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**CONSTITUTION OF  
MILTON KEYNES UNIVERSITY HOSPITAL NHS FOUNDATION TRUST  
(A PUBLIC BENEFIT CORPORATION)**

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**May 2015**

# Constitution of Milton Keynes University Hospital

## NHS Foundation Trust

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## Interpretation and definitions

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

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

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

**Annual Members Meeting** is defined in paragraph 13 of the constitution  
**constitution** means this constitution and all annexes to it.

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

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

## 2. Name

The name of the foundation trust is Milton Keynes University Hospital NHS Foundation Trust. (“the Foundation Trust”).

## 3. Principal purpose

- 3.1 The principal purpose of the Foundation Trust is the provision of goods and services for the purposes of the health service in England.
- 3.2 The Foundation Trust does not fulfil its principal purpose unless, in each financial year, its total income from the provision of goods and services for the purposes of the health service in England is greater than its total income from the provision of goods and services for any other purposes.
- 3.3 The Foundation Trust may provide goods and services for any purposes related to—
  - 3.3.1 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. Powers**

- 4.1 The powers of the Foundation Trust are set out in the 2006 Act, subject to any restrictions in the terms of Authorisation.
- 4.2 The powers of the Foundation Trust shall be exercised by the Board of Directors on behalf of the Foundation Trust.
- 4.3 Any of these powers may be delegated to a committee of directors or to an executive director.

## **5. Membership and constituencies**

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

- 5.1 a public constituency; and
- 5.2 a staff constituency

Further provisions as to members' meetings are set out in Annex 8.

## **6. Application for membership**

An individual who is eligible to become a member of the Foundation Trust may do so on application to the Foundation Trust.

## **7. Public Constituency**

- 7.1 An individual who lives in an area specified in Annex 1 as an area for a public constituency may become or continue as a member of the Foundation Trust.
- 7.2 Those individuals who live in an area specified in an area for any public constituency are referred to collectively as the Public Constituency.
- 7.3 The minimum number of members in each area for the Public Constituency is specified in Annex 1.

## **8. Staff Constituency**

- 8.1 An individual who is employed by the Foundation Trust under a contract of employment with the Foundation Trust may become or continue as a member of the Foundation Trust provided:
  - 8.1.1 he is employed by the Foundation Trust under a contract of employment which has no fixed term or has a fixed term of at least 12 months; or

- 8.1.2 he has been continuously employed by the Foundation Trust under a contract of employment for at least 12 months.
- 8.2 Individuals who exercise functions for the purposes of the Foundation Trust, otherwise than under a contract of employment with the Foundation Trust, may become or continue as members of the staff constituency provided such individuals have exercised these functions continuously for a period of at least 12 months.
- 8.3 Those individuals who are eligible for membership of the Foundation Trust by reason of the previous provisions are referred to collectively as the Staff Constituency.
- 8.4 The Staff Constituency shall be divided into four descriptions of individuals who are eligible for membership of the Staff Constituency, each description of individuals being specified within Annex 2 and being referred to as a class within the Staff Constituency.
- 8.5 The minimum number of members in each class of the Staff Constituency is specified in Annex 2.
- 8.6 The Secretary shall make a final decision about the class of which an individual is eligible to be a member.

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

- 9.1 An individual who is:
- 9.1.1 eligible to become a member of the Staff Constituency, and
- 9.1.2 invited by the Foundation Trust to become a member of the Staff Constituency and a member of the appropriate class within the Staff Constituency,

Shall become a member of the Foundation Trust as a member of the Staff Constituency and appropriate class within the Staff Constituency without an application being made, unless he informs the Foundation Trust that he does not wish to do so. For the avoidance of doubt this does not include any individual who assists or provides services to the Foundation Trust on a voluntary basis, who shall (if eligible to become a member of the Staff Constituency) be admitted on application.

## **10. Restriction on membership**

- 10.1 An individual who is a member of a constituency, or of a class within a constituency, may not while membership of that constituency or class continues, be a member of any other constituency or class of Milton Keynes University Hospital NHS Foundation Trust.
- 10.2 An individual who satisfies the criteria for membership of the Staff Constituency may not become or continue as a member of any constituency other than the Staff Constituency of Milton Keynes University Hospital NHS Foundation Trust..

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

## **11. Annual Members' Meeting**

- 11.1 The Foundation Trust shall hold an annual meeting of its members ('Annual Members' Meeting'). The Annual Members' Meeting shall be open to members of the public.
- 11.2 Further provisions about the Annual Members' Meeting are set out in Annex 10 – Annual Members' Meeting.

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

- 12.1 The Foundation Trust is to have a Council of Governors, which shall comprise both elected and appointed Governors.
- 12.2 The composition of the Council of Governors is specified in Annex 3.
- 12.3 The members of the Council of Governors, other than the appointed members, shall be chosen by election by their constituency or, where there are classes within a constituency, by their class within that constituency. The number of Governors to be elected by each constituency, or, where appropriate, by each class of each constituency, is specified in Annex 3.

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

- 13.1 Elections for elected members of the Council of Governors shall be conducted in accordance with the Model Rules for Elections, as may be varied from time to time. The Board of Directors will decide which of the two voting methods set out in the Model Rules for Elections is to be used.
- 13.2 The Model Rules for Elections, as may be varied from time to time, form part of this constitution and are attached at Annex 4.
- 13.3 A variation of the Model Rules by the Department of Health shall not constitute a variation of the terms of this constitution. For the avoidance of doubt, the Foundation Trust cannot amend the Model Rules.
- 13.4 An election, if contested, shall be by secret ballot.

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

- 14.1 All Governors will hold office for a period of 3 years commencing immediately after the election result is announced or appointment was made.
- 14.2 An elected Governor shall cease to hold office if he ceases to be a member of the constituency or class by which he was elected.

- 14.3 An elected Governor shall be eligible for re-election at the end of his term.
- 14.4 An elected Governor may not hold office for more than nine consecutive years, and may not be eligible for re-election if he has already held office for more than six consecutive years. There may be exceptions to this which will be considered on an individual basis and will require agreement by the Trust Chairman, Lead Governor; a resolution at a Council of Governors meeting; and will be subject to the required electoral process.
- 14.5 For the purposes of these provisions concerning terms of office for elected Governors, “year” means a period of 12 months commencing immediately after the election result is announced.
- 14.6 Further provisions as to tenure for appointed Governors are set out at Annex 5.

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

- 15.1 The following may not become or continue as a member of the Council of Governors:
- 15.1.1 a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;
  - 15.1.2 a person in relation to whom a moratorium period under a debt relief order applies (under Part 7A of the Insolvency Act 1986);
  - 15.1.3 a person who has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it;
  - 15.1.4 a person who within the preceding five years has been convicted in the British Isles of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him.
- 15.2 Governors must be at least 16 years of age at the date they are nominated for election or appointment.

Further provisions as to the circumstances in which an individual may not become or continue as a member of the Council of Governors are set out in Annex 5.

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

- 16.1 The general duties of the Council of Governors are –
- 16.1.1 to hold the non-executive directors individually and collectively to account for the performance of the Board of Directors, and



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

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

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

17.1 The Chairman of the Foundation Trust (i.e. the Chairman of the Board of Directors, appointed in accordance with the provisions of paragraph 20.1 or paragraph 21.1 below) or, in his absence the Deputy Chairman (appointed in accordance with the provisions of paragraph 22 below) or, in his absence, one of the non-executive directors, shall 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 Vice Chairman of the Council of Governors (appointed in accordance with the provisions of paragraph 6 of Annex 5) will chair that part of the meeting.

17.2 Meetings of the Council of Governors shall be 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. Members of the public may be excluded from a meeting if they are interfering with or preventing the proper conduct of the meeting or for other special reasons.

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

The standing orders for the practice and procedure of the Council of Governors, as may be varied from time to time by the Council of Governors, are attached at Annex 6.

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

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

19.1.1 to act in accordance with its constitution, or

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

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

## **20. Council of Governors - conflicts of interest of Governors**

20.1 Members of the Council of Governors shall disclose to the Council of Governors any material interests (as defined below) held by a Governor, their spouse or partner, which shall be recorded in the register of interests of Governors.

20.2 Subject to the exceptions below a material interest is:

20.2.1.1 any directorship of a company;

20.2.1.2 any interest or position in any firm, company, business or organisation (including any charitable or voluntary organisation) which has or is likely to have a trading or commercial relationship with the Foundation Trust;

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

20.2.1.4 a position of authority in a charity or voluntary organisation in the field of health and social care;

20.2.1.5 any connection with any organisation, entity or company considering entering into a financial arrangement with the Foundation Trust including but not limited to lenders or banks.

20.3 The exceptions which shall not be treated as interests or material interests for the purposes of these provisions are as follows:

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

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

20.3.1.3 an employment contract with a Clinical Commissioning Group held by a Clinical Commissioning Group Governor;

20.3.1.4 an employment contract with a local authority held by a Local Authority Governor;

20.3.1.5 an employment contract with or other position of authority within a partnership organisation held by a Partnership Governor.

20.4 Any Governor who has an interest in a matter to be considered by the Council of Governors (whether because the matter involves a firm, company, business or organisation in which the Governor or his spouse or partner has a material interest or otherwise) shall declare such interest to the Council of Governors and:

- 20.4.1 shall withdraw from the meeting and play no part in the relevant discussion or decision; and
- 20.4.2 shall not vote on the issue (and if by inadvertence they do remain and vote, their vote shall not be counted).
- 20.5 Details of any such interest shall be recorded in the register of interests of Governors.
- 20.6 Any Governor who fails to disclose any interest or material interest required to be disclosed under these provisions must permanently vacate their office if required to do so by a majority of the remaining Governors.

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

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

## **22 Council of Governors – further provisions**

Further provisions with respect to the Council of Governors are set out in Annex 5.

## **23 Board of Directors – composition**

23.1 The Foundation Trust is to have a Board of Directors, which shall comprise both executive and non-executive directors.

23.2 The Board of Directors is to comprise:

23.2.1 a non-executive Chairman

23.2.2 not less than five but not more than seven other non-executive directors; and

23.2.3 not less than five but not more than seven executive directors.

23.3 One of the executive directors shall be the Chief Executive.

23.4 The Chief Executive shall be the Accounting Officer.

23.5 One of the executive directors shall be the finance director.

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

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

## **24 Board of Directors – general duty**

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

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

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

25.1 he is a member of the Public Constituency,

25.2 and he is not disqualified by virtue of paragraph 31 below or Annex 7.

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

26.1 The Council of Governors at a general meeting of the Council of Governors shall appoint or remove the chairman of the Foundation Trust and the other non-executive directors.

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

26.3 Further provisions as to the appointment and removal of the chairman and other non-executive directors are set out at Annex 7.

## **27 Board of Directors – appointment of deputy chairman**

The Council of Governors at a general meeting of the Council of Governors shall appoint one of the non-executive directors as a deputy chairman. If the Chairman is unable to discharge his office as Chairman of the Foundation Trust the Deputy Chairman of the Board of Directors shall be acting Chairman of the Foundation Trust.

## **28 Board of Directors - appointment and removal of the Chief Executive and other executive directors**

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

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

### **Appointment of Executive Directors**

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

### **Deputy Chief Executive appointment**

28.4 The Board of Directors shall nominate one of the executive directors to be the Deputy Chief Executive.

## **29 Board of Directors – disqualification**

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

- 29.1 a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged.
- 29.2 a person in relation to whom a moratorium period under a debt relief order applies (under Part 7A of the Insolvency Act 1986).
- 29.3 a person who has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it.
- 29.4 a person who within the preceding five years has been convicted in the British Isles of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him.
- 29.5 a person who does not satisfy all of the requirements of Regulation 5(3) of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014/2936 (as amended or updated from time to time).

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

## **30 Board of Directors – meetings**

- 30.1 Meetings of the Board of Directors shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons.
- 30.2 Before holding a meeting, the Board of Directors must send a copy of the agenda of the meeting to the Council of Governors. As soon as practicable after holding a meeting, the Board of Directors must send a copy of the minutes of the meeting to the Council of Governors

## **31 Board of Directors – standing orders**

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

## **32 Board of Directors - conflicts of interest of directors**

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

- 32.1.1 A duty to avoid a situation in which the director has (or can have) a direct or indirect interest that conflicts (or possibly may conflict) with the interests of the Trust.
- 32.1.2 A duty not to accept a benefit from a third party by reason of being a director or doing (or not doing) anything in that capacity.
- 32.2 The duty referred to in sub-paragraph 34.1.1 is not infringed if –
- 32.2.1 the situation cannot reasonably be regarded as likely to give rise to a conflict of interest; or
- 32.2.2 the matter has been authorised in accordance with the constitution.
- 32.3 The duty referred to in sub-paragraph 34.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- 32.4 In sub-paragraph 34.1.2, “third party” means a person other than –
- 32.4.1 the Trust; or
- 32.4.2 a person acting on its behalf.
- 32.5 If a director of the Trust has in any way a direct or indirect interest in a proposed transaction or arrangement with the Trust, the director must declare the nature and extent of that interest to the other directors.
- 32.6 If a declaration under this paragraph proves to be, or becomes, inaccurate, incomplete, a further declaration must be made.
- 32.7 Any declaration required by this paragraph must be made before the Trust enters into the transaction or arrangement.
- 32.8 This paragraph does not require a declaration of an interest of which the director is not aware or where the director is not aware of the transaction or arrangement in question.
- 32.9 A director need not declare an interest –
- 32.9.1 if it cannot reasonably be regarded as likely to give rise to a conflict of interest;
- 32.9.2 if, or to the extent that, the directors are already aware of it;
- 32.9.3 if, or to the extent that, it concerns terms of the director’s appointment that have been or are to be considered –
- 32.9.3.1** by a meeting of the Board of Directors; or
- 32.9.3.2** by a committee of the directors appointed for the purpose under the constitution.

32.10 A matter shall be authorised for the purposes of paragraph 34.2.2 if:

32.10.1 the Board of Directors by majority disapplies the provision of the constitution which would otherwise prevent a director from being counted as participating in the decision-making process;

32.10.2 the director's interest cannot reasonably be regarded as likely to give rise to a conflict of interest; or

32.10.3 the director's conflict of interest arises from a permitted cause (as determined by the Board of Directors from time to time).

32.11 Any Director who has an interest in a matter to be considered by the Board of Directors (whether because the matter involves a firm, company, business or organisation in which the Director or his spouse, partner or close family member has a material interest or otherwise) shall declare such interest to the Board of Directors and:

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

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

32.12 Details of any such interest shall be recorded in the register of interests of the Board of Directors.

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

33.1 The Council of Governors at a general meeting of the Council of Governors shall decide the remuneration and allowances, and the other terms and conditions of office, of the Chairman and the other non-executive directors.

33.2 The Foundation Trust shall establish a committee of non-executive directors to decide the remuneration and allowances, and the other terms and conditions of office, of the Chief Executive and other executive directors.

### **34 Registers**

The Foundation Trust shall have:

34.1 a register of members showing, in respect of each member, the constituency to which he belongs and, where there are classes within it, the class to which he belongs;

34.2 a register of members of the Council of Governors;

34.3 a register of interests of Governors;

34.4 a register of directors; and

34.5 a register of interests of the directors.

## **35 Admission to and removal from the registers**

35.1 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.

35.2 The Secretary is to send to Monitor a list of persons who were first elected or appointed as Governors and Directors.

## **36 Registers – inspection and copies**

36.1 The Foundation Trust shall make the registers specified in paragraph 29 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.

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

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

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

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

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

## **37 Documents available for public inspection**

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

37.1.1 a copy of the current constitution;

37.1.2 a copy of the current authorisation;

37.1.3 a copy of the latest annual accounts and of any report of the external auditor on them;

37.1.4 a copy of the latest annual report;

37.1.5 a copy of the latest information as to its forward planning;

37.1.6 a copy of any notice given under section 25 of the 2006 Act;

37.1.7 a copy of the Foundation Trust's membership strategy;



- 37.1.8 a copy of the Foundation Trust's policy for the composition of the Council of Governors and of the non-executive directors.
- 37.2 The Foundation Trust shall also make the following documents relating to a special administrator of the Trust available for inspection by members of the public free of charge at all reasonable times:
- 37.2.1 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;
- 37.2.2 a copy of any report laid under section 65D (appointment of trust special administrator) of the 2006 Act;
- 37.2.3 a copy of any information published under section 65D (appointment of trust special administrator) of the 2006 Act;
- 37.2.4 a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act
- 37.2.5 a copy of any statement provided under section 65F (administrator's draft report) of the 2006 Act;
- 37.2.6 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;
- 37.2.7 a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act;
- 37.2.8 a copy of any final report published under section 65I (administrator's final report);
- 37.2.9 a copy of any statement published under section 65J (power to extend time) or 65KC (action following Secretary of State's rejection of final report) of the 2006 Act; and
- 37.2.10 a copy of any information published under section 65M (replacement of trust special administrator) of the 2006 Act.
- 37.3 Any person who requests a copy of or extract from any of the above documents is to be provided with a copy or extract.
- 37.4 If the person requesting a copy or extract is not a member of the Foundation Trust, the Foundation Trust may impose a reasonable charge for doing so.

## **38 External Auditor**

- 38.1 The Foundation Trust shall have an external auditor.
- 38.2 The Council of Governors shall appoint or remove the external auditor at a general meeting of the Council of Governors.
- 38.3 The external auditor is to carry out their duties in accordance with Schedule 10 to the 2006 Act and in accordance with any directions given by Monitor on standards, procedures and techniques to be adopted.

## **39 Audit committee**

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

## **40 Annual Accounts**

- 40.1 The Foundation Trust must keep proper accounts and proper records in relation to the accounts
- 40.2 Monitor may with the approval of the Secretary of State give directions to the Foundation Trust as to the content and form of its accounts
- 40.3 The accounts are to be audited by the Foundation Trust's external auditor.
- 40.4 The Foundation Trust shall prepare in respect of each Financial Year annual accounts in such form as Monitor may with the approval of the Secretary of State direct.
- 40.5 The functions of the Foundation Trust with respect to the preparation of the annual accounts shall be delegated to the Accounting Officer.

## **41 Annual report and forward plans and non NHS work**

- 41.1 The Foundation Trust shall prepare an Annual Report and send it to Monitor. Further provisions as to Annual Reports are set out at Annex 10.
- 41.2 The Foundation Trust shall give information as to its forward planning in respect of each Financial Year to Monitor.
- 41.3 The document containing the information with respect to forward planning (referred to above) shall be prepared by the directors.
- 41.4 In preparing the document, the directors shall have regard to the views of the Council of Governors.
- 41.5 Each forward plan must include information about-
  - 41.5.1 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

- 41.5.2 the income it expects to receive from doing so.
- 41.6 Where a forward plan contains a proposal that the Foundation Trust carry on an activity of a kind mentioned in sub paragraph 43.5.1 the Council of Governors must-
  - 41.6.1 determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfilment by the Foundation Trust of its principal purpose or the performance of its other functions, and
  - 41.6.2 where the Foundation Trust proposes to increase by 5% or more the proportion of its total income in any financial year attributable to activities other than the provision of goods and services for the purposes of health service in England it 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.

## **42 Presentation of the annual accounts and reports to the governors and members**

- 42.1 The following documents are to be presented to the Council of Governors at a general meeting of the Council of Governors:
  - 42.1.1 the annual accounts
  - 42.1.2 any report of the external auditor on them
  - 42.1.3 the annual report
- 42.2 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.
- 42.3 The Foundation Trust may combine a meeting of the Council of Governors convened for the purposes of sub paragraph 44.1 with the Annual Members Meeting.

## **43 Instruments**

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

## **44 Amendment of the constitution**

- 44.1 The Foundation Trust may make amendments of its constitution only if –

- 44.1.1 More than half of the members of the Council of Governors of the Foundation Trust voting approve the amendments, and
- 44.1.2 More than half of the members of the Board of Directors of the Foundation Trust voting approve the amendments.
- 44.2 Amendments made under paragraph 48.1 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.
- 44.3 Where an amendment is made to the constitution in relation the powers or duties of the Council of Governors (or otherwise with respect to the role that the Council of Governors has as part of the Foundation Trust) –
  - 44.3.1 At least one member of the Council of Governors must attend the next Annual Members' Meeting and present the amendment, and
  - 44.3.2 The Foundation Trust must give the members an opportunity to vote on whether they approve the amendment.
- 44.4 If more than half of the members voting approve the amendment, the amendment continues to have effect; otherwise, it ceases to have effect and the trust must take such steps as are necessary as a result.
- 44.5 Amendments by the Foundation Trust of its constitution are to be notified to Monitor. For the avoidance of doubt, Monitor's functions do not include a power or duty to determine whether or not the constitution, as a result of the amendments, accords with Schedule 7 of the 2006 Act.<sup>49</sup>

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

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

## **46 Indemnity**

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

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

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

(Paragraphs 7.1 and 7.3)

The areas of the Public Constituency are:

Bletchley & Fenny Stratford, Denbigh, Eaton Manor, Whaddon

Emerson Valley, Furzton, Loughton Park

Linford South, Bradwell, Campbell Park

Hanslope Park, Olney, Sherington, Newport Pagnall North, Newport Pagnall South, Linford North

Walton Park, Danesborough, Middleton, Woughton

Stantonbury, Stony Stratford and Wolverton

Outer catchment area: The parishes within the areas of Buckingham, Winslow, Leighton Buzzard, Linslade, Woburn Sands, Hanslope, Old Stratford, Beachampton, The Horwoods, The Brickhills, Woburn

Extended area: The remainder of the county area of Northamptonshire (not already covered in the outer catchment area), the remainder of the county area of Buckinghamshire (not already covered in the outer catchment area), the remainder of the county area of Bedfordshire (not already covered in the outer catchment area), the unitary council area of Luton and the district council areas of Cherwell, Oxford City and South Oxfordshire

The minimum number of members of each of the areas of the Public Constituency is to be three

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

(Paragraphs 8.4 and 8.5)

The classes of the Staff Constituency are:

- 2.1 registered medical practitioners and registered dentists
- 2.2 registered nurses and registered midwives
- 2.3 allied healthcare professionals
- 2.4 all other staff

The minimum number of members of each class of the Staff Constituency is to be four.

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

(Paragraphs 12.2 and 12.3)

- 1 The aggregate number of Public Governors is to be more than half of the total number of members of the Council of Governors.
- 2 The Council of Governors, subject to the 2006 Act, shall seek to ensure that through the composition of the Council of Governors:
  - 2.1 the interests of the community served by the Foundation Trust are appropriately represented;
  - 2.2 the level of representation of the Public Constituency, the classes of the Staff Constituency and the appointing organisations strikes an appropriate balance having regard to their legitimate interest in the Foundation Trust's affairs;

and to this end, the Council of Governors:

- 2.3 shall at all times maintain a policy for the composition of the Council of Governors which takes account of the membership strategy, and
  - 2.4 shall from time to time and not less than every three years review the policy for the composition of the Council of Governors, and
  - 2.5 when appropriate shall propose amendments to this constitution.
- 3 The Council of Governors of the Foundation Trust is to comprise:
  - 3.1 15 Public Governors from the following areas of the Public Constituency:
    - 3.1.1 Bletchley & Fenny Stratford, Denbigh, Eaton Manor, Whaddon – two Public Governors
    - 3.1.2 Emerson Valley, Furzton, Loughton Park – two Public Governors
    - 3.1.3 Linfield South, Bradwell, Campbell Park – two Public Governors
    - 3.1.4 Hanslope Park, Olney, Sherington, Newport Pagnall North, Newport Pagnall South, Linford North – two Public Governors
    - 3.1.5 Walton Park, Danesborough, Middleton, Woughton – two Public Governors
    - 3.1.6 Stantonbury, Stony Stratford and Wolverton – two Public Governors
    - 3.1.7 Outer catchment area: Buckingham, Winslow, Leighton Buzzard, Linslade, Woburn Sands, Hanslope, Old Stratford,



Beachampton, The Horwoods, The Brickhills, Woburn – two Public Governors

3.1.8 Extended area: The remainder of the county area of Northamptonshire (not already covered in the outer catchment area), the remainder of the county area of Buckinghamshire (not already covered in the outer catchment area), the remainder of the county area of Bedfordshire (not already covered in the outer catchment area), the unitary council area of Luton and the district council areas of Cherwell, Oxford City and South Oxfordshire – one Public Governor

3.2 seven Staff Governors from the following classes;

3.2.1 registered medical practitioners and registered dentists – one Staff Governor

3.2.2 registered nurses and registered midwives – two Staff Governors

3.2.3 allied healthcare professionals – one Staff Governor

3.2.4 all other staff, including registered volunteers – three Staff Governors

3.3 one Governor to be appointed by Milton Keynes Clinical Commissioning Group;

3.4 one Local Authority Governor to be appointed by Milton Keynes Borough Council;

3.5 three Partnership Governors to be appointed by partnership organisations;

3.6 One representative from Milton Keynes Youth Council. (non voting)

3.7 In accordance with Schedule 7 of the Act, if any of the corporation's hospitals includes a medical or dental school provided by the University of Buckingham, at least one member of the Council of Governors must be appointed by that university.

4 The partnership organisations that may appoint a Partnership Governor (one each) are:

4.1 Healthwatch Milton Keynes

4.2 Milton Keynes Business Leaders;

4.3 Milton Keynes Council for Voluntary Organisations.

## **ANNEX 4 –THE MODEL RULES FOR ELECTIONS**

### **(Paragraph 13.2) The Model Election Rules**

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2. Timetable
3. Computation of time

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4. Returning officer
5. Staff
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## **PART 1: INTERPRETATION**

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### **1. Interpretation**

1.1 In these rules, unless the context otherwise requires:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **PART 2: TIMETABLE FOR ELECTIONS**

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### **2. Timetable**

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

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

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

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

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

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

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

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

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#### **4. Returning Officer**

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

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

#### **5. Staff**

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

#### **6. Expenditure**

6.1 The corporation is to pay the returning officer:

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

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

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

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

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

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

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

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

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

9.2 The returning officer:

- (a) is to supply any member of the corporation with a nomination form; 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 Constituency, of the particulars of his or her qualification to vote as a member of that constituency, or class within that constituency, for which the election is being held.

## **13. Signature of candidate**

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

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

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

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

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

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

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

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

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

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

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

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

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

15.2 The statement must show:

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

candidate standing; and

(b) the declared interests of each candidate standing,

as given in their nomination form.

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

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

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

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

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

## **17. Withdrawal of candidates**

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

## **18. Method of election**

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

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

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

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

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

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

## **PART 5: CONTESTED ELECTIONS**

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

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

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

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

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

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

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

### **20. The ballot paper**

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

20.2 Every ballot paper must specify:

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

20.3 Each ballot paper must have a unique identifier.

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

## **21. The declaration of identity (Public Constituencies)**

21.1 The corporation shall require each voter who participates in an election for a Public 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 64 of these rules; and
- (d) a covering envelope;

("postal voting information").

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

- (a) instructions on how to vote and how to make a declaration of identity (if

required);

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

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

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

### *The poll*

## **27. Eligibility to vote**

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

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

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

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

- 29.1 If a voter has dealt with his or her ballot paper in such a manner that it cannot

be accepted as a ballot paper (referred to as a “spoilt ballot paper”), that voter may apply to the returning officer for a replacement ballot paper.

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

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

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

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

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

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

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

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

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

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

### **30. Lost voting information**

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

### **31. Issue of replacement voting information**

- 31.1 If a person applies for replacement voting information under rule 29 or 30 and a declaration of identity has already been received by the returning officer in the name of that voter, the returning officer may not issue replacement voting information unless, in addition to the requirements imposed 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; and
  - (c) the voter ID number of the voter.

### **32. ID declaration form for replacement ballot papers (Public Constituencies)**

- 32.1 In respect of an election for a public 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 Constituency)**

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

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

**39. De-duplication of votes**

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

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



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

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

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

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

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

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

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

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

- (f) the list of tendered voting information

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

## **PART 6: COUNTING THE VOTES**

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### **41. Not used**

### **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(a)(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.

#### **44. Rejected ballot papers and rejected text voting records**

44.1 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 44.2 and 44.3, be rejected and not counted.

44.2 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.

44.3 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.

44.4 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 44.2 and 44.3, endorse the words “rejected in part” on the ballot paper and indicate which vote or votes have been counted.

44.5 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.

44.6 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 44.7 and 44.8, be rejected and not counted.

44.7 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.

44.8 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.

44.9 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 44.7 and 44.8, endorse the words "rejected in part" on the text voting record and indicate which vote or votes have been counted.

44.10 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.

**45. Not used**

**46. Not used**

**47. Not used**

**48. Not used**

**49. Not used**

**50. Not used**

**51. Equality of votes**

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

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

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

52.1 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 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.

52.2 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 44.5;
- (c) the number of rejected text voting records under each of the headings in rule 44.10,

available on request.

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

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

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

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

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

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

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

and ensure that complete electronic copies of the internet voting records,

telephone voting records and text voting records created in accordance with rule 26 are held in a device suitable for the purpose of storage.

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

- (a) the disqualified documents, with the list of disqualified documents inside it;
- (b) the list of spoiled ballot papers and the list of spoiled 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; and/or



(d) production or opening,

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

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

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

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

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

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

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

59.1 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.

59.2 Where a new election is ordered under rule 59.1, 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.

59.3 Where a poll is abandoned under rule 59.1(a), rules 59.4 to 59.7 are to apply.

59.4 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.

59.5 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.

59.6 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.

59.7 Once the documents relating to the poll have been sealed up and endorsed pursuant to rules 59.4 to 59.6, the returning officer is to deliver them to the chairman of the corporation, and rules 57 and 58 are to apply.

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

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### *Election expenses*

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

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

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

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

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

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

62.1 No person may:

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

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

*Publicity*

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

63.1 The corporation may:

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

as it considers necessary.

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

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

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

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

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

64.2 The information must consist of:

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

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

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

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

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

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**66. Application to question an election**

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

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

66.3 An application may only be made to Monitor by:

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

- 66.4 The application must:
- (a) describe the alleged breach of the rules or electoral irregularity; and
  - (b) be in such a form as the independent panel may require.
- 66.5 The application must be presented in writing within 21 days of the declaration of the result of the election. Monitor will refer the application to the independent election arbitration panel appointed by Monitor.
- 66.6 If the independent election arbitration panel requests further information from the applicant, then that person must provide it as soon as is reasonably practicable.
- 66.7 Monitor shall delegate the determination of an application to a person or panel of persons to be nominated for the purpose.
- 66.8 The determination by the IEAP shall be binding on and shall be given effect by the corporation, the applicant and the members of the constituency (or class within a constituency) including all the candidates for the election to which the application relates.
- 66.9 The IEAP may prescribe rules of procedure for the determination of an application including costs.

## **PART 12: MISCELLANEOUS**

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### **67. Secrecy**

- 67.1 The following persons:
- (a) the returning officer; and
  - (b) the returning officer's staff,
- must maintain and aid in maintaining the secrecy of the voting and the counting of the votes, and must not, except for some purpose authorised by law, communicate to any person any information as to:
- (i) the name of any member of the corporation who has or has not been given 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; and
  - (iv) the candidate(s) for whom any member has voted.
- 67.2 No person may obtain or attempt to obtain information as to the candidate(s) for whom a voter is about to vote or has voted, or communicate such

information to any person at any time, including the unique identifier on a ballot paper given to a voter or the voter ID number allocated to a voter.

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

**68. Prohibition of disclosure of vote**

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

**69. Disqualification**

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

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

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

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

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

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

## **ANNEX 5 – ADDITIONAL PROVISIONS – COUNCIL OF GOVERNORS**

(Paragraphs 14.7,15, 18 and 22)

### **Elected Governors**

1. A member of the Public Constituency may not vote at an election for a Public 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 area of the Public Constituency. It is an offence to knowingly or recklessly make such a declaration which is false in a material particular.

### **Appointed Governors**

2. The Secretary, having consulted Milton Keynes Clinical Commissioning Group (CCG) is to adopt a process for agreeing the appointment of the CCG Governor with that CCG.

3. The Secretary, having consulted Milton Keynes Borough Council, is to adopt a process for agreeing the appointment of the Local Authority Governor with that local authority.

4. The Partnership Governors are to be appointed by the partnership organisations, in accordance with a process agreed with the Secretary.

### **Appointment of Vice Chairman of the Council of Governors**

5. The Council of Governors shall appoint one of the Governors to be Vice Chairman of the Council of Governors.

### **Tenure for appointed Governors**

6. An appointed Governor:

6.1 shall hold office for a period of three years commencing immediately after his appointment is announced;

6.2 shall be eligible for re-appointment at the end of his term;

6.3 may not hold office for longer than nine consecutive years, and shall not be eligible for re-appointment if he has already held office for more than six consecutive years.

7. For the purposes of these provisions concerning terms of office for appointed Governors, “year” means a period commencing immediately after the conclusion of the annual members meeting, and ending at the conclusion of the next annual members meeting.

8. An appointed Governor shall cease to hold office if the appointing organisation which appointed him terminates the appointment.

## **Further provisions as to eligibility to be a Governor**

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

9.1 they are a Director of the Foundation Trust;

9.2 they are a member of a Patients' Forum unless that Patients' Forum is a partnership organisation;

9.3 they have been previously removed as a Governor pursuant to paragraph 11 of this Annex 5.

9.4 being a member of the Public Constituency, 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;

9.5 they are subject to a sex offender order ;

10. A person holding office as a Governor shall immediately cease to do so if:

10.1 they resign by notice in writing to the Secretary;

10.2 they fail to attend three consecutive meetings of the Council of Governors, unless the other Governors are satisfied that:

10.2.1 the absences were due to reasonable causes; and

10.2.2 they will be able to start attending meetings of the Council of Governors again within such a period as the other Governors consider reasonable;

10.3 they have refused without reasonable cause to undertake any training which the Council of Governors requires all Governors to undertake;

10.4 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;

10.5 they are removed from the Council of Governors under the following provisions.

11. A Governor may be removed from the Council of Governors by a resolution approved by not less than three-quarters of the remaining Governors present and voting on the grounds that:

11.1 they have committed a serious breach of the code of conduct; or

11.2 they have acted in a manner detrimental to the interests of the Foundation Trust; and



- 11.3 the Council of Governors consider that it is not in the best interests of the Foundation Trust for them to continue as a Governor.

### **Vacancies amongst Governors**

12. Where a vacancy arises on the Council of Governors for any reason other than expiry of term of office, the following provisions will apply.

13. Where the vacancy arises amongst the appointed Governors, the Secretary shall request that the appointing organisation appoints a replacement to hold office for the remainder of the term of office.

14. Where the vacancy arises amongst the elected Governors, the Council of Governors shall be at liberty either:

- 14.1 to call an election within three months to fill the seat for the remainder of that term of office; or
- 14.2 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 unexpired period of the term of office; or
- 14.3 if the unexpired period of the term of office is less than six months, to leave the seat vacant until the next elections are held.

### **Further provisions as to meetings of Council of Governors**

15. The Council of Governors is to meet at least three times in each financial year. 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 Council of Governors together with an agenda and any supporting papers 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.

16. Meetings of the Council of Governors may be called by the Secretary, or by the Chairman, or by ten Governors (including at least two elected Governors and two 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 fourteen but not more than twenty-eight days' notice to discuss the specified business. If the Secretary fails to call such a meeting then the Chairman or ten Governors, whichever is the case, shall call such a meeting.

17. Ten Governors including not less than four Public Governors, not less than one Staff Governor and not less than one appointed Governor shall form a quorum.

18. 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 external auditor or other advisors to attend a meeting of the Council of Governors.

19. 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.

20. Subject to the following provisions of this paragraph, questions arising at a meeting of the Council of Governors shall be decided by a majority of votes.

20.1 In case of an equality of votes the person presiding at or chairing the meeting shall have a second and casting vote.

20.2 No resolution of the Council of Governors shall be passed if it is opposed by all of the Public Governors present.

21. 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.

22. 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.

### **Declaration**

23. 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.

**ANNEX 6 – STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE COUNCIL OF GOVERNORS**

(Paragraph 18)

**RULES OF PROCEDURE**

**FOR**

**MEETINGS OF THE COUNCIL OF GOVERNORS**

**OF**

**MILTON KEYNES UNIVERSITY HOSPITAL NHS FOUNDATION TRUST**

**1 INTERPRETATION**

In these Rules:

(a) unless the context otherwise requires, the following expressions have the following meanings:

<b>“the Board”</b>	means the board of directors of the Foundation Trust from time to time;
<b>“the Constitution”</b>	means the constitution of the Foundation Trust as amended from time to time;
<b>“the Council”</b>	means the Council of Governors of the Foundation Trust from time to time;
<b>“the Foundation Trust”</b>	means Milton Keynes University Hospital NHS Foundation Trust;
<b>“Meeting”</b>	means a duly convened meeting of the Council;
<b>“Question on Notice”</b>	means a question from a Governor or Governors (notice of which has been given pursuant to Rule 7) about a matter over which the Council has powers or duties or which affects the services provided by the Foundation Trust;

(b) other terms defined in the Constitution shall have the same meaning in these Rules.

## **2 APPROVAL OF THE RULES**

These Rules of Procedure shall be agreed and adopted by majority vote at the first meeting of the Council. Any subsequent amendments to these Rules of Procedure may only be made pursuant to Rule 19.

## **3 MEETINGS**

Meetings of the Council shall be held at regular intervals and at least three times per year, at such times and places as the Chairman may determine from time to time. The Secretary will publish the dates, times and locations of meetings of the Council for the year six months in advance. Other, or emergency, meetings of the Council may be called in accordance with the Constitution.

## **4 AGENDAS AND PAPERS**

An agenda, copies of any Questions on Notice and/or motions on notice to be considered at the relevant Meeting and any supporting papers shall be sent to each Governor so as to arrive with each Governor no later than seven days in advance of each Meeting. Minutes of the previous Meeting will be circulated with these papers for approval and this will be a specific agenda item.

## **5 REPORTS FROM THE EXECUTIVE DIRECTORS**

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

## **6 QUESTIONS ON NOTICE AT MEETINGS**

Subject to the provisions of Rule 7, a Governor may ask a Question on Notice of:

- (a) the Chairman;
- (b) another Governor;
- (c) an executive director of the Foundation Trust;
- (d) the chair of any sub-committee or working group of the Council.

## **7 NOTICE OF QUESTIONS**

Notice of a Question on Notice must be given in writing to the Secretary at least 14 days prior to the relevant Meeting. For the purposes of this Rule 7, receipt of any such Questions on Notice via electronic means is acceptable.

## **8 RESPONSE TO A QUESTION ON NOTICE**

An answer to a Question on Notice may take the form of:

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

## **9 SUPPLEMENTARY QUESTIONS IN RESPECT OF A QUESTION ON NOTICE**

Supplementary questions for the purpose of clarification of a reply to a Question on Notice may be asked at the absolute discretion of the Chairman.

## **10 MOTIONS ON NOTICE**

- (a) Notice

Subject to Rule 11, a motion may only be submitted by Governors and must be received by the Secretary in writing at least 14 days prior to the Meeting at which it is proposed to be considered, together with any relevant supporting papers. Except for motions which can be moved without notice under Rule 11, the notice of every motion must be signed or transmitted by at least two Governors. For the purposes of this Rule 10, receipt of any such motions via electronic means is acceptable. All motions received by the Secretary will be acknowledged by the Secretary in writing to the Governors who have signed or transmitted the same.

- (b) Scope

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

## **11 MOTIONS WITHOUT NOTICE**

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

- (a) in relation to the accuracy of the minutes of the previous Meeting;
- (b) to change the order of business in the agenda for the Meeting;

- (c) to refer a matter discussed at a Meeting to an appropriate body or individual;
- (d) to appoint a working group arising from an item on the agenda for the Meeting;
- (e) to receive reports or adopt recommendations made by the Board;
- (f) to withdraw a motion;
- (g) to amend a motion;
- (h) to proceed to the next business on the agenda;
- (i) that the question be now put;
- (j) to adjourn a debate;
- (k) to adjourn a Meeting;
- (l) to suspend a particular Rule contained within these Rules (provided that any Rule may only be suspended if at least one half of the aggregate number of Governors are present at the Meeting in question and provided also that the Rule in question may only be suspended for the duration of the Meeting in question);
- (m) to exclude the public and press from the Meeting in question (the motion shall be “To exclude the press and public from the remainder of the Meeting, owing to the confidential nature of the business to be transacted.”);
- (n) to not hear further from a Governor, or to exclude them from the Meeting in question (if a Governor persistently disregards the ruling of the Chairman or behaves improperly or offensively or deliberately obstructs business, the Chairman, in its absolute discretion, may move that the Governor in question be not heard further at the Meeting in question. If seconded, the motion will be voted on without discussion. If the Governor continues to behave improperly after such a motion is carried, the Chairman may move that either the Governor leaves the meeting room or that the Meeting in question is adjourned for a specified period. If seconded, the motion will be voted on without discussion);
- (o) to give the consent of the Council to any matter where its consent is required pursuant to the Constitution.

## 12 URGENT MOTIONS OR QUESTIONS

Urgent motions or questions may only be submitted by a Governor and must be received by the Secretary in writing before the commencement of the Meeting in question. The Chairman shall decide whether the motion or question in question should be tabled.

## 13 VOTING

- (a) Every question at a Meeting shall be determined by a majority of the votes of the Chairman of the Meeting and Governors present and voting on the question

and, in the case of the number of votes for and against a motion being equal, the Chairman of the Meeting shall have a second or casting vote.

(b) All questions put to the vote shall, at the discretion of the Chairman of the meeting, be determined by oral expression or by a show of hands. A paper ballot may also be used if a majority of the Governors present so request.

(c) If at least one-third of the Governors present so request, the voting (other than by paper ballot) on any question may be recorded to show how each Governor present voted or abstained.

(d) If a Governor so requests, his/her vote shall be recorded by name upon any vote (other than by paper ballot).

(e) In no circumstances may an absent Governor vote by proxy. Absence is defined as being absent at the time of the vote.

#### 14 **ANY OTHER BUSINESS**

There will not be an agenda item entitled "Any Other Business". Instead, there will an item for "Motions or Questions on Notice" (which are subject to the other provisions of these Rules). There will be another item for "Urgent Motions or Questions" (which are subject to Rule 12).

#### 15 **SPEAKING RULES**

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

##### (a) Content and Length of Speeches

Any approval to speak must be given by the Chairman. Governors will be heard first, and after their debate is complete the Chairman will, if the meeting is in public, ask for any questions or comments from members of the Foundation Trust and the public in that order. Speeches must be directed to the matter, motion or question under discussion or to a point of order. Unless in the opinion of the Chairman it would not be desirable or appropriate to time limit speeches on any topic to be discussed having regard to its nature complexity or importance, no proposal, speech, nor any reply, may exceed three minutes. In the interests of time the Chairman may, in its absolute discretion, limit the number replies questions or speeches which are heard at any one Meeting.

##### (b) When a person may speak again

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

- (i) in exercise of a right of reply;
- (ii) on a point of order.

(c) Identification

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

16 **ATTENDANCE**

Governors who are unable to attend a Meeting shall notify the Secretary in writing in advance of the Meeting in question so that their apologies may be submitted.

17 **QUORUM**

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

18 **CHAIR**

The Council will be chaired in accordance with the Constitution. If the Council is dealing with the matter of succession of the Chairman, then the Vice Chairman of the Council will preside. If the Vice Chairman is not present, the meeting will be chaired, for that part of the meeting only, by a Public Governor selected from among those present.

19 **AMENDMENTS TO RULES OF PROCEDURE**

These Rules of Procedure may only be amended at a Meeting. A motion to change the Rules of Procedure must be signed by a majority of the Governors and submitted to the Secretary in writing at least 21 days before the Meeting at which the motion is intended to be proposed.

20 **DISPUTE BETWEEN THE COUNCIL AND THE BOARD**

In situations where any conflict arises between the Board and the Council, the Chairman may initiate an independent review to investigate and make recommendations in respect of how the conflict may be settled. Normally this will be achieved by inviting the chair of another foundation trust to conduct the review, and the choice of individual will be agreed by both the Council and the Board.

21 **TERMS OF REFERENCE AND CODE OF CONDUCT FOR GOVERNORS**

Governors shall at all times comply with the Council of Governors' Terms of Reference and the Code of Conduct for Governors.



**ANNEX 7 – STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE  
BOARD OF DIRECTORS**

(Paragraph 26)

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

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## **INTRODUCTION**

### **Statutory Framework**

Milton Keynes University Hospital NHS Foundation Trust (the Trust) is a public benefit corporation authorised by the Independent Regulator of NHS Foundation Trusts which was established under the Health and Social Care (Community Health Standards) Act 2003.

The Trust's principal place of business is:

Milton Keynes University Hospital  
 Standing Way  
 Eaglestone  
 Milton Keynes  
 MK6 5LD

NHS Foundation Trusts are governed by statute, mainly the National Health Service Act 2003, by their constitutions and by the terms of their authorisation issued by Monitor (collectively 'the Regulatory Framework').

The functions of the Trust are conferred by the Regulatory Framework.

As a body corporate the Trust has specific powers to contract in its own name and to act as a corporate trustee. In the latter role it is accountable to the Charity Commission for those funds deemed to be charitable. The Trust also has a common law duty as a bailee for patients' property held by the Trust on behalf of patients.

The Constitution requires the Board of Directors to adopt Standing Orders (SOs) for the regulation of its practice and procedure.

### **Delegation of Powers**

Under the SOs relating to the Arrangements for the Exercise of Functions by Delegation (SO 4) the Board exercises its powers to make arrangements for the exercise, on behalf of the Trust, of any of its functions by a committee or sub-committee appointed by virtue of SO 5, in each case subject to such restrictions and conditions as the Board thinks fit or as the Independent Regulator may direct. Delegated Powers are covered in a separate document (Reservation of Powers to the Board and Delegation of Powers). That document has effect as if incorporated into the Standing Orders.

## 1. INTERPRETATION

1.1 Save as permitted by law, and subject to the Constitution, at any meeting the Chairman of the Trust shall be the final authority on the interpretation of SOs (on which he/she should be advised by the Chief Executive or Trust Secretary).

1.2 Any expression to which a meaning is given in the NHS Act 2006 or in the Regulations or Orders made under the Act shall have the same meaning in this interpretation and in addition:

**"ACCOUNTING OFFICER"** shall be the Officer responsible and accountable for funds entrusted to the Trust. He/She shall be responsible for ensuring the proper stewardship of public funds and assets. For this Trust it shall be the Chief Executive.

**"TRUST"** means the Milton Keynes University Hospital NHS Foundation Trust.

**"BOARD"** shall mean the Chairman, non-executive Directors, and the executive Directors of the Trust as a collective body.

**"BUDGET"** shall mean a resource, expressed in financial terms, proposed by the Board for the purpose of carrying out, for a specific period, any or all of the functions of the Trust;

**"CHAIRMAN"** is the person appointed by the Council of Members to lead the Board and to ensure that it successfully discharges its overall responsibility for the Trust as a whole. The expression "the Chairman of the Trust" shall be deemed to include the Deputy Chairman of the Trust if the Chairman is absent from the meeting or is otherwise unavailable.

**"CHIEF EXECUTIVE"** shall mean the chief executive officer of the Trust.

**"COMMITTEE"** shall mean a sub-committee appointed by the Board.

**"COMMITTEE MEMBERS"** shall be persons formally appointed by the Board to sit on or to chair specific committees.

**"DEPUTY CHAIRMAN"** means the non-executive Director appointed by the Council of Governors to take on the Chairman's duties if the Chairman is unable to discharge his office as Chairman, for any reason.

**"DIRECTOR"** shall mean a person appointed as a Director of the Trust in accordance with the Constitution and includes the Chairman.

**"DIRECTOR OF FINANCE "** shall mean the chief finance officer of the Trust.

**"HE/SHE & HIS/HERS"** shall refer to the appropriate postholder and are to be read as the gender of that post which may change.

"**FUNDS HELD ON TRUST**" shall mean those funds which the Trust holds at its date of incorporation, receives on distribution by statutory instrument, or chooses subsequently to accept. Such funds may or may not be charitable.

"**COUNCIL OF GOVERNORS**" means the Council of Governors of the Trust as constituted by the Constitution.

"**MONITOR**" means the Independent Regulator of NHS Foundation Trusts.

"**MOTION**" means a formal proposition to be discussed and voted on during the course of a meeting.

"**NOMINATED OFFICER**" means an officer charged with the responsibility for discharging specific tasks within Standing Orders (SOs) and Standing Financial Instructions (SFIs).

"**NON-EXECUTIVE DIRECTOR**" means a Director, including the Chairman, who does not hold an executive office of the Trust.

"**SECRETARY**" means a person appointed by the Trust to act independently of the Board, to provide advice to the Board on corporate governance issues and monitor the Trust's compliance with the law, these SO's , and the Regulatory Framework.

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

"**SOs**" means Standing Orders.

## **2. THE TRUST**

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

2.2 All funds received in trust shall be in the name of the Trust as corporate trustee. In relation to funds held on trust, powers exercised by the Trust as corporate trustee shall be exercised separately and distinctly from those powers exercised as a Trust.

2.3 The Board has resolved that certain powers and decisions may only be exercised or made by the Board in formal session. These powers and decisions are set out in "Reservation of Powers to the Board" and have effect as if incorporated into the Standing Orders.

2.4 **Composition of the Trust Board** - In accordance with the Constitution the composition of the Board shall be:

The Chairman of the Trust

not less than five but not more than seven non- executive Directors

not less than five but not more than seven executive Directors

including:

- the Chief Executive
- the Director of Finance
- a registered medical or dental practitioner
- a registered nurse or midwife

## **2.5 Appointment of the Chairman and Directors**

### **2.5.1 Appointment and removal of Non executive Directors.**

The Chairman and the other non-executive directors are appointed and removed by the Council of Governors in accordance with the procedure described in the Constitution.

#### **2.5.1.1 Non-Executive Appointments Committee**

The Trust shall appoint a Non-Executive Appointments Committee (a Committee of the Council of Governors) which will comprise of the Chairman of the Trust (or, when a Chairman is being appointed, the Deputy Chairman/ Senior Independent Director unless he is standing for appointment, in which case another non-executive director), three elected Governors and one Appointed Governor. The Committee will be chaired by a Governor. The Chairman of another Foundation Trust will be invited to act as an independent assessor to the Committee.

## **2.6 Appointment and removal of Chief Executive**

In accordance with the Constitution the non-executive Directors of the Trust will appoint and remove the Chief Executive as a director of the Trust. The appointment of the Chief Executive 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.

## **2.7 Appointment and removal of Executive Directors**

In accordance with the Constitution the Board shall appoint an Executive Remuneration and Nominations Committee (a Committee of the Board of Directors) consisting of the Chairman, the Chief Executive, and the other non-executive Directors to appoint or remove the executive Directors other than the Chief Executive. The Committee will be chaired by the Chairman of the Trust.

**2.8 Terms of Office of the Chairman and Non-Executive Directors** – 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/ delegated to the Non-Executive Appointments Committee with subsequent approval at a general meeting.

**2.9 Terms of Office of Executive Directors** - The Executive Remuneration and Nominations Committee consisting of non-executive Directors shall decide the terms and conditions of office including remuneration and allowances of executive Directors.

**2.10 Appointment of Deputy Chairman** - For the purpose of enabling the proceedings of the Trust to be conducted in the absence of the Chairman, the Council of Governors will appoint a non-executive Director to be Deputy Chairman for such a period,

not exceeding the remainder of his/her term as non-executive Director of the Trust, as they may specify on appointing him/her.

2.11 Any non-executive Director so elected may at any time resign from the office of Deputy Chairman by giving notice in writing to the Chairman and the Council of Governors, may thereupon appoint another non-executive Director as Deputy Chairman in accordance with paragraph 2.10.

2.12 **Powers of Deputy Chairman** - Where the Chairman of the Trust has died or has otherwise ceased to hold office or where he/she has been unable to perform his/her duties as Chairman owing to illness, absence from England and Wales or any other cause, the Deputy Chairman of the Board of Directors shall be acting chairman of the Trust and references to the Chairman in these SOs shall, so long as there is no Chairman able to perform his/her duties, be taken to include references to the Deputy Chairman.

### **3. MEETINGS OF THE BOARD**

3.1 **Calling Meetings** - Ordinary meetings of the Board shall be held at such times and places as the Board may determine.

3.2 The Secretary may call a meeting of the Board at any time. The Chairman or four Directors may request the Secretary to call a meeting giving written notice of the business to be carried out. The Secretary shall send a written notice to all Directors as soon as possible after the receipt of such a request. The Secretary shall call a meeting on at least 14 but not more than 28 days' notice to discuss the specified business. If the Secretary fails to call such a meeting then the Chairman or four Directors, whichever is the case, shall call such a meeting.

3.3 **Notice of Meetings** – Save in the case of emergencies or the need to conduct urgent business, the Secretary shall give to all Directors at least 14 days, but not more than 28 days, written notice of the date and place of every meeting of the Board of Directors.

3.4 Before each meeting of the Board, a notice of the meeting, specifying the business proposed to be transacted at it, shall be delivered to every Director, or sent by post to the usual place of residence of such Director, so as to be available to him at least five clear days before the meeting.

3.5 Lack of service of the notice on any director shall not affect the validity of a meeting.

3.6 Failure to serve such a notice on more than two Directors will invalidate the meeting. A notice shall be presumed to have been served at the time at which the notice would be delivered in the ordinary course of the post.

3.7 In the case of a meeting called by four Directors or the Chairman in default of the Secretary, the notice shall be signed either by those Directors or the Chairman

and no business shall be transacted at the meeting other than that specified in the notice.

3.8 **Setting the Agenda** - The Board may determine that certain matters shall appear on every agenda for a meeting of the Board and shall be addressed prior to any other business being conducted.

3.9 A Director desiring a matter to be included on an agenda shall make his/her request in writing to the Chairman at least 10 days before the meeting, subject to SO 3.3. Requests made less than 10 days before a meeting may be included on the agenda at the discretion of the Chairman.

3.10 **Chairman of Meeting** - At any meeting of the Board, the Chairman, if present, shall preside. If the Chairman is absent from the meeting the Deputy Chairman, if present, shall preside. If the Chairman and Deputy Chairman are absent such non-executive Director as the Directors present shall choose shall preside.

3.11 If the Chairman is absent from a meeting temporarily on the grounds of a declared conflict of interest the Deputy Chairman, if present, shall preside. If the Chairman and Deputy Chairman are absent, or are disqualified from participating, such non-executive Director as the Directors present shall choose shall preside.

3.12 **Notices of Motion** - A Director of the Trust desiring to move or amend a motion shall send a written notice thereof at least 10 days before the meeting to the Chairman, who shall insert in the agenda for the meeting all notices so received subject to the notice being permissible under the appropriate regulations. This paragraph shall not prevent any motion being moved during the meeting, without notice on any business mentioned on the agenda subject to SO 3.7.

3.13 **Withdrawal of Motion or Amendments** - A motion or amendment once moved and seconded may be withdrawn by the proposer with the concurrence of the seconder and the consent of the Chairman.

3.14 **Motion to Rescind a Resolution** - Notice of motion to amend or rescind any resolution (or the general substance of any resolution) which has been passed within the preceding 6 calendar months shall bear the signature of the Director who gives it and also the signature of 4 other Directors. When any such motion has been disposed of by the Board, it shall not be competent for any Director other than the Chairman to propose a motion to the same effect within 6 months, however the Chairman may do so if he/she considers it appropriate.

3.15 **Motions** - The mover of a motion shall have a right of reply at the close of any discussion on the motion or any amendment thereto.

3.16 When a motion is under discussion or immediately prior to discussion it shall be open to a Director to move:

- An amendment to the motion.
- The adjournment of the discussion or the meeting.



- That the meeting proceed to the next business. (\*)
- The appointment of an ad hoc sub-committee to deal with a specific item of business.
- That the motion be now put. (\*)

\* In the case of sub-paragraphs denoted by (\*) above to ensure objectivity motions may only be put by a Director who has not previously taken part in the debate and who is eligible to vote. No amendment to the motion shall be admitted if, in the opinion of the Chairman of the meeting, the amendment negates the substance of the motion.

3.17 **Chairman's Ruling** - Statements of Directors made at meetings of the Board shall be relevant to the matter under discussion at the material time and the decision of the Chairman of the meeting on questions of order, relevancy, regularity and any other matters shall be observed at the meeting.

3.18 **Voting** - Every question at a meeting shall be determined by a majority of the votes of the Directors present and voting on the question and, in the case of any equality of votes, the person presiding shall have a second or casting vote.

3.19 All questions put to the vote shall, at the discretion of the Chairman of the meeting, be determined by oral expression or by a show of hands. A paper ballot may also be used if a majority of the Directors present so request.

3.20 If at least one-third of the Directors present so request, the voting (other than by paper ballot) on any question may be recorded to show how each Director present voted or abstained.

3.21 If a Director so requests, his/her vote shall be recorded by name upon any vote (other than by paper ballot).

3.22 In no circumstances may an absent Director vote by proxy. Absence is defined as being absent at the time of the vote.

3.23 Any director or member of a committee of the Directors may participate in a meeting of the Board of Directors or such committee by means of a conference telephone or similar communications equipment whereby all persons participating in the meeting can hear each other and participation in the meeting in this manner shall be deemed to constitute presence in person at such meeting.

3.24 An acting Director who has been appointed formally by the Executive Remuneration and Nominations Committee as an additional Director, in accordance with the Constitution, to carry out a vacant Director's duties during a period of temporary incapacity shall be entitled to exercise the voting rights of the executive Director. An officer attending the Board to represent an executive Director during a period of incapacity or temporary absence without being formally appointed to the Board may not exercise the voting rights of the executive Director. An officer's status when attending a meeting shall be recorded in the minutes.

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

3.26 No discussion shall take place upon the minutes except upon their accuracy or where the Chairman considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the next meeting.

3.27 Minutes shall be circulated in accordance with the Directors' wishes.

3.28 **Suspension of Standing Orders** - Except where this would contravene any statutory provision or any direction made by Monitor, any one or more of the SOs may be suspended at any meeting, provided that at least two-thirds of the Board are present, including one executive Director and one non-executive Director, and that a majority of those present vote in favour of suspension.

3.29 A decision to suspend SOs shall be recorded in the minutes of the meeting.

3.30 A separate record of matters discussed during the suspension of SOs shall be made and shall be available to the Directors.

3.31 No formal business may be transacted while SOs are suspended.

3.32 **Variation and Amendment of Standing Orders** - These SOs shall be amended only if:

- a notice of motion under Standing Order 3.12 has been given; and
- no fewer than half the total of the Trust's non-executive Directors vote in favour of amendment; and
- at least two-thirds of the Directors are present ; and
- the variation proposed does not contravene a statutory provision or direction made by the Monitor.

3.33 **Record of Attendance** - The names of the Directors present at the meeting shall be recorded in the minutes.

3.34 **Quorum** - No business shall be transacted at a meeting of the Board unless at least six Directors including not less than three executive (one of whom must be either the Chief Executive or the Deputy Chief Executive ) and not less than three non-executive Directors (one of whom must be the Chairman or Deputy Chairman of the Board of Directors) are present.

3.35 **Associate Directors** – Unless the Chairman decides otherwise, for proper grounds, Associate Directors shall be entitled to receive notice of, and to attend and speak at meetings of the Board but shall not be entitled to vote or count in the quorum, at such meetings.

### **3.36 Procedure for asking questions at Board of Director meetings**

Questions may be submitted in writing on any matter within the powers and the duties of the Trust. The Chair reserves the right to refuse any written question that:

- Is not within the powers and duties of the Trust to answer;
- Is defamatory or offensive, or related to individual members of staff;
- Would require the disclosure of confidential or exempt information;
- Is substantially the same as a question that has previously been answered. In addition the Chair may decide not to deal with complex or lengthy subjects in the public setting of the question session and may choose to respond with written answers only. The Chair has discretion on whether a question can be submitted for answer.

#### **3.36.1 Process for submitting questions**

Questions will be answered if submitted in writing to the Trust Secretary by 10am at least 4 working days before the date of the Board meeting. Questions must show the name and address of the person submitting the question, and if on behalf of an organisation, its address must also be stated. No more than two questions may be submitted by any person at any meeting, to allow the Trust to deal with a fair cross-section of questions. The Trust will provide a written response in time for the meeting, which will normally be read out by the Chair.

#### **3.36.2 Procedure at the Board meeting in public**

The Chair will first close the Board meeting and then announce the start of the question session, usually lasting up to 15 minutes. If the person who has submitted the question is present, they will be invited to read out their question, with the Chair then reading out the written response. If the questioner is not present the Chair may choose to read out the question before giving the answer. Discussion will not normally follow at the question session except that the Chair may allow one additional oral question to be put after an answer. If the response to this oral question is not easily available then a further written answer may be provided at the Chair's discretion.

## **4. ARRANGEMENTS FOR THE EXERCISE OF FUNCTIONS BY DELEGATION**

4.1 Subject to SO 2.3 and such directions as may be given by Monitor, the Board may make arrangements for the exercise, on behalf of the Trust, of any of its functions by a committee or sub-committee, appointed by virtue of SO 5.1 or 5.2 below, in each case subject to such restrictions and conditions as the Board thinks fit.

4.2 **Emergency Powers** - The powers which the Board has retained to itself within these SOs (SO 2.3) may in emergency be exercised by the Chief Executive and the Chairman after having consulted at least two non-executive Directors. The exercise of such powers by the Chief Executive and the Chairman shall be reported to the next formal meeting of the Board for ratification.

4.3 **Delegation to Committees** – The Board shall agree from time to time to the delegation of executive powers to be exercised by committees which it has formally constituted. The composition and terms of reference of these committees, and their specific executive powers shall be approved by the Board.

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

4.5 The Chief Executive shall prepare a Scheme of Delegation identifying his/her proposals which shall be considered and approved by the Board, subject to any amendment agreed during the discussion. The Chief Executive may periodically propose amendment to the Scheme of Delegation which shall be considered and approved by the Board as indicated above.

4.6 Nothing in the Scheme of Delegation shall impair the discharge of the direct accountability to the Board of the Director of Finance or any other executive Director to provide information and advise the Board in accordance with any statutory requirements or Monitor.

4.7 The arrangements made by the Board as set out in the "Reservation of Powers to the Board and Delegation of Powers" shall have effect as if incorporated in these Standing Orders.

## 5. COMMITTEES

5.1 **Appointment of committees** - Subject to SO 2.7 and such directions as may be given by Monitor, the Board may and, if directed by Monitor, shall appoint committees of the Board, consisting wholly or partly of Directors of the Trust.

5.2 A committee appointed under SO 5.1 may, subject to such directions as may be given by Monitor or the Board, appoint sub-committees of the committee consisting wholly or partly of members of the committee or wholly of persons who are not members of the committee (whether or not they are Directors of the Trust).

5.3 The SOs of the Board, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees or sub-committees of the Board.

5.4 Each such committee or sub-committee shall have such terms of reference and powers and be subject to such conditions (as to reporting back to the Board), as the Board shall decide. Such terms of reference shall have effect as if incorporated into the Standing Orders.

5.5 Committees may not delegate their executive powers to a sub-committee unless expressly authorised by the Board.

5.6 The Board shall approve the appointments to each of the committees which it has formally constituted.

5.7 Where the Trust is required to appoint persons to a committee and/or to undertake statutory functions as required by Monitor and where such appointments are to

operate independently of the Board such appointment shall be made in accordance with applicable statute and regulations and with the guidance issued by Monitor.

5.8 The committees established by the Board are:

- Remuneration
- Audit
- Quality and Clinical Risk
- Finance and Investment
- Workforce and Development Assurance
- Charitable Funds

5.9 **Confidentiality** - A member of a committee shall not disclose a matter dealt with by, or brought before, the committee without its permission until the committee shall have reported to the Board or shall otherwise have concluded on that matter.

5.10 A Director of the Trust or a member of a committee or a sub-committee shall not disclose any matter reported to the Board or otherwise dealt with by the committee or sub-committee, notwithstanding that the matter has been reported or action has been concluded, if the Board or committee or sub-committee shall resolve that it is confidential.

## 6. CUSTODY OF SEAL AND SEALING OF DOCUMENTS

6.1 **Custody of Seal** - The Common Seal of the Trust shall be kept by the Secretary in a secure place.

6.2 **Sealing of Documents** - The Seal of the Trust shall not be fixed to any documents unless the sealing has been authorised by a resolution of the Board.

6.3 **Register of Sealing** - An entry of every sealing shall be made and numbered consecutively in a book provided for that purpose, and shall be signed by the persons who shall have approved and authorised the document and those who attested the seal. A report of all sealing shall be made to the Trust Board at the next meeting. (The report shall contain details of the seal number, the description of the document and date of sealing).

## 7. SIGNATURE OF DOCUMENTS

7.1 Where the signature of any document will be a necessary step in legal proceedings involving the Trust, it shall be signed by the Chief Executive, unless any enactment otherwise requires or authorises, or the Board shall have given the necessary authority to some other person for the purpose of such proceedings.

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

## 8. MISCELLANEOUS

8.1 **Standing Orders to be given to Directors** - It is the duty of the Chief Executive to ensure that existing Directors and all new appointees are notified of and understand their responsibilities within SOs and SFIs. Updated copies shall be issued to all Directors. New Directors shall be informed in writing and shall receive copies where appropriate of SOs and SFIs.

8.2 **Documents having the standing of Standing Orders** - Standing Financial Instructions and Reservation of Powers to the Board and Delegation of Powers shall have the effect as if incorporated into SOs.

8.3 **Review of Standing Orders** - SOs shall be reviewed annually by the Board. The requirement for review extends to all documents having the effect as if incorporated in SOs.

## **ANNEX 8 – ADDITIONAL PROVISIONS – MEMBERS AND ANNUAL MEMBERS MEETING**

(Paragraphs 4 and 8.3)

### **1. DISQUALIFICATION FROM MEMBERSHIP**

1.1 An individual may not become a member of the Foundation Trust if:

1.1.1 they are under 14 years of age; or

1.1.2 within the last five years they have been involved as a perpetrator in a serious incident of violence, whether at any of the Foundation Trust's hospitals 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 any registered volunteer, or elsewhere or against any other person.

### **2. TERMINATION OF MEMBERSHIP**

2.1 A member shall cease to be a member if:

2.1.1 they resign by notice to the Trust Secretary;

2.1.2 they die;

2.1.3 they are expelled from membership under this constitution;

2.1.4 they cease to be entitled under this constitution to be a member of the Public Constituency or of any of the classes of the Staff Constituency;

2.1.5 it appears to the Trust 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.

2.2 A member may be expelled by a resolution approved by not less than two-thirds of the Governors present and voting at a General Meeting. The following procedure is to be adopted.

2.2.1 Any member may complain to the Trust Secretary that another member has acted in a way detrimental to the interests of the Foundation Trust.

2.2.2 If a complaint is made, the Council of Governors may itself consider the complaint having taken such steps as it considers appropriate to ensure that each member's point of view is heard and may either:

2.2.2.1 dismiss the complaint and take no further action; or

2.2.2.2 for a period not exceeding twelve months suspend the rights of the member complained of to attend members meetings and vote under this constitution;

- 2.2.2.3 arrange for a resolution to expel the member complained of to be considered at the next General Meeting of the Council of Governors.
- 2.2.3 If a resolution to expel a member is to be considered at a General Meeting of the Council of Governors, details of the complaint must be sent to the member complained of not less than one calendar month before the meeting with an invitation to answer the complaint and attend the meeting.
- 2.2.4 At the meeting the Council of Governors will consider evidence in support of the complaint and such evidence as the member complained of may wish to place before them.
- 2.2.5 If the member complained of fails to attend the meeting without due cause the meeting may proceed in their absence.
- 2.3 A person expelled from membership will cease to be a member upon the declaration by the Chairman of the meeting that the resolution to expel them is carried.
- 2.4 No person who has been expelled from membership is to be re-admitted except by a resolution carried by the votes of two-thirds of the Council of Governors present and voting at a General Meeting.

### 3. **MEMBERS MEETINGS**

- 3.1 The Foundation Trust is to hold a members meeting (called the annual members meeting) within nine months of the end of each financial year.
- 3.2 All members meetings other than annual meetings are called special members meetings.
- 3.3 Members meetings are open to all members of the Foundation Trust, Governors and Directors, and representatives of the external auditor, but not to members of the public unless the Council of Governors decides otherwise. The Council of Governors may invite representatives of the media and any experts or advisors whose attendance they consider to be in the best interests of the Foundation Trust to attend a members meeting.
- 3.4 All members meetings are to be convened by the Secretary by order of the Council of Governors.
- 3.5 The Council of Governors may decide where a members meeting is to be held and may also for the benefit of members:
  - 3.5.1 arrange for the annual members meeting to be held in different venues each year:
  - 3.5.2 make provisions for a members meeting to be held at different venues simultaneously or at different times. In making such provision the Council of Governors shall also fix an appropriate quorum for each venue, provided that the aggregate of the quorum requirements shall not be less than the quorum set out below.



- 3.6 At the annual members meeting:
  - 3.6.1 the Board of Directors shall present to the members:
    - 3.6.1.1 the annual accounts;
    - 3.6.1.2 any report of the auditor;
    - 3.6.1.3 forward planning information for the next Financial Year
  - 3.6.2 the Council of Governors shall present to the members a report on:
    - 3.6.2.1 steps taken to secure that (taken as a whole) the actual membership of the Public Constituency and of the classes of the Staff Constituency is representative of those eligible for such membership;
    - 3.6.2.2 the progress of the membership strategy; and
    - 3.6.2.3 any proposed changes to the policy for the composition of the Council of Governors and of the non-executive Directors
  - 3.6.3 the results of the election and appointment of Governors and the appointment of non-executive Directors will be announced.
- 3.7 Notice of a members meeting is to be given:
  - 3.7.1 by notice to all members;
  - 3.7.2 by notice prominently displayed at the head office and at all of the Foundation Trust's places of business; and
  - 3.7.3 by notice on the Foundation Trust's website at least 14 clear days before the date of the meeting. The notice must:
    - be given to the Council of Governors and the Board of Directors, and to the auditor;
  - 3.7.4 state whether the meeting is an annual or special members meeting;
  - 3.7.5 give the time, date and place of the meeting; and
  - 3.7.6 indicate the business to be dealt with at the meeting.
- 3.8 Before a members meeting can do business there must be a quorum present. Except where this constitution says otherwise a quorum is one member present from each of the Foundation Trust's constituencies.
- 3.9 The Foundation Trust may make arrangements for members to vote by post, or by using electronic communications.
- 3.10 It is the responsibility of the Council of Governors, the Chairman of the meeting and the Secretary to ensure that at any members meeting:

- 3.10.1 the issues to be decided are clearly explained;
- 3.10.2 sufficient information is provided to members to enable rational discussion to take place.
- 3.11 The Chairman of the Foundation Trust, or in their absence the Deputy Chairman of the Board of Directors, shall act as chairman at all members meetings of the Foundation Trust. If neither the Chairman nor the Deputy Chairman of the Board of Directors is present, the members of the Council of Governors present shall elect one of their number to be Chairman and if there is only one Governor present and willing to act they shall be Chairman.
- 3.12 If no quorum is present within half an hour of the time fixed for the start of the meeting, the meeting shall stand adjourned to the same day in the next week at the same time and place or to such time and place as the Council of Governors determine. If a quorum is not present within half an hour of the time fixed for the start of the adjourned meeting, the number of members present during the meeting is to be a quorum.
- 3.13 A resolution put to the vote at a members meeting shall be decided upon by a poll.
- 3.14 Every member present and every member who has voted by post or using electronic communications is to have one vote. In the case of an equality of votes the Chairman of the meeting is to have a second and casting vote.
- 3.15 The result of any vote will be declared by the Chairman and entered in the minute book. The minute book will be conclusive evidence of the result of the vote.

## **ANNEX 9 – FURTHER PROVISIONS**

### **1. COMMITMENTS**

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

#### **Representative membership**

1.2 The Foundation Trust shall at all times strive to ensure that taken as a whole its actual membership is representative of those eligible for membership. To this end:

1.2.1 the Foundation Trust shall at all times have in place and pursue a membership strategy which shall be approved by the Council of Governors, and shall be reviewed by them from time to time, and at least every three years,

1.2.2 the Council of Governors shall present to each annual members meeting a report on:

1.2.2.1 steps taken to secure that (taken as a whole) the actual membership of the Public Constituency and of the classes of the Staff Constituency is representative of those eligible for such membership;

1.2.2.2 the progress of the membership strategy;

1.2.2.3 any changes to the membership strategy.

#### **Co-operation with NHS bodies and local authorities**

1.3 In exercising its functions the Foundation Trust shall co-operate with NHS bodies and local authorities.

#### **Openness**

1.4 In conducting its affairs, the Foundation Trust shall have regard to the need to provide information to members and conduct its affairs in an open and accessible way.

#### **Prohibiting distribution**

1.5 The profits or surpluses of the Foundation Trust are not to be distributed either directly or indirectly in any way at all among members of the Foundation Trust.

### **2. FRAMEWORK**

2.1 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 authorisation. The members, the Council of Governors and the Board of Directors are to have the roles and responsibilities set out in this constitution.

## **Members**

2.2 Members may attend and participate at members meetings, vote in elections to, and stand for election to, the Council of Governors, and take such other part in the affairs of the Foundation Trust as is provided in this constitution.

## **Council of Governors**

2.3 The roles and responsibilities of the Council of Governors, which are to be carried out in accordance with this constitution and the Foundation Trust's terms of Authorisation, are:

2.3.1 at a General Meeting:

2.3.1.1 to appoint or remove the Chairman and the other non-executive Directors;

2.3.1.2 to approve an appointment (by the non-executive Directors) of the Chief Executive;

2.3.1.3 to decide the remuneration and allowances, and the other terms and conditions of office, of the non-executive Directors;

2.3.1.4 to appoint or remove the Foundation Trust's external auditor;

2.3.1.5 to be presented with the annual accounts, any report of the external auditor on them and the annual report;

2.3.2 to provide their views to the Board of Directors when the Board of Directors is preparing the document containing information about the Foundation Trust's forward planning;

2.3.3 to respond as appropriate when consulted by the Board of Directors in accordance with this constitution;

2.3.4 to undertake such functions as the Board of Directors shall from time to time request;

2.3.5 to prepare and from time to time review the Foundation Trust's membership strategy and its policy for the composition of the Council of Governors and of the non-executive Directors and when appropriate to make recommendations for the revision of this constitution.

## **Board of Directors**

2.4 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.

## **3. TRUST SECRETARY**

3.1 The Foundation Trust shall have a Secretary who may be an employee. The Trust Secretary may not be a Governor, or the Chief Executive or the Finance Director. The Secretary's functions shall include:

3.1.1 acting as Secretary to the Council of Governors and the Board of Directors, and any committees;

3.1.2 summoning and attending all members meetings, meetings of the Council of Governors and the Board of Directors, and keeping the minutes of those meetings;

3.1.3 keeping the register of members and other registers and books required by this constitution to be kept;

3.1.4 having charge of the Foundation Trust's seal;

3.1.5 publishing to members in an appropriate form information which they should have about the Foundation Trust's affairs;

3.1.6 preparing and sending to Monitor and any other statutory body all returns which are required to be made.

3.2 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.

3.3 The Secretary is to be appointed and removed by the Board of Directors.

3.4 The Board of Directors of Milton Keynes University Hospital NHS Foundation Trust shall appoint the first Secretary of the Foundation Trust.

#### 4. **FURTHER PROVISIONS AS TO ACCOUNTS**

4.1 The following documents will be made available to the Controller and Auditor General for examination at his request:

4.1.1 the accounts;

4.1.2 any records relating to them; and

4.1.3 any report of the external auditor on them.

4.2 In preparing its annual accounts, the Accounting Officer shall cause the Foundation Trust to comply with any directions given by Monitor with the approval of the Treasury as to:

4.2.1 the methods and principles according to which the accounts are to be prepared;

4.2.2 the information to be given in the accounts;

and shall be responsible for the functions of the Foundation Trust as set out in paragraph 25 of Schedule 7 to the 2006 Act.

4.3 The Accounting Officer shall cause the Foundation Trust to:

4.3.1 lay a copy of the annual accounts, and any report of the external auditor on them, before Parliament; and

4.3.2 once it has done so, send copies of those documents to Monitor.

## 5. **FURTHER PROVISIONS AS TO ANNUAL REPORTS**

5.1 The annual reports are to give:

5.1.1 information on any steps taken by the Foundation Trust to secure that (taken as a whole) the actual membership of the Public Constituency and of the classes of the Staff Constituency is representative of those eligible for such membership; and

5.1.2 any other information Monitor requires.

5.2 The Foundation Trust is to comply with any decision Monitor makes as to:

5.2.1 the form of the reports;

5.2.2 when the reports are to be sent to it;

5.2.3 the periods to which the reports are to relate.

## 6. **INDEMNITY**

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 may purchase and maintain insurance against this liability for its own benefit and for the benefit of members of the Council of Governors and the Board of Directors and the Secretary.

## 7. **DISPUTE RESOLUTION PROCEDURES**

7.1 Every unresolved dispute which arises out of this constitution between the Foundation Trust and:

7.1.1 a member; or

7.1.2 any person aggrieved who has ceased to be a member within the six months prior to the date of the dispute; or

7.1.3 any person bringing a claim under this constitution; or

7.1.4 an office-holder of the Foundation Trust

is to be submitted to an arbitrator agreed by the parties or in the absence of agreement to be nominated by the Strategic Health Authority. The arbitrator's decision will be binding and conclusive on all parties.

7.2 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 arbitrator will decide how the costs of the arbitration will be paid and what should be done with the deposit.

## **8. DISSOLUTION**

The Foundation Trust may not be dissolved except by order of the Secretary of State for Health, in accordance with the 2003 Act.

## **9. HEAD OFFICE**

The Foundation Trust's head office is at Standing Way, Eaglestone, Milton Keynes MK6 5LD or such other place as the Board of Directors shall decide.

## **10. NOTICES**

10.1 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.

10.2 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.

## **11. FURTHER PROVISIONS AS TO TRANSITION**

11.1 The Board of Directors of Milton Keynes University Hospital NHS Foundation Trust shall prepare and approve the first membership strategy and the first policy for the composition of the Council of Governors and of the non-executive Directors.

11.2 These will be reviewed by the Council of Governors following the election and appointment of the initial Governors.

11.3 For the purposes of the period before Milton Keynes General NHS Trust becomes the Foundation Trust:

11.3.1 elections shall be carried out in accordance with the Model Rules for Elections set out at Annex 4, using the single transferable vote method of voting;

11.3.2 the Chief Executive of Milton Keynes University Hospital NHS Foundation Trust will approve

11.3.2.1 a membership application form;

11.3.2.2 a form of declaration required by section 60 (1) of the 2006 Act;

11.3.2.3 a form of declaration required by section 60 (1) of the 2006 Act;

11.3.2.4 a form of declaration required by section 60 (3) of the 2003 Act;

11.3.2.5 a form confirming acceptance of a code of conduct for Governors;

11.3.3 the Chief Executive of Milton Keynes University Hospital NHS Foundation Trust will consult and agree arrangements with the appointing organisations for the appointment of appointed Governors;

11.3.4 the Chief Executive of Milton Keynes University Hospital NHS Foundation Trust shall make a final decision about the class of the Staff Constituency of which an individual is eligible to be a member.



## **ANNEX 10 – ANNUAL MEMBERS’ MEETING**

### **1. MEMBERS’ MEETINGS**

1.1. The trust shall hold a members’ meeting for all members (called the “Annual Members’ Meeting”) within six months of the end of each financial year of the trust.

1.2. Any members’ meeting other than the Annual Members’ Meeting shall be called a “Special Members’ Meeting”.

1.3. Both Annual Members’ Meetings and any Special Members’ Meetings shall be open to all members of the trust, members of the Council of Governors and members of the Board of Directors, together with representatives of the trust’s external auditors, and to members of the public. The trust may invite representatives of the media and any experts or advisors whose attendance they consider to be in the best interests of the trust to attend any such meeting.

1.4. The Board of Directors may convene an Annual Members’ Meeting or a Special Members’ Meeting when it thinks fit. The Council of Governors may request the Board of Directors to convene a members’ meeting.

1.5. The Board of Directors (or at least one member thereof) shall present to the members at the Annual Members’ Meeting:

1.5.1. the annual accounts;

1.5.2. any report of the external auditor on them;

1.5.3. the annual report;

1.5.4. a report on steps taken to secure that (taken as a whole) the actual membership or the trust is representative of those eligible for such membership;

1.5.5. the progress of the membership plan

1.5.6. the results of any election and appointments to the Council Governors, and any other reports or documentation it considers necessary or otherwise required by Monitor or the 2006 Act.]

1.6. The trust shall give notice of all members’ meetings:

1.6.1. by notice in writing to all members;

1.6.2. by notice prominently displayed at the trust’s headquarters and at all of the trust’s hospitals;

1.6.3. by notice on the trust’s website; and

1.6.4. to the Council of Governors, the Board of Directors, and to the trust’s external auditors,

stating whether the meeting is an Annual Members' Meeting or a Special Members' Meeting including the time, date, place of the meeting, and the business to be dealt with at the meeting at least 14 working days before the date of the relevant members' meeting (or, in the case of an Annual Members' Meeting, at least 21 working days before the date of the relevant meeting).

1.7. An accidental omission to give notice of a members' meeting or to send, supply or make available any document or information relating to the meeting, or the non-receipt of any such notice, document or information by a person entitled to receive any such notice, document or information shall not invalidate the proceedings at that meeting.

1.8. The Chair or in his absence the Deputy Chair shall preside at all members' meetings of the trust. If neither the Chair nor the Deputy Chair is present, the governors present shall elect one of their number to act as Chair and if there is only one governor present and willing to act that person shall be Chair. If no governor is willing to act as Chair or if no governor is present within fifteen minutes after the time appointed for holding the meeting, the members present and entitled to vote shall choose one of their number to act as Chair.

1.9. The quorum for a members' meeting shall be [8 (eight)] members present and entitled to vote. If a quorum is not present within thirty minutes from the time appointed for the meeting, the meeting shall stand adjourned for a minimum of seven days until such time as the Board of Directors determine.

1.10. The Chair may, with the consent of a members' meeting at which a quorum is present (and shall, if so directed by the meeting), adjourn a members' meeting from time to time and from place to place or for an indefinite period.

1.11. A resolution put to the vote of a members' meeting shall be decided on a show of hands.

1.12. No business shall be transacted at an adjourned meeting other than business which might properly have been transacted at the meeting had the adjournment not taken place.

1.13. If the Board of Directors, in its absolute discretion, considers that it is impractical or unreasonable for any reason to hold a members' meeting at the time, date or place specified in the notice calling that meeting, it may move and/or postpone the general meeting to another time, date and/or place.

1.14. In the case of a members' meeting is adjourned or postponed for 14 days or more, at least seven working days' notice shall be given specifying the time and place of the adjourned members' meeting and the general nature of the business to be transacted. Otherwise, it shall not be necessary to give any such notice.

1.15. The Board of Directors may make any arrangement and impose any restriction it considers appropriate to ensure the security of a members' meeting.

1.16. Any approval to speak at a members' meeting must be given by the Chair. Speeches must be directed to the matter, motion or question under discussion or to a

point of order. Unless in the opinion of the Chair it would not be appropriate or desirable to time limit speeches on any topic to be discussed having regard to its nature, complexity or importance, no proposal, speech or any reply may exceed three minutes. In the interests of time, the Chair may, in his or her absolute discretion, limit the number of replies, questions or speeches which are heard at any one members' meeting.

1.17. A person who has already spoken on a matter at a members' meeting may not speak again at that meeting in respect of the same matter except (i) in exercise of a right of reply, or (ii) on a point of order.

1.18. The Board of Directors shall cause minutes to be made and kept, in writing, of all proceedings at members' meetings.