

NORTH EAST LONDON NHS FOUNDATION TRUST

Trust Constitution

January 2019

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1. INTERPRETATION AND DEFINITIONS

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

1.2. Definitions:

1.2.1. The 2006 Act is the National Health Service Act 2006.

1.2.2. The 2012 Act is the Health and Social Care Act 2012.

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

1.2.4. NHS Improvement is the body corporate known as Monitor, as provided by section 61 of the 2012 Act.

1.2.5. 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.

2. NAME

2.1. The name of the Foundation Trust is North East London NHS Foundation Trust (the trust). The trust is a public benefit corporation authorised under the National Health Service Act 2006.

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 principle 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 out activities other than those mentioned in the above paragraph for the purpose of making additional income available in order better to carry out its principal purpose.

3.5. The trust may:

3.5.1. Carry out research in connection with the provision of health care

3.5.2. Make facilities and staff available for the purposes of education, training or research carried out by others.

4. POWERS

4.1. The powers of the trust are set out in the 2006 Act.

4.2. The 2006 Act, section 46, sets out the following financial powers of a trust:

4.2.1. An NHS foundation trust may borrow money for the purposes of or in connection with its functions.

4.2.2. But the total amount of the NHS foundation trust's borrowing is subject to the limit imposed by its license.

4.2.3. The limit must be reviewed annually by the regulator.

4.2.4. An NHS foundation trust may invest money (other than money held by it as trustee) for the purposes of or in connection with its functions.

4.2.5. The investment may include investment by:

4.2.5.1. forming, or participating in forming, bodies corporate.

4.2.5.2. otherwise acquiring membership of bodies corporate.

4.2.6. An NHS foundation trust may give financial assistance (whether by way of loan, guarantee or otherwise) to any person for the purposes of or in connection with its functions.

4.3. The 2006 Act, section 46, sets out the following general powers of a trust:

4.3.1. An NHS foundation trust may do anything which appears to it to be necessary or expedient for the purpose of or in connection with its functions.

4.3.2. In particular it may:

4.3.2.1. acquire and dispose of property,

4.3.2.2. enter into contracts,

4.3.2.3. accept gifts of property (including property to be held on trust for the purposes of the NHS foundation trust or for any purposes relating to the health service),

4.3.2.4. employ staff.

4.4. Any power of the NHS foundation trust to pay remuneration and allowances to any person includes power to make arrangements for providing, or securing the provision of, pensions or gratuities (including those payable by way of compensation for loss of employment or loss or reduction of pay).

4.5. "The purposes of the NHS foundation trust" means the general or any specific purposes of the trust (including the purposes of any specific hospital at or from which services are provided by the trust).

- 4.6. The powers of the trust shall be exercised by the Board of Directors on behalf of the trust.
- 4.7. Any of these powers may be delegated to a committee of directors or to an executive director
- 4.8. The discharge of patients under section 45 of the Mental Health Act 2007 provides that such powers of discharge under that section may be exercised by any three or more “persons authorised by the board of the trust in that behalf each of whom is neither an executive director of the board nor an employee of the trust”

5. MEMBERSHIP AND CONSTITUENCIES

- 5.1. The trust shall have members, each of whom shall be a member of one of the following constituencies:
- 5.1.1. A public constituency (Annex 1)
 - 5.1.2. A staff constituency (Annex 2)

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.

7. PUBLIC CONSTITUENCY

- 7.1. An individual who lives in an area specified in Annex 1 as an area for the public constituency may become or continue as a member of the trust.
- 7.2. Those individuals who live in an area specified in Annex 1 as an area for the public constituency are referred to collectively as the Public Constituency.
- 7.3. The minimum number of members in each class of the Public Constituency shall be 40.

8. STAFF CONSTITUENCY

- 8.1. An individual who is employed by the trust under a contract of employment with the trust, or an individual who exercises functions for the purposes of the trust otherwise than under a contract of employment with the trust, may become or continue as a member of the trust provided:
- 8.1.1. They are employed by the trust under a contract of employment which has no fixed term or has a fixed term of at least 12 months; or

- 8.1.2. They have 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. An individual within the staff constituency may not become or continue as a member of any constituency other than the staff constituency.
- 8.4. The minimum number of members in each class of the Staff Constituency shall be 40.

9. RESTRICTIONS 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 7 – 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 members of the public.

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. The number of governors to be elected by each

constituency, or, where appropriate, by each class of each constituency, is specified in Annex 3.

- 11.4. A person may not vote at an election for the Council of Governors of an NHS foundation trust unless, within the specified period, they have made a declaration in the specified form of the particulars of their qualification to vote as a member of the constituency, or class within a constituency, for which the election is being held.
- 11.5. A person may not stand for election to the council of governors unless they have within the specified period made a declaration in the specified form of the particulars of their qualification to vote as a member of the constituency, or class within a constituency, for which the election is being held.
- 11.6. A person elected to the council of governors may not vote at a meeting of the Council of Governors unless they have within the specified period made a declaration in the specified form of the particulars of their qualification to vote as a member of the trust.
- 11.7. This section does not apply to an election held for the staff constituency.
- 11.8. "Specified" means specified in the trust's constitution.
- 11.9. A person is guilty of an offence if they:
 - 11.9.1. make a declaration under this section which they know to be false in a material particular, or
 - 11.9.2. recklessly make such a declaration which is false in a material particular.
- 11.10. A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

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.
- 12.2. The Model Election Rules as published from time to time by the Department of Health form part of the constitution. The current Model Election Rules are attached at Annex 8.
- 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.
- 12.4. Elections for the Council of Governors shall be conducted in accordance with any regulations which may be made under Section 59 of the 2006 Act.

12.5. 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 three years.

13.2. An elected governor shall cease to hold office if they cease to be a member of the constituency or class by which they were elected.

13.3. An elected governor shall be eligible for re-election at the end of their three-year term.

13.4. An elected governor may not hold office for more than nine consecutive years.

13.5. An appointed governor may hold office for a period of up to three years.

13.6. An appointed governor shall cease to hold office if they cease to be employed by the organisation which they are representing.

13.7. An appointed governor shall cease to hold office if the appointing organisation withdraws its sponsorship of them.

13.8. An appointed governor shall be eligible for re-election at the end of their three-year term.

13.9. An appointed governor may not hold office for more than nine consecutive years.

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 who has made a composition or arrangement with, or granted a trust deed for, their creditors and has not been discharged in respect of it,

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

14.1.4. A person who is under sixteen years of age at the date they are nominated for election or appointment.

14.1.5. A person who is a Director of a Foundation Trust, or a Governor or Director of a national health service trust (unless they are

appointed by an appointing organisation that is the health service trust);

- 14.1.6. A person who is the spouse, partner, parent or child of a member of the Board of Directors of the trust;
 - 14.1.7. A person who is a member of a local authority's scrutiny committee covering health matters;
 - 14.1.8. A person who is a member of a local Healthwatch group;
 - 14.1.9. A person who is subject to a sex offender order or has received a caution or a conviction for a sexual offence;
 - 14.1.10. A person who has been disqualified from being a member of a relevant authority under the provisions of the Local Government Act 2000
 - 14.1.11. A person who has at any time, been dismissed or removed, other than by reasons of redundancy or incapacity, from any paid employment or office with a health service body; or
 - 14.1.12. A person whose tenure of office as a Chair or member or director of a health service body has been terminated on the grounds that their appointment is not in the interests of the health service, for non-attendance at meetings, or for the non-disclosure of a pecuniary interest.
 - 14.1.13. A person who refuses to sign a declaration in the form specified by the Trust of their qualification to vote as a member of the Trust and of their eligibility to be a member of the Council of Governors. This does not apply to Appointed Governors.
 - 14.1.14. A person who failed to disclose to the Trust any spent or unspent criminal convictions
 - 14.1.15. Where a person has declared a spent or unspent criminal conviction and the spent or unspent conviction does not fall within any of the disqualification provisions contained in this constitution the person must be assessed by the trust as to their fitness to hold office as a governor as a fit and proper person
- 14.2. A person holding office as a governor shall immediately cease to do so if:
- 14.2.1. They resign by notice in writing to the Secretary;
 - 14.2.2. They fail to attend three consecutive meetings, unless the other governors are satisfied that:
 - 14.2.2.1. The absences were due to reasonable causes; and
 - 14.2.2.2. They will be able to start attending meetings of the Council of Governors again within such a period as the other governors consider reasonable.
 - 14.2.3. In the case of an elected governor, they cease to be a member of the constituency or class of constituency by which they were elected;
 - 14.2.4. In the case of an appointed governor, where the appointing organisation terminates the appointment;

- 14.2.5. They have refused without reasonable cause to undertake any training which the Council of Governors requires all members to undertake;
- 14.2.6. They have failed to sign and deliver to the Secretary a statement in the form required by the Secretary confirming the acceptance of the Code of Conduct for Governors;
- 14.2.7. A governor may be removed from the Council of Governors by a resolution approved by not less than three quarters of the remaining governors present and on the grounds that:
 - 14.2.7.1. They have committed a serious breach of the code of conduct;
 - 14.2.7.2. They have acted in a manner detrimental to the interests of the Foundation Trust; and
 - 14.2.7.3. The Council of Governors considers that it is not in the best interests of the Foundation Trust for them to continue as a governor.

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.
 - 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 (or in their absence the Vice-Chair), 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 as set out in the Standing Orders of the Council of Governors (Annex 4).
- 16.3. For the purpose 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

17. COUNCIL OF GOVERNORS – standing orders

- 17.1. The standing orders for the practice and procedure of the Council of Governors, as may be varied from time to time, are attached at Annex 4.

18. COUNCIL OF GOVERNORS – referral to the Panel

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

18.1.1. To act in accordance with its constitution

18.1.2. To act in accordance with provision made by or under Part 2 Chapter 5 of the 2006 Act

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

19. COUNCIL OF GOVERNORS - Conflicts of interests of governors

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

20. COUNCIL OF GOVERNORS – travel expenses

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

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. At least half of the Board of Directors, excluding the Chairman, should be non-executive directors, or if there is parity on the Board of Directors between executive and non-executive directors, the Chairman should have a casting vote.

21.3. The Board of Directors is to comprise:

- 21.3.1. A non-executive Chair
- 21.3.2. Not less than six other non-executive directors
- 21.3.3. Not less than six executive directors

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

21.5. The Chief Executive shall be the Accounting Officer.

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

21.7. One of the executive directors is to be a registered medical practitioner

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

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

23.1. A person may be appointed as a non-executive director only if:

- 23.1.1. they are a member of the Public Constituency, and
- 23.1.2. they are not disqualified by criteria within this Constitution

24. BOARD OF DIRECTORS – appointment and removal of chairman 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 other the 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 currently holding office.

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 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 their estate has been sequestrated and (in either case) has not been discharged.
 - 27.1.2. A person who has made a composition or arrangement with, or granted a trust deed for, their creditors and has not been discharged in respect of it.
 - 27.1.3. A person who within the preceding five years has been convicted in the British Isles of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on them.
 - 27.1.4. A person who is a member of the Council of Governors.
 - 27.1.5. A person who is the spouse, partner, parent or child of a member of the Board of Directors of the trust.
 - 27.1.6. A person who is a member of a local authority's scrutiny committee covering health matters.
 - 27.1.7. A person who is a member of a local Healthwatch group.
 - 27.1.8. A person who is subject to a sex offender order or has received a caution or a conviction for a sexual offence.
 - 27.1.9. A person who has been disqualified from being a member of a relevant authority under the provisions of the Local Government Act 2000.
 - 27.1.10. A person who has at any time, been dismissed or removed, other than by reasons of redundancy or incapacity, from any paid employment or office with a health service body.
 - 27.1.11. A person whose tenure of office as a Chair or member or director of a health service body has been terminated on the grounds that their appointment is not in the interests of the health service, for non-attendance at meetings, or for the non-disclosure of a pecuniary interest.
 - 27.1.12. A person who failed to disclose to the Trust any spent or unspent criminal convictions.

- 27.1.13. A person who is the subject of a disqualification order under the Company Directors Disqualification Act 1986.
- 27.1.14. In the case of a non-executive director, a person who is no longer a member of one of the public constituencies.
- 27.1.15. A person who has refused without reasonable cause to fulfil training requirements established by the Board of Directors.
- 27.1.16. A person who has refused to sign and deliver to the Secretary a statement in the form required by the Board of Directors confirming acceptance of the code of conduct for Directors.
- 27.1.17. A person who is not considered a fit and proper person under the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014: Regulation 5.

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 5.

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.
 - 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.
 - 30.2.2. The matter has been authorised in accordance with the Standing Orders of the Board of Directors (Annex 5).

- 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 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.
- 30.6. If a declaration under this paragraph proves to be, or becomes, inaccurate, incomplete, a further declaration must be made.
- 30.7. Any declaration required by this paragraph must be made before the trust enters into the transaction or arrangement.
- 30.8. This paragraph does not require a declaration of an interest of which the director is not aware or where the director is not aware of the transaction or arrangement in question.
- 30.9. A director need not declare an interest:
- 30.9.1. If it cannot reasonably be regarded as likely to give rise to a conflict of interest;
 - 30.9.2. If, or to the extent that, the directors are already aware of it;
 - 30.9.3. If, or to the extent that, it concerns terms of the director’s appointment that have been or are to be considered:
 - 30.9.3.1. By a meeting of the Board of Directors
 - 30.9.3.2. By a committee of the directors appointed for the purpose under the constitution

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 Chairman 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

32.1. The Trust shall have:

- 32.1.1. A register of members showing, in respect of each member, the constituency to which they belong and, where there are classes within it, the class to which they belong.
- 32.1.2. A register of members of the Council of Governors.
- 32.1.3. A register of interests of governors.
- 32.1.4. A register of directors.
- 32.1.5. A register of interests of directors.

33. REGISTERS – inspection and copies

33.1. The trust shall make the registers specified in paragraph 32.1 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.

33.2. 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.

33.3. So far as the registers are required to be made available:

- 33.3.1. They are to be available for inspection free of charge at all reasonable times; and
- 33.3.2. A person who requests a copy of or extract from the registers is to be provided with a copy or extract.

33.4. 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.

34. DOCUMENTS AVAILABLE FOR PUBLIC INSPECTION

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

- 34.1.1. A copy of the current constitution;
- 34.1.2. A copy of the latest annual accounts and of any report of the auditor on them;
- 34.1.3. A copy of the latest annual report;

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

- 34.2.1. A copy of any order made under section 65D (appointment of trust special administrator), 65J (power to extend time), 65KC

(action following Secretary of State's rejection of final report), 65L (trusts coming out of administration) or 65LA (trusts to be dissolved) of the 2006 Act;

- 34.2.2. A copy of any report laid under section 65D (appointment of trust special administrator) of the 2006 Act;
- 34.2.3. A copy of any information published under section 65D (appointment of trust special administrator) of the 2006 Act;
- 34.2.4. A copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act;
- 34.2.5. A copy of any statement provided under section 65F (administrator's draft report) of the 2006 Act;
- 34.2.6. a copy of any notice published under section 65F (administrator's draft report), 65G (consultation plan), 65H (consultation requirements), 65J (power to extend time), 65KA (Monitor's decision), 65KB (Secretary of State's response to Monitor's decision), 65KC (action following Secretary of State's rejection of final report) or 65KD (Secretary of State's response to re-submitted final report) of the 2006 Act;
- 34.2.7. A copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act;
- 34.2.8. A copy of any final report published under section 65I (administrator's final report) of the 2006 Act;
- 34.2.9. A copy of any statement published under section 65J (power to extend time) or 65KC (action following Secretary of State's rejection of final report) of the 2006 Act; and
- 34.2.10. A copy of any information published under section 65M (replacement of trust special administrator) of the 2006 Act.

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

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. AUDITOR

35.1. The trust shall have an auditor.

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

36. AUDIT COMMITTEE

36.1. 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

37. ACCOUNTS

- 37.1. The trust must keep proper accounts and proper records in relation to the accounts
- 37.2. NHS Improvement may with the approval of the Secretary of State give directions to the Trust as to the content and form of its accounts.
- 37.3. The accounts are to be audited by the trust's financial auditor.
- 37.4. The trust shall prepare in respect of each financial year annual accounts in such form as Monitor may with the approval of the HM Treasury direct.
- 37.5. The functions of the trust with respect to the preparation of the annual accounts shall be delegated to the Accounting Officer.

38. ANNUAL REPORT, FORWARD PLANS AND NON-NHS WORK

- 38.1. The trust shall prepare an Annual Report and send it to NHS Improvement.
- 38.2. The trust shall give information as to its forward planning in respect of each financial year to NHS Improvement
- 38.3. The document containing the information with respect to forward planning shall be prepared by the Directors.
- 38.4. In preparing the document, the Directors shall have regard to the views of the Council of Governors.
- 38.5. Each forward plan must include information about:
 - 38.5.1. 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.
 - 38.5.2. The income it expects to receive from doing so.
- 38.6. Where a forward plan contains a proposal that the trust carry on an activity of a kind mentioned in sub-paragraph 38.5.1 the Council of Governors must:
 - 38.6.1. 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.
 - 38.6.2. Notify the Directors of the trust of its determination.

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

39. PRESENTATION OF THE ANNUAL ACCOUNTS AND REPORTS TO THE GOVERNORS AND MEMBERS

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

- 39.1.1. The annual accounts
- 39.1.2. Any report of the auditor on them
- 39.1.3. The annual report

39.2. 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

39.3. The trust may combine a meeting of the Council of Governors convened for the purposes of sub-paragraph 39.1 with the Annual Members' Meeting.

40. INSTRUMENTS

40.1. The trust shall have a seal

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

41. AMENDMENT OF THE CONSTITUTION

41.1. The trust may make amendments of its constitution only if:

- 41.1.1. More than half of the members of the Council of Governors of the trust voting approve the amendments.
- 41.1.2. More than half of the members of the Board of Directors of the trust voting approve the amendments.

41.2. Amendments made under paragraph 41.1 take effect as soon as the conditions in that paragraph are satisfied, but then 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.

41.3. Where an amendment is made to the Constitution in relation to the powers or duties of the Council of Governors (or otherwise respect to the role that the Council of Governors has as part of the trust):

41.3.1. At least one member of the Council of Governors must attend the next Annual Members' Meeting and present the amendment.

41.3.2. The trust must give the members an opportunity to vote on whether they approve the amendment.

41.4. 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

41.5. 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.

42. MERGERS ETC. AND SIGNIFICANT TRANSACTIONS

42.1. 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 in office.

42.2. The trust may enter into significant transaction only if more than half of the members of the Council of Governors of the Trust voting approve entering into the transaction

42.3. For the purpose of this Constitution a "Significant transaction" is a transaction that meets any of the following criteria, as defined by NHS Improvement, or any transaction which the Board defines as a significant transaction:

| Ratio | Description | Significant |
|------------------------|--|------------------|
| Assets | The Gross Assets subject to the transaction divided by the gross assets of the Trust | Greater than 25% |
| Income | The income attributable to: <ul style="list-style-type: none">- The assets- The contract Associated with the transaction divided by the income of the Trust | Greater than 25% |
| Consideration to total | The Gross Capital of the | Greater than 25% |

| | | |
|---------------|---|--|
| Trust Capital | company or business being acquired/ divested divided by the Total Capital of the Trust following completion, or the effects on the Total Capital of the Trust resulting from a transaction. | |
|---------------|---|--|

42.4. "Gross Assets" is the total of fixed assets and current assets

42.5. "Gross Capital" equals the market value of the target's shares and debt securities, plus the excess of current liabilities over current assets

42.6. "Total Capital" of the Trust equals taxpayers' equity

43. INDEMNITY

43.1. Members of the Council of Governors and Board of Directors and the Secretary who act honestly and in good faith will not have to meet out of their personal resource any personal civil liability which is incurred in the execution or purported execution of their functions, save where they have acted recklessly. Any costs arising in this way will be met by the Foundation Trust. The Foundation Trust may purchase and maintain insurance against this liability for its own benefit and for the benefit of the Council of Governors, Board of Directors and Secretary.

ANNEX 1 – THE PUBLIC CONSTITUENCY

The PUBLIC CONSTITUENCY shall be divided into the following classes:

- Barking & Dagenham
Membership will be open to anyone living in the London Borough of Barking & Dagenham
- Havering
Membership will be open to anyone living in the London Borough of Havering
- Redbridge
Membership will be open to anyone living in the London Borough of Redbridge
- Waltham Forest
Membership will be open to anyone living in the London Borough of Waltham Forest
- Basildon
Membership will be open to anyone living in the Borough of Basildon
- Brentwood
Membership will be open to anyone living in the Borough of Brentwood
- Thurrock
Membership will be open to anyone living in the Unitary Authority of Thurrock
- Kent
Membership will be open to anyone living in the electoral area of Kent County Council
- Rest of England
Membership will be open to anyone living in the Rest of England, defined as anyone living in England outside the seven listed constituencies.

The minimum number of members in each class shall be 40.

The specified areas are electoral areas for the purposes of local government elections in England, or areas consisting of two or more electoral areas.

ANNEX 2 – THE STAFF CONSTITUENCY

The STAFF CONSTITUENCY will be divided into the following classes:

- Staff working in Basildon & Brentwood
- Staff working in Barking & Dagenham
- Staff working in Havering
- Staff working in Redbridge
- Staff working in Thurrock
- Staff working in Waltham Forest
- Staff working in Kent
- Staff working in Corporate Services

The minimum number of members in each class shall be 40.

ANNEX 3 – COMPOSITION OF COUNCIL OF GOVERNORS

The composition of the Council of Governors shall be as follows:

Elected governors

Public Constituencies:

Barking & Dagenham – 3 members

Havering – 3 members

Redbridge – 3 members

Waltham Forest – 3 members

Basildon – 1 member

Brentwood – 1 member

Thurrock – 1 member

Kent – 1 member

Rest of England – 1 member

Staff Constituencies:

Barking & Dagenham – 1 member

Basildon & Brentwood – 1 member

Havering – 1 member

Redbridge – 1 member

Thurrock – 1 member

Waltham Forest – 1 member

Kent – 1 member

Corporate Services – 1 member

Total Public – 17 members

Total Staff – 8 members

Total of Elected governors – 25

Appointed governors

One person shall be appointed to sit on the Council of Governors from each of the following organisations:

Thurrock Unitary Authority – 1 member

Kent County Council – 1 member

Barking & Dagenham Local Authority – 1 member

Havering Local Authority – 1 member

Redbridge Local Authority – 1 member

Waltham Forest Local Authority – 1 member

Essex County Council – 1 member

Total of Appointed governors – 7

Total Elected and Appointed governors – 32

ANNEX 4 – STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE COUNCIL OF GOVERNORS

1. STATUTORY DUTIES FOR THE NHS FOUNDATION TRUST COUNCIL OF GOVERNORS

1.1 As provided by the National Health Service Act 2006:

- 1.1.1 Appoint and, if appropriate, remove the Chair;
- 1.1.2 Appoint and, if appropriate, remove the other Non-Executive Directors;
- 1.1.3 Decide the remuneration and allowances and other terms and conditions of office of the Chair and the other Non-Executive Directors;
- 1.1.4 Approve (or not) any new appointment of a Chief Executive on recommendation from the Chair and Non-Executive Directors;
- 1.1.5 Appoint and, if appropriate, remove the NHS Foundation Trust's Auditor;
- 1.1.6 Receive the NHS Foundation Trust's Annual Accounts, any report of the auditor on them, and the Annual Report at a general meeting of the Council of Governors.

1.2 As amended by the Health and Social Care Act 2012:

- 1.2.1 To hold the Non-Executives Directors individually and collectively to account for the performance of the Board of Directors.
- 1.2.2 To represent the interests of the members of the organisation as a whole and the interests of the public.
- 1.2.3 Approve an application by the Trust to enter into a merger, acquisition, separation or dissolution;
- 1.2.4 Decide whether the Trust's non-NHS work would significantly interfere with its principal purpose, which is to provide goods and services for the health service in England, or performing its other functions;
- 1.2.5 Approve amendments to the Trust's Constitution, following consultation with the Board of Directors. Where there has been an amendment to the Constitution which relates to the powers, duties or roles of the Council of Governors, at least one governor must attend the next Annual Members' Meeting and present the amendment to members.
- 1.2.6 Approve significant transactions in line with the Trust's Constitution

2. MEETINGS OF THE COUNCIL OF GOVERNORS

- 2.1 The Council of Governors is to meet at least four times in each financial year. Except 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 each meeting of the Council of Governors to all governors. Notice will also be published on the Foundation Trust website.
- 2.2 In the case where urgent business matters arise between meetings, the Trust may ask the Council of Governors for its approval electronically.
- 2.3 There are two types of formal Council of Governors meetings: General Meetings and Extraordinary meetings.
- 2.4 Extraordinary Meetings of the Council of Governors may be convened by the Secretary by order of the Chair, or by one third of the total governors holding post (i.e vacant posts are not included) who give written notice to the Secretary specifying the business to be carried out. This will include at least two elected governors and two appointed governors. The Secretary shall send a written notice to all Governors as soon as possible after receipt of such a request. The Secretary shall call a meeting no more than twenty-eight days after such a request.
- 2.5 All meetings of the Council of Governors are to be general meetings open to the public unless the Council of Governors decides otherwise in relation to all or part of a meeting for reasons of commercial confidentiality or on other reasonable grounds.
- 2.6 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.
- 2.7 The quorum for a Council of Governors meeting is one third of the total number of governors currently holding office (i.e vacant posts are not included).
- 2.8 If a meeting is not quorate then the meeting may go ahead with discussion recorded, but no decisions can be made. Items for decision must be carried over to the next quorate meeting or alternatively can be approved electronically by one third of the total number of governors currently holding office (i.e vacant posts are not included)".

- 2.9 The Chair of the Foundation Trust, or in their absence the Vice-Chair of the Foundation Trust, or in their absence another Non-Executive Director, is to preside at, and Chair, the meetings of the Council of Governors.
- 2.10 If all of the Non-Executive Directors present at a meeting of the Council of Governors declare a conflict of interest relating to the business being discussed, the Council of Governors will appoint one of the Public governors to Chair that part of the meeting.
- 2.11 The Council of Governors may invite the Chief Executive or any member of the Board of Directors, or a representative of the financial auditor or other advisors to attend a meeting of the Council of Governors.
- 2.12 The Council of Governors may agree that its members may participate in meetings by telephone, computer or video link. Participation in a meeting in this manner shall be deemed to constitute presence in person at that meeting.

3. DECLARATIONS OF INTERESTS AND REGISTER OF INTERESTS

- 3.1 The Council of Governors are required to declare any actual or potential interests. They should do this at the time they are elected, and then annually thereafter. If any new interests arise at any point in time, they should also be declared at the earliest opportunity (within 7 days), in writing to the Secretary. They should also be declared at the next Council of Governors meeting, to obtain a record within the minutes.
- 3.2 The Council of Governors must follow the definitions and guidance outlined in the Trust's policy on Conflicts of Interest, and complete the Trust's declaration form.
- 3.3 If a Governor has a conflict of interest that relates to any item on the Council of Governors agenda, they must declare this and withdraw from the meeting, playing no part in the relevant discussion or decision.
- 3.4 If Governors have any doubt about the relevance of an interest, this should be discussed with the Secretary.
- 3.5 The Secretary will hold a register of Governors' declarations of potential conflicts of interest. This will be presented at a Council of Governors meeting annually and publicised on the Trust's website.

4. COUNCIL OF GOVERNOR COMMITTEES

- 4.1 The Council of Governors may appoint certain committees to assist it in carrying out its functions. These committees will not have delegated decision-making authority or powers but will make recommendations to the full Council of Governors for formal ratification.
- 4.2 Each formal Committee will have a Terms of Reference outlining its authority and business.

5. COUNCIL OF GOVERNOR VACANCIES

- 5.1 Where a vacancy arises on the Council of Governors for any reason other than expiry of term of office, the following provisions shall apply:
 - 5.1.1 Where the vacancy arises amongst the appointed governors, the appointing organisation will be requested to appoint a replacement.
 - 5.1.2 Where the vacancy arises amongst the elected governors, the Council of Governors may appoint the person who received the second largest number of votes in the election for that constituency to hold the office for the remainder of the term, or they may call an election.

6. COUNCIL OF GOVERNORS EXPENSES AND REMUNERATION

- 6.1 Governors hold voluntary positions and are therefore not entitled to remuneration.
- 6.2 Governors are entitled to claim travel expenses in line with Trust policy.

ANNEX 5 - STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE BOARD OF DIRECTORS

INTRODUCTION

NHS Foundation Trusts are governed by a Regulatory Framework that confers the functions of the Trust. This comprises of, but is not limited to: Acts of Parliament and in particular the National Health Service Act 2006 and Health and Social Care Act 2012; the Trust Constitution; the license with the regulator and any NHS guidance that may be issued.

The Regulatory Framework requires the Board of Directors to adopt Standing Orders for the practice and procedure of the Board of Directors.

1. INTERPRETATION

- 1.1 Save as otherwise permitted by law, at any meeting the Chair of the Trust shall be the final authority on the interpretation of Standing Orders (on which he/she should be advised by the Secretary).
- 1.2 Any expression to which a meaning is given in the 2006 Act and other Acts relating to the National Health Service or in the Financial Regulations made under the Acts shall have the same meaning in these Standing Orders and in addition.

2. THE TRUST

- 2.1 All business shall be conducted in the name of the Trust.
- 2.2 All charitable funds shall be held in the name of the Trust as corporate trustee.
- 2.3 If the Trust holds any charitable funds as a trustee it is accountable for those funds to the Charity Commission.

3. THE POWERS OF THE BOARD OF DIRECTORS

- 3.1 The Board of Directors has resolved that certain powers and decisions may only be exercised by the Board of Directors in formal session. The Board of Directors may delegate its powers to a Board sub-committee or to an Executive Director. These powers and decisions are set out in the document entitled 'Reservation of powers to the Board of Directors and Scheme of Delegation'.

4. APPOINTMENT AND POWERS OF VICE CHAIR

- 4.1 For the purposes of allowing the proceedings of the Board of Directors to be conducted in the absence of the Chair, the Council of Governors may appoint a Non-Executive Director to be Vice Chair, giving consideration to the views of the Chair.
- 4.2 Any Non-Executive Director so appointed may at any time resign from the office of Vice Chair by giving notice in writing to the Chair. The Council of Governors may thereupon appoint another Non-Executive Director as Vice Chair, giving consideration to the views of the Chair.
- 4.3 Where the Chair of the Trust has died or has ceased to hold office, or where they have been unable to perform their duties as Chair owing to illness or any other cause, the Vice Chair shall act as Chair until a new Chair is appointed or the existing Chair resumes their duties. References to the Chair in these Standing Orders shall, so long as there is no Chair able to perform his/her duties, be taken to include references to the Vice Chair.

5. APPOINTMENT AND POWERS OF THE SENIOR INDEPENDENT DIRECTOR

- 5.1 The Board of Directors may in consultation with the Council of Governors appoint a Non-Executive Director, to be the Senior Independent Director, for such a period, not exceeding the remainder of their term as a Member of the Board of Directors. The Senior Independent Director shall perform the role set out in the Trust's Senior Independent Director Job Description.
- 5.2 Any Member of the Board of Directors so appointed may at any time resign from the office of Senior Independent Director by giving notice in writing to the Chair. The Board of Directors may thereupon in consultation with the Council of Governors appoint another Non-Executive Director as Senior Independent Director.

6. ROLE OF DIRECTORS

- 6.1 The Board of Directors exercises the Trust's powers on behalf of the Trust. It will function as a corporate decision-making body, considering the key strategic and managerial issues facing the Trust when carrying out its statutory and other functions.
- 6.2 The Board of Directors is a unitary board. Executive and Non-Executive Directors will be full and equal members and will have joint responsibility for every decision of the Board.

7. MEETINGS OF THE BOARD OF DIRECTORS

- 7.1 There are ordinary and extraordinary meetings of the Board of Directors. Ordinary Board of Directors meetings shall be held at such times and places as the Board of Directors may determine.
- 7.2 All meetings of the Board of Directors shall be open to the Public unless the Board of Directors decides otherwise in relation to all or part of a meeting for reasons of commercial confidentiality or on other reasonable grounds.
- 7.3 For any Board of Directors meeting that is held in private all attendees must treat the contents and papers of the meeting as strictly private and confidential.

Notice and calling of Meetings

- 7.4 Before each meeting of the Board of Directors, a notice of the meeting, specifying the date, time and business proposed to be transacted at it, shall be delivered to every Director, so as to be available to him/her at least five clear days before the meeting, whenever possible.
- 7.5 Want of service of the notice on any Director shall not affect the validity of a meeting.
- 7.6 In the case of a meeting called by Directors in default of the Chair, no business shall be transacted at the meeting other than that specified in the notice or emergency motions allowed under these Standing Orders. Failure to serve such a notice on more than three Directors will invalidate the meeting.

Agendas

- 7.7 Agendas and supporting papers will be sent to Directors at least five clear days before the meeting, whenever possible, but will certainly be dispatched no later than three days before the meeting, save in exceptional circumstances.
- 7.8 The Board of Directors may determine that certain matters shall appear on every agenda for a meeting and shall be addressed prior to any other business being conducted.
- 7.9 A Director desiring a matter to be included on an agenda shall make his/her request in writing to the Chair at least 10 clear days before the meeting. The request should include appropriate supporting information. Requests made less than 10 days before a meeting may be included on the agenda at the discretion of the Chair.

Petitions

- 7.10 Where a petition has been received by the Trust, the Chair of the Board of Directors shall include the petition as an item for the agenda of the next Board of Directors meeting

Chair of Meeting

- 7.11 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 they are present, shall preside. If the Chair and Vice Chair are both absent such Director (who is not also an officer of the Trust) from the Directors present shall preside.
- 7.12 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, such Non-Executive Director as the Directors present choose shall preside.
- 7.13 If any matter for consideration at a meeting of the Board of Directors relates to the interests of the Chair or to the interests of the Non-Executive Directors as a class, neither the Chair nor any of the other Non-Executive Directors shall preside over the period of the meeting during which the matter is under discussion. The Directors (excluding the Chair or the other Non-Executive Directors) shall elect one of their number to preside during that period and that person shall exercise all the rights and obligations of the Chair including the right to exercise a second or casting vote where the number of votes for and against a motion is equal.

Annual Members' Meeting

- 7.14 The Trust will publicise and hold an Annual Members' Meeting.

Notices of Motion

- 7.15 A Director desiring to move or amend a motion shall send a written notice thereof at least 10 clear days before the meeting to the Chair, who shall insert in the agenda for the meeting all notices so received, subject to the notice being permissible under the appropriate regulations. This paragraph shall not prevent any motion being moved during the meeting, without notice on any business mentioned on the agenda, subject to these standing orders.

Withdrawal of Motion or Amendments

- 7.16 A motion or amendment once moved and seconded may be withdrawn by the proposer with the concurrence of the seconder and the consent of the Chair.

Motion to Rescind a Resolution

- 7.17 Notice of motion to amend or rescind any resolution (or the general substance of any resolution) which has been passed within the preceding 6 calendar months shall bear the signature of the Director who gives it and also the signature of 4 other Directors. When any such motion has been disposed of by the Board of Directors, it shall not be competent for any Director other than the Chair to propose a motion to the same effect within 6 months; however the Chair may do so if he/she considers it appropriate.

Motions

- 7.18 The mover of a motion shall have a right of reply at the close of any discussion on the motion or any amendment thereto.
- 7.19 When a motion is under discussion or immediately prior to discussion it shall be open to a Director to move:
- 7.19.1 An amendment to the motion.
 - 7.19.2 The adjournment of the discussion or the meeting.
 - 7.19.3 That the meeting proceed to the next business. (*)
 - 7.19.4 The appointment of an ad hoc committee to deal with a specific item of business.
 - 7.19.5 That the motion be now put. (*)
 - 7.19.6 A motion resolving to exclude the public (including the press).
- 7.20 In the case of sub-paragraphs denoted by (*) above to ensure objectivity motions may only be put by a Director who has not previously taken part in the debate and who is eligible to vote.
- 7.21 No amendment to the motion shall be admitted if, in the opinion of the Chair of the meeting, the amendment negates the substance of the motion.

Chair's Ruling

- 7.22 Statements of Directors made at meetings of the Board of Directors shall be relevant to the matter under discussion at the material time. The decision of the Chair of the meeting on questions of order, relevancy, regularity and any other matters shall be final.

Voting

- 7.23 Every question put to a vote at a meeting shall be determined by a majority of the votes of the Directors present and voting on the question and, in the case of the number of votes for and against a motion being equal, the Chair of the meeting shall have a second or casting vote.
- 7.24 All questions put to the vote shall, at the discretion of the Chair of the meeting, be determined by oral expression or by a show of hands. A paper ballot may also be used if a majority of the Directors present so request.
- 7.25 If at least one-third of the Directors present so request, the voting (other than by paper ballot) on any question may be recorded to show how each Director present voted or abstained.
- 7.26 If a Director so requests, his/her vote shall be recorded by name upon any vote (other than by paper ballot).
- 7.27 In no circumstances may an absent Director vote by proxy. Absence is defined as being absent at the time of the vote.
- 7.28 An officer who has been appointed formally by the Board of Directors to act up for an executive director during a period of incapacity or temporarily to fill an executive director vacancy, shall be an executive director.
- 7.29 An officer attending the Board of Directors to represent an executive director during a period of incapacity or temporary absence without formal acting up status may not exercise the voting rights of the executive director. An officer's status when attending a meeting shall be recorded in the minutes.

Minutes

- 7.30 The Minutes of the proceedings of a meeting shall be drawn up and submitted for agreement at the next ensuing meeting where they will be signed by the person presiding at it.
- 7.31 No discussion shall take place upon the minutes except upon their accuracy or where the Chair considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded.
- 7.32 Minutes shall be circulated in accordance with Directors' wishes.

Suspension of Standing Orders

- 7.33 Except where this would contravene any provision of the Regulatory Framework, any one or more of the Standing Orders may be

suspended at any meeting, provided that at least two-thirds of the Directors are present, including one executive director and one non-executive director, and that a majority of those present vote in favour of suspension.

- 7.34 A decision to suspend Standing Orders shall be recorded in the minutes of the meeting.
- 7.35 A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the Directors.
- 7.36 No formal business may be transacted while Standing Orders are suspended.
- 7.37 The Audit Committee shall review every decision to suspend Standing Orders.

Waiver of Standing Orders

- 7.38 Except where this would contravene any provision of the Regulatory Framework, any one or more of the Standing Orders may be waived at any meeting, provided that at least two-thirds of the Directors are present, including one executive director and one non-executive director, and that a majority of those present vote in favour of suspension.
- 7.39 A decision to waive Standing Orders shall be recorded in the minutes of the meeting.
- 7.40 The Audit Committee shall review every decision to waive Standing Orders.

Variation and Amendment of Standing Orders

- 7.41 These Standing Orders shall be amended only if:
- a notice of motion has been given; and
 - no fewer than half the total of the Trust's non-executive directors vote in favour of amendment; and
 - at least two-thirds of the Directors are present; and
 - the variation proposed does not contravene any provision of the Regulatory Framework; and
 - The variation or amendment is approved by NHS Improvement

Record of Attendance

- 7.42 The names of the Directors present at the meeting shall be recorded in the minutes.

Quorum

- 7.43 No business shall be transacted at a meeting of the Board of Directors unless at least one-third of the whole number of the Directors appointed, (including at least one non-executive director and one executive director) are present.
- 7.44 An officer in attendance for an executive Director but without formal acting up status may not count towards the quorum.
- 7.45 If a Director has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of the declaration of a conflict of interest, he/she shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business.
- 7.46 The above requirement for at least one executive director to form part of the quorum shall not apply where the executive directors are excluded from a meeting (for example when the Board of Directors considers the recommendations of the Remuneration and Terms of Service Committee).
- 7.47 The above requirement for at least one non-executive director to form part of the quorum shall not apply where the non-executive directors are excluded from a meeting.

Adjournment of Meetings

- 7.48 The Board of Directors may, by resolution, adjourn any meeting to some other specified date, place and time and such adjourned meeting shall be deemed a continuation of the original meeting. No business shall be transacted at any adjourned meeting which was not included in the agenda of the meeting of which it is an adjournment.
- 7.49 When any meeting is adjourned to another day, other than the following day, notice of the adjourned meeting shall be sent to each Director specifying the business to be transacted.

Observers at Board of Directors meetings

7.50 The Board of Directors will decide what arrangements and terms and conditions it feels are appropriate to offer in extending an invitation to observers to attend and address any of the Board of Directors meetings and may change, alter or vary these terms and conditions as it deems fit.

8. ARRANGEMENTS FOR THE EXERCISE OF FUNCTIONS BY DELEGATION

8.1 Subject to the Regulatory Framework, the Board of Directors may make arrangements for the exercise of any of its functions subject to such restrictions and conditions as the Board of Directors thinks fit by:

8.1.1 A committee or sub-committee appointed by virtue of Standing Order 8.3 or by a Director or an officer of the Trust

Emergency Powers

8.2 The powers which the Board of Directors has retained to itself may in emergency be exercised by the Chief Executive and the Chair after having consulted at least two non-executive directors. The exercise of such powers by the Chief Executive and Chair shall be reported to the next formal meeting of the Board of Directors for noting.

Delegation to Committees

8.3 The Board of Directors shall agree from time to time to the delegation of executive powers to be exercised by committees, or subcommittees, which it has formally constituted. The constitution and terms of reference of these committees, or joint committees, and their specific executive powers shall be approved by the Board of Directors.

Delegation to Officers

8.4 Those functions of the Trust which have not been retained as reserved by the Board of Directors or delegated to a committee or subcommittee shall be exercised on behalf of the Board of Directors by the Chief Executive. The Chief Executive shall determine which functions they will perform personally and shall nominate officers to undertake the remaining functions for which they will still retain accountability to the Board of Directors.

8.5 The Chief Executive shall prepare a Scheme of Delegation identifying their proposals, which shall be considered and approved

by the Board of Directors, subject to any amendment, agreed during the discussion. The Chief Executive may periodically propose amendment to the Scheme of Delegation, which shall be considered and approved by the Board of Directors as indicated above.

- 8.6 Nothing in the Scheme of Delegation shall impair the discharge of the direct accountability to the Board of Directors of the Director of Finance or other executive director to provide information and advise the Board of Directors in accordance with any statutory requirements. Outside these statutory requirements the roles of the Director of Finance shall be accountable to the Chief Executive for operational matters.
- 8.7 The arrangements made by the Board of Directors as set out in the “Reservation of Powers to the Board of Directors and Scheme of Delegation” document shall have effect as if incorporated in these Standing Orders.

Overriding Standing Orders

- 8.8 If for any reason these Standing Orders are not complied with, full details of the non-compliance and any justification for non-compliance and the circumstances around the non-compliance, shall be reported to the next formal meeting of the Board of Directors for action or ratification. All Directors and staff have a duty to disclose any non-compliance with these Standing Orders to the Chief Executive as soon as possible.

9. COMMITTEES

- 9.1 Subject to the Regulatory Framework, the Board of Directors may appoint committees of the Board of Directors. The Board of Directors shall determine the membership and terms of reference of committees and sub-committees and shall if it requires to, receive and consider reports of such committees subject to contractual arrangements and such restrictions and conditions as the Board of Directors thinks fit to ensure appropriate oversight.
- 9.2 A committee appointed under this regulation may, subject to their terms of reference and the Regulatory Framework, appoint sub-committees consisting wholly of members of the committee.
- 9.3 The Standing Orders and Standing Financial Instructions of the Trust, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees established by the Board of Directors. In which case the term “Chair” is to be read as a reference to the Chair of the committee as the context permits, and the term “Director” is to be read as a reference to a member of the committee also as the context permits.

- 9.4 Each such committee shall have such terms of reference and powers and be subject to such conditions (as to reporting back to the Board of Directors), as the Board of Directors shall decide. Such terms of reference shall have effect as if incorporated into the Standing Orders.
- 9.5 Where committees are authorised to establish sub-committees they may not delegate executive powers to the sub-committee unless expressly authorised by the Board of Directors.
- 9.6 The Board of Directors shall approve the appointments to each of the committees which it has formally constituted. The Chair of each Board of Directors sub-committee shall be a non-executive director.
- 9.7 The committees and sub-committees established by the Board of Directors shall include an Audit Committee and a Remuneration and Terms of Service Committee.
- 9.8 The Board of Directors may elect to change the committees and sub-committees of the Board of Directors, as necessary, without requirement to amend these Standing Orders.
- 9.10 A member of a committee shall not disclose a matter dealt with by, or brought before, the committee without its permission until the committee shall have reported to the Board of Directors or shall otherwise have concluded on that matter.
- 9.11 A Director of the Trust or a member of a committee shall not disclose any matter reported to the Board of Directors or otherwise dealt with by the committee, notwithstanding that the matter has been reported or action has been concluded, if the Board of Directors or committee shall resolve that it is confidential.

10. DECLARATIONS OF INTERESTS AND REGISTER OF INTERESTS

- 10.1 Members of the Board of Directors are required to declare any actual or potential interests. They should do this at the time they are appointed, and then annually thereafter. If any new interests arise at any point in time, they should also be declared at the earliest opportunity (within 7 days), in writing to the Secretary. They should also be declared at the next Board of Directors meeting, to obtain a record within the minutes.
- 10.2 The Board of Directors must follow the definitions and guidance outlined in the Trust's policy on Conflicts of Interest, and complete the Trust's declaration form.

- 10.3 If a Board member has a conflict of interest that relates to any item on the Board of Directors agenda, they must declare this and withdraw from the meeting, playing no part in the relevant discussion or decision.
- 10.4 If Directors have any doubt about the relevance of an interest, this should be discussed with the Secretary.
- 10.5 The Secretary will hold a register of Directors' declarations of potential conflicts of interest. This will be presented at a Board of Directors meeting annually and publicised on the Trust's website.

11. STANDARDS OF BUSINESS CONDUCT POLICY

- 11.1 Staff must comply with the national guidance contained in HSG 1993/5 "Standards of Business Conduct for NHS Staff" (contained in Appendix B), which has been adopted by the Trust. This section of Standing Orders should be read in conjunction with this document.

Canvassing of and Recommendations by, Directors in Relation to Appointments

- 11.2 Canvassing of Directors or of any Committee of the Board directly or indirectly for any appointment under the Trust shall disqualify the candidate for such appointment. The contents of this paragraph of the Standing Order shall be included in application forms or otherwise brought to the attention of candidates.
- 11.3 A Director shall not solicit for any person any appointment under the Trust or recommend any person for such appointment: but this paragraph of this Standing Order shall not preclude a Director from giving written testimonial of a candidate's ability, experience or character for submission to the Trust.
- 11.4 Informal discussions outside appointments panels or committees, whether solicited or unsolicited, should be declared to the panel or committee.

Relatives of Directors or Officers

- 11.5 Candidates for any staff appointment shall, when making application, disclose in writing to the Trust whether they are related to any Director or the holder of any office under the Trust. Failure to disclose such a relationship shall disqualify a candidate and, if appointed, render him/her liable to instant dismissal.
- 11.6 Every Director and officer of the Trust shall disclose to the Chief Executive any relationship between themselves and a candidate of

whose candidature that Director or officer is aware. It shall be the duty of the Chief Executive to report to the Board of Directors any such disclosure made.

- 11.7 On appointment, Directors (and prior to acceptance of an appointment in the case of executive directors) should disclose to the Board of Directors whether they are related to any other Director or holder of any office in the Trust.

12. TENDERING AND CONTRACT PROCEDURE

- 12.1 The procedure for making all contracts by or on behalf of the Trust shall comply with: the Regulatory Framework; these Standing Orders and the Trust's Standing Financial Instructions. Such contracts involving charitable funds shall comply with the requirements of the Charities Act and the trust deed.

13. CUSTODY OF SEAL AND SEALING OF DOCUMENTS

- 13.1 The Common Seal of the Trust shall be kept by the Chief Executive or their nominated officer in a secure place.
- 13.2 The Seal of the Trust shall not be fixed to any documents unless the sealing has been authorised by a resolution of the Board or where it has delegated its powers. The Seal shall be used whenever required by law, or on the advice of the Trust's solicitor. Where it is necessary that a document shall be sealed, the seal shall be affixed in the presence of two Directors, and shall be attested by them.
- 13.3 Before any building, engineering, property or capital document is sealed it must be approved and signed by the Director of Finance (or an Officer nominated by him/her) and authorised and countersigned by the Chief Executive (or an Officer nominated by him/her who shall not be within the originating directorate).
- 13.4 An entry of every sealing shall be made and numbered consecutively in a book provided for that purpose, and shall be signed by the persons who have approved and authorised the document and those who attested the seal. A report of all sealing shall be made to the Board of Directors and to the Audit Committee at least quarterly. (The report shall contain details of the seal number, the description of the document and date of sealing).

14. SIGNATURE OF DOCUMENTS

- 14.1 Where the signature of any document will be a necessary step in legal proceedings involving the Trust, it shall be signed by the Chief

Executive, unless any enactment otherwise requires or authorises, or the Board of Directors shall have given the necessary authority to some other person for the purpose of such proceedings.

- 14.2 The Chief Executive or nominated officers shall be authorised, by resolution of the Board of Directors, to sign on behalf of the Trust any agreement or other document, not required to be executed as a deed, the subject matter of which has been approved by the Board of Directors or any committee, sub-committee, or standing committee with delegated authority.

15. MISCELLANEOUS

- 15.1 It is the duty of the Chief Executive to ensure that existing Directors and officers and all new appointees are notified of and put into a position to understand their responsibilities within Standing Orders and Standing Financial Instructions. Updated copies shall be issued to staff designated by the Chief Executive. Copies shall also be placed on the Trust's Intranet to allow ease of access, by Directors and officers, to the latest version. New designated officers shall be informed in writing and shall receive copies where appropriate in Standing Orders.
- 15.2 The Trust Constitution and Standing Orders shall be reviewed by the Board of Directors as and when required and at a minimum, every 5 years. They shall be amended if and as agreed appropriate by the Board of Directors. The Trust will maintain records necessary for the appropriate delegation and control of this process. This requirement extends to all documents having the effect as if incorporated in Standing Orders, unless they specify an earlier review date.

ANNEX 6 FURTHER PROVISIONS

1 DISPUTES

1.1 Every unresolved dispute which arises out of this constitution between the Foundation Trust and;

1.1.1 A member; or

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

1.1.3 Any person bringing a claim under this constitution; or

1.1.4 An office holder of the Foundation Trust;

Is to be submitted to the Chair (or the Senior Independent Director if the matter concerns the Chair).

1.2 If the Chair (or Senior Independent Director if the matter concerns the Chair) feels they cannot act independently, they may refer the matter to arbitration on such terms as they consider appropriate.

1.3 An unresolved dispute will include any disputes that cannot be resolved using the Trust Disputes Policy.


2 DISSOLUTION OF THE FOUNDATION TRUST

2.1 The Foundation Trust may not be dissolved other than by order of the Secretary of State for Health, in accordance with the 2006 Act.

3 HEAD OFFICE

3.1 The Foundation Trust's registered head office address is The West Wing, CEME Centre, Marsh Way, Rainham, RM13 8EU as of October 2016.

ANNEX 7 MODEL ELECTION RULES



Model Election Rules 2014

For use in elections to FT councils of governors

Model Election Rules 2014

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PART 1 INTERPRETATION

1. Interpretation

1.1 In these rules, unless the context otherwise requires:

"2006 Act" means the National Health Service Act 2006;

"corporation" means the public benefit corporation subject to this constitution;

"council of governors" means the council of governors of the corporation;

"declaration of identity" has the meaning set out in rule 21.1;

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

"e-voting" means voting using either the internet, telephone or text message;

"e-voting information" has the meaning set out in rule 24.2;

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

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

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

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

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

"Monitor" means the corporate body known as Monitor as provided by section 61 of the 2012 Act;

"numerical voting code" has the meaning set out in rule 64.2(b)

"polling website" has the meaning set out in rule 26.1;

"postal voting information" has the meaning set out in rule 24.1;

"telephone short code" means a short telephone number used for the purposes of

submitting a vote by text message;

"telephone voting facility" has the meaning set out in rule 26.2;

"telephone voting record" has the meaning set out in rule 26.5 (d);

"text message voting facility" has the meaning set out in rule 26.3;

"text voting record" has the meaning set out in rule 26.6 (d);

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

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

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

"voting information" means postal voting information and/or e-voting information

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

PART 2 TIMETABLE FOR ELECTIONS

2. Timetable

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

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

3. Computation of time

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

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

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

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

PART 3 RETURNING OFFICER

4. Returning Officer

- 4.1 Subject to rule 69, the returning officer for an election is to be appointed by the corporation.
- 4.2 Where two or more elections are to be held concurrently, the same returning officer may be appointed for all those elections.

5. Staff

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

6. Expenditure

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

7. Duty of co-operation

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

PART 4 STAGES COMMON TO CONTESTED AND UNCONTESTED ELECTIONS

8. Notice of election

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

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

9. Nomination of candidates

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

9.2 The returning officer:

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

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

10. Candidate's particulars

10.1 The nomination form must state the candidate's:

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

11. Declaration of interests

11.1 The nomination form must state:

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

12. Declaration of eligibility

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

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

13. Signature of candidate

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

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

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

14. Decisions as to the validity of nomination

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

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

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

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

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

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

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

15. Publication of statement of candidates

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

15.2 The statement must show:

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

as given in their nomination form.

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

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

16. Inspection of statement of nominated candidates and nomination forms

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

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

17. Withdrawal of candidates

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

18. Method of election

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

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

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

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

PART 5 CONTESTED ELECTIONS

19. Poll to be taken by ballot

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

20. The ballot paper

- 20.1 The ballot of each voter (other than a voter who casts his or her ballot by an e-voting method of polling) is to consist of a ballot paper with the persons remaining validly nominated for an election after any withdrawals under these rules, and no others, inserted in the paper.
- 20.2 Every ballot paper must specify:
- (a) the name of the corporation,
 - (b) the constituency, or class within a constituency, for which the election is being held,
 - (c) the number of members of the council of governors to be elected from that constituency, or class within that constituency,
 - (d) the names and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
 - (e) instructions on how to vote by all available methods of polling, including the relevant voter's voter ID number if one or more e-voting methods of polling are available,
 - (f) if the ballot paper is to be returned by post, the address for its return and the date and time of the close of the poll, and
 - (g) the contact details of the returning officer.
- 20.3 Each ballot paper must have a unique identifier.
- 20.4 Each ballot paper must have features incorporated into it to prevent it from being reproduced.
- 21. The declaration of identity (public and patient constituencies)**
- 21.1 The corporation shall require each voter who participates in an election for a public or patient constituency to make a declaration confirming:
- (a) that the voter is the person:
 - (i) to whom the ballot paper was addressed, and/or
 - (ii) to whom the voter ID number contained within the e-voting information was allocated,
 - (b) that he or she has not marked or returned any other voting information in the election, and
 - (c) the particulars of his or her qualification to vote as a member of the constituency or class within the constituency for which the election is being held,

("declaration of identity")

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

- 21.2 The voter must be required to return his or her declaration of identity with his or her ballot.
- 21.3 The voting information shall caution the voter that if the declaration of identity is not duly returned or is returned without having been made correctly, any vote cast by the voter may be declared invalid.

Action to be taken before the poll

22. List of eligible voters

- 22.1 The corporation is to provide the returning officer with a list of the members of the constituency or class within a constituency for which the election is being held who are eligible to vote by virtue of rule 27 as soon as is reasonably practicable after the final date for the delivery of notices of withdrawals by candidates from an election.
- 22.2 The list is to include, for each member:
- (a) a postal address; and,
 - (b) the member's e-mail address, if this has been provided
- to which his or her voting information may, subject to rule 22.3, be sent.
- 22.3 The corporation may decide that the e-voting information is to be sent only by e-mail to those members in the list of eligible voters for whom an e-mail address is included in that list.

23. Notice of poll

- 23.1 The returning officer is to publish a notice of the poll stating:
- (a) the name of the corporation,
 - (b) the constituency, or class within a constituency, for which the election is being held,
 - (c) the number of members of the council of governors to be elected from that constituency, or class with that constituency,

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

24. Issue of voting information by returning officer

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

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

("postal voting information").

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

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

("e-voting information").

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

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

for the purposes of the poll.

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

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

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

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

25.2 The covering envelope is to have:

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

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

- (a) the completed ID declaration form if required, and

(b) the ballot paper envelope, with the ballot paper sealed inside it.

26. E-voting systems

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

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

26.5

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

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

(iv) the date and time of the voter's vote

(e) if the voter's vote has been duly cast and recorded, provide the voter with confirmation of this;

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

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

(a) require a voter to:

(i) provide his or her voter ID number; and

(ii) where the election is for a public or patient constituency, make a declaration of identity;

in order to be able to cast his or her vote;

(b) prevent a voter from voting for more candidates than he or she is entitled to at the election;

(d) create a record ("text voting record") that is stored in the text messaging voting system in respect of each vote cast by a voter by text message that comprises of:

(i) the voter's voter ID number;

(ii) the voter's declaration of identity (where required);

(ii) the candidate or candidates for whom the voter has voted; and

(iii) the date and time of the voter's vote

(e) if the voter's vote has been duly cast and recorded, provide the voter with confirmation of this;

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

The poll

27. Eligibility to vote

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

28. Voting by persons who require assistance

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

28.2 Where the returning officer receives a request from a voter who requires assistance to

vote, the returning officer is to make such arrangements as he or she considers necessary to enable that voter to vote.

29. Spoilt ballot papers and spoilt text message votes

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

was able to obtain it), and

(c) the details of the replacement voter ID number issued to the voter.

30. Lost voting information

- 30.1 Where a voter has not received his or her voting information by the tenth day before the close of the poll, that voter may apply to the returning officer for replacement voting information.
- 30.2 The returning officer may not issue replacement voting information in respect of lost voting information unless he or she:

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

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

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

31. Issue of replacement voting information

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

- 31.2 After issuing replacement voting information under this rule, the returning officer shall enter in a list ("the list of tendered voting information"):

- (a) the name of the voter,
- (b) the unique identifier of any replacement ballot paper issued under this rule;
- (c) the voter ID number of the voter.

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

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

Polling by internet, telephone or text

33. Procedure for remote voting by internet

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

34. Voting procedure for remote voting by telephone

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

35. Voting procedure for remote voting by text message

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

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

36. Receipt of voting documents

- 36.1 Where the returning officer receives:
- (a) a covering envelope, or
 - (b) any other envelope containing an ID declaration form if required, a ballot paper envelope, or a ballot paper,
- before the close of the poll, that officer is to open it as soon as is practicable; and rules 37 and 38 are to apply.
- 36.2 The returning officer may open any covering envelope or any ballot paper envelope for the purposes of rules 37 and 38, but must make arrangements to ensure that no person obtains or communicates information as to:
- (a) the candidate for whom a voter has voted, or
 - (b) the unique identifier on a ballot paper.
- 36.3 The returning officer must make arrangements to ensure the safety and security of the ballot papers and other documents.

37. Validity of votes

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

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

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

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

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

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

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

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

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

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

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

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

39. De-duplication of votes

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

40. Sealing of packets

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

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

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

PART 6 COUNTING THE VOTES

STV41. Interpretation of Part 6

STV41.1 In Part 6 of these rules:

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

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

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

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

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

"non-transferable vote" means a ballot document:

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

or

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

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

- (a) *"first preference"* means the figure "1" or any mark or word which clearly indicates a first (or only) preference,
- (b) *"next available preference"* means a preference which is the second, or as the case may be, subsequent preference recorded in consecutive order for a continuing candidate (any candidate who is deemed to be elected or is excluded thereby being ignored); and
- (c) in this context, a *"second preference"* is shown by the figure "2" or any mark or word which clearly indicates a second preference, and a third preference by the figure "3" or any mark or word which clearly indicates a third preference, and so on,

"quota" means the number calculated in accordance with rule STV46,

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

"stage of the count" means:

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

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

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

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

42. Arrangements for counting of the votes

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

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

- (a) the board of directors and the council of governors of the corporation have approved:
 - (i) the use of such software for the purpose of counting votes in the relevant election, and
 - (ii) a policy governing the use of such software, and
- (b) the corporation and the returning officer are satisfied that the use of such software will produce an accurate result.

43. The count

43.1 The returning officer is to:

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

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

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

STV44. Rejected ballot papers and rejected text voting records

STV44.1 Any ballot paper:

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

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

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

STV44.3 Any text voting record:

- (a) on which the figure "1" standing alone is not placed so as to indicate a first preference for any candidate,

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

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

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

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

FPP44. Rejected ballot papers and rejected text voting records

FPP44.1 Any ballot paper:

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

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

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

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

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

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

FPP44.4 The returning officer is to:

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

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

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

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

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

FPP44.6 Any text voting record:

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

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

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

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

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

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

FPP44.9 The returning officer is to:

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

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

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

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

STV45. First stage

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

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

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

STV46. The quota

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

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

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

STV47. Transfer of votes

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

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

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

STV47.3 The returning officer is, in accordance with this rule and rule STV48, to transfer each sub-parcel of ballot documents referred to in rule STV47.1(a) to the candidate for whom the

next available preference is given on those ballot documents.

STV47.4 The vote on each ballot document transferred under rule STV47.3 shall be at a value ("the transfer value") which:

- (a) reduces the value of each vote transferred so that the total value of all such votes does not exceed the surplus, and
- (b) is calculated by dividing the surplus of the candidate from whom the votes are being transferred by the total number of the ballot documents on which those votes are given, the calculation being made to two decimal places (ignoring the remainder if any).

STV47.5 Where at the end of any stage of the count involving the transfer of ballot documents, the number of votes for any candidate exceeds the quota, the returning officer is to sort the ballot documents in the sub-parcel of transferred votes which was last received by that candidate into separate sub-parcels so that they are grouped:

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

STV47.6 The returning officer is, in accordance with this rule and rule STV48, to transfer each sub-parcel of ballot documents referred to in rule STV47.5(a) to the candidate for whom the next available preference is given on those ballot documents.

STV47.7 The vote on each ballot document transferred under rule STV47.6 shall be at:

- (a) a transfer value calculated as set out in rule STV47.4(b), or
- (b) at the value at which that vote was received by the candidate from whom it is now being transferred,

whichever is the less.

STV47.8 Each transfer of a surplus constitutes a stage in the count.

STV47.9 Subject to rule STV47.10, the returning officer shall proceed to transfer transferable ballot documents until no candidate who is deemed to be elected has a surplus or all the vacancies have been filled.

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

- (a) less than the difference between the total vote then credited to the continuing

candidate with the lowest recorded vote and the vote of the candidate with the next lowest recorded vote, or

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

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

STV48. Supplementary provisions on transfer

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

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

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

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

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

STV48.4 Where a ballot document is so marked that it is unclear to the returning officer at any

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

STV49. Exclusion of candidates

STV49.1 If:

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

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

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.
- STV9.8 Any ballot documents on which no next available preferences have been expressed shall be set aside as non-transferable votes.
- STV49.9 After the returning officer has completed the transfer of the ballot documents in the sub-parcel of ballot documents with the highest transfer value he or she shall proceed to transfer in the same way the sub-parcel of ballot documents with the next highest value and so on until he has dealt with each sub-parcel of a candidate excluded under rule STV49.1.
- STV49.10 The returning officer shall after each stage of the count completed under this rule:
- (a) record:
 - (i) the total value of votes, or
 - (ii) the total transfer value of votes transferred to each candidate,
 - (b) add that total to the previous total of votes recorded for each candidate and record the new total,
 - (c) record the value of non-transferable votes and add that value to the previous non-transferable votes total, and
 - (d) compare:
 - (i) the total number of votes then recorded for each candidate together with the total number of non-transferable votes, with
 - (ii) the recorded total of valid first preference votes.
- STV49.11 If after a transfer of votes under any provision of this rule, a candidate has a surplus, that surplus shall be dealt with in accordance with rules STV47.5 to STV47.10 and rule STV48.
- STV49.12 Where the total of the votes of the two or more lowest candidates, together with any surpluses not transferred, is less than the number of votes credited to the next lowest candidate, the returning officer shall in one operation exclude such two or more candidates.
- STV49.13 If when a candidate has to be excluded under this rule, two or more candidates each have the same number of votes and are lowest:
- (a) regard shall be had to the total number of votes credited to those candidates at the earliest stage of the count at which they had an unequal number of votes and the candidate with the lowest number of votes at that stage shall be excluded, and

- (b) where the number of votes credited to those candidates was equal at all stages, the returning officer shall decide between the candidates by lot and the candidate on whom the lot falls shall be excluded.

STV50. Filling of last vacancies

- STV50.1 Where the number of continuing candidates is equal to the number of vacancies remaining unfilled the continuing candidates shall thereupon be deemed to be elected.
- STV50.2 Where only one vacancy remains unfilled and the votes of any one continuing candidate are equal to or greater than the total of votes credited to other continuing candidates together with any surplus not transferred, the candidate shall thereupon be deemed to be elected.
- STV50.3 Where the last vacancies can be filled under this rule, no further transfer of votes shall be made.

STV51. Order of election of candidates

- STV51.1 The order in which candidates whose votes equal or exceed the quota are deemed to be elected shall be the order in which their respective surpluses were transferred, or would have been transferred but for rule STV47.10.
- STV51.2 A candidate credited with a number of votes equal to, and not greater than, the quota shall, for the purposes of this rule, be regarded as having had the smallest surplus at the stage of the count at which he obtained the quota.
- STV51.3 Where the surpluses of two or more candidates are equal and are not required to be transferred, regard shall be had to the total number of votes credited to such candidates at the earliest stage of the count at which they had an unequal number of votes and the surplus of the candidate who had the greatest number of votes at that stage shall be deemed to be the largest.
- STV51.4 Where the number of votes credited to two or more candidates were equal at all stages of the count, the returning officer shall decide between them by lot and the candidate on whom the lot falls shall be deemed to have been elected first.

FPP51. Equality of votes

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

PART 7 FINAL PROCEEDINGS IN CONTESTED AND UNCONTESTED ELECTIONS

FPP52. Declaration of result for contested elections

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

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

FPP52.2 The returning officer is to make:

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

available on request.

STV52. Declaration of result for contested elections

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

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

(ii) in any other case, to the chairman of the corporation, and

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

STV52.2 The returning officer is to make:

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

available on request.

53. Declaration of result for uncontested elections

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

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

PART 8 DISPOSAL OF DOCUMENTS

54. Sealing up of documents relating to the poll

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

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

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

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

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

54.3 The returning officer must endorse on each packet a description of:

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

55. Delivery of documents

55.1 Once the documents relating to the poll have been sealed up and endorsed pursuant to

rule 56, the returning officer is to forward them to the chair of the corporation.

56. Forwarding of documents received after close of the poll

56.1 Where:

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

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

57. Retention and public inspection of documents

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

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

57.3 A person may request a copy or extract from the documents relating to an election that are held by the corporation, and the corporation is to provide it, and may impose a reasonable charge for doing so.

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

58.1 The corporation may not allow:

- (a) the inspection of, or the opening of any sealed packet containing –
 - (i) any rejected ballot papers, including ballot papers rejected in part,
 - (ii) any rejected text voting records, including text voting records rejected in part,
 - (iii) any disqualified documents, or the list of disqualified documents,
 - (iv) any counted ballot papers, internet voting records, telephone voting records or text voting records, or

(v) the list of eligible voters, or

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

by any person without the consent of the board of directors of the corporation.

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

58.3 The board of directors of the corporation's consent may be on any terms or conditions that it thinks necessary, including conditions as to –

(a) persons,

(b) time,

(c) place and mode of inspection,

(d) production or opening,

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

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

(a) in giving its consent, and

(b) in making the documents available for inspection

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

(i) that his or her vote was given, and

(ii) that Monitor has declared that the vote was invalid.

PART 9 DEATH OF A CANDIDATE DURING A CONTESTED ELECTION

FPP59. Countermand or abandonment of poll on death of candidate

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

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

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

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

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

FPP59.5 The returning officer is to:

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

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

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

- (a) its contents,

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

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

STV59. Countermand or abandonment of poll on death of candidate

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

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

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

PART 10 ELECTION EXPENSES AND PUBLICITY

Election expenses

60. Election expenses

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

61. Expenses and payments by candidates

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

62. Election expenses incurred by other persons

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

Publicity

63. Publicity about election by the corporation

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

as it considers necessary.

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

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

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

64. Information about candidates for inclusion with voting information

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

64.2 The information must consist of:

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

65. Meaning of "for the purposes of an election"

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

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

PART 11 QUESTIONING ELECTIONS AND THE CONSEQUENCE OF IRREGULARITIES

66. Application to question an election

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

PART 12 MISCELLANEOUS

67. **Secrecy**

67.1 The following persons:

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

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

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

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

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

68. **Prohibition of disclosure of vote**

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

69. **Disqualification**

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

- (a) a member of the corporation,
- (b) an employee of the corporation,
- (c) a director of the corporation, or

- (d) employed by or on behalf of a person who has been nominated for election.

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

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

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

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

The Foundation Trust Network (FTN) is the membership organisation for NHS acute hospitals and community, mental health and ambulance services.

The FTN acts as the public voice for those NHS trusts, helping to deliver high quality care and shaping the system in which they operate.

The FTN has over 227 members – more than 92% of all NHS foundation trusts and aspirant trusts.

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