor by section 60 of the 2006 Act or otherwise under this Constitution and that they will at all times abide by the Trust's Code of Conduct for governors as set out at Annex 6 or as may be otherwise adopted by the Trust from time to time.
- 1.5 The form referred to in paragraph 1.4 of this Annex 6 shall be in such form as will comply with all relevant requirements of the 2006 Act (as amended) and this Constitution and will be as determined by the Trust from time to time.

2. Vacancies

- 2.1. Where an elected member of the Council of Governors ceases to hold office during his/her term of office for any reason then, subject to paragraph 2.4 below:
 - 2.1.1. if an election is due to be held within 9 months of the vacancy arising, the office will stand vacant until the next scheduled election unless, by leaving the office vacant, this causes the aggregate number of public governors and patient and carer governors to be less than half the total membership of the Council of Governors; or
 - 2.1.2. the Trust shall offer the candidate who secured the second highest number of first preference votes in the last election for the constituency (or class of constituency, as the case may be) in which the vacancy has arisen the opportunity to assume the vacant office for the unexpired balance of the governor's term of office. If that candidate does not accept to fill the vacancy it will then be offered to that candidate who secured the next highest number of first preference votes until the vacancy is filled.
- 2.2. If no reserve candidate is available or willing to fill the vacancy pursuant to paragraph 2.1.2 above, an election will then be held in accordance with the Model Rules for Elections.
- 2.3. The returning officer under the Model Rules for Elections shall maintain a

record of votes cast at each election under the Model Rules for Elections for the above purposes and the returning officer shall conduct or shall oversee the conducting of the process set out in paragraphs 2.1.2 and 2.2 of this Annex 6 above.

- 2.4. The Chair and the Trust Secretary may agree, where there are reasonable grounds for doing so, to leave an office vacant for no longer than 18 months. The office may only be left vacant for a period longer than 18 months with the agreement of the Council of Governors.
- 2.5. No proceedings of a Council of Governors meeting shall be invalidated by any vacancy in its membership or any defect in the appointment or election of any governor.

3 . Lead Governor and Deputy Lead Governor

- 3.1 The Council of Governors will appoint a Lead Governor from its membership. All elected governors will be asked to nominate via a proposer and seconder model for the position of Lead Governor.
- 3.2 The lead governor role shall be reviewed by the Council of Governors. on the expiry of the current term of office of the elected governor appointed to the post. An election process will take place as soon possible after the serving Lead Governor's term of office expires or if the post becomes vacant for any other reason. The incumbent Lead Governor will be eligible to re-stand if they are re-elected as a Governor.
- 3.3 Agreed procedures for appointment are:
 - 3.3.1 Candidates for Lead Governor must fill out and sign a nomination form, which is also signed by a proposer and seconder from the Council of Governors. The nomination form will include their name and include a statement of why they wish to stand. The proposer and seconder must also print their name on the nomination form.
 - 3.3.2 If more than one valid nomination is received, all governors are issued with a ballot paper and the person who receives the most votes will be appointed as the lead governor.
 - 3.3.3 In the event of a tie for Lead Governor position following voting, the following process will apply:
 - 3.3.3.1 Where there is a candidate who is not in a tied position, those members who voted for the that candidate will be asked to vote again on the tied candidates only.
 - 3.3.3.2 If there are only two tied candidates (i.e., and no other candidates), or that the outcome of 3.3.3.1 above results in another tie, a tossing of a coin will determine the outcome.

- 3.3.4 If there is only one valid nomination, all governors will be asked to vote in favour or against this nomination via a ballot and if this person receives the support of the majority of governors who participate in this vote they will be appointed as the lead governor. In the event of the nomination not being supported, the appointment process would be re-run.
- 3.4 The lead governor will be an elected governor and will hold office for the period they are an elected governor and/or for a maximum period of three years.
- 3.5 The Council of Governors will also appoint a Deputy Lead Governor from its membership. The Deputy Lead Governor election will follow the same process as in paragraphs 3.1 to 3.4.

4. Termination of Tenure

- 4.1. A governor may resign from that office at any time during the term of that office by giving notice in writing to the Trust Secretary save that if the governor's conduct and tenure are subject to review or investigation in accordance with the procedure set out at paragraph 6, Annex 6, or in the opinion of the Trust Secretary may become subject to such review or investigation, then any such notice of resignation will not be effective without the agreement of the Trust Chair or (if different) the chair of the appeal. (See 6.39).
- 4.2. If a governor fails to attend either three successive meetings of the Council of Governors or less than a half of such meetings over the course of a consecutive 12 month period, their tenure of office will be reviewed in accordance with the procedure set out at paragraph 6, Annex 6.
- 4.3. The Council of Governors may terminate a governors' tenure of office (in accordance with paragraph 6, Annex 6) if for reasonable cause it considers that:
- 4.3.1. they are disqualified from becoming or continuing as a governor under this Constitution; or
- 4.3.2. they have knowingly or recklessly made a false declaration for any purpose provided for under this Constitution; or
- 4.3.3. their continuing as a governor would or would be likely to:
- 4.3.3.1. prejudice the ability of the Trust to fulfill its principal purpose or other of its purposes under this Constitution, or otherwise to discharge its duties and functions; or
- 4.3.3.2. harm the Trust's work with other persons or bodies with whom it is engaged or may be engaged in the provisions of goods and services; or

- 4.3.3.3. adversely affect public confidence in the goods or services provided by the Trust; or
- 4.3.4. they have been given the opportunity but not signed the Governors Code of Conduct; or
- 4.3.5. they breach the Governors' Code of Conduct; or
- 4.3.6. they otherwise bring the Trust into disrepute either in acting as a governor or in their wider life, or
- 4.3.7. they fail to cooperate, in a timely manner, with the requirements of this Annex.
- 4.4 In the day-to-day conduct of business, governors will be supported to understand their duties. Where minor errors or discrepancies in actions, or behaviours occur, a supportive approach will be adopted by the Chair, Lead Governor, Senior Independent Director, Director of Corporate Governance and/or the Governor and Membership Officer to provide guidance to the governor to enable them to carry-out their duties within the terms of the Constitution and the Code of Conduct.
- 4.5 Alternative sanctions may be considered and applied in accordance with the procedure set out in paragraph 6 below. These sanctions include but are not limited to: providing an apology for errors, additional training, refresher training, re-signing the Code of Conduct, and/or desisting from specified conduct or actions.

5. Disqualification

- 5.1. A person may not become or continue as a governor if:
 - 5.1.1. they are an executive or Non-Executive Director of the Trust;
 - 5.1.2. in the case of an elected governor, they cease to be a member of the constituency or the class of a constituency by which they were elected;
 - 5.1.3. in the case of an appointed governor the appointing organisation withdraws its sponsorship of them;
 - 5.1.4. NHS England, or any subsequent regulator, has exercised its powers to remove that person as a governor of the Trust or has suspended them from office or has disqualified them from holding office as a governor of the Trust for a specified period or NHS England, or any subsequent regulator, has exercised any of those powers in relation to the person concerned at any other time whether in relation to the Trust or some other NHS foundation trust;

- 5.1.5. they have failed or refused to confirm in writing that they will abide by any Code of Conduct for governors which the Trust shall have published from time to time.
 - 5.1.6. they have failed or refused to attend training which the Council of Governors has decided is required training for governors.
 - 5.1.7. They do not meet the 'fit and proper' persons test described in the provider licence insofar as they are unable to properly perform the functions of a Governor.
- 5.2. The provisions of paragraph 1 of this Annex 6 apply to both elected and appointed governors and to those seeking election or appointment.

6. Protocol relating to alleged breach of Code of Conduct process and terminations of governors.

Standards Group, Governor induction and the Code of Governance

- 6.1. The Trust shall have in place and maintain a Code of Conduct for Governors, and a Standards Group with responsibility for oversight of Governor conduct. The membership of the Standards Group shall be determined by expressions of interest in joining the group from Governors, if the number coming forward match the vacant positions on the Standards Group, they automatically become members of that group, if there are more applicants than positions then the Trust will ask the self-nominated governors to provide a short, written statement to facilitate a vote. The governor(s) with the highest vote shall be elected as members of the Group. This process shall be managed by the Director of Corporate Governance.
- 6.2. The Trust shall provide induction training and copies of the Code of Conduct to all Governors. All governors shall be expected to attend the training and sign to confirm their acceptance of the Code of Conduct.

Informal resolution

- 6.3. Where there are grounds to believe that a governor may have breached the provisions set out within paragraphs 4.2 or 4.3 above or may be exhibiting behaviours that are contrary to the Trust's values and leadership behaviours, there should be early intervention to determine any causal factors that can be addressed immediately to prevent a breach of the Code of Conduct and without recourse to formal procedures. Subject to none being involved in the matter, the Chair, the Lead Governor and the Senior Independent Director shall meet with the Director of Corporate Governance to agree who will hold the informal conversation with the governor concerned. This could include, but is not limited to, an informal conversation with either the Trust Chair, the Lead Governor, The Director of Corporate

Governance, the Senior Independent Director, or any appropriate person. This discussion is to be held with the intent of identifying the causal factors resulting in the grounds for concern, and where possible resolving these quickly and amicably. A record of such interventions shall be made. In the event that the grounds for concern relate to the Lead Governor: then the Trust Chair, the Senior Independent Director or the Director of Corporate Governance shall initiate the early informal intervention.

- 6.4. Where there is prima facie evidence that a breach of the Code of Conduct has occurred, or there is reasonable belief that it may have done, a referral shall be made to the Standards Group.
- 6.5. The Standards Group will meet as soon as practical and assess the nature of the allegation to determine the severity of any alleged breach. Upon receiving information or a concern about the conduct of a governor the Standards Group will take fair and reasonable steps over a period of up to 14 days to resolve the matter informally if appropriate. In exceptional circumstances more rapid action may be warranted, e.g., to prevent harm. Any such intervention will be at the discretion of the Chair of the Standards Group and subject to review by the Standards Group at its next meeting.
- 6.6 Where during the informal discussions either the governor admits to a breach of the Code of Conduct, or it is established on the balance of probabilities that no breach has occurred, the need to proceed to a panel hearing may be avoided with the agreement of the Governor and the Standards Group. Any admission of a breach of the Code of Conduct must be confirmed in writing by the governor. If following discussion, the Standards Group agrees not to proceed to a hearing, the Standards Group is able to decide on an appropriate resolution in agreement with the governor concerned. The governor has the right to proceed to a formal panel process if informal resolution is not agreed. Any such decision shall be formally recorded and reported to the Council of Governors in private session.
- 6.7 **Before progressing to a formal investigation**, the Standards Group will have considered all reasonable option to reach an informal and if necessary, a facilitated resolution. Where conduct is, or could reasonably be considered to be related, to health and/or behavioural concerns this could reasonably include: mentoring, coaching, mediation, conflict resolution sessions, a short gap in service or supported referral to health services (i.e., the Trust's Occupational Health Department).

Establishing the Panel

- 6.8. If the matter cannot be resolved informally as at paragraph 6.3 to 6.7 it shall be for the Standards Group to consider the allegations and what (if any) action should be taken. Where there is a need for the Standards Group to consider the matter if any members of the Group have been involved in that matter, they should consider whether it is necessary to exempt themselves from the Group. The remainder of the Group (providing

that it remains quorate) shall consider the matter, where the group is not quorate additional temporary members, from the Council or Board, as appropriate to the role they are replacing, shall be appointed by the Trust Chair.

- 6.9. The Standards Group should oversee a fair investigation which may include the need to commission an investigatory report. The Group should, in the first instance, seek one or more individuals with relevant experience to conduct an investigation, from outside the Council of Governors but ordinarily from within the Trust. For example, the Trust's HR department has considerable experience in advising on such issues and the Group may commission an investigation from a senior member of the HR team who may need to establish an investigation team depending on the nature of the concerns raised and the context. Any governor who is a member of the Standards Group should not be part of the investigation team. For the avoidance of doubt, for an investigation to be considered 'fair', it need not be led by nor include a Governor as part of the investigation team. While there may be circumstances in which it would be appropriate to commission an investigation from an external party, such instances would be exceptional and only occur where other reasonable internal options have first been fully considered, discounted and a record made of the Group's rationale for using an external investigator.
- 6.10. The Trust shall have in place and maintain a Standards Group, the Terms of Reference shall set out the membership and quoracy requirements. The Council of Governors shall review and update the Terms of Reference on an annual basis.

Suspension

- 6.11. Pending a final decision to be made in accordance with the provisions in this paragraph 6, the Standards Group will consider the risks to the Trust, the public, and the governor themselves of continuing in their duties whilst an investigation is conducted. The Group may on a majority vote of its members present and voting suspend a governor who is the subject of allegations that the Group is investigating. This suspension will not be communicated to anyone save the individual governor themselves and those involved in the Standards Group, unless the Governor has another role within the Trust in which case the Standards Group will need to use its discretion on the balance of risks. (This includes the wider Council of Governors and Trust employees.) In making a decision to suspend a Governor from their duties, the Standards Group should consider the need to take professional advice in the context of the particular circumstances of each case.

Investigation Process

- 6.12. The governor who is being investigated will be informed that an investigation will be undertaken. Where possible this should be face to face but if this is not practicable then it is appropriate for this information to be provided in a Teams call or over the telephone and confirmed in writing at the earliest

opportunity. This communication should include a copy of this Annex 6 of the Trust's Constitution, a copy of the Code of Conduct for Governors, the Trust's values and leadership behaviours documents. It may also include other relevant documents, such as a copy of a terms of reference for an investigation.

- 6.13. The investigating officer(s) may request written statements from parties involved or witnesses to the incident(s) being investigated ahead of an investigation meeting. All parties must be advised that during the investigation that the issue must remain confidential. It will be for the investigating officer to determine from whom any witness statements should be sought, balancing the need for a thorough and fair investigation with the proportionate use of resources.
- 6.14. The investigating officer(s) will arrange a meeting with the governor concerned. They will also arrange a meeting with any other witnesses as deemed necessary.
- 6.15. Where the governor who is the subject of the investigation is invited to the meeting, they will be advised of their right to be accompanied by a companion (not acting in a legal capacity). Anyone acting as a companion should not be involved in the matter under consideration (e.g., a witness). Reasonable notification will be given of the meeting. The governor will inform the investigating officer of the name of the companion they wish to accompany them in advance of such a meeting.
- 6.16. The investigating officer(s) will reasonably gather other documentation relevant to the investigation into the specific allegations made concerning a breach of the code of conduct. It will be for the investigating officer to determine the relevance of any such documentation, which in any case should be demonstrably related to the alleged breach of the Governors code of conduct that is the subject of the investigation.
- 6.17. If the investigating officer(s) feels that they need to obtain further information from a witness it is appropriate for a further statement to be requested or another interview arranged in accordance with the above process.
- 6.18. Any investigation should ordinarily be concluded within five working days, which may be five consecutive days or, with the agreement of the Standards Group, five days over a longer period of time (such period in any event being no longer than a calendar month). In the unusual circumstance where the appointed investigator requires additional time to complete an investigation, they should formally request an extension to the Standards Group, explaining the rationale for the request and projecting a revised date for completion of the investigation. The Standards Group should use its judgement in granting extensions to the timeframe for completing investigations but should ordinarily grant extensions of no more than a total period of eight weeks. The governor who is the subject of the investigation should be informed in writing by the investigating officer(s) if this timescale is not likely to be met and given a

revised timescale for completion; outlining any reasons for the delays.

- 6.19. Upon completion of the investigation an investigation report will be submitted to the Standards Group and the governor concerned. The Standards Group will meet, within 14 days of the receipt of the report, to consider the findings of the report. The Group will consider the report and if necessary a hearing will be called as soon as is reasonably practical to consider the allegations and what (if any) action should be taken (including, if applicable, any potential sanctions).
- 6.20. The Standards Group shall appoint a panel to undertake the hearing. This hearing panel shall consist of one of the Ex-Officio members of the Standards Group and two of the Governor members of the Standards Group. The selection of the panel shall be at the discretion of the Standards Group. For the avoidance of doubt, the Panel is a sub group of the Standards Group, appointed by the Standards Group.

The panel hearing process

- 6.21. The governor concerned is permitted to make written and/or oral representations to the panel for consideration in the panel hearing irrespective of whether the governor has been interviewed as part of an investigation. Any written contribution must be no more than 50 pages in total (including any appendices and supporting materials) and submitted to the chair of the panel no later than seven clear days in advance of the date of the hearing.
- 6.22. The governor has the right to attend and be accompanied at the panel hearing by a companion (i.e. an advocate). The companion can speak on the governor's behalf, with permission from the governor. In the event that the governor concerned declines to attend, the hearing may proceed in absentia.
- 6.23. The investigating officer(s) will present their case to the panel members. Once the presentation is completed, the panel members may question the investigating officer(s). The governor will then present their case and panel members may question the governor.
- 6.24. After questions from the panel, the investigating officer(s) and the governor will have the opportunity to sum up.
- 6.25. There will be an adjournment for the panel members to consider the cases presented and reach a conclusion. The panel will reach its conclusions based on a majority vote of its members. This may include a recommendation to the Council of Governors to consider terminating the tenure of the governor in question. Removal will be considered only in the most serious cases of improper personal conduct or where there is improper personal conduct over a sustained period of time. By way of example, lesser sanctions may include, but are not limited to, one or more of:

- 6.25.1. Requirement that the governor signs the Code of Conduct;
 - 6.25.2. Requirement that the governor attends specified training;
 - 6.25.3. Requirement that the governor desists from specified conduct.
- 6.26. If possible, the meeting will reconvene the same day and the chair of the panel will issue their decision and the reasoning that directed their conclusion. The decision will be confirmed in writing to the governor within 5 working days. If it is not possible to reconvene the same day, the panel should meet within 10 working days and issue their decision in writing to the governor within 5 working days of this meeting.

Panel decision not comprising a recommendation to terminate tenure

- 6.27. Any decision made by the panel in accordance with paragraphs 6.24 to 6.26 above may be appealed in writing by the governor concerned within 28 days of the date upon which notice in writing of the panel's decision is communicated to the governor concerned (time of the essence). The appeal will be heard by the Council of Governors in private session within 56 days of the date upon which the notice of the appeal is received by the Trust.
- 6.28. If it is not possible to hear an appeal within the 56 days' time limit, then the Council of Governors shall be asked to agree either to hold an exceptional meeting for an appeal hearing within the 56 days' time limit or to extend the time limit to the date of the next meeting of the Council of Governors after expiry of the time limit.
- 6.29. The governor has the right to have the appeal against the panel's decision heard by the full Council of Governors as at paragraph 6.27.
- 6.30. The Trust Chair or (if the Trust Chair is disqualified) the Deputy Chair shall act as the chair of the appeal. If both the Trust Chair and Deputy Chair are disqualified, then the Chief Executive shall nominate another Non-Executive Director of the Trust to act as the chair of the appeal. At the start of an appeal hearing, the Council of Governors must approve the appointment of the chair of the appeal if they are not the Trust Chair or Deputy Chair.
- 6.31. The Council of Governors will receive the original investigation report and outcome letter and the written grounds for appeal from the appellant.
- 6.32. At the decision appeal hearing:
- 6.32.1. The chair of the panel will present their reasons for the conclusions reached and decision taken.
 - 6.32.2. Governors except the appellant may ask the chair of the panel clarification questions about their decision.
 - 6.32.3. The appellant may address the Council of Governors outlining their

grounds of appeal. The representation may be time limited at the absolute discretion of the chair of the appeal.

- 6.32.4. The appellant has the right to be accompanied at the hearing by a companion (i.e., an advocate). The companion can speak on the appellant's behalf, with permission from the appellant.
 - 6.32.5. Governors may ask the appellant clarification questions about their comments, response, and representations.
 - 6.32.6. The appellant and the chair of the panel may make final summary representations to the Council of Governors which may be time limited at the absolute discretion of the chair of the appeal.
 - 6.32.7. The chair of the appeal may make such recommendations as they consider appropriate to the Council of Governors.
 - 6.32.8. The chair of the appeal may exclude the appellant and the chair of the panel from the meeting so that the Council of Governors may discuss the chair of the appeal's recommendation in their absence. The chair of the appeal shall invite the appellant and the chair of the panel to return to the meeting on the conclusion of such discussion.
- 6.33. The Council of Governors shall decide whether to uphold the panel's decision or to apply any other sanction by a majority vote of all governors present and voting. The members of the panel who are present will count towards the quorum but will be omitted from the vote. The Council of Governors' decision will be communicated in writing to the appellant within 5 working days of the date of the Council of Governors' meeting.
- 6.34. The chair of the appeal may in their absolute discretion, at any time, adjourn the appeal hearing to a date and time to be fixed.
- 6.35. The chair of the appeal may at any time before or during an appeal hearing take such advice as they consider to be appropriate from the Trust's officers and/or advisers and if necessary, may adjourn an appeal hearing to do so in private.

Panel decision comprising a recommendation to terminate the tenure of a governor

- 6.36. Following a panel hearing the panel may recommend to the Council of Governors the termination of a governor's tenure. Removal will be considered only in the most serious cases of improper personal conduct or where there is improper personal conduct over a sustained period of time. The chair of the panel will set out the reasons for the recommendation of termination of tenure.
- 6.37. At the termination hearing:
- 6.37.1. The chair of the panel will present their reasons for the recommendation to terminate the governor's tenure.

- 6.37.2. The Council of Governors, except the governor concerned, may ask the chair of the panel clarification questions about their recommendation.
- 6.37.3. The governor concerned has the right to be accompanied at the hearing by a companion (i.e., an advocate). The companion can speak on the governor's behalf, with permission from the governor.
- 6.37.4. The governor may address the Council outlining their case for non-termination
- 6.37.5. The Council may ask the governor concerned clarification questions about his or her comments, response, and representations.
- 6.37.6. The governor concerned and the chair of the panel may make final summary representations to the Council of Governors which may be time limited at the absolute discretion of the Trust Chair.
- 6.37.7. The Trust Chair may make such recommendations as they consider appropriate to the Council of Governors.
- 6.37.8. The Trust Chair may exclude the governor concerned and the chair of the panel from the meeting so that the Council of Governors may discuss the chair of the panel's recommendation in their absence. The Trust Chair shall invite the governor concerned and the chair of the panel to return to the meeting on the conclusion of such discussion.
- 6.38. Termination of a governor's tenure of office requires the approval of two-thirds of the members of the Council of Governors present and voting providing the meeting is quorate in accordance with the Standing Orders for the Practice and Procedure of the Council of Governors. The members of the panel who are present will count towards the quorum and will be able to vote.
- 6.39. A governor whose tenure has been terminated by the Trust is not eligible to stand again for election as a governor of the Trust. A governor may not resign without the agreement of an investigation panel if they are, or in the opinion of the Trust Chair and Trust Secretary, subject to an investigation undertaken in accordance with section 6 of Annex 6.
- 6.40. In the event of an appeal being referred to the Council of Governors under paragraph 6.36 above and a determination being made in accordance with paragraph 6.38 above, the decision of the Council of Governors shall be final with no further recourse.

Time

- 6.41. All time limits specified in this section 6 of Annex 6 are for guidance only unless it is stated that time is of the essence. Breach of a time limit shall not invalidate any step taken or decision made unless time is of the essence.

Disputes over process

- 6.42. Any, and all, disputes over process shall be considered and determined by the Director of Corporate Governance having, where necessary, sought any professional advice they deem necessary. Such disputes shall be reported in private session to the Council of Governors.

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

(Paragraph 16)

Northamptonshire Healthcare NHS Foundation Trust

1. Authority

- 1.1. These Standing Orders were agreed at the first meeting of the Council of Governors following the Authorisation of the Trust as an NHS foundation trust.
- 1.2. Subsequent amendments will be made in accordance with the Constitution.
- 1.3. Definitions and interpretations within these Standing Orders shall be consistent with those set out in the Trust Constitution.

2. Frequency of meetings of the Council of Governors

The Council of Governors will meet in full at least four times a year including an Annual General Meeting in September each year.

3. Timing and duration of meetings of the Council of Governors

The Council of Governors meetings shall normally be held between Monday and Friday. Meetings will not normally last more than three hours.

4. Calling meetings of the Council of Governors

The Chair may call a meeting of the Council of Governors at any time.

5. Governors calling an Extra-ordinary Meeting of the Council of Governors

If the Chair refuses to call a meeting after a requisition for that purpose, signed by at least ten of the Governors, has been presented to him/her, or does not call a meeting within seven days of such a requisition, the Governors may call a meeting themselves. The Trust Secretary shall call a meeting within seven days on behalf of the governors.

6. Notice of meetings of the Council of Governors

- 6.1. The Trust Secretary shall publish on the Trust's website and such other places as they in their discretion may consider to be appropriate the dates, times and venues or on-line platform on which Council of Governors meetings will be held at least two months in advance. Other, or emergency, Council of Governor meetings may be called with at least 7 days' notice.
- 6.2. The agenda and supporting papers for a Council of Governors meeting, signed off by the Chair, or another member of the Trust Board of Directors, will be sent to every governor at least seven days in advance of the meeting.
- 6.3. A public notice of every Council of Governors meeting will be posted prominently on the Trust website at least seven days in advance of the meeting.
- 6.4. The normal schedule of Council of Governors meetings with their timings and locations will be circulated to all members as part of the member newsletter.

7. Setting the agenda

- 7.1. The Chair shall agree with the Council of Governors any standard items to appear on every Council of Governors meeting agenda.

- 7.2. The Chair will decide with the Trust Secretary the items to be added to a Council of Governors' meeting agenda.
- 7.3. Draft minutes of the previous Council of Governors meeting will be circulated with the agenda for approval as a specified regular agenda item. This will be followed on the agenda by an item called Matters arising from the previous minutes.
- 7.4. Each agenda will include an item called Any Other Business. Governors intending to raise items under Any Other Business must provide the Chair with two days' notice ahead of the meeting. The Chair will decide if an item of Any Other Business will be given discussion time at that particular meeting and the length of time for that discussion.
- 7.5. A governor desiring an item to be placed on the agenda must outline the item in writing to the Chair and Trust Secretary at least 21 days ahead of the meeting unless the meeting has been called outside of the normal cycle. The placing of agenda items on the agenda will not be unreasonably refused.

8. Attending the meetings

- 8.1. All governors are expected to attend the main Council of Governor meetings each year. Any governor unable to attend a Council of Governors meeting should send their apologies to the Trust Secretary. The Constitution (paragraph 4.2 of Annex 6) outlines the process for dealing with consecutive and persistent non-attendance without good reason.
- 8.2. Appointed governors (but not other governors) may nominate a deputy to attend Council of Governor meetings on their behalf. Their deputies will be entitled to vote for them if the deputy has a written proxy signed by the appointed governor for whom they are deputising.

9. Notice of questions

- 9.1. Governors may ask the Chair, or through the Chair ask another governor, Director or any other presenter of an item at a Council of Governors meeting questions directly relating to a matter on the agenda. Where possible, notice of substantive questions should be given to the Chair and to the governor, Director or other presenter to whom the questions is to be posed.
- 9.2. Questions to the Chair, other governors, Trust Directors or any other presenter at a Council of Governors meeting on matters not on the agenda but falling within the powers, duties or role of the Council of Governors should be submitted at least two days in advance to the Trust Secretary. The only exception to this rule is for urgent matters which are defined as a matter which will adversely affect the Trust within the next seven days.
- 9.3. The Chair will have the final decision as to whether a question is appropriate and as to how much, if any, time is given to that question.

10. Notice of motions

A governor wishing to move a motion shall send a written notice at least 21 days ahead of the meeting to the Trust Secretary unless the meeting has been called outside of the normal cycle. The written notice of every motion shall be signed by at least two governors. Motions must relate to matters for which the Council of Governors has a

responsibility. Motions will be added to the meeting agenda in the order received.

11. Non Governor attendance at Council of Governors meetings

The Council of Governors will invite the Chief Executive of the Trust, the Senior Independent Director and Trust Secretary to attend all of their meetings. Other Trust Directors and members of Trust staff will be expected to attend when invited.

12. Admission of the public and press

12.1. Council of Governors meetings will be held in public except in exceptional circumstances. Members of the Trust, members of the public and the Press may attend Council of Governor meetings in an observation role.

12.2. Members of the Trust, members of the public and the Press shall be required to withdraw from the meeting upon the Council of Governors resolving:

“That members of the Trust, members of the public and the Press be excluded from the remainder of the meeting due to the confidential nature of business to be transacted.”

13. Chairing the meetings

13.1. The Chair of the Trust’s Board of Directors will also chair the Council of Governors. If the Chair of the Trust is absent from the meeting, then the Deputy Chair of the Trust will deputise.

13.2. If the Chair is absent from a meeting temporarily on the grounds of a declared interest the Deputy Chair, if present, shall preside. If the Chair and Deputy Chair are absent or disqualified from participating, a Non- Executive Director of the Trust, as chosen by the governors, shall preside.

14. Conduct of meetings

14.1. The decision of the Chair of the meeting on questions of order, relevance, regularity, appropriateness, and any other matters shall be observed at the meeting.

14.2. Approval to speak will be given by the Chair. Speeches and questions must relate to the item under consideration or a point of order and be limited to a maximum of five minutes. In the interests of time, the Chair may limit the number of contributions and length of response.

14.3. All speakers must state their name and role before speaking to ensure accuracy of the minutes.

15. Voting at meetings

15.1. Unless otherwise stated within this Constitution, pursuant with the provisions of the 2006 Act, every question at a meeting requiring a resolution which cannot be obtained with consensus shall be determined by a majority of the votes of the Chair or other person presiding and the governors present and voting on the question.

15.2. Each person voting shall have one vote save that in the case of any equality of votes, the Chair or other person presiding shall have a second and casting vote.

15.3. A question or issue that goes to a vote can be decided by a show of hands or oral expression unless a majority of the governors present request a paper ballot.

16. Record of attendance

- 16.1. The names of the governors and other present at each Council of Governors meeting will be recorded in the minutes.
- 16.2. A record of attendance at Council of Governor meetings by governors will be made available to members and the public via the Trust website and Annual Report.

17. Minutes of meetings

The minutes of a Council of Governors meeting will be recorded and circulated in draft form at least seven days in advance of the subsequent Council of Governors meeting. A regular agenda item will consider the accuracy of the minutes of the previous Council of Governors meeting. No discussion will take place on the minutes other than on their accuracy. Once agreed as accurate, or with agreed amendments, the chair of the meeting will sign them as an accurate record. The minutes of the public elements of each Council of Governors meeting, once signed as accurate, will be posted on the Trust's website.

18. Quorum

- 18.1. No formal business shall be transacted at a meeting of the Council of Governors unless at least 10 governors are present.
- 18.2. If a governor has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of the declaration of a conflict of interest, he/she shall no longer count towards the quorum. If a quorum is not then available for the discussion or passing of a resolution on any matter, that matter may not be discussed further or voted upon at the meeting.

19. Appointment of committees / sub-groups

- 19.1. The Council of Governors are required to establish a Nominations Committee and a Remuneration Committee which may be combined.
- 19.2. The Council of Governors can from time to time also establish other formal committees and sub-groups to transact business related to the duties it holds.
- 19.3. The Standing Orders of the Council of Governors, as far as they are appropriate, shall apply to any committees and sub-groups of the Council of Governors.
- 19.4. Each committee and sub-group shall have terms of reference and powers and be subject to conditions determined by the full Council of Governors.
- 19.5. Each committee and sub-group shall elect its own chair.
- 19.6. Committees and sub-groups will normally only make recommendations and provide advice to the full Council of Governors.

20. Declaration of interests

- 20.1. The Constitution requires governors to declare all interests which they have which would be considered relevant and material to the Council of Governors.
- 20.2. Interests which should be regarded as relevant, and material include:
 - 20.2.1. Directorships, including non-executive directorships held in private companies;
 - 20.2.2. Ownership or part ownership of a private company, business, or consultancy;

- 20.2.3. A shareholding in a company or other body that may seek to do business with the Trust;
 - 20.2.4. A position of authority in a charity or voluntary or community organisation, paid or unpaid;
 - 20.2.5. Any connection with a charity, voluntary or community organisation contracting for Trust services;
 - 20.2.6. Any body having or likely to have a financial relationship with the Trust.
- 20.3. The above list of potential interests applies to the governor, their partner, and to their immediate family (parent, spouse, child, or sibling).
- 20.4. If a governor has any doubt about the relevance of an interest, then they should discuss it with the Trust Secretary.
- 20.5. A governor who will have a conflict of interest with an item on the agenda of a Council of Governors meeting or subcommittee meeting, should notify the Chair in advance. The conflict of interest should be declared at the start of the meeting. When the agenda item is reached the governor concerned should withdraw from the meeting and play no part in the relevant discussion or decision if they have declared a prejudicial interest.
- 20.6. Interests that are declared as personal but not prejudicial will be noted but will not necessarily necessitate withdrawal from the relevant discussion and decisions. Prejudicial interests are those that a member of the public with knowledge of the relevant facts would reasonably regard as so significant that it is likely to prejudice the governor's judgement of the public interest and/or interests of the Trust. If a governor declares an interest that they deem to be prejudicial, then they will be required to withdraw from the related discussion and decisions.
- 20.7. During the course of a meeting, if a prejudicial conflict arises, the governor concerned should withdraw from the meeting and play no part in the relevant discussion or decision.

21. Register of interests

To participate in Council of Governors meetings, a governor must have made a declaration of interests. The declaration must be updated every year and added to during the year if a new interest arises.

22. Council of Governors - Code of Conduct

A Code of Conduct will be agreed and reviewed at least once every two years by the Council of Governors. This code will outline expected conduct and behaviour for all governors (elected and appointed) and the sanctions to be used by the Council of Governors in the event of non-compliance as set out in Annex 6 of this Constitution. The Council of Governors will implement its own Code of Conduct.

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

(Paragraph 28)

**NORTHAMPTONSHIRE
HEALTHCARE NHS
FOUNDATION TRUST**

STANDING ORDERS

CONTENTS

1. Introduction
2. Interpretation
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STANDING ORDERS - FOREWORD

NHS Foundation Trusts need to agree Standing Orders (SOs) for the regulation of their proceedings and business.

Standing Orders and delegated powers, together with Standing Financial Instructions, provide a regulatory framework for the business conduct of the NHS Foundation Trust. They fulfill the dual role of protecting the Corporation's interests and protecting staff from any possible accusation that they have acted less than properly. This is provided of course that staff have followed the correct procedures outlined in the relevant document.

The Standing Orders and Standing Financial Instructions provide a comprehensive business framework. All executive and Non-Executive Directors and all members of staff, including staff seconded into the NHS Foundation Trust, should be aware of the existence of these documents and, where necessary, be familiar with the detailed provisions.

1. INTRODUCTION

1.1. Regulatory Framework

- 1.1.1. The Northamptonshire Healthcare NHS Foundation Trust (the Trust) is a statutory body which became a public benefit corporation on 1 May 2009 following its Authorisation as an NHS foundation trust by NHS England (formerly Monitor) pursuant to National Health Service Act 2006.
- 1.1.2. The Corporate Headquarters of the Trust is Sudborough House, St Mary's Hospital, London Road, Kettering, Northamptonshire, NN15 7PW.
- 1.1.3. NHS foundation trusts are governed by Acts of Parliament, mainly the 2006 Act, by their constitutions and by the terms of their Authorisation granted by NHS England (the Regulatory Framework).
- 1.1.4. The functions of the Trust are conferred by the Regulatory Framework.
- 1.1.5. The Regulatory Framework requires the Board of Directors of the Trust to adopt Standing Orders for the regulation of its proceedings and business.
- 1.1.6. Standing Orders shall be subject to annual review by the Trust through the Audit Committee.
- 1.1.7. As a statutory body, the Trust has specific powers to contract in its own name.
- 1.1.8. The Trust has a common law duty as a bailee for patients' property held by the Trust on behalf of patients.

2. INTERPRETATION

2.1. Purpose and Terminology

- 2.1.1. Save as permitted by law and subject to the Constitution, at any meeting the Trust Secretary shall be the final authority on the interpretation of Standing Orders, with a right of appeal to the Board of Directors, whose decision shall be final and binding except in case of manifest error.
- 2.1.2. Any expression to which a meaning is given in the 2006 Act or Regulations made under it, shall have the same meaning in this interpretation and in addition:

"Accounting Officer" means the Trust's Officer to whom the Constitution delegates some of the Trust's functions in relation to accounts. For this Trust, it shall be the Chief Executive.

"Council of Governors" means the Council of Governors of the Trust as constituted by the Constitution.

"Board of Directors" and (unless the context otherwise requires) **"Board"** means the Chair, Executive and Non-Executive Directors of the Trust collectively as a body.

"Budget" means a resource, expressed in financial terms, proposed by the Trust for the purpose of carrying out, for a specific period, any or all of the functions of the Trust.

"Chair of the Board" or "Chair of the Trust" is the person appointed by the Council of Governors to lead the Board of Directors and to ensure that it successfully discharges its overall responsibility for the Trust as

a whole. The expression “the Chair of the Trust” shall be deemed to include the Deputy Chair of the Trust if the Chair is absent from the meeting or is otherwise unavailable.

"Chief Executive" means the chief executive officer of the Trust.

"Commissioning" means the process for determining the need for and for obtaining the supply of healthcare and related services by the Trust within available resources.

"Committee" means a Committee of the Board of Directors.

"Constitution" means the Constitution of the Trust.

"Committee members" means Directors formally appointed by the Board to sit on or to chair specific committees.

"Contracting and procuring" means the systems for obtaining the supply of goods, materials, manufactured items, services, building and engineering services, works of construction and maintenance and for disposal of surplus and obsolete assets.

"Deputy Chair" means the Non-Executive Director appointed from amongst the Non-Executive Directors as Deputy Chair by the Council of Governors in accordance with paragraph 24 of the Constitution to take on the Chair's duties if the Chair is absent for any reason.

"Executive Director" means a member of the Board of Directors who holds an executive office of the Trust and is a voting member of the Board.

"Finance Director" means the Chief Financial Officer of the Trust.

"Funds Held on Trust" means those funds which the Trust holds at its date of incorporation, receives on distribution by statutory instrument or chooses subsequently to accept. Such funds may or may not be charitable funds.

"Governance Committee" means a Committee whose functions are concerned with the arrangements for the purpose of monitoring and improving the quality of healthcare for which the Trust has responsibility.

"Legal Advisor" means the properly qualified person appointed by the Trust to provide legal advice.

"Member of the Board" means an Executive or Non-Executive Director (member of the Board in relation to the Board of Directors includes its Chair).

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

"Nominated Officer" means an officer charged with the responsibility for discharging specific tasks within Standing Orders and Standing Financial Instructions.

"Non-Executive Director" means a member of the Board of Directors who does not hold an executive office of the Trust.

"Officer" means an employee of the Trust or any other person holding a paid appointment or office with the Trust. (This includes all employees or agents of the Trust, including medical and nursing staff and consultants practicing upon

the Trust's premises and shall be deemed to include employees of third parties contracted to the Trust when acting on behalf of the Trust).

"SFIs" means Standing Financial Instructions. The Standing Financial Instructions shall have the same effect as if they were incorporated in Standing Orders.

"SOs" means Standing Orders.

"Trust Secretary" means a person who may be appointed to act independently of the Board to provide advice on corporate governance issues to the Board and the Chair and monitor the Trust's compliance with the Regulatory Framework and these Standing Orders.

- 2.1.3. Wherever the title Chief Executive, Director of Finance, or other nominated employee is used in these Standing Orders, it shall be deemed to include such other Director or employees who have been duly authorised to represent them.

2.2. Compliance

- 2.2.1. It is the duty of the Chair to ensure that the Chief Executive, Non-Executive Directors, Executive Directors, and other employees of the Trust, via the Chief Executive as described in para 12.1 of these Standing Orders, are aware of and comply with these Standing Orders.
- 2.2.2. Failure to comply with Standing Orders and Standing Financial Instructions could result in a disciplinary action or dismissal.

2.3. Disclosure

- 2.3.1. Subject to the Trust's guidance for staff raising issues of concern ("whistle-blowing" or "Speaking-Up"), the Chair, Non-Executive Directors, Executive Directors, and other employees of the Trust may not, without the express permission of the relevant Director, disclose to a person not employed by the Trust or quote in public any document which is marked 'Confidential'. Breach of this could be considered as gross misconduct.
- 2.3.2. Candidates for appointment to an office under the Trust are required at the time of their application to declare relationships with Directors (to include senior members of clinical and managerial staff as stated in Standing Orders 9.4).

2.4. Openness

- 2.4.1. It is the aim of the Trust in accordance with the Freedom of Information Act 2000 to ensure that the public:
- 2.4.1.1. have access to available information about the services provided by the Trust, the cost of those services, quality standards and performance against targets;
 - 2.4.1.2. are provided with explanations about proposed service changes and have an opportunity to influence decisions on such changes;
 - 2.4.1.3. are aware of the reasons for decisions and actions affecting their own treatment;
 - 2.4.1.4. know what information is available and where they can obtain it.
- 2.4.2. There is a presumption of openness in meeting a governor's request for reports and/or information produced for or by the Trust. Any refusal should be

accompanied by an appropriate explanation.

2.5. Financial Limits and Thresholds

2.5.1. Details of financial limits and thresholds arising from Standing Orders are contained in the Trust's Standing Financial Instructions. These limits and thresholds shall be reviewed annually and may be formally amended periodically by the Chief Executive and considered and approved by the Audit Committee.

3. THE CORPORATION AND THE BOARD OF DIRECTORS

3.1. Business

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

3.1.2. All Funds Held on Trust shall be accepted in the name of Northamptonshire Health Charitable Fund, the Independent Charity body (Registration No 1165702) which acts as the trustee accountable to the Charity Commission for all donated funds deemed to be charitable. The charity will separately identify all Funds Held on Trust that it manages specifically on the Trust's behalf.

3.1.3. The Trust has resolved that certain powers and decisions may only be exercised or made by the Board in formal session. These powers and decisions are set out in "Reservation of Powers to the Board" as set out in the Trust's Standing Financial Instructions and have effect as if incorporated into the Standing Orders.

3.2. Composition of the Board

3.2.1. The composition of the Board will be in accordance with the Constitution.

3.2.2. The Board will comprise the Chair of the Trust, up to eight, and not fewer than four, other Non-Executive Directors and up to eight and not fewer than four Executive Directors to include:

3.2.2.1. the Chief Executive

3.2.2.2. the Finance Director

3.2.2.3. the Nurse Director

3.2.2.4. the Medical Director

3.2.2.5. the Managing Director

3.2.3. 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.

3.3. Appointment of the Chair and other Non-Executive Directors

3.3.1. The Chair and the other Non-Executive Directors are appointed by the Council of Governors.

3.4. Appointment of the Executive Directors

3.4.1. The Chief Executive is appointed by the Non-Executive Directors, subject to the

approval of the Council of Governors. The other Executive Directors are appointed by a Committee consisting of the Chair, the other Non-Executive Directors and the Chief Executive.

3.5. **Not used**

3.6. **Not used.**

3.7. **Senior Independent Director**

3.7.1. **Appointment and Powers of Senior Independent Director.** The Board of Directors, in consultation with the Council of Governors, should appoint one of the independent Non-Executive Directors to be the Senior Independent Director, for such period, not exceeding the remainder of their term as a member of the Board, as they may specify on appointing them. The Senior Independent Director shall perform the role set out in the Trust's "Senior Independent Director Job Description", as amended from time to time by resolution of the Board. The Senior Independent Director may also hold the role of Deputy Chair.

3.7.2. Any member of the Board so appointed may at any time resign from the office of Senior Independent Director by giving notice in writing to the Chair. The Board of Directors, in consultation with the Council of Governors, may thereupon appoint another independent Non-Executive Director member of the Board as Senior Independent Director in accordance with the provisions of Standing Order 3.7.1.

4. MEETINGS OF THE BOARD

4.1. Calling Meetings

4.1.1. Ordinary meetings of the Board shall be held at such times and places as the Board may determine.

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

4.2. Notice of Meetings

4.2.1. Before each Board or Annual Public Meeting of the Trust, a notice of the meeting, specifying the business proposed to be transacted at it, and signed by the Chair or by an officer of the Trust authorised by the Chair to sign on their behalf shall be sent by email to every member of the Board, at least five clear days before the meeting.

4.2.2. Lack of service of the notice on any member of the Board shall not affect the validity of a meeting.

4.2.3. In the case of a meeting called by members of the Board in default of the Chair, the notice shall be signed by those members of the Board and no business shall be transacted at the meeting other than that specified in the notice.

4.2.4. Failure to serve a notice on more than three Directors shall invalidate the meeting. A notice shall be presumed to have been served at the time at which the notice was sent by email.

- 4.2.5. Agenda shall be sent to members at least three clear days before the meeting and supporting papers, whenever possible, shall accompany the agenda, save in emergency. Failure to serve such a notice on more than three members shall invalidate the meeting. A notice shall be presumed to have been served one day after emailing.
- 4.2.6. A public notice of the time and place of the meeting, and the public part of the agenda shall be displayed on the Trust's public website www.nhft.nhs.uk at least five clear days before the meeting.

4.3. **Setting the Agenda**

- 4.3.1. The Board shall determine that certain matters shall appear on every agenda for a meeting and shall be addressed prior to any other business being conducted.
- 4.3.2. A member of the Board desiring a matter to be included on an agenda shall make their request in writing to the Chair at least seven clear days before the meeting. Requests made less than seven days before a meeting may be included on the agenda at the discretion of the Chair.
- 4.3.3. No business may be transacted at any meeting which is not specified in the notice of that meeting unless the Chair agrees that the item should be considered a matter of urgency, and this is stated in the minutes.

4.4. **Attendance**

A member of the Board may attend a meeting in person or virtually by using an online platform or telephone or weblink or other live and uninterrupted conferencing facilities.

4.5. **Chair of Meeting**

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

4.6. **Public Meetings**

- 4.6.1. **Annual Public Meeting** - the Trust shall publicise and hold an annual public meeting.
- 4.6.2. **Board Meetings** - the Trust shall hold Board Meetings in public on a regular basis.

4.7. **Motions and Amendments**

- 4.7.1. **Notices of Motion** - A member of the Board desiring to move or amend a motion shall send a written notice thereof at least seven 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, on any business mentioned on the agenda.

- 4.7.2. **Withdrawal of Motion or Amendments** - A motion or amendment once moved and seconded may be withdrawn by the proposer with the concurrence of the seconder and the consent of the Chair.
- 4.7.3. **Motion to Rescind a Resolution** - Notice of motion to amend or rescind any resolution (or the general substance of any resolution) which has been passed within the preceding six calendar months shall bear the signature of the member of the Board who gives it and also the signature of four other Board members. When any such motion has been disposed of by the Board, it shall not be permissible for any member other than the Chair to propose a motion to the same effect within six months, however the Chair may do so if they considers it appropriate.
- 4.7.4. **Motions** - The mover of a motion shall have the right of reply at the close of any discussion on the motion or any amendment thereto.
- 4.7.5. When a motion is under discussion or immediately prior to discussion it is open to a Director to move:
- 4.7.5.1. An amendment to the motion.
 - 4.7.5.2. The adjournment of the discussion or the meeting.
 - 4.7.5.3. That the meeting proceed to the next business.*
 - 4.7.5.4. The appointment of an ad hoc committee to deal with a specific item of business.
 - 4.7.5.5. That the motion be now put.*
- 4.7.6. In the case of sub-paragraphs denoted by (*) above (to ensure objectivity) motions may only be put by a member of the Board who has not previously taken part in the debate and be eligible to vote.
- 4.7.7. No amendment to the motion may be admitted if, in the opinion of the Chair of the meeting, the amendment negates the substance of the motion.

4.8. **Admission of Public and Press**

- 4.8.1. The public and representatives of the press shall be afforded facilities to attend all formal meetings of the Board but shall be required to withdraw upon the Board resolving:
- “that representatives of the press and other members of the public be excluded from part of or the remainder of the meeting having regard to the confidential nature of the business to be transacted, publicity on which would be prejudicial to the public interest”.
- 4.8.2. The Chair (or Deputy Chair) shall give such directions as they think fit in regard to the arrangements for meetings and accommodation of the public and representatives of the press such as to ensure that the Board’s business shall be conducted without interruption and disruption and, without prejudice to the power to exclude on the grounds of the confidential nature of the business to be transacted, the public shall be required to withdraw upon the Board resolving as follows:
- “That in the interest of public order the meeting adjourn for (the period to be specified) to enable the Board to complete business without the presence of the public”.
- 4.8.3. Nothing in these Standing Orders shall require the Trust to allow members of the

public or representatives of the press to record proceedings in any manner whatsoever, other than in writing, or to make any oral report of the proceedings as they take place without the prior agreement of the Board.

4.9. Chair's Ruling

4.9.1. Statements of members of the Board made at meetings of the Trust shall be relevant to the matter under discussion at the material time and the decision of the Chair of the meeting on question of order, relevancy, regularity and any other matters shall be observed at the meeting. The Chair's interpretation of Standing Orders shall be final. In this interpretation, they shall be advised by the Trust Secretary and in the case of Standing Financial Instructions by the Director of Finance.

4.10. Voting

4.10.1. Unless otherwise stated within this Constitution, pursuant with the provisions of the 2006 Act every question at a meeting requiring a resolution which cannot be obtained with consensus shall be determined by a majority of the votes of the members present and voting on the question and, in the case of any equality of votes, the person presiding shall have a second and casting vote.

4.10.2. 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 members of the Board present so request.

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

4.10.4. If a member of the Board so requests, his/her vote may be recorded by name upon any vote (other than by paper ballot).

4.10.5. In no circumstances may an absent member of the Board vote by proxy. Absence is defined as being absent at the time of the vote.

4.11. Minutes

4.11.1. The minutes of the proceedings of a meeting shall be drawn up and submitted for agreement at the next meeting where the person presiding at it shall sign them.

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

4.11.3. Minutes shall be circulated in accordance with members' wishes. Where providing a record of a meeting held in public the minutes shall be made available to the public.

4.12. Suspension of Standing Orders

4.12.1. Except where this would contravene any statutory provision or any guidance issued by NHS England, any one or more of the Standing Orders may be suspended at any meeting, provided that at least two-thirds of the Board are present, including one Executive Director and one Non-Executive Director, and that a majority of those present vote in favour of suspension. Standing Order 2.5 provides that Officers so delegated to authorise expenditure by the Chief Executive may waive formal tendering procedures in certain prescribed situations, with the Chief Executive reporting the fact of the waiver to the Board in

a formal meeting.

4.12.2. A decision to suspend Standing Orders together with the reason for the suspension shall be recorded in the minutes of the meeting.

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

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

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

4.13. Variation and Amendment of Standing Orders

4.13.1. These Standing Orders may be amended only if:

4.13.1.1. a notice of motion under Standing Order 4.7 has been given;

4.13.1.2. no fewer than half the total of the Trust's Non-Executive Directors vote in favour of amendment and at least two-thirds of the members are present;

4.13.1.3. the variation proposed does not contravene a statutory provision or direction made by NHS England.

4.14. Record of Attendance

The names of the Chair and members of the Board present at the meeting shall be recorded in the minutes.

4.15. Quorum

4.15.1. No business shall be transacted at a meeting of the Trust unless at least one-third of the whole number of the members of the Board is present including at least one Executive Director and one Non-Executive Director.

4.15.2. An Officer in attendance for an Executive Director but without formal acting up status as described in Standing Order 3.2.3 above may not count towards the quorum.

4.15.3. If a member of the Board has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of the declaration of a conflict of interest (see Standing Order 7 or 8) they shall no longer count towards the quorum. If the 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 the meeting. Such a position shall be recorded in the minutes of the meeting. The meeting shall then proceed to the next business. The above requirement for at least one Executive Director to form part of the quorum shall not apply where the Executive Directors are excluded from a meeting (for example when the Board considers the advice of the Remuneration Committee).

5. ARRANGEMENTS FOR THE EXERCISE OF FUNCTIONS BY DELEGATION

5.1. Introduction

Subject to the Regulatory Framework, the Board may make arrangements for the exercise, on its behalf, of any of its functions by a committee or sub-committee, appointed by virtue of Standing Order 6.1 or 6.2 below or by the Chair or a Director or an employee of the Trust in each case subject to such restrictions and conditions as the Board thinks fit. Where functions are delegated, this means that although the performance of the function is delegated to another committee, sub-committee or

officer, the Board retains the responsibility for the service.

5.2. Emergency Powers

The powers which the Board has retained to itself within these Standing Orders (Standing Order 3.1.3) may in emergency be exercised by the Chief Executive and the Chair having consulted at least two Non-Executive Directors. The exercise of such powers by the Chief Executive and the Chair shall be reported to the next formal meeting of the Board.

5.3. Delegation to Committees

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

5.4. Delegation to Employees

5.4.1. Those functions of the Trust which have not been retained as reserved by the Board or delegated to an Executive committee or sub-committee shall be exercised on behalf of the Board by the Chief Executive. The Chief Executive shall determine which functions they shall perform personally and shall nominate employees to undertake the remaining functions for which they shall still retain accountability to the Board.

5.4.2. The Chief Executive shall prepare Standing Financial Instructions identifying their proposals, which shall be considered and approved by the Board, subject to any amendment, agreed during the discussion. The Chief Executive may periodically propose amendment to the Standing Financial Instructions, which shall be considered and approved by the Audit Committee as indicated above.

5.4.3. Nothing in the Standing Financial Instructions shall impair the discharge of the direct accountability to the Board of the Finance Director or other Executive Directors to provide information and to advise the Board in accordance with any statutory requirements.

5.4.4. The arrangements made by the Board as set out in the Standing Financial Instructions shall have effect as if incorporated in these Standing Orders.

5.5. Overriding of Standing Orders

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

6. COMMITTEES AND SUB COMMITTEES

6.1. The Board may appoint committees of the Board, consisting of two or more members of the Board.

6.2. A committee appointed under this regulation may appoint sub-committees consisting wholly or partly of members of the committee.

6.3. As a minimum, the Trust shall appoint an Audit Committee, Remuneration and Terms of Service Committee and Nominations Committee, the terms of reference and meeting arrangements of which shall be agreed by the Board. The Trust will establish other interim

committees as appropriate.

- 6.4. The Standing Orders of the Trust, as far as applicable, shall apply with appropriate alteration to meetings of any committees or sub-committee established by the Board. In which case the term 'Chair' is to be read as a reference to the Chair of the Committee as the context permits and the term 'member of the Board' is to be read as a reference to a member of the committee also as the context permits.
- 6.5. Each such committee or sub-committee shall have such terms of reference and powers and be subject to such conditions (as to report back to the Board), as the Board shall decide and shall be in accordance with the Regulatory Framework. Such terms of reference shall have effect as if incorporated into the Standing Orders.
- 6.6. Committees may not delegate their executive powers to a sub-committee unless expressly authorised by the Board.
- 6.7. The Board shall approve the appointments to each of the committees that it has formally constituted.
- 6.8. Where the Board is required to appoint persons to undertake statutory functions and, where such appointments are to operate independently of the Board, such appointment shall be made in accordance with applicable statute and regulations and with guidance issued by NHS England.
- 6.9. A member of a committee shall not disclose a matter dealt with by, or brought before the committee, without its permission until the committee has reported to the Board or otherwise concluded on that matter. It is accepted that there shall be circumstances requiring urgent action and where delay would not be in the Trust's interests. Such circumstances shall be recorded.
- 6.10. A Director of the Trust or a member of a committee shall not disclose any matter reported to the Board or otherwise dealt with by the committee, notwithstanding that the matter has been reported or action has been concluded, if the Board or committee has resolved that it is confidential.

7. DECLARATIONS OF INTEREST AND REGISTER OF INTEREST

7.1. Declaration of Interests

- 7.1.1. The Regulatory Framework requires Board members to declare interests which are relevant and material to the Board of which they are a member. All existing Board members should declare such interests. Any Board members appointed subsequently should do so on appointment.
- 7.1.2. Interests which should be regarded as "relevant and material" are to be interpreted in accordance with guidance issued by NHS England and include:
 - 7.1.2.1. Directorships, including Non-Executive Directorship held in private companies or PLCs (with the exception of those of dormant companies);
 - 7.1.2.2. Ownership or part-ownership of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS;
 - 7.1.2.3. Majority or controlling shareholders in organisations likely or possibly seeking to do business with the NHS;
 - 7.1.2.4. A position of trust or authority in a charity or voluntary

organisation in the field of health and social care;

- 7.1.2.5. Any connection with a voluntary or other organisation contracting for NHS services;
- 7.1.2.6. To the extent not covered above, any connection with an organisation, entity or company considering entering into or having entered into a financial arrangement with the Trust including but not limited to, lenders or banks;
- 7.1.2.7. Any other commercial interest in the decision before the meeting.
- 7.1.3. If Board members have any doubt about the relevance or materiality of an interest, this should be discussed with the Chair. Section 175 and Chapter 3 of the Companies Act 2006 sets out the legal basis on which declarations are required. The Board shall maintain a policy for the declaration of interests. The interests of partners in professional partnerships including General Practitioners should also be considered.
- 7.1.4. At the time Board members' interests are declared, they should be recorded in the Board minutes. Any changes in interests should be declared at the next Board meeting following the change occurring.
- 7.1.5. Board members' directorship of companies likely or possibly seeking to do business with the NHS should be published in the Trust's Annual Report. The information should be kept up to date for inclusion in succeeding annual reports.
- 7.1.6. During the course of a Board meeting, if a conflict of interest is established, the member of the Board concerned should withdraw from the meeting and play no part in the relevant discussion or decision.
- 7.1.7. There is no requirement for the interests of Board members' spouses or partners to be declared. Note however that Standing Order 8 which is based on the Membership and Procedure Regulations require that the pecuniary interest of Directors' spouses, if living together, in contracts should be declared. Therefore, the interests of Board members' spouses and cohabiting partners should also be regarded as relevant.

7.2. Register of Interests

- 7.2.1. The Trust Secretary shall ensure that a Register of Interests is established to record formally declarations of interests of Board members. In particular the Register shall include details of all directorships and other relevant and material interests which have been declared by both Executive and Non-Executive Board members, as defined in Standing Order 7.1.2. In addition, the same arrangements should be made for senior managers accountable to Directors and Clinical Directors/Clinical Leads. Registers should also be maintained for gifts and hospitality received.
- 7.2.2. These details shall be kept up to date by means of an annual review of the Register in which any changes to interests declared during the preceding twelve months shall be incorporated.
- 7.2.3. The Register shall be available to the public on request in the offices of the Trust and the Chair shall take reasonable steps to bring the existence of the Register to the attention of the local population and to publicise arrangements for viewing it.

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

- 8.1. Subject to the following provisions of this Standing Order, if the Chair or another member of the Board has any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter and is present at the meeting of the Trust 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 Board may exclude the Chair or another member of the Board from a meeting of the Board while any contract, proposed contract or other matter in which they have a pecuniary interest is under consideration;
- 8.2. Any remuneration, compensation or allowances payable to the Chair or a member of the Board shall not be treated as a pecuniary interest for the purpose of this Standing Order.
- 8.3. For the purpose of this Standing Order, the Chair or other member of the Board shall be treated, subject to Standing Order 8.1 and Standing Order 8.2, as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if:
- 8.3.1. they, or a nominee of theirs, is a Director of a company or other body, not being a public body, with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration; or
- 8.3.2. they are a partner of, or is in the employment of a person, or company with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration;
- and in the case of married persons living together (or persons living together as partners) the interest of one spouse shall, if known to the other, be deemed for the purposes of these Standing Orders to be also an interest of the other.
- 8.4. The Chair or a member of the Board shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only:
- 8.4.1. of their membership of a company or other body, if they have no beneficial interest in any securities of that company or other body;
- 8.4.2. of an interest in any company, body or person with which they are connected as mentioned in Standing Order 8.1 above which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a member of the Board in the consideration or discussion of or in voting on, any question with respect to that contract or matter.
- 8.5. Where the Chair or a member of the Board:
- 8.5.1. has an indirect pecuniary interest in a contract, proposed contract or other matter by reason only of a beneficial interest in securities of a company or other body; and,
- 8.5.2. the total nominal value of those securities does not exceed £5,000 or one-hundredth of the total nominal value of the issued share capital of the company or body, whichever is the less; and,
- 8.5.3. if the share capital is of more than one class, the total nominal value of shares of any one class in which they have a beneficial interest does not exceed one-hundredth of the total issued of the total issued share capital of that class.

this Standing Order shall not prohibit them from taking part in the consideration or discussion of the contract or other matter or from voting on any question with respect to it without prejudice however to their duty to disclose their interest.

- 8.6. Standing Order 8 applies to a committee or sub-committee of the Trust as it applies to the Board and applies to any member of any such committee or sub-committee (whether or not they are also a member of any Committee or Sub Committee) as it applies to a member of the Board.

9. STANDARDS OF BUSINESS CONDUCT

9.1. Policy

Staff shall comply with the Trust's Policy on the Standards of Business Conduct.

9.2. Interest of Employees in Contracts

9.2.1. If it comes to the knowledge of a member or an officer of the Trust that a contract in which they have a pecuniary interest not being a contract to which they themselves are a party, has been, or is proposed to be, entered into by the Trust they shall, at once, give notice in writing to the Trust Secretary of the fact that they hold an interest therein. In the case of married persons (or persons living together as partners) the interest of one partner shall, if known to the other, be deemed to be also the interest of that partner.

9.2.2. An employee shall also declare to the Trust Secretary 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.

9.3. Canvassing of and Recommendation by Members of the Board in Relation to Appointments

9.3.1. Canvassing of Directors or governors of the Trust 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 Orders shall be included in application forms or otherwise brought to the attention of candidates.

9.3.2. A member of the Board shall not solicit for any person any appointment under the Trust or recommend any person for such appointment: but this paragraph of these Standing Orders shall not preclude a member of the Board from giving written testimonial of a candidate's ability, experience or character for submission to the Trust.

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

9.4. Relationships with members of the Board or Officers

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

9.4.2. The Chair and every member of the Board and Officer of the Trust shall disclose to the Trust Secretary any relationship, to include personal friendship, with a candidate of whose candidature that Director or Officer is aware. It shall be the duty of the Trust Secretary to report to the Board any such disclosure made.

- 9.4.3. On appointment, employees (and prior to acceptance of an appointment in the case of Board members) must disclose to the Trust whether they are related to any other Director or holder of any office under the Trust.
- 9.4.4. Where the relationship of an employee or another Director to a Director of the Trust is disclosed, the Standing Order headed Disability of Chair and members of the Board in Proceedings on Account of Pecuniary Interest (Standing Order 8) shall apply.

9.5. Acceptance of Gifts or Hospitality

- 9.5.1. The Bribery Act 2010 makes it unlawful for an employee to solicit or accept fees, gifts, hospitality, or consideration of any kind for doing or not doing anything in their official capacity or showing favour or disfavour to any person in their official capacity.
- 9.5.2. Small gifts, subject to declaration to, and approval by the Chief Executive may be accepted; everything else should be declined. Breach of the provisions of these Acts may render individuals liable to prosecution and/or loss of employment and superannuation rights in the NHS.
- 9.5.3. Reasonable reciprocal hospitality is acceptable as part of a normal business relationship but shall not influence or be seen to influence any business decision.
- 9.5.4. Any offer of an inducement (including hospitality/gifts, fees etc.) should accordingly be reported, by the person to whom it is made, or by any person having knowledge of such, to a senior Officer, and to the Director of Finance.
- 9.5.5. Having regard to the above, hospitality shall only be given or accepted where it is on a scale appropriate to the circumstances, reasonably incidental to the occasion and not extravagant, and where it is apparent that no cause could reasonably arise for adverse criticism from whatever source. Decisions regarding hospitality shall only be capable of being justified publicly and all hospitality, given or accepted, shall be authorised together with required explanations.

9.6. Commercial Sponsorship

- 9.6.1. Attendance at relevant conference/courses is acceptable provided the employee seeks and obtains permission in advance from their Senior Officer and is reported for inclusion in the Hospitality Register.
- 9.6.2. Where inspection of equipment at manufacturer's premises is proposed, consideration should be given to meeting the costs of travelling to avoid any potential doubt as to the integrity of a purchasing decision.
- 9.6.3. Sponsorship of posts is not permitted unless it is made abundantly clear to the company concerned that such sponsorship shall have no effect on purchasing decisions.
- 9.6.4. Linked deals, i.e., sponsorship linked to purchase of particular products are not permitted.

9.7. Personal Use of Trust Contracts

Individual staff members shall not seek or accept preferential rates or benefits in kind for private transactions carried out with companies with which the Trust has official dealings.

9.8. Underlying Principles

9.8.1. The principles which underpin the Standards of Business Conduct in the NHS are that employees shall:

9.8.1.1. be impartial and honest in the conduct of the official business.

9.8.1.2. use the public funds to the best advantage of the NHS, always ensuring value for money ensure the interest of patients remains paramount.

9.8.2. The aim is to protect staff from being placed in a position where work may conflict with external business and removes any possible allegations of favouritism.

10. CUSTODY OF SEAL AND SEALING OF DOCUMENTS (Paragraph 40 of the Constitution)

10.1. Custody of Seal and Register of Seals

The Common Seal and Register of Seals of the Trust shall be kept by the Chief Executive in a secure place.

10.2. Sealing of Documents

10.2.1. The Seal of the Trust shall not be fixed to any documents unless the sealing has been authorised by a resolution of the Board or of a committee, thereof or where the Board has delegated its powers.

10.2.2. The sealing shall be undertaken by the Director of Finance (or an individual nominated by them) and approved by the Board.

10.2.3. The seal shall be affixed in the presence of and attested by the Chief Executive or such nominated Board Director on their behalf. The use of the seal shall be reported to the Trust's Audit Committee.

10.3. Register of Sealing

10.3.1. An entry of every sealing shall be made and numbered consecutively in a book provided for that purpose and shall be signed by the persons who shall have approved and authorised the document and those who attested the seal.

Note: An appropriate form of attestation of documents would be "The Common Seal of the Northamptonshire Healthcare NHS Foundation Trust was hereunto affixed in the presence of"

10.3.2. The seal must be affixed in the case of:

10.3.2.1. Land and property transactions, and;

10.3.2.2. Contracts for financial transactions requiring the seal of a corporate body.

In all other cases the seal is not required to be used.

11. SIGNATURE OF DOCUMENTS

11.1. Where the signature of any document shall be a necessary step in legal proceedings involving the Trust, it shall be signed by the Chief Executive, unless any enactment otherwise requires or authorises, or the Board shall have given the necessary authority to

some other person for the purpose of such proceedings.

- 11.2. The Chief Executive or nominated employees shall be authorised, by resolution of the Board, to sign on behalf of the Trust any agreement or other document (not required to be executed as a deed) the subject matter of which has been approved by the Board or Committee or Sub-committee to which the Board has delegated appropriate authority.

12. MISCELLANEOUS

12.1. Standing Orders to be given to Directors and Employees

In pursuance of paragraph 2.2.1 of these Standing Orders: It is the duty of the Chief Executive to ensure that existing Directors and employees and all new appointees are notified of and understand responsibilities within Standing Orders and Standing Financial Instructions.

12.2. Documents having the standing of Standing Orders

Standing Financial Instructions shall have the effect as if incorporated into Standing Orders but, for the avoidance of doubt, neither the Standing Financial Instructions nor the Reservation of Powers to the Board and Delegation of Powers form part of this Constitution.

12.3. Review of Standing Orders

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

12.4. Conflicts with the Standing Orders

Where there is a conflict between the Standing Orders and other Trust procedures and or Standing Financial Instructions then the interpretation to be used is that contained in the Standing Orders.

ANNEX 9 –FURTHER PROVISIONS

(Paragraph 10.3)

1. Restrictions on Membership - Further provisions

- 1.1. 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.
- 1.2. 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.
- 1.3. An individual shall not be eligible for membership of the Trust and, if already a member of the Trust, shall not be eligible to continue as a member of the Trust, if they:
 - i. are under 12 years of age when they become a member of the Trust;
 - ii. has been placed on the Sex Offenders Register or is the subject of a Sex Offenders Order;
 - iii. demonstrates, or has demonstrated, aggressive or violent behaviour at any Hospital/ site from which the Trust operates or against any of the Trust's employees or other persons who exercise functions for the purposes of the Trust and following such behaviour they have been asked to leave, have been removed or excluded from such Hospital/site in accordance with the relevant Trust policy for the management of violence and aggression;
 - iv. uses, or has used, threatening, abusive and/or insulting words and/or behaviour towards any of the Trust's employees or other persons who exercise functions for the purposes of the Trust whether face-to-face or in writing (including on social media);
 - v. has been confirmed as an "unreasonably persistent complainant" in accordance with the Trust's Complaints & Concerns policy or any other policy for the handling of complaints and concerns that the Trust may adopt from time to time;
 - vi. has been removed from membership of the Trust (except in the circumstances set out in paragraphs 3.7 and 3.8 below) or from membership of another NHS foundation trust, and/or;
 - vii. is deemed to have acted in a manner detrimental to, or contrary to the interests of, the Trust or its partners.
- 1.4. Where, in the reasonable opinion of the Trust Secretary, having carried out such reasonable enquires as they deem necessary, an individual is not eligible to become, or is no longer eligible to be, a member of the Trust, the Trust Secretary shall give that individual 14 days' written notice that their name will not be included in, or will be removed from, the register of members. The individual so notified may provide representations in writing to the Trust Secretary as to why their name should be included, or retained, in the register of members, as applicable. On receipt of any such representations, the Trust Secretary shall consider the same and carry out any further reasonable enquires that they deem necessary, and shall thereafter determine whether the individual's name shall be included or retained in the register of members, as applicable.

1.5. Following a determination under paragraph 1.4, the individual affected may request that the Trust Secretary refer the determination to the Chief Executive who shall:

- i. review the original decision having regard to any representations made by the individual concerned and such other materials, if any, as the Chief Executive considers appropriate;
- ii. either confirm the original decision or make some other decision as appropriate based on the evidence which they have considered, and;
- iii. communicate their decision and the reasons for it in writing to the individual concerned as soon as reasonably practicable.

1.6. All members of the Trust shall notify the Trust Secretary of any change in their particulars which may affect their entitlement to continue as a member of the Trust.

2. Administrative removal of a member

2.1 A person shall cease to be a member of the Trust if:

- they notify the Trust Secretary in writing that they wish to cease to be a member of the Trust;
- they die;
- they cease to be entitled under this Constitution to be a member of the public, patients' and carers' or staff constituency;
- they cease to hold office as a governor of the Trust (including where they are removed from office) on one (or more) of the following grounds:
 - they knowingly or recklessly made a false declaration for any purpose provided for under this Constitution;
 - their continuing as a governor would or would be likely to:
 - prejudice the ability of the Trust to fulfill its principal purpose or other of its purposes under this Constitution, or otherwise to discharge its duties and functions; or
 - harm the Trust's work with other persons or bodies with whom it is engaged or may be engaged in the provisions of goods and services; or
 - adversely affect public confidence in the goods or services provided by the Trust;
 - they breached the Governors' Code of Conduct;
 - they otherwise brought the Trust into disrepute either in acting as a governor or in their wider life;
 - their tenure as a governor of another foundation trust was terminated for cause, and/ or;

- NHS England exercised its powers to remove that person as a governor of the Trust or of another foundation trust or disqualified them from holding office as a governor of the Trust or of another foundation trust;
- their address for correspondence is no longer known by/ available to the Trust;
- they have been removed from membership of the Trust pursuant to paragraph 1.4 and/or paragraph 1.5 of this Annex 9;
- they have been expelled from membership of the Trust pursuant to paragraph 3 below.

3. Council of Governors' expulsion of a member

- 3.1 In addition to the power to remove an individual from the register of members pursuant to paragraph 1.4 and/or 1.5 above, a member of the Trust may be expelled by a resolution approved by not less than two-thirds of the members of the Council of Governors present and voting at a meeting of the Council of Governors.
- 3.2 If a resolution to expel a member is to be considered at a meeting of the Council of Governors, details of the proposed expulsion must be sent to the relevant member not less than one calendar month before the meeting with an invitation to attend the meeting and make such representations as the member considers appropriate.
- 3.3 At the meeting, the Council of Governors will consider any evidence in support of the ground for expelling the member and such representations as the member may wish to make.
- 3.4 If the member fails to attend the meeting without due cause, the meeting may proceed in their absence. The decision to proceed in these circumstances will be at the sole discretion of the person chairing the meeting in question.
- 3.5 At the meeting, the Council of Governors may determine to:
- 3.5.1 dismiss the complaint and take no further action;
 - 3.5.2 arrange for a resolution to expel the member to be considered at the next meeting of the Council of Governors;
 - 3.5.3 determine that the matter should be investigated by the Trust Secretary;
 - 3.5.4 pass a resolution expelling the individual from membership of the Trust.
- 3.6 A person expelled from membership will cease to be a member of the Trust upon the declaration by the person chairing the meeting in question that the resolution to expel them is carried.
- 3.7 No person who has been:
- 3.7.1 expelled from membership of the Trust pursuant to paragraph 3 of this Annex 9; or
 - 3.7.2 subject to paragraph 3.8 below, removed from membership of the Trust pursuant to paragraphs 1 or 2 of this Annex 9;

is to be re-admitted as a member except by a resolution of the Council of Governors carried by votes of two-thirds of the members of the Council of Governors present and voting at a general meeting of the Council of Governors.

3.8 If an individual is removed from membership of the Trust pursuant to paragraph 1 or 2 of this Annex 9 on the grounds that they:

- 3.8.1 are less than 12 years of age;
- 3.8.2 notify the Trust Secretary in writing that they wish to cease to be a member of the Trust;
- 3.8.3 cease to be entitled under this Constitution to be a member of the public, patients' and carers' or staff constituency; and/or
- 3.8.4 their address for correspondence is no longer known by/ available to the Trust;

and they subsequently:

- 3.8.5 become eligible (again) for membership of the Trust;
- 3.8.6 notify the Trust Secretary in writing that they wish to become a member of the Trust again (including by making a new application for membership of the Trust), and/or;
- 3.8.7 make their address for correspondence known to the Trust;

then they may make a new application for membership of the Trust, which shall be considered by the Trust Secretary. In the circumstances set out in this paragraph 3.8, there shall be no requirement for the Council of Governors to pass a resolution to re-admit the individual concerned as a member of the Trust.

3.9 For the avoidance of doubt, if an individual is not admitted as a member of the Trust on the grounds that they are not eligible to become a member of the Trust pursuant to this Constitution, then, if they subsequently become eligible to become a member of the Trust, they may make a new application for membership to the Trust Secretary setting out the grounds on which they are now eligible to become a member.

4. Amending the Constitution

The Trust can make amendments to this Constitution only if the amendments are approved by a majority of the directors present and voting at a meeting of the Board of Directors and by a majority of the governors present and voting at a general meeting of the Council of Governors.

5. Resolution of disputes

The following process will be used to resolve formal disagreements between the Council of Governors and the Board of Directors:

- the Council of Governors and the Board of Directors will each review the disputed issue at their next formal meeting, inviting relevant representatives from the other to join the discussions with a view to resolution without recourse to the remainder of this dispute resolution process.
- If a resolution is not forthcoming, then the issue will be referred to a Dispute Resolution Group made up of the Chair of the Trust, the Deputy Chair of the Trust, the Senior Independent Director, the Chief Executive, three representatives from the Council of Governors, at least two of which must come from the majority public and service user/carers constituencies, and an independent member who will be the Chair of

another Foundation Trust.

- If the Dispute Resolution Group is unable to resolve the dispute via dialogue then the dispute will move to a vote of those present at the meeting. The issue will then be decided by the majority vote and will be binding on both the Council of Governors and the Board of Directors.

6. Indemnity

The Trust shall indemnify members of the Council of Governors and Board of Directors who act honestly and in good faith against any personal civil liability which is incurred in the execution of their Board functions, other than where they have acted recklessly or perversely. Members will not have to meet out of their personal resources any costs arising (beyond the exceptions outlined above) which will be met by the Trust.

ANNEX 10 – STANDING ORDERS FOR ANNUAL MEMBERS’ MEETINGS

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:

CHAIR is the person appointed by the Council of Governors to lead the Board of Directors and the Council of Governors and to ensure that both successfully discharge their overall responsibility for the Trust as a whole.

MEMBER means a person who is a member of the Trust and whose name has been entered in the register of members.

OFFICER means an employee of the Trust.

TRUST means Northamptonshire Healthcare NHS Foundation Trust.

- 1.2. Save as permitted by law, the Chair of the Trust shall be the final authority on the interpretation of these Standing Orders (on which they shall be advised by the Trust Secretary).

2. General Information

- 2.1. The purpose of the Standing Orders for Annual Members’ Meetings is to ensure that the highest standards of corporate governance and conduct are applied to all Annual Members’ Meetings.
- 2.2. All business shall be conducted in the name of the Trust.

3. Attendance

- 3.1. Each Member shall be entitled to attend an Annual Members’ Meeting.

4. Meetings in Public

- 4.1. Annual Members’ Meetings must be open to the public.
- 4.2. The Chair may exclude any member of the public from an Annual Members’ Meeting if they are interfering with or preventing the reasonable conduct of the meeting.
- 4.3. Annual Members’ Meetings shall be held at such times and places that the Chair may determine having consulted with the Council of Governors.

5. Notice of Meetings

- 5.1. At least 14 days before each Annual Members’ Meeting, a notice of the meeting, specifying the business proposed to be transacted at it, and signed by the Chair, or by an officer of the Trust authorised by the Chair to sign on their behalf, shall be posted on the Trust’s website.

6. Setting the Agenda

- 6.1. The Chair, in consultation with the Council of Governors, shall determine the agenda for Annual Members’ Meetings.

7. Chair of Annual Members’ Meetings

- 7.1. The Chair, if present, shall preside. If the Chair is absent from the meeting, the Deputy Chair shall preside.

8. Chair’s Ruling

- 8.1. Statements made by any person at an Annual Members’ Meeting shall be relevant to

the matter under discussion at the material time and the decision of the Chair of the meeting on questions of order, relevancy, regularity and any other matters shall be observed at the meeting.

9. Voting

- 9.1. Decisions at meetings shall be determined by a majority of the votes of the Members present and voting. In the case of any equality of votes, the person presiding shall have a second or casting vote.
- 9.2. All decisions 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.
- 9.3. A person may not vote at an Annual Members' Meeting if the Chair is not satisfied that they are a Member (on which they shall be advised by the Trust Secretary).
- 9.4. In no circumstances may an absent Member vote by proxy.

10. Suspension of Standing Orders

- 10.1. Except where this would contravene any statutory provision, any one or more of these Standing Orders may be suspended at an Annual Members' Meeting, provided that a majority of members present vote in favour of suspension.
- 10.2. A decision to suspend the Standing Orders shall be recorded in the minutes of the meeting.
- 10.3. A separate record of matters discussed during the suspension of the Standing Orders shall be made and shall be available to the Members.
- 10.4. No formal business may be transacted while the Standing Orders are suspended.
- 10.5. The Trust's Audit Committee shall review every decision to suspend the Standing Orders.

11. Variation and Amendment of Standing Orders

- 11.1. These Standing Orders may be amended in accordance with paragraph 41 of the Constitution.

12. Record of Attendance

- 12.1. The Trust Secretary shall keep a record of the names of the Members present at an Annual Members' Meeting.

13. Minutes

- 13.1. The minutes of the proceedings of an Annual Members' Meeting shall be drawn up and maintained as a public record. They will be submitted for agreement at the next Annual Members' Meeting where they will be signed by the person presiding at it.
- 13.2. No discussion shall take place upon the minutes except upon their accuracy or where the Chair considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the next meeting.
- 13.3. The minutes of an Annual Members' Meeting shall be made available to the public on the Trust's website.

14. Quorum

- 14.1. No business shall be transacted at an Annual Members' Meeting unless at least 10 Members are present.

- 14.2. 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 such other time and place as the Chair shall determine in accordance with clause 4.3. 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 at the adjourned meeting is to be the quorum.