

CONSTITUTION

April 2013

Approved:

Board of Directors – 28th March 2013

Council of Governors – 17th April 2013

Notified:

Independent Regulator - 22nd April 2013

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1. Definition

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

“the 2006 Act”	means the National Health Service Act 2006;
“the 2012 Act”	means the Health and Social Care Act 2012;
“The 1977 Act”	means the National Health Service Act 1977;
“Appointed Governors”	means those Governors appointed by the Appointing Organisations;
“Appointing Organisations”	means those organisations named in this constitution that are entitled to appoint Governors;
“Areas of the Foundation Trust”	means the four public constituencies specified in Annex 1, which are referred to in this constitution as “Public, Service Users and Carers constituencies”;
“Authorisation”	means the terms of authorisation given by the Independent Regulator under section 35 of the 2006 Act;
“Board of Directors”	means the Board of Directors as constituted in accordance with this constitution;
“CCG Governor”	means a Governor appointed by a Clinical Commissioning Group for which the Foundation Trust provides goods or services;

“Council of Governors”	means the Council of Governors of the Foundation Trust as constituted in accordance with this constitution;
“Director”	means a member of the Board of Directors as constituted in accordance with this constitution;
“Elected Governors”	means those Governors elected by the Public, Service Users and Carers constituencies and the classes of the staff constituency;
“Financial Auditor”	means the person appointed to audit the accounts of the Foundation Trust, who is called the auditor in the 2006 Act;
“Financial year”	means: <ul style="list-style-type: none"> (a) a period beginning with the date on which the Foundation Trust is authorised and ending with the next 31 March; and (b) each successive period of twelve months beginning with 1 April.
“the Foundation Trust”	means South Staffordshire and Shropshire Healthcare NHS Foundation Trust;
“Independent Regulator”	means the body corporate known as Monitor, as provided by Section 61 of the 2012 Act;
“Local Authority Governor”	means a Governor appointed by one or more local authorities whose area includes the whole or part of one of the areas of the Foundation Trust;
“Member”	means a member of the Foundation Trust;
“Partner”	means, as their husband or wife, or common law husband or wife, or same sex partner;
“Partnership Governor”	means a member of the Council of Governors appointed by a partnership organisation;

“Public, Service Users and Carers Constituency”	means a public constituency of the Foundation Trust;
“Public, Service Users and Carers Governor”	means a Governor elected by a Public, Service Users and Carers Constituency;
“Secretary”	means the secretary of the Foundation Trust or any other person appointed to perform the duties of the secretary, including a joint, assistant or deputy secretary;
“Staff Governor”	means a Governor elected by the members of one of the classes of the staff constituency.

2. Name and Status

- 2.1 The name of this Foundation Trust is to be South Staffordshire and Shropshire Healthcare NHS Foundation Trust. The Foundation Trust is a public benefit corporation authorised under the 2006 Act.

3. Principal Purpose

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

4. Other Purposes

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

5. Powers

- 5.1 The Foundation Trust may do anything which appears to it to be necessary or desirable for the purposes of or in connection with its functions.
- 5.2 In particular it may:
- 5.2.1 acquire and dispose of property,
 - 5.2.2 enter into contracts,
 - 5.2.3 accept gifts of property (including property to be held on trust for the purposes of the Foundation Trust or for any purposes relating to the health service),
 - 5.2.4 employ staff.
 - 5.2.5 assume responsibility for the services provided by other NHS Trusts.
- 5.3 Any power of the Foundation Trust to pay remuneration and allowances to any person includes the power to make arrangements for providing, or securing the provision of pensions or gratuities (including those payable by way of compensation for loss of employment or loss or reduction of pay).
- 5.4 The Foundation Trust may borrow money for the purposes of or in connection with its functions, subject to the limit published by the Independent Regulator from time to time.
- 5.5 The Foundation Trust may invest money (other than money held by it as trustee) for the purposes of or in connection with its functions. The investment may include investment by:
- 5.5.1 forming, or participating in forming bodies corporate.
 - 5.5.2 otherwise acquiring membership of bodies corporate.
- 5.6 The Foundation Trust may give financial assistance (whether by way of loan, guarantee or otherwise) to any person for the purposes of or in connection with its functions.
- 5.7 Without prejudice to the generality of the foregoing and subject to the 2006 Act and to any restrictions in the Independent Regulator's Authorisation, the Foundation Trust may also:

- 5.7.1 enter into, carry on and participate in financial transactions, dealings and operations of all kinds and take any steps which may be considered expedient to effect such transactions, dealings and operations including, but not limited to, borrowing and lending money and entering into contracts and arrangements of all kinds and guaranteeing or otherwise ordering or securing the liabilities and obligations or payment of monies by any person, firm or company including, but not limited to, any company which is for the time being a subsidiary (as defined by Section 736 of the Companies Act 1985) of the Foundation Trust or is otherwise associated with the Foundation Trust in its activities;
- 5.7.2 act and continue to act as trustee of charitable and other trusts and funds, including but not limited to those trusts and funds of which the Foundation Trust is a trustee at the date of adoption of this constitution;
- 5.7.3 appoint any person or persons, firm or firms, company or companies to be the agent or agents or attorneys of the Foundation Trust and to act as agents, managers, secretaries, contractors or in a similar capacity;
- 5.7.4 establish and maintain for the benefit of current and former Directors, Governors and other officers of the Foundation Trust and employees of the Foundation Trust, and their families (including former spouses) and dependents, insurance and pension or superannuation funds and to grant pensions, emoluments, allowances, donations, gratuities, loans and bonuses to such persons;
- 5.7.5 establish, maintain and support institutions (including but not limited to research institutions), associations, societies, clubs or other establishments, the support of which may, in the opinion of the Board of Directors be calculated directly or indirectly to benefit the Foundation Trust, or may be connected with any of the areas of the Foundation Trust or any other place where the Foundation Trust carries on business or otherwise connected in any way with any activities of the Foundation Trust;
- 5.7.6 join, participate in and to subsidise or assist any organisation of employers or employees or a trade association relevant to the activities of the Foundation Trust;
- 5.7.7 take, make, execute, enter into, commence, carry on, prosecute and defend all steps, claims, demands, contracts, agreements, negotiations, legal and other proceedings, compromises, arrangements and schemes, and do all other acts, matters and things which shall at any time appear conducive or expedient for the advantage or protection of the Foundation Trust;
- 5.7.8 take all and any action required or permitted by sections 44 and 45 of the 2003 Act, section 43 of the 2006 Act, section 26 of the Health Act 1999 and section 11(2) of the Health and Social Care

Act 2001, all as amended from time to time and insofar as the same apply to the Foundation Trust;

- 5.7.9 undertake any activities which promote or further the purposes set out at paragraphs 3.1 and 4 and the foregoing paragraphs of this paragraph 5.

6. Framework

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

Members

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

Board of Directors

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

Council of Governors

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

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

7. Members

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

Public, Patient and Carers constituencies

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

- 7.4 The minimum number of members for each of the Public, Service Users and Carers constituencies is set out in column 2 of Part 1 of Annex 1

Staff constituency

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

8. Disqualification from membership

- 8.1 The Board may exercise its discretion as to whether or not to allow a person to become a Member of the Foundation Trust if within the last five years they have been involved as a perpetrator in a serious incident of violence at any NHS hospital or facilities or against any of the Foundation Trust's employees or other persons who exercise functions for the purposes of the Foundation Trust, or against registered volunteers.

9. Termination of membership

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

10. Council of Governors

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

- 10.4.6 nine Partnership Governors who may be appointed by Partnership Organisations.
- 10.5 The Partnership Organisations that may appoint a Partnership Governor (and the number of governors each may appoint) are:
 - 10.5.1 one appointed Governor to be appointed by Staffordshire University in consultation with Keele University, Wolverhampton University, Birmingham University and Harper Adams University College (or other key Universities).
 - 10.5.2 one appointed Governor to be appointed by Her Majesty's Prison Service.
 - 10.5.3 one appointed Governor to be appointed by Housing Plus.
 - 10.5.4 one appointed Governor to be appointed by Age UK – South Staffordshire.
 - 10.5.5 one appointed Governor to be appointed by MIND (Mid Staffordshire Branch).
 - 10.5.6 one appointed Governor to be appointed by Shropshire and Telford & Wrekin Voluntary Sector Mental Health Forum in consultation with its member organisations.
 - 10.5.7 one appointed Governor to be appointed by The Carers Association (Southern Staffordshire Branch).
 - 10.5.8 one appointed Governor to be appointed by Shropshire Clinical Commissioning Group in consultation with Telford and Wrekin Clinical Commissioning Group.
 - 10.5.9 one appointed Governor to be appointed by the Clinical Commissioning Group with the lead for mental health in consultation with other Clinical Commissioning Groups in South Staffordshire (being one of Cannock Chase Clinical Commissioning Group, East Staffordshire Clinical Commissioning Group, South East Staffordshire and Seisdon Peninsula Clinical Commissioning Group and Stafford and Surrounds Clinical Commissioning Group).

A summary of the Appointed Governors is set out in Part 3 of Annex 1.

- 10.6 Public, Service Users and Carers Governors are to be elected by members of their Public, Service Users and Carers constituency, and Staff Governors are to be elected by members of their class of the staff constituency. Each class/constituency may elect any of their number to be a Governor in accordance with the provisions of this constitution.
- 10.7 If contested, the elections must be by secret ballot.

- 10.8 Elections shall be carried out in accordance with the rules set out in Annex 2. The Council of Governors will decide which of the two voting methods set out in Annex 2 is to be used.
- 10.9 A member of a Public, Service Users and Carers constituency may not vote at an election for a Public, Service Users and Carers Governor unless within twenty-one days before they vote they have made a declaration in the form specified by the Secretary that they are qualified to vote as a member of the relevant Public, Service Users and Carers constituency. It is an offence to knowingly or recklessly make such a declaration which is false in a material particular.

Appointment of Deputy Chairman of the Council of Governors

- 10.10 The Council of Governors shall appoint one of the Governors to be Deputy Chairman of the Council of Governors.

Terms of office for Governors

- 10.11 Elected Governors:
- 10.11.1 shall normally hold office for a period of three years commencing immediately after the annual members meeting at which their election is announced;
 - 10.11.2 are eligible for re-election at the end of that period;
 - 10.11.3 may not hold office for more than 10 consecutive years.
- 10.12 Appointed Governors shall hold office until their appointment is terminated by their Appointing Organisation.
- 10.13 For the purposes of these provisions concerning terms of office for Governors, "year" means a period commencing immediately after the conclusion of the annual meeting, and ending at the conclusion of the next annual meeting.

Eligibility to be a Governor

- 10.14 A person may not become a Governor of the Foundation Trust, and if already holding such office will immediately cease to do so if:
- 10.14.1 they are under sixteen years of age;
 - 10.14.2 being a member of one of the Public, Service Users and Carers constituencies, they refuse to sign a declaration in the form specified by the Secretary of particulars of their qualification to vote as a Member of the Foundation Trust, and that they are not prevented from being a member of the Council of Governors.
 - 10.14.3 they have been adjudged bankrupt or their estate has been sequestrated and in either case they have not been discharged;

- 10.14.4 they have made a composition or arrangement with, or granted a trust deed for, their creditors and have not been discharged in respect of it;
 - 10.14.5 they have within the preceding five years been convicted in the British Islands of any offence, and a sentence of imprisonment (whether suspended or not) for a period of three months or more was imposed or are currently serving a term of imprisonment;
 - 10.14.6 they have within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with a health service body;
 - 10.14.7 they are a person whose tenure of office as the Chairman or as a member or director of a health service body has been terminated on the grounds that their appointment is not in the interests of the health service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest;
 - 10.14.8 they have had their name removed, by a direction under section 46 of the 1977 Act from any list prepared under Part II of that Act or has otherwise been suspended or disqualified from any healthcare profession, and have not subsequently had their name included in such a list or had their suspension lifted or qualification re-instated (as applicable); or
 - 10.14.9 their name is on the Sex Offenders Register.
- 10.15 A person may not become an Elected Governor of the Foundation Trust, and if already holding such office will immediately cease to do so if:
- 10.15.1 they are a Director of the Foundation Trust, or a governor or director of an NHS Organisation or another NHS foundation Trust;
 - 10.15.2 they are a member of a Patient's Forum of an NHS body;
 - 10.15.3 they are the spouse, Partner, parent or child of a member of the Board of Directors of the Foundation Trust;
 - 10.15.4 they are a member of a local authority's Scrutiny Committee covering health matters.

Termination of office and removal of Governors

- 10.16 A person holding office as a Governor shall immediately cease to do so if:
- 10.16.1 they resign by notice in writing to the Secretary;
 - 10.16.2 they fail to attend three consecutive meetings, unless the other Governors are satisfied that:

- 10.16.2.1 the absences were due to reasonable causes; and
 - 10.16.2.2 they will be able to start attending meetings of the Foundation Trust again within such a period as they consider reasonable.
 - 10.16.3 in the case of an Elected Governor, they cease to be a member of the constituency or class of the constituency by which they were elected;
 - 10.16.4 in the case of an Appointed Governor, the Appointing Organisation terminates the appointment;
 - 10.16.5 they have refused to undertake any training which the Council of Governors requires all Governors to undertake;
 - 10.16.6 they have failed to sign and deliver to the Secretary a statement in the form required by the Secretary confirming acceptance of the code of conduct for Governors;
 - 10.16.7 they are removed from the Council of Governors under the following provisions.
- 10.17 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 they have
- 10.17.1 committed a serious breach of the code of conduct, or
 - 10.17.2 acted in a manner detrimental to the interests of the Foundation Trust; and
 - 10.17.3 the Council of Governors consider that it is not in the best interests of the Foundation Trust for them to continue as a Governor.

Vacancies amongst Governors

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

seat will fall vacant and subject to election for any un-expired period of the term of office.

Expenses and remuneration of Governors

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

Duties of Governors

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

Meetings of the Council of Governors

- 10.25 The Council of Governors is to meet at least four times in each financial year. Save in the case of emergencies or the need to conduct urgent business, the Secretary shall give at least 14 days written notice of the date and place of every meeting of the Council of Governors to all Governors. Notice will also be published in a local newspaper or newspapers circulating in the area served by the Foundation Trust, and on the Foundation Trust's website.
- 10.26 Meetings of the Council of Governors may be called by the Secretary, or by the Chairman, or by 16 Governors (including at least 10 Elected Governors and 6 Appointed Governors) who give written notice to the Secretary specifying the business to be carried out. The Secretary shall send a written notice to all Governors as soon as possible after receipt of such a request. The Secretary shall call a meeting on at least 7 but not more than 14 days' notice to discuss the specified business. If the Secretary fails to call such a meeting then the Chairman or four board members, whichever is the case, shall call such a meeting.
- 10.27 All meetings of the Council of Governors are to be general meetings open to members of the public unless the Council of Governors decides otherwise in relation to all or part of a meeting for reasons of commercial confidentiality or on other proper grounds. The Chairman may exclude any member of the public from a meeting of the Council of Governors if they are interfering with or preventing the proper conduct of the meeting.
- 10.28 Not less than one third of all Governors including not less than one third of Public, Service Users and Carers Governors, not less than one third of

Staff Governors and not less than one third of Appointed Governors shall form a quorum.

- 10.29 The Chairman of the Foundation Trust or, in their absence one of the non-executive Directors is to preside at meetings of the Council of Governors. If the person presiding at any such meeting has a conflict of interest in relation to the business being discussed, the Deputy Chairman of the Council of Governors will chair that part of the meeting.
- 10.30 The Council of Governors may invite the Chief Executive or any other member or members of the Board of Directors, or a representative of the Foundation Trust's auditor or other advisors to attend a meeting of the Council of Governors.
- 10.31 The Council of Governors may agree that its members can participate in its meetings by telephone, video or computer link. Participation in a meeting in this manner shall be deemed to constitute presence in person at the meeting.
- 10.32 Subject to this constitution including the following provisions of this paragraph, questions arising at a meeting of the Council of Governors shall be decided by a majority of votes.
- 10.32.1 In case of an equality of votes the Chairman of the meeting shall have a casting vote.
- 10.32.2 No resolution of the Council of Governors shall be passed if it is opposed by all of the Public, Service Users and Carers Governors present.
- 10.33 The Council of Governors may not delegate any of its powers to a committee or sub-committee, but it may appoint committees consisting of its members, Directors, and other persons to assist the Council of Governors in carrying out its functions. The Council of Governors may, through the Secretary, request that advisors assist them or any committee they appoint in carrying out its duties.
- 10.34 All decisions taken in good faith at a meeting of the Council of Governors or of any committee shall be valid even if it is discovered subsequently that there was a defect in the calling of the meeting, or the appointment of the Governors attending the meeting.
- 10.35 For the purpose of obtaining information about the Foundation Trust's performance of its functions or the directors' performance of their duties (and deciding whether to propose a vote on the Foundation Trust's or directors' performance), the Council of Governors may require one or more of the directors to attend a meeting.

Referral to the Panel

- 10.36 In this paragraph, the Panel means a panel of persons appointed by the Independent Regulator to which a governor of an NHS foundation trust may refer a question as to whether the trust has failed or is failing –
- 10.36.1 to act in accordance with its constitution, or

- 10.36.2 to act in accordance with provision made by or under Chapter 5 of the 2006 Act.
- 10.37 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.

Disclosure of interests

- 10.38 Any Governor who has a material interest in a matter as defined below shall declare such interest to the Council of Governors and:
- 10.38.1 shall withdraw from the meeting and play no part in the relevant discussion or decision
- 10.38.2 shall not vote on the issue (and if by inadvertence they do remain and vote, their vote shall not be counted).
- 10.39 Any Governor who fails to disclose any interest required to be disclosed under the preceding paragraph must permanently vacate their office if required to do so by a majority of the remaining Governors.
- 10.40 Subject to the exceptions below, a material interest is
- 10.40.1 any directorship of a company;
- 10.40.2 any interest held by a Governor in any firm or company or business which, in connection with the matter, is trading with the Foundation Trust, or is likely to be considered as a potential trading partner with the Foundation Trust;
- 10.40.3 any interest in an organisation providing health and social care services to the National Health Service;
- 10.40.4 a position of authority in a charity or voluntary organisation in the field of health and social care.
- 10.41 The exceptions which shall not be treated as material interests are as follows:
- 10.41.1 shares not exceeding 2% of the total shares in issue held in any company whose shares are listed on any public exchange;
- 10.41.2 an employment contract held by staff Governors;
- 10.41.3 a contract with their CCG held by a CCG Governor;
- 10.41.4 an employment contract with a local authority held by a local authority Governor;
- 10.41.5 an employment contract with a partnership organisation held by a Partnership Governor.
- 10.42 The Council of Governors is to adopt its own standing orders for its practice and procedure, in particular for its procedure at meetings.

Declaration

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

Validity of Acts

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

11. Board of Directors

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

- 11.2 The board is to include:

11.2.1 the following non-executive Directors:

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

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

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

11.2.2 the following executive Directors:

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

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

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

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

Terms of Office

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

Disqualification

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

- of that Act or has otherwise been suspended or disqualified from any healthcare profession, and have not subsequently had their name included in such a list or had their suspension lifted or qualification re-instated (as applicable);
- 11.9.11 their name is on the Sex Offenders Register;
 - 11.9.12 they have within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with a health service body;
 - 11.9.13 in the case of a non-executive Director they have refused to fulfil any training requirement established by the Board of Directors; or
 - 11.9.14 they have refused to sign and deliver to the Secretary a statement in the form required by the Board of Directors confirming acceptance of the code of conduct for Directors.

Committees and delegation

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

Meeting of Directors

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

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

Roles and responsibilities

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

General Duty

- 11.26 The general duty of the Board of Directors and of each director individually is to act with a view to promoting the success of the Foundation Trust so as to

maximise the benefits for the member of the Foundation Trust as a whole and for the public.

Conflicts of Interest of Directors

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

- 11.35 A matter shall be authorised for the purposes of paragraph 11.28.2 if:
- 11.35.1 the Board of Directors by majority disapplies the provision of the constitution which would otherwise prevent a director from being counted as participating in the decision-making process;
 - 11.35.2 the director's interest cannot reasonably be regarded as likely to give rise to a conflict of interest; or
 - 11.35.3 the director's conflict of interest arises from a permitted cause (as determined by the Board of Directors from time to time).

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

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

Expenses

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

Acting Up

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

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

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

Honorary Titles

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

12. Secretary

- 12.1 The Foundation Trust shall have a Secretary who may be an employee. The Secretary may not be a Governor, or the Chief Executive or the Finance Director. The Secretary's functions shall include:
- 12.1.1. acting as Secretary to the Council of Governors and the Board of Directors, and any committees;
 - 12.1.2. summoning and attending all members meetings, meetings of the Council of Governors and the Board of Directors, and keeping the minutes of those meetings;
 - 12.1.3. keeping the register of members and other registers and books required by this constitution to be kept;
 - 12.1.4. having charge of the Foundation Trust's seal;
 - 12.1.5. publishing to Members in an appropriate form information which they should have about the Foundation Trust's affairs;
 - 12.1.6. preparing and sending to the Independent Regulator and any other statutory body all returns which are required to be made.
- 12.2 Minutes of every Members' meeting, of every meeting of the Council of Governors and of every meeting of the Board of Directors are to be kept. Minutes of meetings will be read at the next meeting and signed by the Chairman of that meeting. The signed minutes will be conclusive evidence of the events of the meeting.
- 12.3 The Secretary is to be appointed and removed by the Board of Directors.

13. Registers

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

14. Public Documents

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

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

15. Financial Auditor and Other External Auditors

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

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

16. Accounts

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

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

- 17.1 The Foundation Trust shall prepare an annual report and send it to the Independent Regulator.
- 17.2 The Foundation Trust shall give information as to its forward planning in respect of each financial year to the Independent Regulator.

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

18. Indemnity

- 18.1 Members of the Council of Governors and the Board of Directors and the Secretary who act honestly and in good faith will not have to meet out of their personal resources any personal civil liability which is incurred in the

execution or purported execution of their functions, save where they have acted recklessly. Any costs arising in this way will be met by the Foundation Trust. The Foundation Trust will ensure adequate insurance cover is in place for the benefit of the Council of Governors, the Board of Directors and the Secretary.

19. Execution of documents

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

20. Dispute Resolution Procedures

- 20.1 Every unresolved dispute which arises out of this constitution between the Foundation Trust and:
 - 20.1.1. a Member; or
 - 20.1.2. any person aggrieved who has ceased to be a Member within the six months prior to the date of the dispute; or
 - 20.1.3. any person bringing a claim under this constitution; or
 - 20.1.4. an office-holder of the Foundation Trustis to be submitted to the Secretary, in relation to 20.1.1, 20.1.2 or 20.1.3, or to the Chairman in the case of 20.1.4. In each case the decision of the Secretary or the Chairman (as the case may be) will be binding and conclusive on all parties.
- 20.2 Any person bringing a dispute must, if required to do so, deposit with the Foundation Trust a reasonable sum (not exceeding £250) to be determined by the Council of Governors and approved by the Secretary. The Secretary or Chairman (as the case may be) will decide how any costs of resolving the dispute will be paid and what should be done with the deposit.

21. Amendment of the Constitution

- 21.1 No amendment shall be made to this constitution unless:

- 21.1.1. it has been approved by a majority of those Governors present and voting at a meeting of the Council of Governors in accordance with this constitution; and
- 21.1.2. it has been approved by a majority of those Directors present and voting at a meeting of the Board of Directors in accordance with this constitution; and
- 21.2 Amendments by the Foundation Trust of its constitution are to be notified to the Independent Regulator. For the avoidance of doubt, the Independent Regulator's functions do not include a power or duty to determine whether or not the constitution, as a result of the amendments, accords with Schedule 7 of the 2006 Act.
- 21.3 Amendments made under paragraph 21.1 take effect as soon as the conditions in that paragraph are satisfied, but the amendment has no effect in so far as the constitution would, as a result of the amendment, not accord with schedule 7 of the 2006 Act.
- 21.4 Where an amendment is made to the constitution in relation to the powers or duties of the Council of Governors (or otherwise with respect to the role that the Council of Governors has as part of the Foundation Trust) –
 - 21.4.1. At least one member of the Council of Governors must attend the next Annual Members' Meeting and present the amendment, and
 - 21.4.2. The Foundation Trust must give the members an opportunity to vote on whether they approve the amendment.
- 21.5 If a majority of the members voting approve the amendment, the amendment continues to have effect; otherwise, it ceases to have effect and the Foundation Trust must take such steps as are necessary as a result.
- 21.6 No amendment shall be made to the provisions of this constitution concerning the Public, Service Users and Carers constituencies unless it has also been approved by a majority of the members of all of the Public, Service Users and Carers constituencies as may have voted at a members meeting.
- 21.7 No amendment shall be made to the provisions of this constitution concerning the staff constituency or the classes of the staff constituency unless it has also been approved by a majority of the members of all of the classes of the staff constituency as may have voted at a members meeting.

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

- 22.1 The Foundation Trust may only apply for a merger, acquisition, separation, or dissolution with the approval of more than half of the members of the Council of Governors.

22.2 The Foundation Trust may enter into a significant transaction only if a majority of the Council of Governors of the Foundation Trust voting approve entering into the transaction.

22.3 In paragraph 22.222.1, the following words have the following meanings:

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

22.3.1 the fixed asset test; and

22.3.2 the turnover test; and

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

The fixed asset test:

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

The turnover test:

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

The gross capital test:

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

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

A transaction:

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

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

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

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

The following diagram summarises the tests detailed above:

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

23. Head Office

23.1. The Foundation Trust's head office is at South Staffordshire and Shropshire Healthcare NHS Foundation Trust, Trust Headquarters, Corporation Street, Stafford, ST16 3SR.

24. Notices

24.1. Any notice required by this constitution to be given shall be given in writing or shall be given using electronic communications to an address for the time being notified for that purpose. "Address" in relation to electronic communications includes any number or address used for the purposes of such communications.

24.2. Proof that an envelope containing a notice was properly addressed, prepaid and posted shall be conclusive evidence that the notice was given. A notice shall be treated as delivered 48 hours after the envelope containing it was posted or, in the case of a notice contained in an electronic communication, 48 hours after it was sent.

ANNEX 1

South Staffordshire and Shropshire Healthcare NHS Foundation Trust

PART 1

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

Constituency	No. of Governors	No. of Members (min)
South Staffordshire	9	200
Shropshire/Telford and Wrekin	8	150
North Staffordshire	1	10
England and Wales excluding South Staffordshire, Shropshire/Telford and Wrekin and North Staffordshire	1	10
Total	19	360

PART 2

STAFF CONSTITUENCY

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

PART 3

APPOINTED GOVERNORS

Local Authority	No. of Governors
Staffordshire County Council in consultation with the Borough Councils and Unitary Authorities in South Staffordshire	1
Telford and Wrekin Council	1
Shropshire Council in consultation with Borough Councils and Unitary Authorities in Shropshire County	1
Partnership Organisation	-
Staffordshire University in consultation with Keele University, Wolverhampton University, Birmingham University and Harper Adams University College (or other key Universities)	1
Her Majesty's Prison Service	1
Housing Plus	1
Age UK – South Staffordshire	1
MIND (Mid Staffordshire Branch)	1
Shropshire and Telford & Wrekin Voluntary Sector Mental Health Forum in consultation with its member organisations	1
The Carers Association (Southern Staffordshire Branch)	1
Shropshire Clinical Commissioning Group in consultation with Telford and Wrekin Clinical Commissioning Group	1
The Clinical Commissioning Group with the lead for mental health in South Staffordshire in consultation with the other Clinical Commissioning Groups in South Staffordshire (being one of Stafford and Surrounds Clinical Commissioning Group, Cannock Chase Clinical Commissioning Group, East Staffordshire Clinical Commissioning Group and South East Staffs and Seisdon and Peninsula Clinical Commissioning Group)	1
Total	12

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Part 1 - Interpretation

1. Interpretation –

(1) In these rules, unless the context otherwise requires -

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

“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;

“the regulator” means the Independent Regulator for NHS foundation Trusts; and

“the 2003 Act” means the Health and Social Care (Community Health and Standards) Act 2003.

(2) Other expressions used in these rules and in Annex 1 to the Health and Social Care (Community Health and Standards) Act 2003 have the same meaning in these rules as in that Annex.

Part 2 – Timetable for election

2. Timetable - 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 papers to returning officer	Not later than the twenty eighth day before the day of the close of the poll.
Publication of statement of nominated candidates	Not later than the twenty seventh day before the day of the close of the poll.
Final day for delivery of notices of withdrawals by candidates from election	Not later than twenty fifth day before the day of the close of the poll.
Notice of the poll	Not later than the fifteenth day before the day of the close of the poll.
Close of the poll	By 5.00pm on the final day of the election.

3. Computation of time - (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.

(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 –

(1) Subject to rule 65, the returning officer for an election is to be appointed by the corporation.

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

5. Staff – Subject to rule 65, 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** - 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 corporation – 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 – 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 with that constituency,
- (c) the details of any nomination committee that has been established by the corporation,
- (d) the address and times at which nomination papers may be obtained;
- (e) the address for return of nomination papers, and the final date that they must be delivered to the returning officer,
- (f) the contact details of the returning officer, and
- (g) the date of the close of the poll in the event of a contest.

9. Nomination of candidates –

- (1) Each candidate must be nominated on a separate nomination paper.
- (2) The returning officer -
 - (a) is to supply any member of the corporation with as many nomination papers as may be required, and
 - (b) is to prepare a nomination paper 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.

10. Candidate's particulars –

- (1) The nomination paper must state the candidate's:
 - (a) full names,
 - (b) contact address in full, and
 - (c) constituency, or class within a constituency, which the candidate is a member of.

11. Subscription of nomination paper –

- (1) The nomination paper must be subscribed by at least two supporters.
- (2) Each supporter must –
 - (a) be a member of the same constituency, or class within a constituency, to which the candidate belongs, and
 - (b) state his or her constituency, or class within a constituency, on the nomination paper.
- (3) A member of the corporation must not subscribe more than one nomination paper.

(4) If a member of the corporation subscribes more than one nomination paper in contravention of paragraph (3), then the second and any further subscriptions received by the returning officer are invalid.

(5) Where a member of the corporation subscribes a nomination paper, and the candidate nominated in the paper dies or withdraws before the paper is received by the returning officer, then nothing in paragraphs (3) or (4) prevents that member from subscribing the nomination paper of another candidate.

12. Declaration of interests – The nomination paper 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.

13. Declaration of eligibility –

(1) The nomination paper must include a declaration made by the candidate –

- (a) of the particulars of his or her qualification to vote as a member of the constituency, or class within a constituency, for which the election is being held, and
- (b) that he or she is not prevented from being a member of the Council of Governors

(2) The declaration must be made by the candidate within 6 months of the close of the poll to be valid for the purposes of section 36(2) of the 2003 Act.

14. Signature of candidate – The nomination paper must be signed and dated by the candidate, indicating that –

- (a) the candidate consents to being nominated in the paper,
- (b) the statement of the interests of the candidate in the paper, as required by rule 12, is true and correct, and
- (c) the declaration of eligibility required by rule 13 is true and correct.

15. Decisions as to validity of nomination papers –

(1) Where a nomination paper is received by the returning officer in accordance with these rules, the candidate is deemed to stand for election as nominated unless and until -

- (a) the returning officer decides that the nomination paper is invalid,
- (b) proof is given to the returning officer's satisfaction that the candidate has died, or
- (c) the candidate withdraws.

(2) The returning officer is entitled to decide that a nomination paper is invalid only on one of the following grounds -

- (a) that the paper is not received on or before the final date for return of nomination papers, 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 is not subscribed as required by rule 11,
- (d) that the paper does not contain a declaration of the interests of the candidate, as required by rule 12,

- (e) that the paper does not include a declaration of eligibility as required by rule 13, or
- (f) that the paper is not signed and dated by the candidate, as required by rule 14.

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

(4) Where the returning officer decides that a nomination paper is invalid, he or she must endorse this on the paper, stating the reasons for the decision.

(5) The returning officer is to send notice of the decision as to whether a nomination paper is valid or invalid to the candidate, at the contact address given in the candidate's nomination paper.

16. Publication of statement of nominated candidates –

(1) The returning officer is to prepare and publish a statement showing the candidates who are standing for election as nominated.

(2) The statement must show –

- (a) the name, contact address, and constituency or class within a constituency of each candidate standing as nominated, and
- (b) the statement of interests of each candidate standing as nominated,

as given in their nomination paper.

(3) The statement must list the candidates standing for election in random order / in alphabetical order.

(4) If a candidate has been nominated by more than one nomination paper, the returning officer is to take the particulars required by this rule from one of the papers selected by the candidate, or by the returning officer in default of the candidate.

(5) The returning officer must send a copy of the statement of nominated candidates and copies of the nomination papers to the corporation as soon as is practicable after publishing the statement.

17. Inspection of statement of nominated candidates and nomination papers

(1) The corporation is to make the statement of nominated candidates and the nomination papers supplied by the returning officer under rule 16(5) available for inspection by members of the public free of charge at all reasonable times.

(2) If a person requests a copy or extract of the statement of nominated candidates or the nomination papers, the corporation is to provide that person with the copy or extract free of charge.

18. Withdrawal of candidates - A candidate may withdraw from election on or before the final day for withdrawal by candidates, by giving the returning officer a notice of withdrawal which is signed by that candidate and attested by a witness.

19. Method of election –

(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.

(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.

(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 the 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

20. Poll to be taken by ballot –

- (1) The votes at the poll must be given by ballot.
- (2) The votes are to be counted and the result of the poll determined in accordance with Part 6 of these rules.

21. The ballot paper –

- (1) The ballot of each voter 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.
- (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,
 - (f) that the ballot paper is to be returned by post, with the address for its return and the date of the close of the poll, and
 - (g) the contact details of the returning officer.
- (3) Each ballot paper must have a unique identifier.
- (4) Each ballot paper must have features incorporated into it to prevent it from being reproduced.

22. The declaration of identity –

- (1) A declaration of identity must be issued with each ballot paper.
- (2) The declaration of identity is to include a declaration –
 - (a) that the voter is the person to whom the ballot paper was addressed,
 - (b) that the voter has not marked or returned any other voting paper in the election, and

- (c) of the particulars of that member's qualification to vote as a member of the constituency or class within a constituency for which the election is being held.
- (3) The declaration of identity is to include space for –
- (a) the name of the voter,
 - (b) the address of the voter,
 - (c) the voter's signature, and
 - (d) the date that the declaration was made by the voter.
- (4) The declaration of identity must caution the voter that, if it is not returned with the ballot paper, or if it is returned without being correctly completed, the voter's ballot paper may be invalid.
- (5) The declaration of identity must be signed by the voter within six months of the close of the poll to be valid for the purposes of section 36(1) of the 2003 Act.

Action to be taken before the poll

23. List of eligible voters –

- (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 do not come within rule 27 (the "list of eligible voters"), as soon as is reasonably practicable after the final date for the delivery of notices of withdrawals by candidates from an election.
- (2) The list is to include, for each member, a mailing address where his or her ballot paper is to be sent.

24. Notice of poll - 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 within 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 by post,
- (f) the address for return of the ballot papers, and the date of the close of the poll,
- (g) the address and final dates for applications for replacement ballot papers, and
- (h) the contact details of the returning officer.

25. Issue of voting documents by returning officer –

- (1) 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 documents to each member of the corporation named in the list of eligible voters–
- (a) a ballot paper,
 - (b) a ballot paper envelope,
 - (c) a declaration of identity,
 - (d) information about each candidate standing for election, pursuant to rule 60 of these rules, and

- (e) a covering envelope.
- (2) The documents are to be sent to the mailing address for each member, as specified in the list of eligible voters.

26. Ballot paper envelope and covering envelope –

(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.

(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.

(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 declaration of identity, and
- (b) the ballot paper envelope, with the ballot paper sealed inside it.

The poll

27. Eligibility to vote – An individual who becomes a member of the corporation–

- (a) on the final date for the delivery of notices of withdrawals by candidates from an election, or
- (b) on any subsequent day of the election,

is not eligible to vote in that election.

28. Voting by persons who require assistance –

(1) The returning officer is to put in place arrangements to enable requests for assistance to vote to be made.

(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 –

(1) – If a voter has inadvertently dealt with his or her ballot paper in such a manner that it cannot be conveniently be used as a ballot paper (referred to a “spoilt ballot paper”), that voter may apply to the returning officer for a replacement ballot paper.

(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.

(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 declaration of identity attached to the original ballot paper has not been returned.

(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.

30. Lost ballot papers –

(1) Where a voter has not received his or her ballot paper by the fourth day before the close of the poll, that voter may apply to the returning officer for a replacement ballot paper.

(2) The returning officer may not issue a replacement ballot paper for a lost ballot paper 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 ballot paper, and
- (c) has ensured that the declaration of identity attached to the original ballot paper has not been returned.

(3) After issuing a replacement ballot paper for a lost ballot paper, the returning officer shall enter in a list ("the list of lost ballot papers") –

- (a) the name of the voter, and
- (b) the details of the unique identifier of the replacement ballot paper.

31. Double voting and personation –

(1) If a person applies for a replacement ballot paper 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 a replacement ballot paper unless, in addition to the requirements imposed rule 29(3) or 30(2), he or she is also satisfied that that person has not already voted in the election, notwithstanding the fact that a declaration of identity has already been received by the returning officer in the name of that voter.

(2) After issuing a replacement ballot paper under this rule, the returning officer shall enter in a list ("the list of tendered ballot papers") –

- (a) the name of the voter, and
- (b) the details of the unique identifier of the replacement ballot paper issued under this rule.

32. Declaration of identity for replacement ballot papers –

(1) A declaration of identity must be issued with each replacement ballot paper.

(2) The declaration of identity is to include a declaration –

- (a) that the voter has not voted in the election with any ballot paper other than the ballot paper being returned with the declaration, and
- (b) of the particulars of that member's qualification to vote as a member of the constituency, or class within a constituency, for which the election is being held.

(3) The declaration of identity is to include space for –

- (a) the name of the voter,
- (b) the address of the voter,
- (c) the voter's signature, and
- (d) the date that the declaration was made by the voter.

(4) The declaration of identity must caution the voter that, if it is not returned with the ballot paper, or if it is returned without being correctly completed, the replacement ballot paper may be invalid.

(5) The declaration of identity must be signed by the voter within six months of the close of the poll to be valid for the purposes of section 36(1) of the 2003 Act.

Procedure for receipt of envelopes

33. Receipt of voting documents –

- (1) Where the returning officer receives a –
- (a) covering envelope, or
 - (b) any other envelope containing a declaration of identity, 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 34 and 35 are to apply.

(2) The returning officer may open any ballot paper envelope for the purposes of rules 34 and 35, 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.

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

34. Validity of ballot paper –

(1) A ballot paper shall not be taken to be duly returned unless the returning officer is satisfied that it has been returned before the close of the poll, with a declaration of identity that has been correctly completed, signed, and dated.

(2) Where the returning officer is satisfied that paragraph (1) has been fulfilled, he or she is to –

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

(3) Where the returning officer is not satisfied that paragraph (1) has been fulfilled, he or she is to –

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

35. Declaration of identity but no ballot paper – Where the returning officer receives a declaration of identity but no ballot paper, the returning officer is to –

- (a) mark the declaration of identity “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 declaration of identity in a separate packet.

36. Sealing of packets – As soon as is possible after the completion of the procedure under rules 34 and 35, the returning officer is to seal the packets containing–

- (a) the disqualified documents, together with the list of disqualified documents inside it,

- (b) the declarations of identity,
- (c) the list of spoiled ballot papers,
- (d) the list of lost ballot papers,
- (e) the list of eligible voters, and
- (f) the list of tendered ballot papers.

Part 6 - Counting the votes

stv37. Interpretation of Part 6 – In Part 6 of these rules –

“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 paper –

- (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 stv44(4) below,

“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 stv42 below,

“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 papers 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 paper” means a ballot paper 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 paper on which a second or subsequent preference is recorded for the candidate to whom that paper has been transferred, and

“transfer value” means the value of a transferred vote calculated in accordance with paragraph (4) or (7) of rule stv43 below.

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

39. The count –

- (1) The returning officer is to –
 - (a) count and record the number of ballot papers that have been returned, and
 - (b) count the votes according to the provisions in this Part of the rules.

- (2) The returning officer, while counting and recording the number of ballot papers 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.

- (3) The returning officer is to proceed continuously with counting the votes as far as is practicable.

stv40. Rejected ballot papers –

- (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.

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

- (3) 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 paragraph (1).

fpp40. Rejected ballot papers –

- (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 paragraphs (2) and (3) below, be rejected and not counted.

(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.

(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.

(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 paragraph (2) or (3) above, endorse the words “rejected in part” on the ballot paper and indicate which vote or votes have been counted.

(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.

stv41. First stage –

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

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

(3) The returning officer is to also ascertain and record the number of valid ballot papers.

stv42. The quota –

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

(2) The result, increased by one, of the division under paragraph (1) above (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”).

(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 paragraphs (1) to (3) of rule stv45 has been complied with.

stv43. Transfer of votes –

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

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

(2) The returning officer is to count the number of ballot papers in each parcel referred to in paragraph (1) above.

(3) The returning officer is, in accordance with this rule and rule stv44 below, to transfer each sub-parcel of ballot papers referred to in paragraph (1)(a) to the candidate for whom the next available preference is given on those papers.

(4) The vote on each ballot paper transferred under paragraph (3) above 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 papers on which those votes are given, the calculation being made to two decimal places (ignoring the remainder if any).

(5) Where at the end of any stage of the count involving the transfer of ballot papers, the number of votes for any candidate exceeds the quota, the returning officer is to sort the ballot papers 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 papers for any continuing candidate, or
- (b) where no such preference is given, as the sub-parcel of non-transferable votes.

(6) The returning officer is, in accordance with this rule and rule stv44 below, to transfer each sub-parcel of ballot papers referred to in paragraph (5)(a) to the candidate for whom the next available preference is given on those papers.

(7) The vote on each ballot paper transferred under paragraph (6) shall be at –

- (a) a transfer value calculated as set out in paragraph (4)(b) above, 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.

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

(9) Subject to paragraph (10), the returning officer shall proceed to transfer transferable papers until no candidate who is deemed to be elected has a surplus or all the vacancies have been filled.

(10) Transferable papers 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.

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

stv44. Supplementary provisions on transfer –

(1) If, at any stage of the count, two or more candidates have surpluses, the transferable papers 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 papers 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 papers of the candidate on whom the lot falls shall be transferred first.

(2) The returning officer shall, on each transfer of transferable papers under rule stv43 above –

- (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.

(3) All ballot papers transferred under rule stv43 or stv45 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 paper or, as the case may be, all the papers in that sub-parcel.

(4) Where a ballot paper is so marked that it is unclear to the returning officer at any stage of the count under rule stv43 or stv45 for which candidate the next preference is recorded, the returning officer shall treat any vote on that ballot paper as a non-transferable vote; and votes on a ballot paper 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.

stv45. Exclusion of candidates –

(1) If—

- (a) all transferable papers which under the provisions of rule stv43 above (including that rule as applied by paragraph (11) below) and this rule are required to be transferred, have been transferred, and
- (b) subject to rule stv46 below, 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 paragraph (12) below applies, the candidates with the then lowest votes).

(2) The returning officer shall sort all the ballot papers on which first preference votes are given for the candidate or candidates excluded under paragraph (1) above into two sub-parcels so that they are grouped as—

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

(3) The returning officer shall, in accordance with this rule and rule stv44 above, transfer each sub-parcel of ballot papers referred to in paragraph (2)(a) above to the candidate for whom the next available preference is given on those papers.

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

(5) If, subject to rule stv46 below, one or more vacancies still remain to be filled, the returning officer shall then sort the transferable papers, if any, which had been transferred to any candidate excluded under paragraph (1) above into sub-parcels according to their transfer value.

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

(7) The vote on each transferable paper transferred under paragraph (6) above shall be at the value at which that vote was received by the candidate excluded under paragraph (1) above.

(8) Any papers on which no next available preferences have been expressed shall be set aside as non-transferable votes.

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

(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.

(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 paragraphs (5) to (10) of rule stv43 and rule stv44.

(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.

(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.

stv46. Filling of last vacancies –

(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.

(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.

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

stv47. Order of election of candidates –

(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 stv43(10) above.

(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.

(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.

(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.

fpp47. Equality of votes – 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

fpp48. Declaration of result for contested elections –

(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 South Staffordshire and Shropshire Healthcare NHS Foundation Trust by section 4(4) of the 2003 Act, to the chairman of the NHS Foundation 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.

(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 fpp40(5),

available on request.

stv48. Declaration of result for contested elections –

(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 South Staffordshire and Shropshire Healthcare NHS foundation Trust by section 4(4) of the 2003 Act, to the chairman of the NHS Foundation 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.
- (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 stv40(1),

available on request.

49. Declaration of result for uncontested elections – 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

50. Sealing up of documents relating to the poll – (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,
- (b) the ballot papers endorsed with “rejected in part”,
- (c) the rejected ballot papers, and
- (d) the statement of rejected ballot papers.

- (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 declarations of identity,
 - (c) the list of spoiled ballot papers,
 - (d) the list of lost ballot papers,
 - (e) the list of eligible voters, and
 - (f) the list of tendered ballot papers.

- (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.

51. Delivery of documents – Once the documents relating to the poll have been sealed up and endorsed pursuant to rule 50, the returning officer is to forward them to the chair of the corporation.

52. Forwarding of documents received after close of the poll – 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 ballot papers are made too late to enable new ballot papers 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.

53. Retention and public inspection of documents –

(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 regulator, cause them to be destroyed.

(2) With the exception of the documents listed in rule 54(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.

(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.

54. Application for inspection of certain documents relating to an election

(1) The corporation may not allow the inspection of, or the opening of any sealed packet containing –

- (a) any rejected ballot papers, including ballot papers rejected in part,
- (b) any disqualified documents, or the list of disqualified documents,
- (c) any counted ballot papers,
- (d) any declarations of identity, or
- (e) the list of eligible voters,

by any person without the consent of the regulator.

(2) A person may apply to the regulator to inspect any of the documents listed in (1), and the regulator 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.

(3) The regulator'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.

(4) On an application to inspect any of the documents listed in paragraph (1), –

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

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

- (a) that his or her vote was given, and
- (b) that the regulator has declared that the vote was invalid.

Part 9 – Death of a candidate during a contested election

fpp55. Countermand or abandonment of poll on death of candidate –

(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 ballot papers have been issued, direct that the poll be abandoned, 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 35 days, computed in accordance with rule 3 of these rules, beginning with the day that the poll was countermanded or abandoned.

(2) Where a new election is ordered under paragraph (1), no fresh nomination is necessary for any candidate who was validly nominated for the election where the poll was countermanded or abandoned.

(3) Where a poll is abandoned under paragraph (1)(a), paragraphs (4) to (9) are to apply.

(4) The returning officer shall not take any step or further step to open envelopes or deal with their contents in accordance with rules 34 and 35, and is to make up separate sealed packets in accordance with rule 36.

(5) The returning officer is to –

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

(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.

(7) Once the documents relating to the poll have been sealed up and endorsed pursuant to paragraphs (4) to (6), the returning officer is to deliver them to the chairman of the corporation, and rules 53 and 54 are to apply.

stv55. Countermand or abandonment of poll on death of candidate –

(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) if the death is proved after the close of the poll, proceed with the counting of the votes as if that candidate had been excluded from the count so that –
 - (i) ballot papers 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 papers 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.

(2) The ballot papers which have preferences recorded for the candidate who has died are to be sealed with the other counted ballot papers pursuant to rule 50(1)(a).

Part 10 – Election expenses and publicity

Election expenses

56. Election expenses – 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 to the regulator under Part 11 of these rules.

57 Expenses and payments by candidates - 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.

58. Election expenses incurred by other persons –

(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.

(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 59 and 60.

Publicity

59. Publicity about election by the corporation –

(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.

(2) Any information provided by the corporation about the candidates, including information compiled by the corporation under rule 60, must be –

- (a) objective, balanced and fair,
- (b) (as far as the information provided by the candidates so allows) 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.

(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.

60. Information about candidates for inclusion with voting documents - (1)
The corporation must compile information about the candidates standing for election, to be distributed by the returning officer pursuant to rule 25 of these rules.

- (2) The information must consist of –
 - (a) a statement submitted by the candidate of no more than 250 words, and
 - (b) a photograph of the candidate

if provided by the candidate.

61. Meaning of “for the purposes of an election” –

(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.

(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

62. Application to question an election –

(1) An application alleging a breach of these rules, including an electoral irregularity under Part 10, may be made to the regulator.

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

- (3) An application may only be made to the regulator 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.

- (4) The application must –
 - (a) describe the alleged breach of the rules or electoral irregularity, and
 - (b) be in such a form as the regulator may require.

(5) The application must be presented in writing within 21 days of the declaration of the result of the election.

(6) If the regulator requests further information from the applicant, then that person must provide it as soon as is reasonably practicable.

- (7) The regulator shall delegate the determination of an application to a person or persons to be nominated for that purpose by the regulator.
- (8) The determination by the person or persons nominated in accordance with Rule 62(7) shall be binding on and shall be given effect by the corporation, the applicant, the members of the constituency (or class within a constituency) and the candidate (if any) to which the application relates.
- (9) The regulator may prescribe rules of procedure for the determination of an application, including costs.

Part 12 – Miscellaneous

63. Secrecy –

- (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 a ballot paper or voted,
 - (ii) the unique identifier on any ballot paper,
 - (iii) the candidate for whom any person has voted for on any particular ballot paper.
- (2) No person may obtain or attempt to obtain information as to the candidate 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.
 - (3) The returning officer is to make such arrangements as he or she thinks fit to ensure that the individuals that are affected by this provision are aware of the duties it imposes.

64. Prohibition of disclosure of vote – No person who has voted at an election shall, in any legal or other proceeding to question the election, be required to state who he or she has voted for.

65. Disqualification – 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.

66. Delay in postal service through industrial action or unforeseen event – If industrial action, or some other unforeseen event, results in a delay in –

- (a) the delivery of the documents in rule 25, or
- (b) the return of the ballot papers and declarations of identity,

the returning officer may extend the time between the publication of the notice of the poll and the close of the poll, with the agreement of the regulator.

60. Effect of administrative or clerical errors on election - Elections shall not be invalidated by any administrative or clerical error on the part of the Trust or any acts or omissions of the returning officer or the independent scrutineer acting in good faith on the basis of any such error.