

James Paget University Hospitals NHS Foundation Trust

Constitution

A PUBLIC BENEFIT CORPORATION

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Constitution**

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1 Interpretation and definitions

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

The **2006 Act** is the National Health Service Act 2006.

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

The **2022 Act** is the Health and Care Act 2022.

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

Annual Members' Meeting is the annual meeting of the members of the Trust in accordance with paragraph 12 of this Constitution.

Auditor means an individual or organisation appointed by the Trust's Council of Governors in accordance with paragraph 23 of Schedule 7 to the 2006 Act to evaluate and verify the accuracy of the financial records and accounting practices of the Trust.

Board of Directors is the board of directors of the Norfolk and Waveney University Hospitals Group, as constituted in accordance with this Constitution and the Constitutions of other Foundation Trusts in the Group.

The **Chair** means the Norfolk and Waveney University Hospitals Group Chair.

The **Chief Executive** means the Norfolk and Waveney University Hospitals Group Chief Executive Officer.

The **Code of Conduct for Directors** means the Trust's code of conduct for the Directors as adopted by the Trust from time to time.

Constitution means this constitution and all annexes to it.

The **Code of Conduct for Governors** means the Trust's code of conduct for the Governors as adopted by the Trust and the Council of Governors from time to time.

Council of Governors is the Council of Governors of the Trust as constituted in accordance with this Constitution.

Days mean calendar days for the purposes of this Constitution, unless otherwise specified.

Deputy Chair means one Non-Executive Director appointed by the Board of Directors to act as the Chair of the Trust in certain circumstances.

Director means a voting member of the Board of Directors.

Financial Year means each successive period of twelve (12) months beginning with 1 April and ending on 31 March.

Health Overview and Scrutiny Committee means a local authority committee in accordance with regulations made further to paragraph 244 of the 2006 Act and includes joint Health Overview and Scrutiny Committees established by more than one local authority further to paragraph 245 of the 2006 Act.

Healthwatch means (1) the committee of the Care Quality Commission established under paragraph 6 of Schedule 1 of the Health and Social Care Act 2008 known as Healthwatch England; and (2) any local Healthwatch organisation with the functions set out in paragraph 221 of Local Government and Public Involvement in Health Act 2007 relating to service user and public involvement in healthcare.

Integrated Care Board (ICB) means an integrated care board established under Chapter A3 of Part 2 of the 2006 Act.

Meeting of the Board of Directors means a duly convened meeting of the Board of Directors.

Model Election Rules means those election rules as published by NHS Providers from time to time.

NHS England is the body corporate known as NHS England, established under section 1H of the 2006 Act.

Partnership Organisation means a partnership organisation for the purposes of paragraph 9(7) of Schedule 7 of the 2006 Act.

Public Constituency means those who live in an area specified in Annex 1 of this Constitution as an area for any public constituency of the Trust as constituted in accordance with paragraph 9 of this Constitution.

Significant Transaction is not defined in this Constitution.

Staff Constituency means those individuals who are members of Trust staff and as constituted in accordance with paragraph 10 of this Constitution.

Statutory Transaction means a merger under section 56 of the 2006 Act, an acquisition under section 56A of the 2006 Act, a separation under section 56B of the 2006 Act, or dissolution under section 57A of the 2006 Act.

The **Terms of Reference** means the terms of reference adopted by any committees or other groups of the Trust and which are set out in the Trust's Governance Manual, and which may be updated from time to time.

The **Trust** means the James Paget University Hospitals NHS Foundation Trust.

Trust Secretary is the person appointed by the Board to act as the secretary to the Trust, responsible for providing independent governance advice to the Chair, Chief Executive, Board of Directors, and Council of Governors from time to time.

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

2 Name

- 2.1 The name of the foundation trust is the James Paget University Hospitals 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 and 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 Subject to paragraphs 4.4 (or as otherwise provided by section 45 of the Mental Health Act 2007) and 5, any of these powers may be delegated to a committee of Directors or to an Executive Director.
- 4.4 The Board of Directors may authorise any three or more people, each of whom is neither an Executive Director of the Trust nor an employee of the Trust to exercise powers conferred on the Trust by section 45 of the Mental Health Act 2007.
- 4.5 The Trust shall exercise its functions effectively, efficiently and economically.
- 4.6 Subject to paragraph 4.7 below and having regard to any guidance published by NHS England, in making a decision about the exercise of its functions, the Trust shall have regard to all likely effects of the decision in relation to:

- 4.6.1 the health and wellbeing of the people of England;
- 4.6.2 the quality of services provided to individuals by relevant bodies, or in pursuance of arrangements made by relevant bodies, for or in connection with the prevention, diagnosis or treatment of illness, as part of the health service in England; and
- 4.6.3 efficiency and sustainability in relation to the use of resources by relevant bodies for the purposes of the health service in England.
- 4.7 The requirement to have regard to the wider effect of its decisions set out at paragraph 4.6 shall not apply to decisions about services to be provided to a particular individual for or in connection with the prevention, diagnosis or treatment of illness.
- 4.8 In paragraph 4.6 'relevant bodies' has the meaning set out in paragraph 63A(4) of the 2006 Act.
- 4.9 In exercising its functions, the Trust shall have regard to the need to contribute towards compliance with the UK net zero emissions target set out at section 1 of the Climate Change Act 2008 and the environmental targets set out at section 5 of the Environment Act 2021, and to adapt to any current or predicted impacts of climate change identified in the most recent report under section 56 of the Climate Change Act 2008. In doing so, the Trust shall also have regard to guidance published by NHS England.
- 4.10 The Trust may do anything which appears to it to be necessary or expedient for the purposes of or in connection with its functions.

5 Joint working and delegation arrangements

- 5.1 Subject to paragraph 5.2 the Trust may arrange in accordance with section 65Z5 of the 2006 Act for the joint exercise of functions with any one or more of the following bodies:
 - 5.1.1 a relevant body;
 - 5.1.2 a local authority;
 - 5.1.3 a combined county authority.
- 5.2 Where the Trust has entered into arrangements for the joint exercise of functions with one or more bodies in accordance with paragraph 5.1, it may make arrangements for:
 - 5.2.1 the function to be exercised by a joint committee of theirs;
 - 5.2.2 for one or more of them, or a joint committee of them, to establish and maintain a pooled fund.
- 5.3 The Trust must have regard to any guidance published by NHS England under section 65Z7.
- 5.4 In this paragraph 5 the following terms have the following meanings:
 - 5.4.1 'Relevant body' has the meaning set out in section 65Z5(2) of the 2006 Act

- 5.4.2 'Local authority' means a local authority within the meaning of section 2B of the 2006 Act
- 5.4.3 'Combined authority' has the meaning set out in section 275 of the 2006 Act
- 5.4.4 'Pooled fund' has the meaning set out in section 65Z6(3) of the 2006 Act.

6 Duties relating to Integrated care system financial controls

- 6.1 The Trust must seek to achieve financial objectives that apply to it under section 223L of the 2006 Act.
- 6.2 The Trust must exercise its functions with a view to ensuring that it complies with its duties under section 223M and section 223N of the 2006 Act to limit local capital resource use and local revenue resource use.

7 Membership and Constituencies

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

8 Application for membership

An individual who is eligible to become a member of the Trust may do so on application to the Trust in accordance with this Constitution, with the exception of individuals who are eligible to become members of the Staff Constituency, who shall automatically become members in accordance with paragraph 10.5.

9 Public Constituencies

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

10 Staff Constituency

- 10.1 An individual who is employed by the Trust under a contract of employment with the Trust may become or continue as a member of the Trust provided:
 - 10.1.1 they are employed by the Trust under a contract of employment which has no fixed term or has a fixed term of at least twelve (12) months; or
 - 10.1.2 they have been continuously employed by the Trust under a contract of employment for at least twelve (12) months; and

- 10.1.3 they have not been disqualified or restricted from membership in accordance with paragraph 11 of this Constitution.
- 10.2 Those individuals who are eligible for membership of the Trust by reason of the previous provisions are referred to collectively as the Staff Constituency.
- 10.3 The Staff Constituency shall be one description of individuals who are eligible for membership of the Staff Constituency, this description of individuals being specified within Annex 2 and being referred to as a class within the Staff Constituency.
- 10.4 The minimum number of members in each class in the Staff Constituency is specified in Annex 2.
- 10.5 An individual who is:
 - 10.5.1 eligible to become a member of the Staff Constituency;
 - 10.5.2 invited by the Trust to become a member of the Staff Constituency,
 shall become a member of the Trust as a member of the appropriate class within the Staff Constituency without an application being made, unless they inform the Trust that they do not wish to do so.

11 Restriction on membership

- 11.1 An individual who is a member of a constituency, or of a class within a constituency, may not while membership of that constituency or class continues, to be a member of any other constituency or class.
- 11.2 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.
- 11.3 An individual must be at least sixteen (16) years old to become a member of the Trust.
- 11.4 A member shall otherwise cease to be a member of the Trust in the following circumstances:
 - 11.4.1 they resign by notice to the Trust;
 - 11.4.2 if the Trust reasonably believes that the member no longer lives at their registered address and the Trust does not know where that member lives.
- 11.5 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 4.

12 Annual Members' Meeting

- 12.1 The Trust shall hold an Annual Members' Meeting within nine (9) months of the end of each Financial Year. The Annual Members' Meeting shall be open to members of the public.
- 12.2 Further provisions about the Annual Members' Meeting are set out in Annex 4.

13 Council of Governors – Composition

- 13.1 The Trust is to have a Council of Governors, which shall comprise both Elected and Appointed Governors.
- 13.2 The composition of the Council of Governors is specified in Annex 3.
- 13.3 The members of the Council of Governors, other than the Appointed Governors, shall be chosen by election by their constituency. The number of Governors to be elected by each constituency is specified in Annex 3.
- 13.4 No person shall be eligible to be elected or appointed (as the case may be) a Governor in accordance with the terms of this Constitution unless at the date of their nomination for election or upon the date of their appointment they have attained the age of sixteen (16) years. Persons who are eligible under this paragraph 13.4 shall be eligible for appointment or election under the provisions of this paragraph 13.

Public Governors

- 13.5 Members of the Public Constituency may vote for any eligible member to be a Public Governor, subject to paragraphs 13.6 and 13.7 below.
- 13.6 A person shall not stand for election to the Council of Governors as a Public Governor unless they have made a declaration in a form specified by the Trust Secretary.
- 13.7 A Public Governor shall not vote at a meeting of the Council of Governors unless within the previous twelve (12) months they have made, in a form specified by the Trust Secretary, a declaration of eligibility to vote.
- 13.8 The declarations required under 13.6 and 13.7 above and the equivalent provisions of the declaration required under the Model Election Rules are required by section 60 of the 2006 Act. It is a criminal offence knowingly or recklessly to make a declaration under section 60 of the 2006 Act which is false in a material particular.

Staff Governors

- 13.9 Members of the Staff Constituency may vote for any eligible member to be a Staff Governor.

Appointed Governors

- 13.10 The following local authorities shall be entitled to appoint one (1) Local Authority Governor each:
- 13.10.1 Great Yarmouth Borough Council
 - 13.10.2 East Suffolk Council
 - 13.10.3 Norfolk County Council
 - 13.10.4 Suffolk County Council
- 13.11 There shall be one (1) Appointed Governor appointed by University of East Anglia and University of Suffolk.

- 13.12 No defect or deficiency in the appointment or composition of the members of the Council of Governors shall affect the validity of any decision or action taken by them.

14 Council of Governors – election of Governors

- 14.1 Elections for elected members of the Council of Governors shall be conducted in accordance with the Model Election Rules on the basis of single transferable vote (STV) polling and the Model Election Rules shall be construed accordingly.
- 14.2 The Model Election Rules as published from time to time by NHS Providers form part of this Constitution. A copy of the Model Election Rules as at the date of this Constitution is included at Annex 5 of this Constitution. References in the Model Election Rules to Monitor shall be construed as references to NHS England.
- 14.3 A subsequent variation of the Model Election Rules by NHS Providers shall not constitute a variation of the terms of this Constitution for the purposes of paragraph 44 of this Constitution (amendment of the Constitution).
- 14.4 An election, if contested, shall be by secret ballot.

15 Council of Governors - tenure

- 15.1 An Elected Governor may hold office for a term of three (3) years.
- 15.2 An Elected Governor shall cease to hold office if they cease to be a member of the constituency by which they were elected, or if they are disqualified for any of the reasons set out in this Constitution. For the avoidance of doubt, this includes a Public Governor moving their principal residence from one Public Constituency to another.
- 15.3 An Elected Governor shall be eligible for re-election at the end of their term for a further three-year term.
- 15.4 An Elected Governor may not hold office for more than nine (9) consecutive years, or three full terms of office.
- 15.5 An Elected Governor completing the maximum term of office of nine (9) years, or nine (9) years within a preceding twelve (12) year period, may not stand to for re-election for a period of three (3) years.
- 15.6 An Appointed Governor may hold office for a period of three (3) years commencing from receipt of their formal nomination by their nominating local authority or Partnership Organisation.
- 15.7 An Appointed Governor shall cease to hold office if the nominating Partnership Organisation withdraws its sponsorship and the Trust has been notified that the sponsorship has been terminated.
- 15.8 An Appointed Governor shall be eligible for re-appointment at the end of their term for a further three-year term.
- 15.9 An Appointed Governor may not hold office for longer than nine (9) consecutive years, or three full terms of office.

15.10 An Appointed Governor completing the maximum term of office of nine (9) years, or nine (9) years within a preceding twelve (12) year period, may not stand for re-election to the Council for a period of three (3) years.

15.11 For the purposes of this paragraph 15, concerning the term of office for Governors, a 'year' means a period commencing immediately after the conclusion of their election or appointment.

16 Council of Governors – appointment of a Lead Governor

16.1 The Governors shall nominate one (1) of the Governors to be Lead Governor. The role of the Lead Governor will be to facilitate communication between NHS England and the Council of Governors in circumstances where it would not be appropriate to communicate through the normal channels such as via the Chair or the Trust Secretary.

17 Council of Governors – disqualification and removal

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

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

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

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

17.1.4 a person who within the preceding 5 years has been convicted anywhere in the world of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than 3 months (without the option of a fine) was imposed on them;

17.2 Governors must be at least sixteen (16) years of age at the date they are nominated for election or appointment.

17.3 A Governor may resign from that office at any time during their term by giving notice in writing to the Trust Secretary or the Chair. Such notice is to specify the date of resignation.

17.4 Further provisions as to the circumstances in which an individual may not become or continue as a member of the Council of Governors are set out in Annex 3.

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.

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

18.3 All Governors shall comply with the Code of Conduct for Governors.

19 Council of Governors – meetings of Governors

19.1 The Council of Governors shall meet at least four (4) times in each Financial Year at such time and places as the Chair may determine from time to time.

19.2 The Chair of the Trust or, in their absence, the Deputy Chair or another Non-Executive Director, shall preside at meetings of the Council of Governors. For the avoidance of doubt, no meetings of the Council of Governors may proceed in the absence of the Chair or a Non-Executive Director.

19.3 Meetings of the Council of Governors shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons, including, but not limited to, reasons of commercial confidentiality; and/or interference with or preventing the proper conduct of the meeting.

19.4 For the purposes of obtaining information about the Trust's performance of its functions or the Directors' performance of their duties (and deciding whether to propose a vote on the Trust's or Directors' performance), the Council of Governors may require one (1) or more of the Directors to attend a meeting.

20 Council of Governors – referral to NHS England

20.1 A Governor of an NHS Foundation Trust may refer a question to NHS England through the Lead Governor where they are concerned that the Trust has failed or is failing:

20.1.1 to act in accordance with its Constitution; or

20.1.2 to act in accordance with any provision made by or under chapter 5 of the 2006 Act.

20.2 A referral to NHS England will only be made where more than half of the members of the Council of Governors vote to approve the referral.

21 Council of Governors - conflicts of interest of Governors

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

21.2 Further provision for dealing with Governor conflicts of interest shall be set out in the standing orders for the practice and procedure of the Council of Governors contained in the Trust's Governance Manual.

22 Council of Governors – travel expenses

- 22.1 Members of the Council of Governors may claim travelling and other expenses at rates determined by the Trust.

23 Council of Governors – standing orders

- 23.1 The standing orders for the practice and procedure of the Council of Governors and further provisions relating to the Council of Governors are contained in the Trust's Governance Manual.

24 Board of Directors – composition

- 24.1 The Trust is part of the Norfolk and Waveney Hospitals Group. The Group has a Group Board which shall comprise both Executive and Non-Executive Directors, including a single Group Chair. The Non-Executive Directors will always form the majority of the Board of Directors.
- 24.2 Subject to the requirements of paragraph **Error! Reference source not found.** above, the Board of Directors is to comprise:
- 24.2.1 a Non-Executive Chair;
- 24.2.2 not less than four (4) but no more than eleven (11) other Non-Executive Directors; and
- 24.2.3 not less than four (4) but no more than six (6) Executive Directors.
- 24.3 One (1) of the Executive Directors shall be the Group Chief Executive.
- 24.4 The Group Chief Executive shall be the Accounting Officer.
- 24.5 One (1) of the Executive Directors shall be the Finance Director.
- 24.6 One (1) of the Executive Directors is to be a registered medical practitioner or dentist.
- 24.7 One (1) of the Executive Directors is to be a registered nurse or midwife.
- 24.8 The validity of any act of the Board or the Trust is not affected by any vacancy among the Directors or by any defect in the appointment of any Director.

25 Board of Directors – general duty

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

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

- 26.1 A person may be appointed as a Non-Executive Director only if:
- 26.1.1 They are a member of a Public Constituency; or

26.1.2 where any of the Trust's hospitals includes a medical or dental school provided by a university, they exercise functions for the purposes of that university; and

26.1.3 they are not disqualified by virtue of paragraph 29 below.

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

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

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

27.3 The Board of Directors may in consultation with the Council of Governors appoint a Non-Executive Director, to be the Senior Independent Director, for such a period not exceeding the remainder of their term as a Director.

27.4 The Chair and Non-Executive Directors will normally be appointed for a term of three (3) years and, subject to the approval of the Council of Governors, may be re-appointed for subsequent terms up to a maximum term of office of nine (9) years.

27.5 Further provisions with respect to the appointment and removal of the Chair, Senior Independent Director and other Non-Executive Directors are set out in the standing orders for the practice and procedure of the Board of Directors contained within the Trust's Governance Manual.

28 Board of Directors - appointment and removal of the Group Chief Executive and other Executive Directors

28.1 The Chair and Non-Executive Directors shall appoint or remove the Group Chief Executive.

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

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

29 Board of Directors – disqualification

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

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

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

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

- 29.1.4 a person who within the preceding 5 years has been convicted anywhere in the world of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three (3) months (without the option of a fine) was imposed on them;
 - 29.1.5 a person who is a member of Healthwatch;
 - 29.1.6 a person who is a spouse, partner, parent or child of a member of the Board of Directors of the Trust;
 - 29.1.7 a person who is a member of a local authority's Health Overview and Scrutiny Committee;
 - 29.1.8 a person who is the subject of a disqualification order made under the Company Directors Disqualification Act 1986;
 - 29.1.9 a person whose tenure of office as a chair or as a member or director of an NHS body has been terminated on the grounds that their appointment is not in the interests of the health service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest;
 - 29.1.10 a person who within the preceding five (5) years has been dismissed, otherwise than by reason of redundancy from any paid employment with an NHS body and not reinstated;
 - 29.1.11 a person who is otherwise disqualified by law from acting as a director of an NHS foundation trust;
 - 29.1.12 in the case of a Non-Executive Director, a person who has refused without reasonable cause to fulfil any training requirement established by the Board of Directors;
 - 29.1.13 a person who has had their name removed from a list maintained under the regulations pursuant of Sections 91, 106, 123 or 146 of the 2006 Act, or the equivalent lists maintained by local health boards in Wales under the National Health Services (Wales) Act 2006, and they have not subsequently had their name included in such a list;
 - 29.1.14 a person who is subject to a Sex Offenders Order (under the Sex Offenders Act 1997 as amended by the Sexual Offences Act 2003) and/or whose name is included in the Sex Offender Register (established under the Sexual Offences Act 2003);
 - 29.1.15 a person who fails to meet the requirements of the fit and proper person test set out in regulation 5 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014; or
 - 29.1.16 a person who has refused to sign and deliver to the Trust Secretary a statement in the form required by the Board of Directors confirming acceptance of the Code of Conduct for Directors within one (1) calendar month of appointment.
- 29.2 Any person who is disqualified from becoming or continuing as a Director on any of the grounds set out in this paragraph 29 shall immediately resign as a Director of the Trust. If they decline or fail to do so, they shall be removed immediately by the Board of Directors and a new Director shall be appointed in their place in accordance with the provisions of this Constitution.

30 Board of Directors – meetings

- 30.1 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 including, but not limited to, reasons of commercial confidentiality; and/or interference with or preventing proper conduct of the meeting.
- 30.2 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.

31 Board of Directors – Standing orders

- 31.1 The standing orders for the practice and procedure of the Board of Directors are set out in the Trust's Governance Manual.

32 Board of Directors - conflicts of interest of Directors

- 32.1 The duties that a Director of the Trust has by virtue of being a Director include in particular:
- 32.1.1 a duty to avoid a situation in which the Director has (or can have) a direct or indirect interest that conflicts (or possibly may conflict) with the interests of the Trust; and
 - 32.1.2 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.
- 32.2 The duty referred to in paragraph 32.1.1 is not infringed if:
- 32.2.1 the situation cannot reasonably be regarded as likely to give rise to a conflict of interest; or
 - 32.2.2 the matter has been authorised in accordance with the Constitution.
- 32.3 The duty referred to in paragraph 32.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- 32.4 In sub-paragraph 32.1.2, "third party" means a person other than:
- 32.4.1 the Trust; or
 - 32.4.2 a person acting on its behalf.
- 32.5 Directors shall disclose to the Board of Directors the nature and extent of any material interests whether direct or indirect (as defined below) held by a Director, their spouse or partner, which shall be recorded in the register of interests of the Directors.
- 32.6 A direct or indirect interest is:
- 32.6.1 any interest (excluding a holding of shares in a company whose shares are listed on any public exchange where the holding is less than two per cent (2%) of the total shares in issue) or position held by

- a Director in any firm, company, or business which has or is likely to have a trading or commercial relationship with the Trust;
- 32.6.2 any interest in an organisation providing health and social care services to the national health service;
- 32.6.3 a position of authority in a charity or voluntary organisation in the field of health and social care; or
- 32.6.4 any connection with any organisation, entity or company considering entering into a financial arrangement with the Trust including but not limited to lenders or banks.
- 32.7 Any Director who has an interest, either direct or indirect, in a matter to be considered by the Board of Directors (whether because the matter involves a firm, company, business, or organisation in which the Director or their spouse or partner has a direct or indirect interest or otherwise) shall declare the nature and extent of such interest to the Board of Directors. That Director is not to be counted as participating in the decision-making process for quorum or voting purposes.
- 32.8 If a declaration under this paragraph proves to be, or becomes, inaccurate or incomplete, a further declaration must be made.
- 32.9 Any declaration required by this paragraph must be made before the Trust enters into the transaction or arrangement.
- 32.10 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.
- 32.11 A Director need not declare an interest:
- 32.11.1 if it cannot reasonably be regarded as likely to give rise to a conflict of interest;
- 32.11.2 if, or to the extent that, the Directors are already aware of it;
- 32.11.3 if, or to the extent that, it concerns terms of the Director's appointment that have been or are to be considered:
- (a) by a meeting of the Board of Directors; or
- (b) by a committee of the Directors appointed for the purpose under this Constitution.
- 32.12 However, if paragraph 32.143 applies, a Director who is interested in an actual or proposed matter to be considered by the Board of Directors is to be counted as participating in the decision making process for quorum and voting purposes.
- 32.13 A matter shall have been authorised for the purposes of paragraph 13.2.2 if:
- 32.13.1 the Board of Directors by majority disapplies the provision of the Constitution which would otherwise prevent a Director from being counted as participating in the decision-making process;

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

32.13.3 the Director's conflict of interest arises from a permitted cause.

32.13.4 For the purposes of paragraph 32.13.3, the following is a permitted cause:

- (a) a guarantee given, or to be given, by or to a Director in respect of an obligation incurred by or on behalf of the Trust or any of its subsidiaries.
- (b) for the purposes of this paragraph, references to proposed decisions and decision-making processes include any Directors' meeting or part of a Directors' meeting.

32.14 Subject to paragraph 32.15, if a question arises at a meeting of Directors or of a committee of Directors as to the right of a Director to participate in the meeting (or part of the meeting) for voting or quorum purposes, the question may, before the conclusion of the meeting, be referred to the Chair whose ruling in relation to any Director other than the Chair is to be final and conclusive.

32.15 If any question as to the right to participate in the meeting (or part of the meeting) should arise in respect of the Chair, the question is to be decided by a decision of the Directors at that meeting, for which purpose the Chair is not to be counted as participating in the meeting (or that part of the meeting) for voting or quorum purposes.

32.16 Should an interest in a matter for consideration or decision at a board meeting or board committee meeting affect either all the Non-Executive Directors or all the Executive Directors, the Directors present not affected by the interest will form the quorum for that item.

33 Board of Directors – remuneration and terms of office

33.1 The Council of Governors at a general meeting of the Council of Governors shall decide the remuneration and allowances, and the other terms and conditions of office, of the Chair and the other Non-Executive Directors. In doing so, the Council of Governors shall have regard to NHS England's guidance on remuneration for Non-Executive Directors.

33.2 A committee of the Chair and the Non-Executive Directors shall decide the remuneration and allowances, and the other terms and conditions of office, of the Group Chief Executive and other Executive Directors.

34 Registers

34.1 The Trust shall have:

- 34.1.1 a register of members showing, in respect of each member, the constituency to which they belong;
- 34.1.2 a register of members of the Council of Governors;
- 34.1.3 a register of interests of Governors;

34.1.4 a register of Directors; and

34.1.5 a register of interests of the Directors.

35 Admission to and removal from the registers

35.1 The Trust Secretary shall remove from the register of members the name of any member who ceases to be entitled to be a member under the provisions of this Constitution, and membership shall only formally commence once that name has been entered into the register.

35.2 The Trust Secretary shall remove from the register of Governors the name of any member who ceases to be a Governor under the provisions of this Constitution.

35.3 The Trust Secretary shall remove from the register of Directors the name of any Director who ceases to be a Director under the provisions of this Constitution.

36 Registers – inspection and copies

36.1 The Trust shall make the registers specified in paragraph 34 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.

36.2 The Trust shall not make any part of its registers available for inspection by members of the public which shows details of any member of the Trust, if they so request.

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

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

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

36.4 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.

37 Documents available for public inspection

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

37.1.1 a copy of the current Constitution;

37.1.2 a copy of the latest annual accounts and of any report of the Auditor on them; and

37.1.3 a copy of the latest annual report.

37.2 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:

- 37.2.1 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;
- 37.2.2 a copy of any report laid under section 65D (appointment of Trust special administrator) of the 2006 Act;
- 37.2.3 a copy of any information published under section 65D (appointment of Trust special administrator) of the 2006 Act;
- 37.2.4 a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act;
- 37.2.5 a copy of any statement provided under section 65F(administrator's draft report) of the 2006 Act;
- 37.2.6 a copy of any notice published under section 65F (administrator's draft report); section 65G (consultation plan); section 65H (consultation requirements); section 65J (power to extend time); section 65KA (NHS England's decision), section 65KB (Secretary of State's response to NHS England's decision), section 65KC (action following Secretary of State's rejection of final report); or section 65KD (Secretary of State's response to re-submitted final report) of the 2006 Act;
- 37.2.7 a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act;
- 37.2.8 a copy of any final report published under section 65I (administrator's final report);
- 37.2.9 a copy of any statement published under section 65J (power to extend time); or section 65KC (action following Secretary of State's rejection of final report) of the 2006 Act; and
- 37.2.10 a copy of any information published under section 65M (replacement of Trust special administrator) of the 2006 Act.
- 37.3 Any person who requests a copy of or extract from any of the above documents is to be provided with a copy.
- 37.4 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.

38 Auditor

- 38.1 The Trust shall have an Auditor.
- 38.2 The Council of Governors shall appoint or remove the Auditor at a general meeting of the Council of Governors.
- 38.3 A person may only be appointed as the Auditor if they (or in the case of a firm, each of its members) are eligible to become an Auditor in accordance with paragraph 23 of Schedule 7 to the 2006 Act.

- 38.4 The Auditor is to carry out its duties in accordance with Schedule 10 of the 2006 Act and in accordance with any directions given by NHS England on standards, procedures and techniques to be adopted.

39 Audit Committee

- 39.1 The Trust shall establish a committee consisting of at least three (3) independent Non-Executive Directors as an Audit Committee to perform such monitoring, reviewing and other functions as are appropriate.

40 Accounts

- 40.1 The Trust must keep proper accounts and proper records in relation to the accounts.
- 40.2 NHS England may with the approval of the Secretary of State give directions to the Trust as to the content and form of its accounts.
- 40.3 The accounts are to be audited by the Trust's Auditor.
- 40.4 The Trust shall prepare in respect of each Financial Year annual accounts in such form as NHS England may with the approval of the Secretary of State direct.
- 40.5 The functions of the Trust with respect to the preparation of the annual accounts shall be delegated to the Accounting Officer.
- 40.6 The Trust shall lay a copy of the annual accounts, and any report of the auditor on them, before Parliament and once it has done so, send copies of those documents to NHS England.

41 Annual report, forward plans and non-NHS work

- 41.1 The Trust shall prepare an annual report and send it to NHS England.
- 41.2 Each Annual Report must, in particular, review the extent to which the Trust has exercised its functions:
- 41.2.1 in accordance with the plans published under:
- (a) section 14Z52 of the 2006 Act; and
 - (b) section 14Z56 of the 2006 Act
- 41.2.2 consistently with NHS England's views set out in the latest statement published under section 13SA(1)
- 41.3 Each Annual Report shall provide:
- 41.3.1 information on any steps taken by the Trust to secure that (taken as a whole) the actual membership of its public constituencies and the classes of the staff constituency is representative of those eligible for such membership;
- 41.3.2 information on any occasions in the period to which the report relates on which the Council of Governors has exercised its power under paragraph 19.4

- 41.3.3 information on the Trust's policy on pay and on the work of the committee established under paragraph 33.2 and such other procedures as the Trust has on pay;
- 41.3.4 information on the remuneration of the Directors and on the expenses of the governors and the Directors;
- 41.3.5 any other information NHS England requires.
- 41.4 The Trust is to comply with any decision NHS England makes as to:
 - 41.4.1 the form of the report;
 - 41.4.2 when the reports are to be sent to it;
 - 41.4.3 the periods to which the reports relate.
- 41.5 The Trust shall give information as to its forward planning in respect of each Financial Year to NHS England.
- 41.6 The document containing the information with respect to forward planning (referred to above) shall be prepared by the Directors.
- 41.7 In preparing the document, the Directors shall have regard to the views of the Council of Governors.
- 41.8 Each forward plan must include information about:
 - 41.8.1 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
 - 41.8.2 the income it expects to receive from doing so.
- 41.9 Where a forward plan contains a proposal that the Trust carry on an activity of a kind mentioned in paragraph 41.8.1 the Council of Governors must:
 - 41.9.1 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
 - 41.9.2 notify the Directors of the Trust of its determination.
- 41.10 Where the Trust proposes to increase by 5% or more the proportion of its total income in any Financial Year attributable to activities other than the provision of goods and services for the purposes of the health service in England it may implement the proposal only if more than half of the members of the Council of Governors voting approve its implementation.
- 42 Presentation of the annual accounts and reports to the Governors and members**
 - 42.1 The following documents are to be presented to the Council of Governors at a general meeting of the Council of Governors and at the Trust's Annual Members Meeting:
 - 42.1.1 the Trust's annual accounts;

42.1.2 any report of the Auditor on them; and

42.1.3 the Trust's Annual Report.

42.2 The documents shall also be presented to the members of the Trust at the Annual Members' Meeting by at least one (1) member of the Board of Directors in attendance.

42.3 The Trust may combine a Meeting of the Council of Governors convened for the purposes of paragraph 42.1 with the Annual Members' Meeting.

43 Instruments

43.1 The Trust shall have a seal.

43.2 The seal shall not be affixed except under the authority of the Board of Directors. Attestation by any two Directors shall be deemed to constitute affixing the seal under the authority of the Board of Directors or a committee under a delegation.

44 Amendment of the Constitution

44.1 The Trust may make amendments of its Constitution only if:

44.1.1 more than half of the members of the Board of Directors of the Trust voting approve the amendments; and

44.1.2 more than half of the members of the Council of Governors of the Trust voting approve the amendments.

44.2 Amendments made under paragraph 44.1 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.

44.3 Where an amendment is made to the Constitution in relation the powers or duties of the Council of Governors (or otherwise with respect to the role that the Council of Governors has as part of the Trust):

44.3.1 at least one (1) member of the Council of Governors must attend the next Annual Members' Meeting and present the amendment; and

44.3.2 the Trust must give the members an opportunity to vote on whether they approve the amendment.

44.4 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.

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

45 Mergers etc. and significant transactions

45.1 The Trust may only apply for a Statutory Transaction with the approval of more than half of the members of the Council of Governors.

45.2 The Trust may enter into a Significant Transaction only if more than half of the members of the Council of Governors of the Trust voting approve entering into the transaction.

45.3 For the purposes of paragraph 45.2 a Statutory Transaction is not a Significant Transaction.

46 Procedures and practices

46.1 The Board of Directors shall adopt such procedures and practices (by way of a Governance Manual or otherwise) as it deems to be appropriate for the good governance of the Trust from time to time. For the avoidance of doubt, any such practices and procedures adopted by the Board of Directors for the purposes of good governance shall not form part of this Constitution.

47 Indemnity

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

47.2 The Trust may purchase and maintain for members of the Board of Directors, Council of Governors, and the Trust Secretary insurance in respect of directors' and officers' liability, including, without limitation, liability arising by reason of the Trust acting as a corporate trustee of an NHS charity.

Annex 1 The Public Constituencies

There shall be one Public Constituency. Members of the public shall be eligible for membership of the Public Constituencies as shown in the table below:

Public Constituency	Electoral area	Minimum number of members
Norfolk, Suffolk and Rest of England	The areas of the Public Constituency is as defined by the following electoral wards: All wards in England	500

Annex 2 The Staff Constituency

Class	Description	Minimum number of members
Staff	Individuals who are employed by the Trust under a contract of employment which has no fixed term or has a fixed term of more than 12 months; or have been continuously employed by the Trust under a contract of employment for at least 12 months.	750
Total		750

Annex 3 Further provisions for the Council of Governors

1 Composition

- 1.1 The Council of Governors shall comprise 19 governors as set out in the tables below:

Public Governors

Public Constituency	Number of governors
Norfolk, Suffolk and Rest of England	10
Total:	10

Staff Governors

Staff Class	Number of governors
Staff	4
Total:	4

Appointed Governors

Appointing Organisation	Number of governors
Great Yarmouth Borough Council	1
East Suffolk Council	1
University of East Anglia or University of Suffolk	1
Norfolk County Council	1
Suffolk County Council	1
Total:	5

2 Disqualification and removal

- 2.1 The following may not become or continue as a member of the Council of Governors:
- 2.1.1 a person who is a Director of the Trust;
 - 2.1.2 a person who is a director of another Foundation Trust;

- 2.1.3 a person who has resigned following suspension or been removed as a Governor of another Foundation Trust;
 - 2.1.4 a person who has had their name removed from a list maintained under the regulations pursuant to Sections 91, 106, 123, or 146 of the 2006 Act, or the equivalent lists maintained by local health boards in Wales under the National Health Services (Wales) Act 2006, and they have not subsequently had their name included in such a list;
 - 2.1.5 a person who is subject to a Sex Offenders Order (under the Sex Offenders Act 1997 as amended by the Sexual Offences Act 2003) and/or whose name is included in the Sex Offender Register (established under the Sexual Offences Act 2003);
 - 2.1.6 a person who is incapable by reason of mental disorder, injury, or illness of managing and administering their property and affairs;
 - 2.1.7 a person who has failed to give written consent to the Trust Secretary to enable them to request a third party to provide data that will verify the person's status in relation to paragraphs 2.1.1 to 2.1.6 above;
 - 2.1.8 a person who has refused to take any training required by the Council of Governors for all Governors.
- 2.2 If a Governor fails to attend more than 2 consecutive meetings of the Council of Governors in any Financial Year, their tenure of office is to be terminated immediately unless the other Governors are satisfied that:
- 2.2.1 the absence was due to a reasonable cause; and
 - 2.2.2 they will be able to start attending meetings of the Council of Governors again within such a period as they consider reasonable.
- 2.3 If a Governor is considered to have acted in a manner inconsistent with:
- 2.3.1 the vision and values of the Trust and the core principles of the NHS;
 - 2.3.2 the terms of the Trust's license; or
 - 2.3.3 the standing orders of the Council of Governors; or
 - 2.3.4 the Governors' Code of Conduct; or
 - 2.3.5 except as a result of a genuine mistake or where reasonable cause can be shown or where they can demonstrate that they have gained no personal benefit, they have failed to declare an interest as required by the Constitution or the standing orders of the Council of Governors, or they have spoken or voted at a meeting on a matter in which they has an interest contrary to this Constitution or the standing orders of the Council of Governors, and this paragraph "interest" includes a pecuniary and a non-pecuniary interest and in either case whether direct or indirect, and

they are judged to have so acted by a majority of not less than 75% of the Council of Governors present and voting then the Governor shall vacate their office immediately.

- 2.4 The standing orders of the Council of Governors shall provide for the process to be adopted in cases relating to the termination of a Governor's tenure.

3 Vacancies

- 3.1 Where a vacancy arises from the Council of Governors for any reason other than expiry of the term of office, the following provisions will apply:
- 3.2 Where the vacancy arises amongst the Appointed Governors, the Trust Secretary shall request that the appointing organisation appoints a replacement to hold office for the remainder of the term of office.
- 3.3 When a vacancy arises for one or more Elected Governors, the Council of Governors shall have the option to take from the list of members who stood for election at the most recent election of Governors from the class or constituency in question the next highest polling candidate. This procedure, which shall be an uncontested election for the purposes of the Model Election Rules as they apply to the Trust, shall be available to the Governors on 2 occasions within 12 months of the previous election. Governors appointed in this way shall hold office for a minimum of 6 months from their appointment but, subject thereto, shall hold office until the earlier of the conclusion of the next election of Governors and (except where the vacancy arose through expiry of a term of office) the date on which the term of office of the Governor whose cessation of office gave rise to the vacancy would have expired.

Annex 4 Further provisions for members

1 Annual Members' Meeting

- 1.1 The Chair of the Trust or, in their absence, the Deputy Chair or another Non-Executive Director, shall preside at the Annual Members' Meeting. For the avoidance of doubt, no Annual Members' Meeting may proceed in the absence of the Chair or a Non-Executive Director.
- 1.2 Before a members' meeting can do business, there must be a quorum present. Except where this Constitution states otherwise, a quorum is twenty (20) members with at least one (1) member present from each of the Trust's constituencies.
- 1.3 If a quorum is not present, no matter may be discussed or voted upon at that meeting and the meeting shall be adjourned. Such a position shall be recorded in the minutes of the meeting.
- 1.4 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 time and place as the Board of Directors determines. 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 shall be a quorum.

2 Restriction on membership

- 2.1 An individual shall not become or continue as a member if:
 - 2.1.1 They are or wish to become a member of a Public Constituency and they do not or no longer reside within the relevant catchment area as set out in Annex 1;
 - 2.1.2 in the last 5 years prior to the individual's application for membership, the individual has been involved, as a perpetrator, in a serious incident of assault or violence, or in one or more incidents of harassment against any persons working for the Trust or any other NHS Body or any service users, or carers, or visitors to the Trust or any other NHS Body;
 - 2.1.3 in the last 5 years the individual has been excluded from any of the Trust's premises from which services are provided;
 - 2.1.4 the individual is a vexatious complainant as determined by the Trust Secretary in accordance with the Trust's complaints policy; or
 - 2.1.5 the Council of Governors resolves that there are reasonable grounds to believe that the individual is likely to:
 - (a) prejudice the ability of the Trust to fulfil its Principal Purpose or other of its purposes under the Constitution or otherwise to discharge its duties and functions; or

- (b) harm the Trust's work with other persons or bodies with whom it is engaged or may be engaged in the provision of goods and services; or
- (c) adversely affect public confidence in the goods or services provided by the Trust; or
- (d) otherwise bring the Trust into disrepute

2.1.6 the individual is a former employee of the Trust and their contract has been terminated due to poor performance or misconduct.

2.2 No person who has been expelled from membership of the Trust is to be re-admitted as a member except by a resolution carried by the votes of two-thirds of the Council of Governors present and voting at a general meeting of the Council of Governors.

Annex 5 Model Election Rules

Part 1 - Interpretation

1. Interpretation

Part 2 – Timetable for election

2. Timetable
3. Computation of time

Part 3 – Returning officer

4. Returning officer
5. Staff
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9. Nomination of candidates
10. Candidate's consent and particulars
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19. Poll to be taken by ballot
20. The ballot paper
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22. List of eligible voters
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The poll

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Part 9 – Death of a candidate during a contested election

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

Part 10 – Election expenses and publicity *Expenses*

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

Publicity

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

Part 11 – Questioning elections and irregularities

- 61. Application to question an election

Part 12 – Miscellaneous

- 62. Secrecy

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

Part 1 - Interpretation

1. Interpretation – (1) In these rules, unless the context otherwise requires -
 “corporation” means the public benefit corporation subject to this constitution;
 “election” means an election by a constituency, or by a class within a constituency, to fill a vacancy among one or more posts on the board of governors;
 “the regulator” means the Independent Regulator for NHS foundation trusts; and
 “the 2006 Act” means the NHS Act 2006
 (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 election

2. Timetable - The proceedings at an election shall be conducted in accordance with the following timetable. Proceeding	Time
Publication of notice of election	Not later than the fortieth day before the day of the close of the poll.
Final day for delivery of nomination papers to returning officer	Not later than the twenty eighth day before the day of the close of the poll.
Publication of statement of nominated candidates	Not later than the twenty seventh day before the day of the close of the poll.
Final day for delivery of notices of withdrawals by candidates from election	Not later than twenty fifth day before the day of the close of the poll.
Notice of the poll	Not later than the fifteenth day before the day of the close of the poll.
Close of the poll	By 5.00pm on the final day of the election.

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

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

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

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

Part 3 – Returning officer

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

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

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

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

(a) any expenses incurred by that officer in the exercise of his or her functions under these rules,

(b) such remuneration and other expenses as the corporation may determine.

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

Part 4 - Stages Common to Contested and Uncontested Elections

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

(a) the constituency, or class within a constituency, for which the election is being held,

(b) the number of members of the board of governors to be elected from that constituency, or class within that constituency,

(c) the details of any nomination committee that has been established by the corporation,

(d) the address and times at which nomination papers may be obtained;

(e) the address for return of nomination papers and the date and time by which they must be received by the returning officer,

(f) the date and time by which any notice of withdrawal must be received by the returning officer

(g) the contact details of the returning officer, and

(h) the date and time of the close of the poll in the event of a contest.

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

(2) The returning officer-

(a) is to supply any member of the corporation with a nomination paper, and

(b) is to prepare a nomination paper for signature at the request of any member of the corporation,

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

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

(a) full name,

(b) contact address in full, and

(c) constituency, or class within a constituency, of which the candidate is a member.

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

(a) any financial interest that the candidate has in the corporation, and

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

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

- (a) that he or she is not prevented from being a member of the board of governors by paragraph 8 of Schedule 1 of the 2003 Act or by any provision of the constitution; and,
- (b) for a member of the public or patient constituency, of the particulars of his or her qualification to vote as a member of that constituency, or class within that constituency, for which the election is being held.

13. Signature of candidate – The nomination paper must be signed and dated by the candidate, indicating that –

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

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

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

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

- (a) that the paper is not received on or before the final time and date for return of nomination papers, as specified in the notice of the election,
- (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, as required by rule 13.

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

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

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

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

(2) The statement must show –

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

(b) the declared interests of each candidate standing, as given in their nomination paper.

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

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

16. Inspection of statement of nominated candidates and nomination papers – (1)

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

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

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

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

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

(3) If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is less than the number of members to be elected to be board of governors, then –

(a) the candidates who remain validly nominated are to be declared elected in accordance with Part 7 of these rules, and

(b) the returning officer is to order a new election to fill any vacancy which remains unfilled, on a day appointed by him or her in consultation with the corporation.

Part 5 – Contested elections

19. Poll to be taken by ballot – (1) The votes at the poll must be given by secret ballot.

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

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

(2) Every ballot paper must specify –

(a) the name of the corporation,

(b) the constituency, or class within a constituency, for which the election is being held,

(c) the number of members of the board of governors to be elected from that constituency, or class within that constituency,

(d) the names and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,

(e) instructions on how to vote,

- (f) if the ballot paper is to be returned by post, the address for its return and the date and time of the close of the poll, and
 - (g) the contact details of the returning officer.
 - (3) Each ballot paper must have a unique identifier.
 - (4) Each ballot paper must have features incorporated into it to prevent it from being reproduced.
- 21. The declaration of identity (public and patient constituencies)** – (1) In respect of an election for a public or patient constituency a declaration of identity must be issued with each ballot paper.
- (2) The declaration of identity is to include a declaration –
 - (a) that the voter is the person to whom the ballot paper was addressed,
 - (b) that the voter has not marked or returned any other voting paper in the election, and
 - (c) for a member of the public or patient constituency, of the particulars of that member's qualification to vote as a member of the constituency or class within a constituency for which the election is being held.
 - (3) The declaration of identity is to include space for –
 - (a) the name of the voter,
 - (b) the address of the voter,
 - (c) the voter's signature, and
 - (d) the date that the declaration was made by the voter.
 - (4) The voter must be required to return the declaration of identity together with the ballot paper.
 - (5) The declaration of identity must caution the voter that, if it is not returned with the ballot paper, or if it is returned without being correctly completed, the voter's ballot paper may be declared invalid.

Action to be taken before the poll

- 22. List of eligible voters** – (1) The corporation is to provide the returning officer with a list of the members of the constituency or class within a constituency for which the election is being held who are eligible to vote by virtue of rule 26 as soon as is reasonably practicable after the final date for the delivery of notices of withdrawals by candidates from an election.
- (2) The list is to include, for each member, a mailing address where his or her ballot paper is to be sent.
- 23. Notice of poll** - The returning officer is to publish a notice of the poll stating–
- (a) the name of the corporation,
 - (b) the constituency, or class within a constituency, for which the election is being held,
 - (c) the number of members of the board of governors to be elected from that constituency, or class with that constituency,
 - (d) the names, contact addresses, and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
 - (e) that the ballot papers for the election are to be issued and returned, if appropriate, by post,
 - (f) the address for return of the ballot papers, and the date and time of the close of the poll,

(g) the address and final dates for applications for replacement ballot papers, and

(h) the contact details of the returning officer.

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

(a) a ballot paper and ballot paper envelope,

(b) a declaration of identity (if required),

(c) information about each candidate standing for election, pursuant to rule 59 of these rules, and

(d) a covering envelope.

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

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

(2) The covering envelope is to have –

(a) the address for return of the ballot paper printed on it, and

(b) pre-paid postage for return to that address.

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

(a) the completed declaration of identity if required, and

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

The poll

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

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

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

28. Spoilt ballot papers (1) – If a voter has dealt with his or her ballot paper in such a manner that it cannot be accepted as a ballot paper (referred to a “spoilt ballot paper”), that voter may apply to the returning officer for a replacement ballot paper.

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

(3) The returning officer may not issue a replacement ballot paper for a spoilt ballot paper unless he or she –

(a) is satisfied as to the voter’s identity, and

(b) has ensured that the declaration of identity, if required, has not been returned.

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

(a) the name of the voter, and

(b) the details of the unique identifier of the spoilt ballot paper (if that officer was able to obtain it), and

(c) the details of the unique identifier of the replacement ballot paper.

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

(2) The returning officer may not issue a replacement ballot paper for a lost ballot paper unless he or she –

(a) is satisfied as to the voter's identity,

(b) has no reason to doubt that the voter did not receive the original ballot paper, and

(c) has ensured that the declaration of identity if required has not been returned.

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

(a) the name of the voter, and

(b) the details of the unique identifier of the replacement ballot paper.

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

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

(a) the name of the voter, and

(b) the details of the unique identifier of the replacement ballot paper issued under this rule.

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

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

(a) that the voter has not voted in the election with any ballot paper other than the ballot paper being returned with the declaration, and

(b) of the particulars of that member's qualification to vote as a member of the public or patient constituency, or class within a constituency, for which the election is being held.

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

(a) the name of the voter,

(b) the address of the voter,

(c) the voter's signature, and

(d) the date that the declaration was made by the voter.

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

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

Procedure for receipt of envelopes

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

(a) covering envelope, or

(b) any other envelope containing a declaration of identity if required, a ballot paper envelope, or a ballot paper, before the close of the poll, that officer is to open it as soon as is practicable; and rules 33 and 34 are to apply.

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

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

(3) The returning officer must make arrangements to ensure the safety and security of the ballot papers and other documents.

33. Validity of ballot paper –

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

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

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

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

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

34. Declaration of identity but no ballot paper (public and patient constituency) –

Where the returning officer receives a declaration of identity if required but no ballot paper, the returning officer is to –

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

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

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

Part 6 - Counting the votes

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

“continuing candidate” means any candidate not deemed to be elected, and not excluded,
“count” means all the operations involved in counting of the first preferences recorded for candidates, the transfer of the surpluses of elected candidates, and the transfer of the votes of the excluded candidates,

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

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

“non-transferable vote” means a ballot paper –

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

(b) which is excluded by the returning officer under rule stv44(4) below,

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

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

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

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

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

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

“stage of the count” means –

(a) the determination of the first preference vote of each candidate,

(b) the transfer of a surplus of a candidate deemed to be elected, or

(c) the exclusion of one or more candidates at any given time,

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

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

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

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

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

(a) count and record the number of ballot papers that have been returned, and

(b) count the votes according to the provisions in this Part of the rules.

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

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

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

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

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

(c) on which anything is written or marked by which the voter can be identified except the unique identifier, or

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

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

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

fpp39. Rejected ballot papers – (1) Any ballot paper – (a) which does not bear the features that have been incorporated into the other ballot papers to prevent them from being reproduced,

(b) on which votes are given for more candidates than the voter is entitled to vote,

(c) on which anything is written or marked by which the voter can be identified except the unique identifier, or

(d) which is unmarked or rejected because of uncertainty, shall, subject to paragraphs (2) and (3) below, be rejected and not counted.

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

(3) A ballot paper on which a vote is marked –

(a) elsewhere than in the proper place,

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

(c) by more than one mark,

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

(4) The returning officer is to –

(a) endorse the word “rejected” on any ballot paper which under this rule is not to be counted, and

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

(5) The returning officer is to draw up a statement showing the number of rejected ballot papers under the following headings –

- (a) does not bear proper features that have been incorporated into the ballot paper,
- (b) voting for more candidates than the voter is entitled to,
- (c) writing or mark by which voter could be identified, and
- (d) unmarked or rejected because of uncertainty,

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

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

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

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

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

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

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

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

- (a) according to next available preference given on those papers for any continuing candidate, or

- (b) where no such preference is given, as the sub-parcel of non-transferable votes.

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

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

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

- (a) reduces the value of each vote transferred so that the total value of all such votes does not exceed the surplus, and

- (b) is calculated by dividing the surplus of the candidate from whom the votes are being transferred by the total number of the ballot papers on which those votes are given, the calculation being made to two decimal places (ignoring the remainder if any).

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

- (a) according to the next available preference given on those papers for any continuing candidate, or

- (b) where no such preference is given, as the sub-parcel of non-transferable votes.

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

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

(a) a transfer value calculated as set out in paragraph (4)(b) above, or

(b) at the value at which that vote was received by the candidate from whom it is now being transferred,

whichever is the less.

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

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

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

(a) less than the difference between the total vote then credited to the continuing candidate with the lowest recorded vote and the vote of the candidate with the next lowest recorded vote, or

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

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

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

(a) The surpluses determined in respect of two or more candidates are equal, the transferable papers of the candidate who had the highest recorded vote at the earliest preceding stage at which they had unequal votes shall be transferred first, and

(b) the votes credited to two or more candidates were equal at all stages of the count, the returning officer shall decide between those candidates by lot, and the transferable papers of the candidate on whom the lot falls shall be transferred first.

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

(a) record the total value of the votes transferred to each candidate,

(b) add that value to the previous total of votes recorded for each candidate and record the new total,

(c) record as non-transferable votes the difference between the surplus and the total transfer value of the transferred votes and add that difference to the previously recorded total of non-transferable votes, and

(d) compare—

(i) the total number of votes then recorded for all of the candidates, together with the total number of non-transferable votes, with

(ii) the recorded total of valid first preference votes.

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

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

stv44. Exclusion of candidates – (1) If—

(a) all transferable papers which under the provisions of rule stv42 above (including that rule as applied by paragraph (11) below) and this rule are required to be transferred, have been transferred, and

(b) subject to rule stv45 below, one or more vacancies remain to be filled, the returning officer shall exclude from the election at that stage the candidate with the then lowest vote (or, where paragraph (12) below applies, the candidates with the then lowest votes).

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

(a) ballot papers on which a next available preference is given, and

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

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

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

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

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

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

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

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

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

(a) record –

(i) the total value of votes, or

(ii) the total transfer value of votes transferred to each candidate,

(b) add that total to the previous total of votes recorded for each candidate and record the new total,

(c) record the value of non-transferable votes and add that value to the previous non-transferable votes total, and

(d) compare—

(i) the total number of votes then recorded for each candidate together with the total number of non-transferable votes, with

(ii) the recorded total of valid first preference votes.

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

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

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

(a) regard shall be had to the total number of votes credited to those candidates at the earliest stage of the count at which they had an unequal number of votes and the candidate with the lowest number of votes at that stage shall be excluded, and

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

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

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

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

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

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

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

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

fpp46. Equality of votes – Where, after the counting of votes is completed, an equality of votes is found to exist between any candidates and the addition of a vote would entitle any of those candidates to be declared elected, the returning officer is to decide between those candidates by a lot, and proceed as if the candidate on whom the lot falls had received an additional vote.

Part 7 – Final proceedings in contested and uncontested elections

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

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

(b) give notice of the name of each candidate who he or she has declared elected–

(i) where the election is held under a proposed constitution pursuant to powers conferred on the [insert name] NHS Trust by section 4(4) of the 2003 Act, to the chairman of the NHS Trust, or

(ii) in any other case, to the chairman of the corporation; and

(c) give public notice of the name of each candidate whom he or she has declared elected.

(2) The returning officer is to make –

(a) the total number of votes given for each candidate (whether elected or not), and

(b) the number of rejected ballot papers under each of the headings in rule fpp39(5),

available on request.

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

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

(b) give notice of the name of each candidate who he or she has declared elected –

(i) where the election is held under a proposed constitution pursuant to powers conferred on the [insert name] NHS Trust by section 4(4) of the 2003 Act, to the chairman of the NHS Trust, or

(ii) in any other case, to the chairman of the corporation, and

(c) give public notice of the name of each candidate who he or she has declared elected.

(2) The returning officer is to make –

(a) the number of first preference votes for each candidate whether elected or not,

(b) any transfer of votes,

(c) the total number of votes for each candidate at each stage of the count at which such transfer took place,

(d) the order in which the successful candidates were elected, and

(e) the number of rejected ballot papers under each of the headings in rule stv39(1), available on request.

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

(a) declare the candidate or candidates remaining validly nominated to be elected,

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

Part 8 – Disposal of documents

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

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

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

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

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

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

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

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

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

53. Application for inspection of certain documents relating to an election – (1) The corporation may not allow the inspection of, or the opening of any sealed packet containing

–

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

by any person without the consent of the Regulator.

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

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

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

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

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

- (a) in giving its consent, the regulator, and

(b) and making the documents available for inspection, the corporation,

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

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

Part 9 – Death of a candidate during a contested election

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

- (a) countermand notice of the poll, or, if ballot papers have been issued, direct that the poll be abandoned within that constituency or class, and

- (b) order a new election, on a date to be appointed by him or her in consultation with the corporation, within the period of 40 days, computed in accordance with rule 3 of these rules, beginning with the day that the poll was countermanded or abandoned.

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

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

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

(5) The returning officer is to –

- (a) count and record the number of ballot papers that have been received, and

- (b) seal up the ballot papers into packets, along with the records of the number of ballot papers.
- (6) The returning officer is to endorse on each packet a description of –
 - (a) its contents,
 - (b) the date of the publication of notice of the election,
 - (c) the name of the corporation to which the election relates, and
 - (d) the constituency, or class within a constituency, to which the election relates.
- (7) Once the documents relating to the poll have been sealed up and endorsed pursuant to paragraphs (4) to (6), the returning officer is to deliver them to the chairman of the corporation, and rules 52 and 53 are to apply.
- stv54. Countermand or abandonment of poll on death of candidate** – (1) If, at a contested election, proof is given to the returning officer's satisfaction before the result of the election is declared that one of the persons named or to be named as a candidate has died, then the returning officer is to –
 - (a) publish a notice stating that the candidate has died, and
 - (b) proceed with the counting of the votes as if that candidate had been excluded from the count so that –
 - (i) ballot papers which only have a first preference recorded for the candidate that has died, and no preferences for any other candidates, are not to be counted, and
 - (ii) ballot papers which have preferences recorded for other candidates are to be counted according to the consecutive order of those preferences, passing over preferences marked for the candidate who has died.
- (2) The ballot papers which have preferences recorded for the candidate who has died are to be sealed with the other counted ballot papers pursuant to rule 49(1)(a).

Part 10 – Election expenses and publicity
Election expenses

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

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

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

57. Election expenses incurred by other persons –

- (1) No person may -
 - (a) incur any expenses or make a payment (of whatever nature) for the purposes of a candidate's election, whether on that candidate's behalf or otherwise, or
 - (b) give a candidate or his or her family any money or property (whether as a gift, donation, loan, or otherwise) to meet or contribute to expenses incurred by or on behalf of the candidate for the purposes of an election.
- (2) Nothing in this rule is to prevent the corporation from incurring such expenses, and making such payments, as it considers necessary pursuant to rules 58 and 59.

Publicity

58. Publicity about election by the corporation –

- (1) The corporation may –
- (a) compile and distribute such information about the candidates, and
 - (b) organise and hold such meetings to enable the candidates to speak and respond to questions,
- as it considers necessary.
- (2) Any information provided by the corporation about the candidates, including information compiled by the corporation under rule 59, must be –
- (a) objective, balanced and fair,
 - (b) equivalent in size and content for all candidates,
 - (c) compiled and distributed in consultation with all of the candidates standing for election, and
 - (d) must not seek to promote or procure the election of a specific candidate or candidates, at the expense of the electoral prospects of one or more other candidates.
- (3) Where the corporation proposes to hold a meeting to enable the candidates to speak, the corporation must ensure that all of the candidates are invited to attend, and in organising and holding such a meeting, the corporation must not seek to promote or procure the election of a specific candidate or candidates at the expense of the electoral prospects of one or more other candidates.

59. Information about candidates for inclusion with voting documents - (1) The corporation must compile information about the candidates standing for election, to be distributed by the returning officer pursuant to rule 24 of these rules.

- (2) The information must consist of –
- (a) a statement submitted by the candidate of no more than [250] words, [and]
 - [(b) a photograph of the candidate.]

60. Meaning of “for the purposes of an election” - (1) In this Part, the phrase “for the purposes of an election” means with a view to, or otherwise in connection with, promoting or procuring a candidate’s election, including the prejudicing of another candidate’s electoral prospects; and the phrase “for the purposes of a candidate’s election” is to be construed accordingly.

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

Part 11 – Questioning elections and the consequence of irregularities

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

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

- (3) An application may only be made to the Regulator by –
- (a) a person who voted at the election or who claimed to have had the right to vote,
 - or

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

- (4) The application must –

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

- (5) The application must be presented in writing within 21 days of the declaration of the result of the election.

(6) If the Regulator requests further information from the applicant, then that person must provide it as soon as is reasonably practicable.

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

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

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

Part 12 – Miscellaneous

62. Secrecy – (1) The following persons –

(a) the returning officer,

(b) the returning officer's staff,

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

(i) the name of any member of the corporation who has or has not been given a ballot paper or who has or has not voted,

(ii) the unique identifier on any ballot paper,

(iii) the candidate(s) for whom any member has voted.

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

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

63. Prohibition of disclosure of vote – No person who has voted at an election shall, in any legal or other proceedings to question the election, be required to state for whom he or she has voted.

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

(a) a member of the corporation,

(b) an employee of the corporation,

(c) a director of the corporation, or

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

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

(a) the delivery of the documents in rule 24, or

(b) the return of the ballot papers and declarations of identity,
the returning officer may extend the time between the publication of the notice of the poll and the close of the poll, with the agreement of the Regulator.