
1st August 2015

Constitution of The Clatterbridge Cancer Centre



CONSTITUTION OF

THE CLATTERBRIDGE CANCER CENTRE
NHS FOUNDATION TRUST

(A PUBLIC BENEFIT CORPORATION)

VERSION 10
1ST AUGUST 2015

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CONSTITUTION OF THE CLATTERBRIDGE CANCER CENTRE NHS FOUNDATION TRUST

1 DEFINITIONS

1.1 Unless the contrary intention appears or the context otherwise requires, words or expressions contained in this constitution 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

“Accounting Officer” means the person who from time to time discharges the functions specified in paragraph 25(5) of Schedule 7 to the 2006 Act

“appointed Governors” means those Governors appointed by the appointing organisations

“appointing organisations” means those organisations named in this constitution who are entitled to appoint Governors

“areas of the Trust” means the seven areas specified in Annex 1 which are:

Liverpool
St. Helens and Knowsley
Sefton
Cheshire West and Chester
Warrington and Halton
Wirral and the rest of England
Wales

“authorisation” means an authorisation given by Monitor

“Board of Directors” means the Board of Directors as constituted in accordance with this constitution;

“Council of Governors” means the Council of Governors as constituted in accordance with this constitution, “Director” means a member of the Board of Directors;

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| “elected Governors” | means those Governors elected by the public constituencies and the classes of the staff constituency; |
| “external auditor” | means any external auditor other than the financial auditor appointed under this constitution to review and report upon other aspects of the Trust’s performance; |
| “financial auditor” | means the person appointed to audit the accounts of the Trust, who is called the auditor in the 2006 Act; |
| “Financial year” | means: <ul style="list-style-type: none"> (a) the period beginning with the date on which the Trust is authorised and ending with the next 31 March; and (b) each successive period of twelve months beginning with 1 April. |
| “the Trust” | means The Clatterbridge Cancer Centre NHS Foundation Trust; |
| “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 Trust; |
| “member” | means a member of the Trust; |
| “Monitor” | means the body corporate known as Monitor, as provided by Section 61 of the 2012 Act |
| “the NHS Trust” | means The Clatterbridge Cancer Centre NHS Trust which made the application to become an NHS foundation trust |
| “NHS body” | means an NHS body as defined by Section 275 of the 2006 Act. |
| “partner” | means, in relation to another person, a member of the same household living together as a family unit; |
| “Partnership Governor” | means a Governor appointed by a partnership organisation; |
| “public constituency” | means (collectively) those members living in an area specified in the constitution as an area for any public constituency of the Trust; |
| “Public Governor” | means a Governor elected by the members of one of the public constituencies; |
| “registered dentist” | means a registered dentist within the meaning of the Dentists Act 1984; |

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| “registered medical practitioner” | means a fully registered person within the meaning of the Medicines Act 1983 who holds a licence to practice under that Act; |
| “Trust Secretary” | means the Secretary of the Trust or any other person appointed to perform the duties of the Secretary, including a joint, assistant or deputy secretary; |
| “staff constituency” | means (collectively) those members of the five classes comprising the staff constituency; |
| “Staff Governor” | means a Governor elected by the members of one of the five classes of the staff constituency; |

2 NAME

2.1 The name of the Foundation Trust is to be “The Clatterbridge Cancer Centre NHS Foundation Trust”.

3 PRINCIPAL PURPOSE

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

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

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

4 POWERS

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

5 COMMITMENTS

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

Representative membership

- 5.2 The Trust shall at all times strive to ensure that taken as a whole its actual membership is representative of those eligible for membership. To this end:
- 5.2.1 the Trust shall at all times have in place and pursue a membership strategy which shall be approved by the Council of Governors, and shall be reviewed by them from time to time, and at least every three years,
 - 5.2.2 the Council of Governors shall present to each annual members meeting:
 - 5.2.2.1 a report on steps taken to secure that taken as a whole the actual membership of its public constituencies and of the classes of the staff constituency is representative of those eligible for such membership;
 - 5.2.2.2 the progress of the membership strategy;
 - 5.2.2.3 any changes to the membership strategy.

Co-operation with health service bodies

- 5.3 In exercising its functions the Trust shall co-operate with other NHS bodies.

Respect for rights of people

- 5.4 In conducting its affairs, the Trust shall respect the rights of members of the community it serves, its employees and people dealing with the Trust as set out in the Charter of Fundamental Rights of the European Union.

Openness

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

Prohibiting distribution

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

6 FRAMEWORK

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

Members

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

Council of Governors

- 6.3 The roles and responsibilities of the Council of Governors, which are to be carried out in accordance with this constitution and the Trust's authorisation, are:
- 6.3.1 The general duties:
 - 6.3.1.1 to hold the non-executive Directors individually and collectively to account for the performance of the Board of Directors;
 - 6.3.1.2 to represent the interests of the members of the Trust as a whole and the interests of the public;
 - 6.3.2 The Trust must take steps to secure that the Governors are equipped with the skills and knowledge they require in their capacity as such.
 - 6.3.3 at a General Meeting
 - 6.3.3.1 to appoint or remove the Chair and the other non-executive Directors;
 - 6.3.3.2 to approve an appointment (by the non-executive Directors) of the chief executive;
 - 6.3.3.3 to decide the remuneration and allowances, and the other terms and conditions of office, of the non-executive Directors;
 - 6.3.3.4 to appoint or remove the Trust's financial auditor;
 - 6.3.3.5 to appoint or remove any other external auditor appointed to review and publish a report on any other aspect of the Trust's affairs;
 - 6.3.3.6 to be presented with the annual accounts, any report of the financial auditor on them and the annual report;
 - 6.3.4 to provide their views to the Board of Directors when the Board of Directors is preparing the document containing information about the Trust's forward planning;
 - 6.3.5 to respond as appropriate when consulted by the Board of Directors in accordance with this constitution;
 - 6.3.6 to undertake such functions as the Board of Directors shall from time to time request;
 - 6.3.7 to prepare and from time to time review the Trust's membership strategy and its policy for the composition of the Council of Governors and of the non-executive Directors;
 - 6.3.8 when appropriate to make recommendations for the revision of this constitution.

Board of Directors

- 6.4 All the powers of the Trust shall be exercised by the Board of Directors on behalf of the Trust.
- 6.5 The general duty of the Board of Directors and of each Director individually is to act with a view to promoting the success of the Trust so as to maximise the benefits for the members of the Trust as a whole and for the public.

7 MEMBERS

- 7.1 The members of the Trust are those individuals whose names are entered in the register of members. Every member is either a member of one of the public 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 16 years of age,
 - 7.2.2 is entitled under this constitution to be a member of one of the public constituencies or one of the classes of the staff constituency, and
 - 7.2.3 completes a membership application form in whatever form the Secretary specifies.

Public constituencies

- 7.3 There are seven public constituencies corresponding to the seven areas of the Trust specified in Annex 1.
- 7.4 An individual is entitled to be a member of one of the public constituencies if they:
- 7.4.1 live in the relevant area of the Foundation Trust specified in Annex 1,
 - 7.4.2 are not a member of another public constituency, and
 - 7.4.3 are not eligible to be members of any of the classes of the staff constituency.
- 7.5 The minimum number of members of each of the public constituencies is to be one hundred.

Staff constituency

- 7.6 The staff constituency is divided into six classes as follows:
- 7.6.1 registered medical practitioners
 - 7.6.2 nurses
 - 7.6.3 radiographers
 - 7.6.4 other clinical staff

7.6.5 non-clinical staff

in each of the above cases, who are employed by the Trust

7.6.6 individuals who are not employed by the Trust but fall within paragraph 7.7.2 (including volunteers).

7.7 Membership of one of the classes of the staff constituency is open to individuals:

7.7.1 who, in the case of the first five classes mentioned above, are employed under a contract of employment by the Foundation Trust and who either

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

7.7.1.2 who have been continuously employed by the Trust or the NHS Trust for at least 12 months; or

7.7.2 who, in the case of the sixth class mentioned above, are not so employed but who nevertheless exercise functions for the purposes of the Trust and who have continuously exercised the functions for the purposes of the Trust or the NHS Trust for at least 12 months.

7.8 The Secretary shall make a final decision about the class of which an individual is eligible to be a member.

7.9 All individuals who are entitled under this constitution to become members of one of the classes of the staff constituency, and who

7.9.1 have been invited by the Trust to become a member of the appropriate class, and

7.9.2 have not informed the Trust that they do not wish to do so

shall become members of the appropriate class.

7.10 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 constituencies, and may not become or continue as a member of more than one class of the staff constituency.

7.11 The minimum number of members of each class of the staff constituency is to be four.

8 DISQUALIFICATION FROM MEMBERSHIP

8.1 A person may not become a member of the Trust if within the last five years they have been involved as a perpetrator in a serious incident of violence at any of the Foundation Trust's hospitals or facilities or against any of the Foundation Trust's employees or other persons who exercise functions for the purposes of the Foundation Trust, or against 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 any of the public constituencies or of any of the classes of the staff constituency;
 - 9.1.5 if it appears to the Secretary that they no longer wish to be a member of the 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 Trust.
- 9.2 A member may be expelled by a resolution approved by not less than two-thirds of the Governors present and voting at a General Meeting. The following procedure is to be adopted.
- 9.2.1 Any member may complain to the Secretary that another member has acted in a way detrimental to the interests of the Foundation Trust.
 - 9.2.2 If a complaint is made, the Council of Governors may itself consider the complaint having taken such steps as it considers appropriate to ensure that each member's point of view is heard and may either:
 - 9.2.2.1 dismiss the complaint and take no further action; or
 - 9.2.2.2 for a period not exceeding twelve months suspend the rights of the member complained of to attend members meetings and vote under this constitution;
 - 9.2.2.3 arrange for a resolution to expel the member complained of to be considered at the next General Meeting of the Council of Governors.
 - 9.2.3 If a resolution to expel a member is to be considered at a General Meeting of the Council of Governors, details of the complaint must be sent to the member complained of not less than one calendar month before the meeting with an invitation to answer the complaint and attend the meeting.
 - 9.2.4 At the meeting the Council of Governors will consider evidence in support of the complaint and such evidence as the member complained of may wish to place before them.
 - 9.2.5 If the member complained of fails to attend the meeting without due cause the meeting may proceed in their absence.

- 9.3 A person expelled from membership will cease to be a member upon the declaration by the Chair of the meeting that the resolution to expel them is carried.
- 9.4 No person who has been expelled from membership is to be re-admitted except by a resolution carried by the votes of two-thirds of the Council of Governors present and voting at a General Meeting.

10 MEMBERS MEETINGS

- 10.1 The Trust is to hold a members meeting (called the annual members meeting) within nine months of the end of each financial year.
- 10.2 All members meetings other than annual meetings are called special members meetings.
- 10.3 Members meetings are open to all members of the Trust, Governors and Directors, and representatives of the financial auditor, and shall be open to members of the public. The Council of Governors may invite representatives of the media and any experts or advisors whose attendance they consider to be in the best interests of the Foundation Trust to attend a members meeting.
- 10.4 All members meetings are to be convened by the Secretary by order of the Council of Governors.
- 10.5 The Council of Governors may decide where a members meeting is to be held and may also for the benefit of members:
- 10.5.1 arrange for the annual members meeting to be held in different venues each year:
 - 10.5.2 make provisions for a members meeting to be held at different venues simultaneously or at different times. In making such provision the Council of Governors shall also fix an appropriate quorum for each venue, provided that the aggregate of the quorum requirements shall not be less than the quorum set out below.
- 10.6 At the annual members meeting:
- 10.6.1 the Board of Directors shall present to the members:
 - 10.6.1.1 the annual accounts
 - 10.6.1.2 any report of the auditor on them
 - 10.6.1.3 the annual report
 - 10.6.2 the Council of Governors shall present to the members
 - 10.6.2.1 a report on steps taken to secure that (taken as a whole) the actual membership of its public constituencies and of the classes of the staff constituency is representative of those eligible for such membership;
 - 10.6.2.2 the progress of the membership strategy

- 10.6.2.3 any proposed changes to the policy for the composition of the Council of Governors and of the non-executive Directors
 - 10.6.3 the results of the election and appointment of Governors and the appointment of non-executive Directors will be announced.
- 10.7 Notice of a members meeting is to be given:
 - 10.7.1 by notice prominently displayed at the head office and at all of the Trust's places of business; and
 - 10.7.2 by notice on the Trust's website

at least 14 clear days before the date of the meeting. The notice must:

 - 10.7.3 be given to the Council of Governors and the Board of Directors, and to the financial auditor;
 - 10.7.4 state whether the meeting is an annual or special members meeting;
 - 10.7.5 give the time, date and place of the meeting; and
 - 10.7.6 indicate the business to be dealt with at the meeting.
- 10.8 Before a members meeting can do business there must be a quorum present. Except where this constitution says otherwise a quorum is twenty members present from any of the Trust's constituencies.
- 10.9 The Trust may make arrangements for members to vote by post or by using electronic communications.
- 10.10 It is the responsibility of the Council of Governors, the Chair of the meeting and the Secretary to ensure that at any members meeting:
 - 10.10.1 the issues to be decided are clearly explained;
 - 10.10.2 sufficient information is provided to members to enable rational discussion to take place;
 - 10.10.3 where appropriate, experts in relevant fields or representatives of special interest groups are invited to address the meeting.
- 10.11 The Chair of the Trust, or in their absence the Senior Governor of the Council of Governors, shall act as Chair at all members meetings of the Trust. If neither the Chair nor the Senior Governor of the Council of Governors is present, the Governors present shall elect one of their number to be Chair and if there is only one Governor present and willing to act they shall be Chair.
- 10.12 If no quorum is present within half an hour of the time fixed for the start of the meeting, the meeting shall stand adjourned to the same day in the next week at the same time and place or to such time and place as the Council of Governors determine. If a quorum is not present within half an hour of the time fixed for the start of the adjourned meeting, the number of members present during the meeting is to be a quorum.

- 10.13 A resolution put to the vote at a members meeting shall be decided upon by a poll.
- 10.14 Every member present and every member who has voted by post or using electronic communications is to have one vote. In the case of an equality of votes the Chair of the meeting is to have a second or casting vote.
- 10.15 The result of any vote will be declared by the Chair and entered in the minute book. The minute book will be conclusive evidence of the result of the vote.

11 COUNCIL OF GOVERNORS

- 11.1 The Trust is to have a Council of Governors. It is to consist of Public Governors, Staff Governors, a Local Authority Governor and Partnership Governors.
- 11.2 The aggregate number of Public Governors is to be more than half of the total number of members of the Council of Governors.
- 11.3 The Council of Governors, subject to the 2006 Act, shall seek to ensure that through the composition of the Council of Governors:
 - 11.3.1 the interests of the community served by the Trust are appropriately represented;
 - 11.3.2 the level of representation of the public constituencies, the classes of the staff constituency and the appointing organisations strikes an appropriate balance having regard to their legitimate interest in the Trust's affairs

and to this end, the Council of Governors

 - 11.3.3 shall at all times maintain a policy for the composition of the Council of Governors which takes account of the membership strategy, and
 - 11.3.4 shall from time to time and not less than every three years review the policy for the composition of the Council of Governors, and
 - 11.3.5 when appropriate shall propose amendments to this constitution.
- 11.4 The Council of Governors of the Trust is to comprise:
 - 11.4.1 fifteen Public Governors from the following public constituencies:
 - 11.4.1.1 Liverpool – 3 Public Governors
 - 11.4.1.2 St. Helens and Knowsley – 2 Public Governors
 - 11.4.1.3 Sefton – 2 Public Governors
 - 11.4.1.4 Cheshire West and Chester – 2 Public Governors
 - 11.4.1.5 Warrington and Halton – 2 Public Governors
 - 11.4.1.6 Wirral and the rest of England – 3 Public Governors.

- 11.4.1.7 Wales – 1 Public Governor
- 11.4.2 six Staff Governors from the following classes;
 - 11.4.2.1 Registered medical practitioners employed by the Trust – 1 Staff Governor
 - 11.4.2.2 Nurses employed by the Trust – 1 Staff Governor
 - 11.4.2.3 Radiographers employed by the Trust – 1 Staff Governor
 - 11.4.2.4 Other clinical staff employed by the Trust – 1 Staff Governor
 - 11.4.2.5 Non-clinical staff employed by the Trust – 1 Staff Governor
 - 11.4.2.6 Staff not employed by the Trust – 1 Staff Governor
- 11.4.3 one Local Authority Governor to be appointed by Wirral Metropolitan Borough Council, or any successor organisation or organisations carrying out equivalent functions to such Local Authority;
- 11.4.4 six Partnership Governors to be appointed by partnership organisations.
- 11.5 The partnership organisations that may appoint a Partnership Governor (one each) are:
 - 11.5.1 Liverpool University;
 - 11.5.2 Macmillan Cancer Support;
 - 11.5.3 Manx Cancer Help Association;
 - 11.5.4 Aintree University Hospitals NHS Foundation Trust;
 - 11.5.5 Cancer Steering Group;
 - 11.5.6 NHS England – Cheshire and Merseyside Sub Regional Team (or successor organisation).

Elected Governors

- 11.6 Public Governors are to be elected by members of their public 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.
- 11.7 If contested, the elections must be by secret ballot.
- 11.8 Elections shall be carried out in accordance with the rules set out in Annex 2 using the single transferable vote method of voting.

- 11.9 A member of a public constituency may not vote at an election for a Public Governor unless within twenty-one days before they vote they have made a declaration in the form specified by the Secretary that they are qualified to vote as a member of the relevant public constituency. It is an offence to knowingly or recklessly make such a declaration which is false in a material particular.

Local Authority Governor

- 11.10 The Secretary, having consulted Wirral MBC, is to adopt a process for agreeing the appointment of the Local Authority Governor with that local authority.

Partnership Governors

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

Appointment of Senior Governor of the Council of Governors

- 11.12 The Council of Governors shall appoint one of the Governors to be Senior Governor of the Council of Governors.

Terms of office for Governors

- 11.13 Elected Governors:

- 11.13.1 shall normally hold office for a period of three years commencing immediately after the annual members meeting at which their election is announced;
- 11.13.2 are eligible for re-election at the end of that period;
- 11.13.3 to be allowed to serve a maximum of nine consecutive years ie three 3 year consecutive terms.

- 11.14 Appointed Governors:

- 11.14.1 shall normally hold office for a period of three years commencing immediately after the annual members meeting at which their appointment is announced;
- 11.14.2 are eligible for re-appointment at the end of that period;
- 11.14.3 to be allowed to serve a maximum of nine consecutive years ie three 3 year consecutive terms.

- 11.15 For the purposes of these provisions concerning terms of office for Governors:

- 11.15.1 Subject to paragraph 11.15.2 “year” means a period commencing immediately after the conclusion of the annual members meeting, and ending at the conclusion of the next annual members meeting.

- 11.15.2 Where a Governor is appointed or elected as a result of the vacancy provisions at paragraphs 11.19 to 11.21, the date of that appointment or election to fill a vacancy until the conclusion of the next annual members meeting shall be deemed to constitute one year in office.

Eligibility to be a Governor

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

- 11.16.1 they are under sixteen years of age;
- 11.16.2 they are a Director of the Trust, or a governor or director of a health service body (unless they are appointed by an appointing organisation which is a health service body);
- 11.16.3 they are the spouse, partner, parent or child of a member of the Board of Directors of the Trust;
- 11.16.4 they are a member of a local authority's Scrutiny Committee covering health matters
- 11.16.5 being a member of one of the public 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 Trust, and that they are not prevented from being a member of the Council of Governors;
- 11.16.6 if they are subject to a sex offender order ;
- 11.16.7 they have been adjudged bankrupt or their estate has been sequestrated and in either case they have not been discharged;
- 11.16.8 they are a person in relation to whom a moratorium period under a debt relief order applies (under Part 8A of the Insolvency Act 1986);
- 11.16.9 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;
- 11.16.10 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 (without the option of a fine) was imposed;
- 11.16.11 they have within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment;
- 11.16.12 they are a person whose tenure of office as the Chair 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.

Termination of office and removal of Governors

- 11.17 A person holding office as a Governor shall immediately cease to do so if
- 11.17.1 they resign by notice in writing to the Secretary;
 - 11.17.2 they fail to attend three consecutive meetings, unless the other Governors are satisfied that:
 - 11.17.2.1 the absences were due to reasonable causes; and
 - 11.17.2.2 they will be able to start attending meetings of the Trust again within such a period as the other Governors consider reasonable.
 - 11.17.3 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;
 - 11.17.4 in the case of an appointed Governor, the appointing organisation terminates the appointment;
 - 11.17.5 they have refused without reasonable cause to undertake any training which the Council of Governors requires all Governors to undertake;
 - 11.17.6 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;
 - 11.17.7 they are removed from the Council of Governors under the following provisions.
- 11.18 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 at a General Meeting on the grounds that
- 11.18.1 they have committed a serious breach of the code of conduct, or
 - 11.18.2 they have acted in a manner detrimental to the interests of the Trust, and
 - 11.18.3 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

- 11.19 Where a vacancy arises on the Council of Governors for any reason other than expiry of term of office, the following provisions will apply.
- 11.20 Where the vacancy arises amongst the appointed Governors, the Secretary shall request that the appointing organisation appoints a replacement to hold office for the remainder of the term of office.
- 11.21 Where the vacancy arises amongst the elected Governors, the Council of Governors shall be at liberty either:

- 11.21.1 to call an election within three months to fill the seat for the remainder of that term of office, or
- 11.21.2 to invite the next highest polling candidate for that seat at the most recent election, who is willing to take office, to fill the seat until the next annual election, at which time the seat will fall vacant and subject to election for any unexpired period of the term of office.

Expenses and remuneration of Governors

- 11.22 The Trust may reimburse Governors for travelling and other costs and expenses incurred in carrying out their duties at such rates as the Board of Directors decides. These are to be disclosed in the annual report.
- 11.23 Governors are not to receive remuneration.

Meetings of the Council of Governors

- 11.24 The Council of Governors is to meet at least three times in each financial year. Save in the case of emergencies or the need to conduct urgent business, the Secretary shall give at least fourteen days written notice of the date and place of every meeting of the Council of Governors to all Governors. Notice will on the Trust's website.
- 11.25 Meetings of the Council of Governors may be called by the Secretary, or by the Chair, or by six Governors (including at least two elected Governors and two appointed Governors) who give written notice to the Secretary specifying the business to be carried out. The Secretary shall send a written notice to all Governors as soon as possible after receipt of such a request. The Secretary shall call a meeting on at least fourteen but not more than twenty-eight days' notice to discuss the specified business. If the Secretary fails to call such a meeting then the Chair or six Governors, whichever is the case, shall call such a meeting.
- 11.26 All meetings of the Council of Governors are to be General Meetings open to members of the public unless the Council of Governors decides otherwise in relation to all or part of a meeting for special reasons. The Chair 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.
- 11.27 Twelve Governors including not less than five Public Governors, not less than one Staff Governor and not less than one appointed Governor shall form a quorum.
- 11.28 The Chair of the Trust or, in their absence, the Vice Chair of the Board of Directors, 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 Senior Governor of the Council of Governors will chair that part of the meeting.
- 11.29 For the purposes of obtaining information about the Trust's performance of its functions or the Directors' performance of their duties (and deciding whether to propose a vote on the Trust's or Directors' performance), the Council of Governors may require one or more of the Directors to attend a meeting

- 11.30 The Council of Governors may invite a representative of the auditor or other advisors to attend a meeting of the Council of Governors.
- 11.31 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.
- 11.32 Subject to this constitution and the following provisions of this paragraph, questions arising at a meeting of the Council of Governors shall be decided by a majority of votes.
- 11.32.1 In case of an equality of votes the person presiding at or chairing the meeting shall have a casting vote.
- 11.32.2 No resolution of the Council of Governors shall be passed if it is opposed by all of the Public Governors present.
- 11.33 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.
- 11.34 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.

Referral to the Panel

- 11.35 In this paragraph, the Panel means a panel of persons appointed by Monitor to which a Governor of an NHS Foundation Trust may refer a question as to whether the Trust has failed or is failing:
- 11.35.1 to act in accordance with its constitution, or
- 11.35.2 to act in accordance with provision made by or under Chapter 5 of the 2006 Act.
- 11.36 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

- 11.37 Any Governor who has a material interest in a matter as defined below shall declare such interest to the Council of Governors and:
- 11.37.1 shall withdraw from the meeting and play no part in the relevant discussion or decision
- 11.37.2 shall not vote on the issue (and if by inadvertence they do remain and vote, their vote shall not be counted).

- 11.38 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.
- 11.39 Subject to the exceptions below, a material interest is
- 11.39.1 any directorship of a company;
 - 11.39.2 any interest or position 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 Trust;
 - 11.39.3 any interest in an organisation providing health and social care services to the National Health Service;
 - 11.39.4 a position of authority in a charity or voluntary organisation in the field of health and social care;
 - 11.39.5 any connection with any organisation, entity or company considering entering into or having entered into a financial arrangement with the Trust including but not limited to lenders or banks.
- 11.40 The exceptions which shall not be treated as material interests are as follows:
- 11.40.1 shares not exceeding 2% of the total shares in issue held in any company whose shares are listed on any public exchange;
 - 11.40.2 an employment contract held by Staff Governors;
 - 11.40.3 an employment contract with a local authority held by a Local Authority Governor;
 - 11.40.4 an employment contract with a university held by a University Governor;
 - 11.40.5 an employment contract with a partnership organisation held by a Partnership Governor.
- 11.41 The Council of Governors is to adopt its own standing orders for its practice and procedure, in particular for its procedure at meetings.

Declaration

- 11.42 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.

12 BOARD OF DIRECTORS

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

12.2 The board is to include:

12.2.1 the following non-executive Directors:

12.2.1.1 a Chair, who is to be appointed (and removed) by the Council of Governors at a General Meeting;

12.2.1.2 not more than 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) voting at the meeting;

12.2.2 the following executive Directors:

12.2.2.1 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 General Meeting;

12.2.2.2 a Finance Director, a registered medical practitioner, a registered nurse or registered midwife, and not more than two other executive Directors, all of whom are to be appointed (and removed) by a committee consisting of the Chair, the Chief Executive and the other non-executive Directors.

12.3 At least half the board of directors, excluding the chairman, should comprise non-executive Directors.

12.4 The Board of Directors shall elect one of the non-executive Directors to be Vice-Chair of the Board of Directors. If the Chair is unable to discharge their office as Chair of the Trust, the Vice-Chair of the Board of Directors shall be acting Chair of the Foundation Trust.

12.5 In relation to the appointment of the Chief Executive:

12.5.1 Appropriate candidates will be identified by an Appointments Committee through a process of open competition, taking account of the skills and experience required as identified by the Appointments Committee.

12.5.2 The Appointments Committee will comprise the Chair of the Trust or, if he is absent, the Vice-Chairman and two other non-executive Directors. The Chairman, or Vice-Chair, may:

- 12.5.2.1 invite not more than two Governors to attend meetings of the Appointments Committee for information and communication purposes; and
 - 12.5.2.2 invite a representative from an external organisation with appropriate skills to attend meetings of the Appointments Committee and assist it in its deliberations.
- 12.6 Only a member of one of the public constituencies is eligible for appointment as a non-executive Director.
- 12.7 Non-executive Directors are to be appointed by the Council of Governors using the following procedure.
- 12.7.1 The Council of Governors will maintain a policy for the composition of the non-executive Directors which takes account of the membership strategy, and which they shall review from time to time and not less than every three years.
 - 12.7.2 The Board of Directors will identify the skills and experience required for non-executive Directors.
 - 12.7.3 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.
 - 12.7.4 The Nominations Committee will comprise the Chair of the Trust (or the Vice Chair unless they are standing for appointment, in which case another non-executive director, when a Chair is being appointed) and three elected Governors. The Chief Executive shall be entitled to attend and speak at meetings of the Nominations Committee unless the Committee decides otherwise and the Committee shall take into account the Chief Executive's views.
- 12.8 The removal of the Chair or another non-executive Director requires the approval of three-quarters of the Council of Governors and shall be in accordance with the following procedures.
- 12.8.1 Any proposal for removal must be proposed by a Governor and seconded by not less than half of the Governors including at least one appointed Governor.
 - 12.8.2 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.
 - 12.8.3 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 Chair.
 - 12.8.4 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

- 12.9 The Chair and the non-executive Directors are to be appointed for a period of office in accordance with the terms and conditions of office, including remuneration and allowances, 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.
- 12.10 The remuneration committee of the Chair and other non-executive Directors shall decide the terms and conditions of office including remuneration and allowances of all the executive Directors.

Disqualification

- 12.11 A person may not become or continue as a Director of the Trust if:
- 12.11.1 they are a member of the Council of Governors, or a governor or director of a health service body;
 - 12.11.2 they are the spouse, partner, parent or child of a member of the Board of Directors of the Trust;
 - 12.11.3 they are a member of a committee of a local authority that has any role in scrutinising health matters;
 - 12.11.4 they are subject to a sex offender order;
 - 12.11.5 they have been adjudged bankrupt or their estate has been sequestrated and in either case they have not been discharged;
 - 12.11.6 they are a person in relation to whom a moratorium period under a debt relief order applies (under Part 8A of the Insolvency Act 1986);
 - 12.11.7 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;
 - 12.11.8 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 (without the option of a fine) was imposed;
 - 12.11.9 they are the subject of a disqualification order made under the Company Directors Disqualification Act 1986;
 - 12.11.10 in the case of a non-executive Director, they are no longer a member of one of the public constituencies;
 - 12.11.11 they are a person whose tenure of office as a Chair 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;

- 12.11.12 they have within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment;
- 12.11.13 in the case of a non-executive Director they have refused without reasonable cause to fulfil any training requirement established by the Board of Directors; or
- 12.11.14 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

- 12.12 The Board of Directors may delegate any of its powers to a committee of Directors or to an executive Director.
- 12.13 The Board of Directors shall appoint an audit committee of non-executive Directors to perform such monitoring, reviewing and other functions as appropriate.
- 12.14 The Board of Directors shall appoint a remuneration committee of the Chair and other non-executive Directors to decide the remuneration and allowances, and the other terms and conditions of office, of the executive Directors.

Meetings of the Board of Directors

- 12.15 Save in the case of emergencies or the need to conduct urgent business, the Secretary shall give to all Directors at least fourteen days written notice of the date and place of every meeting of the Board of Directors.
- 12.16 All 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.
- 12.17 Before holding a meeting, the Board of Directors must send a copy of the agenda of the meeting to the Council of Governors.
- 12.18 As soon as practicable after holding a meeting, the Board of Directors must send a copy of the minutes of the meeting to the Council of Governors.
- 12.19 Meetings of the Board of Directors are called by the Secretary, or by the Chair, or by four 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 fourteen but not more than twenty-eight days' notice to discuss the specified business. If the Secretary fails to call such a meeting then the Chair or four Directors, whichever is the case, shall call such a meeting.
- 12.20 Six Directors including not less than three executive Directors (one of whom must be the Chief Executive or another executive Director nominated by the Chief Executive), and not less than three non-executive Directors (one of whom must be the Chair or the Vice-Chair) shall form a quorum.

- 12.21 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.
- 12.22 The Chair of the Trust or, in their absence, the Vice-Chair of the Board of Directors, is to chair meetings of the Board of Directors.
- 12.23 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.
- 12.23.1 In case of an equality of votes the Chair shall have a second and casting vote.
- 12.23.2 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.
- 12.24 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.

Conflicts of Interest of Directors

- 12.25 The duties that a Director of the Trust has by virtue of being a Director include in particular:
- 12.25.1 A duty to avoid a situation in which the Director has (or can have) a direct or indirect interest that conflicts (or possibly may conflict) with the interests of the Trust
- 12.25.2 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.
- 12.26 The duty referred to in sub-paragraph 12.23.1 is not infringed if:
- 12.26.1 The situation cannot reasonably be regarded as likely to give rise to a conflict of interest, or
- 12.26.2 The matter has been authorised in accordance with the constitution.
- 12.27 The duty referred to in sub-paragraph 12.23.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- 12.28 In sub-paragraph 12.23.2 'third party' means a person other than:
- 12.28.1 The Trust or
- 12.28.2 A person acting on its behalf.
- 12.29 If a Director of the Trust has in any way a direct or indirect interest in a proposed transaction or arrangement with the Trust, the director must declare the nature and extent of that interest to the other Directors.

- 12.30 If a declaration under this paragraph proves to be, or becomes, inaccurate, incomplete, a further declaration must be made.
- 12.31 Any declaration required by this paragraph must be made before the Trust enters into the transaction or arrangement.
- 12.32 This paragraph does not require a declaration of an interest of which the Director is not aware of where the director is not aware of the transaction or arrangement in question.
- 12.33 A Director need not declare an interest
- 12.33.1 If it cannot reasonably be regarded as likely to give rise to a conflict of interest;
 - 12.33.2 If, or to the extent that, the directors are already aware of it;
 - 12.33.3 If, or to the extent that, it concerns terms of the Directors appointment that have been or are to be considered:
 - 12.33.3.1 By a meeting of the Board of Directors, or
 - 12.33.3.2 By a committee of the directors appointed for the purpose under the constitution.

Expenses

- 12.34 The Trust may reimburse executive Directors travelling and other costs and expenses incurred in carrying out their duties at such rates as the remuneration committee of non-executive Directors decides. These are to be disclosed in the annual report.
- 12.35 The remuneration and allowances for Directors are to be disclosed in bands in the annual report.

13 SECRETARY

- 13.1 The Trust shall have a Secretary who may be an employee. The Secretary may not be a Governor, or the Chief Executive or the Finance Director. The Secretary's functions shall include:
- 13.1.1 acting as Secretary to the Council of Governors and the Board of Directors, and any committees;
 - 13.1.2 summoning and attending all members meetings, meetings of the Council of Governors and the Board of Directors, and keeping the minutes of those meetings;
 - 13.1.3 keeping the register of members and other registers and books required by this constitution to be kept;
 - 13.1.4 having charge of the Trust's seal;
 - 13.1.5 publishing to members in an appropriate form information which they should have about the Trust's affairs;

- 13.1.6 preparing and sending to Monitor and any other statutory body all returns which are required to be made.
- 13.2 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 Chair of that meeting. The signed minutes will be conclusive evidence of the events of the meeting.
- 13.3 The Secretary is to be appointed and removed by the Board of Directors.

14 **REGISTERS**

- 14.1 The Trust is to have:
 - 14.1.1 a register of members showing, in respect of each member, the constituency and (where relevant) the class of a constituency to which they belong;
 - 14.1.2 a register of Governors;
 - 14.1.3 a register of Directors;
 - 14.1.4 a register of interests of Governors;
 - 14.1.5 a register of interests of the Directors.
- 14.2 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.

Registers – inspection and copies

- 14.3 The registers shall be made available for inspection by members of the public, except in circumstances prescribed by regulations 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 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 **PUBLIC DOCUMENTS**

- 15.1 The following documents of the 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 Trust's website:
 - 15.1.1 a copy of the current constitution;
 - 15.1.2 a copy of the latest annual accounts and of any report of the auditor on them;

- 15.1.3 a copy of the report of any other external auditor of the Trust's affairs appointed by the Council of Governors;
- 15.1.4 a copy of the latest annual report;
- 15.2 The Trust shall also make the following documents relating to a special administration of the Trust available for inspection by members of the public free of charge at all reasonable times:
 - 15.2.1 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.
 - 15.2.2 a copy of any report laid under section 65D (appointment of trust special administrator) of the 2006 Act.
 - 15.2.3 a copy of any information published under section 65D (appointment of trust special administrator) of the 2006 Act.
 - 15.2.4 a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act.
 - 15.2.5 a copy of any statement provided under section 65F (administrator's draft report) of the 2006 Act.
 - 15.2.6 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.
 - 15.2.7 a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act.
 - 15.2.8 a copy of any final report published under section 65I (administrator's final report),
 - 15.2.9 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.
 - 15.2.10 a copy of any information published under section 65M (replacement of trust special administrator) of the 2006 Act.

16 AUDITOR

- 16.1 The Trust shall have an auditor
- 16.2 The Council of Governors at a General Meeting shall appoint or remove the Trust's auditor.

17 ACCOUNTS

- 17.1 The Trust must keep proper accounts and proper records in relation to the accounts.
- 17.2 Monitor may with the approval of the Secretary of State give directions to the Trust as to the content and form of its accounts.
- 17.3 The accounts are to be audited by the Trust's Auditor.
- 17.4 The Trust shall prepare in respect of each financial year annual accounts in such form as Monitor may with the approval of the Secretary of State direct.
- 17.5 The functions of the Trust with respect to the preparation of the annual accounts shall be delegated to the Accounting Officer.

18 ANNUAL REPORTS AND FORWARD PLANS AND NON-NHS WORK

- 18.1 The Trust shall prepare an Annual Report and send it to Monitor.
- 18.2 The Trust shall give information as to its forward planning in respect of each financial year to Monitor.
- 18.3 The document containing the information with respect to forward planning (referred to above) shall be prepared by the Directors.
- 18.4 In preparing the document, the Directors shall have regard to the views of the Council of Governors.
- 18.5 Each forward plan must include information about –
 - 18.5.1 the activities other than the provision of goods and services for the purposes of the health service in England that the trust proposes to carry on, and
 - 18.5.2 the income it expects to receive from doing so.
- 18.6 Where a forward plan contains a proposal that the trust carry on an activity of a kind mentioned in sub-paragraph 18.5.1 the Council of Governors must –
 - 18.6.1 determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfillment by the trust of its principal purpose or the performance of its other functions, and
 - 18.6.2 notify the directors of the trust of its determination.
- 18.7 A trust which proposes to increase by 5% or more the proportion of its total income in any financial year attributable to activities other than the provision of goods and services for the purposes of the health service in England may implement the proposal only if more than half of the members of the Council of Governors of the trust voting approve its implementation.

19 INDEMNITY

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

20 EXECUTION OF DOCUMENTS

20.1 A document purporting to be duly executed under the 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.

20.2 The Trust is to have a seal, but this is not to be affixed except under the authority of the Board of Directors.

21 DISPUTE RESOLUTION PROCEDURES

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

21.1.1 a member; or

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

21.1.3 any person bringing a claim under this constitution; or

21.1.4 an office-holder of the Trust

is to be submitted to an arbitrator agreed by the parties. The arbitrator's decision will be binding and conclusive on all parties

21.2 Any person bringing a dispute must, if required to do so, deposit with the Trust a reasonable sum (not exceeding £250) to be determined by the Council of Governors and approved by the Secretary. The arbitrator will decide how the costs of the arbitration will be paid and what should be done with the deposit.

22 AMENDMENT OF THE CONSTITUTION

22.1 The Trust may make amendments of its constitution only if

22.1.1 More than half of the members of the Council of Governors of the trust voting approve the amendments, and

22.1.2 More than half of the members of the Board of Directors of the Trust voting approve the amendments

- 22.2 Amendments made under paragraph 22.1 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
- 22.3 Where an amendment is made to the constitution in relation the powers or duties of the Council of Governors (or otherwise with respect to the role that the Council of Governors has as part of the Trust) –
- 22.3.1 At least one member of the Council of Governors must attend the next Annual Members' Meeting and present the amendment, and
- 22.3.2 The Trust must give the members an opportunity to vote on whether they approve the amendment.
- 22.4 If more than half of the members voting approve the amendment, the amendment continues to have effect; otherwise, it ceases to have effect and the Trust must take such steps as are necessary as a result.
- 22.5 Amendments by the Trust of its constitution are to be notified to Monitor. For the avoidance of doubt, Monitor's functions do not include a power or duty to determine whether or not the constitution, as a result of the amendments, accords with Schedule 7 of the 2006 Act.

23 **MERGERS ETC. AND SIGNIFICANT TRANSACTIONS**

- 23.1 The Trust may only apply for a merger, acquisition, separation or dissolution with the approval of more than half of the members of the Council of Governors.
- 23.2 The Trust may enter into a significant transaction only if more than half of the members of the Council of Governors voting approve the entering into the transaction.
- 23.3 For the purposes of this paragraph:
- 23.3.1 "Transaction" may be either an investment or a divestment.
- 23.3.2 A transaction is "significant" if its value equates to 25% of either the Trust's Gross Assets, Income or Gross Capital (inclusive of the transaction), calculated with reference to the Trust's opening Balance Sheet for the Financial Year in which approval is being sought.
- 23.4 If more than half of the members of the Council of Governors voting at a meeting of the Council decline to approve a significant transaction or any part of it, the meeting must provide an agreed written Statement of Reasons for its rejection to the Board of Directors."

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

AREAS OF THE TRUST

Liverpool

St. Helens and Knowsley

Sefton

Cheshire West and Chester

Warrington and Halton

Wirral and the rest of England

Wales

Annex 2

ELECTION RULES

Election Rules

Part 1 - Interpretation

1. Interpretation

Part 2 – Timetable for election

2. Timetable
3. Computation of time

Part 3 – Returning officer

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

Part 4 - Stages Common to Contested and Uncontested Elections

8. Notice of election
9. Nomination of candidates
10. Candidate's consent and particulars
11. Declaration of interests
12. Declaration of eligibility
13. Signature of candidate
14. Decisions as to validity of nomination papers
15. Publication of statement of nominated candidates
16. Inspection of statement of nominated candidates and nomination papers
17. Withdrawal of candidates
18. Method of election

Part 5 – Contested elections

19. Poll to be taken by ballot
20. The ballot paper
21. The declaration of identity

Action to be taken before the poll

22. List of eligible voters
23. Notice of poll
24. Issue of voting documents
25. Ballot paper envelope and covering envelope

The poll

26. Eligibility to vote
27. Voting by persons who require assistance
28. Spoilt ballot papers
29. Lost ballot papers
30. Issue of replacement ballot paper
31. Declaration of identity for replacement ballot papers

Procedure for receipt of envelopes

32. Receipt of voting documents
33. Validity of ballot paper
34. Declaration of identity but no ballot paper
35. Sealing of packets

Part 6 - Counting the votes

- stv36. Interpretation of Part 6
37. Arrangements for counting of the votes
38. The count
- stv39. Rejected ballot papers
- fpp39. Rejected ballot papers
- stv40. First stage
- stv41. The quota
- stv42. Transfer of votes
- stv43. Supplementary provisions on transfer
- stv44. Exclusion of candidates

- stv45. Filling of last vacancies
- stv46. Order of election of candidates
- fpp46. Equality of votes
- Part 7 – Final proceedings in contested and uncontested elections*
- fpp47. Declaration of result for contested elections
- stv47. Declaration of result for contested elections
- 48. Declaration of result for uncontested elections
- Part 8 – Disposal of documents*
- 49. Sealing up of documents relating to the poll
- 50. Delivery of documents
- 51. Forwarding of documents received after close of the poll
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- Part 9 – Death of a candidate during a contested election*
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- Part 10 – Election expenses and publicity*
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- 58. Publicity about election by the corporation
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- Part 11 – Questioning elections and irregularities*
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- Part 12 – Miscellaneous*
- 62. Secrecy
- 63. Prohibition of disclosure of vote
- 64. Disqualification
- 65. Delay in postal service through industrial action or unforeseen event

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 body corporate known as Monitor, as provided by Section 61 of the Health and Social Care Act 2012; and
 - “the Act” means the National Health Service Act 2006.
- (2) Other expressions used in these rules and in Schedule 1 to the National Health Service Act 2006 have the same meaning in these rules as in that Schedule.

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 64, 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 64, 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 co-operation – 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 within that constituency,
- (c) the details of any nomination committee that has been established by the corporation,
- (d) the address and times at which nomination papers may be obtained;
- (e) the address for return of nomination papers and the date and time by which they must be received by the returning officer,
- (f) the date and time by which any notice of withdrawal must be received by the returning officer
- (g) the contact details of the returning officer, and
- (h) the date and time of the close of the poll in the event of a contest.

9. Nomination of candidates – (1) Each candidate must nominate themselves on a single nomination paper.

(2) The returning officer-

- (a) is to supply any member of the corporation with a nomination paper, 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 name,
- (b) contact address in full, and
- (c) constituency, or class within a constituency, of which the candidate is a member.

11. 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.
- 12. Declaration of eligibility** – The nomination paper must include a declaration made by the candidate–
- (a) that he or she is not prevented from being a member of the council of governors by paragraph 60 of Schedule 5 of the 2006 Act or by any provision of the constitution; and,
 - (b) for a member of the public or patient constituency, of the particulars of his or her qualification to vote as a member of that constituency, or class within that constituency, for which the election is being held.
- 13. Signature of candidate** – The nomination paper must be signed and dated by the candidate, indicating that –
- (a) they wish to stand as a candidate,
 - (b) their declaration of interests as required under rule 11, is true and correct, and
 - (c) their declaration of eligibility, as required under rule 12, is true and correct.
- 14. Decisions as to the validity of nomination** –
- (1) Where a nomination paper is received by the returning officer in accordance with these rules, the candidate is deemed to stand for election unless and until the returning officer-
 - (a) decides that the candidate is not eligible to stand,
 - (b) decides that the nomination paper is invalid,
 - (c) receives satisfactory proof that the candidate has died, or
 - (d) receives a written request by the candidate of their withdrawal from candidacy.
 - (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 time and 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 does not contain a declaration of the interests of the candidate, as required by rule 11,
 - (d) that the paper does not include a declaration of eligibility as required by rule 12, or
 - (e) that the paper is not signed and dated by the candidate, as required by rule 13.

- (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 is invalid, the returning officer must endorse this on the nomination paper, stating the reasons for their decision.
- (5) The returning officer is to send notice of the decision as to whether a nomination is valid or invalid to the candidate at the contact address given in the candidate's nomination paper.

15. Publication of statement of candidates –

- (1) The returning officer is to prepare and publish a statement showing the candidates who are standing for election.
- (2) The statement must show –
 - (a) the name, contact address, and constituency or class within a constituency of each candidate standing, and
 - (b) the declared interests of each candidate standing, as given in their nomination paper.
- (3) The statement must list the candidates standing for election in alphabetical order by surname.
- (3) The returning officer must send a copy of the statement of candidates and copies of the nomination papers to the corporation as soon as is practicable after publishing the statement.

16. Inspection of statement of nominated candidates and nomination papers –

- (1) The corporation is to make the statements of the candidates and the nomination papers supplied by the returning officer under rule 15(4) 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 statements of candidates or their nomination papers, the corporation is to provide that person with the copy or extract free of charge.

17. Withdrawal of candidates –

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

18. Method of election –

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

Part 5 – Contested elections

19. Poll to be taken by ballot –

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

20. 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) if the ballot paper is to be returned by post, the address for its return and the date and time of the close of the poll, and
 - (g) the contact details of the returning officer.
- (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.

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

- (1) In respect of an election for a public or patient constituency 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) for a member of the public or patient constituency, 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 voter must be required to return the declaration of identity together with the ballot paper.
- (5) 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 declared invalid.

Action to be taken before the poll

22. 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 are eligible to vote by virtue of rule 26 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.

23. 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 board of governors to be elected from that constituency, or class with that constituency,
- (d) the names, contact addresses, and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
- (e) that the ballot papers for the election are to be issued and returned, if appropriate, by post,
- (f) the address for return of the ballot papers, and the date and time 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.

24. 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 and ballot paper envelope,
 - (b) a declaration of identity (if required),
 - (c) information about each candidate standing for election, pursuant to rule 59 of these rules, and
 - (d) 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.

25. 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 if required, and
 - (b) the ballot paper envelope, with the ballot paper sealed inside it.

The poll

26. Eligibility to vote –

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

27. 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.

28. Spoilt ballot papers

- (1) If a voter has dealt with his or her ballot paper in such a manner that it cannot be accepted as a ballot paper (referred to 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, if required, 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.

29. 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 if required 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.

30. Issue of replacement ballot paper–

- (1) If a person applies for a replacement ballot paper under rule 28 or 29 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 28(3) or 29(2), he or she is also satisfied that that person has not already voted in the election, notwithstanding the fact that a declaration of identity if required has already been received by the returning officer in the name of that voter.
- (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.

31. Declaration of identity for replacement ballot papers (public and patient constituencies) –

- (1) In respect of an election for a public or patient constituency 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 public or patient 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 voter must be required to return the declaration of identity together with the ballot paper.

- (5) 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 declared invalid.

Procedure for receipt of envelopes

32. Receipt of voting documents –

- (1) Where the returning officer receives a –
 - (a) covering envelope, or
 - (b) any other envelope containing a declaration of identity if required, a ballot paper envelope, or a ballot paper, before the close of the poll, that officer is to open it as soon as is practicable; and rules 33 and 34 are to apply.
- (2) The returning officer may open any ballot paper envelope for the purposes of rules 33 and 34, 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.

33. 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 received by the returning officer before the close of the poll, with a declaration of identity if required 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 if required 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.

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

– Where the returning officer receives a declaration of identity if required 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.

35. Sealing of packets –

As soon as is possible after the close of the poll and after the completion of the procedure under rules 33 and 34, 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 if required,
- (c) the list of spoilt 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

36. 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 stv41 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 stv42 below.

37. 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.

38. 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.

39. 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).

39. 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.

40. 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.

41. 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 stv44 has been complied with.

42. 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 nontransferable 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 stv43 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 nontransferable votes.
- (6) The returning officer is, in accordance with this rule and rule stv43 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.

43. 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 stv42 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 stv42 or stv44 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 stv42 or stv44 for which candidate the next preference is recorded, the returning officer shall treat any vote on that ballot paper as a nontransferable 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.

44. Exclusion of candidates –

- (1) If—
 - (a) all transferable papers which under the provisions of rule stv42 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 stv45 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 stv43 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 stv45 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 stv42 and rule stv43.
- (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.

45. 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.

46. 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 stv42(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.

47. 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

48. 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 Clatterbridge Cancer Centre NHS Foundation Trust by section 59(2) of the 2006 Act, to the chair of the NHS Trust, or
 - (ii) in any other case, to the chair 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 stv39(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 chair 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 49, 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 chair 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 53(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 –
 - (i) that his or her vote was given, and

- (ii) that the regulator has declared that the vote was invalid.

Part 9 – Death of a candidate during a contested election

55. 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) 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 49(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 58 and 59.

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 59, must be –
 - (a) objective, balanced and fair,
 - (b) equivalent in size and content for all candidates,
 - (c) compiled and distributed in consultation with all of the candidates standing for election, and
 - (d) must not seek to promote or procure the election of a specific candidate or candidates, at the expense of the electoral prospects of one or more other candidates.
- (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 24 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.

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.
 - a. The Regulator shall delegate the determination of an application to a person or persons to be nominated for the purpose of the Regulator.
 - b. The determination by the person or persons nominated in accordance with Rule 61(7) shall be binding on and shall be given effect by the corporation, the applicant and the members of the constituency (or class within a constituency) including all the candidates for the election to which the application relates.
 - c. The Regulator may prescribe rules of procedure for the determination of an application including costs.
 - d.

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 who has or has not voted,
 - (ii) the unique identifier on any ballot paper,
 - (iii) the candidate(s) for whom any member has voted.
- (2) No person may obtain or attempt to obtain information as to the candidate(s) for whom a voter is about to vote or has voted, or communicate such information to any person at any time, including the unique identifier on a ballot paper given to a voter.
- (3) The returning officer is to make such arrangements as he or she thinks fit to ensure that the individuals who are affected by this provision are aware of the duties it imposes.

64. Prohibition of disclosure of vote –

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

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 24, 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.

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