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**CONSTITUTION OF  
OXLEAS NHS FOUNDATION TRUST  
(A PUBLIC BENEFIT CORPORATION)**

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# **CONSTITUTION OF OXLEAS NHS FOUNDATION TRUST**

## **1 DEFINITIONS**

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

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

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

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

1.5 In this constitution:

“the 2006 Act” means the National Health Service Act 2006 (as amended by the 2012 Act);

“the 2012 Act” means the Health and Social Care Act 2012;

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

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

“authorisation” means an authorisation given by Monitor;

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

“Council of Governors” means the Council of Governors as constituted in accordance with this constitution, which has the same meaning as the Council of Governors in the 2006 Act;

“carer” means a person who has attended any of the Foundation Trust’s premises from which services are provided as the carer of a service-user within the last five years and who provides substantial regular care for a service-user, provided that such person is not providing care in pursuance of a contract (including a contract of employment), or as a volunteer for a voluntary organisation;

“Director” means a member of the Board of Directors;

|                             |   |
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| “elected Governors”         | means those Governors elected by the public constituencies, the classes of service-user/carers’ constituency and the classes of the staff constituency;   |
| “external auditor”          | means any external auditor other than the auditor appointed under this constitution to review and report upon other aspects of the Foundation Trust’s performance;  |
| “Financial Year”            | means: <ul style="list-style-type: none"> <li>(a) a period beginning with the date on which the Foundation Trust is authorised and ending with the next 31 March; and</li> <li>(b) each successive period of twelve months beginning with 1 April.</li> </ul> |
| “the Foundation Trust”      | means Oxleas NHS Foundation Trust;  |
| “General Meeting”           | means a meeting of the Council of Governors;  |
| “Governor”                  | means a member of the Council of Governors;   |
| “Local Authority Governor”  | means a Governor appointed by one or more local authorities whose area includes the whole or part of one of the public constituency areas;  |
| “member”                    | means a member of the Foundation Trust;   |
| “Monitor”                   | means the body corporate known as Monitor, as provided by section 61 of the 2012 Act; From April 2016 Monitor has been part of NHS Improvement  |
| “the NHS Trust”             | means Oxleas NHS Trust which made the application to become an NHS foundation trust;  |
| “partner”                   | means, in relation to another person, a member of the same household living together as a family unit;  |
| “Partnership Governor”      | means a Governor appointed by a partnership organisation;   |
| “partnership organisation”  | means Bexley Voluntary Service Council;   |
| “public constituency”       | means (collectively) the members who live in an area specified in this constitution as an area for any public constituency of the Foundation Trust;   |
| “public constituency areas” | which are Bexley, Bromley, Greenwich, and the Rest of England;  |

|                                     |   |
|-------------------------------------|---|
| “Public Governor”                   | means a Governor elected by the members of one of the public constituencies;  |
| “registered dentist”                | means a registered dentist within the meaning of the Dentists Act 1984;   |
| “registered medical practitioner”   | means a fully registered person within the meaning of the Medical Act 1983 who holds a license to practice under that Act;  |
| “Secretary”                         | means the Secretary of the Foundation Trust or any other person appointed to perform the duties of the Secretary, including a joint, assistant or deputy secretary;                                     |
| “service-user”                      | means a person who has attended any of the Foundation Trust’s premises from which services are provided as a service-user within the last five years and is referred to as a “patient” in the 2006 Act; |
| “service-user/carers’ constituency” | means (collectively) the members of the service-user/carers’ constituency which is referred to as the “patients’ constituency” in the 2006 Act;   |
| “Service-user/carer Governor”       | means a Governor elected by the members of one of the classes of the service-user/carers’ constituency;   |
| “staff constituency”                | means (collectively) the members of the seven classes comprising the staff constituency;  |
| “Staff Governor”                    | means a Governor elected by the members of one of the classes of the staff constituency.  |
| “vexatious complainant”             | means a person who has been deemed to be an unreasonably persistent complainant following the procedure laid out in the Foundation Trust’s Complaints Policy and Procedures.                            |
| “voluntary organisation”            | means a body, other than a public or local authority, the activities of which are not carried on for profit.  |

## **2 NAME AND STATUS**

- 2.1 The name of the Foundation Trust is to be “Oxleas NHS Foundation Trust”. The Foundation Trust is a public benefit corporation.

### **3 PRINCIPAL PURPOSE**

- 3.1 The Foundation Trust's principal purpose is to serve the community by the provision of goods and services for the purposes of the health service in England.
- 3.2 The Foundation Trust does not fulfil its principal purpose unless, in each Financial Year, its total income from the provision of goods and services for the purposes of the health service in England is greater than its total income from the provision of goods and services for any other purpose.
- 3.3 The Foundation Trust may provide goods and services for any purpose related to:
  - 3.3.1 the provision of services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness;
  - 3.3.2 the promotion and protection of public health; and
  - 3.3.3 the provision of goods and services, including education and training, research, accommodation and other facilities, for purposes related to the provision of health and social care.
- 3.4 The Foundation Trust may also carry on activities other than those mentioned in the above paragraph for the purpose of making additional income available in order better to carry on its principal purpose.

### **4 POWERS**

- 4.1 The business of the Foundation Trust is to be managed by the Board of Directors, who shall exercise all the powers of the Foundation Trust, subject to any contrary provisions of the 2006 Act as given effect by this constitution.
- 4.2 The Foundation Trust may do anything which appears to it to be necessary or desirable for the purposes of or in connection with its functions.
- 4.3 In particular it may:
  - 4.3.1 acquire and dispose of property;
  - 4.3.2 enter into contracts;
  - 4.3.3 accept gifts of property (including property to be held on trust for the purposes of the Foundation Trust or for any purposes relating to the health service); and
  - 4.3.4 employ staff.
- 4.4 Any power of the Foundation Trust to pay remuneration and allowances to any person includes the power to make arrangements for providing or securing the provision of pensions or gratuities (including those payable by way of compensation for loss of employment or loss or reduction of pay).

- 4.5 The Foundation Trust may borrow money for the purposes of or in connection with its functions, subject to any limit imposed by its authorisation or specified in the prudential borrowing code published by Monitor from time to time.
- 4.6 The Foundation Trust may invest money (other than money held by it as trustee) for the purposes of or in connection with its functions. The investment may include investment by:
- 4.6.1 forming or participating in forming bodies corporate; and/or
  - 4.6.2 otherwise acquiring membership of bodies corporate.
- 4.7 The Foundation Trust may give financial assistance (whether by way of loan, guarantee or otherwise) to any person for the purposes of or in connection with its functions.

## **5 COMMITMENTS**

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

### **Representative membership**

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

### **Co-operation with health service and other bodies**

- 5.3 In exercising its functions the Foundation Trust shall co-operate with Health Authorities, Special Health Authorities, NHS trusts and NHS Foundation Trusts.

## **Respect for rights of people**

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

## **Openness**

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

## **Prohibiting distribution**

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

# **6 FRAMEWORK**

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

## **Members**

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

## **Council of Governors**

- 6.3 The roles and responsibilities of the Council of Governors, which are to be carried out in accordance with this constitution and the Foundation Trust's authorisation, are:

6.3.1 at a General Meeting:

6.3.1.1 to appoint or remove the Chair and the other non-executive Directors;

6.3.1.2 to approve an appointment (by the non-executive Directors) of the chief executive;

6.3.1.3 to decide the remuneration and allowances, and the other terms and conditions of office, of the non-executive Directors;

6.3.1.4 to appoint or remove the Foundation Trust's auditor;



- 6.3.1.5 to be presented with the annual accounts, any report of the auditor on them and the annual report,
- 6.3.2 to provide their views to the Board of Directors when the Board of Directors is preparing the document containing information about the Foundation Trust's forward planning;
- 6.3.3 to respond as appropriate when consulted by the Board of Directors in accordance with this constitution;
- 6.3.4 to undertake such functions as the Board of Directors shall from time to time request;
- 6.3.5 to prepare and from time to time review the Foundation Trust's membership strategy and its policy for the composition of the Council of Governors and of the non-executive Directors; and
- 6.3.6 when appropriate to make recommendations for the revision of this constitution.

## **7 MEMBERS**

- 7.1 Subject to the transitional provisions set out in paragraphs 7.5A, 7.8A, 11.4.1A and 11.4.2A, the members of the Foundation Trust are those individuals whose names are entered in the register of members. Every member is either a member of one of the public constituencies, or a member of one of the classes of the service-user/carers' constituency, or a member of one of the classes of the staff constituency.
- 7.2 Subject to this constitution, membership is open to any individual who:
  - 7.2.1 is fourteen years of age or over;
  - 7.2.2 is entitled under this constitution to be a member of one of the public constituencies, or one of the classes of the service-user/carers' constituency or one of the classes of the staff constituency; and
  - 7.2.3 (unless they are a member of one of the classes of the staff constituency) completes a membership application form in whatever form the Secretary specifies.

### **Public constituencies**

- 7.3 There are four public constituencies corresponding to the public constituency areas as specified in Annex 1. Membership of a public constituency is open to individuals who:
  - 7.3.1 live in the relevant area of the Foundation Trust;
  - 7.3.2 are not a member of another public constituency or of one of the classes of the service-user/carers' constituency; and

- 7.3.3 are not eligible to be members of any of the classes of the staff constituency.
- 7.4 The minimum number of members of each of the public constituencies is to be four.

**Service-user/carers' constituency**

- 7.5 Up and until 11 September 2018, the service-user/carers' constituency is divided into six classes as follows:

- 7.5.1 Working Age Adult Mental Health (including the interests of those in forensic and prison services);
- 7.5.2 Older People Mental Health;
- 7.5.3 Adult Community Health;
- 7.5.4 Children's;
- 7.5.5 Learning Disability; and
- 7.5.6 Carers.

- 7.5A From 11 September 2018, the service user/carers' constituency is divided into seven classes as follows:

- 7.5A.1 Bromley adult
- 7.5A.2 Bexley adult
- 7.5A.3 Greenwich adult
- 7.5A.4 Forensic and prisons
- 7.5A.5 Children
- 7.5A.6 Learning disability; and
- 7.5A.7 Carers

- 7.5B For the avoidance of doubt, to give effect to the transitional arrangements described in 7.5A above and only for the purposes of enabling an election to be held prior to 11 September 2018, each member who retains membership of their existing class shall be deemed to be members of the new class for which they are eligible until such time as their membership of relevant new class take effect formally on 11 September 2018.

- 7.6 Membership of the service-user/carers' constituency is open to individuals:
  - 7.6.1 who are a service-user or carer when they apply for membership or have been a service-user or carer within the period of five years ending on the date they apply for membership; and

7.6.2 who are not a member of a public constituency, nor eligible to be a member of the staff constituency.

7.7 The minimum number of members of the service-user/carers' constituency is to be fourteen (two per class).

### **Staff constituency**

7.8 Up and until 11 September 2018, the staff constituency is divided into seven classes as follows:

- 7.8.1 adult community health services;
- 7.8.2 older people mental health services;
- 7.8.3 working age adult mental health services;
- 7.8.4 children's services;
- 7.8.5 learning disability services;
- 7.8.6 forensic and prison health services; and
- 7.8.7 corporate and partnership organisations

7.8A From 11 September 2018, the staff constituency is divided into seven classes as follows:

- 7.8A.1 Bromley adult;
- 7.8A.2 Bexley adult;
- 7.8A.3 Greenwich adult;
- 7.8A.4 Children;
- 7.8A.5 Learning Disability;
- 7.8A.6 Forensic and Prison; and
- 7.8A.7 Corporate and partnership organisations.

7.8B For the avoidance of doubt, to give effect to the transitional arrangements described in 7.8A above and only for the purposes of enabling an election to be held prior to 11 September 2018, each member who retains membership of their existing class shall be deemed to be members of the new class for which they are eligible until such time as their membership of relevant new class take effect formally on 11 September 2018

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

- 7.9.1 who are employed under a contract of employment by the Foundation Trust and who either:
  - 7.9.1.1 are employed by the Foundation Trust under a contract of employment which has no fixed term or a fixed term of at least 12 months; or

- 7.9.1.2 who have been continuously employed by the Foundation Trust or the NHS Trust for at least 12 months; or
  - 7.9.1.3 who are not so employed but who nevertheless exercise functions for the purposes of the Foundation Trust and who have continuously exercised the functions for the purposes of the Foundation Trust or the NHS Trust for at least 12 months. For the avoidance of doubt, this does not include those who assist or provide services to the Foundation Trust on a voluntary basis.
- 7.10 The Secretary shall make a final decision about the class of which an individual is eligible to be a member.
- 7.11 All individuals who are entitled under this constitution to become members of one of the classes of the staff constituency, and who:
- 7.11.1 have been invited by the Foundation Trust to become a member of the appropriate class; and
  - 7.11.2 have not informed the Foundation Trust that they do not wish to do so,
- shall become members of the appropriate class.
- 7.12 A person who is eligible to be a member of one of the classes of the staff constituency may not become or continue as a member of any of the public constituencies, or the service-user/carers' constituency and may not become or continue as a member of more than one class of the staff constituency.
- 7.13 The minimum number of members of each class of the staff constituency is to be four.

## **8 DISQUALIFICATION FROM MEMBERSHIP**

- 8.1 This provision applies to:
- 8.1.1 any person involved within the last five years as a perpetrator in a serious incident of assault or violence, or in one or more incidents of harassment, against any of the Foundation Trust's employees or other persons who exercise functions for the purposes of the Foundation Trust, or against registered volunteers; and
  - 8.1.2 any person who has been excluded from the Foundation Trust's premises from which services are provided.

In relation to any such person, membership of the Foundation Trust may be refused or withdrawn if the Council of Governors considers that it is not in the best interests of the Foundation Trust for them to become or remain a member.

## **9 TERMINATION OF MEMBERSHIP**

- 9.1 A member shall cease to be a member if:
- 9.1.1 they resign by notice to the Secretary;
  - 9.1.2 they die;
  - 9.1.3 they are expelled from membership under this constitution;
  - 9.1.4 they cease to be entitled under this constitution to be a member of any of the public constituencies, of any of the classes of the service-user/carers' constituency, or of any of the classes of the staff constituency; and/or
  - 9.1.5 if it appears to the Secretary that they no longer wish to be a member of the Foundation Trust, and after enquiries made in accordance with a process approved by the Council of Governors, they fail to demonstrate that they wish to continue to be a member of the Foundation Trust.
- 9.2 A member may be expelled by a resolution approved by not less than two-thirds of the Governors present and voting at a General Meeting. The following procedure is to be adopted:
- 9.2.1 any member may complain to the Secretary that another member has acted in a way detrimental to the interests of the Foundation Trust;
  - 9.2.2 if a complaint is made, the Council of Governors may itself consider the complaint having taken such steps as it considers appropriate to ensure that each member's point of view is heard and may either:
    - 9.2.2.1 dismiss the complaint and take no further action; or
    - 9.2.2.2 for a period not exceeding twelve months suspend the rights of the member complained of to attend members meetings and vote under this constitution; or
    - 9.2.2.3 arrange for a resolution to expel the member complained of to be considered at the next General Meeting of the Council of Governors.
  - 9.2.3 If a resolution to expel a member is to be considered at a General Meeting of the Council of Governors, details of the complaint must be sent to the member complained of not less than one calendar month before the meeting with an invitation to answer the complaint and attend the meeting.

- 9.2.4 At the meeting the Council of Governors will consider evidence in support of the complaint and such evidence as the member complained of may wish to place before them.
- 9.2.5 If the member complained of fails to attend the meeting without due cause the meeting may proceed in their absence.
- 9.3 A person expelled from membership will cease to be a member upon the declaration by the Chair of the meeting that the resolution to expel them is carried.
- 9.4 No person who has been expelled from membership is to be re-admitted except by a resolution carried by the votes of two-thirds of the Council of Governors present and voting at a General Meeting.

## **10 MEMBERS MEETINGS**

- 10.1 The Foundation Trust is to hold a members meeting (called the annual members meeting) within nine months of the end of each Financial Year. . The Annual Members' Meeting shall be open to members of the public.
- 10.2 All members meetings other than annual meetings are called special members meetings.
- 10.3 Members meetings are open to all members of the Foundation Trust, Governors, and Directors but not to members of the public (aside from the annual members' meeting) unless the Council of Governors decides otherwise. The Council of Governors may invite representatives of the media and any experts or advisors whose attendance they consider to be in the best interests of the Foundation Trust to attend a members meeting.
- 10.4 All members meetings are to be convened by the Secretary by order of the Council of Governors.
- 10.5 The Council of Governors may decide where a members meeting is to be held and may also for the benefit of members:
  - 10.5.1 arrange for the annual members meeting to be held in different venues each year; and
  - 10.5.2 make provisions for a members meeting to be held at different venues simultaneously or at different times. In making such provision the Council of Governors shall also fix an appropriate quorum for each venue, provided that the aggregate of the quorum requirements shall not be less than the quorum set out below.
- 10.6 At the annual members meeting:
  - 10.6.1 the Board of Directors shall present to the members:
    - 10.6.1.1 the annual accounts;

- 10.6.1.2 any report of the auditor; and
  - 10.6.1.3 forward planning information for the next Financial Year.
- 10.6.2 the Council of Governors shall present to the members:
  - 10.6.2.1 a report on steps taken to secure that (taken as a whole) the actual membership of its public constituencies, of the classes of the service-user/carers' constituency and of the classes of the staff constituency is representative of those eligible for such membership;
  - 10.6.2.2 the progress of the membership strategy; and
  - 10.6.2.3 any proposed changes to the policy for the composition of the Council of Governors and of the non-executive Directors.
- 10.6.3 The results of the election and appointment of Governors and the appointment of non-executive Directors will be announced.
- 10.7 Notice of a members meeting is to be given:
  - 10.7.1 by notice to all members;
  - 10.7.2 by notice prominently displayed at the head office; and
  - 10.7.3 by notice on the Foundation Trust's website,
 at least 14 clear days before the date of the meeting. The notice must:
  - 10.7.4 be given to the Council of Governors and the Board of Directors, and to the auditor;
  - 10.7.5 state whether the meeting is an annual or special members meeting;
  - 10.7.6 give the time, date and place of the meeting; and
  - 10.7.7 indicate the business to be dealt with at the meeting.
- 10.8 Before a members meeting can do business there must be a quorum present. Except where this constitution says otherwise a quorum is one member present from each of the Foundation Trust's constituencies.
- 10.9 The Foundation Trust may make arrangements for members to vote by post, or by using electronic communications.
- 10.10 It is the responsibility of the Council of Governors, the Chair of the meeting and the Secretary to ensure that at any members meeting:
  - 10.10.1 the issues to be decided are clearly explained; and

- 10.10.2 sufficient information is provided to members to enable rational discussion to take place.
- 10.11 The Chair of the Foundation Trust, or in their absence the Deputy Chair of the Council of Governors, or in their absence one of the other Public Governors shall act as chair at all members meetings of the Foundation Trust. If neither the Chair nor the Deputy Chair of the Council of Governors is present, the members of the Council of Governors present shall elect one of their number to be Chair and if there is only one Governor present and willing to act they shall be Chair.
- 10.12 If no quorum is present within half an hour of the time fixed for the start of the meeting, the meeting shall stand adjourned to the same day in the next week at the same time and place or to such time and place as the Council of Governors determine. If a quorum is not present within half an hour of the time fixed for the start of the adjourned meeting, the number of members present during the meeting is to be a quorum.
- 10.13 A resolution put to the vote at a members meeting shall be decided upon by a poll.
- 10.14 Every member present and every member who has voted by post or using electronic communications is to have one vote. In the case of an equality of votes the Chair of the meeting is to have a second or casting vote.
- 10.15 The result of any vote will be declared by the Chair and entered in the minute book. The minute book will be conclusive evidence of the result of the vote.

## **11 COUNCIL OF GOVERNORS**

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



- 11.3.4 shall at all times maintain a policy for the composition of the Council of Governors which takes account of the membership strategy, and
  - 11.3.5 shall from time to time and not less than every three years review the policy for the composition of the Council of Governors, and
  - 11.3.6 when appropriate shall propose amendments to this constitution.
- 11.4 The Council of Governors of the Foundation Trust is to comprise:
- 11.4.1 up to and until 11 September 2018 thirteen Public Governors from the following public constituencies:
    - 11.4.1.1 Bexley – four Public Governors;
    - 11.4.1.2 Bromley – four Public Governors;
    - 11.4.1.3 Greenwich – four Public Governors; and
    - 11.4.1.4 Rest of England – one Public Governor.
  - 11.4.1A from 11 September 2018, ten Public Governors from the following public constituencies:
    - 11.4.1A.1 Bexley – three Public Governors;
    - 11.4.1A.2 Bromley – three Public Governors;
    - 11.4.1A.3 Greenwich – three Public Governors; and
    - 11.4.1A.4 Rest of England – one Public Governor.
  - 11.4.2 up and until 11 September 2018, thirteen Service-user/carer Governors from the classes of the service-user/carers' constituency (with the number of governors as indicated):
    - 11.4.2.1 Working Age Adult Mental Health (including the interests of those in forensic and prison services) – four Service-user/carer Governors;
    - 11.4.2.2 Older People Mental Health – two Service-user/carer Governors;
    - 11.4.2.3 Adult Community Health – four Service-user/carer Governors;
    - 11.4.2.4 Children's – one Service-user/carer Governor;
    - 11.4.2.5 Learning Disability – one Service-user/carer Governor; and
    - 11.4.2.6 Carers – one Service-user/carer Governor;
  - 11.4.2A from 11 September 2018, eleven Service-user/carer Governors from the classes of the service-user/carers' constituency (with the number of governors as indicated):
    - 11.4.2A.1 Bromley adult – two Service-user/carer Governors;

- 11.4.2A.2 Bexley adult – two Service-user/carer Governors;
  - 11.4.2A.3 Greenwich adult – two Service-user/carer Governors;
  - 11.4.2A.3 Children – two Service-user/carer Governors;
  - 11.4.2A.4 Learning disability – one Service-user/carer Governor;
  - 11.4.2A.5 Forensic and prison – one Service user/carer Governor; and
  - 11.4.2A.6 Carers – one Service-user/carer Governor;
- 11.4.3 seven Staff Governors, one from each of the classes of the staff constituency;
  - 11.4.4 three Local Authority Governors, one appointed by each of Bexley Council, the London Borough of Bromley, and the London Borough of Greenwich;
  - 11.4.5 six Partnership Governors who may be appointed by the partnership organisation.

11.4A For the avoidance of doubt, to give effect to the transitional arrangements described in 11.4.1A and 11.4.2A above, each governor whose tenure of office has not expired shall continue as a member of the Council of Governors for the relevant class by which they were elected until the results of the election take effect on 11 September 2018.

11.5 The partnership organisation shall appoint Partnership Governors following consultation with Community Links Bromley and Greenwich Action for Voluntary Service in order to represent the interests of (without limitation) children, older people and people with, or people engaging with people with, learning disabilities and/or mental health issues.

### **Elected Governors**

- 11.6 Public Governors are to be elected by members of their public constituency, Service-user/carer Governors are to be elected by members of their class of the service-user/carers' constituency and Staff Governors are to be elected by members of their class of the staff constituency. Each class/constituency may elect any of their number to be a Governor in accordance with the provisions of this constitution.
- 11.7 If contested, the elections must be by secret ballot.
- 11.8 Elections shall be carried out in accordance with the model election rules (as published from time to time by NHS Providers) set out in Annex 2.
- 11.9 A member of a public constituency may not vote at an election for a Public Governor and a member of the service-user/carers' constituency may not vote at an election for a Service-user/carer Governor unless within twenty-one days before they vote they have made a declaration in the form specified by the Secretary that they are qualified to vote as a member of the relevant public constituency or the service-user/carers' constituency (as the case may

be). It is an offence to knowingly or recklessly make such a declaration which is false in a material particular.

### **Local Authority Governors**

11.10 The Chair, having consulted Bexley Council, the London Borough of Bromley, and the London Borough of Greenwich is to adopt a process for agreeing the appointment of Local Authority Governors with those local authorities.

### **Partnership Governors**

11.11 The Partnership Governors are to be appointed by the partnership organisation, in accordance with paragraph 11.5 and a process agreed with the Chair.

### **Appointment of Deputy Chair of the Council of Governors**

11.12 The Council of Governors shall appoint one of the Governors to be Deputy Chair of the Council of Governors.

### **Terms of office for Governors**

11.13 Elected Governors:

11.13.1 shall normally hold office for a period of three years commencing immediately after the annual members meeting at which their election is announced;

11.13.2 are eligible for re-election after a three year period of office and after a six year period of office;

11.13.3 may not hold office for more than three successive terms making nine consecutive years, and shall not be eligible for re-election if they have already held office for more than six consecutive years.

11.14 Appointed Governors:

11.14.1 shall normally hold office for a period of three years commencing immediately after the annual members meeting at which their appointment is announced;

11.14.2 are eligible for re-appointment after a three year period of office and after a six year period of office;

11.14.3 may not hold office for longer than three successive terms making nine consecutive years, and shall not be eligible for re-appointment if they have already held office for more than six consecutive years.

11.15 For the purposes of these provisions concerning terms of office for Governors, "year" means a period commencing immediately after the conclusion of the annual members meeting, and ending at the conclusion of the next annual members meeting.

### **Eligibility to be a Governor**

- 11.16 A person may not become a Governor of the Foundation Trust, and if already holding such office will immediately cease to do so, if:
- 11.16.1 they are under sixteen years of age;
  - 11.16.2 They are a Director of the Foundation Trust
  - 11.16.3 they are the spouse, partner, parent or child of a member of the Board of Directors of the Foundation Trust;
  - 11.16.4 ;
  - 11.16.5 being a member of one of the public constituencies or the service-user/carers' constituency, they refuse to sign a declaration in the form specified by the Secretary of particulars of their qualification to vote as a member of the Foundation Trust, and that they are not prevented from being a member of the Council of Governors;
  - 11.16.6 they are a vexatious complainant;
  - 11.16.7 on the basis of disclosures obtained through an application to the Disclosure and Barring Service established under section 87 of the Protection of Freedoms Act 2012 (or any other checks required by the Foundation Trust from time to time as being consistent with its licence conditions or mandatory or nationally recommended good governance arrangements), they are not considered suitable by the Foundation Trust's executive Director responsible for Human Resources or the Chairman;
  - 11.16.8 they have been adjudged bankrupt or their estate has been sequestrated and in either case they have not been discharged;
  - 11.16.9 they are a person in relation to whom a moratorium period under a debt relief order applies (under part 7A of the Insolvency Act 1986);
  - 11.16.10 they have made a composition or arrangement with, or granted a trust deed for, their creditors and have not been discharged in respect of it;
  - 11.16.11 they have within the preceding five years been convicted in the British Islands of any offence, and a sentence of imprisonment (whether suspended or not) for a period of three months or more (without the option of a fine) was imposed;
  - 11.16.12 they do not satisfy all of the requirements of Regulation 5(3) of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014/2936 (as amended or updated from time to time);
  - 11.16.13 they have within the preceding two years been dismissed from any paid employment with a health service body, otherwise than by reason of redundancy, sickness or dismissal that was found by an Employment Tribunal or competent court (or on appeal in either case) to be unfair, wrongful or discriminatory; and/or

- 11.16.14 they are a person whose tenure of office as the Chair or as a member or director of a health service body has been terminated on the grounds that their appointment is not in the interests of the health service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest.

### **Termination of office and removal of Governors**

- 11.17 A person holding office as a Governor shall immediately cease to do so if:
  - 11.17.1 they resign by notice in writing to the Secretary;
  - 11.17.2 they fail to attend two consecutive meetings, unless the other Governors are satisfied that:
    - 11.17.2.1 the absences were due to reasonable causes; and
    - 11.17.2.2 they will be able to start attending meetings of the Council of Governors again within such a period as the other Governors consider reasonable.
  - 11.17.3 in the case of an elected Governor, they cease to be a member of the constituency or class of the constituency by which they were elected;
  - 11.17.4 in the case of an appointed Governor, the appointing organisation terminates the appointment;
  - 11.17.5 they have refused without reasonable cause to undertake any training which the Council of Governors requires all Governors to undertake;
  - 11.17.6 they have failed to sign and deliver to the Secretary a statement in the form required by the Secretary confirming acceptance of the code of conduct for Governors;
  - 11.17.7 they are removed from the Council of Governors under the following provisions.
- 11.18 A Governor may be removed from the Council of Governors by a resolution approved by not less than two-thirds of the remaining Governors present and voting on the grounds that:
  - 11.18.1 they have committed a serious breach of the code of conduct; or
  - 11.18.2 they have acted in a manner detrimental to the interests of the Foundation Trust; and
  - 11.18.3 the Council of Governors consider that it is not in the best interests of the Foundation Trust for them to continue as a Governor.

### **Vacancies amongst Governors**

- 11.19 Where a vacancy arises on the Council of Governors for any reason other than expiry of term of office, the following provisions will apply.

- 11.20 Where the vacancy arises amongst the appointed Governors, the Secretary shall request that the appointing organisation appoints a replacement to hold office for the remainder of the term of office.
- 11.21 Where the vacancy arises amongst the elected Governors, the Council of Governors shall be at liberty either:
- 11.21.1 to call an election within three months to fill the seat for the remainder of that term of office; or
  - 11.21.2 to invite the next highest polling candidate for that seat at the most recent election, who is willing to take office, to fill the seat until the next annual election, at which time the seat will fall vacant and subject to election for any unexpired period of the term of office.

### **Expenses and remuneration of Governors**

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

### **Meetings of the Council of Governors**

- 11.24 The Council of Governors is to meet at least twice in each Financial Year. Save in the case of emergencies or the need to conduct urgent business, the Secretary shall give at least fourteen days written notice of the date and place of every meeting of the Council of Governors to all Governors. Notice will also be published in a local newspaper or newspapers circulating in the area served by the Foundation Trust, and on the Foundation Trust's website.
- 11.25 Meetings of the Council of Governors may be called by the Secretary, or by the Chair, or by ten Governors (including at least two elected Governors and two appointed Governors) who give written notice to the Secretary specifying the business to be carried out. The Secretary shall send a written notice to all Governors as soon as possible after receipt of such a request. The Secretary shall call a meeting on at least fourteen but not more than twenty-eight days' notice to discuss the specified business. If the Secretary fails to call such a meeting then the Chair or ten Governors, whichever is the case, shall call such a meeting.
- 11.26 All meetings of the Council of Governors are to be General Meetings open to members of the public unless the Council of Governors decides otherwise in relation to all or part of a meeting for reasons of commercial confidentiality or on other proper grounds. The Chair may exclude any person from a meeting of the Council of Governors if they are interfering with or preventing the proper conduct of the meeting.
- 11.27 Twelve Governors including not less than two Public Governors, not less than two Service-user/carer Governors, not less than two Staff Governors and not less than two appointed Governors shall form a quorum.

- 11.28 The Chair of the Foundation Trust or, in their absence, the Vice Chair of the Board of Directors, or in their absence one of the non-executive Directors is to preside at meetings of the Council of Governors. If the person presiding at any such meeting has a conflict of interest in relation to the business being discussed, the Deputy Chair of the Council of Governors will chair that part of the meeting.
- 11.29 For the purposes of obtaining information about the Foundation Trust's performance of its functions or the Directors' performance of their duties (and deciding whether to propose a vote on the Foundation Trust's or Directors' performance), the Council of Governors may require one or more of the Directors to attend a meeting.
- 11.30 The Council of Governors may agree that its members can participate in its meetings by telephone, video or computer link. Participation in a meeting in this manner shall be deemed to constitute presence in person at the meeting.
- 11.31 Subject to this constitution and the following provisions of this paragraph, questions arising at a meeting of the Council of Governors shall be decided by a majority of votes.
- 11.31.1 In case of an equality of votes the person presiding at or chairing the meeting shall have a casting vote.
- 11.31.2 No resolution of the Council of Governors shall be passed if it is opposed by all of the Service User/Carer Governors and Public Governors present.
- 11.32 The Council of Governors may not delegate any of its powers to a committee or sub-committee, but it may appoint committees to assist the Council of Governors in carrying out its functions. The Council of Governors may appoint Governors and may invite Directors and other persons to serve on such committees. The Council of Governors may, through the Secretary, request that external advisors assist them or any committee they appoint in carrying out its duties.
- 11.33 All decisions taken in good faith at a meeting of the Council of Governors or of any committee shall be valid even if it is discovered subsequently that there was a defect in the calling of the meeting, or the appointment of the Governors attending the meeting.

### **Disclosure of interests**

- 11.34 Any Governor who has a material interest in a matter as defined below shall declare such interest to the Council of Governors and:
- 11.34.1 shall withdraw from the meeting and play no part in the relevant discussion or decision; and
- 11.34.2 shall not vote on the issue (and if by inadvertence they do remain and vote, their vote shall not be counted).
- 11.35 Any Governor who fails to disclose any interest required to be disclosed under the preceding paragraph must permanently vacate their office if required to do so by a majority of the remaining Governors.

- 11.36 Subject to the exceptions below, a material interest is:
- 11.36.1 any directorship of a company;
  - 11.36.2 any interest or position held by a Governor in any firm or company or business which, in connection with the matter, is trading with the Foundation Trust, or is likely to be considered as a potential trading partner with the Foundation Trust;
  - 11.36.3 any interest in an organisation providing health and social care services to the National Health Service;
  - 11.36.4 a position of authority in a charity or voluntary organisation in the field of health and social care; and/or
  - 11.36.5 any connection with any organisation, entity or company considering entering into a financial arrangement with the Foundation Trust including but not limited to lenders or banks.
- 11.37 The exceptions which shall not be treated as material interests are as follows:
- 11.37.1 shares not exceeding 2% of the total shares in issue held in any company whose shares are listed on any public exchange;
  - 11.37.2 an employment contract held by a Staff Governor;
  - 11.37.3 an employment contract with a local authority held by a Local Authority Governor; and/or
  - 11.37.4 an employment contract with the partnership organisation held by a Partnership Governor.
- 11.38 The Council of Governors is to adopt its own standing orders for its practice and procedure, in particular for its procedure at meetings.

### **Declaration**

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

## **12 BOARD OF DIRECTORS**

- 12.1 The Foundation Trust is to have a Board of Directors. It is to consist of executive and non-executive Directors.
- 12.2 The board is to include:
- 12.2.1 the following non-executive Directors:



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

12.2.1.2 not less than five and not more than seven other non-executive Directors who are to be appointed (and removed) by the Council of Governors at a General Meeting;

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

12.2.2 the following executive Directors:

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

12.2.2.2 a Finance Director, and other executive Directors, subject to a maximum of six executive Directors which must include a registered medical practitioner or a registered dentist, a registered nurse or registered midwife, all of whom are to be appointed (and removed) by a committee consisting of the Chair, the Chief Executive and the other non-executive Directors.

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

12.4 The Chief Executive shall nominate one of the executive Directors to be Deputy Chief Executive.

12.5 Only a member of one of the public constituencies or service-user/carers' constituency is eligible for appointment as a non-executive Director.

12.6 Non-executive Directors are to be appointed by the Council of Governors using the following procedure:

12.6.1 the Council of Governors will maintain a policy for the composition of the non-executive Directors which takes account of the membership strategy, and which they shall review from time to time and not less than every three years;

12.6.2 the Board of Directors may work with an external organisation recognised as expert at appointments to identify the skills and experience required for non-executive Directors;

- 12.6.3 appropriate candidates (not more than five for each vacancy) will be identified by a Nominations Committee through a process of open competition, which take account of the policy maintained by the Council of Governors and the skills and experience required; and
  - 12.6.4 the Nominations Committee will comprise the Chair of the Foundation Trust (or the Vice Chair unless they are standing for appointment, in which case another non-executive director, when a Chair is being appointed), two elected Governors and one Appointed Governor.
- 12.7 The removal of the Chair or another non-executive Director shall be in accordance with the following procedures:
- 12.7.1 any proposal for removal must be proposed by a Governor and seconded by not less than ten Governors including at least two elected Governors and two appointed Governors;
  - 12.7.2 written reasons for the proposal shall be provided to the non-executive Director in question, who shall be given the opportunity to respond to such reasons;
  - 12.7.3 in making any decision to remove a non-executive Director, the Council of Governors shall take into account any annual appraisal carried out by the Chair; and
  - 12.7.4 if any proposal to remove a non-executive Director is not approved at a meeting of the Council of Governors, no further proposal can be put forward to remove such non-executive Director based upon the same reasons within 12 months of the meeting.

### **Terms of Office**

- 12.8 The Chair and other non-executive Directors shall hold office for a period of up to three years, and are eligible for re-appointment after a three year period of office.
- 12.9 The Chair and other non-executive Directors may not hold office for more than three successive terms (nine consecutive years in total).
- 12.10 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.
- 12.11 The Chair and the non-executive Directors are to be appointed in accordance with the terms and conditions of office, decided by the Council of Governors at a General Meeting. Any re-appointment of a non-executive Director by the Council of Governors shall be subject to a satisfactory appraisal carried out in accordance with procedures which the Board of Directors have approved.
- 12.12 The remuneration committee of non-executive Directors shall decide the terms and conditions of office including remuneration and allowances of all the executive Directors.

## Disqualification

- 12.13 A person may not become or continue as a Director of the Foundation Trust if:
- 12.13.1 they are a member of the Council of Governors;
  - 12.13.2 they are the spouse, partner, parent or child of a member of the Board of Directors of the Foundation Trust;
  - 12.13.3 they have been adjudged bankrupt or their estate has been sequestrated and in either case they have not been discharged;
  - 12.13.4 they are a person in relation to whom a moratorium period under a debt relief order applies (under part 7A of the Insolvency Act 1986);
  - 12.13.5 they have made a composition or arrangement with, or granted a Trust deed for, their creditors and have not been discharged in respect of it;
  - 12.13.6 they have within the preceding five years been convicted in the British Islands of any offence, and a sentence of imprisonment (whether suspended or not) for a period of three months or more (without the option of a fine) was imposed;
  - 12.13.7 they are the subject of a disqualification order made under the Company Directors Disqualification Act 1986;
  - 12.13.8 they are a person whose tenure of office as a Chair or as a member or Director of a health service body has been terminated on the grounds that their appointment is not in the interests of the health service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest;
  - 12.13.9 they have within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with a health service body;
  - 12.13.10 on the basis of disclosures obtained through an application to the Disclosure and Barring Service established under section 87 of the Protection of Freedoms Act 2012 (or any other checks required by the Foundation Trust from time to time as being consistent with its licence conditions or mandatory or nationally recommended good governance arrangements), they are not considered suitable by the Foundation Trust's executive Director responsible for Human Resources or the Chairman;
  - 12.13.11 in the case of a non-executive Director they have refused without reasonable cause to fulfil any training requirement established by the Board of Directors;

- 12.13.12 they have refused to sign and deliver to the Secretary a statement in the form required by the Board of Directors confirming acceptance of the code of conduct for Directors;
- 12.13.13 in the case of a non-executive Director, they are no longer a member of one of the public constituencies or the service-user/carers' constituency; and/or
- 12.13.14 they do not satisfy all of the requirements of Regulation 5(3) of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014/2936 (as amended or updated from time to time).

### **Committees and delegation**

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

### **Meetings of the Board of Directors**

- 12.17 Save in the case of emergencies or the need to conduct urgent business, the Secretary shall give to all Directors at least fourteen days written notice of the date and place of every meeting of the Board of Directors.
- 12.18 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, including but not limited to where the Board of Directors decides all or part of a meeting must be held in private for reasons of commercial confidentiality or on other proper grounds. The Chair may exclude any member of the public from a meeting of the Board of Directors if they are interfering with or preventing the proper conduct of the meeting.
- 12.19 Meetings of the Board of Directors are called by the Secretary, or by the Chair, or by four Directors who give written notice to the Secretary specifying the business to be carried out. The Secretary shall send a written notice to all Directors as soon as possible after receipt of such a request. The Secretary shall call a meeting on at least fourteen but not more than twenty-eight days' notice to discuss the specified business. If the Secretary fails to call such a meeting then the Chair or four Directors, whichever is the case, shall call such a meeting.
- 12.20 Seven Directors including not less than two executive Directors (one of whom must be the Chief Executive or the Deputy Chief Executive), and not less than two non-executive Directors (one of whom must be the Chair or the Vice-Chair of the Board) shall form a quorum.

- 12.21 The Board of Directors may agree that its members can participate in its meetings by telephone, video or computer link. Participation in a meeting in this manner shall be deemed to constitute presence in person at the meeting.
- 12.22 The Chair of the Foundation Trust or, in their absence, the Vice-Chair of the Board of Directors, is to chair meetings of the Board of Directors.
- 12.23 Subject to the following provisions of this paragraph, questions arising at a meeting of the Board of Directors shall be decided by a majority of votes.
- 12.23.1 In case of an equality of votes the Chair shall have a second and casting vote.
- 12.23.2 No resolution of the Board of Directors shall be passed if it is opposed by all of the non-executive Directors present or by all of the executive Directors present.
- 12.24 The Board of Directors is to adopt Standing Orders covering the proceedings and business of its meetings. The proceedings shall not however be invalidated by any vacancy of its membership, or defect in a Director's appointment.

### **Conflicts of Interest of Directors**

- 12.25 Any Director who has a material interest in a matter as defined below shall declare such interest to the Board of Directors and:
- 12.25.1 shall withdraw from the meeting and play no part in the relevant discussion or decision; and
- 12.25.2 shall not vote on the issue (and if by inadvertence they do remain and vote, their vote shall not be counted).
- 12.26 Details of any such interest shall be recorded in the register of the interests of Directors.
- 12.27 Any Director who fails to disclose any interest required to be disclosed under the preceding paragraph must permanently vacate their office if required to do so by a majority of the remaining Directors and (in the case of a non-executive Director) by the requisite majority of the Council of Governors.
- 12.28 A material interest is:
- 12.28.1 any directorship of a company;
- 12.28.2 any interest (excluding a holding of shares in a company whose shares are listed on any public exchange where the holding is less than 2% of the total shares in issue) or position held by a Director in any firm or company or business which, in connection with the matter, is trading with the Foundation Trust, or is likely to be considered as a potential trading partner with the Foundation Trust;

- 12.28.3 any interest in an organisation providing health and social care services to the National Health Service;
  - 12.28.4 a position of authority in a charity or voluntary organisation in the field of health and social care; and/or
  - 12.28.5 any connection with any organisation, entity or company considering entering into a financial arrangement with the Foundation Trust including but not limited to lenders or banks.
- 12.29 A material interest shall have been authorised if:
- 12.29.1 the Board of Directors by majority disapplies the provision of the constitution which would otherwise prevent a Director from being counted as participating in the decision-making process;
  - 12.29.2 the Director's interest cannot reasonably be regarded as likely to give rise to a conflict of interest; or
  - 12.29.3 the Director's conflict of interest arises from a permitted cause.
  - 12.29.4 For the purposes of paragraph 12.29.3, the following is a permitted cause:
    - 12.29.4.1 a guarantee given, or to be given, by or to a Director in respect of an obligation incurred by or on behalf of the Foundation Trust or any of its subsidiaries.
- 12.30 For the purposes of this paragraph, references to proposed decisions and decision-making processes include any Directors' meeting or part of a Directors' meeting.
- 12.31 Subject to paragraph 12.32, if a question arises at a meeting of Directors or of a committee of Directors as to the right of a Director to participate in the meeting (or part of the meeting) for voting or quorum purposes, the question may, before the conclusion of the meeting, be referred to the Chair whose ruling in relation to any Director other than the Chair is to be final and conclusive.
- 12.32 If any question as to the right to participate in the meeting (or part of the meeting) should arise in respect of the Chair, the question is to be decided by a decision of the Directors at that meeting, for which purpose the Chair is not to be counted as participating in the meeting (or that part of the meeting) for voting or quorum purposes.
- 12.33 This paragraph does not require a declaration of an interest of which the Director is not aware or where the Director is not aware of the transaction of arrangement in question.
- 12.34 Should an interest in a matter for consideration or decision at a board meeting

or board committee meeting affect either all the non-executive Directors or all the executive Directors, the Directors present not affected by the interest will form the quorum for that item.

## **Expenses**

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

12.36 The remuneration and allowances for Directors are to be disclosed in bands in the annual report.

## **13 REGISTERS**

13.1 The Foundation Trust is to have:

13.1.1 a register of members showing, in respect of each member, the constituency and (where relevant) the class of a constituency to which they belong;

13.1.2 a register of members of the Council of Governors;

13.1.3 a register of Directors;

13.1.4 a register of interests of Governors; and

13.1.5 a register of interests of the Directors.

13.2 The Secretary shall remove from the register of members the name of any member who ceases to be entitled to be a member under the provisions of this constitution.

## **14 PUBLIC DOCUMENTS**

14.1 The following documents of the Foundation Trust are to be available for inspection by members of the public free of charge at all reasonable times, and shall be available on the Foundation Trust's website:

14.1.1 a copy of the current constitution;

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

14.1.3 a copy of the report of any other external auditor of the Foundation Trust's affairs appointed by the Council of Governors;

14.1.4 a copy of the latest annual report;

14.1.5 a copy of the latest information as to its forward planning;

- 14.1.6 a copy of the Foundation Trust's membership development strategy; and
  - 14.1.7 a copy of the Foundation Trust's policy for the composition of the Council of Governors and of the non-executive Directors; and
  - 14.1.8 a copy of any notice, information, order, statement, or report given under paragraph 22(1) of schedule 7 to the 2006 Act.
- 14.2 The registers specified in paragraph 13 above shall be made available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations. The Foundation Trust shall not make any part of its registers available for inspection by members of the public which shows details of:
- 14.2.1 any member of the service user/carers' constituency where that member has not consented to his details being made so available; or
  - 14.2.2 any other member of the Foundation Trust, if they so request, and
- so far as they are required to be available they are to be available free of charge at all reasonable times.
- 14.3 Any person who requests it is to be provided with a copy or extract from any of the above documents or registers. The Foundation Trust may impose a reasonable charge for providing the copy or extract, but a member is entitled to a copy or extract from the registers free of charge.

## **15 AUDITOR**

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

## **16 ACCOUNTS**

- 16.1 The Foundation Trust must keep proper accounts and proper records in relation to the accounts.
- 16.2 Monitor may with the approval of the Secretary of State give directions to the Foundation Trust as to the content and form of its accounts.
- 16.3 The accounts are to be audited by the Foundation Trust's auditor.
- 16.4 The Foundation Trust shall prepare in respect of each Financial Year annual accounts in such form as Monitor may with the approval of the Secretary of State direct.
- 16.5 The following documents will be made available to the Comptroller and Auditor General for examination at his request:
  - 16.5.1 the accounts;



- 16.5.2 the records relating to them; and
- 16.5.3 any report of the auditor on them.
- 16.6 The accounting officer shall cause the Foundation Trust to prepare in respect of each Financial Year annual accounts in such form as Monitor may with the approval of the Secretary of State direct.
- 16.7 In preparing its annual accounts, the accounting officer shall cause the Foundation Trust to comply with any directions given by Monitor with the approval of the Secretary of State as to:
  - 16.7.1 the methods and principles according to which the accounts are to be prepared; and
  - 16.7.2 the content and form of the accounts.
- 16.8 The annual accounts, any report of the auditor on them, and the annual report are to be presented to the Council of Governors at a General Meeting.
- 16.9 The accounting officer shall cause the Foundation Trust to:
  - 16.9.1 lay a copy of the annual accounts, and any report of the auditor on them, before Parliament; and
  - 16.9.2 once it has done so, send copies of those documents to Monitor within such a period as Monitor may direct.

## **17 ANNUAL REPORTS, FORWARD PLANS AND NON-NHS WORK**

- 17.1 The Foundation Trust is to prepare annual reports and send them to Monitor.
- 17.2 The reports are to give:
  - 17.2.1 information on any steps taken by the Foundation Trust to secure that (taken as a whole) the actual membership of its public constituencies, the classes of the service-user/carers' constituency and of the classes of the staff constituency is representative of those eligible for such membership;
  - 17.2.2 information on any occasions in the period to which the report relates on which the Council of Governors exercised its power under paragraph 11.29 above;
  - 17.2.3 information on the Foundation Trust's policy on pay and on the work of the committee established under paragraph 12.12 above and such other procedures as the Foundation Trust has on pay;
  - 17.2.4 information on the remuneration of the Directors and on the expenses of the Governors and the Directors; and
  - 17.2.5 any other information Monitor requires.
- 17.3 The Foundation Trust is to comply with any decision Monitor makes as to:
  - 17.3.1 the form of the reports;

- 17.3.2 when the reports are to be sent to him; and
- 17.3.3 the periods to which the reports are to relate.
- 17.4 The Foundation Trust is to give information as to its forward planning in respect of each Financial Year to Monitor. The document containing this information is to be prepared by the Directors, and in preparing the document, the Board of Directors must have regard to the views of the Council of Governors.
- 17.5 Each forward plan must include information about:
  - 17.5.1 the activities other than the provision of goods and services for the purposes of the health service in England that the Foundation Trust proposes to carry on; and
  - 17.5.2 the income it expects to receive from doing so.
- 17.6 Where a forward plan contains a proposal that the Foundation Trust carry on an activity of a kind mentioned in sub-paragraph 17.5.1 the Council of Governors must:
  - 17.6.1 determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfilment by the Foundation Trust of its principal purpose or the performance of its other functions; and
  - 17.6.2 notify the Directors of the Foundation Trust of its determination.
- 17.7 Where the Foundation Trust proposes to increase by 5% or more the proportion of its total income in any Financial Year attributable to activities other than the provision of goods and services for the purposes of the health service in England it may implement the proposal only if more than half of the members of the Council of Governors of the Foundation Trust voting approve its implementation.

## **18 INDEMNITY**

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

## **19 EXECUTION OF DOCUMENTS**

- 19.1 A document purporting to be duly executed under the Foundation Trust's seal or to be signed on its behalf is to be received in evidence and, unless the contrary is proved, taken to be so executed or signed.
- 19.2 The Foundation Trust is to have a seal, but this is not to be affixed except under the authority of the Board of Directors.

## **20 DISPUTE RESOLUTION PROCEDURES**

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

## **21 AMENDMENT OF THE CONSTITUTION**

- 21.1 The Foundation Trust may make amendments of its constitution only if:
- 21.1.1 more than half of the members of the Council of Governors of the Foundation Trust voting approve the amendments; and
  - 21.1.2 more than half of the members of the Board of Directors of the Foundation Trust voting approve the amendments.
- 21.2 Amendments made under paragraph 21.1 take effect as soon as the conditions in that paragraph are satisfied, but the amendment has no effect in so far as the constitution would, as a result of the amendment, not accord with schedule 7 of the 2006 Act.
- 21.3 Where an amendment is made to the constitution in relation the powers or duties of the Council of Governors (or otherwise with respect to the role that the Council of Governors has as part of the Foundation Trust):
- 21.3.1 at least one member of the Council of Governors must attend the next Annual Members' Meeting and present the amendment; and
  - 21.3.2 the Foundation Trust must give the members an opportunity to vote on whether they approve the amendment.
- 21.4 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 Foundation Trust must take such steps as are necessary as a result.
- 21.5 Amendments by the Foundation Trust of its constitution are to be notified to Monitor. For the avoidance of doubt, Monitor's functions do not include a

power or duty to determine whether or not the constitution, as a result of the amendments, accords with Schedule 7 of the 2006 Act.

## **22 MERGERS ETC. AND SIGNIFICANT TRANSACTIONS**

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

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

22.3 In paragraph 22.2, the following words have the following meanings:

22.4 “significant transaction” means a transaction which meets any one of the tests below:

22.4.1 the fixed/gross asset test; or

22.4.2 the turnover/income test; or

22.4.3 the gross capital test (relating to acquisitions or divestments).

The fixed asset test:

22.4.4 is met if the assets which are the subject of the transaction exceed 10% of the fixed assets of the Foundation Trust.

The turnover test:

22.4.5 is met if, following the completion of the relevant transaction, the gross income of the Foundation Trust will increase or decrease by more than 10%.

The gross capital test:

22.4.6 is met if the gross capital of the company or business being acquired or divested represents more than 10% of the capital of the Foundation Trust following completion (where “gross capital” is the market value of the relevant company or business’s shares and debt securities, plus the excess of current liabilities over current assets, and the Foundation Trust’s capital is determined by reference to its balance sheet).

22.4.7 for the purposes of calculating the tests in this paragraph 22.4 figures used to classify assets and profits must be the figures shown in the latest published audited consolidated accounts.

A transaction:

22.4.8 includes all agreements (including amendments to agreements) entered into by the Foundation Trust; but

22.4.8.1 excludes a transaction in the ordinary course of business (including the renewal, extension or

entering into an agreement in respect of healthcare services carried out by the Foundation Trust);

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

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

## **23 HEAD OFFICE**

23.1 The Foundation Trust's head office is at Pinewood House, Pinewood Place, Dartford, Kent DA2 7WG or such other place as the Board of Directors shall decide.

## **24 NOTICES**

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

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

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2. Bromley – the electoral area covered by the London Borough of Bromley
3. Greenwich – the electoral area covered by the London Borough of Greenwich
4. Rest of England – all other electoral areas in England not already covered by the electoral areas in Bexley, Bromley, and Greenwich

## Annex 2

# Oxleas NHS Foundation Trust (Council of Governors) Election Rules

## Model Election Rules – Single Transferable Vote

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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 40th day before the day of the close of the poll. |
| Final day for delivery of nomination forms to returning officer              | Not later than the 28th day before the day of the close of the poll. |
| Publication of statement of nominated Candidates                             | Not later than the 27th 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 25th day before the day of the close of the poll.     |

|                    |  |
|--------------------|--|
| Notice of the poll | Not later than the 15th day before the day of the close of the poll. |
| Close of the poll  | By 5pm 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 email 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 email 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 service user/carers' 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 email 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 COUNTING THE VOTES**

**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 email 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 is 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 service user/carers' constituencies)**

21.1. The corporation shall require each voter who participates in an election for a public or service user/carers' 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 email 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 email to

those members in the list of eligible voters for whom an email 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 64 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 email 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 email to those members in the list of eligible voters for whom an email address is included in that list, then the returning officer shall only send that information by email.

24.5. The voting information is to be sent to the postal address and/or email 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 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 service user/carers' 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 service user/carers' 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 service user/carers' constituency, make a declaration of identity;
 in order to be able to cast his or her vote;
- (b) prevent a voter from voting for more candidates than he or she is entitled to at the election;
- (c) create a record ("text voting record") that is stored in the text messaging voting system in respect of each vote cast by a voter by

text message that comprises of:

- (i) the voter's voter ID number;
  - (ii) the voter's declaration of identity (where required);
  - (iii) the candidate or candidates for whom the voter has voted;  
and
  - (iv) the date and time of the voter's vote;
- (d) if the voter's vote has been duly cast and recorded, provide the voter with confirmation of this;
- (e) prevent any voter from voting after the close of poll.

## **The poll**

### **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 service user/carers' constituencies)**

- 32.1. In respect of an election for a public or service user/carers' 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 service user/carers' constituency)**
- 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.

**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**

### **41. Interpretation of Part 6**

41.1. 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 49;

"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 46;

"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 47.4 or 47.7.

## **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(a)(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.

**44. Rejected ballot papers and rejected text voting records**

44.1. 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.

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

44.3. 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.

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

44.5. 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 44.1 and the number of text voting records rejected by him or her under each of the sub-paragraphs (a) to (c) of rule 44.3.

#### **45. First stage**

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

45.2. 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.

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

#### **46. The quota**

46.1. 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.

46.2. The result, increased by one, of the division under rule 46.1 (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").

46.3. 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 47.1 to 47.3 has been complied with.

#### **47. Transfer of votes**

47.1. 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.

- 47.2. The returning officer is to count the number of ballot documents in each parcel referred to in rule 47.1.
- 47.3. The returning officer is, in accordance with this rule and rule 48, to transfer each sub-parcel of ballot documents referred to in rule 47.1 (a) to the candidate for whom the next available preference is given on those ballot documents.
- 47.4. The vote on each ballot document transferred under rule 47.3 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).
- 47.5. 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.
- 47.6. The returning officer is, in accordance with this rule and rule 48, to transfer each sub-parcel of ballot documents referred to in rule 47.5(a) to the candidate for whom the next available preference is given on those ballot documents.
- 47.7. The vote on each ballot document transferred under rule 47.6 shall be at:
- (a) a transfer value calculated as set out in rule 47.4(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.
- 47.8. Each transfer of a surplus constitutes a stage in the count.
- 47.9. Subject to rule 47.10, 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.
- 47.10. 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.

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

#### **48. Supplementary provisions on transfer**

48.1. 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.

48.2. The returning officer shall, on each transfer of transferable ballot documents under rule 47:

- (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.

48.3. All ballot documents transferred under rule 47 or 49 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.

48.4. Where a ballot document is so marked that it is unclear to the returning officer at any stage of the count under rule 47 or 49 for which candidate the next preference is recorded, the returning officer shall treat any vote on that ballot document as a nontransferable 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.

**49. Exclusion of candidates**

49.1. If:

(a) all transferable ballot documents which under the provisions of rule 47 (including that rule as applied by rule 49.11) and this rule are required to be transferred, have been transferred; and

(b) subject to rule 50, 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 49.12 applies, the candidates with the then lowest votes).

49.2. The returning officer shall sort all the ballot documents on which first preference votes are given for the candidate or candidates excluded under rule 49.1 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).

49.3. The returning officer shall, in accordance with this rule and rule 48, transfer each sub-parcel of ballot documents referred to in rule 49.2 to the candidate for whom the next available preference is given on those ballot documents.

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

49.5. If, subject to rule 50, 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 49.1 into sub-parcels according to their transfer value.

49.6. 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).

49.7. The vote on each transferable ballot document transferred under rule 49.6 shall be at the value at which that vote was received by the candidate excluded under rule 49.1.

- 49.8. Any ballot documents on which no next available preferences have been expressed shall be set aside as non-transferable votes.
- 49.9. 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 49.1.
- 49.10. 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.
- 49.11. 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 47.5 to 47.10 and rule 48.
- 49.12. 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.
- 49.13. 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.

## **50. Filling of last vacancies**

- 50.1. 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.
- 50.2. 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.
- 50.3. Where the last vacancies can be filled under this rule, no further transfer of votes shall be made.

## **51. Order of election of candidates**

- 51.1. 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 47.10.
- 51.2. 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 or she obtained the quota.
- 51.3. 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.
- 51.4. Where the number of votes credited to two or more candidates were equal at all stages of the count, the returning officer shall decide between them by lot and the candidate on whom the lot falls shall be deemed to have been elected first.

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

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

- 52.1. 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 NHS Trust by section 33(4) of the 2006 Act, to the chair of the NHS Trust; or
    - (ii) in any other case, to the chair of the corporation; and
  - (c) give public notice of the name of each candidate who he or she has declared elected.

- 52.2. 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 44.1;
  - (f) the number of rejected text voting records under each of the headings in rule 44.3;
- 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 chair of the corporation; and
  - (c) give public notice of the name of each candidate who he or she has declared elected.

**PART 8 DISPOSAL OF DOCUMENTS**

**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 chair 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**

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

59.1. 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.

59.2. 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**

### **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; and
- (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 paper;

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.