



Black Country Healthcare NHS Foundation Trust

Constitution

Approved: Board of Directors – 11 April 2025

Approved: Assembly of Governors – 7 May 2025



Together with you to achieve 
healthier, happier lives

Constitution

Section	Table of Contents	Page
1.	Interpretation and Definitions	4
2.	Name	4
3.	Principle purpose	4
4.	Powers	5
5.	Membership and Constituencies	5
6.	Application for Membership	6
7.	Public constituency	6
8.	Staff constituency	6
9.	Restriction of membership	7
10.	Council of Governors – Composition	7
11.	Council of Governors – election of governors	7
12.	Council of Governors – tenure	8
13.	Council of Governors – disqualification and removal	8
14.	Council of Governors – duties	9
15.	Council of Governors – meeting of governors	9
16.	Council of Governors – standing orders	9
17.	Council of Governors – referral to the panel	10
18.	Council of Governors – conflicts of interest of governors	10
19.	Council of Governors – travel expenses	10
20.	Council of Governors – further provisions	10
21.	Board of Directors – composition	10
22.	Board of Directors – general duty	11
23.	Board of Directors – qualification for appointment as non-executive	11
24.	Board of Directors – appointment/removal of chair etc	11
25.	Board of Directors – appointment of deputy chair	11
26.	Board of Directors – appointment/removal of the Chief Executive etc	12
27.	Board of Directors – disqualification	12
28.	Board of Directors – meetings	12
29.	Board of Directors – standing orders	13
30.	Board of Directors – conflicts off interests of directors	13
31.	Board of Directors – remuneration and terms of office	14
32.	Registers	15
33.	Admission to and removal from the registers	15
34.	Registers – inspection and copies	15
35.	Documents available for public inspection	15
36.	Auditor	17
37.	Audit Committee	17
38.	Annual Accounts	17
39.	Annual Report and forward plans and NHS work	17
40.	Presentation of the annual accounts and reports to governors	18
41.	Instruments	19
42.	Amendment of the Constitution	19
43.	Mergers etc and Significant Transactions	19

Annex 1	The Public Constituency	20
Annex 2	The Staff Constituency	21
Annex 3	The Patients Constituency (N/A)	22
Annex 4	Composition of the Council of Governors	23
Annex 5	The Model Election Rules	24
Annex 6	Additional Provisions – Council of Governors	54
Annex 7	Standing Orders – Council of Governors	60
Annex 8	Standing Orders – Board of Directors	69
Annex 9	Further Provisions	78

1 Interpretation and definitions

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

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

the 2006 Act is the National Health Service Act 2006.

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

the 2022 Act is the Health and Care Act 2022

Constitution means the constitution and all annexes to it.

NHS England / NHSE – the body established by section 1H of the 2006 Act

terms of authorisation are the terms of authorisation issued by NHSE under Section 35 of the 2006 Act.

voluntary organisation is a body, other than a public or local authority, the activities of which are not carried on for profit.

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

the **Council of Governors** has the same meaning as “Council of Governors” in the 2012 Act

Trust Secretary shall mean that person appointed by the Trust to undertake specified functions in the Constitution, though may not be the Trust Secretary by title of post

2. Name

The name of the foundation Trust is Black Country Healthcare NHS Foundation Trust (the Trust).

3. Principal purpose

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

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

- 3.3** The Trust may provide goods and services for any purposes related to—
- 3.3.1** the provision of services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness, and
 - 3.3.2** the promotion and protection of public health.
- 3.4** The Trust may also carry on activities other than those mentioned in the above paragraph for the purpose of making additional income available in order better to carry on its principal purpose.
- 3.5** The Trust may carry out research in connection with the provision of health care and make facilities and staff available for the purposes of education, training or research carried on by others.

4. Powers

4.1 The powers of the Trust are set out in the 2006, 2012 and 2022 Acts, subject to any restrictions in the terms of authorisation

4.2 The powers of the Trust shall be exercised by the Board of Directors on behalf of the Trust.

4.3 In certain circumstances, under Section 65 of the 2006, the Trust may delegate responsibility for the exercise of any of its functions to another statutory organisation; another statutory organisation may delegate responsibility for the exercise of any of its functions to the Trust; or the Trust may work jointly with one or more statutory organisation to make exercise their functions jointly. The Trust will manage its powers in accordance with any specific arrangements put in place at the time the delegation is agreed.

4.4 Any of these powers may be delegated to a committee of Directors or to an Executive Director, or as and where permitted or required by the Mental Health Act 1983 to committees comprising or including persons who are not Directors of the Trust.

5. Membership and constituencies

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

- 5.1** a public constituency
- 5.2** a staff constituency
- 5.3** a stakeholder constituency

6. Application for membership

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

7. Public Constituency

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

8. Staff Constituency

- 8.1 An individual who is employed by the Trust under a contract of employment with the Trust may become or continue as a member of the Trust provided:
 - 8.1.1 They are employed by the Trust under a contract of employment which has no fixed term or has a fixed term of at least 12 months; or
 - 8.1.2 They have been continuously employed by the Trust under a contract of employment for at least 12 months.
- 8.2 Individuals who exercise functions for the purposes of the Trust, other 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.
- 8.3 Those individuals who are eligible for membership of the Trust by reason of the previous provisions are referred to collectively as the Staff Constituency.
- 8.4 The minimum number of members the Staff Constituency is specified in Annex 2.

Automatic membership by default – staff

- 8.6 An individual who is:

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

8.6.2 invited by the Trust to become a member of the Staff Constituency,

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

9. Restriction on membership

9.1 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.

9.2 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.

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

10. Council of Governors – composition

10.1 The Trust is to have a Council of Governors, which shall comprise both elected and appointed governors.

10.2 The composition of the Council of Governors is specified in Annex 4.

10.3 The members of the Council of Governors, other than the appointed members, shall be chosen by election by their constituency or, where there are classes within a constituency, by their class within that constituency.

11. Council of Governors – election of governors

11.1 Elections for elected members of the Council of Governors shall be conducted in accordance with the Model Rules for Elections, as may be varied from time to time.

11.2 The Model Rules for Elections, as may be varied from time to time, form part of this constitution and are attached at Annex 5.

11.3 A variation of the Model Rules by the Department of Health shall not constitute a variation of the terms of this constitution. For the avoidance of doubt, the Trust cannot amend the Model Rules.

11.4 An election, if contested, shall be by secret ballot.

12. Council of Governors - tenure

- 12.1** An elected governor may hold office for a period of up to 3 years commencing immediately after the election is announced
- 12.2** An elected governor shall cease to hold office if they cease to be a member of the constituency or class by which he was elected.
- 12.3** An elected governor shall hold office for an initial term of 3 years and shall be eligible for re-election for subsequent terms of not more than 3 years subject to a maximum period of office of 6 years.
- 12.4** An appointed governor shall cease to hold office if the appointing organisation withdraws its sponsorship of them.
- 12.5** An appointed governor shall be eligible for re-appointment at the end of their term subject to 12.3

13. Council of Governors – disqualification and removal

- 13.1** The following may not become or continue as a member of the Council of Governors:
 - 13.1.1** a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;
 - 13.1.2** 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;
 - 13.1.3** 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.
- 13.2** Governors must be at least 16 years of age at the date they are nominated for election or appointment
- 13.3** If a governor fails to attend TWO successive meetings of the Council of Governors, their tenure of office is to be terminated unless the other governors are satisfied that:
 - 13.3.1** The absence was due to a reasonable cause; and
 - 13.3.2** They will be able to start attending meetings of the Council again within such a period as they consider reasonable.

The Company Secretary will bring at least once a year a full report to the Council of Governors listing attendance.

- 13.4 Further provisions as to the circumstances in which an individual may not become or continue as a member of the Council of Governors are set out in Annex 6.
- 13.5 Provision for the management of a complaint against a Governor, and the removal of Governors is set out in Annex 6.

14 Council of Governors – duties

14.1 The general duties of the Council of Governors are –

14.1.1 to hold the Non-Executive Directors individually and collectively to account for the performance of the Board of Directors, and

14.1.2 to represent the interests of the members of the Trust as a whole and the interests of the public.

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

15. Council of Governors – meetings of Governors

15.1 The Chair of the Trust (i.e. the Chair of the Board of Directors, appointed in accordance with the provisions of paragraph 24.1 below) or, in their absence, the Deputy Chair (appointed in accordance with the provisions of paragraph 25 below), or in their absence, one of the Non-Executive Directors shall preside at meetings of the Council of Governors.

15.2 Meetings of the Council of Governors shall be open to members of the public, unless the Council of Governors decides otherwise in relation to all or part of a meeting for reasons of commercial and individual confidentiality, or other proper grounds. Members of the public may be excluded from a meeting if it is considered that their behaviour prevents the proper conduct of the meeting.

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

16. Council of Governors – standing orders

The standing orders for the practice and procedure of the Council of Governors, as may be varied from time to time, are attached at Annex 7.

17 Council of Governors – referral to the panel

17.1 In this paragraph, the Panel means a panel of persons appointed by NHSE to which a Governor of an NHS foundation Trust may refer a question as to whether the Trust has failed or is failing—

17.1.1 to act in accordance with its constitution, or

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

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

18. Council of Governors - conflicts of interest of governors

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

19. 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.

20. Council of Governors – further provisions

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

21. Board of Directors – composition

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

21.2 The Board of Directors is to comprise:

21.2.1 a Non-Executive Chair

21.2.2 up to seven other Non-Executive Directors; and

21.2.3 up to seven voting Executive Directors, providing that the number of Executive Directors is not more than the number of non- Executive Directors at paragraph 21.2.2

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

21.4 The Chief Executive shall be the Accounting Officer.

21.5 One of the Executive Directors shall be the Chief Finance Officer

21.6 One of the Executive Directors is to be a registered medical practitioner or a registered dentist (within the meaning of the Dentists Act 1984).

21.7 One of the Executive Directors is to be a registered nurse or registered midwife.

22 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.

23. Board of Directors – qualification for appointment as a Non-Executive Director

A person may be appointed as a Non-Executive Director only if –

23.1 They are a member of the Public Constituency, and

23.2 They are not disqualified by virtue of paragraph 27 below.

24. Board of Directors – appointment and removal of Chair and other Non-Executive Directors

24.1 The Council of Governors at a general meeting of the Council of Governors shall appoint or remove the Chair of the Trust and the other Non-Executive Directors.

24.2 Removal of the Chair or another Non-Executive Director shall require the approval of three-quarters of the members of the Council of Governors.

25. Board of Directors – appointment of deputy Chair

The Council of Governors at a general meeting of the Council of Governors shall appoint one of the Non-Executive Directors as a Deputy Chair upon recommendation from the Chair.

26. Board of Directors - appointment and removal of the Chief Executive and other Executive Directors

- 26.1 The Non-Executive Directors shall appoint or remove the Chief Executive.
- 27.2 The appointment of the Chief Executive shall require the approval of the Council of Governors.
- 27.3 A committee consisting of the Chair, the Chief Executive and the other Non-Executive Directors shall appoint or remove the other Executive Directors.

27. Board of Directors – disqualification

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

- 27.1 a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged.
- 27.2 a person who has made a composition or arrangement with, or granted a Trust Deed for, their creditors and has not been discharged in respect of it.
- 27.3 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.
- 27.4 Further provisions as to the circumstances in which an individual may not become or continue as a member of the Board of Directors are set out in Annex 9 of this constitution

28. Board of Directors – meetings

- 28.1 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.
- 28.2 The “special reasons” referred to in paragraph 30.1 above will include:
 - a) matters of commercial sensitivity
 - b) matters that include person identifiable information
 - c) other matters which if disclosed may breach a confidence

- 28.3** 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.

29. Board of Directors – standing orders

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

30. Board of Directors - conflicts of interest of Directors

30.1 The duties that a Director of the Trust has by virtue of being a Director include in particular –

30.1.1 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.

30.1.2 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.

30.2 The duty referred to in sub-paragraph 30.1.1 is not infringed if –

30.2.1 The situation cannot reasonably be regarded as likely to give rise to a conflict of interest, or

30.2.2 The matter has been authorised in accordance with the constitution.

30.3 The matter (interest) referred to in 30.2.2 is to be considered authorised when the following conditions have been met:

30.3.1 the matter is properly included as an agenda item for approval at a meeting of the Board of Directors;

30.3.2 the Director to whom the matter refers is excluded from both the quorum and vote on the matter; and

30.3.3 there is a majority of members voting and present in favour of authorisation.

30.4 The duty referred to in sub-paragraph 30.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.

30.5 In sub-paragraph 30.1.2, “third party” means a person other than –

30.5.1 The Trust, or

30.5.2 A person acting on its behalf.

30.6 If a Director of the Trust has in any way an actual or potential; personal, pecuniary or family; direct or indirect interest (as defined in the Standing Orders at annex 8 to the constitution) in a proposed transaction or arrangement with the Trust, the Director must declare the nature and extent of that interest to the other members of the Board of Directors as soon as he/she becomes aware of it.

30.7 If a declaration under this paragraph proves to be, or becomes, inaccurate, incomplete, a further declaration must be made.

30.8 Any declaration required by this paragraph must be made before the Trust enters into the transaction or arrangement.

30.9 This paragraph does not require a declaration of an interest of which the Director is not aware or where the Director is not aware of the transaction or arrangement in question.

30.10 A Director need not declare an interest –

30.10.1 If it cannot reasonably be regarded as likely to give rise to a conflict of interest; or

30.10.2 If, or to the extent that, the Directors are already aware of it; or

30.10.3 If, or to the extent that, it concerns terms of the Director's appointment that have been or are to be considered –

30.10.3.1 By a meeting of the Board of Directors, or

30.10.3.2 By a committee of the Directors appointed for the purpose under the constitution.

31. Board of Directors – remuneration and terms of office

31.1 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.

31.1.2 The Chair shall establish a Governor member Appointments and Remuneration Committee with its own terms of reference. The committee will be responsible for making recommendations to the Council on Non-Executive Director remuneration and terms of office.

31.2 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.

32. Registers

The Trust shall have:

- 32.1** 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 he/she belongs;
- 32.2** a register of members of the Council of Governors;
- 32.3** a register of interests of Governors;
- 32.4** a register of Directors; and
- 32.5** a register of interests of the Directors.

33. Admission to and removal from the registers

- 33.1** The Trust Secretary shall remove from the Register of Members the names of any members who cease to be entitled to membership under the provisions of this constitution.

34. Registers – inspection and copies

- 34.1** The Trust shall make the registers specified in paragraph 32 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.
- 34.2** The Trust shall not make any part of its registers available for inspection by members of the public which shows details of any member of the Trust, if the member so requests.
- 34.3** So far as the registers are required to be made available:
 - 34.3.1** they are to be available for inspection free of charge at all reasonable times; and
 - 34.3.2** a person who requests a copy of or extract from the registers is to be provided with a copy or extract.
- 34.4** If the person requesting a copy or extract is not a member of the Trust, the Trust may impose a reasonable charge for doing so.

35. Documents available for public inspection

- 35.1** The Trust shall make the following documents available for inspection by members of the public free of charge at all reasonable times:
- 35.1.1** a copy of the current constitution;
 - 35.1.2** a copy of the latest annual accounts and of any report of the auditor on them;
 - 35.1.3** a copy of the latest annual report;
- 35.2** 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:
- 35.2.1** 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.
 - 35.2.2** a copy of any report laid under section 65D (appointment of Trust special administrator) of the 2006 Act.
 - 35.2.3** a copy of any information published under section 65D (appointment of Trust special administrator) of the 2006 Act.
 - 35.2.4** a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act.
 - 35.2.5** a copy of any statement provided under section 65F (administrator's draft report) of the 2006 Act.
 - 35.2.6** 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 (NHSE decision), 65KB (Secretary of State's response to NHSE 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.
 - 35.2.7** a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act.
 - 35.2.8** a copy of any final report published under section 65I (administrator's final report),
 - 35.2.9** 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.

35.2.10 a copy of any information published under section 65M (replacement of Trust special administrator) of the 2006 Act.

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

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

36. Auditor

36.1 The Trust shall have an auditor.

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

37. 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.

38. Accounts

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

38.2 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.

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

38.4 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.

38.5 The functions of the Trust with respect to the preparation of the annual accounts shall be delegated to the Accounting Officer.

39. Annual report, forward plans and non NHS work

39.1 The Trust shall prepare an Annual Report and send it to NHS England

39.2 The Trust shall give information as to its forward planning in respect

of each financial year to NHS England.

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

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

39.5 Each forward plan must include information about –

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

39.5.2 the income it expects to receive from doing so.

39.6 Where a forward plan contains a proposal that the Trust carry on an activity of a kind mentioned in sub-paragraph 39.5.1 the Council of Governors must –

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

39.6.2 notify the Directors of the Trust of its determination.

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

40. Presentation of the annual accounts and reports to the governors and members

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

40.1.1 the annual accounts;

40.1.2 any report of the auditor on them;

40.1.3 the annual report; and

40.1.4 the annual quality report (account)

40.2 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.

40.3 The Trust may combine a meeting of the Council of Governors convened for the purposes of sub-paragraph 40.1 with the Annual Members' meeting.

41. Instruments

41.1 The Trust shall have a seal.

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

41.3 References in this Constitution to legislation shall include all amendments, replacements or re-enactments made

42. Amendment of the constitution

42.1 Amendments by the Trust of its constitution are to be made, only if:

42.1.1 more than half the members of the board of Directors voting approve the amendments, and

42.1.2 more than half the members of the Council of Governors voting approve the amendments

42.2 Where however amendments to the Constitution are in relation to the powers or duties of the Council of Governors (other than those provided for by statute), then:

42.2.1 such amendment must be presented by at least one member of the Council of Governors to the Annual Meeting of the Members (as referred to in paragraphs 40.2 and 40.3 above), and

42.2.2 the members of the Trust will be offered a vote on the proposed amendment as presented, and

42.2.3 the amendment will be carried if approved by more than half the members voting;

42.2.4 If less than half the members voting approve the amendment the amendment will cease to have effect.

43. Mergers etc. and significant transactions

43.1 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.

43.2 The Trust may only enter into a significant transaction with approval of more than half of the members of the Council of Governors.

ANNEX 1

THE PUBLIC CONSTITUENCY

<u>Area</u>	<u>Electoral Area</u>
Sandwell	All those within the borough of Sandwell
Walsall	All those within the borough of Walsall
Dudley	All those within the borough of Dudley
Wolverhampton	All those within the city of Wolverhampton
Birmingham & the Wider West Midlands	All those within the city of Birmingham and those within the wider West Midlands area, coterminous with that area under the responsibility of the former West Midlands Strategic Health Authority
Central England, Rest of England and Wales	All electoral areas within Central England, Rest of England and Wales except for those electoral areas forming part of another area of the Public Constituency

The minimum number of members in each area shall be 12.

ANNEX 2

THE STAFF CONSTITUENCY

As of 1st September 2022, the Trust has a single Staff Constituency.

The minimum number of members in the Staff Constituency shall be 56.

ANNEX 3

THE PATIENTS' CONSTITUENCY

Not applicable

ANNEX 4

COMPOSITION OF COUNCIL OF GOVERNORS

The Council of Governors shall comprise elected governors and appointed governors.

Elected governors include those elected by the members of the areas within the Public Constituency, and those elected by the members of the Staff Constituency.

Appointed Governors will include those appointed by bodies as required by statute, and those appointed by partnership organisations identified by the Trust. More than half the aggregate number of Governors within the Council of Governors will be those within the Public Constituency.

The composition of the Council of Governors is as follows:

Elected Governors:

Numbers effective

	Until 31/8/20	From 1/9/20	From 1/9/22	From 2025
<u>Areas within the Public Constituency</u>				
Sandwell	7	6	6	3
Walsall	3	6	6	3
Dudley	4	6	6	3
Wolverhampton	7	6	6	3
Birmingham & the Wider West Midlands	1	2	2	1
Central England, rest of England and Wales	0	1	1	1
<u>The Staff Constituency</u>				
Generic	7	4	8	4
DWMH	0	4	0	0
<u>Appointed Governors:</u>				
Sandwell Metropolitan Borough Council	1	1	1	1
Wolverhampton City Council	1	1	1	1
Dudley Metropolitan Borough Council	1	1	1	1
Walsall Metropolitan Borough Council	1	1	1	1
WM Police				1
University of Wolverhampton				1
Total				24

ANNEX 5

THE MODEL ELECTION RULES

Part 1 - Interpretation

1. Interpretation

Part 2 – Timetable for election

2. Timetable
3. Computation of time

Part 3 – Returning officer

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

Part 4 - Stages Common to Contested and Uncontested Elections

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

Part 5 – Contested elections

19. Poll to be taken by ballot
20. The ballot paper
21. The declaration of identity

Action to be taken before the poll

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

The poll

26. Eligibility to vote
27. Voting by persons who require assistance
28. Spoilt ballot papers
29. Lost ballot papers
30. Issue of replacement ballot paper
31. Declaration of identity for replacement ballot papers

Procedure for receipt of envelopes

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

Part 6 - Counting the votes

- stv36. Interpretation of Part 6
37. Arrangements for counting of the votes
38. The count
- stv39. Rejected ballot papers
- fpp39. Rejected ballot papers
- stv40. First stage
- stv41. The quota
- stv42. Transfer of votes
- stv43. Supplementary provisions on transfer
- stv44. Exclusion of candidates
- stv45. Filling of last vacancies
- stv46. Order of election of candidates
- fpp46. Equality of votes

Part 7 – Final proceedings in contested and uncontested elections

- fpp47. Declaration of result for contested elections
- stv47. Declaration of result for contested elections
48. Declaration of result for uncontested elections

Part 8 – Disposal of documents

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

Part 9 – Death of a candidate during a contested election

- fpp54. Countermand or abandonment of poll on death of candidate
- stv54. Countermand or abandonment of poll on death of candidate

Part 10 – Election expenses and publicity

Expenses

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

Publicity

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

Part 11 – Questioning elections and irregularities

- 61. Application to question an election

Part 12 – Miscellaneous

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

Part 1 - Interpretation

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

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

“election” means an election by a constituency, or by a class within a constituency, to fill a vacancy among one or more posts on the Council of governors;

“the regulator” means the body corporate known as NHSE, as provided by section 61 of the Health and Social Care Act 2012; and

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

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

Part 2 – Timetable for election

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

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

3. Computation of time - (1) In computing any period of time for the purposes of the timetable -

a Saturday or Sunday;
Christmas day, Good Friday, or a bank holiday, or
a day appointed for public thanksgiving or mourning,

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

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

Part 3 – Returning officer

4. Returning officer – (1) Subject to rule 64, the returning officer for an election is to be appointed by the corporation.

(2) Where two or more elections are to be held concurrently, the same returning officer may be appointed for all those elections.

5. Staff – Subject to rule 64, the returning officer may appoint and pay such staff, including such technical advisers, as he or she considers necessary for the purposes of the election.

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

any expenses incurred by that officer in the exercise of his or her functions under these rules, such remuneration and other expenses as the corporation may determine.

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

Part 4 - Stages Common to Contested and Uncontested Elections

8. Notice of election – The returning officer is to publish a notice of the election stating –

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

9. Nomination of candidates – (1) Each candidate must nominate themselves on a single nomination paper.

(2) The returning officer-

is to supply any member of the corporation with a nomination paper, and is to prepare a nomination paper for signature at the request of any member of the corporation,

but it is not necessary for a nomination to be on a form supplied by the returning officer.

10. Candidate's particulars – (1) The nomination paper must state the candidate's -

full name,
contact address in full, and
constituency, or class within a constituency, of which the candidate is a member.

11. Declaration of interests – The nomination paper must state –

- (a) any financial interest that the candidate has in the corporation, and
- (b) whether the candidate is a member of a political party, and if so, which party,

and if the candidate has no such interests, the paper must include a statement to that effect.

12. Declaration of eligibility – The nomination paper must include a declaration made by the candidate–

- (a) that he or she is not prevented from being a member of the board 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 – The nomination paper must be signed and dated by the candidate, indicating that –

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

14. Decisions as to the validity of nomination – (1) Where a nomination paper is received by the returning officer in accordance with these rules, the candidate is deemed to stand for election unless and until the returning officer-

decides that the candidate is not eligible to stand,
decides that the nomination paper is invalid,
receives satisfactory proof that the candidate has died, or
receives a written request by the candidate of their withdrawal from candidacy.

(2) The returning officer is entitled to decide that a nomination paper is invalid only on one of the following grounds -

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

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

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

(5) The returning officer is to send notice of the decision as to whether a nomination is valid or invalid to the candidate at the contact address given in the candidate's nomination paper.

15. Publication of statement of candidates – (1) The returning officer is to prepare and publish a statement showing the candidates who are standing for election.

(2) The statement must show –

- (a) the name, contact address, and constituency or class within a constituency of each candidate standing, and
- (b) the declared interests of each candidate standing,

as given in their nomination paper.

(3) The statement must list the candidates standing for election in alphabetical order by surname.

(4) The returning officer must send a copy of the statement of candidates and copies of the nomination papers to the corporation as soon as is practicable after publishing the statement.

16. Inspection of statement of nominated candidates and nomination papers – (1) The corporation is to make the statements of the candidates and the nomination papers supplied by the returning officer under rule 15(4) available for inspection by members of the public free of charge at all reasonable times.

(2) If a person requests a copy or extract of the statements of candidates or their nomination papers, the corporation is to provide that person with the copy or extract free of charge.

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

18. Method of election – (1) If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is greater than the number of members to be elected to the board of governors, a poll is to be taken in accordance with Parts 5 and 6 of these rules.

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

(3) If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is less than the number of members to be elected to be board 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 – (1) The votes at the poll must be given by secret ballot.

(2) The votes are to be counted and the result of the poll determined in accordance with Part 6 of these rules.

20. The ballot paper – (1) The ballot of each voter is to consist of a ballot paper with the persons remaining validly nominated for an election after any withdrawals under these rules, and no others, inserted in the paper.

(2) Every ballot paper must specify –

- (a) the name of the corporation,
- (b) the constituency, or class within a constituency, for which the election is being held,
- (c) the number of members of the board of governors to be elected from that constituency, or class within that constituency,
- (d) the names and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
- (e) instructions on how to vote,
- (f) if the ballot paper is to be returned by post, the address for its return and the date and time of the close of the poll, and
- (g) the contact details of the returning officer.

(3) Each ballot paper must have a unique identifier.

(4) Each ballot paper must have features incorporated into it to prevent it from being reproduced.

21. The declaration of identity (public and patient constituencies) – (1) In respect of an election for a public or patient constituency a declaration of identity must be issued with each ballot paper.

(2) The declaration of identity is to include a declaration –

- (a) that the voter is the person to whom the ballot paper was addressed,
- (b) that the voter has not marked or returned any other voting paper in the election, and
- (c) for a member of the public or patient constituency, of the particulars of that member's qualification to vote as a member of the constituency or class within a constituency for which the election is being held.

(3) The declaration of identity is to include space for –

- (a) the name of the voter,
- (b) the address of the voter,
- (c) the voter's signature, and
- (d) the date that the declaration was made by the voter.

(4) The voter must be required to return the declaration of identity together with the ballot paper.

(5) The declaration of identity must caution the voter that, if it is not returned with the ballot paper, or if it is returned without being correctly completed, the voter's ballot paper may be declared invalid.

Action to be taken before the poll

22. List of eligible voters – (1) The corporation is to provide the returning officer with a list of the members of the constituency or class within a constituency for which the election is being held who are eligible to vote by virtue of rule 26 as soon as is reasonably practicable after the final date for the delivery of notices of withdrawals by candidates from an election.

(2) The list is to include, for each member, a mailing address where his or her ballot paper is to be sent.

23. Notice of poll - The returning officer is to publish a notice of the poll stating–

- (a) the name of the corporation,
- (b) the constituency, or class within a constituency, for which the election is being held,
- (c) the number of members of the board of governors to be elected from that constituency, or class with that constituency,
- (d) the names, contact addresses, and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
- (e) that the ballot papers for the election are to be issued and returned, if appropriate, by post,
- (f) the address for return of the ballot papers, and the date and time of the close of the poll,
- (g) the address and final dates for applications for replacement ballot papers, and
- (h) the contact details of the returning officer.

24. Issue of voting documents by returning officer – (1) As soon as is reasonably practicable on or after the publication of the notice of the poll, the returning officer is to send the following documents to each member of the corporation named in the list of eligible voters–

- (a) a ballot paper and ballot paper envelope,
- (b) a declaration of identity (if required),
- (c) information about each candidate standing for election, pursuant to rule 59 of these rules, and
- (d) a covering envelope.

(2) The documents are to be sent to the mailing address for each member, as specified in the list of eligible voters.

25. Ballot paper envelope and covering envelope – (1) The ballot paper envelope must have clear instructions to the voter printed on it, instructing the voter to seal the ballot paper inside the envelope once the ballot paper has been marked.

(2) The covering envelope is to have –

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

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

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

The poll

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

27. Voting by persons who require assistance – (1) The returning officer is to put in place arrangements to enable requests for assistance to vote to be made.

(2) Where the returning officer receives a request from a voter who requires assistance to vote, the returning officer is to make such arrangements as he or she considers necessary to enable that voter to vote.

28. Spoilt ballot papers (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 a “spoilt ballot paper”), that voter may apply to the returning officer for a replacement ballot paper.

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

(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 declaration of identity, if required, has not been returned.

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

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

29. Lost ballot papers – (1) Where a voter has not received his or her ballot paper by the fourth day before the close of the poll, that voter may apply to the returning officer for a replacement ballot paper.

(2) The returning officer may not issue a replacement ballot paper for a lost ballot paper unless 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 ballot paper, and
- (c) has ensured that the declaration of identity if required has not been returned.

(3) After issuing a replacement ballot paper for a lost ballot paper, the returning officer shall enter in a list (“the list of lost ballot papers”) –

- (a) the name of the voter, and
- (b) the details of the unique identifier of the replacement ballot paper.

30. Issue of replacement ballot paper– (1) If a person applies for a replacement ballot paper under rule 28 or 29 and a declaration of identity has already been received by the returning officer in the name of that voter, the returning officer may not issue a replacement ballot paper unless, in addition to the requirements imposed rule 28(3) or 29(2), 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.

(2) After issuing a replacement ballot paper under this rule, the returning officer shall enter in a list (“the list of tendered ballot papers”) –

- (a) the name of the voter, and
- (b) the details of the unique identifier of the replacement ballot paper issued under this rule.

31. Declaration of identity for replacement ballot papers (public and patient constituencies) – (1) In respect of an election for a public or patient constituency a declaration of identity must be issued with each replacement ballot paper.

(2) The declaration of identity is to include a declaration –

- (a) that the voter has not voted in the election with any ballot paper other than the ballot paper being returned with the declaration, and
- (b) of the particulars of that member’s qualification to vote as a member of the public or patient constituency, or class within a constituency, for which the election is being held.

(3) The declaration of identity is to include space for –

- (a) the name of the voter,
- (b) the address of the voter,
- (c) the voter’s signature, and
- (d) the date that the declaration was made by the voter.

(4) The voter must be required to return the declaration of identity together with the ballot paper.

(5) The declaration of identity must caution the voter that if it is not returned with the ballot paper, or if it is returned without being correctly completed, the replacement ballot paper may be declared invalid.

Procedure for receipt of envelopes

32. Receipt of voting documents – (1) Where the returning officer receives a –

- (a) covering envelope, or
- (b) any other envelope containing a declaration of identity if required, a ballot paper envelope, or a ballot paper,

before the close of the poll, that officer is to open it as soon as is practicable; and rules 33 and 34 are to apply.

(2) The returning officer may open any ballot paper envelope for the purposes of rules 33 and 34, but must make arrangements to ensure that no person obtains or communicates information as to –

- (a) the candidate for whom a voter has voted, or
 - (b) the unique identifier on a ballot paper.
- (3) The returning officer must make arrangements to ensure the safety and security of the ballot papers and other documents.

33. Validity of ballot paper – (1) A ballot paper shall not be taken to be duly returned unless the returning officer is satisfied that it has been received by the returning officer before the close of the poll, with a declaration of identity if required that has been correctly completed, signed, and dated.

(2) Where the returning officer is satisfied that paragraph (1) has been fulfilled, he or she is to –

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

(3) Where the returning officer is not satisfied that paragraph (1) has been fulfilled, he or she is to –

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

34. Declaration of identity but no ballot paper (public and patient constituency) – Where the returning officer receives a declaration of identity if required but no ballot paper, the returning officer is to –

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

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

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

Part 6 - Counting the votes

stv36. Interpretation of Part 6 – In Part 6 of these rules –

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

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

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

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

“non-transferable vote” means a ballot paper –

- (a) on which no second or subsequent preference is recorded for a continuing candidate, or
- (b) which is excluded by the returning officer under rule stv44(4) below,

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

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

“quota” means the number calculated in accordance with rule stv41 below,

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

“stage of the count” means –

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

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

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

“transfer value” means the value of a transferred vote calculated in accordance with paragraph (4) or (7) of rule stv42 below.

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

38. The count – (1) The returning officer is to –

- (a) count and record the number of ballot papers that have been returned, and
- (b) count the votes according to the provisions in this Part of the rules.

(2) The returning officer, while counting and recording the number of ballot papers and counting the votes, must make arrangements to ensure that no person obtains or communicates information as to the unique identifier on a ballot paper.

(3) The returning officer is to proceed continuously with counting the votes as far as is practicable.

Stv39. Rejected ballot papers – (1) Any ballot paper –

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

(d) which is unmarked or rejected because of uncertainty,

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

(2) The returning officer is to endorse the word “rejected” on any ballot paper which under this rule is not to be counted.

(3) The returning officer is to draw up a statement showing the number of ballot papers rejected by him or her under each of the subparagraphs (a) to (d) of paragraph (1).

fpp39. Rejected ballot papers – (1) Any ballot paper –

(a) which does not bear the features that have been incorporated into the other ballot papers to prevent them from being reproduced,

(b) on which 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 paragraphs (2) and (3) below, be rejected and not counted.

(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.

(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.

(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 paragraph (2) or (3) above, endorse the words “rejected in part” on the ballot paper and indicate which vote or votes have been counted.

(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.

stv40. First stage – (1) The returning officer is to sort the ballot papers into parcels according to the candidates for whom the first preference votes are given.

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

(3) The returning officer is to also ascertain and record the number of valid ballot papers.

stv41. The quota – (1) The returning officer is to divide the number of valid ballot papers by a number exceeding by one the number of members to be elected.

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

(3) At any stage of the count a candidate whose total votes equals or exceeds the quota shall be deemed to be elected, except that any election where there is only one vacancy a candidate shall not be deemed to be elected until the procedure set out in paragraphs (1) to (3) of rule stv44 has been complied with.

stv42. Transfer of votes – (1) Where the number of first preference votes for any candidate exceeds the quota, the returning officer is to sort all the ballot papers on which first preference votes are given for that candidate into sub-parcels so that they are grouped –

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

(2) The returning officer is to count the number of ballot papers in each parcel referred to in paragraph (1) above.

(3) The returning officer is, in accordance with this rule and rule stv43 below, to transfer each sub-parcel of ballot papers referred to in paragraph (1)(a) to the candidate for whom the next available preference is given on those papers.

(4) The vote on each ballot paper transferred under paragraph (3) above shall be at a value (“the transfer value”) which –

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

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

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

(6) The returning officer is, in accordance with this rule and rule stv43 below, to transfer each sub-parcel of ballot papers referred to in paragraph (5)(a) to the candidate for whom the next available preference is given on those papers.

(7) The vote on each ballot paper transferred under paragraph (6) shall be at –

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

whichever is the less.

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

(9) Subject to paragraph (10), the returning officer shall proceed to transfer transferable papers until no candidate who is deemed to be elected has a surplus or all the vacancies have been filled.

(10) Transferable papers shall not be liable to be transferred where any surplus or surpluses which, at a particular stage of the count, have not already been transferred, are –

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

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

stv43. Supplementary provisions on transfer – (1) If, at any stage of the count, two or more candidates have surpluses, the transferable papers of the candidate with the highest surplus shall be transferred first, and if –

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

(2) The returning officer shall, on each transfer of transferable papers under rule stv42 above –

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

(3) All ballot papers transferred under rule stv42 or stv44 shall be clearly marked, either individually or as a sub-parcel, so as to indicate the transfer value recorded at that time to each vote on that paper or, as the case may be, all the papers in that sub-parcel.

(4) Where a ballot paper is so marked that it is unclear to the returning officer at any stage of the count under rule stv42 or stv44 for which candidate the next preference is recorded, the returning officer shall treat any vote on that ballot paper as a non-transferable vote; and votes on a ballot paper shall be so treated where, for example, the names of two or more candidates (whether continuing candidates or not) are so marked that, in the opinion of the returning officer, the same order of preference is indicated or the numerical sequence is broken.

stv44. Exclusion of candidates – (1) If—

- (a) all transferable papers which under the provisions of rule stv42 above (including that rule as applied by paragraph (11) below) and this rule are required to be transferred, have been transferred, and
- (b) subject to rule stv45 below, one or more vacancies remain to be filled,

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

(2) The returning officer shall sort all the ballot papers on which first preference votes are given for the candidate or candidates excluded under paragraph (1) above into two sub-parcels so that they are grouped as—

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

(3) The returning officer shall, in accordance with this rule and rule stv43 above, transfer each sub-parcel of ballot papers referred to in paragraph (2)(a) above to the candidate for whom the next available preference is given on those papers.

(4) The exclusion of a candidate, or of two or more candidates together, constitutes a further stage of the count.

(5) If, subject to rule stv45 below, one or more vacancies still remain to be filled, the returning officer shall then sort the transferable papers, if any, which had been transferred to any candidate excluded under paragraph (1) above into sub-parcels according to their transfer value.

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

(7) The vote on each transferable paper transferred under paragraph (6) above shall be at the value at which that vote was received by the candidate excluded under paragraph (1) above.

(8) Any papers on which no next available preferences have been expressed shall be set aside as non-transferable votes.

(9) After the returning officer has completed the transfer of the ballot papers in the sub-parcel of ballot papers with the highest transfer value he or she shall proceed to transfer in the same way the sub-parcel of ballot papers with the next highest value and so on until he has dealt with each sub-parcel of a candidate excluded under paragraph (1) above.

(10) The returning officer shall after each stage of the count completed under this rule—

- (a) record –
 - (i) the total value of votes, or
 - (ii) the total transfer value of votes transferred to each candidate,
- (b) add that total to the previous total of votes recorded for each candidate and record the new total,
- (c) record the value of non-transferable votes and add that value to the previous non-transferable votes total, and
- (d) compare—
 - (i) the total number of votes then recorded for each candidate together with the total number of non-transferable votes, with
 - (ii) the recorded total of valid first preference votes.

(11) If after a transfer of votes under any provision of this rule, a candidate has a surplus, that surplus shall be dealt with in accordance with paragraphs (5) to (10) of rule stv42 and rule stv43.

(12) Where the total of the votes of the two or more lowest candidates, together with any surpluses not transferred, is less than the number of votes credited to the next lowest candidate, the returning officer shall in one operation exclude such two or more candidates.

(13) If when a candidate has to be excluded under this rule, two or more candidates each have the same number of votes and are lowest—

- (a) regard shall be had to the total number of votes credited to those candidates at the earliest stage of the count at which they had an unequal number of votes and the candidate with the lowest number of votes at that stage shall be excluded, and
- (b) where the number of votes credited to those candidates was equal at all stages, the returning officer shall decide between the candidates by lot and the candidate on whom the lot falls shall be excluded.

stv45. Filling of last vacancies – (1) Where the number of continuing candidates is equal to the number of vacancies remaining unfilled the continuing candidates shall thereupon be deemed to be elected.

(2) Where only one vacancy remains unfilled and the votes of any one continuing candidate are equal to or greater than the total of votes credited to other continuing candidates together with any surplus not transferred, the candidate shall thereupon be deemed to be elected.

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

stv46. Order of election of candidates – (1) The order in which candidates whose votes equal or exceed the quota are deemed to be elected shall be the order in which their respective surpluses were transferred, or would have been transferred but for rule stv42(10) above.

(2) A candidate credited with a number of votes equal to, and not greater than, the quota shall, for the purposes of this rule, be regarded as having had the smallest surplus at the stage of the count at which he obtained the quota.

(3) Where the surpluses of two or more candidates are equal and are not required to be transferred, regard shall be had to the total number of votes credited to such candidates at the earliest stage of the count at which they had an unequal number of votes and the surplus of the candidate who had the greatest number of votes at that stage shall be deemed to be the largest.

(4) Where the number of votes credited to two or more candidates were equal at all stages of the count, the returning officer shall decide between them by lot and the candidate on whom the lot falls shall be deemed to have been elected first.

fpp46. Equality of votes – 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

fpp47. Declaration of result for contested elections – (1) In a contested election, when the result of the poll has been ascertained, the returning officer is to –

- (a) declare the 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 board of governors from the constituency, or class within a constituency, for which the election is being held to be elected,
 - (i) give notice of the name of each candidate who he or she has declared elected to the chair of the corporation; and
 - (b) give public notice of the name of each candidate whom he or she has declared elected.

(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 fpp39(5),

available on request.

stv47. Declaration of result for contested elections – (1) In a contested election, when the result of the poll has been ascertained, the returning officer is to—

- (a) declare the candidates who are deemed to be elected under Part 6 of these rules as elected,
 - (i) give notice of the name of each candidate who he or she has declared elected
 - (b) give public notice of the name of each candidate who he or she has declared elected.

(2) The returning officer is to make –

- (a) the number of first preference votes for each candidate whether elected or not,
- (b) any transfer of votes,
- (c) the total number of votes for each candidate at each stage of the count at which such transfer took place,
- (d) the order in which the successful candidates were elected, and
- (e) the number of rejected ballot papers under each of the headings in rule stv39(1),

available on request.

48. Declaration of result for uncontested elections – In an uncontested election, the returning officer is to as soon as is practicable after final day for the delivery of notices of withdrawals by candidates from the election –

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

Part 8 – Disposal of documents

49. Sealing up of documents relating to the poll – (1) On completion of the counting at a contested election, the returning officer is to seal up the following documents in separate packets –

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

- (2) The returning officer must not open the sealed packets of –
- (a) the disqualified documents, with the list of disqualified documents inside it,
 - (b) the declarations of identity,
 - (c) the list of spoiled ballot papers,
 - (d) the list of lost ballot papers,
 - (e) the list of eligible voters, and
 - (f) the list of tendered ballot papers.
- (3) The returning officer must endorse on each packet a description of –
- (a) its contents,
 - (b) the date of the publication of notice of the election,
 - (c) the name of the corporation to which the election relates, and
 - (d) the constituency, or class within a constituency, to which the election relates.

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

51. Forwarding of documents received after close of the poll – Where –

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

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

52. Retention and public inspection of documents – (1) The corporation is to retain the documents relating to an election that are forwarded to the chair by the returning officer under these rules for one year, and then, unless otherwise directed by the regulator, cause them to be destroyed.

(2) With the exception of the documents listed in rule 53(1), the documents relating to an election that are held by the corporation shall be available for inspection by members of the public at all reasonable times.

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

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

(1) The corporation may not allow the inspection of, or the opening of any sealed packet containing –

- (a) any rejected ballot papers, including ballot papers rejected in part,
- (b) any disqualified documents, or the list of disqualified documents,
- (c) any counted ballot papers,
- (d) any declarations of identity, or
- (e) the list of eligible voters,

by any person without the consent of the Regulator.

(2) A person may apply to the Regulator to inspect any of the documents listed in (1), and the Regulator may only consent to such inspection if it is satisfied that it is necessary for the purpose of questioning an election pursuant to Part 11.

(3) The Regulator's consent may be on any terms or conditions that it thinks necessary, including conditions as to –

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

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

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

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

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

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

Part 9 – Death of a candidate during a contested election

fpp54. Countermand or abandonment of poll on death of candidate – (1) If, at a contested election, proof is given to the returning officer's satisfaction before the result of the election is declared that one of the persons named or to be named as a candidate has died, then the returning officer is to

- (a) countermand notice of the poll, or, if ballot papers have 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.

(2) Where a new election is ordered under paragraph (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.

(3) Where a poll is abandoned under paragraph (1)(a), paragraphs (4) to (7) are to apply.

(4) The returning officer shall not take any step or further step to open envelopes or deal with their contents in accordance with rules 33 and 34, and is to make up separate sealed packets in accordance with rule 35.

(5) The returning officer is to –

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

(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.

(7) Once the documents relating to the poll have been sealed up and endorsed pursuant to paragraphs (4) to (6), the returning officer is to deliver them to the chair of the corporation, and rules 52 and 53 are to apply.

stv54. Countermand or abandonment of poll on death of candidate – (1) If, at a contested election, proof is given to the returning officer's satisfaction before the result of the election is declared that one of the persons named or to be named as a candidate has died, then the returning officer is to –

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

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

Part 10 – Election expenses and

publicity Election expenses

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

56 Expenses and payments by candidates - A candidate may not incur any expenses or make a payment (of whatever nature) for the purposes of an election, other than expenses or payments that relate to –

- (a) personal expenses,
- (b) travelling expenses, and expenses incurred while living away from home, and
- (c) expenses for stationery, postage, telephone, internet (or any similar means of communication) and other petty expenses, to a limit of £100.

57. Election expenses incurred by other persons – (1) No person may -

- (a) incur any expenses or make a payment (of whatever nature) for the purposes of a candidate's election, whether on that candidate's behalf or otherwise, or
- (b) give a candidate or 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.

(2) Nothing in this rule is to prevent the corporation from incurring such expenses, and making such payments, as it considers necessary pursuant to rules 58 and 59.

Publicity

58. Publicity about election by the corporation – (1) The corporation may –

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

as it considers necessary.

(2) Any information provided by the corporation about the candidates, including information compiled by the corporation under rule 59, must be –

- (a) objective, balanced and fair,
- (b) equivalent in size and content for all candidates,

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

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

59. Information about candidates for inclusion with voting documents - (1)

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

(2) The information must consist of –

- (a) a statement submitted by the candidate of no more than [250] words, [and] [(b) a photograph of the candidate.]

60. Meaning of “for the purposes of an election” - (1)

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

(2) The provision by any individual of 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

61. Application to question an election – (1) An application alleging a breach of these rules, including an electoral irregularity under Part 10, may be made to the regulator.

(2) An application may only be made once the outcome of the election has been declared by the returning officer.

(3) An application may only be made to the Regulator by -

- (a) a person who voted at the election or who claimed to have had the right to vote, or
- (b) a candidate, or a person claiming to have had a right to be elected at the election.

- (4) The application must –
- (a) describe the alleged breach of the rules or electoral irregularity, and
 - (b) be in such a form as the Regulator may require.
- (5) The application must be presented in writing within 21 days of the declaration of the result of the election.
- (6) If the Regulator requests further information from the applicant, then that person must provide it as soon as is reasonably practicable.

The Regulator shall delegate the determination of an application to a person or persons to be nominated for the purpose of the Regulator.

The determination by the person or persons nominated in accordance with Rule 61(7) shall be binding on and shall be given effect by the corporation, the applicant and the members of the constituency (or class within a constituency) including all the candidates for the election to which the application relates.

The Regulator may prescribe rules of procedure for the determination of an application including costs.

Part 12 – Miscellaneous

62. Secrecy – (1) The following persons –

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

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

- (i) the name of any member of the corporation who has or has not been given a ballot paper or who has or has not voted,
- (ii) the unique identifier on any ballot paper,
- (iii) the candidate(s) for whom any member has voted.

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

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

63. Prohibition of disclosure of vote – No person who has voted at an election

shall, in any legal or other proceedings to question the election, be required to state for whom he or she has voted.

64. Disqualification – A person may not be appointed as a returning officer, or as staff of the returning officer pursuant to these rules, if that person is –

- (a) a member of the corporation,
- (b) an employee of the corporation,
- (c) a Director of the corporation, or
- (d) employed by or on behalf of a person who has been nominated for election.

65. Delay in postal service through industrial action or unforeseen event – If industrial action, or some other unforeseen event, results in a delay in –

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

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

ANNEX 6

ADDITIONAL PROVISIONS –COUNCIL OF GOVERNORS

Appointed Governors

1: The Trust Secretary is to adopt a process for agreeing the appointment of Governors with Sandwell Metropolitan Borough Council, Wolverhampton City Council, Dudley Metropolitan Borough Council, and Walsall Metropolitan Borough Council.

2: Other appointed Governors are to be appointed by the partnership organisations, in accordance with a process agreed with the Trust Secretary.

3: Not used.

Tenure for appointed Governors

4.1 : A Governor appointed by any of Sandwell MBC, Wolverhampton CC, Dudley MBC and Walsall MBC:

4.1.1. If the Governor appointed is a Councillor, then they shall hold office for the period of their current term of office as a Councillor or for a period of three calendar years commencing immediately after the appointment is made, whichever is the sooner.

4.1.2. If the Governor appointed is not a Councillor, then they shall normally hold office for a period of three calendar years commencing immediately after the appointment is made;

4.1.3. In both cases above he/she shall be eligible for re-appointment at the end of his/her term.

4.2 In all cases an appointed Governor shall cease to hold office if the appointing organisation which appointed him/her terminates the appointment.

Further provisions as to eligibility to be a Governor

5: A person may not become a Governor of the Foundation Trust, and if already holding such office will immediately cease to do so, if:

5.1 They are a Non-Executive or Executive Director of this Foundation Trust

5.2 They have been previously removed as a Governor pursuant to paragraph 6.5 of this Annex 6.

5.3 Being a member of the Public constituency they refuse to sign a declaration in the form specified by the Trust Secretary of particulars of their qualification to vote as a member of the Foundation Trust, and that they are not prevented from being a Foundation Trust Governor;

5.4 They are subject to a sex offender order;

5.5 They have within the preceding two years been dismissed, otherwise than by reason of redundancy or ill health, from any paid employment with an NHS body;

5.6 They have been disqualified from being a member of a relevant authority under the provision of the Local Government Act 2000;

5.7 They are a person whose tenure of office as the Chair or as a member or Director of an NHS body has been terminated on the grounds that their appointment is not in the interests of the health service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest.

5.8 They have had their name removed by any Primary Care Trust from any list prepared under parts 4, 5 or 6, and 7 of the 2006 Act, and have not subsequently had their names included in such a list.

5.9 They are subject to disqualification made under the Company Directors Disqualification Act 1986

6: A person holding office as a Governor shall immediately cease to do so if;

6.1 They resign by notice in writing to the Trust Secretary;

6.2 They fail to attend TWO consecutive meetings of the Council of Governors, unless the other Governors are satisfied that:

6.2.1 The absences were due to reasonable causes; and

6.2.2 They will be able to start attending meetings of the Council of Governors again within such a period as the other Governors consider reasonable;

6.3 They have refused without reasonable cause to undertake any training that the Council of Governors requires all Governors to undertake;

6.4 They have failed to sign and deliver to the Trust Secretary a statement in the form required by the Trust Secretary confirming acceptance of the code of conduct for Governors;

6.5: They are removed from the Council of Governors by a resolution approved by not less than three-quarters of the remaining Governors present and voting on the grounds that;

6.5.1 They have committed a serious breach of the code of conduct;
or

6.5.2.1 They have acted in a manner detrimental to the interests of the Foundation Trust; and

6.5.2.2 The Council of Governors consider that it is not in the best interests of the Foundation Trust for them to continue as a Governor.

Vacancies amongst Governors

7: Where a vacancy arises for a Foundation Trust Governor for any reason other than expiry of term of office, the following provisions will apply.

7.1 Where the vacancy arises amongst the appointed Governors, the Trust Secretary shall request that the appointing organisation appoints a replacement to hold office for the remainder of the term of office.

Further provisions as to meetings of Governors

8: Meetings of the Council of Governors may be called by the Trust Secretary, or by the Chair, or by one third of the Governors (including at least one third of the elected Governors and one third of the appointed Governors) who give written notice to the Trust Secretary specifying the business to be carried out. The Trust Secretary shall send a written notice to all Governors as soon as possible after receipt of such a request. The Trust Secretary shall call a meeting on at least fourteen but not more than twenty-eight days' notice to discuss the specified business. If the Trust Secretary fails to call such a meeting then the Chair shall call such a meeting.

9: The Council of Governors may invite the Chief Executive or any other member or members of the Board of Directors, or a representative of the auditor or other advisors to attend a meeting of the Council of Governors.

10: The Council of Governors may agree that its members can participate in its

meetings by telephone or video link. Participation in a meeting in this manner shall be deemed to constitute presence in person at the meeting.

11: Subject to the following provisions of this paragraph, questions arising at a meeting of the Council of Governors shall be decided by a majority of votes.

11.1 In case of equality of votes the Chair shall have a second and casting vote.

11.2 No resolution of the Council of Governors shall be passed if it is opposed by all of the Public Governors present.

12: The Council of Governors may not delegate any of their powers to a committee or sub-committee, but may appoint committees consisting of Governors, Directors, and other persons to assist the Council of Governors in carrying out their functions.

13: The Council of Governors may through the Trust Secretary, request that advisors assist them or any committee they appoint in carrying out its duties.

14: All decisions taken in good faith at a meeting of the Council of Governors or of any committee established by the Council shall be valid even if it is discovered subsequently that there was a defect in the calling of the meeting, or the appointment of the Governors attending the meeting.

15: An elected Governor may not vote at a meeting of the Council of Governors unless, before attending the meeting, they have made a declaration in the form specified by the Trust Secretary of the particulars of their qualification to vote as a member of the Foundation Trust and that they are not prevented from being a Foundation Trust Governor. An elected Governor shall be deemed to have confirmed the declaration upon attending any subsequent meeting of the Foundation Trust Governors, and every agenda for meeting of the Council of Governors will draw this to the attention of elected Governors.

Mergers

16.1 : An application under Section 56 of the National Health Service Act 2006 for a merger of the Trust with another NHS Foundation Trust or NHS Trust can be made only with the approval of more than half of the members of the Council of Governors.

16.2 : An application under 16.1 must have been recommended by a resolution of the Board of Directors

Acquisitions

17.1 : An application under Section 56A of the National Health Service Act 2006 for an acquisition by the Trust of another NHS Foundation Trust or NHS Trust can be made only with the approval of more than half of the members of the Council of

Governors

17.2 : An application under 17.1 must have been recommended by a resolution of the Board of Directors

Separations

18.1 : An application under Section 56B of the National Health Service Act 2006 for the dissolution of the Trust and the establishment of two or more new NHS Foundation Trusts can be made only with the approval of more than half of the members of the Council of Governors.

18.2 : An application under 18.1 must have been recommended by a resolution of the Board of Directors

Dissolution

19.1 : An application under Section 57A of the National Health Service Act 2006 for the dissolution of the Trust can be made only with the approval of more than half of the members of the Council of Governors.

19.2 : An application under 19.1 must have been recommended by a resolution of the Board of Directors

Significant Transactions

20.1 : The Foundation Trust may enter into a “significant transaction”, (as described in paragraph 20.2 below) only if half the members of the Council of Governors voting approve entering the transaction.

20.2 : A transaction is deemed a “significant transaction” if it meets any of the following criteria in paragraphs 20.2.1 to 20.2.4

20.2.1 : the gross value of either the assets or capital subject to the transaction is greater than 25% of the gross assets of the Trust before the proposed transaction, where

- the gross value of assets equals the total of fixed and current assets, and
- the gross value of capital equals the market value of the targets shares and debt securities, plus the excess of current liabilities over current assets

20.2.2 : the income attributable to either the assets or contracts associated with the transaction is greater than 25% of the annual income of the Trust before the proposed transaction

20.2.3 : the transaction involves a diversification from the range of direct care services provided by the Trust, which are described in paragraph 20.2.3.1 below.

20.2.3.1: the range of services provided by the Trust is:

- all age mental health and well- being services including those referred to as social care services
- all age learning disability services including those referred to as social care services
- all age substance (including drugs and alcohol) misuse services including those referred to as social care services
- all universal health care services for children

20.2.4 : the transaction would require the Trust to either operate or provide services outside the area specified as the public constituency at Annex 1 of the Constitution, providing that the transaction is equal to or greater than 2% (two per cent) of the annual revenue of the Trust as stated in the latest audited accounts.

ANNEX 7

STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE COUNCIL OF GOVERNORS

1: Interpretation

In these Standing Orders:

a) unless the context otherwise requires, the following expressions have the following meanings:

- | | |
|--------------------------|---|
| “the Board of Directors” | means the board of Directors of the Foundation Trust ; |
| “the Chair” | means the Chair of the Foundation Trust or, in relation to the function of chairing a meeting where another person is carrying out that role as required by the Constitution, such person; |
| “the Constitution” | means the constitution of the Foundation Trust as amended from time to time; |
| “the Council” | means the Council of Governors of the Foundation Trust from time to time; |
| “The Foundation Trust” | means Black Country Healthcare NHS Foundation Trust |
| “Meeting” | means duly convened meeting of the Council of Governors; |
| “Motion” | means a formal proposition (either with or without notice pursuant to Standing Orders 10 and 11) to be discussed and voted on during the course of a Meeting about a matter for which the Council of Governors has responsibility or which affects the services provided by the Foundation Trust; |
| “Question on Notice” | means a question from a Governor or Governors (notice of which has been given pursuant to Standing Order 7) about a |

matter for which the Council of Governors has responsibility or which affects the services provided by the Foundation Trust;

“The Trust Secretary” means the Trust Secretary appointed under the Constitution;

- b) other terms defined in the Constitution shall have the same meaning in these Standing Orders.

2: These Standing Orders

These Standing Orders for the Practice and Procedures of the Council of Governors are the standing orders referred to in paragraph 16 of the Constitution. They may be amended in accordance with the procedure set out in Standing Order 20 below. If there is any conflict between these Standing Orders and the Constitution, the Constitution shall prevail.

3: Meetings

Meeting of the Council of Governors shall be held at regular intervals (normally no less than three times in each year) at such times and places as the Chair may determine from time to time. Other, or emergency, meetings of the Council of Governors may be called in accordance with the Constitution.

4: Agendas and Papers

An Agenda, copies of any Questions on Notice and/or motions on notice to be considered at the relevant meeting and any supporting papers shall be sent to each Governor so as to arrive with each Governor normally no later than 7 days in advance of each meeting.

Minutes of the previous meeting will be circulated with these papers for approval and this will be a specific agenda item.

Minutes of every meeting of the Council of Governors are to be kept.

Minutes of meetings will be read at the next meeting and signed by the Chair of that meeting. The signed minutes will be conclusive evidence of the events of the meeting.

5: Reports from the Executive Directors

At any meeting a Governor may ask any question through the Chair without notice on any report by an Executive Director, or other officer of the Foundation Trust, after that report has been received by or while such report is under consideration by the Council of Governors at the meeting. Unless the Chair decides otherwise no statements will be made other than those which are strictly necessary to define any question posed. The Chair may, in its absolute discretion, reject any question from any Governor if in the opinion of the Chair the question is substantially the same and relates to the same subject matter as a question which has already been put to

that meeting or a previous meeting.

6: Questions on Notice at Meetings

Subject to the provisions of Standing Order 7, a Governor may ask a Question on Notice of:

- a) the Chair;
- b) another Governor;
- c) an Executive Director of the Foundation Trust;
- d) the Chair of any sub-committee or working group of the Council of Governors.
- e) a Non-Executive Director or associate Non-Executive Director

7: Notice of Questions

Notice of a Question on Notice must be given in writing to the Trust Secretary at least 14 days prior to the relevant meeting. For the purposes of this Standing Order 7, receipt of any such Questions on Notice via electronic means is acceptable.

8: Response to a Question on Notice

An answer to a Question on Notice may take the form of:

- a) a direct oral answer at the relevant meeting (which may, where the desired information is in a publication of the Foundation Trust or other published work, take the form of a reference to that publication);
- b) where the reply cannot conveniently be given orally at the relevant meeting, a written answer which will be circulated as soon as reasonably practicable to the questioner and to the other Governors with the agenda for the meeting; or
- c) a brief oral answer at the relevant meeting supplemented by a written answer circulated as soon as reasonably practicable to the questioner and to the other Governors with the agenda for the next meeting.

9: Supplementary Questions in respect of a Question on Notice

Supplementary questions for the purpose of clarification of a reply to a Question on Notice may be asked at the absolute discretion of the Chair.

10: Motions on Notice

- a) Notice

Subject to Standing Order 11, a motion may only be submitted by Governors and must be received by the Trust Secretary in writing at least 14 days prior to the meeting at which it is proposed to be considered, together with any relevant supporting papers. Except for motions which can be moved without notice under Standing Order 11, the notice of every motion must be signed or transmitted by at least two Governors. For the purposes of this Standing Order 10, receipt of any such motions via electronic means is acceptable. All motions received by the Trust Secretary will be acknowledged by the Trust Secretary in writing to the Governors who have signed or transmitted the same.

b) Scope

Motions may only be about matters for which the Council of Governors have a responsibility or which affect the services provided by the Foundation Trust.

11: Motions without Notice

The following motions may be moved at any meeting without notice:

- a) in relation to the accuracy of the minutes of the previous meeting;
- b) to change the order of business in the agenda for the meeting;
- c) to refer a matter discussed at a meeting to an appropriate body or individual;
- d) to appoint a working group arising from an item on the agenda for the meeting;
- e) to receive reports or adopt recommendations made by the Board of Directors;
- f) to withdraw a motion;
- g) to amend a motion;
- h) to proceed to the next business on the agenda;
- i) that the question be now put;
- j) to adjourn a debate;
- k) to adjourn a meeting;
- l) to suspend a particular Standing Order contained within the Standing Orders (provided that any Standing Order may only be suspended if at least one half of the aggregate number of Governors are present at the meeting in question and provided also that the Standing Order in question may only be

suspended for the duration of the meeting in question);

- m) to exclude the public and press from the meeting in question (the motion shall be “To exclude the press and public from the remainder of the meeting, owing to the confidential nature of the business to be transacted.”);
- n) to not hear further from a Governor, or to exclude them from the meeting in question (if a Governor persistently disregards the ruling of the Chair or behaves improperly or offensively or deliberately obstructs business, the Chair, in their absolute discretion, may move that the Governor in question be not heard further at the meeting in question. If seconded, the motion will be voted on without discussion. If the Governor continues to behave improperly after such a motion is carried, the Chair may move that either the Governor leaves the meeting room or that the meeting in question is adjourned for a specified period. If seconded, the motion will be voted on without discussion);
- o) to give the consent of the Council of Governors to any matter where its consent is required pursuant to the Constitution.

12: Urgent Motions or Questions

Urgent motions or questions may only be submitted by a Governor and must be received by the Trust Secretary in writing before the commencement of the meeting in question. The Chair shall decide whether the motion or question in question should be tabled.

13: Any Other Business

There will not be an agenda item entitled “Any Other Business”. Instead, there will be an item for “Motions or Questions on Notice”, (which are subject to the other provisions of these Standing Orders). There will be another item for “Urgent Motions or Questions”, (which are subject to Standing Order 12).

14: Speaking

This Standing Order applies to all forms of speech/debate by Governors or members of the Foundation Trust and the public in relation to the motion or question under discussion at a meeting. Any approval to speak must be given by the Chair. Speeches must be directed to the matter, motion or question under discussion or to a point of order. In the interests of time and agenda management the Chair may, in its absolute discretion, limit the number of replies, questions or speeches that are heard at any one meeting. All speakers must state their name and role before starting to speak to ensure the accuracy of the minutes.

15: Voting

All questions put to the vote shall, at the discretion of the Chair, be decided by a

show of hands. A proper ballot may be used if a majority of the Governors present so request.

16: Attendance

Governors who are unable to attend a meeting shall notify the Trust Secretary in writing in advance of the meeting in question so that their apologies may be submitted.

17: Quorum

A quorum shall exist when in total 10 Governors are present, providing that the Chair shall be counted as one of that number and the majority shall be public governors.

18: Declaration of Interests and Register of Interests

18.1 Declaration of Interests

18.1.1 Governors of the Council are required to declare interests, which are relevant and material. All existing Governors should declare such interests. Any Governor appointed subsequently should do so on appointment.

18.1.2 Interests which should be regarded as relevant and material are
a: Directorships, including Non-Executive Directorships held in private companies or Public Limited Companies (with the exception of those of dormant companies);

b: Ownership or part-ownership of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS;

c: Majority or controlling share holdings in organisations likely or possibly seeking to do business with the NHS;

d: A position of Authority in a charity or voluntary organisation in the field of health and social care;

e: Any connection with a voluntary or other organisation contracting for NHS services;

f: Research funding/grants that may be received by an individual or their department;

g: Interests in pooled funds that are under separate management.

h: In respect of appointed governors, any governorships in any other NHS Foundation Trust in the areas defined within the public constituency at annex 1 of the constitution.

18.1.3 Any Governor who comes to know that the Trust has entered into or proposes to enter into a contract in which he/she or any person connected with him/her has any pecuniary interest (as defined below), direct or indirect, the Governor shall declare his/her interest by giving notice in writing of such fact to the

Trust as soon as practicable.

18.1.4 For the sake of clarity, the following definition of terms is to be used in interpreting this Standing Order

- (i) "spouse" shall include any person who lives with another person in the same household (and any pecuniary interest of one spouse shall, if known to the other spouse, be deemed to be an interest of that other spouse);
- (ii) "contract" shall include any proposed contract or other course of dealing.
- (iii) "Pecuniary interest"
Subject to the exceptions set out in this Standing Order, a person shall be treated as having an indirect pecuniary interest in a contract if:
 - a) he/she, or a nominee of his/her, is a member of a company or other body (not being a public body), with which the contract is made, or to be made or which has a direct pecuniary interest in the same, or
 - b) he/she is a partner, associate or employee of any person with whom the contract is made or to be made or who has a direct pecuniary interest in the same.
- iv) Exception to Pecuniary interests

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

- a) neither he/she or any person connected with him/her has any beneficial interest in the securities of a company of which he/she or such person appears as a member, or
- b) any interest that he/she or any person connected with him/her may have in the contract is so remote or insignificant that it cannot reasonably be regarded as likely to influence him/her in relation to considering or voting on that contract, or
- c) those securities of any company in which he/she (or any person connected with him/her) has a beneficial interest do not exceed £5,000 in nominal value or one per cent of the total issued share capital of the company or of the relevant class of such capital, whichever is the less.

Provided however, that where paragraph (c) above applies the person shall nevertheless be obliged to disclose/declare their interest in accordance with Standing Order 18.1.2.

18.2 Conflicts of interest, which arise during the course of a meeting

During the course of a meeting, if a conflict of interest is established, the Governor concerned should withdraw from the meeting and play no part in the

relevant discussion or decision. There is no requirement for the interests of board Director' spouses or partners to be declared.

18.3 Recording of Interests in minutes of meetings of Council of Governors

At the time Governors interests are declared, they should be recorded in the minutes.

Any changes in interests should be declared at the next meeting of the Council of Governors following the change occurring and recorded in the minutes of that meeting.

18.4 Exclusion in proceedings of the Council of Governors

18.4.1 Subject to the following provisions of this Standing Order, if the Chair or any Governor has any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter and is present at a meeting at which the contract or other matter is the subject of consideration, they shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not take part in the consideration or discussion of the contract or other matter or vote on any question with respect to it.

18.4.2 The Council of Governors may exclude the Chair or a Governor from a meeting while any contract, proposed contract or other matter in which he/she has a pecuniary interest is under consideration.

18.5 Register of Interests

18.5.1 The Trust Secretary will ensure that a Register of Interests is established to record formally the interests, which have been declared by Governors.

18.5.2. These details will be kept up to date by means of an annual review of the Register in which any changes to interests declared during the preceding twelve months will be incorporated.

18.5.3 The Register will be available to the public and the Trust Secretary will take reasonable steps to publicise arrangements for viewing it.

19: Chair

The arrangements for presiding at or chairing meetings of the Council of Governors are set out in the Constitution.

20: Amendments to Standing Orders

These Standing Orders may only be amended at a meeting of the Council of Governors and if the variation proposed does not contravene a statutory provision.

Amendments to the Standing Orders must be approved in accordance with paragraph 44 of the Trust's constitution.

21: Dispute between the Council of Governors and the Board of Directors

In the event of any unresolved dispute between the Council of Governors and the Board of Directors, the Chair or the Trust Secretary may arrange for independent professional advice to be obtained for the Foundation Trust. The Chair may also initiate an independent review to investigate and make recommendations in respect of how the dispute may be resolved. This provision does not compromise the right of a governor to refer matters to the panel, as provided for in paragraph 17 of the constitution

22: Senior Independent Director

22.1 The Council of Governors is entitled to be consulted by the Board of Directors on the appointment of the Trust's Senior Independent Director.

22.2 The role of the Senior Independent Director is as set out in the Trust's "Senior Independent Director Job Specification", as amended from time to time.

ANNEX 8

STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE BOARD OF DIRECTORS

1: Interpretation

In these standing orders:

(a) unless the context otherwise requires, the following expressions have the following meanings:

“the Board of Directors”	means the board of Directors of the Foundation Trust from time to time;
“the Chair”	means the Chair of the Foundation Trust, or, in relation to the function of chairing a meeting where another person is carrying out that role as required by the Constitution, such person;
“the Chief Executive”	means chief officer of the Trust
“the Constitution”	means the constitution of the Foundation Trust as amended from time to time;
“the Council of Governors”	means the Council of Governors from time to time;
“the Foundation Trust”	means Black Country Healthcare NHS Foundation Trust;
“Meeting”	means a duly convened meeting of the Board of Directors;
“the Trust Secretary”	means the Trust Secretary appointed under the terms of the Constitution;

(b) other terms defined in the Constitution shall have the same meaning in these Standing Orders

2: These Standing Orders

2.1 These Standing Orders for the Practice and Procedures of the Board of Directors are the standing orders referred to in paragraph 31 of the Constitution. They may be amended in accordance with the procedure set out in Standing Order 14 below. If there is any conflict between these Standing Orders and the Constitution, the Constitution shall prevail.

2.2 The Board of Directors shall adopt, and may by resolution amend, Standing Financial Instructions and a Scheme of Delegation which shall be read in conjunction with these Standing Orders

3: Meetings

Meetings of the Board of Directors shall be held at regular intervals, normally no less than 6 times in each year, at such times and in such places as the Board of Directors may determine from time to time.

The Chair may exclude any member of the public from a meeting of the Board of Directors if they are interfering with or preventing the proper conduct of the meeting.

(for the avoidance of doubt “member of public” in this context means any person other than a Director of the Trust or an officer called to attend).

Meetings of the Board of Directors may be called by the Trust Secretary, or by the Chair, or by four Directors who together give written notice to the Trust Secretary, specifying the business to be carried out.

The Trust Secretary shall send a written notice to all Directors as soon as possible after receipt of such a request

Save in the case of emergencies or the need to conduct urgent business, the Trust Secretary shall call a meeting on at least fourteen but not more than twenty-eight days’ notice to discuss the specified business.

4: Agendas and Papers

An agenda and any supporting papers shall be sent to each Director so as to arrive with each Director normally no later than 7 days in advance of each meeting. Minutes of the previous meeting will be circulated with these papers for approval and this will be a specific agenda item.

Minutes of every meeting of the Board of Directors are to be kept. Minutes of meetings will be read at the next meeting and signed by the Chair of that meeting. The signed minutes will be conclusive evidence of the events of the meeting.

5: Voting

All questions put to the vote shall, at the discretion of the Chair, be decided by a show of hands. A paper ballot may be used if a majority of the Board of Directors present so request.

Subject to the following provisions of the paragraph, resolutions required at a meeting of the Board of Directors shall be decided by majority votes.

- In cases of an equality of votes the Chair shall have a second and casting vote.
- No resolution of the Board of Directors shall be passed if it is opposed by either all of the Non-Executive Directors present or all of the Executive Directors present.
- In the absence of the Chief Executive, their vote will be transferred to the appointed Deputy Chief Executive. If the Deputy Chief Executive is already a voting member, they will not receive an additional vote, meaning they will have no more than one vote. If the Deputy Chief Executive is a non-voting member, they will be able to use the Chief Executive's vote in the Chief Executive's absence, but will not have a vote if the Chief Executive is present

6: Attendance

Directors who are unable to attend a meeting shall notify the Trust Secretary in writing in advance of the meeting in question so that their apologies may be submitted.

The Board of Directors may agree that its members can participate in its meetings by telephone or video link. Participation in this manner shall be deemed to constitute presence in person at the meeting.

7: Quorum

The quorum for a Meeting will be six, of which one is the Chair (or in his/her absence the Deputy Chair), at least two Executive Directors, one of which should be the Chief Executive, or his/her nominated deputy in his/her absence, and at least two other Non-Executive Directors.

8: Chair

The Chair of the Foundation Trust or in their absence, the Deputy Chair will Chair meetings of the Board of Directors.

The decision of the Chair of the meeting on questions of order, relevancy and regularity (including procedure on handling motions) and their interpretation of the Standing Orders and Standing Financial Instructions, at the meeting, shall be final.

The Chair may, in their absolute discretion:

- exclude the press and public from a meeting in accordance with paragraph 30.2 of the constitution;
- exclude a Director from a meeting if a Director persistently disregards the ruling of the Chair or behaves improperly or offensively or deliberately obstructs business

The Chair undertakes line management responsibility for the Non-Executive Directors, including but not limited to ensuring attendance, compliance with contractual obligations, and overseeing their performance. This also includes investigating any complaints, concerns, or issues related to their conduct or performance, addressing them promptly and appropriately in line with Trust policies and procedures. The Chair ensures that any necessary actions or improvements are identified and implemented.

9: Arrangements for the exercise of functions by delegation

The Board of Directors may make arrangements on behalf of the Foundation Trust for the exercise of any of its powers by a formally constituted committee of Directors or the Chief Executive, subject to such restrictions and conditions as the Board of Directors thinks fit.

The powers which the Board of Directors has retained to itself within these Standing Orders may in emergency be exercised by the Chief Executive and the Chair after having consulted at least two Non Executive Directors.

The exercise of such powers by the Chief Executive and Chair shall be reported to the next formal meeting of the Board of Directors for noting.

10: Committees

The Board of Directors may appoint committees with a membership wholly of Directors to exercise any of its powers.

The Board of Directors may appoint committees consisting of wholly or partly of members who are not Directors for any purpose which is calculated or likely to contribute to or assist it in the exercise of its powers but it may not delegate the exercise of any of its powers to such a committee.

11: Code of Conduct

The Board of Directors shall adopt and conform to a Code of Conduct, built upon the “Nolan “principles, and will have systems in place to allow for complaints and investigations of any accusation of breach of the Code of Conduct. This Code of Conduct will also apply to the Council of Governors.

All Board members must meet the conditions of the Fit and Proper Persons Test under NHS England Guidance.

12: Declaration of Interests and Register of Interests

12.1 Conflicts of interests

The duties of Directors with regards to interests is provided for in paragraph 32 of the constitution and should there be any conflict in the provisions of this paragraph 12 of the Standing Orders annex 8 and the constitution, the

constitution shall prevail.

12.2 Declaration of Interests

12.2.1 Directors of the Board are required to declare interests, which are relevant and material. All existing board Directors should declare such interests. Any board Directors appointed subsequently should do so on appointment.

12.2.2 Interests which should be regarded as relevant and material are:

a: Directorships, including Non-Executive Directorships held in private companies or Public Limited Companies (with the exception of those of dormant companies);

b: Ownership or part-ownership of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS;

c: Majority or controlling shareholdings in organisations likely or possibly seeking to do business with the NHS;

d: A position of Authority in a charity or voluntary organisation in the field of health and social care;

e: Any connection with a voluntary or other organisation contracting for NHS services;

f: Research funding/grants that may be received by an individual or their department;

g: Interests in pooled funds that are under separate management.

12.2.3 Any member of the Board of Directors who comes to know that the Trust has entered into or proposes to enter into a contract in which he/she or any person connected with him/her has any pecuniary interest (as defined below), direct or indirect, the Board member shall declare his/her interest by giving notice in writing of such fact to the Trust as soon as practicable.

12.2.4 For the sake of clarity, the following definition of terms is to be used in interpreting this Standing Order

(i) "spouse" shall include any person who lives with another person in the same household (and any pecuniary interest of one spouse shall, if known to the other spouse, be deemed to be an interest of that other spouse);

(ii) "contract" shall include any proposed contract or other course of dealing.

(iii) "Pecuniary interest"

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

a) he/she, or a nominee of his/her, is a member of a company or other body (not being a public body), with which the contract is

- made, or to be made or which has a direct pecuniary interest in the same, or
- b) he/she is a partner, associate or employee of any person with whom the contract is made or to be made or who has a direct pecuniary interest in the same.
- iv) Exception to Pecuniary interests
- A person shall not be regarded as having a pecuniary interest in any contract if: -
- a) neither he/she or any person connected with him/her has any beneficial interest in the securities of a company of which he/she or such person appears as a member, or
 - b) any interest that he/she or any person connected with him/her may have in the contract is so remote or insignificant that it cannot reasonably be regarded as likely to influence him/her in relation to considering or voting on that contract, or
 - c) those securities of any company in which he/she (or any person connected with him/her) has a beneficial interest do not exceed £5,000 in nominal value or one per cent of the total issued share capital of the company or of the relevant class of such capital, whichever is the less.

Provided however, that where paragraph (c) above applies, the person shall nevertheless be obliged to disclose/declare their interest in accordance with Standing Order 12.2.2.

12.3 Conflicts of interest, which arise during the course of a meeting

During the course of a meeting, if a conflict of interest is established, the Director concerned should withdraw from the meeting and play no part in the relevant discussion or decision. There is no requirement for the interests of board Director' spouses or partners to be declared.

12.4 Recording of Interests in minutes of meetings of the Board of Directors (Board)

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

Any changes in interests should be declared at the next Board meeting following the change occurring and recorded in the minutes of that meeting.

12.5 Exclusion in proceedings of meetings of the Board

- 12.5.1** Subject to the following provisions of this Standing Order, if the Chair or any Director has any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter and is present at a meeting at which the contract or other matter is the subject of consideration, they shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not take part in the consideration or discussion of the contract or other matter or vote on any question with respect to it.
- 12.5.2** The Board of Directors may exclude the Chair or a Director of the Board from a meeting while any contract, proposed contract or other matter in which he/she has a pecuniary interest is under consideration.
- 12.5.3** Where the Board of Directors considers that it would be in the best interests of the Trust and in the interests of the effective conduct of meetings for a Director to be present during the consideration or discussion of any contract or other matter in which the Director has an interest and/or to vote on the matter, they may resolve (by a simple majority of those present and voting) that the Director shall:
- (a) count towards the quorum; and/or
 - (b) merely observe or take part in the consideration or discussion; and/or
 - (c) vote on the matter.

12.6 Register of Interests

- 12.6.1** The Trust Secretary will ensure that a Register of Interests is established to record formally the interests, which have been declared by both executive and Non-Executive Directors.
- 12.6.2.** These details will be kept up to date by means of an annual review of the Register in which any changes to interests declared during the preceding twelve months will be incorporated.
- 12.6.3** The Register will be available to the public and the Trust Secretary will take reasonable steps to publicise arrangements for viewing it.

13: Signature of Documents

The Chief Executive or other nominated officer of the Chief Executive shall be authorised by the resolution of the Board of Directors to sign any agreement or other document not required to be executed as a deed, the subject matter of which has been approved by the Board of Directors or any committee with delegated authority, on behalf of the Foundation Trust.

14: Amendments to Standing Orders

These Standing Orders may only be amended at a meeting of the Board of Directors and if the variation proposed does not contravene a statutory provision. Amendments to these standing orders must be approved in accordance with paragraph 44 of the constitution

15: Dispute between the Council of Governors and the Board of Directors

In the event of any unresolved dispute between the Council of Governors and the Board of Directors, the Chair or the Trust Secretary may arrange for independent professional advice to be obtained for the Foundation Trust. The Chair may also initiate an independent review to investigate and make recommendations in respect of how the dispute may be resolved.

16: Appointment and Powers of Senior Independent Director

16.1 Subject to Standing Order 16.2 below, the Board of Directors may in consultation with the Council of Governors appoint a Non-Executive Director, to be the Senior Independent Director (SID), for such period, not exceeding the remainder of their term as a member of the Board of Directors, as they may specify on appointing them. The Senior Independent Director shall perform the role set out in the Trust's "Senior Independent Director Job Description", as amended from time to time by resolution of the Board of Directors.

16.2 The SID is responsible for undertaking an annual appraisal of the Chair and submitting this to the Council of Governors. Any complaints against the Chair or their conduct must go to the SID to investigate/intervene and make any necessary recommendations to the Governors.

16.3 Any Member of the Board of Directors so appointed may at any time resign from the office of Senior Independent Director by giving notice in writing to the Chair. The Board of Directors may thereupon in consultation with the Council of Governors appoint another Non-Executive Director as Senior Independent Director in accordance with the provisions of Standing Order 16.1 above.

17: Waiver of Standing Orders

17.1 Except where this would contravene any provision in the Constitution, Terms of Authorisation or any statutory or mandated provision any one or more of these Standing Orders may be waived at any meeting, provided that at least two thirds of the Directors are present, including at least one Executive Director and at least one Non-Executive Director, and that a majority of those present vote in favour of waiver

- 17.2** A decision to waive Standing Orders shall be recorded in the minutes of the meeting
- 17.3** The Audit Committee shall review every decision to waive Standing Orders

ANNEX 9

FURTHER PROVISIONS

A. Members

A1: Disqualification from Membership

A1.1 An individual may not become a member of the Foundation Trust if they are less than 12 years of age.

A1.2 The following provision also applies to disqualification from membership:

A1.2.1: any person involved within the last five years as a perpetrator in a serious incident of assault or violence, or in one or more incidents of harassment against any of the Foundation Trust's employees or other persons who exercise functions for the purposes of the Foundation Trust, or against any registered volunteer.

A1.2.2: In relation to any such person, membership of the Foundation Trust may be refused or withdrawn if the Council of Governors considers that it is not in the best interest of the Foundation Trust for them to become or remain a member.

A2: Termination of Membership

A2.1 A member shall cease to be a member if:

A2.1.1 They resign by notice to the Trust Secretary;

A2.1.2 They die;

A2.1.3 They are expelled from membership under this constitution;

A2.1.4 They cease to be entitled under this constitution to be a member of the Public Constituency or of the Staff Constituency;

A2.1.5 It appears to the Trust Secretary that they no longer wish to be a member of the Foundation Trust, and after enquiries made in accordance with the process approved by the Council of Governors, they fail to demonstrate that they wish to continue to be a member of the Foundation Trust.

A2.2 A member may be expelled by a resolution approved by not less than two-thirds of the Governors present and voting at a General Meeting. The following procedure is to be adopted:

- A2.2.1** Any member may complain to the Trust Secretary that another member has acted in a way detrimental to the interests of the Foundation Trust.
- A2.2.2** If a complaint is made, the Council of Governors may consider the complaint having taken such steps as they consider appropriate to ensure that each member's point of view is heard and may:
- Dismiss the complaint and taken no further action; or
 - For a period not exceeding twelve months suspend the rights of the member complained of to attend members meetings and vote under this constitution;
 - Arrange for a resolution to expel the member complained of to be considered at the next General Meeting of the Council of Governors.
- A2.2.3** If a resolution to expel a member is to be considered at a General meeting of the Council of Governors, details of the complaint must be sent to the member complained of not less than one calendar month before the meeting with an invitation to answer the complaint and attend the meeting.
- A2.2.4** At the meeting the Council of Governors will consider evidence in support of the complaint and such evidence as the member complained of may wish to place before them.
- A2.2.5** If the member about whom the complaint has been made fails to attend the meeting without due cause, the meeting may proceed in their absence.
- A2.2.6** A person expelled from membership will cease to be a member upon the declaration by the Chair of the meeting that the resolution to expel them is carried.
- A2.2.7** No person who has been expelled from membership is to be re-admitted except by a resolution carried by the votes of two-thirds of the Council of Governors present and voting at a General Meeting.

B. Board of Directors

B1: Further provisions as to disqualification of Directors

A person may not become or continue as a Director of the Foundation Trust if:

- B1.1** They are a Governor of this Foundation Trust;

B1.2 They are the spouse, partner, parent or child of a member of the Board of Directors of the Foundation Trust;

B1.3 They are the subject of a disqualification order made under the Company Directors Disqualification Act 1986;

B1.4 They are a person whose tenure of office as a Chair or as a member or Director of an NHS body has been terminated on the grounds that their appointment is not in the interests of the health service for non-attendance at meetings, or for non-disclosure of a pecuniary interest;

B1.5 They have within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with an NHS body;

B1.6 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;

B1.7 They have refused to sign and deliver to the Trust Secretary a statement in the form required by the Board of Directors confirming acceptance of the code of conduct for Directors.

B1.8 They fail to meet the required standards of a fit and proper person as specified by the Care Quality Commission, and/or they fail to comply with Trust procedures in respect of such regulations.

B1.9 They fail to meet the conditions of their contract with the Trust.

B2: Title of “Director”

B2.1 The Trust may confer on senior staff the title “Director” as an indication of their corporate responsibility within the Trust but such persons will not be Executive Directors of the Trust for the purposes of the 2006 Act (“statutory Directors”) unless their appointment was made in accordance with paragraph 27 of this constitution and will not have the voting rights of statutory Directors or any power to bind the Trust.

B3: Absent Directors

B3.1 If:

- a: an Executive Director is temporarily unable to perform his/her duties due to illness or some other reason (the "Absent Director");
and
- b: the board of Directors agree that it is inappropriate to terminate the Absent Director’s term of office and appoint a replacement Director;
and
- c: the board of Directors agree that the duties of the Absent Director need to be carried out;

then the Chair (if the Absent Director is the Chief Executive) or the Chief Executive (in any other case) may appoint an acting Director as an additional Director to carry out the Absent Director's duties temporarily.

- B3.2.** For the purposes of paragraph 3.1 of this Annex, the maximum number of Directors that may be appointed under paragraph 21.2.3 of the Constitution shall be relaxed accordingly.
- B3.3** The acting Director will vacate office as soon as the Absent Director returns to office or, if earlier, the date on which the person entitled to appoint him under this paragraph notifies him that he/she is no longer to act as an acting Director.
- B3.4** The acting Director shall be an Executive Director for the purposes of the 2006 Act. He shall be responsible for his/her own acts and defaults and he/she shall not be deemed to be the agent of the Absent Director.

B4 Vacant Positions

- B4.1** If:
- (a) an Executive Director post is vacant ("Vacant Position"); and
 - (b) the board of Directors agree that the Vacant Position needs to be filled by an interim post-holder pending appointment of a permanent post-holder, then the Chair (if the Vacant Position is the Chief Executive) or the Chief Executive (in any other case) may appoint a Director as an interim Director ("Interim Director") to fill the Vacant Position pending appointment of a permanent post-holder.
- B4.2** The Interim Director will vacate office on the appointment of a permanent post-holder or, if earlier, the date on which the persons entitled to appoint him under this paragraph notifies him that he/she is no longer to act as an Interim Director.
- B4.3** The Interim Director shall be an Executive Director for the purposes of the 2006 Act.

C. Elections

- C.1** Elections shall not be invalidated by any administrative or clerical error on the part of the Trust or any acts or omissions of the returning officer acting in good faith on the basis of such error.

C2. Notwithstanding any provision of the Election Rules, the Trust and the Returning Officer shall:

C2.1 not be obliged to send any information or photographs unless received by the Trust from the candidate;

C2.2 not be in breach of any obligation to include in any communication, or otherwise provide, information, which is equivalent in size and content for all candidates if the information provided by one or more of the candidates does not so allow;

C2.3 have the right to edit or not publish any election statement if it exceeds the permitted number of words or because it contains statements, which the Trust or the Returning Officer reasonably believes are factually inaccurate, offensive or libellous.

D. Trust Secretary

D1: The Foundation Trust shall have a Trust Secretary who may be an employee. The Trust Secretary may not be a Governor, or the Chief Executive or the Finance Director.

D2: The Trust Secretary's functions shall include, but not limited to:

- Acting as a Trust Secretary to the Council of Governors and the Board of Directors, and any committees established by the Council and Board;
- Summoning and attending all meetings of the Council of Governors and the Board of Directors, and keeping the minutes of those meetings;
- Keeping the register of members and other registers and books required by this constitution to be kept;
- Having charge of the Foundation Trust's Seal;
- Publishing to members in appropriate form information, which they should have about the Foundation Trust's affairs;
- Preparing and sending to regulators and any other statutory body all returns which are required to be made.

D3: The Trust Secretary is to be appointed and removed by the Board of Directors, in consultation with the Council of Governors.

E. Lead and Deputy Lead Governor

E.1 The following applies in relation to the role of Lead Governor:

- Any public Governor is eligible to apply for the role of Lead Governor upon the role becoming available;
- When the role becomes available the Chair will open up expressions of interest but any Governor is permitted to submit an expression of interest to the Trust Secretary at any time;
- The Council of Governors will elect a Lead Governor by way of majority vote at a Council of Governor meeting.

E.2 The following applies in relation to the role of Deputy Lead Governor:

- Any Governor is eligible to apply for the role of Deputy Lead Governor upon the role becoming available;
- When the role becomes available the Chair will open up expressions of interest but any Governor is permitted to submit an expression of interest to the Trust Secretary or Chair at any time;
- The Council of Governors will elect a Deputy Lead Governor by way of majority vote at a Council of Governor meeting.

E.3 Tenure:

- The posts of both Lead Governor and Deputy Lead Governor will be appointed for a 3-year term with an annual review of performance by the Chair.
- After the 3-year term the posts will be re-opened to all Governors but the outgoing Lead Governor or Deputy Lead Governor can reapply.
- The Lead Governor and/or Deputy Lead Governor can resign from their role (without resigning from their role as Governor) by notifying the Chair at any time.

E4. The Council of Governors can call for a re-election of either the Lead Governor or the Deputy Lead Governor at any time by raising a Motion as detailed in section 10 and 11 to the Chair or Trust Secretary.

E5. The Chair may seek a re-election should either the Lead or Deputy Lead Governor:

- No longer have the confidence of the Chair;
- Refuse reasonable requests from the Chair;
- No longer acting in the interests of the Foundation Trust
- Breaches the Governor Code of Conduct or Constitution;

In these circumstances both the Chair and Lead/Deputy Lead Governor (as applicable) may attend the Council of Governors meeting to present their case to the Council of Governors. Following this, a re-election will be triggered and conducted by the Council of Governors.

F. Indemnity

F1: The Council of Governors and the Board of Directors and the Trust Secretary who act honestly and in good faith will not have to meet out of their personal resources any personal civil liability which is incurred in the execution or purported execution of their functions, save where they have acted recklessly. The Foundation Trust will meet any costs arising in this way.

F2: The Foundation Trust may purchase and maintain insurance against this liability for its own benefit and for the benefit of the Council of Governors and the Board of Directors and the Trust Secretary.

G. Notices

G1: Any notice required by this constitution to be given shall be given in writing or shall be given using electronic communications to an address for the time being notified for that purpose. "Address" in relation to electronic communications includes any number or address used for the purposes of such communications.

G2: Proof that an envelope containing a notice was properly addressed, prepaid and posted shall be conclusive evidence that the notice was given. A notice shall be treated as delivered 48 hours after the envelope containing it was posted or, in the case of a notice contained in an electronic communication, 48 hours after it was sent.

END