

**CONSTITUTION**

**FOR NORTH CUMBRIA INTEGRATED CARE NHS  
FOUNDATION TRUST**

**NOVEMBER 2025**

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## 1. Interpretation and Definitions

In this Constitution:

- 1.1. unless a contrary intention is evident or the context requires otherwise, words or expressions contained in this Constitution shall bear the same meaning as in the National Health Service Act 2006;
- 1.2. use of the masculine gender shall include the feminine gender; use of the singular shall include the plural and vice-versa;
- 1.3. save as otherwise expressly provided, references in this Constitution to legislation include all amendments, replacements, or re-enactments made;
- 1.4. headings are for ease of reference only and are not to affect interpretation; and
- 1.5. unless stated otherwise, the following words and expressions shall have the following meanings:

|                                   |  |
|-----------------------------------|--|
| <b>"the 2006 Act"</b>             | means the National Health Service Act 2006;  |
| <b>"the 2012 Act"</b>             | means the Health and Social Care Act 2012;   |
| <b>"the 2022 Act"</b>             | means the Health and Care Act 2022;  |
| <b>"Accounting Officer"</b>       | means the person who from time to time discharges the functions specified in paragraph 25(5) of Schedule 7 to the 2006 Act;  |
| <b>"Annual Members' Meeting"</b>  | is defined in paragraph 14.1 of this Constitution;   |
| <b>"Appointed Governors"</b>      | means the Local Authority Governors and the Partnership Governors;   |
| <b>"Appointing Organisations"</b> | means those organisations named in this Constitution which are entitled to appoint Appointed Governors;  |
| <b>"Board of Directors"</b>       | means the Chair, Executive Directors and Non-Executive Directors of the Trust collectively as a body.;   |
| <b>"Chairman"</b>                 | means the person appointed to be the chairman of the Board of Directors in accordance with paragraph 29 below;   |
| <b>"Company Secretary"</b>        | means a person appointed to act independently of the Board to provide advice on corporate governance issues to the Board and the Chair and monitor the Trust's compliance with the law, Standing Orders and relevant guidance. |
| <b>"Constitution"</b>             | means this constitution and all annexes to it;   |
| <b>"Deputy Lead Governor"</b>     | means the individual elected by the Governors' Council to support and deputise for the Lead Governor;  |
| <b>"Director"</b>                 | means a member of the Board of Directors;  |
| <b>"Elected Governors"</b>        | means those Governors elected by the Public Constituencies and the classes of the Staff Constituency;  |

|  |  |
|--|--|
|  | means:   |
| <b>"Financial Year"</b>                                | <ul style="list-style-type: none"> <li>the period beginning with the date on which the Foundation Trust is authorised and ending with the next 31 March; and</li> <li>each successive period of twelve (12) months beginning with 1 April;</li> </ul>  |
| <b>"Foundation Trust"</b>                              | means the NHS Foundation Trust to which this Constitution relates. Foundation Trust;   |
| <b>"Governor"</b>                                      | means a member of the Governors' Council;  |
| <b>"Governors' Council"</b>                            | Means a council of governors (as such term is used in the 2006 Act) constituted in accordance with this Constitution.  |
| <b>"Lead Governor"</b>                                 | Means the individual elected by the Governors' Council to act as a direct point of contact between NHS England and the Governors' Council.   |
| <b>"Local Authority Governor"</b>                      | means a Governor appointed by one or more local authorities whose area includes the whole or part of one of the areas specified in Annex 1;  |
| <b>"Member"</b>  | means a member of the Foundation Trust;  |
| <b>"Members' Meeting"</b>                              | means any Annual Members' Meeting and any other meeting of the Foundation Trust's members. ;   |
| <b>"NHS England"</b>                                   | NHS England leads and manages the National Health Service in England, overseeing its planning, commissioning, and delivery of health and care services. The Health and Care Act 2022 formally abolished Monitor (established under S61 of 2012 Health and Social care Act) and transferred its functions to NHS England. |
| <b>"NHS Provider Licence"</b>                          | means the NHS Provider Licence issued by NHS England under Part 3 Chapter 3 of the 2012 Act;   |
| <b>"Partner"</b>                                       | means, in relation to another person, a member of the same household living together as a family unit;   |
| <b>"Partnership Governor"</b>                          | Means a Governor appointed by a Partnership Organisation;  |
| <b>"Partnership Organisation"</b>                      | Means a partnership organisation specified in paragraph 17.2;  |
| <b>"Public Constituency"</b>                           | means (collectively) those Members living in one of the areas specified in Annex 1;  |
| <b>"Public Governor"</b>                               | means a Governor elected by the members of one of the Public Constituencies;   |
| <b>"Secretary of State for Health and Social Care"</b> | means the person appointed by HM Government to be the Secretary of State for Health and Social Care for England from time to time;   |
| <b>"Staff Constituency"</b>                            | Is comprised of three (3) classes North/East (Carlisle and Eden); West (Allerdale and Copeland); and South (Furness and South Lakeland)  |

|                                 |   |
|---------------------------------|---|
| <b>“Staff Governor”</b>         | means a Governor elected by the members of one of the classes of the Staff Constituency;                    |
| <b>“Terms of Authorisation”</b> | means the terms of authorisation issued by the NHS England under Section 35 of the 2006 Act                 |
| <b>“Voluntary Organisation”</b> | means a body, other than a public or local authority, the activities of which are not carried on for profit |

2. **Name**

The name of the Foundation Trust is to be North Cumbria Integrated Care NHS Foundation Trust.

3. **Principal purpose**

- 3.1. The principal purpose of the Foundation Trust is the provision of goods and services for the purposes of the health service in England.
- 3.2. The Foundation 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 Foundation Trust may provide goods and services for any purposes related to:
  - 3.3.1.1. the provision of services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness; and
  - 3.3.1.2. the promotion and protection of public health.
- 3.4. The Foundation 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 the Foundation Trust's principal purpose.

4. **Powers**

- 4.1. The powers of the Foundation Trust are set out in the 2006 Act (as amended by the 2012 Act and the 2022 Act), subject to any restrictions in the Terms of Authorisation and NHS Provider Licence.
- 4.2. The Foundation Trust may do anything which appears to it to be necessary or expedient for the purposes of or in connection with its functions.
- 4.3. In particular the Foundation Trust may:
  - 4.3.1. acquire and dispose of property;
  - 4.3.2. enter into contracts;
  - 4.3.3. be a party to any arrangement with a local authority or local authorities;
  - 4.3.4. accept gifts of property (including property to be held on trust for the purposes of the Foundation Trust or for any purposes relating to the health service); and
  - 4.3.5. employ staff.

- 4.4. Any power of the Foundation Trust to pay remuneration and allowances to any person includes the power to make arrangements for providing, or securing the provision of, pensions or gratuities (including those payable by way of compensation for loss of employment or loss or reduction of pay).
- 4.5. The Foundation Trust may borrow money for the purposes of or in connection with its functions, subject to any limit imposed by its Terms of Authorisation or specified in the guidance published by the Secretary of State.
- 4.6. The Foundation Trust may invest money (other than money held by it as trustee) for the purposes of or in connection with its functions. The investment may include investment by:
  - 4.6.1. forming or participating in forming bodies corporate; or
  - 4.6.2. otherwise acquiring membership of bodies corporate.
- 4.7. The Foundation Trust may give financial assistance (whether by way of loan, guarantee or otherwise) to any person for the purposes of or in connection with its functions.
- 4.8. Without prejudice to the general powers in paragraphs 4.1 to 4.7 and subject to the 2006 Act and to any restrictions in the Terms of Authorisation, the Foundation Trust may also act and continue to act as trustee of charitable and other trusts and funds, including but not limited to those trusts and funds of which the Foundation Trust is a trustee at the date of adoption of this Constitution.

## 5. **Commitments**

- 5.1. The Foundation Trust shall exercise its functions effectively, efficiently and economically.

### Representative Membership

- 5.2. The Foundation Trust shall at all times strive to ensure that (taken as a whole) its actual membership of the Public Constituencies is representative of those eligible for membership. To this end the Foundation Trust shall have a membership strategy which shall be reviewed by the Governors' Council at least once each year.

### Co-operation with health service and other bodies

- 5.3. In exercising its functions the Foundation Trust shall co-operate and collaborate with other health organisations and with local authorities as required by the Health and Care Act 2022

### Prohibiting distribution

- 5.4. The surpluses of the Foundation Trust are not to be distributed either directly or indirectly in any way among Members of the Foundation Trust or to other organisations.

## 6. **Framework**

- 6.1. The powers of the Foundation Trust are to be exercised by the Board of Directors in accordance with the Health and Care Act 2006. ,

## Members

6.2. Members may:

- 6.2.1. attend and participate at Members' Meetings, vote in elections to the Governors' Council, and stand for election to the Governors' Council;
- 6.2.2. in the case of members of the Public Constituencies, be eligible for appointment as non-executive Directors; and
- 6.2.3. take such other part in the affairs of the Foundation Trust as is provided in this Constitution.

## Governors' Council

6.3. The general duties of the Governors' Council are:

- 6.3.1. to hold the non-executive Directors individually and collectively to account for the performance of the Board of Directors; and
- 6.3.2. to represent the interests of NHS foundation trust members, the public at large, and staff in the governance of the NHS foundation trust..

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

6.5. The roles and responsibilities of the Governors' Council, which are to be carried out in accordance with this Constitution, the Terms of Authorisation and NHS Provider Licence, are:

- 6.5.1. at a general meeting:
  - 6.5.1.1. to appoint or remove the Chairman and the other non-executive Directors;
  - 6.5.1.2. to approve an appointment (by the non-executive Directors) of the Chief Executive;
  - 6.5.1.3. to decide the remuneration, allowances and other terms and conditions of office of the non-executive Directors;
  - 6.5.1.4. to appoint or remove the Foundation Trust's auditor; and
  - 6.5.1.5. to be presented with the annual accounts, any report of the auditor on them and the annual report;
- 6.5.2. to provide their views to the Board of Directors when the Board of Directors is preparing the document containing information about the Foundation Trust's forward planning;
- 6.5.3. to undertake such functions as the Board of Directors may from time to time request;
- 6.5.4. to review at least annually the Foundation Trust's membership strategy;

- 6.5.5. to make recommendations to the Board of Directors for any amendments in this Constitution to the composition of the Governors' Council; and
- 6.5.6. to respond as appropriate when consulted by the Board of Directors on any proposed revision of this Constitution or any other matter.

#### Board of Directors

- 6.6. The business of the Foundation Trust is to be managed by the Board of Directors, who shall exercise all the powers of the Foundation Trust on its behalf, subject to any contrary provisions of the 2006 Act.
- 6.7. The Board of Directors shall be responsible for approving the annual accounts and the annual report of the Foundation Trust.
- 6.8. In preparing the document containing information about the Foundation Trust's forward planning, the Board of Directors shall have regard to the views of the Governors' Council.

#### **7. Membership and Constituencies**

- 7.1. The Members of the Foundation Trust are those individuals whose names are entered into the register of Members. The Foundation Trust is to have nine (9) membership constituencies as follows:
  - 7.1.1. eight (8) Public Constituencies; and
  - 7.1.2. one (1) Staff Constituency.

- 7.2. Every Member shall be a member of one of the Public Constituencies or a member of one of the classes of the Staff Constituency.

#### **8. Eligibility and Application for membership**

- 8.1. Subject to this Constitution, membership is open to individuals who:
  - 8.1.1. are over fourteen (14) years of age;
  - 8.1.2. are not otherwise disqualified from membership under paragraph 12 or any other provision of this Constitution;
  - 8.1.3. are eligible under this Constitution to be members of one of the Public Constituencies or of one of the classes of the Staff Constituency; and
  - 8.1.4. (unless they are eligible to be members of one of the classes of the Staff Constituency) complete a membership application form in whatever form the Foundation Trust specifies; or
  - 8.1.5. in the case of the classes of the Staff Constituency only, have been invited to become members of a class of the Staff Constituency by the Foundation Trust and have not informed the Foundation Trust that they do not wish to be Members.

- 8.2. Subject to paragraphs 60 - 65 of the Model Election Rules contained in Annex 4, the Foundation Trust shall arrange appropriate assistance and support for any individual in completing a membership application form or in participating as a Member or as a Governor of the Foundation Trust.
- 8.3. Any dispute about eligibility for membership or the constituency or class of a constituency that an individual is entitled to join shall be resolved by the Foundation Trust in accordance with the Dispute Resolution Procedure set out at paragraph 49.1.1.
- 8.4. It is the responsibility of Members, and not of the Foundation Trust, to ensure their eligibility for membership.

## 9. **Public Constituencies**

- 9.1. There are seven (7) Public Constituencies corresponding to the seven (7) areas specified in Annex 1. Members of the Foundation Trust who are members of a Public Constituency are to be individuals who:
  - 9.1.1. live in an area specified in Annex 1;
  - 9.1.2. are not members of another Public Constituency; and
  - 9.1.3. are not eligible to be a member of any of the classes of the Staff Constituency.
- 9.2. The minimum number of Members in each of the Public Constituencies is to be five (5).

## 10. **Staff Constituency**

- 10.1. The Staff Constituency is divided into three (3) classes corresponding to the three (3) areas specified in Annex 2.
- 10.2. Members of the Foundation Trust who are members of a class in the Staff Constituency are to be individuals who:
  - 10.2.1. work for the Foundation Trust in the relevant geographic area specified in Annex 2 and either:
    - 10.2.1.1. are employed by the Foundation Trust under a contract of employment with the Foundation Trust provided:
      - 10.2.1.1.1. the contract of employment has no fixed term or has a fixed term of at least twelve (12) months; or
      - 10.2.1.1.2. they have been continuously employed for at least twelve (12) months; or
    - 10.2.1.2. are not employed by the Foundation Trust but exercise functions for the purposes of the Foundation Trust, and have exercised these functions for the Foundation Trust continuously for a period of at least twelve (12) months; and
    - 10.2.1.3. are not members of any Public Constituency.

10.3. A person who is eligible to be a member of one of the classes of the Staff Constituency may not become or continue as a member of any of the Public Constituencies, and may not become or continue as a member of more than one class of the Staff Constituency.

10.4. The minimum number of Members in each class of the Staff Constituency is to be ten (10).

Automatic membership by default – staff

10.5. Individuals who:

10.5.1. are eligible to become members of one of the classes of the Staff Constituency; and

10.5.2. are invited by the Foundation Trust to become members of the appropriate class of the Staff Constituency,

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

11. **Not used**

12. **Disqualification from membership**

12.1. This paragraph applies to:

12.1.1. any person who has committed within the last five (5) years a serious act of assault or violence which has resulted in that person being prosecuted in relation to the act, or one or more incidents of harassment, against any of the Foundation Trust's employees or other persons who exercise functions for the purposes of the Foundation Trust, or against registered volunteers; and

12.1.2. any person who has been excluded from the Foundation Trust's premises from which services are provided.

12.2. In relation to any such person, membership of the Foundation Trust may be refused or withdrawn following the procedure in paragraph 13.2 if the Governors' Council considers that it is not in the best interests of the Foundation Trust for that person to become or remain a Member.

13. **Termination of membership**

13.1. A Member shall cease to be a Member if:

13.1.1. they resign by notice to the Foundation Trust;

13.1.2. they die;

13.1.3. they are expelled from membership under this Constitution;

13.1.4. they cease to be entitled under this Constitution to be a member of any of the Public Constituencies or of any of the classes of the Staff Constituency;

- 13.1.5. it appears to the Foundation Trust, after making enquiries, that they no longer wish to be a Member of the Foundation Trust;
- 13.1.6. the Foundation Trust believes that a Member no longer lives at their registered address and the Foundation Trust does not know where the Member lives; or
- 13.1.7. they are otherwise disqualified from membership under paragraph 12.

13.2. A Member may be expelled by a resolution of the Governors' Council on the ground that the Member's continued membership is harmful to or not in the best interests of the Foundation Trust.

- 13.2.1. If a resolution to expel a Member is to be considered at a general meeting of the Governors' Council, details of the grounds for the proposed resolution must be sent to the Member concerned not less than one (1) calendar month before the meeting with an invitation to respond to the grounds and attend the meeting.
- 13.2.2. At the meeting the Governors' Council will consider evidence in support of the proposed resolution and such evidence as the Member concerned may wish to place before them.
- 13.2.3. If the Member concerned fails to attend the meeting without reasonable cause the meeting may proceed in their absence.

13.3. A person expelled from membership will cease to be a Member when the chairman of the meeting declares that the resolution to expel them is carried.

13.4. No person who has been expelled from membership is to be re-admitted except by a resolution of the Governors' Council.

#### **14. Members' meetings**

##### **Annual Members' Meetings**

- 14.1. The Foundation Trust shall hold an annual meeting of its Members ("Annual Members' Meeting"). The Annual Members' Meeting shall be open to members of the public.
- 14.2. Further provisions about the Annual Members' Meeting are set out in Annex 5 – Annual Members' Meeting.

##### **Members' Meetings**

- 14.3. Members' Meetings are open to all Members of the Foundation Trust, Governors, Directors, and representatives of the auditor, but Members' Meetings that are not Annual members' Meetings shall not be open to members of the public, representatives of the media, experts or advisers unless the Governors' Council decides otherwise.
- 14.4. All Members' Meetings are to be convened by order of the Governors' Council.

#### **15. Governors' Council – composition**

- 15.1. The Foundation Trust is to have a Governors' Council, which shall comprise Elected Governors and Appointed Governors.

15.2. The number of Public Governors is to be more than half of the total number of Governors.

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

**16. Governors' Council – election of Elected Governors**

16.1. Elected Governors shall be chosen as follows:

16.1.1. Members of a Public Constituency may elect any of their number to be a Public Governor; and

16.1.2. Members of each class of the Staff Constituency may elect any of their number to be a Staff Governor.

16.2. Elections for Elected Governors shall be conducted in accordance with the Model Election Rules.

16.3. The Model Election Rules as published from time to time by the Department of Health and Social Care form part of this Constitution. The Model Election Rules (revised 2014) are attached at Annex 4.

16.4. A subsequent variation of the Model Election Rules by the Department of Health and Social Care shall not constitute a variation of the terms of this Constitution for the purposes of paragraph 50 of this Constitution (Amendment of the Constitution).

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

16.6. To be eligible to vote at an election for Governors, members of a Public Constituency must, within twenty-one (21) days before they vote, make a declaration in the form specified by the Foundation Trust that they are qualified to vote. Making an incorrect declaration may be an offence.

16.7. To be eligible to stand for election as a Public Governor, a person must, within the period specified in Annex 4, make a declaration in the form specified by the Foundation Trust that they are qualified to vote as a member of the relevant Public Constituency and are not prevented from being a Governor under the 2006 Act or this Constitution. Making an incorrect declaration may be an offence.

**17. Governors' Council – appointment of Appointed Governors**

17.1. Local Authority Governors

17.1.1. Cumberland Council is authorised to appoint one (1) Local Authority Governor following a process agreed with the Foundation Trust

17.1.2. Westmorland & Furness Council is authorised to appoint one (1) Local Authority Governor following a process agreed with the Foundation Trust

17.2. Partnership Governors

17.2.1. The Partnership Organisations that may appoint a Partnership Governor are:

- 17.2.1.1. University of Cumbria Faculty for Health and Wellbeing as education partner – one (1) Partnership Governor ;
- 17.2.1.2. University of Central Lancashire (UCLAN) as education partner – one (1) Partnership Governor ;
- 17.2.1.3. The Councils for Voluntary Service in Cumbria as community and voluntary sector partners – one (1) Partnership Governor;
- 17.2.1.4. League of Friends as supporters' organisation partner – one (1) Partnership Governor;
- 17.2.1.5. Healthwatch Cumbria – one (1) Partnership Governor;
- 17.2.1.6. Northumberland, Tyne & Wear NHS Foundation Trust – one (1) Partnership Governor

- 17.2.2. The Partnership Governors are to be appointed by the Partnership Organisations, following a process agreed with the Foundation Trust.
- 17.2.3. If the Councils for Voluntary Service in Cumbria fail to appoint a Partnership Governor within six (6) months of a vacancy arising, the Governors' Council shall be entitled to nominate another of the existing Partnership Organisations to appoint a Partnership Governor to fill that vacancy.

## **18. *Governors' Council – tenure***

### Elected Governors

- 18.1. An Elected Governor may hold office for a period of up to three (3) years.
- 18.2. An Elected Governor shall cease to hold office if he ceases to be a member of the constituency or class by which he was elected.
- 18.3. Elected Governors shall be eligible for re-election at the end of their term
- 18.4. An Elected Governor may hold office for three consecutive periods or nine (9) years whichever is the greater.
- 18.5. An individual who has held office as an Elected Governor for the maximum timeframe set out in 18.4 above will not become eligible for re-election for one full calendar year following the end of their term of office.

### Appointed Governors

- 18.6. An Appointed Governor may hold office for a period of up to three (3) years.
- 18.7. An Appointed Governor shall cease to hold office if the appointing organisation withdraws its sponsorship of him.
- 18.8. Appointed Governors are eligible for re-appointment at the end of their term.

## **19. *Eligibility to be a Governor***

- 19.1. The following may not become or continue as a Governor of the Foundation Trust:

- 19.1.1. a person who has been made bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;
- 19.1.2. 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;
- 19.1.3. a person who within the preceding five (5) years has been convicted in the British Islands of any offence and 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;
- 19.1.4. a person who is under sixteen (16) years of age;
- 19.1.5. a person who, being a member of one of the Public Constituencies, refuses to sign a declaration as required under paragraph 16.6;
- 19.1.6. a person who is subject to a sex offender order or whose name is on the sex offenders register;
- 19.1.7. a person who has within the preceding two (2) years been dismissed, otherwise than by reason of redundancy or incapacity, from any paid employment with a health service body;
- 19.1.8. a person whose tenure of office as the chairman or as a member or director of a health service body has been terminated on the grounds that their appointment is not in the interests of the health service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest;
- 19.1.9. a person who is a Director of the Foundation Trust or Director of another NHS trust or a Foundation Trust.
- 19.1.10. a person who is the subject of an unexpired disqualification order made under the Company Directors Disqualification Act 1986;
- 19.1.11. a person in relation to whom a moratorium period under a debt relief order applies (Under Part 7A of the Insolvency Act 1986)

- 19.2. The following may not become or continue as an Elected Governor of the Foundation Trust:
  - 19.2.1. a person who is the spouse, Partner, parent or child of a Director of the Foundation Trust;
  - 19.2.2. a person who is a member of a local authority's scrutiny committee covering health matters;

20. **Termination of office and removal of Governors**
  - 20.1. A person holding office as a Governor shall immediately cease to do so if:
    - 20.1.1. they resign by notice in writing to the Foundation Trust;
    - 20.1.2. they have been absent from meetings of the Governors' Council for twelve (12) or more consecutive months, unless the other Governors, at a general meeting of the Governors' Council are satisfied that:

- 20.1.2.1. the absences were due to reasonable causes; and
- 20.1.2.2. they will be able to start attending meetings of the Governors' Council again within such a period as the other Governors consider reasonable;
- 20.1.3. in the case of an Elected Governor, they cease to be a member of the Public Constituency;
- 20.1.4. in the case of an Appointed Governor, the Appointing Organisation terminates the appointment;
- 20.1.5. they are disqualified from continuing to be a Governor under paragraph 19;
- 20.1.6. they are removed from the Governors' Council under the following provisions of paragraph 20.2.

20.2. A Governor may be removed from the Governors' Council by a resolution approved by not less than half (at least 51%) of the remaining Governors present and voting on the grounds that:

- 20.2.1. they have committed a serious breach of the code of conduct; or
- 20.2.2. they have acted in a manner detrimental to the interests of the Foundation Trust, and the Governors' Council considers that it is not in the best interests of the Foundation Trust for them to continue as a Governor; or.
- 20.2.3. They have refused without reasonable cause to undertake any training which the Governors' Council requires all Governors to undertake; or
- 20.2.4. They have failed to sign and deliver to the Foundation Trust a statement in the form required by the Foundation Trust confirming acceptance of the code of conduct for Governors

20.3 The Governors' Council shall adopt and adhere to procedures for termination of office and removal of governors.

## 21. **Vacancies amongst Governors**

- 21.1. Where a vacancy arises on the Governors' Council for any reason other than expiry of term of office, the following provisions will apply.
- 21.2. Where the vacancy arises amongst the Appointed Governors, the Foundation Trust shall request that the Appointing Organisation appoints a replacement to hold office for the remainder of the term of office.
- 21.3. Where the vacancy arises amongst the Elected Governors, the Governors' Council shall:
  - 21.3.1. invite the next highest polling candidate for that seat at the most recent election held less than twelve (12) months previously, who is willing to take office, to fill the seat until the next annual election at which time the seat will fall vacant and be subject to election for any unexpired period of the term of office; or

21.3.2. if there is no candidate at the most recent election willing to take office or if the most recent election was held more than twelve (12) months previously, call an election within six (6) months to fill the seat for the remainder of that term of office.

22. **Governors' Council – meetings of Governors**

22.1. The Governors' Council is to meet at least four (4) times in each Financial Year. Save in the case of emergencies or the need to conduct urgent business, at least fourteen (14) days' written notice shall be given to all Governors of the date and place of every meeting of the Governors' Council. Notice will also be published on the Foundation Trust's website.

22.2. All meetings of the Governors' Council are to be general meetings open to members of the public unless the Governors' Council decides otherwise in relation to all or part of a meeting for reasons of commercial confidentiality or on other proper grounds.

22.3. The Chairman or, in their absence the vice-chairman of the Board of Directors, or in their absence one of the non-executive Directors shall preside at meetings of the Governors' Council. If the person presiding at any such meeting has a conflict of interest in relation to the business being discussed, the Lead Governor of the Governors' Council will chair that part of the meeting.

22.4. Not less than ten (10) Governors including not less than four (4) Elected Governors shall form a quorum.

22.5. Subject to this Constitution and the following provisions of this paragraph, if the chairman of the meeting considers it necessary to hold a vote on an issue, questions arising at a meeting of the Governors' Council shall be decided by a majority of votes. In case of an equality of votes the person chairing the meeting shall have a casting vote.

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

23. **Governors' Council – standing orders**

The standing orders for the practice and procedure of the Governors' Council, as may be varied from time to time in accordance with the provisions of those standing orders, are attached at Annex 6.

24. **Governors' Council – referral to the Panel**

24.1. In this paragraph, the Panel means a panel of persons appointed by NHS England to which a governor of an NHS foundation trust may refer a question as to whether the Trust has failed or is failing:

24.1.1. to act in accordance with its constitution; or

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

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

25. **Governors' Council – conflicts of interest of Governors**

25.1. 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 Governors' Council, the Governor shall disclose that interest to the members of the Governors' Council as soon as he becomes aware of it. The Standing Orders for the Governors' Council 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.

25.2. Any Governor who has a material interest in a matter as defined below shall declare such interest to the Governors' Council and shall:

- 25.2.1. withdraw from the meeting and play no part in the relevant discussion or decision; and
- 25.2.2. not vote on the issue (and if by inadvertence they do remain and vote, their vote shall not be counted).

25.3. Any Governor who fails to disclose any interest required to be disclosed under the preceding paragraph must permanently vacate their office if required to do so by a majority of the remaining Governors.

25.4. Subject to the exceptions below, a material interest is:

- 25.4.1. any executive or non-executive directorship of a company;
- 25.4.2. any interest or position held by a Governor in any firm or company or business which, in connection with the matter, is trading with the Foundation Trust, or is likely to be considered as a potential trading partner with the Foundation Trust;
- 25.4.3. any interest in an organisation providing health and social care services to the National Health Service;
- 25.4.4. a position of authority in a charity or Voluntary Organisation in the field of health and social care; or
- 25.4.5. any connection with any organisation, entity or company considering entering into a financial arrangement with the Foundation Trust including but not limited to lenders or banks.

25.5. The exceptions which shall not be treated as material interests are as follows:

- 25.5.1. not exceeding 2% of the total shares in issue held in any company whose shares are listed on any public exchange;
- 25.5.2. an employment contract held by a Staff Governor;
- 25.5.3. an employment contract with a local authority held by a Local Authority Governor;

- 25.5.4. an employment contract with their Partnership Organisation held by a Partnership Governor; or
- 25.5.5. the holding of any position of authority within their Partnership Organisation by a Partnership Governor.

26. **Governors' Council – expenses**

- 26.1. The Foundation Trust may reimburse Governors travelling and other expenses incurred in carrying out their duties as Governors at rates determined by the Board of Directors.
- 26.2. Governors are not to receive remuneration.
- 26.3. The Governors' Council shall adopt and adhere to procedures for payment of expenses.

27. **Board of Directors – composition**

- 27.1. The Foundation Trust is to have a Board of Directors, which shall comprise both executive and non-executive Directors.
- 27.2. The Board of Directors is to comprise:
  - 27.2.1. a non-executive Chairman;
  - 27.2.2. a maximum of seven (7) and a minimum of six (6) other Non-Executive Directors, all non-executives have voting rights; and
  - 27.2.3. a maximum of seven (7) Executive Directors, who have voting rights, who shall include the chief executive, the finance director, a registered medical practitioner or a registered dentist (within the meaning of the Dentists Act 1984), and a registered nurse or a registered midwife.
- 27.3. The chief executive shall be the Accounting Officer.

28. **Board of Directors – general duty**

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

29. **Board of Directors – appointment, reappointment and removal of Chairman and other non-executive Directors**

- 29.1. The Governors' Council at a general meeting of the Governors' Council shall appoint, reappoint or remove the Chairman and the other non-executive Directors in accordance with the Foundation Trust's appointments policies and practice and the following procedure:
  - 29.1.1. The Board of Directors will identify and review the independence, skills and experience required for non-executive Directors to achieve the appropriate experience, expertise and balance on the Board of Directors;
  - 29.1.2. In making any decision to re-appoint a non-executive Director, the Governors' Council shall take into account the annual appraisal carried

out in accordance with procedures which the Governors' Council has approved;

29.1.3. Where reappointment is not applicable appropriate candidates will be identified by a nominations committee through a process of open competition, which takes account of the required independence, skills and experience identified by the Board of Directors;

29.1.4. The nominations committee will comprise the Chairman (or, if the Chairman is being appointed, the vice-chair or, if both of the Chairman and the vice-chair are standing for appointment, another non-executive Director), and five (5) Elected Governors. The nominations committee will determine which of its members will participate in the interviews and may invite an independent assessor to assist the nominations committee; and

29.1.5. The nominations committee will make a recommendation to the Governors' Council on the suitability of the identified candidates to meet the required independence, skills and experience identified by the Board of Directors.

29.2. Appointment or reappointment of the Chairman or any other non-executive Director shall require the approval of a majority of the Governors present and voting at a meeting of the Governors' Council.

29.3. Removal of the Chairman or any other non-executive Director shall require the approval of three-quarters of the Governors.

29.4. The removal of the Chairman or any other non-executive Director shall be in accordance with the following procedure:

29.4.1. Any proposal for removal must be proposed by a Governor and seconded by not less than ten (10) Governors including at least two (2) Elected Governors and two (2) Appointed Governors;

29.4.2. Written reasons for the proposal shall be provided to the non-executive Director in question, who shall be given the opportunity to respond to such reasons;

29.4.3. In making any decision to remove a non-executive Director, the Governors' Council shall take into account the annual appraisal carried out in accordance with procedures which the Governors' Council has approved; and

29.4.4. If any proposal to remove a non-executive Director is not approved at a meeting of the Governors' Council, no further proposal can be put forward to remove such non-executive Director based upon the same reasons within twelve (12) months of the meeting.

**30. Board of Directors – appointment of vice-chairman**

The Governors' Council at a general meeting of the Governors' Council shall appoint one of the non-executive Directors as a vice-chairman of the Board of Directors. If the Chairman is unable to discharge their functions as Chairman, the vice-chairman of the Board of Directors shall be acting chairman of the Foundation Trust.

**31. Board of Directors – appointment and removal of the chief executive and other executive Directors**

- 31.1. The non-executive Directors shall appoint or remove the chief executive.
- 31.2. The appointment of the chief executive shall require the approval of a majority of the Governors present and voting at a general meeting of the Governors' Council.
- 31.3. A committee consisting of the Chairman, the chief executive and the other non- executive Directors shall appoint or remove the other executive Directors.
- 31.4. The chief executive shall be entitled to nominate one of the other executive Directors to be the deputy chief executive.

**32. Board of Directors – disqualification**

The following may not become or continue as a Director of the Foundation Trust:

- 32.1. a person who has been made bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;
- 32.2. a person who has made a composition or arrangement with, or granted a trust deed for, their creditors and has not been discharged in respect of it;
- 32.3. a person who within the preceding five (5) years has been convicted in the British Isles of any offence and 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;
- 32.4. a person who is a Governor;
- 32.5. a person who is the spouse, Partner, parent or child of a Director of the Foundation Trust;
- 32.6. a person who is a member of a local authority's scrutiny committee covering health matters;
- 32.7. a person who is the subject of an unexpired disqualification order made under the Company Directors Disqualification Act 1986;
- 32.8. in the case of a non-executive Director, a person who is no longer a member of one of the Public Constituencies;
- 32.9. a person whose tenure of office as a chairman or as a member or director of a health service body has been terminated on the grounds that their appointment is not in the interests of the health service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest;
- 32.10. a person who is subject to a sex offender order or whose name is on the sex offenders register;
- 32.11. a person who has within the preceding two (2) years been dismissed, otherwise than by reason of redundancy, from any paid employment with a health service body;
- 32.12. 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;

- 32.13. a person who has refused to sign and deliver to the Foundation Trust a statement in the form required by the Board of Directors confirming acceptance of the code of conduct for Directors;
- 32.14. in the case of an executive director, a person who accepts an appointment as chairman of another NHS foundation trust or an organisation of comparable size and complexity; or
- 32.15. In the case of an executive director, a person who accepts an appointment as a non-executive director of another NHS foundation trust or an organisation of comparable size and complexity without the prior approval of the Board of Directors.
- 32.16. A person who has a disbarment in relation to safeguarding vulnerable groups

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

#### Non-executive Directors

- 33.1. The Governors' Council at a general meeting of the Governors' Council shall decide the period of office, the remuneration and allowances, and the other terms and conditions of office of the Chairman and the other non-executive directors in accordance with regulatory guidance on Non-Executive Director and Chair remuneration. Any re-appointment of a non-executive Director by the Governors' Council shall be subject to a satisfactory appraisal carried out in accordance with procedures which the Governors' Council has approved.

#### Executive Directors

- 33.2. The Board of Directors shall establish a remuneration committee of non-executive Directors to decide the remuneration and allowances, and the other terms and conditions of office of the chief executive and other executive Directors.
- 33.3. The remuneration and allowances for Directors are to be disclosed in bands in the annual report.

### **34. Executive Directors – Expenses**

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

### **35. Board of Directors – committees and delegation**

Save for any powers which, under the provisions of any statute, the Board of Directors is not permitted to delegate, the Board of Directors may, subject to and in accordance with provision made by or under any statute, delegate any of its powers to a committee of Directors or to an executive Director and shall appoint:

- 35.1. the Audit & Risk Committee of non-executive Directors referred to in paragraph 43; and
- 35.2. the remuneration committee of non-executive Directors referred to in paragraph 33.2.

### **36. Meetings of the Board of Directors**

- 36.1. 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.
- 36.2. Before holding a meeting, the Board of Directors must send a copy of the agenda of the meeting to the Governors' Council.
- 36.3. As soon as practicable after holding a meeting, the Board of Directors must send a copy of the minutes of the meeting to the Governors' Council.

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

- 37.1. The Board of Directors is to adopt standing orders for the practice and procedure of the Board of Directors and may vary its standing orders from time to time. The standing orders for the practice and procedure of the Board of Directors are attached at Annex 7.
- 37.2. The proceedings of the Board of Directors shall not be invalidated by any vacancy in the office of Director, or any defect in the calling of the meeting or in the appointment of a Director.

### **38. Board of Directors – conflicts of interest of Directors**

#### **38.1. Conflicts of Interest**

- 38.1.1. Each Director of the Foundation Trust has the following duties:
  - 38.1.1.1. a duty to avoid a situation in which the Director has (or could have) a direct or indirect interest that conflicts (or may conflict) with the interests of the Foundation Trust; and
  - 38.1.1.2. 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.
- 38.1.2. The duty referred to in paragraph 38.1.1.1 is not infringed if:
  - 38.1.2.1. the situation cannot reasonably be regarded as likely to give rise to a conflict of interest; or
  - 38.1.2.2. the matter has been authorised in accordance with this Constitution.
- 38.1.3. The duty referred to in paragraph 38.1.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- 38.1.4. In paragraph 38.1.1.2, "third party" means a person other than:
  - 38.1.4.1. the Foundation Trust; or
  - 38.1.4.2. a person acting properly on its behalf.

#### **38.2. Proposed Transactions and Arrangements**

- 38.2.1. If a Director has in any way a direct or indirect interest in a proposed transaction or arrangement with the Foundation Trust, the Director must declare the nature and extent of that interest to the other Directors.

- 38.2.2. If a declaration under this paragraph 38.2 proves to be, or becomes, inaccurate or incomplete, a further declaration must be made.
- 38.2.3. Any declaration required by this paragraph 38.2 must be made before the Foundation Trust enters into the proposed transaction or arrangement.
- 38.2.4. This paragraph 38.2 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.
- 38.2.5. A Director need not declare an interest:
  - 38.2.5.1. if it cannot reasonably be regarded as likely to give rise to a conflict of interest;
  - 38.2.5.2. if, or to the extent that, the Directors are already aware of it; or
  - 38.2.5.3. if, or to the extent that, it concerns terms of the Director's appointment that have been or are to be considered;
    - 38.2.5.3.1. by a meeting of the Board of Directors; or
    - 38.2.5.3.2. by a committee of the Directors appointed for the purpose under this Constitution.

## **39. Registers**

- 39.1. The Foundation Trust shall have:
  - 39.1.1. a register of Members showing, in respect of each Member, the constituency and (where relevant) the class of a constituency to which they belong;
  - 39.1.2. a register of Governors;
  - 39.1.3. a register of interests of Governors;
  - 39.1.4. a register of Directors; and
  - 39.1.5. a register of interests of the Directors.
- 39.2. The Board of Directors shall delegate to an officer of the Foundation Trust the responsibility for maintaining the registers and for removing 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.

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

- 40.1. The Foundation Trust shall make the registers specified in paragraph 39 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.
- 40.2. The Foundation 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 Foundation Trust, if the Member so requests.

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

- 40.3.1. they are to be available for inspection free of charge at all reasonable times; and
- 40.3.2. a person who requests a copy of or extract from the registers is to be provided with a copy or extract.

40.4. If the person requesting a copy or extract is not a Member of the Foundation Trust, the Foundation Trust may impose a reasonable charge for providing the copy or extract.

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

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

- 41.1.1. a copy of the current constitution;
- 41.1.2. a copy of the latest annual accounts and of any report of the auditor on them; and
- 41.1.3. a copy of the latest annual report.

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

- 41.2.1. a copy of any order made under sections 65D (appointment of trust special administrator), 65J (power to extend time), 65KC (action following Secretary of State of Health and Social Care's rejection of final report), 65L (trusts coming out of administration) or 65LA (trusts to be dissolved) of the 2006 Act;
- 41.2.2. a copy of any report laid under section 65D (appointment of trust special administrator) of the 2006 Act;
- 41.2.3. a copy of any information published under section 65D (appointment of trust special administrator) of the 2006 Act;
- 41.2.4. a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act;
- 41.2.5. a copy of any statement provided under section 65F (administrator's draft report) of the 2006 Act;
- 41.2.6. a copy of any notice published under sections 65F (administrator's draft report), 65G (consultation plan), 65H (consultation requirements), 65J (power to extend time), 65KA (NHS England's decision), 65KB (Secretary of State of Health and Social Care's response to NHS England's decision), 65KC (action following Secretary of State of Health and Social Care's rejection of final report) or 65KD (Secretary of State of Health and Social Care's response to re-submitted final report) of the 2006 Act;
- 41.2.7. a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act;

- 41.2.8. a copy of any final report published under section 65I (administrator's final report) of the 2006 Act;
- 41.2.9. a copy of any statement published under sections 65J (power to extend time) or 65KC (action following Secretary of State of Health and Social Care's rejection of final report) of the 2006 Act; or
- 41.2.10. a copy of any information published under section 65M (replacement of trust special administrator) of the 2006 Act.

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

41.4. If the person requesting a copy or extract is not a Member of the Foundation Trust, the Foundation Trust may impose a reasonable charge for providing the copy or extract.

## **42. Auditor**

- 42.1. The Foundation Trust shall have an auditor.
  - 42.1.1. An Auditor may be an individual or a firm
  - 42.1.2. A person appointed as auditor must be
    - 42.1.2.1. Eligible for appointment as a statutory auditor (see Part 42 of the Companies Act 2006)
    - 42.1.2.2. Eligible for appointment as a local auditor (see Part 4 of the Local Audit and Accountability Act 2014), or
    - 42.1.2.3. A member of a body of accountants approved by the regulator for the purposes of this paragraph
- 42.2. The Governors' Council shall appoint or remove the auditor at a general meeting of the Governors' Council.

## **43. Audit Committee**

The Board of Directors shall establish a committee of non-executive Directors as an audit committee to perform such monitoring, reviewing and other functions as are appropriate.

- 43.1. The Audit Committee is to comprise of three Non-Executive Directors. The trust Chair should not be a member of the Committee. The vice chair or senior independent director should not chair the Committee.

## **44. Accounts**

- 44.1. The Foundation Trust must keep proper accounts and proper records in relation to the accounts.
- 44.2. NHS England may with the approval of the Secretary of State of Health and Social Care give directions to the Foundation Trust as to the content and form of its accounts.
- 44.3. The accounts are to be audited by the Foundation Trust's auditor.
- 44.4. The Accounting Officer shall cause the Foundation Trust to prepare in respect of each Financial Year annual accounts in such form as NHS England may with the approval of the Secretary of State of Health and Social Care direct.

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

- 45.1. The Foundation Trust shall prepare an annual report and send it to NHS England.
- 45.2. The annual report is to give:
  - 45.2.1. information on any steps taken by the Foundation Trust to secure that (taken as a whole) the actual membership of its Public Constituencies is representative of those eligible for such membership;
  - 45.2.2. information on the impact that income received by the Foundation Trust otherwise than from the provision of goods and services for the purposes of the health service in England has had on the provision by the Foundation Trust of goods and services for these purposes;
  - 45.2.3. information on any occasions in the period to which the report relates on which the Governors' Council exercised its power under paragraph 22.6;
  - 45.2.4. information on the Foundation Trust's policy on pay and on the work of the committee established under paragraph 35.2 and such other procedures as the Foundation Trust has on pay;
  - 45.2.5. information on the remuneration of the Directors and on the expenses of the Governors and the Directors; and
  - 45.2.6. any other information that NHS England requires.
- 45.3. The Foundation Trust shall give information as to its forward planning in respect of each Financial Year to NHS England.
- 45.4. The document containing the information with respect to forward planning (referred to above) shall be prepared by the Directors.
- 45.5. In preparing the document, the Directors shall have regard to the views of the Governors' Council.
- 45.6. Each forward plan must include information about:
  - 45.6.1. the activities other than the provision of goods and services for the purposes of the health service in England that the Foundation Trust proposes to carry on; and
  - 45.6.2. the income it expects to receive from doing so.
- 45.7. Where a forward plan contains a proposal that the Foundation Trust carry on an activity of a kind mentioned in paragraph 45.6.1, the Governor's Council must:
  - 45.7.1. determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfilment by the Foundation Trust of its principal purpose or the performance of its other functions; and
  - 45.7.2. notify the Directors of its determination.
- 45.8. If the Foundation 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 Governors' Council voting approve its implementation.

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

- 46.1. The following documents are to be presented to the Governors' Council at a general meeting of the Governors' Council:
  - 46.1.1. the annual accounts;
  - 46.1.2. any report of the auditor on them; and
  - 46.1.3. the annual report.
- 46.2. The documents shall also be presented to the Members at the Annual Members' Meeting by at least one member of the Board of Directors in attendance.
- 46.3. The Foundation Trust may combine a meeting of the Governors' Council convened for the purposes of paragraph 46.1 with the Annual Members' Meeting.

**47. Indemnity**

Governors, Directors and any other officer of the Foundation Trust 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 Foundation Trust. The Foundation Trust may purchase and maintain insurance against this liability for its own benefit and for the benefit of the Governors' Council, the Board of Directors and any other officer of the Foundation Trust.

**48. Execution of Documents**

- 48.1. The Foundation Trust shall have a seal.
- 48.2. The seal shall not be affixed except under the authority of the Board of Directors.

**49. Dispute Resolution Procedure**

- 49.1. Dispute resolution procedures shall operate in the following circumstances:
  - 49.1.1. In the event of any dispute about entitlement to membership or the constituency or class of a constituency that an individual is entitled to join, a Member or Applicant shall be invited to an informal meeting with the Company Secretary to discuss the matter in dispute. If not resolved, the individual may refer the dispute in writing within 14 days of the decision of the Company Secretary to a panel of the Chairman and Lead Governor or another elected Governor if the Lead Governor has an interest or is not able to attend. The decision of the panel shall be final.
  - 49.1.2. If through informal efforts the Chairman is unable to resolve a dispute between the Governors' Council and the Board of Directors, the Chairman shall set up a special ad hoc committee (a "resolution committee") comprising no more than eight members. Three of the members will be Directors including the Chairman and Chief Executive,

and five will be Governors including the Lead Governor, to consider the circumstances and make a recommendation to the Governors' Council and the Board of Directors with a view to resolving the dispute.

Directors or Governors who have or may be perceived to have a conflict of interest in respect of the matter in dispute shall not be members of the resolution committee. The aim of the committee will be to achieve resolution. The Chairman will have the right to appoint an independent facilitator to assist the process. If the recommendations (if any) of the resolution committee are unsuccessful in resolving the dispute, the Chairman may refer the dispute back to the Board of Directors to decide the matter.

- 49.1.3. In the event of any unresolved dispute between the Governors' Council and the Board of Directors, the Chair will ensure an appropriate record is included in the annual report of the Foundation Trust for the relevant period. The record will include a summary of the issues in dispute and the action taken by the Board of Directors and the Governors' Council to attempt to resolve the dispute.
- 49.1.4. Nothing in this procedure shall prevent the Governors' Council, if it so desires, from informing NHS England that, in the opinion of the Governors' Council, the Board of Directors has not responded constructively to concerns of the Governors' Council that the Trust is not meeting the Terms of Authorisation and/or conditions of the NHS Provider Licence.

## **50. Amendment of the Constitution**

- 50.1. The Foundation Trust may make amendments to this Constitution only if:
  - 50.1.1. more than half of the members of the Governors' Council voting approve the proposed amendments; and
  - 50.1.2. more than half of the Directors voting approve the amendments.
- 50.2. Amendments made under paragraph 50.1 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.
- 50.3. Where an amendment is made to the Constitution in relation to the powers or duties of the Governors' Council (or otherwise with respect to the role that the Governors' Council has as part of the Foundation Trust):
  - 50.3.1. at least one member of the Governors' Council must attend the next Annual Members' Meeting and present the amendment; and
  - 50.3.2. the Foundation Trust must give the members an opportunity to vote on whether they approve the amendment.
- 50.4. 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 Foundation Trust must take such steps as are necessary as a result.

50.5. Amendments by the Foundation Trust of 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.

**51. Mergers etc. and significant transactions**

The Foundation Trust may only apply for a merger, acquisition, separation or dissolution (such transactions and arrangements which shall constitute a Significant Transaction for the purposes of section 51A of the 2006 Act) with the approval of more than half of the members of the Governors' Council.

**52. Notices**

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

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

## **ANNEX 1 – AREAS OF THE FOUNDATION TRUST FOR THE PUBLIC CONSTITUENCIES**

(Paragraph 9.1)

Carlisle\*

Allerdale\*

Copeland\*

Eden\*

Furness & South Lakeland\*

Lancashire

North East England and Yorkshire (Cleveland, Durham, Northumbria, Tyne & Wear, North Yorkshire, West Yorkshire, South Yorkshire, East Riding of Yorkshire)

Note:

\* Under Schedule 7, section 3(2) of the National Health Service Act 2006, each public constituency area must be an electoral area for the purposes of local government elections in England and Wales or an area consisting of two or more such electoral areas.

Due to local government reform, on 1 April 2023 Cumbria County Council and the six District Councils within Cumbria (Allerdale, Carlisle, Copeland, Furness, Eden, South Lakeland) were disbanded and replaced by two unitary authorities called 'Cumberland' and 'Westmorland and Furness'.

Public membership constituency areas stated within this Constitution retain the names of the former six District Council geographic areas and comprise [the electoral areas covering each of those former District Council geographic areas as listed in the table overleaf.](#) [These reflect the electoral areas within the footprint of Cumbria with effect from 1 April 2023.](#)

| Allerdale   | Carlisle   | Copeland  |
|---|--|---|
| Aspatria<br>Bothel & Wharrels<br>Cockermouth North<br>Cockermouth South<br>Dearham & Broughton<br>Harrington<br>Keswick<br>Maryport North<br>Maryport South<br>Morton<br>Moss Bay & Moorclose<br>Seaton<br>Solway Coast<br>St Michael's<br>St John's & Great Clifton<br>Thursby<br>Wigton | Belah<br>Belle Vue<br>Botcherby<br>Brampton<br>Castle<br>Corby & Hayton<br>Cуррок<br>Dalston & Burgh<br>Denton Holme<br>Harraby North<br>Harraby South<br>Houghton & Irthington<br>Longtown<br>Stanwix Urban<br>Upperby<br>Wetheral<br>Yewdale | Bransty<br>Cleator Moor East & Frizington<br>Cleator Moor West<br>Egremont<br>Egremont North & St Bees<br>Gosforth<br>Hillcrest & Hensingham<br>Howgate<br>Kells & Sandwith<br>Millom<br>Millom Without<br>Mirehouse  |
| <b>Eden</b>   |  | <b>Furness &amp; South Lakeland</b>   |
| Alston & Fellside<br>Appleby & Brough<br>Eamont & Shap<br>Eden & Lyvennet Vale<br>Greystoke & Ullswater<br>Hesket & Lazonby<br>Kirkby Stephen & Tebay<br>Penrith North<br>Penrith South   |  | Bowness & Lyth<br>Burton and Holme<br>Coniston & Hawkshead<br>Dalton North<br>Dalton South<br>Grange & Cartmel<br>Hawcoat & Newbarns<br>High Furness<br>Kendal Castle<br>Kendal Highgate<br>Kendal Nether<br>Kendal South<br>Kendal Strickland & Fell<br>Kent Estuary<br>Levens & Crooklands<br>Low Furness<br>Old Barrow & Hindpool<br>Ormsgill & Parkside<br>Risedale & Roosecote<br>Sedbergh & Kirkby Lonsdale<br>Ulverston<br>Upper Kent<br>Walney Island<br>Windermere & Ambleside |

## **ANNEX 2 – AREAS OF THE FOUNDATION TRUST FOR THE STAFF CONSTITUENCY**

(Paragraphs 10.1 and 10.2)

North/East (Carlisle and Eden)

West (Allerdale and Copeland)

South (Furness and South Lakeland)

## **ANNEX 3 – THE COMPOSITION OF THE GOVERNORS’ COUNCIL**

(Paragraph 15.3)

1. The Governors’ Council is to comprise:
  - 1.1. up to twenty one (21) Public Governors from the following Public Constituencies:
    - 1.1.1. Carlisle – four (4) Public Governors;
    - 1.1.2. Allerdale – four (4) Public Governors;
    - 1.1.3. Copeland – four (4) Public Governors;
    - 1.1.4. Eden – four (4) Public Governor;
    - 1.1.5. Furness & South Lakeland – three (3) Public Governors; and
    - 1.1.6. Lancashire – one (1) Public Governor
    - 1.1.7. North East England and Yorkshire – one (1) Public Governor
  - 1.2. not used;
  - 1.3. not used;
  - 1.4. at least three (3) and up to seven (7) Staff Governors from the following classes of the Staff Constituency:
    - 1.4.1. North/East (Carlisle and Eden) – at least one (1) and up to three (3) Staff Governors;
    - 1.4.2. West (Allerdale and Copeland) – at least one (1) and up to three (3) Staff Governors;
    - 1.4.3. South (Furness and South Lakeland) – one (1) Staff Governor;
  - 1.5. Up to two (2) Local Authority Governors,
    - 1.5.1. One (1) appointed by Cumberland Council; and
    - 1.5.2. One (1) appointed by Westmorland & Furness Council
  - 1.6. Up to six (6) Partnership Governors appointed by Partnership Organisations.
2. Lead Governor and Deputy Lead Governor
  - 2.1. Members of the Governors’ Council will elect a Lead Governor and Deputy Lead Governor.
  - 2.2. The Lead Governor and Deputy Lead Governor will be appointed for a two (2) year period, with a maximum of 2 terms (4 years).
  - 2.3. The Lead Governor and Deputy Lead Governor will be eligible for re-election at the end of their term.

## **ANNEX 4 – THE MODEL ELECTION RULES**

(Paragraphs 16.2, 16.3, 16.4 and 16.6)

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# **MODEL ELECTION RULES 2014**

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**1. Interpretation**

1.1 In these rules, unless the context otherwise requires:

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

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

“council of governors” means the Governors Council of the corporation;

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

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

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

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

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

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

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

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

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

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

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

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

“telephone short code” means a short telephone number used for the

purposes of submitting a vote by text message;

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

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

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

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

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

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

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

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

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

## PART 2: TIMETABLE FOR ELECTIONS

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### 2. **Timetable**

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

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

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### 3. **Computation of time**

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

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

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

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

## **PART 3: RETURNING OFFICER**

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### **4. Returning Officer**

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

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

### **5. Staff**

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

### **6. Expenditure**

6.1 The corporation is to pay the returning officer:

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

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

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

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

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

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

- (a) the constituency, or class within a constituency, for which the election is being held,
- (b) the number of members of the Governors' Council to be elected from that constituency, or class within that constituency,
- (c) the details of any nomination committee that has been established by the corporation,
- (d) the address and times at which nomination forms may be obtained;
- (e) the address for return of nomination forms (including, where the return of nomination forms in an electronic format will be

permitted, the e-mail address for such return) and the date and time by which they must be received by the returning officer,

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

## **9. Nomination of candidates**

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

9.2 The returning officer:

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

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

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

10.1 The nomination form must state the candidate's:

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

## **11. Declaration of interests**

11.1 The nomination form must state:

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

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

**12. Declaration of eligibility**

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

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

**13. Signature of candidate**

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

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

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

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

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

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

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

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

by rule 12, or

- (e) that the paper is not signed and dated by the candidate, if required by rule 13.

- 14.3 The returning officer is to examine each nomination form as soon as is practicable after he or she has received it, and decide whether the candidate has been validly nominated.
- 14.4 Where the returning officer decides that a nomination is invalid, the returning officer must endorse this on the nomination form, stating the reasons for their decision.
- 14.5 The returning officer is to send notice of the decision as to whether a nomination is valid or invalid to the candidate at the contact address given in the candidate's nomination form. If an e-mail address has been given in the candidate's nomination form (in addition to the candidate's postal address), the returning officer may send notice of the decision to that address.

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

- 15.1 The returning officer is to prepare and publish a statement showing the candidates who are standing for election.
- 15.2 The statement must show:
  - (a) the name, contact address (which shall be the candidate's postal address), and constituency or class within a constituency of each candidate standing, and
  - (b) the declared interests of each candidate standing,as given in their nomination form.

- 15.3 The statement must list the candidates standing for election in alphabetical order by surname.
- 15.4 The returning officer must send a copy of the statement of candidates and copies of the nomination forms to the corporation as soon as is practicable after publishing the statement.

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

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

## **17. Withdrawal of candidates**

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

**18. Method of election**

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

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

18.3 If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is less than the number of members to be elected to be Governors' Council, 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**

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

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

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

19.3 The corporation may decide that voters within a constituency or class within a constituency, may, subject to rule 19.4, cast their votes at the poll using such different methods of polling in any combination as the corporation may determine.

19.4 The corporation may decide that voters within a constituency or class within a constituency for whom an e-mail address is included in the list of eligible voters may only cast their votes at the poll using an e-voting method of polling.

19.5 Before the corporation decides, in accordance with rule 19.3 that one or more e-voting methods of polling will be made available for the purposes of the poll, the corporation must satisfy itself that:

- (a) if internet voting is to be a method of polling, the internet voting system to be used for the purpose of the election is:

- (i) configured in accordance with these rules; and
- (ii) will create an accurate internet voting record in respect of any voter who casts his or her vote using the internet voting system;
- (b) if telephone voting to be a method of polling, the telephone voting system to be used for the purpose of the election is:
  - (i) configured in accordance with these rules; and
  - (ii) will create an accurate telephone voting record in respect of any voter who casts his or her vote using the telephone voting system;
- (c) if text message voting is to be a method of polling, the text message voting system to be used for the purpose of the election is:
  - (i) configured in accordance with these rules; and
  - (ii) will create an accurate text voting record in respect of any voter who casts his or her vote using the text message voting system.

## **20. The ballot paper**

- 20.1 The ballot of each voter (other than a voter who casts his or her ballot by an e-voting method of polling) is to consist of a ballot paper with the persons remaining validly nominated for an election after any withdrawals under these rules, and no others, inserted in the paper.
- 20.2 Every ballot paper must specify:
  - (a) the name of the corporation,
  - (b) the constituency, or class within a constituency, for which the election is being held,
  - (c) the number of members of the Governors' Council to be elected from that constituency, or class within that constituency,
  - (d) the names and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
  - (e) instructions on how to vote by all available methods of polling, including the relevant voter's voter ID number if one or more e-voting methods of polling are available,
  - (f) if the ballot paper is to be returned by post, the address for its return and the date and time of the close of the poll, and
  - (g) the contact details of the returning officer.
- 20.3 Each ballot paper must have a unique identifier.
- 20.4 Each ballot paper must have features incorporated into it to prevent it from being reproduced.

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

21.1 The corporation shall require each voter who participates in an election for a public or patient constituency to make a declaration confirming:

- (a) that the voter is the person:
  - (i) to whom the ballot paper was addressed, and/or
  - (ii) to whom the voter ID number contained within the e-voting information was allocated,
- (b) that he or she has not marked or returned any other voting information in the election, and
- (c) the particulars of his or her qualification to vote as a member of the constituency or class within the constituency for which the election is being held,  
("declaration of identity")

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

21.2 The voter must be required to return his or her declaration of identity with his or her ballot.

21.3 The voting information shall caution the voter that if the declaration of identity is not duly returned or is returned without having been made correctly, any vote cast by the voter may be declared invalid.

*Action to be taken before the poll*

**22. List of eligible voters**

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

22.2 The list is to include, for each member:

- (a) a postal address; and,
- (b) the member's e-mail address, if this has been provided

to which his or her voting information may, subject to rule 22.3, be sent.

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

**23. Notice of poll**

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

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

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

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

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

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

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

(“e-voting information”).

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

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

for the purposes of the poll.

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

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

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

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

25.2 The covering envelope is to have:

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

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

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

**26. E-voting systems**

26.1 If internet voting is a method of polling for the relevant election then the returning officer must provide a website for the purpose of voting over the internet (in these rules referred to as "the polling website").

26.2 If telephone voting is a method of polling for the relevant election then the returning officer must provide an automated telephone system for the purpose of voting by the use of a touch-tone telephone (in these rules referred to as "the telephone voting facility").

26.3 If text message voting is a method of polling for the relevant election then the returning officer must provide an automated text messaging system for the purpose of voting by text message (in these rules referred to as "the text message voting facility").

26.4 The returning officer shall ensure that the polling website and internet voting system provided will:

- (a) require a voter to:
  - (i) enter his or her voter ID number; and
  - (ii) where the election is for a public or patient constituency, make a declaration of identity;

in order to be able to cast his or her vote;
- (b) specify:
  - (i) the name of the corporation,
  - (ii) the constituency, or class within a constituency, for which the election is being held,
  - (iii) the number of members of the Governors' Council to be elected from that constituency, or class within that constituency,
  - (iv) the names and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
  - (v) instructions on how to vote and how to make a declaration of identity,
  - (vi) the date and time of the close of the poll, and
  - (vii) the contact details of the returning officer;
- (c) prevent a voter from voting for more candidates than he or she is entitled to at the election;
- (d) create a record ("internet voting record") that is stored in the internet voting system in respect of each vote cast by a voter using the internet that comprises of-

- (i) the voter's voter ID number;
- (ii) the voter's declaration of identity (where required);
- (iii) the candidate or candidates for whom the voter has voted; and
- (iv) the date and time of the voter's vote,

- (e) if the voter's vote has been duly cast and recorded, provide the voter with confirmation of this; and
- (f) prevent any voter from voting after the close of poll.

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

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

- (e) if the voter's vote has been duly cast and recorded, provide the voter with confirmation of this;
- (f) prevent any voter from voting after the close of poll.

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

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

*The poll*

**27. Eligibility to vote**

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

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

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

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

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

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

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

29.3 The returning officer may not issue a replacement ballot paper for a spoilt ballot paper unless he or she:

- (a) is satisfied as to the voter’s identity; and
- (b) has ensured that the completed ID declaration form, if required, has not been returned.

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

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

29.5 If a voter has dealt with his or her text message vote in such a manner that it cannot be accepted as a vote (referred to as a “spoilt text message vote”), that voter may apply to the returning officer for a replacement voter ID number.

29.6 On receiving an application, the returning officer is to obtain the details of the voter ID number on the spoilt text message vote, if he or she can obtain it.

29.7 The returning officer may not issue a replacement voter ID number in respect of a spoilt text message vote unless he or she is satisfied as to the voter’s identity.

29.8 After issuing a replacement voter ID number in respect of a spoilt text message vote, the returning officer shall enter in a list (“the list of spoilt text message votes”):

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

**30. Lost voting information**

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

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

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

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

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

**31. Issue of replacement voting information**

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

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

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

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

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

*Polling by internet, telephone or text*

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

33.1 To cast his or her vote using the internet, a voter will need to gain access to the polling website by keying in the url of the polling website provided in the voting information.

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

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

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

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

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

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

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

- 36.1 Where the returning officer receives:
  - (a) a covering envelope, or

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

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

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

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

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

### **37. Validity of votes**

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

37.2 Where the returning officer is satisfied that rule 37.1 has been fulfilled, he or she is to:

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

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

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

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

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

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

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

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

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

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

**39. De-duplication of votes**

39.1 Where different methods of polling are being used in an election, the returning officer shall examine all votes cast to ascertain if a voter ID number has been used more than once to cast a vote in the election.

39.2 If the returning officer ascertains that a voter ID number has been used more than once to cast a vote in the election he or she shall:

- (a) only accept as duly returned the first vote received that was cast using the relevant voter ID number; and
- (b) mark as "disqualified" all other votes that were cast using the relevant voter ID number

39.3 Where a ballot paper is disqualified under this rule the returning officer shall:

- (a) mark the ballot paper "disqualified",
- (b) if there is an ID declaration form accompanying the ballot paper, mark it "disqualified" and attach it to the ballot paper,
- (c) record the unique identifier and the voter ID number on the ballot paper in the list of disqualified documents;
- (d) place the document or documents in a separate packet; and disregard the ballot paper when counting the votes in accordance with these rules.

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

39.4 Where an internet voting record, telephone voting record or text voting record is disqualified under this rule the returning officer shall:

- (a) mark the internet voting record, telephone voting record or text voting record (as applicable) "disqualified",
- (b) record the voter ID number on the internet voting record, telephone voting record or text voting record (as applicable) in the list of disqualified documents;
- (c) place the internet voting record, telephone voting record or text voting record (as applicable) in a separate packet, and
- (d) disregard the internet voting record, telephone voting record or text voting record (as applicable) when counting the votes in accordance with these rules.

**40. Sealing of packets**

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

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

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

**STV41. Interpretation of Part 6**

STV41.1 In Part 6 of these rules:

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

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

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

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

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

“*non-transferable vote*” means a ballot document:

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

or

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

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

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

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

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

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

“*surplus*” means the number of votes by which the total number of votes for any candidate (whether first preference or transferred votes, or a

combination of both) exceeds the quota; but references in these rules to the transfer of the surplus means the transfer (at a transfer value) of all transferable ballot documents from the candidate who has the surplus, "stage of the count" means:

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

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

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

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

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

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

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

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

## **43. The count**

43.1 The returning officer is to:

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

43.2 The returning officer, while counting and recording the number of ballot

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

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

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

STV44.1 Any ballot paper:

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

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

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

STV44.3 Any text voting record:

- (a) on which the figure “1” standing alone is not placed so as to indicate a first preference for any candidate,
- (b) on which anything is written or marked by which the voter can be identified except the unique identifier, or
- (c) which is unmarked or rejected because of uncertainty,

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

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

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

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

FPP44.1 Any ballot paper:

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

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

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

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

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

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

FPP44.4 The returning officer is to:

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

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

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

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

FPP44.6 Any text voting record:

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

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

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

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

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

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

FPP44.9 The returning officer is to:

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

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

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

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

**STV45. First stage**

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

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

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

**STV46. The quota**

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

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

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

**STV47. Transfer of votes**

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

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

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

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

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

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

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

sub-parcels so that they are grouped:

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

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

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

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

whichever is the less.

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

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

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

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

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

**STV48. Supplementary provisions on transfer**

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

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

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

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

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

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

STV48.4 Where a ballot document is so marked that it is unclear to the returning officer at any stage of the count under rule STV47 or STV49 for which candidate the next preference is recorded, the returning officer shall treat any vote on that ballot document as a non-transferable vote; and votes on a ballot document shall be so treated where, for example, the names of two or more candidates (whether continuing candidates or not) are so marked that, in the opinion of the returning officer, the same order of preference is indicated or the numerical sequence is broken.

**STV49. Exclusion of candidates**

STV49.1 If:

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

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

STV9.2 The returning officer shall sort all the ballot documents on which first preference votes are given for the candidate or candidates excluded under rule STV49.1 into two sub-parcels so that they are grouped as:

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

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

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

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

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

STV49.7 The vote on each transferable ballot document transferred under rule STV49.6 shall be at the value at which that vote was received by the candidate excluded under rule STV49.1.

STV49.8 Any ballot documents on which no next available preferences have been expressed shall be set aside as non-transferable votes.

STV49.9 After the returning officer has completed the transfer of the ballot documents in the sub-parcel of ballot documents with the highest transfer value he or she shall proceed to transfer in the same way the sub-parcel of ballot documents with the next highest value and so on until he has dealt with each sub-parcel of a candidate excluded under rule STV49.1.

STV49.10 The returning officer shall after each stage of the count completed under this rule:

- (a) record:
  - (i) the total value of votes, or
  - (ii) the total transfer value of votes transferred to each candidate,
- (b) add that total to the previous total of votes recorded for each candidate and record the new total,
- (c) record the value of non-transferable votes and add that value to the previous non-transferable votes total, and
- (d) compare:

- (i) the total number of votes then recorded for each candidate together with the total number of non-transferable votes, with
- (ii) the recorded total of valid first preference votes.

STV49.11 If after a transfer of votes under any provision of this rule, a candidate has a surplus, that surplus shall be dealt with in accordance with rules STV47.5 to STV47.10 and rule STV48.

STV49.12 Where the total of the votes of the two or more lowest candidates, together with any surpluses not transferred, is less than the number of votes credited to the next lowest candidate, the returning officer shall in one operation exclude such two or more candidates.

STV49.13 If when a candidate has to be excluded under this rule, two or more candidates each have the same number of votes and are lowest:

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

**STV50. Filling of last vacancies**

STV50.1 Where the number of continuing candidates is equal to the number of vacancies remaining unfilled the continuing candidates shall thereupon be deemed to be elected.

STV50.2 Where only one vacancy remains unfilled and the votes of any one continuing candidate are equal to or greater than the total of votes credited to other continuing candidates together with any surplus not transferred, the candidate shall thereupon be deemed to be elected.

STV50.3 Where the last vacancies can be filled under this rule, no further transfer of votes shall be made.

**STV51. Order of election of candidates**

STV51.1 The order in which candidates whose votes equal or exceed the quota are deemed to be elected shall be the order in which their respective surpluses were transferred, or would have been transferred but for rule STV47.10.

STV51.2 A candidate credited with a number of votes equal to, and not greater than, the quota shall, for the purposes of this rule, be regarded as having had the smallest surplus at the stage of the count at which he obtained the quota.

STV51.3 Where the surpluses of two or more candidates are equal and are not required to be transferred, regard shall be had to the total number of votes credited to such candidates at the earliest stage of the count at which they had an unequal number of votes and the surplus of the candidate who had the greatest number of votes at that stage shall be deemed to be the largest.

STV51.4 Where the number of votes credited to two or more candidates were equal at all stages of the count, the returning officer shall decide between them by lot and the candidate on whom the lot falls shall be deemed to have been elected first.

**FPP51. Equality of votes**

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

**PART 7: FINAL PROCEEDINGS IN CONTESTED AND UNCONTESTED ELECTIONS**

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

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

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

FPP52.2 The returning officer is to make:

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

available on request.

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

## STV52.1

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

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

## STV52.2

The returning officer is to make:

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

available on request.

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

## 53.1

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

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

## PART 8: DISPOSAL OF DOCUMENTS

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

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

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

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

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

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

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

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

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

**55. Delivery of documents**

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

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

56.1 Where:

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

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

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

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

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

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

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

58.1 The corporation may not allow:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FPP59.5 The returning officer is to:

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

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

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

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

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

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

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

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

(ii) ballot documents which have preferences recorded for other candidates are to be counted according to the consecutive order of those preferences, passing over preferences marked for the candidate who has died.

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

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

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### *Election expenses*

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

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

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

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

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

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

62.1 No person may:

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

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

*Publicity*

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

63.1 The corporation may:

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

as it considers necessary.

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

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

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

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

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

64.2 The information must consist of:

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

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

65.1 In this Part, the phrase “for the purposes of an election” means with a view to, or otherwise in connection with, promoting or procuring a candidate’s

election, including the prejudicing of another candidate's electoral prospects; and the phrase "for the purposes of a candidate's election" is to be construed accordingly.

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

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

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

66.1 An application alleging a breach of these rules, including an electoral irregularity under Part 10, may be made to NHS England for the purpose of seeking a referral to the independent election arbitration panel (IEAP).

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

66.3 An application may only be made to NHS England by:

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

66.4 The application must:

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

66.5 The application must be presented in writing within 21 days of the declaration of the result of the election. NHS England will refer the application to the independent election arbitration panel appointed by NHS England.

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

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

66.8 The determination by the IEAP shall be binding on and shall be given effect by the corporation, the applicant and the members of the constituency (or class within a constituency) including all the candidates for the election to which the application relates.

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

**67. Secrecy**

67.1 The following persons:

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

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

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

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

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

**68. Prohibition of disclosure of vote**

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

**69. Disqualification**

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

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

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

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

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

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

## **ANNEX 5 – ANNUAL MEMBERS' MEETINGS**

(Paragraph 14.2)

1. The Foundation Trust shall hold an annual meeting of its Members ("Annual Members' Meeting"). The Annual Members' Meeting shall be open to members of the public.
2. At the Annual Members' Meeting:
  - 2.1. the Board of Directors shall present to the Members the annual accounts, any report of the auditor and the annual report;
  - 2.2. the Governors' Council shall present to the Members the progress of the membership strategy and any changes to the membership strategy; and
  - 2.3. the results of the election and appointment of Governors and the appointment of non-executive Directors will be announced.
3. All Annual Members' Meetings are to be convened by order of the Governors' Council.
4. Before an Annual Members' Meeting can do business there must be a quorum present. Except where this Constitution says otherwise, a quorum is one (1) Member present from at least four (4) of the Foundation Trust's Public Constituencies and at least one (1) from two (2) of the three (3) classes of the Staff Constituency. If it is not possible on the day to distinguish the public constituency or staff constituency class of each participant (for example due to attendance by virtual means), pre-notified intention to attend will count toward quorum. If no quorum is present within fifteen (15) minutes of the time fixed for the start of the meeting, the meeting shall be adjourned to such time and place as the Governors' Council decides. 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 during the meeting is to be a quorum.
5. The Governors' Council shall adopt standing orders for the practice and procedure of Annual Members' Meetings and may vary those standing orders from time to time.

**ANNEX 6 – STANDING ORDERS FOR THE PRACTICE AND PROCEDURES OF  
THE GOVERNORS’ COUNCIL OF NORTH CUMBRIA INTEGRATED CARE NHS  
FOUNDATION TRUST**

(Paragraph 23)

**1. Interpretation**

1.1. In these Standing Orders:

1.1.1. unless the context otherwise requires, the following expressions have the following meanings:

**“Board of Directors”** means the board of directors of the Foundation Trust;

**“Chair”** means the chairman of the Foundation Trust, or, in relation to the function of presiding at or chairing a meeting where another person is carrying out that role as required by the Constitution;

**“Constitution”** means the constitution of the Foundation Trust as amended from time to time;

**“Foundation Trust”** means North Cumbria Integrated Care NHS Foundation Trust ;

**“Governors’ Council”** means the Governors’ Council of the Foundation Trust as constituted in accordance with the Constitution; and

**“Meeting”** means a duly convened meeting of the Governors’ Council;

1.1.2. other terms defined in the Constitution shall have the same meaning in these Standing Orders.

**2. These Standing Orders**

These Standing Orders for the Practice and Procedures of the Governors’ Council are the standing orders referred to in the Constitution. They may be amended in accordance with the procedure set out in Standing Order 22 below. If there is any conflict between these Standing Orders and the Constitution, the Constitution shall prevail.

**3. Code of Conduct for Governors**

The Governors shall comply with the code of conduct for Governors from time to time proposed by the Governors’ Council and approved by the Board of Directors.

**4. Meetings**

4.1. Meetings of the Governors’ Council shall be held at least four (4) times in each Financial Year in accordance with the Constitution, at such times and places as the Chair may determine.

4.2. The requirements for notice of Meetings are set out in the Constitution which states that save in the case of emergencies or the need to conduct urgent business, at least fourteen (14) days’ written notice shall be given to all Governors of the date and place of every

Meeting of the Governors' Council and that notice will also be published on the Foundation Trust's website.

- 4.3. Any accidental omission to give notice of a Meeting to a Governor, or the non-receipt of notice of a Meeting by a Governor or any other technical defect in the giving of notice of which the Governors are unaware at the time shall not invalidate the proceedings at that Meeting.

## 5. **Agendas and Papers**

- 5.1. An agenda, copies of any agenda items on notice and/or motions on notice to be considered at the relevant Meeting and any supporting papers shall be sent to each Governor so as to arrive with each Governor normally no later than seven (7) days in advance of each Meeting. Minutes of the previous Meeting will be circulated with these papers for approval and this will be a specific agenda item.
- 5.2. Every agenda for Meetings of the Governors' Council will draw to the attention of the Elected Governors the declaration which Elected Governors are required to make in accordance with Standing Order 18.1 stating that they are qualified to vote as a member of the Foundation Trust and that they are not prevented from being an Elected Governor. An Elected Governor shall be deemed to have confirmed the declaration upon attending any subsequent Meeting of the Governors' Council.

## 6. **Admission of the Public**

- 6.1. The provisions of the Constitution shall apply to admission or exclusion of members of public from Meetings of the Governors' Council.
- 6.2. The Chair may exclude any member of the public from a Meeting of the Governors' Council if that person is interfering with or preventing the proper conduct of the Meeting.

## 7. **Reports from the Executive Directors**

- 7.1. At any Meeting a Governor may ask any question through the Chair without notice on any report by an executive Director, or other officer of the Foundation Trust, after that report has been received by or while such report is under consideration by the Governors' Council at the Meeting. Unless the Chair decides otherwise no statements will be made other than those which are strictly necessary to define any question posed and in any event no statements will be allowed to last longer than three (3) minutes each.
- 7.2. A Governor who has put such a question may also put one supplementary question if the supplementary question arises directly out of the reply given to the initial question. The Chair may, in its absolute discretion, reject any question from any Governor if in the opinion of the Chair the question is substantially the same and relates to the same subject matter as a question which has already been put to that Meeting or a previous Meeting. At the absolute discretion of the Chair, questions may, at any Meeting which is held in public, be asked of the Executive Directors present by members of the Foundation Trust or any other members of the public present at the Meeting.

**8. Questions on Notice at Meetings**

Subject to the provisions of Standing Order 9, a Governor may ask a question on notice about matters which are directly related to matters over which the Governors' Council has powers or duties or which affect the area covered by the Foundation Trust. A Governor may ask question on notice of:

- 8.1. the Chair;
- 8.2. another Governor;
- 8.3. an executive Director of the Foundation Trust; or
- 8.4. the chair of any sub-committee or working group of the Governors' Council.

**9. Notice of Questions**

- 9.1. Notice of questions on notice must be given in writing to the Chair's office at least fourteen (14) days prior to the relevant Meeting. For the purposes of this Standing Order 9, receipt of any such question on notice via electronic means is acceptable.

**10. Response to Question on Notice**

An answer to a question on notice may take the form of:

- 10.1. a direct oral answer at the relevant Meeting;
- 10.2. where the desired information is in a publication of the Foundation Trust or other published work, a reference to that publication;
- 10.3. where the reply cannot conveniently be given orally at the relevant Meeting, a written answer which will be circulated as soon as reasonably practicable to the questioner and to the other Governors with the agenda for the next Meeting; or
- 10.4. a brief oral answer at the relevant Meeting supplemented by a written answer circulated as soon as reasonably practicable to the questioner and to the other Governors with the agenda for the next Meeting.

**11. Supplementary Questions**

- 11.1. Supplementary questions for the purpose of clarification of a reply to a question under Standing Order 8 above may be asked at the absolute discretion of the Chair.

**12. Motions on Notice**

**12.1. Notice**

Subject to Standing Order 13, a motion may only be submitted by Governors and must be received by the Chair's office in writing at least fourteen (14) days prior to the Meeting at which it is proposed to be considered, together with any relevant supporting papers. Except for motions which can be moved without notice under Standing Order 13, the notice of every motion must be signed or transmitted by at least two (2) Governors. For the purposes of this Standing Order 12, receipt

of any such motions via electronic means is acceptable.

12.2. Scope

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

13. **Motions without Notice**

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

- 13.1. in relation to the accuracy of the minutes of the previous Meeting;
- 13.2. to change the order of business in the agenda for the Meeting;
- 13.3. to refer a matter discussed at a Meeting to an appropriate body or individual;
- 13.4. to appoint a working group arising from an item on the agenda for the Meeting;
- 13.5. to receive reports or adopt recommendations made by the Board of Directors;
- 13.6. to withdraw a motion;
- 13.7. to amend a motion;
- 13.8. to proceed to the next business on the agenda;
- 13.9. that the question be now put;
- 13.10. to adjourn a debate;
- 13.11. to adjourn a Meeting;
- 13.12. to suspend a particular Standing Order contained within these Standing Orders. Except where this would contravene any statutory provision or any provision of the Constitution, a Standing Order may be suspended by motion on notice or without notice if at least one half of the total number of Governors are present at the Meeting in question. A Standing Order may only be suspended for the duration of the Meeting in question. A decision to suspend a Standing Order shall be recorded in the minutes of the Meeting;
- 13.13. to exclude the public and press from the Meeting in question in accordance with the Constitution;
- 13.14. to not hear further from a Governor, or to exclude them from the Meeting in question. If a Governor persistently disregards the ruling of the Chair or behaves improperly or offensively or deliberately obstructs business, the Chair, in its absolute discretion, may move that the

Governor in question be not heard further at the Meeting in question. If seconded, the motion will be voted on without discussion. If the Governor continues to behave improperly after such a motion is carried, the Chair may move that either the Governor leaves the meeting room or that the Meeting in question is adjourned for a specified period. If seconded, the motion will be voted on without discussion; or

- 13.15. to give the consent of the Governors' Council to any matter where its consent is required pursuant to the Constitution.

14. **Urgent Motions and Questions**

- 14.1. Urgent motions or questions may only be submitted by a Governor and must be received by the Chair's office in writing before the commencement of the Meeting in question. The Chair shall decide, in its absolute discretion, whether such motion or question should be tabled.

15. **Any Other Business**

- 15.1. There will not be an agenda item entitled "Any Other Business". Instead, there will be an item for "Motions or Questions on notice", which are subject to Standing Orders 9 and 12 above. There will be another item for "Urgent Motions or Questions", which are subject to Standing Order 14.

16. **Conflicts of interest of Governors**

- 16.1. The provisions of the Constitution shall apply in relation to conflicts of interest of Governors.

17. **Speaking**

- 17.1. This Standing Order applies to all forms of speech/debate by Governors or members of the Foundation Trust and the public in relation to the motion or question under discussion at a Meeting.

17.2. Content and Length of Speeches

Any approval to speak must be given by the Chair. Speeches must be directed to the matter, motion or question under discussion or to a point of order. Unless in the opinion of the Chair it would not be desirable or appropriate to time limit speeches on any topic to be discussed having regard to its nature complexity or importance, no proposal, speech, nor any reply, may exceed three minutes. In the interests of time the Chair may, in its absolute discretion, limit the number of replies, questions or speeches which are heard at any one Meeting.

17.3. When a person may speak again

A person who has already spoken on a matter at a Meeting may not speak again at that Meeting in respect of the same matter, except:

- 17.3.1. in exercise of a right of reply; or

- 17.3.2. on a point of order.

17.4. Identification

All speakers must state their name and role before starting to speak to ensure the accuracy of the minutes.

18. **Voting**

- 18.1. An Elected Governor may not vote at a Meeting of the Governors' Council unless, before attending the Meeting, they have made a declaration in the form specified by the Foundation Trust of the particulars of their qualification to vote as a member of the Foundation Trust and that they are not prevented from being a Governor. An Elected Governor shall be deemed to have confirmed the declaration upon attending any subsequent Meeting of the Governors' Council, and every agenda for Meetings of the Governors' Council will draw this to the attention of Elected Governors. Making an incorrect declaration may be an offence.
- 18.2. All questions put to the vote shall, at the discretion of the Chair, be decided by a show of hands. A paper ballot may be used if a majority of the Governors present so request. The provisions of the Constitution shall apply to votes held at a Meeting.
- 18.3. In no circumstances may an absent Governor vote by proxy. Absence is defined as being absent at the time of the vote.
- 18.4. All decisions taken in good faith at a Meeting of the Governors' Council shall be valid even if it is discovered subsequently that there was a defect in the calling of the Meeting, or in the appointment of the Governors attending the Meeting.

19. **Attendance**

- 19.1. Governors who are unable to attend a Meeting shall notify the Chair's office in writing in advance of the Meeting in question so that their apologies may be submitted.
- 19.2. The Governors' Council may agree that the Governors can participate in its Meetings by telephone, video or computer link. Participation in a Meeting in this manner shall be deemed to constitute presence in person at the Meeting.
- 19.3. The Governors' Council may invite the chief executive or any other Director or Directors, or a representative of the Foundation Trust's auditor or other advisors to attend a Meeting of the Governors' Council.

20. **Quorum**

- 20.1. The quorum for a Meeting will be as set out in the Constitution.

21. **Chair**

- 21.1. The arrangements for presiding at or chairing Meetings of the Governors' Council are set out in the Constitution.

22. **Amendments to Standing Orders**

- 22.1. These Standing Orders may only be amended at a meeting of the Board of Directors after consultation with the Governors' Council and consideration of any amendments proposed by the Governors' Council in accordance with this Standing Order. The Governors' Council may submit a motion to change the Standing Orders to the Chair's office in writing at least twenty-one (21) days before the meeting of the Board of Directors at which the motion is intended to be proposed. No changes

to these Standing Orders shall be proposed or made which would make them inconsistent with the Constitution or the 2006 Act.

- 22.2. The Board of Directors shall notify the Governors' Council of any amendments to these Standing Orders and of any proposed amendments submitted by the Governors' Council which have not been approved by the Board of Directors together with the reasons why such proposed amendments were not approved.

23. **Dispute between the Governors' Council and the Board of Directors**

- 23.1. In the event of a dispute between the Governors' Council and the Board of Directors the Dispute Resolution Procedure set out at paragraph 49 of the Constitution will apply.

24. **Committee meetings**

- 24.1. The Governors' Council has established the following committee:
  - Nominations committee,in accordance with the Constitution.
- 24.2. The Governors' Council shall establish such other committees as required to discharge the responsibilities of the Governors' Council.
- 24.3. The terms of reference of each committee shall be approved by the Governors' Council and any changes must be agreed by a majority of Governors attending a Governors' Council Meeting.
- 24.4. Procedures for standing as a committee member and elections to committees shall be approved by the Governors' Council and included within the terms of reference for each committee.
- 24.5. Membership and quorum for each committee will be set out in its Terms of Reference. .

**ANNEX 7 – STANDING ORDERS FOR THE PRACTICE AND PROCEDURES OF THE  
BOARD OF DIRECTORS OF NORTH CUMBRIA INTEGRATED CARE NHS  
FOUNDATION TRUST**

(Paragraph 37)

**North Cumbria Integrated Care NHS Foundation Trust  
Board Standing Orders**

**1. Interpretation and Definitions**

- 1.1. Save as otherwise permitted by law, at any meeting the Chair of the Trust shall be the final authority on the interpretation of Standing Orders (on which he should be advised by the Chief Executive or Company Secretary).
- 1.2. Any expression to which a meaning is given in the National Health Service Act 2006, other Acts relating to the National Health Service or in the Regulations made under the Acts or in the Constitution shall have the same meaning in these Standing Orders and Standing Financial Instructions and in addition:
  - 1.2.1. "**Accounting Officer**" means the Officer responsible and accountable for funds entrusted to the Trust in accordance with the NHS Foundation Trust Accounting Officer Memorandum. He is responsible for ensuring the proper stewardship of public funds and assets. The National Health Service Act 2006 designates the Chief Executive of the Trust as its Accounting Officer.
  - 1.2.2. "**Board**" means the Chair, Executive Directors and Non-Executive Directors of the Trust collectively as a body.
  - 1.2.3. "**Chairman**" of the Board (or Trust) is the person appointed by the Governors' Council in accordance with the Constitution to lead the Board and to ensure that it successfully discharges its overall responsibility for the Trust as a whole. The expression "the Chair" shall be deemed to include the Vice-Chair of the Trust if the Chair is absent from the meeting or is otherwise unavailable.
  - 1.2.4. "**Chief Executive**" means the chief Officer of the Trust.
  - 1.2.5. "**Committee**" means a committee or sub-committee created and appointed by the Board.
  - 1.2.6. "**Committee members**" means persons formally appointed by the Board to sit on or to chair specific committees.
  - 1.2.7. "**Company Secretary**" means a person appointed to act independently of the Board to provide advice on corporate governance issues to the Board and the Chair and monitor the Trust's compliance with the law, Standing Orders and relevant guidance.
  - 1.2.8. "**Constitution**" means this Constitution (which incorporates these Standing Orders) and describes the type of organisation that the Trust is, its primary purpose, governance arrangements and membership.
  - 1.2.9. "**Director**" means a member of the Board of Directors and may encompass either an Executive Director or a Non-Executive Director.
  - 1.2.10. "**Director of Finance**" means the Chief Financial Officer of the Trust.

1.2.11. "**Executive Director**" means a director of the Trust who is an Officer of the Trust and voting member of the Trust Board.

1.2.12. "**Governors' Council**" means the Council of Governors as constituted in accordance with this Constitution.

1.2.13. "**Non-Executive Director**" means a director of the Trust who is not an Officer of the Trust.

1.2.14. "**Officer**" means an employee of the Trust or any other person holding a paid appointment or office with the Trust.

1.2.15. "**Senior Independent Director**" means the Non-Executive Director, appointed by the Board in accordance with these Standing Orders, who is available to members and governors if they have concerns which contact through the normal channels of Chair, Chief Executive or Director of Finance has failed to resolve or for which such contact is inappropriate. The Senior Independent Director could be the vice-Chair.

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

1.2.17. "**SOs**" means Standing Orders.

1.2.18. "**Trust**" means the North Cumbria Integrated Care NHS Foundation Trust.

1.2.19. "**Vice-Chair**" means the Non-Executive Director appointed by the Board to take on the Chair's duties if the Chair is absent for any reason as per section 30 of the Constitution

1.3. References in the Standing Orders to legislation include all amendments, replacements, or re-enactments made.

1.4. Headings are for ease of reference only and are not to affect interpretation. Words importing the masculine gender only shall include the feminine gender; words importing the singular shall include the plural and vice-versa.

## **2. Introduction**

### **2.1. Statutory Framework**

2.1.1. The Trust is a public benefit corporation authorised under the National Health Service Act 2006. The Trust's purpose is the provision of goods and services for the purposes of the health service in England.

2.1.2. The Trust headquarters are at the Pillars Building, Cumberland Infirmary, Carlisle, CA2 7HY, and its principal places of business cover the areas specified in Annex 1 to the Constitution as areas of the Trust's public constituencies.

2.1.3. NHS Foundation Trusts are governed by statute, mainly the National Health Service Act 2006 as amended. The statutory functions conferred on the Trust are conferred by this legislation.

2.1.4. The Trust's Constitution outlines the primary purpose of the organisation and defines its membership and its governance arrangements. These Standing Orders form part of the Trust's Constitution, a copy of which is available at

<https://www.gov.uk/government/groups/cumbria-partnership-nhs-foundation-trust/>

- 2.1.5. The requirements placed on the Trust are set out in its Terms of Authorisation, which can also be found at the weblink above.
- 2.2. **Delegation of Powers:** The Trust has powers to delegate and make arrangements for delegation. The Standing Orders set out the detail of these arrangements. Delegated Powers are covered in a separate document ('Schedule of Matters reserved to the Board and Scheme of Delegation'). This document has effect as if incorporated into the Standing Orders.

### **3. The Trust Board: Composition Of Membership, Tenure And Role Of Members**

- 3.1. **Composition of the Membership of the Trust Board** The composition of the Trust Board shall be as set out in the Constitution.
- 3.2. **Appointment of Chair and Non-Executive Directors of the Trust** The Chairman and Non-Executive Directors shall be appointed by the Governors' Council in accordance with the provisions of the Constitution.
- 3.3. **Terms of Office of the Chair and Non-Executive Directors** The Governors' Council shall determine the remuneration, allowances and other terms and conditions of office of the Chair and Non-Executive Directors in accordance with the Constitution.

#### **3.4. Appointment and Powers of Vice-Chair**

- 3.4.1. Subject to Standing Order 3.4.2 below, the Chair and Non-Executive Directors of the Trust may recommend for appointment by Governors Council one of their Non-Executive Directors to be Vice-Chair, for such period, not exceeding the remainder of his term, as they may specify on appointing him.
- 3.4.2. Any Non-Executive Director so appointed may at any time resign from the office of Vice-Chair by giving notice in writing to the Chair. The Chair and Non-Executive Directors may thereupon recommend the appointment of another Non-Executive Director as Vice-Chair in accordance with the provisions of Standing Order 3.4.1.
- 3.4.3. Where the Chair of the Trust has died or has ceased to hold office, or where he has been unable to perform their duties as Chair owing to illness or any other cause, the Vice-Chair shall act as Chair until a new Chair is appointed or the existing Chair resumes their duties, as the case may be; and references to the Chair in these Standing Orders shall, so long as there is no Chair able to perform those duties, be taken to include references to the Vice-Chair.
- 3.4.4. **Joint Directors:** Where more than one person is appointed jointly to a Director post in the Board:
  - 3.4.4.1. Those persons shall count as one person;
  - 3.4.4.2. Either or all of those persons may attend or take part in meetings of the Board;
  - 3.4.4.3. Any of those persons if present shall be eligible to vote in the case of agreement between them in which case they shall cast one vote between them and in the case of disagreements no vote should be cast; and
  - 3.4.4.4. The presence of any or all of those persons should count as the presence of one person for the purposes of considering quorum.

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

3.6. **Executive Members:** Executive Members shall exercise their authority within the terms of these Standing Orders and Standing Financial Instructions and the Scheme of Delegation.

3.7. **Chief Executive:** The Chief Executive shall be responsible for the overall performance of the executive functions of the Trust. S/He is the **Accounting Officer** for the Trust.

3.8. **Director of Finance:** The Director of Finance shall be responsible for the provision of financial advice to the Trust and to its members and for the supervision of financial control and accounting systems. S/He shall be responsible along with the Chief Executive for ensuring the discharge of obligations under relevant Standing Financial Instructions.

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

### 3.10. **Chair**

3.10.1. The Chair shall be responsible for the operation of the Board and chair all Board meetings when present. The Chair must comply with his/her terms of appointment and with these Standing Orders.

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

### 3.11. **Senior Independent Director**

3.11.1. Subject to SO 3.11.2 below, the Chair (in consultation with the Non-Executive Directors and the Governors' Council) may appoint any Director who is also a Non-Executive Director, to be the Senior Independent Director, for such period, not exceeding the remainder of his term as a Director, as they may specify on appointing him/her. The Senior Independent Director shall, save as otherwise resolved from time to time by the Board of Directors, perform the role set out in the Code of Governance for NHS Provider Trusts.

3.11.2. Any Director so appointed may at any time resign from the office of Senior Independent Director by giving notice in writing to the Chair. The Chair (in consultation with the Non-Executive Directors and the Governors' Council) may thereupon appoint another Director who is also a non-executive Director, to be the Senior Independent Director in accordance with the provisions of SO 3.11.1.

### 3.12. **Corporate role of the Board**

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

3.12.2. All funds received in trust shall be held in the name of the Trust as corporate trustee.

3.12.3. The powers of the Trust established under statute shall be exercised by the Board.

3.12.4. The Board shall define and regularly review the functions it exercises.

3.12.5. The Board shall comply with the principles of best practice applicable to corporate governance in the NHS/health sector, with any relevant code of practice and with any applicable guidance.

3.12.6. The Board shall fully adopt the Nolan Principles of Public Life:

3.12.6.1. **Selflessness:** Holders of public office should act solely in terms of the public interest.

3.12.6.2. **Integrity:** Holders of public office must avoid placing themselves under any obligation to people or organisations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships

3.12.6.3. **Objectivity:** Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.

3.12.6.4. **Accountability:** Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.

3.12.6.5. **Openness:** Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.

3.12.6.6. **Honesty:** Holders of public office should be truthful.

3.12.6.7. **Leadership:** Holders of public office should exhibit these principles in their own behaviour and treat others with respect. They should actively promote and robustly support the principles and challenge poor behaviour wherever it occurs.

3.13. **Schedule of Matters reserved to the Board and Scheme of Delegation:** The Board has resolved that certain powers and decisions may only be exercised by the Board in formal session. These powers and decisions are set out in the 'Schedule of Matters Reserved to the Board' and shall have effect as if incorporated into the Standing Orders. Those powers which it has delegated are contained in the Scheme of Delegation.

3.14. **Lead Roles for Board Members:** The Chair will ensure that the designation of lead roles or appointments of Board members as required or as set out in any statutory or other guidance will be made in accordance with that guidance or statutory requirement (e.g. appointing a Lead Board Member with responsibilities for Infection Control or Child Protection Services etc.).

## **4. Meetings of the Trust**

### **4.1. Calling meetings;**

- 4.1.1. Ordinary meetings of the Board shall be held at regular intervals at such times and places as the Board may determine.
- 4.1.2. The Chair of the Trust may call a meeting of the Board at any time.
- 4.1.3. Four or more Directors may requisition a meeting in writing. If the Chair refuses, or fails, to call a meeting within seven days of a requisition being presented, the members signing the requisition may forthwith call a meeting.
- 4.1.4. Save in the case of emergencies or the need to conduct urgent business, the Company Secretary shall give to all Directors reasonable notice in writing of the date, time and place of every meeting of the Board of Directors for each year and will publish the dates, times and locations of meetings of the Board of Directors in advance.

### **4.2. Notice of Meetings and the Business to be transacted:**

- 4.2.1. Before each meeting of the Board a written notice specifying the business proposed to be transacted shall be delivered to every Director, via email (preference) or sent by post to the usual place of residence of each Director, so as to be available to Directors at least seven days before the meeting. The notice shall be signed by the Chair or by an officer authorised by the Chair to sign on their behalf.
- 4.2.2. Any accidental omission to give notice of a meeting to a Director or the non-receipt of notice of a meeting by a Director or any other technical defect in the giving of notice of which the Board is unaware at the time shall not invalidate the proceedings at that meeting.
- 4.2.3. In the case of a meeting called by Directors in default of the Chair calling the meeting, the notice shall be signed by those Directors.
- 4.2.4. No business shall be transacted at the meeting other than that specified on that notice of meeting, or emergency motions allowed under Standing Order 4.6.
- 4.2.5. A Director desiring a matter to be included on an agenda shall make his/her request in writing to the Chair at least 15 clear days before the meeting. The request should state whether the item of business is proposed to be transacted in the presence of the public and should include appropriate supporting information. Requests made less than 15 days before a meeting may be included on the agenda at the discretion of the Chair.
- 4.2.6. Notice of each meeting of the Board will be published on the Trust's website.

### **4.3. Agenda and Supporting Papers:**

- 4.3.1. The Board may determine that certain matters shall appear on every agenda for a meeting of the Board and shall be addressed prior to any other business being conducted as agreed by the Board. The Board may agree an annual cycle of business which will change from time to time and will be used to inform the agenda.

4.3.2. The Agenda will be sent to members of the Board 4 days before the meeting and supporting papers, whenever possible, shall accompany the agenda, but will certainly be dispatched no later than three clear calendar days before the meeting, save in emergency. Minutes of the previous meeting will be circulated with these papers for approval and this will be a specific agenda item.

4.3.3. A copy of the agenda sent to each Director in accordance with the provisions of SO 4.3.2 shall also be sent to the Governors' Council prior to each meeting of the Board of Directors.

4.4. **Petitions:** Where a petition has been received by the Trust the Chair shall include the petition as an item for the agenda of the next meeting.

#### 4.5. **Notice of Motion:**

4.5.1. Subject to the provision of Standing Orders 4.7 'Motions: Procedure at and during a meeting' and 4.8 'Motions to rescind a resolution', a member of the Board wishing to move a motion shall send a written notice to the Chief Executive who will ensure that it is brought to the immediate attention of the Chair.

4.5.2. The notice shall be delivered at least 15 clear days before the meeting. The Chief Executive shall include in the agenda for the meeting all notices so received that are in order and permissible under governing regulations. This Standing Order shall not prevent any motion being withdrawn or moved without notice on any business mentioned on the agenda for the meeting.

4.6. **Emergency Motions:** Subject to the agreement of the Chair, and subject also to the provision of Standing Order 4.7 'Motions: Procedure at and during a meeting', a member of the Board may give written notice of an emergency motion after the issue of the notice of meeting and agenda, up to one hour before the time fixed for the meeting. The notice shall state the grounds of urgency. If in order, it shall be declared to the Trust Board at the commencement of the business of the meeting as an additional item included in the agenda. The Chair's decision to include the item shall be final.

#### 4.7. **Motions: Procedure at and during a meeting**

4.7.1. **Who may propose:** A motion may be proposed by the Chair of the meeting or any member of the Board present. It must also be seconded by another member.

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

- 4.7.2.1. the receipt of a report;
- 4.7.2.2. consideration of any item of business before the Board;
- 4.7.2.3. the accuracy of minutes;
- 4.7.2.4. that the Board proceed to next business;
- 4.7.2.5. that the Board adjourn;
- 4.7.2.6. that the question be now put.

#### 4.7.3. **Amendments to motions:**

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

4.7.3.2. Amendments to motions shall be moved relevant to the motion, and shall not have the effect of negating the motion before the Board.

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

**4.7.4. Rights of reply to motions:**

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

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

**4.7.5. Withdrawing a motion**

4.7.5.1. A motion, or an amendment to a motion, may be withdrawn

**4.7.6. Motions once under debate:**

4.7.6.1. When a motion is under debate, no motion may be moved other than:

- 4.7.6.1.1. an amendment to the motion;
- 4.7.6.1.2. the adjournment of the discussion, or the meeting;
- 4.7.6.1.3. that the meeting proceed to the next business;
- 4.7.6.1.4. that the question should be now put;
- 4.7.6.1.5. the appointment of an 'ad hoc' committee to deal with a specific item of business;
- 4.7.6.1.6. that a member/director be not further heard;
- 4.7.6.1.7. a motion to exclude the public, including the press.

4.7.6.2. No amendment to the motion shall be admitted if, in the opinion of the Chair of the meeting, the amendment negates the substance of the motion.

4.7.6.3. In those cases where the motion is either that the meeting proceeds to the 'next business' or 'that the question be now put' in the interests of objectivity these should only be put forward by a member of the Board who has not taken part in the debate and who is eligible to vote.

4.7.6.4. If a motion to proceed to the next business or that the question be now put, is carried, the Chair should give the mover of the substantive motion under debate a right of reply, if not already exercised. The matter should then be put to the vote.

**4.8. Motion to Rescind a Resolution:**

4.8.1. Notice of motion to rescind any resolution (or the general substance of any resolution) which has been passed within the preceding six calendar months shall bear the signature of the Director who gives it and also the signature of three other Directors, and before considering any such motion of which notice

shall have been given, the Board may refer the matter to any appropriate Committee or the Chief Executive for recommendation.

- 4.8.2. When any such motion has been dealt with by the Board it shall not be competent for any Director other than the Chair to propose a motion to the same effect within six months. This Standing Order shall not apply to motions moved in pursuance of a report or recommendations of a Committee or the Chief Executive.
- 4.9. **Questions:** At any meeting a Director may ask any question through the Chair without notice on any report by an Executive Director or other officer of the Trust, after that report has been received by or while such report is under consideration by the Board at the Meeting. The Chair may, in his/her absolute discretion, reject any question from any Director if in the opinion of the Chair the question is substantially the same and relates to the same subject matter as a question which has already been put to that meeting or a previous meeting.

#### 4.10. **Chair of meeting:**

- 4.10.1. At any meeting of the Board the Chair, if present, shall preside. If the Chair is absent from the meeting, the Vice-Chair (if the Board has appointed one), if present, shall preside.
- 4.10.2. If the Chair and Vice-Chair are absent, such Non-Executive Director of the Trust as the Directors present shall choose shall preside.

- 4.11. **Chair's ruling:** Statements made at meetings of the Trust shall be relevant to the matter under discussion at the material time and the decision of the Chair of the meeting on questions of order, relevancy and regularity (including procedure on handling motions) and their interpretation of the Standing Orders and Standing Financial Instructions, at the meeting, shall be final.

#### 4.12. **Quorum:**

- 4.12.1. No business shall be transacted at a meeting unless at least six Directors are present, including at least two Executive Directors and two Non-Executive Directors.
- 4.12.2. Directors who are unable to attend a meeting shall notify the Company Secretary in writing in advance of the meeting in question so that their apologies may be submitted.
- 4.12.3. By exception, the Board may decide that Directors may participate in meetings either by telephone, video or computer link. Participation in a meeting in this manner shall be deemed to constitute presence in person at the meeting and as such shall count towards the quorum.
- 4.12.4. An Officer in attendance for an Executive Director but without formal acting up status may not count towards the quorum.
- 4.12.5. If the Chair or a Director has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of a declaration of a conflict of interest that person shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business.

#### **4.13. Voting:**

- 4.13.1. Save as provided in Standing Orders 4.14 - Suspension of Standing Orders and 4.15 - Variation and Amendment of Standing Orders, every question put to a vote at a meeting shall be determined by a majority of the votes of Directors present and voting on the question. In the case of an equal vote, the person presiding (i.e. the Chair of the meeting) shall have a second, and casting vote.
- 4.13.2. At the discretion of the Chair all questions put to the vote shall be determined by oral expression or by a show of hands, unless the Chair directs otherwise, or it is proposed, seconded and carried that a vote be taken by paper ballot.
- 4.13.3. If at least one third of the members present so request, the voting on any question may be recorded so as to show how each member present voted or did not vote (except when conducted by paper ballot).
- 4.13.4. If a Director so requests, (except when conducted by paper ballot) their vote shall be recorded by name.
- 4.13.5. In no circumstances may an absent member vote by proxy. Absence is defined as being absent at the time of the vote.
- 4.13.6. An Officer who has been formally appointed to act up for an Executive Director during a period of incapacity, absence or temporarily to fill an Executive Director vacancy shall be entitled to exercise the voting rights of the Executive Director.
- 4.13.7. An Officer attending a Board meeting to represent an Executive Director during a period of incapacity or temporary absence without formal acting up status may not exercise the voting rights of the Executive Director. An Officer's status when attending a meeting shall be recorded in the minutes.
- 4.13.8. For the voting rules relating to joint members see Standing Order 3.4.4.

#### **4.14. Suspension of Standing Orders:**

- 4.14.1. Except where this would contravene any statutory provision, the Constitution or any direction or rules relating to Quorum (SO 4.12), any one or more of the Standing Orders may be suspended at any meeting, provided that at least two-thirds of the whole number of the members of the Board are present (including at least one Executive Director and one Non- Executive Director) and that at least two-thirds of those Directors present signify their agreement to such suspension. The decision and reason for the suspension shall be recorded in the Board's minutes.
- 4.14.2. A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the Chair and Non-Executive Directors of the Trust.
- 4.14.3. No formal business may be transacted while Standing Orders are suspended.
- 4.14.4. The Audit & Risk Committee shall review every decision to suspend Standing Orders.

#### **4.15. Variation and amendment of Standing Orders:** These Standing Orders shall not be varied except in the following circumstances:

- 4.15.1. upon a notice of motion under SO 4.5;
- 4.15.2. upon a recommendation of the Chair or Chief Executive included on the agenda for the meeting;
- 4.15.3. that two thirds of the Board members are present at the meeting where the variation or amendment is being discussed, and that at least half of the Trust's Non-Executive Directors vote in favour of the amendment; and
- 4.15.4. providing that any variation or amendment does not contravene a statutory provision or applicable direction or the Constitution.

**4.16. Record of Attendance:** The names of the Chair, Directors and others present at the meeting shall be recorded.

**4.17. Minutes:**

- 4.17.1. It is the responsibility of each individual Director to ensure that, where they have concerns which cannot be resolved about the running of Trust or a proposed action, their concerns are recorded in the minutes of the relevant meeting.
- 4.17.2. The minutes of the proceedings of a meeting shall be drawn up and shall include the names of those in attendance at the meeting. The minutes shall be submitted for agreement at the next ensuing meeting where they shall be signed by the person presiding at it.
- 4.17.3. No discussion shall take place upon the minutes except upon their accuracy or where the Chair considers discussion appropriate.
- 4.17.4. As soon as practicable after holding a meeting, the Board must send a copy of the minutes of the meeting to the Governors' Council and may otherwise circulate the minutes in accordance with Directors' wishes. Where providing a record of a public meeting the minutes shall be made available to the public through publication on the Trust website.

**4.18. Admission of public and the press**

**4.18.1. Admission and exclusion on grounds of confidentiality of business to be transacted:**

- 4.18.1.1. The public and representatives of the press may attend all meetings of the Board, but shall be required to withdraw upon the Board resolving that representatives of the press, and other members of the public, be excluded from the remainder of this meeting having regard to the confidential nature of the business to be transacted, publicity on which would be prejudicial to the public interest or for other special reasons. For the avoidance of doubt, this is without prejudice to the Board's ability to extend an invitation to observers to attend and address any of the Board's meetings at SO 4.19.
- 4.18.1.2. In this context in determining 'the confidential nature of the business to be transacted,' the Trust's Freedom of Information Classification Scheme for Board Papers shall be taken into account. All items classified under the scheme as 'Restricted' (covered in whole or in part by exemption under the Freedom of Information Act) or as 'Private' (wholly exempted,) will be deemed to be confidential.

4.18.2. **General disturbances:** The Chair (or Vice-Chair if one has been appointed) or the person presiding over the meeting shall give such directions as he thinks fit with regard to the arrangements for meetings and accommodation of the public and representatives of the press such as to ensure that the Board's business shall be conducted without interruption and disruption and, without prejudice to the power to exclude on grounds of the confidential nature of the business to be transacted, the Board may resolve to exclude any member of the public or representatives of the press at a meeting that is interfering with or preventing the proper conduct of the meeting.

4.18.3. **Business proposed to be transacted when the press and public have been excluded from a meeting:**

4.18.3.1. Matters to be dealt with by the Board following the exclusion of representatives of the press and other members of the public, as provided above, shall be confidential to the members of the Board.

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

4.18.4. **Use of Mechanical or Electrical Equipment for Recording or Transmission of Meetings:** Nothing in these Standing Orders shall be construed as permitting the introduction by the public, or press representatives, of recording, transmitting, video or similar apparatus into meetings of the Board or Committee thereof. Such permission shall be granted only upon resolution of the Board.

4.19. **Observers at Trust meetings:** The Board may decide what arrangements and terms and conditions it feels are appropriate to offer in extending an invitation to observers to attend and address any of the Board's meetings and may change, alter or vary these terms and conditions as it deems fit.

## **5. Appointment of Committees and Sub-Committees**

### **5.1. Appointment of Committees:**

5.1.1. Subject to these Standing Orders, the provisions of the Constitution and any applicable legislation, the Board may appoint committees or sub-committees consisting wholly or partly of Directors or wholly of persons who are not Directors of the Trust.

5.1.2. The Board shall determine the membership and terms of reference of committees and sub-committees and shall, if it requires to, receive and consider reports of such committees.

5.2. **Applicability of Standing Orders and Standing Financial Instructions to Committees** The Standing Orders and Standing Financial Instructions of the Trust, as far as they are applicable, shall as appropriate apply to meetings and any committees established by the Board. In which case the term "Chair" is to be read as a reference to the Chair of other committee as the context permits, and the term "Director" is to be read as a reference to a member of the committee also as the context permits. (There is no requirement to hold meetings of committees established by the Board in public.)

5.3. **Terms of Reference** Each such committee shall have such terms of reference and powers and be subject to such conditions (as to reporting back to the Board), as the Board shall decide and shall be in accordance with any applicable legislation and regulation or direction issued. Such terms of reference shall have effect as if incorporated into the Standing Orders.

#### 5.4. **Sub-Committees**

- 5.4.1. A committee may, subject to any applicable legislation and directions and any restrictions imposed by the Board, appoint sub-committees consisting wholly or partly of directors of the Trust or wholly of persons who are not directors of the Trust.
- 5.4.2. Where committees have been delegated executive powers and are authorised to establish sub-committees, they may not delegate executive powers to the sub-committee unless expressly authorised by the Trust Board.

5.5. **Approval of Appointments to Committees** The Board shall approve the appointments to each of the committees which it has formally constituted. Where the Board determines, and legislation permits, that persons, who are neither members nor officers, shall be appointed to a committee the terms of such appointment shall be within the powers of the Board. The Board shall define the powers of such appointees and shall agree allowances, including reimbursement for loss of earnings, and/or expenses in accordance with national guidance.

#### 5.6. **Committees established by the Trust Board**

- 5.6.1. The committees and sub-committees established by the Board are:

- Audit Committee
- Remuneration Committee
- Quality Improvement & Safety Committee
- Finance, Investment & Performance Committee
- Charitable Funds Committee
- Workforce Committee
- Digital, Estates & Procurement Committee
- Great North Health Alliance Committee in Common
- Patient Safety Incident oversight and Improvement Committee

5.7. **Other Committees:** The Board may also establish such other committees as required to discharge the Trust's responsibilities. These committees will be reviewed on an annual basis by the Board.

## 5.8. Confidentiality

- 5.8.1. A member of a committee shall not disclose a matter dealt with by, or brought before, the committee without its permission until the committee shall have reported to the Board or shall otherwise have concluded on that matter.
- 5.8.2. A Director or a member of a committee shall not disclose any matter reported to the Board or otherwise dealt with by the committee, notwithstanding that the matter has been reported or action has been concluded, if the Board or committee shall resolve that it is confidential without the permission of the Board/committee as applicable.
- 5.8.3. Nothing in the above sections shall restrict staff acting within the applicable law on whistleblowing.

## 6. Arrangements for the Exercise of Trust Functions by Delegation

- 6.1. The Board of Directors may delegate any of its powers to a committee of Directors or to an Executive Director.
- 6.2. Subject to these Standing Orders, the provisions of the Constitution and any applicable legislation, the Board shall agree from time to time to the delegation of executive powers to be exercised by committees or sub-committees of Directors, which it has formally constituted, or to an Executive Director. The constitution and terms of reference of these committees or sub-committees and the terms on which executive powers have been delegated shall be approved by the Board.
- 6.3. **Emergency Powers and urgent decisions:** The powers which the Board has reserved to itself within these Standing Orders may in emergency or for an urgent decision be exercised by the Chief Executive and the Chair after having consulted at least two Non-Executive Directors. The exercise of such powers by the Chief Executive and Chair shall be reported to the next formal meeting of the Trust Board in public session for formal ratification.

## 6.4. Delegation to Officers

- 6.4.1. Those functions of the Trust which have not been retained as reserved by the Board or delegated to other committee or sub-committee shall be exercised on behalf of the Trust by the Chief Executive. The Chief Executive shall determine which functions he will perform personally and shall nominate officers to undertake the remaining functions for which he will still retain accountability to the Trust.
- 6.4.2. The Chief Executive shall prepare a Scheme of Delegation identifying his/her proposals which shall be considered and approved by the Board, subject to any amendment agreed during the discussion. The Chief Executive may periodically propose amendment to the Scheme of Delegation which shall be considered and approved by the Board.
- 6.4.3. Nothing in the Scheme of Delegation shall impair the discharge of the direct accountability to the Board of the Director of Finance to provide information and advise the Board in accordance with statutory or other requirements. Outside these statutory requirements the roles of the Director of Finance shall be accountable to the Chief Executive for operational matters.

6.5. **Schedule of Matters Reserved to the Trust and Scheme of Delegation of powers:** The arrangements made by the Board as set out in the "Schedule of Matters Reserved to the Board" and "Scheme of Delegation" of powers shall have effect as if incorporated in these Standing Orders.

6.6. **Duty to report non-compliance with Standing Orders and Standing Financial Instructions:** If for any reason these Standing Orders are not complied with, full details of the non-compliance and any justification for non-compliance and the circumstances around the non-compliance, shall be reported to the next formal meeting of the Board for action or ratification. All members of the Board and staff have a duty to disclose any non-compliance with these Standing Orders to the Chief Executive as soon as possible.

7. **Duties and Obligations of Board Members/Directors and Senior Managers Under These Standing Orders**

7.1. **Declaration of Interests:**

7.1.1. **Requirements for Declaring Interests and applicability to Board Members:** Directors are required to manage and to declare interests in accordance with the Constitution and to declare interests which are relevant and material to the Board of which they are a member. All existing Directors should declare such interests. Any Directors appointed subsequently should do so on appointment.

7.1.2. **Interests which are relevant and material:** Interests which should be regarded as "relevant and material" include:

7.1.2.1. Directorships, including Non-Executive Directorships held in private companies or PLCs (with the exception of those of dormant companies);

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

7.1.2.3. Majority or controlling share-holdings in organisations likely or possibly seeking to do business with the NHS;

7.1.2.4. A position of authority in a charity or Voluntary Organisation in the field of health and social care;

7.1.2.5. Any connection with a Voluntary Organisation or other organisation contracting for NHS services;

7.1.2.6. Research funding/grants that may be received by an individual or their department;

7.1.2.7. Interests in pooled funds that are under separate management.

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

7.1.4. On appointment, and by annual review, all Directors will undertake a Fit and Proper Persons Test to ensure compliance with the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014, regulation 5.

7.1.5. **Advice on Interests:** If Board members have any doubt about the relevance of an interest, this should be discussed with the Chair or with the Company Secretary.

7.1.6. **Recording of Interests in Trust Board minutes:**

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

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

7.1.7. **Publication of declared interests in Annual Report:**

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

7.1.8. **Conflicts of interest which arise during the course of a meeting:** During the course of a Trust Board meeting, if a conflict of interest is established, the Board member concerned should withdraw from the meeting and play no part in the relevant discussion or decision.

8. **Register of Interests**

8.1. The Chief Executive will ensure that a Register of Interests is established to record formally declarations of interests of Board or Committee members. In particular the Register will include details of all directorships and other relevant and material interests which have been declared by both Executive and Non-Executive Trust Board members.

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

8.3. The Register will be available to the public and the Chief Executive will take reasonable steps to bring the existence of the Register to the attention of local residents and to publicise arrangements for viewing it.

9. **Disability of Chair and Directors in Proceedings on Account of Pecuniary Interest**

9.1. **Definition of terms used in interpreting 'Pecuniary' interest:** For the sake of clarity, the following definition of terms is to be used in interpreting this Standing Order:

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

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

9.1.3. "Pecuniary interest"

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

9.1.3.1.1. he, or a nominee of his/her, is a member of a company or other body (not being a public body), with which the contract is made, or to be made or which has a direct pecuniary interest in the same, or

9.1.3.1.2. he is a partner, associate or employee of any person with whom the contract is made or to be made or who has a direct pecuniary interest in the same.

9.1.4. Exception to Pecuniary interests

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

9.1.4.1.1. neither he or any person connected with him/her has any beneficial interest in the securities of a company of which he or such person appears as a member; or

9.1.4.1.2. any interest that he or any person connected with him/her may have in the contract is so remote or insignificant that it cannot reasonably be regarded as likely to influence him/her in relation to considering or voting on that contract; or

9.1.4.1.3. those securities of any company in which he (or any person connected with him/her) has a beneficial interest do not exceed £5,000 in nominal value or one per cent of the total issued share capital of the company or of the relevant class of such capital, whichever is the less. Provided however, that where this applies the person shall nevertheless be obliged to disclose/declare their interest.

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

9.3. The Board may exclude the Chair or Director of the Trust from a meeting of the Board while any contract, proposed contract or other matter in which he has a pecuniary interest is under consideration.

9.4. Any remuneration, compensation or allowance payable to the Chair or a Non-Executive Director shall not be treated as a pecuniary interest for the purpose of this Standing Order.

9.5. This Standing Order applies to a committee or sub-committee and to a joint committee or sub-committee as it applies to the Trust and applies to a member of any such committee or sub-committee (whether or not he is also a Director of the Trust) as it applies to a Director of the Trust.

## **10. Standards of Business Conduct**

- 10.1. It is the responsibility of all Directors and Trust staff to ensure that they are not placed in a position which risks, or appears to risk, conflict between their private interests and their official duties on behalf of the Trust.
- 10.2. **Trust Policy and National Guidance:** All Trust staff and Directors must comply with the Trust's Standards of Business Conduct, Conflicts of Interest Policy and other relevant HR, hospitality, fraud and bribery policies. The Directors shall also comply with the code of conduct for Directors from time to time approved by the Board.
- 10.3. **Interest of Officers in Contracts:** Any officer or employee of the Trust who comes to know that the Trust has entered into or proposes to enter into a contract in which he or any person connected with him/her (as defined in these Standing Orders) has any pecuniary interest, direct or indirect, the Officer shall declare their interest by giving notice in writing of such fact to the Chief Executive or Trust's Company Secretary as soon as practicable.
- 10.4. An Officer should also declare to the Chief Executive any other employment or business or other relationship of his/her, or of a cohabiting spouse, that conflicts, or might reasonably be predicted could conflict with the interests of the Trust.
- 10.5. The Trust will require interests, employment or relationships so declared to be entered in a register of interests of staff.

## **11. Canvassing of and Recommendations by Directors in Relation to Appointments**

- 11.1. Canvassing of Directors or governors of the Trust or members of any Committee of the Trust directly or indirectly for any appointment under the Trust shall disqualify the candidate for such appointment. The contents of this paragraph of the Standing Order shall be included in application forms or otherwise brought to the attention of candidates.
- 11.2. A Director or governor shall not solicit for any person any appointment under the Trust or recommend any person for such appointment; but this paragraph of this Standing Order shall not preclude a Director from giving written testimonial of a candidate's ability, experience or character for submission to the Trust.
- 11.3. Informal discussions outside appointments panels or committees, whether solicited or unsolicited, should be declared to the panel or committee.

**11.4. Relatives of Directors or Officers:**

- 11.4.1. Candidates for any staff appointment under the Trust shall, when making an application, disclose in writing to the Trust whether they are related to any director or the holder of any office under the Trust. Failure to disclose such a relationship shall disqualify a candidate and, if appointed, render him liable to instant dismissal.
- 11.4.2. The Chair and every Director, governor and officer of the Trust shall disclose to the Board any relationship between himself/herself and a candidate of whose candidature that Director or officer is aware. It shall be the duty of the Chief Executive to report to the Board any such disclosure made.
- 11.4.3. On appointment, Directors (and prior to acceptance of an appointment in the case of Executive Directors) should disclose to the Trust whether they are related to any other Director or holder of any office under the Trust.

11.4.4. Where the relationship to a Director of the Trust is disclosed, the Standing Order headed 'Disability of Chair and Non-Executive Directors in proceedings on account of pecuniary interest' (SO 9) shall apply.

## **12. Custody of Seal, Sealing of Documents and Signature of Documents**

**12.1.Custody of Seal:** The common seal of the Trust shall be kept by the Company Secretary or a nominated manager by him/her in a secure place.

### **12.2.Sealing of Documents:**

12.2.1. The seal of the Trust shall not be fixed to any documents unless the sealing has been authorised by a resolution of the Board which expression includes, by virtue of the resolution of the Board adopting these Standing Orders, documents approved for sealing by the Chief Executive.

12.2.2. Where it is necessary that a document shall be sealed, the seal shall be affixed in the presence of two senior managers duly authorised by the Chief Executive or by the Board, and not also from the originating department, and shall be attested by them.

**12.3.Register of Sealing:** An entry of every sealing shall be made and numbered consecutively in a book provided for that purpose by the Company Secretary. A report of all sealings shall be made to the Board of Directors at least quarterly. The report shall contain details of the seal number, the description of the document and date of sealing.

### **12.4.Signature of documents:**

12.4.1. Where any document will be a necessary step in legal proceedings on behalf of the Trust, it shall, unless any enactment otherwise requires or authorises, be signed by the Chief Executive or any Executive Director.

12.4.2. The Chief Executive or other executive Directors shall be authorised to sign on behalf of the Trust any agreement or other document not requested to be executed as a deed, the subject matter of which has been approved by the Board or any committee or sub-committee with delegated authority.

12.4.3. In land transactions, the signing of certain supporting documents will be delegated to managers and set out clearly in the Scheme of Delegation but will not include the main or principal documents effecting the transfer (e.g. sale/purchase agreement, lease, contracts for construction works and main warranty agreements or any document which is required to be executed as a deed).

## **13. Miscellaneous**

**13.1.Dispute between the Board of Directors and the Governors' Council:** In the event of a dispute between the Board of Directors and the Governors' Council the Dispute Resolution Procedure set out at paragraph 49 of the Constitution will apply.

**13.2.Distribution of Standing Orders:** It is the duty of the Chief Executive to ensure that existing Directors and officers and all new appointees are notified of and understand their responsibilities within and the importance of compliance with the Standing Orders and Standing Financial Instructions. Updated copies shall be issued to staff designated by the Chief Executive. New designated officers shall be informed in

writing and shall receive copies where appropriate of Standing Orders. The Trust intends that these Standing Orders will apply equally to all external consultants or other agents acting on behalf of the Trust.

**13.3. Policy statements - general principles:** The Trust may agree and approve policy statements/procedures which will apply to all or specific groups of staff employed by the Trust. The decisions to approve such policies and procedures will be recorded in an appropriate Board minute and will be deemed to be an integral part of the Trust's Standing Orders and Standing Financial Instructions.

#### **13.4. Company Secretary**

13.4.1. The Chair and the Chief Executive may appoint and remove a Company Secretary who may be an employee of the Trust but who may not be a Governor or the Chief Executive or the Director of Finance.

13.4.2. The functions of any Company Secretary appointed shall include:

13.4.2.1. acting as Secretary to the Board of Directors and the Governors' Council, any committees of the Governors' Council and any committees of the Board of Directors;

13.4.2.2. summoning and attending all Members' meetings, meetings of the Governors' Council and the Board of Directors, and keeping the minutes of those meetings;

13.4.2.3. keeping the register of members and other registers and books required by the Constitution to be kept;

13.4.2.4. publishing to members in appropriate form information which they should have above the Trust's affairs; and

13.4.2.5. preparing and sending to the NHS England and any other statutory body all returns which are required to be made; and

13.4.2.6. having charge of the Trust's seal.

**13.5. Review of Standing Orders:** Standing Orders shall be reviewed annually by the Board. The requirement for review extends to all documents having the effect as if incorporated in Standing Orders which shall be the Standing Financial Instructions and Schedule of Matters Reserved to the Board and Scheme of Delegation.

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**Statement of changes made from previous version**

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|----------------|---------------|--|
| V1             | 04/07/2023    | Annex 7, Section 6.6.1 – Estates & procurement Committee added   |
| V2             | July 2024     | <ul style="list-style-type: none"><li>Section 5.3 updated to read as follows (<b>changes in bold</b>): “In exercising its functions the Foundation Trust shall co-operate <b>and collaborate</b> with other health organisations and with local authorities <b>as required by the Health and Care Act 2022</b>”.</li><li>Annex 3,<ul style="list-style-type: none"><li>Section 1.1 – typo corrected – changed to read 21 public governors.</li><li>Section 1.6 – typo corrected – changed to read up to 6 partner governors.</li><li>Changes above reflect decision of Board of Directors and Governors Council April 2023 on composition of Governors Council.</li></ul></li><li>Annex 7, Section 5.6.1 – Added:<ul style="list-style-type: none"><li>Great North Health Alliance Committee in Common</li><li>Patient Safety Incident Oversight and Improvement Committee</li></ul></li></ul> |
| V3             | November 2025 | <ul style="list-style-type: none"><li>Full review throughout document following detailed feedback from Trust's legal advisers, Ward Hadaway. Review undertaken to ensure content remains up to date and relevant.<ul style="list-style-type: none"><li>References to Monitor updated to read NHS England throughout (except when referring to publications issued by Monitor before its dissolution)</li><li>References to Department of Health updated to state Department of Health and Social Care throughout document</li><li>References to “Secretary of State” updated to read “Secretary of State for Health and Social Care” throughout document</li></ul></li></ul>   |

| Version | Date | Section & description of changes made  |
|---------|------|--|
|         |      | <ul style="list-style-type: none"> <li>• References to “Governors Council” or “Council of Governors” replaced with Governors’ Council” throughout document</li> <li>• Section 1.5: <ul style="list-style-type: none"> <li>▪ Removal of definition of “Monitor” from definitions table</li> <li>▪ Definition of “Board” updated to reflect definition used in Annex 7</li> <li>▪ Definition of “Company Secretary” updated to reflect definition used in Annex 7</li> <li>▪ Definition of “Foundation Trust” updated to state “means the NHS foundation trust to which this Constitution relates”</li> <li>▪ Definition of Governors’ Council updated to state “means a council of governors (as such term is used in the 2006 Act) constituted in accordance with this Constitution</li> <li>▪ Definition of Members’ Meeting updated to read “means a council of governors (as such term is used in the 2006 Act) constituted in accordance with this Constitution.</li> <li>▪ Duplicate entry of definition of Members’ meeting removed.</li> <li>▪ Definition of ‘Lead / Deputy Lead Governor’ updated and separated into two entries in the definitions table</li> <li>▪ Definition of “Secretary of State” amended to read “Secretary of State for Health and Social Care”.</li> <li>▪ Definition of “the Health and Care Act 2022” added to definitions table</li> <li>▪ Definition of “significant transaction” removed.</li> </ul> </li> <li>• Para 4.1 amended to add “and the 2022 Act” after “as amended by the 2012 Act ),</li> <li>• Para 4.2 “desireable” amended to state “expedient” to reflect wording within section 47 of National Health Service Act 2006 upon which para 4.2 is based.</li> <li>• Para 6.1 amended to read “The powers of the Foundation Trust are to be exercised by the Board of Directors in accordance with the Health and Care Act 2006”</li> <li>• Para 6.3.2 amended to read “to represent the interests of NHS foundation trust members, the public at large, and staff in the governance of the NHS foundation trust” to reflect Provision 1.3 of Appendix B of the Code of Governance for NHS Provider Trusts (2022)</li> <li>• Para 6.6 “on its behalf” added after “powers of the Foundation Trust” to reflect wording of Schedule 7 of NHS Act 2006,</li> <li>• Para 9.1 (1) amended to read (7).</li> <li>• Para 9.1.1 “the relevant” replaced with “an”</li> </ul> |

| Version | Date | Section & description of changes made   |
|---------|------|---|
|         |      | <ul style="list-style-type: none"> <li>• Para 14.3 removed as duplicate of definition of “Members’ Meeting” in definitions table at 1.5</li> <li>• Para 14.4 and 14.5 renumbered.</li> <li>• Renumbered para 14.4 sentence updated to be consistent with definition of “Members’ Meeting” at 1.5</li> <li>• Para 19.1.1 “adjudged” amended to “made”</li> <li>• New para added at 19.1.11 “a person in relation to whom a moratorium period under a debt relief order applies (Under Part 7A of the Insolvency Act 1986) reflect Schedule 7 of the NHS Act 2007</li> <li>• Para 19.1.3 “British Isles” replaced with “British Islands”</li> <li>• Para 20.1.2 “at a general meeting of the Governors’ Council” inserted</li> <li>• Para 20.1.6 and 20.1.7 moved to become 20.2.3 and 20.2.4 respectively.</li> <li>• Para 20.1.8 renumbered 20.1.6</li> <li>• Para 27.2.2 amended to state Chair plus maximum 7, minimum 6 Non-Executive Directors</li> <li>• Para 27.2.3 amended to state maximum seven Executive Directors</li> <li>• Para 32.1 “adjudged” replaced with “made”</li> <li>• New para 32.16 added “A person who has a disbarment in relation to safeguarding vulnerable groups”</li> <li>• Para 42 updated related to the eligibility of the auditor to reflect Schedule 7 of the NHS Act 2006 (para 23)</li> <li>• New para 43.1</li> <li>• Para 45.7.1 “confirm” replaced with “determine”</li> <li>• Para 45.1.9 “the Regulator” replaced with “NHS England”, and “terms of its authorisation” replaced with “Terms of Authorisation”</li> <li>• Annexe 5 – section 2 removed as duplication of section 50.3</li> <li>• Annexe 6, para 13.13 typo corrected: word “of” removed.</li> <li>• Annexe 6, para 14.1 “Chairman’s” replaced with “Chair’s”</li> <li>• Annexe 6, para 24.5 updated to state “Membership and quorum for each committee will be set out in its Terms of Reference.” This replaces previous statement that Each Committee will have a minimum of 4 and maximum of 12 members.</li> <li>• Annexe 7, para 1 (definitions”) all references to “officer” replaced with</li> <li>• Annexe 7, para 1.2.3 “Officer”, and “Chair” replaced with “Chairman”</li> <li>• Annexe 7, para 1.2.19 “as per section 30 of the Constitution” added at end of sentence</li> </ul> |

| Version | Date | Section & description of changes made   |
|---------|------|---|
|         |      | <ul style="list-style-type: none"> <li>Annexe 7, sections 7.1.2.4 and 7.1.2.5 to amend voluntary organisation to “Voluntary Organisation”</li> <li>Annexe 7, para 3.4.1 and 3.4.2 sentences updated to reflect para 30 of the Constitution in relation to Governors’ Council role to appoint Vice Chair. This is consistent with section C2.2.6 of the Code of Governance for NHS Provider Trusts</li> <li>Annexe 7, para 3.11.1 reference to “Code of Governance for NHS Foundation Trusts” updated to read “Code of Governance for NHS Provider Trusts”</li> <li>Annexe 7, para 3.12.16 descriptors of the seven principles of public life updated to reflect wording on Gov.uk website:<br/><a href="https://www.gov.uk/government/publications/the-7-principles-of-public-life/the-7-principles-of-public-life--2">https://www.gov.uk/government/publications/the-7-principles-of-public-life/the-7-principles-of-public-life--2</a></li> <li>Annexe 7, references to “member” in paras 4.3.2 and 4.7.1 updated to read “member of the Board”</li> <li>Annexe 7, 4.7.5 typo corrected (missing line space) to create 4.7.5.1</li> <li>Annexe 7, para 9.5, reference to “member” in final sentence replaced by “Director”.</li> <li>Annexe 7, para 5.6.1. Name of Estates &amp; Procurement Committee updated to read ‘Digital, Estates &amp; Procurement Committee’ and Name of Audit &amp; Risk Committee updated to read ‘Audit Committee’</li> </ul> |
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#### List of Stakeholders who have reviewed the document

| Name               | Job Title         | Date           |
|--------------------|-------------------|----------------|
| Diane Teasdale     | Company Secretary | July 2024      |
| Governors’ Council |                   | September 2024 |
| Board of Directors |                   | September 2024 |
| Diane Teasdale     | Company Secretary | October 2925   |
| Governors’ Council |                   | November 2025  |
| Board of Directors |                   | November 2025  |