



**Torbay and South Devon**  
NHS Foundation Trust

# **Torbay and South Devon NHS Foundation Trust**

## **Constitution**

Approved on 25 October 2023

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## 1. DEFINITIONS AND INTERPRETATION

- 1.1 Unless the contrary intention appears or the context otherwise requires, words or expressions contained in this Constitution bear the same meaning as in the 2006 Act. References in this constitution to legislation include all amendments, replacements, or re-enactments made.
- 1.2 References to legislation include all regulations, statutory guidance or directions. Headings are for ease of reference only and are not to affect interpretation.
- 1.3 In this Constitution the following definitions apply:

<b>2006 Act</b>	means the National Health Service Act 2006.
<b>Accounting Officer</b>	means the person who from time to time discharges the functions specified in paragraph 25(5) of schedule 7 to the 2006 Act.
<b>Annual Members Meeting</b>	is defined in paragraph 13 of this Constitution.
<b>Annual Report</b>	means the document prepared by the Trust pursuant to paragraph 43 of schedule 7 to the 2006 Act.
<b>Appointed Governor(s)</b>	means a member of the Council of Governors who is not an Elected Governor and who has been appointed in accordance with this Constitution.
<b>Board of Directors</b>	means the Board of Directors of the Trust comprising of the Executive Directors and the Non-Executive Directors.
<b>Chair</b>	means the chairperson of the Trust appointed in accordance with paragraph 27 of this Constitution.
<b>Constitution</b>	means this constitution together with each annex attached.
<b>Council of Governors</b>	means the Council of Governors as constituted in this Constitution in accordance with paragraph 7 of schedule 7 to the 2006 Act.
<b>Director</b>	means a member of the Board of Directors.
<b>Director Code of Conduct</b>	means any code of conduct applicable to all Executive Directors, Non-Executive Directors and such other persons as set out therein, as amended from time to time.
<b>Elected Governor</b>	means a Public Governor or a Staff Governor.

<b>Executive Director</b>	means an executive member of the Board of Directors of the Trust appointed pursuant to paragraph 30 of this Constitution.
<b>Financial Year</b>	means a period beginning on 1 April and finishing on the following 31 March.
<b>Governor</b>	means a member of the Council of Governors.
<b>Governor Code of Conduct</b>	means any code of conduct accepted by and applicable to all Governors, as amended from time to time.
<b>Independence Criteria</b>	means the indicative criteria set out at provision 2.6 of the Provider Code of Governance or such other guidance produced which the Trust must have regard to from time to time.
<b>Lead Governor</b>	means the governor appointed by the Council of Governors as Lead Governor in accordance with Annex 4.
<b>Member</b>	means a member of the Trust.
<b>Model Election Rules</b>	means the rules for the conduct of elections for a member of Council of Governors of Trust published by NHS Providers and set out at Annex 8.
<b>NHS Body</b>	means an NHS foundation trust and any body set out in section 9(4) of the 2006 Act.
<b>NHS England</b>	means the body corporate known as NHS England, established under section 1H of the 2006 Act.
<b>NHS Provider Licence</b>	means provider licence number: 110102 issued to the Trust by NHS England (as amended).
<b>Non-Executive Director</b>	means a non-executive member of the Board of Directors of the Trust appointed pursuant to paragraph 27 of this Constitution.
<b>Principal Purpose</b>	means the purpose set out in Section 43(1) of the 2006 Act and paragraph 3 of this Constitution.
<b>Provider Code of Governance</b>	means the "Code of governance for NHS provider trusts" published by NHS England, as may be amended from time to time.
<b>Public Constituency</b>	is defined in paragraph 9 of this Constitution.
<b>Public Governor</b>	means a member of the Council of Governors elected by the members of one of the Public Constituencies.

<b>Secretary</b>	means the secretary of Trust or any other person appointed to perform the roles and responsibilities as set out in any role description issued by the Trust, this Constitution and Appendix A of the Provider Code of Governance.
<b>Staff Constituency</b>	is defined in paragraph 10 of this Constitution.
<b>Staff Governor</b>	means a member of the Council of Governors elected by the members of the Staff Constituency.
<b>Trust</b>	is defined in paragraph 2 of this Constitution.
<b>Trust Headquarters</b>	Torbay Hospital, Lowes Bridge, Torquay TQ2 7AA
<b>Vice Chair</b>	means the vice chairperson of the Trust appointed in accordance with paragraph 28 of this Constitution.

## 2. **NAME**

The name of the foundation trust is Torbay and South Devon NHS Foundation Trust (the **Trust**).

## 3. **PRINCIPAL PURPOSE**

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

## 4. **POWERS**

- 4.1 The Trust is to have all the powers of an NHS foundation trust set out in the 2006 Act.
- 4.2 In the exercise of its powers the Trust shall have regard to:
  - 4.2.1 section 63A of the 2006 Act (duty to have regard to wider effect of decisions), also referred to as the “Triple Aim”;

- 4.2.2 section 63B of the 2006 Act (duties in relation to climate change); and
  - 4.2.3 guidance published by NHS England.
- 4.3 All the powers of the Trust shall be exercised by the Board of Directors on behalf of the Trust.
- 4.4 Subject to any restriction contained in this Constitution or in the 2006 Act, any of these powers may be delegated to a committee of Directors or to an Executive Director.

## **5. JOINT WORKING WITH RELEVANT BODIES**

- 5.1 The Trust may arrange for any functions exercisable by it to be exercised by or jointly with any one or more of the relevant bodies set out in Section 65Z5(1) of the 2006 Act.
- 5.2 Where a function is exercisable jointly, the relevant bodies may arrange for the function to be exercised by joint committee as set out in section 65Z6 of the 2006 Act.

## **6. JOINT FINANCIAL OBJECTIVES**

- 6.1 The Trust must:
  - 6.1.1 seek to achieve any financial objectives set under section 223L of the 2006 Act;
  - 6.1.2 exercise their functions with a view to ensuring that, in respect of each Financial Year, limits specified by NHS England are not exceeded as set out in section 223M of the 2006 Act;
  - 6.1.3 comply with any NHS England directions pursuant to section 223N of the NHS Act; and
  - 6.1.4 comply with section 223LA with regard to expenditure limits, if and when that section comes into force.

## **7. MEMBERSHIP AND CONSTITUENCIES**

- 7.1 The Trust shall have members, each of whom shall be a member of one of the following constituencies:
  - 7.1.1 a Public Constituency; or
  - 7.1.2 a Staff Constituency.

## **8. APPLICATION FOR MEMBERSHIP**

- 8.1 Subject to paragraph 12, an individual who is eligible to become a member of the Trust may do so on application to the Trust.

**9. PUBLIC CONSTITUENCY**

- 9.1 An individual who lives in an area specified in Annex 1 as an area for a public constituency may become or continue as a member of the Trust.
- 9.2 Those individuals who live in an area specified for a public constituency are referred to collectively as a Public Constituency.
- 9.3 The minimum number of members in each Public Constituency is specified in Annex 1.

**10. STAFF CONSTITUENCY**

- 10.1 An individual who is employed by the Trust under a contract of employment with the Trust may become or continue as a Member provided that they:
  - 10.1.1 are employed by the Trust under a contract of employment which has no fixed term or has a fixed term of at least 12 months; or
  - 10.1.2 have been continuously employed by the Trust under contract of employment for at least 12 months.
- 10.2 For the purposes of this paragraph 10, Chapter 1 of Part XIV of the Employment Rights Act 1996 (Continuous Employment) shall apply when determining whether an individual has been continuously employed by the Trust or has continuously exercised functions for the Trust.
- 10.3 Individuals who exercise functions for the purposes of the Trust, otherwise than under a contract of employment with the Trust, may become or continue as Members of the Staff Constituency provided such individuals have exercised these functions continuously for a period of at least 12 months.
- 10.4 Those individuals who are eligible for membership of the Trust by reason of the previous provisions are referred to collectively as the Staff Constituency.
- 10.5 The Staff Constituency shall be divided into descriptions of individuals who are eligible for membership of the Staff Constituency, each description of individuals being specified within Annex 2 and being referred to as a class within the Staff Constituency.
- 10.6 The Secretary shall make a final decision about the class of which an individual is eligible to be a member.
- 10.7 The minimum number of members in each class of the Staff Constituency is specified in Annex 2.



## 11. **AUTOMATIC MEMBERSHIP BY DEFAULT – STAFF**

11.1 An individual who is:

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

11.1.2 invited by the Trust to become a member of the Staff Constituency and a member of the appropriate class within the Staff Constituency,

shall become a Member as a member of the Staff Constituency and appropriate class within the Staff Constituency without an application being made, unless they inform the Trust that they do not wish to become a Member.

## 12. **RESTRICTION ON MEMBERSHIP**

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

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

12.3 An individual must be at least fourteen years old to become a Member.

12.4 Further provisions as to the circumstances in which an individual may not become or continue as a Member are set out in Annex 6.

## 13. **ANNUAL MEMBERS' MEETING**

13.1 The Trust shall hold an annual meeting of its members (the **Annual Members' Meeting**). The Annual Members' Meeting shall be open to members of the public.

13.2 Further provisions about the Annual Members' Meeting are set out in Annex 7.

## 14. **COUNCIL OF GOVERNORS – COMPOSITION**

14.1 The Trust is to have a Council of Governors, which shall comprise both Elected Governors and Appointed Governors.

14.2 The composition of the Council of Governors is specified in Annex 3.

14.3 The members of the Council of Governors, other than the Appointed Governors, shall be chosen by election by their constituency or, where there are classes within a constituency, by their class within that constituency. The number of Governors to be elected by each constituency, or, where appropriate, by each class of each constituency, is specified in Annex 3.

**15. COUNCIL OF GOVERNORS – ELECTION OF GOVERNORS**

- 15.1 Elections for Elected Governors shall be conducted in accordance with the Model Election Rules.
- 15.2 The Model Election Rules as published from time to time form part of this Constitution. The Model Election Rules current at the date of this Constitution are set out at Annex 8.
- 15.3 A subsequent variation of the Model Election Rules shall not constitute a variation of the terms of this Constitution for the purposes of paragraph 46. An updated version of the Constitution may be published by the Secretary incorporating any revised Model Election Rules.
- 15.4 An election, if contested, shall be by secret ballot.

**16. COUNCIL OF GOVERNORS - TENURE**

**16.1 Elected Governors**

- 16.1.1 An Elected Governor may hold office for a period of up to three years.
- 16.1.2 An Elected Governor shall cease to hold office if they cease to be a member of the constituency or class by which they were elected.
- 16.1.3 Subject to paragraph 16.1.4, an Elected Governor shall be eligible for re-election at the end of their term.
- 16.1.4 An Elected Governor may not serve on the Council of Governors for more than nine years in aggregate. For the avoidance of doubt, this covers all constituencies such that once an Elected Governor has served for nine years in any one constituency or across a mixture of several Constituencies they are no longer eligible to stand for election in any constituency or be appointed to the Council of Governors.

**16.2 Appointed Governors**

- 16.2.1 An Appointed Governor may hold office for a term of up to three years.
- 16.2.2 An Appointed Governor shall cease to hold office if the appointing organisation withdraws its sponsorship of them.
- 16.2.3 An Appointed Governor shall be eligible for re-appointment at the end of their term.

## **17. COUNCIL OF GOVERNORS – DISQUALIFICATION AND REMOVAL**

- 17.1 The following may not become or continue as a member of the Council of Governors:
- 17.1.1 a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;
  - 17.1.2 a person in relation to whom a moratorium period under a debt relief order applies (under Part 7A of the Insolvency Act 1986);
  - 17.1.3 a person who has made a composition or arrangement with, or granted a trust deed for, their creditors and has not been discharged in respect of it; or
  - 17.1.4 a person who within the preceding five years has been convicted in the British Islands of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on them.
- 17.2 Governors must be at least sixteen years (16) of age at the date they are nominated for election or appointment.
- 17.3 Further provisions as to the circumstances in which an individual may not become or continue as a Governor are set out in Annex 4.

## **18. COUNCIL OF GOVERNORS – DUTIES OF GOVERNORS**

- 18.1 The general duties of the Council of Governors are to:
- 18.1.1 hold the non-executive directors individually and collectively to account for the performance of the Board of Directors;
  - 18.1.2 represent the interests of the Members as a whole and the interests of the public; and
  - 18.1.3 feedback information about the Trust, its vision and its performance to Members, the public and stakeholder organisations.
- 18.2 The Trust must take steps to secure that the governors are equipped with the skills and knowledge they require in their capacity as such.

## **19. COUNCIL OF GOVERNORS – MEETINGS OF GOVERNORS**

- 19.1 The Chair, or, in their absence the Vice Chair, shall preside at meetings of the Council of Governors.
- 19.2 In the absence of both the Chair and the Vice Chair at a meeting of the Council of Governors, the Governors present shall nominate another non- executive director to preside over that meeting.

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

19.4 For the purposes of obtaining information about the Trust's performance of its functions or the directors' performance of their duties (and deciding whether to propose a vote on the Trust's or directors' performance), the Council of Governors may require one or more of the directors to attend a meeting.

**20. COUNCIL OF GOVERNORS – STANDING ORDERS**

The standing orders for the practice and procedure of the Council of Governors shall be read alongside this Constitution.

**21. COUNCIL OF GOVERNORS - CONFLICTS OF INTEREST OF GOVERNORS**

21.1 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.

21.2 The Standing Orders for the Council of Governors shall make provision for the disclosure of interests and arrangements for the exclusion of a governor declaring any interest from any discussion or consideration of the matter in respect of which an interest has been disclosed.

**22. COUNCIL OF GOVERNORS – TRAVEL EXPENSES**

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

**23. COUNCIL OF GOVERNORS – FURTHER PROVISIONS**

Further provisions with respect to the Council of Governors are set out in Annex 4.

**24. BOARD OF DIRECTORS – COMPOSITION**

24.1 The Trust is to have a Board of Directors, which shall comprise both Executive Directors and Non-Executive Directors.

24.2 The Board of Directors is to comprise:

24.2.1 a non-executive Chair

24.2.2 Non-Executive Directors; and

24.2.3 Executive Directors.

24.3 One of the Executive Directors shall be the Chief Executive.

24.4 The Chief Executive shall be the Accounting Officer.

- 24.5 One of the Executive Directors shall be the finance director
- 24.6 One of the Executive Directors is to be a registered medical practitioner or a registered dentist (within the meaning of the Dentists Act 1984).
- 24.7 One of the Executive Directors is to be a registered nurse or a registered midwife.
- 24.8 At least half of the Board of Directors (excluding the Chair) should be Non-executive Directors. In the event that the number of Non-Executive Directors (including the Chair) is equal to the number of Executive Directors, the Chair (and in their absence, the Vice Chair), shall have a casting vote at meetings of the Board of Directors.
- 24.9 The post of an Executive Director may be held by two individuals (provided that the provisions of this paragraph 24 are met in respect of required qualifications) on a job share basis. Where such an agreement is in force the two individuals may only exercise one vote between them at any meeting of the Board of Directors. In the case of disagreements, no vote may be cast.
- 24.10 The Trust may appoint other individuals who may receive a standing invite to attend meetings of the Board of Directors but such individuals shall not be members of the Board of Directors, shall not have a vote and shall not count towards any quorum requirements.

25. **BOARD OF DIRECTORS – GENERAL DUTY**

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

26. **BOARD OF DIRECTORS – QUALIFICATION FOR APPOINTMENT AS A NON-EXECUTIVE DIRECTOR**

- 26.1 A person may be appointed as a Non-Executive Director only if
- 26.1.1 they are a member of a Public Constituency, or
  - 26.1.2 where any of the Trust's hospitals includes a medical or dental school provided by a university, they exercise functions for the purposes of that university; and
  - 26.1.3 they are not disqualified by virtue of paragraph 31 below.
- 26.2 On first appointment, re-appointment for each further term and throughout their term of office, the Chair and Non-Executive Directors are required to meet the Independence Criteria. In circumstances where, in relation to the Chair or a Non-Executive Director, the Independence Criteria are not met but the Board of Directors considers that the individual in question is independent this will be explained in the Annual Report.

**27. BOARD OF DIRECTORS – APPOINTMENT AND REMOVAL OF CHAIR AND OTHER NON-EXECUTIVE DIRECTORS**

- 27.1 The Council of Governors at a general meeting of the Council of Governors shall appoint or remove the Chair and the other Non-Executive Directors. In doing so, the Council of Governors shall take into account the Provider Code of Governance.
- 27.2 Removal of the Chair or another Non-Executive Directors shall require the approval of three-quarters of the members of the Council of Governors.
- 27.3 Subject always to the Provider Code of Governance, the maximum tenure for any individual holding the office of Non-Executive Director shall be nine years in aggregate unless exceptional circumstances apply. For the avoidance of doubt, exceptional circumstances shall be determined on a case by case basis.
- 27.4 In a situation where a Non-Executive Director becomes the Chair, the maximum tenure runs from the time of first appointment to the position of Non-Executive Director.

**28. BOARD OF DIRECTORS – APPOINTMENT OF VICE CHAIR**

- 28.1 The Council of Governors at a general meeting of the Council of Governors shall appoint one of the Non-Executive Directors as a Vice Chair.
- 28.2 Any Non-Executive Director so appointed may at any time resign from the office of Vice Chair by giving notice in writing to the Chair. The Council of Governors may consequently appoint another Non-Executive Director as Vice Chair in accordance with this Constitution.

**29. BOARD OF DIRECTORS – APPOINTMENT OF SENIOR INDEPENDENT DIRECTOR**

- 29.1 The Board of Directors shall appoint one of the independent Non-Executive Director (as set out in the Provider Code of Governance) to be the Senior Independent Director in consultation with the Council of Governors, for such a period not exceeding the remainder of their term as a Non-Executive Director, as they may specify on appointing them.
- 29.2 The Senior Independent Director will be available to Governors if they have concerns that the Chair is unable to resolve.

**30. BOARD OF DIRECTORS – APPOINTMENT AND REMOVAL OF THE CHIEF EXECUTIVE AND OTHER EXECUTIVE DIRECTORS**

- 30.1 The Non-Executive Directors shall appoint or remove the Chief Executive.
- 30.2 The appointment of the Chief Executive shall require the approval of the Council of Governors.

- 30.3 A committee consisting of the Chair, the Chief Executive and the other Non-Executive Director shall appoint or remove the other Executive Directors.

### **31. BOARD OF DIRECTORS – DISQUALIFICATION**

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

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

- 31.2 Further provisions as to the circumstances in which a person may not become or continue as a member of the Board of Directors are set out in Annex 5.

### **32. BOARD OF DIRECTORS – MEETINGS**

- 32.1 Meetings of the Board of Directors shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons.
- 32.2 Before holding a meeting, the Board of Directors must send a copy of the agenda of the meeting to the Council of Governors. As soon as practicable after holding a meeting, the Board of Directors must send a copy of the minutes of the meeting to the Council of Governors. Minutes of meetings of the Board of Directors held in private shall be provided as required by the Provider Code of Governance unless exceptional circumstances apply which shall be determined on a case by case basis.

### **33. BOARD OF DIRECTORS – STANDING ORDERS**

The standing orders for the practice and procedure of the Board of Directors shall be read alongside this Constitution.

**34. BOARD OF DIRECTORS - CONFLICTS OF INTEREST OF DIRECTORS**

- 34.1 The duties that a director of the Trust has by virtue of being a director include in particular:
- 34.1.1 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.
  - 34.1.2 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.
- 34.2 The duty referred to in paragraph 34.1.1 is not infringed if:
- 34.2.1 the situation cannot reasonably be regarded as likely to give rise to a conflict of interest, or
  - 34.2.2 the matter has been authorised in accordance with this Constitution.
- 34.3 The duty referred to in paragraph 34.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- 34.4 In paragraph 34.1.2, “third party” means a person other than:
- 34.4.1 the Trust, or
  - 34.4.2 a person acting on its behalf.
- 34.5 If a director of the Trust has in any way a direct or indirect interest in a proposed transaction or arrangement with the Trust, the director must declare the nature and extend of that interest to the other directors.
- 34.6 If a declaration under this paragraph proves to be, or becomes, inaccurate or incomplete, a further declaration must be made.
- 34.7 Any declaration required by this paragraph must be made before the Trust enters into the transaction or arrangement.
- 34.8 This paragraph does not require a declaration of an interest of which the Director is not aware or where the Director is not aware of the transaction or arrangement in question.
- 34.9 A director need not declare an interest:
- 34.9.1 if it cannot reasonably be regarded as likely to give rise to a conflict of interest;
  - 34.9.2 if, or to the extent that, the directors are already aware of it;
  - 34.9.3 if, or to the extent that, it concerns terms of the director’s appointment that have been or are to be considered:
    - (a) by a meeting of the Board of Directors; or



- (b) by a committee of the directors appointed for the purpose under this Constitution.

34.10 A matter shall have been authorised for the purposes of paragraph 34.2.2 if:

34.10.1 the Board of Directors by majority disapplies the provision of the Constitution which would otherwise prevent a director from being counted as participating in the decision-making process;

34.10.2 the director's interest cannot reasonably be regarded as likely to give rise to a conflict of interest; or

34.10.3 the director's conflict of interest arises from a permitted clause (as determined by the Board of Directors) from time to time.

### 35. **BOARD OF DIRECTORS – REMUNERATION AND TERMS OF OFFICE**

35.1 The Council of Governors at a general meeting of the Council of Governors shall decide the remuneration and allowances, and the other terms and conditions of office, of the Chair and the other Non-Executive Directors.

35.2 The Trust shall establish a committee of Non-Executive Directors to decide the remuneration and allowances, and the other terms and conditions of office, of the Chief Executive and other Executive Directors.

### 36. **REGISTERS**

36.1 The Trust shall have:

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

36.1.2 a Register of Members of the Council of Governors;

36.1.3 a Register of Interests of Governors;

36.1.4 a Register of Directors; and

36.1.5 a Register of Interests of the Directors.

36.2 The Secretary shall be responsible for compiling and maintaining the registers, and the registers may be kept in either paper or electronic form. Removal from any register shall be in accordance with the provisions of this Constitution. The Secretary shall update the registers with new or amended information as soon as is practical and in any event within 14 days of receipt.

**37. ADMISSION TO AND REMOVAL FROM THE REGISTERS**

37.1 The Secretary shall add to the register of Members the name of any individual who is accepted as a Member under the provisions of this Constitution. The Secretary shall remove from the register of Members the name of any Member who ceases to be entitled to be a Member.

**38. REGISTERS – INSPECTION AND COPIES**

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

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

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

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

38.3 If the person requesting a copy or extract is not a Member, the Trust may impose a reasonable charge for doing so.

**39. DOCUMENTS AVAILABLE FOR PUBLIC INSPECTION**

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

39.1.1 a copy of the current constitution;

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

39.1.3 a copy of the latest Annual Report.

39.2 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:

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

39.2.2 a copy of any report laid under section 65D (appointment of trust special administrator) of the 2006 Act.

39.2.3 a copy of any information published under section 65D (appointment of trust special administrator) of the 2006 Act.

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

- 39.2.5 a copy of any statement provided under section 65F (administrator's draft report) of the 2006 Act.
- 39.2.6 a copy of any notice published under section 65F(administrator's draft report), 65G (consultation plan), 65H (consultation requirements), 65J (power to extend time), 65KA (NHS England's decision), 65KB (Secretary of State's response to NHS England's decision), 65KC (action following Secretary of State's rejection of final report) or 65KD (Secretary of State's response to re-submitted final report) of the 2006 Act.
- 39.2.7 a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act.
- 39.2.8 a copy of any final report published under section 65I (administrator's final report),
- 39.2.9 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.
- 39.2.10 a copy of any information published under section 65M (replacement of trust special administrator) of the 2006 Act.
- 39.3 Any person who requests a copy of or extract from any of the above documents is to be provided with a copy.
- 39.4 If the person requesting a copy or extract is not a Member, the Trust may impose a reasonable charge for doing so.

#### **40. AUDITOR**

- 40.1 The Trust shall have an auditor.
- 40.2 The Council of Governors shall appoint or remove the auditor at a general meeting of the Council of Governors.
- 40.3 A person may only be appointed as the 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.
- 40.4 The auditor is to carry out their duties in accordance with schedule 10 to the 2006 Act.

#### **41. AUDIT COMMITTEE**

The Trust shall establish a committee of Non-Executive Directors as an audit committee to perform such monitoring, reviewing and other functions as are appropriate.

#### **42. ACCOUNTS**

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

- 42.2 NHS England may with the approval of the Secretary of State give directions to the Trust as to the content and form of its accounts.
- 42.3 The accounts are to be audited by the Trust's auditor.
- 42.4 The Trust shall prepare in respect of each Financial Year annual accounts in such form as NHS England may with the approval of the Secretary of State direct.
- 42.5 The functions of the Trust with respect to the preparation of the annual accounts shall be delegated to the Accounting Officer.

**43. ANNUAL REPORT, FORWARD PLANS AND NON-NHS WORK**

- 43.1 The Trust shall prepare an Annual Report and send it to NHS England.
- 43.2 The Annual Report must
  - 43.2.1 review the extent to which the Trust has exercised its functions in accordance with the plans published under:
    - (a) section 14Z52 of the 2006 Act (joint forward plans for integrated care board and its partners); and
    - (b) section 14Z56 of the 2006 Act (joint capital resource use plan for integrated care board and its partners),
  - 43.2.2 review the extent to which the Trust has exercised its functions consistently with NHS England's views set out in the latest statement published under section 13SA(1) of the 2006 Act (views about how functions relating to inequalities information should be exercised);
  - 43.2.3 give information:
    - (a) on any steps taken by the Trust to secure that (taken as a whole) the actual membership of the Public Constituency and of the classes of the Staff Constituency is representative of those eligible for such membership;
    - (b) on any occasions in the period to which the report relates on which the council of governors exercised its power under paragraph 10C of schedule 7 to the 2006 Act;
    - (c) on the remuneration of the directors and on the expenses of the Governors and the directors;
    - (d) on the impact that income received by the Trust otherwise than from the provision of goods and services for the purposes of the health service in England has had on the provision by the Trust of goods and services for those purposes; and
    - (e) on any other matter which NHS England requires.

- 43.3 The Trust shall give information as to its forward planning in respect of each Financial Year to NHS England.
- 43.4 The document containing the information with respect to forward planning (referred to above) shall be prepared by the directors.
- 43.5 In preparing the document, the directors shall have regard to the views of the Council of Governors.
- 43.6 Each forward plan must include information about:
  - 43.6.1 the activities other than the provision of goods and services for the purpose of the health service in England that the Trust proposes to carry on; and
  - 43.6.2 the income it expects to receive from doing so.
- 43.7 Where a forward plan contains a proposal that the Trust carry on an activity of a kind mentioned in paragraph 43.6.1 the Council of Governors must:
  - 43.7.1 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 functions; and
  - 43.7.2 notify the directors of the Trust and its determination.
- 43.8 A Trust which proposes to increase by 5% or more the proportion of its total income in any Financial Year attributable to activities other than the provision of goods and services for the purpose of the health service in England may implement the proposal only if more than half of the members of the Council of Governors of the Trust voting approve its implementation.

**44. PRESENTATION OF THE ANNUAL ACCOUNTS AND REPORTS TO THE GOVERNORS AND MEMBERS**

- 44.1 The following documents are to be presented to the Council of Governors at a general meeting of the Council of Governors:
  - 44.1.1 the annual accounts
  - 44.1.2 any report of the auditor on them
  - 44.1.3 the Annual Report.
- 44.2 The documents shall also be presented to the members of the Trust at the Annual Members' Meeting by at least one member of the Board of Directors in attendance.
- 44.3 The Trust may combine a meeting of the Council of Governors convened for the purposes of paragraph 44.1 with the Annual Members' Meeting.

**45. INSTRUMENTS**

- 45.1 The Trust shall have a seal.
- 45.2 The seal shall not be affixed except under the authority of the Board of Directors.
- 45.3 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.

**46. AMENDMENT OF THE CONSTITUTION**

- 46.1 The Trust may make amendments to this Constitution only if:
  - 46.1.1 more than half of the members of the Council of Governors voting approve the amendments, and
  - 46.1.2 more than half of the members of the Board of Directors voting approve the amendments.
- 46.2 Amendments made under paragraph 46.1 take effect as soon as the conditions in that paragraph are satisfied, but the amendment has no effect in so far as this Constitution would, as a result of the amendment, not accord with Schedule 7 of the 2006 Act.
- 46.3 Where an amendment is made to this 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 part of the Trust):
  - 46.3.1 at least one member of the Council of Governors must attend the next Annual Members' Meeting and present the amendment; and
  - 46.3.2 the Trust must give the members an opportunity to vote on whether they approve the amendment.
- 46.4 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.
- 46.5 Amendments by the Trust to this Constitution are to be notified to NHS England. For the avoidance of doubt, NHS England's functions do not include a power or duty to determine whether or not the constitution, as a result of the amendments, accords with schedule 7 of the 2006 Act.
- 46.6 The following amendments to ancillary documents shall not be considered amendments to the Trust's Constitution and shall not be required to follow the process set out above:
  - 46.6.1 new versions of the Model Election Rules which will be notified in accordance with paragraph 15.3 above;

- 46.6.2 amendments to the standing orders for the practice and procedure of the Council of Governors and the standing orders for the practice and procedure of the Board of Directors shall be made in accordance with those standing orders;
- 46.6.3 amendments to any Director Code of Conduct which will follow the amendment process in that document; and
- 46.6.4 amendments to any Governor Code of Conduct which will follow the amendment process in that document.

#### **47. MERGERS ETC. AND SIGNIFICANT TRANSACTIONS**

- 47.1 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.
- 47.2 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.
- 47.3 In paragraph, the following words have the following meanings:
  - 47.3.1 “Significant Transaction” means a transaction which meets any one of the tests below:
    - (a) the total asset test; or
    - (b) the total income test; or
    - (c) the capital test (relating to acquisitions or divestments).
  - 47.3.2 The total asset test is met if the assets which are the subject of the transaction exceed 25% of the total assets of the Trust.
  - 47.3.3 The total income test is met if, following the completion of the relevant transaction, the total income of the Trust will increase or decrease by more than 25%.
  - 47.3.4 The capital test is met if the gross capital of the company or business being acquired or divested represents more than 25% of the capital of the Trust following completion (where “gross capital” is the market value of the relevant company or business’s shares and debt securities, plus the excess of current liabilities over current assets, and the Trust’s total taxpayers’ equity).
  - 47.3.5 For the purposes of calculating the tests in this paragraph 47.3 figures used for the Trust assets, total income and taxpayers’ equity must be the figures shown in the latest published audited consolidated accounts.

47.4 A transaction:

- 47.4.1 excludes a transaction in the ordinary course of business (including the renewal, extension or entering into an agreement in respect of healthcare services carried out by the Trust);
- 47.4.2 excludes any agreement or changes to healthcare services carried out by the Trust following a reconfiguration of services led by the commissioners of such services;
- 47.4.3 excludes any grant of public dividend capital or the entering into of a working capital facility or other loan, which does not involve the acquisition or disposal of any fixed asset of the Trust.

47.5 The Trust may enter into Material Transactions provided that it has sought the views of the Council of Governors. A “Material Transaction” for the purposes of this paragraph 47.5 shall mean a transaction which meets one of the following tests:

- 47.5.1 the total asset test; or
- 47.5.2 the total income test; or
- 47.5.3 the capital test (relating to acquisitions or divestments).

where the definitions set out in paragraph 47.2 will apply, except that instead of the threshold being 25% it shall be “greater than 10%”.

**48. ELECTRONIC COMMUNICATIONS**

- 48.1 Meetings of the Trust may be conducted by electronic means (in whole or in part) provided that each person attending has the ability to communicate interactively and simultaneously with all other parties attending the meeting including all persons attending by way of electronic communication where the meeting is hybrid.
- 48.2 A meeting at which one or more persons attends by way of electronic means the meeting will be deemed to be held at such a place as said meeting shall resolve. In the absence of such a resolution, the meeting shall be deemed to be held at the place (if any) where a majority of persons attending the meeting are physically present, or in default of such a majority, the place at which the chair of the meeting is physically present.
- 48.3 Meetings held by electronic means remain subject to requirements in respect of quorum. For such a meeting to be valid, a quorum must be present and maintained throughout the meeting.
- 48.4 The minutes of a meeting held in this way must state that it was held by electronic means and that all persons were all able to hear each other and were present throughout the meeting.
- 48.5 Meetings open to the public, if held by electronic means, should be open to public attendance by such means.



48.6 For the purposes of this paragraph "electronic means" shall include telephone, video conference or any other such electronic methods, which allows all participating persons in the meeting to hear and interact with each other.

49. **INDEMNITY**

To the extent permissible by law, 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, the Council of Governors, the Board of Directors and the Secretary.

50. **DEFECTIVE APPOINTMENTS**

Acts done by the Trust or of a committee or by a person acting as a director or Governor shall not be invalidated by the subsequent realisation that the appointment of any such director or Governor person acting as a director or Governor was defective.

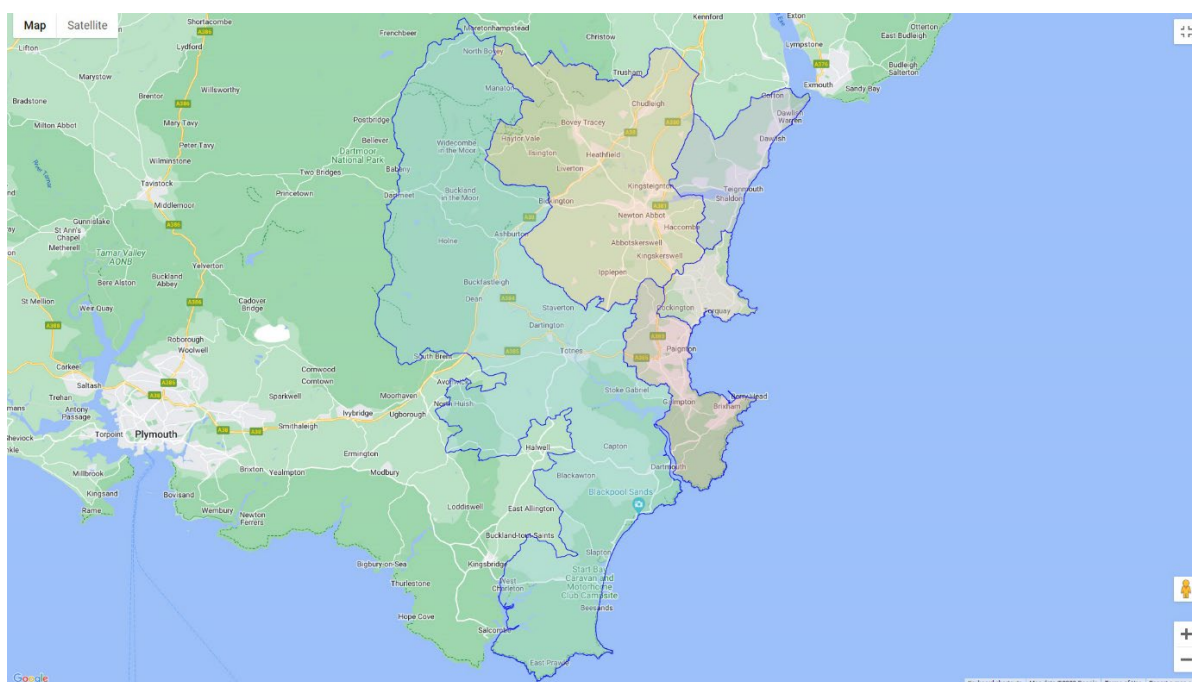
## ANNEX 1

### THE PUBLIC CONSTITUENCIES

The Trust has four (4) Public Constituencies as follows:

Areas comprising the Public Constituency	Local Authority areas/or local authority electoral areas falling within the following Electoral Wards	Minimum number of Members	Number of elected Governors
South Hams	South Hams District Council	Five hundred (500)	Three (3)
Torbay	Torbay Unitary Authority	Five hundred (500)	Seven (7)
Teignbridge	Teignbridge District Council	Five hundred (500)	Seven (7)
Rest of the South West Peninsula	All electoral wards in Cornwall, Devon, Dorset, Somerset and Bristol not included in the above Public Constituencies (which for the avoidance of doubt includes all wards within the district and unitary councils within those areas)	Ten (10)	One (1)

For ease of reference, a map identifying the footprint of the Trust is provided below:



**ANNEX 2**  
**THE STAFF CONSTITUENCY**

The Staff Constituency is divided into five (5) classes as follows:

<b>Classes comprising the Staff Constituency</b>	<b>Minimum number of Members</b>	<b>Number of elected Governors</b>
Families and Communities	One hundred (100)	One (1)
Medicine and Urgent Care	One hundred (100)	One (1)
Planned Care and Surgery	One hundred (100)	One (1)
Children and Family Health Devon	One hundred (100)	One (1)
Professional Support Services	One hundred (100)	One (1)

### ANNEX 3

#### COMPOSITION OF COUNCIL OF GOVERNORS

The Council of Governors is to comprise:

<b>Constituency</b>	<b>Number of seats on the Council of Governors</b>
<b>Elected Governors</b>	
<b>Public constituency</b>	<b>18</b>
South Hams and Plymouth	Three (3)
Torbay	Seven (7)
Teignbridge	Seven (7)
Rest of the South West Peninsula	One (1)
<b>Staff constituency</b>	<b>5</b>
Families and Communities	One (1)
Medicine and Urgent Care	One (1)
Planned Care and Surgery	One (1)
Children and Family Health Devon	One (1)
Professional Support Services	One (1)
<b>Appointed Governors</b>	<b>9</b>
Devon County Council	One (1)
South Hams District Council	One (1)
Teignbridge District Council	One (1)
Torbay District Council	One (1)
NHS Devon Integrated Care Board	One (1)
Devon Partnership NHS Trust	One (1)
University of Exeter Medical School	One (1)
Plymouth University Peninsula School of Medicine and Dentistry	One (1)
Devon Carers Strategy Board or Torbay Carers Strategy Steering Group	One (1)
<b>Total</b>	<b>32</b>

## **ANNEX 4**

### **Additional Provisions – Council of Governors**

#### **1. Elected Governors**

A Member of the Public Constituency may not vote at an election for a public governor unless at the time of voting they have made and returned a declaration in the form specified in the Model Election Rules, that they are qualified to vote as a Member of the Public Constituency.

#### **2. Appointed Governors**

2.1 The Secretary (or such person as they may nominate) shall contact each relevant organisation in writing regarding the appointment of the Governor by it.

2.2 For the purposes of this paragraph 2 “relevant organisation” shall mean any local authority, university or other partnership organisation which is eligible to appoint a Governor to the Council of Governors under this Constitution.

#### **3. Lead Governor**

3.1 The Council of Governors shall appoint one of its public Governors as the Lead Governor in accordance with the conditions of appointment set out in the Lead Governor role description approved by the Council of Governors.

3.2 The Lead Governor shall have the responsibilities, and perform the tasks, set out in the Lead Governor role description.

3.3 The term of the Lead Governor shall be one (1) year.

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

4.1 In addition to paragraph 17 of this Constitution, a person may not become or continue as a Governor if:

4.1.1 they are not a Member;

4.1.2 in the case of a public governor or staff governor they cease to be a Member of the Constituency or Class from which they were elected;

4.1.3 in the case of an appointed governor, the organisation which appointed them terminates that appointment;

4.1.4 they are a person who is not a fit and proper person as required by the NHS Provider Licence;

4.1.5 they have been required to notify the police of their name and address as a result of being convicted or cautioned under the Sexual Offences Act 2003 or other applicable legislation or their

name appears a Barred List as defined in the Safeguarding Vulnerable Groups Act 2006;

- 4.1.6 they (or an organisation of which they were a director) have been found guilty of an offence under the Modern Slavery Act 2015;
- 4.1.7 they (or an organisation of which they were a director) have been found guilty of an offence under the Bribery Act 2010 or any other applicable law relating to fraud, financial crime or terrorist financing;
- 4.1.8 they are the spouse, partner, parent, child of, or occupant of the same household as a director or a member of the Council of Governors;
- 4.1.9 they are a member of a local authority's Overview and Scrutiny Committee covering health matters or hold a role at a local authority which involves the review or scrutiny of health matters;
- 4.1.10 they are a director of the Trust;
- 4.1.11 they are a governor, non-executive director (including the chair) or, executive director (including the chief executive officer) of another NHS Body, unless they are appointed by an appointing organisation which is a NHS Body or the Chair agrees to them becoming, or continuing as, a governor of the Trust in exceptional circumstances;
- 4.1.12 they have within the preceding two years been dismissed, otherwise than by reason of redundancy or ill health, from any paid employment with a NHS Body;
- 4.1.13 they are a person whose tenure of office as a Chair or as a member or director of a NHS Body has been terminated on the grounds that their appointment is not in the interests of the NHS, for non-attendance at meetings, or for non-disclosure of a pecuniary interest;
- 4.1.14 they have previously been removed as a Governor of the Trust;
- 4.1.15 they have previously been removed as a governor from another NHS foundation trust;
- 4.1.16 they have failed to sign and deliver to the Secretary a statement in the form required by the Secretary confirming acceptance of any Governor Code of Conduct;
- 4.1.17 they have committed a serious breach of the Governor Code of Conduct;

- 4.1.18 they lack capacity within the meaning of the Mental Capacity Act 2005 to carry out all the duties and responsibilities of a governor;
  - 4.1.19 they are the subject of a disqualification order made under the Company Directors Disqualification Act 1986;
  - 4.1.20 they have had their name removed from a list maintained under regulations pursuant to sections 91 (Persons performing primary medical services), 106 (Persons performing primary dental services), 123 (Persons performing primary ophthalmic services), or 146 (Persons performing local pharmaceutical services) of the 2006 Act, or the equivalent lists maintained by Local Health Boards in Wales, and they have not subsequently had their name included in such a list;
  - 4.1.21 they are deemed a vexatious or persistent complainant or litigant against the Trust without reasonable cause; or
  - 4.1.22 they have failed to repay (without good cause) any amount of monies properly owed to the Trust.
- 4.2 For the purposes of this Annex 4 "a vexatious or persistent complainant" shall be as defined in the Trust's Feedback Complaints and Patient Advice and Liaison (PALS) Policy (or such other policy that may replace it from time to time). In the event of a dispute regarding whether an individual is a vexatious or persistent complainant, the Chair in consultation with the Senior Independent Director shall make the final decision.
- 4.3 A person holding office as a Governor shall immediately cease to do so if:
- 4.3.1 they resign by notice in writing to the Secretary;
  - 4.3.2 they become disqualified from office under paragraph 17 of this Constitution or under paragraph 4.1 of this Annex 4;
  - 4.3.3 they fail to attend two meetings of the Council of Governors in a period of one year unless the Lead Governor, Chair and Secretary are satisfied that:
    - 4.3.3.1 the absence was due to a reasonable cause; and
    - 4.3.3.2 they will be able to start attending meetings of the Trust again within such a period as they consider reasonable.
  - 4.3.4 they have refused to undertake any training which the Council of Governors requires all governors to undertake unless the Lead Governor, Chair and Secretary are satisfied that the refusal was due to a reasonable cause; or

- 4.3.5 they are removed from the Council of Governors by a resolution passed under paragraph 5 below.
- 4.4 For the purposes of 4.3.3.1 and 4.3.4:
  - 4.4.1 an absence will ordinarily be considered to be due to a reasonable cause if it is due to:
    - 4.4.1.1 a conflict with work or personal commitments in circumstances where the Trust has changed the date of the meeting of the Council of Governors at short notice;
    - 4.4.1.2 ill health (provided that the Governor in question, or someone on their behalf, has advised the Secretary of such circumstances as soon as reasonably practicable); or
    - 4.4.1.3 a personal or family emergency.
  - 4.4.2 For the avoidance of doubt, work commitments will not be considered a reasonable cause unless the Trust has changed the date of the meeting of the Council of Governors at short notice.
  - 4.4.3 Instances of ill health will be reviewed on a case-by-case basis in consultation between the Lead Governor, Secretary, the Chair and the affected Governor with a view of acting in the best interests of the Trust.
- 4.5 Where a Governor becomes disqualified for appointment under this paragraph 4 or paragraph 17 of this Constitution, they shall notify the Secretary in writing without delay upon becoming aware the grounds for disqualification. Any failure to notify the Secretary of grounds for disqualification pursuant to this paragraph 4.5 shall result in such individual becoming ineligible to become a Governor at any future point.
- 4.6 If it comes to the notice of the Secretary that at the time of their appointment or later a Governor is disqualified, they shall immediately declare that the person in question is disqualified and notify them in writing to that effect.

## **5. Removal of Governor from office**

- 5.1 A Governor may be removed from the Council of Governors by a resolution approved at a meeting of the Council of Governors by not less than three-quarters of the Governor present and voting on the grounds that:
  - 5.1.1 they have acted in a manner detrimental to the interests of the Trust or otherwise bring the Trust into disrepute; or



5.1.2 the Council of Governors consider that it is not in the best interests of the Trust for them to continue as a Governor, for example because:

5.1.2.1 the individual's continuation as a Governor would be likely to prejudice the ability of the Trust to fulfil its principal purpose or discharge its duties and functions;

5.1.2.2 the individual's continuation as a Governor would be likely to prejudice the Trust's work with other persons or body within whom it is engaged or may be engaged in the provision of goods and services;

5.1.2.3 the individual's continuation as a Governor would be likely to adversely affect public confidence in the goods and services provided by the Trust;

5.1.2.4 it would not be in the best interests of the Council of Governors for the individual to continue as a Governor / the individual has caused or is likely to cause prejudice to the proper conduct of the Council of Governors' affairs; or

5.1.2.5 the individual has failed to comply with the values and principles of the NHS, the Trust or this Constitution.

5.2 The Council of Governors will agree a process for investigating complaints against Governor which may lead to a removal of a Governor under this paragraph 5.

## **6. Vacancies amongst Governors**

6.1 Where a vacancy arises on the Council of Governors for any reason other than expiry of term of office, the following provisions will apply.

### **Appointed Governors**

6.2 Where the vacancy arises amongst the Appointed Governor, the Secretary shall request that the appointing organisation appoints a replacement to hold office for the remainder of the term of office or to commence a new term of office.

### **Elected Governors**

6.3 Where the vacancy arises amongst the elected governors, the Council of Governors shall be at liberty either:

6.3.1 to call an election within three months to fill the seat for the remainder of that term of office;

6.3.2 to call an election to fill the seat for a new term of office;

- 6.3.3 to invite the next highest polling candidate for that seat at the most recent election, who is willing to take office, to fill the seat until the next annual election, at which time the seat will fall vacant and subject to election for any unexpired period of the term of office; or
  - 6.3.4 if the unexpired period of the term of office is less than twelve months, to leave the seat vacant until the next elections are held.
- 6.4 All decisions taken in good faith at a meeting of the Council of Governors or of any committee shall be valid even if it is discovered subsequently that there was a defect in the calling of the meeting, or in the appointment or election of the Governor attending the meeting.

## **7. Dispute Resolution**

- 7.1 In the event of any dispute between the Council of Governors and the Board of Directors:
  - 7.1.1 in the first instance the Chair on the advice of the Secretary, and such other advice as the Chair may see fit to obtain, shall seek to resolve the dispute;
  - 7.1.2 if the Chair is unable to resolve the dispute they shall appoint a special committee comprising equal numbers of directors and Governors to consider the circumstances and to make recommendations to the Council of Governors and the Board of Directors with a view to resolving the dispute; and
  - 7.1.3 if the recommendations (if any) of the special committee are unsuccessful in resolving the dispute, the Chair may refer the dispute back to the Board of Directors who shall make the final decision.

## **ANNEX 5**

### **Additional Provisions – Board of Directors**

#### **1. Disqualification of directors**

- 1.1 In addition to paragraph 26 of this Constitution, a person may not become or continue as a Director if:
- 1.1.1 they have been required to notify the police of their name and address as a result of being convicted or cautioned under the Sexual Offences Act 2003 or other applicable legislation or their name appears a Barred List as defined in the Safeguarding Vulnerable Groups Act 2006;
  - 1.1.2 they (or an organisation of which they were a director) have been found guilty of an offence under the Modern Slavery Act 2015;
  - 1.1.3 they (or an organisation of which they were a director) have been found guilty of an offence under the Bribery Act 2010 or any other applicable law relating to fraud, financial crime or terrorist financing;
  - 1.1.4 they are the spouse, partner, parent, child of, or occupant of the same household as a Director or a member of Council of Governors;
  - 1.1.5 they are a member of a local authority's Overview and Scrutiny Committee covering health matters;
  - 1.1.6 they are a Governor;
  - 1.1.7 they are a governor, non-executive director (including the Chair) or, executive director (including the chief executive officer) of another NHS Body, unless:
    - 1.1.7.1 in the case of an executive director other than the Chief Executive, the Chair, following consultation with the Chief Executive;
    - 1.1.7.2 in the case of the Chief Executive, the Chair, following consultation with the Board of Directors;
    - 1.1.7.3 in the case of a non-executive director other than the Chair, the Chair following consultation with the Council of Governors; or
    - 1.1.7.4 in the case of the Chair, the Senior Independent Director, following consultation with the Board of Directors and the Council of Governors,
- agrees to them becoming, or continuing as, a Director;

- 1.1.8 they are a person whose tenure of office as a Chair or as a member or director of a Health Service Body has been terminated on the grounds that their appointment is not in the interests of the NHS, for non-attendance at meetings, or for non-disclosure of a pecuniary interest;
  - 1.1.9 in the case of a non-executive Director, they have refused, without reasonable cause, to fulfil any training requirement established by the Board of Directors;
  - 1.1.10 they lack capacity within the meaning of the Mental Capacity Act 2005 to carry out all the duties and responsibilities of a Director;
  - 1.1.11 they are the subject of a disqualification order made under the Company Directors Disqualification Act 1986;
  - 1.1.12 they have had their name removed from a list maintained under regulations pursuant to sections 91 (Persons performing primary medical services), 106 (Persons performing primary dental services), 123 (Persons performing primary ophthalmic services), or 146 (Persons performing local pharmaceutical services) of the 2006 Act, or the equivalent lists maintained by Local Health Boards in Wales under the National Health Service (Wales) Act 2006, and they have not subsequently had their name included in such a list;
  - 1.1.13 they are deemed a vexatious or persistent complainant (as defined in Annex 4) or litigant against the Trust without reasonable cause;
  - 1.1.14 they have failed to repay (without good cause) any amount of monies properly owed to the Trust; or
  - 1.1.15 they fail to satisfy the fit and proper persons requirements for directors as detailed in Regulation 5 of The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014, as may be amended from time to time.
- 1.2 Where a Director becomes disqualified for appointment under paragraph 1 of this Annex or paragraph 26 of this Constitution, they shall notify the Trust Secretary in writing of such disqualification.
  - 1.3 If it comes to the notice of the Trust Secretary that at the time of their appointment or later the Director is so disqualified, they shall immediately declare that the Director in question is disqualified and notify them in writing to that effect.
  - 1.4 Where a Director is disqualified their tenure of office shall automatically terminate and they shall cease to hold office with immediate effect.

## **2. Expenses**

- 2.1 The Trust may reimburse executive Directors travelling and other costs and expenses incurred in carrying out their duties at such rates as the Remuneration Committee decides. These are to be disclosed in the annual report.

## **ANNEX 6**

### **Further Provisions - Membership**

#### **1. Restriction on membership**

- 1.1 In addition to paragraph 12 of this Constitution, the following restrictions on Membership apply:
  - 1.1.1 The following will not be eligible to become or continue a Member:
    - 1.1.1.1 they have been required to notify the police of their name and address as a result of being convicted or cautioned under the Sexual Offences Act 2003 or other applicable legislation or their name appears a Barred List as defined in the Safeguarding Vulnerable Groups Act 2006;
    - 1.1.1.2 an individual who exhibits inappropriate conduct (as agreed by a majority of the governors present and voting at a meeting of the Council of Governors), including those who have been identified as the perpetrators of a serious incident involving violence, assault or harassment against Trust staff; and/or
    - 1.1.1.3 a person who is deemed a vexatious or persistent complainant or litigant against the Trust (as defined in Annex 4) without reasonable cause (as agreed by a majority of the governors present and voting at a meeting of the Council of Governors).

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

- 2.1 A Member shall cease to be a Member if:
  - 2.1.1 they resign by notice in writing to the Trust Secretary;
  - 2.1.2 they cease to be eligible to continue to as a Member under paragraph 1.1.1 of this Annex 6 or paragraph 12 of this Constitution;
  - 2.1.3 they are expelled from Membership under paragraph 1.1 of this Annex 6; or
  - 2.1.4 they die.
- 2.2 The Trust shall give any Member at least fourteen days' written notice of a proposal to remove them from the Trust membership under this paragraph 2 of Annex 6. The Trust shall consider any representations made by the Member during that notice period, and the Secretary shall decide whether to remove the Member. Within fourteen days after receiving notice of the Secretary's decision, a person wishing to dispute

the decision may require the Secretary to refer the matter to the Council of Governors to determine whether the decision was fair and reasonable taking all relevant matters into account. Where a Member does not ask the Secretary to refer their proposed removal to the Council of Governors, they shall cease to be a Member fourteen days after receiving notice of the Secretary's decision. Where a Member does ask the Secretary to refer their proposed removal to the Council of Governors, they shall continue to be a Member until the Council of Governors has reached a decision on their membership and provided them with notice. The decision of the Council of Governors shall be final.

- 2.3 An individual member removed under paragraph 2.2 may make a request to the Secretary that their membership removal be reviewed and their eligibility to be a member be considered no sooner than 12 months from the date of the removal.
- 2.4 When making a request under paragraph 2.3 the individual must make such a request in writing to the Secretary and outline whether they wish to be considered as eligible to be a member and the reasons for the requested review. The Trust shall endeavour to issue a decision in writing within 28 days of receipt of the request. The Trust's decision shall be final and any further requests for review may only be made after intervals of at least two further years.

## **ANNEX 7**

### **Annual Members Meeting**

- 1.1 The Trust shall hold a members' meeting for all Members (called the **Annual Members Meeting**) within six months of the end of the financial year of the Trust.
- 1.2 Any members' meeting other than the Annual Members' Meeting shall be called a 'Special Members Meeting'.
- 1.3 Both Annual Members' Meetings and Special Members' Meetings shall be open to all Members, members of the Council of Governors and members of the Board of Directors, together with representatives of the Trust's Auditors, and to members of the public. The Trust may invite representatives of the media and any experts or advisors whose attendance they consider to be in the best interests of the Trust to attend any such meeting.
- 1.4 The Board of Directors may convene an Annual Members' Meeting or a Special Members' meeting when it thinks fit. The Council of Governors may request the Board of Directors to convene a members' meeting.
- 1.5 The agenda shall set out the business to be conducted at the meeting. No business other than that set out in the Agenda shall be considered at any members' meeting.
- 1.6 The Board of Directors (or at least one (1) member of the Board of Directors) shall present to the members of the Annual Members' Meeting:
  - 1.6.1 the annual accounts;
  - 1.6.2 any report of the auditor on them;
  - 1.6.3 the Annual Report;
  - 1.6.4 a report on steps taken to secure that (taken as a whole) the actual membership of the Trust is representative of those eligible for such membership;
  - 1.6.5 the progress of the membership plan; and
  - 1.6.6 the results of any election and appointments to the Council of Governors, and any other reports or documentation it considers necessary or otherwise required.
- 1.7 The Trust shall give notice of all members' meetings:
  - 1.7.1 by notice prominently displayed at the Trust's headquarters;
  - 1.7.2 by notice on the Trust's website;
  - 1.7.3 by notice communicated by email to the Members; and




- 1.7.4 to the Council of Governors, Board of Directors and the Trust's Auditors, stating whether the meeting is an Annual Members' Meeting or a Special Members' Meeting including the time, date, place of the meeting, and the business to be dealt with at the meeting at least 14 working days before the date of the relevant members' meeting (or, in the case of an Annual Members' Meeting, at least 21 working days before the date of the relevant meeting).
- 1.8 Accidental omission to give notice of a members' meeting or to send, supply or make available any document or information relating to the meeting, or the non-receipt of any such notice, document or information by a person entitled to receive any such notice, document or information shall not invalidate the proceedings at that meeting.
- 1.9 The Chair or in their absence, the Vice Chair, shall preside at all members' meetings of the Trust. If neither the Chair nor the Vice Chair is present, the Governors present shall elect one of the Non-Executive Directors to act as Chair. If no Non-Executive Director is present, the Governors present shall elect one of their number to act as the meeting Chair. If no Governor is willing to act as Chair or if no Governor is present within fifteen minutes after the time appointed for holding the meeting, the members present and entitled to vote shall choose one of their number to act as Chair.
- 1.10 The quorum for a members' meeting shall be twenty (20) members present and entitled to vote. If a quorum is not present within thirty (30) minutes from the time appointed for the meeting, the meeting shall stand adjourned for a minimum of seven (7) days until such time as the Board of Directors determine.
- 1.11 No such meeting shall become incompetent to transact business by lack of a quorum arising after the chair has been taken.
- 1.12 The Chair may, with the consent of a members' meeting at which a quorum is present (and shall, if so directed by the meeting), adjourn a members' meeting from time to time and from place to place or for an indefinite period.
- 1.13 A resolution put to the vote at a members' meeting shall be decided on a show of hands.
- 1.14 Every Member registered who is present shall have one vote. No proxies will be admissible.
- 1.15 The Trust's Auditor shall act as scrutineers in event of any voting.
- 1.16 No business shall be transacted at an adjourned meeting other than business which might properly have been transacted at the meeting had the adjournment not taken place.
- 1.17 If the Board of Directors, in its absolute discretion, considers that it is impractical or unreasonable for any reason to hold a members' meeting

at the time, date or place specified in the notice calling that meeting, it may move and/or postpone the general meeting to another time, date, and/or place.

- 1.18 Unless exceptional circumstances apply, in the case of a members' meeting is adjourned or postponed for fourteen (14) days or more, at least seven (7) working days' notice shall be given, specifying the time and place of the adjourned members' meeting and the general nature of the business to be transacted. Otherwise, it shall not be necessary to give any such notice.
- 1.19 The Board of Directors may make any such arrangement and impose any restriction it considers appropriate to ensure the security of a members' meeting.
- 1.20 Any approval to speak at a members' meeting must be given by the Chair. Speeches must be directed to the matter, motion or question under discussion or to a point of order. No proposal, speech or any reply may exceed three (3) minutes unless the Chair directs otherwise. In the interests of time, the Chair may, in their absolute discretion, limit the number of replies, questions or speeches which are heard at any one members' meeting.
- 1.21 A person who has already spoken on a matter at a members' meeting may not speak again at that meeting in respect of the same matter except (i) in exercise of a right of reply or (ii) on a point of order, or (iii) at the Chair's discretion.
- 1.22 The ruling of the Chair on any matter of procedure or a point of order shall be final.

**ANNEX 8**  
**Model Election Rules**



# Model Election Rules 2014

For use in elections to FT councils of governors

# Model Election Rules 2014

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## PART 1 INTERPRETATION

### 1. Interpretation

#### 1.1 In these rules, unless the context otherwise requires:

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

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

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

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

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

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

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

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

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

*"lead governor"* means the governor nominated by the corporation to fulfil the role described in Appendix B to The NHS Foundation Trust Code of Governance (Monitor, December 2013) or any later version of such code.

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

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

*"Monitor"* means the corporate body known as Monitor as provided by section 61 of the 2012 Act;

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

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

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

*"telephone short code"* means a short telephone number used for the purposes of



submitting a vote by text message;

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

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

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

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

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

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

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

*"voting information"* means postal voting information and/or e-voting information

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

## PART 2 TIMETABLE FOR ELECTIONS

### 2. Timetable

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

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

### 3. Computation of time

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

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

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

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

## PART 3 RETURNING OFFICER

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### 4. Returning Officer

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

### 5. Staff

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

### 6. Expenditure

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

### 7. Duty of co-operation

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

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

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### **8. Notice of election**

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

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

### **9. Nomination of candidates**

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

9.2 The returning officer:

- (a) is to supply any member of the corporation with a nomination form, and
- (b) is to prepare a nomination form for signature at the request of any member of the corporation,

but it is not necessary for a nomination to be on a form supplied by the returning officer and a nomination can, subject to rule 13, be in an electronic format.

### **10. Candidate's particulars**

10.1 The nomination form must state the candidate's:

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

## **11. Declaration of interests**

11.1 The nomination form must state:

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

## **12. Declaration of eligibility**

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

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

## **13. Signature of candidate**

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

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

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

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

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

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

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

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

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

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

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

## 15. **Publication of statement of candidates**

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

15.2 The statement must show:

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

as given in their nomination form.

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

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

## **16. Inspection of statement of nominated candidates and nomination forms**

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

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

## **17. Withdrawal of candidates**

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

## **18. Method of election**

18.1 If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is greater than the number of members to be elected to the council of governors, a poll is to be taken in accordance with Parts 5 and 6 of these rules.

18.2 If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is equal to the number of members to be elected to the council of governors, those candidates are to be declared elected in accordance with Part 7 of these rules.

18.3 If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is less than the number of members to be elected to be council of governors, then:

- (a) the candidates who remain validly nominated are to be declared elected in accordance with Part 7 of these rules, and
- (b) the returning officer is to order a new election to fill any vacancy which remains unfilled, on a day appointed by him or her in consultation with the corporation.





## PART 5 CONTESTED ELECTIONS

### 19. Poll to be taken by ballot

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

### 20. The ballot paper

- 20.1 The ballot of each voter (other than a voter who casts his or her ballot by an e-voting method of polling) is to consist of a ballot paper with the persons remaining validly nominated for an election after any withdrawals under these rules, and no others, inserted in the paper.
- 20.2 Every ballot paper must specify:
- (a) the name of the corporation,
  - (b) the constituency, or class within a constituency, for which the election is being held,
  - (c) the number of members of the council of governors to be elected from that constituency, or class within that constituency,
  - (d) the names and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
  - (e) instructions on how to vote by all available methods of polling, including the relevant voter's voter ID number if one or more e-voting methods of polling are available,
  - (f) if the ballot paper is to be returned by post, the address for its return and the date and time of the close of the poll, and
  - (g) the contact details of the returning officer.
- 20.3 Each ballot paper must have a unique identifier.
- 20.4 Each ballot paper must have features incorporated into it to prevent it from being reproduced.
- 21. The declaration of identity (public and patient constituencies)**
- 21.1 The corporation shall require each voter who participates in an election for a public or patient constituency to make a declaration confirming:
- (a) that the voter is the person:
    - (i) to whom the ballot paper was addressed, and/or
    - (ii) to whom the voter ID number contained within the e-voting information was allocated,
  - (b) that he or she has not marked or returned any other voting information in the election, and
  - (c) the particulars of his or her qualification to vote as a member of the constituency or class within the constituency for which the election is being held,

("declaration of identity")

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

- 21.2 The voter must be required to return his or her declaration of identity with his or her ballot.
- 21.3 The voting information shall caution the voter that if the declaration of identity is not duly returned or is returned without having been made correctly, any vote cast by the voter may be declared invalid.

*Action to be taken before the poll*

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

- 22.1 The corporation is to provide the returning officer with a list of the members of the constituency or class within a constituency for which the election is being held who are eligible to vote by virtue of rule 27 as soon as is reasonably practicable after the final date for the delivery of notices of withdrawals by candidates from an election.
- 22.2 The list is to include, for each member:
- (a) a postal address; and,
  - (b) the member's e-mail address, if this has been provided
- to which his or her voting information may, subject to rule 22.3, be sent.
- 22.3 The corporation may decide that the e-voting information is to be sent only by e-mail to those members in the list of eligible voters for whom an e-mail address is included in that list.

## **23. Notice of poll**

- 23.1 The returning officer is to publish a notice of the poll stating:
- (a) the name of the corporation,
  - (b) the constituency, or class within a constituency, for which the election is being held,
  - (c) the number of members of the council of governors to be elected from that constituency, or class with that constituency,

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

## **24. Issue of voting information by returning officer**

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

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

("postal voting information").

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

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

("e-voting information").

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

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

for the purposes of the poll.

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

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

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

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

25.2 The covering envelope is to have:

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

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

- (a) the completed ID declaration form if required, and

(b) the ballot paper envelope, with the ballot paper sealed inside it.

## 26. E-voting systems

- 26.1 If internet voting is a method of polling for the relevant election then the returning officer must provide a website for the purpose of voting over the internet (in these rules referred to as "the polling website").
- 26.2 If telephone voting is a method of polling for the relevant election then the returning officer must provide an automated telephone system for the purpose of voting by the use of a touch-tone telephone (in these rules referred to as "the telephone voting facility").
- 26.3 If text message voting is a method of polling for the relevant election then the returning officer must provide an automated text messaging system for the purpose of voting by text message (in these rules referred to as "the text message voting facility").
- 26.4 The returning officer shall ensure that the polling website and internet voting system provided will:
- (a) require a voter to:
    - (i) enter his or her voter ID number; and
    - (ii) where the election is for a public or patient constituency, make a declaration of identity;in order to be able to cast his or her vote;
  - (b) specify:
    - (i) the name of the corporation,
    - (ii) the constituency, or class within a constituency, for which the election is being held,
    - (iii) the number of members of the council of governors to be elected from that constituency, or class within that constituency,
    - (iv) the names and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
    - (v) instructions on how to vote and how to make a declaration of identity,
    - (vi) the date and time of the close of the poll, and
    - (vii) the contact details of the returning officer;
  - (c) prevent a voter from voting for more candidates than he or she is entitled to at the election;

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

26.5

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

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

(iv) the date and time of the voter's vote

(e) if the voter's vote has been duly cast and recorded, provide the voter with confirmation of this;

(f) prevent any voter from voting after the close of poll.

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

(a) require a voter to:

(i) provide his or her voter ID number; and

(ii) where the election is for a public or patient constituency, make a declaration of identity;

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

(b) prevent a voter from voting for more candidates than he or she is entitled to at the election;

(d) create a record ("text voting record") that is stored in the text messaging voting system in respect of each vote cast by a voter by text message that comprises of:

(i) the voter's voter ID number;

(ii) the voter's declaration of identity (where required);

(ii) the candidate or candidates for whom the voter has voted; and

(iii) the date and time of the voter's vote

(e) if the voter's vote has been duly cast and recorded, provide the voter with confirmation of this;

(f) prevent any voter from voting after the close of poll.

### *The poll*

## **27. Eligibility to vote**

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

## **28. Voting by persons who require assistance**

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

28.2 Where the returning officer receives a request from a voter who requires assistance to



vote, the returning officer is to make such arrangements as he or she considers necessary to enable that voter to vote.

**29. Spoilt ballot papers and spoilt text message votes**

- 29.1 If a voter has dealt with his or her ballot paper in such a manner that it cannot be accepted as a ballot paper (referred to as a “spoilt ballot paper”), that voter may apply to the returning officer for a replacement ballot paper.
- 29.2 On receiving an application, the returning officer is to obtain the details of the unique identifier on the spoilt ballot paper, if he or she can obtain it.
- 29.3 The returning officer may not issue a replacement ballot paper for a spoilt ballot paper unless he or she:
- (a) is satisfied as to the voter’s identity; and
  - (b) has ensured that the completed ID declaration form, if required, has not been returned.
- 29.4 After issuing a replacement ballot paper for a spoilt ballot paper, the returning officer shall enter in a list (“the list of spoilt ballot papers”):
- (a) the name of the voter, and
  - (b) the details of the unique identifier of the spoilt ballot paper (if that officer was able to obtain it), and
  - (c) the details of the unique identifier of the replacement ballot paper.
- 29.5 If a voter has dealt with his or her text message vote in such a manner that it cannot be accepted as a vote (referred to as a “spoilt text message vote”), that voter may apply to the returning officer for a replacement voter ID number.
- 29.6 On receiving an application, the returning officer is to obtain the details of the voter ID number on the spoilt text message vote, if he or she can obtain it.
- 29.7 The returning officer may not issue a replacement voter ID number in respect of a spoilt text message vote unless he or she is satisfied as to the voter’s identity.
- 29.8 After issuing a replacement voter ID number in respect of a spoilt text message vote, the returning officer shall enter in a list (“the list of spoilt text message votes”):
- (a) the name of the voter, and
  - (b) the details of the voter ID number on the spoilt text message vote (if that officer

was able to obtain it), and

(c) the details of the replacement voter ID number issued to the voter.

### **30. Lost voting information**

- 30.1 Where a voter has not received his or her voting information by the tenth day before the close of the poll, that voter may apply to the returning officer for replacement voting information.
- 30.2 The returning officer may not issue replacement voting information in respect of lost voting information unless he or she:

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

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

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

### **31. Issue of replacement voting information**

- 31.1 If a person applies for replacement voting information under rule 29 or 30 and a declaration of identity has already been received by the returning officer in the name of that voter, the returning officer may not issue replacement voting information unless, in addition to the requirements imposed by rule 29.3 or 30.2, he or she is also satisfied that that person has not already voted in the election, notwithstanding the fact that a declaration of identity if required has already been received by the returning officer in the name of that voter.

- 31.2 After issuing replacement voting information under this rule, the returning officer shall enter in a list ("the list of tendered voting information"):

- (a) the name of the voter,
- (b) the unique identifier of any replacement ballot paper issued under this rule;
- (c) the voter ID number of the voter.

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

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

### *Polling by internet, telephone or text*

## **33. Procedure for remote voting by internet**

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

## **34. Voting procedure for remote voting by telephone**

- 34.1 To cast his or her vote by telephone, the voter will need to gain access to the telephone voting facility by calling the designated telephone number provided in the voter information using a telephone with a touch-tone keypad.
- 34.2 When prompted to do so, the voter will need to enter his or her voter ID number using the keypad.
- 34.3 If the telephone voting facility authenticates the voter ID number, the voter will be prompted to vote in the election.
- 34.4 When prompted to do so the voter may then cast his or her vote by keying in the numerical voting code of the candidate or candidates, for whom he or she wishes to vote.
- 34.5 The voter will not be able to access the telephone voting facility for an election once his or her vote at that election has been cast.

## **35. Voting procedure for remote voting by text message**

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

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

## **36. Receipt of voting documents**

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

## **37. Validity of votes**

- 37.1 A ballot paper shall not be taken to be duly returned unless the returning officer is satisfied that it has been received by the returning officer before the close of the poll, with an ID declaration form if required that has been correctly completed, signed and dated.
- 37.2 Where the returning officer is satisfied that rule 37.1 has been fulfilled, he or she is to:

- (a) put the ID declaration form if required in a separate packet, and
- (b) put the ballot paper aside for counting after the close of the poll.

37.3 Where the returning officer is not satisfied that rule 37.1 has been fulfilled, he or she is to:

- (a) mark the ballot paper “disqualified”,
- (b) if there is an ID declaration form accompanying the ballot paper, mark it “disqualified” and attach it to the ballot paper,
- (c) record the unique identifier on the ballot paper in a list of disqualified documents (the “list of disqualified documents”); and
- (d) place the document or documents in a separate packet.

37.4 An internet, telephone or text message vote shall not be taken to be duly returned unless the returning officer is satisfied that the internet voting record, telephone voting record or text voting record (as applicable) has been received by the returning officer before the close of the poll, with a declaration of identity if required that has been correctly made.

37.5 Where the returning officer is satisfied that rule 37.4 has been fulfilled, he or she is to put the internet voting record, telephone voting record or text voting record (as applicable) aside for counting after the close of the poll.

37.6 Where the returning officer is not satisfied that rule 37.4 has been fulfilled, he or she is to:

- (a) mark the internet voting record, telephone voting record or text voting record (as applicable) “disqualified”,
- (b) record the voter ID number on the internet voting record, telephone voting record or text voting record (as applicable) in the list of disqualified documents; and
- (c) place the document or documents in a separate packet.

## 38. Declaration of identity but no ballot paper (public and patient constituency)<sup>1</sup>

38.1 Where the returning officer receives an ID declaration form if required but no ballot paper, the returning officer is to:

- (a) mark the ID declaration form “disqualified”,
- (b) record the name of the voter in the list of disqualified documents, indicating that a declaration of identity was received from the voter without a ballot paper, and
- (c) place the ID declaration form in a separate packet.

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

## **39. De-duplication of votes**

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

## **40. Sealing of packets**

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

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

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

## PART 6 COUNTING THE VOTES

### STV41. Interpretation of Part 6

#### STV41.1 In Part 6 of these rules:

*"ballot document"* means a ballot paper, internet voting record, telephone voting record or text voting record.

*"continuing candidate"* means any candidate not deemed to be elected, and not excluded,

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

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

*"mark"* means a figure, an identifiable written word, or a mark such as "X",

*"non-transferable vote"* means a ballot document:

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

or

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

*"preference"* as used in the following contexts has the meaning assigned below:

- (a) *"first preference"* means the figure "1" or any mark or word which clearly indicates a first (or only) preference,
- (b) *"next available preference"* means a preference which is the second, or as the case may be, subsequent preference recorded in consecutive order for a continuing candidate (any candidate who is deemed to be elected or is excluded thereby being ignored); and
- (c) in this context, a *"second preference"* is shown by the figure "2" or any mark or word which clearly indicates a second preference, and a third preference by the figure "3" or any mark or word which clearly indicates a third preference, and so on,



*"quota"* means the number calculated in accordance with rule STV46,

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

*"stage of the count"* means:

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

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

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

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

## **42. Arrangements for counting of the votes**

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

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

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

## **43. The count**

43.1 The returning officer is to:

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

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

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

#### **STV44. Rejected ballot papers and rejected text voting records**

STV44.1 Any ballot paper:

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

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

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

STV44.3 Any text voting record:

- (a) on which the figure "1" standing alone is not placed so as to indicate a first preference for any candidate,

- (b) on which anything is written or marked by which the voter can be identified except the unique identifier, or
- (c) which is unmarked or rejected because of uncertainty,

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

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

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

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

**FPP44.1 Any ballot paper:**

- (a) which does not bear the features that have been incorporated into the other ballot papers to prevent them from being reproduced,
- (b) on which votes are given for more candidates than the voter is entitled to vote,
- (c) on which anything is written or marked by which the voter can be identified except the unique identifier, or
- (d) which is unmarked or rejected because of uncertainty,

shall, subject to rules FPP44.2 and FPP44.3, be rejected and not counted.

**FPP44.2 Where the voter is entitled to vote for more than one candidate, a ballot paper is not to be rejected because of uncertainty in respect of any vote where no uncertainty arises, and that vote is to be counted.**

**FPP44.3 A ballot paper on which a vote is marked:**

- (a) elsewhere than in the proper place,
- (b) otherwise than by means of a clear mark,
- (c) by more than one mark,

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

**FPP44.4 The returning officer is to:**

- (a) endorse the word “rejected” on any ballot paper which under this rule is not to be counted, and
- (b) in the case of a ballot paper on which any vote is counted under rules FPP44.2 and FPP 44.3, endorse the words “rejected in part” on the ballot paper and indicate which vote or votes have been counted.

**FPP44.5 The returning officer is to draw up a statement showing the number of rejected ballot papers under the following headings:**

- (a) does not bear proper features that have been incorporated into the ballot paper,
- (b) voting for more candidates than the voter is entitled to,

- (c) writing or mark by which voter could be identified, and
- (d) unmarked or rejected because of uncertainty,

and, where applicable, each heading must record the number of ballot papers rejected in part.

FPP44.6 Any text voting record:

- (a) on which votes are given for more candidates than the voter is entitled to vote,
- (b) on which anything is written or marked by which the voter can be identified except the voter ID number, or
- (c) which is unmarked or rejected because of uncertainty,

shall, subject to rules FPP44.7 and FPP44.8, be rejected and not counted.

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

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

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

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

FPP44.9 The returning officer is to:

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

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

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

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

**STV45. First stage**

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

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

STV45.3 The returning officer is to also ascertain and record the number of valid ballot documents.

**STV46. The quota**

STV46.1 The returning officer is to divide the number of valid ballot documents by a number exceeding by one the number of members to be elected.

STV46.2 The result, increased by one, of the division under rule STV46.1 (any fraction being disregarded) shall be the number of votes sufficient to secure the election of a candidate (in these rules referred to as “the quota”).

STV46.3 At any stage of the count a candidate whose total votes equals or exceeds the quota shall be deemed to be elected, except that any election where there is only one vacancy a candidate shall not be deemed to be elected until the procedure set out in rules STV47.1 to STV47.3 has been complied with.

**STV47. Transfer of votes**

STV47.1 Where the number of first preference votes for any candidate exceeds the quota, the returning officer is to sort all the ballot documents on which first preference votes are given for that candidate into sub- parcels so that they are grouped:

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

STV47.2 The returning officer is to count the number of ballot documents in each parcel referred to in rule STV47.1.

STV47.3 The returning officer is, in accordance with this rule and rule STV48, to transfer each sub-parcel of ballot documents referred to in rule STV47.1(a) to the candidate for whom the

next available preference is given on those ballot documents.

STV47.4 The vote on each ballot document transferred under rule STV47.3 shall be at a value ("the transfer value") which:

- (a) reduces the value of each vote transferred so that the total value of all such votes does not exceed the surplus, and
- (b) is calculated by dividing the surplus of the candidate from whom the votes are being transferred by the total number of the ballot documents on which those votes are given, the calculation being made to two decimal places (ignoring the remainder if any).

STV47.5 Where at the end of any stage of the count involving the transfer of ballot documents, the number of votes for any candidate exceeds the quota, the returning officer is to sort the ballot documents in the sub-parcel of transferred votes which was last received by that candidate into separate sub-parcels so that they are grouped:

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

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

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

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

whichever is the less.

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

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

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

- (a) less than the difference between the total vote then credited to the continuing

candidate with the lowest recorded vote and the vote of the candidate with the next lowest recorded vote, or

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

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

#### **STV48. Supplementary provisions on transfer**

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

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

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

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

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

STV48.4 Where a ballot document is so marked that it is unclear to the returning officer at any



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

## **STV49. Exclusion of candidates**

### **STV49.1 If:**

- (a) all transferable ballot documents which under the provisions of rule STV47 (including that rule as applied by rule STV49.11) and this rule are required to be transferred, have been transferred, and
- (b) subject to rule STV50, one or more vacancies remain to be filled,

the returning officer shall exclude from the election at that stage the candidate with the then lowest vote (or, where rule STV49.12 applies, the candidates with the then lowest votes).

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

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

### **STV49.3 The returning officer shall, in accordance with this rule and rule STV48, transfer each sub-parcel of ballot documents referred to in rule STV49.2 to the candidate for whom the next available preference is given on those ballot documents.**

### **STV49.4 The exclusion of a candidate, or of two or more candidates together, constitutes a further stage of the count.**

### **STV49.5 If, subject to rule STV50, one or more vacancies still remain to be filled, the returning officer shall then sort the transferable ballot documents, if any, which had been transferred to any candidate excluded under rule STV49.1 into sub-parcels according to their transfer value.**

### **STV49.6 The returning officer shall transfer those ballot documents in the sub-parcel of transferable ballot documents with the highest transfer value to the continuing candidates in accordance with the next available preferences given on those ballot documents (thereby passing over candidates who are deemed to be elected or are**

excluded).

- STV49.7 The vote on each transferable ballot document transferred under rule STV49.6 shall be at the value at which that vote was received by the candidate excluded under rule STV49.1.
- STV9.8 Any ballot documents on which no next available preferences have been expressed shall be set aside as non-transferable votes.
- STV49.9 After the returning officer has completed the transfer of the ballot documents in the sub-parcel of ballot documents with the highest transfer value he or she shall proceed to transfer in the same way the sub-parcel of ballot documents with the next highest value and so on until he has dealt with each sub-parcel of a candidate excluded under rule STV49.1.
- STV49.10 The returning officer shall after each stage of the count completed under this rule:
- (a) record:
    - (i) the total value of votes, or
    - (ii) the total transfer value of votes transferred to each candidate,
  - (b) add that total to the previous total of votes recorded for each candidate and record the new total,
  - (c) record the value of non-transferable votes and add that value to the previous non-transferable votes total, and
  - (d) compare:
    - (i) the total number of votes then recorded for each candidate together with the total number of non-transferable votes, with
    - (ii) the recorded total of valid first preference votes.
- STV49.11 If after a transfer of votes under any provision of this rule, a candidate has a surplus, that surplus shall be dealt with in accordance with rules STV47.5 to STV47.10 and rule STV48.
- STV49.12 Where the total of the votes of the two or more lowest candidates, together with any surpluses not transferred, is less than the number of votes credited to the next lowest candidate, the returning officer shall in one operation exclude such two or more candidates.
- STV49.13 If when a candidate has to be excluded under this rule, two or more candidates each have the same number of votes and are lowest:
- (a) regard shall be had to the total number of votes credited to those candidates at the earliest stage of the count at which they had an unequal number of votes and the candidate with the lowest number of votes at that stage shall be excluded, and

- (b) where the number of votes credited to those candidates was equal at all stages, the returning officer shall decide between the candidates by lot and the candidate on whom the lot falls shall be excluded.

#### **STV50. Filling of last vacancies**

- STV50.1 Where the number of continuing candidates is equal to the number of vacancies remaining unfilled the continuing candidates shall thereupon be deemed to be elected.
- STV50.2 Where only one vacancy remains unfilled and the votes of any one continuing candidate are equal to or greater than the total of votes credited to other continuing candidates together with any surplus not transferred, the candidate shall thereupon be deemed to be elected.
- STV50.3 Where the last vacancies can be filled under this rule, no further transfer of votes shall be made.

#### **STV51. Order of election of candidates**

- STV51.1 The order in which candidates whose votes equal or exceed the quota are deemed to be elected shall be the order in which their respective surpluses were transferred, or would have been transferred but for rule STV47.10.
- STV51.2 A candidate credited with a number of votes equal to, and not greater than, the quota shall, for the purposes of this rule, be regarded as having had the smallest surplus at the stage of the count at which he obtained the quota.
- STV51.3 Where the surpluses of two or more candidates are equal and are not required to be transferred, regard shall be had to the total number of votes credited to such candidates at the earliest stage of the count at which they had an unequal number of votes and the surplus of the candidate who had the greatest number of votes at that stage shall be deemed to be the largest.
- STV51.4 Where the number of votes credited to two or more candidates were equal at all stages of the count, the returning officer shall decide between them by lot and the candidate on whom the lot falls shall be deemed to have been elected first.

#### **FPP51. Equality of votes**

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

## PART 7 FINAL PROCEEDINGS IN CONTESTED AND UNCONTESTED ELECTIONS

### FPP52. Declaration of result for contested elections

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

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

FPP52.2 The returning officer is to make:

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

available on request.

### STV52. Declaration of result for contested elections

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

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

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

STV52.2 The returning officer is to make:

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

available on request.

## **53. Declaration of result for uncontested elections**

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

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

## PART 8 DISPOSAL OF DOCUMENTS

### 54. Sealing up of documents relating to the poll

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

- (a) the counted ballot papers, internet voting records, telephone voting records and text voting records,
- (b) the ballot papers and text voting records endorsed with "rejected in part",
- (c) the rejected ballot papers and text voting records, and
- (d) the statement of rejected ballot papers and the statement of rejected text voting records,

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

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

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

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

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

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

### 55. Delivery of documents

55.1 Once the documents relating to the poll have been sealed up and endorsed pursuant to

rule 56, the returning officer is to forward them to the chair of the corporation.

## **56. Forwarding of documents received after close of the poll**

### **56.1 Where:**

- (a) any voting documents are received by the returning officer after the close of the poll, or
- (b) any envelopes addressed to eligible voters are returned as undelivered too late to be resent, or
- (c) any applications for replacement voting information are made too late to enable new voting information to be issued,

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

## **57. Retention and public inspection of documents**

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

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

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

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

### **58.1 The corporation may not allow:**

- (a) the inspection of, or the opening of any sealed packet containing –
  - (i) any rejected ballot papers, including ballot papers rejected in part,
  - (ii) any rejected text voting records, including text voting records rejected in part,
  - (iii) any disqualified documents, or the list of disqualified documents,
  - (iv) any counted ballot papers, internet voting records, telephone voting records or text voting records, or

(v) the list of eligible voters, or

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

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

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

58.3 The board of directors of the corporation's consent may be on any terms or conditions that it thinks necessary, including conditions as to –

(a) persons,

(b) time,

(c) place and mode of inspection,

(d) production or opening,

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

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

(a) in giving its consent, and

(b) in making the documents available for inspection

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

(i) that his or her vote was given, and

(ii) that Monitor has declared that the vote was invalid.



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

### FPP59. Countermand or abandonment of poll on death of candidate

FPP59.1 If at a contested election, proof is given to the returning officer's satisfaction before the result of the election is declared that one of the persons named or to be named as a candidate has died, then the returning officer is to:

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

FPP59.2 Where a new election is ordered under rule FPP59.1, no fresh nomination is necessary for any candidate who was validly nominated for the election where the poll was countermanded or abandoned but further candidates shall be invited for that constituency or class.

FPP59.3 Where a poll is abandoned under rule FPP59.1(a), rules FPP59.4 to FPP59.7 are to apply.

FPP59.4 The returning officer shall not take any step or further step to open envelopes or deal with their contents in accordance with rules 38 and 39, and is to make up separate sealed packets in accordance with rule 40.

FPP59.5 The returning officer is to:

- (a) count and record the number of ballot papers, internet voting records, telephone voting records and text voting records that have been received,
- (b) seal up the ballot papers, internet voting records, telephone voting records and text voting records into packets, along with the records of the number of ballot papers, internet voting records, telephone voting records and text voting records and

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

FPP59.6 The returning officer is to endorse on each packet a description of:

- (a) its contents,

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

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

#### **STV59. Countermand or abandonment of poll on death of candidate**

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

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

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

## PART 10 ELECTION EXPENSES AND PUBLICITY

### *Election expenses*

#### **60. Election expenses**

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

#### **61. Expenses and payments by candidates**

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

#### **62. Election expenses incurred by other persons**

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

### *Publicity*

#### **63. Publicity about election by the corporation**

- 63.1 The corporation may:
- (a) compile and distribute such information about the candidates, and
  - (b) organise and hold such meetings to enable the candidates to speak and respond to questions,

as it considers necessary.

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

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

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

#### **64. Information about candidates for inclusion with voting information**

64.1 The corporation must compile information about the candidates standing for election, to be distributed by the returning officer pursuant to rule 24 of these rules.

64.2 The information must consist of:

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

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

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

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



## PART 11 QUESTIONING ELECTIONS AND THE CONSEQUENCE OF IRREGULARITIES

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### 66. Application to question an election

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

**67. Secrecy**

67.1 The following persons:

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

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

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

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

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

**68. Prohibition of disclosure of vote**

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

**69. Disqualification**

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

- (a) a member of the corporation,
- (b) an employee of the corporation,
- (c) a director of the corporation, or

- (d) employed by or on behalf of a person who has been nominated for election.

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

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

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

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



The Foundation Trust Network (FTN) is the membership organisation for NHS acute hospitals and community, mental health and ambulance services.

The FTN acts as the public voice for those NHS trusts, helping to deliver high quality care and shaping the system in which they operate.

The FTN has over 227 members – more than 92% of all NHS foundation trusts and aspirant trusts.

For further information contact John Coutts, Governance Advisor  
Tel 020 7304 6875 Email: [John.Coutts@FoundationTrustNetwork.org](mailto:John.Coutts@FoundationTrustNetwork.org)

One Birdcage Walk, London SW1H 9JJ  
Tel 020 7304 6977  
[enquiries@foundationtrustnetwork.org](mailto:enquiries@foundationtrustnetwork.org)  
[www.foundationtrustnetwork.org](http://www.foundationtrustnetwork.org)

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