



East Kent  
Hospitals University  
NHS Foundation Trust

# **East Kent Hospitals University NHS Foundation Trust Constitution**

Ratified by Council of Governors and Board April 2025

# NHS Foundation Trust Model Core Constitution

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## 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.

**Annual Members Meeting** is defined in paragraph 13 of the constitution.

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

**NHS England or NHSE** means the body established as part of the Health and Social Care Act 2012 and formally came into being in April 2013. A full merger between NHS England and NHS Improvement, under the name of NHS England, was confirmed by the Health and Care Act 2022, and took place on 1 July 2022. Reference to NHS England or 'NHSE' in this constitution covers any successor body including transfer of functions to the Department of Health and Social Care (DHSC).

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

## 2. Name

The name of the foundation trust is East Kent Hospitals University NHS Foundation Trust (the trust).

## 3. Principal purpose

**3.1** The principal purpose of the trust is the provision of goods and services for the purposes of the health service in England.

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

**3.3** The trust may provide goods and services for any purposes related to:

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

**3.3.2** the promotion and protection of public health.

- 3.4** The trust may also carry on activities other than those mentioned in the above paragraph for the purpose of making additional income available in order better to carry on its principal purpose.

#### **4. Powers**

- 4.1** The powers of the trust are set out in the 2006 Act.
- 4.2** All the powers of the trust shall be exercised by the Board of Directors on behalf of the trust.
- 4.3** Any of these powers may be delegated to a committee of directors or to an executive director.

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

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

- 5.1** a public constituency
- 5.2** a staff constituency
- 5.3** Not used

#### **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** Not used
- 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** Not used
- 8.5** The minimum number of members and categories set out in the Staff Constituency is specified in Annex 2.

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

- 9.1** An individual who is:
- 9.1.1** eligible to become a member of the Staff Constituency, and
- 9.1.2** invited by the trust to become a member of the Staff Constituency
- shall become a member of the trust as a member of the Staff Constituency without an application being made, unless he informs the trust that he does not wish to do so.

**10. Automatic membership by default – Volunteers**

- 10.1** An individual who is:
- 10.1.1** eligible to become a member of the Public Constituency and have registered as a Volunteer the Trust; and
- 10.1.2** invited by the Trust to become a member of the Public Constituency
- shall become a member of the Trust as a member of the Public Constituency in which they reside without an application being made, unless they inform the Trust that they do not wish to do so.

**11. Not used**

## **12. Restriction on membership**

- 12.1** An individual who is a member of a constituency, may not while membership of that constituency continues, be a member of any other constituency.
- 12.2** An individual who satisfies the criteria for membership of the Staff Constituency may not become or continue as a member of any constituency other than the Staff Constituency.
- 12.3** An individual must be at least 16 years old to become a member of the trust.
- 12.4** An individual who within the preceding five years has been convicted in the British Islands of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him may not become or continue as members of the council of governors.
- 12.5** 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.

## **13. Annual Members' Meeting**

- 13.1** The trust shall hold an annual meeting of its members ('Annual Members' Meeting). The Annual Members' Meeting shall be open to members of the public.
- 13.2** Further provisions about the Annual Members' Meeting are set out in Annex 10 – Annual Members' Meeting.

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

- 14.1** The trust is to have a Council of Governors, which shall comprise both elected and appointed governors.
- 14.2** The composition of the Council of Governors is specified in Annex 4.
- 14.3** The members of the Council of Governors, other than the appointed members, shall be chosen by election by their constituency. The number of governors to be elected by each constituency is specified in Annex 4.
- 14.4** Subject to paragraph 14.5 below, if an elected member of the Council of Governors shall be removed, die or resign before the expiry of his term of office, then the Council of Governors shall invite the next highest polling candidate for that seat at the most recent election, who is willing to hold office, to fill the seat for any unexpired period of the term of office. Candidates will be

approached in the order of the percentage of votes received. If there is no such candidate, then a by-election shall be conducted in the proceeding February.

- 14.5** If an elected member of the Council of Governors shall die or resign in the 6 months prior to the trust holding elections for the Council of Governors, the Council may elect that the position will remain vacant until such time as an election has been held and an individual has been appointed to fill such position on the Council of Governors.

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

- 15.1** Elections for elected members of the Council of Governors shall be conducted in accordance with the Model Election Rules.

- 15.2** The latest Model Election Rules are attached at Annex 5.

- 15.3** A subsequent variation of the Model Election Rules by the Department of Health shall not constitute a variation of the terms of this constitution for the purposes of paragraph 48 of the constitution (amendment of the constitution).

- 15.4** An election, if contested, shall be by secret ballot.

## **16. Council of Governors – tenure**

- 16.1** An elected governor may hold office for a period of up to 3 years.

- 16.2** An elected governor shall cease to hold office if they cease to be a member of the constituency by which they were elected.

- 16.3** An elected governor shall be eligible for re-election at the end of his term, but for no more than two further terms making a maximum of nine years in total as a governor for the Trust.

- 16.4** An appointed governor may hold office for a period of up to 3 years

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

- 16.6** An appointed governor shall be eligible for reappointment at the end of his term, but for no more than two further terms making a maximum of nine years in total.



## **17. Council of Governors – disqualification and removal**

**17.1** The following may not become or continue as a member of the Council of Governors:

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

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

**17.1.3** 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 him.

**17.2** Governors must be at least 18 years of age at the date they are nominated for election or appointment.

**17.3** Further provisions as to the circumstances in which an individual may not become or continue as a member of the Council of Governors are set out in Annex 6.

**17.4** NHSE may remove one or all of the governors from the Council if this is necessary to deal with a situation where the trust is failing.

**17.5** Governors will also be disqualified if they cease to meet the eligibility criteria, (mandatory or otherwise) for becoming governors, or if, through changing circumstances, they fall into the category of those who are excluded from becoming governors. Failure to meet the mandatory requirements under paragraph 17.1 will result in automatic termination. In circumstances where disqualification is under consideration for the non mandatory reasons set out in Annex 6, three weeks notice of the resolution must be given to the Council of Governors, and termination as a governor will require the approval of three quarters of those members of the Council of Governors present and voting at the meeting.

## **18. Council of Governors – duties of governors**

**18.1** The general duties of the Council of Governors are:

**18.1.1** to hold the non-executive directors individually and collectively to account for the performance of the Board of Directors, and

**18.1.2** to represent the interests of the members of the trust as a whole and the interests of the public

- 18.1.3** to appoint, remove and decide upon the terms of office of the Chair and Non-Executive directors.
  - 18.1.4** to determine the remuneration of the Chair and Non-Executive directors.
  - 18.1.5** to appoint and remove the Trust's auditors.
  - 18.1.6** to approve the appointment of the Chief executive.
  - 18.1.7** to receive the annual report and accounts and auditors report at the annual members meeting.
  - 18.1.8** to jointly approve changes to the Constitution with the Board.
- 18.2** The trust must make steps to secure that the governors are equipped with the skills and knowledge they require in their capacity as such.

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

- 19.1** The Chair of the trust (i.e. the Chair of the Board of Directors, appointed in accordance with the provisions of paragraph 28.1 below) or, in his absence the Deputy Chair (appointed in accordance with the provisions of paragraph 30 below) shall preside at meetings of the Council of Governors. Should neither the Chair or Deputy Chair be available then the Senior Independent Director should stand in.
- 19.2** Meetings of the Council of Governors shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons by resolution of the Council.
- 19.3** 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.

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

The standing orders for the practice and procedure of the Council of Governors, are attached at Annex 7.

## **21. Not used**

## **22. 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 Chair and members of the Council of Governors as soon as they become aware of it. The Standing Orders or Policies applying to 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.

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

The trust may pay agreed travelling and other expenses to members of the Council of Governors at rates determined by the trust and in accordance with the trust's policies.

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

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

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

**25.1** The trust is to have a Board of Directors, which shall comprise both executive and non-executive directors. At least half the Board, excluding the Chair, shall be non executive directors.

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

**25.2.1** a non-executive Chair

**25.2.2** a minimum of 5 and up to 8 other non-executive directors; and

**25.2.3** a minimum of 4 and up to 7 executive directors.

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

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

**25.5** One of the executive directors shall be the finance director.

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

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

### **26. 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.

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

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

**27.1** they are a member of a Public Constituency, and

**27.2** Not used

**27.3** Not used

**27.4** they are not disqualified by virtue of paragraph 33 and/or paragraph 2.3 of Annex 9 below.

## **28. Board of Directors – appointment and removal of chair and other non-executive directors**

**28.1** 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.

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

**28.3** Non Executive Directors may in exceptional circumstances serve longer than six years, subject to annual re-appointment and to serving up to a maximum of a further three years (making nine years in total).

**29. Not used**

## **30. 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 of the Board of Directors following a recommendation by the Chair.

## **31. Board of Directors - appointment and removal of the Chief Executive and other executive directors**

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

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

**31.3** Not used.

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

## **32. Not used**

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

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

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

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

**33.3** 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 him.

**33.4** A person who has been found, through due process, not to be fit and proper person on the grounds of a serious misconduct or incompetence.

**33.5** a non executive director who ceases to comply with paragraph 27.

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

**34.1** 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.

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

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

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

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

**36.1** The duties that a director of the trust has by virtue of being a director include in particular:

**36.1.1** 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.

- 36.1.2** 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.
- 36.2** The duty referred to in paragraph 36.1.1 is not infringed if:
- 36.2.1** the situation cannot reasonably be regarded as likely to give rise to a conflict of interest, or
  - 36.2.2** the matter has been authorised in accordance with the constitution.
- 36.3** The duty referred to in paragraph 36.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- 36.4** In paragraph 36.1.2, “third party” means a person other than:
- 36.4.1** The trust, or
  - 36.4.2** A person acting on its behalf.
- 36.5** If a director of the trust has in any way a direct or indirect interest in a proposed transaction or arrangement with the trust, the director must declare the nature and extent of that interest to the other directors.
- 36.6** If a declaration under this paragraph proves to be, or becomes, inaccurate or incomplete, a further declaration must be made.
- 36.7** Any declaration required by this paragraph must be made before the trust enters into the transaction or arrangement.
- 36.8** This paragraph does not require a declaration of an interest of which the director is not aware or where the director is not aware of the transaction or arrangement in question.
- 36.9** A director need not declare an interest:
- 36.9.1** if it cannot reasonably be regarded as likely to give rise to a conflict of interest;
  - 36.9.2** If, or to the extent that, the directors are already aware of it;
  - 36.9.3** If, or to the extent that, it concerns terms of the director’s appointment that have been or are to be considered;
    - 36.9.3.1** By a meeting of the Board of Directors, or
    - 36.9.3.2** By a committee of the directors appointed for the purpose under the Constitution.

**36.10** The Standing Orders at Annex 8 specify the arrangements for excluding a Director from discussion or consideration of any contract or other matter in which they have declared an interest as appropriate.

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

**37.1** 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 nonexecutive directors.

**37.2** 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.

**37.3** Pending the establishment of such a committee the Chair of the trust may make alternative provision for these matters to be decided

### **38. Registers**

The trust shall have:

**38.1** a register of members showing, in respect of each member, the constituency to which they belong

**38.2** a register of members of the Council of Governors;

**38.3** a register of interests of governors;

**38.4** a register of directors; and

**38.5** a register of interests of the directors.

### **39. Admission to and removal from the registers**

In relation to 38.1 above, the registers of members of the trust will be validated annually.

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

**40.1** The trust shall make the registers specified in paragraph 38 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.

**40.2** Not used

**40.3** 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, or their home, contact details or address, if the member so requests.

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

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

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

**40.5** 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.

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

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

**41.1.1** a copy of the current constitution.

**41.1.2** a copy of the latest annual accounts and of any report of the auditor on them, and

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

**41.2** 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.

**41.2.1** 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.

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

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

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

**41.2.5** a copy of any statement provided under section 65F (administrator's draft report) of the 2006 Act.

**41.2.6** a copy of any notice published under section 65F (administrator's draft report), 65G (consultation plan), 65H (consultation requirements), 65J (power to extend time), 65KC (action following Secretary of State's rejection of final report) or 65 KD (Secretary of



State's response to resubmitted final report) of the 2006 Act.

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

**41.2.8** a copy of any final report published under section 65I (administrator's final report) of the 2006 Act.

**41.2.9** 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.

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

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

**41.4** 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.

## **42. Auditor**

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

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

## **43. 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.

## **44. Annual Accounts**

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

**44.2** NHSE may with the approval of the Secretary of State give directions to the trust as to the content and form of its accounts.

**44.3** The accounts are to be audited by the trust's auditor.

**44.4** The trust shall prepare in respect of each financial year annual accounts in such form as the Secretary of State directs.

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

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

**45.1** The trust shall prepare an Annual Report and send it to NHSE.

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

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

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

**45.5** Each forward plan must include information about:

**45.5.1** 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

**45.5.2** the income it expects to receive from doing so.

**45.6** Where a forward plan contains a proposal that the trust carry on an activity of a kind mentioned in paragraph 45.5.1, the Council of Governors must:

**45.6.1** 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

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

**45.7** 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.

#### **46. Presentation of the annual accounts to the Governors and Members**

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

**46.1.1** the annual accounts

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

**46.1.3** the annual report.

**46.2** 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.

**46.3** The trust may combine a meeting of the Council of Governors convened for the purposes of paragraph 46.1 with the Annual Members' Meeting.

## **47. Instruments**

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

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

## **48. Amendment of the constitution**

**48.1** The trust may make amendments of its constitution only if:

**48.1.1** more than half of the members of the Council of Governors of the trust voting approve the amendments, and

**48.1.2** More than half of the members of the Board of Directors of the trust voting approve the amendments.

**48.2** Amendments made under paragraph 48.1 take effect as soon as the conditions in that paragraph are satisfied, but the amendment has no effect in so far as the constitution would, as a result of the amendment, not accord with schedule 7 of the 2006 Act.

**48.3** Where an amendment is made to the constitution in relation to the powers or duties of the Council of Governors (or otherwise with respect to the role that the Council of Governors has as part of the trust):

**48.3.1** At least one member of the Council of Governors must attend the next Annual Members' meeting and present the amendment, and

**48.3.2** the trust must give the members an opportunity to vote on whether they approve the amendment.

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

**48.5** Amendments by the trust of its constitution are to be notified to NHSE. For the avoidance of doubt, NHSE's functions do not include a power or duty to determine whether or not the constitution, as a result of the amendments, accords

with Schedule 7 of the 2006 Act.

## **49. Significant transactions**

**49.1** The Council of Governors are required to approve significant transactions, defined with reference to the National Health Service Act 2006, as amended by the Health and Care Act 2022. Examples of significant transactions include:

- a) Mergers (section 56)
- b) Acquisitions (section 56A)
- c) Dissolutions (section 57A)
- d) Separations (section 56B)
- e) Transfer schemes (section 69A).

**49.2** This means Governors need to satisfy themselves that the Trust Board has been thorough and comprehensive in reaching its proposal and appropriately obtained and considered the interests of members and the public as part of the decision-making process. They must be assured that a due process has been followed, that the Board has sought and obtained assurance regarding risk and has taken account of the downside and its possible consequences.

**49.3** The trust may enter into a significant transaction only if more than half of the members of the Council of Governors voting approve entering into the transaction.

**49.4** A significant transaction does not include:

**49.4.1** a transaction in the ordinary course of business (including the renewal, extension or entering into an agreement in respect of healthcare services carried out by the trust);

**49.4.2** any agreement or changes to healthcare services carried out by the trust following a reconfiguration of services led by the commissioners of such services; and

**49.4.3** any grant of public dividend capital or the entering into of a working capital facility or other loan, which does not involve the acquisition or disposal of any fixed asset of the trust.

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

(Paragraphs 7.1 and 7.3)

The areas specified as areas for public constituencies are the six local authority areas described in the table below. In addition there is a rest of England and Wales public constituency. The table sets out the minimum numbers of members required in each area.

<b>Constituency</b>	<b>Minimum number of members</b>
Ashford Borough Council	100
Canterbury City Council	100
Dover District Council	100
Thanet District Council	100
Swale Borough Council	100
Folkestone and Hythe District Council	100
Rest of England and Wales	25

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

(Paragraph 8.5)

The Staff Constituency should comprise the different sites and locations of the Trust and nominations for Staff Governors should reflect the breadth and range of staff working for the Trust. The minimum number of members required in the Staff Constituency as a whole is 500.

### **ANNEX 3 – THE PATIENTS’ CONSTITUENCY**

There is no Patients’ Constituency.

## ANNEX 4 – COMPOSITION OF COUNCIL OF GOVERNORS

(Paragraphs 14.2 and 14.3)

The Council of Governors will consist of a Chair and 19 governors as follows:

Type of Governor	Number of Governors
<b>Elected Governors</b>	
<b>Public constituencies</b> – residents of the following constituency areas	
Ashford Borough Council	2
Canterbury City Council	2
Dover District Council	2
Thanet District Council	2
Swale Borough Council	2
Folkestone and Hythe District Council	2
Rest of England and Wales	1
<b>Staff Constituency</b>	3
<b>Appointed Governors</b>	
<b>Statutory</b>	
Appointed jointly by: Ashford Borough Council Canterbury City Council Dover District Council Thanet District Council Swale Borough Council Folkestone and Hythe District Council	1
<b>From partnership organisations*</b>	
Appointed jointly by Canterbury Christ Church University University of Kent	1
Nominated by the following League of Friends to represent the interests of the League of Friends and other volunteers working with the Trust: <ul style="list-style-type: none"> <li>□ The League of Friends of the Kent &amp; Canterbury Hospital</li> <li>□ The League of Friends of the William Harvey Hospital</li> <li>□ League of Friends, Queen Elizabeth the Queen Mother Hospital</li> <li>□ League of Friends, Royal Victoria Hospital, Folkestone</li> <li>□ The League of Friends of Dover Hospitals</li> </ul>	1

\* Specified for the purposes of paragraph 9 (7) of Schedule 7 to the 2006 Act.

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## **PART 1 – INTERPRETATION**

### **1 Interpretation**

1.1 In these rules, unless the context otherwise requires:

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

“associate non-executive director” is member of the Board of Directors holding an Associate director office (not an executive office) of the Trust, without voting rights;

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

“council of governors” means the council of governors of the Trust;

“declaration of identity” has the meaning set out in rule 21.1;

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

“e-voting” means voting using either the internet, telephone or text message;

“e-voting information” has the meaning set out in rule 24.2;

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

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

“lead governor” means the governor nominated by the Trust to fulfil the role described in Appendix B to The NHS Foundation Trust Code of Governance or any later version of such code.

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

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

NHSE is the umbrella organisation that brought together a number of bodies.

“non-voting executive director” is a member of the Board of Directors holding an executive office of the Trust, without voting rights;  
“non-voting non-executive director” is a member of the Board of Directors who does not hold an executive office of the Trust, without voting rights;

“numerical voting code” has the meaning set out in rule 64.2(b)

“polling website” has the meaning set out in rule 26.1;

“postal voting information” has the meaning set out in rule 24.1;

“telephone short code” means a short telephone number used for the purposes of submitting a vote by text message;

“telephone voting facility” has the meaning set out in rule 26.2;

“telephone voting record” has the meaning set out in rule 26.5 (d);

“text message voting facility” has the meaning set out in rule 26.3;

“text voting record” has the meaning set out in rule 26.6 (d);

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

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

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

“voting information” means postal voting information and/or e-voting information

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

## **PART 2 – TIMETABLE FOR ELECTIONS**

### **2 Timetable**

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

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

### **3 Computation of time**

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

- (a) a Saturday or Sunday;
- (b) Christmas day, Good Friday, or a bank holiday, or
- (c) a day appointed for public thanksgiving or mourning, shall be disregarded, and any such day shall not be treated as a day for the purpose of any proceedings up to the completion of the poll, nor shall the returning officer be obliged to proceed with the counting of votes on such a day.

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

## **PART 3 – RETURNING OFFICER**

### **4 Returning Officer**

4.1 Subject to rule 69, the returning officer for an election is to be appointed by the Trust.

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

## **5 Staff**

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

## **6 Expenditure**

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

## **7 Duty of co-operation**

- 7.1 The Trust is to co-operate with the returning officer in the exercise of their functions under these rules.

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

## **8 Notice of election**

- 8.1 The returning officer is to publish a notice of the election stating:
- (a) the constituency, or class within a constituency, for which the election is being held,
  - (b) the number of members of the council of governors to be elected from that constituency, or class within that constituency,
  - (c) the details of any nomination committee that has been established by the Trust,
  - (d) the address and times at which nomination forms may be obtained;
  - (e) the address for return of nomination forms (including, where the return of nomination forms in an electronic format will be permitted, the e-mail address for such return) and the date and time by which they must be received by the returning officer,

- (f) the date and time by which any notice of withdrawal must be received by the returning officer
- (g) the contact details of the returning officer
- (h) the date and time of the close of the poll in the event of a contest.

## **9 Nomination of candidates**

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

9.2 The returning officer:

- (a) is to supply any member of the Trust with a nomination form, and
- (b) is to prepare a nomination form for signature at the request of any member of the Trust, but it is not necessary for a nomination to be on a form supplied by the returning officer and a nomination can, subject to rule 13, be in an electronic format.

## **10 Candidate's particulars**

10.1 The nomination form must state the candidate's:

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

## **11 Declaration of interests**

11.1 The nomination form must state:

- (a) any financial interest that the candidate has in the Trust, 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.
- (c) whether the candidate has within the preceding five years been convicted in the British Islands of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him.



## **12 Declaration of eligibility**

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

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

## **13 Signature of candidate**

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

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

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

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

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

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

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

- (a) that the paper is not received on or before the final time and date for return of nomination forms, as specified in the notice of the

election,

- (b) that the paper does not contain the candidate's particulars, as required by rule 10;
  - (c) that the paper does not contain a declaration of the interests of the candidate, as required by rule 11,
  - (d) that the paper does not include a declaration of eligibility as required by rule 12, or
  - (e) that the paper is not signed and dated by the candidate, if required by rule 13.
- 14.3 The returning officer is to examine each nomination form as soon as is practicable after they have received it, and decide whether the candidate has been validly nominated.
- 14.4 Where the returning officer decides that a nomination is invalid, the returning officer must endorse this on the nomination form, stating the reasons for their decision.
- 14.5 The returning officer is to send notice of the decision as to whether a nomination is valid or invalid to the candidate at the contact address given in the candidate's nomination form. If an e-mail address has been given in the candidate's nomination form (in addition to the candidate's postal address), the returning officer may send notice of the decision to that address.

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

- 15.1 The returning officer is to prepare and publish a statement showing the candidates who are standing for election.
- 15.2 The statement must show:
- (a) the constituency or class within a constituency of each candidate standing, and
  - (b) the declared interests of each candidate standing,
- as given in their nomination form.
- 15.3 The statement must list the candidates standing for election in alphabetical order by surname.
- 15.4 The returning officer must send a copy of the statement of candidates and copies of the nomination forms to the Trust as soon as is practicable after publishing the statement.

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

- 16.1 The Trust is to make the statement of the candidates and the nomination forms supplied by the returning officer under rule 15.4 available for inspection by members of the Trust free of charge at all reasonable times.
- 16.2 If a member of the Trust requests a copy or extract of the statement of candidates or their nomination forms, the Trust is to provide that member with the copy or extract free of charge.

## **17 Withdrawal of candidates**

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

## **18 Method of election**

- 18.1 If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is greater than the number of members to be elected to the council of governors, a poll is to be taken in accordance with Parts 5 and 6 of these rules.
- 18.2 If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is equal to the number of members to be elected to the council of governors, those candidates are to be declared elected in accordance with Part 7 of these rules.
- 18.3 If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is less than the number of members to be elected to be council of governors, then:
  - (a) the candidates who remain validly nominated are to be declared elected in accordance with Part 7 of these rules, and
  - (b) the returning officer is to order a new election to fill any vacancy which remains unfilled, on a day appointed by him or her in consultation with the Trust.

## **PART 5 – CONTESTED ELECTIONS**

### **19 Poll to be taken by ballot**

- 19.1 The votes at the poll must be given by secret ballot.

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

## **20 The ballot paper**

- 20.1 The ballot of each voter (other than a voter who casts their ballot by an evoting method of polling) is to consist of a ballot paper with the persons remaining validly nominated for an election after any withdrawals under these rules, and no others, inserted in the paper.
- 20.2 Every ballot paper must specify:
- (a) the name of the Trust,

- (b) the constituency, or class within a constituency, for which the election is being held,
  - (c) the number of members of the council of governors to be elected from that constituency, or class within that constituency,
  - (d) the names and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
  - (e) instructions on how to vote by all available methods of polling, including the relevant voter's voter ID number if one or more e-voting methods of polling are available,
  - (f) if the ballot paper is to be returned by post, the address for its return and the date and time of the close of the poll, and
  - (g) the contact details of the returning officer.
- 20.3 Each ballot paper must have a unique identifier.
- 20.4
- 20.5 Each ballot paper must have features incorporated into it to prevent it from being reproduced.

## **21 The declaration of identity (public and patient constituencies)**

- 21.1 The Trust shall require each voter who participates in an election for a public or patient constituency to make a declaration confirming:
- (a) that the voter is the person:
    - (i) to whom the ballot paper was addressed, and/or
    - (ii) to whom the voter ID number contained within the e-voting information was allocated,
  - (b) that they have not marked or returned any other voting information in the election, and
  - (c) the particulars of their qualification to vote as a member of the constituency or class within the constituency for which the election is being held,  
("declaration of identity")  
and the Trust shall make such arrangements as it considers appropriate to facilitate the making and the return of a declaration of identity by each voter, whether by the completion of a paper form ("ID declaration form") or the use of an electronic method.
- 21.2 The voter must be required to return their declaration of identity with their ballot.
- 21.3 The voting information shall caution the voter that if the declaration of identity is not duly returned or is returned without having been made correctly, any vote cast by the voter may be declared invalid.

*Action to be taken before the poll*

## **22 List of eligible voters**

22.1 The Trust is to provide the returning officer with a list of the members of the constituency or class within a constituency for which the election is being held who are eligible to vote by virtue of rule 27 as soon as is reasonably practicable after the final date for the delivery of notices of withdrawals by candidates from an election.

22.2 The list is to include, for each member:

- (a) a postal address; and,
- (b) the member's e-mail address, if this has been provided to which their voting information may, subject to rule 22.3, be sent.

22.3 The Trust may decide that the e-voting information is to be sent only by email to those members in the list of eligible voters for whom an e-mail address is included in that list.

## **23 Notice of poll**

23.1 The returning officer is to publish a notice of the poll stating:

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

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

- 24.1 Subject to rule 24.3, as soon as is reasonably practicable on or after the publication of the notice of the poll, the returning officer is to send the following information by post to each member of the Trust named in the list of eligible voters:
- (a) a ballot paper and ballot paper envelope,
  - (b) the ID declaration form (if required),
  - (c) information about each candidate standing for election, pursuant to rule 61 of these rules, and
  - (d) a covering envelope;
- (“postal voting information”).
- 24.2 Subject to rules 24.3 and 24.4, as soon as is reasonably practicable on or after the publication of the notice of the poll, the returning officer is to send the following information by e-mail and/ or by post to each member of the Trust named in the list of eligible voters whom the Trust determines in accordance with rule 19.3 and/ or rule 19.4 may cast their vote by an e-voting method of polling:
- (a) instructions on how to vote and how to make a declaration of identity (if required),
  - (b) the voter’s voter ID number,
  - (c) information about each candidate standing for election, pursuant to rule 64 of these rules, or details of where this information is readily available on the internet or available in such other formats as the Returning Officer thinks appropriate, (d) contact details of the returning officer,
- (“e-voting information”).
- 24.3 The Trust may determine that any member of the Trust shall:
- (a) only be sent postal voting information; or
  - (b) only be sent e-voting information; or
  - (c) be sent both postal voting information and e-voting information;
- for the purposes of the poll.
- 24.4 If the Trust determines, in accordance with rule 22.3, that the e-voting information is to be sent only by e-mail to those members in the list of eligible voters for whom an e-mail address is included in that list, then the returning officer shall only send that information by e-mail.
- 24.5 The voting information is to be sent to the postal address and/ or e-mail address for each member, as specified in the list of eligible voters.

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

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

the ballot paper has been marked.

- 25.2 The covering envelope is to have:
- (a) the address for return of the ballot paper printed on it, and
  - (b) pre-paid postage for return to that address.
- 25.3 There should be clear instructions, either printed on the covering envelope or elsewhere, instructing the voter to seal the following documents inside the covering envelope and return it to the returning officer –
- (a) the completed ID declaration form if required, and
  - (b) the ballot paper envelope, with the ballot paper sealed inside it.

## **26 E-voting systems**

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



- identity,
- (vi) the date and time of the close of the poll, and
- (vii) the contact details of the returning officer;

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

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

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

- (ii) the voter's declaration of identity (where required);
  - (iii) the candidate or candidates for whom the voter has voted;  
and
  - (iv) the date and time of the voter's vote
- (e) if the voter's vote has been duly cast and recorded, provide the voter with confirmation of this;
- (f) prevent any voter from voting after the close of poll.

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

- (a) require a voter to:
  - (i) provide their voter ID number; and
  - (ii) where the election is for a public or patient constituency, make a declaration of identity;  
in order to be able to cast their vote;
- (b) prevent a voter from voting for more candidates than they are entitled to at the election;
- (c) create a record ("text voting record") that is stored in the text messaging voting system in respect of each vote cast by a voter by text message that comprises of:
  - (i) the voter's voter ID number;
  - (iii) the voter's declaration of identity (where required);
  - (iv) the candidate or candidates for whom the voter has voted;  
and
  - (v) the date and time of the voter's vote
- (e) if the voter's vote has been duly cast and recorded, provide the voter with confirmation of this;
- (f) prevent any voter from voting after the close of poll.

*The poll*

## **27 Eligibility to vote**

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

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

- 28.1 The returning officer is to put in place arrangements to enable requests for assistance to vote to be made.
- 28.2 Where the returning officer receives a request from a voter who requires assistance to vote, the returning officer is to make such arrangements as they consider necessary to enable that voter to vote.

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

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

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

### **30 Lost voting information**

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

30.2 The returning officer may not issue replacement voting information in respect of lost voting information unless they:

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

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

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

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

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

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

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

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

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

*Polling by internet, telephone or text*

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

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

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

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

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

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

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

## **36 Receipt of voting documents**

- 36.1 Where the returning officer receives:

- (a) a covering envelope, or
- (b) any other envelope containing an ID declaration form if required, a ballot paper envelope, or a ballot paper,

before the close of the poll, that officer is to open it as soon as is practicable; and rules 37 and 38 are to apply.

- 36.2 The returning officer may open any covering envelope or any ballot paper envelope for the purposes of rules 37 and 38, but must make arrangements to ensure that no person obtains or communicates information as to:

- (a) the candidate for whom a voter has voted, or
- (b) the unique identifier on a ballot paper.

- 36.3 The returning officer must make arrangements to ensure the safety and security of the ballot papers and other documents.

## **37 Validity of votes**

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

37.2 Where the returning officer is satisfied that rule 37.1 has been fulfilled, they are to:

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

37.3 Where the returning officer is not satisfied that rule 37.1 has been fulfilled, they are to:

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

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

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

37.6 Where the returning officer is not satisfied that rule 37.4 has been fulfilled, they are to:

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

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

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

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

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

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

### **40 Sealing of packets**

- 40.1 As soon as is possible after the close of the poll and after the completion of the procedure under rules 37 and 38, the returning officer is to seal the packets containing:
- (a) the disqualified documents, together with the list of disqualified documents inside it,



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

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

## PART 6 – COUNTING THE VOTES

### STV41 Interpretation of Part 6

#### STV41.1

In Part 6 of these rules:

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

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

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

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

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

“non-transferable vote” means a ballot document:

- (a) on which no second or subsequent preference is recorded for a continuing candidate,
- (b) which is excluded by the returning officer under rule STV49,

or

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

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

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

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

“stage of the count” means:

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

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

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

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

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

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

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

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

### **43 The count**

43.1 The returning officer is to:

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

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

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

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

FPP44.1 Any ballot paper:

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

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

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

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

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

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

FPP44.4 The returning officer is to:

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

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

- (a) does not bear proper features that have been incorporated into the ballot paper,
- (b) voting for more candidates than the voter is entitled to,
- (c) writing or mark by which voter could be identified, and unmarked or rejected because of uncertainty, and, where applicable, each heading must record the number of ballot papers rejected in part.

FPP44.6 Any text voting record:

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

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

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

FPP448 A text voting record on which a vote is marked:

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

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

FPP44.9 The returning officer is to:

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

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

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

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

## **STV45 First stage**

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

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

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

## **STV46 The quota**

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

- STV46.2 The result, increased by one, of the division under rule STV46.1 (any fraction being disregarded) shall be the number of votes sufficient to secure the election of a candidate (in these rules referred to as “the quota”).
- STV46.3 At any stage of the count a candidate whose total votes equals or exceeds the quota shall be deemed to be elected, except that any election where there is only one vacancy a candidate shall not be deemed to be elected until the procedure set out in rules STV47.1 to STV47.3 has been complied with.
- STV47 Transfer of votes**
- STV47.1 Where the number of first preference votes for any candidate exceeds the quota, the returning officer is to sort all the ballot documents on which first preference votes are given for that candidate into sub- parcels so that they are grouped:
- (a) according to next available preference given on those ballot documents for any continuing candidate, or where no such preference is given, as the sub-parcel of nontransferable votes.
- STV47.2 The returning officer is to count the number of ballot documents in each parcel referred to in rule STV47.1.
- STV47.3 The returning officer is, in accordance with this rule and rule STV48, to transfer each sub-parcel of ballot documents referred to in rule STV47.1(a) to the candidate for whom the next available preference is given on those ballot documents.
- STV47.4 The vote on each ballot document transferred under rule STV47.3 shall be at a value (“the transfer value”) which:
- (a) reduces the value of each vote transferred so that the total value of all such votes does not exceed the surplus, and
  - (b) is calculated by dividing the surplus of the candidate from whom the votes are being transferred by the total number of the ballot documents on which those votes are given, the calculation being made to two decimal places (ignoring the remainder if any).

- STV47.5 Where at the end of any stage of the count involving the transfer of ballot documents, the number of votes for any candidate exceeds the quota, the returning officer is to sort the ballot documents in the sub-parcel of transferred votes which was last received by that candidate into separate sub-parcels so that they are grouped:
- (a) according to the next available preference given on those ballot documents for any continuing candidate, or
  - (b) where no such preference is given, as the sub-parcel of nontransferable votes.
- STV47.6 The returning officer is, in accordance with this rule and rule STV48, to transfer each sub-parcel of ballot documents referred to in rule STV47.5(a) to the candidate for whom the next available preference is given on those ballot documents.
- STV47.7 The vote on each ballot document transferred under rule STV47.6 shall be at:
- (a) a transfer value calculated as set out in rule STV47.4(b), or
  - (b) at the value at which that vote was received by the candidate from whom it is now being transferred,
- whichever is the less.
- STV47.8 Each transfer of a surplus constitutes a stage in the count.
- STV47.9 Subject to rule STV47.10, the returning officer shall proceed to transfer transferable ballot documents until no candidate who is deemed to be elected has a surplus or all the vacancies have been filled.
- STV47.10 Transferable ballot documents shall not be liable to be transferred where any surplus or surpluses which, at a particular stage of the count, have not already been transferred, are:
- (a) less than the difference between the total vote then credited to the continuing candidate with the lowest recorded vote and the vote of the candidate with the next lowest recorded vote, or
  - (b) less than the difference between the total votes of the two or more continuing candidates, credited at that stage of the count with the lowest recorded total numbers of votes and the candidate next above such candidates.
- STV47.11 This rule does not apply at an election where there is only one vacancy.



**STV48      Supplementary provisions on transfer**

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

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

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

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

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

- STV48.4 Where a ballot document is so marked that it is unclear to the returning officer at any stage of the count under rule STV47 or STV49 for which candidate the next preference is recorded, the returning officer shall treat any vote on that ballot document as a non-transferable vote; and votes on a ballot document shall be so treated where, for example, the names of two or more candidates (whether continuing candidates or not) are so marked that, in the opinion of the returning officer, the same order of preference is indicated or the numerical sequence is broken.
- STV49 Exclusion of candidates**
- STV49.1 If:
- (a) all transferable ballot documents which under the provisions of rule STV47 (including that rule as applied by rule STV49.11) and this rule are required to be transferred, have been transferred, and
  - (b) subject to rule STV50, one or more vacancies remain to be filled,
- the returning officer shall exclude from the election at that stage the candidate with the then lowest vote (or, where rule STV49.12 applies, the candidates with the then lowest votes).
- STV9.2 The returning officer shall sort all the ballot documents on which first preference votes are given for the candidate or candidates excluded under rule STV49.1 into two sub-parcels so that they are grouped as:
- (a) ballot documents on which a next available preference is given, and
  - (b) ballot documents on which no such preference is given (thereby including ballot documents on which preferences are given only for candidates who are deemed to be elected or are excluded).
- STV49.3 The returning officer shall, in accordance with this rule and rule STV48, transfer each sub-parcel of ballot documents referred to in rule STV49.2 to the candidate for whom the next available preference is given on those ballot documents.
- STV49.4 The exclusion of a candidate, or of two or more candidates together, constitutes a further stage of the count.
- STV49.5 If, subject to rule STV50, one or more vacancies still remain to be filled, the returning officer shall then sort the transferable ballot documents, if any, which had been transferred to any candidate excluded under rule STV49.1 into sub- parcels according to their transfer value.
- STV49.6 The returning officer shall transfer those ballot documents in the subparcel of transferable ballot documents with the highest transfer value to the continuing candidates in accordance with the next available preferences given on those ballot documents (thereby

passing over candidates who are deemed to be elected or are excluded).

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

the lowest number of votes at that stage shall be excluded,  
and

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

## **STV50 Filling of last vacancies**

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

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

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

## **FPP51 Equality of votes**

- FPP51.1 Where, after the counting of votes is completed, an equality of votes is found to exist between any candidates and the addition of a vote would

entitle any of those candidates to be declared elected, the returning officer is to decide between those candidates by a lot, and proceed as if the candidate on whom the lot falls had received an additional vote.

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

### **FPP52. Declaration of result for contested elections**

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

(a)  
declare the candidate or candidates whom more votes have been given than for the other candidates, up to the number of vacancies to be filled on the council of governors from the constituency, or class within a constituency, for which the election is being held to be elected,

(b)  
give notice of the name of each candidate who they have declared elected:  
(i) where the election is held under a proposed constitution pursuant to powers conferred on the Trust by section 33(4) of the 2006 Act, to the chair of the NHS Trust, or  
(ii) in any other case, to the chair of the Trust; and

(c)  
give public notice of the name of each candidate whom they have declared elected.

FPP52.2 The returning officer is to make:

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

the number of rejected text voting records under each of the headings in rule FPP44.10, available on request.

### **STV52 Declaration of result for contested elections**

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

(a) declare the candidates who are deemed to be elected under Part 6 of these rules as elected,

- (b) give notice of the name of each candidate who they have declared elected –
  - (i) where the election is held under a proposed constitution pursuant to powers conferred on the Trust by section 33(4) of the 2006 Act, to the chair of the NHS Trust, or
  - (ii) in any other case, to the chair of the Trust, and
- (c) give public notice of the name of each candidate who they have declared elected.

STV52.2 The returning officer is to make:

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

available on request.

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

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

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

## **PART 8 – DISPOSAL OF DOCUMENTS**

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

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

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

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

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

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

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

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

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

## **55 Delivery of documents**

55.1 Once the documents relating to the poll have been sealed up and endorsed pursuant to rule 56, the returning officer is to forward them to the chair of the Trust.

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

56.1 Where:

- (a) any voting documents are received by the returning officer after the close of the poll, or
- (b) any envelopes addressed to eligible voters are returned as undelivered too late to be resent, or

- (c) any applications for replacement voting information are made too late to enable new voting information to be issued,  
  
the returning officer is to put them in a separate packet, seal it up, and endorse and forward it to the chair of the Trust.

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

- 57.1 The Trust is to retain the documents relating to an election that are forwarded to the chair by the returning officer under these rules for one year, and then, unless otherwise directed by the board of directors of the Trust, cause them to be destroyed.
- 57.2 With the exception of the documents listed in rule 58.1, the documents relating to an election that are held by the Trust shall be available for inspection by members of the public at all reasonable times.
- 57.3 A person may request a copy or extract from the documents relating to an election that are held by the Trust, and the Trust is to provide it, and may impose a reasonable charge for doing so.

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

- 58.1 The Trust may not allow:

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

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

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



58.3 The board of directors of the Trust'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 Trust must only make the documents available for inspection in accordance with those terms and conditions.

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

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

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

- (i) that their vote was given, and
- (ii) that NHSE has declared that the vote was invalid.

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

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

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

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

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

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

- FPP59.4 The returning officer shall not take any step or further step to open envelopes or deal with their contents in accordance with rules 38 and 39, and is to make up separate sealed packets in accordance with rule 40.
- FPP59.5 The returning officer is to:
- (a) count and record the number of ballot papers, internet voting records, telephone voting records and text voting records that have been received,
  - (b) seal up the ballot papers, internet voting records, telephone voting records and text voting records into packets, along with the records of the number of ballot papers, internet voting records, telephone voting records and text voting records and
- ensure that complete electronic copies of the internet voting records telephone voting records and text voting records created in accordance with rule 26 are held in a device suitable for the purpose of storage.
- FPP59.6 The returning officer is to endorse on each packet a description of:
- (a) its contents,
  - (b) the date of the publication of notice of the election,
  - (c) the name of the Trust to which the election relates, and
  - (d) the constituency, or class within a constituency, to which the election relates.
- FPP59.7 Once the documents relating to the poll have been sealed up and endorsed pursuant to rules FPP59.4 to FPP59.6, the returning officer is to deliver them to the chair of the Trust, and rules 57 and 58 are to apply.
- STV59 Countermand or abandonment of poll on death of candidate**
- STV59.1 If, at a contested election, proof is given to the returning officer's satisfaction before the result of the election is declared that one of the persons named or to be named as a candidate has died, then the returning officer is to:
- (a) publish a notice stating that the candidate has died, and

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

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

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

### *Election expenses*

#### **60 Election expenses**

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

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

61.1 A candidate may not incur any expenses or make a payment (of whatever nature) for the purposes of an election, other than expenses or payments that relate to:

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

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

62.1 No person may:

- (a) incur any expenses or make a payment (of whatever nature) for the purposes of a candidate's election, whether on that candidate's behalf or otherwise, or
- (b) give a candidate or their family any money or property (whether as a gift, donation, loan, or otherwise) to meet or contribute to

expenses incurred by or on behalf of the candidate for the purposes of an election.

62.2 Nothing in this rule is to prevent the Trust from incurring such expenses, and making such payments, as it considers necessary pursuant to rules 63 and 64.

### *Publicity*

## **63 Publicity about election by the Trust**

63.1 The Trust may:

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

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

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

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

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

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

64.2 The information must consist of:

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

- telephone voting facility or the text message voting facility (“numerical voting code”), and
- (c) a photograph of the candidate.

## **65 Meaning of “for the purposes of an election”**

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

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

## **PART 11 – QUESTIONING ELECTIONS AND THE CONSEQUENCE OF IRREGULARITIES**

### **66 Application to question an election**

66.1 An application alleging a breach of these rules, including an electoral irregularity under Part 10, may be made to NHSE .

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

66.3 An application may only be made to NHSE by:

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

66.4 The application must:

- (a) describe the alleged breach of the rules or electoral irregularity, and
- (b) be in such a form as NHSE may require.

66.5 The application must be presented in writing within 21 days of the declaration of the result of the election.

66.6 If NHSE requests further information from the applicant, then that person must provide it as soon as is reasonably practicable.

66.7 NHSE shall delegate the determination of an application to a person or panel of persons to be nominated for the purpose.

66.8 The determination by the person or panel of persons nominated in accordance with rule 66.7 shall be binding on and shall be given effect by the Trust, the applicant and the members of the constituency (or class within a constituency) including all the candidates for the election to which the application relates.

66.9 NHSE may prescribe rules of procedure for the determination of an application including costs.

## **67 Secrecy**

67.1 The following persons:

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

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

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

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

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

## **68 Prohibition of disclosure of vote**

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

## **69 Disqualification**

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

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

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

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

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

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

the returning officer may extend the time between the publication of the notice of the poll

## **ANNEX 6 – ADDITIONAL PROVISIONS – COUNCIL OF GOVERNORS**

(Paragraph 17.3)

### **1. Elected Governors**

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

### **2. Appointed Governors**

- 2.1 The Secretary (or such person as they may nominate) shall contact each relevant organisation in writing regarding the appointment of the Governor by it.
- 2.2 For the purposes of this paragraph 2 “relevant organisation” shall mean any local authority, university or other partnership organisation which is eligible to appoint a Governor to the Council of Governors under this Constitution.

### **3. Lead Governor**

- 3.1 The Council of Governors shall appoint one of its public Governors as the Lead Governor in accordance with the conditions of appointment set out in the Lead Governor role description and approved by the Council of Governors and the Board of Directors.
- 3.2 The Lead Governor shall have the responsibilities, and perform the tasks, set out in the Lead Governor role description.
- 3.3 The term of the Lead Governor shall be selected by the Council of Governors for a term of one year up to a maximum of 3 years.

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

- 4.1 In addition to paragraph 17 of this Constitution, a person may not become or continue as a Governor if they are not a Member;
  - 4.1.2 in the case of a public governor or staff governor they cease to be a Member of the Constituency or Class from which they were elected;

- 4.1.3 in the case of an appointed governor, the organisation which appointed them terminates that appointment;
- 4.1.4 they are a person who is not a fit and proper person as required by the NHS Provider Licence; Fit and Proper Person statement should be completed on an annual basis.
- 4.1.5 they have been required to notify the police of their name and address as a result of being convicted or cautioned under the Sexual Offences Act 2003 or other applicable legislation or their name appears a Barred List as defined in the Safeguarding Vulnerable Groups Act 2006;
- 4.1.6 they (or an organisation of which they were a director) have been found guilty of an offence under the Modern Slavery Act 2015;
- 4.1.7 they (or an organisation of which they were a director) have been found guilty of an offence under the Bribery Act 2010 or any other applicable law relating to fraud, financial crime or terrorist financing;
- 4.1.8 they are the spouse, partner, parent, child of, or occupant of the same household as a director or a member of the Council of Governors;
- 4.1.9 they are a director of the Trust;
- 4.1.10 they are a governor, non-executive director (including the chair) or, executive director (including the chief executive officer) of another NHS Body, unless they are appointed by an appointing organisation which is an NHS Body or the Chair agrees to them becoming, or continuing as, a governor of the Trust in exceptional circumstances;
- 4.1.11 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;
- 4.1.12 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 NHS, for non-attendance at meetings, or for non-disclosure of a pecuniary interest;
- 4.1.13 they have previously been removed as a Governor of the Trust;
- 4.1.14 they have previously been removed as a governor from another NHS foundation trust;
- 4.1.15 they have failed to sign and deliver to the Secretary a statement in the form required by the Secretary confirming acceptance of any Governor or Trust Code of Conduct;
- 4.1.16 they have committed a serious breach of the Trust's Code of Conduct or which resulted in them being removed as a Governor from the Council;
- 4.1.17 they lack capacity within the meaning of the Mental Capacity Act 2005 to carry out all the duties and responsibilities of a governor;
- 4.1.18 they are the subject of a disqualification order made under the Company Directors Disqualification Act 1986;



- 4.1.19 they have had their name removed from a list maintained under regulations pursuant to sections 91 (Persons performing primary medical services), 106 (Persons performing primary dental services), 123 (Persons performing primary ophthalmic services), or 146 (Persons performing local pharmaceutical services) of the 2006 Act, or the equivalent lists maintained by Local Health Boards in Wales, and they have not subsequently had their name included in such a list;
  - 4.1.20 they are deemed a vexatious or persistent complainant or litigant against the Trust without reasonable cause; or
  - 4.1.21 they have failed to repay (without good cause) any amount of monies properly owed to the Trust.
- 4.2 For the purposes of this a vexatious or persistent complainant" shall be as defined in the Trust's Feedback Complaints and Patient Advice and Liaison (PALS) Policy (or such other policy that may replace it from time to time). In the event of a dispute regarding whether an individual is a vexatious or persistent complainant, the Chair in consultation with the Senior Independent Director and Company Secretary shall make the final decision.
- 4.3 A person holding office as a Governor shall immediately cease to do so if they resign by notice in writing to the Secretary;
- 4.3.1 they become disqualified from office under this Constitution
  - 4.3.2 they fail to attend three meetings of the Council of Governors in a period of one year unless the Lead Governor, Chair and Secretary are satisfied that the absence was due to a reasonable cause; and
  - 4.3.3 they will be able to start attending meetings of the Trust again within such a period as they consider reasonable.
  - 4.3.4 they have refused to undertake any training which the Council of Governors requires all governors to undertake unless the Lead Governor, Chair and Secretary are satisfied that the refusal was due to a reasonable cause; or
  - 4.3.5 they are removed from the Council of Governors by a resolution passed under paragraph 17 of this Constitution
- 4.4 For the purposes of an absence this will ordinarily be considered to be due to a reasonable cause if it is due to:
- 4.4.1. ill health (provided that the Governor in question, or someone on their behalf, has advised the Secretary of such circumstances as soon as reasonably practicable); or
  - 4.4.2 a personal or family emergency.
  - 4.4.3 for the avoidance of doubt, work commitments will not be considered a reasonable cause unless the Trust has changed the date of the meeting of the Council of Governors at short notice.
  - 4.4.3 Instances of ill health will be reviewed on a case-by-case basis in consultation between the Lead Governor, Secretary, the Chair and the affected Governor with a view of acting in the best interests of the Trust.

- 4.5 Where a Governor becomes disqualified for appointment under this paragraph 4 or paragraph 17 of this Constitution, they shall notify the Secretary in writing without delay upon becoming aware the grounds for disqualification. Any failure to notify the Secretary of grounds for disqualification pursuant to this paragraph 4.5 shall result in such individual becoming ineligible to become a Governor at any future point.
- 4.6 If it comes to the notice of the Secretary that at the time of their appointment or later a Governor is disqualified, they shall immediately declare that the person in question is disqualified and notify them in writing to that effect.

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

- 5.1 A Governor may be removed from the Council of Governors by a resolution approved at a meeting of the Council of Governors by not less than three-quarters of the Governors present and voting on the grounds that they have acted in a manner detrimental to the interests of the Trust or otherwise bring the Trust into disrepute; or the Council of Governors consider that it is not in the best interests of the Trust for them to continue as a Governor, for example because:
- 5.1.2.1 the individual's continuation as a Governor would be likely to prejudice the ability of the Trust to fulfil its principal purpose or discharge its duties and functions;
  - 5.1.2.2 the individual's continuation as a Governor would be likely to prejudice the Trust's work with other persons or body within whom it is engaged or may be engaged in the provision of goods and services;
  - 5.1.2.3 the individual's continuation as a Governor would be likely to adversely affect public confidence in the goods and services provided by the Trust;
  - 5.1.2.4 it would not be in the best interests of the Council of Governors for the individual to continue as a Governor / the individual has caused or is likely to cause prejudice to the proper conduct of the Council of Governors' affairs; or
  - 5.1.2.5 the individual has failed to comply with the values and principles of the NHS, the Trust or this Constitution in his or her behaviour or conduct.
- 5.2 The Chair, Lead Governor and Chief People officer will agree a process for investigating complaints against a Governor after taking advice from the Director of Corporate Governance which may lead to a removal of a Governor under this paragraph 5. Should the Complaint be against the Lead Governor then the Deputy Lead Governor will step in.

## **6. Vacancies amongst Governors**

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

## **Appointed Governors**

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

## **Elected Governors**

6.3 Where the vacancy arises amongst the elected governors, the Council of Governors shall be at liberty either call an election at the next yearly election cycle to fill the seat for the remainder of that term of office;

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

6.3.3 to recommend the second placed candidate in the previous election for that constituency for the remaining term.

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

## **Staff Governors**

6.5 Where the vacancy arises amongst staff governors, the Council of Governors shall be at liberty either call an election of the Staff Constituency at the next yearly election cycle to fill the seat for the remainder of that term of office;

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

6.3.3 to recommend the second placed candidate in the previous election for that constituency for the remaining term.

6.4 Staff Governors should collectively be representative of the wider staff population of the Trust including, in particular, professional group and site location. This can be achieved through priority candidates or categories of Staff Constituency voting provided for in Annex 2.

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

## **7. Dispute Resolution**

7.1 In the event of any dispute between the Council of Governors and the Board of Directors:

7.1.1 in the first instance the Chair on the advice of the Secretary, and such other advice as the Chair may see fit to obtain, shall seek to resolve the dispute;

- 7.1.2 if the Chair is unable to resolve the dispute they shall appoint a special committee comprising equal numbers of directors and Governors to consider the circumstances and to make recommendations to the Council of Governors and the Board of Directors with a view to resolving the dispute; and
- 7.1.3 if the recommendations (if any) of the special committee are unsuccessful in resolving the dispute, the Chair may refer the dispute back to the Board of Directors who shall make the final decision.
- 7.1.4 it is the duty of the Chair to consider in consultation with the Senior Independent Director and the Company Secretary whether it is appropriate for the Senior Independent Director to represent the Council of Governors and the Board if there is a conflict of interest

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

(Paragraph 16)

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## **INTERPRETATION**

1. Save as otherwise permitted by law and subject to the Constitution, at any meeting the Chair shall be the final authority on the interpretation of the Standing Orders, with a right of appeal to a committee of the Council of Governors convened for that purpose, whose decision shall be final and binding except in case of manifest error.
2. Any expression to which a meaning is given in the National Health Service Act 2006 as amended by the Health and Social Care Act 2012 (and other Acts relating to the National Health Service or in the Financial Regulations made under the Act or regulations made under it) shall have the same meaning in this interpretation and in addition.

<b>Council of Governors and (unless the context requires otherwise) "Council"</b>	The Council of Governors of the Trust as constituted by the Constitution
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<b>Board of Directors</b>	Chair, Executive and Non-Executive Directors of the Trust collectively as a body
<b>Chair of the Council or Chair of the Trust</b>	Person appointed by the Council of Governors to lead the Board of Directors and to ensure that it successfully discharges its overall responsibility for the Trust as a whole. The expression “the Chair of the trust” shall be deemed to include the Deputy Chair of the Trust if the Chair of the Trust is absent from the meeting or otherwise unavailable.
<b>Chief Executive</b>	Chief Executive Officer of the Trust
<b>Committee</b>	A Committee of the Council of Governors
<b>Constitution</b>	The Constitution of the Trust
<b>Committee members</b>	Chair of the committee and the governors (and other people by invitation) formally appointed by the Council of Governors to sit on or to Chair specific committees.
<b>Executive Director</b>	A member of the Board of Directors holding an
	executive office of the Trust.
<b>Member of the Council</b>	A Governor of the Trust. (Member of the Council in relation to the Council of Governors does not include the Chair)
<b>Non-Executive Director</b>	A member of the Board of Directors who does not hold an executive office of the Trust
<b>SOs</b>	Refers to the Standing Orders of the Council of Governors
<b>Trust Secretary</b>	A person who may be appointed to act independently of the Board to provide advice on corporate governance issues to the Council and the Chair and NHSE the Trust’s compliance with the Statutory Framework and these Standing Orders.

<b>Deputy Chair</b>	The Non-Executive Director appointment from amongst the Non-Executive Directors as Deputy Chair by the Board of Governors in accordance with the constitution to take on the Chair's duties if the Chair is absent for any reason.
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## **1. INTRODUCTION**

### **1.1 Statutory Framework**

The East Kent Hospitals University NHS Foundation Trust is a statutory body which became a public benefit Trust on 1 March 2009 following its approval as an NHS Foundation Trust, pursuant to the National Health Service Act 2006.

The statutory functions conferred on the Trust are set out in:

- The National Health Service Act 2006;
- The Health and Social Care Act 2012;

The trust is also required to comply with the licence granted to it by NHSE

All business of the Council of Governors will be conducted in the name of the Trust.

The Constitution, paragraph 20, requires the Council of Governors to adopt its own Standing Orders for its practice and procedure.

## **2. THE COUNCIL OF GOVERNORS**

### **2.1 Composition of the Council**

The composition of the Council of Governors is set out in the constitution.

One of the Governors shall be elected by the Council of Governors as the Lead Governor. The position of Lead Governor shall be determined by election annually on the basis of a secret ballot.

If a Governor resigns from office as Lead Governor, or dies in service, then the Council of Governors shall thereupon elect another Governor as the Lead Governor without delay. Any such Governor shall complete the term of office of the of the Lead Governor they succeed.

The Lead Governor may preside at meetings of the Council of Governors in the following circumstances:

- 2.1.1 where matters relating to the Non-Executive Directors are being considered and, as a result, a conflict of interest exists relating to the Chair and the Deputy Chair.



## **2.2 Role of the Chair**

The Chair is not a member of the Council of Governors. Under the Statutory Framework, the Chair presides at meetings of the Council of Governors and has a casting vote.

Where the Chair ceases to hold office, or where s/he has been unable to perform his/her duties as Chair owing to illness or any other cause, the Deputy Chair (a Non-Executive Director appointed by the Council of Governors) shall act as Chair until a new Chair is appointed or the existing Chair resumes his/her duties, as the case may be. References to the Chair in these Standing Orders shall, so long as there is no Chair able to perform his/her duties, be taken to include references to the Deputy Chair.

## **3. MEETINGS OF THE COUNCIL**

### **3.1 Calling meetings**

Ordinary meetings of the Council of Governors shall be held at such times and places as the Chair may determine. Not fewer than 3 meetings will be held each year. One such meeting shall be combined with the Annual Members' Meeting. Meetings will normally be held in public. However, the Council may resolve to exclude the public where it wishes to discuss particular issues in private session. The Council of Governors may also meet on an informal basis for development days (away days). For the avoidance of doubt, where a meeting of the Council of Governors is combined with the Annual Members' meeting, the meeting of the Council of Governors must be open to members of the public.

The Chair may call meetings of the Council of Governors. If the Chair refuses to call a meeting after a requisition for that purpose, signed by at least one-third of the whole number of governors including at least two elected and one appointed governor, has been presented to them, or if, without so refusing, the Chair does not call a meeting within 14 days after such requisition has been presented to them, at the Trust's Headquarters, such one third or more governors may forthwith call a meeting of the Board.

### **3.2 Notice of meetings**

Before each meeting of the Council of Governors, a notice of the meeting signed by the Chair or by an officer of the Trust authorised by the Chair to sign on their behalf shall be delivered to every member of the Council, or sent by post to the usual place of residence of such governor, no fewer than six clear days in advance of the meeting

### **3.3 Notice of business to be transacted**

Before each meeting of the Council of Governors, an agenda setting out the business of the meeting, signed by the Chair or by an officer of the Trust authorised by the Chair to sign on his/her behalf shall be delivered to every

member of the Council of Governors, or sent by post to the usual place of residence of such governor specifying the business proposed to be transacted at it so as to be available to the governor at least six clear days before the meeting, including weekends. Supporting papers, whenever possible, shall accompany the agenda, but will be dispatched no later than three clear days before the meeting save in an emergency.

Lack of service of the notice on any governor shall not affect the validity of a meeting.

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

A notice shall be presumed to have been served at the time at which the notice would be delivered in the ordinary course of post or otherwise on the day following electronic or facsimile transmission.

### **3.4 Setting the agenda**

The Council of Governors may determine that certain matters shall appear on every agenda for a meeting of the Council of Governors and shall be addressed prior to any other business being conducted. (Such matters may be identified within these Standing Orders or following subsequent resolution shall be listed in an appendix to the Standing Orders.)

A governor desiring a matter to be included on an agenda shall make his/her request in writing to the Chair at least 15 clear days including weekends before the respective meeting. Requests made less than 15 days before a meeting may be included on the agenda at the discretion of the Chair.

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.

### **3.5 Attendance and questions from the public**

The public shall be welcome at all meetings of the Council of Governors unless the Council of Governors decides otherwise in relation to all or part of a meeting for reasons of commercial confidentiality or on other proper grounds. The Chair may exclude any member of the public from a meeting of the Council of Governors if they are interfering with or preventing the proper conduct of the meeting.

Up to 15 minutes will be set aside at the end of each ordinary meeting to enable members of the public or other interested parties to ask questions of the Council. Questions on any matter that has been discussed at the meeting can be raised at this point. Questions on general matters related to the business of the Trust should be sent in writing to the Chair at least 10 days prior to the meeting.

Nothing in these standing orders shall require the Trust to allow members of the public and representatives of the press to record proceedings in any manner whatsoever, other than in writing, or to make any oral report of proceedings as they take place, without the prior agreement of the Chair.

### **3.6 Chair of meeting**

At any meeting of the Council, the Chair of the Council, if present, shall preside. If the Chair is absent from the meeting, or absent temporarily on the grounds of a declared conflict of interest, the Deputy Chair, if there is one, and s/he is present, shall preside. If the Chair and Deputy Chair are absent, such Non-Executive Director as the Non-Executive Directors present shall choose, shall preside. Where the Chair, Deputy Chair, and other Non-Executive Directors are all absent or have a conflict of interest, the Lead

Governor/Vice Chair of Governors (to be appointed from amongst the Council of Governors) shall preside at the meeting and shall have a casting vote.

### **3.7 Notices of motion**

A governor of the Trust desiring to move or amend a motion shall send a written notice thereof signed by at least one other Governor at least 15 days before the meeting to the Chair, who shall insert in the agenda for the meeting all notices so received subject to the notice being permissible under the appropriate regulations. This paragraph shall not prevent any motion being moved during the meeting without notice, on any business mentioned on the agenda.

Subject to the agreement of the Chair, a Governor may give written notice of an emergency motion after the issue of the notice of meeting and agenda, up to one hour before the time fixed for the meeting. The notice shall state the grounds of urgency. If in order, it shall be declared to the Council at the commencement of the business of the meeting as an additional item included in the agenda. The Chair's decision to include or exclude the item shall be final.

### **3.8 Motions: Procedure at and during a meeting**

#### **i) Who may propose**

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

#### **ii) Contents of motions**

The Chair may exclude from the debate at their discretion any such motion of which notice was not given on the notice summoning the meeting other than a motion relating to:

- the reception of a report;
- consideration of any item of business before the Council;
- the accuracy of minutes;
- that the Council proceed to next business

- that the Council adjourn;
- that the question be now put.

### **iii) Motion once under debate**

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

- an amendment to the motion.
- the adjournment of the discussion or the meeting.
- that the meeting proceed to the next business. (\*)
- the motion be now put. (\*)
- that a Governor be not further heard;
- a motion resolving to exclude the public, including the press

\* In the case of sub-paragraphs denoted by (\*) above to ensure objectivity motions may only be put by a Governor who has not previously taken part in the debate.

### **iv) Amendments to motions**

A motion for amendment shall not be discussed unless it has been proposed and seconded.

Amendments to motions shall be moved relevant to the motion, and shall not have the effect of negating the motion before the Council. The Chair's decision on this will be final.

If there are a number of amendments, they shall be considered one at a time. When a motion has been amended, the amended motion shall become the substantive motion before the meeting, upon which any further amendment may be moved.

### **v) Rights of reply to motions**

#### **a) Amendments**

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

#### **b) Substantive / original motion**

The member who proposed the substantive motion shall have a right of reply at the close of any debate on the motion.

### **3.9 Withdrawal of motion or amendments**

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

### **3.10 Motion to rescind a resolution**

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

If a Governor persistently disregards the ruling of the Chair by behaving improperly or offensively or deliberately obstructs business, the Chair may move that the Governor be not heard further. 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 is adjourned for a specified period. If seconded, the motion will be voted on without discussion.

### **3.11 Chair's ruling**

Statements of governors made at meetings of the Trust shall be relevant to the matter under discussion at the material time and the decision of the Chair of the meeting on questions of order, relevancy, regularity and any other matters shall be final.

### **3.12 Virtual Voting**

In the event that a decision is required ahead of the next Council of Governors meeting a virtual vote will be proposed. Virtual voting shall be undertaken via a secure electronic system or NHS email and will be passed by a simple majority of the number of Governors on Council. Public Governors must be the majority of those voting. The decision will be ratified at the next public Council of Governors meeting.

### **3.13 Voting**

Every question at a meeting shall be determined by a majority of the votes of the Chair of the meeting and the governors present and voting on the question and, in the case of any equality of votes, the Chair or person presiding shall have a second or casting vote.

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

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

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

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

Confidential votes shall be used in extreme circumstances by agreement in Council and in a way which ensures that the individual's votes remain private. The timeframe for confidential votes shall be five days, but can be shorter if required, by agreement with Council.

### **3.14 Minutes**

The minutes of the proceedings of a meeting shall be drawn up and submitted for agreement at the next meeting where they will be signed by the Chair or person presiding

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

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

### **3.15 Waiver of standing orders**

These standing orders shall not be waived except:

3.15.1 where urgent action is required and the Chair considers it to be in the interests of the Trust to waive one or more of the Standing Orders, s/he may do so, subject to such action being reported to and ratified by the next meeting of the Council

3.15.2 upon a notice of motion under Standing Order 3.7

3.15.3 at least half of the total number of governors, including not less than one third public governors, no fewer than one third staff governors and no fewer than one third appointed governors are present at the meeting

A decision to waive Standing Orders shall be recorded in the minutes of the next meeting of the Council of Governors

All waivers of Standing Orders shall be reported to the Board of Directors' Integrated Audit and Governance Committee. The Committee shall review every decision to waive the Standing Orders

### **3.16 Amendment of standing orders**

These Standing Orders shall only be amended in accordance with paragraph 48 of the Constitution.

### **3.17 Record of attendance**

The names of the Chair and governors, and any invited attendees present at the meeting shall be recorded in the minutes

### **3.18 Quorum**

No business shall be transacted at a meeting of the Council of Governors unless there is a quorum present consisting as follows:

3.18.1 One third of the governors are present with the majority having been elected by one of the public constituencies

If insufficient members to constitute a quorum are in attendance within 30 minutes of the time fixed for a meeting, the meeting will stand adjourned for 7 days and at the reconvened meeting those present will constitute a quorum.

If a governor has been disqualified from participating in the discussion on any matter and/or from voting on any resolution because of the declaration of a conflict of interest they shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business

## **4. DELEGATION OF FUNCTIONS AND STATUS OF STANDING ORDERS**

### **4.1 Delegation of powers to committees**

The Council may not delegate any of its functions or powers to any subcommittees or committees of the Council.

### **4.2 Non-Compliance with Standing Orders**

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

## **5. COMMITTEES**

### **5.1 Appointment of Committees**

Subject to the constitution and the Statutory Framework, the Council of Governors may appoint committees of the Council of Governors consisting of a sub-set of Governors. The Council of Governors may not delegate any of its powers to a committee but committees may act in an advisory capacity to assist the Council of Governors in carrying out its functions.

The Committee can be substantive (for example Nominations and Remunerations Committee) or set up for the purposes of a task and will only exist until the task is deemed complete by the Council of Governors

The standing orders of the Council of Governors, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees or subcommittee established by the Council of Governors. The minimum quorum for any committee shall be three.

Each such committee shall have such terms of reference and be subject to such conditions (as to reporting to the Council) as the Council shall decide and shall be in accordance with the Statutory Framework and any direction or guidance issued by NHSE . Such terms of reference shall have effect as if incorporated into the standing orders.

The Council of Governors shall approve the appointments to each of the committees which it has formally constituted, and their chairs. The Council of Governors may request that external advisers assist them or any committee they appoint in carrying out its duties.

Where the Trust is required to appoint persons to a committee and/or to undertake statutory functions as required by the Statutory Framework, and where such appointments are to operate independently of the Trust such appointment shall be made in accordance with the regulations laid down by the Statutory Framework.

The committees established by the Council shall be such committees as are required to assist the Council in discharging its responsibilities.

### **5.2 Council of Governors Nominations and Remuneration Committee**

The Council shall appoint a Nominations and Remuneration Committee to be responsible for the identification and nomination of non executive directors, including the Chair, and to make recommendations to the Council.

The Committee will also recommend to the Council the remuneration and terms of appointments of the Chair and NEDs



The Nominations and Remuneration Committee will operate in accordance with guidance set out in the NHS Foundation Trust Code of Governance issued by NHSE , or as shall from time to time be further issued by NHSE .

### **5.3 Confidentiality**

A member of a committee shall not disclose a matter dealt with by, or brought before, the committee without its permission until the committee shall have reported to the Council or shall otherwise have concluded on that matter.

A governor of the Trust shall not disclose any matter reported to the Council or otherwise dealt with by the committee, notwithstanding that the matter has been reported or action has been concluded, if the Council or committee shall resolve that it is confidential.

A governor of the Trust shall not reveal or disclose the contents of papers marked 'In Confidence' or minutes headed 'Items Taken in Private' outside of the Trust, without the express permission of the Trust. This prohibition shall apply equally to the content of any discussion during the meeting which may take place on such reports or papers.

## **6. DECLARATION OF INTERESTS AND REGISTER OF INTERESTS**

### **6.1 Declaration of Interests**

Council members are required to declare interests which are relevant and material to the Council. Interests should be declared on appointment and updated to the Trust Secretary as circumstances change, and at least annually.

Interests which should be regarded as 'relevant and material' are set out in paragraph 22 of the Trust's constitution:

At the time Council members' interests are declared, they should be recorded in the Council's minutes. Any changes notified to the Trust Secretary in between meetings should be declared at the next Council meeting following the change occurring.

Council members' directorships of companies likely or possibly seeking to do business with the NHS should be published in the Council's annual report. The information should be kept up to date for inclusion in succeeding annual reports.

During the course of a meeting, if a conflict of interest is established, the member of the Council concerned should withdraw from the meeting and play no part in the relevant discussion or decision.

There is no requirement for the interests of Council members' spouses or partners to be declared. However, if the Council members' spouses or partners, if living together, have any pecuniary interest, direct or indirect, in contracts or

proposed contracts with the Trust, this is regarded as relevant and should be disclosed.

If Governors have any doubt about the relevance of an interest this should be discussed with the Chair or the Trust Secretary.

## **6.2 Register of Interests**

The Trust Secretary shall maintain a register of members' interests. This will include details of all directorships and other relevant and material interests which have been declared by Council members as defined in Standing Order 6.1.

The register will be subject to regular review by the Trust Secretary at each meeting or as required by the Statutory Framework. The register will be updated as and when members' declare an interest/revise a declaration. Any such changes made will be declared and noted at the next meeting of the Council of Governors.

The register will be available to the public and the Chair will take reasonable steps to bring the existence of the register to the attention of the local population and to publicise arrangements for viewing it.

In establishing, maintaining, updating and publicising the register, the Trust will comply with all requirements as laid out in the Statutory Framework.

## **7. DISPUTE RESOLUTION PROCEDURES**

Provisions for the resolution of disputes about the constitution or its interpretation, whether raised by the Board of Directors or Council of Governors, are specified in Annex 6 of this constitution.

## **8. PROCESS FOR THE APPOINTMENT OF NON-EXECUTIVE DIRECTORS**

When a vacancy arises or is scheduled to arise, a Nominations Committee shall be convened with clear terms of reference to advise the Council of Governors on the appointment of Non-Executive Directors.

## **9. PROCESS FOR THE APPOINTMENT OF THE CHAIR**

Subject to the provisions within the constitution in relation to the appointment and removal of the Chair, the Chair shall be appointed in accordance with the process of open competition.

When a vacancy arises or is scheduled to arise, a Nominations Committee shall be convened with clear terms of reference to advise the Council of Governors on the appointment of the Chair

## **10. PROCESS FOR THE APPOINTMENT OF AUDITORS**

The Council will appoint external auditors following a recommendation from the Integrated Audit and Governance Committee to which will be delegated the tendering and selection arrangements. The recommendation will set out the reasons for the proposed choice of external auditor.

## **11. STANDARDS OF BUSINESS CONDUCT**

### **11.1 Duty of compliance**

Governors should comply with the Trust's values, the Trust's code of conduct, Trust's policy on Standards of Business Conduct, the requirements of the Statutory Framework as referred to in standing order 1.1 and any relevant guidance issued by NHSE .

### **11.2 Canvassing of and recommendations by, members of the Council in relation to appointments**

Canvassing of directors or governors of the Trust or of any committee of the Trust directly or indirectly for any appointment with the Trust shall disqualify the candidate for such appointment. This clause of the Standing Orders shall be brought to the attention of candidates.

A member of the Council shall not solicit for any person any appointment with the Trust or recommend any person for such appointment. This clause of the Standing Orders shall not preclude a member of the Council from giving written testimonial of a candidate's ability, experience or character for submission to the Trust.

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

## **12. DECLARATION OF ELIGIBILITY**

At their first meeting, all governors shall be required to sign declarations of their right to represent their constituency and to be a member of the Council of Governors. These declarations shall be valid for 1 year and must be renewed annually Declaration forms are attached.

## **13. MISCELLANEOUS**

### **13.1 Standing Orders to be given to members of the Council**

It is the duty of the Trust Secretary to ensure that existing and new members of the Council are notified and understand their responsibilities within the constitution and these standing orders.

### **13.2 Review of Standing Orders**

These Standing Orders shall be reviewed every three years or earlier with agreement of the Council of Governors in line with the Constitution

## GOVERNORS' DECLARATION PART 1

### EAST KENT HOSPITALS UNIVERSITY NHS FOUNDATION TRUST (the "Trust")

I, .....(insert name)  
Of ..... (insert address)

Hereby declare that I am entitled to stand for election to the Council of Governors as a Governor elected by *one of the public constituencies / the staff constituency\** because I am a member of one of the *public constituencies staff / constituency \** and that I am not prevented from being a member of the Council of Governors of the Trust by paragraph 8 of Schedule 7 of the National Health Service Act 2006 or under the constitution of the Trust.

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

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

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

Signed .....  
Print

Name.....

Date of Declaration .....

\*delete as appropriate

## PART 2

### EAST KENT HOSPITALS UNIVERSITY NHS FOUNDATION TRUST (the “Trust”)

I, .....(insert name)  
Of ..... (insert address)

Hereby declare that I am entitled to vote at meetings of the Council of Governors as a Governor elected by *one of the public constituencies / the staff constituency\** or because *I have been appointed as a Partner Governor* and that I am not prevented from being a member of the Council of Governors of the Trust by paragraph 8 of Schedule 7 of the National Health Service Act 2006 or under the constitution of the Trust.

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

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

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

Signed.....

Print.....  
Name

Date of Declaration .....

\*delete as appropriate

### APPENDIX 1 TO COUNCIL OF GOVERNORS STANDING ORDERS

Not used

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

(Paragraph 25 and 36 )

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## INTRODUCTION

### Statutory Framework

East Kent Hospitals University NHS Foundation Trust (the Trust) is a body corporate which became a public benefit Trust on 1 March 2009 following its approval as an NHS Foundation Trust, pursuant to the National Health Service Act 2006 (the 2006 Act).

The Trust Offices are at Kent & Canterbury Hospital, Ethelbert road, Canterbury, CT1 3NG.



NHS Foundation Trusts are governed by Acts of Parliament, mainly the 2006 Act (as amended by the Health and Social Care Act 2012), by their constitutions and by the terms of their licence granted by NHSE (the Statutory Framework).

The functions of the Trust are conferred by the Statutory Framework.

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

## **Reservation and Delegation of Powers**

Under the Standing Orders relating to the Arrangements for the Exercise of Functions (SO 4) the Board exercises its powers to make arrangements for the exercise, on behalf of the Trust, of any of its functions by a committee or subcommittee appointed by virtue of SO 5 or by an officer of the Trust, in each case subject to such restrictions and conditions as the Board thinks fit.

Delegated Powers are covered in a separate document (Standing Financial Instructions incorporating Reservation of Powers to the Board of Directors and Detailed Scheme of Delegation).

## **1 INTERPRETATION**

1.1 Save as permitted by law and subject to the Constitution, at any meeting the Chair of the Trust shall be the final authority on the interpretation of Standing Orders (on which they should be advised by the Chief Executive or Trust Secretary).

1.2 Any expression to which a meaning is given in the 2006 Act or in the Regulations or Orders made under the 2006 Act shall have the same meaning in this interpretation and where there is a conflict between the 2006 Act and another legislative provision the 2006 Act interpretation shall prevail (unless, in either case, the context otherwise requires) and in addition:

**"Accounting Officer"** shall be the Officer responsible and accountable for funds entrusted to the Trust. He shall be responsible for ensuring the proper stewardship of public funds and assets and performing the functions delegated to him by the Constitution in relation to the Trust's accounts. For this Trust it shall be the Chief Executive.

**"Trust"** means East Kent Hospitals University NHS Foundation Trust.

**"Board of Directors"** and (unless the context otherwise requires)

**"Board"** shall mean the Chair and other non-executive directors, and the executive directors appointed by the relevant committee of the Trust.

**"Council of Governors"** means the Council of Governors of the Trust.

**"Budget"** shall mean a resource, expressed in financial terms, proposed by the Board for the purpose of carrying out, for a specific period, any or all of the functions of the Trust;

**"Chair"** is the person appointed by the Council of Governors to lead the Board and to ensure that it successfully discharges its overall responsibility for the Trust as a whole. The expression "the Chair of the Trust" shall be deemed to include the Deputy Chair of the Trust if the Chair is absent from the meeting or is otherwise unavailable.

**"Chief Executive"** shall mean the Chief Executive Officer of the Trust.

**"Committee"** shall mean a committee of the Board of Directors.

**"Committee Members"** shall be the directors formally appointed by the Trust to sit on or to chair specific committees.

**"Constitution"** means the constitution of the Trust.

**"Contract"** shall include any proposed contract or other course of dealing.

**"Deputy Chair"** means the non-executive director appointed by the Council of Governors to take on the Chair's duties if the Chair is absent for any reason.

**"Director"** shall mean a person appointed as a director in accordance with the Constitution and includes the Chair.

**"Finance Director"** shall mean the chief finance officer of the Trust. **"Funds held on trust"** shall mean those funds which the Trust holds on trust at its date of authorisation as an NHS Foundation Trust or chooses subsequently to accept. Such funds may or may not be charitable. **"Motion"** means a formal proposition to be discussed and voted on during the course of a meeting.

**"Nominated officer"** means an officer charged with the responsibility for discharging specific tasks within Standing orders (SOs) and Standing financial Instructions (SFIs).

**"Officer"** means an employee of the Trust.

**"SFIs"** means Standing Financial Instructions.

**"SOs"** means Standing Orders.

**"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);

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

## **2. THE TRUST**

### **2.1 Preamble**

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

### **2.2 The Trust has the functions conferred on it by the Statutory Framework.**

### **2.3 All funds received in trust shall be in the name of the Trust as corporate trustee. In relation to funds held on trust, powers exercised by the Trust as corporate trustee shall be exercised separately and distinctly from those powers exercised as a Trust.**

- 2.4 Directors acting on behalf of the Trust as a corporate trustee are acting as quasi-trustees, accountability for charitable funds held on trust is to the Charity Commission.
- 2.5 The Trust has resolved that certain powers and decisions may only be exercised or made by the Board. These powers and decisions and those delegated by the Board to officers and other bodies are set out in the Reservation of Powers to the Board of Directors.

## **2.6 Composition of the Board**

In accordance with, but always subject to, the provisions of the Constitution, the composition of the Board shall be:

- The Chair of the Trust
- A minimum of 5 and up to 8 other Non executive directors excluding the Chair
- A minimum of 4 and up to 7 Executive directors including:
  - o The Chief Executive (and Accounting Officer)
  - o The Director of Finance
  - o A medical or dental practitioner
  - o A registered nurse or registered midwife.

## **2.7 Appointment of the Chair and other Non-Executive Directors**

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

## **2.8 Appointment of the Executive Directors**

The Chief Executive is appointed by the Chair and other NonExecutive Directors, subject to the approval of the Council of Governors. The other Executive Directors are appointed by the Nominations Committee that the Board shall appoint from time to time for that purpose.

## **2.9 Terms of Office of the Chair and other Non-Executive Directors**

The regulations setting out the period of tenure of office of the Chair and other Non-Executive Directors and for the termination or suspension of office of the Chair and other Directors are contained in the Constitution of the Trust.

## **2.10 Appointment of Deputy Chair**

Subject to SO 2.11 below, the Council of Governors will appoint one of the Non-Executive Directors to be Deputy Chair, following recommendation by the Chair for such period, not exceeding the remainder of their term as a Director, as they may specify on appointing them.

- 2.11 Any Director so appointed may at any time resign from the office of Deputy Chair by giving notice in writing to the Chair. The Council of Governors may thereupon appoint another Non Executive Director as Deputy Chair in accordance with the provisions of Standing Order 2.10

## **2.12 Powers of Deputy Chair**

Where the Chair of the Trust has died or has ceased to hold office, or where he has been unable to perform his duties as Chair owing to illness or any other cause, the Deputy Chair shall act as Chair until a new Chair is appointed or the existing Chair resumes their duties, as the case may be; and references to the Chair in these Standing Orders shall, so long as there is no Chair able to perform their duties, be taken to include references to the Deputy Chair.

## **2.13 Appointment and Powers of Senior Independent Director**

Subject to SO 2.14 below, the Board of Directors may appoint one of the independent Non Executive Directors (as defined in the NHS Foundation Trust Code of Governance) to be the Senior Independent Director, in consultation with the Council of Governors for such period, not exceeding the remainder of their term as a Director, 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.

- 2.14 Any Director so appointed may at any time resign from the office of Senior Independent Director by giving notice in writing to the Chair. The Board of Directors, in consultation with the Council of Governors, may thereupon appoint another independent Non Executive Director as Senior Independent Director in accordance with the provisions of Standing Order 2.13.
- 2.15 The posts and duties of the Deputy Chair and Senior Independent Director may be combined. This decision may be reviewed at any time by the Board of Directors, in consultation with the Council of Governors.
- 2.16 The role of the Senior Independent Director will include acting as a conduit for concerns to be raised by governors if the usual mechanisms of contact and discussion have been exhausted and, subject to the agreement of the Council of Governors, making arrangements for the annual evaluation of the performance of the Chair. The process to achieve this evaluation and its outcome will be agreed with and reported to the Council of Governors.

## **2.17 Joint Executive Directors**

Where more than one person is appointed jointly to an Executive Director post those persons shall count as one person for the purposes of these

standing orders:-

- (a) either or both of those persons may attend or take part in meetings of the Board;
- (b) if both are present at a meeting they should cast one vote if they agree;
- (c) in the case of disagreements no vote should be cast;
- (d) the presence of either or both of those persons should count as the presence of one person for the purposes of a quorum.

## **2.18 Role of Directors**

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

### **(1) Chief Executive**

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

### **(2) Non-Executive Directors**

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

### **(3) Chair**

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

## **2.19 Corporate role of the Board**

- (1) All business shall be conducted in the name of the Trust.
- (2) All funds received in trust shall be held in the name of the Trust as corporate trustee.

## **2.20 Scheme of Reservation and Delegation of Powers**

The Board may resolve that certain powers and decisions be exercised only by the Board. These powers and decisions are set out in the Reservation of Powers to the Board of Directors. Those powers which it has delegated to officers and other bodies are also contained in the Standing Financial Instructions and Detailed Scheme of Delegation.

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

### **3.1 Calling Meetings**

Ordinary meetings of the Board shall be held at such times and places as the Board may determine. All meetings of the Board are to be held in public pursuant to clause 34 of the Constitution. Parts of these meetings may be held in closed session for special reasons.

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

### **3.3 Notice of Meetings**

Before each meeting of the Board, a notice of the meeting, specifying the business proposed to be transacted at it, and signed by the Chair or by an officer of the Trust authorised by the Chair to sign on their behalf shall be delivered to every director, or sent by post to the usual place of residence of such director, so as to be available to them at least six clear days before the meeting. The agenda will be sent to Directors six days before the meeting. The open agenda will be sent to the Council of Governors at the same time. Supporting papers, whenever possible, shall accompany the agenda, but will certainly be dispatched no later than three clear days before the meeting, save in emergency. A public notice of the time and place of the meeting, and the public part of the agenda, shall be displayed at the Trust's principal offices, or on its website at least three clear days before the meeting.

3.4 Lack of service of the notice on any director shall not affect the validity of a meeting.

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

3.6 A notice shall be presumed to have been served at the time at which the notice would be delivered in the ordinary course of the post or otherwise the day following electronic transmission.

### **3.7 Setting the Agenda**

The Board may determine that certain matters shall appear on every agenda for a meeting of the Board and that for special reasons certain items should be heard in a separate closed session.

3.8 A director desiring a matter to be included on an agenda shall make their request in writing or orally to the Chair or the Trust Secretary at least 15 clear days before the meeting, subject to Standing Order 3.3. Requests made less than 15 days before a meeting may be included on the agenda at the discretion of the Chair.

### **3.9 Chair of Meeting**

At any meeting of the Board, the Chair, if present, shall preside. If the Chair is absent from the meeting the Deputy Chair, if there is one and they are present, shall preside. If the Chair and Deputy Chair are absent such non-executive director as the directors present shall choose shall preside.

3.10 If the Chair is absent from a meeting temporarily on the grounds of a declared conflict of interest the Deputy Chair, if present, shall preside. If the Chair and Deputy Chair are absent, or are disqualified from participating, such non-executive director as the directors present shall choose shall preside.

### **3.11 Notices of Motion**

A director of the Board desiring to move or amend a motion shall send a written notice thereof at least 15 clear days before the meeting to the Chair, who shall insert in the agenda for the meeting all notices so received subject to the notice being permissible under the appropriate regulations.

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

### **3.12 Motions: Procedure at and during a meeting**

i) Who may propose

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

## ii) Contents of motions

The Chair may exclude from the debate at their discretion any such motion of which notice was not given on the notice summoning the meeting other than a motion relating to:

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

## iii) Motion once under debate

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

- an amendment to the motion.
- the adjournment of the discussion or the meeting.
- that the meeting proceed to the next business. (\*)
- the appointment of an ad hoc committee to deal with a specific item of business.
- the motion be now put. (\*)
- that a member/director be not further heard;

\* In the case of sub-paragraphs denoted by (\*) above to ensure objectivity motions may only be put by a director who has not previously taken part in the debate.

## iv) Amendments to motions

A motion for amendment shall not be discussed unless it has been proposed and seconded.

Amendments to motions shall be moved relevant to the motion, and shall not have the effect of negating the motion before the Board. The Chair's decision on this will be final

If there are a number of amendments, they shall be considered one at a time. When a motion has been amended, the amended motion shall become the substantive motion before the meeting, upon which any further amendment may be moved.

## v) Rights of reply to motions

### a) Amendments



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

b) Substantive/original motion

The member who proposed the substantive motion shall have a right of reply at the close of any debate on the motion.

### **3.13 Withdrawal of Motion or Amendments**

A motion or amendment once moved and seconded may be withdrawn by the proposer

### **3.14 Motion to Rescind a Resolution**

Notice of motion to amend or rescind any resolution (or the general substance of any resolution) which has been passed within the preceding six calendar months shall bear the signature of the director(s) who gives it and also the signature of three other directors. Before considering any such motion of which notice shall have been given, the Board may refer the matter to any appropriate Committee or the Chief Executive for recommendation. When any such motion has been disposed of by the Board, it shall not be competent for any director other than the Chair to propose a motion to the same effect within six months; however the Chair may do so if they consider it appropriate. This Standing Order shall not apply to motions moved in pursuance of a report or recommendations of a Committee or the Chief Executive.

### **3.15 Chair's Ruling**

Statements of directors made at meetings of the Board shall be relevant to the matter under discussion at the material time and the decision of the Chair of the meeting on questions of order, relevance, regularity and any other matters shall be observed at the meeting.

### **3.16 Voting**

Every question at a meeting shall be determined by a majority of the votes of the directors present and voting on the question. In the case of any equality of votes, the Chair shall have a further or casting vote.

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

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

3.19 If a director so requests, their vote shall be recorded by name upon any vote (other than by paper ballot).

3.20 In no circumstances may an absent director vote by proxy. Absence is defined as being absent at the time of the vote.

- A manager who has been formally appointed to act up for an Executive Director during a period of incapacity or temporarily to fill an Executive Director vacancy shall be entitled to exercise the voting rights of the Executive Director, at the Chair's discretion.
- A manager attending the Board meeting to represent an Executive Director during a period of incapacity or temporary absence without formal acting up status may not exercise the voting rights of the Executive Director, unless approved by the Chair. An Officer's status when attending a meeting shall be recorded in the minutes.
- For the voting rules relating to joint Executive Directors see Standing Order 2.17

### **3.21 Virtual Voting**

In the event that a decision is required ahead of the next Board of Directors' meeting a virtual vote will be proposed. The vote will be passed if 75% of the Board members vote in favour and at least 50% of those voting are non-executive directors. The decision will be ratified at the next Board of Directors meeting.

### **3.22 Minutes**

The Minutes of the proceedings of a meeting shall be drawn up and submitted for agreement at the next ensuing meeting where they will be signed by the person presiding at it. A copy of the public minutes will be sent to the Council of Governors as soon as practically possible after the meeting.

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

### **3.24 Waiver of Standing Orders**

Except where this would contravene any statutory provision or any guidance issued by NHSE, any one or more of the Standing Orders may be waived at any meeting, provided that at least two-thirds of the Board are present, including one Executive Director and two Non Executive Directors, and that

a majority of those present vote in favour of suspension.

3.25 A decision to waive Standing Orders shall be recorded in the minutes of the meeting.

3.26 The Audit Committee shall review every decision to waive Standing Orders.

### **3.27 Suspension of Standing Orders**

Except where this would contravene any statutory provision or any guidance issued by NHSE, any one or more of the Standing Orders may be suspended at any meeting, provided that at least two-thirds of the Board are present, including one executive director and two non-executive directors, and that a majority of those present vote in favour of suspension.

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

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

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

3.31 The Integrated Audit and Governance Committee shall review every decision to suspend Standing Orders.

### **3.32 Variation and Amendment of Standing Orders**

These Standing Orders shall only be amended in accordance with paragraph 48 of the Constitution.

### **3.33 Record of Attendance**

The names and titles of the directors present at the meeting shall be recorded in the minutes.

### **3.34 Quorum**

No business shall be transacted at a meeting of the Board unless at least one third of the whole number of the directors are present including at least one executive director and two non-executive directors.

3.35 If a director has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of the declaration of a conflict of interest (see Standing Order 6 or 7) they shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be

recorded in the minutes of the meeting. The meeting must then proceed to the next business. The above requirement for at least one executive director to form part of the quorum shall not apply where the executive directors are excluded from a meeting (for example, when the Board considers the recommendations of the Remuneration Committee).

3.36 An Officer in attendance for an Executive Director but without formal acting up status may not count towards the quorum.

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

3.37.1 Subject to paragraph 3.36.2, Board meetings shall be held in public but the whole or any part of the meeting may be held in closed session if the Board so resolves or any change in legislation dictates.

3.37.2 Individual members of the public and the press may, at the absolute discretion of the Chair, be admitted to all or part of a closed session of a Board meeting.

3.37.3 When the public and press are admitted to all or part of a Board meeting, the Chair (or Deputy Chair if one has been appointed) or the person presiding over the meeting shall give such directions as he thinks fit with regard to the arrangements for meetings and accommodation of the public and representatives of the press such as to ensure that the Board's business shall be conducted without interruption and disruption.

3.37.4 In the event that the public and press are admitted to all or part of a Board meeting they shall be required to withdraw if the Board so resolves.

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

### **3.38 Observers at closed sessions of the Board of Directors meetings**

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

## **4. ARRANGEMENTS FOR THE EXERCISE OF FUNCTIONS BY DELEGATION**

### **4.1 Exercise of functions**

Subject to the Statutory Framework and such guidance as may be issued by Monitor or NHSE, the Board may make arrangements for the exercise, on behalf of the Trust, of any of its functions by a committee or sub-committee, appointed by virtue of SO 5.1 or 5.2 below or by a director or an officer of the Trust in each case subject to such restrictions and conditions as the Board thinks fit.

### **4.2 Emergency Powers**

The powers which the Board has retained to itself within these Standing Orders (SO 2.5) may in emergency or for an urgent decision be exercised by the Chief Executive and the Chair, after having consulted two non executive directors where possible. The exercise of such powers by the Chief Executive and the Chair shall be reported to the next formal meeting of the Board for formal ratification.

### **4.3 Delegation to Committees**

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

### **4.4 Delegation to officers**

Those functions of the Trust which have not been retained as reserved by the Board or delegated to other committees or sub-committees or joint committees shall be exercised on behalf of the Trust by the Chief Executive. The Chief Executive shall determine which functions he/she will perform personally and shall nominate officers to undertake the remaining functions for which he/she will still retain accountability to the Trust.

4.5 The Chief Executive shall prepare a schedule of matters reserved to the Board and a scheme of delegation (Scheme of Reservation and Delegation of Powers) identifying their proposals which shall be considered and approved by the Board, subject to any amendment agreed during the discussion. The Chief Executive may periodically propose amendment to the Scheme of Reservation and Delegation of Powers which shall be considered and approved by the Board as indicated above.

Nothing in the Scheme of Reservation and Delegation of Powers shall impair the discharge of the direct accountability to the Board of the Finance Director or other executive director to provide information and advise the Board in accordance with any statutory requirements or guidance issued by NHSE. Outside these statutory requirements the roles

shall be accountable to the Chief Executive for operational matters.

- 4.6 Overriding Standing Orders – If for any reason these Standing Orders are not complied with, full details of the non-compliance and any justification for non-compliance and the circumstances around the non-compliance, shall be reported to the next formal meeting of the Board for action or ratification. All Board Directors and staff have a duty to disclose any noncompliance with these Standing Orders to the Chief Executive or Chair of the Integrated Audit and Governance Committee as soon as possible.

## **5. COMMITTEES**

### **5.1 Appointment of Committees**

Subject to the Statutory Framework and any guidance as may be issued by Monitor or NHSE, the Board may and, if so required by NHSE shall appoint committees of the Board, consisting wholly of directors of the Board. The Trust shall determine the membership and terms of reference of these committees and shall if it requires to, receive and consider reports from them.

- 5.2 A committee appointed under SO 5.1 may, subject to any guidance issued by NHSE and to any restriction imposed by the Board, appoint subcommittees consisting wholly of one or more members of the committee.

- 5.3 The Standing Orders of the Board, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees or subcommittee established by the Board.

- 5.4 Each such committee or sub-committee shall have such terms of reference and powers, reviewed annually, and be subject to such conditions (as to reporting back to the Board), as the Board shall decide.

- 5.5 Committees may not delegate their executive powers to a sub-committee unless expressly authorised by the Board.

- 5.6 The Board shall approve the appointments to each of the committees which it has formally constituted.

### **5.7 Confidentiality**

A member of a committee shall not disclose a matter dealt with by, or brought before, the committee without its permission until the committee shall have reported to the Board or shall otherwise have concluded on that matter.

- 5.8 A Director shall not disclose any matter reported to the Board or otherwise dealt with by the committee, notwithstanding that the matter has been reported or action has been concluded, if the Board or committee shall resolve that it is

confidential.

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

The Board will establish committees required of it by legislation or NHSE's NHS Foundation Trust Code of Governance.

These will include:

### **5.9.1 Integrated Audit and Governance Committee**

In line with legislation and the Code of Governance, the Board of Directors will establish and constitute an Integrated Audit and Governance Committee to provide the Board with an independent and objective review of its financial and non-financial internal control systems, financial information and compliance with laws, guidance, and regulations governing the NHS. The terms of reference will be approved by the Board and reviewed on an annual basis.

The Integrated Audit and Governance Committee will be composed of a minimum of three independent non-executive directors, of which one must have significant, recent and relevant financial experience.

### **5.9.2 Remuneration Committee**

A Remuneration Committee will be established and constituted by the Board of Directors, comprised of the independent non-executive directors. The terms of reference of the Committee will be approved by the Board and reviewed on an annual basis.

The purpose of the Committee will be:

5.9.2.1 to decide on the appropriate remuneration, allowances, and terms of and conditions of service for the Chief Executive and other Executive Directors including:

- (i) all aspects of salary (including any performance-related elements/bonuses);
- (ii) provisions for other benefits, including pensions and cars;
- (iii) arrangements for termination of employment and other contractual terms.

5.9.2.2 The Committee may also recommend and monitor the level and structure of remuneration for senior management

### **5.9.3 Charitable Funds Committee**

In line with its role as a corporate trustee for any funds held in trust, either as charitable or non charitable funds, the Board will establish a Charitable Funds Committee to administer those funds in accordance with any statutory or other legal requirements or best

practice required by the Charities Commission.

#### **5.9.4 Nominations Committee**

The Board shall appoint from time to time an Nominations Committee comprised of the Chair, the other Non-Executive Directors and the Chief Executive (except in the case of appointment of the Chief Executive). The purpose of the Nominations Committee shall be to appoint the Executive Directors and the Chief Executive. The appointment of the Chief Executive shall require the approval of the Council of Governors.

#### **5.9.5 Other Committees**

The Board may also establish such other committees as required to discharge its responsibilities.

### **6. DECLARATIONS OF INTERESTS AND REGISTER OF INTERESTS**

#### **6.1 Declaration of Interests**

The Directors shall declare any interests in accordance with paragraph 36 of the Constitution. All existing directors shall declare such interests. Any directors appointed subsequently shall do so on appointment or as soon as they arise.

6.2 Financial Reporting Standard No 8 (issued by the Accounting Standards Board) specifies that influence rather than the immediacy of the relationship is more important in assessing the relevance of an interest. The interests of partners in professional partnerships including general practitioners should also be considered. If directors have any doubt about the relevance of an interest, this should be discussed with the Chair, or the Trust Secretary.

6.3 At the time directors' 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.

6.4 Directors' directorships of companies likely or possibly seeking to do business with the NHS should be published in the board's annual report. The information should be kept up to date for inclusion in succeeding annual reports.

6.5 During the course of a board 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.

#### **6.6 Register of Interests**



The Trust Secretary will ensure that a Register of Interests is established to record formally declarations of interests of directors. In particular the Register will include details of all directorships and other interests which have been declared by both executive and non-executive directors,. Attendees of Board Committees who are not Board directors will be required to declare any interests in accordance with paragraph 36 of the Constitution.

- 6.7 These details will be kept up to date on a regular basis, and the Register will be formally reviewed once a year.
- 6.8 The Register will be available to the public and the Trust Secretary will take reasonable steps to bring the existence of the Register to the attention of the local population and to publicise arrangements for viewing it.
- 6.9 In establishing, maintaining, updating and publicising the Register, the Trust shall comply at all times with the Statutory Framework and any guidance issued by NHSE. In the event of conflict between these Standing Orders and the Statutory Framework or guidance issued by NHSE, the latter shall prevail.
- 6.10 Standing Order 6 applies to a committee or sub-committee of the Board as it applies to the Board and applies to all members of any such committee or sub-committee whether or not they are also a Director.

## **7. STANDARDS OF BUSINESS CONDUCT**

### **7.1 Policy**

Staff must comply with the national guidance contained in HSG(93)5 'Standards of Business Conduct for NHS staff', which has been adopted by the Trust as its Code of Conduct, and any guidance issued by NHSE . In addition, they must adhere to the Trust's Counter Fraud Policy and Procedure for East Kent Hospitals Staff, Trust Values, and any other guidance produced by the Trust

### **7.2 Interest of Officers in Contracts**

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

- 7.3 An officer must also declare to the Chief Executive any other employment or business or other relationship of his, or of a cohabiting spouse, that conflicts, or might reasonably be predicted could conflict with the interests of the Trust. The Chief Executive will ensure that such declarations are formally recorded.

### **7.4 Canvassing of, and Recommendations by, Directors in Relation to Appointments**

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

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

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

### **7.7 Relatives of Directors or Officers**

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

- 7.8 The directors and every officer of the Trust shall disclose to the Chief Executive any relationship with a candidate of whose candidature that director or officer is aware. It shall be the duty of the Chief Executive to report to the Trust any such disclosure made.
- 7.9 On appointment, directors (and prior to acceptance of an appointment in the case of executive directors) should disclose to the Trust whether they are related to any other director or holder of any office within the Trust.
- 7.10 Where the relationship of an officer or another director to a director of the Trust is disclosed, Standing Orders 6 and/or 8.2 may apply.

## **8. CUSTODY OF SEAL AND SEALING OF DOCUMENTS**

### **8.1 Custody of Seal**

The Common Seal of the Trust shall be kept by the Trust Secretary in a secure place.

### **8.2 Sealing of Documents**

Where it is necessary that a document shall be sealed, the seal shall be affixed in the presence of two Directors of the Board, not from the originating department, and shall be attested by them. A report of all sealings shall be made to the Board at least quarterly.

### **8.3 Register of Sealing**

The Trust Secretary shall keep a register in which they, or another manager of the Trust authorised by them, shall enter a record of the sealing of every document.

## **9. SIGNATURE OF DOCUMENTS**

- 9.1 Where the signature of any document will be a necessary step in legal proceedings involving the Trust, it shall be signed by the Chief Executive or his nominated deputy, unless any enactment otherwise requires or authorises, or the Board shall have given the necessary authority to some other person for the purpose of such proceedings.

- 9.2 In land transactions, the signing of certain supporting documents will be delegated to Managers and set out clearly in the Scheme of Reservation and Delegation of Powers but will not include the main or principal documents effecting the transfer (e.g. sale/purchase agreement, lease, contracts for construction works and main warranty agreements or any document which is required to be executed as a deed), which may only be signed by the Chief Executive or their nominated deputy with a second Director as in 9.2 for documents requiring sealing.

## **10. MISCELLANEOUS**

### **10.1 Standing Orders to be given to Directors and Officers**

It is the duty of the Chief Executive to ensure that existing directors and officers and all new appointees are notified of and understand their responsibilities within Standing Orders and SFIs. Updated copies shall be issued to staff designated by the Chief Executive. New designated officers shall be informed in writing and shall receive copies where appropriate of Standing Orders.

### **10.2 Review of Standing Orders**

Standing Orders shall be reviewed annually by the Trust.

## **ANNEX 9 – FURTHER PROVISIONS**

### **1. Membership of the Foundation Trust.**

- 1.1 With reference to Section 12 and paragraph 12.4 of the constitution if a member of the Trust ceases to meet the criteria for initially becoming a member, they will be automatically disqualified from membership.
- 1.2 Other criteria for exclusion or disqualification from membership are as follows:
- Anyone under the age of 16
  - Anyone who has been involved in any act of violence or aggression against Trust staff (whether directly employed or not), or a Trust volunteer in the five years leading up to the next election. This will apply whether or not the act occurred on or off the Trust premises.
  - Anyone who has been identified by court order as a vexatious complainant

### **2. Chair and Non executive Directors.**

- 2.1 With the exception of the arrangements set out section 28 of the constitution the first term of appointment of Chair and Non Executive Directors will be by competition for a maximum of three years. Reappointment may be considered for a further three year term The Council of Governors will determine whether competition is required after discussion with the Chair or Senior Independent Director (in the case of the reappointment of the Chair).

Non Executive Directors may in exceptional circumstances serve longer than six years (e.g. two three year terms following authorisation of the NHS Foundation Trust) subject to annual appointment and to serving up to a maximum of three further years (making nine years in total).

- 2.2 Neither the Chair nor the Non Executive Directors of the Trust may otherwise be employees of the Trust
- 2.3 Non executive directors will be subject to additional exclusion requirements over the mandatory ones. These are if:
- They are an executive director of the Trust or, a governor, nonexecutive director, Chair, or chief executive of another NHS Foundation Trust
  - They are incapable by reason of mental disorder, illness or injury of managing and administering his property and affairs
  - They cease to be a member of the Trust

- They have had their name placed on registers of Schedule 1 offenders pursuant to the Sex Offenders Act 1977 and/or the Children and Young Person Act 1933
- They have failed to declare a significant conflict of interest
- They have a conflict of interest making appointment or continuation as a non executive director untenable
- They are guilty of conduct or actions prejudicial to the Council or the Trust.
- They are a person who has found through due process not to be a fit and proper person on the grounds of a serious misconduct or incompetence.

In addition non executive directors will be expected to adhere to the Code of Conduct for Directors

- 2.4 The Chair should meet the qualification requirements for Non Executive Directors set out in the constitution, and be subject to the same disqualification and exclusion criteria.

### **3. Statutory /Required Committees**

- 3.1 The Trust will establish committees required by statute or by NHSE.

### **4. NHS Foundation Trust Code of Governance**

- 4.1 The Trust will have due regard to the Code of Governance published in accordance with NHSE's requirements it will make a disclosure statement concerning its compliance with the code, and give an explanation where it does not meet its provisions.

### **5. Trust Secretary.**

- 5.1 The Trust will appoint a Trust Secretary and define their role and responsibilities. The appointment and removal of the Trust Secretary will be a matter for the Chief Executive and the Chair jointly

### **6. Resolution of disputes.**

- 6.1 NHSE's code of Governance requires foundation trusts to put in place a procedure for addressing disagreements between the Council of Governors and Board of Directors (see para 6.4 to 6.8 in this Annex 9).
- 6.2 As with all grievances, a dispute should be declared only as a last resort. Established processes should be employed whenever possible to resolve disagreements between two key groups.

- 6.3 Any dispute not resolved by informal means should be subject to external review and dealt with in a timely manner. The recommendations arising from the external review will be binding on all parties.
- 6.4 In order for a dispute to be declared a majority of the Council of Governors or the Board of Directors must agree to this course of action.
- 6.5 **Level one.** The Chair will be informed, by Governors or Directors' that they consider there are grounds to declare a dispute. The Chair will seek to resolve matters informally, normally by asking the Senior Independent Director to investigate the issues and seek resolution. The Senior Independent Director will be assisted by the Trust Secretary. If there is no resolution at this stage a formal dispute will be declared and the process will move to level two.
- 6.6 **Level two.** The Senior Independent Director, Lead Governor and the Trust Secretary will arrange for independent individuals with relevant experience, for example, Chair, Non Executive Director, Governors of other Foundation Trusts to undertake an investigation. The investigation team will be assisted by the Trust Secretary. The investigation report will be received by the Senior Independent Director, Lead Governor and the Trust Secretary who will discuss the recommendations and agree an action plan for implementation.
- 6.7 In the event of any dispute about the entitlement to membership the dispute shall be referred to the Trust Secretary who shall make a determination on the point in issue. If the Member or applicant is aggrieved at the decision of the Trust Secretary they may appeal in writing within 14 days of the Trust Secretary's decision to the Chair whose decision shall be final.
- 6.8 In the event of any dispute about the eligibility and disqualification of a Governor the dispute shall be referred to the Council of Governors whose decision shall be final.

## **7. Indemnity**

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

benefit of the Trust, Council members or Directors to meet all or any liabilities which are properly the liabilities of the Trust under the paragraph above.

**8. Amending the constitution.**

- 8.1 The constitution will be reviewed at least every two years. Any changes to it may only be made in accordance with paragraph 48 of the Constitution. The population figures of the Public Constituencies will be reviewed every five years.



## **ANNEX 10 – ANNUAL MEMBERS’ MEETINGS**

### **1. Interpretation**

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

**CHAIR** is the person appointed by the Council of Governors to lead the Board and to ensure that it successfully discharges its overall responsibility for the Trust as a whole;

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

**OFFICER** means an employee of the Trust;

**TRUST** means East Kent Hospitals University NHS Foundation Trust.

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

### **2. General Information**

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

### **3. Attendance**

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

### **4. Meetings in Public**

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

## **5. Notice of Meetings**

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

## **6. Setting the Agenda**

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

## **7. Chair of Annual Members' Meetings**

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

## **8. Chair's Ruling**

- 8.1. Statements made by any person at an Annual Members' Meeting shall be relevant to the matter under discussion at the material time and the decision of the Chair of the meeting on questions of order, relevancy, regularity and any other matters shall be observed at the meeting.

## **9. Voting**

- 9.1. Decisions at meetings shall be determined by a majority of the votes of the Members present and voting. In the case of any equality of votes, the person presiding shall have a second or casting vote.
- 9.2. All decisions put to the vote shall, at the discretion of the Chair of the meeting, be determined by oral expression or by a show of hands.
- 9.3. A Member may not vote at an Annual Members' Meeting unless they have made a declaration in the specified form that they are a member of a Public Constituency.
- 9.4. The form and content of the declaration for the purposes of paragraph 9.3 above shall be specified and published by the Trust from time to time and shall be so published not less than 28 days prior to the Annual Members' Meeting.
- 9.5. In no circumstances may an absent Member vote by proxy.

## **10. Suspension of Standing Orders**

- 10.1. Except where this would contravene any statutory provision, any one or more of these Standing Orders may be suspended at an Annual

Members' Meeting, provided that a majority of Members present vote in favour of suspension.

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

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

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

10.5. The Trust's Audit Committee shall review every decision to suspend the Standing Orders.

## **11. Variation and Amendment of Standing Orders**

11.1. These Standing Orders may be amended in accordance with paragraph 48 of the Constitution.

## **12. Record of Attendance**

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

## **13. Minutes**

13.1. The Minutes of the proceedings of an Annual Members' Meeting shall be drawn up and maintained as a public record. They will be submitted for agreement at the next Annual Members' Meeting where they will be signed by the person presiding at it.

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

13.3. The Minutes of an Annual Members' Meeting shall be made available to the public on the Trust's website.

## **14. Quorum**

14.1. No business shall be transacted at an Annual Members' Meeting unless at least 20 Members are present.

14.2. If no quorum is present within half an hour of the time fixed for the start of the meeting, the meeting shall stand adjourned to the same day in the next week at the same time and place or to such other time and place as the Chair shall determine. If a quorum is not present within half an hour of the time fixed for the start of the adjourned meeting, the number of Members present at the adjourned meeting is to be the quorum.

