

# **Birmingham Community Healthcare NHS Foundation Trust**

## **Constitution**

December 2018

Version 1.5

# Birmingham Community Healthcare NHS Foundation Trust Constitution

## ----- TABLE OF CONTENTS -----

<b>Paragraph</b>		<b>Page</b>
<b>1.</b>	<b>Interpretation and definitions.....</b>	<b>4</b>
<b>2.</b>	<b>Name .....</b>	<b>5</b>
<b>3.</b>	<b>Principal purpose .....</b>	<b>5</b>
<b>4.</b>	<b>Powers .....</b>	<b>6</b>
<b>5.</b>	<b>Membership and constituencies.....</b>	<b>6</b>
<b>6.</b>	<b>Application for membership.....</b>	<b>6</b>
<b>7.</b>	<b>Public Constituency.....</b>	<b>6</b>
<b>8.</b>	<b>Staff Constituency.....</b>	<b>7</b>
<b>9.</b>	<b>Restriction on membership.....</b>	<b>7</b>
<b>10.</b>	<b>Annual Members' Meeting.....</b>	<b>8</b>
<b>11.</b>	<b>Council of Governors – composition .....</b>	<b>8</b>
<b>12.</b>	<b>Council of Governors – election of governors .....</b>	<b>9</b>
<b>13.</b>	<b>Council of Governors - tenure.....</b>	<b>9</b>
<b>14.</b>	<b>Council of Governors – disqualification and removal .....</b>	<b>10</b>
<b>15.</b>	<b>Council of Governors- duties of governors .....</b>	<b>11</b>
<b>16.</b>	<b>Council of Governors – meetings of governors .....</b>	<b>11</b>
<b>17.</b>	<b>Council of Governors – standing orders.....</b>	<b>12</b>
<b>18.</b>	<b>Council of Governors - conflicts of interest of governors.....</b>	<b>12</b>
<b>19.</b>	<b>Council of Governors – travel expenses .....</b>	<b>12</b>
<b>20.</b>	<b>Council of Governors – further provisions .....</b>	<b>12</b>
<b>21.</b>	<b>Board of Directors – composition.....</b>	<b>13</b>
<b>22.</b>	<b>Board of Directors – general duty.....</b>	<b>13</b>
<b>23.</b>	<b>Board of Directors – qualification for appointment as a non- executive director.....</b>	<b>14</b>
<b>24.</b>	<b>Board of Directors – appointment and removal of Chair and other non-executive directors .....</b>	<b>14</b>
<b>25.</b>	<b>Board of Directors – appointment of vice chair.....</b>	<b>14</b>

<b>26.</b>	<b>Board of Directors - appointment and removal of the Chief</b>	
	<b>Executive and other executive directors.....</b>	<b>15</b>
<b>27.</b>	<b>Board of Directors – disqualification.....</b>	<b>15</b>
<b>28.</b>	<b>Board of Directors – meetings .....</b>	<b>17</b>
<b>29.</b>	<b>Board of Directors – standing orders.....</b>	<b>17</b>
<b>30.</b>	<b>Board of Directors - conflicts of interest of directors .....</b>	<b>17</b>
<b>31.</b>	<b>Board of Directors – remuneration and terms of office .....</b>	<b>19</b>
<b>32.</b>	<b>Registers.....</b>	<b>19</b>
<b>33.</b>	<b>Admission to and removal from the registers .....</b>	<b>20</b>
<b>34.</b>	<b>Registers – inspection and copies .....</b>	<b>20</b>
<b>35.</b>	<b>Documents available for public inspection.....</b>	<b>21</b>
<b>36.</b>	<b>Auditor .....</b>	<b>21</b>
<b>37.</b>	<b>Audit committee .....</b>	<b>21</b>
<b>38.</b>	<b>Accounts .....</b>	<b>22</b>
<b>39.</b>	<b>Annual report, forward plans and non-NHS work .....</b>	<b>22</b>
<b>40.</b>	<b>Presentation of the annual accounts and reports to the</b>	
	<b>governors and members .....</b>	<b>23</b>
<b>41.</b>	<b>Instruments.....</b>	<b>23</b>
<b>42.</b>	<b>Amendment of the constitution .....</b>	<b>24</b>
<b>43.</b>	<b>Mergers etc. and Significant transactions .....</b>	<b>25</b>
<b>44.</b>	<b>Procedures and Protocols.....</b>	<b>26</b>
<b>45.</b>	<b>Indemnity .....</b>	<b>26</b>
	<b>ANNEX 1 THE PUBLIC CONSTITUENCY .....</b>	<b>28</b>
	<b>ANNEX 2 THE STAFF CONSTITUENCY.....</b>	<b>30</b>
	<b>ANNEX 3 COMPOSITION OF COUNCIL OF GOVERNORS.....</b>	<b>31</b>
	<b>ANNEX 4 THE MODEL ELECTION RULES 2014 .....</b>	<b>33</b>
	<b>ANNEX 5 ADDITIONAL PROVISIONS – COUNCIL OF GOVERNORS.....</b>	<b>81</b>
	<b>ANNEX 6 STANDING ORDERS FOR THE PRACTICE AND</b>	
	<b>PROCEDURE OF THE COUNCIL OF GOVERNORS .....</b>	<b>86</b>
	<b>ANNEX 7 STANDING ORDERS FOR THE PRACTICE AND</b>	
	<b>PROCEDURE OF THE BOARD OF DIRECTORS .....</b>	<b>90</b>
	<b>ANNEX 8 FURTHER PROVISIONS .....</b>	<b>94</b>
	<b>ANNEX 9 ANNUAL MEMBERS’ MEETING.....</b>	<b>98</b>

## 1. Interpretation and definitions

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

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

References to any statute or statutory provision shall be deemed to include any instrument, order, regulation or direction issued under it and shall be construed to include a reference to the same as it may have been, or may from time to time be, amended, modified, consolidated, re-enacted or replaced.

References to any statutory body or public organisation shall be deemed to include any successor body or bodies which may from time to time assume all or substantially all of the functions of that original statutory body.

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

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

**Annual Members' Meeting** is defined in paragraph 10 of the constitution.

**Authorisation** is the authorisation issued by Monitor under Section 35 of the 2006 Act.

**Chair** means the chair of the Trust.

**Constitution** means this constitution and all annexes to it.

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

**NHS Improvement** is the operational name for the organisation which consists of (inter alia) Monitor and the NHS Trust Development Authority.

**Public Constituency** means the constituency of the Trust constituted in accordance with paragraph 7.

**Staff Constituency** means the constituency of the Trust constituted in accordance with paragraph 8.

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

the **Secretary** means the secretary of the Trust or any other person appointed by the Trust to perform the duties of the secretary, including a joint, assistant or deputy secretary.

## **2. Name**

The name of the foundation trust is Birmingham Community Healthcare NHS Foundation Trust (the Trust).

## **3. Principal purpose**

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

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

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

3.3.2 the promotion and protection of public health.

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

#### **4. Powers**

- 4.1 The powers of the Trust are set out in the 2006 Act. All the powers of the Trust shall be exercised by the Board of Directors on behalf of the Trust.
- 4.2 Any of these powers may be delegated to a committee of directors or to an executive director.

#### **5. Membership and constituencies**

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

- 5.1 a Public Constituency; or
- 5.2 a Staff Constituency.

#### **6. Application for membership**

- 6.1 An individual who is eligible to become a member of the Trust may do so on application to the Trust. An individual who is eligible for membership of the Staff Constituency may become a member automatically upon invitation in accordance with the provisions of paragraph 8.5 of this constitution.

#### **7. Public Constituency**

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

## **8. Staff Constituency**

- 8.1 An individual who is employed by the Trust under a contract of employment with the Trust may become or continue as a member of the Trust provided:
- 8.1.1 he is employed by the Trust under a contract of employment which has no fixed term or has a fixed term of at least 12 months; or
  - 8.1.2 he has been continuously employed by the Trust under a contract of employment for at least 12 months.
- 8.2 Those individuals who are eligible for membership of the Trust by reason of the previous provisions are referred to collectively as the Staff Constituency.
- 8.3 The Staff Constituency shall be divided into 4 descriptions of individuals who are eligible for membership of the Staff Constituency, known as staff classes as set out in Annex 2.
- 8.4 The minimum number of members required for each class of the Staff Constituency is specified in Annex 2.

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

- 8.5 An individual who is:
- 8.5.1 eligible to become a member of the Staff Constituency, and
  - 8.5.2 invited by the Trust to become a member of the Staff Constituency and a member of the appropriate class within the Staff Constituency,

shall become a member of the Trust as a member of the Staff Constituency and appropriate class within the Staff Constituency without an application being made, unless he informs the Trust that he does not wish to do so.

## **9. Restriction on membership**

- 9.1 An individual, who is a member of a constituency, or of a class within a constituency, may not while membership of that constituency or class continues, be a member of any other constituency or class.

- 9.2 An individual who satisfies the criteria for membership of the Staff Constituency may not become or continue as a member of any constituency other than the Staff Constituency.
- 9.3 An individual must be at least 16 years old to become a member of the Trust.
- 9.4 Further provisions as to the circumstances in which an individual may not become or continue as a member of the Trust are set out in Annex 8 – Further Provisions.

## **10. Annual Members' Meeting**

- 10.1 The Trust shall hold an annual meeting of its members ('Annual Members' Meeting'). The Annual Members' Meeting shall be open to the public.
- 10.2 Further provisions about the Annual Members' Meeting are set out in Annex 9 – Annual Members' Meeting.

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

- 11.1 The Trust is to have a Council of Governors, which shall comprise both elected and appointed governors.
- 11.2 The composition of the Council of Governors is specified in Annex 3.
- 11.3 The members of the Council of Governors, other than the appointed members, shall be chosen by election by their constituency or, where there are classes within a constituency, by their class within that constituency.
- 11.4 The number of governors to be elected by each constituency, or, where appropriate, by each class of each constituency, is specified in Annex 3.
- 11.5 a person shall not stand for election to the Council of Governors as a public governor unless within the previous six months he has made a declaration in the form specified in rule 12 of the Model Election Rules:
  - 11.5.1 of the particulars of his qualification to vote as a member of the Public Constituency;



11.5.2 that he is not prevented from being a governor by paragraph 8 of Schedule 7 to the 2006 Act; and

11.5.3 that he is not otherwise disqualified under paragraph 14 of this constitution.

11.6 The organisations referred to in paragraph 2 of Annex 3 shall be entitled to appoint an individual as the appointed governor representing their organisation in accordance with a process of appointment agreed with the Secretary and the allocation defined in paragraph 2 of Annex 3

11.7 The aggregate number of governors who are public governors shall be more than half the total number of governors.

## **12. Council of Governors – election of governors**

12.1 Elections for elected members of the Council of Governors shall be conducted in accordance with the Model Election Rules as published by NHS Providers (previously the Foundation Trust Network).

12.2 The Model Election Rules form part of this constitution. The Model Election Rules current at the date of the Trust's Authorisation are attached at Annex 4.

12.3 A subsequent variation of the Model Election Rules by the Department of Health shall not constitute a variation of the terms of this constitution for the purposes of paragraph 42 of the constitution (amendment of the constitution).

12.4 An election, if contested, shall be by secret ballot.

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

13.1 An elected governor may hold office for a period of up to 3 years.

13.2 The first election to the Council of Governors for the elected governors shall be conducted in such a way as to result in the initial terms of office for those elected governors to end on a phased basis to ensure that elected governors do not all vacate office on the same day and in order that future elections also occur on a phased basis, save that if it becomes apparent that more than half elected

governors in a constituency will vacate office on the same day, the Trust will ensure that the tenures of governors will be allocated at election on a phased basis.

- 13.3 An elected governor shall cease to hold office if he ceases to be a member of the constituency or class by which he was elected.
- 13.4 An elected governor shall be eligible for re-election at the end of his term.
- 13.5 An elected governor may not hold office for longer than 9 years and therefore must stand down from office after a total of 9 years' service.
- 13.6 An appointed governor may hold office for a period of up to 3 years.
- 13.7 An appointed governor shall cease to hold office if the appointing organisation withdraws its sponsorship of him.
- 13.8 An appointed governor shall be eligible for re-appointment at the end of his term.
- 13.9 Elected and appointed governors shall cease to be governors forthwith if their tenure is terminated under paragraph 2 of Annex 5 or they are disqualified from being a governor under paragraph 14.

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

- 14.1 The following may not become or continue as a member of the Council of Governors:
  - 14.1.1 a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;
  - 14.1.2 a person in relation to whom a moratorium period under a debt relief order applies (under Part 7A of the Insolvency Act 1986),
  - 14.1.3 a person who has made a composition or arrangement with, or granted a Trust deed for, his creditors and has not been discharged in respect of it;

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

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

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

14.4 Provisions for the removal of governors are set out in Annex 5.

## **15. Council of Governors- duties of governors**

15.1 The general duties of the Council of Governors are –

15.1.1 to hold the non-executive directors individually and collectively to account for the performance of the Board of Directors, and

15.1.2 to represent the interests of the members of the Trust as a whole and the interests of the public.

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

## **16. Council of Governors – meetings of governors**

16.1 The Chair of the Trust (i.e. the Chair of the Board of Directors, appointed in accordance with the provisions of paragraph 24.1 below) or, in his absence the vice chair (appointed in accordance with the provisions of paragraph 25 below), shall preside at meetings of the Council of Governors.

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

16.3 For the purposes of obtaining information about the Trust's performance of its functions or the directors' performance of their

duties (and deciding whether to propose a vote on the Trust's or directors' performance), the Council of Governors may require one or more of the directors to attend a meeting.

16.4 No proceedings of the Council of Governors shall be invalidated by any vacancy in its membership or any defect in the appointment or election of any governor.

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

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

## **18. Council of Governors - conflicts of interest of governors**

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

18.2 The Standing Orders for the Council of Governors shall make provision for the disclosure of interests and arrangements for the exclusion of a governor declaring any interest from any discussion or consideration of the matter in respect of which an interest has been disclosed.

## **19. Council of Governors – travel expenses**

19.1 Governors shall not receive remuneration for acting as governors but may receive expenses as provided for in this paragraph.

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

## **20. Council of Governors – further provisions**

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

## **21. Board of Directors – composition**

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

21.2 The Board of Directors is to comprise:

21.2.1.1 a non-executive Chair;

21.2.1.2 up to six (6) other non-executive directors; and

21.2.1.3 up to six (6) executive directors,

such that at any time at least half of the Board of Directors (excluding the Chair) shall be Non-Executive Directors.

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

21.4 The Chief Executive shall be the Accounting Officer.

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

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

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

21.8 The power to appoint non executive directors and executive directors shall at all times be exercised so as to ensure that the aggregate voting rights vested in the Chair and non executive directors exceed the aggregate of those votes vested in the executive directors.

21.9 The directors shall at all times have one vote each save that the Chair shall be entitled to exercise a second or casting vote where the number of votes for and against a motion is equal.

## **22. Board of Directors – general duty**

22.1 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.

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

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

23.1 he is a member of the Public Constituency, or

23.2 where any of the Trust’s hospitals includes a medical or dental school provided by a university, he exercises functions for the purposes of that university, and

23.3 he is not disqualified by virtue of paragraph 27 below.

**24. Board of Directors – appointment and removal of Chair and other non-executive directors**

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

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

**25. Board of Directors – appointment of vice chair**

25.1 The Council of Governors at a general meeting of the Council of Governors shall appoint one of the non-executive directors as a vice chair.

25.2 The Board of Directors shall, following consultation with the Council of Governors, appoint one of the non-executive directors as senior independent director to act in accordance with the NHS Foundation Trust Code of Governance published by Monitor in December 2013; updated July 2014. The senior independent director could be the vice chair.

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

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

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

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

**27. Board of Directors – disqualification**

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

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

27.1.2 a person in relation to whom a moratorium period under a debt relief order applies (under Part 7A of the Insolvency Act 1986),

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

27.1.4 a person who within the preceding five years has been convicted in the British Islands of any offence and a sentence of imprisonment (whether suspended or not) for a period of three months or more (without the option of a fine) was imposed on him;

27.1.5 a person who, in the case of a non-executive director, no longer satisfies paragraph 23 (if applicable);

27.1.6 a person whose tenure of office as a chair or as a member or director of a health service body has been terminated on the grounds that his appointment is not in the interests of

public service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest;

27.1.7 a person who has had his name removed from a practising list by a direction under any applicable legislation or has otherwise been disqualified or suspended from any healthcare profession, and has not subsequently had his name included in such a list or had his qualification reinstated or suspension lifted (as applicable);

27.1.8 a person who has within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with a health service body;

27.1.9 a person who is a member of a local authority Health Overview and Scrutiny Committee;

27.1.10 a person who is a subject of a disqualification order made under the Company Directors' Disqualification Act 1986;

27.1.11 a person who has failed without reasonable cause to fulfil any training requirement established by the Board of Directors;

27.1.12 a person who has failed to sign and deliver to the Secretary a statement in the form required by the Board of Directors confirming acceptance of the Directors' Code of Conduct;

27.1.13 a person who is the spouse, partner, parent or child of a member of the Board of Directors (including the Chair) of the Trust;

27.1.14 a person who is the subject of a Sex Offenders Order and/or his name is included in the Sex Offenders Register;  
or

27.1.15 where NHS Improvement (or Monitor) have exercised its powers under the 2006 Act to remove that person as a director of the Trust or any foundation trust within its jurisdiction or has suspended him from office or has disqualified him from holding office as a director of the Trust or of any other foundation trust for a specified period.



27.2 Subject to paragraph 27.3, a person who is disqualified from becoming or continuing as a director on any of the grounds set out in paragraph 27.1 shall forthwith resign as a director of the Trust or if he fails to do so shall be removed forthwith by the Board of Directors and a new director appointed in his place in accordance with the provisions of this constitution.

27.3 The Board of Directors may exercise its discretion to allow any individual to become or continue as a member of the Board of Directors in respect of any matter that would otherwise bar such membership under paragraphs 27.1.5 to 27.1.14 (inclusive).

## **28. Board of Directors – meetings**

28.1 Meetings of the Board of Directors shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons.

28.2 Before holding a meeting, the Board of Directors must send a copy of the agenda of the meeting to the Council of Governors. As soon as practicable after holding a meeting, the Board of Directors must send a copy of the minutes of the meeting to the Council of Governors.

## **29. Board of Directors – standing orders**

29.1 The standing orders for the practice and procedure of the Board of Directors are attached at Annex 7.

## **30. Board of Directors - conflicts of interest of directors**

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

30.1.1 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

30.1.2 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.

- 30.2 The duty referred to in sub-paragraph 30.1.1 is not infringed if –
- 30.2.1 the situation cannot reasonably be regarded as likely to give rise to a conflict of interest; or
  - 30.2.2 the matter has been authorised in accordance with the constitution.
- 30.3 The duty referred to in sub-paragraph 30.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- 30.4 In sub-paragraph 30.1.2, “third party” means a person other than –
- 30.4.1 the Trust; or
  - 30.4.2 a person acting on its behalf.
- 30.5 If a director of the Trust is aware that he 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 as soon as they are aware of it and in all cases, before the Trust enters into the transaction or arrangement.
- 30.6 If a declaration under this paragraph proves to be, or becomes, inaccurate or incomplete, a further declaration must be made.
- 30.7 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.
- 30.8 A director need not declare an interest –
- 30.8.1 if it cannot reasonably be regarded as likely to give rise to a conflict of interest;
  - 30.8.2 if, or to the extent that, the directors are already aware of it;
  - 30.8.3 if, or to the extent that, it concerns terms of the director’s appointment that have been or are to be considered –
    - 30.8.3.1 by a meeting of the Board of Directors, or

30.8.3.2 by a committee of the directors appointed for the purpose under the constitution.

30.9 A matter shall be authorised for the purposes of paragraph 30.2.2 if:

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

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

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

30.10 Further provisions as to conflicts of interest are in Annex 7.

### **31. Board of Directors – remuneration and terms of office**

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

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

### **32. Registers**

The Trust shall have:

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

32.2 a register of governors;

32.3 a register of interests of governors;

- 32.4 a register of directors; and
- 32.5 a register of interests of the directors.
- 32.6 The information to be included in the above registers shall be such as will comply with the requirements of the 2006 Act, any subordinate legislation made under it and the provisions of this constitution.

### **33. Admission to and removal from the registers**

- 33.1 The Secretary shall ensure that the name of any individual who is accepted as a member of the Trust under the provisions of this constitution is added to the register of members.
- 33.2 The Secretary shall ensure the removal from the register of members the name of any member who dies or who ceases to be entitled to be a member under the provisions of this constitution.

### **34. Registers – inspection and copies**

- 34.1 The Trust shall make the registers specified in paragraph 32 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.
- 34.2 The Trust shall not make any part of its registers available for inspection by members of the public which shows details of any member of the Trust, if the member so requests.
- 34.3 So far as the registers are required to be made available:
  - 34.3.1 they are to be available for inspection free of charge at all reasonable times; and
  - 34.3.2 a person who requests a copy of or extract from the registers is to be provided with a copy or extract.
- 34.4 If the person requesting a copy or extract is not a member of the Trust, the Trust may impose a reasonable charge for doing so.

### **35. Documents available for public inspection**

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

35.1.1 a copy of the current constitution;

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

35.1.3 a copy of the latest annual report.

35.2 All documents required by paragraphs 22(1)(g) to 22(1)(p) inclusive of Schedule 7 to the 2006 Act (relating to special administration) shall be available for inspection by members of the public free of charge at all reasonable times.

35.3 Any person who requests a copy of or extract from any of the above documents is to be provided with a copy.

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

### **36. Auditor**

36.1 The Trust shall have an auditor.

36.2 The Council of Governors shall appoint or remove the auditor at a general meeting of the Council of Governors.

36.3 The auditor shall carry out his duties in accordance with Schedule 10 to the 2006 Act and in accordance with any directions given by NHS Improvement (previously Monitor) on standards, procedures and techniques to be adopted.

### **37. Audit committee**

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

### **38. Accounts**

- 38.1 The Trust must keep proper accounts and proper records in relation to accounts.
- 38.2 The accounts are to be audited by the Trust's auditor.
- 38.3 The Trust shall prepare in respect of each financial year annual accounts in such form as NHS Improvement may with the approval of the Secretary of State direct.
- 38.4 The functions of the Trust with respect to the preparation of the annual accounts shall be delegated to the Accounting Officer.

### **39. Annual report, forward plans and non-NHS work**

- 39.1 The Trust shall prepare an Annual Report and send it to NHS Improvement.
- 39.2 The Trust shall give information as to its forward planning in respect of each financial year to NHS Improvement.
- 39.3 The document containing the information with respect to forward planning (referred to above) shall be prepared by the directors.
- 39.4 In preparing the document, the directors shall have regard to the views of the Council of Governors.
- 39.5 Each forward plan must include information about -
  - 39.5.1 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
  - 39.5.2 the income it expects to receive from doing so.
- 39.6 Where a forward plan contains a proposal that the Trust carry on an activity of a kind mentioned in sub-paragraph 39.5.1, the Council of Governors must –
  - 39.6.1 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

39.6.2 notify the directors of the Trust of its determination.

39.7 Where 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.

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

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

40.1.1 the annual accounts

40.1.2 any report of the auditor on them

40.1.3 the annual report.

40.2 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.

40.3 The Trust may combine a meeting of the Council of Governors convened for the purposes of sub-paragraph 40.1 with the Annual Members' Meeting.

#### **41. Instruments**

41.1 The Trust shall have a seal.

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

41.3 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 executed or signed.

## **42. Amendment of the constitution**

- 42.1 The Trust may make amendments of its constitution only if –
- 42.1.1 more than half of the members of the Council of Governors of the Trust voting approve the amendments, and
  - 42.1.2 more than half of the members of the Board of Directors of the Trust voting approve the amendments.
- 42.2 Amendments made under paragraph 42.1 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.
- 42.3 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) –
- 42.3.1 at least one member of the Council of Governors must attend the next Annual Members' Meeting and present the amendment, and
  - 42.3.2 the Trust must give the members an opportunity to vote on whether they approve the amendment.
- 42.4 If more than half of the members voting approve the amendment, the amendment continues to have effect; otherwise, it ceases to have effect and the Trust must take such steps as are necessary as a result.
- 42.5 Amendments by the Trust of its constitution are to be notified to NHS Improvement. For the avoidance of doubt, NHS Improvement'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.



### **43. Mergers etc. and Significant transactions**

43.1 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.

43.2 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.

43.3 In this paragraph 43, the following words have the following meanings:

43.3.1 “Significant transaction” means a transaction which meets any one of the tests below:

- the fixed asset test; or
- the turnover test; or
- the gross capital test (relating to acquisitions or divestments).

The fixed asset test:

43.3.2 is met if the assets which are the subject of the transaction exceed 25% of the fixed assets of the Trust;

43.4 The turnover test:

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

43.5 The gross capital test:

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

43.6 For the purposes of calculating the tests in this paragraph 43.3, figures used to classify assets and profits must be the figures shown in the latest published audited consolidated accounts.

43.7 A transaction:

43.7.1 is any agreement (including an amendment to an agreement) entered into by the Trust in respect of the acquisition of or merger with a business or services or the disposal of a business or service;

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

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

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

#### **44. Procedures and Protocols**

44.1 The Board of Directors shall adopt such procedures and protocols as it shall deem to be appropriate for the good governance of the Trust from time to time.

#### **45. Indemnity**

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

45.2 The Trust may purchase and maintain for members of the Board of Directors and Council of Governors insurance in respect of directors'

and officers' liability, including, without limitation, liability arising by reason of the Trust acting as a corporate trustee of an NHS charity.

## ANNEX 1 THE PUBLIC CONSTITUENCY

Public Constituency Area	Electoral Area	Minimum Number of Members
South Birmingham	Allens Cross Bartley Green Billesley Bournbrook & Selly Park Bournville & Cotteridge Brandwood & King's Heath Druids Heath & Monyhull Edgbaston Frankley Great Park Hall Green North Hall Green South Harborne Highter's Heath King's Norton North King's Norton South Longbridge & West Heath Moseley Northfield Quinton Rubery & Rednal Stirchley Weoley & Selly Oak	300
Central and West Birmingham	Aston Balsall Heath West Bordesley Green Bordesley & Highgate Birchfield Handsworth Handsworth Wood Holyhead Kingstanding Newtown Ladywood Lozells Nechells North Edgbaston Oscott Perry Barr Small Heath Soho & Jewellery Quarter Sparkbrook & Balsall Heath East Sparkhill	300

<b>Public Constituency Area</b>	<b>Electoral Area</b>	<b>Minimum Number of Members</b>
Birmingham North and East	Acocks Green Alum Rock Bromford & Hodge Hill Castle Vale Erdington Garretts Green Glebe Farm & Tile Cross Gravelly Hill Heartlands Perry Common Pype Hayes Shard End Sheldon South Yardley Stockland Green Sutton Four Oaks Sutton Mere Green Sutton Reddicap Sutton Roughley Sutton Trinity Sutton Vesey Sutton Walmley & Minworth Sutton Wylde Green Tyseley & Hay Mills Ward End Yardley East Yardley West & Stechford	300
West Midlands Region	Herefordshire Shropshire Staffordshire Warwickshire Worcestershire West Midlands (excluding Birmingham)	100
<b>Total</b>		1,000

## ANNEX 2 THE STAFF CONSTITUENCY

The Staff Constituency is divided into four (4) classes. Staff shall be eligible for membership of the class within the Staff Constituency shown in the table below.

<b>Staff Constituency class</b>	<b>Description</b>	<b>Minimum Number of Members</b>
Medical, Dental and Nursing	Staff who are employed as doctors, dentists or nurses	150
Healthcare Assistants and Support Staff	Staff who are employed as healthcare assistants or support staff	150
Scientific, Therapeutic and Technical Staff / AHP & Healthcare Scientists	Staff who are employed as scientific, therapeutic or technical staff, or AHP or healthcare scientists.	100
Other	Staff who are employed by the Trust in roles other than those specified in other Staff Constituency classes	100
<b>Total</b>		<b>500</b>

## ANNEX 3 COMPOSITION OF COUNCIL OF GOVERNORS

The Council of Governors will consist of twenty-three (23) governors, which shall comprise elected and appointed governors as set out in the table below:

### Elected Governors

<b>Constituency</b>	<b>Area/Class</b>	<b>Number of Governors</b>
Public	South Birmingham	4
	Central and West Birmingham	4
	Birmingham East and North	4
	West Midlands Region	1
<b>Public Governors Total</b>		<b>13</b>
Staff	Medical, Dental and Nursing	2
	Healthcare Assistants and Support Staff	2
	Scientific, Therapeutic and Technical Staff / Allied Health Professionals and Healthcare Scientists	1
	Other	1
<b>Staff Governors Total</b>		<b>6</b>

## Appointed Governors

<b>Representative Status</b>	<b>Representative of</b>	<b>Number of Governors</b>
Required by Statute	Birmingham City Council Local Authority	1
Required by Statute	University of Birmingham	1
Partnership/stakeholder organisation	Birmingham Voluntary Services Council	1
Partnership/stakeholder organisation	West Midlands Police	1
<b>Partner Governor Total</b>		<b>4</b>



## **ANNEX 4 THE MODEL ELECTION RULES 2014**

### **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. Declaration of interests
12. Declaration of eligibility
13. Signature of candidate
14. Decisions as to validity of nomination forms
15. Publication of statement of nominated candidates
16. Inspection of statement of nominated candidates and nomination forms
17. Withdrawal of candidates
18. Method of election

### **PART 5: CONTESTED ELECTIONS**

19. Poll to be taken by ballot
20. The ballot paper
21. The declaration of identity (public and patient constituencies)

#### *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. Ballot paper envelope and 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. Declaration of identity but no ballot (public and patient constituency)
- 39. De-duplication of votes
- 40. Sealing of packets

**PART 6: COUNTING THE VOTES**

- STV41. Interpretation of Part 6
- 42. Arrangements for counting of the votes
- 43. The count
- STV44. Rejected ballot papers and rejected text voting records
- FPP44. Rejected ballot papers and rejected text voting records
- STV45. First stage
- STV46. The quota
- STV47. Transfer of votes
- STV48. Supplementary provisions on transfer
- STV49. Exclusion of candidates
- STV50. Filling of last vacancies
- STV51. Order of election of candidates
- FPP51. Equality of votes

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

- FPP52. Declaration of result for contested elections
- STV52. Declaration of result for contested elections
- 53. Declaration of result for uncontested elections

**PART 8: DISPOSAL OF DOCUMENTS**

- 54. Sealing up of documents relating to the poll
- 55. Delivery of documents
- 56. Forwarding of documents received after close of the poll
- 57. Retention and public inspection of documents

58. Application for inspection of certain documents relating to election

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

- FPP59. Countermand or abandonment of poll on death of candidate  
STV59. Countermand or abandonment of poll on death of candidate

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

### *Expenses*

60. Election expenses  
61. Expenses and payments by candidates  
62. Expenses incurred by other persons

### *Publicity*

63. Publicity about election by the corporation  
64. Information about candidates for inclusion with voting information  
65. Meaning of “for the purposes of an election”

## **PART 11: QUESTIONING ELECTIONS AND IRREGULARITIES**

66. Application to question an election

## **PART 12: MISCELLANEOUS**

67. Secrecy  
68. Prohibition of disclosure of vote  
69. Disqualification  
70. Delay in postal service through industrial action or unforeseen event

## Interpretation

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 (published by Monitor in 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 and reference in these Model Election Rules to “Monitor” shall be read as reference to its statutory successor, “NHS Improvement”;

“*NHS Improvement*” is the operational name for the organisation which consists of (inter alia) Monitor and the NHS Trust Development Authority;

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

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

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

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

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

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

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

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

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

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

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

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

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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### Timetable

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

Proceeding	Time
Publication of notice of election	Not later than the fortieth day before the day of the close of the poll
Final day for delivery of nomination 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.

### **Computation of time**

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.

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

## **PART 3: RETURNING OFFICER**

### **Returning Officer**

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

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

### **Staff**

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

### **Expenditure**

The corporation is to pay the returning officer:

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

### **Duty of co-operation**

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

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

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### **Notice of election**

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

- (a) the constituency, or class within a constituency, for which the election is being held,
- (b) the number of members of the council of governors to be elected from that constituency, or class within that constituency,
- (c) the details of any nomination committee that has been established by the corporation,
- (d) the address and times at which nomination 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.

### **Nomination of candidates**

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

The returning officer:

- (a) is to supply any member of the corporation with a nomination form, and

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

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

### **Candidate's particulars**

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.

### **Declaration of interests**

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.

### **Declaration of eligibility**

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.

### **Signature of candidate**

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

- (a) they wish to stand as a candidate,



- (b) their declaration of interests as required under rule 11, is true and correct, and
- (c) their declaration of eligibility, as required under rule 12, is true and correct.

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.

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

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.

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

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

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.

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.

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.

### **Publication of statement of candidates**

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

The statement must show:

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

as given in their nomination form.

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

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.

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

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

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.

### **Withdrawal of candidates**

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

### **Method of election**

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.

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.

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

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

## **PART 5: CONTESTED ELECTIONS**

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

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

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

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

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.

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

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

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

### **The ballot paper**

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.

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.

Each ballot paper must have a unique identifier.

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

## **The declaration of identity (public and patient constituencies)**

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

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

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

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

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

*Action to be taken before the poll*

### **List of eligible voters**

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.

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.

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.

### **Notice of poll**

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

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

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

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”).

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

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

(“e-voting information”).

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.

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.

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.

### **Ballot paper envelope and covering envelope**

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.

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.

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.

### **E-voting systems**

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").

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").

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").

The returning officer shall ensure that the polling website and internet voting system provided will:

- (a) require a voter to:
  - (i) enter his or her voter ID number; and
  - (ii) where the election is for a public or patient constituency, make a declaration of identity;  
in order to be able to cast his or her vote;
- (b) specify:
  - (i) the name of the corporation,
  - (ii) the constituency, or class within a constituency, for which the election is being held,
  - (iii) the number of members of the council of governors to be elected from that constituency, or class within that constituency,
  - (iv) the names and other particulars of the candidates standing for



- election, with the details and order being the same as in the statement of nominated candidates,
- (v) instructions on how to vote and how to make a declaration of identity,
  - (vi) the date and time of the close of the poll, and
  - (vii) the contact details of the returning officer;
- (c) prevent a voter from voting for more candidates than he or she is entitled to at the election;
  - (d) create a record ("internet voting record") that is stored in the internet voting system in respect of each vote cast by a voter using the internet that comprises of-
    - (i) the voter's voter ID number;
    - (ii) the voter's declaration of identity (where required);
    - (iii) the candidate or candidates for whom the voter has voted; and
    - (iv) (the date and time of the voter's vote,
  - (e) if the voter's vote has been duly cast and recorded, provide the voter with confirmation of this; and
  - (f) prevent any voter from voting after the close of poll.

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

- (a) require a voter to
  - (i) enter his or her voter ID number in order to be able to cast his or her vote; and
  - (ii) where the election is for a public or patient constituency, make a declaration of identity;
- (b) specify:
  - (i) the name of the corporation,
  - (ii) the constituency, or class within a constituency, for which the election is being held,
  - (iii) the number of members of the council of governors to be elected from that constituency, or class within that constituency,
  - (iv) instructions on how to vote and how to make a declaration of identity,
  - (v) the date and time of the close of the poll, and
  - (vi) the contact details of the returning officer;

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

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

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

### *The poll*

## **Eligibility to vote**

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

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

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

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.

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

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.

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.

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

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

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.

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.

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.

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.

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.

### **Lost voting information**

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.

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

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

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.

### **Issue of replacement voting information**

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

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.

### **ID declaration form for replacement ballot papers (public and patient constituencies)**

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

*Polling by internet, telephone or text*

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

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.

When prompted to do so, the voter will need to enter his or her voter ID number.

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.

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.

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.

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

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.

When prompted to do so, the voter will need to enter his or her voter ID number using the keypad.

If the telephone voting facility authenticates the voter ID number, the voter will be prompted to vote in the election.

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.

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.

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

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.

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.

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*

### **Receipt of voting documents**

Where the returning officer receives:

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

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

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

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

## Validity of votes

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

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

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

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

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

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

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.

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.

## **Declaration of identity but no ballot paper (public and patient constituency)<sup>1</sup>**

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

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

## **De-duplication of votes**

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.

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

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

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

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”,

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



- (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.

### **Sealing of packets**

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

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

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

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

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### **STV41. Interpretation of Part 6**

STV41.1 In Part 6 of these rules:

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

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

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

elected candidates, and the transfer of the votes of the excluded candidates,

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

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

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

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

or

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

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

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

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

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

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

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

*“stage of the count”* means:

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

*“transferable vote”* means a ballot document on which, following a first

preference, a second or subsequent preference is recorded in consecutive numerical order for a continuing candidate,

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

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

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

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

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.

#### **The count**

The returning officer is to:

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

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.

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

#### **STV44. Rejected ballot papers and rejected text voting records**

STV44.1 Any ballot paper:

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

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

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

STV44.3 Any text voting record:

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

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

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

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

#### **FPP44. Rejected ballot papers and rejected text voting records**

FPP44.1 Any ballot paper:

- (a) which does not bear the features that have been incorporated into the other ballot papers to prevent them from being reproduced,
- (b) on which votes are given for more candidates than the voter is entitled to vote,
- (c) on which anything is written or marked by which the voter can be identified except the unique identifier, or
- (d) which is unmarked or rejected because of uncertainty,

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

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

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

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

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

FPP44.4 The returning officer is to:

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

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

- (a) does not bear proper features that have been incorporated into the ballot paper,
- (b) voting for more candidates than the voter is entitled to,

- (c) writing or mark by which voter could be identified, and
- (d) unmarked or rejected because of uncertainty,

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

FPP44.6 Any text voting record:

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

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

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

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

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

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

FPP44.9 The returning officer is to:

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

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

- (a) voting for more candidates than the voter is entitled to,

- (b) writing or mark by which voter could be identified, and
- (c) unmarked or rejected because of uncertainty,

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

**STV45. First stage**

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

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

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

**STV46. The quota**

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

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

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

**STV47. Transfer of votes**

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

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

STV47.2 The returning officer is to count the number of ballot documents in each parcel referred to in rule STV47.1.

- STV47.3 The returning officer is, in accordance with this rule and rule STV48, to transfer each sub-parcel of ballot documents referred to in rule STV47.1(a) to the candidate for whom the next available preference is given on those ballot documents.
- STV47.4 The vote on each ballot document transferred under rule STV47.3 shall be at a value (“the transfer value”) which:
- (a) reduces the value of each vote transferred so that the total value of all such votes does not exceed the surplus, and
  - (b) is calculated by dividing the surplus of the candidate from whom the votes are being transferred by the total number of the ballot documents on which those votes are given, the calculation being made to two decimal places (ignoring the remainder if any).
- STV47.5 Where at the end of any stage of the count involving the transfer of ballot documents, the number of votes for any candidate exceeds the quota, the returning officer is to sort the ballot documents in the sub-parcel of transferred votes which was last received by that candidate into separate sub-parcels so that they are grouped:
- (a) according to the next available preference given on those ballot documents for any continuing candidate, or
  - (b) where no such preference is given, as the sub-parcel of non-transferable votes.
- STV47.6 The returning officer is, in accordance with this rule and rule STV48, to transfer each sub-parcel of ballot documents referred to in rule STV47.5(a) to the candidate for whom the next available preference is given on those ballot documents.
- STV47.7 The vote on each ballot document transferred under rule STV47.6 shall be at:
- (a) a transfer value calculated as set out in rule STV47.4(b), or
  - (b) at the value at which that vote was received by the candidate from whom it is now being transferred,
- whichever is the less.
- STV47.8 Each transfer of a surplus constitutes a stage in the count.
- STV47.9 Subject to rule STV47.10, the returning officer shall proceed to transfer transferable ballot documents until no candidate who is deemed to be



elected has a surplus or all the vacancies have been filled.

STV47.10 Transferable ballot documents shall not be liable to be transferred where any surplus or surpluses which, at a particular stage of the count, have not already been transferred, are:

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

STV47.11 This rule does not apply at an election where there is only one vacancy.

#### **STV48. Supplementary provisions on transfer**

STV48.1 If, at any stage of the count, two or more candidates have surpluses, the transferable ballot documents of the candidate with the highest surplus shall be transferred first, and if:

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

STV48.2 The returning officer shall, on each transfer of transferable ballot documents under rule STV47:

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

- (ii) the recorded total of valid first preference votes.

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

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

#### **STV49. Exclusion of candidates**

STV49.1 If:

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

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

STV49.2 The returning officer shall sort all the ballot documents on which first preference votes are given for the candidate or candidates excluded under rule STV49.1 into two sub-parcels so that they are grouped as:

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

STV49.3 The returning officer shall, in accordance with this rule and rule STV48, transfer each sub-parcel of ballot documents referred to in rule STV49.2 to the candidate for whom the next available preference is given on those ballot documents.

STV49.4 The exclusion of a candidate, or of two or more candidates together, constitutes a further stage of the count.

STV49.5 If, subject to rule STV50, one or more vacancies still remain to be filled, the

returning officer shall then sort the transferable ballot documents, if any, which had been transferred to any candidate excluded under rule STV49.1 into sub- parcels according to their transfer value.

STV49.6 The returning officer shall transfer those ballot documents in the sub-parcel of transferable ballot documents with the highest transfer value to the continuing candidates in accordance with the next available preferences given on those ballot documents (thereby passing over candidates who are deemed to be elected or are excluded).

STV49.7 The vote on each transferable ballot document transferred under rule STV49.6 shall be at the value at which that vote was received by the candidate excluded under rule STV49.1.

STV49.8 Any ballot documents on which no next available preferences have been expressed shall be set aside as non-transferable votes.

STV49.9 After the returning officer has completed the transfer of the ballot documents in the sub-parcel of ballot documents with the highest transfer value he or she shall proceed to transfer in the same way the sub-parcel of ballot documents with the next highest value and so on until he has dealt with each sub-parcel of a candidate excluded under rule STV49.1.

STV49.10 The returning officer shall after each stage of the count completed under this rule:

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

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

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

exclude such two or more candidates.

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

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

#### **STV50. Filling of last vacancies**

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

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

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

#### **STV51. Order of election of candidates**

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

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

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

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

**FPP51. Equality of votes**

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

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

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**FPP52. Declaration of result for contested elections**

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

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

FPP52.2 The returning officer is to make:

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

available on request.

## **STV52. Declaration of result for contested elections**

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

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

STV52.2 The returning officer is to make:

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

available on request.

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

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

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

- (c) give public notice of the name of each candidate who he or she has declared elected.

## PART 8: DISPOSAL OF DOCUMENTS

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### Sealing up of documents relating to the poll

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.

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 spoilt ballot papers and the list of spoilt 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.

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.

### **Delivery of documents**

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.

### **Forwarding of documents received after close of the poll**

Where:

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

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

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.

With the exception of the documents listed in rule 58.1, the documents relating to an election that are held by the corporation shall be available for inspection by members of the public at all reasonable times.

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.

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

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.

A person may apply to the board of directors of the corporation to inspect any of the documents listed in rule 58.1, and the board of directors of the corporation may only consent to such inspection if it is satisfied that it is necessary for the purpose of questioning an election pursuant to Part 11.

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.

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

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

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

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

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

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### FPP59. Countermand or abandonment of poll on death of candidate

FPP59.1 If at a contested election, proof is given to the returning officer's satisfaction before the result of the election is declared that one of the persons named or to be named as a candidate has died, then the returning officer is to:

- (a) countermand notice of the poll, or, if voting information has been issued, direct that the poll be abandoned within that constituency or class, and
- (b) order a new election, on a date to be appointed by him or her in consultation with the corporation, within the period of 40 days, computed in accordance with rule 3 of these rules, beginning with the day that the poll was countermanded or abandoned.

FPP59.2 Where a new election is ordered under rule FPP59.1, no fresh nomination is necessary for any candidate who was validly nominated for the election where the poll was countermanded or abandoned but further candidates shall be invited for that constituency or class.

FPP59.3 Where a poll is abandoned under rule FPP59.1(a), rules FPP59.4 to FPP59.7 are to apply.

FPP59.4 The returning officer shall not take any step or further step to open envelopes or deal with their contents in accordance with rules 38 and 39, and is to make up separate sealed packets in accordance with rule 40.

FPP59.5 The returning officer is to:

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

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

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

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

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

**STV59. Countermand or abandonment of poll on death of candidate**

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

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

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

**PART 10: ELECTION EXPENSES AND PUBLICITY**

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*Election expenses*

**60. Election expenses**

Any expenses incurred, or payments made, for the purposes of an election which contravene this Part are an electoral irregularity, which may only be questioned in an

application made to Monitor under Part 11 of these rules.

### **Expenses and payments by candidates**

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

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

### **Election expenses incurred by other persons**

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.

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

### *Publicity*

#### **Publicity about election by the corporation**

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.

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

- (a) objective, balanced and fair,
- (b) equivalent in size and content for all candidates,

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

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.

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

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.

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.

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

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.

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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### **Application to question an election**

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).

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

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.

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.

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.

If the independent election arbitration panel requests further information from the applicant, then that person must provide it as soon as is reasonably practicable.

Monitor shall delegate the determination of an application to a person or panel of persons to be nominated for the purpose.

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.

The IEAP may prescribe rules of procedure for the determination of an application including costs.

## Secrecy

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.

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.

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.

## Prohibition of disclosure of vote

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

## Disqualification

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

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

## **Delay in postal service through industrial action or unforeseen event**

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

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

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



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

### **Eligibility and Disqualification of Governors**

1. Further provisions as to the circumstances in which a person may not become or continue as a member of the Council of Governors are set out below.
  - 1.1. A person may not become a governor of the Trust, and if already holding such office will immediately cease to do so, if:
    - 1.1.1. they are the spouse, partner, parent or child of a member of the Board of Directors (including the Chair) of the Trust;
    - 1.1.2. they are a member of a local authority's Health Overview and Scrutiny Committee;
    - 1.1.3. they are the subject of a disqualification order made under the Company Directors' Disqualification Act 1986;
    - 1.1.4. they have within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with a health service body;
    - 1.1.5. they are incapable by reason of illness (whether physical or mental) or injury of managing and administering their property and affairs as determined by a medical professional;
    - 1.1.6. NHS Improvement has exercised its powers to remove that person as a governor or has suspended them from office or has disqualified them from holding office as a governor for a specified period or NHS Improvement / Monitor have exercised any of those powers in relation to the person concerned at any time whether in relation to the Trust or some other NHS foundation trust;
    - 1.1.7. they have demonstrated aggressive or violent behaviour at any hospital and following such behaviour they have been asked to leave, have been removed or excluded from any hospital, Trust site or other healthcare facility under either the Trust's or other health service body's policy for withholding treatment for violent/aggressive behaviour, or equivalent;

- 1.1.8. they have been confirmed as a habitual or repetitive complainant in accordance with the relevant Trust policy for handling complaints;
  - 1.1.9. they have been removed as a member from another NHS foundation trust;
  - 1.1.10. they have been deemed by the Council of Governors to have acted in a manner contrary to the interests of the Trust;
  - 1.1.11. being a member of the Staff Constituency, they have a current and unexpired written warning which has been imposed following disciplinary action by the Trust or the predecessor trust, arising out of their employment with the predecessor trust. For the avoidance of doubt, a member will not be precluded from eligibility as a governor by reason of his suspension or in the event that he is the subject of an ongoing disciplinary procedure and/or fact finding investigation. Spent disciplinary warnings will not preclude eligibility to be a governor;
  - 1.1.12. being a member of the Public Constituency, they refuse to sign a declaration in the form specified by the Secretary of particulars of their qualification to vote as a member of the Trust, and that they are not prevented from being a member of the Council of Governors;
  - 1.1.13. on the basis of disclosures obtained through an application to the Criminal Records Bureau, they are not considered suitable by the Trust's director responsible for human resources;
  - 1.1.14. they have previously been or are currently subject to a sex offender order and/or required to register under the Sexual Offences Act 2003 or have committed a sexual offence prior to the requirements to register under current legislation coming into force.
- 1.2. Any such member of the Council of Governors, or prospective member as the case may be, shall notify the Secretary of any bar to his membership of the Council of Governors under the foregoing paragraphs of this Annex on becoming aware of such a bar provided that the Board of Directors may exercise its discretion to allow any such individual to become or continue as a member of the Council of Governors in respect of any matter that would otherwise bar such membership under the foregoing paragraphs of this Annex.

## **2. Termination of Office and Removal of Governors**

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

- 2.1. they resign by notice in writing to the Secretary;
- 2.2. they fail to attend three (3) consecutive meetings, unless the other governors are satisfied that:
  - 2.2.1. the absences were due to reasonable causes;
  - 2.2.2. they will be able to start attending meetings of the Council of Governors again within such a period as the other governors consider reasonable.
- 2.3. in the case of an elected governor, they cease to be a member of the constituency or class or area of the constituency by which they were elected which for the avoidance of doubt includes in respect of a public governor a governor moving their principal residence from one area within the Public Constituency to another;
- 2.4. in the case of an appointed governor, the appointing organisation terminates the appointment;
- 2.5. they are expelled from membership of the Trust;
- 2.6. they have refused without reasonable cause to undertake any training which the Trust requires all governors to undertake;
- 2.7. they have failed to sign and deliver to the Secretary a statement in the form required by the Secretary confirming acceptance of the Code of Conduct;
- 2.8. they act in a manner detrimental to the Trust;
- 2.9. they fail to disclose a disclosable interest;
- 2.10. they are responsible for a substantive breach of confidentiality in relation to any confidential information of the Trust.

## **3. Expenses and Remuneration of Governors**

- 3.1. The Trust may reimburse governors for travelling and other costs and expenses incurred in carrying out their duties as the Board of Directors decides.

- 3.2. The Trust may at its discretion decide to reimburse the cost and expense of a governor's carer arrangements necessarily and reasonably incurred in the governor carrying out their duties
- 3.3. In respect of a staff governor who is an employee of the Trust, the Secretary shall seek to facilitate such employee's reasonable participation as a staff governor during normal working hours to the extent reasonably necessary for the performance of their duties as a staff governor (including reasonable time off from his contractual duties) and shall not make any corresponding deduction from salary.
- 3.4. Governors shall not receive remuneration from the Trust with respect to the performance of their duties as Governors otherwise than as set out in paragraphs 3.1, 3.2 and 3.3.

#### **4. Vacancies on the Council of Governors**

- 4.1. Where a vacancy arises on the Council of Governors for any reason other than expiry of term of office, the following provisions will apply:
  - 4.1.1. where a vacancy arises amongst the appointed governors, the Secretary shall request that the appointing organisation appoints a replacement to hold office for the remainder of the term of office;
  - 4.1.2. where the vacancy arises amongst the elected governors, the Council of Governors shall be at liberty either:
    - 4.1.2.1. to call an election within four months to fill the seat for the remainder of the term of office of the governor who is being replaced (unless they are in the last year of their term of office, in which case the seat may be left vacant until the next election due in respect of that seat is held); or
    - 4.1.2.2. to invite the next highest polling candidate for that seat at the most recent election, who is willing to take office, to fill the seat until the next election due in respect of that seat is held, at which time the seat will fall vacant and be subject to election for any unexpired period of the term of office of the governor who is being replaced.

- 4.2. For the avoidance of doubt, no provision in this paragraph 4 shall operate in such a way as to subvert the phased basis on which elections to the Council of Governors occur pursuant to the terms of this constitution and the replacement of any governor pursuant to this paragraph 4 shall be undertaken in such a way as to preserve the phased basis on which elections to the Council of Governors occur pursuant to the terms of the constitution.

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

### **1. Meetings of the Council of Governors**

#### **1.1. Admission of the Public and the Press**

All meetings of the Council of Governors are to be open to members of the public unless two thirds of the members of the Council of Governors present decide otherwise in relation to all or part of the meeting for reasons of commercial confidentiality or other special reasons. The Chair may exclude any member of the public from a meeting of the Council of Governors if they are interfering with or preventing the proper conduct of the meeting.

#### **1.2. Calling and Notice of Meetings**

- (i) The Council of Governors is to meet a minimum of three times in each financial year. Save in the case of emergencies or the need to conduct urgent business, the Secretary shall give at least fourteen days' written notice of the date and place of every meeting of the Council of Governors to all governors. Notice will also be published on the Trust's website and in the Trust's membership newsletter if practicable.
- (ii) Meetings of the Council of Governors may be called by the Secretary, the Chair, or by five governors (including at least two elected governors and two appointed governors) who give written notice to the Secretary specifying the business to be carried out. The Secretary shall send a written notice to all governors as soon as possible after receipt of such a request and will call a meeting on at least fourteen, but not more than twenty eight, days' notice. Notice by post, delivery in person, fax or email shall constitute written notice.

#### **1.3. Chair of the Meeting**

In accordance with paragraph 16 of the constitution, the Chair of the Board of Directors or, in his absence, the vice chair of the Board of Directors, shall preside at meetings of the Council of Governors. If the chair and vice

chair are absent, or are disqualified from participating, then the governors present shall choose by majority which public governor present shall preside for that part of the meeting.

#### 1.4. Quorum

No business shall be transacted at a meeting of the Council of Governors unless at least one third of the Council of Governors is present, a majority of whom must be public governors.

#### 1.5. Voting

Questions arising at a meeting of the Council of Governors shall be decided by a majority of votes. In case of an equality of votes the person presiding at or chairing the meeting shall have a casting vote.

#### 1.6. Committees

The Council of Governors may not delegate any of its powers to a committee or sub-committee, but it may appoint committees to assist the Council of Governors in carrying out its functions. The Council of Governors may appoint governors and may invite directors and other persons to attend and advise committees. The Council of Governors may, through the Secretary, request that external advisors assist them or any committee they appoint in carrying out its duties. Such committees established by the Council of Governors may meet in private for reasons of commercial confidentiality or other special reasons if the members of the committee so decide.

#### 1.7. Confidentiality

In the event of the Council of Governors, or any committee established by the governors, meeting in private for all or part of a meeting, governors shall not disclose outside of the Council of Governors meetings the contents of the papers, discussions or minutes of the items taken in private.

## 2. **Disclosure of interests**

Governors shall declare any pecuniary, personal or family interest, whether that interest is direct or indirect, in any proposed contract or other matter which is under consideration or is to be considered by the Council of Governors. A family interest will include those of a governor's spouse or

partner. Any governors appointed subsequently shall declare such interests on appointment or election.

Such interests include:

- (i) Directorships, including non-executive directorships held in private companies, public limited companies or public benefit corporations (with the exception of those of dormant companies).
- (ii) Ownership or part-ownership of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS.
- (iii) Shareholdings in organisations likely or possibly seeking to do business with the NHS.
- (iv) A position of trust or fiduciary duty in a charity or voluntary organisation in the field of health and social care.
- (v) Any connection with a voluntary or other organisation contracting for NHS services.
- (vi) Any other commercial interest in the decision before the meeting.

The following exceptions shall not be treated as interests:

- (i) an employment contract with the Trust held by a staff governor;
- (ii) an employment contract with a local authority held by a local authority governor;
- (iii) an employment contract with a partnership organisation held by a partnership governor.

### **3. Declaring interests**

- 3.1. At the time governors' interests are declared, they shall be recorded in the Council of Governors' minutes and entered on a register of interests of governors to be maintained by the Secretary. Any changes in interests should be declared at the next Council of Governors meeting following the change occurring.



- 3.2. During the course of a Council of Governors meeting, if a conflict of interest is established, the governor concerned shall disclose the fact, and withdraw from the meeting and play no part in the relevant discussion or decision.
- 3.3. If a governor has any doubt about the relevance of an interest, he should discuss it with the Chair or Secretary who shall advise him on whether or not to disclose the interest.

#### **4. Code of Conduct**

All members of the Council of Governors are required to comply with any Code of Conduct for governors adopted by the Council of Governors or the Board of Directors from time to time.

#### **5. Additional Provisions**

The Board of Directors may establish additional protocols and procedures for the operation of the Council of Governors as appropriate.

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

### **1. Appointments to the Board of Directors**

#### **1.1. Appointment of the Chair and Non-Executive Directors**

The governors at a general meeting of the Council of Governors shall, subject to the other provisions of the constitution, appoint or remove the Chair of the Trust and the other non-executive directors. Any re-appointment of a non-executive director by the Council of Governors shall be subject to a satisfactory appraisal carried out in accordance with any procedures the Board of Directors may approve from time to time.

#### **1.2. Appointment of the Chief Executive and other Executive Directors**

The Chief Executive is appointed by the non-executive directors subject to the approval of the Council of Governors. A committee consisting of the Chair, the Chief Executive and the other non-executive directors shall appoint the other executive directors.

#### **1.3. Appointment and Powers of the vice chair**

The governors at a general meeting of the Council of Governors shall appoint one of the non-executive directors to be vice chair of the Board of Directors. If the chair is unable to discharge his/her office as chair of the Trust for whatever reason, the vice chair of the Board of Directors shall be acting chair of the Trust.

### **2. Meetings of the Board of Directors**

#### **2.1. Calling and Notice of Meetings**

- (i) Save in the case of emergencies or the need to conduct urgent business, the Secretary shall give at least fourteen days' written notice of the date and place of every meeting of the Board of Directors to all directors.
- (ii) Meetings of the Board of Directors may be called by the Secretary, the chair, or by two or more directors who give written notice to the Secretary specifying the business to be carried out. The Secretary shall send a written notice to all directors as soon as possible after

receipt of such a request and shall call a meeting on at least fourteen but not more than twenty eight days' notice.

## 2.2. Chair of the Meeting

- (i) At any meeting of the Board of Directors, the chair of the Board of Directors, if present, shall preside. If the chair is absent from the meeting the vice chair, if there is one and he/she is present, shall preside. If the chair and vice chair are absent, then the non-executive directors present shall choose which non-executive director present shall preside.
- (ii) If the chair is absent temporarily on the grounds of a declared conflict of interest, the vice chair, if present, shall preside. If the chair and vice chair are absent, or are disqualified from participating, then the remaining non-executive directors present shall choose which non-executive director present shall preside.

## 2.3. Quorum

No business shall be transacted at a meeting unless half of the voting directors are present including not less than one non-executive director and one executive director.

## 2.4. Voting

Questions arising at a meeting of the Board of Directors shall be decided by a majority of votes. In the case of an equality of votes the person presiding at or chairing the meeting shall have a casting vote.

## 3. Committees and Delegation

- 3.1. The Board of Directors may delegate any of its powers to a committee whose membership is composed entirely of such directors or to an executive director, in each case subject to such restrictions and conditions as the Board of Directors thinks fit from time to time.
- 3.2. The Board of Directors shall have various committees which will advise it, including in relation to audit, nominations and remuneration.

- 3.3. Each such committee, and any sub-committee, shall have such terms of reference and powers as the Board of Directors shall determine from time to time.

#### **4. Disclosure of interests**

Directors shall declare any pecuniary, personal or family interest, whether that interest is direct or indirect, in any proposed contract or other matter which is under consideration or is to be considered by the Board of Directors. A family interest will include those of a director's spouse or partner. Any directors appointed subsequently shall declare such interests on appointment.

Such interests include:

- (i) Directorships, including non-executive directorships held in private companies, public limited companies or public benefit corporations (with the exception of those of dormant companies).
- (ii) Ownership or part-ownership of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS.
- (iii) Shareholdings in organisations likely or possibly seeking to do business with the NHS.
- (iv) A position of trust or fiduciary duty in a charity or voluntary organisation in the field of health and social care.
- (v) Any connection with a voluntary or other organisation contracting for NHS services.
- (vi) Any other commercial interest in the decision before the meeting.

#### **5. Declaring interests**

- 5.1. At the time directors' interests are declared, they should be recorded in the Board of Directors' minutes and entered on a register of interests of directors to be maintained by the Secretary. Any changes in interests should be declared at the next Board of Directors' meeting following the change occurring.

- 5.2. During the course of a Board of Directors' meeting, if a conflict of interest is established, the director concerned shall disclose the fact, and withdraw from the meeting and play no part in the relevant discussion or decision.
- 5.3. If a director has any doubt about the relevance of an interest, he should discuss it with the Chair or Secretary who shall advise him on whether or not to disclose the interest.

## **6. Additional Provisions**

The Board of Directors may establish additional protocols and procedures for the operation of the Board of Directors, and the economic, effective and efficient operation and good governance of the Trust generally from time to time as appropriate.

## **ANNEX 8 FURTHER PROVISIONS**

### **1. Roles with external organisations**

1.1 Where a person who is a governor, executive or non-executive director of the Trust holds a position of governor, executive or non-executive director with another NHS foundation trust, health service body or body corporate whose business includes the provision of health care services, or which includes the provision of any service to the Trust, it is the responsibility of the individual to:

1.1.1 inform the Board of Directors in writing of such a role in accordance with the declaration of interest provisions within the constitution;

1.1.2 ensure that they are able to fully and effectively carry out their duties on behalf of this Trust in accordance with their terms of appointment;

1.1.3 to be proactive in the management of conflict of interests in line with the provisions within the constitution;

1.1.4 to comply with their obligations in relation to confidentiality.

### **2. Disqualification from membership**

2.1 A person may not become or remain a member of the Trust if the following apply:

2.1.1 they do not meet the requirements of eligibility under this constitution. It is the responsibility of each member to ensure his eligibility at all times;

2.1.2 they have been removed from membership by the Council of Governors within the preceding five years;

2.1.3 they have been removed as a member of another NHS foundation trust;

2.1.4 the Trust considers that they have caused substantial detriment to the Trust in terms of patient safety, financial loss or adverse impact on reputation of the Trust;

2.1.5 they have demonstrated aggressive or violent behaviour at any hospital and following such behaviour they have been asked to

leave, have been removed or excluded from any hospital, Trust site or other healthcare facility under either the Trust's or other health service body's policy for withholding treatment for violent/aggressive behaviour, or equivalent;

2.1.6 they have been confirmed as a 'habitual or repetitive complainant' in accordance with the Trust's complaints handling policy;

2.1.7 the Council of Governors has reasonable cause to believe that by becoming or remaining a member of the Trust, a person is likely to:

2.1.7.1 prejudice the ability of the Trust to fulfill its principal purpose or other of its purposes under the constitution or otherwise discharge its duties and functions;

2.1.7.2 harm the Trust's work with other persons or bodies with whom it is engaged or may be engaged in the provision of goods and services;

2.1.7.3 adversely affect public confidence in the goods or services provided by the Trust; or

2.1.7.4 otherwise bring the Trust into disrepute.

2.2 Where the Trust is on notice that a member may be disqualified from membership, or may no longer be eligible to be a member, the Secretary shall give the member 14 days written notice to show cause why their name should not be removed from the register of members. On receipt of any such information supplied by the member, the Secretary may, if he considers it appropriate, remove the member from the register of members.

2.3 Any dispute about membership entitlement shall be resolved by the Secretary; for further details refer to 3.1.

2.4 All members of the Trust shall be under a duty to notify the Secretary of any change in their circumstances which may affect entitlement to membership.

### **3. Expulsion from membership**

3.1 A member may be expelled by a resolution approved by not less than two thirds of the whole number of the Council of Governors present if they are deemed to have acted in a manner contrary to the interests of the Trust.

3.2 The following procedure is to be adopted:

3.2.1 any member may complain to the Secretary that another member has acted in a way which would justify expulsion in accordance with 3.1 above;

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

3.2.2.1 dismiss the complaint and take no further action; or

3.2.2.2 arrange for a resolution to expel the member complained of to be considered at the next meeting of the Council of Governors

### **4. Dispute Resolution Procedures**

4.1 *Membership* - In the event of any dispute about membership entitlement, the dispute shall be referred to the Secretary who shall make a determination on the point in issue. If the member or applicant is aggrieved at the decision of the Secretary, he may appeal in writing within 14 (fourteen) days of the Secretary's decision to the Council of Governors whose decision shall be final.

4.2 *Governor* - In the event of any dispute about eligibility and disqualification of a governor, the dispute shall be referred to the Council of Governors, whose decision shall be final.

4.3 *Boards* - In the event of any dispute between the Board of Directors and Council of Governors or between a governor and the Council of Governors:

4.3.1 in the first instance, the Chair, on the advice of the Secretary, and other advice the Chair may obtain, shall seek to resolve the issue;

4.3.2 if the Chair is unable to resolve the dispute, he shall appoint a special committee comprising equal numbers of directors and



governors to consider the circumstances and to make recommendations to the Council of Governors with a view to resolving the dispute. The special committee may include an advisor from another foundation trust;

- 4.3.3 if the recommendations (if any) of the special committee are unsuccessful, the Chair may refer the dispute back to the Board of Directors who shall make the final decision.

## **ANNEX 9 ANNUAL MEMBERS' MEETING**

### **1. MEMBERS' MEETINGS**

- 1.1. The Trust shall hold a members' meeting for all members (called the "Annual Members' Meeting") within six months of the end of each financial year of the Trust.
- 1.2. Any members' meeting other than the Annual Members' Meeting shall be called a "Special Members' Meeting".
- 1.3. Both Annual Members' Meetings and any Special Members' Meetings shall be open to all members of the Trust, members of the Council of Governors and members of the Board of Directors, together with representatives of the Trust's auditors, and to members of the public. The Trust may invite representatives of the media and any experts or advisors whose attendance they consider to be in the best interests of the Trust to attend any such meeting.
- 1.4. The Board of Directors may convene an Annual Members' Meeting or a Special Members' Meeting when it thinks fit. The Council of Governors may request the Board of Directors to convene a members' meeting.
- 1.5. The Board of Directors (or at least one member thereof) shall present to the members at the Annual Members' Meeting:
  - 1.5.1. the annual accounts;
  - 1.5.2. any report of the auditor on them;
  - 1.5.3. the annual report.
- 1.6. The Trust shall give notice of all members' meetings:
  - 1.6.1. by notice in writing to all members;
  - 1.6.2. by notice prominently displayed at the Trust's headquarters and at all of the Trust's hospitals;
  - 1.6.3. by notice on the Trust's website; and
  - 1.6.4. to the Council of Governors, the Board of Directors, and to the Trust's auditors,

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

- 1.7. An accidental omission to give notice of a members' meeting or to send, supply or make available any document or information relating to the meeting, or the non-receipt of any such notice, document or information by a person entitled to receive any such notice, document or information shall not invalidate the proceedings at that meeting.
- 1.8. The Chair or in his absence the Vice Chair shall preside at all members' meetings of the Trust. If neither the Chair nor the Vice Chair is present, the governors present shall elect one of their number to act as Chair and if there is only one governor present and willing to act that person shall be Chair. If no governor is willing to act as Chair or if no governor is present within fifteen minutes after the time appointed for holding the meeting, the members present and entitled to vote shall choose one of their number to act as Chair.
- 1.9. The quorum for a members' meeting shall be 8 (eight) members present and entitled to vote. If a quorum is not present within thirty minutes from the time appointed for the meeting, the meeting shall stand adjourned for a minimum of seven days until such time as the Board of Directors determine.
- 1.10. The Chair may, with the consent of a members' meeting at which a quorum is present (and shall, if so directed by the meeting), adjourn a members' meeting from time to time and from place to place or for an indefinite period.
- 1.11. A resolution put to the vote of a members' meeting shall be decided on a show of hands.
- 1.12. No business shall be transacted at an adjourned meeting other than business which might properly have been transacted at the meeting had the adjournment not taken place.

- 1.13. If the Board of Directors, in its absolute discretion, considers that it is impractical or unreasonable for any reason to hold a members' meeting at the time, date or place specified in the notice calling that meeting, it may move and/or postpone the general meeting to another time, date and/or place.
- 1.14. In the case of a members' meeting is adjourned or postponed for 14 days or more, at least seven working days' notice shall be given specifying the time and place of the adjourned members' meeting and the general nature of the business to be transacted. Otherwise, it shall not be necessary to give any such notice.
- 1.15. The Board of Directors may make any arrangement and impose any restriction it considers appropriate to ensure the security of a members' meeting.
- 1.16. The Board of Directors shall cause minutes to be made and kept, in writing, of all proceedings at members' meetings.