



# The Hillingdon Hospitals

## NHS Foundation Trust



Constitution of

The Hillingdon Hospitals NHS Foundation Trust

(A Public Benefit Corporation)

## 1. Record of changes to the document

Version number	Amendment	Date of Change
Issue 2	<ul style="list-style-type: none"> <li>• Annex 1: addition of 'Rest of England Public Constituency' with minimum of 40 members</li> <li>• Annex 4: composition of the Council of Governors expanded to include a Governor to represent the 'Rest of England Public Constituency'</li> </ul>	21.11.11
Issue 3	<p>Changes to reflect sections of Health &amp; Social Care Act 2012 that take effect in October 2012:</p> <ul style="list-style-type: none"> <li>• Principal purpose</li> <li>• Accounts</li> <li>• Forward plan</li> <li>• Interpretation &amp; definition</li> </ul>	11.12.12
Issue 4	<p>Amendments to reflect sections of Health and Social Care Act 2012 that took effect on 1<sup>st</sup> April 2013, plus further amendments identified by Trust.</p> <p>Amended paragraphs: 7.2, 10, 12.3, 15, 16.2, 16.3, 18, 22.8, 23, 27, 31, 33, 38.2</p>	31.7.13
Issue 5	<p>The Council of Governors (CoGs) approved the move to electronic voting and to Single Transferable Vote system, as shown on pages 45-6 and 49 (paras 19.3, 19.4, 19.5 and 24.2).</p> <p>Updated the CoGs Vacancies at Annex 6</p> <p>Composition of the CoGs to include Hillingdon Healthwatch at page 31</p> <p>Selection and election of the Lead Governor reflects NHSI guidance at Annex 9 Clause 4.1 onwards</p> <p>Lead Governor Job Description at Annex 9</p> <p>Inclusion of Resolution and Dispute Procedures at Annex 10</p> <p>Clarified the period of time for when to holding the Annual members meeting</p> <p>Clarified the role of Deputy Chair and SID in event of resignation, incapacity of death of the Chairman</p>	07.02.17

Issue 6	<p>Council approved (11 February 2020) the following amendments to the Constitution:</p> <ul style="list-style-type: none"> <li>• Section 13.3 Amendment in respect of the tenure of Elected Governors;</li> <li>• Annex 9 Section 4.28, Amendment to the process for the election of the Lead Governor</li> </ul>	11.02.2020
Issue 7	<ul style="list-style-type: none"> <li>• <b>British Islands</b> to be replaced by <b>UK and Crown Dependencies</b> in 14.1.3, 30.3 and Annex 6- 1(d)</li> <li>• Section 13- Council of Governors- Tenure. Insert the reference 13.10 Governors who are stepping down via the election process will be able to continue in the role until the next formal Council of Governors meeting at which new Governors will be ratified by the Council'</li> </ul>	03.11.2020

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## **1. Name**

The name of the foundation trust is The Hillingdon Hospitals NHS Foundation Trust (the trust).

## **2. Principal Purpose**

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

**2.2** 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.

**2.3** The trust may provide goods and services for any purposes related to—

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

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

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

## **3. Powers**

**3.1** The powers of the trust are set out in the 2006 Act.

**3.2** The powers of the trust shall be exercised by the Board of Directors on behalf of the trust.

**3.3** Any of these powers may be delegated to a committee of directors or to an executive director.

## **4. Membership and constituencies**

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

**4.1** A public constituency;

**4.2** A staff constituency.

## **5. Application for membership**

An individual who is eligible to become a member of the trust may do soon application to the trust.

## **6. Public constituency**

**6.1** 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.

**6.2** Those individuals who live in an area specified as an area for any public constituency are referred to collectively as a Public Constituency.

**6.3** The minimum number of members in each area for the Public Constituency is specified in Annex 1.

## **7. Staff constituency**

**7.1** An individual who is employed by the trust under a contract of employment with the trust may become or continue as a member of the trust provided:

**7.1.1** He is employed by the trust under a contract of employment which has no fixed term or has a fixed term of at least 12 months; or

**7.1.2** He has been continuously employed by the trust under a contract of employment for at least 12 months.

**7.2** Individuals who from time to time provide services to the trust under bank worker arrangements pursuant to which there is no relationship of mutual obligations are also eligible for staff membership, provided such individuals have been registered on the trust's bank under its worker arrangements for at least 12 months and continue to be registered.

**7.3** Those individuals who are eligible for membership of the trust by reason of the previous provisions are referred to collectively as the Staff Constituency.

**7.4** The Staff Constituency shall be divided into 4 descriptions of individuals who are eligible for membership of the Staff Constituency, each description of individuals being specified within Annex 2 and being referred to as a class within the Staff Constituency.

**7.5** The minimum number of members in each class of the Staff Constituency is specified in Annex 2.

## **8. Automatic membership by default – staff**

**8.1** An individual who is:

**8.1.1** eligible to become a member of the Staff Constituency; and is



**8.1.2** 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 and the appropriate class within the Staff Constituency without an application being made, unless he informs the trust that he does not wish to do so.

## **9. Restriction on membership**

**9.1** An individual who is a member of a constituency, or of a class within a constituency, may not while membership of that constituency or class continues, be a member of any other constituency or class

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

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

## **10. Annual Members' Meeting**

**10.1** The Trust shall hold an annual meeting of its members ('Annual Members' Meeting'). The Annual Members' Meeting shall be open to members of the public and be held within six months of the end of the preceding financial year.

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

**11.1** The trust is to have a Council of Governors, which shall comprise both elected and appointed governors.

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

**11.3** The members of the Council of Governors, other than the appointed members, shall be chosen by election by their constituency or where there are classes within a constituency, by their class within that constituency. The number of governors to be elected by each constituency is specified in annex 4.

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

**12.1** Elections for elected members of the Council of Governors shall be conducted in accordance with the Model Rules for Elections, (as may be varied from time to time), on the basis of single transferable vote (STV) polling.

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

**12.3** A variation of the Model Rules by the Department of Health shall not constitute a variation of the terms of this constitution for the purposes of paragraph 45 of the constitution (amendment of the constitution).

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

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

**13.1** An elected governor may hold office for a period of up to three years.

**13.2** An elected governor shall cease to hold office if he ceases to be a member of the constituency or class by which he was elected.

**13.3** *An Elected Governor, who has served the maximum period of nine years, shall, in special and time-limited circumstances, be eligible for re-election at the end of his/her term (whether elected consecutively or otherwise), for a further period of no more than two years, subject to the approval of Council*

**13.4** An appointed governor may hold office for a period of up to 3 years.

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

**13.6** An appointed governor shall be eligible for re-appointment at the end of his term.

**13.7** An appointed Governor shall not hold office for more than Nine years **OR** shall hold office for no more than six years without having an interval of not less than two years before holding office again as a Governor for a further term

**13.8** Where a vacancy arises due to an Appointed Governor ceasing to hold office before the expiry date of his term of office howsoever caused the Trust Secretary on behalf of the Council of Governors will request that the appointing organisation provides a replacement Appointed Governor

**13.9** For the purposes of calculating the length of time served as a governor, time prior to the Trust's authorisation on 1 April 2011 shall be disregarded.

**13.10** Governors who are stepping down via the election process will be able to continue in the role until the next formal Council of Governors meeting at which new Governors will be ratified by the Council'

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

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

**14.1.1** A person who has been adjudged bankrupt or whose estate has

been sequestrated and (in either case) has not been discharged;

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

**14.1.3** A person who within the preceding five years has been convicted in the UK and Crown Dependencies. of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him.

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

**14.3** 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.

**14.4** Provisions for the removal of a governor from the Council of Governors are set out in Annex 6.

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

**15.1** The general duties of the Council of Governors are –

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

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

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

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

**16.1** The Chairman of the trust (i.e. the Chairman of the Board of Directors, appointed in accordance with the provisions of paragraph 25.1 or paragraph 26.1 below) or, in his absence, the Deputy Chairman (appointed in accordance with the provisions of paragraph 27 below), shall preside at meetings of the Council of Governors.

**16.2** Meetings of the Council of Governors shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons.

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

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

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

## **18. Council of Governors – referral to the Panel**

**18.1** In this paragraph, the Panel means a panel of persons appointed by Monitor to which a governor of an NHS foundation trust may refer a question as to whether the trust has failed or is failing—

**18.1.1** to act in accordance with its constitution, or

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

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

## **19. Council of Governors – conflicts of interest of governors**

If a governor has a pecuniary, personal or family interest, whether that interest is actual or potential and whether that interest is direct or indirect, in any proposed contract or other matter which is under consideration or is to be considered by the Council of Governors, the governor shall disclose that interest to the members of the Council of Governors as soon as he 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.

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

The trust may pay travelling and other expenses to members of the Council of Governors at rates determined by the trust.

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

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

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

**22.1** The trust is to have a Board of Directors, which shall comprise both executive and non-executive directors. At all times the number of non-executive directors, not to include the Chairman, must be greater than or equal to the number of executive directors.

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

**22.2.1** A non-executive Chairman

**22.2.2** A maximum of 7 other non-executive directors; and

**22.2.3** A maximum of 7 executive directors

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

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

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

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

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

**22.8** In line with paragraph 3 the authority to determine the size of the Board shall remain with the Board of Directors subject to the provisions of paragraph 22.

### **23. Board of Directors – general duty**

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

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

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

**24.1** He is a member of a Public Constituency, and

**24.2** He is not disqualified by virtue of paragraph 30 below

### **25. Board of Directors – appointment and removal of chairman and other non-executive directors**

**25.1** The Governors at a general meeting of the Council of Governors shall appoint or remove the chairman of the trust and the other non-executive directors.

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

**25.3** The initial chairman and the initial non-executive directors are to be appointed in accordance with paragraph 26 below.

### **26. Board of Directors – appointment of initial chairman and initial other non-executive directors**

**26.1** The Chairman of The Hillingdon Hospital NHS trust shall be appointed as the initial Chairman of the trust if he wishes to be appointed.

**26.2** The power of the Council of Governors to appoint the other non-executive

directors of the trust is to be exercised, so far as possible, by appointing as the initial non-executive directors of the trust any of the non-executive directors of The Hillingdon Hospital NHS Trust (other than the Chairman) who wish to be appointed.

**26.3** The criteria for qualification for appointment as a non-executive director set out in paragraph 24 above (other than disqualification by virtue of paragraph 30 below) do not apply to the appointment of the initial chairman and the initial other non-executive directors in accordance with the procedures set out in this paragraph.

**26.4** An individual appointed as the initial Chairman or as an initial non-executive director in accordance with the provision of this paragraph shall be appointed for the unexpired period of his term of office as Chairman or (as the case may be) non-executive director of the Applicant NHS Trust; but if, on appointment, that period is less than 12 months, he shall be appointed for 12 months.

**27. Board of Directors – appointment of the deputy chairman**

The Council of Governors at a general meeting of the Council of Governors shall appoint one of the non-executive directors as a deputy chairman in consultation with the Board of Directors.

**28. Board of Directors – appointment and removal of the Chief Executive and other executive directors**

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

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

**28.3** The initial Chief Executive is to be appointed in accordance with paragraph 29 below.

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

**29. Board of Directors – appointment and removal of initial Chief Executive**

**29.1** The chief executive of the Applicant NHS Trust shall be appointed as the initial Chief Executive of the trust if he wishes to be appointed.

**29.2** The appointment of the chief executive of the Applicant NHS Trust as the initial Chief Executive of the trust shall not require the approval of the Council of Governors.

**30. Board of Directors – disqualification**

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

- 30.1** A person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged.
- 30.2** A person who has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it.
- 30.3** A person who within the preceding five years has been convicted in the UK and Crown Dependencies.
- 30.4** of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him.
- 30.5** A member of the Council of Governors.
- 30.6** A member of the Health watch Board (or any successor body in respect of patient engagement).
- 30.7** A spouse, partner, parent or child of a member of the Board of Directors.
- 30.8** A member of a local authority's Scrutiny Committee covering health matters.
- 30.9** A person who is the subject of an unexpired disqualification order made under the Company Directors Disqualification Act 1986.
- 30.10** A person whose tenure in office as a chair or as a member or director of a health service (whether National Health Service, private or independent care commissioner or provider) body has been terminated on the grounds that their appointment is not in the interests of the health service, non-attendance at meetings, or for non-disclosure of a pecuniary interest.
- 30.11** A person who within the preceding two years has been dismissed, otherwise than by reasons of redundancy, from any paid employment with a health service body (whether National Health Service, private or independent care commissioner or provider) .
- 30.12** In the case of a non-executive director, a person who has refused without reasonable cause to fulfil any training requirement established by the Board of Directors.
- 30.13** A person who has refused to sign and deliver to the Secretary a statement in the form required by the Board of Directors confirming acceptance of the code of conduct for directors.
- 30.14** In the case of a non-executive director (other than the initial chairman and other non-executive directors appointed under paragraph 26 (if any)), a person who is no longer a member of the Public Constituency.
- 30.15** The Board of Directors may exercise its discretion to allow any individual to become or continue as a member of the Board of Directors in respect

of any matter that would otherwise bar such membership under paragraph 30.10.

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

- 31.1** 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.
- 31.2** 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.

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

The standing orders for the practice and procedure of the Board of Directors, as may be varied from time to time, are attached at Annex 8.

### **33. Board of Directors – conflicts of interests of directors**

- 33.1** The duties that a director of the trust has by virtue of being a director include in particular –
  - 33.1.1** 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.
  - 33.1.2** 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.
- 33.2** The duty referred to in sub-paragraph 33.1.1 is not infringed if –
  - 33.2.1** The situation cannot reasonably be regarded as likely to give rise to a conflict of interest, or
  - 33.2.2** The matter has been authorised in accordance with the constitution.
- 33.3** The duty referred to in sub-paragraph 33.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- 33.4** In sub-paragraph 33.1.2, “third party” means a person other than –
  - 33.4.1** The trust, or
  - 33.4.2** A person acting on its behalf.
- 33.5** If a director of the trust has in any way a direct or indirect interest in a proposed transaction or arrangement with the trust, the director must declare the nature and extent of that interest to the other directors.



- 33.6** If a declaration under this paragraph proves to be, or becomes, inaccurate, incomplete, a further declaration must be made.
- 33.7** Any declaration required by this paragraph must be made before the trust enters into the transaction or arrangement.
- 33.8** This paragraph does not require a declaration of an interest of which the director is not aware or where the director is not aware of the transaction or arrangement in question.
- 33.9** A director need not declare an interest –
- 33.9.1** If it cannot reasonably be regarded as likely to give rise to a conflict of interest;
- 33.9.2** If, or to the extent that, the directors are already aware of it;
- 33.9.3** If, or to the extent that, it concerns terms of the director's appointment that have been or are to be considered –
- 33.9.3.1** By a meeting of the Board of Directors, or
- 33.9.3.2** By a committee of the directors appointed for the purpose under the constitution.
- 33.10** A matter shall have been authorised for the purposes of paragraph 33.2.2 if:
- 33.10.1** 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;
- 33.10.2** The director's interest cannot reasonably be regarded as likely to give rise to a conflict of interest; or
- 33.10.3** The director's conflict of interest arises from a permitted cause (as determined by the Board of Directors from time to time).
- 34. Board of Directors – remuneration and terms of office**
- 34.1** 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 Chairman and the other non-executive directors.
- 34.2** The trust shall establish a committee of not less than three 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.

## **35. Registers**

The trust shall have:

- 35.1** A register of members showing, in respect of each member, the constituency to which he belongs and, where there are classes within it, the class to which he belongs;
- 35.2** A register of members of the Council of Governors;
- 35.3** A register of interests of governors;
- 35.4** A register of directors; and
- 35.5** A register of interests of directors.

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

**36.1** Any person entitled to be a Member who, as appropriate, applies or is invited to become a Member, shall have their name added to the register of Members. Such person's membership of the Trust shall commence from the date of their name being added to the register of Members.

**36.2** Members will be removed from the register of Members if:

- 36.2.1** the Member is no longer eligible or is disqualified;
- 36.2.2** the Member is deceased.

**36.3** The register of Governors shall list the names of Governors, their category of membership of the Council of Governors and an address through which they may be contacted (which may be the Secretary).

**36.4** The register of interests of Governors shall contain the names of each Governor, whether he has declared any interests and, if so, the interests declared in accordance with this constitution or the standing orders for Governors.

**36.5** The register of Directors shall list the names of Directors, their capacity on the Board of Directors and an address through which they may be contacted (which may be the Secretary).

**36.6** The register of interests of Directors shall contain the names of each Director, whether he has declared any interests and, if so, the interests declared in accordance with this constitution or the standing orders for Directors.

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

**37.1** The trust shall make the registers specified in paragraph 34 above available for inspection by members of the public, except in the

circumstances set out below or as otherwise prescribed by regulations.

**37.2** The trust shall not make any part of its registers available for inspection by members of the public which shows details of any member of the trust, if the member so requests.

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

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

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

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

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

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

**38.1.1** A copy of the current constitution;

**38.1.2** A copy of the latest annual accounts and of any report of the auditor on them;

**38.1.3** A copy of the latest annual report;

**38.2** 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:

**38.2.1** 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.

**38.2.2** A copy of any report laid under section 65D (appointment of trust special administrator) of the 2006 Act.

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

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

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

**38.2.6** 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 (Monitor's decision), 65KB (Secretary of State's response to Monitor'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.

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

**38.2.8** A copy of any final report published under section 65I (administrator's final report),

**38.2.9** 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.

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

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

**38.4** 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.

## **39. Auditor**

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

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

## **40. Audit committee**

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

## **41. Accounts**

**41.1** The trust shall keep proper accounts and proper records in relation to the accounts.

**41.2** Monitor may with the approval of the Secretary of State give directions to the trust as to the content and form of the accounts.

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

**41.4** The trust shall prepare in respect of each financial year annual accounts in such form as Monitor may with the approval of the Secretary of State direct.

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

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

**42.1** The trust shall prepare an Annual Report and send it to Monitor.

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

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

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

**42.5** Each forward plan must include information about –

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

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

**42.6** Where a forward plan contains a proposal that the trust carry on an activity of a kind mentioned in sub-paragraph 42.5.1 the Council of Governors must –

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

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

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

**43. Presentation of the annual accounts and reports to governors and members**

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

**43.1.1** the annual accounts

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

**43.1.3** the annual report.

**43.2** The documents shall also be presented to the members of the trust at the Annual Members' Meeting by at least one member of the Board of Directors in attendance.

**43.3** The trust may combine a meeting of the Council of Governors convened for the purposes of sub-paragraph 43.1 with the Annual Members' Meeting.

#### **44. Instruments**

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

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

#### **45. Dispute resolution procedures**

The Board of Directors shall adopt such procedures and protocols in Annex 10 in connection with the resolution of disputes between Members, Governors and Directors (and/or between the Trust and any such person) as it shall deem to be appropriate for the good governance of the Trust from time to time.

#### **46. Amendment of the constitution**

**46.1** The trust may make amendments of its constitution only if–

**46.1.1** More than half of the members of the Council of Governors of the trust voting approve the amendments, and

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

**46.2** Amendments made under paragraph 46.1 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.

**46.3** 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) –

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

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

**46.4** 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.

**46.5** Amendments by the trust of its constitution are to be notified to Monitor. For the avoidance of doubt, Monitor'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.

#### **47. Mergers etc. and significant transactions**

**47.1** The trust may only apply for merger, acquisition, separation or dissolution with the approval of more than half of the members of the Council of Governors.

**47.2** 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.

**47.3** In paragraph 47.2, the following words have the following meanings: "Significant transaction" means a transaction which meets any one of the tests below:

**47.3.1** the fixed asset test; or

**47.3.2** the turnover test; or

**47.3.3** the gross capital test (relating to acquisitions or divestments)

The fixed asset test:

**47.3.4** is met if the assets which are the subject of the transaction exceed 25% of the fixed assets of the Trust.

The turnover test:

**47.3.5** is met if, following the completion of the relevant transaction, the income of the Trust will increase or decrease by more than 25%;

The gross capital test:

**47.3.6** is met if the gross capital of the company or business being acquired or divested represents more than 25% of the 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, and the Trust's capital as defined as its taxpayers' equity in the latest published audited accounts).

**47.3.7** for the purposes of calculating the tests in this paragraph 47.3, figures used to classify assets and profits must be the figures shown in the latest published audited consolidated accounts.

**47.3.8** A transaction is any agreement (including an amendment to an agreement) entered into by the Trust in respect of the acquisition or disposal of a business, service, or asset. It does not include any contract the Trust may have from time to time with commissioners of NHS funded services.

**48. Procedures and Protocols**

The Board of Directors shall adopt such procedures and protocols as it shall deem to be appropriate for the good governance of the trust from time to time.

**49. Indemnity**

Members of the Board of Directors and Council of Governors 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.

Trust may purchase such insurance or make such arrangements as it considers appropriate to meet all such costs

**50. Interpretation and definitions**

**50.1** In this Constitution the following expressions shall have the following meanings assigned to them:

- |   |  |
|---|--|
| <b>“2006 Act”</b>                         | means the National Health Service Act 2006;  |
| <b>“2012 Act”</b>                         | means the Health & Social Care Act 2012  |
| <b>“Accounting Officer”</b>               | means the person who from time to time discharges the functions specified in paragraph 25(5) of Schedule 7 to the 2006 Act.                            |
| <b>“Applicant NHS Trust”</b>              | means The Hillingdon Hospital NHS Trust;   |
| <b>“annual members’ meeting”</b>          | is defined in paragraph 10 of the Constitution;  |
| <b>“Appointed Member Representatives”</b> | means the Clinical Commissioning Group Member Representative, the Local Authority Member Representative and the Partnership Membership Representative; |



<b>“Area of the Trust”</b>	means the area consisting of all the areas specified in Annex 1 as an area for a Public Constituency;
<b>“Board of Directors”</b>	means the Board of Directors of the Trust as constituted in accordance with this Constitution and referred to in Clause 22 of this Constitution and “Board” shall be construed accordingly;
<b>“Chairman”</b>	means the chairman of the Trust appointed in accordance with Clause 25 and 26 of this Constitution;
<b>“Chief Executive”</b>	means the Chief Executive (and Accounting Officer) of the Trust appointed in accordance with Clause 28 of this Constitution;
<b>“Constituencies”</b>	means the Public Constituencies and the Staff Constituency;
<b>“Constitution”</b>	means this constitution of The Hillingdon Hospitals NHS Foundation Trust;
<b>“Council of Governors”</b>	<b>means the Council of Governors of the Trust as constituted in accordance with this Constitution;</b>
<b>"Director"</b>	means a director on the Board of Directors;
<b>“Elected Governors”</b>	means those Governors elected by the public constituencies and the classes of staff constituency;
<b>“Election Scheme”</b>	means the election scheme and rules set out in Annex 4 and which are to be used in connection with the election of the Elected Governors;
<b>“Executive Director”</b>	means an Executive Director of the Trust;
<b>“Financial Year”</b>	means: <ul style="list-style-type: none"> <li>(a) the period beginning with the date on which the Trust is authorised and ending with the next 31st March; and</li> <li>(b) each successive period of twelve months beginning with 1st April;</li> </ul>
<b>“Initial Council of Governors”</b>	means the first Council of Governors constituted under this Constitution;
<b>“Local Authority Governor”</b>	means a Governor appointed by a local authority whose area includes the whole or part of the Area of the Trust;

<b>“Member”</b>	means a member of the Trust;
<b>“Membership”</b>	means membership of the Trust through being a Member of one of its constituencies;
<b>“Members’ Meetings”</b>	means a meeting of the Members;

<b>“Monitor”</b>	means the body corporate known as Monitor, as provided by Section 61 of the 2012 Act;
<b>“Model Election Rules”</b>	means the model form rules for the conduct of elections published from time to time by the Department of Health and as currently set out in Annex 4;
<b>“the NHS Trust”</b>	means the Applicant NHS Trust;
<b>“Partnership Organisations”</b>	means those organisations designated as partnership organisations for the purposes of this Constitution specified in Annex 3;
<b>“Partnership Organisation Governor”</b>	means a Governor appointed under this constitution by a partnership organisation;
<b>“Non-Executive Director”</b>	means a Non-Executive Director of the Trust;
<b>“Public Constituencies”</b>	means that part of the Trust’s membership consisting of Members living in the Area of the Trust;
<b>“Secretary”</b>	means the company secretary of the Trust or any other person appointed to perform the duties of the secretary of the Trust;
<b>“Staff Classes”</b>	means the classes of the Staff Constituency as specified in Annex 2;
<b>“Staff Constituency”</b>	means (collectively) those members of the four classes comprising the staff constituency as specified in Annex 2;
<b>“Staff Governor”</b>	means a Governor elected by a Staff Class;
<b>“The Trust”</b>	means The Hillingdon Hospitals NHS Foundation Trust;
<b>“voluntary organisation”</b>	is a body, other than a public or local authority, the activities of which are not carried on for profit.

- 50.2** Unless a contrary intention is evident or the context requires otherwise, words or expressions contained in this Constitution shall bear the same meaning as in the National Health Service Act 2006 as amended by the Health & Social Care Act 2012.
- 50.3** Words importing the masculine gender only shall include the feminine gender; words importing the singular shall import the plural and vice-versa.
- 50.4** References in this Constitution to legislation include all amendments, replacements or re-enactments made and references to clause numbers are references to clauses of this Constitution unless the context provides otherwise.
- 50.5** References to legislation include all regulations, statutory guidance or directions.
- 50.6** Headings are for ease of reference only and are not to affect interpretation.
- 50.7** If there is a conflict between the provisions of this Constitution and the provisions of any document referred to herein or the law then the provisions of this Constitution shall prevail unless the law requires otherwise.
- 50.8** All Annexes referred to in this Constitution form part of it.

## ANNEX 1 – THE PUBLIC CONSTITUENCIES

The Trust has four public constituencies that consist of the following electoral areas for the purpose of local government elections in England:

<b>Constituency</b>	<b>Electoral Areas:</b>
<p><b>North</b></p> <p>Minimum number of members: 200</p>	<ul style="list-style-type: none"> <li>• Maple Cross and Mill End</li> <li>• Rickmansworth</li> <li>• Moor Park &amp; East bury</li> <li>• Ashridge</li> <li>• Denham North</li> <li>• Denham South</li> <li>• Harefield</li> <li>• Northwood</li> <li>• Northwood Hills</li> <li>• Pinner</li> <li>• Pinner South</li> <li>• Eastcote &amp; Ruislip</li> <li>• West Ruislip</li> </ul>
<p><b>Central</b></p> <p>Minimum number of members: 200</p>	<ul style="list-style-type: none"> <li>• Iver Heath</li> <li>• Uxbridge South</li> <li>• Ickenham</li> <li>• Uxbridge North</li> <li>• Brunel</li> <li>• Manor</li> <li>• South Ruislip</li> <li>• Cavendish</li> <li>• Rayners Lane</li> <li>• Roxbourne</li> <li>• Roxeth</li> <li>• Northolt</li> <li>• Mandeville</li> <li>• Northolt West End</li> <li>• Charville</li> <li>• Hillingdon East</li> </ul>
<p><b>South</b></p> <p>Minimum number of members: 200</p>	<ul style="list-style-type: none"> <li>• Iver Village &amp; Richings Park</li> <li>• Yiewsley</li> <li>• West Drayton</li> <li>• Botwell</li> <li>• Pinkwell</li> <li>• Heathrow Villages</li> <li>• Barnhill</li> <li>• Townfield</li> <li>• Yeading</li> <li>• Greenford</li> <li>• Broadway</li> <li>• Lady Margaret</li> <li>• Southall</li> <li>• Broadway</li> <li>• Southall Green</li> </ul>
<p><b>Rest of England</b></p> <p>Minimum number of members: 40</p>	<p>All electoral areas in England other than those listed above</p>

## ANNEX 2 – THE STAFF CONSTITUENCY

The Trust has a staff constituency of Members pursuant to paragraph 7 of this Constitution made up of 4 classes described below.

<b>Staff Constituency</b>	<b>Staff group</b>
Doctors and dentists	Doctors Dentists
Nurses and midwives (including health care assistants)	Health care assistants Midwifery staff Nursing staff
Allied Health Professionals	Allied Health Professionals Scientific staff Technical staff
Support staff	Ancillary, administrative and other staff Maintenance staff

The minimum membership for each class within the staff constituency is 50.

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

Not applicable

## ANNEX 4 – COMPOSITION OF COUNCIL OF GOVERNORS

From the 1<sup>st</sup> April 2017 the Council of Governors is to comprise:

<b>Council of Governors</b>		
<b>Public Governors (elected)</b>		
North Constituency		4
Central Constituency		4
South Constituency		4
Rest of England Constituency		1
	<b>Sub total</b>	<b>13</b>
<b>Staff Governors (elected)</b>		
Doctors and dentists		1
Nurses and midwives (including health care assistants)		3
Allied Health Professionals		1
Support staff		2
	<b>Sub total</b>	<b>7</b>
<b>Partner Governors (appointed)</b>		
Hillingdon Clinical Commissioning Group		1
London Borough of Hillingdon		1
Joint Negotiating & Consultative Committee		1
London Ambulance Service		1
Health watch Hillingdon		1
	<b>Sub total</b>	<b>5</b>
	<b>Total</b>	<b>25</b>



## **ANNEX 5 –THE MODEL RULES FOR ELECTIONS**

(Paragraph 12.2)

**The Hillingdon Hospitals NHS Foundation Trust  
(Council of Governors)  
Rules for the Conduct of Elections for Public and Staff  
Governors**

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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;

“Trust” means The Hillingdon Hospitals NHS Foundation Trust;

“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.

<u>Proceeding</u>	<u>Time</u>
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	Not later than twenty fifth day

withdrawals by candidates from election

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; and

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

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

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

### ***Part 4 – Stages common to contested and uncontested elections***

## **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; and
- (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;



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

## **11. Declaration of interests**

11.1 The nomination form must state:

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

## **12. Declaration of eligibility**

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

- (a) that he or she is not prevented from being a member of the council of governors by paragraph 8 of Schedule 7 of the 2006 Act or by any provision of the constitution; and
- (b) for a member of the public or patient constituency, of the particulars of 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 trust may decide that voters within a constituency or class within a constituency, may, subject to rule 19.4, cast their votes at the poll using such different methods of polling in any combination as the corporation may determine.
- 19.4 The trust may decide that voters within a constituency or class within a constituency for whom an e-mail address is included in the list of eligible voters may only cast their votes at the poll using an e-voting method of polling.
- 19.5 Before the 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 paper 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; and
  - (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;
  - 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 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;
- (c) create a record ("text voting record") that is stored in the text messaging voting system in respect of each vote cast by a voter by text message that comprises of:
  - (i) the voter's voter ID number;
  - (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;
- (d) if the voter's vote has been duly cast and recorded, provide the voter with confirmation of this;
- (e) 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 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 spoiled 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 spoiled ballot paper, the returning officer shall enter in a list ("the list of spoiled ballot papers"):
- (a) the name of the voter;
  - (b) the details of the unique identifier of the spoiled 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 "spoiled 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 spoiled 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 spoiled 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 spoiled text message vote, the returning officer shall enter in a list ("the list of spoiled text message votes"):
- (a) the name of the voter; and
  - (b) the details of the voter ID number on the spoiled 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 ballot paper 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; and
- (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 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; and
- (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 voting information 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 as “disqualified” and attach it the ballotpaper,
  - (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)**
- 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; or
- (b) which is excluded by the returning officer under rule STV49;

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

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

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

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

“stage of the count” means:

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

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

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

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

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

- 42.1 The returning officer is to make arrangements for counting the votes as soon as is practicable after the close of the poll.
- 42.2 The returning officer may make arrangements for any votes to be counted using vote counting software where:

- (a) the board of directors and the council of governors of the corporation have approved:
  - (i) the use of which software for the purpose of counting votes in the relevant election; and
  - (ii) a policy governing the use of soft 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:
  - (i) ballot papers that have been returned; and
  - (ii) 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 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 subparagraphs (a) to (c) of rule STV44.3.

## **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 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 STV47.2 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 papers 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 paragraph 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 paper 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 or she 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.

**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 Trust by section 33(4) of the 2006 Act, to the chairman of the 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;
- (e) the number of rejected ballot papers under each of the headings in rule STV44.1; and
- (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;
- (b) any envelopes addressed to eligible voters are returned as undelivered too late to be resent; or
- (c) any applications for replacement voting information are made too late to enable new voting information to be issued;

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

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

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

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

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

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

- 58.1 The corporation may not allow:

- (a) the inspection of, or the opening of any sealed packet containing:
  - (i) any rejected ballot papers, including ballot papers rejected in part;
  - (ii) any rejected text voting records, including text voting records

rejected in part;

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

### **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:

- (a) be objective, balanced and fair;
- (b) be equivalent in size and content for all candidates;
- (c) be compiled and distributed in consultation with all of the candidates standing for election; and
- (d) 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; and
  - (b) the returning officer's staff;
- must maintain, and aid in maintaining, the secrecy of the voting and the counting of the votes, and must not, except for some purpose authorised by law, communicate to any person any information as to:
- (i) the name of any member of the corporation who has or has not been given a 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; or
  - (iv) the candidate(s) for whom any member has voted.
- 67.2 No person may obtain or attempt to obtain information as to the candidate(s) for whom a voter is about to vote or has voted, or communicate such information to any person at any time, including the

unique identifier on a ballot paper given to a voter or the voter ID number allocated to a voter.

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

**68. Prohibition of disclosure of vote**

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

**69. Disqualification**

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

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

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

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

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

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

## ANNEX 6 – ADDITIONAL PROVISIONS – COUNCIL OF GOVERNORS

### Membership of the Council of Governors

1. The following may not become or continue as a member of the Council of Governors:
  - (a) a director of the Trust;
  - (b) A person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;
  - (c) 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;
  - (d) A person who within the preceding five years has been convicted in the UK and Crown Dependencies.
  - (e) of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him;
  - (f) A person who is the subject of an unexpired disqualification order made under the Company Directors Disqualification Act 1986;
  - (g) a governor or director of another NHS trust or foundation trust;
  - (h) a spouse, partner, parent or child of a member of the Board of Directors of the Trust;
  - (i) being a member of the Public Constituency, a person who refuses to sign a declaration in the form specified by the Secretary of particulars of their qualification to vote as a member of the Trust and that they are not prevented from being a member of the Council of Governors;
  - (j) a vexatious complainant;
  - (k) a person who is required to notify the police of his name and address as a result of being convicted or cautioned for relevant sex offences pursuant to the Sex Offenders' Act 1997 or other relevant legislation;
  - (l) a person who has been disqualified from being a member of a relevant authority under the provisions of the Local Government Act 2000;
  - (m) a person who, on the basis of disclosures obtained through an

application to the Criminal Records Bureau, is considered unsuitable by the Trust's Board of Directors;

- (n) a person who within the preceding two years has been dismissed, otherwise than by reason of redundancy, from any paid employment with a health service (whether National Health Service, private or independent care commissioner or provider) body;
- (o) a person whose tenure of office as the chair or as a member or director of a health service body has been terminated on the grounds that his appointment is not in the interests of the health service, or for non-attendance at meetings, or for non-disclosure of a pecuniary interest;
- (p) he has refused without reasonable cause to undertake any training which the Chair requires all governors to undertake;  
or
- (q) he has failed to sign and deliver to the Secretary a statement in the form required by the Secretary confirming acceptance of the code of conduct for Governors.

Any member of the Council of Governors, or prospective member as the case shall be, shall notify the Secretary of any bar to his membership of the Council of Governors under the above paragraphs of this Annex as soon as becoming aware of such a bar. The Board of Directors may exercise its discretion to allow any individual to become or continue as a member of the Council of Governors in respect of any matter that would otherwise bar such membership under paragraphs 1(f) or 1(n) of this Annex where there is no conflict or potential conflict of interest on the part of the governor.

## **Removal**

- 2 A governor may be removed from the Council of Governors by a resolution approved by not less than two-thirds of the remaining governors present and voting on the grounds that:
  - (a) he has committed a serious breach of the code of conduct; or
  - (b) he has acted in a manner detrimental to the interests of the Trust; and/or
  - (c) the Council of Governors consider that it is not in the best interest of the Trust for him to continue as a governor.

## **Vacancies**

- 3 Where a vacancy arises on the Council of Governors for any reason other than expiry of the term of office, the following

provisions will apply:

- (a) where the vacancy arises amongst the appointed governors, the Secretary shall request that the appointing organisation appoints a replacement to hold office for the remainder of the term of office; and
- (b) where the vacancy arises amongst the elected governors, the Council of Governors may:
  - (i) invite the next highest polling candidate for that seat at the most recent election, who is willing to take office, to fill the vacant seat for the remainder of the term of office; or
  - (ii) if the unexpired period of the term of office is less than 6 months, leave the seat vacant until the next elections are held.

### **Additional Provisions**

- 4. The general duties of the Council of Governors are--
  - (a) to hold the Non-Executive Directors individually and collectively to account for the performance of the Board of Directors, and
  - (b) to represent the interests of the members of the Trust as a whole and the interests of the public.
- 5. The Trust must take steps to secure that the Governors are equipped with the skills and knowledge they require in their capacity as such.
- 6. For the purpose of obtaining information about the Trust's performance of its functions or the Directors' performance of their duties (and deciding whether to propose a vote on the Trust's or Directors' performance), the Council of Governors may require one or more of the Directors to attend a meeting.



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

### **1. Meetings of the Council of Governors**

#### *Admission of the Public and the Press*

All meetings of the Council of Governors are to be open to members of the public unless members of the public are excluded for reasons of commercial confidentiality or other special reasons. The Chairman may exclude any member of the public from a meeting of the Council of Governors if they are interfering with or preventing the proper conduct of the meeting.

#### *Calling and Notice of Meetings*

The Council of Governors is to meet a minimum of four times in each financial year. Before each meeting of the Council of Governors, a notice of the meeting specifying the business proposed to be transacted shall be delivered to every governor so as to be available to him at least three clear working days before the meeting. Notice will also be published on the Trust's website and, if practicable, in the Trust's membership newsletter.

Meetings of the Council of Governors may be called by the Secretary, the Chairman, or by ten governors (including at least two elected governors and two appointed governors) who give written notice (including by fax and email) to the Secretary specifying the business to be carried out. The Secretary shall send a written notice to all Governors as soon as possible after receipt of such a request and will call a meeting of the Council of Governors within the next twenty eight days. If the Secretary fails to convene such a meeting then the Chairman or ten governors, whichever is the case, shall convene such a meeting.

#### *Chair of the Meeting*

In accordance with paragraph 16 of the Constitution the Chairman of the Trust (i.e. the Chairman of the Board of Directors) or in his absence, the Deputy Chairman of the Board of Directors, shall preside at meetings of the Council of Governors. If the Chairman and Deputy Chairman are absent, or are disqualified from participating, then the Lead Governor shall preside for that part of the meeting.

#### *Quorum*

No business shall be transacted at a meeting of the Council of Governors unless at least one third of the Council of Governors is present.

#### *Voting*

Except on the issues which the Constitution requires to be settled by a larger majority, questions arising at a meeting of the Council of Governors shall be decided by a majority of votes. In any vote, in the case of an equality of votes the person presiding at or chairing the meeting shall have a casting vote.

### Committees

The Council of Governors may not delegate any of its powers to a committee or sub-committee, but it may appoint committees to assist the Council of Governors in carrying out its functions. The Council of Governors may appoint governors to such committees and may invite directors and other persons to attend in an advisory, non-voting capacity. The Council of Governors may, through the Secretary request that external advisors assist them or any committee they appoint in carrying out its duties. Committees established by the Council of Governors may meet in private for reasons of commercial confidentiality or other special reasons if the members of the Committee so decide.

### Confidentiality

In the event of the Council of Governors, or any Committee established by the Governors, meeting in private for all or part of a meeting, governors shall not disclose outside of the Council of Governors meetings the contents of the papers, discussions or minutes of the items taken in private.

## **2. Disclosure of interests**

The Constitution requires governors to 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. All governors should declare such interests. Any governors appointed or elected subsequently should do so on appointment or election.

Such interests should include:

- a) Directorships, including non-executive directorships held in private companies, Plcs or public benefit corporations (with the exception of those of dormant companies).
- b) Ownership or part-ownership of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS.
- c) Majority or controlling shareholdings in organisations likely or possibly seeking to do business with the NHS.
- d) A position of authority in a charity or voluntary organisation in the field of health and social care.
- e) Any connection with a voluntary or other organisation contracting for NHS services.
- f) Any other commercial interest in the decision before the meeting.

The following exceptions shall not be treated as interests:

- an employment contract with the Trust held by a Staff Governor;

- an employment contract with their employing Clinical Commissioning Group held by a Clinical Commissioning Group Governor;
- an employment contract with a local authority held by a Local Authority Governor;
- an employment contract with a partnership organisation held by a Partnership Governor.

### **3. Declaring interests**

At the time governors' interests are declared, they should be recorded in the Council of Governors' minutes and entered on a register of interests of governors to be maintained by the Trust Secretary. Any changes in interests should be declared at the next Council of Governors meeting following the change occurring.

During the course of a Council of Governors meeting, if a conflict of interest is established, the governor concerned shall disclose the fact, and withdraw from the meeting and play no part in the relevant discussion or decision.

If a governor has any doubt about the relevance of an interest, he should discuss it with the Chairman or Trust Secretary who shall advise him on whether or not to disclose the interest.

### **4. Code of Conduct**

All members of the Council of Governors are required to comply with the Code of Conduct for Governors adopted by the Council of Governors or Board of Directors from time to time.

### **5. Additional Provisions**

The Board of Directors may establish additional protocols and procedures for the operation of the Council of Governors as appropriate from time to time.

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

### **1. Appointments to the Board of Directors**

#### *Appointment of the Chairman and Non-Executive Directors*

The Governors at a general meeting of the Council of Governors shall appoint or remove the Chairman of the Trust and the other non-executive directors, subject to the other provisions of the Constitution. Any re-appointment of a non-executive director by the Council of Governors shall be subject to a satisfactory appraisal carried out in accordance with procedures which the Board of Directors may approve from time to time.

#### *Appointment of the Chief Executive and other Executive Directors*

The Chief Executive is appointed by the non-executive directors subject to the approval of the Council of Governors. A committee consisting of the Chairman, the Chief Executive and the other non-executive directors shall appoint the other executive directors.

#### *Appointment and Powers of Deputy Chairman*

The Governors at a general meeting of the Council of Governors shall appoint one of the non-executive directors to be Deputy Chairman of the Board of Directors, in consultation with the Board of Directors. If the Chairman is unable to discharge their office as Chairman of the NHS Foundation Trust, the Deputy Chairman of the Board of Directors shall be acting Chairman of the NHS Foundation Trust until and unless the Council of governors appoints another acting Chairman (on the recommendation of the Board).

#### *Appointment of a Senior Independent Director*

The Board of Directors shall appoint one of the independent non-executive directors to be the senior independent director, in consultation with the Council of Governors. The senior independent director should be available to members and governors if they have concerns which contact through the normal channels of Chairman, Chief Executive or Director of Finance has failed to resolve or for which such contact is inappropriate. The senior independent director could be the Deputy Chairman. If the Deputy Chairman is also the Senior Independent Director and becomes acting Chairman of the Trust, the Board of Directors will appoint one of the independent non-executive directors to be the acting Senior Independent Director, in consultation with the Council of Governors

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

#### *Calling and Notice of Meetings*

Before each meeting of the Board of Directors, a notice of the meeting specifying the business proposed to be transacted shall be delivered to every director so as to be available to him at least three clear working days before

the meeting.

Meetings of the Board of Directors are called by the Secretary, the Chairman, or by four Directors who give written notice (including by fax or email) to the Secretary specifying the business to be carried out. The Secretary shall send a written notice to all directors as soon as possible after receipt of such a request and shall call a meeting of the Board of Directors within the next twenty eight days. If the Secretary fails to convene such a meeting then the Chairman or four directors, whichever is the case, shall convene such a meeting.

#### Chair of the Meeting

At any meeting of the Board of Directors, the Chairman of the Board, if present, shall preside. If the Chairman is absent from the meeting the Deputy Chairman, if there is one and he/she is present, shall preside. If the Chairman and Deputy Chairman are absent then the non-executive directors present shall choose which non-executive director present shall preside.

If the Chairman is absent temporarily on the grounds of a declared conflict of interest the Deputy Chairman, if present, shall preside. If the Chairman and Deputy Chairman are absent, or are disqualified from participating, then the remaining non-executive directors present shall choose which non-executive director present shall preside.

#### Quorum

No business shall be transacted at a meeting unless at least five directors are present including not less than three non-executive directors and two executive directors.

#### Voting

Questions arising at a meeting of the Board of Directors shall be decided by a majority of votes. In the case of an equality of votes, the person presiding at or chairing the meeting shall have a casting vote.

### **3. Committees and Delegation**

The Board of Directors may from time to time delegate any of its powers to a committee of directors or to an executive director, in each case subject to such restrictions and conditions as the Board thinks fit.

The Board of Directors will have a range of committees which will advise it (and the Council of Governors if appropriate). These will include an Audit Committee and a committee or committees for dealing with nominations to, and the remuneration of, the Board of Directors.

Each such committee shall have such terms of reference and powers and be subject to such procedures as the Board shall from time to time decide.

### **4. Disclosure of interests**

The Constitution requires directors to 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 Board of Directors. A family interest will include those of a Director's spouse or partner. All directors should declare such interests. Any directors appointed subsequently should do so on appointment.

Such interests should include:

- a) Directorships, including non-executive directorships held in private companies, Plc. or public benefit corporations (with the exception of those of dormant companies). Ownership or part-ownership of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS.
- b) Majority or controlling shareholdings in organisations likely or possibly seeking to do business with the NHS.
- c) A position of authority in a charity or voluntary organisation in the field of health and social care.
- d) Any connection with a voluntary or other organisation contracting for NHS services.
- e) Any other commercial interest in the decision before the meeting.

### **5. Declaring interests**

At the time directors' interests are declared, they should be recorded in the Board minutes and entered on a register of interests of directors to be maintained by the Trust Secretary. Any changes in interests should be declared at the next Board meeting following the change occurring.

During the course of a Board meeting, if a conflict of interest is established, the director concerned shall disclose the fact, and withdraw from the meeting and play no part in the relevant discussion or decision.

If a director has any doubt about the relevance of an interest, he should discuss it with the Chairman or Trust Secretary who shall advise him on whether or not to disclose the interest.

### **6. Additional Provisions**

The Board of Directors may establish additional protocols and procedures for the operation of the Board of Directors and the economic, effective and efficient operation and good governance of the Trust generally, as appropriate from time to time.

## ANNEX 9 – FURTHER PROVISIONS

1. Disqualification from membership of the Trust
  - 1.1. A person may not be a member of the Trust if he is under 16 years of age at the time of his application to become a member.
  - 1.2. A person may not become or remain a member of the Trust if during the five years prior to his application, he has demonstrated aggressive or violent behaviour at any hospital or towards any person working for a health service body and following such behaviour he has been excluded from any hospital or other health service body under either the Trust's or other health service body's policy for withholding treatment from violent/aggressive patients, or equivalent.
  - 1.3. A person may not become or continue as a member of the Trust if they have been confirmed as a 'vexatious complainant' in accordance with the Trust's complaints handling policy.
  - 1.4. It is the responsibility of each member to ensure his eligibility at all times.
  - 1.5. The Trust may carry out reasonable enquiries if it has reason to believe a member is ineligible for membership under the provisions of this constitution.
  - 1.6. Ineligible or disqualified members will be removed from the register of members immediately and shall cease to be a member.
2. Termination of membership
  - 2.1. A member shall cease to be a member on:
    - 2.1.1. death
    - 2.1.2. resignation by notice to the Membership Office or Trust Secretary
    - 2.1.3. ceasing to fulfil paragraphs 6 or 7 of this constitution
3. Process for appointing non-executive directors and the Chairman
  - 3.1. Subject to the provisions of paragraph 26 of this constitution the process for appointing new non-executive directors and the Chairman will be as per the following paragraphs.
  - 3.2. In accordance with paragraph 25.1 of this constitution, the Chairman and other non-executive directors are to be appointed by the Council of Governors.
  - 3.3. At the start of each financial year the Council of Governors shall



appoint a “Nominations and Remuneration Committee” that will be constituted in accordance with paragraphs 3.5 and 3.6 below. In the six months before the end of the term of office of the Chairman or a non-executive director (as the case may be), the Committee shall consider whether the retiring Chairman or non-executive director should be reappointed for a further term of office up to three years, provided that such an appointment is consistent with any corporate governance guidance published by Monitor in relation to Board members’ length of tenure. Alternatively, the Committee may decide that the position should be advertised and subject to open competition. In making such a decision the Committee shall consider the views of any nominations committee that may be established by the Board of Directors from time to time in order to advise on the qualifications, skills and experience required for appointment to the position of Chairman and non-executive director.

- 3.4. The Nominations and Remuneration Committee will make recommendations to the Council of Governors, including recommendations about pay.
- 3.5. The Nominations and Remuneration Committee for the Chairman will consist of three Public Governors, one Staff Governor, one Appointed or Staff Governor and one Non-Executive Director (usually the Senior Independent Director). The quorum for meetings of such Nominations and Remuneration Committee shall be three Governors (which must include one Public Governor). If the number of Governors prepared to serve on the Nominations and Remuneration Committee is greater than the number of places available, the committee members shall be selected by election by their peer Governors. The Non-Executive Director on the Committee will chair the Nominations and Remuneration Committee. Each member of the Nominations and Remuneration Committee will have one vote. The Chief Executive is invited to attend in an advisory capacity.
- 3.6. The Nominations and Remuneration Committee for the non-executive directors will consist of the Chairman, three Public Governors, one Staff Governor and one Staff or Appointed Governor. The quorum for meetings of such Nominations and Remuneration Committee shall be three Governors (which must include one Public Governor). If the number of Governors prepared to serve on the Nominations and Remuneration Committee is greater than the number of places available, the committee members will be selected by election by their peer Governors. The Chairman will chair the Nominations and Remuneration Committee. Each member of the Nominations and Remuneration Committee will have one vote. The Chief Executive is invited to attend in an advisory capacity.
- 3.7. The Nominations and Remuneration Committees constituted under paragraphs 3.5 and 3.6 above will be supported by appropriate advice from the Trust’s Director with responsibility for the Human Resources function.



3.8. The Council of Governors will not consider nominations for membership of the Board of Directors other than those made by the appropriate Nominations and Remuneration Committee.

#### 4. Process for Election of Lead Governor

4.1. The lead Governor may be any of the Governors.

The process for election will be as follows:

4.2. All Governors will be asked to Self-nominate to be Lead Governor by an email to be sent to Trust Secretary (by date insert)

4.3. If the Trust Secretary receives only one self-nomination, that person will be elected unopposed as Lead Governor and all Governors will be notified by email accordingly

4.4. If several self-nominations are received, then all Governors will be informed that a ballot will be held. Each candidate will be asked to supply up to a 300-word election address by (insert date) which the Trust Secretary will circulate to all Governors via email

4.5. A meeting will be arranged where candidates will give a short election address and Governors will have the opportunity to ask questions; conference call facilities will be available to Governors who cannot attend in person to dial in. This meeting will be chaired by the Chairman of the Trust

4.6. The election address will be up to five minutes per candidate with five minutes to ask the candidate questions proceeding the presentation

4.7. At the end of the presentations the voting will open. A separate room will be made available for casting votes. For those dialling in, texted votes will be accepted in the half hour slot following the presentations.

4.8. As all Governors need to be offered the opportunity to vote, Governors can apply for a postal vote if they are not able to attend the election meeting or able to dial in. Governors need to give a valid reason why they will not be able to attend the election meeting or would not be able to dial in; and this will be adjudicated by the Chairman of the Trust. Postal votes must be received 24 hours before the election meeting.

4.9. Once voting is complete, the ballot papers will be opened in the presence of the Chief Executive (or representative) and Trust Secretary

4.10. For voting where more than two candidates have stood; Governors will be asked to rank the candidates in order of preference (Single Transferrable Vote). If no candidate achieves 50% of first preferences, the votes for the candidate who came last in the ballot will be re-distributed to the second

preference candidate. This process will continue until one candidate receives 50% of the vote.

- 4.11. The result will be announced by the Chairman at the election meeting; and all Governors will be notified by email by the Trust Secretary of the name of the winning candidate.
- 4.12. Role Description and Person Specification for Lead Governor of the Council of Governors
- 4.13. The Role
- 4.14. The main duties of the Lead Governor will be to:
  - 4.15. Act as a point of contact for Monitor/NHS Improvement should the Regulator wish to contact the Council of Governors on an issue for which the normal channels of communication are not appropriate
  - 4.16. Be the conduit for raising with Monitor/NHS Improvement any Governor concerns that the Foundation Trust is at risk of significantly breaching its License, having made every attempt to resolve any such concerns locally
  - 4.17. Chair such parts of meetings of the Council of Governors which cannot be chaired by the Trust Chair or Deputy Chair due to a conflict of interest in relation to the business being discussed
  - 4.18. To act as a point of leadership for Governors to manage, co-ordinate and act as conduit for holding Non-Executive Directors to account; including having regular meetings with the Chair
  - 4.19. To act as a focal point in engaging with the public.
- 4.20. The person
  - 4.21. To be able to fulfil this role effectively the Lead Governor will:
    - 4.22. Have the confidence of Governor colleagues and of members of the Board of Directors
    - 4.23. Have the ability to influence and negotiate and be able to present well-reasoned arguments
    - 4.24. Be committed to the success of the Foundation Trust
    - 4.25. Be able to demonstrate experience of chairing large and small meetings effectively
    - 4.26. Understand the role of Monitor/NHS Improvement and the basis on which Monitor/NHS Improvement may take regulatory action
    - 4.27. Have established networks in the Community which the Trust serves.

- 4.28. Appointment as Lead Governor will normally be for a one-year term. Following the end of each annual term of office, if more than one nomination is received, then an election for the position will take place. The Lead Governor to serve up to three, one year terms of office; and in special and time-limited circumstances, will be able serve for an additional two years, subject to the approval of Council.
5. Provisions if the Chair is unable to act
- 5.1 If the Chair is unable to fulfil his duties from time to time (other than by reason of lack of mental capacity) or in the event of an irretrievable breakdown of trust between the Chair and the other Directors or between the Chair and the Council of Governors, the Chair must notify the Trust Secretary that he is unable to fulfil his duties (temporarily or for the foreseeable future or permanently as the case may be) or of the breakdown of trust (as the case may be) and (in the absence of the Chair taking such steps) the Senior Independent Director may notify the Trust Secretary accordingly.
- 5.2 On receipt of such notice the Secretary shall inform the Board of Directors and the Council of Governors, and the Council of Governors shall appoint an Acting Chair (on the recommendation of the Board) from among the other current Non-Executive Directors following good practice and any applicable guidance and acting reasonably and proportionately.
- 5.3 The Council of Governors' appointment decision will be in respect of the role of Acting Chair for the Board and the Council of Governors
- 5.4 If the Chair is not able to hand over directly to the Acting Chair, the Deputy Chair shall assume the responsibilities of the Chair pending the decision of the Council of Governors as to the appointment of the Acting Chair
- 5.5 The Deputy Chair shall, with the Secretary, commence the process to appoint a new Chair in accordance with paragraph 3 of this Annex on the basis that the position should be advertised and subject to open competition unless the Chair is only temporarily unable to fulfil his duties and there is a reasonable prospect that the Chair will be able to resume his duties within a period of no more than 3 months.

## **ANNEX 10 – DISPUTE RESOLUTION PROCEDURES**

In the event of disputes between the Council of Governors and the Board of Directors, the following Dispute Resolution Procedure shall apply:

- (a) In the first instance the Chair on the advice of the Trust Secretary, and such other advice as the Chair may see fit to obtain, shall seek to resolve the dispute;
- (b) If the Chair is unable to resolve the dispute the individual shall refer the dispute to the Trust Secretary who shall appoint a joint special committee constituted as a committee of the Board of Directors and a committee of the Council of Governors, both comprising equal numbers, to consider the circumstances and to make recommendations to the Council of Governors and the Board of Directors with a view to resolving the dispute;
- (c) If the recommendations (if any) of the joint special committee are unsuccessful in resolving the dispute, the Chair may refer the dispute back to the Board of Directors who shall make the final decision.
- (d) In the event that none of the above satisfies the Council of Governors; the Lead Governor can still approach Monitor if they believe the matter merits a referral.