

# **Medway NHS Foundation Trust Constitution**

September 2014

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## **1. Name**

The name of the foundation trust is Medway 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 so on 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 a public constituency are referred to collectively as a Public Constituency.
- 6.3. The minimum number of members in each 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 exercise functions for the purposes of the Trust other than on a voluntary basis and otherwise than under a contract of employment with the Trust, may become or continue as members of the staff constituency provided such individuals have exercised these functions continuously for a period of at least 12 months.
- 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 five 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.
- 7.6. An individual who is:
  - 7.6.1. eligible to become a member of the Staff Constituency under paragraphs 7.1 and 7.2, and
  - 7.6.2. invited by the Trust to become a member of the Staff Constituency and a member of the appropriate class within the Staff Constituency,

shall become a member of the Trust as a member of the Staff Constituency and appropriate class within the Staff Constituency without an application being made, unless he informs the Trust that he does not wish to do so.

## **8. Restriction on membership**

- 8.1. 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.

- 8.2. 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.
- 8.3. An individual must be at least 16 years old to become a member of the Trust.
- 8.4. 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 8.

## **9. Annual Members' Meeting**

- 9.1 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.

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

- 10.1. The Trust is to have a Council of Governors, which shall comprise both elected and appointed Governors.
- 10.2. The composition of the Council of Governors is specified in Annex 3.
- 10.3. 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, or, where appropriate, by each class of each constituency, is specified in Annex 3.

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

- 11.1. 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.
- 11.2. The Model Rules for Elections, as published from time to time by the Department of Health, form part of this constitution. The Model Election Rules current at the date of the Trust's Authorisation are attached at Annex 4.
- 11.3. A subsequent variation of the Model Rules by the Department of Health shall not constitute a variation of the terms of this constitution. For the avoidance of doubt, the Trust cannot amend the Model Rules.
- 11.4. An election, if contested, shall be by secret ballot.
- 11.5. Where a vacancy arises for an elected Governor the Trust need not hold a by-election if it is less than six months to the next scheduled election.
- 11.6. Where a vacancy arises for an elected Governor the Trust may, instead of holding a by-election, fill the vacancy by appointing the highest polling unsuccessful candidate at the most recent election of governors for the constituency or class in respect of which the vacancy has arisen. Any person so appointed shall hold office for the unexpired term of office of the retiring Governor.

## **12. Council of Governors - tenure**

- 12.1. An elected governor may hold office for a period of up to 3 years.
- 12.2. 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.
- 12.3. An elected governor shall be eligible for re-election at the end of his term.
- 12.4. An appointed Governor may hold office for a period of up to 3 years.
- 12.5. An appointed Governor shall cease to hold office if the appointing organisation withdraws sponsorship of him.
- 12.6. An appointed Governor shall be eligible for re-appointment at the end of his term.

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

- 13.1. The following may not become or continue as a member of the Council of Governors:
  - 13.1.1. a person who has been adjudged bankrupt or whose estate has been sequestered and (in either case) has not been discharged;
  - 13.1.2. 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;
  - 13.1.3. a person who within the preceding five years has been convicted in the British Islands of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him.
  - 13.1.4. a person who, in the case of a Staff Governor or Public Governor, ceases to be a member of the constituency he represents;
  - 13.1.5. a person who, in the case of an appointed Governor, has his sponsorship withdrawn by the sponsoring organisation;
  - 13.1.6. a person who has within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with a health service body.
  - 13.1.7. a person whose tenure of office as the Chairman or as a member of Director of a health service body has been terminated on the grounds that his appointment is not in the interests of the health service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest;
  - 13.1.8. a person who is an Executive or Non Executive Director of the Trust, or a Governor, Non Executive Director, Chairman, Chief Executive officer of another NHS Foundation Trust or health

service body (unless he is appointed as a Governor by an appointing organisation which is a health service body);

- 13.1.9. a person who has had his name removed, by a direction under any NHS Act or has otherwise been disqualified or suspended from any healthcare profession, and has not subsequently has his name included in such a list or had his qualification re-instated or suspension lifted (as applicable)
  - 13.1.10. a person who is incapable by reason of mental disorder, illness or injury of managing and administering his property and affairs;
  - 13.1.11. a person who is the spouse, partner, parent or child of a member of the Board of Directors of the Trust;
  - 13.1.12. a person who is less than 16 years of age at the date his is nominated for election or appointment as a Governor.
  - 13.1.13. he has demonstrated aggressive or violent behaviour at any hospital and following such behaviour he has been asked to leave, He has been removed or excluded from any hospital or other healthcare facility in accordance with the relevant Trust policy for withholding treatment from violent / aggressive patients.
  - 13.1.14. he has been confirmed as a vexatious complainant in accordance with the relevant trust policy for handling complaints;
  - 13.1.15. he has been removed as a member from another NHS Foundation Trust;
  - 13.1.16. a person who is subject to a sexual offences prevention order;
  - 13.1.17. he is deemed by the Council of Governors to have acted in a manner contrary to the interests of the Trust;
  - 13.1.18. he has failed or refused to sign and deliver to the Company Secretary a statement in the form required by the Council of Governors confirming acceptance of the Trust's Code of Conduct for Governors as may be adopted from time to time.
- 13.2 Where a person has been elected or appointed to be a Governor and he becomes disqualified or is removed from office under paragraph 13.1 he shall notify the Secretary in writing of such disqualification and / or removal. If it comes to the attention of the Company Secretary at the time of his taking office or later that the Governor is so disqualified, the Company Secretary shall immediately declare that the person in question is disqualified and notify him in writing to that effect. Upon dispatch of any such notification;
- 13.2.1 that person's tenure of office shall be terminated and he shall cease to act as Governor; and
  - 13.2.2 The Company Secretary shall inform the Chairman of the actions taken in respect of the person in question and the reasons for the actions.

#### **14. Termination of tenure**

- 14.1. A governor may resign from that office at any time during the term of that office by giving notice in writing to the Secretary to the Foundation Trust.
- 14.2. If a Governor fails to attend any meeting of the Council of Governors, for three consecutive meetings his tenure of office is to be immediately terminated unless the Council of Governors is satisfied that:
  - 14.2.1. the absence was due to a reasonable cause; and
  - 14.2.2. he will be able to start attending meetings of the Council of Governors again within such a period as they consider reasonable.
- 14.3. The Council of Governors may by a resolution approved by two-thirds of Governors present and entitled to vote at a properly constituted general meeting of the Council of Governors terminate a Governor's tenure of office if it considers:
  - 14.3.1 he has failed to undertake any training which the Council of Governors requires all Governors to undertake, or
  - 14.3.2 he has committed a serious breach of the Trust's Code of Conduct for Governors.

#### **15. Vacancies**

Where membership of the Council of Governors ceases, Public and Staff Governors shall be replaced in accordance with paragraph 10, and appointed Governors shall be replaced in accordance with processes agreed with their appointers.

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

- 16.1. The general duties of the Council of Governors are –
  - 16.1.1. To hold the Non-Executive Directors individually and collectively to account for the performance of the Board of Directors; and
  - 16.1.2. To represent the interests of the members of the Trust as a whole and the interests of the public.
- 16.2. The Trust must take steps to secure that the Governors are equipped with the skills and knowledge they require in their capacity as such.

#### **17. Council of Governors – meetings of Governors**

- 17.1. The Chairman of the Trust (i.e. the Chairman of the Board of Directors, appointed in accordance with the provisions of paragraph 24 below) or, in his absence the Deputy Chairman (appointed in accordance with the provisions of paragraph 25 below), shall preside at meetings of the Council of Governors.

- 17.2. 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, if the Council so resolves.
- 17.3. 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 Director's performance), the Council of Governors may require one or more of the Directors to attend a meeting.

## **18. 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 5.

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

- 19.1. 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 –
  - 19.1.1. To act in accordance with its constitution, or
  - 19.1.2. To act in accordance with provision made by or under Chapter 5 of the 2006 Act.
- 19.2. 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.

## **20. 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.

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

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

## **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.
- 22.2. The Board of Directors is to comprise:
  - 22.2.1. a Non Executive Chairman

- 22.2.2. up to 7 other Non Executive Directors; and
  - 22.2.3. up to 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 Director of Finance.
  - 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.

### **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 the Public Constituency, and
- 24.2. he is not disqualified by virtue of paragraph 28 below.

### **25. Board of Directors – appointment and removal of chairman and other Non Executive Directors**

- 25.1. The Council of 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.

### **26. Board of Directors – appointment of 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.

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

- 27.1. The Non Executive Directors shall appoint or remove the Chief Executive.
- 27.2. The appointment of the Chief Executive shall require the approval of the Council of Governors.

- 27.3. A committee consisting of the Chairman, the Chief Executive and the other Non Executive Directors shall appoint or remove the other executive Directors.

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

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

- 28.1. a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) he has not been discharged;
- 28.2. 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;
- 28.3. a person who within the preceding five years has been convicted in the British Islands of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him;
- 28.4. a person who, in the case of a Non Executive Director other than the initial Non Executive Directors, no longer satisfies paragraph 24.1 or 24.2 (if applicable);
- 28.5. a person whose tenure of office as a Chairman or as a member or Director of a health service body has been terminated on the grounds that his appointment is not in the interests of public service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest;
- 28.6. a person who has had his name removed, by a direction under any NHS Act or has otherwise been disqualified or suspended from any healthcare profession, and has not subsequently had his name included in such a list or had his qualification re-instated or suspension lifted (as applicable);
- 28.7. a person who has within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with a health service body;
- 28.8. a person who is a member of the Council of Governors or who is an elected governor or director of a health service body or another NHS Foundation Trust.

## **29. 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 6.

## **30. Board of Directors - conflicts of interest of Directors**

- 30.1. The duties that a director of the Trust has by virtue of being a director include in particular –
  - 30.1.1. 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.

- 30.1.2. 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.
- 30.2. The duty referred to in sub-paragraph 30.1.1 is not infringed if –
  - 30.2.1. The situation cannot reasonably be regarded as likely to give rise to a conflict of interest, or
  - 30.2.2. The matter has been authorised in accordance with the constitution.
- 30.3. The duty referred to in sub-paragraph 30.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- 30.4. In sub-paragraph 30.1.2, “third party” means a person other than –
  - 30.4.1. The Trust, or
  - 30.4.2. A person acting on its behalf.
- 30.5. 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.
- 30.6. If a declaration under this paragraph proves to be, or becomes, inaccurate, incomplete, a further declaration must be made.
- 30.7. Any declaration required by this paragraph must be made before the Trust enters into the transaction or arrangement.
- 30.8. This paragraph does not require a declaration of any interest of which the Director is not aware or where the Director is not aware of the transaction or arrangement in question.
- 30.9. A Director need not declare an interest –
  - 30.9.1. If it cannot reasonably be regarded as likely to give rise to a conflict of interest;
  - 30.9.2. If, or to the extent that, the Directors are already aware of it;
  - 30.9.3. If, or to the extent that, it concerns terms of the Director’s appointment that have been or are to be considered –
    - 30.9.3.1. By a meeting of the Board of Directors, or
    - 30.9.3.2. By a committee of the Directors appointed for the purpose under the constitution.
- 30.10. Further provisions as to conflicts of interest are in Annex 6.

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

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

## **32. Registers**

The Trust shall have:

- 32.1. 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;
- 32.2. a register of members of the Council of Governors;
- 32.3. a register of interests of Governors;
- 32.4. a register of Directors; and
- 32.5. a register of interests of the Directors.

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

- 33.1. The Trust shall make the registers specified in paragraph 32 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.
- 33.2. 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.
- 33.3. So far as the registers are required to be made available:
  - 33.3.1. they are to be available for inspection free of charge at all reasonable times; and
  - 33.3.2. a person who requests a copy of or extract from the registers is to be provided with a copy or extract.
- 33.4. 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.

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

- 34.1. The Trust shall make the following documents available for inspection by members of the public free of charge at all reasonable times:
  - 34.1.1. a copy of the current constitution;
  - 34.1.2. a copy of the latest annual accounts and of any report of the auditor on them;

- 34.1.3. a copy of the latest annual report;
- 34.2. 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:
  - 34.2.1. A copy of any order made under section 65D (appointment of trust special administrator), 65J (power of 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.
  - 34.2.2. A copy of any report laid under section 65D (appointment of trust special administrator) of the 2006 Act.
  - 34.2.3. A copy of any information published under section 65D (appointment of trust special administrator) of the 2006 Act.
  - 34.2.4. A copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act.
  - 34.2.5. A copy of any statement provided under section 65F (administrator's draft report) of the 2006 Act.
  - 34.2.6. 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.
  - 34.2.7. A copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act.
  - 34.2.8. A copy of any final report published under section 65J (administrator's final report).
  - 34.2.9. 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.
  - 34.2.10. A copy of any information published under section 65M (replacement of trust special administrator) of the 2006 Act.
- 34.3. Any person who requests a copy of or extract from any of the above documents is to be provided with a copy.
- 34.4. 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.

## **35. Auditor**

- 35.1. The Trust shall have an auditor.

- 35.2. The Council of Governors shall appoint or remove the auditor at a general meeting of the Council of Governors.

### **36. 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.

### **37. Accounts**

- 37.1. The Trust must keep proper accounts and proper records in relation to the accounts.
- 37.2. Monitor may, with the approval of the Secretary of State, give directions to the Trust as to the content and form of its accounts.
- 37.3. The accounts are to be audited by the Trust's auditor.
- 37.4. 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.
- 37.5. The functions of the Trust with respect to the preparation of the annual accounts shall be delegated to the Accounting Officer.

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

- 38.1. The Trust shall prepare an Annual Report and send it to Monitor.
- 38.2. The Trust shall give information as to its forward planning in respect of each financial year to Monitor.
- 38.3. The document containing the information with respect to forward planning (referred to above) shall be prepared by the Directors.
- 38.4. In preparing the document, the Directors shall have regard to the views of the Council of Governors.
- 38.5. Each forward plan must include information about:
  - 38.5.1. 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
  - 38.5.2. the income it expects to receive from doing so.
- 38.6. Where a forward plan contains a proposal that the Trust carry on an activity of a kind mentioned in sub-paragraph 38.5.1 the Council of Governors must:
  - 38.6.1. determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfillment by the Trust of its principal purpose or the performance of its other functions; and

- 38.6.2. notify the Directors of the Trust of its determination.
- 38.7. If the Trust proposes to increase by 5% or more the proportion of its total income in any financial year attributable to activities other than the provision of goods and services for the purposes of the health service in England it may implement the proposal only if more than half of the members of the Council of Governors of the Trust voting approve its implementation.
- 39. Presentation of the annual accounts and reports to the Governors and Members**
- 39.1 The following documents are to be presented to the Council of Governors at a general meeting of the Council of Governors:
- 39.1.1. The annual accounts
  - 39.1.2. Any report of the auditor on them
  - 39.1.3. The annual report.
- 39.2 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.
- 39.3 The Trust may combine a meeting of the Council of Governors convened for the purposes of sub-paragraph 3.9.1 with the Annual Members'
- 40. Indemnity**
- The Company Secretary of the Trust and Members of the Council of Governors and Board of Directors who act honestly and in good faith will not have to meet out of their personal resources any personal civil liability which is incurred in the execution or purported execution of their functions, save where they have acted recklessly and the Trust may also take out and maintain for their benefit insurance against such risks. Any costs arising in this way will be met by the Trust.
- 41. Instruments**
- 41.1. The Trust shall have a seal.
- 41.2. The seal shall not be affixed except under the authority of the Board of Directors.
- 42. Amendment of the constitution**
- 42.1. The Trust may make amendments to the constitution only if –
- 42.1.1. More than half of the members of the Council of Governors of the Trust voting approve the amendments, and
  - 42.1.2. More than half of the members of the Board of Directors of the Trust voting approve the amendments.
- 42.2. Amendments made under paragraph 42.1 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.

42.3. Where an amendment is made to the constitution in relation to the powers or duties of the Council of governors (or otherwise with respect to the role that the Council of Governors has as part of the Trust) –

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

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

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.

42.4. 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.

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

- 43.1. The Trust may only apply for a merger, acquisition, separation or dissolution with the approval of more than half of the members of the Council of Governors.
- 43.2. The constitution does not contain any descriptions of the term 'significant transaction' for the purposes of section 51A of the 2006 Act (Significant Transactions).

### **44. Interpretation and definitions**

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 2006 Act.

References to statutory provisions shall be deemed to include references to any provision amending, re-enacting or replacing them and to such provisions as amended from time to time.

Words importing the masculine gender only shall include the feminine gender; words importing the singular shall import the plural and vice-versa.

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

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

**Annual Members Meeting** is defined in paragraph 9 of the constitution.

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

**Monitor** is the body corporate known as Monitor, as provided by Section 61 of the 2012 Act.

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

**Trust Principles** means the principles set out in Annex 7.

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

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

## **ANNEX 1 – THE PUBLIC CONSTITUENCY**

<b>Area</b>	<b>Minimum number of members</b>
Medway	70
Swale	30
Rest of England and Wales	10

The overall number of public members will not fall below 400 nor below the minimum in each area identified in this annex.

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

The staff constituency will comprise five classes based on job groups. These and the minimum number of members in each class are set out below.

Job Class	Minimum number
Medical	200
Nursing and Midwifery	700
Allied Health Professions	150
Non Clinical	700
Management	200

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

The Council of Governors will consist of 23 elected and appointed Governors, structured as follows:

<b>Appointed Governors:</b>	
Local Authority (represented by a member of the Kent Health and Wellbeing Board)	1
Local Authority (represented by a member of the Medway Health and Wellbeing Board)	1
Universities at Medway ( Kent, Christchurch and Greenwich)	1
Charity Representative	1
<b>Elected Governors – staff members:</b>	
Staff Members	5
<b>Elected Governors – Public Members</b>	
Medway	9
Swale	4
Rest of England and Wales	1

Subject to agreement with the local commissioners the Council can appoint up to two commissioning representatives.

## **ANNEX 4 – MODEL ELECTION RULES**

### **PART 1: INTERPRETATION**

1. Interpretation

### **PART 2: TIMETABLE FOR ELECTION**

2. Timetable
3. Computation of time

### **PART 3: RETURNING OFFICER**

4. Returning officer
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6. Expenditure
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### **PART 4: STAGES COMMON TO CONTESTED AND UNCONTESTED ELECTIONS**

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9. Nomination of candidates
10. Candidate's particulars
11. Declaration of interests
12. Declaration of eligibility
13. Signature of candidate
14. Decisions as to validity of nomination forms
15. Publication of statement of nominated candidates
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### **PART 5: CONTESTED ELECTIONS**

19. Poll to be taken by ballot
20. The ballot paper
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*Action to be taken before the poll*

22. List of eligible voters
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24. Issue of voting information by returning officer
25. Ballot paper envelope and covering envelope
26. E-voting systems

*The poll*

27. Eligibility to vote
28. Voting by persons who require assistance
29. Spoilt ballot papers and spoilt text message votes
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33. Procedure for remote voting by internet
34. Procedure for remote voting by telephone
35. Procedure for remote voting by text message

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

36. Receipt of voting documents
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**PART 6: COUNTING THE VOTES**

- STV41. Interpretation of Part 6
42. Arrangements for counting of the votes
43. The count
- STV44. Rejected ballot papers and rejected text voting records
- FPP44. Rejected ballot papers and rejected text voting records
- STV45. First stage
- STV46. The quota
- STV47. Transfer of votes
- STV48. Supplementary provisions on transfer
- STV49. Exclusion of candidates
- STV50. Filling of last vacancies
- STV51. Order of election of candidates
- FPP51. Equality of votes

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

- FPP52. Declaration of result for contested elections
- STV52. Declaration of result for contested elections
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54. Sealing up of documents relating to the poll

- 55. Delivery of documents
- 56. Forwarding of documents received after close of the poll
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#### **PART 9: DEATH OF A CANDIDATE DURING A CONTESTED ELECTION**

- FPP59. Countermand or abandonment of poll on death of candidate
- STV59. Countermand or abandonment of poll on death of candidate

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

##### *Expenses*

- 60. Election expenses
- 61. Expenses and payments by candidates
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##### *Publicity*

- 63. Publicity about election by the corporation
- 64. Information about candidates for inclusion with voting information
- 65. Meaning of "for the purposes of an election"

#### **PART 11: QUESTIONING ELECTIONS AND IRREGULARITIES**

- 66. Application to question an election

#### **PART 12: MISCELLANEOUS**

- 67. Secrecy
- 68. Prohibition of disclosure of vote
- 69. Disqualification
- 70. Delay in postal service through industrial action or unforeseen event

## PART 1: INTERPRETATION

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### 1. Interpretation

1.1 In these rules, unless the context otherwise requires:

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

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

“*council of governors*” means the council of governors of the corporation;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## PART 2: TIMETABLE FOR ELECTIONS

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### 2. **Timetable**

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

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

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

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

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

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

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

## PART 3: RETURNING OFFICER

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### **4. Returning Officer**

- 4.1 Subject to rule 69, the returning officer for an election is to be appointed by the corporation.
- 4.2 Where two or more elections are to be held concurrently, the same returning officer may be appointed for all those elections.

### **5. Staff**

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

### **6. Expenditure**

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

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

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

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

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

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

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

### **9. Nomination of candidates**

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

9.2 The returning officer:

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

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

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

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

**11. Declaration of interests**

- 11.1 The nomination form must state:
- (a) any financial interest that the candidate has in the corporation, and
  - (b) whether the candidate is a member of a political party, and if so, which party,

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

**12. Declaration of eligibility**

- 12.1 The nomination form must include a declaration made by the candidate:
- (a) that he or she is not prevented from being a 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

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

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

- 20. The ballot paper**
- 20.1 The ballot of each voter (other than a voter who casts his or her ballot by an e-voting method of polling) is to consist of a ballot paper with the persons remaining validly nominated for an election after any withdrawals under these rules, and no others, inserted in the paper.
- 20.2 Every ballot paper must specify:
- (a) the name of the corporation,
  - (b) the constituency, or class within a constituency, for which the election is being held,
  - (c) the number of members of the council of governors to be elected from that constituency, or class within that constituency,
  - (d) the names and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
  - (e) instructions on how to vote by all available methods of polling, including the relevant voter's voter ID number if one or more e-voting methods of polling are available,
  - (f) if the ballot paper is to be returned by post, the address for its return and the date and time of the close of the poll, and
  - (g) the contact details of the returning officer.
- 20.3 Each ballot paper must have a unique identifier.
- 20.4 Each ballot paper must have features incorporated into it to prevent it from being reproduced.
- 21. The declaration of identity (public and patient constituencies)**
- 21.1 The corporation shall require each voter who participates in an election for a public or patient constituency to make a declaration confirming:
- (a) that the voter is the person:
    - (i) to whom the ballot paper was addressed, and/or
    - (ii) to whom the voter ID number contained within the e-voting information was allocated,
  - (b) that he or she has not marked or returned any other voting information in the election, and
  - (c) the particulars of his or her qualification to vote as a member

of the constituency or class within the constituency for which the election is being held,

(“declaration of identity”)

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

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

*Action to be taken before the poll*

**22. List of eligible voters**

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

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

**23. Notice of poll**

- 23.1 The returning officer is to publish a notice of the poll stating:
  - (a) the name of the corporation,
  - (b) the constituency, or class within a constituency, for which the election is being held,

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

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

- 24.1 Subject to rule 24.3, as soon as is reasonably practicable on or after the publication of the notice of the poll, the returning officer is to send the following information by post to each member of the corporation named in the list of eligible voters:
- (a) a ballot paper and ballot paper envelope,
  - (b) the ID declaration form (if required),
  - (c) information about each candidate standing for election, pursuant to rule 61 of these rules, and
  - (d) a covering envelope;
- (“postal voting information”).

- 24.2 Subject to rules 24.3 and 24.4, as soon as is reasonably practicable on or after the publication of the notice of the poll, the returning officer is to send the following information by e-mail and/ or by post to each

member of the corporation named in the list of eligible voters whom the corporation determines in accordance with rule 19.3 and/ or rule 19.4 may cast his or her vote by an e-voting method of polling:

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

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

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

for the purposes of the poll.

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

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

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

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

25.2 The covering envelope is to have:

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

- 25.3 There should be clear instructions, either printed on the covering envelope or elsewhere, instructing the voter to seal the following documents inside the covering envelope and return it to the returning officer –
- (a) the completed ID declaration form if required, and
  - (b) the ballot paper envelope, with the ballot paper sealed inside it.
- 26. E-voting systems**
- 26.1 If internet voting is a method of polling for the relevant election then the returning officer must provide a website for the purpose of voting over the internet (in these rules referred to as "the polling website").
- 26.2 If telephone voting is a method of polling for the relevant election then the returning officer must provide an automated telephone system for the purpose of voting by the use of a touch-tone telephone (in these rules referred to as "the telephone voting facility").
- 26.3 If text message voting is a method of polling for the relevant election then the returning officer must provide an automated text messaging system for the purpose of voting by text message (in these rules referred to as "the text message voting facility").
- 26.4 The returning officer shall ensure that the polling website and internet voting system provided will:
- (a) require a voter to:
    - (i) enter his or her voter ID number; and
    - (ii) where the election is for a public or patient constituency, make a declaration of identity;

in order to be able to cast his or her vote;
  - (b) specify:
    - (i) the name of the corporation,
    - (ii) the constituency, or class within a constituency, for which the election is being held,
    - (iii) the number of members of the council of governors to be elected from that constituency, or class within that constituency,
    - (iv) the names and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
    - (v) instructions on how to vote and how to make a declaration of identity,

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

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

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

telephone voting system in respect of each vote cast by a voter using the telephone that comprises of:

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

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

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

*The poll*

**27. Eligibility to vote**

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

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

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

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

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

she can obtain it.

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

**30. Lost voting information**

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

**31. Issue of replacement voting information**

- 31.1 If a person applies for replacement voting information under rule 29 or 30 and a declaration of identity has already been received by the returning officer in the name of that voter, the returning officer may

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

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

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

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

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

*Polling by internet, telephone or text*

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

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

33.2 When prompted to do so, the voter will need to enter his or her voter ID number.

33.3 If the internet voting system authenticates the voter ID number, the system will give the voter access to the polling website for the election in which the voter is eligible to vote.

33.4 To cast his or her vote, the voter will need to key in a mark on the screen opposite the particulars of the candidate or candidates for whom he or she wishes to cast his or her vote.

33.5 The voter will not be able to access the internet voting system for an election once his or her vote at that election has been cast.

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

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

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

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

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

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

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

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

- 36.1 Where the returning officer receives:
  - (a) a covering envelope, or
  - (b) any other envelope containing an ID declaration form if required, a ballot paper envelope, or a ballot paper,before the close of the poll, that officer is to open it as soon as is practicable; and rules 37 and 38 are to apply.
- 36.2 The returning officer may open any covering envelope or any ballot paper envelope for the purposes of rules 37 and 38, but must make

arrangements to ensure that no person obtains or communicates information as to:

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

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

**37. Validity of votes**

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

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

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

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

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

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

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

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

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

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

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

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

**39. De-duplication of votes**

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

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

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

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

- (a) mark the ballot paper “disqualified”,
- (b) if there is an ID declaration form accompanying the ballot paper,

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

- 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

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### 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 such software for the purpose of counting votes in the relevant election, and
  - (ii) a policy governing the use of such software, and
- (b) the corporation and the returning officer are satisfied that the use of such software will produce an accurate result.

**43. The count**

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

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

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

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

STV44.1 Any ballot paper:

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

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

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

- STV44.3 Any text voting record:
- (a) on which the figure “1” standing alone is not placed so as to indicate a first preference for any candidate,
  - (b) on which anything is written or marked by which the voter can be identified except the unique identifier, or
  - (c) which is unmarked or rejected because of uncertainty,
- shall be rejected and not counted, but the text voting record shall not be rejected by reason only of carrying the words “one”, “two”, “three” and so on, or any other mark instead of a figure if, in the opinion of the returning officer, the word or mark clearly indicates a preference or preferences.
- STV44.4 The returning officer is to endorse the word “rejected” on any text voting record which under this rule is not to be counted.
- STV44.5 The returning officer is to draw up a statement showing the number of ballot papers rejected by him or her under each of the subparagraphs (a) to (d) of rule STV44.1 and the number of text voting records rejected by him or her under each of the sub-paragraphs (a) to (c) of rule STV44.3.
- FPP44. Rejected ballot papers and rejected text voting records**
- FPP44.1 Any ballot paper:
- (a) which does not bear the features that have been incorporated into the other ballot papers to prevent them from being reproduced,
  - (b) on which votes are given for more candidates than the voter is entitled to vote,
  - (c) on which anything is written or marked by which the voter can be identified except the unique identifier, or
  - (d) which is unmarked or rejected because of uncertainty,
- shall, subject to rules FPP44.2 and FPP44.3, be rejected and not counted.
- FPP44.2 Where the voter is entitled to vote for more than one candidate, a ballot paper is not to be rejected because of uncertainty in respect of any vote where no uncertainty arises, and that vote is to be counted.
- FPP44.3 A ballot paper on which a vote is marked:
- (a) elsewhere than in the proper place,

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

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

- FPP44.4 The returning officer is to:
- (a) endorse the word "rejected" on any ballot paper which under this rule is not to be counted, and
  - (b) in the case of a ballot paper on which any vote is counted under rules FPP44.2 and FPP 44.3, endorse the words "rejected in part" on the ballot paper and indicate which vote or votes have been counted.
- FPP44.5 The returning officer is to draw up a statement showing the number of rejected ballot papers under the following headings:
- (a) does not bear proper features that have been incorporated into the ballot paper,
  - (b) voting for more candidates than the voter is entitled to,
  - (c) writing or mark by which voter could be identified, and
  - (d) unmarked or rejected because of uncertainty,
- and, where applicable, each heading must record the number of ballot papers rejected in part.
- FPP44.6 Any text voting record:
- (a) on which votes are given for more candidates than the voter is entitled to vote,
  - (b) on which anything is written or marked by which the voter can be identified except the voter ID number, or
  - (c) which is unmarked or rejected because of uncertainty,
- shall, subject to rules FPP44.7 and FPP44.8, be rejected and not counted.
- FPP44.7 Where the voter is entitled to vote for more than one candidate, a text voting record is not to be rejected because of uncertainty in respect of any vote where no uncertainty arises, and that vote is to be counted.

- FPP448 A text voting record on which a vote is marked:
- (a) otherwise than by means of a clear mark,
  - (b) by more than one mark,
- is not to be rejected for such reason (either wholly or in respect of that vote) if an intention that the vote shall be for one or other of the candidates clearly appears, and the way the text voting record is marked does not itself identify the voter and it is not shown that he or she can be identified by it.
- FPP44.9 The returning officer is to:
- (a) endorse the word "rejected" on any text voting record which under this rule is not to be counted, and
  - (b) in the case of a text voting record on which any vote is counted under rules FPP44.7 and FPP 44.8, endorse the words "rejected in part" on the text voting record and indicate which vote or votes have been counted.
- FPP44.10 The returning officer is to draw up a statement showing the number of rejected text voting records under the following headings:
- (a) voting for more candidates than the voter is entitled to,
  - (b) writing or mark by which voter could be identified, and
  - (c) unmarked or rejected because of uncertainty,
- and, where applicable, each heading must record the number of text voting records rejected in part.
- STV45. First stage**
- STV45.1 The returning officer is to sort the ballot documents into parcels according to the candidates for whom the first preference votes are given.
- STV45.2 The returning officer is to then count the number of first preference votes given on ballot documents for each candidate, and is to record those numbers.
- STV45.3 The returning officer is to also ascertain and record the number of valid ballot documents.
- STV46. The quota**
- STV46.1 The returning officer is to divide the number of valid ballot documents

by a number exceeding by one the number of members to be elected.

- STV46.2 The result, increased by one, of the division under rule STV46.1 (any fraction being disregarded) shall be the number of votes sufficient to secure the election of a candidate (in these rules referred to as “the quota”).
- STV46.3 At any stage of the count a candidate whose total votes equals or exceeds the quota shall be deemed to be elected, except that any election where there is only one vacancy a candidate shall not be deemed to be elected until the procedure set out in rules STV47.1 to STV47.3 has been complied with.

**STV47. Transfer of votes**

- STV47.1 Where the number of first preference votes for any candidate exceeds the quota, the returning officer is to sort all the ballot documents on which first preference votes are given for that candidate into sub-parcels so that they are grouped:
- according to next available preference given on those ballot documents for any continuing candidate, or
  - where no such preference is given, as the sub-parcel of non-transferable votes.
- STV47.2 The returning officer is to count the number of ballot documents in each parcel referred to in rule STV47.1.
- STV47.3 The returning officer is, in accordance with this rule and rule STV48, to transfer each sub-parcel of ballot documents referred to in rule STV47.1(a) to the candidate for whom the next available preference is given on those ballot documents.
- STV47.4 The vote on each ballot document transferred under rule STV47.3 shall be at a value (“the transfer value”) which:
- reduces the value of each vote transferred so that the total value of all such votes does not exceed the surplus, and
  - is calculated by dividing the surplus of the candidate from whom the votes are being transferred by the total number of the ballot documents on which those votes are given, the calculation being made to two decimal places (ignoring the remainder if any).
- STV47.5 Where at the end of any stage of the count involving the transfer of ballot documents, the number of votes for any candidate exceeds the quota, the returning officer is to sort the ballot documents in the sub-

parcel of transferred votes which was last received by that candidate into separate sub-parcels so that they are grouped:

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

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

**STV48. Supplementary provisions on transfer**

- STV48.1 If, at any stage of the count, two or more candidates have surpluses, the transferable ballot documents of the candidate with the highest surplus shall be transferred first, and if:
- (a) The surpluses determined in respect of two or more candidates are equal, the transferable ballot documents of the candidate who had the highest recorded vote at the earliest preceding stage at which they had unequal votes shall be transferred first, and
  - (b) the votes credited to two or more candidates were equal at all stages of the count, the returning officer shall decide between those candidates by lot, and the transferable ballot documents of the candidate on whom the lot falls shall be transferred first.
- STV48.2 The returning officer shall, on each transfer of transferable ballot documents under rule STV47:
- (a) record the total value of the votes transferred to each candidate,
  - (b) add that value to the previous total of votes recorded for each candidate and record the new total,
  - (c) record as non-transferable votes the difference between the surplus and the total transfer value of the transferred votes and add that difference to the previously recorded total of non-transferable votes, and
  - (d) compare:
    - (i) the total number of votes then recorded for all of the candidates, together with the total number of non-transferable votes, with
    - (ii) the recorded total of valid first preference votes.
- STV48.3 All ballot documents transferred under rule STV47 or STV49 shall be clearly marked, either individually or as a sub-parcel, so as to indicate the transfer value recorded at that time to each vote on that ballot document or, as the case may be, all the ballot documents in that sub-parcel.
- STV48.4 Where a ballot document is so marked that it is unclear to the returning officer at any stage of the count under rule STV47 or STV49 for which candidate the next preference is recorded, the returning officer shall treat any vote on that ballot document as a non-transferable vote; and votes on a ballot document shall be so treated where, for example, the names of two or more candidates (whether continuing candidates or not) are so marked that, in the opinion of the returning officer, the same order of preference is indicated or the numerical sequence is broken.

- STV49.      Exclusion of candidates**
- STV49.1    If:
- (a) all transferable ballot documents which under the provisions of rule STV47 (including that rule as applied by rule STV49.11) and this rule are required to be transferred, have been transferred, and
  - (b) subject to rule STV50, one or more vacancies remain to be filled,
- the returning officer shall exclude from the election at that stage the candidate with the then lowest vote (or, where rule STV49.12 applies, the candidates with the then lowest votes).
- STV49.2    The returning officer shall sort all the ballot documents on which first preference votes are given for the candidate or candidates excluded under rule STV49.1 into two sub-parcels so that they are grouped as:
- (a) ballot documents on which a next available preference is given, and
  - (b) ballot documents on which no such preference is given (thereby including ballot documents on which preferences are given only for candidates who are deemed to be elected or are excluded).
- STV49.3    The returning officer shall, in accordance with this rule and rule STV48, transfer each sub-parcel of ballot documents referred to in rule STV49.2 to the candidate for whom the next available preference is given on those ballot documents.
- STV49.4    The exclusion of a candidate, or of two or more candidates together, constitutes a further stage of the count.
- STV49.5    If, subject to rule STV50, one or more vacancies still remain to be filled, the returning officer shall then sort the transferable ballot documents, if any, which had been transferred to any candidate excluded under rule STV49.1 into sub-parcels according to their transfer value.
- STV49.6    The returning officer shall transfer those ballot documents in the sub-parcel of transferable ballot documents with the highest transfer value to the continuing candidates in accordance with the next available preferences given on those ballot documents (thereby passing over candidates who are deemed to be elected or are excluded).
- STV49.7    The vote on each transferable ballot document transferred under rule

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

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

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

**STV50. Filling of last vacancies**

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

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

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

**STV51. Order of election of candidates**

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

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

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

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

**FPP51. Equality of votes**

FPP51.1 Where, after the counting of votes is completed, an equality of votes

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

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

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

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

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

FPP52.2 The returning officer is to make:

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

available on request.

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

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

- (a) declare the candidates who are deemed to be elected under Part 6 of these rules as elected,
- (b) give notice of the name of each candidate who he or she has

declared elected –

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

STV52.2 The returning officer is to make:

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

available on request.

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

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

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

## PART 8: DISPOSAL OF DOCUMENTS

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

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

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

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

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

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

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

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

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

**55.      Delivery of documents**

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

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

56.1     Where:

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

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

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

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

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

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

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

58.1     The corporation may not allow:

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

- records rejected in part,
- (iii) any disqualified documents, or the list of disqualified documents,
  - (iv) any counted ballot papers, internet voting records, telephone voting records or text voting records, or
  - (v) the list of eligible voters, or
- (b) access to or the inspection of the complete electronic copies of the internet voting records, telephone voting records and text voting records created in accordance with rule 26 and held in a device suitable for the purpose of storage,
- by any person without the consent of the board of directors of the corporation.

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

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

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

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

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

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

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

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

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

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

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

- FPP59.6 The returning officer is to endorse on each packet a description of:
- (a) its contents,
  - (b) the date of the publication of notice of the election,
  - (c) the name of the corporation to which the election relates, and
  - (d) the constituency, or class within a constituency, to which the election relates.
- FPP59.7 Once the documents relating to the poll have been sealed up and endorsed pursuant to rules FPP59.4 to FPP59.6, the returning officer is to deliver them to the chairman of the corporation, and rules 57 and 58 are to apply.
- STV59. Countermand or abandonment of poll on death of candidate**
- STV59.1 If, at a contested election, proof is given to the returning officer's satisfaction before the result of the election is declared that one of the persons named or to be named as a candidate has died, then the returning officer is to:
- (a) publish a notice stating that the candidate has died, and
  - (b) proceed with the counting of the votes as if that candidate had been excluded from the count so that –
    - (i) ballot documents which only have a first preference recorded for the candidate that has died, and no preferences for any other candidates, are not to be counted, and
    - (ii) ballot documents which have preferences recorded for other candidates are to be counted according to the consecutive order of those preferences, passing over preferences marked for the candidate who has died.
- STV59.2 The ballot documents which have preferences recorded for the candidate who has died are to be sealed with the other counted ballot documents pursuant to rule 54.1(a).

## PART 10: ELECTION EXPENSES AND PUBLICITY

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### *Election expenses*

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

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

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

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

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

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

62.1 No person may:

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

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

### *Publicity*

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

63.1 The corporation may:

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

as it considers necessary.

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

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

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

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

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

64.2 The information must consist of:

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

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

- 65.1 In this Part, the phrase “for the purposes of an election” means with a view to, or otherwise in connection with, promoting or procuring a candidate’s election, including the prejudicing of another candidate’s electoral prospects; and the phrase “for the purposes of a candidate’s election” is to be construed accordingly.
- 65.2 The provision by any individual of his or her own services voluntarily, on his or her own time, and free of charge is not to be considered an expense for the purposes of this Part.

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

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

- 66.1 An application alleging a breach of these rules, including an electoral irregularity under Part 10, may be made to Monitor for the purpose of seeking a referral to the independent election arbitration panel (IEAP).
- 66.2 An application may only be made once the outcome of the election has been declared by the returning officer.
- 66.3 An application may only be made to 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 the independent panel may require.
- 66.5 The application must be presented in writing within 21 days of the declaration of the result of the election. Monitor will refer the application to the independent election arbitration panel appointed by Monitor.
- 66.6 If the independent election arbitration panel requests further information from the applicant, then that person must provide it as soon as is reasonably practicable.
- 66.7 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 IEAP shall be binding on and shall be given effect by the corporation, the applicant and the members of the constituency (or class within a constituency) including all the candidates for the election to which the application relates.
- 66.9 The IEAP may prescribe rules of procedure for the determination of an application including costs.

## PART 12: MISCELLANEOUS

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### **67. Secrecy**

67.1 The following persons:

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

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

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

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

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

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

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

### **69. Disqualification**

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

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

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

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

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

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

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

## **ANNEX 5 – STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE COUNCIL OF GOVERNORS**

### **1. INTERPRETATION**

- 1.1. Save as otherwise permitted by law, at any meeting the Chairman of the Trust shall be the final authority on the interpretation of Standing Orders (of which he should be advised by the Chief Executive of Secretary).
- 1.2. Any expression to which a meaning is given in the National Health Service Act 2006 (“2006 Act”) or in the Financial Regulations made under the 2006 Act shall have the same meaning in these Standing Orders.
  - 1.2.1. “Accounting Officer” means the Officer responsible and accountable for funds entrusted to the Trust. He shall be responsible for ensuring the proper stewardship of public funds and assets. For this Trust it shall be the Chief Executive.
  - 1.2.2. “Board of Directors” means the Chairman, Executive and other Non Executive Directors of the Trust collectively as a body
  - 1.2.3. “Constitution” means the constitution of the Trust.
  - 1.2.4. “Council of Governors” means the elected and appointed Governors of the Trust collectively as a body.
  - 1.2.5. “Chairman of the Council (or Trust)” is the person appointed by the Council of Governors to lead the Council of Governors and Board of Directors and to ensure that they successfully discharge their overall responsibility for the Trust as a whole. The expression “the Chairman of the Trust” shall be deemed to include the Deputy Chairman of the Trust if the Chairman is absent from the meeting or is otherwise unavailable.
  - 1.2.6. “Chief Executive” means the chief officer of the Trust.
  - 1.2.7. “Committee” means a committee appointed by the Council of Governors.
  - 1.2.8. “Committee members” means in the context of a Committee persons formally appointed by the Council of Governors to be members of the Committee
  - 1.2.9. “Deputy Chairman” means the Non Executive Director appointed by the Council of Governors to take on the Chairman duties if the Chairman is absent for any reason.
  - 1.2.10. “Executive Director” means a Director of the Trust who is an officer of the Trust
  - 1.2.11. “Member” means a governor of the Council. (Member in relation to the Council does not include the Chairman).

- 1.2.12. “Non Executive Director” means a member of the Board of Directors who is not an executive officer of the Trust.
- 1.2.13. “Officer” means employee of the Trust or any other person holding a paid appointment or office with the Trust.
- 1.2.14. “Secretary” means a person who may be appointed to act independently of the Council to provide advice on corporate governance issues to the Council, and the Chairman and monitor the Trust’s compliance with the law, Standing Orders and guidance of the Independent Regulator.
- 1.2.15. “SOs” mean Standing Orders.
- 1.2.16. “the Trust” means Medway NHS Foundation Trust.

## **2. THE TRUST COUNCIL**

- 2.1. **Composition of the Council** - The composition of the Council of Governors shall be in accordance with the Constitution.
- 2.2. **Appointment of the Chairman and Members** – The Chairman is appointed by the Council of Governors, as set out in the Constitution.
- 2.3. **Terms of Office of the Chairman and Members** - The regulations setting out the period of tenure of office of the Chairman and members and for the termination or suspension of office of the Chairman and members are contained in the Constitution.
- 2.4. **Appointment and Powers of Deputy Chairman** – subject to SO 2.5 below; the Chairman and members of the Trust may appoint one of their number, who is a Non Executive Director, to be Deputy Chairman for such period, not exceeding the remainder of his term as a member of the Trust, as they may specify on appointing him.
- 2.5. Any Non Executive Director so appointed may at any time resign from the office of Deputy Chairman and members may thereupon appoint another Non Executive Director as Deputy Chairman in accordance with the provisions of Standing Order 2.4.
- 2.6. Where the Chairman of the Trust has died or has ceased to hold office or where he has been unable to perform his duties as Chairman owing to illness or any other cause, the Deputy Chairman shall act as Chairman until a new Chairman is appointed or the existing Chairman resumes his duties, as the case may be, and references to the Chairman in these Standing Orders shall, so long as there is no Chairman able to perform his duties, be taken to include references to the Deputy Chairman.

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

- 3.1. *Admission of the Public and the Press* – The public and representatives of the press shall be afforded facilities to attend all formal meetings of the Council of Governors but shall be required to withdraw upon the Council (including a majority of the public Governors present at the meeting) resolving as follows:

*"That representatives of the press and other members of the public be excluded from the remainder of this meeting having regard to the confidential nature of the business to be transacted, publicity on which would be prejudicial to the public interest"*

- 3.2. Nothing in these Standing Orders shall require the Trust to allow members of the public or representatives of the press to record proceedings in any manner whatsoever, other than writing, or to make any oral report of proceedings as they take place, without the prior agreement of the Council.
- 3.3. **Calling Meetings** – Ordinary meetings of the Council shall be held at such times and places as the Council may determine.
- 3.4. The Chairman of the Trust may call a meeting of the Trust at any time. If the Chairman refuses to call a meeting after a requisition for that purpose, signed by at least one-third of the whole number of members, has been presented to him or her, or if, without so refusing, the Chairman does not call a meeting within seven days after such requisition has been presented to him at the Trust's Headquarters, such one-third or more members may forthwith call a meeting.
- 3.5. **Notice of Meetings-** Before each meeting of the Council, a notice of the meeting, specifying the business proposed to be transacted at it, and signed by the Chairman or by an officer authorised by the Chairman to sign on his behalf shall be delivered to every member, or sent by post to the usual place of residence of each member, so as to be available to him at least three clear days before the meeting.
- 3.6. Want of service of the notice on any member shall not affect the validity of a meeting.
- 3.7. In the case of a meeting called by members in default of the Chairman, the notice shall be signed by those members and no business shall be transacted at the meeting other than that specified in the notice.
- 3.8. Agendas will be sent to members six days before the meeting and supporting papers, whenever possible, shall accompany the agenda, but will certainly be dispatched no later than three clear days before the meeting, save in emergency. Failure to serve such a notice on more than three members will invalidate the meeting. A notice shall be presumed to have been served one day after posting.
- 3.9. Before each meeting of the Council a public notice of the time and place of the meeting, and the public part of the agenda, shall be displayed at the Trust's office at least three clear days before the meeting.
- 3.10. **Setting the Agenda-** The Council may determine that certain matters shall appear on every agenda for a meeting and shall be addressed prior to any other business being conducted. (Such matters may be identified within these Standing Orders or following subsequent resolution shall be listed in an Appendix to the Standing Orders).
- 3.11. A member desiring a matter to be included on an agenda shall make his request in writing to the Chairman at least ten clear days before the meeting.

The request should state whether the item of business is proposed to be transacted in the presence of the public and should include appropriate supporting information. Requests made less than ten days before a meeting may be included on the agenda at the discretion of the Chairman.

- 3.12. **Petitions-** where a petition has been received by the Trust the Chairman of the Council shall include the petition as an item for the agenda of the next Council meeting.
- 3.13. **Chairman of Meeting-** At any meeting of the Council, the Chairman of the Council, if present, shall preside. If the Chairman is absent from the meeting the Deputy Chairman, if there is one and he is present, shall preside. If the Chairman and Deputy Chairman are absent another Non Executive Director as the members present shall choose who shall preside.
- 3.14. 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, such Governor from the Public Constituency as the Governors present shall choose by majority vote who shall preside.
- 3.15. **Notices of Motion –** A member of the Council desiring to move or amend a motion shall send a written notice thereof at least ten clear days before the meeting to the Chairman, who shall insert in the agenda for the meeting all notices so received subject to the notice being permissible under the appropriate regulations. This paragraph shall not prevent any motion being moved during the meeting, without notice on any business mentioned on the agenda.
- 3.16. **Withdrawal of Motion or Amendments –** A motion or amendment once moved and seconded may be withdrawn by the proposer with the concurrence of the seconder and consent of the Chairman.
- 3.17. **Motion to Rescind a Resolution –** Notice of motion to amend or rescind any resolution (or the general substance of any resolution) which has been passed within the preceding six calendar months shall bear the signature of the member who gives it and also the signature of four other Council members. When any such motion has been disposed of by the Council, it shall not be competent for any member other than the Chairman to propose a motion to the same effect within six months however the Chairman may do so if he considers it appropriate.
- 3.18. **Motions-** The mover of a motion shall have a right of reply at the close of any discussion on the motion or any amendment thereto.
- 3.19. When a motion is under discussion or immediately prior to discussion it shall be open to a member to move:
  - An amendment to the motion,
  - The adjournment of the discussion or the meeting
  - That the meeting proceed to the next business (\*)
  - The appointment of an ad hoc committee to deal with a specific item of business
  - That the motion be now put (\*)
  - A motion resolving to exclude the public (including the press).

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

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

- 3.20. **Chairman's Ruling-** Statements of members made at meetings of the Council shall be relevant to matter under discussion at the material time and the decision of the Chairman of the meeting on questions of order, relevancy, regularity and any other matters shall be final.
- 3.21. **Voting-** every question at a meeting shall be determined by either a majority of the votes of the members present, qualified to vote on the issue and voting on the question unless the constitution requires otherwise. In the case of the number of votes for and against a motion being equal, the Chairman of the meeting, or the person presiding over that issue if the Chairman is absent, shall have a second or casting vote.
- 3.22. All questions put to the vote shall, at the discretion of the Chairman of the meeting, be determined by oral expression or by a show of hands. A paper ballot may also be used if a majority of the members present so request.
- 3.23. If at least one-third of the members present so request, the voting (other than by paper ballot) on any question may be recorded to show how each member voted or abstained.
- 3.24. If a member so requests, his or her vote shall be recorded by name upon any vote (other than by paper ballot).
- 3.25. In no circumstances may an absent member vote by proxy. Absence is defined as being absent at the time of the vote.
- 3.26. A person attending the Council to represent a member during a period of incapacity or temporary absence without formal appointment as a Governor may not exercise the voting rights of the member. A person's status when attending a meeting shall be recorded in the minutes.
- 3.27. Minutes- the Minutes of the proceedings of a meeting shall be drawn up and submitted for agreement at the next ensuing meeting where they will be signed by the person presiding at it.
- 3.28. No discussion shall take place upon the minutes except upon their accuracy or where the Chairman considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the next meeting.
- 3.29. Minutes shall be circulated in accordance with members' wishes. Where providing a record of a public meeting the minutes shall be made available to the public as required by Code of Practice on Openness in the NHS.

### 3.30. **Variation and Amendment of Standing Orders**

- 3.30.1. These Standing Orders shall be amended only if:

- A notice of motion under Standing Order 3.16 has been given; and
  - No fewer than half the total of the Trust's public Governors vote in favour of amendment; and
  - At least two-thirds of the Council members are present; and
  - The variation proposed does not contravene a statutory provision, the Terms of Authorisation or any binding guidance issued by Monitor
- 3.31. **Record of Attendance** – the names of the Chairman and members present at the meeting shall be recorded in the minutes.
- 3.32. **Quorum** – No business shall be transacted at a meeting unless at least one-third of the whole number of the Governors, (including at least one appointed Governor and one elected Governor with the Public Governors in a majority) are present.
- 3.33. If the Chairman or member has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of the declaration of a conflict of interest (see Standing Orders 6 or 7) he shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. The meeting must then proceed to the next business. The above requirement for at least one executive Director to form part of the quorum shall not apply where the executive Directors are excluded from a meeting.

#### **4. ARRANGEMENTS FOR DELEGATION**

- 4.1. **Committees** – The Council shall agree from time to time to the delegation of matters for consideration by committee, or sub-committees which it has formally constituted in accordance with the constitution and consisting wholly or partly of its members. The constitution and terms of reference of these committees or sub-committees and their specific powers shall be approved by the Council. Such committees and sub-committees shall be advisory only and not decision-making
- 4.2. **Overriding Standing Orders** – If for any reason these Standing Orders are not complied with, full details of the non-compliance and any justification for non-compliance and the circumstances around the non-compliance, shall be reported to the next formal meeting of the Council for action or ratification. All members of the Council and staff have a duty to disclose any non-compliance with these Standing Orders to the Chairman as soon as possible.

#### **5. COMMITTEES**

- 5.1. Subject to the constitution and any requirements of The Regulator, the Council may appoint committees of the Council consisting wholly or partly of the Chairman and members of the Council
- 5.2. A committee appointed under this regulation may, subject to any binding requirement of the Trust's terms of authorisation, of The Regulator or of the

Council, appoint sub-committees consisting wholly or partly of members of the committee

- 5.3. The Standing Orders of the Council, as far as they are applicable, shall apply with appropriate alteration to meeting of any committees established by the Council. In which case the term "Chairman" is to be read as a reference to the Chairman of the committee as the context permits, and the term "member" is to be read as a reference to a member of the committee also as the context permits. (There is no requirement to hold meetings of committees, established by the Council in public).
- 5.4. Each such committee should have such terms of reference and subject to such conditions (as to reporting back to the Council), as the Council shall decide and shall be in accordance with any legislation. Such terms of reference shall have effect as if incorporated into the Standing Orders.
- 5.5. The Council shall approve the appointments to each of the committees which it has formally constituted.
- 5.6. The Secretary or his deputy will attend all meetings of the Committees in support of them.

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

- 6.1. **Declaration of interests** – The constitution and the Trust's Code of Conduct requires Council members to declare interests which are relevant and material to the Council of which they are a member. All existing Council members should declare such interests. Any Council members appointed subsequently should do so on appointment.
- 6.2. Interests which should be regarded as "relevant and material" are:
  - a. Directorships, including Non Executive Directorships held in private companies or public limited companies (with the exception of those of dormant companies).
  - b. Ownership, part-ownership or Directorship of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS.
  - c. Majority or controlling share holdings in organisations likely or possibly seeking to do business with the NHS.
  - d. A position of trust 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. To the extent not covered above, any connection with an organisation, entity or company considering entering into or having entered into a financial agreement with the NHS Foundation Trust, including but not limited to, lenders or banks.
  - g. Any other commercial interest in the decision before the meeting
- 6.3. At the time Council members' interests are declared, they should be recorded in the Council minutes. Any changes in interests should be declared at the next Council meeting following the change occurring.
- 6.4. Council meetings' Directorships of companies likely or possibly seeking to do business with the Trust should be published in the Council's Annual Report.

The information should be kept up to date for inclusion in succeeding annual reports.

- 6.5. During the course of a Council meeting, if a conflict of interest is established, the member concerned should withdraw from the meeting and play no part in the relevant discussion or decision.
- 6.6. There is no requirement in the Code of Conduct for the interests of Council members' spouses or partners to be declared. However Standing Order 7 requires that the interest of members' spouses, if living together, in contracts should be declared. Therefore the interests of Council members' spouses and cohabiting partners should also be regarded as relevant.
- 6.7. If Council members have any doubt about the relevance of an interest, this should be discussed with the Chairman. Financial Reporting Standard No 8 (issued by the Accounting Standards Council) specifies that influence rather than the immediacy of the relationship is more important in assessing the relevance of an interest. The interests of partners in professional partnerships including general practitioners should also be considered.
- 6.8. **Register of Interests** – The Secretary will ensure that a Register of Interests is established to record formally declarations of interests of Council members. In particular the Register will include details of all Directorships and other relevant and material interests which have been declared by both elected and appointed members.
- 6.9. These details will be kept up to date by means of an annual review of the Register in which any changes to interests declared during the preceding twelve months will be incorporated.
- 6.10. The Register will be available to the public and the Secretary will take reasonable steps to bring the existence of the Register to the attention of the local population and to publicise arrangements for viewing it.

## **7. DISABILITY OF CHAIRMAN AND MEMBERS IN PROCEEDINGS ON ACCOUNT OF PECUNIARY INTEREST**

- 7.1. Subject to the following provisions of this Standing Orders, if the Chairman or a member has any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter and is present at a meeting of the Trust at which the contract or other matter is the subject of consideration, he shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not take part in the consideration or discussion of the contract or other matter or vote on any question with respect to it.
- 7.2. The Council may exclude the Chairman or a member of the Council from a meeting of the Council while any contract, proposed contract to other matter in which he has a pecuniary interest, is under consideration.
- 7.3. Any remuneration compensation or allowances payable to the Chairman or a member by virtue of the constitution shall not be treated as a pecuniary interest for the purpose of this Standing Order.

- 7.4. For the purpose of this Standing Order the Chairman or a member shall be treated as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if:
- He, or a nominee of his, is a Director of a company or other body, not being a public body, with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration; or
  - He is a partner of, or is in the employment of a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration;

And in the case of married persons living together the interest of one spouse shall, if known to the other, be deemed for the purposes of this Standing Order to be also an interest of the other.

- 7.5. The Chairman or a member shall not be treated as having a pecuniary interest in any contract, proposed contract or any other matter by reason only:
- a. of his membership of a company or other body, if he has no beneficial interest in any securities of that company or other body;
  - b. of an interest in any company, body or person with which he is connected which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a member in the consideration or discussion of or in voting on, any question with respect to that contract or matter.
- 7.6. Where the Chairman or a member has an indirect pecuniary interest in a contract, proposed contract or other matter by reason only of a beneficial interest in securities of a company or other body, and the total nominal value of these securities does not exceed £5,000 or one-hundredth of the total nominal value of the issued share capital of the company body, whichever is the less, and if the share capital is of more than one class, the total nominal value of shares of any one class in which he has beneficial interest does not exceed one-hundredth of the total issued share capital of that class, this Standing Order shall not prohibit him/her from taking part in the consideration or discussion of the contract or other matter or from voting on any question with respect to it, without prejudice however to his duty to disclose his interest.
- 7.7. The Standing Order applies to a committee or sub-committee as it applies to the Trust.

## **8. SENIOR INDEPENDENT DIRECTOR**

- 8.1. The Council of Governors is entitled to be consulted by the Board of Directors on the appointment of the Trust's Senior Independent Director.
- 8.2. The role of the Senior Independent Director is as set out in the Trust's "Senior Independent Director Job Specification" as amended from time to time.

## **ANNEX 6 – STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE BOARD OF DIRECTORS**

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## **SECTION A**

### **1. INTERPRETATION AND DEFINITIONS FOR STANDING ORDERS**

- 1.1 Save as otherwise permitted by law, at any meeting the Chairman of the Trust shall be the final authority on the interpretation of Standing Orders (on which they should be advised by the Chief Executive or Secretary to the Board).
- 1.2 Throughout these Standing Orders, if not inconsistent with the context:
  - 1.2.1 **2006 Act**" means the National Health Service Act 2006.
  - 1.2.2 **"Accounting Officer"** means the Officer responsible and accountable for discharging the functions specified in paragraph 25(5) of Schedule 7 to the 2006 Act, which shall be the Chief Executive.
  - 1.2.3 **"Board"** means the Executive and Non Executive Directors including the Chairman as constituted in accordance with the Constitution.
  - 1.2.4 **"Budget"** means a resource, expressed in financial terms, proposed by the Board for the purpose of carrying out, for a specific period, any or all of the functions of the Trust.
  - 1.2.5 **"Budget Holder"** means the Director or officer with delegated authority to manage finances (Income and Expenditure) for a specific area of the organisation.
  - 1.2.6 **"Chairman"** is the person appointed by the Council of Governors to lead the Board and to ensure that it successfully discharges its overall responsibility for the Trust as a whole. The expression "the Chairman" shall be deemed to include the Deputy Chairman if the Chairman is absent from the meeting or is otherwise unavailable.
  - 1.2.7 **"Chief Executive"** means the chief executive Officer of the Trust.
  - 1.2.8 **"Quality committee"** means a committee whose functions are concerned with the arrangements for the purpose of monitoring and improving the quality of healthcare for which the Trust has responsibility.
  - 1.2.9 **"Commissioning"** means the process for determining the need for and for obtaining the supply of healthcare and related services by the Trust within available resources.
  - 1.2.10 **"Committee"** means a committee or sub-committee of the Board.
  - 1.2.11 **"Committee Members"** means persons formally appointed by the Board to sit on or to chair specific committees.

- 1.2.12    "**Constitution**" means the constitution approved by the Council of Governors and the Board and which describes the operation of the Trust.
- 1.2.13    "**Contracting and procuring**" means the systems for obtaining the supply of goods, materials, manufactured items, services, building and engineering services, works of construction and maintenance and for disposal of surplus and obsolete assets.
- 1.2.14    "**Council of Governors**" means the body of elected and appointed Governors authorised to be members of the Council of Governors to act in accordance with the Constitution.
- 1.2.15    "**Deputy Chairman**" means the Non Executive Director appointed by the Council of Governors to take on the Chairman's duties if the Chairman is absent for any reason.
- 1.2.16    "**Director**" means a Director on the Board.
- 1.2.17    "**Director of Finance**" means the chief financial officer of the Trust.
- 1.2.18    "**Executive Director**" means a member of the Board who holds an executive office of the Trust.
- 1.2.19    "**Dispute Resolution Procedure**" is the dispute resolution procedure to be established by the Trust in accordance with Annex 8, paragraph 11.
- 1.2.20    "**Governor**" means a person who is a member of the Council of Governors.
- 1.2.21    "**Independent Regulator**" means the Regulator of NHS Foundation Trusts, pursuant to section 31 of the 2006 Act
- 1.2.22    "**Member**" means any person registered as a member of the Trust, and authorised to vote in elections to select Governors.
- 1.2.23    "**Motion**" means a formal proposition to be discussed and voted on during the course of the meeting.
- 1.2.24    "**Nominated Officer**" means an officer charged with the responsibility for discharging specific tasks within Standing Orders and Standing Financial Instructions.
- 1.2.25    "**Non Executive Director**" means a member of the Board who does not hold an executive office of the Trust.
- 1.2.26    "**Secretary**" means the Secretary of the Trust or any person appointed to perform the duties of the Trust.

- 1.2.27    "**SFIs**" means Standing Financial Instructions.
  - 1.2.28    "**SOs**" means Standing Orders.
  - 1.2.29    "**Terms of Authorisation**" are the terms of authorisation issued by the Regulator under section 35 of the 2006 Act.
  - 1.2.30    "**Trust**" means the Medway NHS Foundation Trust.
- 1.3    All references in these Standing Orders to the masculine gender shall be read as equally applicable to the feminine gender and vice-versa.

## **SECTION B**

### **STANDING ORDERS**

#### **1. INTRODUCTION**

##### **1.1 Regulatory Framework**

The Trust is a public benefit corporation which was established under the 2006 Act on 1<sup>st</sup> April 2008, subject to its Constitution and Terms of Authorisation.

- 1.1.1 The principal place of business of the Trust is Medway Maritime Hospital.
- 1.1.2 The powers of the Trust are set out in the 2006 Act subject to any restrictions in the Terms of Authorisation.
- 1.1.3 The Constitution requires the Board to adopt Standing Orders for the regulation of its proceedings and business. The Trust must also adopt Standing Financial Instruction (SFIs) as an integral part of Standing Orders setting out the responsibility of individuals.
- 1.1.4 The Trust will also be bound by such other statute, legal provisions and binding guidance from the Regulator which governs the conduct of its affairs.
- 1.1.5 As a statutory body, the Trust has specified powers to contract in its own name and to act as a corporate trustee. In the latter role it is accountable to the Charity Commission for those funds deemed to be charitable.

##### **1.2 Delegation of Powers**

- 1.2.1 The powers of the Trust shall be exercised by the Board of Directors on behalf of the Trust.
- 1.2.2 Any of those powers may be delegated to a committee of Directors or to an officer. The Standing Orders set out the detail of these arrangements. Under the Standing Order relating to the Arrangements for the Exercise of Functions (SO 5) the Trust is given powers to "make arrangements for the exercise, on behalf of the Trust of any of their functions by a committee or sub-committee, or by an officer of the Trust, in each case subject to such restrictions and conditions as the Trust thinks fit. Delegated Powers are covered in a separate document (Reservation of Powers to the Board and Delegation of Powers). This document has effect as if incorporated into the Standing Orders. Delegated Powers are covered in a separate document entitled – 'Schedule of Matters reserved to the Board and Scheme of Delegation' and have effect as if incorporated into the Standing Orders and Standing Financial Instructions.

#### **2. THE BOARD:**

- 2.1 Composition of the Board
  - 2.1.1 The composition of the Board shall be in accordance with the Constitution save that at all times the number of appointed non-executive directors (including the Chair) must outweigh the number of voting executive directors.
- 2.2 Appointment of Chairman and Directors
  - 2.2.1 The Chairman and Non Executive Directors are appointed by the Council of Governors.
  - 2.2.2 The Chief Executive will be appointed or removed by the Non Executive Directors subject to approval by the Council of Governors.
  - 2.2.3 The Executive Directors will be appointed or removed by a committee whose members shall be the Chairman and the Non Executive Directors with the Chief Executive in attendance (and providing advice).
- 2.3 Terms of Office of the Chairman and Directors
  - 2.3.1 The provisions governing the period of tenure of office of the Chairman and Directors and for the termination or suspension of office of the Chairman and Directors are set out in the Constitution and these Standing Orders.
- 2.4 Appointment and Powers of Deputy Chairman
  - 2.4.1 Subject to Standing Order 2.4.2 below, the Council of Governors may appoint a Non Executive Director, to be Deputy Chairman, for such period, not exceeding the remainder of his term as a member of the Board, as they may specify on appointing him.
  - 2.4.2 Any Non Executive Director so appointed may at any time resign from the office of Deputy Chairman by giving notice in writing to the Chairman (in the Chairman's capacity as Chairman of the Board and the Council of Governors). The Council of Governors may thereupon appoint another Non Executive Director as Chairman in accordance with the provisions of Standing Order 2.4.1.
  - 2.4.3 Where the Chairman of the Trust has died or has ceased to hold office, or where they have been unable to perform their duties as Chairman owing to illness or any other cause, the Deputy Chairman shall act as Chairman until a new Chairman is appointed or the existing Chairman resumes their duties, as the case may be; and references to the Chairman in these Standing Orders shall, so long as there is no Chairman able to perform those duties, be taken to include references to the Deputy Chairman.
- 2.5 Appointment and Powers of Senior Independent Director
  - 2.5.1 Subject to SO 2.5.2 below, the Chairman (in consultation with the other Non Executive Directors and the Council of Governors) may appoint any Member of the Board, who is also a Non Executive Director, to be

the Senior Independent Director, for such period, not exceeding the remainder of his term as a Member of the Board, as they may specify on appointing him. The Senior Independent Director shall perform the role set out in the Trust's "Senior Independent Director Job Description", as amended from time to time by resolution of the Board.

- 2.5.2 Any Member of the Board so appointed may at any time resign from the office of Senior Independent Director by giving notice in writing to the Chairman. The Chairman (in consultation with the other Non Executive Directors and the Council of Governors) may thereupon appoint another Member of the Board as Senior Independent Director in accordance with the provisions of Standing Order 2.5.1.

## 2.6 Role of Directors

The Board will function as a corporate decision making body and Non Executive and Executive Directors will be full and equal Board members. Their role as members of the Board will be to consider the key strategic and managerial issues facing the Trust in carrying out its statutory and other functions. In exercising these functions, the Board will consider guidance from the Regulator "The NHS Foundation Trust Code of Governance" as amended from time to time.

### (1) Executive Directors

Executive Directors shall exercise their authority within the terms of these Standing Orders, the Standing Financial Instructions and the Scheme of Delegation.

### (2) Chief Executive

The Chief Executive shall be responsible for the overall performance of the Trust. He is the Accounting Officer and shall be responsible for ensuring the discharge of obligations under any financial directions.

### (3) Director of Finance

The Director of Finance shall be responsible for the provision of financial advice to the Trust and to its members and for the supervision of financial control and accounting systems. He shall be responsible along with the Chief Executive for ensuring the discharge of obligations under any relevant financial directions.

### (4) Non Executive Directors

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

### (5) Chairman

The Chairman shall be responsible for the operation of the Board and chair all Board meetings when present. The Chairman has certain delegated executive powers. The Chairman must comply with the terms of appointment and with these Standing Orders.

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

2.7 Corporate role of the Board

- 2.7.1 All business conducted by the Trust shall be conducted in the name of the Trust.
- 2.7.2 All funds received in trust shall be held in the name of the Trust as corporate trustee.
- 2.7.3 The powers of the Trust established under statute subject to the Terms of Authorisation shall be exercised by the Board in public session except as otherwise provided for in Standing Order No 3.

2.8 Schedule of Matters reserved to the Board and Scheme of Delegation

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

2.9 Lead Roles for Directors

The Chairman will ensure that the designation of Lead roles as set out in any statutory or other guidance will be made in accordance with that guidance or statutory requirement (e.g. appointing a Lead Board Director with responsibilities for Infection Control or Child Protection Services etc).

**3. MEETINGS OF THE BOARD OF DIRECTORS**

3.1 Calling meetings

- 3.1.1 Ordinary meetings of the Board shall be held at regular intervals at such times and places as the Board may determine.
- 3.1.2 The Chairman may call a meeting of the Board at any time.
- 3.1.3 One third or more Directors of the Board may requisition a meeting in writing. If the Chairman refuses, or fails, to call a meeting within seven days of a requisition being presented, the Directors signing the requisition may forthwith call a meeting.

3.2 Notice of Meetings and the Business to be transacted

- 3.2.1 Before each meeting of the Board a written notice specifying the business proposed to be transacted shall be delivered to every Director, or sent by post to the usual place of residence of each Director, so as to be available to Directors at least three clear days before the meeting. The notice shall be signed by the Chairman or by an officer authorised

by the Chairman to sign on their behalf. Want of service of such a notice on any Director shall not affect the validity of a meeting.

- 3.2.2 In the case of a meeting called by Directors in default of the Chairman calling the meeting, the notice shall be signed by those Directors.
- 3.2.3 No business shall be transacted at the meeting other than that specified on the agenda, or emergency Motions allowed under Standing Order 3.6.
- 3.2.4 A Director desiring a matter to be included on an agenda shall make his/her request in writing to the Chairman at least 15 clear days before the meeting. The request should state whether the item of business is proposed to be transacted in the presence of the public and should include appropriate supporting information. Requests made less than 15 days before a meeting may be included on the agenda at the discretion of the Chairman.
- 3.2.5 In the event that a meeting of the Board is to be held in public pursuant to paragraph 3.18.1, a public notice of the time and place of the meeting, and the public part of the agenda, shall be displayed at the Trust's principal offices at least three clear days before the meeting.

### 3.3 Agenda and Supporting Papers

The Agenda will be sent to Directors 6 days before the meeting and supporting papers, whenever possible, shall accompany the agenda, but will certainly be despatched no later than three clear days before the meeting, save in emergency.

### 3.4 Petitions

Where a petition has been received by the Trust the Chairman shall include the petition as an item for the agenda of the next Board meeting.

### 3.5 Notice of Motion

- 3.5.1 Subject to the provision of Standing Orders 3.7 'Motions: Procedure at and during a meeting' and 3.8 'Motions to rescind a resolution', a Director of the Board wishing to move a Motion shall send a written notice to the Chief Executive who will ensure that it is brought to the immediate attention of the Chairman.
- 3.5.2 The notice shall be delivered at least five clear days before the meeting. The Chief Executive shall include in the agenda for the meeting all notices so received that are in order and permissible under governing regulations. This Standing Order shall not prevent any Motion being withdrawn or moved without notice on any business mentioned on the agenda for the meeting.

### 3.6 Emergency Motions

Subject to the agreement of the Chairman, and subject also to the provision of Standing Order 3.7 'Motions: Procedure at and during a meeting', a Director of the Board may give written notice of an emergency Motion after the issue of the notice

of meeting and agenda, up to one hour before the time fixed for the meeting. The notice shall state the grounds of urgency. If in order, it shall be declared to the Board at the commencement of the business of the meeting as an additional item included in the agenda. The Chairman's decision to include the item shall be final.

### 3.7 Motions: Procedure at and during a meeting

#### 3.7.1 Who may propose

A Motion may be proposed by the Chairman of the meeting or any Director present. It must also be seconded by another Director.

#### 3.7.2 Contents of Motions

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

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

#### 3.7.3 Amendments to Motions

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

Amendments to Motions shall be moved relevant to the Motion, and shall not have the effect of negating the Motion before the Board.

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

#### 3.7.4 Rights of reply to Motions

##### (a) Amendments

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

##### (b) Substantive/original Motion

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

3.7.5 Withdrawing a Motion

A Motion, or an amendment to a Motion, may be withdrawn.

3.7.6 Motions once under debate

When a Motion is under debate, no Motion may be moved other than:

- an amendment to the Motion;
- the adjournment of the discussion, or the meeting;
- that the meeting proceed to the next business;
- that the question should be now put;
- the appointment of an 'ad hoc' committee to deal with a specific item of business;
- that a Director be not further heard;

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

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

3.8 Motion to Rescind a Resolution

3.8.1 Notice of Motion to rescind any resolution (or the general substance of any resolution) which has been passed within the preceding six calendar months shall bear the signature of the Director who gives it and also the signature of three other Directors, and before considering any such Motion of which notice shall have been given, the Board may refer the matter to any appropriate Committee or the Chief Executive for recommendation.

3.8.2 When any such Motion has been dealt with by the Board it shall not be competent for any Director other than the Chairman to propose a Motion to the same effect within six months. This Standing Order shall not apply to Motions moved in pursuance of a report or recommendations of a Committee or the Chief Executive.

3.9 Chairman of meeting

3.9.1 At any meeting of the Board the Chairman, if present, shall preside. If the Chairman is absent from the meeting, the Deputy Chairman (if one is appointed), if present, shall preside.

- 3.9.2 If the Chairman and Deputy Chairman are absent, such Non Executive Director as the Directors present shall choose shall preside.
- 3.10 Chairman's ruling
- The decision of the Chairman of the meeting on questions of order, relevancy and regularity (including procedure on handling Motions) and their interpretation of the Standing Orders and Standing Financial Instructions, at the meeting, shall be final.
- 3.11 Quorum
- 3.11.1 No business shall be transacted at a meeting unless at least one-third of the whole number of the Directors (including at least one Executive Director and one Non Executive Director) is present.
- 3.11.2 An officer in attendance for an Executive Director but without formal acting up status may not count towards the quorum.
- 3.11.3 If the Director has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of a declaration of a conflict of interest (see SO No.6) that person shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business.
- 3.12 Voting
- 3.12.1 Save as provided in Standing Orders 3.13 - Suspension of Standing Orders, 3.14- Waiver of Standing Orders 3.15- Variation and Amendment of Standing Orders, every question put to a vote at a meeting shall be determined by a majority of the votes of Directors present and voting on the question. In the case of an equal vote, the person presiding (i.e.: the Chairman of the meeting) shall have a second, and casting vote.
- 3.12.2 At the discretion of the Chairman all questions put to the vote shall be determined by oral expression or by a show of hands, unless the Chairman directs otherwise, or it is proposed, seconded and carried that a vote be taken by paper ballot.
- 3.12.3 If at least one third of the Directors present so request, the voting on any question may be recorded so as to show how each Director present voted or did not vote (except when conducted by paper ballot).
- 3.12.4 If a Director so requests, their vote shall be recorded by name.
- 3.12.5 In no circumstances may an absent Director vote by proxy. Absence is defined as being absent at the time of the vote.
- 3.12.6 A manager who has been formally appointed by the Board to act up for a Director during a period of incapacity or temporarily to fill a Director vacancy as an acting Director or an Interim Director under paragraph 4

and 5 respectively of Annex 8 of the Constitution shall be entitled to exercise the voting rights of the Director.

- 3.12.7 A manager attending the Board meeting to represent a Director during a period of incapacity or temporary absence who is not an acting Director or an interim Director for the purposes of the constitution may not exercise the voting rights of the Director. An officer's status when attending a meeting shall be recorded in the minutes.
- 3.13 Suspension of Standing Orders -
- 3.13.1 Except where this would contravene any provision in the Constitution, the Terms of Authorisation, any statutory provision, any binding guidance issued by the Independent Regulator, or the rules relating to the Quorum (SO 3.11), any one or more of the Standing Orders may be suspended at any meeting, provided that at least two-thirds of the whole number of the Directors are present (including at least one Executive Director and one Non Executive Director) and that at least two-thirds of those Directors present signify their agreement to such suspension. The reason for the suspension shall be recorded in the Trust Board's minutes.
- 3.13.2 A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the Chairman and Directors of the Trust.
- 3.13.3 No formal business may be transacted while Standing Orders are suspended.
- 3.13.4 The Integrated Audit Committee shall review every decision to suspend Standing Orders.
- 3.14 Waiver of Standing Orders
- 3.14.1 Except where this would contravene any provision in the Constitution, the Terms of Authorisation, any statutory provision or any binding guidance issued by the Independent Regulator, any one or more of the Standing Orders may be waived at any meeting, provided that at least two-thirds of the Directors are present, including at least one Executive Director and at least one Non Executive Director, and that a majority of those present vote in favour of waiver.
- 3.14.2 A decision to waive Standing Orders shall be recorded in the minutes of the meeting.
- 3.14.3 The Integrated Audit Committee shall review every decision to waive Standing Orders.
- 3.15 Variation and amendment of Standing Orders
- 3.15.1 These Standing Orders shall not be varied except in the following circumstances:
- upon a notice of Motion under Standing Order 3.5;

- upon a recommendation of the Chairman or Chief Executive included on the agenda for the meeting;
- that two thirds of the Board Directors are present at the meeting where the variation or amendment is being discussed, and that at least half of the Non Executive Directors vote in favour of the amendment;
- providing that any variation or amendment does not contravene a statutory provision, the Terms of Authorisation or any binding guidance issued by the Independent Regulator

**3.16 Record of Attendance**

The names of the Chairman and Directors present at the meeting shall be recorded.

**3.17 Minutes**

The minutes of the proceedings of a meeting shall be drawn up and submitted for agreement at the next ensuing meeting where they shall be signed by the person presiding at it.

No discussion shall take place upon the minutes except upon their accuracy or where the Chairman considers discussion appropriate.

**3.18 Admission of public and the press**

3.18.1 Subject to paragraph 3.18.2, Board meetings shall be held in public but any part of a meeting may be held in private, for special reasons, if the Board so resolves.

3.18.2 In the event of a Board meeting being held in private, under paragraph 3.18.1, members of the public (including the press) will be excluded from that part of the Board meeting.

**3.18.3 General disturbances**

The Chairman (or Deputy Chairman if one has been appointed) or the person presiding over the meeting shall give such directions as he thinks fit with regard to the arrangements for meetings and accommodation of the public. Such directions will ensure that the Trust's business shall be conducted without interruption and disruption and, without prejudice to the power to exclude for special reasons, the public will be required to withdraw from a Board meeting in order to suppress or prevent disorderly conduct or other misbehaviour, if the Board so resolves.

**3.18.4 Use of Mechanical or Electrical Equipment for Recording or Transmission of Meetings**

Nothing in these Standing Orders shall be construed as permitting the introduction by the public, or press representatives, of recording, transmitting, video or similar apparatus into meetings of the Trust or

Committee thereof. Such permission shall be granted only upon resolution of the Trust.

3.19 Observers at Board meetings

The Board of Directors will decide what arrangements and terms and conditions it feels are appropriate to offer in extending an invitation to observers to attend and address any of the Board's meetings held in private under paragraph 3.18.2 and may change, alter or vary these terms and conditions as it deems fit.

**4. APPOINTMENT OF TRUST COMMITTEES AND SUB-COMMITTEES**

4.1 Subject to the Constitution, the Board shall appoint committees of the Board, consisting wholly of Directors

4.2 Appointment of Committees

Subject to the Constitution, the Board of Directors may appoint committees of the Trust.

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

4.3 Applicability of Standing Orders and Standing Financial Instructions to Committees

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

4.4 Terms of Reference

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

4.5 Delegation of powers by Committees to Sub-Committees

Where committees are authorised to establish sub-committees they may not delegate executive powers to the sub-committee unless expressly authorised by the Board.

4.6 Approval of Appointments to Committees

The Board shall approve the appointments to each of the committees which it has formally constituted. Where the Board determines, and regulations permit, that persons, who are neither members nor officers, shall be appointed to a committee the terms of such appointment shall be within the powers of the Board. The Board

shall define the powers of such appointees and shall agree allowances, including reimbursement for loss of earnings, and/or expenses in accordance where appropriate with national guidance.

4.7 Committees established by the Board

The committees, sub-committees, and joint-committees established by the Board may vary from time to time as per operational requirements, legislation and best practice. Their terms of reference may be obtained from the Secretary to the Foundation Trust.

**5. ARRANGEMENTS FOR THE EXERCISE OF TRUST FUNCTIONS BY DELEGATION**

5.1 Delegation of Functions to Committees, Officers or other bodies

5.1.1 Subject to the Constitution and Terms of Authorisation and such guidance as may be given by the Independent Regulator, the Board may make arrangements for the exercise, on behalf of the Board, of any of its functions by a committee, sub-committee appointed by virtue of Standing Order 4, or by an officer of the Trust, in each case subject to such restrictions and conditions as the Trust thinks fit.

5.2 Emergency Powers and urgent decisions

The powers which the Board has reserved to itself within these Standing Orders (see Standing Order 2.8) may in emergency or for an urgent decision be exercised by the Chief Executive and the Chairman after having consulted at least two Non Executive Directors. The exercise of such powers by the Chief Executive and Chairman shall be reported to the next formal meeting of the Board in public session for noting.

5.3 Delegation to Committees

5.3.1 The Board shall agree from time to time to the delegation of executive powers to be exercised by other committees, or sub-committees, which it has formally constituted in accordance with the Constitution, the Terms of Authorisation, binding guidance issued by The Regulator and the 2006 Act. The constitution and terms of reference of these committees, or sub-committees, and their specific executive powers shall be approved by the Board in respect of its sub-committees.

5.4 Delegation to Officers

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

5.4.2 The Chief Executive shall prepare a Scheme of Delegation identifying his/her proposals which shall be considered and approved by the Board. The Chief Executive may periodically propose amendment to the

- Scheme of Delegation which shall be considered and approved by the Board.
- 5.4.3 Nothing in the Scheme of Delegation shall impair the discharge of the direct accountability to the Board of the Director of Finance to provide information and advise the Board in accordance with the Constitution, Terms of Authorisation and any statutory requirements, or provisions required by the Independent Regulator.
- 5.5 Schedule of Matters Reserved to the Trust and Scheme of Delegation of powers
- 5.5.1 The arrangements made by the Board as set out in the "Schedule of Matters Reserved to the Board" and "Scheme of Delegation" of powers shall have effect as if incorporated in these Standing Orders.
- 5.6 Duty to report non-compliance with Standing Orders and Standing Financial Instructions
- If for any reason these Standing Orders are not complied with, full details of the non-compliance and any justification for non-compliance and the circumstances around the non-compliance, shall be reported to the next formal meeting of the Board for action or ratification. All Directors of the Trust Board and staff have a duty to disclose any non-compliance with these Standing Orders to the Chief Executive as soon as possible.
- 6. OVERLAP WITH OTHER TRUST POLICY STATEMENTS/PROCEDURES, REGULATIONS AND THE STANDING FINANCIAL INSTRUCTIONS**
- 6.1 Policy statements: general principles
- The Board will from time to time agree and approve Policy statements/ procedures which will apply to all or specific groups of staff employed by the Trust. The decisions to approve such policies and procedures will be recorded in an appropriate Board minute and will be deemed where appropriate to be an integral part of the Trust's Standing Orders and Standing Financial Instructions.
- 6.2 Specific Policy statements
- Notwithstanding the application of SO 6.1 above, these Standing Orders and Standing Financial Instructions must be read in conjunction with the following Policy statements:
- the Standards of Business Conduct and Conflicts of Interest Policy for Trust staff;
  - the staff Disciplinary and Appeals Procedures adopted by the Trust both of which shall have effect as if incorporated in these Standing Orders.
- 6.3 Standing Financial Instructions
- Standing Financial Instructions adopted by the Board of Directors in accordance with the Financial Regulations shall have effect as if incorporated in these Standing Orders.

#### 6.4 Specific guidance

Notwithstanding the application of SO 6.1 above, these Standing Orders and Standing Financial Instructions must be read in conjunction with the following guidance and any other binding guidance issued by the Independent Regulator:

- Caldicott Guardian 1997;
- Human Rights Act 1998;
- Freedom of Information Act 2000.

### **7. DUTIES AND OBLIGATIONS OF DIRECTORS UNDER THESE STANDING ORDERS**

#### 7.1 Declaration of Interests

##### 7.1.1 Requirements for Declaring Interests and applicability to Board Directors

- (a) All existing Board Directors should declare any relevant and material interests. Any Director appointed subsequently should do so on appointment.

##### 7.1.2 Interests which are relevant and material

- (a) Interests which should be regarded as "relevant and material" are:
  - (i) Directorships, including Non Executive Directorships held in private companies or PLCs (with the exception of those of dormant companies);
  - (ii) Ownership or part-ownership of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS;
  - (iii) Majority or controlling share holdings in organisations likely or possibly seeking to do business with the NHS;
  - (iv) A position of authority in a charity or voluntary organisation in the field of health and social care;
  - (v) Any connection with a voluntary or other organisation contracting for NHS services or considering entering into or having entered into a financial arrangement with the Trust, including but not limited to lenders or banks;
  - (vi) Research funding/grants that may be received by an individual or their department;
  - (vii) Interests in pooled funds that are under separate management.

- (b) Any Director who comes to know that the Trust has entered into or proposes to enter into a contract in which he or any person connected with him/her (as defined in Standing Order 7.3 below and elsewhere) has any pecuniary interest, direct or indirect, the Director shall declare his/her interest by giving notice in writing of such fact to the Trust as soon as practicable.

7.1.3 Advice on Interests

If Board Directors have any doubt about the relevance of an interest, this should be discussed with the Chairman or with the Secretary.

Financial Reporting Standard No 8 (issued by the Accounting Standards Board) specifies that influence rather than the immediacy of the relationship is more important in assessing the relevance of an interest. The interests of partners in professional partnerships including general practitioners should also be considered.

7.1.4 Recording of Interests in Trust Board minutes

At the time Directors' interests are declared, they should be recorded in the Board minutes.

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

7.1.5 Publication of declared interests in Annual Report

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

7.1.6 Conflicts of interest which arise during the course of a meeting

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

7.2 Register of Interests

- 7.2.1 The Chief Executive will ensure that a Register of Interests is established to record formally declarations of interests of Board or Committee Directors. In particular the Register will include details of all Directorships and other relevant and material interests (as defined in SO 7.1.2) which have been declared by both executive and Non Executive Board Directors.
- 7.2.2 These details will be kept up to date by means of an annual review of the Register in which any changes to interests declared during the preceding twelve months will be incorporated.

- 7.2.3 The Register will be available to the public and the Chief Executive will take reasonable steps to bring the existence of the Register to the attention of local residents and to publicise arrangements for viewing it.
- 7.3 Exclusion of Chairman and Directors in proceedings on account of pecuniary interest
- 7.3.1 Definition of terms used in interpreting 'Pecuniary' interest

For the sake of clarity, the following definition of terms is to be used in interpreting this Standing Order:

- (a) "spouse" shall include any person who lives with another person in the same household (and any pecuniary interest of one spouse shall, if known to the other spouse, be deemed to be an interest of that other spouse);
- (b) "contract" shall include any proposed contract or other course of dealing.
- (c) "Pecuniary interest"

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

- (i) he, or a nominee of his/her, is a Director of a company or other body (not being a public body), with which the contract is made, or to be made or which has a direct pecuniary interest in the same, or
  - (ii) he is a partner, associate or employee of any person with whom the contract is made or to be made or who has a direct pecuniary interest in the same.
- (d) Exception to Pecuniary interests

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

- (i) neither he or any person connected with him/her has any beneficial interest in the securities of a company of which he or such person appears as a Director, or
- (ii) any interest that he or any person connected with him/her may have in the contract is so remote or insignificant that it cannot reasonably be regarded as likely to influence him/her in relation to considering or voting on that contract, or
- (iii) those securities of any company in which he (or any person connected with him/her) has a beneficial interest do not exceed £5,000 in nominal value or one per cent of

the total issued share capital of the company or of the relevant class of such capital, whichever is the less.

Provided however, that where paragraph (c) above applies the person shall nevertheless be obliged to disclose/declare their interest in accordance with Standing Order 7.1.2 (ii)

#### 7.3.2 Exclusion in proceedings of the Board

- (a) Subject to the following provisions of this Standing Order, if a Director has any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter and is present at a meeting of the Board at which the contract or other matter is the subject of consideration, they shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not take part in the consideration or discussion of the contract or other matter or vote on any question with respect to it.
- (b) The Board may exclude a Director from a meeting of the Board while any contract, proposed contract or other matter in which he has a pecuniary interest is under consideration.
- (c) Any remuneration, compensation or allowance payable to a Director.
- (d) This Standing Order applies to a committee or sub-committee as it applies to the Trust

### 7.4 Standards of Business Conduct

#### 7.4.1 Trust Policy

All Trust staff and Directors must comply with the Trust's Standards of Business Conduct and Conflicts of Interest Policy. Staff should comply with the Trust's Standards of Business Conduct for Staff. This section of standing orders shall be read in conjunction with this document.

#### 7.4.2 Interest of Officers in Contracts

- (a) Any officer or employee of the Trust who comes to know that the Trust has entered into or proposes to enter into a contract in which he or any person connected with him/her (as defined in SO 7.3) has any pecuniary interest, direct or indirect, the Officer shall declare their interest by giving notice in writing of such fact to the Chief Executive or Trust's Company Secretary as soon as practicable.
- (b) An officer should also declare to the Chief Executive any other employment or business or other relationship of his/her, or of a cohabiting spouse, that conflicts, or might reasonably be predicted could conflict with the interests of the Trust.

- (c) The Trust will require interests, employment or relationships so declared to be entered in a register of interests of staff.

7.4.3 Canvassing of and Recommendations by Directors in Relation to Appointments

- (a) Canvassing of Directors of the Trust or of any Committee of the Trust directly or indirectly for any appointment under the Trust shall disqualify the candidate for such appointment. The contents of this paragraph of the Standing Order shall be included in application forms or otherwise brought to the attention of candidates.
- (b) Directors shall not solicit for any person any appointment under the Trust or recommend any person for such appointment; but this paragraph of this Standing Order shall not preclude a Director from giving written testimonial of a candidate's ability, experience or character for submission to the Trust.

7.4.4 Relatives of Directors or Officers

- (a) Candidates for any staff appointment under the Trust shall, when making an application, disclose in writing to the Trust whether they are related to any Director or the holder of any office under the Trust. Failure to disclose such a relationship shall disqualify a candidate and, if appointed, render him liable to instant dismissal.
- (b) The Chairman and every Director and Officer of the Trust shall disclose to the Board any relationship between himself and a candidate of whose candidature that Director or officer is aware. It shall be the duty of the Chief Executive to report to the Board any such disclosure made.
- (c) On appointment, Directors (and prior to acceptance of an appointment in the case of Executive Directors) should disclose to the Trust whether they are related to any other Director or holder of any office under the Trust.
- (d) Where the relationship to a Director of the Trust is disclosed, the Standing Order headed 'Disability of Chairman and Directors in proceedings on account of pecuniary interest' (SO 7) shall apply.

**8. CUSTODY OF SEAL, SEALING OF DOCUMENTS AND SIGNATURE OF DOCUMENTS**

8.1 Custody of Seal

The common seal of the Trust shall be kept by the Chief Executive or a Nominated Officer by him/her in a secure place.

8.2 Sealing of Documents

Where it is necessary that a document shall be sealed, the seal shall be affixed in the presence of two Directors or a Director and the Secretary duly authorised by the Board.

8.3 Register of Sealing

The Chief Executive shall keep a register in which he, or another manager of the Trust authorised by him/her, shall enter a record of the sealing of every document.

8.4 Signature of documents

Where any document will be a necessary step in legal proceedings on behalf of the Trust, it shall, unless any enactment otherwise requires or authorises, be signed by the Chief Executive or any Executive Director.

In land transactions, the signing of certain supporting documents will be delegated to Managers and set out clearly in the Scheme of Delegation but will not include the main or principal documents effecting the transfer (e.g. sale/purchase agreement, lease, contracts for construction works and main warranty agreements or any document which is required to be executed as a deed).

## **ANNEX 7 – PRINCIPLES**

Medway NHS Foundation Trust will operate within a governance framework which reflects best practice within the NHS. In particular it will adopt the seven principles of public life, determined by the Nolan Report. It will also from time to time develop mission statements, corporate values, codes of conduct and other governance statements.

Nolan Principles: - the seven principles of public life

### **Selflessness**

Holders of public office should take decisions solely in terms of the public interest. They should not do so to gain financial or other material benefits for themselves, their family or their friends.

### **Integrity**

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.

### **Objectivity**

In carrying out public business, including making public appointments, awarding contracts or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

### **Accountability**

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

### **Openness**

Holders of public office should be as open as possible about all the decisions and actions they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

### **Honesty**

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

### **Leadership**

Holders of public office should promote and support these principles by leadership and example.

## **ANNEX 8 - ADDITIONAL PROVISIONS**

### **Company Secretary**

- 1.1 The Trust shall have a Secretary who may be an employee. The Secretary may not be a Governor, or the Chief Executive or the Finance Director. The Secretary's functions shall include:
  - 1.1.1 acting as Secretary to the Council of Governors and the Board of Directors, and any committees;
  - 1.1.2 summoning and attending all members meetings, meetings of the Council of Governors and the Board of Directors, and keeping the minutes of those meetings;
  - 1.1.3 keeping the register of members and other registers and books required by this constitution to be kept;
  - 1.1.4 having charge of the Trust's seal;
  - 1.1.5 publishing to members in an appropriate form information which they should have about the Trust's affairs;
  - 1.1.6 preparing and sending to the Regulator and any other statutory body all returns which are required to be made.
- 1.2 Minutes of every meeting of the Council of Governors and of every meeting of the Board of Directors are to be kept by the Secretary.
- 1.3 The Secretary is to be appointed and removed by the Chairman and Chief Executive acting jointly.

### **Vacancies**

- 2.1 The validity of any act of the Trust is not affected by any vacancy among the Directors or the Governors or by any defect in the appointment of any Director or Governor.
- 2.2 If:
  - (a) an executive Director is temporarily unable to perform his/her duties due to illness or some other reason (the "Absent Director"); and
  - (b) the Board of Directors agree that it is inappropriate to terminate the Absent Director's term of office and appoint a replacement Director; and
  - (c) the Board of Directors agree that the duties of the Absent Director need to be carried out;

then the Chairman (if the Absent Director is the Chief Executive) or the Chief Executive (in any other case) may appoint an acting Director as an additional Director to carry out the Absent Director's duties temporarily.

- 2.3 For the purposes of paragraph 2.2 of this Annex, the maximum number of Directors that may be appointed under paragraph 22.2.3 of the Constitution shall be relaxed accordingly.
- 2.4 The acting Director will vacate office as soon as the Absent Director returns to office or, if earlier, the date on which the person entitled to appoint him under this paragraph notifies him that he is no longer to act as an acting Director.
- 2.5 The acting Director shall be an Executive Director for the purposes of the 2006 Act. He shall be responsible for his own acts and defaults and he shall not be deemed to be the agent of the Absent Director.
- 2.6 If:
  - (a) an executive Director post is vacant ("Vacant Position"); and
  - (b) the Board of Directors agree that the Vacant Position needs to be filled by an interim postholder pending appointment of a permanent postholder, then the Chairman (if the Vacant Position is the Chief Executive) or the Chief Executive (in any other case) may appoint a Director as an interim Director ("Interim Director") to fill the Vacant Position pending appointment of a permanent postholder.
- 2.7 The Interim Director will vacate office on the appointment of a permanent postholder or, if earlier, the date on which the persons entitled to appoint him under this paragraph notifies him that he is no longer to act as an Interim Director.
- 2.8 The Interim Director shall be an Executive Director for the purposes of the 2006 Act.
- 2.9 The Trust may confer on senior staff the title "Director" as an indication of their corporate responsibility within the Trust but such persons will not be Directors of the Trust for the purposes of the 2006 Act ("statutory Directors") unless their title includes the title "Chief" or "Executive" or "Non Executive Director" or "Chair" or "Chairman" and will not have the voting rights of statutory Directors or any power to bind the Trust.

### **Validity of Elections**

3. Elections shall not be invalidated by any administrative or clerical error on the part of the Trust or any acts or omissions of the returning officer acting in good faith on the basis of such error.
4. Notwithstanding any provision of the Election Rules, the Trust and the Returning Officer shall:
  - 4.1 not be obliged to send any information or photographs unless received by the Trust from the candidate;
  - 4.2 not be in breach of any obligation to include in any communication, or otherwise provide, information which is equivalent in size and content for all candidates if the information provided by one or more of the candidates does not so allow;

- 4.3 have the right to edit or not publish any election statement if it exceeds the permitted number of words or because it contains statements which the Trust or the Returning Officer reasonably believes are factually inaccurate, offensive or libelous.

### **Disqualification from Membership of the Trust**

- 5.1 A person may not become a member of the Trust if they have been removed from membership from the Council of Governor's in the preceding five years.
- 5.2 Where the Trust is on notice that a Member may be disqualified from membership or may no longer be eligible to be Member the Secretary shall give the Member 14 days written notice to show cause why his name should not be removed from the Trust's Register of Members. On receipt of any such information the Secretary may remove the Member from the Register of members. Any dispute about entitlement to membership will be resolved in accordance with the dispute resolution process outlined in paragraph 9 of Annex 8.

### **Expulsion from membership of the Trust**

A member may be expelled by a resolution approved by not less than two thirds of the members of the Council of Governors present and voting at a meeting of the Council of Governors on the following grounds:

- 6.1 if they have demonstrated aggressive or violent behaviour at any Hospital and following such behaviour has been asked to leave, has been removed or excluded from any hospital or other healthcare facility in accordance with the relevant Trust's policy for withholding treatment from violet / aggressive behavior;
- 6.2 if they have been confirmed as a 'vexatious complainant' under the Trust's policy for handling complaints;
- 6.3 if they have been removed as a member of another NHS Foundation trust; or
- 6.4 if they are deemed to have acted in a manner contrary to the interests of the Trust.
- 6.5 The following procedure is to be adopted:
- 6.5.1 Any member may complain to the Secretary that another member has acted in a way which would justify expulsion in accordance with paragraphs 10.1 to 10.4 of Annex 8.
- 6.5.2 if a complaint is made, the Council of Governors may itself consider the complaint, having taken such steps as it considers appropriate to ensure that each member's point of view is heard and may either:
- a) dismiss the complaint and take no further action; or
- b) arrange for a resolution to expel the member complained of to be considered at the next Council of Governors meeting.

### **Termination of Membership**

- 7.1 A Member shall cease to be a Member on:

- 7.1.1 death;
- 7.1.2 resignation by notice in writing to the Secretary;
- 7.1.3 ceasing to fulfill the requirements of membership contained within this Constitution; or
- 7.1.4 being disqualified under paragraph 5 of Annex 8 or being expelled under paragraph 6 of Annex 8.

### **Dispute Resolution**

- 8.1 In the event of disputes between the Council of Governors and the Board of Directors, the following Dispute Resolution Procedure shall apply:
  - 8.1.1 in the first instance the Chair on the advice of the Company Secretary, and such other advice as the Chair may see fit to obtain, shall seek to resolve the dispute;
  - 8.1.2 if the Chair is unable to resolve the dispute the individual shall refer the dispute to the 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;
  - 8.1.3 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.

### **Decisions**

- 9.1 Save where it is specifically provided in this constitution and/or in the 2006 Act that decisions are to be made at a Council of Governors Meeting, a resolution in writing, approved by a majority of the Governors who would have been entitled to vote upon it if it had been proposed at a meeting at which he was present, will be just as valid and effective as if it had been passed at a meeting duly convened and held.