

**BARNSELY HOSPITAL NHS FOUNDATION TRUST**  
**(A Public Benefit Corporation)**

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**Constitution**

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**December 2015**

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Unless the contrary intention appears or the context otherwise requires, words or expressions contained in this Constitution bear the same meaning as in the 2006 Act as amended by the Health and Social Care Act 2012.

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

References in this Constitution to legislation include all amendments, replacements, or re-enactments made.

References to legislation include all regulations, statutory guidance or directions.

Headings are for ease of reference only and are not to affect interpretation.

## 1. DEFINITIONS

### 1.1 In this Constitution:

“2006 Act”	means the National Health Service Act 2006;
“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;
“Annual Members Meeting”	is defined in paragraph 7.6 of the Constitution;
“Area of the Trust”	means the area specified in Annex 1 and the attached map;
“Board of Directors”	means the board of directors as constituted in accordance with this Constitution;
“Chairman”	means the chair of the Trust (the term is not gender specific);
“Constitution”	means this constitution together with the annexes attached hereto;
“Director”	means a director on the Board of Directors;
“Financial Year”	means:  (a) the period beginning with the date on which the Trust is authorised and ending with the next 31st March; and  (b) each successive period of twelve months beginning with 1 <sup>st</sup> April.

“Fit and Proper Person Requirements (FPPR)”	means those requirements stipulated under Regulation 5 of The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 (the 2014 Regulations)
“Council of Governors”	means the Council of Governors as constituted in accordance with this Constitution. This is the body referred to as the Council of Governors in the 2006 Act, as amended by the 2012 Act;
"Licence"	means the Trust's licence granted by Monitor under the 2012 Act;
“Local Authority Governor”	means a member of the Council of Governors appointed by a local authority whose area includes the whole or part of an area specified in Annex 1 as an area for a public constituency;
"Member"	means a member of the Trust;
“Monitor”	means the body corporate known as Monitor, as provided by Section 61 of the 2012 Act;
“Partnership Governor”	means a member of the Council of Governors appointed by a partnership organisation specified in Annex 3;
“Public Governor”	means a member of the Council of Governors elected by the members of the relevant class within the public constituency;
"Secretary"	means the secretary of the Trust or any other person appointed to perform the duties of the secretary of the Trust, including a joint, assistant or deputy secretary;
“Staff Governor”	means a member of the Council of Governors elected by the members of the relevant class of the staff constituency;
“Staff Class”	means those classes of the staff constituency set out in Annex 2;
“Trust”	means the Barnsley Hospital NHS Foundation Trust.

## **2 NAME**

- 2.1 The name of this Trust is to be Barnsley Hospital NHS Foundation Trust.

## **3 PRINCIPAL PURPOSE**

- 3.1 The Trust's principal purpose is the provision of goods and services for the purposes of the health service 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.

#### **4 OTHER PURPOSES**

4.1 The Trust may provide goods and services for any purposes related to:

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

4.1.2 the promotion and protection of public health.

4.2 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.

#### **5 POWERS**

5.1 The Trust is to have all the powers of an NHS foundation trust set out in the 2006 Act subject to any restrictions in its Licence.

#### **6 FRAMEWORK**

6.1 A Board of Directors will be responsible for the management of the Trust and a Council of Governors will ensure that the Trust takes account of local needs and complies with the terms of its legal framework. Members of the Council of Governors will be drawn from those membership constituencies described in paragraph 7 of this Constitution and representatives from organisations closely connected with the services and goods of the Trust.

#### **7 MEMBERS**

7.1 The Trust is to have 2 membership constituencies, namely:

(a) a “public constituency”; and

(b) a “staff constituency”.

##### **7.2 Public constituency**

7.2.1 Members of the Trust who are members of the public constituencies listed in Annex 1 are to be individuals:

a) who live in the Area of the Trust;

- (b) who are not eligible to become a member of the staff constituency and are not Members of any other constituency or otherwise disqualified for membership under paragraph 7.4; and
- (c) who have each made an application for membership to the Trust.

7.2.2 The minimum number of Members required in each area of the public constituency is specified in Annex 1.

### 7.3 **Staff constituency**

7.3.1 The staff constituency is to be divided into 5 classes as specified in Annex 2.

7.3.2 All staff are eligible to be a Member of one class or another.

7.3.3 Members of the Trust who are Members of the staff constituency are to be individuals:

- (a) who are employed under a contract of employment by the Trust; or
- (b) who are not so employed but who nevertheless exercise functions for the purposes of the Trust; and
- (c) who satisfy the minimum duration requirements set out in paragraph 3(3) of Schedule 7 to the 2006 Act, that is to say:
  - (i) in the case of individuals described at (a) above
    - (aa) who 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
    - (bb) who have been continuously employed by the Trust for at least 12 months;
  - (ii) in the case of individuals described at (b) above, who have exercised the functions for the purposes of the Trust for at least a continuous period of 12 months and do so either under an honorary contract with the Trust and are acknowledged in writing by the Trust as so doing for the purposes of this paragraph or who are the staff of contractors who work full time at the Trust providing services that the Trust would otherwise provide itself; and
- (d) who are not disqualified for membership under paragraph 7.4 below;
- (e) who in the case of individuals described at (b) above have each made an application for membership to the Trust, or in the case of all other staff and for the avoidance of doubt this will include the volunteer staff class, have been invited by the Trust to become a Member of the relevant staff class within the staff constituency and have not notified the Trust that they do not wish to do so.

7.3.4 The minimum number of Members required for each staff class of the staff constituency is as specified in Annex 2.

## **7.4 Disqualification for membership**

7.4.1 A person may not be a member of the Trust or continue to be a member of the Trust if at the time of their application for membership of the Trust or at any time during the duration of their membership they do not meet the criteria for membership set out in paragraphs 7.2 or 7.3.

7.4.2 It is the responsibility of the Member to ensure their eligibility and not the Trust, but where the Trust is on notice that a Member may be disqualified from membership, they shall carry out all reasonable enquiries to establish if this is the case.

7.4.3 A person may not become a Member of the Trust if at the time of their application for membership of the Trust they have not attained the age of 14.

## **7.5 Termination of membership**

7.5.1 A Member shall cease to be a Member if he or she:

- (a) resigns by notice to the Foundation Trust Chairman or their nominated officer;
- (b) ceases to fulfil the requirements of paragraph 7.2 or 7.3;
- (c) is deemed to be disqualified by the application of paragraph 7.4;
- (d) dies.

## **7.6 Annual Members' Meetings**

7.6.1 The Trust shall hold an annual meeting of its Members ('Annual Members' Meeting'). The Annual Members' Meeting shall be open to members of the public.

7.6.2 This shall be combined with a general meeting of the Council of Governors described in paragraph 8.17.

7.6.3 Members shall be invited to attend the meeting by public notice issued by the Trust.

## **8 COUNCIL OF GOVERNORS**

8.1 The Trust is to have a Council of Governors. which shall comprise both elected and appointed governors.

8.2 The composition of the Council of Governors is specified in Annex 3 .

8.2.1 The members of the Council of Governors, other than the appointed members, shall be chosen by election by their constituency or, where there are classes within a constituency, by their class within that constituency. The number of governors to be elected by each constituency, or, where appropriate, by each class of constituency, is specified in Annex 1 (Public Governors) and Annex 2 (Staff Governors).

8.2.2 The number of Public Governors is to be more than half the total membership of the Council.

### 8.3 **Co-opted Advisors**

8.3.1 Up to a maximum of two Members may be co-opted to the Council of Governors as advisors at any one time to provide additional support or expertise to the Council.

8.3.2 Co-opted advisors will be appointed for an agreed period, not to exceed the usual terms of office of an elected governor as set out in 8.6 below. The appointment (and removal) of a co-opted advisor will be subject to approval at a general meeting by a majority of the Council of Governors present and voting.

8.3.3 Co-opted advisors shall not have voting rights at general meetings nor be counted in the quorum.

8.4 The organisations specified as partnership organisations that may appoint a member to the Council of Governors are described in Annex 3.

### 8.5 **Election of governors**

8.5.1 Elections for elected members of the Council of Governors shall be conducted in accordance with the Election Rules attached at Annex 5.

8.5.2 The Election Rules, based on those published nationally and supported by Monitor from time to time, form part of this Constitution.

8.5.3 A subsequent variation of the Model Election Rules issued by any national body and supported by Monitor shall not constitute a variation of the terms of this Constitution for the purposes of paragraph 21 of the Constitution (amendment of the Constitution).

8.5.4 If contested, the election must be by secret ballot.

8.5.5 A lead governor shall be appointed from among the Public Governors in accordance with the process determined by the Chairman and Council of Governors and subject to approval at a general meeting by a majority of the Council of Governors present and voting.

### 8.6 **Terms of office**

#### 8.6.1 **Elected Governors:**

- (a) may hold office for a period of up to three years;
- (b) are eligible for re-election at the end of that period;
- (c) shall cease to hold office if they cease to be a member of the constituency. or class by which he or she was elected

#### 8.6.2 **Appointed governors:**

- (a) may hold office for a period of 3 years;
- (b) are eligible for reappointment at the end of that period;
- (c) shall cease to hold office if the appointing organisation withdraws its sponsorship of them.



## 8.7 Termination of tenure

- 8.7.1 A governor may resign from that office at any time during the term of that office by giving notice in writing to the Chairman or his or her nominated officer.
- 8.7.2 If a governor fails to attend 2 consecutive meetings of the Council of Governors, his or her tenure of office is to be immediately terminated unless the other governors are satisfied that:
- (a) the absence was due to a reasonable cause; and
  - (b) he or she will be able to start attending meetings of the Trust again within such a period as they consider reasonable.
- 8.7.3 If the Council of Governors determines that a Public or Staff Governor is at any time not representative of the constituency or class which they represent having regard to the manifesto of the governor then they may, acting reasonably, terminate, upon notice to him or her, his or her tenure of office.
- 8.7.4 If a governor fails to attend a training session for governors as recommended by the Chairman or his or her nominated officer and approved by the Council of Governors, within 6 months of becoming a governor, his or her tenure of office is to be terminated within one month unless in the meantime the governor has satisfied the Council of Governors that:
- (a) the absence was due to a reasonable cause; and
  - (b) he or she will be able to attend a training session within such a period as they consider reasonable.
- 8.7.5 The Council of Governors may by a resolution terminate a governor's tenure of office for reasonable cause if it considers that his or her continuing as a governor would or would be likely to:
- (a) prejudice the ability of the Trust to fulfill its principal purpose or other of its purposes under this Constitution or otherwise to discharge its duties and functions; or
  - (b) harm the Trust's work with other persons or bodies with whom it is engaged or may be engaged in the provisions of goods and services; or
  - (c) adversely affect public confidence in the goods or services provided by the Trust; or
  - (d) otherwise bring the Trust into disrepute.
- 8.7.6 The governor concerned will have the opportunity to make representations on his or her own behalf to the Governing Body but shall not be entitled to vote on the issue of his or her removal.

## 8.8 Disqualification of Governors

- 8.8.1 A person may not become or continue as a governor of the Trust if:
- (a) he or she has not attained the age of 16;

- (b) in the case of an elected governor he or she ceases to be a member of the constituency he or she represents;
- (c) in the case of an appointed governor, the appointing organisation withdraws their sponsorship of him or her;
- (d) he or she has been adjudged bankrupt or his or her estate has been sequestrated and in either case he or she has not been discharged;
- (e) he or she has made a composition or arrangement with, or granted a trust deed for, his or her creditors and has not been discharged in respect of it;
- (f) he or she has within the preceding five years been convicted in the British Islands of any offence, and a sentence of imprisonment (whether suspended or not, without the option of a fine) was imposed on him or her;
- (g) he or she has within the preceding two years been dismissed, otherwise than by reason of redundancy, end of fixed term contract or ill health, from any paid employment with a health service body;
- (h) he or she is a person whose tenure of office as the chairman or as a member or director of a health service body has been terminated on the grounds that his or her appointment is not in the interests of the health service, or for non-disclosure of a pecuniary interest;
- (i) he or she is an executive or non-executive Director of the Trust, or a non-executive director, chairman, chief executive officer of another NHS foundation trust;
- (j) he or she is incapable by reason of mental disorder, illness or injury of managing and administering his or her property and affairs;
- (k) he or she is a registered sex offender pursuant to the Sex Offenders Act 2003;
- (l) he or she has failed to abide by the Trust's Code of Conduct for Governors and accountability and any Code of Values and principles in such form as the Trust may publish from time to time.
- (m) the Chairman of the Council of Governors and/or the Council of Governors if necessary, resolves that disclosures revealed by a Criminal Records Bureau or Disclosure & Barring Service check are such that it would be inappropriate for him or her to become or continue as a governor and would adversely affect public confidence in the Trust or otherwise bring the Trust into disrepute.
- (n) he or she has failed to comply with or otherwise contravened the Trust's Withholding Treatment Policy (as amended from time to time) and has been so notified to that effect by the Chief Executive.

8.8.2 Where a person has been elected or appointed to be a governor and he or she becomes disqualified for appointment under paragraph 8.8.1, he or she shall notify the Chairman or his or her nominated officer in writing of such disqualification.

8.8.3 If it comes to the notice of the Chairman at the time of his or her appointment or later that the governor is so disqualified, he or she shall immediately declare that the person in question is disqualified and notify him or her in writing to that effect.

8.8.4 Upon receipt of any such notification, that person's tenure of office, if any, shall be terminated and he or she shall cease to act as a governor.

## 8.9 **Vacancies**

8.9.1 Where membership of the Council of Governors ceases for one of the reasons set out in paragraphs 8.7 or 8.8 above, Public and Staff Governors shall be replaced in accordance with the relevant electoral schemes as detailed in paragraph 8.9.2 below. Appointed governors are to be replaced in accordance with the processes agreed and set out in Annex 3.

8.9.2 Where the vacancy arises amongst elected governors, the Trust shall be at liberty to:

- (a) 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 vacate and be subject to election for any unexpired period of the term of office.
- (b) If no-one is available to take office under the preceding sub-paragraph, the seat will remain vacant until the next scheduled election, unless there is no longer a majority of governors on the Council of Governors from the public constituencies.
- (c) If, as a result of the vacancy, there is no longer a majority of Public Governors and providing that the outstanding period of office is six months or more, to call an election within three months to fill the seat for the remainder of that term of office.

## 8.10 **Duties, Roles and responsibilities of Governors**

8.10.1 The general duties, roles and responsibilities of the governors are:

- (a) to hold the non-executive Directors individually and collectively to account for the performance of the Board of Directors;
- (b) to represent the interests of the Members of the Trust as a whole and the interests of the public;
- (c) at a general meeting:
  - (i) to appoint or remove the chairman and the other non-executive directors. The removal of a non-executive Director requires the approval of three-quarters of all the members of the Council of Governors;
  - (ii) to decide the remuneration and allowances, and the other terms and conditions of office, of the non-executive Directors;
  - (iii) to appoint or remove the Trust's auditor at a general meeting of the Council of Governors in accordance with the protocol determined by the Council of Governors;
  - (iv) to be presented with the annual accounts, any report of the auditor on them and the annual report;
- (d) to approve (by a majority of the Council of Governors present and voting) an appointment (by the non-executive directors) of the Chief Executive;

- (e) to give the views of the Council of Governors to Directors for the purposes of the preparation (by the Directors) of the document containing information as to the Trust's forward planning in respect of each Financial Year to be given to Monitor;
- (f) to consider the annual accounts, any report of the auditor on them and the annual report;
- (g) to respond as appropriate when consulted by the Directors;
- (h) to act as a source of ideas about how the Trust can provide its services in a way that meets the needs of the communities in its Area;
- (i) approve amendments to the Trust's Constitution in accordance with paragraph 21 of this Constitution;
- (j) approve referral of a question to the Panel by a governor in accordance with paragraph 8.16 of this Constitution;
- (k) approve the implementation of a proposal 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 in accordance with paragraph 16.7 of this Constitution;
- (l) approve entering into a significant transaction or approve an application for a merger, acquisition, separation or dissolution of the Trust in accordance with paragraph 22 of this Constitution.

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

## 8.11 Expenses

8.11.1 The Trust may pay travelling and other expenses to governors at such rates as it decides. These rates are to be published in the annual report.

8.11.2 The remuneration and allowances for non-executive Directors set by the governors are also to be published in the annual report.

## 8.12 Remuneration

8.12.1 Governors are not to receive remuneration.

## 8.13 Meetings

8.13.1 The Chairman of the Trust (ie the Chairman of the Board of Directors, appointed in accordance with the provisions of paragraph 9.4 or 9.5 below) or, in his absence the Deputy Chairman (appointed in accordance with the provisions of paragraph 9.4.3 below), shall preside at meetings of the Council of Governors and will have the casting vote, unless there is a conflict of interests, in which case the lead governor, or in his or her absence a Public Governor chosen by the members of the Council of Governors present and in accordance with Annex 4, will preside at the meeting and will have the casting vote.

- 8.13.2 Meetings of the Council of Governors are to be open to members of the public unless the Council of Governors resolves to exclude the public (for either the whole or part of the proceedings) where it considers that publicity would be prejudicial to the Trust by reason of the confidential nature of the business to be transacted or for other exceptional reasons stated in the resolution.
- 8.13.3 For the purposes of 8.13.2 the Council of Governors may treat the following as examples of matters of a confidential nature:
- (a) any matter arising from a contract of employment with the Trust;
  - (b) any matter which involves the consideration of confidential information held by the Trust;
  - (c) commercial matters;
  - (d) legal matters;
  - (e) actual or anticipated litigation, including any arbitration or dispute resolution process;
  - (f) recommendations or advice from sources other than the Board of Directors and any committee or sub-committee referred to in this Constitution.
- 8.13.4 The Council of Governors is to meet at least 3 times per year.
- 8.13.5 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.
- 8.13.6 At the annual general meeting of the Council of Governors which shall take place on or before 30 September in every year the Council of Governors is to receive and consider the annual accounts, any report of the auditor on them, and the annual report.
- 8.13.7 The Council of Governors may adopt its own standing orders for its practice and procedure, in particular for its procedure at meetings (including general meetings), but these shall be in accordance with Annex 4.
- 8.13.8 An elected governor may not vote at a meeting of the Council of Governors unless he or she has made a declaration in the period commencing with the date of the publicised nomination date and ending with the date of the relevant election for which he or she has made his or her nomination, in the form specified in the paragraph below stating which constituency or class he or she is a member of and is not prevented from being a member of the Council of Governors by paragraph 8 of Schedule 7 to the 2006 Act or paragraph 8.18 of this Constitution.
- 8.13.9 The form referred to in paragraph 8.13.8 is more particularly described in Annex 5 to this Constitution.
- 8.14 **Committees and sub-committees**
- 8.14.1 The Council of Governors may appoint committees consisting of its members to assist it in carrying out its functions. A committee appointed under this paragraph may appoint a sub-committee.

8.14.2 These committees or sub-committees may call upon outside advisers to help them in their tasks.

## 8.15 **Conflicts of interest of Governors**

8.15.1 If a governor has a pecuniary, relevant or material interest, whether direct or indirect, in any contract or proposed contract or other matter which is under consideration by the Council of Governors, he or she shall disclose that to the Council as soon as he or she is aware of it and retire from the meeting. The Board of Directors, in consultation with the Council of Governors, shall comply with Annex 7, which will specify arrangements for excluding governors or Directors from discussion or consideration of the contract or other matter as appropriate.

## 8.16. **Referral to the Panel**

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

8.16.1 to act in accordance with its constitution; or

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

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

## 9 **BOARD OF DIRECTORS**

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

### 9.2 **Composition**

9.2.1 The Board is to include:

(a) the following non-executive Directors:

(i) a Chairman;

(ii) a minimum of 4 and a maximum of 6 other non-executive Directors;

(b) the following executive Directors:

(i) a Chief Executive (and Accounting Officer);

(ii) a Finance Director; and

(iii) a minimum of 2 and a maximum of 4 other executive Directors, one of whom is to be a registered medical practitioner or a registered dentist (within the meaning of the Dentists Act 1984) and another of whom is to be a registered nurse or registered midwife.

provided that the Board shall at all times be constituted so that the number of non-executive Directors (excluding the Chairman) equals or exceeds the number of executive Directors

- 9.2.2 Non-voting directors or any other persons by invitation will be eligible to attend Board meetings as and when required to provide operational advice and support to the Board.
- 9.2.3 For the avoidance of doubt non-voting directors will not be statutory directors under the 2006 Act and will bear no responsibility or liability for any action or decision of the Board of Directors.
- 9.3 Only a member of the public constituency is eligible for appointment as a non-executive Director, and provided the person is not disqualified by virtue of paragraph 9.6 below.
- 9.4 Non-executive Directors are to be appointed in accordance with a process of open competition outlined as follows:
  - 9.4.1 The Council of Governors shall establish an appointment committee (known as the Nominations Committee) comprising the Chairman (or, in their absence, the Deputy Chairman), 3 Public Governors, 1 Staff Governor and 2 other appointed governors to consider candidates for appointment as non-executive Directors against an agreed person specification. The Nominations Committee will be supported by appropriate advice and guidance from a human resources specialist. If appropriate the nomination process may also include the services of another external agency and such other independent expert as may be considered necessary. The Nominations Committee will shortlist those candidates they wish to interview and conduct interviews with the candidates and/or seek the support of a human resources specialist to do so and thereafter make their selection to recommend for appointment. This recommendation will be put to the Council of Governors who may decide or not to accept it and may or may not approve the appointment.
  - 9.4.2 The validity of any act of the Trust is not affected by any vacancy among the Directors or by any defect in the appointment of any Director.
  - 9.4.3 The Chairman will appoint a Deputy Chairman from the non executive Directors subject to the approval of the Council of Governors.
- 9.5 **Terms of office**
  - 9.5.1 The Nominations Committee of the Council of Governors will undertake and oversee the appointment and terms and conditions of non-executive Directors including the Chairman. Final ratification of appointments will be subject to approval of the majority of the Council of Governors present and voting at a general meeting.
  - 9.5.2 The Chief Executive (and Accounting Officer) shall hold office for a period in accordance with the terms and conditions of office decided by an appointment committee of non executive Directors supported by appropriate advice and guidance from a human resources specialist although the appointment will be required to be approved by a majority vote at a general meeting of the Council of Governors. If appropriate the appointment process may also include the services of another external agency and such other independent expert as may be considered necessary. The Chairman and non-executive Directors will also be responsible for establishing the terms and conditions for the Chief Executive via a further committee (the Remuneration Committee).

9.5.3 The executive Directors, other than the Chief Executive, shall hold office for a period in accordance with the terms and conditions decided by an appointment committee consisting of the Chairman, the Chief Executive and the other non-executive Directors. The appointment committee will be supported by appropriate advice and guidance from a human resources specialist. If appropriate the appointment process may also include the services of another external agency and such other independent expert as may be considered necessary.

## 9.6 **Disqualification of Directors**

9.6.1 A person may not be a director of the Trust if–

- (a) he or she has been adjudged bankrupt or his or her estate has been sequestrated and in either case he or she has not been discharged;
- (b) he or she has made a composition or arrangement with, or granted a trust deed for, his or her creditors and has not been discharged in respect of it;
- (c) he or she has within the preceding five years been convicted in the British Islands of any offence, and a sentence of imprisonment (whether suspended or not, without the option of a fine) was imposed on him or her;
- (d) in the case of a non-executive Director, he or she no longer satisfies paragraph 9.3;
- (e) he or she is a person whose tenure of office as a Chairman or as a member or director of a health service body has been terminated on the grounds that his or her appointment is not in the interests of public service, or for non-disclosure of a pecuniary interest;
- (g) he or she has within the preceding two years been dismissed, otherwise than by reason of redundancy, end of fixed term contract or ill health from any paid employment with a health service body;
- (h) disclosures revealed by a Criminal Records Bureau or Disclosure & Barring Service check are such that it would be inappropriate for him or her to become or continue as a Director and would adversely affect public confidence in the Trust or otherwise bring the Trust into disrepute;
- (i) he or she no longer meets the regulatory Fit and Proper Person Requirements (FPPR).

## 9.7 **Duties, roles and responsibilities**

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

9.7.2 The powers of the Trust are to be exercisable by the Board of Directors on its behalf.

9.7.3 Any of those powers may be delegated to a committee of Directors or to an executive Director.

9.7.4 A committee of non-executive Directors established as an audit committee is to monitor, review and carry out such other functions in relation to the Auditor as are appropriate.

9.7.5 It is for the non-executive Directors to appoint (subject to the approval of the Council of Governors) or remove the Chief Executive (and Accounting Officer).



- 9.7.6 It is for a committee consisting of the Chairman, the Chief Executive (and Accounting Officer) and the other non-executive Directors to appoint or remove the executive Directors.
- 9.7.7 The Trust shall establish a committee of non-executive Directors to decide the remuneration and allowances, and the other terms and conditions of office, of the executive Directors.
- 9.7.8 The Directors, having regard to the views of the Council of Governors, are to prepare the information as to the Trust's forward planning in respect of each Financial Year to be given to Monitor.
- 9.7.9 The Directors are to present to the Council of Governors at a general meeting the annual accounts, any report of the auditor on them, and the annual report.
- 9.7.10 The functions of the Trust under paragraph 15 below are delegated to the Chief Executive as Accounting Officer.

## 10 **MEETINGS OF DIRECTORS**

- 10.1 The Board of Directors, in consultation with the Council of Governors, is to adopt standing orders for the Trust covering the regularity, proceedings and business of its meetings. These are to include setting a quorum for meetings, both of executive and non-executive directors. The proceedings shall not however be invalidated by any vacancy of its membership, or defect in a Director's appointment.
- 10.2 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, as set out in the Trust's standing orders.
- 10.3 Before holding a meeting, the Board of Directors must send a copy of the agenda of the meeting to the Council of Governors. As soon as practicable after holding a meeting, the Board of Directors must send a copy of the minutes of the meeting to the Council of Governors.

## 11 **CONFLICTS OF INTEREST OF DIRECTORS**

- 11.1 The duties that a Director of the Trust has by virtue of being a Director include in particular:
- 11.1.1 a duty to avoid a situation in which the Director has (or can have) a direct or indirect interest that conflicts (or possibly may conflict) with the interests of the Trust; and
- 11.1.2 a duty not to accept a benefit from a third party by reason of being a Director or doing (or not doing) anything in that capacity.
- 11.2 the duty referred to in sub-paragraph 11.1.1 is not infringed if:
- 11.2.1 the situation cannot reasonably be regarded as likely to give rise to a conflict of interest; or
- 11.2.2 the matter has been authorised in accordance with the Constitution.

- 11.3 the duty referred to in sub-paragraph 11.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- 11.4 In sub-paragraph 11.1.2, “third party” means a person other than;
- 11.4.1 the Trust; or
- 11.4.2 a person acting on its behalf.
- 11.5 If a Director of the Trust has in any way a direct or indirect interest in a proposed transaction or arrangement with the Trust, the Director must declare the nature and extent of that interest to the other Directors.
- 11.6 If a declaration under this paragraph proves to be, or becomes, inaccurate, incomplete, a further declaration must be made.
- 11.7 Any declaration required by this paragraph must be made before the Trust enters into the transaction or arrangement.
- 11.8 This paragraph does not require a declaration of an interest of which the Director is not aware or where the Director is not aware of the transaction or arrangement in question.
- 11.9 A Director need not declare an interest:
- 11.9.1 if it cannot reasonably be regarded as likely to give rise to a conflict of interest;
- 11.9.2 if, or to the extent that, the Directors are already aware of it;
- 11.9.3 if, or to the extent that, it concerns terms of the Director’s appointment that have been or are to be considered:
- (a) by a meeting of the Board of Directors; or
- (b) by a committee of the Directors appointed for the purpose under the Constitution.

## 12 **REGISTERS**

- 12.1 The Trust is to have:
- (a) a register of Members showing, in respect of each Member, the constituency and where there are classes within it, the class to which he or she belongs;
- (b) a register of members of the Council of Governors;
- (c) a register of interests of the Council of Governors;
- (d) a register of Directors;
- (e) a register of interests of the Directors,
- and maintained in accordance with the standing orders and standing financial instructions of the Trust.
- 12.2 The Chairman or their nominated officer shall:

- 12.2.1 admit to the Members Register the name and constituency of a Member as soon as reasonably possible following receipt of a completed declaration of the Member confirming their eligibility as a Member;
- 12.2.2 remove from the Members Register as soon as reasonably possible upon this being determined or upon being so advised, the name of any Member who ceases to be entitled to be a Member under the provisions of this Constitution;
- 12.2.3 admit to the Register of Governors as soon as reasonably possible upon this being determined or upon being so advised, the name and constituency of those members who have been elected or appointed as a governor of the Trust;
- 12.2.4 remove from the Register of Governors those governors who have not been re-elected or who have had their sponsorship withdrawn, as soon as reasonably possible, notice having been given to the Chief Executive or their nominated officer to that effect;
- 12.2.5 maintain the respective registers of interests of Directors and governors and undertake a review of the same at least twice in every year by notice to that effect to all Directors and governors.

### 13 PUBLIC DOCUMENTS

- 13.1 The following documents of the Trust are to be available for inspection by members of the public free of charge at all reasonable times:
  - (a) a copy of the current Constitution;
  - (b) a copy of the latest annual accounts and of any report of the auditor on them;
  - (c) a copy of the latest annual report;
- 13.2 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:
  - 13.2.1 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;
  - 13.2.2 a copy of any report laid under section 65D (appointment of trust special administrator) of the 2006 Act;
  - 13.2.3 a copy of any information published under section 65D (appointment of trust special administrator) of the 2006 Act;
  - 13.2.4 a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act;
  - 13.2.5 a copy of any statement provided under section 65F(administrator's draft report) of the 2006 Act;

- 13.2.6 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;
- 13.2.7 a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act;
- 13.2.8 a copy of any final report published under section 65I (administrator's final report);
- 13.2.9 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;
- 13.2.10 a copy of any information published under section 65M (replacement of trust special administrator) of the 2006 Act.
- 13.3 Any person who requests it is to be provided with a copy or extract from any of the above documents.
- 13.4 The registers mentioned in the paragraph 12.1 are also to be made available for inspection by members of the public, except in circumstances prescribed by regulations made under the Public Benefit Corporation (Register of Members) Regulations 2004 (SI 2004 No 539 as amended) and, so far as those registers are required to be available;
- (a) they are to be available free of charge at all reasonable times,
- (b) a person who requests it is to be provided with a copy of or extract from them.
- 13.5 If the person requesting a copy or extract is not a Member of the Trust, the Trust may impose a reasonable charge for providing the copy or extract.

## 14 **AUDITOR**

- 14.1 The Trust is to have an auditor and is to provide the auditor with every facility and all information which he or she may reasonably require for the purposes of his or her functions under Part 1 of the 2006 Act.
- 14.2 A person may only be appointed auditor if he or she (or in the case of a firm each of its members) is a member of one or more of the bodies referred to in paragraph 23(4) of Schedule 7 to the 2006 Act.
- 14.3 Appointment of the Auditor by the Council of Governors is covered in paragraph 8.10, and monitoring of the auditor's functions by a committee of non-executive directors is covered in paragraph 9.7.4.
- 14.4 An officer of the Audit Commission may be appointed with the agreement of the Commission.
- 14.5 The Auditor is to carry out his or her duties in accordance with Schedule 10 to the 2006 Act and in accordance with any directions given by Monitor on standards, procedures and techniques to be adopted.

15        **ACCOUNTS**

- 15.1        The Trust must keep proper accounts and proper records in relation to the accounts.
- 15.2        Monitor may, with the approval of the Secretary to the State, give directions to the Trust as to the content and form of its accounts.
- 15.3        The accounts are to be audited by the Trust's auditor.
- 15.4        The following documents will be made available to the Comptroller and Auditor General for examination at his or her request–
- (a)        the accounts;
  - (b)        Any records relating to them; and
  - (c)        any report of the auditor on them.
- 15.5        The Trust (through its Chief Executive and Accounting Officer) 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.

16        **ANNUAL REPORTS, FORWARD PLANS AND NON-NHS WORK**

- 16.1        The Trust is to prepare annual reports and send them to Monitor.
- 16.2        The reports are to give -
- (a)        information on any steps taken by the Trust to secure that (taken as a whole) the actual Membership of its/any public constituency is representative of those eligible for such membership;
    - i) Information on any occasions in the period to which the report relates on which the Council of Governors exercised its power under paragraph 8.17.5
    - ii) Information on the Trust's policy on pay and on the committee established under paragraph 9.7.7
    - iii) Information on the remuneration of the directors and on the expenses of the governors and the directors, and.
  - (b)        any other information Monitor requires.
- 16.3        The Trust is to comply with any decision Monitor makes as to –
- (a)        the form of the reports;
  - (b)        when the reports are to be sent to it;
  - (c)        the periods to which the reports are to relate.
- 16.4        The Trust shall give information as to its forward planning in respect of each financial year to Monitor. This information is to be prepared by the directors, who must have regard to the views of the Council of Governors (paragraph 9.7.8 above).

- 16.5 Each forward plan must include information about:
- 16.5.1 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
  - 16.5.2 the income it expects to receive from doing so.
- 16.6 Where a forward plan contains a proposal that the Trust carry on an activity of a kind mentioned in sub-paragraph 16.5.1 the Council of Governors must:
- 16.6.1 determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfilment by the Trust of its principal purpose or the performance of its other functions; and
  - 16.6.2 notify the Directors of the Trust of its determination.
- 16.7 If the Trust proposes to increase by 5% or more the proportion of its total income in any Financial Year attributable to activities other than the provision of goods and services for the purposes of the health service in England, it may implement the proposal only if more than half of the members of the Council of Governors of the Trust voting approve its implementation.

## 17. **PRESENTATION OF THE ANNUAL ACCOUNTS AND REPORTS TO THE GOVERNORS AND MEMBERS**

- 17.1 The following documents are to be presented to the Council of Governors at a general meeting of the Council of Governors:
- 17.1.1 the annual accounts;
  - 17.1.2 any report of the auditor on them; and
  - 17.1.3 the annual report.
- 17.2 The documents shall also be presented to the Members of the Trust at the Annual Members' Meeting by at least one member of the Board of Directors in attendance.
- 17.3 The Trust may combine a meeting of the Council of Governors convened for the purposes of sub-paragraph 17.1 with the Annual Members' Meeting.

## 18 **INDEMNITY**

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

19           **INSTRUMENTS ETC.**

- 19.1       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.
- 19.2       The Trust is to have a seal, but this shall not be affixed except under the authority of the Board of Directors.

20           **DISPUTE RESOLUTION PROCEDURES**

- 20.1       Disputes between the Board of Directors and the Council of Governors are to be resolved in accordance with Annex 6.

21           **AMENDMENT OF THE CONSTITUTION**

- 21.1       The Trust may make amendments to this Constitution only if:
  - 21.1.1     more than half of the members of the Council of Governors of the Trust voting approve the amendments; and
  - 21.1.2     more than half of the members of the Board of Directors of the Trust voting approve the amendments.
- 21.2       Amendments made under paragraph 21.1 take effect as soon as the conditions in that paragraph are satisfied, but the amendment has no effect in so far as the Constitution would, as a result of the amendment, not accord with schedule 7 of the 2006 Act.
- 21.3       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):
  - 21.3.1     at least one member of the Council of Governors must attend the next Annual Members' Meeting and present the amendment; and
  - 21.3.2     the Trust must give the Members an opportunity to vote on whether they approve the amendment.
- 21.4       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.
- 21.5       The Constitution shall be reviewed periodically at the request of either the Board of Directors or the Council of Governors.

22           **MERGERS, ETC AND SIGNIFICANT TRANSACTIONS**

- 22.1       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.
- 22.2       The Trust may enter into a significant transaction only if more than half of the members of the Council of Governors of the Trust voting approve entering into the transaction.
- 22.3       “Significant transaction” means a transaction greater in value than 25% of the Trust’s existing gross assets or income.



## Annex 1

### AREA OF THE TRUST AND PUBLIC CONSTITUENCY OF THE TRUST (Paragraph 7.2)

- 1 The area of the Trust shall be the Barnsley Public Constituency, encompassing the whole of the area of Barnsley Metropolitan Borough as determined by the electoral wards of the Local Authority of Barnsley (see also map below) and

Constituency O covering the area of England and Wales excluding the given areas mentioned above.

- 2 The minimum number of Members shall be 500 for the Barnsley Public Constituency and shall be 50 for the constituency class known as O.
- 3 The total number of Public Governors shall be 16, comprising 15 governors for the Barnsley Public Constituency and 1 governor for Constituency O.



*Barnsley Metropolitan Borough*

## Annex 2

### THE STAFF CONSTITUENCY

1. The staff constituency is to be divided into 5 classes, with six governors in total, as specified below:
  - (a) the medical and dental staff class (one governor);
  - (b) the nursing and midwifery staff class (two governors);
  - (c) the clinical support staff class (one governor);
  - (d) the volunteer staff class (one governor); and
  - (e) the non clinical support staff class (one governor)
2. The Members of the medical and dental practitioners' staff class are individuals who are Members of the staff constituency who are fully registered persons within the meaning of the Medicines Act 1956 and, in the case of medical practitioners, who hold a licence to practise. For the avoidance of doubt the medical and dental practitioners' staff class shall also include junior doctors who are not yet fully registered within the meaning of the Medicines Act 1956.
3. The Members of the nursing and midwifery staff class are individuals who are Members of the staff constituency who are not fully registered persons within the meaning of the Medicines Act 1956, but whose regulatory body falls within the remit of the Council for the Regulation of Health Care Professions established by section 25 of the NHS Reform and Health Care Professionals Act 2002. For the avoidance of doubt the nursing and midwifery staff class shall also include nursing auxiliaries and health care assistants.
4. The Members of the volunteer staff class are individuals who provide voluntary support in pursuance of an honorary agreement or who work on behalf of a voluntary organisation within the meaning of the 2006 Act and are in either case acknowledged in writing by the Trust as doing so for the purposes of this paragraph.
5. The Members of the other staff classes as described in paragraphs 1 (c) and (e) above are individuals who are Members of the staff constituency who do not come within paragraphs 1 (a), (b) or (d).
6. The minimum number of Members required for each staff class of the staff constituency is as follows:
  - (a) the medical and dental staff class – 50
  - (b) the nursing and midwifery staff class – 200
  - (c) the clinical support staff class – 75
  - (d) the volunteer staff class – 50
  - (e) the non clinical support staff class – 150.
7. A person who is eligible to be a Member of the staff constituency (see paragraph 7.3) may not become or continue as a Member of any constituency other than the staff constituency and may not become or continue as a Member of more than one staff class.

## **Annex 3**

### **Composition of the Council of Governors**

1. The Council of Governors is to include:

(a) 16 Public Governors as specified in Annex 1

(b) 6 Staff Governors, as specified in Annex 2:

(c) 1 Local Authority Governor

(d) 6 other Partnership Governors as specified below:

(i) Barnsley Together

(ii) Barnsley College;

(iii) Joint Trade Unions Committee (JTUC);

(iv) Sheffield Hallam University or The University of Sheffield (shared seat)

(v) Voluntary Action Barnsley

(vi) Barnsley Clinical Commissioning Group

2. If and to the extent that a partnership organisation fails to make an appointment within three months of being invited to do so by the Trust the Trust may seek an appointment from an alternative partnership organisation which in the Trust's opinion has similar objects or provides similar goods or services to the partnership organisation it shall stand in substitution for.

## Annex 4

### Practice and Procedure for Meetings of the Council of Governors

1.

- 1.1. **Admission of the Public and the Press** – The public and representatives of the press shall be afforded facilities to attend all formal meetings of the Council of Governors but shall be required to withdraw upon the Council of Governors resolving as follows:

*“That representatives of the press and other members of the public be excluded from the remainder of this meeting having regard to the confidential nature of the business to be transacted, publicity on which would be prejudicial to the public interest in accordance with 8.17 of this Constitution.”*

- 1.2. The Chairman (or Deputy-Chairman or lead governor) shall give such directions as he or she thinks fit in regard to the arrangements for meetings and accommodation of the public and representatives of the press such as to ensure that the Council of Governors’ business shall be conducted without interruption and disruption and, without prejudice to the power to exclude on the grounds of the confidential nature of the business to be transacted, the Council of Governors may resolve as follows:

*“That in the interests of public order the meeting adjourn for (the period to be specified) to enable the Council of Governors to complete business without the presence of the public in accordance with 8.17 of this Constitution.”*

- 1.3. Nothing in this Annex 4 shall require the Council of Governors to allow members of the public or representatives of the press to record proceedings in any manner whatsoever, other than in writing, or to make any oral report of proceedings as they take place without prior agreement of the Council of Governors.
- 1.4. Meetings of the Council of Governors shall be determined at the first meeting of the Council of Governors or at such other times as the Council of Governors may determine and at such places as they may from time to time appoint.
- 1.5. The Chairman may call a meeting of the Council of Governors at any time. If he or she refuses to call a meeting after a requisition for that purpose, signed by at least one third of the whole number of Governors has been presented to him or her, or if, without so refusing, the Chairman does not call a meeting within seven days after such a requisition has been presented to him or her, such one third or more members may forthwith call a meeting.
- 1.6. **Notice of Meetings** – Before each meeting of the Council of Governors, a notice of the meeting, specifying the business proposed to be transacted at it, and signed by the Chairman or by an officer of the Trust authorised by the Chairman to sign on his or her behalf shall be delivered to every Governor, or sent by post to the usual place of residence of such persons, so as to be available to him or her at least three clear days before the meeting.
- 1.7. Lack of service of the notice on any person as described in paragraph 1.6 shall not affect the validity of the meeting.
- 1.8. In the case of a meeting called by Governors in default of the Chairman, the notice shall be signed by those Governors and no business shall be transacted at the meeting other than that specified on the notice.
- 1.9. Failure to serve such a notice on more than 6 Governors will invalidate the meeting. A notice shall be presumed to have been served at the time at which the notice would be delivered in the ordinary course of the post.
- 1.10. **Quorum** – At least 10 Governors must be present at a meeting of the Council of Governors for the meeting to be quorate.

- 1.11. **Setting the Agenda** – The Council of Governors may determine that certain matters shall appear on every agenda for a meeting of the Council of Governors and shall be addressed prior to any other business being conducted.
- 1.12. A governor desiring a matter to be included on an agenda shall make the request in writing to the Chairman at least 7 clear days before the meeting. Requests made less than 7 clear days before a meeting may be included on the agenda at the discretion of the Chairman.
- 1.13. **Chairman of Meeting** – At any meeting of the Council of Governors, the Chairman, if present, shall preside. If the Chairman is absent from the meeting the Deputy-Chairman, if there is one and he or she is present, shall preside. If the Chairman and the Deputy-Chairman are absent the lead governor shall preside or in his or her absence such Public Governor as the Governors present shall choose shall preside.
- 1.14. If the Chairman is absent from a meeting temporarily on the grounds of a declared conflict of interest the Deputy-Chairman, if present, shall preside. If the Chairman and the Deputy-Chairman are absent, or disqualified from participating, the lead governor shall preside or in his or her absence or if disqualified from participating, such Public Governor as the governors present shall choose shall preside.
- 1.15. **Notices of Motion** – A governor of the Council desiring to move or amend a motion shall send a written notice thereof at least 7 clear days before the meeting to the Chairman, who shall insert in the agenda for the meeting all notices so received subject to the notice being permissible under the appropriate regulations. This paragraph shall not prevent any motion being moved during the meeting, without notice on any business mentioned on the agenda subject to preceding provisions
- 1.16. **Withdrawal of Motion or Amendments** – A motion or amendment once moved and seconded may be withdrawn by the proposer with the concurrence of the seconder and the consent of the Chairman.
- 1.17. **Motion to Rescind a Resolution** – Notice of motion to amend or rescind any resolution (or general substance of any resolution) which has been passed within the preceding 6 calendar months shall bear the signature of the governors who give it and also the signature of 4 other governors at least 2 of whom shall be as Public Governors. When any such motion has been disposed of by the Trust, it shall not be competent for any governor other than the Chairman to propose a motion to the same effect within 6 months, however the Chairman may do so if he or she considers it appropriate.
- 1.18. **Motions** – The mover of a motion shall have the right of reply at the close of any discussions on the motion or any amendment thereto.
- 1.19. When a motion is under discussion or immediately prior to discussion it shall be open to a Governor to move:
- an amendment to the motion.
- the adjournment of the discussion or the meeting.
  - that the meeting proceed to the next business. (\*)
  - the appointment of an ad hoc committee to deal with a specific item of business.
  - that the motion be now put. (\*)
- \* In the case of sub-paragraphs denoted by (\*) above to ensure objectivity motions may only be put by a governor who has not previously taken part in the debate.
- No amendment to the motion shall be admitted if, in the opinion of the Chairman of the meeting, the amendment negates the substance of the motion.
- 1.20 **Chairman's Ruling** - The decision of the Chairman of the meeting on the question of order, relevancy and regularity shall be final. The Chairman of the Trust shall be the final authority in the interpretation of this Annex 4 on which he or she shall be advised by the Chief Executive or his or her nominated officer.

- 1.21 **Voting** – Every question at a meeting will be determined by a majority of the votes of the Governors present and voting on the question and, in the case of an equality of votes, the person presiding shall have a second or casting vote.
- 1.22 All questions put to the vote shall, at the discretion of the Chairman, be determined by oral expression or by a show of hands. A paper ballot may also be used if a majority of the governors present so request.
- 1.23 If a governor so requests his or her vote shall be recorded by name upon any vote (other than by paper ballot).
- 1.24 **Minutes** - The minutes of the proceedings of a meeting shall be drawn up and appropriately recorded and shall be signed at the next ensuing meeting by the person presiding at it.
- 1.25 No discussion shall take place upon the minutes, except upon their accuracy, or where the Chairman considers discussion appropriate. Any amendments to the minutes shall be agreed and recorded at the next meeting.
- 1.26 Minutes shall be circulated in accordance with Governor's wishes. Where providing a record of a public meeting the minutes shall be made available to the public (required by Code of Practice on Openness in the NHS).

## 2. **Committees**

- 2.1. **Appointment of Committees** – Subject to paragraph 2.7 below and such directions as may be given by Monitor, the Council of Governors may and, if directed by him or her, shall appoint committees of the Council of Governors, consisting wholly or partly of Governors of the Council of Governors.
- 2.2. A committee appointed under paragraph 2.1 may, subject to such directions as may be given by Monitor or the Council of Governors appoint sub-committees consisting wholly or partly of members of the committee.
- 2.3. This Annex 4, as far as it is applicable, shall apply with appropriate alteration to meetings of any committees or sub-committee established by the Council of Governors.
- 2.4. Each such committee or sub-committee shall have such terms of reference and powers and be subject to such conditions (as to reporting back to the Council of Governors), as the Council of Governors shall decide. Such terms of reference shall have effect as if incorporated into this Annex 4.
- 2.5. Committees may not delegate their powers to a sub-committee unless expressly authorised by the Council of Governors.
- 2.6. The Council of Governors shall approve the appointments to each of the committees which it has formally constituted. Where the Council of Governors determines that persons, who are neither governors nor Directors or officers, shall be appointed to a committee, the terms of such an appointment shall be determined by the Council of Governors subject to the payment of travelling and other allowances being in accordance with such sum as may be determined by the Trust and /or Monitor.
- 2.7. Where the Council of Governors is required to appoint persons to a committee and/or to undertake statutory functions as required by Monitor, and where such appointments are to operate independently of the Council of Governors and /or the Trust such appointment shall be made in accordance with the any regulations laid down by the Chief Executive or his or her nominated officer or any directions or guidance issued by Monitor from time to time.

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

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

## Annex 5

### Conduct of Elections

Elections for Public Governors and Staff Governors will be conducted in accordance with the election rules set out below which may be amended in accordance with the consent of the Returning Officer and in compliance with any further guidance or instructions issued by Monitor:-

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## ELECTION RULES - 2016

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### PART 1: INTERPRETATION

1. Interpretation

### PART 2: TIMETABLE FOR ELECTION

2. Timetable
3. Computation of time

### PART 3: RETURNING OFFICER

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

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

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

### PART 5: CONTESTED ELECTIONS

20. Poll to be taken by ballot
21. The ballot paper

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

22. List of eligible voters
23. Notice of poll
24. Issue of voting information by returning officer
25. Covering envelope
26. E-voting systems



### *The poll*

- 27. Eligibility to vote
- 28. Voting by persons who require assistance
- 29. Spoilt ballot papers and spoilt text message votes
- 30. Lost voting information
- 31. Issue of replacement voting information
- 32. ID declaration form for replacement ballot papers (public and patient constituencies)
- 33. Procedure for remote voting by internet
- 34. Procedure for remote voting by telephone
- 35. Procedure for remote voting by text message

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

- 36. Receipt of voting documents
- 37. Validity of votes
- 38. De-duplication of votes
- 39. Sealing of packets

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

- STV40. Interpretation of Part 6
- 41. Arrangements for counting of the votes
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## 1. Interpretation

1.1 In these rules, unless the context otherwise requires:

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

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

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

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

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

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

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

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

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

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

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

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

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

“*numerical voting code*” has the meaning set out in rule 63.2(b)

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

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

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

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

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

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

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

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

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

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

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

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

## PART 2: TIMETABLE FOR ELECTIONS

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### 2. Timetable

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

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

### 3. Computation of time

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

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

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

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

**4.Returning Officer**

- 4.1 Subject to rule 68, the returning officer for an election is to be appointed by the corporation.
- 4.2 Where two or more elections are to be held concurrently, the same returning officer may be appointed for all those elections.

**5.Staff**

- 5.1 Subject to rule 68, the returning officer may appoint and pay such staff, including such technical advisers, as he or she considers necessary for the purposes of the election.

**6.Expenditure**

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

**7.Duty of co-operation**

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

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

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### 8. Notice of election

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

### 9. Nomination of candidates

- 9.1 Subject to rule 9.2, each candidate must nominate themselves on a single nomination form.
- 9.2 The returning officer:
- (a) is to supply any member of the corporation with a nomination form, and
  - (b) is to prepare a nomination form for signature at the request of any member of the corporation,
- but it is not necessary for a nomination to be on a form supplied by the returning officer and a nomination can, subject to rule 14, be in an electronic format.

### 10. Candidate's particulars

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

### 11. Subscription of nomination form

- 11.1 The nomination form **must be subscribed by two supporters.**
- 11.2 Each supporter must –
- (a) be a member of the same constituency, or class within a constituency, to which the candidate belongs, and
  - (b) state his or her constituency, or class within a constituency, on the nomination form.
- 11.3 A member of the corporation must not subscribe more than one nomination form.

- 11.4 If a member of the corporation subscribes more than one nomination form in contravention of paragraph 11.3, then the second and any further subscriptions received by the returning officer are invalid.
- 11.5 Where a member of the corporation subscribes a nomination form, and the candidate nominated in the paper dies or withdraws before the form is received by the returning officer, then nothing in paragraphs (3) or (4) prevents that member from subscribing the nomination form of another candidate.

## **12. Declaration of interests**

- 12.1 The nomination form must state:
- (a) any financial interest that the candidate has in the corporation, and
  - (b) whether the candidate is a member of a political party, and if so, which party, and if the candidate has no such interests, the paper must include a statement to that effect.

## **13. Declaration of eligibility**

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

## **14. Signature of candidate**

- 14.1 The nomination form must be signed and dated by the candidate, in a manner prescribed by the returning officer, indicating that:
- (a) they wish to stand as a candidate,
  - (b) their declaration of interests as required under rule 12, is true and correct, and
  - (c) their declaration of eligibility, as required under rule 13, is true and correct.
- 14.2 Where the return of nomination forms in an electronic format is permitted, the returning officer shall specify the particular signature formalities (if any) that will need to be complied with by the candidate.

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

- 15.1 Where a nomination form is received by the returning officer in accordance with these rules, the candidate is deemed to stand for election unless and until the returning officer:
- (a) decides that the candidate is not eligible to stand,
  - (b) decides that the nomination form is invalid,
  - (c) receives satisfactory proof that the candidate has died, or
  - (d) receives a written request by the candidate of their withdrawal from candidacy.
- 15.2 The returning officer is entitled to decide that a nomination form is invalid only on one of the following grounds:
- (a) that the paper is not received on or before the final time and date for return of nomination forms, as specified in the notice of the election,



- (b) that the paper does not contain the candidate's particulars, as required by rule 10;
- (c) that the paper is not subscribed as required by rule 11;
- (d) that the paper does not contain a declaration of the interests of the candidate, as required by rule 12,
- (e) that the paper does not include a declaration of eligibility as required by rule 13, or
- (f) that the paper is not signed and dated by the candidate, if required by rule 14.

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

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

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

#### **16.Publication of statement of candidates**

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

16.2 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 form.

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

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

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

17.1 The corporation is to make the statement of the candidates and the nomination forms supplied by the returning officer under rule 16.4 available for inspection by members of the corporation free of charge at all reasonable times.

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

#### **18.Withdrawal of candidates**

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

## **19.Method of election**

- 19.1 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.
- 19.2 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.
- 19.3 If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is less than the number of members to be elected to be council of governors, then:
- (a) the candidates who remain validly nominated are to be declared elected in accordance with Part 7 of these rules, and
  - (b) the returning officer is to order a new election to fill any vacancy which remains unfilled, on a day appointed by him or her in consultation with the corporation.

**20. Poll to be taken by ballot**

- 20.1 The votes at the poll must be given by secret ballot.
- 20.2 The votes are to be counted and the result of the poll determined in accordance with Part 6 of these rules.
- 20.3 The corporation may decide that voters within a constituency or class within a constituency, may, subject to rule 20.4, cast their votes at the poll using such different methods of polling in any combination as the corporation may determine.
- 20.4 The corporation may decide that voters within a constituency or class within a constituency for whom an e-mail address is included in the list of eligible voters may only cast their votes at the poll using an e-voting method of polling.
- 20.5 Before the corporation decides, in accordance with rule 20.3 that one or more e-voting methods of polling will be made available for the purposes of the poll, the corporation must satisfy itself that:
- (a) if internet voting is to be a method of polling, the internet voting system to be used for the purpose of the election is:
    - (i) configured in accordance with these rules; and
    - (ii) will create an accurate internet voting record in respect of any voter who casts his or her vote using the internet voting system;
  - (b) if telephone voting to be a method of polling, the telephone voting system to be used for the purpose of the election is:
    - (i) configured in accordance with these rules; and
    - (ii) will create an accurate telephone voting record in respect of any voter who casts his or her vote using the telephone voting system;
  - (c) if text message voting is to be a method of polling, the text message voting system to be used for the purpose of the election is:
    - (i) configured in accordance with these rules; and
    - (ii) will create an accurate text voting record in respect of any voter who casts his or her vote using the text message voting system.

**21. The ballot paper**

- 21.1 The ballot of each voter (other than a voter who casts his or her ballot by an e-voting method of polling) is to consist of a ballot paper with the persons remaining validly nominated for an election after any withdrawals under these rules, and no others, inserted in the paper.
- 21.2 Every ballot paper must specify:
- (a) the name of the corporation,
  - (b) the constituency, or class within a constituency, for which the election is being held,
  - (c) the number of members of the council of governors to be elected from that constituency, or class within that constituency,

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

21.3 Each ballot paper must have a unique identifier.

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

*Action to be taken before the poll*

**22.List of eligible voters**

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

22.2 The list is to include, for each member:

- (a) a postal address; and,
  - (b) the member's e-mail address, if this has been provided
- to which his or her voting information may, subject to rule 22.3, be sent.

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

**23.Notice of poll**

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

- (a) the name of the corporation,
- (b) the constituency, or class within a constituency, for which the election is being held,
- (c) the number of members of the council of governors to be elected from that constituency, or class with that constituency,
- (d) the names, contact addresses, and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
- (e) that the ballot papers for the election are to be issued and returned, if appropriate, by post,
- (f) the methods of polling by which votes may be cast at the election by voters in a constituency or class within a constituency, as determined by the corporation in accordance with rule 20.3,
- (g) the address for return of the ballot papers,
- (h) the uniform resource locator (url) where, if internet voting is a method of polling, the polling website is located;
- (i) the telephone number where, if telephone voting is a method of polling, the telephone voting facility is located,

- (j) the telephone number or telephone short code where, if text message voting is a method of polling, the text message voting facility is located,
- (k) the date and time of the close of the poll,
- (l) the address and final dates for applications for replacement voting information, and
- (m) the contact details of the returning officer.

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

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

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

24.2 Subject to rules 24.3 and 24.4, as soon as is reasonably practicable on or after the publication of the notice of the poll, the returning officer is to send the following information by e-mail and/ or by post to each member of the corporation named in the list of eligible voters whom the corporation determines in accordance with rule 20.3 and/ or rule 20.4 may cast his or her vote by an e-voting method of polling:

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

("e-voting information").

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

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

for the purposes of the poll.

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

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

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

- 25.1 The ballot paper envelope must have clear instructions to the voter printed on it, instructing the voter to seal the ballot paper inside the envelope once the ballot paper has been marked.
- 25.2 The covering envelope is to have:
- (a) the address for return of the ballot paper printed on it, and
  - (b) pre-paid postage for return to that address.
- 25.3 There should be clear instructions, either printed on the covering envelope or elsewhere, instructing the voter to seal the following documents inside the covering envelope and return it to the returning officer –
- (a) the completed ID declaration form if required, and
  - (b) the ballot paper envelope, with the ballot paper sealed inside it.

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

- 26.1 If internet voting is a method of polling for the relevant election then the returning officer must provide a website for the purpose of voting over the internet (in these rules referred to as "the polling website").
- 26.2 If telephone voting is a method of polling for the relevant election then the returning officer must provide an automated telephone system for the purpose of voting by the use of a touch-tone telephone (in these rules referred to as "the telephone voting facility").
- 26.3 If text message voting is a method of polling for the relevant election then the returning officer must provide an automated text messaging system for the purpose of voting by text message (in these rules referred to as "the text message voting facility").
- 26.4 The returning officer shall ensure that the polling website and internet voting system provided will:
- (a) require a voter to enter his or her voter ID number in order to be able to cast his or her vote;
  - (b) specify:
    - (i) the name of the corporation,
    - (ii) the constituency, or class within a constituency, for which the election is being held,
    - (iii) the number of members of the council of governors to be elected from that constituency, or class within that constituency,
    - (iv) the names and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
    - (v) instructions on how to vote,
    - (vi) the date and time of the close of the poll, and
    - (vii) the contact details of the returning officer;

- (c) prevent a voter from voting for more candidates than he or she is entitled to at the election;
- (d) create a record ("internet voting record") that is stored in the internet voting system in respect of each vote cast by a voter using the internet that comprises of-
  - (i) the voter's voter ID number;
  - (ii) the candidate or candidates for whom the voter has voted; and
  - (iii) the date and time of the voter's vote,
- (e) if the voter's vote has been duly cast and recorded, provide the voter with confirmation of this; and
- (f) prevent any voter from voting after the close of poll.

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

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

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

- (a) require a voter to provide his or her voter ID number in order to be able to cast his or her vote;
- (b) prevent a voter from voting for more candidates than he or she is entitled to at the election;

- (d) create a record ("text voting record") that is stored in the text messaging voting system in respect of each vote cast by a voter by text message that comprises of:
  - (i) the voter's voter ID number;
  - (ii) the candidate or candidates for whom the voter has voted; and
  - (iii) the date and time of the voter's vote
- (e) if the voter's vote has been duly cast and recorded, provide the voter with confirmation of this;
- (f) prevent any voter from voting after the close of poll.

### *The poll*

#### **27. Eligibility to vote**

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

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

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

28.2 Where the returning officer receives a request from a voter who requires assistance to vote, the returning officer is to make such arrangements as he or she considers necessary to enable that voter to vote.

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

29.1 If a voter has dealt with his or her ballot paper in such a manner that it cannot be accepted as a ballot paper (referred to as a "spoilt ballot paper"), that voter may apply to the returning officer for a replacement ballot paper.

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

29.3 The returning officer may not issue a replacement ballot paper for a spoilt ballot paper unless he or she is satisfied as to the voter's identity

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

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

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

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

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

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



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

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

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

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

- 31.1 If a person applies for replacement voting information under rule 29 or 30 the returning officer may not issue replacement voting information unless, in addition to the requirements imposed by rule 29.3 or 30.2, he or she is also satisfied that that person has not already voted in the election.
- 31.2 After issuing replacement voting information under this rule, the returning officer shall enter in a list ("the list of tendered voting information"):
- (a) the name of the voter,
  - (b) the unique identifier of any replacement ballot paper issued under this rule;
  - (c) the voter ID number of the voter.

### **32. ID declaration form for replacement ballot papers (public constituencies)**

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

*Polling by internet, telephone or text*

### **33.Procedure for remote voting by internet**

- 33.1 To cast his or her vote using the internet, a voter will need to gain access to the polling website by keying in the url of the polling website provided in the voting information.
- 33.2 When prompted to do so, the voter will need to enter his or her voter ID number.
- 33.3 If the internet voting system authenticates the voter ID number, the system will give the voter access to the polling website for the election in which the voter is eligible to vote.

- 33.4 To cast his or her vote, the voter will need to key in a mark on the screen opposite the particulars of the candidate or candidates for whom he or she wishes to cast his or her vote.
- 33.5 The voter will not be able to access the internet voting system for an election once his or her vote at that election has been cast.

#### **34.Voting procedure for remote voting by telephone**

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

#### **35.Voting procedure for remote voting by text message**

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

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

#### **36.Receipt of voting documents**

- 36.1 Where the returning officer receives:
- (a) a covering envelope, or
  - (b) any other envelope containing a ballot paper,
- before the close of the poll, that officer is to open it as soon as is practicable; and rules 37 is to apply.
- 36.2 The returning officer may open any covering envelope for the purpose of rule 37, but must make arrangements to ensure that no person obtains or communicates information as to:
- (a) the candidate for whom a voter has voted, or
  - (b) the unique identifier on a ballot paper.
- 36.3 The returning officer must make arrangements to ensure the safety and security of the ballot papers and other documents.

### **37. Validity of votes**

- 37.1 A ballot paper shall not be taken to be duly returned unless the returning officer is satisfied that it has been received by the returning officer before the close of the poll.
- 37.2 Where the returning officer is satisfied that rule 37.1 has been fulfilled, he or she is to put the ballot paper aside for counting after the close of the poll.
- 37.3 Where the returning officer is not satisfied that rule 37.1 has been fulfilled, he or she is to:
- (a) mark the ballot paper “disqualified”,
  - (b) (b) record the unique identifier on the ballot paper in a list of disqualified documents (the “list of disqualified documents”); and
  - (c) place the document or documents in a separate packet.
- 37.4 An internet, telephone or text message vote shall not be taken to be duly returned unless the returning officer is satisfied that the internet voting record, telephone voting record or text voting record (as applicable) has been received by the returning officer before the close of the poll.
- 37.5 Where the returning officer is satisfied that rule 37.4 has been fulfilled, he or she is to put the internet voting record, telephone voting record or text voting record (as applicable) aside for counting after the close of the poll.
- 37.6 Where the returning officer is not satisfied that rule 37.4 has been fulfilled, he or she is to:
- (a) mark the internet voting record, telephone voting record or text voting record (as applicable) “disqualified”,
  - (b) record the voter ID number on the internet voting record, telephone voting record or text voting record (as applicable) in the list of disqualified documents; and
  - (c) place the document or documents in a separate packet.

### **38. De-duplication of votes**

- 38.1 Where different methods of polling are being used in an election, the returning officer shall examine all votes cast to ascertain if a voter ID number has been used more than once to cast a vote in the election.
- 38.2 If the returning officer ascertains that a voter ID number has been used more than once to cast a vote in the election he or she shall:
- (a) only accept as duly returned the first vote received that was cast using the relevant voter ID number; and
  - (b) mark as “disqualified” all other votes that were cast using the relevant voter ID number
- 38.3 Where a ballot paper is disqualified under this rule the returning officer shall:
- (a) mark the ballot paper “disqualified”,
  - (b) record the unique identifier and the voter ID number on the ballot paper in the list of disqualified documents;
  - (c) place the document in a separate packet; and
  - (d) disregard the ballot paper when counting the votes in accordance with these rules.
- 38.4 Where an internet voting record, telephone voting record or text voting record is disqualified under this rule the returning officer shall:

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

### **39. Sealing of packets**

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

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

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

**STV40. Interpretation of Part 6**

STV40.1 In Part 6 of these rules:

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

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

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

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

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

*“non-transferable vote”* means a ballot document:

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

or

(b) which is excluded by the returning officer under rule STV48,

*“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 STV45,

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

*“stage of the count”* means:

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

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

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

“*transfer value*” means the value of a transferred vote calculated in accordance with rules STV46.4 or STV46.7.

#### **41. Arrangements for counting of the votes**

- 41.1 The returning officer is to make arrangements for counting the votes as soon as is practicable after the close of the poll.
- 41.2 The returning officer may make arrangements for any votes to be counted using vote counting software where:
- (a) the board of directors and the council of governors of the corporation have approved:
    - (i) the use of such software for the purpose of counting votes in the relevant election, and
    - (ii) a policy governing the use of such software, and
  - (b) the corporation and the returning officer are satisfied that the use of such software will produce an accurate result.

#### **42. The count**

- 42.1 The returning officer is to:
- (a) count and record the number of:
    - (iii) ballot papers that have been returned; and
    - (iv) the number of internet voting records, telephone voting records and/or text voting records that have been created, and
  - (b) count the votes according to the provisions in this Part of the rules and/or the provisions of any policy approved pursuant to rule 41.2(ii) where vote counting software is being used.
- 42.2 The returning officer, while counting and recording the number of ballot papers, internet voting records, telephone voting records and/or text voting records and counting the votes, must make arrangements to ensure that no person obtains or communicates information as to the unique identifier on a ballot paper or the voter ID number on an internet voting record, telephone voting record or text voting record.
- 42.3 The returning officer is to proceed continuously with counting the votes as far as is practicable.

#### **STV43. Rejected ballot papers and rejected text voting records**

- STV43.1 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.

STV43.2 The returning officer is to endorse the word "rejected" on any ballot paper which under this rule is not to be counted.

STV43.3 Any text voting record:

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

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

STV43.4 The returning officer is to endorse the word "rejected" on any text voting record which under this rule is not to be counted.

STV43.5 The returning officer is to draw up a statement showing the number of ballot papers rejected by him or her under each of the subparagraphs (a) to (d) of rule STV43.1 and the number of text voting records rejected by him or her under each of the sub-paragraphs (a) to (c) of rule STV43.3.

#### **STV44.First stage**

- STV44.1 The returning officer is to sort the ballot documents into parcels according to the candidates for whom the first preference votes are given.
- STV44.2 The returning officer is to then count the number of first preference votes given on ballot documents for each candidate, and is to record those numbers.
- STV44.3 The returning officer is to also ascertain and record the number of valid ballot documents.

#### **STV45.The quota**

- STV45.1 The returning officer is to divide the number of valid ballot documents by a number exceeding by one the number of members to be elected.
- STV45.2 The result, increased by one, of the division under rule STV45.1 (any fraction being disregarded) shall be the number of votes sufficient to secure the election of a candidate (in these rules referred to as "the quota").
- STV45.3 At any stage of the count a candidate whose total votes equals or exceeds the quota shall be deemed to be elected, except that any election where there is only one vacancy a candidate shall not be deemed to be elected until the procedure set out in rules STV46.1 to STV46.3 has been complied with.

#### **STV46.Transfer of votes**

- STV46.1 Where the number of first preference votes for any candidate exceeds the quota, the returning officer is to sort all the ballot documents on which first preference votes are given for that candidate into sub- parcels so that they are grouped:
- (a) according to next available preference given on those ballot documents for any continuing candidate, or
  - (b) where no such preference is given, as the sub-parcel of non-transferable votes.
- STV46.2 The returning officer is to count the number of ballot documents in each parcel referred to in rule STV46.1.
- STV46.3 The returning officer is, in accordance with this rule and rule STV47, to transfer each sub-parcel of ballot documents referred to in rule STV46.1(a) to the candidate for whom the next available preference is given on those ballot documents.
- STV46.4 The vote on each ballot document transferred under rule STV46.3 shall be at a value ("the transfer value") which:
- (a) reduces the value of each vote transferred so that the total value of all such votes does not exceed the surplus, and
  - (b) is calculated by dividing the surplus of the candidate from whom the votes are being transferred by the total number of the ballot documents on which those votes are given, the calculation being made to two decimal places (ignoring the remainder if any).
- STV46.5 Where at the end of any stage of the count involving the transfer of ballot documents, the number of votes for any candidate exceeds the quota, the returning officer is to sort the ballot documents in the sub-parcel of transferred votes which was last received by that candidate into separate sub-parcels so that they are grouped:
- (a) according to the next available preference given on those ballot documents for any continuing candidate, or



(b) where no such preference is given, as the sub-parcel of non-transferable votes.

STV46.6 The returning officer is, in accordance with this rule and rule STV47, to transfer each sub-parcel of ballot documents referred to in rule STV46.5(a) to the candidate for whom the next available preference is given on those ballot documents.

STV46.7 The vote on each ballot document transferred under rule STV46.6 shall be at:

- (a) a transfer value calculated as set out in rule STV46.4(b), or
- (b) at the value at which that vote was received by the candidate from whom it is now being transferred,

whichever is the less.

STV46.8 Each transfer of a surplus constitutes a stage in the count.

STV46.9 Subject to rule STV46.10, the returning officer shall proceed to transfer transferable ballot documents until no candidate who is deemed to be elected has a surplus or all the vacancies have been filled.

STV46.10 Transferable ballot documents shall not be liable to be transferred where any surplus or surpluses which, at a particular stage of the count, have not already been transferred, are:

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

STV46.11 This rule does not apply at an election where there is only one vacancy.

#### **STV47. Supplementary provisions on transfer**

STV47.1 If, at any stage of the count, two or more candidates have surpluses, the transferable ballot documents of the candidate with the highest surplus shall be transferred first, and if:

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

STV47.2 The returning officer shall, on each transfer of transferable ballot documents under rule STV46:

- (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.

STV47.3 All ballot documents transferred under rule STV46 or STV48 shall be clearly marked, either individually or as a sub-parcel, so as to indicate the transfer value recorded at that time to each vote on that ballot document or, as the case may be, all the ballot documents in that sub-parcel.

STV47.4 Where a ballot document is so marked that it is unclear to the returning officer at any stage of the count under rule STV46 or STV48 for which candidate the next preference is recorded, the returning officer shall treat any vote on that ballot document as a non-transferable vote; and votes on a ballot document shall be so treated where, for example, the names of two or more candidates (whether continuing candidates or not) are so marked that, in the opinion of the returning officer, the same order of preference is indicated or the numerical sequence is broken.

#### **STV48.Exclusion of candidates**

STV48.1 If:

- (a) all transferable ballot documents which under the provisions of rule STV46 (including that rule as applied by rule STV48.11) and this rule are required to be transferred, have been transferred, and
- (b) subject to rule STV49, one or more vacancies remain to be filled,

the returning officer shall exclude from the election at that stage the candidate with the then lowest vote (or, where rule STV48.12 applies, the candidates with the then lowest votes).

STV48.2 The returning officer shall sort all the ballot documents on which first preference votes are given for the candidate or candidates excluded under rule STV48.1 into two sub-parcels so that they are grouped as:

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

STV48.3 The returning officer shall, in accordance with this rule and rule STV47, transfer each sub-parcel of ballot documents referred to in rule STV48.2 to the candidate for whom the next available preference is given on those ballot documents.

STV48.4 The exclusion of a candidate, or of two or more candidates together, constitutes a further stage of the count.

STV48.5 If, subject to rule STV49, one or more vacancies still remain to be filled, the returning officer shall then sort the transferable ballot documents, if any, which had been transferred to any candidate excluded under rule STV48.1 into sub-parcels according to their transfer value.

STV48.6 The returning officer shall transfer those ballot documents in the sub-parcel of transferable ballot documents with the highest transfer value to the continuing candidates in accordance with the next available preferences given on those ballot documents (thereby passing over candidates who are deemed to be elected or are excluded).

STV48.7 The vote on each transferable ballot document transferred under rule STV48.6 shall be at the value at which that vote was received by the candidate excluded under rule STV48.1.

STV48.8 Any ballot documents on which no next available preferences have been expressed shall be set aside as non-transferable votes.

STV48.9 After the returning officer has completed the transfer of the ballot documents in the sub-parcel of ballot documents with the highest transfer value he or she shall proceed to transfer

in the same way the sub-parcel of ballot documents with the next highest value and so on until he has dealt with each sub-parcel of a candidate excluded under rule STV48.1.

- STV48.10 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.
- STV48.11 If after a transfer of votes under any provision of this rule, a candidate has a surplus, that surplus shall be dealt with in accordance with rules STV46.5 to STV46.10 and rule STV47.
- STV48.12 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.
- STV48.13 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.

#### **STV49.Filling of last vacancies**

- STV49.1 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.
- STV49.2 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.
- STV49.3 Where the last vacancies can be filled under this rule, no further transfer of votes shall be made.

#### **STV50.Order of election of candidates**

- STV50.1 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 STV46.10.
- STV50.2 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.

- STV50.3 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.
- STV50.4 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.

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

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### STV51. Declaration of result for contested elections

STV51.1 In a contested election, when the result of the poll has been ascertained, the returning officer is to:

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

STV51.2 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 STV43.1,
- (f) the number of rejected text voting records under each of the headings in rule STV43.3,

available on request.

### 52. Declaration of result for uncontested elections

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

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

**53. Sealing up of documents relating to the poll**

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

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

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

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

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

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

53.3 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.

**54. Delivery of documents**

554.1 Once the documents relating to the poll have been sealed up and endorsed pursuant to rule 56, the returning officer is to forward them to the chair of the corporation.

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

55.1 Where:

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

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

#### **56.Retention and public inspection of documents**

- 56.1 The corporation is to retain the documents relating to an election that are forwarded to the chair by the returning officer under these rules for one year, and then, unless otherwise directed by the board of directors of the corporation, cause them to be destroyed.
- 56.2 With the exception of the documents listed in rule 57.1, 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.
- 56.3 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.

#### **57.Application for inspection of certain documents relating to an election**

- 57.1 The corporation may not allow:
- (a) the inspection of, or the opening of any sealed packet containing –
    - (i) any rejected ballot papers, including ballot papers rejected in part,
    - (ii) any rejected text voting records, including text voting records rejected in part,
    - (iii) any disqualified documents, or the list of disqualified documents,
    - (iv) any counted ballot papers, internet voting records, telephone voting records or text voting records, or
    - (v) the list of eligible voters, or
  - (b) access to or the inspection of the complete electronic copies of the internet voting records, telephone voting records and text voting records created in accordance with rule 26 and held in a device suitable for the purpose of storage,
- by any person without the consent of the board of directors of the corporation.
- 57.2 A person may apply to the board of directors of the corporation to inspect any of the documents listed in rule 57.1, and the board of directors of the corporation may only consent to such inspection if it is satisfied that it is necessary for the purpose of questioning an election pursuant to Part 11.
- 57.3 The board of directors of the corporation's consent may be on any terms or conditions that it thinks necessary, including conditions as to –
- (a) persons,
  - (b) time,
  - (c) place and mode of inspection,
  - (d) production or opening,
- and the corporation must only make the documents available for inspection in accordance with those terms and conditions.
- 57.4 On an application to inspect any of the documents listed in rule 57.1 the board of directors of the corporation must:

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

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

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



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

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### **STV58.Countermand or abandonment of poll on death of candidate**

STV58.1 If, at a contested election, proof is given to the returning officer's satisfaction before the result of the election is declared that one of the persons named or to be named as a candidate has died, then the returning officer is to:

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

STV58.2 The ballot documents which have preferences recorded for the candidate who has died are to be sealed with the other counted ballot documents pursuant to rule 53.1(a).

*Election expenses*

**59. Election expenses**

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

**60. Expenses and payments by candidates**

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

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

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

61.1 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.

61.2 Nothing in this rule is to prevent the corporation from incurring such expenses, and making such payments, as it considers necessary pursuant to rules 62 and 63.

*Publicity*

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

62.1 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.

62.2 Any information provided by the corporation about the candidates, including information compiled by the corporation under rule 63, 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.

62.3 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.

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

63.1 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.

63.2 The information must consist of:

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

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

64.1 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.

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

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

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### 65. Application to question an election

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

**66. Secrecy**

66.1 The following persons:

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

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

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

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

66.3 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.

**67. Prohibition of disclosure of vote**

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

**68. Disqualification**

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

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

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

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

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

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

## **Annex 6**

### **Governors and Directors: Communication and Conflict**

#### **1. Summary**

This annex describes the processes intended to ensure a successful and constructive relationship between the Council of Governors and the Board of Directors. It emphasises the importance of informal and formal communication, and confirms the formal arrangements for communication within the Trust. It suggests an approach to informal communications, and sets out the formal arrangements for resolving conflicts between the Council of Governors and the Board of Directors.

#### **2. Informal Communications**

2.1 Informal and frequent communication between the governors and the Directors is an essential feature of a positive and constructive relationship designed to benefit the Trust and the services it provides.

2.2 The Chairman of the Council of Governors and the Board of Directors will encourage informal methods of communication including:-

- a) Participation of the Board of Directors in the induction, orientation and training of governors.
- b) Development of special interest links between non-executive Directors and governors.
- c) Discussions between governors and the Chairman, the Chief Executive or a Director, through the office of the Chief Executive or his or her nominated officer to the Board.
- d) Involvement in membership recruitment and briefings at public events organised by the Trust.

#### **3. Formal Communication**

3.1 Some aspects of communication are defined by the constitutional roles and responsibilities of the Council of Governors and the Board of Directors respectively. Communications initiated by the Council of Governors, and intended for the Board of Directors, will be conducted as follows:-

- a) Specific requests by the Council of Governors will be made through the Chairman, to the Board of Directors;
- b) Any Governor has the right to raise specific issues at a duly constituted meeting of the Council of Governors through the Chairman. In the event of disagreement, two thirds of the governors present must approve the request. The Chairman will raise the matter with the Board of Directors and provide the response to the Council of Governors.
- c) Joint meetings will take place between the Council of Governors and the Board of Directors as and when appropriate.

3.2 The Board of Directors will request the Chairman to seek the views of the Council of Governors:-

- a) on the Board of Directors proposal for the Strategic Direction, and the Annual Business Plan.
- b) on the Board of Directors proposals for developments.
- c) on Trust performance.
- d) on their involvement in service reviews and evaluation.
- e) on proposed changes, plans and developments for the Trust.

3.3 The Board of Directors will also present for the approval of the Council of Governors, the annual accounts, annual report and auditors report.

3.4 The following formal methods of communication will also be used:-

- a) Attendance by the Board of Directors at a meeting of the Council of Governors.
- b) Provision of formal reports or presentations by executive Directors to a meeting of the Council of Governors.
- c) Inclusion of appropriate minutes for information on the agenda of a meeting of the Council of Governors.
- d) Reporting the views of the Council of Governors to the Board of Directors through the Chairman or Deputy Chairman.
- e) Issue to the Council of Governors all agendas and minutes of meetings of the Board of Directors (to be held in confidence by the governors, in accordance with the Trust's Code of Conduct for Governors, where such documents relate to Board's confidential meetings and discussions).

#### **4. Resolving Conflict**

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

4.2 If through informal efforts the Chairman cannot achieve resolution of a disagreement or conflict, the Chairman will follow the dispute resolution procedure described below. The aim is to resolve the matter at the first available opportunity, and only to follow this procedure if initial action fails to achieve resolution:

- a) The Chairman will call a Resolution Meeting of the members of the Council of Governors and Board of Directors, to take place as soon as possible, but no later than twenty clear days following the date of the request. The meeting must comprise two thirds of the membership of the Council of Governors and two thirds of the membership of the Board of Directors. The meeting will be held in private in accordance with paragraphs 8.13 and 10.2 of this Constitution . The Agenda and any papers for the meeting will be issued in accordance with Annex 2. The aim of the meeting will be to achieve resolution of the conflict. The Chairman will have the right to appoint an independent facilitator to assist the process. Every effort must be made to reach agreement.
- b) If a Resolution Meeting of the members of the Council of Governors and Board of Directors fails to resolve a conflict, the Board of Directors will decide the disputed matter.
- c) If following the formal Resolution Meeting, and the decision of the Board of Directors, the Council of Governors considers that implementation of the decision will result in the Trust failing to comply with its Constitution or any provision under Chapter 5 of the 2006 Act, the Council of Governors will notify Monitor of the specific issue of non-compliance.

4.3 The right to call a Resolution Meeting rests with the following, in the sequence of escalation shown:

- a) The Chairman
- b) The Chief Executive
- c) Two thirds of the members of the Council of Governors
- d) Two thirds of the members of the Board of Directors



- e) Nothing within this clause shall affect the Governors' right of referral to the Panel in accordance with the procedure set out in paragraph 8.20 of the Constitution.

## **5. Review of Process**

The business agenda will include a joint meeting of the Council of Governors and the Board of Directors to assess communications, and consider any changes to this procedure that might assist resolution in the event of a conflict between them.

## Annex 7

### Register of Directors and Governors Interests

1. Pursuant to Section 20 of Schedule 7 of the National Health Service Act 2006, a register of directors and governors' interests must be kept by each NHS Foundation Trust.
- 2. Declaration of Interests**
  - 2.1 All Directors (including for the purposes of this document, non-executive Directors) and governors should declare relevant and material interests.
  - 2.2 Interests which should be regarded as "relevant and material" and which, for the guidance of doubt, should be included in the register, are:
    - (a) Directorships, including non-executive directorships held in private companies or PLCs (with the exception of those of dormant companies).
    - (b) Ownership, part-ownership or directorship of private companies, business or consultancies likely or possibly seeking to do business with the NHS.
    - (c) Majority or controlling share holdings in organisations likely or possibly seeking to do business with the NHS.
    - (d) A position of authority in a charity or voluntary organisation in the field of health and social care.
    - (e) Any connection with a voluntary or other organisation contracting for NHS services or commissioning NHS services.
    - (f) Any connection with an organisation, entity or company considering entering into or having entered into a financial arrangement with the Trust, including but not limited to, lenders or banks.
  - 2.3 If Directors or governors have any doubt about the relevance or materiality of an interest, this should be discussed with the Chairman.
  - 2.4 At the time the interests are declared, they should be recorded in the board minutes or governors meeting minutes as appropriate. Any changes in interests should be officially declared at the next board meeting or governors meeting as appropriate following the change occurring. It is the obligation of the Director or governor to inform the Chairman or his or her nominated officer in writing within 7 clear days of becoming aware of the existence of a relevant or material interest. The Chairman or his or her nominated officer will amend the register upon receipt within 7 clear days.
  - 2.5 Directors directorships of companies in 2(a) above or in companies likely or possibly seeking to do business with the NHS (2(b) above) should be published in the board's annual report. The information should be kept up to date for inclusion in succeeding annual reports.
  - 2.6 During the course of a board meeting or governors meeting, if a conflict of interest is established, the Directors or governors concerned should withdraw from the meeting and play no part in the relevant discussion or decision. For the avoidance of doubt, this includes voting on such an issue where a conflict is established. If there is a dispute as to whether a conflict of interest does exist, majority will resolve the issue with the Chairman having the casting vote.
  - 2.7 There is no requirement for the interests of directors' or governors' spouses or partners to be declared.
  - 2.8 The above direction is in addition to the conflict of interests outlined in paragraph 11 of the Constitution.