

**CONSTITUTION**

**OF**

**OXFORD HEALTH NHS FOUNDATION TRUST**

*(A Public Benefit Corporation)*

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*adopted from September 2021*

*Annual Members Meeting and Annual General Meeting*

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# OXFORD HEALTH NHS FOUNDATION TRUST (A PUBLIC BENEFIT CORPORATION)

## CONSTITUTION

This Constitution represents the Constitution of Oxford Health NHS Foundation Trust as adopted in accordance with the 2006 Act (as defined below) as amended by the 2012 Act (as defined below). This Constitution sets out the powers and functions of the Trust. In exercising its powers and carrying out its functions the Trust shall aim to provide the best possible patient care, based on evidence and in a culture that encourages continuous improvement

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 as amended by the 2012 Act.

References in this Constitution to legislation include all amendments, replacements, or re-enactments made, and include all subordinate legislation made thereunder.

Headings are for ease of reference only and are not to affect interpretation. All annexes referred to in this Constitution form part of it.

Words importing the masculine gender only shall include all other gender identities; words importing the singular shall include the plural and vice-versa.

References to paragraphs are to paragraphs in this Constitution save that where there is a reference to a paragraph in an annex to this Constitution it shall be a reference to a paragraph in that annex unless the contrary is expressly stated or the context otherwise so requires.

### 1 Definitions

1.1 In this Constitution:

**2006 Act** - means the National Health Service Act 2006;

**2012 Act** - means the Health and Social Care Act 2012;

**Accounting Officer** - means the Chief Executive who discharges the functions specified in paragraph 25(5) of Schedule 7 to the 2006 Act;

**Annual Accounts** - means those accounts prepared by the Trust (through the Accounting Officer) pursuant to paragraph 25 of Schedule 7 to the 2006 Act;

**Annual Members' Meeting** – means the annual meeting of the Members as provided for in paragraph 6.8;

**Annual Report** – means the annual report of the Trust prepared by the Trust as referred to in paragraph 15.1;

**Appointed Governor** - means a CCG Governor, a Local Authority Governor, or an 'Other' Partnership Governor;

**Audit Committee** - means the committee of the Board of Directors as established pursuant to paragraph 8.9.4;

**Auditor** - means the auditor of the Trust appointed by the Council of Governors pursuant to paragraph 7.15.3.1;

**Board of Directors** - means the Board of Directors of the Trust as constituted in accordance with this Constitution;

**CCG** – means Oxfordshire Clinical Commissioning Group;

**CCG Governor** – means the Governor appointed by the CCG pursuant to paragraph 7.6.1;

**Council of Governors’ Code of Conduct / Code of Conduct for Governors** - means the Trust’s code of conduct for Governors (as amended from time to time);

**CoG’s Nominations & Remuneration Committee** – means the committee appointed by the Council of Governors pursuant to paragraph 8.6.1.3;

**Council of Governors** - means the Council of Governors of the Trust as constituted in accordance with this Constitution;

**Chairman** - means the Chairman of the Trust appointed in accordance with paragraph 7.15.3.1;

**Chief Executive** - means the Chief Executive of the Trust appointed in accordance with paragraph 8.6.2;

**Constituency** – means the Public Constituency or the Staff Constituency or the Patient Constituency and “**Constituencies**” shall be construed accordingly;

**Constitution** - means this Constitution together with its annexes;

**Director** - means an Executive or Non-Executive Director;

**Director of Corporate Affairs and Company Secretary** - means the Company Secretary of the Trust or any other person or corporate body appointed to perform the duties of the company secretary of the Trust, including a joint, Assistant or Deputy Secretary;

**Elected Governor** - means a Patient Governor; or a Staff Governor or a Public Governor;

**Election Scheme** - means the election rules set out at Annex 5 of the Constitution as may be amended from time to time;

**Engagement Policy** – means the Engagement Policy in relation to the interaction of the Board of Directors and Council of Governors as published by the Council of Governors and amended from time to time;

**Executive Director** - means an Executive Director of the Trust being the Chief Executive, Finance Director or such other Executive Director as is appointed under paragraph 8.6.2;

**Finance Director** - means the Finance Director of the Trust appointed in accordance with paragraph 8.6.2;

**Financial Year** - each successive period of twelve months beginning with 1st April in any year;

**Governor** - means a member of the Council of Governors;

**Health Overview and Scrutiny Committee** - means a local authority overview and scrutiny committee established pursuant to Section 21 of the Local Government Act 2000;

**Health Service Body** - shall have the meaning ascribed to it in section 65(1) of the 2006 Act;

**Healthwatch** – means a Healthwatch England committee as defined in section 181 of the Health and Social Care Act 2012 or a Local Healthwatch organisation as defined in section 222 of the Local Government and Public Involvement in Health Act 2007;

**Hospital** means: Warneford Hospital; Littlemore Hospital; the Trust’s Community Hospitals and all associated hospitals, establishments and facilities at which the Trust provides and/or manages the provision of goods and/or services, including accommodation and “**Hospitals**” shall be construed accordingly;

**Independent Regulator** – means the independent Regulator of NHS Foundation Trusts known as “NHS Improvement” (previously Monitor) as provided by section 61 of the 2012 Act;

**Lead Governor** – means the Governor appointed by the Council of Governors as the Trust’s lead Governor pursuant to paragraph 7.1.3;

**Local Authority** – means any of: Oxfordshire County Council; and Buckinghamshire County Council and “**Local Authorities**” shall be construed accordingly;

**Local Authority Governor** - means a member of the Council of Governors appointed pursuant to paragraph 7.7 by a Local Authority;

**Member** - means a member of the Trust and the term “**Membership**” shall be construed accordingly;

**Nolan Principles** – means the seven principles of conduct of holders of public office enunciated by the Nolan Committee in its Report on Standards in Public Office;

**Non-Executive Director** – means the Chairman or such other Non-Executive Director of the Trust appointed in accordance with paragraph 8.6.1;

**Other Partnership Governor** - means a member of the Council of Governors appointed by an ‘Other’ Partnership Organisation pursuant to paragraph 7.8;

**Other Partnership Organisation** – means Buckinghamshire MIND; Age UK Oxfordshire; Oxford Brookes University; Oxford University NHS Foundation Trust; Buckinghamshire Healthcare NHS Trust and/or such other organisation as may be appointed as such under this Constitution;

**Patient Constituency** - means the constituency made up of the Patient Constituency Classes;

**Patient Constituency Class** – means the classes making up the Patient Constituency as set out in Annex 3 and “Patient Constituency Classes” shall be construed accordingly;

**Patient Governor** - means a member of the Council of Governors elected by the members of a Patient Constituency Class.

**Policies** – means the Trust’s published policies on whistleblowing, confidentiality, equal opportunities and such other reasonable Trust policies as are notified to the Directors, and Governors in writing from time to time;

**Public Constituency** - means the constituency made up of the Public Constituency Classes;

**Public Constituency Class** – means the classes making up the Public Constituency as set out in Annex 1 and “Public Constituency Classes” shall be construed accordingly;

**Public Governor** - means a member of the Council of Governors elected by the members of a Public Constituency Class.

**Registered Dentist** – means a registered dentist within the meaning of the Dentists Act 1984;

**Registered Medical Practitioner** – means a medical practitioner who is fully registered within the meaning of the Medical Act 1983 who holds a license to practice under that Act.

**Registered Midwife** – means a person who is registered to practice as a midwife by the Nursing and Midwifery Council;

**Registered Nurse** – means a person who is registered to practice as a nurse by the Nursing and Midwifery Council;

**Senior Independent Director** - means an independent Non-Executive Director appointed by the Board of Directors (in consultation with the Council of Governors) and having the role envisaged by the Independent Regulator’s NHS Foundation Trust Code of Governance;

**Staff Class** – one of the classes for the Staff Constituency as set out in Annex 2 and “Staff Classes” shall be construed accordingly;

**Staff Constituency** – means the constituency of the Trust comprising the Staff Classes as referred to Annex 2;

**Staff Governor** - means a member of the Council of Governors elected by the members of a Staff Class;

**Trust** - means the Oxford Health NHS Foundation Trust;



**Vice Chairman** - means the Non-Executive Director appointed as the vice/deputy Chairman of the Trust by the Council of Governors in general meeting;

**Voluntary organisation** – means a body, other than a public or local authority, the activities of which are not carried on for profit

## **2 Name**

2.1 The name of the Foundation Trust is "Oxford Health NHS Foundation Trust" (the Trust).

## **3 Principal Purpose**

3.1 The Trust's principal purpose 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.

## **4 Other Purposes**

4.1 In addition to the Trust's principal purpose as set out in paragraph 3, the Trust may:

4.1.1 provide goods and services for any purposes related to:

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

4.1.1.2 the promotion and protection of public health;

4.1.2 carry out research in connection with the provision of health care and make facilities and staff available for the purposes of education, training or research carried on by others; and

4.1.3 carry on activities other than those mentioned above for the purposes of making additional income available in order to better carry on the Trust's principal purpose.

## **5 Powers**

5.1 The Trust has all the powers of an NHS Foundation Trust as set out in the 2006 Act.

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

5.3 Any of the powers of the Trust may be delegated to a committee of Directors or to an Executive Director in accordance with this Constitution and the Standing Orders of the Board of Directors.

## **6 Members and constituencies**

### **6.1 Constituencies**

6.1.1 The Trust has three Constituencies, namely:

6.1.1.1 the Public Constituency;

6.1.1.2 the Staff Constituency; and

6.1.1.3 the Patient Constituency.

### **6.2 Public Constituency**

6.2.1 Subject to paragraph 6.5 an individual is eligible to become a Member of the Public Constituency and therefore a Public Constituency Class if they:

6.2.1.1 live in the area specified for that Public Constituency Class in the corresponding entry in column 2 of Annex 1;

6.2.1.2 are not a member of another Public Constituency Class;

6.2.1.3 are not eligible to become a Member of the Staff Constituency;

6.2.1.4 are at least 12 years old at the time of their application to be a Member; and

6.2.1.5 are not disqualified for membership under paragraph 6.5.

6.2.2 Those individuals who are eligible to be Members of the Public Constituency Classes are referred to collectively as the "Public Constituency".

6.2.3 An eligible individual shall become a Member upon entry to the membership register pursuant to an application by them.

6.2.4 On receipt of an application for Membership and subject to being satisfied that the applicant is eligible the Director of Corporate Affairs and Company Secretary shall cause the applicant's name to be entered in the Trust's register of Members.

6.2.5 The minimum number of Members of each Public Constituency Class is set out in column 3 of Annex 1.

### **6.3 Staff Constituency**

6.3.1 Subject to paragraphs 6.3.2 and 6.5 individuals are eligible to become members of the Staff Constituency if they are at least 16 years old and:

6.3.1.1 they are employed by the Trust under a contract of employment (other than as a Non-Executive Director);

For the avoidance of doubt members of the Staff Constituency cannot be members of the Public Constituency.

6.3.2 An individual is only eligible to become a member of the Staff Constituency under paragraph 6.3.1 above if they satisfy the minimum duration requirements set out in 3(3) of Schedule 7 to the 2006 Act, that is to say:

6.3.2.1 In the case of individuals qualifying under paragraph 6.3.1.1 above, they:

- (a) are employed by the Trust under a contract of employment which has no fixed term;
- (b) are employed by the Trust under a contract of employment which has a fixed term of at least 12 months; or
- (c) have been continuously employed by the Trust under a contract of employment for at least 12 months;

6.3.2.2 For the purposes of paragraphs 6.3.2.1, Chapter 1 of Part 14 of the Employment Rights Act 1996 shall apply for the purposes of determining whether the individual has been continuously employed by the Trust or has continually exercised functions on behalf of the Trust.

6.3.3 An individual who is:

6.3.3.1 eligible to become a member of the Staff Constituency who qualifies under paragraph 6.3.1.1; and

6.3.3.2 is invited by the Trust to become a member of the Staff Constituency and appropriate Staff Class within the Staff Constituency

shall become a Member of the Trust as a member of the Staff Constituency and relevant Staff Class without an application for Membership being made unless they inform the Trust that they do not wish to become a Member.

6.3.4 On receipt of an application for Membership for those qualifying for membership of the Trust under paragraph 6.3.3, and subject to being satisfied that the applicant is eligible, the Director of Corporate Affairs and Company Secretary shall cause the applicant's name to be entered in the Trust's register of Members.

6.3.5 Those individuals who are eligible for Membership by reason of the provisions set out in this paragraph 6.3 are referred to collectively as the "Staff Constituency".

6.3.6 Staff Constituency: Classes

6.3.6.1 The Staff Constituency shall be divided into 5 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 Staff Class within the Staff Constituency.

6.3.6.2 Individuals who are eligible to be a member of the Staff Constituency may not become or continue as a Member of more than one Staff Class, and individuals who are eligible to join more than one Staff Class shall be allocated to the Staff Class for which they are primarily employed or engaged.

6.3.7 The minimum number of Members for each Staff Class is set out in Annex 2.

#### 6.4 Patients' Constituency

6.4.1 Members who are Members of the Patients' Constituency shall be individuals who:

6.4.2 Have attended any of the Trust's services as a patient within the 5 years immediately preceding the date of an application by the patient to become a member of the Trust; or

6.4.3 Are the regular carer of a patient who has attended any of the Trust's services within the 5 years immediately preceding the date of an application by the carer to become a member of the Trust; and does not provide care for that patient:

- a. By virtue of a contract of employment or other contract; or
- b. As a volunteer for a voluntary organisation; and

6.4.4 are not eligible to become a Member of the Staff Constituency and are not Members of any other constituency;

6.4.5 are not disqualified for membership under paragraph 6.5; and

6.4.6 have applied to the Trust to become a Member; and were at least 12 years of age at the date of their application to become a Member.

6.4.7 Those individuals who are eligible for membership of the Trust by reason of the previous provisions are referred to collectively as the Patients' Constituency.

6.4.8 The Patients' Constituency shall be divided into 3 descriptions of individuals who are eligible for membership of the Patients' Constituency, each description of individuals being specified within Annex 3 and being referred to as a class within the Patients' Constituency.

6.4.9 The minimum number of members in each class of the Patients' Constituency is specified in Annex 3.

#### 6.5 Disqualification for Membership

6.5.1 An individual may not be or continue as a Member of the Trust if, in respect of:

6.5.1.1 a Public Member, they do not meet the relevant eligibility criteria under paragraph 6.2; or

6.5.1.2 a Staff Member, they do not meet the relevant eligibility criteria under paragraph 6.3; or

6.5.1.3 a Patient Member, they do not meet the relevant eligibility criteria under paragraph 6.4.

6.5.2 It is the responsibility of each Member to ensure their eligibility for membership. If the Trust is on notice that a Member may no longer be eligible to be a Member, the Trust shall carry out such reasonable enquiries as it considers necessary to establish if this is the case and shall invite the Member concerned to comment on its findings (within 14 days), and following receipt of any comments or expiry of that 14 day period (whichever occurs first) the Director of Corporate Affairs and Company Secretary shall decide whether such Member should be disqualified.

## 6.6 Termination of Membership

6.6.1 A Member shall cease to be a Member if they:

6.6.1.1 resigns by notice in writing to the Director of Corporate Affairs and Company Secretary; or

6.6.1.2 ceases to fulfil the eligibility requirements of paragraphs 6.2, 6.3 or 6.4 and/or is disqualified under paragraph 6.5.

6.6.2 The Council of Governors may also terminate the membership of a Member by a resolution approved by not less than two-thirds of the Governors present and voting at a General Meeting if in the reasonable opinion of the Council of Governors the Member:

a. is the maker, or has procured the making, or has otherwise been involved in making, vexatious complaints to or about the Trust, its officers or staff

b. has conducted them in a manner which has caused or is likely to cause material prejudice to the best interests of the Trust;

c. has been violent towards Trust staff or has been banned from any Trust Hospital for inappropriate behaviour towards Trust staff, patients or other visitors to the Trust.

6.6.3 In all cases where an individual ceases to be entitled to be a Member, the Director of Corporate Affairs and Company Secretary shall cause their name to be forthwith removed from the Register of Members and they shall thereupon cease to be a Member.

6.6.4 If the Member is also a Governor, the provisions of paragraph 7.12. apply to any proposal to terminate their membership.

6.6.5 No person who has been expelled from membership is to be re-admitted except by a resolution carried by the votes of two-thirds of the Council of Governors voting at a General Meeting of the Council of Governors.

#### 6.7 Voting at Governor Elections

6.7.1 A Member may not vote in an election for an Elected Governor unless within the specified time period they have made a declaration in the specified form setting out the particulars of their qualification to vote as a member of the Constituency (and where relevant the appropriate class within that Constituency) for which the election is being held. The specified time period and form of declaration are specified in the Election Scheme.

6.7.2 It is an offence for any Member to knowingly or recklessly make such a declaration as is referred to at paragraph 6.7.1 which is false in a material particular.

6.7.3 An individual who is a Member of another Foundation Trust as well as the Trust may vote in elections for this Trust provided they are able to comply with the provisions of this paragraph 6.7 (Voting at Governor Elections).

#### 6.8 Annual Members' Meeting

6.8.1 The Trust shall every year hold an Annual Members' Meeting which shall be open to members of the public.

6.8.2 The following documents shall be presented at the Annual Members' Meeting by at least one of the Directors:

6.8.2.1 the Annual Accounts;

6.8.2.2 any report of the Auditor on the Annual Accounts; and

6.8.2.3 the Annual Report.

6.8.3 The Trust may combine a meeting of the Council of Governors convened for the purposes of being presented with the documents in sub-paragraph 6.8.2 with the Annual Members' Meeting.

6.8.4 In accordance with paragraph 20.3 where an amendment has been made to the Constitution in relation the powers or duties of the Council of Governors (or otherwise with respect to the role that the Council of Governors has as a part of the Trust), Members shall be given an opportunity to vote at the Annual Members' Meeting on whether they approve the amendment which shall be presented to that meeting by at least one Governor.

6.8.5 Where an amendment has been presented to the Annual Member's Meeting in accordance with paragraph 6.8.4, and it is not approved by more than half of

the Members voting such amendment shall cease to have effect and the Trust shall take such steps as are necessary as a result.

## **7 Council of Governors**

### **7.1 Composition**

7.1.1 The Trust shall have a Council of Governors which shall consist of Elected Governors and Appointed Governors (as set out in paragraph 7.1.2).

7.1.2 The composition of the Council of Governors shall be:

7.1.2.1 eight (8) Public Governors representing the Public Constituency Classes as set out in Annex 1;

7.1.2.2 nine (9) Staff Governors representing the Staff Classes as set out in Annex 2;

7.1.2.3 Eleven (11) Patient Governors representing the Patient Classes as set out in Annex 3;

7.1.2.4 one (1) CCG Governor;

7.1.2.5 two (2) Local Authority Governors; and

7.1.2.6 five (5) Other Partnership Governors.

7.1.3 The Council of Governors shall nominate a Governor to be the Trust's Lead Governor for up to 3 years as aligned with tenures and as determined by the Council.

### **7.2 Governor Elections**

7.2.1 Elected Governors shall be chosen by election by their Constituency or, where there are classes within a Constituency, by their class within that Constituency. The number of Governors to be elected by each Constituency or, where appropriate, by each class of each Constituency, is as set out in Annexes 1, 2 and 3.

7.2.2 Elections for Elected Governors shall be conducted in accordance with the Election Scheme. A subsequent variation to the Election Scheme to reflect a change to the Independent Regulator's model election rules shall not constitute a variation of the terms of this Constitution for the purposes of paragraph 20.1.

7.2.3 The Election Scheme provides for arrangements to be made to assist those persons requiring assistance to vote.

7.2.4 Members:

7.2.4.1 standing for; and/or

7.2.4.2 voting in

Governor elections must comply with the terms of the Election Scheme.

7.2.5 Where an election is contested, the election shall be by secret ballot.

### 7.3 Public Governors

7.3.1 Each Public Constituency Class shall elect the number of Governors set against it in column 5 of Annex 1.

7.3.2 Members of each Public Constituency Class may elect any of their number who is eligible to be a Public Governor.

7.3.3 An individual may not stand for election to the Council of Governors as a Public Governor unless:

7.3.3.1 in accordance with paragraph 12 of the Election Scheme (Annex 5), they have made a declaration in the form specified in that part of that annex of their qualification to vote as a Member of the Public Constituency Class for which the election is being held; and

7.3.3.2 they are not prevented from being a member of the Council of Governors by paragraph 7.12 (Suspension and disqualification).

7.3.4 It is an offence for any Member to knowingly or recklessly make such a declaration as is referred to in paragraph 7.3.3.1 which is false in a material particular.

### 7.4 Staff Governors

7.4.1 Members of each Staff Class may elect the number of Governors for that Staff Class as set out in Annex 2.

7.4.2 Members of the Staff Constituency may elect any individual who is eligible to be a Staff Governor in respect of the relevant Staff Constituency.

7.4.3 The Election Scheme, including the specified forms of and periods for declarations to be made by candidates standing for office and Members as a condition of voting and the process if the election is uncontested, is set out in Annex 5.

### 7.5 Patient Governors

7.5.1 Subject to the provisions of paragraph 7.5.5 below, members of a Class of the Patients' Constituency may elect any of their number to be a Patient Governor for that Class.

7.5.2 If contested, the election shall be by secret ballot using the single transferable voting method in accordance with the Election Scheme.

7.5.3 The Election Scheme (including the specified forms of and periods for declarations to be made by candidates standing for office as a Governor and by



Members as a condition of voting and the process if the election is uncontested) is set out in Annex 5.

7.5.4 A person may not stand for election to the Council of Governors as a Patient Governor unless, within the period specified in Annex 5, they have made a declaration in the form specified in that Annex stating of which Class within the Patients' Constituency they are a Member and that they are not prevented from being a Governor by paragraph 8 of Schedule 7 to the 2006 Act or by any provision of the Constitution. It is an offence knowingly or recklessly to make such a declaration which is false in a material particular.

7.5.5 Notwithstanding paragraph 7.5.1 above, a Patient and their primary carer shall not both be eligible to stand for election as a Patient Governor at the same election nor shall they be eligible to stand for election if in consequence their respective terms of office if elected would or may coincide wholly or in part.

## 7.6 CCG Governor

7.6.1 The CCG may appoint one CCG Governor. The Chair or Director of Corporate Affairs and Company Secretary of the Trust shall invite the Chair of the commissioner to appoint one such Governor. The absence of any such invitation shall not preclude any the commissioner from appointing its Commissioner Governor (such person must be eligible to be, and not disqualified from being, a Governor under this Constitution).

## 7.7 Local Authority Governors

7.7.1 Each of the Local Authorities may appoint one Local Authority Governor (such person must be eligible to be, and not disqualified from being, a Governor under this Constitution) by notice in writing signed by:

7.7.1.1 the leader of the relevant council;

7.7.1.2 or a member of the relevant council's Executive,

and delivered to the Director of Corporate Affairs and Company Secretary.

## 7.8 Other Partnership Governors

7.8.1 Each Other Partnership Organisation may appoint one Other Partnership Governor (such person being eligible to be, and not disqualified from being, a Governor under this Constitution) as set out below:

7.8.1.1 Oxford Brookes University may appoint a University Governor by notice in writing signed by the principal and delivered to the Director of Corporate Affairs and Company Secretary.

7.8.1.2 Buckinghamshire Mind may appoint its Other Partnership Governor by notice in writing signed by the Chair and delivered to the Director of Corporate Affairs and Company Secretary.

- 7.8.1.3 Age UK Oxfordshire may appoint its Other Partnership Governor by notice in writing signed by the Chair and delivered to the Director of Corporate Affairs and Company Secretary.
- 7.8.1.4 Buckinghamshire Healthcare NHS Trust may appoint its Other Partnership Governor by notice in writing signed by the Chair and delivered to the Director of Corporate Affairs and Company Secretary.
- 7.8.1.5 Oxford University Hospitals NHS Foundation Trust may appoint its Other Partnership Governor by notice in writing signed by the Chair and delivered to the Director of Corporate Affairs and Company Secretary.

## 7.9 Transition arrangements

- 7.9.1 Where an Elected Governor ceases to be eligible to hold the office to which they were elected by virtue of paragraphs 6.2, 6.3 or 6.4 that Elected Governor shall immediately notify the Director of Corporate Affairs and Company Secretary of the circumstances giving rise to their ineligibility.
- 7.9.2 Where the Director of Corporate Affairs and Company Secretary receives notice from an Elected Governor, pursuant to paragraph 7.9.1, that they believe they are no longer eligible to hold their office (or the Director of Corporate Affairs and Company Secretary otherwise becomes aware that the Elected Governor is no longer eligible to hold their office) the Director of Corporate Affairs and Company Secretary shall notify the Elected Governor that their position is suspended with immediate effect and shall ask the Governor if they:
  - 7.9.2.1 wish to stand down as a Governor; and
- 7.9.3 Where the Elected Governor confirms in writing that they:
  - 7.9.3.1 will stand down as a Governor, such resignation shall take effect immediately;the provisions of paragraphs 7.13 – 7.14 shall apply.

## 7.10 Terms of Office

- 7.10.1 Elected Governors:
  - 7.10.1.1 shall be elected for a period of up to 3 years;
  - 7.10.1.2 are, subject to paragraphs 7.10.1.3 and 7.10.1.4 eligible for re-election at the end of the period referred to in paragraph 7.10.1.1;
  - 7.10.1.3 may hold office for a maximum of 9 years but in exceptional circumstances (as determined by the Council of Governors) may serve longer than 9 years, but any extension beyond 9 years will be

subject to annual re-election and, in any event, they shall not serve for a total term longer than 12 years; and

7.10.1.4 shall cease to hold office if they cease to be a member of the Constituency (or relevant class within a Constituency) or in any other situation specified in this Constitution.

7.10.2 Appointed Governors:

7.10.2.1 shall be appointed for a period of 3 years.

7.10.2.2 are, subject to paragraphs 7.10.2.3 and 7.10.2.4 eligible for reappointment at the end of the period referred to in paragraph 7.10.2.1;

7.10.2.3 may hold office for a maximum of 9 years but in exceptional circumstances (as determined by the Council of Governors) may serve longer than 9 years, but any extension beyond 9 years will be subject to annual re-appointment and, in any event, they shall not serve for a total term longer than 12 years; and

7.10.2.4 shall cease to hold office if their appointing organisation withdraws its appointment of them or in any other situation specified in this Constitution.

7.10.3 Governors must comply with the Trust's:

7.10.3.1 Constitution;

7.10.3.2 Standing Orders for the Council of Governors;

7.10.3.3 Code of Conduct for Governors; and

7.10.3.4 Policies as relevant to their role and conduct.

7.11 Termination of Tenure

7.11.1 A Governor may resign from office at any time during the term of their office by giving notice in writing to the Director of Corporate Affairs and Company Secretary or the Chairman.

7.11.2 A Governor's tenure:

7.11.2.1 shall be terminated immediately if a Governor fails to attend two consecutive meetings of the Council of Governors, unless a majority of the other Governors are satisfied that:

(a) the absence was due to a reasonable cause; and

(b) they will be able to start attending meetings of the Council of Governors again within such a period as they consider reasonable;

7.11.2.2 shall be terminated immediately if the Council of Governors decide (by a majority of the other Governors) that a Governor has:

- (a) failed to comply with paragraph 7.10.3; (except where the Council of Governors decide that termination of tenure would not be appropriate in the circumstances);
- (b) conducted themselves in an inappropriate manner which would adversely affect public confidence in the Trust or the Council of Governors; or
- (c) conducted themselves in such a manner as is likely to bring the Trust into disrepute including, but without prejudice to the generality of the foregoing, a failure to declare a material or pecuniary interest which would or would be likely to result in a conflict of interest.

7.11.3 The Council of Governors may request that the CoG's Nominations and Remuneration Committee investigates any matter which would give rise to them exercising their powers in paragraphs 7.11.2.1 – 7.11.2.2 (inclusive) and to receive the representations of the relevant Governor and any representative appointed by them for that purpose except to the extent that the Code of Conduct for Governors provides a procedure for the same in which case such procedure must be followed.

7.11.4 Any engagement of the CoG's Nominations and Remuneration Committee pursuant to paragraph 7.11.3 shall make such report and recommendations to the Council of Governors as it deems fit and shall, as far as practicable, submit any report and recommendations to the Council of Governors within 4 months of commencing their investigation.

## 7.12 Suspension and disqualification from office

7.12.1 Where a Staff Governor has been:

- 7.12.1.1 made the subject of a written warning or a period of suspension in excess of 28 days; or
- 7.12.1.2 absent from their post as an employee of the Trust for a continuous period of not less than four months and no reasonable cause (in the opinion of the Council of Governors acting by simple majority) has been given for absence;

their term of office as Governor may be suspended by the Council of Governors) for such period of time as the Council of Governors deems fit and so as to enable, if necessary, an investigation to be carried out to determine whether or not the tenure of that Staff Governor should then be terminated. The Staff Governor in question may submit reasons to the Council of Governors as to why they should still be eligible to continue as a Staff Governor and the

Council of Governors shall decide whether to terminate the Governor's term of office and such determination of the Council of Governors shall be final.

- 7.12.2 An individual is immediately disqualified from becoming or continuing to hold office as a Governor if they:
- 7.12.3.1 have been adjudged bankrupt or their estate has been sequestrated and in either case they have not been discharged;
  - 7.12.3.2 are a person in relation to whom a moratorium period under a debt relief order applies (under Part 7A of the Insolvency Act 1986);
  - 7.12.3.3 have made a composition or arrangement with, or granted a trust deed for, their creditors and has not been discharged in respect of it;
  - 7.12.3.4 have within the preceding five years been convicted in the British Islands of any offence and a sentence of imprisonment (whether suspended or not) for a period of three months or more (without the option of a fine) was imposed on them;
  - 7.12.3.5 have within the preceding three years been dismissed (including, but not limited to, by reason of redundancy) by the Trust;
  - 7.12.3.6 have within the preceding two years been dismissed from any paid employment with a Health Service Body otherwise than by reason of redundancy, sickness or dismissal that was found by an Employment Tribunal or competent court (or on appeal in either case) to be unfair, wrongful or discriminatory;
  - 7.12.3.7 are under 16 years of age;
  - 7.12.3.8 are an individual whose tenure of office as the Chairman, Governor or as a member or Director of a Health Service Body has been terminated on the grounds that their appointment is not in the interest of the health service, for non-attendance at meetings or for non-disclosure of a pecuniary interest;
  - 7.12.3.9 are the spouse, civil partner, partner, parent or child of a member of the Board of Directors of the Trust;
  - 7.12.3.10 have had their name removed from any list prepared pursuant to paragraph 14 of the National Health Service (Performers List) Regulations 2013 or section 151 of the 2006 Act (or similar provision elsewhere) and have not subsequently had their name included in such a list;
  - 7.12.3.11 are incapable by reason of mental disorder, illness or injury of managing and administering their property and affairs;

- 7.12.3.12 are registered as a sex offender pursuant to Part 1 of the Sex Offenders Act 1997;
  - 7.12.3.13 have been identified and given notice in writing by the Chief Executive (or an authorised agent acting on behalf of the Chief Executive) to the effect that they are a habitual or repetitive complainant in respect of the Trust, if the Council of Governors decide (by a majority of the other Governors) to disqualification/ termination;
  - 7.12.3.14 are a member of a local authority's Overview and Scrutiny Committee covering health matters;
  - 7.12.3.15 are a member of Healthwatch; or
  - 7.12.3.16 have failed to confirm that they will abide by the Code of Conduct for Governors adopted by the Trust;
  - 7.12.3.17 have contravened any other provision of this Constitution.
- 7.12.4 An individual is disqualified from becoming or continuing to hold office as a Governor if NHS Improvement has exercised its powers to remove that person as a Governor or has suspended them from office or has disqualified them from holding office as Governor for a specified period or NHS Improvement 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.
- 7.12.5 An individual is disqualified from becoming or continuing to hold office as a Public Governor if:
- 7.12.4.1 they cease to be a Member of the Public Constituency (or Public Constituency Class) for which they were elected; or
  - 7.12.4.2 they are eligible to be a Member of the Staff Constituency.
- 7.12.6 An individual is disqualified from becoming or continuing to hold office as a Staff Governor if they:
- 7.12.6.1 cease to be a Member of the Staff Constituency (or relevant Staff Class); or
  - 7.12.6.2 are employed by the Trust on a temporary contract which contract is or was identified on the face of it as a temporary contract.
- 7.12.7 An individual is disqualified from becoming or continuing to hold office as an Appointed Governor if the relevant appointing organisation withdraws its appointment of them.
- 7.12.8 If an Elected or Appointed Governor ceases to be eligible to hold such office because grounds for disqualification exist pursuant to paragraph 7.12 (other than under paragraph 7.12.1 and paragraph 7.11.2), they shall immediately

notify the Director of Corporate Affairs and Company Secretary in writing of the circumstances.

- 7.12.9 If the Trust is on notice that a Governor may no longer be eligible to be a Governor, the Trust shall carry out such reasonable enquiries as it considers necessary to establish if this is the case and shall invite the Governor concerned to comment on its findings (within 14 days) and following receipt of any comments or expiry of that 14day period (whichever occurs first) the Council of Governors shall decide whether such Governor's term of office should be terminated.

#### 7.13 Consequences of termination of tenure

##### 7.13.1 Where a Governor:

- 7.13.1.1 has given notice of resignation in accordance with paragraph 7.11.1;
- 7.13.1.2 has had their term of office terminated pursuant to the terms of this Constitution in any manner whatsoever; or
- 7.13.1.3 is otherwise disqualified from holding office pursuant to the Constitution or the 2006 Act,

that Governor shall thereupon cease to be a Governor and their name shall be forthwith removed from the Register of Governors by the Director of Corporate Affairs and Company Secretary.

- 7.13.2 A Governor who resigns or whose tenure of office is terminated shall not be eligible to stand for re-election for a period of three years from the date of their resignation or termination of office.

#### 7.14 Vacancies

- 7.14.1 Where a Governor's tenure of office ceases for one or more of the reasons set out in paragraph 7.11 or 7.12, in the case of:

- 7.14.1.1 Public Governors, Patient Governors and Staff Governors, such vacancy shall, subject to provisions of paragraphs 7.14.2 and 7.14.3, be filled by elections held in accordance with the Election Scheme set out in Annex 5; and
- 7.14.1.2 the CCG Governor, the Local Authority Governor and Other Partnership Governors shall be replaced in accordance with the processes set out in paragraphs 7.6 – 7.8.

- 7.14.2 Where a vacancy arises amongst the Elected Governors for any reason (including, for the avoidance of doubt, an increase in the number of Elected Governors effected by an amendment to the Constitution in accordance with paragraph 20.1 below) other than the expiry of the term of office, the Council of Governors shall decide either:

7.14.2.1 to call an election within three months to fill the vacancy, unless an election is due within nine months in which case the seat shall stand vacant until the following scheduled election;

7.14.2.2 to invite the next highest polling candidate in the relevant constituency and class at the most recent election who is willing to take office, to fill the vacancy (the "Reserved Governor"). If that candidate does not accept to fill the vacancy it will then be offered to the next reserve candidate and so on until the vacancy is filled. If the vacancy is filled in this way, the Reserved Governor shall be eligible for re-election for a further two full three year terms; or

7.14.2.3 to leave the seat vacant until the next scheduled elections are held

except that if the aggregate number of Public Governors does not exceed half the total membership of the Council of Governors an election will be held in accordance with the Election Scheme as soon as reasonably practicable.

## 7.15 Roles and Responsibilities of Governors

7.15.1 The general duties of the Council of Governors are:

7.15.1.1 to hold the Non-Executive Directors individually and collectively to account for the performance of the Board of Directors; and

7.15.1.2 to represent the interests of the Members of the Trust as a whole and the interests of the public.

7.15.2 The Trust must take steps to secure that its Governors are equipped with the skills and knowledge they require to carry out their role as a Governor.

7.15.3 The roles and responsibilities of the Governors (in addition to any roles and responsibilities set out elsewhere in this Constitution) are:

7.15.3.1 at a General Meeting:

(a) to appoint or remove the Chairman and the other Non-Executive Directors as further set out in the Standing Orders for the Council of Governors. The removal of the Chairman or a Non-Executive Director requires the approval of three-quarters of the members of the Council of Governors;

(b) to approve the appointment (by the Non-Executive Directors) of the Chief Executive as further set out in the Standing Orders for the Council of Governors;

(c) to decide the remuneration and allowances, and other terms and conditions of office of the Non-Executive Directors;

(d) to appoint or remove the Trust's External Auditor; and



(e) to be presented with the Annual Accounts, any report of the Auditor on them and the Annual Report.

7.15.3.2 to give the views of the Council of Governors to the Board of Directors for the purposes of the preparation by the Board of Directors of the document containing the information to be given to the Independent Regulator as to the Trust's forward planning in respect of each Financial Year;

7.15.3.3 to consider the Annual Accounts, any report of the Auditor on them and the Annual Report;

7.15.3.4 to respond as appropriate when consulted by the Directors in accordance with this Constitution; and

7.15.3.5 to represent the interests of Members and the Other Partnership Organisations in the governance of the Trust, regularly feeding back information about the Trust, its vision and its performance to the Constituency or Other Partnership Organisation they represent; and

#### 7.16 Expenses

7.16.1 Governors are entitled to receive re-imbusement for travelling and other reasonable expenses incurred and evidenced by receipts in accordance with the Trust's Expenses Policy at such rates as the Trust decides from time to time.

7.16.2 The Trust shall publish the aggregate sum of expenses paid to Governors in each year in the Annual Report.

#### 7.17 Remuneration

7.17.1 Governors are not entitled to receive remuneration for their role.

#### 7.18 Meetings

7.18.1 Meetings of the Council of Governors shall be conducted in accordance with the provisions of the Standing Orders for the Council of Governors.

7.18.2 Meetings of the Council of Governors shall be chaired by the Chairman or in their absence the Vice Chairman. If the Vice Chairman is also unavailable the meeting shall be chaired by such person as is chosen in accordance with the Standing Orders for the Council of Governors.

7.18.3 The Council of Governors is to meet at least four times per year, including an annual meeting no later than 30 September in each year where the Council of Governors shall receive and consider the annual accounts, any report of the auditor on them and the annual report.

7.18.4 The Council of Governors may require one or more of the Directors to attend a meeting 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). Unless otherwise agreed, at least five working days' notice of the meeting must be provided.

7.18.5 Meetings of the Council of Governors shall be open to members of the public, but members of the public may be excluded from a meeting for special reasons.

7.18.6 No defect in the election or appointment of a Governor nor any deficiency in the composition of the Council of Governors shall affect the validity of any act or decision of the Council of Governors.

#### 7.19 Committees and Sub-Committees

7.19.1 The Council of Governors may appoint committees and sub-committees in accordance with the provisions of the Standing Orders for the Council of Governors.

7.19.2 The Council of Governors cannot delegate its powers to any committee or sub-committee.

#### 7.20 Conflicts of Interests of Governors.

7.20.1 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.

7.20.2 The Standing Orders of 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 and Governors shall comply with the provisions of the Standing Orders for the Council of Governors.

#### 7.21 Referral to the Panel

7.21.1 A Governor may refer a question as to whether the Trust has failed or is failing;

7.21.1.1 to act in accordance with the Constitution; or

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

to the Panel only if more than half of the members of the Council of Governors voting approve the referral.

7.21.2 In this paragraph 7.21.2, the Panel means a panel of persons appointed by Independent Regulator to which a Governor of the Trust may refer a question as set out in 7.21.1.

## 7.22 Engagement Policy

- 7.22.1 The Governors and Directors shall observe the terms of the Engagement Policy in relation to their engagement with each other on matters concerning the Trust.

## 8 Board of Directors

- 8.1 The Trust shall have a Board of Directors which shall consist of Executive and Non-Executive Directors.
- 8.2 The Board of Directors shall comprise the following:
- 8.2.1 the Chairman (a Non-Executive Director);
  - 8.2.2 between 6 and 7 other Non-Executive Directors;
  - 8.2.3 the Chief Executive (an Executive Director);
  - 8.2.4 the Finance Director (an Executive Director); and
  - 8.2.5 between 3 and 5 other voting Executive Directors but subject to the provisions of paragraph 8.3 and 8.4.
- 8.3 One of the Executive Directors is to be:
- 8.3.1 a Registered Medical Practitioner or Registered Dentist; and
  - 8.3.2 a Registered Nurse or Registered Midwife.
- 8.4 At all times the composition of the Board of Directors shall be such that the number of voting Executive Directors is less than the number of Non-Executive Directors.
- 8.5 Only a member of the public or patient constituencies or an individual nominated by the University of Oxford may be appointed as a Non-Executive Director.
- 8.6 Appointment and removal of Non-Executive Directors and Executive Directors.
- 8.6.1 Appointment and removal of Non-Executive Directors
    - 8.6.1.1 The Council of Governors, at a general meeting of the Council of Governors, shall appoint and remove the Chairman and other Non-Executive Directors;
    - 8.6.1.2 The Council of Governors, at a general meeting of the Council of Governors shall appoint one of the Non-Executive Directors as Vice Chairman;
    - 8.6.1.3 The Council of Governors shall establish the CoG's Nominations and Remuneration Committee (comprising the Chairman, the Lead Governor, one Public Governor, one Staff Governors, two Patient Governors (one service user, one carer) and one Appointed

Governor) to consider candidates for appointment as Non-Executive Directors against an agreed job specification.

8.6.1.4 The CoG's Nominations and Remuneration Committee shall shortlist from those candidates meeting the specified criteria, those candidates whom it wishes to interview and shall appoint from amongst itself, a panel to interview candidates along with up to an additional two Non-Executive Directors of the Board of Directors and if necessary, a suitably qualified independent advisor; the panel shall conduct interviews with the said candidates and thereafter the CoG's Nominations and Remuneration Committee shall make its recommendation to the Council of Governors as to who should be appointed as a Non-Executive Director.

8.6.1.5 The Council of Governors shall consider the recommendation of the CoG's Nominations Committee and make a decision as to the appointment of the Non-Executive Directors in general meeting.

8.6.1.6 An individual shall not be appointed as a Non-Executive Director unless they are a member of the Public or Patient Constituency or an individual nominated by the University of Oxford.

8.6.1.7 The removal of a Non-Executive Director shall require the approval of three-quarters of the members of the Council of Governors.

8.6.1.8 The CoG's Nominations and Remuneration Committee shall consult the Chief Executive regarding the particular skills, qualifications or experience which in their opinion would be desirable for any Non-Executive Director to possess who may be appointed.

8.6.1.9 The CoG shall be entitled to appoint one Non-Executive Director nominated by the University of Oxford in accordance with a process agreed by the Council of Governors and recommended by the CoG Nomination and Remuneration Committee.

#### 8.6.2 Appointment and removal of Executive Directors

8.6.2.1 It is for the Chairman and the other Non-Executive Directors to appoint (subject to the approval of the Council of Governors) or remove the Chief Executive.

8.6.2.2 It is for a committee consisting of the Chairman, the Chief Executive and the other Non-Executive Directors to appoint or remove the Executive Directors (other than the Chief Executive).

### 8.7 Terms of Office

8.7.1 Subject to paragraph 8.7.3, the Chairman and the other Non-Executive Directors are to be appointed for a period of office in accordance with the terms and conditions of office (including as to remunerations and allowances, which shall

be published in the Annual Report) decided by the Council of Governors in general meeting.

8.7.2 The Executive Directors shall hold offices for a period in accordance with the terms and conditions of office (including as to remunerations and allowances) decided by the relevant committee of Non-Executive Directors.

8.7.3 Non-Executive Directors:

8.7.3.1 shall be appointed for a period of up to 3 years;

8.7.3.2 are, subject to paragraphs 8.7.3.3 and 8.7.3.4 eligible for re-election at the end of the period referred to in paragraph 8.7.3.1;

8.7.3.3 shall not, except in exceptional circumstances, hold office for a period in excess of 6 years; and

8.7.3.4 where appointed for more than 6 years shall, at the discretion of the Council of Governors, be so appointed either on the basis of:

(a) re-appointment for up to 3 years;

(b) annual re-appointment through broader review taking into account the needs of the Board and the Trust; or

(c) a competitive process

up to a maximum 9 years.

8.7.4 The Directors shall comply with the Trust's:

8.7.4.1 Constitution;

8.7.4.2 Standing Orders for the Board of Directors;

8.7.4.3 any Code of Conduct for Directors; and

8.7.4.4 Policies.

8.8 Disqualification

8.8.1 An individual may not become or continue as a Director of the Trust if:

8.8.1.1 they have been adjudged bankrupt or their estate has been sequestrated and in either case they have not been discharged;

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

- 8.8.1.3 they have made a composition or arrangement with, or granted a trust deed for, their creditors and has not been discharged in respect of it;
- 8.8.1.4 they have within the preceding five years been convicted in the British Islands of any offence, and a sentence of imprisonment (whether suspended or not) for a period of three months or more (without the option of a fine) was imposed on them;
- 8.8.1.5 they are a person whose tenure of office as a Chairman or as a member or Director of a Health Service Body has been terminated on the grounds that their appointment is not in the interests of public service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest;
- 8.8.1.6 they had their name removed from any list prepared pursuant to paragraph 14 of the National Health Service (Performers List) Regulations 2013 or section 151 of the 2006 Act (or similar provision elsewhere) and has not subsequently had their name included in such a list;
- 8.8.1.7 they have within the preceding three years been dismissed, otherwise than by reason of redundancy or ill health, from any paid employment with a Health Service Body;
- 8.8.1.8 The Independent Regulator has exercised its powers under the 2006 Act to:
  - (a) remove that individual as a Director of the Trust or any other NHS Foundation Trust within its jurisdiction;
  - (b) suspend them from office; or
  - (c) disqualify them from holding office as a Director of the Trust or of any other NHS Foundation Trust
 for a specified period;
- 8.8.1.9 they are incapable by reason of mental disorder, illness or injury of managing and administering their property and affairs;
- 8.8.1.10 they are registered as a sex offender pursuant to Part I of the Sex Offenders Act 1997;
- 8.8.1.11 they have been identified as a vexatious complainant in respect of the Trust and has been notified to that effect by notice in writing given by the Chief Executive;
- 8.8.1.12 they have been unable to dedicate adequate time to the role and responsibilities of a Director of the Trust;

8.8.1.13 they are an 'unfit person' as defined in the Trust's Provider Licence (as may be amended from time to time); or

8.8.1.14 they are a member of a local authority's Overview & Scrutiny Committee covering health matters.

8.8.2 An individual may not be a Non-Executive Director if they cease to be a member of the Public or Patient Constituency or are no longer exercising functions for the University of Oxford.

8.8.3 The Board of Directors may in their discretion appoint a Committee of the Board of Directors to enquire into any such matter as may be raised in connection with paragraph 8.8.1 and/or 8.8.2 above in accordance with terms of reference as determined by the Board of Directors and to make recommendations to the Board of Directors in respect thereof.

## 8.9 Duties, Roles and Responsibilities

8.9.1 The general duty of the Board of Directors and of each Director individually, is to act with a view to promoting the success of the Trust so as to maximize the benefits for the Members of Trust as a whole and for the public.

8.9.2 The Directors, having regard to the views of the Council of Governors, are to prepare the information as to the Trust's forward planning in respect of each Financial Year to be given to the Independent Regulator.

8.9.3 The Directors are to present to the Council of Governors at a general meeting the Annual Accounts, any report of the Auditor on them and the Annual Report.

8.9.4 The Board of Directors shall appoint an audit committee of Non-Executive Directors to review and carry out such other functions in relation to audit as are appropriate.

8.9.5 The functions of the Trust under paragraph 14 are delegated to the Chief Executive as accounting officer.

## 9 Meetings of Directors

9.1 Meetings of the Board of Directors shall be conducted in accordance with the provisions of the Standing Orders for the Board of Directors.

9.2 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.

9.3 Before holding a meeting, the Board of Directors must send a copy of the agenda of the meeting to the Council of Governors.

9.4 As soon as practicable after holding a meeting, the Board of Directors must send a copy of the minutes of the Board of Directors meeting to the Council of Governors.

## **10 Conflicts of Interest of Directors**

- 10.1 The duties that a Director has by virtue of being a Director include in particular:
- 10.1.1 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; and
  - 10.1.2 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.
- 10.2 The duty referred to in sub-paragraph 10.1.1 is not infringed if:
- 10.2.1 the situation cannot reasonably be regarded as likely to give rise to a conflict of interest; or
  - 10.2.2 the matter has been authorised in accordance with the Constitution.
- 10.3 The duty referred to in sub-paragraph 10.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- 10.4 In sub-paragraph 10.1.2, “third party” means a person other than:
- 10.4.1 the Trust; or
  - 10.4.2 a person acting on its behalf.
- 10.5 If a Director has in any way a direct or indirect interest in a proposed transaction or arrangement with the Trust, the Director must declare the nature and extent of that interest to the other Directors. If a declaration under this paragraph proves to be, or becomes, inaccurate, incomplete, a further declaration must be made.
- 10.6 Any declaration required by paragraph 10.5 must be made before the Trust enters into the transaction or arrangement.
- 10.7 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.
- 10.8 A Director need not declare an interest:
- 10.8.1 if it cannot reasonably be regarded as likely to give rise to a conflict of interest;
  - 10.8.2 if, or to the extent that, the Directors are already aware of it;
  - 10.8.3 if, or to the extent that, it concerns terms of the Director’s appointment that have been or are to be considered:
    - 10.8.3.1 by a meeting of the Board of Directors, or
    - 10.8.3.2 by a committee of the Directors appointed for the purpose under the Constitution.



10.9 Directors shall comply with the provisions of the Standing Orders for the Board of Directors in relation to the declaration and management of conflicts of interests.

## **11 Registers**

11.1 The Trust is to have:

11.1.1 a register of Members showing, in respect of each Member, the Constituency and where there are classes within it, the class to which they belong;

11.1.2 a register of members of the Council of Governors;

11.1.3 a register of interests of the members of the Council of Governors;

11.1.4 a register of Directors;

11.1.5 a register of interests of the Directors;

11.2 The Director of Corporate Affairs and Company Secretary shall admit to the:

11.2.1 Register of Members the name, Constituency and class of Constituency of a Member upon receipt of a signed declaration from the Member confirming their eligibility as a Member;

11.2.2 Register of Governors the name and Constituency (and where relevant class within the Constituency) of those Members who have been elected or appointed as a Governor of the Trust.

11.3 The Director of Corporate Affairs and Company Secretary shall remove from the:

11.3.1 Register of Members any Member:

11.3.1.1 who is not, or who is no longer, eligible to be a Member;

11.3.1.2 indicates in writing that they no longer wish to be a Member; or

11.3.1.3 has died, upon receipt of a notice to that effect from the Member's next of kin or personal representative;

11.3.2 Register of Governors those Governors:

11.3.2.1 who have not been re-elected;

11.3.2.2 who have had their appointment withdrawn;

11.3.2.3 whose tenure of office as Governors has been terminated; or

11.3.2.4 who are otherwise disqualified from office.

11.4 The Director of Corporate Affairs and Company Secretary shall maintain the respective Registers of Interests of the Directors and Governors and undertake a review of the same at least once in every year by notice to that effect to all Directors and Governors.

- 11.5 The Trust shall not make any part of its Registers available for inspection by members of the public which shows details of any member of the Patients' constituency; or any other member of the Trust if they so requests.

## **12 Public Documents**

- 12.1 The following documents of the Trust are to be available for inspection by members of the public free of charge at all reasonable times:

12.1.1 a copy of the current Constitution;

12.1.2 a copy of the latest Annual Accounts and of any report of the Auditor on them;

12.1.3 a copy of the latest Annual Report;

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

12.2.1 a copy of any order made under section 65D (appointment of Trust special administrator), 65J (power to extend time), 65KC (action following Secretary of State's rejection of final report), 65L (Trusts coming out of administration) or 65LA (Trust to be dissolved) of the 2006 Act;

12.2.2 a copy of any report laid under section 65D (appointment of Trust special administrator) of the 2006 Act;

12.2.3 a copy of any information published under section 65D (appointment of Trust special administrator) of the 2006 Act;

12.2.4 a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act;

12.2.5 a copy of any statement provided under Section 65F (administrators draft report) of 2006 Act;

12.2.6 a copy of any notice published under section 65F (administrator's draft report), 65G (consultation plan), 65H (consultation requirements), 65J (power to extend time), 65KA (Regulator's decision), 65KB (Secretary of State's response to Regulator'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;

12.2.7 a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act;

12.2.8 a copy of any final report published under section 65I (administrators final report) of the 2006 Act;

- 12.2.9 a copy of any statement published under section 65J (power to extend time) or 65KC (action following Secretary of State's rejection of final report) of the 2006 Act;
- 12.2.10 a copy of any information published under section 65M (replacement of Trust special administrator) of the 2006 Act.
- 12.3 Any person who requests it shall be provided with a copy or extract from any of the above documents.
- 12.4 The registers mentioned in paragraph 11.1 above are also to be made available for inspection by members of the public, except in circumstances prescribed by regulations made under the 2006 Act, and so far as those registers are required to be available:
  - 12.4.1 they are to be available free of charge at all reasonable times; and
  - 12.4.2 a person who requests shall be provided with a copy of or extract from them.
- 12.5 The Trust shall not make any part of its register available for inspection by members of the public which show details of any Member of the Trust if the Member so requests.
- 12.6 If the person requesting a copy or extract of a register or a document referred to in this paragraph 12 above is not a Member of the Trust, the Trust may impose a reasonable charge for providing the copy or extract.

### **13 Auditor**

- 13.1 The Trust is to have an Auditor and is to provide the Auditor with every facility and all information which they may reasonably require for the purposes of their functions under Chapter 5 of Part 2 to the 2006 Act.
- 13.2 An individual may only be appointed Auditor if they (or in the case of a firm each of its members) are a member of one or more of the bodies referred to in paragraph 23 (4) of Schedule 7 to the 2006 Act.
- 13.3 Appointment of the Auditor by the Council of Governors is covered in paragraph 7.15.
- 13.4 An officer of the Audit Commission (as defined in the 2006 Act) may be appointed as Auditor with the agreement of the Commission. If such an appointment by the Council of Governors is made, the Audit Commission shall charge fees for the services of the officer so appointed.
- 13.5 The Auditor is to carry out their duties in accordance with Schedule 10 to the 2006 Act and in accordance with any directions given by the Independent Regulator on standards, procedures and techniques to be adopted.

### **14 Accounts**

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

- 14.2 The Independent Regulator may with the approval of the Secretary of State give directions to the Trust as to the content and form of its accounts.
- 14.3 The accounts are to be audited by the Trust's Auditor.
- 14.4 The following documents will be made available to the Comptroller and Auditor General for examination at their request:
- 14.4.1 the accounts;
  - 14.4.2 the records relating to them; and
  - 14.4.3 any report of the Auditor on them.
- 14.5 If trustees are appointed under section 51 of the 2006 Act, the Comptroller and the Auditor General may also examine:
- 14.5.1 the accounts kept by the Trustees;
  - 14.5.2 any records relating to them; and
  - 14.5.3 any report of an auditor on them.
- 14.6 The Trust shall prepare in respect of each Financial Year, Annual Accounts in such form as the Independent Regulator may with the approval of the Secretary of State direct.
- 14.7 The function of the Trust with respect to the preparation of the Annual Accounts shall be delegated to the Accounting Officer.
- 14.8 In preparing its Annual Accounts, the Trust is to comply with any directions given by the Independent Regulator with the approval of the Secretary of State as to:
- 14.8.1 the period or periods in respect of which the Trust shall prepare accounts; and
  - 14.8.2 the audit requirements of any such accounts.
- 14.9 the Trust must:
- 14.9.1 lay a copy of the Annual Accounts, and any report of the Auditor on them, before Parliament; and
  - 14.9.2 once it has done so, send copies of those documents to the Independent Regulator within such a period as the Independent Regulator may direct.
- 14.10 The Trust must send to the Independent Regulator within such period as the Independent Regulator may direct:
- 14.10.1 a copy of any accounts prepared by the Trust by virtue of paragraph 25(1A)(a) of the 2006 Act; and
  - 14.10.2 a copy of any report of an auditor on them prepared by virtue of 25(1A)(b)

## **15 Annual Reports, Forward Plans and Non-NHS Work**

- 15.1 The Trust shall prepare an Annual Report and send it to the Independent Regulator.
- 15.2 The Annual Report shall contain:
- 15.2.1 information on any steps taken by the Trust to secure that (taken as a whole) the actual membership of any public constituency is representative of those eligible for such membership;
  - 15.2.2 information on any occasions in the period to which the report relates on which the Council of Governors exercised its power under paragraph 7.18.4;
  - 15.2.3 information on the Trust's policy on pay and on the work of the committee established under paragraph 8.6 and such other procedures as the Trust has on pay;
  - 15.2.4 the remuneration of the Directors and the expenses of the Governors and the Directors; and
  - 15.2.5 any other information the Independent Regulator requires.
- 15.3 The Trust is to comply with any decision the Independent Regulator makes as to:
- 15.3.1 the form of the Annual Reports;
  - 15.3.2 when the Annual Reports are to be sent to it;
  - 15.3.3 the periods to which the Annual Reports are to relate.
- 15.4 The Trust shall give information as to its forward planning in respect of each Financial Year to the Independent Regulator. This information is to be prepared by the Directors, who must have regard to the views of the Council of Governors (paragraph 7.15.3.2 above).
- 15.5 Each forward plan must include information about –
- 15.5.1 the activities other than the provision of goods and services for the purposes of the health service in England that the Trust proposes to carry on, and
  - 15.5.2 the income it expects to receive from doing so.
- 15.6 Where a forward plan contains a proposal that the Trust carry on an activity of a kind mentioned in sub-paragraph 15.5.1 the Council of Governors must:
- 15.6.1 determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfilment by the Trust of its principal purpose or the performance of its other functions, and
  - 15.6.2 notify the Directors of the Trust of its determination.

- 15.7 If the Trust proposes to increase by 5% or more the proportion of its total income in any Financial Year attributable to activities other than the Principal Purpose referred to in paragraph 3 it may implement the proposal only if more than half of the members of the Council of Governors voting approve its implementation.

## **16 Mergers, Significant Transactions and other transaction requirements**

- 16.1 The Trust may only apply for a merger, acquisition, separation or dissolution with the approval of more than half of the members of the Council of Governors.
- 16.2 The Trust may enter into a Significant Transaction only if more than half of the members of the Council of Governors voting approve entering into the transaction.
- 16.3 The Engagement Policy includes an addendum which describes those matters which will be deemed to be Significant Transactions for the purposes of section 51A of the 2006 Act (Significant Transactions).

## **17 Indemnity**

- 17.1 Members of the Council of Governors and Board of Directors who act honestly and in good faith will not have to meet out of their personal resources any personal civil liability which is incurred in the execution or purported execution of their Board functions, save where they have acted recklessly. Any costs arising in this way will be met by the Trust.
- 17.2 The Trust may make such arrangements as it considers appropriate for the provision of indemnity insurance or similar arrangement for the benefit of the Trust, Governors or Directors to meet all or any liabilities which are properly the liability of the Trust under paragraph 17.1.

## **18 Instruments and acts of the Trust etc.**

- 18.1 A document purporting to be duly executed under the Trust's seal or to be signed on its behalf is to be received in evidence and, unless the contrary is proved, taken to be so executed or signed.
- 18.2 The Trust is to have a seal, but this is not to be affixed except in accordance with the provisions of the Standing Orders for the Board of Directors.
- 18.3 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.

## **19 Engagement**

- 19.1 The Trust has adopted an Engagement Policy for matters relating to interaction between the Council of Governors and the Board of Directors.

## **20 Amendment of the Constitution**

- 20.1 This Constitution may only be amended with the approval of:
- 20.1.1 more than half of the members of the Board of Directors voting; and

- 20.1.2 more than half of the members of the Council of Governors voting.
- 20.2 Amendments made under paragraph 20.1 take effect as soon as the conditions in that paragraph are satisfied, but the amendment has no effect in so far as the Constitution would, as a result of amendment, not accord with Schedule 7 of the 2006 Act.
- 20.3 Where an amendment is made to the Constitution in relation to the powers or duties of the Council of Governors (or otherwise with respect to the role that the Council of Governors has as part of the Trust):
  - 20.3.1 at least one member of the Council of Governors must attend the next Annual Members' Meeting and present the amendment; and
  - 20.3.2 the Trust must give the Members an opportunity to vote on whether they approve the amendment.
- 20.4 If more than half of the Members voting approve the amendment, the amendment continues to have effect; otherwise, it ceases to have effect and the Trust must take such steps as are necessary as a result.
- 20.5 The Trust shall inform the Independent Regulator of any amendments to the Constitution.

## ANNEX 1: PUBLIC CONSTITUENCY OF THE TRUST

NAME OF CONSTITUENCY	NAME OF CLASS	AR EA	MINIMUM NUMBER OF MEMBERS	NUMBER OF GOVERNORS
<b>Public</b>	<b>County of Oxfordshire</b>	Consisting of the local authority electoral area of the Oxfordshire County Council	50	4
	<b>County of Buckinghamshire</b>	Consisting of the local authority electoral area of the Buckinghamshire County Council	50	3
	<b>Rest of England &amp; Wales</b>	Consisting of all other local authority electoral areas in England and Wales not already covered by the local authority areas in Oxfordshire and Buckinghamshire	20	1
<b>Totals</b>		<b>Minimum Membership</b>	<b>120</b>	
		<b>Public Governors</b>		<b>8</b>



## ANNEX 2: STAFF CONSTITUENCY

### Staff Classes

1. There shall be five Staff Classes as follows:
  - 1.1 the “Oxfordshire, BaNES, Swindon & Wiltshire (BSW) Mental Health Services - all age Class” being those staff employed in the Mental Health Services Oxfordshire BaNES, Swindon and Wiltshire Directorate;
  - 1.2 the “Buckinghamshire Mental Health Services all age Class” being those staff employed in the Mental Health Services Buckinghamshire Directorate;
  - 1.3 the “Community Services (all disciplines) Class” being those staff employed in the Community Services Directorate;
  - 1.4 the “Corporate Services (all disciplines) Class” being those staff employed in the Corporate Services Directorate; and
  - 1.5 the “Specialised Services (all disciplines) Class” being those staff employed in the Specialised Services Directorate.
  
2. The minimum number of Members required for each Staff Class shall be 50 (fifty):

Staff Classes	Minimum number of Members	Number of Staff Governors
Oxfordshire BANES, Swindon & Wiltshire (BSW) Mental Health Services class	50	2
Buckinghamshire Mental Health Services class	50	2
Community Services class	50	2
Specialised Services class	50	2
Corporate Services class	50	1
<b>Total</b>	<b>250</b>	<b>9</b>

## ANNEX 3 – PATIENT CONSTITUENCY

### Patient Classes

1. There shall be three patient classes as follows:
  - 1.1 the “Service Users: Buckinghamshire and other counties Class”;
  - 1.2 the “Service Users: Oxfordshire Class”; and
  - 1.3 the “Carers Class”.
2. The minimum number of Members required for each Patient Class shall be twenty (20):
3. The Patient Classes shall be entitled to elect the following number of Governors:
  - 3.1 four (4) elected by the Service Users: Buckinghamshire and other Counties Class;
  - 3.2 four (4) elected by the Service Users: Oxfordshire Class; and
  - 3.3 three (3) elected by the Carers Class.

## ANNEX 4 – COMPOSITION OF COUNCIL OF GOVERNORS

<b>Elected Governors</b>		
<i>Constituency</i>	<i>Class</i>	<i>No of Governors</i>
Public	Buckinghamshire	3
	Oxfordshire	4
	Rest of England & Wales	1
Patient	Service Users: Buckinghamshire & Other Counties	4
	Service Users: Oxfordshire	4
	Carers	3
Staff	Oxfordshire, BaNES, Swindon & Wiltshire Mental Health Services	2
	Buckinghamshire Mental Health Services	2
	Community Services	2
	Corporate Services	1
	Specialised Services	2
Subtotal: Elected		<b>28</b>
<b>Appointed Governors</b>		
Oxfordshire Clinical Commissioning Group		1
Oxford University Hospitals NHS Foundation Trust		1
Buckinghamshire Healthcare NHS Trust		1
Oxfordshire County Council		1
Buckinghamshire Council		1
Oxford Brookes University		1
Voluntary / Community Organisations		
- Buckinghamshire Mind		1
- Age UK Oxfordshire		1
Subtotal: Appointed		<b>8</b>
<b>Total number of Governors</b>		<b>36</b>

## ANNEX 5 – ELECTION SCHEME

### *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 consent and particulars
11. Declaration of interests
12. Declaration of eligibility
13. Signature of candidate
14. Decisions as to validity of nomination papers
15. Publication of statement of nominated candidates
16. Inspection of statement of nominated candidates and nomination papers
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

*Action to be taken before the poll*

22. List of eligible voters
23. Notice of poll
24. Issue of voting documents
25. Ballot paper envelope and covering envelope

*The poll*

26. Eligibility to vote
27. Voting by persons who require assistance
28. Spoilt ballot papers
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30. Issue of replacement ballot paper
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*Procedure for receipt of envelopes*

32. Receipt of voting documents
33. Validity of ballot paper
34. Declaration of identity but no ballot paper
35. Sealing of packets

*Part 6 - Counting the votes*

36. Interpretation of Part 6
37. Arrangements for counting of the votes
38. The count
39. Rejected ballot papers
40. First stage
41. The quota
42. Transfer of votes
43. Supplementary provisions on transfer
44. Exclusion of candidates

45. Filling of last vacancies
46. Order of election of candidates

*Part 7 – Final proceedings in contested and uncontested elections*

47. Declaration of result for contested elections
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*Part 8 – Disposal of documents*

49. Sealing up of documents relating to the poll
50. Delivery of documents
51. Forwarding of documents received after close of the poll
52. Retention and public inspection of documents
53. Application for inspection of certain documents relating to election

*Part 9 – Death of a candidate during a contested election*

54. Countermand or abandonment of poll on death of candidate

*Part 10 – Election expenses and publicity*

*Expenses*

55. Expenses incurred by candidates
56. Expenses incurred by other persons
57. Personal, travelling, and administrative expenses

*Publicity*

58. Publicity about election by the corporation
59. Information about candidates for inclusion with voting documents
60. Meaning of “for the purposes of an election”

*Part 11 – Questioning elections and irregularities*

61. Application to question an election

*Part 12 – Miscellaneous*

62. Secrecy
63. Prohibition of disclosure of vote
64. Disqualification
65. Delay in postal service through industrial action or unforeseen event

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*Part 1 - Interpretation*

**1. Interpretation –**

- (1) In these rules, unless the context otherwise requires -

“corporation” means the public benefit corporation subject to this Constitution;

“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

“the Regulator” means the Independent Regulator for NHS Foundation Trusts; and

“the 2006 Act” means the National Health Service Act 2006.

- (2) Other expressions used in these rules and in Schedule 7 to the National Health Service Act 2006 have the same meaning in these rules as in that Schedule.

*Part 2 – Timetable for election*

2. **Timetable** - The proceedings at an election shall be conducted in accordance with the following timetable.

<b>Proceeding</b>	<b>Time</b>
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 papers 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 –**

- (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.

- (2) In this rule, “bank holiday” means a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in England and Wales.



*Part 3 – Returning officer*

**4. Returning officer –**

- (1) Subject to rule 64, the returning officer for an election is to be appointed by the corporation.
- (2) Where two or more elections are to be held concurrently, the same returning officer may be appointed for all those elections.

**5. Staff –** Subject to rule 64, the returning officer may appoint and pay such staff, including such technical advisers, as they consider necessary for the purposes of the election.

**6. Expenditure -** The corporation is to pay the returning officer –

- (a) any expenses incurred by that officer in the exercise of their functions under these rules,
- (b) such remuneration and other expenses as the corporation may determine.

**7. Duty of co-operation –** The corporation is to co-operate with the returning officer in the exercise of their functions under these rules.

*Part 4 - Stages Common to Contested and Uncontested Elections*

**8. Notice of election –** 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 papers may be obtained;
- (e) the address for return of nomination papers 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, and
- (h) the date and time of the close of the poll in the event of a contest.

**9. Nomination of candidates –**

- (1) Each candidate must nominate themselves on a single nomination paper.
  
- (2) The returning officer-
  - (a) is to supply any Member of the corporation with a nomination paper, and
  - (b) is to prepare a nomination paper 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.

**10. Candidate's particulars –**

- (1) The nomination paper must state the candidate's -
  - (a) full name,
  - (b) contact address in full, and
  - (c) Constituency, or class within a Constituency, of which the candidate is a Member.

**11. Declaration of interests –** The nomination paper 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 –** The nomination paper must include a declaration made by the candidate–

- (a) that they are 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 their 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** – The nomination paper must be signed and dated by the candidate, 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.

**14. Decisions as to the validity of nomination** –

- (1) Where a nomination paper 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 paper 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.
  
- (2) The returning officer is entitled to decide that a nomination paper is invalid only on one of the following grounds -
  - 1. that the paper is not received on or before the final time and date for return of nomination papers, as specified in the notice of the election,
  - 2. that the paper does not contain the candidate's particulars, as required by rule 10;
  - 3. that the paper does not contain a declaration of the interests of the candidate, as required by rule 11,
  - 4. that the paper does not include a declaration of eligibility as required by rule 12, or
  - 5. that the paper is not signed and dated by the candidate, as required by rule 13.
  
- (3) The returning officer is to examine each nomination paper as soon as is practicable after they have received it, and decide whether the candidate has been validly nominated.

- (4) Where the returning officer decides that a nomination is invalid, the returning officer must endorse this on the nomination paper, stating the reasons for their decision.
- (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 paper.

**15. Publication of statement of candidates –**

- (1) The returning officer is to prepare and publish a statement showing the candidates who are standing for election.
- (2) The statement must show –
  - (a) the name, contact 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 paper.
- (3) The statement must list the candidates standing for election in alphabetical order by surname.
- (4) The returning officer must send a copy of the statement of candidates and copies of the nomination papers to the corporation as soon as is practicable after publishing the statement.

**16. Inspection of statement of nominated candidates and nomination papers –**

- (1) The corporation is to make the statements of the candidates and the nomination papers supplied by the returning officer under rule 15(4) available for inspection by members of the public free of charge at all reasonable times.
- (2) If a person requests a copy or extract of the statements of candidates or their nomination papers, the corporation is to provide that person with the copy or extract free of charge.

**17. Withdrawal of candidates** - 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 –**

- (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.
- (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.
- (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 them in consultation with the corporation.

*Part 5 – Contested elections*

**19. Poll to be taken by ballot –**

- (1) The votes at the poll must be given by secret ballot.
- (2) The votes are to be counted and the result of the poll determined in accordance with Part 6 of these rules.

**20. The ballot paper –**

- (1) The ballot of each voter 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.

- (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,
  - (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.
- (3) Each ballot paper must have a unique identifier.
- (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) –**

- (1) In respect of an election for a Public or Patient Constituency a declaration of identity must be issued with each ballot paper.
- (2) The declaration of identity is to include a declaration –
  - (a) that the voter is the person to whom the ballot paper was addressed,
  - (b) that the voter has not marked or returned any other voting paper in the election, and
  - (c) for a Member of the Public or Patient Constituency, of the particulars of that Member’s qualification to vote as a Member of the Constituency or class within a Constituency for which the election is being held.
- (3) The declaration of identity is to include space for –

- (a) the name of the voter,
  - (b) the address of the voter,
  - (c) the voter's signature, and
  - (d) the date that the declaration was made by the voter.
- (4) The voter must be required to return the declaration of identity together with the ballot paper.
- (5) The declaration of identity must caution the voter that, if it is not returned with the ballot paper, or if it is returned without being correctly completed, the voter's ballot paper may be declared invalid.

*Action to be taken before the poll*

**22. List of eligible voters –**

- (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 26 as soon as is reasonably practicable after the final date for the delivery of notices of withdrawals by candidates from an election.
- (2) The list is to include, for each Member, a mailing address where their ballot paper is to be sent.

**23. Notice of poll -** 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 address for return of the ballot papers, and the date and time of the close of the poll,
- (g) the address and final dates for applications for replacement ballot papers, and
- (h) the contact details of the returning officer.

**24. Issue of voting documents by returning officer –**

- (1) 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 documents to each Member of the corporation named in the list of eligible voters–
  - (a) a ballot paper and ballot paper envelope,
  - (b) a declaration of identity (if required),
  - (c) information about each candidate standing for election, pursuant to rule 59 of these rules, and
  - (d) a covering envelope.
- (2) The documents are to be sent to the mailing address for each Member, as specified in the list of eligible voters.

**25. Ballot paper envelope and covering envelope –**

- (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.
- (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.
- (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 declaration of identity if required, and
  - (b) the ballot paper envelope, with the ballot paper sealed inside it.



## *The poll*

**26. Eligibility to vote** – 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.

### **27. Voting by persons who require assistance –**

- (1) The returning officer is to put in place arrangements to enable requests for assistance to vote to be made.
- (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 they consider necessary to enable that voter to vote.

### **28. Spoilt ballot papers -**

- (1) If a voter has dealt with their ballot paper in such a manner that it cannot be accepted as a ballot paper (referred to a “spoilt ballot paper”), that voter may apply to the returning officer for a replacement ballot paper.
- (2) On receiving an application, the returning officer is to obtain the details of the unique identifier on the spoilt ballot paper, if they can obtain it.
- (3) The returning officer may not issue a replacement ballot paper for a spoilt ballot paper unless they –
  - (a) is satisfied as to the voter’s identity, and
  - (b) has ensured that the declaration of identity, if required, has not been returned.
- (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. Lost ballot papers –**

- (1) Where a voter has not received their ballot paper by the fourth day before the close of the poll, that voter may apply to the returning officer for a replacement ballot paper.
- (2) The returning officer may not issue a replacement ballot paper for a lost ballot paper unless they –
  - (a) is satisfied as to the voter’s identity,
  - (b) has no reason to doubt that the voter did not receive the original ballot paper, and
  - (c) has ensured that the declaration of identity if required has not been returned.
- (3) After issuing a replacement ballot paper for a lost ballot paper, the returning officer shall enter in a list (“the list of lost ballot papers”) –
  - (a) the name of the voter, and
  - (b) the details of the unique identifier of the replacement ballot paper.

**30. Issue of replacement ballot paper –**

- (1) If a person applies for a replacement ballot paper under rule 28 or 29 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 a replacement ballot paper unless, in addition to the requirements imposed rule 28(3) or 29(2), they are 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.
- (2) After issuing a replacement ballot paper under this rule, the returning officer shall enter in a list (“the list of tendered ballot papers”) –
  - (a) the name of the voter, and
  - (b) the details of the unique identifier of the replacement ballot paper issued under this rule.

### **31. Declaration of identity for replacement ballot papers (public and patient constituencies) –**

- (1) In respect of an election for a Public or Patient Constituency a declaration of identity must be issued with each replacement ballot paper.
- (2) The declaration of identity is to include a declaration –
  - (a) that the voter has not voted in the election with any ballot paper other than the ballot paper being returned with the declaration, and
  - (b) of the particulars of that Member’s qualification to vote as a Member of the Public or Patient Constituency, or class within a Constituency, for which the election is being held.
- (3) The declaration of identity is to include space for –
  - (a) the name of the voter,
  - (b) the address of the voter,
  - (c) the voter’s signature, and
  - (d) the date that the declaration was made by the voter.
- (4) The voter must be required to return the declaration of identity together with the ballot paper.
- (5) The declaration of identity must caution the voter that if it is not returned with the ballot paper, or if it is returned without being correctly completed, the replacement ballot paper may be declared invalid.

#### *Procedure for receipt of envelopes*

### **32. Receipt of voting documents –**

- (1) Where the returning officer receives a –
  - (a) covering envelope, or

- (b) any other envelope containing a declaration of identity 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 33 and 34 are to apply.

- (2) The returning officer may open any ballot paper envelope for the purposes of rules 33 and 34, 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.
- (3) The returning officer must make arrangements to ensure the safety and security of the ballot papers and other documents.

### **33. Validity of ballot paper –**

- (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 a declaration of identity if required that has been correctly completed, signed, and dated.
- (2) Where the returning officer is satisfied that paragraph (1) has been fulfilled, they are to –
  - (a) put the declaration of identity if required in a separate packet, and
  - (b) put the ballot paper aside for counting after the close of the poll.
- (3) Where the returning officer is not satisfied that paragraph (1) has been fulfilled, they are to –
  - (a) mark the ballot paper “disqualified”,
  - (b) if there is a declaration of identity accompanying the ballot paper, mark it as “disqualified” and attach it the ballot paper,
  - (c) record the unique identifier on the ballot paper in a list (the “list of disqualified documents”); and
  - (d) place the document or documents in a separate packet.

**34. Declaration of identity but no ballot paper (Public and Patient Constituency)** – Where the returning officer receives a declaration of identity if required but no ballot paper, the returning officer is to –

- (a) mark the declaration of identity “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 declaration of identity in a separate packet.

**35. Sealing of packets** – As soon as is possible after the close of the poll and after the completion of the procedure under rules 33 and 34, the returning officer is to seal the packets containing –

- (a) the disqualified documents, together with the list of disqualified documents inside it,
- (b) the declarations of identity if required,
- (c) the list of spoiled ballot papers,
- (d) the list of lost ballot papers,
- (e) the list of eligible voters, and
- (f) the list of tendered ballot papers.

*Part 6 - Counting the votes*

**36. Interpretation of Part 6** – In Part 6 of these rules –

“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 paper –

- (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 44(4) below,

“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 41 below,

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

“transfer value” means the value of a transferred vote calculated in accordance with paragraph (4) or (7) of rule 42 below.

**37. Arrangements for counting of the votes** – The returning officer is to make arrangements for counting the votes as soon as is practicable after the close of the poll.

**38. The count** –

- (1) The returning officer is to –
  - (a) count and record the number of ballot papers that have been returned, and
  - (b) count the votes according to the provisions in this Part of the rules.
- (2) The returning officer, while counting and recording the number of ballot papers 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.
- (3) The returning officer is to proceed continuously with counting the votes as far as is practicable.

**39. Rejected ballot papers** –

- (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.

- (2) The returning officer is to endorse the word “rejected” on any ballot paper which under this rule is not to be counted.
- (3) The returning officer is to draw up a statement showing the number of ballot papers rejected by them under each of the subparagraphs (a) to (d) of paragraph (1).

**40. First stage –**

- (1) The returning officer is to sort the ballot papers into parcels according to the candidates for whom the first preference votes are given.
- (2) The returning officer is to then count the number of first preference votes given on ballot papers for each candidate, and is to record those numbers.
- (3) The returning officer is to also ascertain and record the number of valid ballot papers.

**41. The quota –**

- (1) The returning officer is to divide the number of valid ballot papers by a number exceeding by one the number of members to be elected.
- (2) The result, increased by one, of the division under paragraph (1) above (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”).
- (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 paragraphs (1) to (3) of rule 44 has been complied with.

**42. Transfer of votes –**

- (1) Where the number of first preference votes for any candidate exceeds the quota, the returning officer is to sort all the ballot papers 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 papers for any continuing candidate, or
  - (b) where no such preference is given, as the sub-parcel of non-transferable votes.
  
- (2) The returning officer is to count the number of ballot papers in each parcel referred to in paragraph (1) above.
  
- (3) The returning officer is, in accordance with this rule and rule 43 below, to transfer each sub-parcel of ballot papers referred to in paragraph (1)(a) to the candidate for whom the next available preference is given on those papers.
  
- (4) The vote on each ballot paper transferred under paragraph (3) above 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 papers on which those votes are given, the calculation being made to two decimal places (ignoring the remainder if any).
  
- (5) Where at the end of any stage of the count involving the transfer of ballot papers, the number of votes for any candidate exceeds the quota, the returning officer is to sort the ballot papers 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 papers for any continuing candidate, or
  - (b) where no such preference is given, as the sub-parcel of non-transferable votes.
  
- (6) The returning officer is, in accordance with this rule and rule 43 below, to transfer each sub-parcel of ballot papers referred to in paragraph (5)(a) to the candidate for whom the next available preference is given on those papers.
  
- (7) The vote on each ballot paper transferred under paragraph (6) shall be at –
  - (a) a transfer value calculated as set out in paragraph (4)(b) above, 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.

- (8) Each transfer of a surplus constitutes a stage in the count.
- (9) Subject to paragraph (10), the returning officer shall proceed to transfer transferable papers until no candidate who is deemed to be elected has a surplus or all the vacancies have been filled.
- (10) Transferable papers 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.
- (11) This rule does not apply at an election where there is only one vacancy.

**43. Supplementary provisions on transfer –**

- (1) If, at any stage of the count, two or more candidates have surpluses, the transferable papers 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 papers 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 papers of the candidate on whom the lot falls shall be transferred first.
- (2) The returning officer shall, on each transfer of transferable papers under rule 42 above –

- (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.
- (3) All ballot papers transferred under rule 42 or 44 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 paper or, as the case may be, all the papers in that sub-parcel.
- (4) Where a ballot paper is so marked that it is unclear to the returning officer at any stage of the count under rule 42 or 44 for which candidate the next preference is recorded, the returning officer shall treat any vote on that ballot paper as a non-transferable vote; and votes on a ballot paper 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.

**44. Exclusion of candidates –**

- (1) If—
  - (a) all transferable papers which under the provisions of rule 42 above (including that rule as applied by paragraph (11) below) and this rule are required to be transferred, have been transferred, and
  - (b) subject to rule 45 below, 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 paragraph (12) below applies, the candidates with the then lowest votes).

- (2) (2) The returning officer shall sort all the ballot papers on which first preference votes are given for the candidate or candidates excluded under paragraph (1) above into two sub-parcels so that they are grouped as—
  - (a) ballot papers on which a next available preference is given, and
  - (b) ballot papers on which no such preference is given (thereby including ballot papers on which preferences are given only for candidates who are deemed to be elected or are excluded).
- (3) The returning officer shall, in accordance with this rule and rule 43 above, transfer each sub-parcel of ballot papers referred to in paragraph (2)(a) above to the candidate for whom the next available preference is given on those papers.
- (4) The exclusion of a candidate, or of two or more candidates together, constitutes a further stage of the count.
- (5) If, subject to rule 45 below, one or more vacancies still remain to be filled, the returning officer shall then sort the transferable papers, if any, which had been transferred to any candidate excluded under paragraph (1) above into sub-parcels according to their transfer value.
- (6) The returning officer shall transfer those papers in the sub-parcel of transferable papers with the highest transfer value to the continuing candidates in accordance with the next available preferences given on those papers (thereby passing over candidates who are deemed to be elected or are excluded).
- (7) The vote on each transferable paper transferred under paragraph (6) above shall be at the value at which that vote was received by the candidate excluded under paragraph (1) above.
- (8) Any papers on which no next available preferences have been expressed shall be set aside as non-transferable votes.
- (9) After the returning officer has completed the transfer of the ballot papers in the sub-parcel of ballot papers with the highest transfer value they shall proceed to transfer in the same way the sub-parcel of ballot papers with the next highest value and so on until they have dealt with each sub-parcel of a candidate excluded under paragraph (1) above.

- (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.
- (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 paragraphs (5) to (10) of rule 42 and rule 43.
- (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.
- (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.

**45. Filling of last vacancies –**

- (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.

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

**46. Order of election of candidates –**

- (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 42(10) above.
- (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 they obtained the quota.
- (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.
- (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.

**47. Declaration of result for contested elections –**

- (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 they have declared elected –
    - (i) where the election is held under a proposed Constitution pursuant to powers conferred on the Oxfordshire & Buckinghamshire Mental Health NHS Foundation 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 they have declared elected.
  
- (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 39(1),

available on request.

**48. Declaration of result for uncontested elections –** 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 they have declared elected to the Chair of the corporation, and
- (c) give public notice of the name of each candidate who they have declared elected.

*Part 8 – Disposal of documents*

**49. Sealing up of documents relating to the poll –**

(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,
- (b) the ballot papers endorsed with “rejected in part”,
- (c) the rejected ballot papers, and
- (d) the statement of rejected ballot papers.

(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 declarations of identity,
- (c) the list of spoiled ballot papers,
- (d) the list of lost ballot papers,
- (e) the list of eligible voters, and
- (f) the list of tendered ballot papers.

(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.



**50. Delivery of documents** – Once the documents relating to the poll have been sealed up and endorsed pursuant to rule 49, the returning officer is to forward them to the Chair of the corporation.

**51. Forwarding of documents received after close of the poll** – 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 ballot papers are made too late to enable new ballot papers 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.

**52. Retention and public inspection of documents** –

- (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 Regulator, cause them to be destroyed.
- (2) With the exception of the documents listed in rule 53(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.
- (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.

**53. Application for inspection of certain documents relating to an election** –

- (1) The corporation may not allow the inspection of, or the opening of any sealed packet containing –
  - (a) any rejected ballot papers, including ballot papers rejected in part,
  - (b) any disqualified documents, or the list of disqualified documents,

- (c) any counted ballot papers,
- (d) any declarations of identity, or
- (e) the list of eligible voters,

by any person without the consent of the Independent Regulator.

(2) A person may apply to the Regulator to inspect any of the documents listed in (1), and the Independent Regulator 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.

(3) The Independent Regulator'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.

(4) On an application to inspect any of the documents listed in paragraph (1), –

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

must 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 their vote was given, and
- (ii) that the Independent Regulator has declared that the vote was invalid.

*Part 9 – Death of a candidate during a contested election*

**54. Countermand or abandonment of poll on death of candidate –**

- (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 papers 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 papers 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.
- (2) The ballot papers which have preferences recorded for the candidate who has died are to be sealed with the other counted ballot papers pursuant to rule 49(1)(a).

*Part 10 – Election expenses and publicity*

*Election expenses*

**55. Election expenses** – 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 to the Regulator under Part 11 of these rules.

**56 Expenses and payments by candidates** - 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.

**57. Election expenses incurred by other persons –**

- (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 their 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.
  
- (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 58 and 59.

*Publicity*

**58. Publicity about election by the corporation –**

- (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.
  
- (2) Any information provided by the corporation about the candidates, including information compiled by the corporation under rule 59, 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.

- (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.

#### **59. Information about candidates for inclusion with voting documents -**

(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.

(2) The information must consist of –

- (a) a statement submitted by the candidate of no more than 250 words.

#### **60. Meaning of “for the purposes of an election” –**

- (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.
- (2) The provision by any individual of their own services voluntarily, on their own time, and free of charge is not to be considered an expense for the purposes of this Part.

#### *Part 11 – Questioning elections and the consequence of irregularities*

#### **61. Application to question an election –**

- (1) An application alleging a breach of these rules, including an electoral irregularity under Part 10, may be made to the Regulator.
- (2) An application may only be made once the outcome of the election has been declared by the returning officer.

- (3) An application may only be made to the Regulator 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.
  
- (4) The application must –
  - (a) describe the alleged breach of the rules or electoral irregularity, and
  - (b) be in such a form as the Regulator may require.
  
- (5) The application must be presented in writing within 21 days of the declaration of the result of the election.
  
- (6) If the Regulator requests further information from the applicant, then that person must provide it as soon as is reasonably practicable.
  
- (7) The Regulator shall delegate the determination of an application to a person or persons to be nominated for the purpose of the Regulator.
  
- (8) The determination by the person or persons nominated in accordance with Rule 61(7) shall be binding on and shall be given effect by the corporation, the applicant and the Members of the Constituency (or class within a Constituency) including all the candidates for the election to which the application relates.
  
- (9) The Regulator may prescribe rules of procedure for the determination of an application including costs.

*Part 12 – Miscellaneous*

**62. Secrecy –**

- (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 a ballot paper or who has or has not voted,
  - (ii) the unique identifier on any ballot paper,
  - (iii) the candidate(s) for whom any Member has voted.
- (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.
- (3) The returning officer is to make such arrangements as they think fit to ensure that the individuals who are affected by this provision are aware of the duties it imposes.

**63. Prohibition of disclosure of vote** – 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 they have voted.

**64. Disqualification** – 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.

**65. Delay in postal service through industrial action or unforeseen event** – 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 and declarations of identity,

the returning officer may extend the time between the publication of the notice of the poll and the close of the poll, with the agreement of the Regulator.