



North London
NHS Foundation Trust

NORTH LONDON NHS FOUNDATION TRUST

CONSTITUTION

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**CONSTITUTION OF
NORTH LONDON NHS FOUNDATION TRUST
(A PUBLIC BENEFIT CORPORATION)**

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North London NHS Foundation Trust Constitution

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1. Interpretation and definitions

- 1.1 Unless otherwise stated, words or expressions contained in this Constitution shall bear the same meaning as in the National Health Service Act 2006.
- 1.2 Words importing the masculine gender only shall include the feminine gender; words importing the singular shall import the plural and vice-versa.
- 1.3 The **2006 Act** is the National Health Service Act 2006.
- 1.4 The **2012 Act** is the Health and Social Care Act 2012.
- 1.5 The **2022 Act** is the Health and Care Act 2022.
- 1.6 The **Accounting Officer** is the Chief Executive who from time to time discharges the functions specified in paragraph 25(5) of Schedule 7 to the 2006 Act.
- 1.7 **Annual Members' Meeting** is defined in paragraph 14 of this Constitution.
- 1.8 **Auditor** means an individual or organisation appointed by the Trust's Governors in accordance with paragraph 23 of Schedule 7 to the 2006 Act to evaluate and verify the accuracy of the financial records and accounting practices of the Trust.
- 1.9 **Appointed Governor** means a Governor nominated by a partner organisation such as a local authority, medical college or from the voluntary sector.
- 1.10 **Board of Directors** is the board of directors of the Trust as constituted in accordance with this Constitution.
- 1.11 The **Chair** means the chair of the Trust.
- 1.12 The **Chief Executive** means the chief officer of the Trust.
- 1.13 The **Code of Conduct for Directors** means the Trust's code of conduct for the Directors as adopted by the Trust from time to time.
- 1.14 The **Code of Conduct for Governors** means the Trust's code of conduct for the Governors as adopted by the Trust and the Council of Governors from time to time.
- 1.15 **Constitution** means this constitution and all annexes to it.
- 1.16 **Council of Governors** is the Council of Governors of the Trust as constituted in accordance with this Constitution.
- 1.17 **Days** mean calendar days for the purposes of this Constitution, unless otherwise specified.

- 1.18 **Deputy Chair** means one Non-Executive Director appointed by the Board of Directors to act as the Chair of the Trust in certain circumstances.
- 1.19 **Director** means a member of the Board of Directors.
- 1.20 **Dispute Resolution Procedure** means a procedure detailing matters relating to the resolution of disputes as adopted by the Trust from time to time.
- 1.21 **Elected Governors** means those Governors elected by the Public Constituencies, the Service User and Carer Constituency (which includes service users and service users' carers) and the Staff Constituency.
- 1.22 **Financial Year** means each successive period of twelve (12) months beginning with 1 April and ending on 31 March.
- 1.23 **Governor** means a member of the Council of Governors.
- 1.24 **Health Overview and Scrutiny Committee** means a local authority committee in accordance with regulations made further to paragraph 244 of the 2006 Act and includes joint Health Overview and Scrutiny Committees established by more than one local authority further to paragraph 245 of the 2006 Act.
- 1.25 **Healthwatch** means (1) the committee of the Care Quality Commission established under paragraph 6 of Schedule 1 of the Health and Social Care Act 2008 known as Healthwatch England; and (2) any local healthwatch organisation with the functions set out in paragraph 221 of Local Government and Public Involvement in Health Act 2007 relating to service user and public involvement in healthcare.
- 1.26 **Integrated Care Board (ICB)** means an integrated care board established under Chapter A3 of Part 2 of the 2006 Act.
- 1.27 **Lead Governor** means one (1) Governor appointed by the Council of Governors who may act as a point of contact for NHS England.
- 1.28 **Meeting of the Board of Directors** means a duly convened meeting of the Board of Directors.
- 1.29 **Meeting of the Council of Governors** means a duly convened meeting of the Council of Governors.
- 1.30 **Model Election Rules** means those election rules as published by NHS Providers from time to time.
- 1.31 **NHS England** is the body corporate known as NHS England, established under section 1H of the 2006 Act.
- 1.32 **Partner** means, in relation to another person, a member of the same household living together as a family unit.

- 1.33 **Partnership Organisation** means a partnership organisation for the purposes of Schedule 7 paragraph 9(7) of the 2006 Act.
- 1.34 **Public Constituency** means those who live in an area specified in Annex 1 of this Constitution as an area for any public constituency of the Trust as constituted in accordance with paragraph 9 of this Constitution.
- 1.35 **Public Governor** means a Governor elected by the members of a Public Constituency.
- 1.36 **Senior Independent Director** means the Non-Executive Director appointed by the Board of Directors in accordance with paragraph 31.3 of this Constitution.
- 1.37 **Service User** an individual whose name is recorded as a service user on the Trust's service user administration system or other record maintained by the Trust for the purposes of identifying service users of the Trust and has attended any of the Trust's premises as a service user in the last five (5) years.
- 1.38 **Service User Carer** is an individual who comes within the description of service user carer as set out in paragraph 1 of Annex 9.
- 1.39 **Service User and Carer Constituency** means those who are referred to collectively as the service users' constituency, as constituted in accordance with paragraph 12 of this Constitution.
- 1.40 **Service User/Carer Governor** means a Governor elected by the members of the Service Users and Carers' Constituency.
- 1.41 **Staff Constituency** means those individuals who are members of Trust staff and as constituted in accordance with paragraph 10 of this Constitution.
- 1.42 **Staff Governor** means a Governor elected by the members of the Staff Constituency.
- 1.43 **Statutory Transaction** means a merger under section 56 of the 2006 Act, an acquisition under section 56A of the 2006 Act, a separation under section 56B of the 2006 Act, or dissolution under section 57A of the 2006 Act.
- 1.44 **The Terms of Reference** means the terms of reference adopted by any committees or other groups of the Trust and which are set out in the Trust's Board Committee Handbook and Corporate Governance Manual, and which may be updated from time to time.
- 1.45 **the Trust** means the Camden and Islington NHS Foundation Trust.
- 1.46 **Trust Secretary** is the person with responsibility or acting as the secretary or with responsibility for the corporate affairs of the Trust from time to time.

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

2. Name

2.1 The name of the foundation trust is the North London NHS Foundation Trust (the “**Trust**”).

3. Principal Purpose

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

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

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

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

3.3.2 the promotion and protection of public health.

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

4. Powers

4.1 The powers of the Trust are set out in the National Health Service Act 2006.

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

4.3 Any of these powers may be delegated to a committee of Directors or to an Executive Director.

4.4 The Trust shall exercise its functions effectively, efficiently and economically.

4.5 Subject to paragraph 4.6 below and having regard to any guidance published by NHS England, in making a decision about the exercise of its functions, the Trust shall have regard to all likely effects of the decision in relation to:

4.5.1 the health and wellbeing of the people of England;

4.5.2 the quality of services provided to individuals by relevant bodies, or in pursuance of arrangements made by relevant bodies, for or

in connection with the prevention, diagnosis or treatment of illness, as part of the health service in England; and

4.5.3 efficiency and sustainability in relation to the use of resources by relevant bodies for the purposes of the health service in England.

4.6 The requirement to have regard to the wider effect of its decisions set out at paragraph 4.5 shall not apply to decisions about services to be provided to a particular individual for or in connection with the prevention, diagnosis or treatment of illness.

4.7 In paragraph 4.5 'relevant bodies' has the meaning set out in paragraph 63A(4) of the 2006 Act.

4.8 In exercising its functions, the Trust shall have regard to the need to contribute towards compliance with the UK net zero emissions target set out at section 1 of the Climate Change Act 2008 and the environmental targets set out at section 5 of the Environment Act 2021, and to adapt to any current or predicted impacts of climate change identified in the most recent report under section 56 of the Climate Change Act 2008. In doing so, the Trust shall also have regard to guidance published by NHS England.

4.9 The Trust may do anything which appears to it to be necessary or expedient for the purposes of or in connection with its functions.

5. Joint working and delegation arrangements

5.1 Subject to paragraph 5.2 the Trust may arrange in accordance with s65Z5 of the 2006 Act for the joint exercise of functions with any one or more of the following bodies:

5.1.1 a relevant body;

5.1.2 a local authority;

5.1.3 a combined authority.

5.2 Where the Trust has entered into arrangements for the joint exercise of functions with one or more bodies in accordance with paragraph 5.1, it may make arrangements for:

5.2.1 the function to be exercised by a joint committee of theirs

5.2.2 for one or more of them, or a joint committee of them, to establish and maintain a pooled fund.

5.3 The Trust must have regard to any guidance published by NHS England under s65Z7.

5.4 In this paragraph 5 the following terms have the following meanings:

- 5.4.1 'Relevant body' has the meaning set out in section 65Z5(2) of the 2006 Act
- 5.4.2 'Local authority' means a local authority within the meaning of section 2B of the 2006 Act
- 5.4.3 'Combined authority' has the meaning set out in s275 of the 2006 Act
- 5.4.4 'Pooled fund' has the meaning set out in s65Z6(3) of the 2006 Act.

6. Duties relating to Integrated care system financial controls

- 6.1 The Trust must seek to achieve financial objectives that apply to it under section 223L of the 2006 Act.
- 6.2 The Trust must exercise its functions with a view to ensuring that it complies with its duties under s223M and s223N of the 2006 Act to limit local capital resource use and local revenue resource use.

7. Membership and Constituencies

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

8. Application for membership

An individual who is eligible to become a member of the Trust may do so on application to the Trust in accordance with this Constitution, with the exception of individuals who are eligible to become members of the Staff Constituency, who shall automatically become members in accordance with paragraph 11.

9. Public Constituencies

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

10. Staff Constituency

- 10.1 An individual who is employed by the Trust under a contract of employment with the Trust (Annex 2) may become or continue as a member of the Trust provided:
- 10.1.1 he/she is employed by the Trust under a contract of employment which has no fixed term or has a fixed term of at least twelve (12) months; or
 - 10.1.2 he/she has been continuously employed by the Trust under a contract of employment for at least twelve (12) months; and
 - 10.1.3 he/she has not been disqualified from membership in accordance with Annex 9 or restricted from membership in accordance with paragraph 13 of this Constitution.

11. Automatic membership by default – staff

- 11.1 An individual who is:
- 11.1.1 eligible to become a member of the Staff Constituency; and
 - 11.1.2 invited by the Trust to become a member of the Staff Constituency,
- shall become a member of the Trust as a member of the Staff Constituency without an application being made, unless he/she informs the Trust that he does not wish to do so.
- 11.2 Those individuals who are eligible for membership of the Trust by reason of the previous provisions are referred to collectively as the Staff Constituency.
- 11.3 The minimum number of members in the Staff Constituency is specified in Annex 2.

12. Service User and Carer Constituency

- 12.1 An individual who has, within the period specified below, accessed any of the Trust's services as either a Service User or as the Service User's Carer may become a member of the Trust.
- 12.2 The period referred to above shall be the period of five (5) years immediately preceding the date of an application by the Service User or their Carer to become a member of the Trust.
- 12.3 Those individuals who are eligible for membership of the Trust by reason of the previous provisions are referred to collectively as the Service User and Carer Constituency.
- 12.4 An individual providing care in pursuance of a contract (including a contract of employment) with a voluntary organisation, or as a volunteer

for a voluntary organisation, does not come within the category of those who qualify for membership of the Service User and Carer Constituency.

12.5 Further provisions as to the circumstances in which an individual may not become or continue as a Service User Carer are set out in Annex 9.

12.6 The minimum number of members in the Service User and Carer Constituency is specified in Annex 3.

13. Restriction on membership

13.1 An individual who is a member of a constituency may not, while membership of that constituency continues, be a member of any other constituency.

13.2 An individual who satisfies the criteria for membership of both a Public Constituency and the Service User and Carer Constituency may choose whether they become a member of either a Public Constituency or the Service User and Carer Constituency.

13.3 An individual who is a member of the Service User and Carer Constituency and is eligible to become a member of a Public Constituency, may upon notice to the Trust Secretary of their termination of membership of the Service User and Carer Constituency, make an application to become a member of a Public Constituency.

13.4 An individual who is a member of a Public Constituency and is eligible to become a member of the Service User and Carer Constituency, may upon notice to the Trust Secretary of their termination of membership of a Public Constituency, make an application to become a member of the Service User and Carer Constituency.

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

13.6 An individual must be at least sixteen (16) years old to become a member of the Trust.

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

14. Annual Members' Meeting

14.1 The Trust shall hold an annual meeting of its members ('Annual Members' Meeting') within nine (9) months of the end of each Financial Year. The Annual Members' Meeting shall be open to members of the public.

14.2 Further provisions about the Annual Members' Meeting are set out in Annex 10 – Annual Members' Meeting.

15. Council of Governors – Composition

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

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

15.3 The members of the Council of Governors, other than the Appointed Governors, shall be chosen by election by their constituency. The number of Governors to be elected by each constituency is specified in Annex 4.

15.4 No person shall be eligible to be elected or appointed (as the case may be) a Governor in accordance with the terms of this Constitution unless at the date of their nomination for election or upon the date of their appointment they have attained the age of sixteen (16) years. Persons who are eligible under this paragraph 15.4 shall be eligible for appointment or election under the provisions of this paragraph 15.

15.5 Public Governors

15.5.1 Members of the Public Constituency may vote for any eligible member to be a Public Governor, subject to paragraphs 15.5.2 and 15.5.3 below.

15.5.2 A person shall not stand for election to the Council of Governors as a Public Governor unless he/she has made a declaration in a form specified by the Trust Secretary.

15.5.3 A Public Governor shall not vote at a Meeting of the Council of Governors unless within the previous twelve (12) months he/she has made, in a form specified by the Trust Secretary, a declaration of eligibility to vote.

15.5.4 The declarations required under 15.5.2 and 15.5.3 above and the equivalent provisions of the declaration required under rule 12 of Annex 5 are required by section 60 of the 2006 Act. It is a criminal offence knowingly or recklessly to make a declaration under section 60 of the 2006 Act which is false in a material particular.

15.6 Service User/Carer Governors

15.6.1 Members of the Service User and Carer Constituency may vote for any eligible member to be a Service User/Carer Governor, subject to paragraphs 15.6.2 and 15.6.3 below.

15.6.2 A person shall not stand for election to the Council of Governors as a Service User/Carer Governor unless he/she has made a declaration of eligibility in a form specified by the Trust Secretary.

15.6.3 A Service User Governor shall not vote at a Meeting of the Council of Governors unless within the previous twelve (12)

months he/she has made, in a form specified by the Trust Secretary, a declaration of eligibility to vote.

15.6.4 The declarations required under paragraphs 15.6.2 and 15.6.3 above and the equivalent provisions of the declaration required under rule 12 of Annex 5 are required by section 60 of the 2006 Act. It is a criminal offence knowingly or recklessly to make a declaration under section 60 of the 2006 Act which is false in a material particular.

15.7 Staff Governors

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

15.8 Appointed Governors

15.8.1 The following local authorities shall be entitled to appoint one (1) Local Authority Governor each:

- London Borough of Barnet
- London Borough of Camden
- London Borough of Enfield
- London Borough of Haringey
- London Borough of Islington

15.8.2 There shall be one (1) Appointed Governor appointed by each Partnership Organisation (as set out in Annex 4).

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

16. Council of Governors – election of Governors

16.1 Elections for elected members of the Council of Governors shall be conducted in accordance with the Model Election Rules on the basis of single transferable vote (STV) polling and the Model Election Rules shall be construed accordingly. .

16.2 The Model Election Rules as published from time to time by NHS Providers form part of this Constitution. A copy of the Model Election Rules as at the date of this Constitution is included at Annex 5 of this Constitution. References in the Model Election Rules to Monitor shall be construed as references to NHS England.

16.3 A subsequent variation of the Model Election Rules by NHS Providers shall not constitute a variation of the terms of this Constitution for the purposes of paragraph 49 of this Constitution (amendment of the Constitution).

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

17. Council of Governors - tenure

17.1 An Elected Governor may hold office for a term of three (3) years’.

17.2 An Elected Governor shall cease to hold office if he/she ceases to be a member of the constituency by which he/she was elected, or if they are disqualified for any of the reasons set out in this Constitution. For the avoidance of doubt, this includes a Public Governor moving their principal residence from one Public Constituency to another.

17.3 An Elected Governor shall be eligible for re-election at the end of his term for a further three-year term.

17.4 An Elected Governor may not hold office for more than nine (9) consecutive years, or three full terms of office.

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

17.6 An Appointed Governor may hold office for a period of three (3) years commencing from receipt of their formal nomination by their nominating Partnership Organisation.

17.7 An Appointed Governor shall cease to hold office if the nominating Partnership Organisation withdraws its sponsorship and the Trust has been notified that the sponsorship has been terminated.

17.8 An Appointed Governor shall be eligible for re-appointment at the end of his term for a further three-year term.

17.9 An Appointed Governor may not hold office for longer than nine (9) consecutive years, or three full terms of office.

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

17.11 For the purposes of this paragraph 17, concerning the term of office for Appointed Governors, a ‘year’ means a period commencing immediately after the conclusion of their election or appointment.

17.12 Any period of office before 1 October 2024 shall be disregarded for the purpose of calculating the number of consecutive years that a governor has held office.

18. Council of Governors – appointment of a Lead Governor

18.1 The Governors shall nominate one (1) of the Governors to be Lead Governor. The Lead Governor will communicate directly with NHS England in certain circumstances where it would not be appropriate for

the Chair to contact NHS England, or for NHS England to contact the Chair.

19. Council of Governors – disqualification and removal

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

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

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

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

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

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

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

19.4 The Constitution is to make provision for the removal of Governors.

20. Council of Governors – duties of Governors

20.1 The general duties of the Council of Governors are:

20.1.1 to hold the Non-Executive Directors individually and collectively to account for the performance of the Board of Directors; and

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

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

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

21. Council of Governors – meetings of Governors

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

- 21.2 The Chair of the Trust (i.e. the Chair of the Board of Directors, appointed in accordance with the provisions of paragraph 30.1) or, in their absence, the Deputy Chair (appointed in accordance with the provisions of paragraph 31.1 below), shall preside at meetings of the Council of Governors.
- 21.3 Meetings of the Council of Governors shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons, including, but not limited to, reasons of commercial confidentiality; and/or interference with or preventing the proper conduct of the meeting.
- 21.4 For the purposes of obtaining information about the Trust's performance of its functions or the Directors' performance of their duties (and deciding whether to propose a vote on the Trust's or Directors' performance), the Council of Governors may require one (1) or more of the Directors to attend a meeting.

22. Council of Governors – standing orders

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

23. Council of Governors – referral to NHS England

- 23.1 A Governor of an NHS Foundation Trust may refer a question to NHS England through the Lead Governor where he/she is concerned that the Trust has failed or is failing:

23.1.1 to act in accordance with its Constitution; or

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

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

24. Council of Governors - conflicts of interest of Governors

- 24.1 If a Governor has a pecuniary, personal or family interest, whether that interest is actual or potential and whether that interest is direct or indirect, in any proposed contract or other matter which is under consideration or is to be considered by the Council of Governors, the Governor shall disclose that interest to the members of the Council of Governors as soon as he/she becomes aware of it. The Standing Orders for the Council of Governors shall make provision for the disclosure of interests and arrangements for the exclusion of a Governor declaring any interest from any discussion or consideration of the matter in respect of which an interest has been disclosed.
- 24.2 Further provision for dealing with Governor conflicts of interest are set out in paragraph 6 of Annex 7 – standing orders for the practice and procedure of the Council of Governors.

25. Council of Governors – travel expenses

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

26. Council of Governors – further provisions

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

27. Board of Directors – composition

- 27.1 The Trust is to have a Board of Directors, which shall comprise both Executive and Non-Executive Directors, including the Chair. The Non-Executive Directors will always form the majority of the Board of Directors.
- 27.2 Subject to the requirements of paragraph 27.1 above, the Board of Directors is to comprise:
- 27.2.1 a Non-Executive Chair;
 - 27.2.2 not less than four (4) but no more than seven (7) other Non-Executive Directors; and
 - 27.2.3 not less than four (4) but no more than seven (7) Executive Directors.
- 27.3 One (1) of the Executive Directors shall be the Chief Executive.
- 27.4 The Chief Executive shall be the Accounting Officer.
- 27.5 One (1) of the Executive Directors shall be the Finance Director.
- 27.6 One (1) of the Executive Directors is to be a registered medical practitioner.
- 27.7 One (1) of the Executive Directors is to be a registered nurse.
- 27.8 The validity of any act of the Trust is not affected by any vacancy among the Directors or by any defect in the appointment of any Director.

28. Board of Directors – general duty

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

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

- 29.1 A person may be appointed as a Non-Executive Director only if:
- 29.1.1 he/she is a member of a Public Constituency; or

29.1.2 he/she is a member of the Service User and Carer Constituency;
or

29.1.3 where any of the Trust's hospitals includes a medical or dental school provided by a university, he/she exercises functions for the purposes of that university; and

29.1.4 he/she is not disqualified by virtue of paragraph 34 below.

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

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

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

30.3 Further provisions with respect to the appointment and removal of the Chair and other Non-Executive Directors are set out in paragraph 3 of Annex 8 – standing orders for the practice and procedure of the Board of Directors.

31. Board of Directors – appointment of Deputy Chair and Senior Independent Director

31.1 The Council of Governors at a general Meeting of the Council of Governors shall appoint one (1) of the Non-Executive Directors as a Deputy Chair.

31.2 If the Chair is unable to discharge his/her office as Chair of the Trust, the Deputy Chair of the Board of Directors shall be acting Chair of the Trust.

31.3 The Council of Governors at a Meeting of the Council of Governors shall appoint one (1) of the Non-Executive Directors (who may be the same person as appointed in paragraph 31.1) as Senior Independent Director.

31.4 The Governors may approach the Senior Independent Director with any queries if in the circumstances it is not appropriate to approach the Chair.

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

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

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

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

33. Board of Directors – tenure

- 33.1 A Non-Executive Director (including the Chair):
- 33.1.1 shall hold office for a period of up to three (3) years;
 - 33.1.2 shall be eligible for reappointment at the end of their term;
 - 33.1.3 may not hold office for longer than nine (9) consecutive years and shall not be eligible for re-appointment if he/she has already held office for more than six (6) consecutive years.
- 33.2 The Executive Directors including the Chief Executive (and Accounting Officer) and the finance Director shall hold office for a period in accordance with the terms and conditions of office decided by the relevant committee of Non-Executive Directors as set out in Annex 8 of this Constitution.

34. Board of Directors – disqualification

- 34.1 The following may not become or continue as a member of the Board of Directors:
- 34.1.1 a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;
 - 34.1.2 a person in relation to whom a moratorium period under a debt relief order applies (under part 7A of the Insolvency Act 1986);
 - 34.1.3 a person who has made a composition or arrangement with, or granted a Trust deed for, his creditors and has not been discharged in respect of it;
 - 34.1.4 a person who within the preceding five (5) years has been convicted anywhere in the world of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three (3) months (without the option of a fine) was imposed on him;
 - 34.1.5 in the case of a Non-Executive Director, a person who no longer satisfies the provisions of paragraph 29 of this Constitution;
 - 34.1.6 a person who is a member of Healthwatch;
 - 34.1.7 a person who is a spouse, partner, parent or child of a member of the Board of Directors of the Trust;
 - 34.1.8 a person who is a member of a local authority's Health Overview and Scrutiny Committee;
 - 34.1.9 a person who is the subject of a disqualification order made under the Company Directors Disqualification Act 1986;

- 34.1.10 a person whose tenure of office as a Chair or as a member or Director of an NHS body has been terminated on the grounds that their appointment is not in the interests of the health service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest;
- 34.1.11 a person who within the preceding five (5) years has been dismissed, otherwise than by reason of redundancy from any paid employment with an NHS body and not reinstated;
- 34.1.12 a person who is otherwise disqualified by law from acting as a Director of an NHS foundation trust;
- 34.1.13 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;
- 34.1.14 a person who fails to meet the requirements of the fit and proper person test set out in regulation 5 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014; or
- 34.1.15 a person who has refused to sign and deliver to the Trust Secretary a statement in the form required by the Board of Directors within one (1) calendar month of appointment confirming acceptance of the Code of Conduct for Directors.
- 34.2 Any person who is disqualified from becoming or continuing as a Director on any of the grounds as set out in this paragraph 34 shall immediately resign as a Director of the Trust or if they decline or fail to do so shall be removed immediately by the Board of Directors and a new Director appointed in their place in accordance with the provisions in this Constitution.

35. Board of Directors – meetings

- 35.1 Meetings of the Board of Directors shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons including, but not limited to, reasons of commercial confidentiality; and/or interference with or preventing proper conduct of the meeting.
- 35.2 Before holding a meeting, the Board of Directors must send a copy of the agenda of the meeting to the Council of Governors. As soon as practicable after holding a meeting, the Board of Directors must send a copy of the minutes of the meeting to the Council of Governors.

36. Board of Directors – standing orders

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

37. Board of Directors - conflicts of interest of Directors

- 37.1 The duties that a Director of the Trust has by virtue of being a Director include in particular:
- 37.1.1 a duty to avoid a situation in which the Director has (or can have) a direct or indirect interest that conflicts (or possibly may conflict) with the interests of the Trust; and
 - 37.1.2 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.
- 37.2 The duty referred to in paragraph 37.1.1 is not infringed if:
- 37.2.1 the situation cannot reasonably be regarded as likely to give rise to a conflict of interest; or
 - 37.2.2 the matter has been authorised in accordance with the Constitution.
- 37.3 The duty referred to in paragraph 37.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- 37.4 In sub-paragraph 37.1.2, “third party” means a person other than:
- 37.4.1 the Trust; or
 - 37.4.2 a person acting on its behalf.
- 37.5 Members of the Board of Directors shall disclose to the Board of Directors the nature and extent of any material interests whether direct or indirect (as defined below) held by a Director, their spouse or partner, which shall be recorded in the register of interests of the Directors.
- 37.6 A direct or indirect interest is:
- 37.6.1 any interest (excluding a holding of shares in a company whose shares are listed on any public exchange where the holding is less than 2% of the total shares in issue) or position held by a Director in any firm, company or business which has or is likely to have a trading or commercial relationship with the Trust;
 - 37.6.2 any interest in an organisation providing health and social care services to the national health service;
 - 37.6.3 a position of authority in a charity or voluntary organisation in the field of health and social care; or
 - 37.6.4 any connection with any organisation, entity or company considering entering into a financial arrangement with the Trust including but not limited to lenders or banks.

- 37.7 Any Director who has an interest either direct or indirect in a matter to be considered by the Board of Directors (whether because the matter involves a firm, company, business or organisation in which the Director or his/her spouse or partner has a direct or indirect interest or otherwise) shall declare the nature and extent of such interest to the Board of Directors and that Director is not to be counted as participating in the decision-making process for quorum or voting purposes.
- 37.8 If a declaration under this paragraph proves to be, or becomes, inaccurate or incomplete, a further declaration must be made.
- 37.9 Any declaration required by this paragraph must be made before the Trust enters into the transaction or arrangement.
- 37.10 This paragraph does not require a declaration of an interest of which the Director is not aware or where the Director is not aware of the transaction or arrangement in question.
- 37.11 A Director need not declare an interest:
- 37.11.1 if it cannot reasonably be regarded as likely to give rise to a conflict of interest;
 - 37.11.2 if, or to the extent that, the Directors are already aware of it;
 - 37.11.3 if, or to the extent that, it concerns terms of the Director's appointment that have been or are to be considered:
 - 37.11.3.1 by a Meeting of the Board of Directors; or
 - 37.11.3.2 by a committee of the Directors appointed for the purpose under this Constitution.
- 37.12 However, if paragraph 37.14 applies, a Director who is interested in an actual or proposed matter to be considered by the Board of Directors is to be counted as participating in the decision making process for quorum and voting purposes.
- 37.13 A matter shall have been authorised for the purposes of paragraph 37.13 if:
- 37.13.1 the Board of Directors by majority disapplies the provision of the Constitution which would otherwise prevent a Director from being counted as participating in the decision-making process;
 - 37.13.2 the Director's interest cannot reasonably be regarded as likely to give rise to a conflict of interest; or
 - 37.13.3 the Director's conflict of interest arises from a permitted cause.
- 37.13.4 For the purposes of paragraph 37.13.3, the following is a permitted cause:

37.13.4.1 a guarantee given, or to be given, by or to a Director in respect of an obligation incurred by or on behalf of the Trust or any of its subsidiaries.

37.13.4.2 for the purposes of this paragraph, references to proposed decisions and decision-making processes include any Directors' meeting or part of a Directors' meeting.

37.14 Subject to paragraph 37.15, if a question arises at a meeting of Directors or of a committee of Directors as to the right of a Director to participate in the meeting (or part of the meeting) for voting or quorum purposes, the question may, before the conclusion of the meeting, be referred to the Chair whose ruling in relation to any Director other than the Chair is to be final and conclusive.

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

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

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

38. Board of Directors – remuneration and terms of office

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

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

39. Registers

39.1 The Trust shall have:

39.1.1 a register of members showing, in respect of each member, the constituency to which he/she belongs;

39.1.2 a register of members of the Council 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.

40. Admission to and removal from the registers

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

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

40.3 The Trust Secretary shall remove from the register of Directors the name of any Director who ceases to be to be a Director under the provisions of this Constitution and shall notify NHS England.

41. Registers – inspection and copies

41.1 The 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.

41.2 The Trust shall not make any part of its registers available for inspection by members of the public which shows details of:

41.2.1 any member of the Service User and Carer Constituency, where that member has not consented to his details being made so available; or

41.2.2 any other member of the Trust, if he so requests.

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

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

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

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

42. Documents available for public inspection

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

42.1.1 a copy of the current Constitution;

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

- 42.1.3 a copy of the latest annual report.
- 42.2 The Trust shall also make the following documents relating to a special administration of the Trust available for inspection by members of the public free of charge at all reasonable times:
- 42.2.1 a copy of any order made under section 65D (appointment of Trust special administrator); 65J (power to extend time); 65KC (action following Secretary of State's rejection of final report); 65L (Trusts coming out of administration); or 65LA (Trusts to be dissolved) of the 2006 Act;
 - 42.2.2 a copy of any report laid under section 65D (appointment of Trust special administrator) of the 2006 Act;
 - 42.2.3 a copy of any information published under section 65D (appointment of Trust special administrator) of the 2006 Act;
 - 42.2.4 a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act;
 - 42.2.5 a copy of any statement provided under section 65F (administrator's draft report) of the 2006 Act;
 - 42.2.6 a copy of any notice published under section 65F (administrator's draft report); 65G (consultation plan); 65H (consultation requirements); 65J (power to extend time); 65KA (NHS England's decision), 65KB (Secretary of State's response to NHS England's decision), 65KC (action following Secretary of State's rejection of final report); or 65KD (Secretary of State's response to re-submitted final report) of the 2006 Act;
 - 42.2.7 a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act;
 - 42.2.8 a copy of any final report published under section 65I (administrator's final report);
 - 42.2.9 a copy of any statement published under section 65J (power to extend time); or 65KC (action following Secretary of State's rejection of final report) of the 2006 Act; and
 - 42.2.10 a copy of any information published under section 65M (replacement of Trust special administrator) of the 2006 Act.
- 42.3 Any person who requests a copy of or extract from any of the above documents is to be provided with a copy.
- 42.4 If the person requesting a copy or extract is not a member of the Trust, the Trust may impose a reasonable charge for doing so.

43. Auditor

- 43.1 The Trust shall have an Auditor.

- 43.2 The Council of Governors shall appoint or remove the Auditor at a general Meeting of the Council of Governors.
- 43.3 A person may only be appointed as the Auditor if they (or in the case of a firm, each of its members) are eligible to become an Auditor in accordance with paragraph 23 of Schedule 7 to the 2006 Act.
- 43.4 The Auditor is to carry out its duties in accordance with Schedule 10 of the 2006 Act and in accordance with any directions given by NHSE on standards, procedures and techniques to be adopted.

44. Audit & Risk Committee

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

45. Accounts

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

46. Annual report, forward plans and non-NHS work

- 46.1 The Trust shall prepare an annual report and send it to NHS England.
- 46.2 Each Annual Report must, in particular, review the extent to which the Trust has exercised its functions:
- 46.2.1 in accordance with the plans published under:
- 46.2.1.1 section 14Z52 of the 2006 Act;
- 46.2.1.2 section 14Z56 of the 2006 Act
- 46.2.2 consistently with NHS England's views set out in the latest statement published under section 13SA(1)

- 46.3 Each Annual Report shall provide:
- 46.3.1 information on any steps taken by the Trust to secure that (taken as a whole) the actual membership of its public constituencies and the classes of the staff constituency is representative of those eligible for such membership;
 - 46.3.2 information on any occasions in the period to which the report relates on which the Council of Governors exercised its powers under paragraph 21.4;
 - 46.3.3 information on the Foundation Trust's policy on pay and on the work of the committee established under paragraph 38.2 and such other procedures as the Trust has on pay;
 - 46.3.4 information on the remuneration of the directors and on the expenses of the governors and the directors; and
 - 46.3.5 any other information NHS England requires.
- 46.4 The Trust is to comply with any decision NHS England makes as to:
- 46.4.1 the form of the report;
 - 46.4.2 when the report are to be sent to it;
 - 46.4.3 the periods to which the report relates.
- 46.5 The Trust shall give information as to its forward planning in respect of each Financial Year to NHS England.
- 46.6 The document containing the information with respect to forward planning (referred to above) shall be prepared by the Directors.
- 46.7 In preparing the document, the Directors shall have regard to the views of the Council of Governors.
- 46.8 Each forward plan must include information about:
- 46.8.1 the activities other than the provision of goods and services for the purposes of the health service in England that the Trust proposes to carry on; and
 - 46.8.2 the income it expects to receive from doing so.
- 46.9 Where a forward plan contains a proposal that the Trust carry on an activity of a kind mentioned in sub-paragraph 46.8.1 the Council of Governors must:
- 46.9.1 determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfilment by the Trust of its principal purpose or the performance of its other functions; and

46.9.2 notify the Directors of the Trust of its determination.

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

47. Presentation of the annual accounts and reports to the Governors and members

- 47.1 The following documents are to be presented to the Council of Governors at a general meeting of the Council of Governors and at the Trust's Annual Members meeting:

47.1.1 the Trust's annual accounts;

47.1.2 any report of the Auditor on them; and

47.1.3 the Trust's Annual Report.

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

- 47.3 The Trust may combine a Meeting of the Council of Governors convened for the purposes of paragraph 47.1 with the Annual Members' Meeting.

48. Instruments

- 48.1 The Trust shall have a seal.

- 48.2 The seal shall not be affixed except under the authority of the Board of Directors. Attestation by any two Directors shall be deemed to constitute affixing the seal under the authority of the Board of Directors.

49. Amendment of the Constitution

- 49.1 The Trust may make amendments of its Constitution only if:

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

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

- 49.2 Amendments made under paragraph 49.1 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.

- 49.3 Where an amendment is made to the Constitution in relation the powers or duties of the Council of Governors (or otherwise with respect to the role that the Council of Governors has as part of the Trust):
- 49.3.1 at least one (1) member of the Council of Governors must attend the next Annual Members' Meeting and present the amendment; and
- 49.3.2 the Trust must give the members an opportunity to vote on whether they approve the amendment.
- 49.4 If more than half of the members voting approve the amendment, the amendment continues to have effect; otherwise, it ceases to have effect and the Trust must take such steps as are necessary as a result.
- 49.5 Amendments by the Trust of its Constitution are to be notified to NHSE. For the avoidance of doubt, NHSE's functions do not include a power or duty to determine whether or not the Constitution, as a result of the amendments, accords with Schedule 7 of the 2006 Act.

50. Mergers etc. and significant transactions

- 50.1 The Trust may only apply for a Statutory Transaction with the approval of more than half of the members of the Council of Governors.
- 50.2 The Trust may enter into a significant transaction only if more than half of the members of the Council of Governors of the Trust voting approve entering into the transaction.
- 50.3 In paragraph 50.2, the following words have the following meanings:
- 50.4 "Significant transaction" means a transaction which meets any one (1) of the below criteria:
- 50.4.1 the total of the fixed assets and current assets subject to the transaction represents more than 25% of the value of the total fixed assets and current assets of the Trust; and/or
- 50.4.2 the increase in income attributable to:
- 50.4.2.1 the assets; or
- 50.4.2.2 the contract,
- associated with the transaction represents more than 25% of the value of the Trust's income; and/or
- 50.4.3 the gross capital of the company or business which is the subject of the transaction represents more than 25% of the total capital of the Trust following completion (where gross capital is the market value of the relevant company or business's shares and debt securities, plus the excess of current liabilities over current assets).

50.5 For the purposes of paragraph 50.2 a Statutory Transaction is not a significant transaction.

51. Procedures and protocols

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

52. Indemnity

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

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

THE PUBLIC CONSTITUENCIES

There shall be six (6) Public Constituencies. Members of the public shall be eligible for membership of the Public Constituencies as shown in the table below:

Public Constituency:	Electoral area:	Minimum number of members:
London Borough of Camden	All twenty (20) electoral wards in the London Borough of Camden	10
London Borough of Islington	All 16 electoral wards in the London Borough of Islington	10
London Borough of Barnet	All 24 electoral wards in the London Borough of Barnet	10
London Borough of Enfield	All 25 electoral wards in the London Borough of Enfield	10
London Borough of Haringey	All 21 electoral wards in the London Borough of Haringey	10
Rest of London	All electoral wards within the City of London and the remaining twenty seven principal subdivisions of the administrative area of Greater London each governed by a London borough council, established by the London Government Act 1963.	5
Total		55

THE STAFF CONSTITUENCY

Constituency:	Description:	Minimum number of members:
Staff	Individuals who are employed by the Trust under a contract of employment which has no fixed term or has a fixed term of more than twelve (12) months; or have been continuously employed by the Trust under a contract of employment for at least twelve (12) months.	100
Total		100

THE SERVICE USER AND CARER CONSTITUENCY

Constituency:	Description:	Minimum number of members:
Service User and Carer	An individual who has been a Service User of the Trust within the last five (5) years at the point of application for membership (in accordance with paragraph 12.2) or is over the age of sixteen (16) and provides care on a regular basis for a Service User who has not attained the age of sixteen (16) or who is by reason of physical or mental incapacity unable to discharge the functions of a member.	10
Total		10

COMPOSITION OF THE COUNCIL OF GOVERNORS

The Council of Governors shall comprise twenty-six (26) Governors as set out in the tables below:

1. Elected Governors

Constituency:	Area:	Number of Governors:
Public	London Borough of Camden	2
	London Borough of Islington	2
	London Borough of Barnet	2
	London Borough of Enfield	2
	London Borough of Haringey	2
	Rest of London	1
Staff	All staff	4
Service User	All Service Users and Service User Carers	6
Total		21

2. Appointed Governors

Nominated by:	Number of Governors:
Local Authority - Camden	1
Local Authority - Islington	1
Local Authority - Barnet	1
Local Authority - Enfield	1
Local Authority - Haringey	1
University College London Medical College	1
North Central London Voluntary, Community and Social Enterprise Alliance	1
Metropolitan Police	1
Total	8

MODEL ELECTION RULES (2014)

(Paragraph 16.2)

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PART 1: INTERPRETATION

1. Interpretation

1.1 In these rules, unless the context otherwise requires: “2006 Act” means the National Health Service Act 2006;

“*corporation*” means the public benefit corporation subject to this constitution; “*council of governors*” means the council of governors of the corporation; “*declaration of identity*” has the meaning set out in rule 21.1;

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

“*e-voting*” means voting using either the internet, telephone or text message; “*e-voting information*” has the meaning set out in rule 24.2;

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

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

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

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

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

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

“*numerical voting code*” has the meaning set out in rule 64.2(b) “*polling website*” has the meaning set out in rule 26.1;

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

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

“telephone voting facility” has the meaning set out in rule 26.2; *“telephone voting record”* has the meaning set out in rule 26.5 (d); *“text message voting facility”* has the meaning set out in rule 26.3; *“text voting record”* has the meaning set out in rule 26.6 (d);

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

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

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

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

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

PART 2: TIMETABLE FOR ELECTIONS

2. Timetable

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

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

3. Computation of time

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

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

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

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

PART 3: RETURNING OFFICER

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.

8. Notice of election

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

9. Nomination of candidates

- 9.1 Subject to rule 9.2, each candidate must nominate themselves on a single nomination form.
- 9.2 The returning officer:
- (a) is to supply any member of the corporation with a nomination form, and
 - (b) is to prepare a nomination form for signature at the request of any member of the corporation,
- but it is not necessary for a nomination to be on a form supplied by the returning officer and a nomination can, subject to rule 13, be in an electronic format.

10. Candidate's particulars

- 10.1 The nomination form must state the candidate's:
- (a) full name,
 - (b) contact address in full (which should be a postal address although an e-mail address may also be provided for the purposes of electronic communication), and

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

11. Declaration of interests

11.1 The nomination form must state:

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

12. Declaration of eligibility

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

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

13. Signature of candidate

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

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

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

14. Decisions as to the validity of nomination

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

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

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

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

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

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

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

15. Publication of statement of candidates

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

15.2 The statement must show:

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

standing, as given in their nomination form.

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

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

16. Inspection of statement of nominated candidates and nomination forms

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

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

17. Withdrawal of candidates

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

18. Method of election

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

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

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

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

(b) the returning officer is to order a new election to fill any vacancy

which remains unfilled, on a day appointed by him or her in consultation with the corporation.

PART 5: CONTESTED ELECTIONS

19. Poll to be taken by ballot

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

20. The ballot paper

- 20.1 The ballot of each voter (other than a voter who casts his or her ballot by an e- voting method of polling) is to consist of a ballot paper with the persons remaining validly nominated for an election after any withdrawals under these rules, and no others, inserted in the paper.

20.2

Every ballot paper must specify:

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

20.3

Each ballot paper must have a unique identifier.

20.4

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

21.

The declaration of identity (public and patient constituencies)

21.1

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

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

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

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

Action to be taken before the poll

22. List of eligible voters

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

23. Notice of poll

- 23.1 The returning officer is to publish a notice of the poll stating:
- (a) the name of the corporation,
 - (b) the constituency, or class within a constituency, for which the election is being held,
 - (c) the number of members of the council of governors to be elected from that constituency, or class with that constituency,
 - (d) the names, contact addresses, and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
 - (e) that the ballot papers for the election are to be issued and returned, if appropriate, by post,
 - (f) the methods of polling by which votes may be cast at the election by voters in a constituency or class within a constituency, as determined by the corporation in accordance with rule 19.3,
 - (g) the address for return of the ballot papers,

- (h) the uniform resource locator (URL) where, if internet voting is a method of polling, the polling website is located;
- (i) the telephone number where, if telephone voting is a method of polling, the telephone voting facility is located,
- (j) the telephone number or telephone short code where, if text message voting is a method of polling, the text message voting facility is located,
- (k) the date and time of the close of the poll,
- (l) the address and final dates for applications for replacement voting information, and
- (m) the contact details of the returning officer.

24. Issue of voting information by returning officer

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

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

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

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

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

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

- (c) be sent both postal voting information and e-voting information;

for the purposes of the poll.

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

25. Ballot paper envelope and covering envelope

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

26. E-voting systems

- 26.1 If internet voting is a method of polling for the relevant election, then the returning officer must provide a website for the purpose of voting over the internet (in these rules referred to as "the polling website").
- 26.2 If telephone voting is a method of polling for the relevant election then the returning officer must provide an automated telephone system for the purpose of voting by the use of a touch-tone telephone (in these rules referred to as "the telephone voting facility").
- 26.3 If text message voting is a method of polling for the relevant election, then the returning officer must provide an automated text messaging system for the purpose of voting by text message (in these rules referred to as "the text message voting facility").
- 26.4 The returning officer shall ensure that the polling website and internet voting system provided will:

- (a) require a voter to:
 - (i) enter his or her voter ID number; and
 - (ii) where the election is for a public or patient constituency, make a declaration of identity;
 in order to be able to cast his or her vote;
- (b) specify:
 - (i) the name of the corporation,
 - (ii) the constituency, or class within a constituency, for which the election is being held,
 - (iii) the number of members of the council of governors to be elected from that constituency, or class within that constituency,
 - (iv) the names and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
 - (v) instructions on how to vote and how to make a declaration of identity,
 - (vi) the date and time of the close of the poll, and
 - (vii) the contact details of the returning officer;
- (c) prevent a voter from voting for more candidates than he or she is entitled to at the election;
- (d) create a record ("internet voting record") that is stored in the internet voting system in respect of each vote cast by a voter using the internet that comprises of-
 - (i) the voter's voter ID number;
 - (ii) the voter's declaration of identity (where required);
 - (iii) the candidate or candidates for whom the voter has voted; and
 - (iv) the date and time of the voter's vote,
- (e) if the voter's vote has been duly cast and recorded, provide the voter with confirmation of this; and
- (f) prevent any voter from voting after the close of poll.

26.5

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

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

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

26.6

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

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

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

The poll

27. Eligibility to vote

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

28. Voting by persons who require assistance

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

29. Spoilt ballot papers and spoilt text message votes

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

that it cannot be accepted as a vote (referred to as a “spoilt text message vote”), that voter may apply to the returning officer for a replacement voter ID number.

- 29.6 On receiving an application, the returning officer is to obtain the details of the voter ID number on the spoilt text message vote, if he or she can obtain it.
- 29.7 The returning officer may not issue a replacement voter ID number in respect of a spoilt text message vote unless he or she is satisfied as to the voter’s identity.
- 29.8 After issuing a replacement voter ID number in respect of a spoilt text message vote, the returning officer shall enter in a list (“the list of spoilt text message votes”):
- (a) the name of the voter, and
 - (b) the details of the voter ID number on the spoilt text message vote (if that officer was able to obtain it), and
 - (c) the details of the replacement voter ID number issued to the voter.

30. Lost voting information

- 30.1 Where a voter has not received his or her voting information by the tenth day before the close of the poll, that voter may apply to the returning officer for replacement voting information.
- 30.2 The returning officer may not issue replacement voting information in respect of lost voting information unless he or she:
- (a) is satisfied as to the voter’s identity,
 - (b) has no reason to doubt that the voter did not receive the original voting information,
 - (c) has ensured that no declaration of identity, if required, has been returned.
- 30.3 After issuing replacement voting information in respect of lost voting information, the returning officer shall enter in a list (“the list of lost ballot documents”):
- (a) the name of the voter
 - (b) the details of the unique identifier of the replacement ballot paper, if applicable, and
 - (c) the voter ID number of the voter.

31. Issue of replacement voting information

- 31.1 If a person applies for replacement voting information under rule 29 or 30 and a declaration of identity has already been received by the returning officer in the name of that voter, the returning officer may not issue replacement voting information unless, in addition to the requirements imposed by rule 29.3 or 30.2, he or she is also satisfied that that person has not already voted in the election, notwithstanding the fact that a declaration of identity if required has already been received by the returning officer in the name of that voter.
- 31.2 After issuing replacement voting information under this rule, the returning officer shall enter in a list ("the list of tendered voting information"):
- (a) the name of the voter,
 - (b) the unique identifier of any replacement ballot paper issued under this rule;
 - (c) the voter ID number of the voter.

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

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

Polling by internet, telephone or text

33. Procedure for remote voting by internet

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

34. Voting procedure for remote voting by telephone

- 34.1 To cast his or her vote by telephone, the voter will need to gain access

to the telephone voting facility by calling the designated telephone number provided in the voter information using a telephone with a touch-tone keypad.

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

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

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

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

36. **Receipt of voting documents**

- 36.1 Where the returning officer receives:
 - (a) a covering envelope, or
 - (b) any other envelope containing an ID declaration form if required, a ballot paper envelope, or a ballot paper,

before the close of the poll, that officer is to open it as soon as is practicable; and rules 37 and 38 are to apply.
- 36.2 The returning officer may open any covering envelope or any ballot paper envelope for the purposes of rules 37 and 38, but must make arrangements to ensure that no person obtains or communicates information as to:
 - (a) the candidate for whom a voter has voted, or
 - (b) the unique identifier on a ballot paper.

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

37. Validity of votes

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

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

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

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

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

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

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

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

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

38. Declaration of identity but no ballot paper (public and patient constituency)¹

¹ It should not be possible, technically, to make a declaration of identity electronically without also submitting a vote

- 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
 - (e) disregard the ballot paper when counting the votes in accordance with these rules.
- 39.4 Where an internet voting record, telephone voting record or text voting record is disqualified under this rule the returning officer shall:
- (a) mark the internet voting record, telephone voting record or text voting record (as applicable) “disqualified”,
 - (b) record the voter ID number on the internet voting record, telephone voting record or text voting record (as applicable) in the list of disqualified documents;
 - (c) place the internet voting record, telephone voting record or text voting record (as applicable) in a separate packet, and
 - (d) disregard the internet voting record, telephone voting record or text voting record (as applicable) when counting the votes in accordance with these rules.

40. Sealing of packets

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

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

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

PART 6: COUNTING THE VOTES

STV41. Interpretation of Part 6

STV41.1 In Part 6 of these rules:

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

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

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

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

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

transferable vote” means a ballot document:

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

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

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

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

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

“*stage of the count*” means:

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

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

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

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

42. Arrangements for counting of the votes

- 42.1 The returning officer is to make arrangements for counting the votes as soon as is practicable after the close of the poll.
- 42.2 The returning officer may make arrangements for any votes to be counted using vote counting software where:
 - (a) the board of directors and the council of governors of the corporation have approved:
 - (i) the use of such software for the purpose of counting votes in the relevant election, and
 - (ii) a policy governing the use of such software, and
 - (b) the corporation and the returning officer are satisfied that the use of such software will produce an accurate result.

43. The count

- 43.1 The returning officer is to:
 - (a) count and record the number of:
 - (iii) ballot papers that have been returned; and

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

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

ID number on an internet voting record, telephone voting record or text voting record.

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

STV44. Rejected ballot papers and rejected text voting records

STV44.1 Any ballot paper:

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

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

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

STV44.3 Any text voting record:

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

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

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

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

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

FPP44. Rejected ballot papers and rejected text voting records

FPP44.1 Any ballot paper:

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

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

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

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

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

is not to be rejected for such reason (either wholly or in respect of that vote) if an intention that the vote shall be for one or other of the candidates clearly

appears, and the way the paper is marked does not itself identify the voter and it is not shown that he or she can be identified by it.

FPP44.4 The returning officer is to:

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

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

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

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

FPP44.6 Any text voting record:

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

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

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

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

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

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

FPP44.9 The returning officer is to:

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

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

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

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

STV45. First stage

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

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

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

STV46. The quota

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

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

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

STV47. Transfer of votes

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

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

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

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

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

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

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

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

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

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

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

whichever is the less.

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

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

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

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

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

STV48. [Supplementary provisions on transfer](#)

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

- (a) The surpluses determined in respect of two or more candidates are equal, the transferable ballot documents of the candidate who had the

highest recorded vote at the earliest preceding stage at which they had unequal votes shall be transferred first, and

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

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

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

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

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

STV49. Exclusion of candidates

STV49.1 If:

- (a) all transferable ballot documents which under the provisions of rule STV47 (including that rule as applied by rule STV49.11) and this rule are required to be transferred, have been transferred, and

(b) subject to rule STV50, one or more vacancies remain to be filled,

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

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

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

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

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

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

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

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

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

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

FPP52. Declaration of result for contested elections

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

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

FPP52.2 The returning officer is to make:

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

available on request.

STV52. Declaration of result for contested elections

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

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

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

STV52.2 The returning officer is to make:

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

available on request.

53. Declaration of result for uncontested elections

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

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

PART 8: DISPOSAL OF DOCUMENTS

54. Sealing up of documents relating to the poll

- 54.1 On completion of the counting at a contested election, the returning officer is to seal up the following documents in separate packets:
- (a) the counted ballot papers, internet voting records, telephone voting records and text voting records,
 - (b) the ballot papers and text voting records endorsed with “rejected in part”,
 - (c) the rejected ballot papers and text voting records, and
 - (d) the statement of rejected ballot papers and the statement of rejected text voting records, and ensure that complete electronic copies of the internet voting records, telephone voting records and text voting records created in accordance with rule 26 are held in a device suitable for the purpose of storage.
- 54.2 The returning officer must not open the sealed packets of:
- (a) the disqualified documents, with the list of disqualified documents inside it,
 - (b) the list of spoilt ballot papers and the list of spoilt text message votes,
 - (c) the list of lost ballot documents, and
 - (d) the list of eligible voters,
- or access the complete electronic copies of the internet voting records, telephone voting records and text voting records created in accordance with rule 26 and held in a device suitable for the purpose of storage.
- 54.3 The returning officer must endorse on each packet a description of:
- (a) its contents,
 - (b) the date of the publication of notice of the election,
 - (c) the name of the corporation to which the election relates, and
 - (d) the constituency, or class within a constituency, to which the election relates.

55. Delivery of documents

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

the corporation.

56. Forwarding of documents received after close of the poll

56.1 Where:

- (a) any voting documents are received by the returning officer after the close of the poll, or
- (b) any envelopes addressed to eligible voters are returned as undelivered too late to be resent, or
- (c) any applications for replacement voting information are made too late to enable new voting information to be issued, the returning officer is to put them in a separate packet, seal it up, and endorse and forward it to the chairman of the corporation.

57. Retention and public inspection of documents

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

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

58.1 The corporation may not allow:

- (a) the inspection of, or the opening of any sealed packet containing –
 - (i) any rejected ballot papers, including ballot papers rejected in part,
 - (ii) any rejected text voting records, including text voting records rejected in part,
 - (iii) any disqualified documents, or the list of disqualified documents,
 - (iv) any counted ballot papers, internet voting records, telephone voting records or text voting records, or
 - (v) the list of eligible voters, or
- (b) access to or the inspection of the complete electronic copies of the

internet voting records, telephone voting records and text voting records created in accordance with rule 26 and held in a device suitable for the purpose of storage, by any person without the consent of the board of directors of the corporation.

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

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

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

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

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

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

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

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

PART 9: DEATH OF A CANDIDATE DURING A CONTESTED ELECTION

FPP59. Countermand or abandonment of poll on death of candidate

- FPP59.1 If at a contested election, proof is given to the returning officer's satisfaction before the result of the election is declared that one of the persons named or to be named as a candidate has died, then the returning officer is to:
- (a) countermand notice of the poll, or, if voting information has been issued, direct that the poll be abandoned within that constituency or class, and
 - (b) order a new election, on a date to be appointed by him or her in consultation with the corporation, within the period of 40 days, computed in accordance with rule 3 of these rules, beginning with the day that the poll was countermanded or abandoned.
- FPP59.2 Where a new election is ordered under rule FPP59.1, no fresh nomination is necessary for any candidate who was validly nominated for the election where the poll was countermanded or abandoned but further candidates shall be invited for that constituency or class.
- FPP59.3 Where a poll is abandoned under rule FPP59.1(a), rules FPP59.4 to FPP59.7 are to apply.
- FPP59.4 The returning officer shall not take any step or further step to open envelopes or deal with their contents in accordance with rules 38 and 39, and is to make up separate sealed packets in accordance with rule 40.
- FPP59.5 The returning officer is to:
- (a) count and record the number of ballot papers, internet voting records, telephone voting records and text voting records that have been received,
 - (b) seal up the ballot papers, internet voting records, telephone voting records and text voting records into packets, along with the records of the number of ballot papers, internet voting records, telephone voting records and text voting records and
- ensure that complete electronic copies of the internet voting records telephone voting records and text voting records created in accordance with rule 26 are held in a device suitable for the purpose of storage.
- FPP59.6 The returning officer is to endorse on each packet a description of:
- (a) its contents,

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

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

STV59. Countermand or abandonment of poll on death of candidate

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

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

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

PART 10: ELECTION EXPENSES AND PUBLICITY

Election expenses

60. Election expenses

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

61. Expenses and payments by candidates

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

62. Election expenses incurred by other persons

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

Publicity

63. Publicity about election by the corporation

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

- 63.2 Any information provided by the corporation about the candidates, including information compiled by the corporation under rule 64, must be:
- (a) objective, balanced and fair,
 - (b) equivalent in size and content for all candidates,
 - (c) compiled and distributed in consultation with all of the candidates standing for election, and
 - (d) must not seek to promote or procure the election of a specific candidate or candidates, at the expense of the electoral prospects of one or more other candidates.

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

64. Information about candidates for inclusion with voting information

- 64.1 The corporation must compile information about the candidates standing for election, to be distributed by the returning officer pursuant to rule 24 of these rules.
- 64.2 The information must consist of:
- (a) a statement submitted by the candidate of no more than 250 words,
 - (b) if voting by telephone or text message is a method of polling for the election, the numerical voting code allocated by the returning officer to each candidate, for the purpose of recording votes using the telephone voting facility or the text message voting facility (“numerical voting code”), and
 - (c) a photograph of the candidate.

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

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

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

PART 11: QUESTIONING ELECTIONS AND THE CONSEQUENCE OF IRREGULARITIES

66. Application to question an election

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

PART 12: MISCELLANEOUS

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.

ADDITIONAL PROVISIONS – COUNCIL OF GOVERNORS

1. Council of Governors – disqualification and removal

- 1.1. A person may not become or continue as a Governor, if:
- 1.1.1. in the case of a Staff Governor, Service User/Carer Governor or Public Governor the person ceases to be a member of the constituency by which he/she was elected;
 - 1.1.2. NHSE has exercised its powers to remove that person as a Governor or has suspended him/her from office or has disqualified him/her from holding office as a Governor for a specified period or NHSE has exercised any of those powers in relation to the person concerned at any other time whether in relation to the Trust or another NHS foundation trust;
 - 1.1.3. they are a Director of the Trust or a Governor or Director of another NHS body (unless they are appointed by Partnership Organisation which is an NHS body);
 - 1.1.4. they are the spouse, partner, parent or child of a member of the Board of Directors of the Trust;
 - 1.1.5. they are a member of a local authority's Health Overview and Scrutiny Committee;
 - 1.1.6. they have been previously removed as a Governor pursuant to this paragraph 1 of Annex 6 or as a governor of another NHS foundation trust as a result of their inappropriate conduct and not in view of their employment or other status or role at any relevant time;
 - 1.1.7. being a member of the Public Constituency or the Service Users' Constituency, they refuse to sign a declaration in the form specified by the Trust Secretary of particulars of their qualification to vote as a member of the Trust, and that they are not prevented from being a Governor;
 - 1.1.8. they have previously been or are currently subject to a sex offender order and/or required to register under the Sexual Offences Act 2003 or have committed a sexual offence prior to the requirements to register under current legislation coming into force;
 - 1.1.9. they have within the preceding five (5) years been dismissed, otherwise than by reason of redundancy, from any paid employment with an NHS body and not reinstated;
 - 1.1.10. they have been disqualified from being a member of a relevant authority under a provision of the Local Government Act 2000;

- 1.1.11. they are a person whose tenure of office as the Chair or as a member or director of another NHS body has been terminated on the grounds that their appointment is not in the interests of the health service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest;
 - 1.1.12. they are incapable by reason of mental disorder, illness or injury of managing and administering their property and affairs;
 - 1.1.13. on the basis of disclosures obtained through an application to the Disclosure and Barring Service established under section 87 of the Protection of Freedoms Act 2012 (or any other checks required by the Trust from time to time as being consistent with its licence conditions or mandatory or nationally recommended good governance arrangements), they are not considered suitable by the Chief Executive;
 - 1.1.14. they have been suspended, and during such period of suspension that Governor's term of office is due to expire; and/or
 - 1.1.15. they have been suspended, and prior to any investigation being carried out and/or concluded, they have resigned.
- 1.2. A person holding office as a Governor shall immediately cease to do so if:
- 1.2.1. they resign by notice in writing to the Trust Secretary;
 - 1.2.2. they have failed to attend three (3) consecutive meetings of the Council of Governors, and by the end of the following Meeting of the Council of Governors the other Governors are not satisfied that the absences were due to reasonable causes;
 - 1.2.3. they have refused without reasonable cause to undertake any training which the Council of Governors or the Trust require all Governors to undertake;
 - 1.2.4. they have not signed and delivered a statement in the form required by the Trust Secretary confirming acceptance of the Code of Conduct for Governors within a reasonable period of being elected or appointed as the Trust Secretary may in his/her absolute discretion determine; and/or
 - 1.2.5. they have failed or refused to make any declaration required by paragraph 15 of this Constitution and paragraph 5 of Annex 7.
 - 1.2.6. the Chair determines that it would not be in the best interests of the Trust for them to continue as a Governor, as their continuing as a Governor would be likely to:
 - 1.2.6.1. contravene the Code of Conduct for Governors;

- 1.2.6.2. prejudice the ability of the Trust to fulfil its principal purpose or other of its purposes under this Constitution or otherwise to discharge its duties or functions;
 - 1.2.6.3. harm the Trust's work with other persons or bodies with whom it is engaged or may be engaged in the provision of goods and services;
 - 1.2.6.4. adversely affect public confidence in the goods and services provided by the Trust; and/or
 - 1.2.6.5. otherwise bring the Trust into disrepute.
- 1.3. It is for the Chair to determine in his/her absolute discretion as to whether a Governor falls into one of the categories for disqualification referred to in paragraphs 1.1 – 1.2 above.
- 1.4. In addition to the circumstances in which a Governor may be removed by the Chair in the circumstances set out in paragraphs 1.1 to 1.3, a Governor may be removed from the Council of Governors by a resolution approved by not less than three-quarters of the remaining Governors present and voting on the grounds that:
 - 1.4.1. they have committed a serious breach of the Code of Conduct for Governors;
 - 1.4.2. they have knowingly or recklessly made a false declaration for any purpose provided for under this Constitution or in the 2006 Act;
 - 1.4.3. they have acted in a manner detrimental to the interests of the Trust; and/or
 - 1.4.4. the Council of Governors consider that it is not in the best interests of the Trust for them to continue as a Governor, as their continuing as a Governor would be likely to:
 - 1.4.4.1. contravene the Code of Conduct for Governors;
 - 1.4.4.2. prejudice the ability of the Trust to fulfil its principal purpose or other of its purposes under this Constitution or otherwise to discharge its duties or functions;
 - 1.4.4.3. harm the Trust's work with other persons or bodies with whom it is engaged or may be engaged in the provision of goods and services;
 - 1.4.4.4. adversely affect public confidence in the goods and services provided by the Trust; and/or
 - 1.4.4.5. otherwise bring the Trust into disrepute.

- 1.5. The provisions of this paragraph 1 of Annex 6 and paragraph 19 of this Constitution applies to both Elected and Appointed Governors and to those seeking election or appointment.
- 1.6. Where an individual has been elected or appointed to be a Governor and he/she becomes disqualified for election or appointment, he/she shall notify the Trust Secretary in writing of such disqualification as soon as practicable and in any event within fourteen (14) days of first becoming aware of those matters which render him/her disqualified.
- 1.7. If it comes to the notice of the Trust Secretary that a Governor is disqualified, whether at the time of the Governor's appointment or later, the Trust Secretary shall immediately declare that the individual in question is disqualified and give notice to him in writing to that effect as soon as practicable and in any event within fourteen (14) days of the date of said declaration.
- 1.8. Upon giving of notice under paragraphs 1.6 or 1.7 of this Annex 6 that an individual's tenure of office, if any, shall be terminated forthwith, he/she shall cease to be a Governor and his/her name shall be removed from the register of Governors. Any Governor may refer any dispute he/she may have with regard to that decision to the Trust's Dispute Resolution Procedure.

2. Council of Governors – vacancies

- 2.1. Where a vacancy arises for a Governor for any reason other than expiry of term of office, the following provisions will apply:
 - 2.1.1. where an Elected Governor's membership of the Council of Governors ceases for one of the reasons set out in paragraph 19 of this Constitution or paragraph 1 of this Annex 6 he/she may be replaced in accordance with the following provisions:
 - 2.1.1.1. the Trust may invite the highest polling unelected candidate for that constituency at the most recent election the opportunity to fill the seat for the unexpired period of the term of office, subject to the approval of the majority of the Council of Governors voting at a Meeting of the Council of Governors. If that candidate does not agree to fill the vacancy it may then be offered to the next highest polling unelected candidate until the vacancy is filled.
 - 2.1.1.2. if no such reserve candidate is available, chosen, or willing to fill the vacancy, an election will then be held in accordance with the Model Election Rules save that if an election is due to be held within nine (9) months of the vacancy having arisen the position shall stand vacant unless this causes the aggregate number of Governors who are Public Governors and Service User Governors to be less than half of the total membership of the Council of Governors. In that

case an election will be held in accordance with the Model Election Rules as soon as reasonably practicable.

- 2.1.1.3. Where an Appointed Governor's membership of the Council of Governors ceases for one of the reasons set out in paragraph 19 of this Constitution or paragraph 1 of this Annex 6, he/she shall be replaced in accordance with a process of appointment as agreed by the Trust Secretary and the Appointing Organisation.

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

1. Composition of the Council of Governors – further provisions

- 1.1. The Council of Governors, subject to the 2006 Act, shall seek to ensure through the composition of the Council of Governors that:
- 1.1.1. the interests of the community served by the Trust and the wider public are appropriately represented;
 - 1.1.2. the level of representation of the Public Constituency, the Service User and Carer Constituency, the Staff Constituency, and the Partnership Organisations strikes an appropriate balance such that no individual or small group of individuals can dominate the Council of Governor's decision making, having regard to their legitimate interest in the Trust's affairs,

and to this end, the Council of Governors:
 - 1.1.2.1. shall at all times maintain a policy for the composition of the Council of Governors;
 - 1.1.2.2. shall from time to time and not less than every three (3) years review the policy for the composition of the Council of Governors; and
 - 1.1.2.3. where appropriate shall propose amendments to this Constitution.

2. Roles and responsibilities of the Council of Governors

- 2.1. Notwithstanding any statutory responsibilities and obligations imposed by NHSE, the general responsibilities of the Council of Governors shall be to:
- 2.1.1. engage in dialogue with the Board of Directors about how the Trust can provide its services in ways that meet the needs of the community it serves;
 - 2.1.2. review annually the extent to which the Trust is meeting its objective of delivering high quality services; and
 - 2.1.3. work with the Board of Directors on such other matters for the benefit of the Trust as may be agreed between them.

3. Council of Governors - committees

- 3.1. The Council of Governors may establish advisory committees and working groups as appropriate and to which the Council of Governors may not delegate any of their powers but that may assist the Council of Governors in carrying out its duties. This will include a nominations

committee and a remuneration committee which may be combined. Committees of the Trust are governed by the Terms of Reference.

4. Disputes between the Council of Governors and the Board of Directors

- 4.1. The procedure that should be followed in the event of any unresolved dispute between the Council of Governors and the Board of Directors is set out in the Trust's relevant policies and procedures.

Eligibility to vote and stand for election

- 4.2. A person may not vote at an election for, or stand for election to the Council of Governors unless within a period and form specified by the Trust Secretary, and unless that person has made a declaration:
- 4.2.1. of the particulars of his/her qualification to vote as a member of the Constituency, for which the election is being held;
 - 4.2.2. that he/she is not prevented from being a member of the Council by paragraph 8 of Schedule 7 to the 2006 Act; and
 - 4.2.3. that he is not otherwise disqualified under paragraph 1 of Annex 6 or paragraph 19 of the Constitution.
 - 4.2.4. this paragraph 4 of Annex 7 does not apply to an election held for the Staff Constituency.
- 4.3. Every Service User/Carer Governor and Public Governor must upon their election as a Governor make a declaration, and they must make a further declaration within each Financial Year, in the form specified below, that they are qualified to vote at meetings of the Council of Governors and are not prevented from being a member of the Council of Governors by paragraph 8 of Schedule 7 of the 2006 Act or under the Constitution:

"I declare that the details I have provided to the Trust are correct to the best of my knowledge and belief; that I remain eligible to be a member of the [] constituency and am not otherwise disqualified from membership of the Trust; and that I am not prevented from being a Foundation Trust Governor by paragraph 8 of Schedule 7 to the National Health Service Act 2006."

- 4.4. A person is guilty of an offence under the 2006 Act if he/she:
- 4.4.1. makes a declaration under this section which he knows to be false in a material particular; or
 - 4.4.2. recklessly makes such a declaration which is false in a material particular.

5. Meetings of Council of Governors

- 5.1. No business shall be transacted at a Meeting of the Council of Governors unless at least 50% of the Elected Governors are present.
- 5.2. For the purposes of paragraph 5.1 above, an Elected Governor shall not be counted towards the quorum in the event that that Governor has taken a leave of absence which has been acknowledged by the Chair.
- 5.3. Any required vote by the Council of Governors will be by a show of hands unless an alternative voting system is agreed in advance. Any form of voting may be exercised in physical or virtual form.

6. Council of Governors - conflicts of interest of Governors

- 6.1. Governors shall declare any pecuniary, personal or family interest, whether that interest is direct or indirect, in any proposed contract or other matter which is under consideration or is to be considered by the Council of Governors. A family interest will include those of a Governor's spouse or partner. Any Governors appointed subsequently shall declare such interests on appointment or election.
- 6.2. Subject to the exceptions below a direct or indirect interest is:
 - 6.2.1. any directorship of a company;
 - 6.2.2. any interest or position in any firm, company, business or organisation (including any charitable or voluntary organisation) which has or is likely to have a trading or commercial relationship with the Trust;
 - 6.2.3. any interest in an organisation providing health and social care services to the national health service;
 - 6.2.4. a position of authority in a charity or voluntary organisation in the field of health and social care; or
 - 6.2.5. any connection with any organisation, entity or company considering entering into a financial arrangement with the Trust including but not limited to lenders or banks.
- 6.3. The exceptions which shall not be treated as a direct or indirect interests for the purposes of these provisions are as follows:
 - 6.3.1. shares not exceeding 2% of the total shares in issue held in any company whose shares are listed on any public exchange;
 - 6.3.2. an employment contract with the Trust held by a Staff Governor;
 - 6.3.3. an employment contract with a local authority held by a Local Authority Governor;
 - 6.3.4. an employment contract with a university held by a university Governor; or

- 6.3.5. an employment contract with or other position of authority within a Partnership Organisation held by a Appointed Governor.
- 6.4. Any Governor who has an interest in a matter to be considered by the Council of Governors (whether because the matter involves a firm, company, business or organisation in which the Governor or his/her spouse or partner has a direct or indirect interest or otherwise) shall declare such interest to the Council of Governors as soon as he becomes aware of it and:
 - 6.4.1. shall withdraw from the meeting and play no part in the relevant discussion or decision; and
 - 6.4.2. shall not vote on the issue (and if by inadvertence they do remain and vote, their vote shall not be counted).
- 6.5. Details of any such interest shall be recorded in the register of interests of Governors.

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

1. Board of Directors – Committees

- 1.1. The Board of Directors shall establish an Audit & Risk Committee and a Remuneration Committee comprised of Non-Executive Directors and any other committees comprised of Board members as appropriate, to which any of the powers exercised by the Board of Directors (except for powers reserved for the Board) on behalf of the Trust may be delegated. The Terms of Reference for committees shall be as set out in the Trust's Corporate Governance Manual.

2. Disputes between the Council of Governors and the Board of Directors

- 2.1. The procedure that should be followed in the event of any unresolved dispute between the Council of Governors and the Board of Directors is set out in the Trust's relevant policies and procedures.

3. Appointment and removal of the Chair and other Non-Executive Directors

- 3.1. The appointment of the Chair and the other Non-Executive Directors shall be in accordance with the following procedures:
- 3.1.1. the Council of Governors shall create a duly authorised Nominations Committee responsible for dealing with nominations for the Non-Executive Directors consisting of a majority of Governors;
 - 3.1.2. membership of the Nominations Committee will be determined by the Governors and defined in that committee's Terms of Reference;
 - 3.1.3. The Council of Governors will maintain a policy for the composition of the Non-Executive Directors, and which they shall review from time to time and not less than every three (3) years;
 - 3.1.4. the Council of Governors will work with an external organisation recognised as expert at appointments to identify the skills and experience required for Non-Executive Directors;
 - 3.1.5. appropriate candidates (not more than five (5) for each vacancy) will be identified by the Nominations Committee through a process of open competition, which take account of the policy maintained by the Council of Governors and the skills and experience required; and
 - 3.1.6. at a general meeting the Council of Governors shall appoint the Chair of the Trust and the other Non-Executive Directors in

accordance with paragraphs 30 and 31 of this Constitution and this paragraph 3 of Annex 8.

- 3.2. The removal of the Chair or another Non-Executive Director shall be in accordance with the following procedures:
- 3.2.1. any proposal for removal must be proposed by a Governor, seconded by not less than ten (10) Governors including at least two (2) Elected Governors and two (2) Appointed Governors and submitted to the Chair of the Trust;
 - 3.2.2. written reasons for the proposal shall be provided to the Non-Executive Director in question, who shall be given at least 14 clear days to respond to such reasons;
 - 3.2.3. in making any decision to remove a Non-Executive Director, the Council of Governors shall take into account the annual appraisal of the Non-Executive Director in question carried out by the Chair;
 - 3.2.4. removal of the Chair or another Non-Executive Director shall require the approval of three-quarters of the members of the Council of Governors; and
 - 3.2.5. if any proposal to remove a Non-Executive Director is not approved at a Meeting of the Council of Governors, 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.

4. Signature of documents

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

5. Board of Directors – meetings of Directors

- 5.1. Ordinary meetings of the Board of Directors shall be held at regular intervals, at such times and in such places as the Board of Directors may determine from time to time.
- 5.2. Seven (7) Directors including not less than two (2) Executive Directors (one of whom must be the Chief Executive or another Executive Director nominated by the Chief Executive), and not less than two (2) Non-Executive Directors (one (1) of whom must be the Chair or the Deputy Chair of the Board of Directors) shall form a quorum.

FURTHER PROVISIONS

1. **Membership of the Service User and Carer Constituency – Service User Carers**
 - 1.1. A service user carer is an individual who:
 - 1.1.1. is not less than sixteen (16) years of age at the date of applying to become a member;
 - 1.1.2. provides care on a regular basis for a service user who has not attained the age of sixteen (16) years or who is by reason of physical or mental incapacity unable to discharge the functions of a member; and
 - 1.1.3. does not (as set out in paragraph 3(6) of Schedule 7 to the 2006 Act) provide that care:
 - 1.1.3.1. in pursuance of a contract (including a contract of employment); or
 - 1.1.3.2. as a volunteer for a voluntary organisation; and
 - 1.1.4. has either been:
 - 1.1.4.1. nominated by that service user as his/her carer for the time being for the purposes of this paragraph 1 of Annex 9 and has been accepted by the Trust as that service users' carer for that purpose; or
 - 1.1.4.2. has been accepted by the Trust as a service user carer for the purposes of this paragraph 1 of Annex 9 where the service user is under sixteen (16) years of age or lacks the legal or mental capacity to nominate that individual as his/her service user carer and the Trust has to the extent that it is reasonably practicable (and in line with a policy agreed by the Council of Governors) with that service user as to his/her wishes and has then agreed to treat that individual as the Service User Carer for the purposes of this paragraph 1 of this Annex 9 provided the individual has agreed in writing to act in that capacity and he/she is otherwise qualified in accordance with this Constitution.
 - 1.2. An individual shall not be eligible to apply to become a member as service user carer or to continue as a member as a service user carer if:
 - 1.2.1. the service user has withdrawn his/her nomination of that individual under paragraph 1.1.4.2 of Annex 9 as his/her carer; or

- 1.2.2. the service user's carer is a member of another constituency under this Constitution; or
- 1.2.3. where the individual no longer fits the description of service user carer as set out in paragraph 1.1 of this Annex 9.

2. Disqualification from membership

- 2.1. An individual shall not become or continue as a member if:
 - 2.1.1. they are under sixteen (16) years of age;
 - 2.1.2. they become ineligible to be a member under paragraphs 8 - 13 of this Constitution;
 - 2.1.3. they have been involved within the last five (5) years as a perpetrator in a serious incident of assault or violence, or in one or more incidents of harassment against any of the Trust's employees or other persons who exercise functions for the purposes of the Trust, or against any registered volunteer and the Council of Governors considers that it is not in the best interests of the Trust for them to become or remain a member;
 - 2.1.4. they have within the preceding five (5) years been convicted anywhere in the world 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.
 - 2.1.5. the Council of Governors resolves for other reasonable cause that his/her doing so would or would be likely to:
 - 2.1.5.1. prejudice the ability of the Trust to fulfil its principal purpose or other of its purposes under this Constitution or otherwise to discharge its duties and functions;
 - 2.1.5.2. harm the Trust's ability to work with other persons or bodies with whom it is engaged or may be engaged in the provision of goods and services;
 - 2.1.5.3. adversely affect public confidence in the goods or services provided by the Trust; and/or
 - 2.1.5.4. otherwise bring the Trust into disrepute.
- 2.2. the Council of Governors resolves or ever has resolved in accordance with paragraph 19 of this Constitution or paragraph 1 of Annex 6 that his/her tenure as a member be terminated.
- 2.3. It is the responsibility of each member to ensure his/her eligibility at all times and not the responsibility of the Trust to do so on his/her behalf. A member who becomes aware of his ineligibility shall inform the Trust as

soon as practicable and that person should hereupon be immediately removed from the register of members and shall cease to be a member.

- 2.4. Where the Trust has reason to believe that a member is ineligible for membership under paragraphs 8 - 13 of this Constitution, or may be disqualified from membership under this paragraph 2 of Annex 9, the Trust Secretary shall carry out reasonable enquiries to establish if this is the case.
- 2.5. Where the Trust Secretary considers that there may be reasons for concluding that a member or an applicant for membership may be ineligible or be disqualified from membership he/she shall advise that individual of those reasons in summary form and invite representations from the member or applicant for membership within twenty-eight (28) days or such other reasonable period as the Trust Secretary may in his/her absolute discretion determine. Any representations received shall be considered by the Trust Secretary and he/she shall make a decision on the member's or applicant's eligibility or disqualification as soon as reasonably practicable and shall give notice in writing of that decision to the member or applicant within fourteen (14) days of the decision being made.
- 2.6. If no representations are received within the above period of twenty-eight (28) days or such longer period (if any) permitted under paragraph 2.5 of Annex 9 above, the Trust Secretary shall be entitled nonetheless to proceed and make a decision on the member's or applicant's eligibility or disqualification notwithstanding the absence of any such representations from him/her.
- 2.7. Any decision made under paragraph 2.5 of this Annex 9 to disqualify a member or an applicant for membership may be referred by the member or applicant concerned for consideration under the Trust's regular dispute resolution procedures.

3. Representative membership

- 3.1. The Trust shall at all times strive to ensure that taken as a whole its actual membership is representative of those eligible for membership.
- 3.2. The Council of Governors shall present to each Annual Members' Meeting a report on the steps taken to secure that (taken as a whole) the actual membership of a Public Constituency, of the Service Users and Carer Constituency and of the Staff Constituency is representative of those eligible for such membership.

4. Termination of Membership

- 4.1. A person's membership shall be terminated if:
 - 4.1.1. they resign by giving notice to the Trust Secretary;
 - 4.1.2. they are disqualified under paragraph 2 of Annex 9 above;
 - 4.1.3. they die;

- 4.1.4. they cease to be entitled under this Constitution to be a member of a Public Constituency or of the Service User and Carer Constituency or of the Staff Constituency; or
 - 4.1.5. it appears to the Trust Secretary that they no longer wish to be a member of the Trust, and after enquiries, they fail to demonstrate that they wish to continue as a member of the Trust.
- 4.2. A member may be expelled via the following adopted procedure:
 - 4.2.1. any member may complain to the Trust Secretary, in accordance with the Trust's Dispute Resolution Procedure, that another member has acted in a way detrimental to the interests of the Trust; and
 - 4.2.2. that member shall be expelled by a resolution approved by not less than two-thirds of the Governors present and voting at a meeting of the Council of Governors.

5. Voting in Council of Governors Elections

- 5.1. A member may not vote at an election for a Public Governor or a Service User/Carer Governor (as the case may be) unless within the specified period he/she has made a declaration in the specified form that he/she is a member of the Public Constituency or the Service User and Carer Constituency (as the case may be) and stating the particulars of his/her qualification to vote as a member of that Constituency for which an election is being held. It is an offence to knowingly or recklessly make such a declaration which is false in a material particular.
- 5.2. The form and content of the declaration and the period for making such a declaration for the purposes of paragraph 5.1 of Annex 7 above shall be specified and published by the Trust from time to time and shall be so published not less than twenty-eight (28) days prior to elections.

ANNUAL MEMBERS' MEETING

1. Annual Members' Meeting – further provisions

- 1.1. Before a members' meeting can do business there must be a quorum present. Except where this Constitution states otherwise a quorum is twenty (20) members with at least one (1) member present from each of the Trust's constituencies.
- 1.2. If a quorum is not present, no matter may be discussed or voted upon at that meeting and the meeting shall be adjourned. Such a position shall be recorded in the minutes of the meeting.
- 1.3. If no quorum is present within half an hour of the time fixed for the start of the meeting, the meeting shall stand adjourned to the same day in the next week at the same time and place or to such time and place as the Board of Directors determine. If a quorum is not present within half an hour of the time fixed for the start of the adjourned meeting, the number of members present shall be a quorum.

Transition arrangements

1. In this Annex:
 - 1.1. “Initial Elected Governors” means the Initial Public Governors, Initial Staff Governors and Initial Service User and Carer Governors;
 - 1.2. “Initial Public Governors” means a public governor elected in the initial governor elections held following the acquisition of Barnet Enfield and Haringey Mental Health NHS Trust by Camden and Islington NHS Foundation Trust on 1 October 2024 under section 56A of the 2006 Act;
 - 1.3. “Initial Staff Governors” means a staff governor elected in the initial governor elections held following the acquisition of Barnet Enfield and Haringey Mental Health NHS Trust by Camden and Islington NHS Foundation Trust on 1 October 2024 under section 56A of the 2006 Act; and
 - 1.4. “Initial Service User and Carer Governors” means a service user and carer governor elected in the initial governor elections held following the acquisition of Barnet Enfield and Haringey Mental Health NHS Trust by Camden and Islington NHS Foundation Trust on 1 October 2024 under section 56A of the 2006 Act.
2. The Trust shall give notice of election for the Initial Elected Governors forthwith on 1 October 2024.
3. The terms of office of all elected governors who are in post as at 1 October 2024 shall expire on the earlier of either the date when the election of the Initial Elected Governors has been completed in accordance with notice of election given pursuant to paragraph 2 (whether or not one or more elected governor posts may be vacant) or their terms of office have in any event expired by effluxion of time.
4. The terms of office of all appointed governors who are in post immediately before 1 October 2024 shall continue until they expire in accordance with clause **Error! Reference source not found.**
5. Not less than one third of the Initial Public Governors who polled the highest votes will serve a term of office of three years; not less than one third of the Initial Public Governors who polled the next highest number of votes will serve a term of office of two years; the remaining Initial Public Governors will serve a term of office ending at the conclusion of one year. For the purposes of this paragraph any Initial Public Governor who is elected unopposed, or elected pursuant to a subsequent election to fill a seat left empty at or after the initial elections, shall be deemed to have received no votes. For the avoidance of doubt, such Initial Public Governors will serve a term of office of one year.
6. Not less than one third of the Initial Staff Governors who polled the highest votes will serve a term of office of three years; not less than one third of the Initial Staff Governors who polled the next highest number of votes will serve a term of office of two years; the remaining Initial Staff Governors will serve a term of office of one year. For the purposes of this paragraph any Initial Staff Governor who is elected unopposed, or elected pursuant to a subsequent election to fill a seat left empty at or after the initial elections, shall be deemed to have received no votes. For the

avoidance of doubt, such Initial Staff Governors will serve a term of office of one year.

7. Not less than one third of the Initial Service User and Carer Governors who polled the highest votes will serve a term of office of three years; not less than one third of the Initial Service User and Carer Governors who polled the next highest number of votes will serve a term of office of two years; the remaining Initial Service User and Carer Governors will serve a term of office of one year. For the purposes of this paragraph any Initial Service User and Carer Governors who is elected unopposed, or elected pursuant to a subsequent election to fill a seat left empty at or after the initial elections, shall be deemed to have received no votes. For the avoidance of doubt, such Initial Service User and Carer Governors will serve a term of office of one year.