



South Tyneside and Sunderland
NHS Foundation Trust

Constitution of South Tyneside and Sunderland NHS Foundation Trust (A Public Benefit Corporation)

(updated as per the Health and Social Care Act 2012)

Version 1 – April 2019

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1. Introduction

- 1.1 The South Tyneside and Sunderland NHS Foundation Trust was established on 1 April 2019 by grant of merger made by Monitor under section 56 of the 2006 Act and the [City Hospitals Sunderland NHS Foundation Trust and South Tyneside NHS Foundation Trust (Dissolution and Transfer of Property and Liabilities) Order 2019.
- 1.2 Schedule 7 to the National Health Service Act 2006 (the 2006 Act) as amended by the Health and Social Care Act 2012 (the 2012 Act) provides that an NHS Foundation Trust must have a constitution, which must include any provision authorised or required by that Schedule.
- 1.3 The constitution was submitted to Monitor alongside the application for the merger of the two Predecessor Trusts in accordance with section 56(2) of the 2006 Act. It is based on the model core constitution that has been prepared by Monitor to reflect the requirements of Schedule 7 and what Monitor considers "otherwise appropriate".

2. Interpretations and definitions

- 2.1 Unless otherwise stated, words or expressions contained in this constitution shall bear the same meaning as in the National Health Service Act 2006 as amended by the Health and Social Care Act 2012.
- 2.2 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.

The Trust means South Tyneside and Sunderland NHS Foundation Trust.

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.

Annual Members Meeting is defined in paragraph 12 of the constitution.

Appointed Governor means those Governors appointed by the partner organisations specified in Annex 3 of this constitution.

Area of the Trust means the area specified in Annex 1 as the area of the Trust's public constituencies.

Board of Directors means the Board of Directors as constituted in accordance within this Constitution.

Council of Governors means the Council of Governors for South Tyneside and Sunderland NHS Foundation Trust and with specific responsibilities as set out in this constitution and constituted in accordance with this constitution.

Constitution means this constitution and all annexes to it.

Director means a Director of the Board of Directors.

Elected Governors means those Governors elected by the public and staff constituencies.

Financial year means a) the period beginning with the date on which the Trust is established and ending with the next 31st March; and b) each successive period of twelve months beginning 1st April.

Governor means a member of the Council of Governors.

Initial Governor means an initial Governor of the Trust who has been elected to office for a period that is determined in accordance with Annex 10.

Interim Directors means the individuals who were executive or non-executive directors of the Predecessor Trusts immediately prior to their dissolution

Member means an individual registered as a member of one of the constituencies described at paragraph 6 and at Annex 1 and Annex 2 of this Constitution.

Monitor means the body corporate known as Monitor, referred to in Section 61 of the 2012 Act, which operates with the National Health Service Trust Development Authority as NHS Improvement.

Predecessor Trusts means City Hospitals Sunderland NHS Foundation Trust and South Tyneside NHS Foundation Trust which were dissolved by order of Monitor on 31 March 2019.

Public Governor means a member of the Council of Governors elected by the Members who fall within a public constituency of the membership community.

Staff Governor means a member of the Council of Governors elected by the Members who fall within the staff constituency of the membership community.

Trust Secretary means the secretary of the Trust (and secretary to the Board of Directors and Council of Governors of the Trust) or any other person appointed to perform the duties of the secretary of the Trust, including a joint, assistant or deputy secretary.

3. Name

3.1 The name of the Trust is South Tyneside and Sunderland NHS Foundation Trust.

4. Principle purpose

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

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

4.3 The Trust may provide goods and services for any purposes related to—

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

4.3.2 the promotion and protection of public health.

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

5. Powers

5.1 The powers of the Trust are set out in the 2006 Act.

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

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

6. Membership and constituencies

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

6.1.1 a Public Constituency

6.1.2 the Staff Constituency

7. Application for membership

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

8. Public constituency

8.1 An individual who lives in an area specified in Annex 1 as an area for a public constituency may become or continue as a Member of the Trust.

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

8.3 The minimum number of Members in each Public Constituency is specified in Annex 1.

9. Staff constituency

9.1 An individual who is employed by the Trust under a contract of employment with the Trust may become or continue as a Member of the Trust provided:

9.1.1 They are employed by the Trust under a contract of employment which has no fixed term or has a fixed term of at least 12 months; or

9.1.2 They have been continuously employed by the Trust under a contract of employment for at least 12 months.

9.2 Individuals who exercise functions for the purposes of the Trust otherwise than under a contract of employment with the Trust, may become or continue as members of the staff constituency provided such individuals have exercised these functions continuously for a period of at least 12 months.

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

9.4 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.

9.5 The minimum number of Members in each class of the Staff Constituency is specified in Annex 2.

10. Automatic Membership by default

10.1 An individual who is:

10.1.1 Eligible to become a member of the Staff Constituency, and

10.1.2 Invited by the Trust to become a member of the Staff Constituency (and appropriate class within the Staff Constituency)

shall become a Member of the Trust as a member of the Staff Constituency (and appropriate class within the Staff Constituency) without an application being made, unless they inform the Trust that they do not wish to do so.

11. Restriction on membership

- 11.1 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.
- 11.2 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.
- 11.3 An individual must be at least 16 years old to become a Member of the Trust.
- 11.4 Further provisions as to the circumstances in which an individual may not become or continue as a Member of the Trust are set out in Annex 5 – Further Provisions in Relation to Membership.

12. Annual Members' Meeting

- 12.1 The Trust shall hold an annual meeting of its Members ('Annual Members' Meeting'). The Annual Members' Meeting shall be open to members of the public.
- 12.2 Further provisions about the Annual Members' Meeting are set out in Annex 5.

13. Council of Governors composition

- 13.1 The Trust is to have a Council of Governors, which shall comprise both Elected Governors and Appointed Governors.
- 13.2 The composition of the Council of Governors is specified in Annex 3.
- 13.3 The members of the Council of Governors, other than the Appointed Governors, 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 1 and 2.
- 13.4 Further provisions with respect to the Council of Governors are set out in Annex 4.

14. Council of Governors – election of governors

- 14.1 Elections for elected members of the Council of Governors shall be conducted in accordance with the Model Election Rules on the basis of first past the post (FPP) polling and the Model Election Rules shall be construed accordingly.

- 14.2 The Model Election Rules as published from time to time by NHS Providers form part of this constitution. The Model Election Rules current at the date of their adoption under this constitution are attached at Annex 9.
- 14.3 A subsequent variation of the Model Election Rules by NHS Providers, or any other subsequent body with the authority to do so, shall not constitute a variation of the terms of this constitution for the purposes of paragraph 46 of the constitution (amendment of the constitution).
- 14.4 An election, if contested, shall be by secret ballot.

15. Council of Governors – tenure

- 15.1 An Elected Governor may hold office for a period of up to 3 years. An Initial Governor shall hold office for a period determined in accordance with Annex 10. In each case the period of office shall be known as the term.
- 15.2 An Elected Governor shall cease to hold office if they cease to be a member of the constituency or class by which they were elected.
- 15.3 An Elected Governor shall be eligible for re-election at the end of their term.
- 15.4 An Appointed Governor may hold office for a period of up to 3 years.
- 15.5 An Appointed Governor shall cease to hold office if the appointing organisation withdraws its sponsorship of them.
- 15.6 An Appointed Governor shall be eligible for re-appointment at the end of their term.
- 15.7 A Governor may not hold office for longer than 9 consecutive years, and may not stand for another constituency, different to their current constituency, if they have served for 9 consecutive years on the Council of Governors.
- 15.8 Governors who have served 9 consecutive years may stand again for election to the Council of Governors, but only after a break in service for a minimum period of 3 consecutive years.
- 15.9 If a Governor fails to attend three meetings of the Council of Governors in any 12 month period, their tenure of office is to be immediately terminated unless the full Council of Governors are satisfied that:-
- (a) the absence was due to a reasonable cause; and
 - (b) they will be able to start attending meetings of the Council of Governors again within such a period as they consider reasonable.

16. Council of Governors – disqualification and removal

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

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

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

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

16.2 Governors must be at least 16 years of age at the date they are nominated for election or appointment.

16.3 Further provisions with respect to the Council of Governors are set out in Annex 4.

16.4 Provisions for the removal of governors are set out in Annex 4.

17. Council of Governors – duties of governors

17.1 The general duties of the Council of Governors are –

17.1.1 To hold the Non-Executive Directors individually and collectively to account for the performance of the Board of Directors, and

17.1.2 To represent the interests of the Members of the Trust as a whole and the interests of the public.

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

18. Council of Governors – meetings of Governors

18.1 The Chairman of the Trust (i.e. the Chairman of the Board of Directors, appointed in accordance with the provisions of paragraph 27) or, in their absence, the Vice-Chairman (appointed in accordance with the provisions of paragraph 28 below), shall preside at meetings of the Council of Governors.

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

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

19. Council of Governors – Standing Orders

- 19.1 The standing orders for the practice and procedure of the Council of Governors are attached at Annex 6.

20. Council of Governors – referral to the Panel

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

20.1.1 To act in accordance with its constitution, or

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

- 20.2 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.

21. Council of Governors – conflicts of interest

- 21.1 If a governor has a pecuniary, personal or family interest, whether that interest is actual or potential and whether that interest is direct or indirect, in any proposed contract or other matter which is under consideration or is to be considered by the Council of Governors, the governor shall disclose that interest to the members of the Council of Governors as soon as he becomes aware of it. The Standing Orders for the Council of Governors shall make provision for the disclosure of interests and arrangements for the exclusion of a governor declaring any interest from any discussion or consideration of the matter in respect of which an interest has been disclosed.

22. Council of Governors – travel expenses

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

23. Council of Governors – further provisions

- 23.1 Further provisions with respect to the Council of Governors are set out in Annex 4.

24. Board of Directors – composition

- 24.1 The Trust is to have a Board of Directors, which shall comprise both Executive and Non-Executive Directors.

24.2 The Board of Directors is to comprise:

24.2.1 A Non-Executive Chairman

24.2.2 A minimum of six other Non-Executive Directors

24.2.3 Six Executive Directors

24.3 One of the Executive Directors shall be the Chief Executive.

24.4 The Chief Executive shall be the Accounting Officer

24.5 One of the Executive Directors shall be the Finance Director

24.6 One of the Executive Directors is to be a registered medical practitioner or a registered dentist (within the meaning of the Dentists Act 1984).

24.7 One of the Executive Directors is to be a registered nurse or a registered midwife.

25. Board of Directors – general duty

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

26. Board of Directors – qualification for appointment as a non-executive director

26.1 A person may be appointed as a Non-Executive Director only if –

26.1.1 They are a member of a Public Constituency

26.1.2 Where any of the Trust's hospitals includes a medical or dental school provided by a university, they exercise functions for the purposes of that university, and

26.1.3 They are not disqualified by virtue of paragraph 30.

27. Board of Directors – appointment and removal of chairman and other non-executive directors

27.1 The Council of Governors at a general meeting of the Council of Governors shall appoint or remove the Chairman of the Trust and the other Non-Executive Directors.

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

28. Board of Directors – appointment of Vice-Chairman

28.1 The Council of Governors at a general meeting of the Council of Governors shall appoint one of the Non-Executive Directors as a Vice-Chairman, having taken the advice of the Chairman.

29. Board of Directors - appointment and removal of the Chief Executive and other executive directors

29.1 It is for the Chairman and Non-Executive Directors to appoint (subject to the approval of the Council of Governors) the Chief Executive (and accounting officer).

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

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

30. Board of Directors – disqualification

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

30.1.1 A person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged.

30.1.2 A person who has made a composition or arrangement with, or granted a Trust deed for, their creditors and has not been discharged in respect of it.

30.1.3 A person who within the preceding five years has been convicted in the British Islands of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on them.

30.1.4 A person who is the subject of an order under the Sexual Offences Act 2003.

30.1.5 A person who is included in any barred list established under the Safeguarding Vulnerable Adults Act 2006 or any equivalent list.

30.1.6 In the case of a Non-Executive Director, a person who is no longer a member of a Public Constituency.

30.1.7 A person who is a Director or Governor or Governing Body member or equivalent of another NHS body except with the approval of the Board

of Directors for Executive Directors or the Council of Governors for Non-Executive Directors.

- 30.1.8 A person who is not a fit and proper person for the purposes of Regulation 5 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 and/or Condition G4 of the Trust's Licence.
- 30.1.9 In the case of a Non-Executive Director they have refused to fulfil any training requirement established by the Board of Directors.
- 30.1.10 A person where disclosures revealed by a Disclosure and Barring Service check against such a person are such that it would be inappropriate for him to become or continue as a Director or would adversely affect public confidence in the Trust or otherwise bring the Trust into disrepute.
- 30.1.11 They are the subject of a disqualification order made under the Company Directors Disqualification Act 1986.
- 30.1.12 They are the spouse, partner, parent or child of a member of the Board of Directors of the Trust;
- 30.1.13 They are a person whose tenure of office as a Chairman or as a member or Director of a health service body has been terminated on the grounds that their appointment is not in the interests of the health service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest.
- 30.1.14 They have within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with a public body;
- 30.1.15 They are a member of a Local Authority's Overview and Scrutiny Committee or Health and Wellbeing Board covering health matters;
- 30.1.16 They have refused to sign and deliver to the Trust Secretary a statement in the form required by the Board of Directors confirming acceptance of the Code of Conduct for Directors;
- 30.1.17 They have had their name removed, by a direction under part 7 of the 2006 Act from any list prepared under chapter 6 of that Act, and have not subsequently had their name included in such a list.
- 30.1.18 They are a person who is a medical practitioner and who has been removed from the register of medical practitioners held by the General Medical Council, in accordance with the Medical Act, or has been suspended from that register, and not subsequently has their name returned to the register.

31. Board of Directors – meetings

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

32. Board of Directors – standing orders

- 32.1 The Standing Orders for the practice and procedure of the Board of Directors are attached at Annex 7.

33. Board of Directors - conflicts of interest of directors

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

- 33.6 If a declaration under this paragraph proves to be, or becomes, inaccurate, incomplete, a further declaration must be made.
- 33.7 Any declaration required by this paragraph must be made before the Trust enters into the transaction or arrangement.
- 33.8 This paragraph does not require a declaration of an interest of which the Director is not aware or where the Director is not aware of the transaction or arrangement in question.
- 33.9 A Director need not declare an interest –
- 33.9.1 If it cannot reasonably be regarded as likely to give rise to a conflict of interest;
 - 33.9.2 If, or to the extent that, the directors are already aware of it;
 - 33.9.3 If, or to the extent that, it concerns the terms of the Director's appointment that have been or are to be considered –
 - 33.9.3.1 By a meeting of the Board of Directors, or
 - 33.9.3.2 By a committee of the directors appointed for the purpose under the constitution

34. Board of Directors – remuneration and terms of office

- 34.1 The Council of Governors at a general meeting of the Council of Governors shall decide the remuneration and allowances, and the other terms and conditions of office, of the Chairman and the other Non-Executive Directors. These are to be disclosed in the Annual Report.
- 34.2 The Trust shall establish a committee of Non-Executive Directors to decide the remuneration and allowances, and the other terms and conditions of office, of the Chief Executive and other Executive Directors. These are to be disclosed in the Annual Report.
- 34.3 Further provisions with respect to the Board of Directors are provided in Annex 7.

35. Registers

- 35.1 The Trust shall have:
- 35.1.1 A register of Members showing, in respect of each Member, the constituency to which they belong and, where there are classes within it, the class to which they belong;
 - 35.1.2 A register of members of the Council of Governors;

35.1.3 A register of interests of Governors;

35.1.4 A register of Directors; and

35.1.5 A register of interests of the Directors.

36. Registers – inspection and copies

36.1 The Trust shall make the registers specified in paragraph 35 available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.

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

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 Trust, the Trust may impose a reasonable charge for doing so.

37. Documents available for public inspection

37.1 The 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 latest Annual Accounts and of any report of the Auditor on them, and

37.1.3 A copy of the latest Annual Report.

37.2 The Trust shall also make the following documents relating to a special administration of the Trust available for inspection by members of the public free of charge at all reasonable times:

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

38. Auditor

- 38.1 The Trust shall have an Auditor.
- 38.2 The Council of Governors shall appoint or remove the Auditor at a general meeting of the Council of Governors.

39. Audit committee

- 39.1 The Trust shall establish a committee of Non-Executive Directors as an Audit Committee to perform such monitoring, reviewing and other functions as are appropriate.

40. Accounts

- 40.1 The 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 Trust as to the content and form of its accounts.
- 40.3 The accounts are to be audited by the Trust's Auditor.
- 40.4 The Trust shall prepare in respect of each financial year annual accounts in such form as Monitor may with the approval of the Secretary of State direct.
- 40.5 The functions of the Trust with respect to the preparation of the annual accounts shall be delegated to the Accounting Officer.

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

- 41.1 The Trust shall prepare an Annual Report and send it to Monitor.
- 41.2 The 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 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 Trust carry on an activity of a kind mentioned in sub-paragraph 41.5.1 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 Trust of its principal purpose or the performance of its other functions, and
 - 41.6.2 Notify the Directors of the Trust of its determination.

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

42. Indemnity

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

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

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

43.1.1 The Annual Accounts

43.1.2 Any report of the Auditor on them

43.1.3 The Annual Report.

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

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

44. Instruments

- 44.1 The Trust shall have a seal.

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

45. Resolution of Disputes between the Board of Directors and Council of Governors

- 45.1 Should a dispute arise between the Council of Governors and the Board of Directors, then the disputes resolution procedure set out in Annex 8 should be followed.

46. Amendment of the constitution

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

- 46.1.1 More than half of the members of the Council of Governors of the Trust voting approve the amendments, and
- 46.1.2 More than half of the members of the Board of Directors of the Trust voting approve the amendments.
- 46.2 Amendments made under paragraph 46.1 take effect as soon as the conditions in that paragraph are satisfied, but the amendment has no effect in so far as the constitution would, as a result of the amendment, not accord with Schedule 7 of the 2006 Act.
- 46.3 Where an amendment is made to the constitution in relation the powers or duties of the Council of Governors (or otherwise with respect to the role that the Council of Governors has as part of the Trust) –
 - 46.3.1 At least one Member of the Council of Governors must attend the next Annual Members' Meeting and present the amendment, and
 - 46.3.2 The Trust must give the Members an opportunity to vote on whether they approve the amendment.
- 46.4 If more than half of the Members voting approve the amendment, the amendment continues to have effect; otherwise, it ceases to have effect and the Trust must take such steps as are necessary as a result.
- 46.5 Amendments by the Trust of its constitution are to be notified to Monitor. For the avoidance of doubt, Monitor's functions do not include a power or duty to determine whether or not the constitution, as a result of the amendments, accords with Schedule 7 of the 2006 Act.

47. Mergers etc. and significant transactions

- 47.1 The Trust may only apply for a statutory merger, acquisition, separation or dissolution with the approval of more than half of the members of the Council of Governors.
- 47.2 The Trust may enter into a significant transaction only if more than half of the members of the Council of Governors of the Trust voting approve entering into the transaction.
- 47.3 "Significant transaction" is defined as:
 - 47.3.1 The acquisition of, or an agreement to acquire, whether contingent or not, assets the value of which is more than 25% of the value of the Trust's gross assets before the acquisition; or
 - 47.3.2 The disposition of, or an agreement to dispose of, whether contingent or not, assets of the Trust the value of which is more than 25% of the value of the Trust's gross assets before the disposition; or

47.3.3 A transaction that has or is likely to have the effect of the Trust acquiring rights or interests or incurring obligations or liabilities, including contingent liabilities, the value of which is more than 25% of the value of the Trust's gross assets before the transaction.

47.4 For the purpose of this paragraph 47:

47.4.1 'gross assets' means the total of fixed assets and current assets;

47.4.2 In assessing the value of any contingent liability for the purposes of sub-paragraph 47.3.3, the Directors:

47.4.2.1 must have regard to all circumstances that the Directors know, or ought to know, affect, or may affect, the value of the contingent liability; and

47.4.2.2 may rely on estimates of the contingent liability that are reasonable in the circumstances; and

47.4.2.3 may take account of the likelihood of the contingency occurring.

47.4.3 A statutory transaction under paragraph 47.1 is not a significant transaction for the purposes of paragraph 47.2.

47.5 The views of the Council of Governors will be taken into account before the Trust enters into any proposed transaction which would exceed a threshold of 10% for any of the criteria set out in paragraph 47.3 above.

48. Interim Directors

48.1 Annex 10 provides how the Interim Directors shall exercise the functions of the Trust on its behalf until such time as the Board of Directors is appointed in accordance with this Constitution.

ANNEX 1 – THE PUBLIC CONSTITUENCIES

An individual who lives in an area specified below as an area for a public constituency may become or continue as a Member of the Trust:

Area for public constituency	Electoral Area
South Tyneside Area	All electoral wards within South Tyneside
Sunderland Area	All electoral wards within Sunderland
Gateshead Area	All electoral wards within Gateshead
Durham Area	All electoral wards within Durham
Rest of North East of England and Cumbria	Covering: Northumberland; Tyne and Wear; Tees Valley and Cumbria

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

The minimum number of Members in each Public Constituency is to be 50.

ANNEX 2 – THE STAFF CONSTITUENCY**Staff Constituency**

The Staff Constituency shall be divided into the following four classes of individuals who are eligible for membership of the Staff Constituency, and being referred to as a class within the Staff Constituency.

Classes for staff constituency	Designations
Medical and Dental	Medical and dental, and assistants
Clinical Acute Staff (excluding Medical and Dental and Clinical Community Staff)	Nursing, midwifery, health care assistants, AHPs, scientific and professional and assistants designated as acute staff
Clinical Community Staff (excluding Medical and Dental and Clinical Acute Staff)	Nursing, midwifery, health care assistants, AHPs, scientific and professional and assistants designated as community staff
Non-Clinical	Senior managers; administrative and clerical; ancillary; maintenance; estates officers; and medical electronics

The minimum number of Members in each class of the Staff Constituency is to be 50.

ANNEX 3 – COMPOSITION OF COUNCIL OF GOVERNORS

- 1.1 The Trust is to have a Council of Governors. It is to consist of Public Governors, Staff Governors and Appointed Governors.
- 1.2 The Council of Governors of the Trust is to comprise:
 - 1.2.1 Six Public Governors from the Sunderland Public Constituency;
 - 1.2.2 Six Public Governors from the South Tyneside Public Constituency;
 - 1.2.3 One Public Governor from the Gateshead Public Constituency;
 - 1.2.4 One Public Governor from the Durham Public Constituency;
 - 1.2.5 One Public Governor for the Rest of North East and Cumbria Public Constituency;
 - 1.2.6 One Staff Governor to represent the Medical and Dental Staff class;
 - 1.2.7 Two Staff Governors to represent the Clinical Acute Staff (excluding Medical and Dental and Clinical Community Staff) class;
 - 1.2.8 One Staff Governor to represent the Clinical Community Staff (excluding Medical and Dental and Clinical Acute Staff) class;
 - 1.2.9 Two Staff Governors to represent the Non-Clinical Staff class;
 - 1.2.10 One Commissioner Appointed Governor who may be appointed to represent the regional Clinical Commissioning Groups;
 - 1.2.11 Two Local Authority Appointed Governors in total, comprised of one from each of: South Tyneside Council and City of Sunderland Council;
 - 1.2.12 One Education Appointed Governor to represent the University of Sunderland Medical School
 - 1.2.13 One Education Appointed Governor to represent the University of Newcastle Medical School

ANNEX 4 – FURTHER PROVISIONS IN RELATION TO BEING A GOVERNOR

1. Duties of Governors

- 1.1 The statutory duties of the Council of Governors are provided in paragraph 17 of the Constitution.
- 1.2 The Trust must take steps to secure that the governors are equipped with the skills and knowledge they require in their capacity as such to:
 - 1.2.1 To appoint or remove the Chairman and the other Non-Executive Directors.
 - 1.2.2 To approve an appointment (by the Non-Executive Directors) of the Chief Executive.
 - 1.2.3 To decide the remuneration and allowances, and the other terms and conditions of office, of the Chairman and other Non-Executive Directors.
 - 1.2.4 To appoint or remove the Trust's financial auditor.
 - 1.2.5 To receive the report of any other external auditor appointed to review and report on any other aspect of the Trust's affairs.
 - 1.2.6 To be presented with the annual accounts, any report of the financial auditor on them and the annual report.
 - 1.2.7 To provide their views to the Board of Directors when the Board of Directors is preparing the document containing information about the Trust's forward planning.
 - 1.2.8 To respond as appropriate when consulted by the Board of Directors in accordance with this Constitution.
 - 1.2.9 To approve any amendments made to the Trust's Constitution and to undertake a review of the Constitution every two years.
 - 1.2.10 To undertake such functions as the Board of Directors shall from time to time request.

2. Non-Eligibility to be a Governor

- 2.1 A person may not become a Governor of the Trust, and if already holding such office will immediately cease to do so, if:
 - 2.1.1 They are under sixteen years of age;

- 2.1.2 They are a Director of the Trust, or a Governor or Director of another NHS Trust or NHS foundation Trust;
- 2.1.3 They are the spouse, partner, parent or child of a member of the Board of Directors of the Trust;
- 2.1.4 They are a member of a Local Authority's Overview and Scrutiny Committee or Health and Wellbeing Board covering health matters;
- 2.1.5 Being a Member of a Public Constituency, they refuse to sign a declaration as to their qualification to vote as a member of the Trust, and that they are not prevented from being a Governor;
- 2.1.6 They are a person who is subject to an order under the Sexual Offences Act 2003;
- 2.1.7 They are a person who is included in any barred list established under the Safeguarding Vulnerable Adults Act 2006 or any equivalent list.
- 2.1.8 They are a person where disclosures revealed by a Disclosure and Barring Service check against such a person are such that it would be inappropriate for him to become or continue as a Director or would adversely affect public confidence in the Trust or otherwise bring the Trust into disrepute.
- 2.1.9 They have within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with a public body; or
- 2.1.10 As a staff governor, they have a current and unexpired written warning which has been imposed following disciplinary action by the Trust. For the avoidance of doubt, a Member will not be precluded from eligibility as a Governor by reason of their suspension or as the subject of an ongoing disciplinary procedure and/or fact finding investigation;
- 2.1.11 They are a vexatious complainant or have received a Trust 'Red Card' in line with Trust policy;
- 2.1.12 They are a person whose tenure of office as the Chairman or as a member, or as a Governor, or Director of a health service body has been terminated on the grounds that their appointment is not in the interests of the health service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest; or
- 2.1.13 They have had their name removed, by a direction under part 7 of the 2006 Act from any list prepared under chapter 6 of that Act, and have not subsequently had their name included in such a list.

2.1.14 They are a person who is a medical practitioner and who has been removed from the register of medical practitioners held by the General Medical Council, in accordance with the Medical Act, or has been suspended from that register, and not subsequently has their name returned to the register.

2.1.15 They are the subject of a disqualification order made under the Company Directors Disqualification Act 1986.

2.1.16 They have been previously removed as a Governor of the Trust, or been removed as a Governor of another NHS Foundation Trust.

2.1.17 They are not a fit and proper person for the purposes of Regulation 5 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 and/or Condition G4 of the Trust's Licence.

2.1.18 In line with Paragraph 15.7 of the Constitution they have held a term of office as a Governor of the Trust for 9 consecutive years. Years of office are consecutive unless there is a break of at least one year between them.

3. Vacancies amongst Governors

3.1 Unless determined otherwise by the Board of Directors, where a vacancy arises on the Council of Governors for any reason other than expiry of term of office, the following provisions will apply.

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

3.3 Where the vacancy arises amongst the Elected Governors, the Council of Governors shall be at liberty either:

3.3.1 To call an election within three months to fill the seat for the remainder of that term of office, or

3.3.2 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 for the remainder of the term of office.

4. Appointment of Lead Governor

4.1 The Council of Governors shall appoint one of the Governors to be Lead Governor of the Council of Governors via a process agreed with the Council of Governors and the Trust Secretary.

5. Termination of office and removal of Governors

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

- 5.1.1 They resign by notice in writing to the Trust Secretary.
 - 5.1.2 They fail to attend three meetings of the Council of Governors within a 12 month period, unless the other Governors are satisfied that:
 - a) The absences were due to reasonable causes; and
 - b) they will be able to start attending meetings of the Trust again within such a period as they consider reasonable.
 - 5.1.3 In the case of an Elected Governor, they cease to be a member of the constituency or class of the constituency by which they were elected.
 - 5.1.4 In the case of an Appointed Governor, the appointing organisation terminates the appointment, or they withdraw themselves as the Appointed Governor representative.
 - 5.1.5 They are disqualified from being a member of the Council of Governors under paragraph 16.1 of the Constitution or under paragraph 2 of this Annex 4.
- 5.2 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:
- a) They have committed a serious breach of the code of conduct, or
 - b) They have acted in a manner detrimental to the interests of the Trust, and/or
 - c) The Council of Governors consider that it is not in the best interests of the Trust for them to continue as a Governor. Circumstances where it may not be appropriate for an individual to continue as a Governor include the circumstances set out in paragraph 5.3;
- 5.3 The Council of Governors may remove a Governor in accordance with paragraph 5.2 where a Governor:
- 5.3.1 has refused to disclose any conflict of interest required to be disclosed in meetings of the Council of Governors
 - 5.3.2 has failed to sign and deliver to the Trust Secretary a statement in the form required by the Trust Secretary confirming acceptance of the code of conduct for Governors.
 - 5.3.3 has refused to undertake any training which the Council of Governors requires all Governors to undertake.

6. Disclosure of Interests

- 6.1 If a Governor has a pecuniary (financial), personal or family interest, whether that interest is actual or potential, direct or indirect, in any proposed contract or other matter which is under consideration or is to be considered by the Council of Governors, the Governor shall disclose that interest to the members of the Council of Governors as soon as he/she becomes aware of it.
- 6.2 Any Governor who has a material interest in a matter as defined below shall declare such interest to the Council of Governors and:
- 6.2.1 Shall withdraw from the meeting and play no part in the relevant discussion or decision; and
- 6.2.2 Shall not vote on the issue (and if by inadvertence they do remain and vote, their vote shall not be counted).
- 6.3 Any Governor who fails to disclose any interest required to be disclosed under the preceding paragraph must permanently vacate their office if required to do so by a decision of the remaining Governors in accordance with paragraph 5.2 of this Annex 4.
- 6.4 Subject to the exceptions detailed in 6.5, a material interest is:
- 6.4.1 Any Directorship of a company, including Non-Executive directorships held in limited companies (with the exception of dormant companies);
- 6.4.2 Any interest held by a Governor in any firm or company or business which, in connection with the matter, is trading with the Trust, or is likely to be considered as a potential trading partner with the Trust;
- 6.4.3 Any interest in a voluntary or other organisation providing health and social care services to the National Health Service;
- 6.4.4 A position of authority in a charity or voluntary organisation in the field of health and social care; or
- 6.4.5 Any connection with any organisation, entity or company considering entering into or having entered into a financial arrangement with the Trust including but not limited to lenders or banks.
- 6.5 The exceptions which shall not be treated as material interests are as follows:
- 6.5.1 Shares not exceeding 2% of the total shares in issue held in any company whose shares are listed on any public exchange;
- 6.5.2 An employment contract held by Staff Governors;
- 6.5.3 An Appointed Governor's employment contract with their appointing organisation.

- 6.6 The Council of Governors is to adopt its own standing orders for its practice and procedure, in particular for its procedure at meetings.
- 6.7 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 Trust Secretary of the particulars of their qualification to vote as a Member of the Trust and that they are not prevented from being a member of the Council of Governors. 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.

7. Meetings of the Council of Governors

- 7.1 The Council of Governors is to meet at least three times in each financial year in addition to the Annual Members' Meeting. Conduct and procedure for Council of Governors meetings are provided in Annex 6 Standing Orders for the Practice and Procedure for the Council of Governors.

ANNEX 5 – FURTHER PROVISIONS IN RELATION TO THE TRUST’S MEMBERSHIP

1. Termination of membership

- 1.1 A Member shall cease to be a Member if:
 - 1.1.1 They resign by notice to the Trust Secretary;
 - 1.1.2 They are deceased;
 - 1.1.3 They are expelled from membership under this Constitution;
 - 1.1.4 They cease to be entitled under this Constitution to be a member of a Public Constituency or any of the classes of the Staff Constituency; or
- 1.2 A Member may be expelled by a resolution approved by not less than two-thirds of the Governors attending and voting at a general meeting, unless they are a Governor, then paragraph 5.2 of Annex 4 shall be applied. The following procedure is to be adopted:
 - 1.2.1 Any Member may complain to the Trust Secretary that another member has acted in a way detrimental to the interests of the Trust;
 - 1.2.2 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:
 - a) Dismiss the complaint and take no further action; or
 - b) for a period not exceeding twelve months suspend the rights of the Member complained of to attend Members meetings and vote under this Constitution; or
 - c) Arrange for a resolution to expel the Member complained of to be considered at the next General Meeting of the Council of Governors.
 - 1.2.3 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.
 - 1.2.4 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.
 - 1.2.5 If the Member complained of fails to attend the meeting without due cause the meeting may proceed in their absence.

1.3 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.

1.4 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 who are present at a General Meeting.

2. Annual Members' Meeting

2.1 The Annual Members' meeting is open to all Members of the Trust, Governors and Directors, and representatives of the Trust's External Auditors.

2.2 Members of the public and representatives of the media may attend and the Council of Governors can invite any experts or advisors, whose attendance they consider to be in the best interests of the Trust. However, the Chairman may exclude anyone from such a meeting if they are interfering with or preventing the proper conduct of that meeting.

2.3 The Annual Members' meeting is to be convened by the Trust Secretary by order of the Council of Governors.

2.4 At the Annual Members' Meeting the Board of Directors shall present to the members:

2.4.1 The annual accounts;

2.4.2 Any report of the financial auditor;

2.4.3 Any report of any other external auditor of the Trust's affairs; and

2.4.4 Forward planning information for the next financial year;

2.5 Information on the following shall be presented to Members as part of the Annual Report and Accounts:

2.5.1 Report on steps taken to secure that (taken as a whole) the actual membership of its public constituencies and of the classes of the Staff Constituency is representative of those eligible for such membership;

2.5.2 Progress of and changes to the Membership Strategy; and

2.5.3 The results of the election and appointment of Governors and the appointment of Non-Executive Directors.

2.6 Notice of the Annual Members' Meeting is to be given:

2.6.1 By notice to all Members;

- 2.6.2 By notice prominently displayed at the head office and at all of the Trust's places of business; and
- 2.6.3 By notice on the Trust's website;
- 2.7 At least 14 working days before the date of the meeting. The notice must:
 - 2.7.1 Be given to the Council of Governors and the Board of Directors, and to the financial auditor;
 - 2.7.2 Give the time, date and place of the meeting; and
 - 2.7.3 Indicate the business to be dealt with at the meeting.
- 2.8 Before the Annual Members' Meeting can do business there must be a quorum present except where this Constitution says otherwise a quorum is five Members from the Public Constituencies and two Members from the Staff Constituency.
- 2.9 The Chairman of the Trust, or in their absence the Lead Governor, or in their absence, one of the other Public Governors shall act as chairman at the Annual Members' Meeting. If neither the Chairman nor the Lead Governor is present, the members of the Council of Governors present shall elect one of the Public Governors to chair the meeting.
- 2.10 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.
- 2.11 A resolution put to the vote at a Members' Meeting shall be decided upon by a show of hands, unless a poll is demanded.
- 2.12 Every Member present is to have one vote. In the case of an equality of votes the Chairman of the meeting is to have a casting vote.
- 2.13 The result of any vote will be declared by the Chairman and recorded in the minutes of the meeting.

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

Foreword

This document provides a regulatory and business framework for the conduct of the Council of Governors and is part of the South Tyneside and Sunderland NHS Foundation Trust's Constitution.

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1. Introduction

1.1 Main principle

- 1.1.1 Every NHS Foundation Trust will have a Council of Governors who must act in the best interests of the NHS Foundation Trust and must adhere to its values and code of conduct. The Council of Governors should hold the Non-Executive Directors to account for the performance of the Board of Directors, including receiving assurance that the Trust does not breach the terms of its licence.
- 1.1.2 Governors are responsible for regularly feeding back information about the Trust, its vision, mission and objectives to the constituencies and stakeholder organisations that either elected or appointed them.

1.2 Statutory framework

- 1.2.1 The South Tyneside and Sunderland NHS Foundation Trust (the Trust) is a public benefit corporation which was established by a grant of merger under section 56 of the 2006 Act by Monitor and the City Hospitals Sunderland NHS Foundation Trust and South Tyneside NHS Foundation Trust (Dissolution and Transfer of Property and Liabilities) Order 2019 effective from XX April 2019.
- 1.2.2 The statutory functions of the Trust are set out in the National Health Service Act 2006 and in the Trust's provider licence issued by Monitor. The governance of the Trust is dictated by its Constitution and rules regarding membership of the Council of Governors and other constitutional issues relating to the Governors are also set out in the Constitution.
- 1.2.3 As a public benefit corporation the Trust has specific powers to take any action which appears to be necessary or desirable for the purposes of, or in connection with, its functions. It has the power to contract in its own name and to act as a corporate trustee. In the latter role it is accountable to the Charity Commission for those funds deemed to be charitable.
- 1.2.4 Monitor requires the Trust to adopt Standing Orders for the regulation of its proceedings and business.

1.3 Council of Governors framework

- 1.3.1 The purpose of the Council of Governors Standing Orders is to ensure that the highest standards of corporate governance and conduct are applied to all Council of Governors meetings and associated deliberations. The Council of Governors shall at all times seek to comply with the NHS Foundation Trust Code of Governance, which is founded on The UK Corporate Governance Code.

- 1.3.2 All business conducted by the Council of Governors shall be conducted in the name of the Trust. All decisions must be taken objectively and in the interests of the Trust.
- 1.3.3 The Trust believes that public service values lie at its heart. High standards of corporate and personal integrity based on a recognition that patients come first, is a fundamental value of the Trust. Governors are expected to observe the Nolan Principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership.
- 1.3.4 Everything done by the Council of Governors should be able to stand the test of scrutiny, public judgment on propriety, and professional codes of conduct.

2. Council of Governors – composition and role of Governors

2.1 Role and responsibility of the Council of Governors

- 2.1.1 The roles and responsibilities of the Council of Governors are set out in the Constitution and are further described in Monitor's reference guide for NHS Foundation Trust Governors.

2.2 Composition of the Council of Governors

- 2.2.1 The composition of the Council of Governors shall be in accordance with paragraph 13 and Annex 3 of the Constitution.
- 2.2.2 The Council of Governors shall have a chair. This shall be the Chairman of the Trust.
- 2.2.3 The Chairman of the Trust shall be responsible for the leadership of the Council of Governors.

3. Meetings of the Council of Governors

3.1 Notice of meetings and the business to be transacted

- 3.1.1 At any meeting of the Council of Governors the Chairman of the Trust shall preside. If the Chairman of the Trust is absent from the meeting (including absence due to a declared conflict of interest) the Vice-Chairman of the Board of Directors, or another Non-Executive Director shall preside. Otherwise, the Lead Governor of the Council of Governors will chair the meeting.
- 3.1.2 The Council of Governors is to meet a minimum of three [3] times in each financial year, in addition to the Annual Members' Meeting. Save in the case of emergencies or the need to conduct urgent business, the Trust Secretary shall give at least five [5] clear days written notice of the date, place and time of the meeting to all Governors.
- 3.1.3 Before each meeting of the Council of Governors, a notice of the meeting, specifying the business proposed to be transacted at it, approved by the

Chairman or any officer of the Trust authorised by the Chairman, shall be delivered to every Governor at their usual place of residence, so as to be available to them at least five [5] clear working days before the meeting.

3.1.4 Meetings will be called by the Chairman. Notices of meetings are to be given by the following:

- a) Notice sent by post or by electronic mail where the Governor has provided an e-mail address;
- b) Notice on the Trust's website; and
- c) By any other method approved by the Council of Governors

3.1.5 One third or more Governors of the Council of Governors may requisition a meeting in writing. If the Chairman refuses, or fails, to call a meeting within fourteen [14] working days after a requisition to do so has been delivered to the Trust Secretary, the Governors signing the requisition may forthwith call a meeting.

3.1.6 Any meeting called in accordance with Standing Order 3.1 shall subject as set out in these Standing Orders or the Constitution, be chaired by the Chairman of the Trust and attended by the Trust Secretary.

3.1.7 The Council of Governors shall have the right to give prior notice of the requirement for a Director or a representative of the Trust's Auditors to attend any general meeting in order that Governors may raise questions in respect of particular agenda items or other matters that may arise. If a Director is required to attend a Council of Governors meeting it shall be incumbent on the Director to do so.

3.2 Agenda and supporting papers

3.2.1 A Governor, or Officer of the Trust, desiring a matter to be included on an agenda shall make their request in writing to the Trust Secretary at least twenty [20] clear working days before the meeting for consideration by the Chairman. The request should state whether the item of business proposed is to be transacted in the presence of the public, and should include appropriate supporting information. Requests made less than twenty [20] clear working days before a meeting may be included on the agenda at the discretion of the Chairman.

3.2.2 Following notice of the meeting, as per Standing Order 3.1, an agenda for the meeting specifying the business proposed to be transacted at it will be delivered to every Governor, or sent by post to the usual place of residence of such persons, so as to be available to the Governor at least five [5] clear working days before the meeting. Supporting papers, wherever possible, shall accompany the agenda, but will certainly be despatched no later than three [3] clear working days before the meeting, save in emergency.

3.3 Notice of motion

3.3.1 A Governor of the Trust desiring to move or amend a motion shall send a written notice thereof at least ten (10) clear working days before the meeting to the Chairman, who shall, if they are satisfied that they are proper business and properly proposed, insert in the agenda for the meeting all notices received. This Standing Order shall not prevent any motion being withdrawn or moved without notice on any business mentioned on the agenda for the meeting.

3.4 Motions

3.4.1 A motion may be proposed by the Chairman or by a Governor present at the meeting and eligible to vote and must be seconded by a Governor present at the meeting and eligible to vote.

3.4.2 The mover of a motion shall have a right of reply at the close of any discussion on the motion or any amendment thereto.

3.4.3 When a motion is under discussion or immediately prior to discussion, it shall be open to a Governor to move:

- a) An amendment to a motion;
- b) The adjournment of the discussion or the meeting;
- c) That the meeting proceed to the next business;
- d) That appointment of an ad hoc committee to deal with a specific item of business;
- e) That the motion be now put;
- f) A motion resolving to exclude the public, including the press

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

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

3.4.6 No amendment to a motion shall be admitted if, in the opinion of the chair of the meeting, the amendment negates the substance of the motion. When a motion has been amended, the amended Motion shall become the substantive motion before the meeting.

3.4.7 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.

3.5 Notice to Rescind a Resolution

- 3.5.1 Notice of motion to rescind any resolution (or general substance of any resolution) which has been passed within the preceding six (6) calendar months, shall bear the signature of the Governors who give it and also the signature of four (4) other Governors, of whom at least two (2) shall be Public Governors. Before considering any such motion of which notice shall have been given, the Council of Governors may refer the matter to any appropriate committee for recommendation.
- 3.5.2 When any such motion has been dealt with by the Council of Governors, it shall not be competent for any Governor other than the Chairman to propose a motion to the same effect within six (6) months.

3.6 Chairman's ruling

- 3.6.1 The decision of the chair of the meeting, advised by the Trust Secretary, on questions of order, relevancy and regularity (including procedure on handling motions) and their interpretation of the Standing Orders, at the meeting, shall be final.
- 3.6.2 The conduct of business at meetings of the Council of Governors shall be under the control of the Chairman, who shall have power to decide in their discretion any question which arises including any question as to:
- a) Whether any motion or topic is to be discussed and in what order business is to be dealt with;
 - b) Whether any Governor shall be permitted to speak on any issue and for how long;
 - c) Whether comments or submissions made by a Governor are relevant to the issue under discussion; and
 - d) The conduct of a Governor, Officer of the Trust or member of the public (including press) at a meeting.
- 3.6.3 Governors shall act in accordance with directions and rulings of the Chairman and will conduct themselves in accordance with the Code of Conduct.

3.7 Quorum

- 3.7.1 No business shall be transacted at a meeting of the Council of Governors unless nine (9) or more Governors are present and entitled to vote, the majority of which must be Public Governors.
- 3.7.2 If a Governor has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of the declaration of a conflict of interest that person shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business.

- 3.7.3 If at any meeting there is no quorum within thirty (30) minutes of the time fixed for the start of the meeting, the meeting shall stand adjourned for seven (7) days and upon reconvening, those present shall constitute a quorum.
- 3.7.4 Members of the Council of Governors can participate in meetings by telephone or video link. Participation in a meeting in this manner shall be deemed to constitute presence in person at the meeting.
- 3.7.5 Should any member of the Council of Governors participate in meetings by telephone or video link for a specific item on the agenda, they must participate at the commencement of the agenda item, and remain present until the Chairman has deemed the item closed.

3.8 Voting

- 3.8.1 If in the opinion of the Chairman a vote should be required on a matter under discussion at a meeting, the result, unless otherwise specified in the Constitution or its Annexes, shall be determined by a majority of votes of Governors present at the meeting and eligible to vote. In the case of any equality in votes, the decision would be adjourned to the next meeting.
- 3.8.2 All questions put to the vote shall, at the discretion of the chair 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 Governors present at the meeting and eligible to vote so request, or the Trust Secretary deems it advisable or necessary.
- 3.8.3 If at least one-third of the Governors present and eligible to vote so request, the voting other than by paper ballot on any question may be recorded in the minutes to show how each Governor voted or abstained.
- 3.8.4 If a Governor so requests, their vote shall be recorded by name upon any vote (other than a paper ballot).
- 3.8.5 In no circumstances may an absent Governor vote by proxy. Absence is defined as being absent at the time of the vote.
- 3.8.6 No resolution of the Council of Governors shall be passed if it is opposed by all of the Public Governors present.
- 3.8.7 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.

3.9 Record of attendance

- 3.9.1 Governors must make every effort to attend meetings of the Council of Governors where appropriate and practicable. Where it is not possible for a

Governor to attend apologies should be sent to the Trust Secretary no later than two (2) working days prior to the meeting.

- 3.9.2 The names of the Governors present at a meeting and those who gave apologies for each meeting shall be recorded in the minutes.

3.10 Minutes of meetings

- 3.10.1 The minutes of the proceedings of each meeting of the Council of Governors shall be drawn up and submitted for agreement at the next ensuing meeting.

- 3.10.2 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.

- 3.10.3 The minutes of the meeting shall be made available to the public, via the Trust's website, except for minutes relating to business conducted when members of the public are excluded under the terms of Standing Order 3.11.

3.11 Admission of the public and press

- 3.11.1 All meetings of the Council of Governors are to be open to 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 as set out in the constitution. The Chairman may exclude any member of the public and representatives of the press from a meeting of the Council of Governors if they are interfering with, or preventing the proper conduct of the meeting.

- 3.11.2 Where the Council of Governors resolves that the meeting be adjourned in the interests of public order and to allow them to conclude the business in hand in private, the resolution shall specify the period of any adjournment.

- 3.11.3 Nothing in these Standing Orders shall be construed as permitting the introduction by the public, or press representatives, of recording, transmitting, video or similar apparatus into meetings of the Council of Governors or Committee thereof. Such permission shall be granted only upon resolution of the Council of Governors.

3.12 Observers at Council of Governors Meetings

- 3.12.1 The right of attendance at meetings by members of the public as referred to in Standing Orders 3.11 does not give right to the said members of the public to ask questions or otherwise participate in that meeting, unless invited to do so by the Chairman.

- 3.12.2 Members of the public may request that they address a question to the Council of Governors. Questions put forward by members of the public shall relate only to matters on the agenda for the meeting of the Council of Governors at which the question is to be raised. Any member of the public

wishing to address a question to the Council of Governors shall where possible submit a written notice to the Trust Secretary prior to the commencement of the meeting, stating their name and the nature of their question. These questions shall be brought to the attention of the Chairman prior to the commencement of the meeting.

3.13 Confidentiality

3.13.1 Matters to be dealt with by the Council of Governors following the exclusion of members of the public and representatives of the press shall be confidential to the Council of Governors.

3.13.2 Governors, Directors, Officers or any employee or representative of the Trust in attendance at a private meeting or private part of any meeting, shall not reveal or disclose the contents of the papers, discussions or minutes of the items taken in private, outside the Council of Governors meetings without the express permission of the Council of Governors and any such occurrence will be treated as a potential breach of the relevant Governor / Director Code of Conduct.

4. Appointment of committees and sub-committees

4.1 The Council of Governors may form advisory sub committees under a written Terms of Reference, approved by the Council of Governors. Advisory meetings may include members of the Board, and Trust representatives nominated by the Board. The Council of Governors may appoint the membership and chair of any advisory committees. All acts of any proceedings of advisory committees shall be reported to the Council of Governors.

4.2 These Standing Orders in their entirety, as far as they are applicable, shall apply also, with the appropriate alteration, to meetings of any committees so established by the Council of Governors and to any sub-committees which the Council of Governors authorises to be established.

4.3 The Council of Governors may not delegate any of its powers to these committees or sub-committees.

4.4 Subject as may be required by Monitor there is no requirement to hold meetings of committees established by the Council of Governors in public.

4.5 The committees, sub-committees and joint committees established by the Council of Governors are:

a) Nomination, Appointments and Remuneration Committee

See terms of reference for the roles and responsibilities of committees.

- 4.6 In addition the Council of Governors will establish such other committees and sub-committees as it deems necessary to assist it in the exercise its functions and in particular the functions at set out at Standing Order 4.

5. Standards of Business Conduct

5.1 Declaration of interests

- 5.1.1 Governors must comply with the Trust's Standards of Business Conduct Policy.

- 5.1.2 All Governors shall declare interests which are pecuniary (which includes monetary) personal or family interests that they have and which are relevant to the Trust. If a Governor does not have any interests to declare a nil return should be submitted.

- 5.1.3 Interests which should be declared pursuant to 5.1.2 above include:

- a) Directorships, including non-executive directorships held in private companies or public limited companies (with the exception of those of dormant companies).
- b) Ownership or part-ownership of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS.
- c) Majority or controlling shareholdings in organisations likely or possibly seeking to do business with the NHS.
- d) A position of authority in a charity or voluntary organisation in the field of health and social care.
- e) Any connection with a voluntary or other organisation contracting for NHS Services.
- f) Any substantial or influential connection with an organisation, entity or company considering entering into or having entered into a financial arrangement with the Trust, including but not limited to lenders or banks.
- g) Any other commercial interest in the decision before the meeting.
- h) Research funding/grants that may be received by an individual or their department.
- i) Interests in pooled funds that are under separate management.

For the avoidance of doubt, any Governor who comes to know that the Trust has entered into or proposes to enter into a contract in which that Governor or any person connected with the Governor (including a spouse, partner or other family member) has any pecuniary interest, direct or indirect, the Governor shall declare their interest by giving notice in writing of such fact to the Trust as soon as practicable. If a Governor does not have any interests to declare a nil return should be submitted as such.

- 5.1.4 If a Governor has any doubt about the relevance of an interest, this should be discussed with the Chairman or with the Trust Secretary.

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

5.1.6 During the course of a Council of Governor or Trust meeting, if a conflict of interest is established the Chairman or Governor concerned should withdraw from the meeting and play no part in the discussion or decision.

5.2 Register of Interests

5.2.1 The Trust Secretary will ensure that a Register of Interests is established to record formally declarations of interests of Governors. In particular the Register will include details of all interests (as defined in Standing Order 5.1.3) which have been declared. Any interests declared by the Chairman of the Trust will be recorded in the Board of Director's Register of Interests.

5.2.2 Details of the Register will be kept up to date by the Trust Secretary who will ensure that all declarations made are incorporated into the register as they arise or are notified in writing to the Trust Secretary by Governors by completion of a declaration form in a format approved by the Board of Directors. An annual review, of the Register in which any changes to interests declared during the preceding twelve (12) months will also be conducted by the Trust Secretary.

5.2.3 The Register of Interests for the Council of Governors and Board of Directors will be available on the Trust's website at all times. The Registers will be made publicly available for inspection by members of the public free of charge at a reasonable time.

5.2.4 This Standing Order applies to any Committee or sub-committee of the Council of Governors and applies to a Governor or member of any such committee or sub-committee as it applies to an Officer of the Trust.

6. Resolution of disputes with the Board of Directors

6.1 Guidance for the resolution of disputes with the Board of Directors is set out in Annex 8 of the Constitution.

7. Suspension of Standing Orders

7.1 To suspend any one or more of these Standing Orders, except where this would contravene any provision in the Constitution or conditions of its licence, any statutory provision or direction given by Monitor, the following is required:

7.1.1 A notice of motion under Standing Order 3.3; and

7.1.2 Two-thirds of Governors present and eligible to vote, vote in favour of the suspension; and

- 7.1.3 The suspension is approved by Board of Directors.
- 7.2 A decision to suspend Standing Orders shall be recorded in the minutes of the meeting.
- 7.3 No formal business may be transacted while Standing Orders are suspended.
- 7.4 The Board of Director's Audit Committee shall review every decision to suspend Standing Orders.

8. Amendments to the Trust's Constitution

- 8.1 Amendments by the Trust of its constitution are to be notified to Monitor in line with paragraph 46.
- 8.2 The Council of Governors shall from time to time, and not less than every two years review the policy for the composition of the Council of Governors; and at the same time, shall review the Trust's Constitution.

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

Foreword

This document provides a regulatory and business framework for the conduct of the Board of Directors and is part of the South Tyneside NHS Foundation Trust's Constitution.

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1. Introduction

1.1 Main principle

1.1.1 The Board of Directors must act in the best interests of South Tyneside and Sunderland NHS Foundation Trust and must adhere to its values and code of conduct.

1.2 Statutory framework

1.2.1 The South Tyneside and Sunderland NHS Foundation Trust (the Trust) is a Public Benefit Corporation that was established by a grant of merger under section 56 of the 2006 Act by Monitor and the City Hospitals Sunderland NHS Foundation Trust and South Tyneside NHS Foundation Trust (Dissolution and Transfer of Property and Liabilities) Order 2019 effective from XX April 2019.

1.2.2 The statutory functions conferred on the Trust are set out in the National Health Service Act 2006. The governance of the Trust is dictated by its NHS provider licence, its Constitution and rules regarding membership of the Board of Directors and other constitutional issues relating to the Directors are also set out in the Constitution.

1.2.3 As a Public Benefit Corporation 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.

1.3 The Trust

1.3.1 All business shall be conducted in the name of the Trust. The business of the Trust is to be managed by the Board of Directors, who shall exercise all the powers of the Trust, subject to any contrary provisions of the 2006 Act given effect by the constitution.

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

1.4 NHS framework

1.4.1 The Trust is to have a Board of Directors, which is to consist of executive and Non-Executive Directors.

1.4.2 The Constitution requires the Board of Directors to adopt its own Standing Orders covering for its practice and procedure.

2. Board of Directors

2.1 Roles and responsibilities

2.1.1 The roles and responsibilities of the Board of Directors are set out in the 2006 Act and Constitution.

2.2 Composition of the Board of Directors

2.2.1 The composition of the Board of Directors shall be in accordance with paragraph 24 of the Constitution.

2.2.2 The number of the Directors may be increased provided always that at least half of the Board, excluding the Chairman, comprises Non-Executive Directors.

2.2.3 The Council of Governors shall appoint one of the Non-Executive Directors to be Vice-Chairman for such period not exceeding the remainder of their term as a member of the Board of Directors as they specify on appointing them.

2.2.4 The Board shall appoint one of the independent Non-Executive Directors to be the Senior Independent Director in consultation with the Council of Governors. The Senior Independent Director should be available to Directors and Governors if they have concerns which contact through the normal channels of Chairman, Chief Executive, and Director of Finance has failed to resolve, or for which such contact is inappropriate.

3. Meetings of the Board of Directors

3.1 Notice of meetings

3.1.1 The Board of Directors is to meet a minimum of six [6] times in each financial year. Meetings will usually not be held in the months of August and December, save in the case of emergencies or the need to conduct urgent business.

3.1.2 The Trust Secretary shall give at least five [5] clear days written notice of the date, place and time of the meeting to all Board members.

3.1.3 Before each meeting of the Board of Directors, a notice of the meeting, specifying the business proposed to be transacted at it, approved by the Chairman or by an officer of the Trust authorised by the Chairman on their behalf, shall be delivered to every Director to their usual place of residence so as to be available to them at least five [5] clear days before the meeting.

3.1.4 Meetings will be called by the Chairman. Notices of meetings are to be given by the following:

a) Notice sent by post or by electronic mail;

- b) Notice on the Trusts website; and
- c) By any other method approved by the Board of Directors.

3.1.5 Lack of service of the notice on any Director shall not affect the validity of a meeting.

3.2 Agenda and supporting papers

3.2.1 A Director, or officer of the Trust, desiring a matter to be included on an agenda shall make their request in writing to the Chairman at least twenty [20] clear working days before the meeting for consideration by the Chairman. The request should state whether the item of business proposed is to be transacted in the presence of the public, and should include appropriate supporting information. Requests made less than twenty [20] clear working days before a meeting may be included on the agenda at the discretion of the Chairman.

3.2.2 Following notice of the meeting, as per Standing Order 3.1, an agenda or the meeting specifying the business proposed to be transacted at it will be delivered to every Director as per paragraph 3.1.4 above, so as to be available to the Director at least five [5] clear days before the meeting. Supporting papers, wherever possible, shall accompany the agenda, but will be despatched no later than three [3] clear working days before the meeting, save in an emergency or when dealing with urgent issues.

3.3 Record of attendance at meetings

3.3.1 The names of the Directors present at a meeting shall be recorded in the minutes of meetings.

3.4 Minutes of meetings

3.4.1 The minutes of the proceedings of each meeting of the Board of Directors shall be drawn up and submitted for agreement at the next ensuing meeting.

3.4.2 No discussion shall take place upon the minutes except upon their accuracy or where the Chairman considers discussion appropriate. Any amendments to the minutes shall be agreed and recorded.

3.4.3 The minutes of the meeting shall be made available to the public via the Trusts website, except for minutes relating to business conducted when members of the public and press are excluded under the terms of Standing Order 3.5.

3.5 Admission of the public and press

3.5.1 All meetings of the Board of Directors shall be held in public unless the Chairman in their absolute discretion determines that any meeting of the Board of Directors shall be held in private. The Chairman may exclude any

members of the public and representatives of the press from a meeting of the Board of Directors if they are interfering with, or preventing the proper conduct of the meeting.

- 3.5.2 Nothing in these Standing Orders shall be construed as permitting the introduction by the public, or press representatives, of recording, transmitting, video or similar apparatus into meetings of the Board of Directors, or committee thereof. Such permission shall be granted only upon resolution of the Board of Directors.
- 3.5.3 The right of attendance at meetings of the Board of Directors by members of the public or press representatives does not give the right to the said attendees to ask questions or otherwise participate in the meeting, unless invited to do so by the Chairman.

3.6 Notice of a motion

- 3.6.1 Subject to the provision of Standing Orders 3.7 – Motions: Procedure at and during a Meeting and 3.8 – Motions to rescind a resolution, a Director of the Board wishing to move a motion shall send a written notice to the Chief Executive who will ensure that it is brought to the immediate attention of the Chairman.
- 3.6.2 The notice shall be delivered at least fifteen [15] clear working days before the meeting. The Chief Executive shall include in the agenda for the meeting all notices so received that are in order and permissible under governing regulations. This Standing Order shall not prevent any motion being withdrawn or moved without notice on any business mentioned on the agenda for the meeting.

3.7 Motions: procedure at and during a meeting

- 3.7.1 A motion may be proposed by the chair of the meeting or any Director present. It must also be seconded by another Director.
- 3.7.2 The Chairman may exclude from the debate at their discretion any such motion of which notice was not given on the notice summoning the meeting other than a motion relating to:
- a) The reception of a report;
 - b) Consideration of any item of business before the Board of Directors;
 - c) The accuracy of minutes;
 - d) That the Board proceed to next business;
 - e) That the Board adjourn;

f) That the question be now put.

3.7.3 A motion for amendment shall not be discussed unless it has been proposed and seconded. Amendments to motions shall be moved relevant to the motion and shall not have the effect of negating the motion before the Board of Directors. If there are a number of amendments, they shall be considered one at a time. When a motion has been amended, the amended motion shall become the substantive motion before the meeting, upon which any further amendment may be moved.

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

a) An amendment to the motion;

b) The adjournment of the discussion, or the meeting;

c) That the meeting proceed to the next business;

d) That the question should be now put;

e) The appointment of an —ad hoc committee to deal with a specific item of business;

f) That a Director be not further heard;

g) Motion resolving to exclude the public, including the press

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

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

3.8 Notice to rescind a resolution

3.8.1 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 notice and also the signature of 2 other Directors. When any such motion has been disposed of by the Trust, it shall not be competent of 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.

3.9 Chair of the meeting

3.9.1 At any meeting of the Board of Directors the Chairman, if present, shall preside. If the Chairman is absent from the meeting, the Vice-Chairman, if present, shall preside. If the Chairman and Vice-Chairman are absent, a Non-Executive Director as chosen by the Directors present shall preside.

3.10 Chairman's ruling and the conduct of meetings

3.10.1 The conduct of business at meetings of the Board of Directors shall be under the control of the Chairman, who shall have power to decide in his discretion any question which arises including any question as to:

- a) Whether any motion or topic is to be discussed and in what order business is to be dealt with
- b) Whether any Director shall be permitted to speak on any issue and for how long
- c) Whether comments or submissions made by a Director are relevant to the issue under discussion
- d) The conduct of a Director at a meeting.

3.10.2 Directors shall act in accordance with directions and rulings of the Chairman and will conduct themselves in accordance with the Code of Conduct.

3.11 Quorum

3.11.1 No business shall be transacted at a meeting unless at least one-third of the whole number of the Chairman and voting Directors (including at least one Non-Executive Director and one Executive Director) is present.

3.11.2 An Officer in attendance for an Executive Director but without formal acting-up status may not count towards the quorum.

3.11.3 If the Chairman or Director has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of a declaration of a conflict of interest, that person shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business.

3.11.4 Members of the Board of Directors can participate in meetings by telephone or video-link. Participation in a meeting in this manner shall be deemed to constitute presence in person at the meeting.

3.11.5 Should any member of the Board of Directors participate in meetings by telephone or video-link for a specific item on the agenda, they must participate

at the commencement of the agenda item, and remain present until the Chairman has deemed the item closed.

3.12 Voting

3.12.1 If in the opinion of the Chairman, a vote should be required on a matter under discussion at a meeting, the result, unless otherwise specified in the Constitution or its Annexes, shall be determined by a majority of votes of Board members present at the meeting and eligible to vote. In the case of any equality in votes, the decision would be adjourned to the next meeting.

3.12.2 All questions put the vote shall, at the discretion of the chair 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 Board members present at the meeting and eligible to vote so request.

3.12.3 If at least one-third of the Board of Directors present and eligible to vote so request, the voting, other than by paper ballot, on any question may be recorded in the minutes of the meeting to show how each Board member voted or abstained.

3.12.4 In no circumstances may an absent Board member vote by proxy. Absence is defined as being absent at the time of the vote.

3.12.5 All decisions taken in good faith at a meeting of the Board of Directors or any committee of the Board, shall be deemed valid even if it is discovered subsequently that there was a defect in the calling of the meeting, or the appointment of the Director attending the meeting.

4. Appointment of Committees and Sub-Committees

4.1 The Board of Directors may appoint committees of the Board of Directors comprising wholly of Directors.

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

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

4.4 Each such committee shall have such terms of reference and powers and be subject to such conditions (as to reporting back to the Board of Directors) as the Board of Directors shall decide and shall be in accordance with any

legislation and regulation or direction issued by Monitor. Such terms of reference shall have effect as if incorporated into these Standing Orders.

- 4.5 Where committees are authorised to establish sub-committees, they may not delegate executive powers to the subcommittee unless expressly authorised by the Board of Directors.
- 4.6 The Board of Directors shall approve the appointments to each of the committees which it has formally constituted.
- 4.7 The committees established by the Board of Directors are:
- a) Audit Committee;
 - b) Executive Committee;
 - c) Finance and Performance Committee;
 - d) Governance Committee;
 - e) IM&T Committee;
 - f) Patient, Carer, Public Experience Committee;
 - g) Policy Committee;
 - h) Remuneration and Nominations Committee;
 - i) Strategy Committee Workforce Committee; and
 - j) Workforce Committee.
- 4.8 The Board of Directors will establish such other committees and sub-committees as it deems necessary to exercise its functions.

5. Arrangements for the exercise of Trust functions by delegation

- 5.1 The Board of Directors may make arrangements for the exercise, on behalf of the Board of Directors, of any of its functions by a committee, or subcommittee appointed by virtue of Standing Order 4 or by an Executive Director, in each case subject to such restrictions and conditions as the Board of Directors thinks fit.
- 5.2 The powers which the Board of Directors has reserved in line with the Trust's Scheme of Delegation, may in emergency or for an urgent decision be exercised by the Chief Executive and the Chairman after having consulted at least two Non-Executive Directors. The exercise of such powers by the Chief Executive and Chairman shall be reported to the next formal meeting of the Board of Directors for formal ratification.

- 5.3 Those functions of the Trust which have not been retained as reserved by the Board of Directors or delegated to other committee or subcommittee shall be exercised on behalf of the Trust by the Chief Executive. The Chief Executive shall determine which functions they will perform personally and shall nominate Officers to undertake the remaining functions for which they will still retain accountability to the Trust.
- 5.4 The Chief Executive shall prepare a Scheme of Delegation identifying their proposals which shall be considered and approved by the Board of Directors. The Chief Executive may periodically propose amendment to the Scheme of Delegation which shall be considered and approved by the Board of Directors.
- 5.5 Nothing in the Scheme of Delegation shall impair the discharge of the direct accountability to the Board of Directors or the Director of Finance to provide information and advise the Board of Directors in accordance with statutory, Secretary of State or Monitor's requirements. Outside these statutory requirements, the roles of the Director of Finance shall be accountable to the Chief Executive for operational matters.

6. Confidentiality

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

7. Board of Directors disqualification

- 7.1 The disqualification of any member of the Board of Directors shall be in accordance with paragraph 30 of the Constitution.

8. Declarations of interest and register of interests

- 8.1 In accordance with paragraph 33 of the Constitution, any Director who has a material interest in a matter as defined below shall declare such an interest in writing to the Trust Secretary within 7 days of the matter arising to the Board of Directors at the next meeting of the Board of Directors.
- a) Shall withdraw from the meeting and play no part in the relevant discussion or decisions
 - b) Shall not vote on the issue arising out of or connected with the matter (and if by inadvertence they do remain and vote, their vote shall not be counted).

- 8.2 Details of any such interest shall be recorded in the register of the interests of Directors.
- 8.3 Any Director who fails to disclose any interest required to be disclosed under the preceding paragraph must permanently vacate their office if required to do so by a majority of the remaining Directors and (in the case of a non-executive Director) by the requisite majority of the Council of Governors. If a Director is in doubt as to whether an interest should be disclosed they should discuss the position with the Chairman.
- 8.4 The Trust is to have a Register of Interests of Directors in accordance with paragraph 35 of the Constitution. The Trust Secretary shall record any declaration of interest in a Register of Interests. Any interest declared at a meeting shall also be recorded in the minutes of the meeting.
- 8.5 The Register shall be made available by members of the public free of charge, at a reasonable time. Any person who requires it must be provided with a copy or extract from the Register. If the person requesting a copy or extract is not a Member of the Trust then a charge may be made for doing so.
- 8.6 Public service values must be at the heart of the NHS. High standards of corporate and personal conduct based on a recognition that patients come first, have been a requirement throughout the NHS since its inception. Directors are required to sign a Code of Conduct as part of the appointment process.

9. Disability of Directors in proceedings on account of pecuniary interest

- 9.1 Subject to the following provisions of this Standing Order, if a Director has any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter and is present at a meeting of the Board of Directors at which the contract or other matter is the subject of consideration, he/she shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not take part in the consideration or discussion of the contract or other matter or vote on any question with respect to it.
- 9.2 The Trust may exclude a member or Director from a meeting of the Board of Directors while any contract, proposed contract or other matter in which he/she has a pecuniary interest, is under consideration.
- 9.3 For the purpose of this Standing Order the Chairman or Director shall be treated, subject to Standing Order 5.2 and paragraph 33 of the Constitution, as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if:
- a) he/she, or a nominee of his/her, is a Director of a company or other body, not being a public body, with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration; or

- b) he/she is a partner of, or is in the employment of a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration; and
- c) and in the case of family or close personal relationships the interest of one party shall, if known to the other, be deemed for the purposes of this Standing Order to be also an interest of the other.

9.4 A Director shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only:

- a) of his/her membership of a company or other body, if he/she has no beneficial interest in any securities of that company or other body;
- b) of an interest in any company, body or person with which he/she is connected as mentioned in Standing Order 9.3 which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a Director in the consideration or discussion of or in voting on, any question with respect to that contract or matter

10. Suspension of Standing Orders

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

10.2 A decision to suspend Standing Orders shall be recorded in the minutes of the meeting.

10.3 A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the Directors.

10.4 No formal business may be transacted while Standing Orders are suspended.

10.5 The Audit Committee shall review every decision of the Board of Directors to suspend Standing Orders.

11. Custody of Seal and sealing documents

11.1 The Common Seal of the Trust shall be kept by the Chief Executive.

11.2 The Seal of the Trust shall not be fixed to any document unless the sealing has been authorised by a resolution of the Board of Directors or a committee thereof, or where the Board of Directors has delegated its powers.

- 11.3 Before any building, engineering, property or capital document is sealed it must be approved and signed by the Executive Director of Finance and Corporate Governance (or an official nominated by him/her) and authorised and countersigned by the Chief Executive (or an officer nominated by him/her who shall not be within the engineering division).
- 11.4 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 attended the seal. A report of all sealing shall be made to the Board of Directors at least quarterly. (The report shall contain details of the seal number, the description of the document and the date of sealing).
- 11.5 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 of Directors shall have given the necessary authority to some other person for the purpose of such proceedings.
- 11.6 The Chief Executive or nominated officers shall be authorised, by resolution of the Board of Directors, 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 of Directors or committee or sub-committee to which the Board of Directors has delegated appropriate authority.

ANNEX 8 – RESOLUTION PROCESS FOR DISPUTES BETWEEN THE BOARD OF DIRECTORS AND COUNCIL OF GOVERNORS

The Council of Governors and the Board of Directors must be committed to develop and maintain a constructive and positive relationship. The aim at all times is to resolve any potential or actual differences of opinion quickly, through discussion and negotiation.

If, through informal efforts, the Chairman, Vice-Chairman or Senior Independent Director (when an issue involves the Chairman), cannot achieve resolution of a disagreement or conflict, the Chairman, Vice-Chairman or Senior Independent Director will follow the dispute resolution procedure described below. The aim is to resolve the matter at the first available opportunity, and only to follow this procedure if all actions fail to achieve resolution.

For the purposes of the procedure outlined below, Chairman, Vice-Chairman and Senior Independent Director will be referred to as 'Chairman' for ease of reference.

- 1.1 The *Chairman* shall first endeavour through discussion with Governors and Directors or appropriate representatives of them, to achieve the earliest possible conclusion, to resolve the matter to the reasonable satisfaction of both parties.
- 1.2 Failing resolution under paragraph 1.1 above, then the Board of Directors or the Council of Governors, as appropriate, shall at its next formal meeting in private, approve the precise wording of a 'Dispute Statement' setting out clearly and concisely the issue or issues giving rise to the dispute.
- 1.3 The *Chairman* shall ensure that the Disputes Statement, without amendment or abbreviation in any way, shall be an agenda item and paper at the next formal meeting of the Board of Directors or the Council of Governors, in private, as appropriate. That meeting shall agree the precise wording of a Response to Disputes Statement.
- 1.4 The *Chairman* of the Board of Directors or the Council of Governors as appropriate, shall immediately, or as soon as is practical, communicate the outcome to the other party and deliver the written Response to Disputes Statement. If the matter remains unresolved or only partially resolved then the procedure outlined in paragraph 1.2 above shall be repeated.
- 1.5 If, in the opinion of the *Chairman*, following the further discussions prescribed in paragraph 1.2, there is no further prospect of a full resolution or, if at any stage in the whole process, in the opinion of the *Chairman*, there is no prospect of a resolution (partial or otherwise) then they shall advise the Council of Governors and the Board of Directors accordingly.
- 1.6 On the satisfactory completion of this disputes process the Board of Directors or Council of Governors, as appropriate, shall implement any agreed actions.

- 1.7 On the unsatisfactory completion of this disputes process the view of the Board of Directors shall prevail.
- 1.8 Nothing in this procedure shall prevent the Council of Governors, if it so desires, from informing Monitor that, in the Council of Governors' opinion, the Board of Directors has not responded constructively to concerns of the Council of Governors and that the Trust is not meeting the conditions of its Licence.
- 1.9 Should Paragraph 1.8 be applied, the Lead Governor will act as the conduit between the Council of Governors and Monitor.

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PART 1: INTERPRETATION

1. Interpretation

1.1 In these rules, unless the context otherwise requires:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

PART 2: TIMETABLE FOR ELECTIONS

2. Timetable

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

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

3. Computation of time

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

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

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

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

PART 3: RETURNING OFFICER

4. Returning Officer

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

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

5. Staff

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

6. Expenditure

6.1 The corporation is to pay the returning officer:

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

7. Duty of co-operation

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

PART 4: STAGES COMMON TO CONTESTED AND UNCONTESTED ELECTIONS

8. Notice of election

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

9. Nomination of candidates

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

9.2 The returning officer:

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

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

10. Candidate's particulars

10.1 The nomination form must state the candidate's:

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

11. Declaration of interests

11.1 The nomination form must state:

- (a) any financial interest that the candidate has in the corporation, and
- (b) whether the candidate is a member of a political party, and if so, which party,

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

12. Declaration of eligibility

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

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

13. Signature of candidate

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

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

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

14. Decisions as to the validity of nomination

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

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

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

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

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

candidate has been validly nominated.

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

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

15. Publication of statement of candidates

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

15.2 The statement must show:

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

as given in their nomination form.

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

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

16. Inspection of statement of nominated candidates and nomination forms

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

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

17. Withdrawal of candidates

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

18. Method of election

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

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

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

- (a) the candidates who remain validly nominated are to be declared elected in accordance with Part 7 of these rules, and
- (b) the returning officer is to order a new election to fill any vacancy which remains unfilled, on a day appointed by him or her in consultation with the corporation.

PART 5: CONTESTED ELECTIONS

19. Poll to be taken by ballot

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

- (i) configured in accordance with these rules; and
- (ii) will create an accurate text voting record in respect of any voter who casts his or her vote using the text message voting system.

20. The ballot paper

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

20.2 Every ballot paper must specify:

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

20.3 Each ballot paper must have a unique identifier.

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

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

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

- (a) that the voter is the person:

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

("declaration of identity")

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

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

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

Action to be taken before the poll

22. List of eligible voters

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

22.2 The list is to include, for each member:

- (a) a postal address; and,
- (b) the member's e-mail address, if this has been provided

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

sent.

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

23. Notice of poll

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

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

24. Issue of voting information by returning officer

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

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

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

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

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

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

for the purposes of the poll.

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

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

25. Ballot paper envelope and covering envelope

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

25.2 The covering envelope is to have:

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

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

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

26. E-voting systems

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

26.2 If telephone voting is a method of polling for the relevant election then the returning officer must provide an automated telephone system for the purpose of voting by the use of a touch-tone telephone (in these rules referred to as "the telephone voting facility").

26.3 If text message voting is a method of polling for the relevant election then the returning officer must provide an automated text messaging system for the purpose of voting by text message (in these rules referred to as "the text message voting facility").

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

- (f) prevent any voter from voting after the close of poll.

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

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

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

The poll

27. Eligibility to vote

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

28. Voting by persons who require assistance

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

29. Spoilt ballot papers and spoilt text message votes

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

text message votes”):

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

30. Lost voting information

30.1 Where a voter has not received his or her voting information by the tenth day before the close of the poll, that voter may apply to the returning officer for replacement voting information.

30.2 The returning officer may not issue replacement voting information in respect of lost voting information unless he or she:

- (a) is satisfied as to the voter’s identity,
- (b) has no reason to doubt that the voter did not receive the original voting information,
- (c) has ensured that no declaration of identity, if required, has been returned.

30.3 After issuing replacement voting information in respect of lost voting information, the returning officer shall enter in a list (“the list of lost ballot documents”):

- (a) the name of the voter
- (b) the details of the unique identifier of the replacement ballot paper, if applicable, and
- (c) the voter ID number of the voter.

31. Issue of replacement voting information

31.1 If a person applies for replacement voting information under rule 29 or 30 and a declaration of identity has already been received by the returning officer in the name of that voter, the returning officer may not issue replacement voting information unless, in addition to the requirements imposed by rule 29.3 or 30.2, he or she is also satisfied that that person has not already voted in the election, notwithstanding the fact that a declaration of identity if required has already been received by the returning officer in the name of that voter.

- 31.2 After issuing replacement voting information under this rule, the returning officer shall enter in a list (“the list of tendered voting information”):
- (a) the name of the voter,
 - (b) the unique identifier of any replacement ballot paper issued under this rule;
 - (c) the voter ID number of the voter.

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

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

Polling by internet, telephone or text

33. Procedure for remote voting by internet

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

34. Voting procedure for remote voting by telephone

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

number provided in the voter information using a telephone with a touch-tone keypad.

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

35. Voting procedure for remote voting by text message

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

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

36. Receipt of voting documents

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

36.2 The returning officer may open any covering envelope or any ballot paper envelope for the purposes of rules 37 and 38, but must make arrangements to ensure that no person obtains or communicates information as to:

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

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

37. Validity of votes

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

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

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

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

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

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

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

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

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

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

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

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

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 spoiled ballot papers and the list of spoiled text message votes,
- (d) the list of lost ballot documents,
- (e) the list of eligible voters, and

(f) the list of tendered voting information

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

PART 6: COUNTING THE VOTES

STV41. Interpretation of Part 6

STV41.1 In Part 6 of these rules:

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

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

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

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

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

“non-transferable vote” means a ballot document:

(a) on which no second or subsequent preference is recorded for a continuing candidate,

or

(b) which is excluded by the returning officer under rule STV49,

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

(a) “first preference” means the figure “1” or any mark or word which clearly indicates a first (or only) preference,

(b) “next available preference” means a preference which is the second, or as the case may be, subsequent preference recorded in consecutive order for a continuing candidate (any candidate who is deemed to be elected or is excluded thereby being

ignored); and

- (c) in this context, a “second preference” is shown by the figure “2” or any mark or word which clearly indicates a second preference, and a third preference by the figure “3” or any mark or word which clearly indicates a third preference, and so on,

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

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

“*stage of the count*” means:

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

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

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

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

42. Arrangements for counting of the votes

42.1 The returning officer is to make arrangements for counting the votes as soon as is practicable after the close of the poll.

42.2 The returning officer may make arrangements for any votes to be counted using vote counting software where:

- (a) the board of directors and the council of governors of the corporation have approved:
 - (i) the use of such software for the purpose of counting votes

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

43. The count

43.1 The returning officer is to:

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

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

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

STV44. Rejected ballot papers and rejected text voting records

STV44.1 Any ballot paper:

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

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

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

STV44.3 Any text voting record:

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

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

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

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

FPP44. Rejected ballot papers and rejected text voting records

FPP44.1 Any ballot paper:

- (a) which does not bear the features that have been incorporated into the other ballot papers to prevent them from being reproduced,
- (b) on which votes are given for more candidates than the voter is entitled to vote,

- (c) on which anything is written or marked by which the voter can be identified except the unique identifier, or
- (d) which is unmarked or rejected because of uncertainty,

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

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

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

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

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

FPP44.4 The returning officer is to:

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

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

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

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

FPP44.6 Any text voting record:

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

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

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

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

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

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

FPP44.9 The returning officer is to:

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

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

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

(c) unmarked or rejected because of uncertainty,

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

STV45. First stage

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

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

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

STV46. The quota

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

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

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

STV47. Transfer of votes

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

(a) according to next available preference given on those ballot documents for any continuing candidate, or

- (b) where no such preference is given, as the sub-parcel of non-transferable votes.
- STV47.2 The returning officer is to count the number of ballot documents in each parcel referred to in rule STV47.1.
- STV47.3 The returning officer is, in accordance with this rule and rule STV48, to transfer each sub-parcel of ballot documents referred to in rule STV47.1(a) to the candidate for whom the next available preference is given on those ballot documents.
- STV47.4 The vote on each ballot document transferred under rule STV47.3 shall be at a value (“the transfer value”) which:
 - (a) reduces the value of each vote transferred so that the total value of all such votes does not exceed the surplus, and
 - (b) is calculated by dividing the surplus of the candidate from whom the votes are being transferred by the total number of the ballot documents on which those votes are given, the calculation being made to two decimal places (ignoring the remainder if any).
- STV47.5 Where at the end of any stage of the count involving the transfer of ballot documents, the number of votes for any candidate exceeds the quota, the returning officer is to sort the ballot documents in the sub-parcel of transferred votes which was last received by that candidate into separate sub-parcels so that they are grouped:
 - (a) according to the next available preference given on those ballot documents for any continuing candidate, or
 - (b) where no such preference is given, as the sub-parcel of non-transferable votes.
- STV47.6 The returning officer is, in accordance with this rule and rule STV48, to transfer each sub-parcel of ballot documents referred to in rule STV47.5(a) to the candidate for whom the next available preference is given on those ballot documents.
- STV47.7 The vote on each ballot document transferred under rule STV47.6 shall be at:
 - (a) a transfer value calculated as set out in rule STV47.4(b), or
 - (b) at the value at which that vote was received by the candidate from

whom it is now being transferred,

whichever is the less.

- STV47.8 Each transfer of a surplus constitutes a stage in the count.
- STV47.9 Subject to rule STV47.10, the returning officer shall proceed to transfer transferable ballot documents until no candidate who is deemed to be elected has a surplus or all the vacancies have been filled.
- STV47.10 Transferable ballot documents shall not be liable to be transferred where any surplus or surpluses which, at a particular stage of the count, have not already been transferred, are:
- (a) less than the difference between the total vote then credited to the continuing candidate with the lowest recorded vote and the vote of the candidate with the next lowest recorded vote, or
 - (b) less than the difference between the total votes of the two or more continuing candidates, credited at that stage of the count with the lowest recorded total numbers of votes and the candidate next above such candidates.
- STV47.11 This rule does not apply at an election where there is only one vacancy.

STV48. Supplementary provisions on transfer

- STV48.1 If, at any stage of the count, two or more candidates have surpluses, the transferable ballot documents of the candidate with the highest surplus shall be transferred first, and if:
- (a) The surpluses determined in respect of two or more candidates are equal, the transferable ballot documents of the candidate who had the highest recorded vote at the earliest preceding stage at which they had unequal votes shall be transferred first, and
 - (b) the votes credited to two or more candidates were equal at all stages of the count, the returning officer shall decide between those candidates by lot, and the transferable ballot documents of the candidate on whom the lot falls shall be transferred first.
- STV48.2 The returning officer shall, on each transfer of transferable ballot documents under rule STV47:
- (a) record the total value of the votes transferred to each candidate,

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

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

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

STV49. Exclusion of candidates

STV49.1 If:

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

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

- STV9.2 The returning officer shall sort all the ballot documents on which first preference votes are given for the candidate or candidates excluded under rule STV49.1 into two sub-parcels so that they are grouped as:
- (a) ballot documents on which a next available preference is given, and
 - (b) ballot documents on which no such preference is given (thereby including ballot documents on which preferences are given only for candidates who are deemed to be elected or are excluded).
- STV49.3 The returning officer shall, in accordance with this rule and rule STV48, transfer each sub-parcel of ballot documents referred to in rule STV49.2 to the candidate for whom the next available preference is given on those ballot documents.
- STV49.4 The exclusion of a candidate, or of two or more candidates together, constitutes a further stage of the count.
- STV49.5 If, subject to rule STV50, one or more vacancies still remain to be filled, the returning officer shall then sort the transferable ballot documents, if any, which had been transferred to any candidate excluded under rule STV49.1 into sub- parcels according to their transfer value.
- STV49.6 The returning officer shall transfer those ballot documents in the sub-parcel of transferable ballot documents with the highest transfer value to the continuing candidates in accordance with the next available preferences given on those ballot documents (thereby passing over candidates who are deemed to be elected or are excluded).
- STV49.7 The vote on each transferable ballot document transferred under rule STV49.6 shall be at the value at which that vote was received by the candidate excluded under rule STV49.1.
- STV9.8 Any ballot documents on which no next available preferences have been expressed shall be set aside as non-transferable votes.
- STV49.9 After the returning officer has completed the transfer of the ballot documents in the sub-parcel of ballot documents with the highest transfer value he or she shall proceed to transfer in the same way the sub-parcel of ballot documents with the next highest value and so on until he has dealt with each sub-parcel of a candidate excluded under rule STV49.1.
- STV49.10 The returning officer shall after each stage of the count completed

under this rule:

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

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

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

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

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

STV50. Filling of last vacancies

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

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

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

STV51. Order of election of candidates

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

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

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

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

FPP51. Equality of votes

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

PART 7: FINAL PROCEEDINGS IN CONTESTED AND UNCONTESTED ELECTIONS

FPP52. Declaration of result for contested elections

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

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

FPP52.2 The returning officer is to make:

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

available on request.

STV52. Declaration of result for contested elections

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

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

STV52.2 The returning officer is to make:

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

available on request.

53. Declaration of result for uncontested elections

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

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

PART 8: DISPOSAL OF DOCUMENTS

54. Sealing up of documents relating to the poll

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

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

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

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

- (a) the disqualified documents, with the list of disqualified documents inside it,
- (b) the list of 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,
- (d) production or opening,

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

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

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

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

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

PART 9: DEATH OF A CANDIDATE DURING A CONTESTED ELECTION

FPP59. Countermand or abandonment of poll on death of candidate

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

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

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

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

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

STV59. Countermand or abandonment of poll on death of candidate

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

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

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

PART 10: ELECTION EXPENSES AND PUBLICITY

Election expenses

60. Election expenses

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

61. Expenses and payments by candidates

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

62. Election expenses incurred by other persons

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

Publicity

63. Publicity about election by the corporation

63.1 The corporation may:

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

as it considers necessary.

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

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

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

64. Information about candidates for inclusion with voting information

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

64.2 The information must consist of:

- (a) a statement submitted by the candidate of no more than 250

words,

- (b) if voting by telephone or text message is a method of polling for the election, the numerical voting code allocated by the returning officer to each candidate, for the purpose of recording votes using the telephone voting facility or the text message voting facility (“numerical voting code”), and
- (c) a photograph of the candidate.

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

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

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

PART 11: QUESTIONING ELECTIONS AND THE CONSEQUENCE OF IRREGULARITIES

66. Application to question an election

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

PART 12: MISCELLANEOUS

67. Secrecy

67.1 The following persons:

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

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

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

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

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

68. Prohibition of disclosure of vote

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

69. Disqualification

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

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

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

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

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

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

ANNEX 10 –TRANSITIONAL PROVISIONS**1. Interim Directors**

- 1.1 The Interim Directors shall exercise the functions of the Trust on its behalf until such time as the Board of Directors is appointed in accordance with this Constitution.
- 1.2 The Interim Directors shall comply with this Constitution in exercising the functions of the Trust as if they were the Directors.
- 1.3 This Constitution shall apply to the Interim Directors as if they were the Directors.

2. Initial Governors

- 2.1 The Initial Governors term of office will commence on the date notified to them by the Trust in writing and shall be for the terms set out below. Any Initial Governor who is elected to serve a further term of office thereafter will serve a term of three years:
- 2.2 For the Sunderland Public Constituency, the three governors that poll the highest number of votes will serve a term of office of three years. The three governors polling the next highest number of votes will serve a term of two years.
- 2.3 For the South Tyneside Public Constituency, the three governors that poll the highest number of votes will serve a term of office of three years. The three governors polling the next highest number of votes will serve a term of two years.
- 2.4 The governors elected to represent the Gateshead Public Constituency, the Durham Public Constituency and the Rest of North East and Cumbria Public Constituency shall draw lots to determine their term of office. Two of these public governors shall serve a term of three years and one of these public governors shall serve a term of two years.
- 2.5 For the Clinical Acute Staff (excluding Medical and Dental and Clinical Community Staff) class the governor that polls the highest number of votes will serve a term of office of three years. The governor polling the next highest number of votes will serve a term of two years.
- 2.6 For the Non-Clinical Staff class the governor that polls the highest number of votes will serve a term of office of three years. The governor polling the next highest number of votes will serve a term of two years.
- 2.7 The governors elected to represent the Medical and Dental Staff class and Clinical Community Staff (excluding Medical and Dental and Clinical Acute Staff) class shall draw lots to determine their term of office. One of these staff

governors shall serve a term of three years and the other shall serve a term of two years.

2.8 All Appointed Governors shall have an initial term of 3 years.