



# Midlands Partnership

**NHS Foundation Trust**

*A Keele University Teaching Trust*

## CONSTITUTION

**Approved:**

Board of Directors – 22 May 2018

Council of governors – 23 May 2018

**Notified:**

Independent Regulator – May 2018

## Contents

1. Definition	3
2. Name and Status	5
3. Principal Purpose	5
4. Other Purposes	5
6. Framework	6
7. Members	7
8. Disqualification from Membership	8
9. Termination of Membership	9
10. Council of Governors	9
11. Board of Directors	16
12. Secretary	23
13. Registers	24
14. Public Documents	24
15. Financial Auditor and Other External Auditors	25
16. Accounts	26
17. Annual report, Forward Plans and Non-NHS Work	26
18. Indemnity	27
19. Execution of documents	28
20. Dispute Resolution Procedures	28
21. Amendment of the Constitution	28
22. Significant Transactions	29
23. Head Office	31
24. Notices	31
ANNEX 1	32
ANNEX 2	34

# 1. Definition

---

- 1.1. Unless otherwise stated, words or expressions contained in this constitution shall bear the same meaning as in the National Health Service Act 2006 as amended by the Health and Social Care Act 2012.
- 1.2. References in this constitution to legislation include all amendments, replacements, or re-enactments made.
- 1.3. Headings are for ease of reference only and are not to affect interpretation.
- 1.4. Words importing the masculine gender only shall include the feminine gender; words importing the singular shall include the plural and vice-versa.
- 1.5. In this constitution:

“the 2006 Act”	means the National Health Service Act 2006;
“the 2012 Act”	means the Health and Social Care Act 2012;
“Appointed governors”	means those Local Authority governors and Partnership governors appointed by the relevant Appointing Organisations;
“Appointing Organisations”	means those organisations named in Part 3 of Annex 1 of this constitution that are entitled to appoint governors;
“Areas of the Foundation Trust”	means the three public constituencies specified in Annex 1, which are referred to in this constitution as “Public, Service Users and Carers constituencies”;
“Board of Directors”	means the Board of Directors as constituted in accordance with this constitution;
“Council of governors”	means the Council of governors of the Foundation Trust as constituted in accordance with this constitution;
“Director”	means a Member of the Board of Directors as constituted in accordance with this constitution;
“Elected governors”	means those governors elected by the Public, Service Users and Carers

	constituencies and the classes of the staff constituency;
“Financial Auditor”	means the person appointed to audit the accounts of the Foundation Trust, who is called the auditor in the 2006 Act;
“Financial year”	means: <ul style="list-style-type: none"> <li>(a) a period beginning with the date on which the Foundation Trust is authorised and ending with the next 31 March; and</li> <li>(b) each successive period of twelve months beginning with 1 April.</li> </ul>
“the Foundation Trust”	means Midlands Partnership NHS Foundation Trust;
“Independent Regulator”	means the body corporate known as Monitor, as provided by Section 61 of the 2012 Act and references in this constitution to ‘Monitor’ shall be read as reference to its statutory successor, ‘NHS Improvement’ where the context permits;
“Local Authority Governor”	means a Governor appointed by one or more local authorities whose area includes the whole or part of one of the areas of the Foundation Trust;
“Member”	means a Member of the Foundation Trust;
“Partner”	means, as their husband or wife, or common law husband or wife, or same sex partner;
“Partnership Governor”	means a Member of the Council of governors appointed by an Appointing Organisation;
“Public, Service Users and Carers Constituency”	means a public constituency of the Foundation Trust;
“Public, Service Users and Carers Governor”	means a Governor elected by a Public, Service Users and Carers Constituency;

“Secretary”	means the secretary of the Foundation Trust or any other person appointed to perform the duties of the secretary, including a joint, assistant or deputy secretary;
“Staff Governor”	means a Governor elected by the Members of one of the classes of the staff constituency.

## 2. Name and Status

---

- 2.1 The name of this Foundation Trust is to be Midlands Partnership NHS Foundation Trust. The Foundation Trust is a public benefit corporation authorised under the 2006 Act.

## 3. Principal Purpose

---

- 3.1 The principal purpose of the Foundation Trust is the provision of goods and services for the purposes of the health service in England.
- 3.2 The Foundation Trust does not fulfill its principal purpose unless, in each financial year, its total income from the provision of goods and services for the purposes of the health service in England is greater than its total income from the provision of goods and services for any other purposes.
- 3.3 The Foundation Trust may provide goods and services for any purposes related to:
- 3.3.1 the provision of services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness; and
  - 3.3.2 the promotion and protection of public health.
- 3.4 The Foundation Trust may also carry on activities other than those mentioned in the above paragraph for the purpose of making additional income available in order better to carry on its principal purpose.

## 4. Other Purposes

---

- 4.1 The Purpose of the Foundation Trust is to provide goods and services, including education and training, research, accommodation and other facilities, for purposes related to the provision of health and social care.

## 5. Powers

---

- 5.1 The powers of the trust are set out in the 2006 Act.<sup>1</sup>

<sup>1</sup> see in particular sections 46 and 47 of the 2006 Act. Please note that the discharge of patients under section 45 of the Mental Health Act 2007 provides that such powers of

- 5.2 All the powers of the trust shall be exercised by the Board of Directors on behalf of the trust.
- 5.3 Any of these powers may be delegated to a committee of directors or to an executive director.

## 6. Framework

---

- 6.1 The affairs of the Foundation Trust are to be conducted by the Board of Directors, the Council of governors and the Members in accordance with this constitution and the Foundation Trust's Licence. The Members, the Board of Directors and the Council of governors are to have the roles and responsibilities set out in this constitution.

### Members

- 6.2 Members may participate in Members' meetings, vote in elections, and stand for election at the Council of governors. They can also take such other part in the affairs of the Foundation Trust as provided in this constitution.

### Board of Directors

- 6.3 The business of the Foundation Trust is to be managed by the Board of Directors, who shall exercise all the powers of the Foundation Trust subject to any contrary provisions of the 2006 Act as given effect by this constitution.

### Council of governors

- 6.4 The roles and responsibilities of the Council of governors, which are to be carried out in accordance with this constitution , are:
- 6.4.1 at a general meeting;
  - 6.4.2 to appoint or remove the Chairman and the other non-executive Directors;
  - 6.4.3 to approve an appointment (by the non-executive Directors) of the Chief Executive;
  - 6.4.4 to decide the remuneration and allowances, and the other terms and conditions of office, of the non-executive Directors;
  - 6.4.5 to appoint or remove the Foundation Trust's Financial Auditor;

---

discharge under that section may be exercised by any three or more "*persons authorised by the board of the trust in that behalf each of whom is neither an executive director of the board nor an employee of the trust.*"

- 6.4.6 to appoint or remove any other external auditor appointed to review and publish a report on any other aspect of the Foundation Trust's affairs;
- 6.4.7 to be presented with the annual accounts, any report of the Financial Auditor on them and the annual report;
- 6.4.8 to provide their views to the Board of Directors when the Board of Directors is preparing the document containing information about the Foundation Trust's forward planning.
- 6.4.9 to respond as appropriate when consulted by the Board of Directors in accordance with this constitution.
- 6.4.10 to undertake such functions as the Board of Directors shall from time to time request.
- 6.4.11 from time to time to review the Foundation Trust's constitution, and when appropriate to make recommendations.

## 7. Members

---

- 7.1 The Members of the Foundation Trust are those individuals whose names are entered in the register of Members. Every Member is either a Member of one of the Public, Service Users and Carers constituencies or a Member of one of the classes of the staff constituency.
- 7.2 Subject to this constitution, Membership is open to any individual who:
  - 7.2.1 is over eleven years of age,
  - 7.2.2 is entitled under this constitution to be a Member of one of the Public, Service Users and Carers constituencies or one of the classes of the staff constituency, and
    - 7.2.2.1 completes a Membership application form in whatever form the Secretary specifies; or
    - 7.2.2.2 in the case of the staff constituency only, has been invited to become a Member of that constituency by the Foundation Trust and has not informed the Foundation Trust that they do not wish to do so.

### **Public, Patient and Carers constituencies**

- 7.3 There are four Public, Service Users and Carers constituencies corresponding to the four constituencies specified in Part 1 of Annex 1. Membership of a Public, Service Users and Carers constituency is open to individuals
  - 7.3.1 who live in the relevant area of the Foundation Trust,
  - 7.3.2 who are not a Member of another Public, Service Users and Carers constituency, and

- 7.3.3 who are not eligible to be Members of any of the classes of the staff constituency.
- 7.4 The minimum number of Members for each of the Public, Service Users and Carers constituencies is set out in column 2 of Part 1 of Annex 1
- Staff constituency**
- 7.5 The staff constituency is divided into six classes as follows:
- 7.5.1 Medical (Qualified Medical Staff)
  - 7.5.2 Nursing (Qualified Nursing Staff)
  - 7.5.3 Allied Health Professionals
  - 7.5.4 Clinical Support Staff
  - 7.5.5 Non Clinical Support Staff
  - 7.5.6 Social Care Staff
- 7.6 Membership of one of the classes of the staff constituency is open to individuals:
- 7.6.1 who are employed by the Foundation Trust under a contract of employment which has no fixed term or a fixed term of at least 12 months, or
  - 7.6.2 who are not so employed but who nevertheless exercise functions for the purposes of the Foundation Trust and who have continuously exercised the functions for the purposes of the Foundation Trust for at least 12 months. For the avoidance of doubt, this does not include those who assist or provide services to the Foundation Trust on a voluntary basis.
- 7.7 A person who is eligible to be a Member of one of the classes of the staff constituency may not become or continue as a Member of any of the Public, Service Users and Carers constituencies, and may not become or continue as a Member of more than one class of the staff constituency.
- 7.8 The minimum number of Members for each class of the staff constituency is set out in column 2 of Part 2 of Annex 1.
- 7.9 Any dispute about eligibility for Membership or the class of constituency that a person is entitled to join shall be referred to and resolved by the Secretary, whose decision shall be final.

## **8. Disqualification from Membership**

---

- 8.1 The Board may exercise its discretion as to whether or not to allow a person to become a Member of the Foundation Trust if within the last five years they have been involved as a perpetrator in a serious incident of violence at any NHS hospital or facilities or against any of the Foundation



Trust's employees or other persons who exercise functions for the purposes of the Foundation Trust, or against registered volunteers.

## 9. Termination of Membership

---

- 9.1 A Member shall cease to be a Member if:
- 9.1.1 they resign by notice to the Secretary;
  - 9.1.2 they die;
  - 9.1.3 they are expelled from Membership under this constitution;
  - 9.1.4 they cease to be entitled under this constitution to be a Member of the constituency in respect of which they are registered as a Member
  - 9.1.5 if it appears to the Secretary that they no longer wish to be a Member of the Foundation Trust, and after enquiries made in accordance with a process approved by the Council of governors, they fail to demonstrate that they wish to continue to be a Member of the Foundation Trust.

## 10. Council of governors

---

- 10.1 The Foundation Trust is to have a Council of governors. It is to consist of Public, Service Users and Carers governors, Staff governors, Local Authority governors and Partnership governors.
- 10.2 The aggregate number of Public, Service Users and Carers governors is to be more than half of the total number of Members of the Council of governors.
- 10.3 The Council of governors when appropriate shall propose amendments to this constitution.
- 10.4 The Council of governors of the Foundation Trust is to comprise:
- 10.4.1 nineteen Public, Service Users and Carers governors as set out in column 1 of Part 1 of Annex 1
  - 10.4.2 six Staff governors as set out in column 1 of Part 2 of Annex 1
  - 10.4.3 one Local Authority Governor who will be appointed by Staffordshire County Council in consultation with the Borough Councils, and Unitary Authorities in South Staffordshire.
  - 10.4.4 one Local Authority Governor who will be appointed by Telford and Wrekin Council.
  - 10.4.5 one Local Authority Governor who will be appointed by Shropshire Council in consultation with Borough Councils and Unitary Authorities in Shropshire County.

- 10.4.6 one Local Authority Governor who will be appointed by Stoke on Trent City Council.
- 10.4.7 one Partnership Governor who will be appointed by Shropshire and Telford & Wrekin Voluntary Sector Mental Health Forum in consultation with its Member organisations.
- 10.4.8 one Partnership Governor who will be appointed by VAST Staffordshire in consultation with its Member organisations.
- 10.4.9 A summary of the Appointed governors is set out in Part 3 of Annex 1.
- 10.5 Public, Service Users and Carers governors are to be elected by Members of their Public, Service Users and Carers constituency, and Staff governors are to be elected by Members of their class of the staff constituency. Each class/constituency may elect any of their number to be a Governor in accordance with the provisions of this constitution.
- 10.6 If contested, the elections must be by secret ballot.
- 10.7 Elections shall be carried out in accordance with the rules set out in Annex 2. The Council of governors will decide which of the two voting methods set out in Annex 2 is to be used.
- 10.8 A Member of a Public, Service Users and Carers constituency may not vote at an election for a Public, Service Users and Carers governor unless within twenty-one days before they vote they have made a declaration in the form specified by the Secretary that they are qualified to vote as a Member of the relevant Public, Service Users and Carers constituency. It is an offence to knowingly or recklessly make such a declaration which is false in a material particular.

#### **Appointment of Deputy Chairman of the Council of governors**

- 10.9 The Council of governors shall appoint one of the governors to be Deputy Chairman of the Council of governors.

#### **Terms of office for governors**

- 10.10 Elected governors:
- 10.10.1 shall normally hold office for a maximum period of three years commencing immediately after the annual Members meeting at which their election is announced;
- 10.10.2 are eligible for re-election at the end of that period;
- 10.10.3 may not hold office for more than 10 consecutive years.
- 10.11 Appointed governors shall hold office until their appointment is terminated by their Appointing Organisation.
- 10.12 For the purposes of these provisions concerning terms of office for governors, “year” means a period commencing immediately after the

conclusion of the annual meeting, and ending at the conclusion of the next annual meeting.

### **Eligibility to be a Governor**

10.13 A person may not become a Governor of the Foundation Trust, and if already holding such office will immediately cease to do so if:

- 10.13.1 they are under sixteen years of age;
- 10.13.2 being a Member of one of the Public, Service Users and Carers constituencies, they refuse to sign a declaration in the form specified by the Secretary of particulars of their qualification to vote as a Member of the Foundation Trust, and that they are not prevented from being a Member of the Council of governors.
- 10.13.3 they have been adjudged bankrupt or their estate has been sequestrated and in either case they have not been discharged;
- 10.13.4 they have made a composition or arrangement with, or granted a trust deed for, their creditors and have not been discharged in respect of it;
- 10.13.5 they have within the preceding five years been convicted in the British Islands of any offence, and a sentence of imprisonment (whether suspended or not) for a period of three months or more was imposed or are currently serving a term of imprisonment;
- 10.13.6 they have within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with a health service body;
- 10.13.7 they are a person whose tenure of office as the Chairman or as a Member or director of a health service body has been terminated on the grounds that their appointment is not in the interests of the health service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest;
- 10.13.8 they have had their name removed, by a direction under section 46 of the 1977 Act from any list prepared under Part II of that Act or has otherwise been suspended or disqualified from any healthcare profession, and have not subsequently had their name included in such a list or had their suspension lifted or qualification re-instated (as applicable); or
- 10.13.9 their name is on the Sex Offenders Register.

10.14 A person may not become an Elected Governor of the Foundation Trust, and if already holding such office will immediately cease to do so if:

- 10.14.1 they are a Director of the Foundation Trust, or a governor or director of an NHS Organisation or another NHS foundation Trust;
- 10.14.2 they are a Member of a Patient's Forum of an NHS body;
- 10.14.3 they are the spouse, Partner, parent or child of a Member of the Board of Directors of the Foundation Trust;
- 10.14.4 they are a Member of a local authority's Scrutiny Committee covering health matters.

### **Termination of office and removal of governors**

- 10.15 A person holding office as a Governor shall immediately cease to do so if:
  - 10.15.1 they resign by notice in writing to the Secretary;
  - 10.15.2 they fail to attend three consecutive meetings, unless the other governors are satisfied that:
    - 10.15.2.1 the absences were due to reasonable causes; and
    - 10.15.2.2 they will be able to start attending meetings of the Foundation Trust again within such a period as they consider reasonable.
  - 10.15.3 in the case of an Elected Governor, they cease to be a Member of the constituency or class of the constituency by which they were elected;
  - 10.15.4 in the case of an Appointed Governor, the Appointing Organisation terminates the appointment;
  - 10.15.5 they have refused to undertake any training which the Council of governors requires all governors to undertake;
  - 10.15.6 they have failed to sign and deliver to the Secretary a statement in the form required by the Secretary confirming acceptance of the code of conduct for governors;
  - 10.15.7 they are removed from the Council of governors under the following provisions.
- 10.16 A Governor may be removed from the Council of governors in line with the process outlined in the Code of Conduct for governors on the grounds that they have
  - 10.16.1 committed a serious breach of the code of conduct, or
  - 10.16.2 acted in a manner detrimental to the interests of the Foundation Trust;

### **Vacancies amongst governors**

- 10.17 Where a vacancy arises on the Council of governors for any reason other than expiry of term of office, the following provisions will apply.
- 10.18 Where the vacancy arises amongst the Appointed governors, the Secretary shall request that the Appointing Organisation appoints a replacement.
- 10.19 Where the vacancy arises amongst the Elected governors, the Council of governors shall be at liberty either:
- 10.19.1 to call an election within three months to fill the seat for the remainder of that term of office, or
  - 10.19.2 to invite the next highest polling candidate for that seat at the most recent election, who is willing to take office to fill the seat until the next annual election, at which time the seat will fall vacant and subject to election for any un-expired period of the term of office.

### **Expenses and remuneration of governors**

- 10.20 The Foundation Trust may reimburse governors for travelling and other costs and expenses at such rates as the Board of Directors decides. These are to be disclosed in the annual report.
- 10.21 governors are not to receive remuneration.

### **Duties of governors**

- 10.22 The general duties of the Council of governors are –
- 10.22.1 to hold the non-executive directors individually and collectively to account for the performance of the Board of Directors, and
  - 10.22.2 to represent the interests of the Members of the Foundation Trust as a whole and the interests of the public.
- 10.23 The Foundation Trust must take steps to secure that the governors are equipped with the skills and knowledge they require in their capacity as such.

### **Meetings of the Council of governors**

- 10.24 The Council of governors is to meet at least four times in each financial year. Save in the case of emergencies or the need to conduct urgent business, the Secretary shall give at least 14 days written notice of the date and place of every meeting of the Council of governors to all governors. Notice will also be published in a local newspaper or newspapers circulating in the area served by the Foundation Trust, and on the Foundation Trust's website.
- 10.25 Meetings of the Council of governors may be called by the Secretary, or by the Chairman, or by 16 governors (including at least 10 Elected governors and 6 Appointed governors) who give written notice to the Secretary specifying the business to be carried out. The Secretary shall

send a written notice to all governors as soon as possible after receipt of such a request. The Secretary shall call a meeting on at least 7 but not more than 14 days' notice to discuss the specified business. If the Secretary fails to call such a meeting then the Chairman or four board Members, whichever is the case, shall call such a meeting.

- 10.26 All meetings of the Council of governors are to be general meetings open to Members of the public unless the Council of governors decides otherwise in relation to all or part of a meeting for reasons of commercial confidentiality or on other proper grounds. The Chairman may exclude any Member of the public from a meeting of the Council of governors if they are interfering with or preventing the proper conduct of the meeting.
- 10.27 Not less than one third of all governors including not less than one third of Public, Service Users and Carers governors, not less than one third of Staff governors and not less than one third of Appointed governors shall form a quorum.
- 10.28 The Chairman of the Foundation Trust or, in their absence one of the non-executive Directors is to preside at meetings of the Council of governors. If the person presiding at any such meeting has a conflict of interest in relation to the business being discussed, the Deputy Chairman of the Council of governors will chair that part of the meeting.
- 10.29 The Council of governors may invite the Chief Executive or any other Member or Members of the Board of Directors, or a representative of the Foundation Trust's auditor or other advisors to attend a meeting of the Council of governors.
- 10.30 The Council of governors may agree that its Members can participate in its meetings by telephone, video or computer link. Participation in a meeting in this manner shall be deemed to constitute presence in person at the meeting.
- 10.31 Subject to this constitution including the following provisions of this paragraph, questions arising at a meeting of the Council of governors shall be decided by a majority of votes.
- 10.31.1 In case of an equality of votes the Chairman of the meeting shall have a casting vote.
- 10.31.2 No resolution of the Council of governors shall be passed if it is opposed by all of the Public, Service Users and Carers governors present.
- 10.32 The Council of governors may not delegate any of its powers to a committee or sub-committee, but it may appoint committees consisting of its Members, Directors, and other persons to assist the Council of governors in carrying out its functions. The Council of governors may, through the Secretary, request that advisors assist them or any committee they appoint in carrying out its duties.
- 10.33 All decisions taken in good faith at a meeting of the Council of governors or of any committee shall be valid even if it is discovered subsequently

that there was a defect in the calling of the meeting, or the appointment of the governors attending the meeting.

- 10.34 For the purpose of obtaining information about the Foundation Trust's performance of its functions or the directors' performance of their duties (and deciding whether to propose a vote on the Foundation Trust's or directors' performance), the Council of governors may require one or more of the directors to attend a meeting.

#### **Disclosure of interests**

- 10.35 Any Governor who has a material interest in a matter as defined below shall declare such interest to the Council of governors and:

10.35.1 shall withdraw from the meeting and play no part in the relevant discussion or decision

10.35.2 shall not vote on the issue (and if by inadvertence they do remain and vote, their vote shall not be counted).

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

- 10.37 Subject to the exceptions below, a material interest is

10.37.1 any directorship of a company;

10.37.2 any interest held by a Governor in any firm or company or business which, in connection with the matter, is trading with the Foundation Trust, or is likely to be considered as a potential trading partner with the Foundation Trust;

10.37.3 any interest in an organisation providing health and social care services to the National Health Service;

10.37.4 a position of authority in a charity or voluntary organisation in the field of health and social care.

- 10.38 The exceptions which shall not be treated as material interests are as follows:

10.38.1 shares not exceeding 2% of the total shares in issue held in any company whose shares are listed on any public exchange;

10.38.2 an employment contract held by staff governors; or

10.38.3 an employment contract with a local authority held by a local authority Governor;

- 10.39 The Council of governors is to adopt its own standing orders for its practice and procedure, in particular for its procedure at meetings.

## Declaration

- 10.40 An Elected Governor may not vote at a meeting of the Council of governors unless, before attending the meeting, they have made a declaration in the form specified by the Secretary of the particulars of their qualification to vote as a Member of the Foundation Trust and that they are not prevented from being a Member of the Council of governors. An Elected Governor shall be deemed to have confirmed the declaration upon attending any subsequent meeting of the Council of governors, and every agenda for meetings of the Council of governors will draw this to the attention of Elected governors.

## Validity of Acts

- 10.41 The validity of any act of the Foundation Trust is not affected by any vacancy among the governors or by any defect in the appointment of any Governor.

# 11. Board of Directors

---

- 11.1 The Foundation Trust is to have a Board of Directors. It is to consist of executive and non-executive Directors.

- 11.2 The board is to include:

- 11.2.1 the following non-executive Directors:

11.2.1.1 a Chairman, who is to be appointed (and removed) by the Council of governors at a general meeting;

11.2.1.2 up to six other non-executive Directors who are to be appointed (and removed) by the Council of governors at a general meeting;

in each case subject to the approval of a majority of the Council of governors (in the case of an appointment) present and voting at the meeting, and three-quarters of all of the Members of the Council of governors (in the case of a removal);

- 11.2.2 the following executive Directors:

11.2.2.1 a Chief Executive (who is the accounting officer), who is to be appointed (and removed) by the non-executive Directors, and whose appointment is subject to the approval of a majority of the Members of the Council of governors present and voting at a meeting of the Council of governors;

11.2.2.2 a Finance Director, a registered medical practitioner, a registered nurse and two other Executive Directors (not including Chief Executive), all of whom are to be appointed (and removed) by a committee



consisting of the Chairman, the Chief Executive and the other non-executive Directors.

- 11.3 The Board of Directors shall elect one of the non-executive Directors to be Vice-Chairman of the Board. If the Chairman is unable to discharge their office as Chairman of the Foundation Trust, the Vice-Chairman of the Board of Directors shall be acting Chairman of the Foundation Trust.
- 11.4 Only a Member of one of the Public, Service Users and Carers constituencies is eligible for appointment as a non-executive Director.
- 11.5 Non-executive Directors are to be appointed by the Council of governors using the following procedure.
- 11.5.1 The Board of Directors will identify the skills and experience required for non-executive Directors.
- 11.5.2 Appropriate candidates (not more than five for each vacancy) will be identified by a Nominations Committee through a process of open competition, which take account of the policy maintained by the Council of governors and the skills and experience required;
- 11.5.3 The Nominations Committee will comprise the Chairman of the Foundation Trust (or the Vice Chairman unless they are standing for appointment, in which case another non-executive director, when a Chairman is being appointed), two Elected governors and one Appointed Governor. The Chairman of another Foundation Trust will be invited to act as an independent assessor to the Nominations Committee.
- 11.6 The removal of the Chairman or another non-executive Director shall be in accordance with the following procedures.
- 11.6.1 Any proposal for removal must be proposed by a Governor and seconded by not less than 20 governors including at least 12 Elected governors and eight Appointed governors.
- 11.6.2 Written reasons for the proposal shall be provided to the non-executive Director in question, who shall be given the opportunity to respond to such reasons.
- 11.6.3 In making any decision to remove a non-executive Director, the Council of governors shall take into account the annual appraisal carried out by the Chairman.
- 11.6.4 If any proposal to remove a non-executive Director is not approved at a meeting of the Council of governors, no further proposal can be put forward to remove such non-executive Director based upon the same reasons within 12 months of the meeting.

### **Terms of Office**

- 11.7 The Chairman and the non-executive Directors are to be appointed for a period of office in accordance with the terms and conditions of office decided by the Council of governors at a general meeting. Any re-appointment of a non-executive Director by the Council of governors shall be subject to a satisfactory appraisal carried out in accordance with procedures which the Board of Directors have approved.
- 11.8 The remuneration committee of non-executive Directors shall decide the terms and conditions of office including remuneration and allowances of all the executive Directors.

### **Disqualification**

- 11.9 A person may not become or continue as a Director of the Foundation Trust if:
- 11.9.1 they are the spouse, Partner, parent or child of a Member of the Board of Directors of the Foundation Trust;
  - 11.9.2 they are a Member of a local authority's Scrutiny Committee covering health matters.
  - 11.9.3 they have been adjudged bankrupt or their estate has been sequestrated and in either case they have not been discharged;
  - 11.9.4 they have made a composition or arrangement with, or granted a trust deed for, their creditors and have not been discharged in respect of it;
  - 11.9.5 they have within the preceding five years been convicted in the British Islands of any offence, and a sentence of imprisonment (whether suspended or not) for a period of three months or more was imposed or are currently serving a term of imprisonment;
  - 11.9.6 they are the subject of a disqualification order made under the Company Directors Disqualification Act 1986;
  - 11.9.7 in the case of a non-executive Director, they are no longer a Member of one of the Public, Service Users and Carers constituencies;
  - 11.9.8 they are a person whose tenure of office as a Chairman or as a Member or Director of a health service body has been terminated on the grounds that their appointment is not in the interests of the health service, for non attendance at meetings, or for non-disclosure of a pecuniary interest;
  - 11.9.9 they have had their name removed, by a direction under section 46 of the 1977 Act from any list prepared under Part II of that Act or has otherwise been suspended or disqualified from any healthcare profession, and have not subsequently

- had their name included in such a list or had their suspension lifted or qualification re-instated (as applicable);
- 11.9.10 their name is on the Sex Offenders Register;
  - 11.9.11 they have within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with a health service body;
  - 11.9.12 in the case of a non-executive Director they have refused to fulfil any training requirement established by the Board of Directors; or
  - 11.9.13 they have refused to sign and deliver to the Secretary a statement in the form required by the Board of Directors confirming acceptance of the code of conduct for Directors.

### **Committees and delegation**

- 11.10 The Board of Directors may delegate any of its powers to a committee of Directors or to an Executive Director, or as and where permitted or required by the Mental Health Act 1983 to committees comprising or including persons who are not directors of the Trust.
- 11.11 The Board of Directors shall appoint a committee of four non-executive Directors to monitor the exercise of the financial auditor's functions (the "Audit Committee").
- 11.12 The Board of Directors shall appoint a committee of all non-executive Directors to decide the remuneration and allowances, and the other terms and conditions of office, of the executive Directors (the "Remuneration Committee").

### **Meeting of Directors**

- 11.13 Save in the case of emergencies or the need to conduct urgent business, the Secretary shall give at least fourteen days written notice of the date and place of every meeting of the Board of Directors to all Directors.
- 11.14 Meetings of the Board of Directors are called by the Secretary, or by the Chairman, or by nine Directors who give written notice to the Secretary specifying the business to be carried out. The Secretary shall send a written notice to all Directors as soon as possible after receipt of such a request. The Secretary shall call a meeting on at least seven but not more than 14 days' notice to discuss the specified business. If the Secretary fails to call such a meeting then the Chairman or six Directors, whichever is the case, shall call such a meeting.
- 11.15 Meetings of the Board of Directors shall be open to Members of the public. Members of the public may be excluded from a meeting for special reasons.
- 11.16 Before holding a meeting, the Board of Directors must send or otherwise make available a copy of the agenda of the meeting to the Council of governors. As soon as practicable after holding a meeting, the Board of

Directors must send or otherwise make available a copy of the minutes of the meeting to the Council of governors.

- 11.17 Nine Directors including not less than three Executive Directors (one of whom must be the Chief Executive or the Deputy Chief Executive, and not less than three non-executive Directors (one of whom must be the Chairman or the Vice-Chairman of the Board) shall form a quorum.
- 11.18 The Board of Directors may agree that its Members can participate in its meetings by telephone, video or computer link. Participation in a meeting in this manner shall be deemed to constitute presence in person at the meeting.
- 11.19 The Chairman of the Foundation Trust or, in their absence, the Vice-Chairman of the Board of Directors, is to chair meetings of the Board of Directors.
- 11.20 Subject to the following provisions of this paragraph, questions arising at a meeting of the Board of Directors shall be decided by a majority of votes.
- 11.20.1 In case of an equality of votes the Chairman of the meeting shall have a second and casting vote.
- 11.20.2 No resolution of the Board of Directors shall be passed if it is opposed by all of the non-executive Directors present or by all of the executive Directors present.
- 11.21 The Board of Directors is to adopt Standing Orders covering the proceedings and business of its meetings. The proceedings shall not however be invalidated by any vacancy of its Membership, or defect in a Director's appointment.

### **Roles and responsibilities**

- 11.22 The powers of the Foundation Trust are to be exercisable by the Board of Directors on its behalf.
- 11.23 The Directors, having regard to the views of the Council of governors, are to prepare the information as to the Foundation Trust's forward planning in respect of each financial year to be given to the Independent Regulator.
- 11.24 The Directors are to present to the Council of governors at a general meeting the annual accounts, any report of the auditor on them, and the annual report.
- 11.25 The functions of the Foundation Trust under paragraph 25 of schedule 7 of the 2006 Act are delegated to the Chief Executive as accounting officer.

### **General Duty**

- 11.26 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 Foundation Trust so as to maximise the benefits for the Member of the Foundation Trust as a whole and for the public.

## **Conflicts of Interest of Directors**

- 11.27 The duties that a director of the Foundation Trust has by virtue of being a director in particular –
- 11.27.1 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 Foundation Trust.
  - 11.27.2 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.
- 11.28 The duty referred to in sub-paragraph 11.27.1 is not infringed if –
- 11.28.1 The situation cannot reasonably be regarded as likely to give rise to a conflict of interest, or
  - 11.28.2 The matter has been authorised in accordance with the constitution.
- 11.29 The duty referred to in sub-paragraph 11.27.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- 11.30 If a director of the Foundation Trust has in any way a direct or indirect interest in a proposed transaction or arrangement with the Foundation Trust, the director must declare the nature and extent of that interest to the other directors.
- 11.31 If a declaration under this paragraph proves to be, or becomes, inaccurate, incomplete, a further declaration must be made.
- 11.32 Any declaration required by this paragraph must be made before the Foundation Trust enters into the transaction or arrangement.
- 11.33 This paragraph does not require a declaration of an interest of which the director is not aware or where the director is not aware of the transaction or arrangement in question.
- 11.34 A director need not declare an interest –
- 11.34.1 If it cannot reasonably be regarded as likely to give rise to a conflict of interest;
  - 11.34.2 If, or to the extent that, the directors are already aware of it;
  - 11.34.3 If, or to the extent that, it concerns terms of the director's appointment that have been or are to be considered –
    - 11.34.3.1 By a meeting of the Board of Directors, or
    - 11.34.3.2 By a committee of the directors appointed for the purpose under the constitution.
- 11.35 A matter shall be authorised for the purposes of paragraph 11.28.2 if:

- 11.35.1 the Board of Directors by majority disapplies the provision of the constitution which would otherwise prevent a director from being counted as participating in the decision-making process;
- 11.35.2 the director's interest cannot reasonably be regarded as likely to give rise to a conflict of interest; or
- 11.35.3 the director's conflict of interest arises from a permitted cause (as determined by the Board of Directors from time to time).

For the purposes of this paragraph, a permitted cause includes (but is not limited to)-

- 11.35.4 a guarantee given, or to be given, by or to a director in respect of an obligation incurred by or on behalf of the Foundation Trust (or any of its subsidiaries from time to time);
- 11.35.5 a transaction or arrangement for the benefit of the Foundation Trust's employees (or any of its subsidiaries from time to time) which does not award him or her a privilege or benefit not generally awarded to the employees to whom it relates; and
- 11.35.6 a transaction or arrangement concerning the purchase or maintenance of any insurance policy for the benefit of directors or for the benefit of persons including directors.

### **Expenses**

- 11.36 The Foundation Trust may reimburse executive Directors' travelling and other costs and expenses at such rates as the executive remuneration committee of non-executive Directors decides. These are to be disclosed in the annual report.
- 11.37 The remuneration and allowances for Directors are to be disclosed in bands in the annual report.

### **Acting Up**

- 11.38 If -
  - 11.38.1 an executive Director is temporarily unable to perform his duties due to illness or some other reason (the "Vacant Director"); and
  - 11.38.2 the Board of Directors agree that it is inappropriate to terminate the Vacant Director's term of office and appoint a replacement director; and
  - 11.38.3 the Board of Directors agree that the duties of the Vacant Director need to be carried out;

then the non-executive Directors may appoint an acting director as an additional director to carry out the Vacant Director's duties temporarily.

- 11.39 For the purposes of paragraph 11.41, the maximum number of Directors that may be appointed under paragraph 11.2 shall be relaxed accordingly.
- 11.40 The acting director will vacate office as soon as the Vacant Director returns to office.
- 11.41 An acting director shall be responsible for his own acts and defaults and he shall not be deemed to be the agent of the Vacant Director.

### **Honorary Titles**

- 11.42 The Foundation Trust may confer on senior staff the title “Director” as an indication of their corporate responsibility within the Foundation Trust but such persons will not be Directors of the Foundation Trust for the purposes of the 2006 Act (“statutory directors”) unless their title is that of “Executive Director” or “Non-Executive Director” or “Chairman” and will not have the voting rights of statutory directors or any power to bind the Foundation Trust.

## **12. Secretary**

---

- 12.1 The Foundation 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:
- 12.1.1. acting as Secretary to the Council of governors and the Board of Directors, and any committees;
  - 12.1.2. summoning and attending all Members meetings, meetings of the Council of governors and the Board of Directors, and keeping the minutes of those meetings;
  - 12.1.3. keeping the register of Members and other registers and books required by this constitution to be kept;
  - 12.1.4. having charge of the Foundation Trust’s seal;
  - 12.1.5. publishing to Members in an appropriate form information which they should have about the Foundation Trust’s affairs;
  - 12.1.6. preparing and sending to the Independent Regulator and any other statutory body all returns which are required to be made.
- 12.2 Minutes of every Members’ meeting, of every meeting of the Council of governors and of every meeting of the Board of Directors are to be kept. Minutes of meetings will be read at the next meeting and signed by the Chairman of that meeting. The signed minutes will be conclusive evidence of the events of the meeting.
- 12.3 The Secretary is to be appointed and removed by the Board of Directors.

## 13.Registers

---

- 13.1 The Foundation Trust is to have:
- 13.1.1. a register of Members showing, in respect of each Member:
    - 13.1.1.1. the constituency and class to which they belong;
    - 13.1.1.2. any address which they have authorised the Foundation Trust to use for the purposes of any communications.
  - 13.1.2. a register of Members of the Council of governors;
  - 13.1.3. a register of Directors;
  - 13.1.4. a register of interests of governors;
  - 13.1.5. a register of interests of the Directors.
- 13.2 The Secretary shall remove from the register of Members the name of any Member who ceases to be entitled to be a Member under the provisions of this constitution.
- 13.3 The Secretary is to send to the Independent Regulator a list of persons who were first elected or appointed as governors and Directors.

## 14.Public Documents

---

- 14.1 The following documents of the Foundation Trust are to be available for inspection by Members of the public free of charge at all reasonable times, and shall be available on the Foundation Trust's website:
- 14.1.1. a copy of the current constitution;
  - 14.1.2. a copy of the latest annual accounts and of any report of the Financial Auditor on them;
  - 14.1.3. a copy of the report of any other external auditor of the Foundation Trust's affairs appointed by the Council of governors;
  - 14.1.4. a copy of the latest annual report.
- 14.2 The Foundation Trust shall also make the following documents relating to a special administration of the Foundation Trust available for inspection by Members of the public free of charge at all reasonable times:
- 14.2.1. a copy of any order made under section 65D (appointment of trust special administrator), 65J (power to extend time) 65KC (action following Secretary of State's rejection of final report), 65L (trusts coming out of administration) or 65LA (trusts to be dissolved) of the 2006 Act.



- 14.2.2. a copy of any report laid under section 65D (appointment of trust special administrator) of the 2006 Act.
  - 14.2.3. a copy of any information published under section 65D (appointment of trust special administrator) of the 2006 Act.
  - 14.2.4. a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act.
  - 14.2.5. a copy of any statement provided under section 65F (administrator's draft report) of the 2006 Act.
  - 14.2.6. 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.
  - 14.2.7. a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act.
  - 14.2.8. a copy of any final report published under section 65I (administrator's final report).
  - 14.2.9. 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.
  - 14.2.10. a copy of any information published under section 65M (replacement of trust special administrator) of the 2006 Act.
- 14.3 The registers (but not the addresses of Members of the Foundation Trust) shall be made available for inspection by Members of the public, except in circumstances prescribed by regulations including the Public Benefit Corporation (Register of Members) Regulations 2004; and so far as they are required to be available they are to be available free of charge at all reasonable times.
- 14.4 Any person who requests it is to be provided with a copy or extract from any of the above documents or registers. The Foundation Trust may impose a reasonable charge for providing the copy or extract, but a Member is entitled to a copy or extract from the registers free of charge.

## 15. Financial Auditor and Other External Auditors

---

- 15.1 The Foundation Trust is to have a Financial Auditor and is to provide the Financial Auditor with every facility and all information which he may reasonably require for the purposes of his functions under the 2006 Act.

- 15.2 A person may only be appointed as the Financial Auditor if they (or in the case of a firm, each of its Members) are eligible for appointment as a statutory auditor under Part 42 of the Companies Act 2006 and a Member of one or more of the bodies referred to in paragraph 23(4)(b) and (c) of Schedule 7 to the 2006 Act.
- 15.3 The Council of governors at a general meeting shall appoint or remove the Foundation Trust's Financial Auditor.
- 15.4 The Financial Auditor is to carry out their duties in accordance with Schedule 10 to the 2006 Act and in accordance with any directions given by the Independent Regulator on standards, procedures and techniques to be adopted.
- 15.5 The Board of Directors may resolve that external auditors be appointed to review and publish a report on any other aspect of the Foundation Trust's performance. Any such auditors are to be appointed by the Council of governors.

## 16. Accounts

---

- 16.1 The Foundation Trust must keep proper accounts and proper records in relation to the accounts.
- 16.2 The Independent Regulator may with the approval of the Secretary of State give directions to the Foundation Trust as to the content and form of its accounts.
- 16.3 The accounts are to be audited by the Foundation Trust's auditor.
- 16.4 The Foundation Trust shall prepare in respect of each financial year annual accounts in such form as the Independent Regulator may with the approval of the Secretary of State direct.
- 16.5 The functions of the Foundation Trust with respect to the preparation of the annual accounts shall be delegated to the Accounting Officer.

## 17. Annual report, Forward Plans and Non-NHS Work

---

- 17.1 The Foundation Trust shall prepare an annual report and send it to the Independent Regulator.
- 17.2 The Foundation Trust shall give information as to its forward planning in respect of each financial year to the Independent Regulator.
- 17.3 The document containing the information with respect to forward planning (referred to above) shall be prepared by the directors.
- 17.4 In preparing the document, the directors shall have regard to the views of

the Council of governors.

- 17.5 Each forward plan must include information about –
- 17.5.1 the activities other than the provision of goods and services for the purposes of the health service in England that the Foundation Trust proposes to carry on, and
  - 17.5.2 the income it expects to receive from doing so.
- 17.6 Where a forward plan contains a proposal that the Foundation Trust carry on an activity of a kind mentioned in sub-paragraph 17.5.1 the Council of governors must:
- 17.6.1 determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfillment by the Foundation Trust of its principal purpose or the performance of its other functions, and
  - 17.6.2 notify the directors of the Foundation Trust of its determination.
- 17.7 A Foundation Trust which proposes to increase by 5% or more the proportion of its total income in any financial year attributable to activities other than the provision of goods and services for the purposes of the health service in England may implement the proposal only if more than half of the Members of the Council of governors of the Foundation Trust voting approve its implementation.
- 17.8 The following documents are to be presented to the Council of governors at a general meeting of the Council of governors:
- 17.8.1 the annual accounts
  - 17.8.2 any report of the auditor on them
  - 17.8.3 the annual report.
- 17.9 The documents shall also be presented to the Members of the Foundation Trust at the Annual Members' Meeting by at least one Member of the Board of Directors in attendance.
- 17.10 The Foundation Trust may combine a meeting of the Council of governors convened for the purposes of sub-paragraph 17.8 with the Annual Members' Meeting.

## 18. Indemnity

---

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

cover is in place for the benefit of the Council of governors, the Board of Directors and the Secretary.

## **19. Execution of documents**

---

- 19.1 A document purporting to be duly executed under the Foundation Trust's seal or to be signed on its behalf is to be received in evidence and, unless the contrary is proved, taken to be so executed or signed.
- 19.2 The Foundation Trust is to have a seal, but this is not to be affixed except under the authority of the Board of Directors.
- 19.3 The Standing Orders of the Board of Directors shall make provision as to whose signature(s) shall attest the seal.

## **20. Dispute Resolution Procedures**

---

- 20.1 Every unresolved dispute which arises out of this constitution between the Foundation Trust and:
  - 20.1.1. a Member; or
  - 20.1.2. any person aggrieved who has ceased to be a Member within the six months prior to the date of the dispute; or
  - 20.1.3. any person bringing a claim under this constitution; or
  - 20.1.4. an office-holder of the Foundation Trust

is to be submitted to the Secretary, in relation to 20.1.1, 20.1.2 or 20.1.3, or to the Chairman in the case of 20.1.4. In each case the decision of the Secretary or the Chairman (as the case may be) will be binding and conclusive on all parties.
- 20.2 Any person bringing a dispute must, if required to do so, deposit with the Foundation Trust a reasonable sum (not exceeding £250) to be determined by the Council of governors and approved by the Secretary. The Secretary or Chairman (as the case may be) will decide how any costs of resolving the dispute will be paid and what should be done with the deposit.

## **21. Amendment of the Constitution**

---

- 21.1 No amendment shall be made to this constitution unless:
  - 21.1.1. it has been approved by a majority of those governors present and voting at a meeting of the Council of governors in accordance with this constitution; and

- 21.1.2. it has been approved by a majority of those Directors present and voting at a meeting of the Board of Directors in accordance with this constitution; and
- 21.2 Amendments by the Foundation Trust of its constitution are to be notified to the Independent Regulator. For the avoidance of doubt, the Independent Regulator'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.
- 21.3 Amendments made under paragraph 21.1 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.
- 21.4 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 Foundation Trust) –
- 21.4.1. At least one Member of the Council of governors must attend the next Annual Members' Meeting and present the amendment, and
- 21.4.2. The Foundation Trust must give the Members an opportunity to vote on whether they approve the amendment.
- 21.5 If a majority of the Members voting approve the amendment, the amendment continues to have effect; otherwise, it ceases to have effect and the Foundation Trust must take such steps as are necessary as a result.
- 21.6 No amendment shall be made to the provisions of this constitution concerning the Public, Service Users and Carers constituencies unless it has also been approved by a majority of the Members of all of the Public, Service Users and Carers constituencies as may have voted at a Members meeting.
- 21.7 No amendment shall be made to the provisions of this constitution concerning the staff constituency or the classes of the staff constituency unless it has also been approved by a majority of the Members of all of the classes of the staff constituency as may have voted at a Members meeting.

## **22. Mergers, Acquisitions, Separations, Dissolutions and Significant Transactions**

- 22.1 The Foundation 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.
- 22.2 The Foundation Trust may enter into a significant transaction only if a majority of the Council of governors of the Foundation Trust voting approve entering into the transaction.
- 22.3 In paragraph 22.222.1, the following words have the following meanings:

“Significant transaction” means a transaction which meets all of the tests below:

22.3.1 the fixed asset test; and

22.3.2 the turnover test; and

22.3.3 the gross capital test (relating to acquisitions or divestments)

The fixed asset test:

22.3.4 is met if the assets which are the subject of the transaction exceed 25% of the fixed assets of the Foundation Trust

The turnover test:

22.3.5 is met if, following the completion of the relevant transaction, the gross income of the Foundation Trust will increase or decrease by more than 25%

The gross capital test:

22.3.6 is met if the gross capital of the company or business being acquired or divested represents more than 25% of the capital of the Foundation Trust following completion (where “gross capital” is the market value of the relevant company or business’s shares and debt securities, plus the excess of current liabilities over current assets, and the Foundation Trust’s capital is determined by reference to its balance sheet);

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

A transaction:

22.3.8 includes any agreement (including an amendment to an agreement) entered into by the Foundation Trust in respect of the acquisition of a business or services or the disposal of a business or service;

22.3.9 excludes a transaction in the ordinary course of business (including the renewal, extension or entering into an agreement in respect of healthcare services carried out by the Foundation Trust);

22.3.10 excludes any agreement or changes to healthcare services carried out by the Foundation Trust following a reconfiguration of services led by the commissioners of such services;

22.3.11 excludes any grant of public dividend capital or the entering into of a working capital facility or other loan, which does not involve the acquisition or disposal of any fixed asset of the Foundation Trust.

The following diagram summarises the tests detailed above:

Test	Description	Significant
Fixed Asset	The fixed assets subject to the transaction, divided by fixed assets of the Foundation Trust	> 25%
Turnover	The gross income attributable to the transaction, divided by the income of the Foundation Trust	> 25%
Gross Capital	The gross capital of the company or business being acquired/divested, divided by the total capital of the Foundation Trust following completion, or the effects on the total capital of the Foundation Trust resulting from the transaction	> 25%

## 23. Head Office

---

- 23.1. The Foundation Trust's head office is at Midlands Partnership Foundation Trust, Trust Headquarters, Corporation Street, Stafford, ST16 3SR.

## 24. Notices

---

- 24.1. Any notice required by this constitution to be given shall be given in writing or shall be given using electronic communications to an address for the time being notified for that purpose. "Address" in relation to electronic communications includes any number or address used for the purposes of such communications.
- 24.2. Proof that an envelope containing a notice was properly addressed, prepaid and posted shall be conclusive evidence that the notice was given. A notice shall be treated as delivered 48 hours after the envelope containing it was posted or, in the case of a notice contained in an electronic communication, 48 hours after it was sent.

# ANNEX 1

---

## Midlands Partnership NHS Foundation Trust

### PART 1

#### PUBLIC, SERVICE USERS AND CARERS CONSTITUENCIES – COMPOSITION BY ELECTORAL WARD

<b>Constituency</b>	<b>No. of governors</b>	<b>No. of Members (min)</b>
Shropshire/Telford and Wrekin	8	150
Staffordshire/Stoke-on-Trent	10	200
England and Wales excluding Staffordshire, Shropshire/Telford and Wrekin and North Staffordshire	1	10
<b>Total</b>	<b>19</b>	<b>360</b>

### PART 2

#### STAFF CONSTITUENCY

<b>Classes</b>	<b>No. of governors</b>	<b>No. of Members (min)</b>
Medical (Qualified Medical Staff)	1	10
Nursing (Qualified Nursing Staff)	1	10
Allied Health Professionals	1	10
Clinical Support Staff	1	10
Non Clinical Support Staff	1	10
Social Care Staff	1	10
<b>Total</b>	<b>6</b>	<b>60</b>



### **PART 3**

#### **APPOINTED GOVERNORS**

<b>Local Authority</b>	<b>No. of governors</b>
Staffordshire County Council in consultation with the Borough Councils and Unitary Authorities in South Staffordshire	1
Telford and Wrekin Council	1
Shropshire Council in consultation with Borough Councils and Unitary Authorities in Shropshire County	1
Stoke-on-Trent City Council	1
<b>Partnership Organisation</b>	-
Shropshire and Telford & Wrekin Voluntary Sector Mental Health Forum in consultation with its Member organisations	1
VAST Staffordshire in consultation with its Member organisations.	1
<b>Total</b>	<b>6</b>

## ANNEX 2

---

# MODEL ELECTION RULES 2014

---

### PART 1: INTERPRETATION

1. Interpretation

### PART 2: TIMETABLE FOR ELECTION

2. Timetable
3. Computation of time

### PART 3: RETURNING OFFICER

4. Returning officer
5. Staff
6. Expenditure
7. Duty of co-operation

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

8. Notice of election
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
16. Inspection of statement of nominated candidates and nomination forms
17. Withdrawal of candidates
18. Method of election

### PART 5: CONTESTED ELECTIONS

19. Poll to be taken by ballot
20. The ballot paper
21. The declaration of identity (public and patient constituencies)

#### *Action to be taken before the poll*

22. List of eligible voters
23. Notice of poll
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
30. Lost voting information
31. Issue of replacement voting information
32. ID declaration form for replacement ballot papers (public and patient constituencies)
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
37. Validity of votes
38. Declaration of identity but no ballot (public and patient constituency)
39. De-duplication of votes
40. Sealing of packets

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

## **PART 8: DISPOSAL OF DOCUMENTS**

54. Sealing up of documents relating to the poll
55. Delivery of documents
56. Forwarding of documents received after close of the poll
57. Retention and public inspection of documents
58. Application for inspection of certain documents relating to election

## **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
- 62. Expenses incurred by other persons

### *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

### 1. Interpretation

1.1 In these rules, unless the context otherwise requires:

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

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

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

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

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

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

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

“*ID declaration form*” has the meaning set out in Rule 21.1;

“*internet voting record*” has the meaning set out in rule 26.4(d);

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

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

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

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

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

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

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

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

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

the purposes of submitting a vote by text message;

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

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

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

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

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

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

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

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

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

## PART 2: TIMETABLE FOR ELECTIONS

---

### 2. Timetable

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

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

### 3. Computation of time

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

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

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

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

## PART 3: RETURNING OFFICER

---

### **4. Returning Officer**

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

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

### **5. Staff**

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

### **6. Expenditure**

6.1 The corporation is to pay the returning officer:

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

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

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



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

---

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

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

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

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

## **20. The ballot paper**

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

20.2 Every ballot paper must specify:

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

20.3 Each ballot paper must have a unique identifier.

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

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

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

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

("declaration of identity")

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

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

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

*Action to be taken before the poll*

## **22. List of eligible voters**

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

22.2 The list is to include, for each Member:

(a) a postal address; and,

(b) the Member's e-mail address, if this has been provided

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

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

## **23. Notice of poll**

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

(a) the name of the corporation,

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

(c) the number of Members of the council of governors to be elected from that constituency, or class with that constituency,

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

(e) that the ballot papers for the election are to be issued and



- returned, if appropriate, by post,
- (f) the methods of polling by which votes may be cast at the election by voters in a constituency or class within a constituency, as determined by the corporation in accordance with rule 19.3,
  - (g) the address for return of the ballot papers,
  - (h) the uniform resource locator (url) where, if internet voting is a method of polling, the polling website is located;
  - (i) the telephone number where, if telephone voting is a method of polling, the telephone voting facility is located,
  - (j) the telephone number or telephone short code where, if text message voting is a method of polling, the text message voting facility is located,
  - (k) the date and time of the close of the poll,
  - (l) the address and final dates for applications for replacement voting information, and
  - (m) the contact details of the returning officer.

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

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

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

("postal voting information").

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

- (a) instructions on how to vote and how to make a declaration of identity (if required),
- (b) the voter's voter ID number,
- (c) information about each candidate standing for election, pursuant to rule 64 of these rules, or details of where this information is readily available on the internet or available in

such other formats as the Returning Officer thinks appropriate, (d) contact details of the returning officer,

("e-voting information").

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

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

for the purposes of the poll.

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

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

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

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

25.2 The covering envelope is to have:

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

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

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

## **26. E-voting systems**

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

- 26.2 If telephone voting is a method of polling for the relevant election then the returning officer must provide an automated telephone system for the purpose of voting by the use of a touch-tone telephone (in these rules referred to as “the telephone voting facility”).
- 26.3 If text message voting is a method of polling for the relevant election then the returning officer must provide an automated text messaging system for the purpose of voting by text message (in these rules referred to as “the text message voting facility”).
- 26.4 The returning officer shall ensure that the polling website and internet voting system provided will:
- (a) require a voter to:
    - (i) enter his or her voter ID number; and
    - (ii) where the election is for a public or patient constituency, make a declaration of identity;in order to be able to cast his or her vote;
  - (b) specify:
    - (i) the name of the corporation,
    - (ii) the constituency, or class within a constituency, for which the election is being held,
    - (iii) the number of Members of the council of governors to be elected from that constituency, or class within that constituency,
    - (iv) the names and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
    - (v) instructions on how to vote and how to make a declaration of identity,
    - (vi) the date and time of the close of the poll, and
    - (vii) the contact details of the returning officer;
  - (c) prevent a voter from voting for more candidates than he or she is entitled to at the election;
  - (d) create a record (“internet voting record”) that is stored in the internet voting system in respect of each vote cast by a voter using the internet that comprises of-
    - (i) the voter’s voter ID number;
    - (ii) the voter’s declaration of identity (where required);
    - (iii) the candidate or candidates for whom the voter has voted; and

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

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

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

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

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

*The poll*

**27. Eligibility to vote**

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

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

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

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

- 29.1 If a voter has dealt with his or her ballot paper in such a manner that it cannot be accepted as a ballot paper (referred to as a "spoilt ballot paper"), that voter may apply to the returning officer for a replacement ballot paper.
- 29.2 On receiving an application, the returning officer is to obtain the details of the unique identifier on the spoilt ballot paper, if he or she can obtain it.

- 29.3 The returning officer may not issue a replacement ballot paper for a spoiled ballot paper unless he or she:
- (a) is satisfied as to the voter's identity; and
  - (b) has ensured that the completed ID declaration form, if required, has not been returned.
- 29.4 After issuing a replacement ballot paper for a spoiled ballot paper, the returning officer shall enter in a list ("the list of spoiled ballot papers"):
- (a) the name of the voter, and
  - (b) the details of the unique identifier of the spoiled ballot paper (if that officer was able to obtain it), and
  - (c) the details of the unique identifier of the replacement ballot paper.
- 29.5 If a voter has dealt with his or her text message vote in such a manner that it cannot be accepted as a vote (referred to as a "spoiled text message vote"), that voter may apply to the returning officer for a replacement voter ID number.
- 29.6 On receiving an application, the returning officer is to obtain the details of the voter ID number on the spoiled text message vote, if he or she can obtain it.
- 29.7 The returning officer may not issue a replacement voter ID number in respect of a spoiled text message vote unless he or she is satisfied as to the voter's identity.
- 29.8 After issuing a replacement voter ID number in respect of a spoiled text message vote, the returning officer shall enter in a list ("the list of spoiled text message votes"):
- (a) the name of the voter, and
  - (b) the details of the voter ID number on the spoiled text message vote (if that officer was able to obtain it), and
  - (c) the details of the replacement voter ID number issued to the voter.
- 30. Lost voting information**
- 30.1 Where a voter has not received his or her 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>2</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:

---

<sup>2</sup> It should not be possible, technically, to make a declaration of identity electronically without also submitting a vote.

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

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

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

#### **40. Sealing of packets**

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

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

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

**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 subparagraphs (a) to (c) of rule STV44.3.

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

FPP44.1 Any ballot paper:

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

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

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

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

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

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

FPP44.4 The returning officer is to:

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

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

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



(d) unmarked or rejected because of uncertainty,

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

FPP44.6 Any text voting record:

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

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

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

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

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

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

FPP44.9 The returning officer is to:

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

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

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

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

**STV45. First stage**

- STV45.1 The returning officer is to sort the ballot documents into parcels according to the candidates for whom the first preference votes are given.
- STV45.2 The returning officer is to then count the number of first preference votes given on ballot documents for each candidate, and is to record those numbers.
- STV45.3 The returning officer is to also ascertain and record the number of valid ballot documents.

**STV46. The quota**

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

**STV47. Transfer of votes**

- STV47.1 Where the number of first preference votes for any candidate exceeds the quota, the returning officer is to sort all the ballot documents on which first preference votes are given for that candidate into sub- parcels so that they are grouped:
- (a) according to next available preference given on those ballot documents for any continuing candidate, or
  - (b) where no such preference is given, as the sub-parcel of non-transferable votes.
- STV47.2 The returning officer is to count the number of ballot documents in each parcel referred to in rule STV47.1.
- STV47.3 The returning officer is, in accordance with this rule and rule STV48, to transfer each sub-parcel of ballot documents referred to in rule STV47.1(a) to the candidate for whom the next available preference is given on those ballot documents.
- STV47.4 The vote on each ballot document transferred under rule STV47.3 shall be at a value (“the transfer value”) which:

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

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

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

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

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

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

whichever is the less.

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

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

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

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

candidate next above such candidates.

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

**STV48. Supplementary provisions on transfer**

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

- (a) The surpluses determined in respect of two or more candidates are equal, the transferable ballot documents of the candidate who had the highest recorded vote at the earliest preceding stage at which they had unequal votes shall be transferred first, and
- (b) the votes credited to two or more candidates were equal at all stages of the count, the returning officer shall decide between those candidates by lot, and the transferable ballot documents of the candidate on whom the lot falls shall be transferred first.

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

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

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

STV48.4 Where a ballot document is so marked that it is unclear to the returning officer at any stage of the count under rule STV47 or STV49 for which candidate the next preference is recorded, the returning officer shall treat any vote on that ballot document as a non-transferable vote; and votes on a ballot document shall be so treated where, for example, the names of two or more candidates

(whether continuing candidates or not) are so marked that, in the opinion of the returning officer, the same order of preference is indicated or the numerical sequence is broken.

#### **STV49. Exclusion of candidates**

STV49.1 If:

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

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

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

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

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

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

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

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

STV49.7 The vote on each transferable ballot document transferred under

rule STV49.6 shall be at the value at which that vote was received by the candidate excluded under rule STV49.1.

STV9.8 Any ballot documents on which no next available preferences have been expressed shall be set aside as non-transferable votes.

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

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

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

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

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

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

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

shall be excluded.

**STV50. Filling of last vacancies**

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

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

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

**STV51. Order of election of candidates**

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

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

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

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

**FPP51. Equality of votes**

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



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

---

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

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

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

FPP52.2 The returning officer is to make:

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

available on request.

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

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

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

Trust by section 33(4) of the 2006 Act, to the chairman of the NHS Trust, or

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

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

STV52.2 The returning officer is to make:

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

(b) any transfer of votes,

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

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

(e) the number of rejected ballot papers under each of the headings in rule STV44.1,

(f) the number of rejected text voting records under each of the headings in rule STV44.3,

available on request.

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

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

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

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

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

## PART 8: DISPOSAL OF DOCUMENTS

---

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

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

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

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

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

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

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

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

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

### **55. Delivery of documents**

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

them to the chair of the corporation.

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

56.1 Where:

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

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

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

57.1 The corporation is to retain the documents relating to an election that are forwarded to the 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

---

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

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

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

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

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

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

FPP59.5 The returning officer is to:

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

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

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

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

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

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

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

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

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

## PART 10: ELECTION EXPENSES AND PUBLICITY

---

### *Election expenses*

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

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

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

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

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

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

### *Publicity*

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

- 63.1 The corporation may:
- (a) compile and distribute such information about the candidates, and



- (b) organise and hold such meetings to enable the candidates to speak and respond to questions,

as it considers necessary.

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

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

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

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

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

64.2 The information must consist of:

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

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

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

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

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

---

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

- 66.1 An application alleging a breach of these rules, including an electoral irregularity under Part 10, may be made to Monitor 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.

**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.