

**PETERBOROUGH AND STAMFORD HOSPITALS  
NHS FOUNDATION TRUST**

**Model Core Constitution**

**(updated as per the Health and Social Care Act 2012)**

**Peterborough and Stamford Hospitals  
NHS Foundation Trust Model Core Constitution**

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## **1. Interpretation and definitions**

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

Unless otherwise stated, all references are to paragraph numbers in Schedule 7 of the 2006 Act as amended by the 2012 Act.

Unless otherwise stated, the Model Core Constitution reflects the relevant provisions of the 2006 Act as amended by the 2012 Act.

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

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

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

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

**Adviser** means an individual formally appointed by resolution of the Council of Governors to advise the Council of Governors at meetings of the Council of governors in an advisory and non-voting capacity.

**Annual Members Meeting** is defined in paragraph 11 of the constitution

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

**financial year** means each successive period of twelve months beginning with 1 April.

**local authority governor** means a member of the Council of Governors who is an appointed governor who is appointed by one or more local authorities whose area includes the whole or part of the area of the trust.

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

**partnership governor** means a member of the Council of Governors who is an appointed governor and who is appointed by a partnership organisation.

**public governor** means a member of the Council of Governors who is an elected governor and who is elected by the members of the public constituency.

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

**staff governor** means a member of the Council of Governors who is an elected governor and who is elected by the members of the staff constituency.

**Trust Values** means the values set out in the Statement in the appendix to Annex 8 (Further Provisions).

## 2. Name

The name of the foundation trust is the Peterborough and Stamford Hospitals NHS Foundation Trust (the trust).

## 3. Principal purpose

- 3.1 The principal purpose of the trust is the provision of goods and services for the purposes of the health service in England.
- 3.2 The trust does not fulfil its principal purpose unless, in each financial year, its total income from the provision of goods and services for the purposes of the health service in England is greater than its total income from the provision of goods and services for any other purposes.
- 3.3 The trust may provide goods and services for any purposes related to—
  - 3.3.1 the provision of services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness, and
  - 3.3.2 the promotion and protection of public health.
- 3.4 The trust may also carry on activities other than those mentioned in the above paragraph for the purpose of making additional income available in order better to carry on its principal purpose.

## 4. Powers

- 4.1 The powers of the trust are set out in the 2006 Act.
- 4.2 All the powers of the trust shall be exercised by the Board of Directors on behalf of the trust.

- 4.3 Any of these powers may be delegated to a committee of directors or to an executive director.

## **5. Membership and constituencies**

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

5.1 a public constituency; and

5.2 a staff constituency.

## **6. Application for membership**

An individual who is eligible to become a member of the trust may do so on application to the trust.

## **7. Public Constituency**

7.1 An individual who lives in the area specified in Annex 1 as the area for a public constituency may become or continue as a member of the trust.

7.2 Those individuals who live in the area specified for a public constituency are referred to collectively as a Public Constituency.

7.3 The minimum number of members in the Public Constituency is specified in Annex 1.

## **8. Staff Constituency**

8.1 An individual who is employed by the trust under a contract of employment with the trust may become or continue as a member of the trust provided:

8.1.1 he is employed by the trust under a contract of employment which has no fixed term or has a fixed term of at least 12 months; or

8.1.2 he has been continuously employed by the trust under a contract of employment for at least 12 months.

8.2 Individuals who exercise functions for the purposes of the trust, otherwise than under a contract of employment with the trust, may become or continue as members of the staff constituency provided such individuals have exercised these functions continuously for a period of at least 12 months.

- 8.3** Those individuals who are eligible for membership of the trust by reason of the previous provisions are referred to collectively as the Staff Constituency.
- 8.4** The minimum number of members in the Staff Constituency is specified in Annex 2.

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

- 9.1** An individual who is:
- 9.1.1** eligible to become a member of the Staff Constituency, and
  - 9.1.2** invited by the trust to become a member of the Staff Constituency,

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

## **10. Restriction on membership**

- 10.1** An individual who is a member of a constituency, or of a class within a constituency, may not while membership of that constituency or class continues, be a member of any other constituency or class.
- 10.2** An individual who satisfies the criteria for membership of the Staff Constituency may not become or continue as a member of any constituency other than the Staff Constituency.
- 10.3** An individual must be at least 16 years old to become a member of the trust.
- 10.4** Further provisions as to the circumstances in which an individual may not become or continue as a member of the trust are set out in Annex 8 (Further Provisions).

## **11. Annual Members' Meeting**

- 11.1** The Trust shall, as a minimum, hold an annual meeting of its members ('Annual Members' Meeting'). The Annual Members' Meeting shall be open to members of the public.

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

- 12.1 The trust is to have a Council of Governors, which shall comprise both elected and appointed governors.
- 12.2 The composition of the Council of Governors is specified in Annex 3.
- 12.3 The members of the Council of Governors, other than the appointed members, shall be chosen by election by their constituency or, where there are classes within a constituency, by their class within that constituency. The number of governors to be elected by each constituency, or, where appropriate, by each class of each constituency, is specified in Annex 3.

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

- 13.1 Elections for elected members of the Council of Governors shall be conducted in accordance with the Model Election Rules.
- 13.2 The Model Election Rules as published from time to time by the Department of Health form part of this constitution. The Model Election Rules current at the date shown on the front of this constitution are attached at Annex 4.
- 13.3 A subsequent variation of the Model Election Rules by the Department of Health shall not constitute a variation of the terms of this constitution for the purposes of paragraph 44 of the constitution (amendment of the constitution).
- 13.4 An election, if contested, shall be by secret ballot.

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

- 14.1 An elected governor may hold office for a period of up to 3 years.
- 14.2 An elected governor shall cease to hold office if he ceases to be a member of the constituency or class by which he was elected.
- 14.3 An elected governor shall be eligible for re-election at the end of his term save where he has held office for a period of at least 9 years.
- 14.4 An appointed governor may hold office for a period of up to 3 years.
- 14.5 An appointed governor shall cease to hold office if the appointing organisation withdraws its sponsorship of him.



- 14.6 An appointed governor shall be eligible for re-appointment at the end of his term save where he has held office for a period of at least 9 years.

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

- 15.1 The following may not become or continue as a member of the Council of Governors:
- 15.1.1 If the requirements of regulation 5: fit and proper persons of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 are not met.
- 15.2 Governors must be at least 16 years of age at the date they are nominated for election or appointment.
- 15.3 Further provisions as to the circumstances in which an individual may not become or continue as a member of the Council of Governors are set out in Annex 5.

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

- 16.1 The general duties of the Council of Governors are –
- 16.1.1 to hold the non-executive directors individually and collectively to account for the performance of the Board of Directors, and
  - 16.1.2 to represent the interests of the members of the trust as a whole and the interests of the public.
- 16.2 The Trust must take steps to secure that the governors are equipped with the skills and knowledge they require in their capacity as such.

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

- 17.1 The Chairman of the trust (i.e. the Chairman of the Board of Directors, appointed in accordance with the provisions of paragraph 26.1 below) or, in his absence, the Deputy Chairman (appointed in accordance with the provisions of paragraph 27 below), shall preside at meetings of the Council of Governors.
- 17.2 Meetings of the Council of Governors shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons.
- 17.3 For the purposes of obtaining information about the trust's performance of its functions or the directors' performance of their duties (and deciding whether to propose a vote on the Trust's or directors' performance), the Council of

Governors may require one or more of the directors to attend a meeting.

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

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

### **19. Council of Governors – referral to the Panel**

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

**19.1.1** to act in accordance with its constitution, or

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

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

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

**20.1** If a governor has a pecuniary, personal or family interest, whether that interest is actual or potential and whether that interest is direct or indirect, in any proposed contract or other matter which is under consideration or is to be considered by the Council of Governors, the governor shall disclose that interest to the members of the Council of Governors as soon as he becomes aware of it. The Standing Orders for the Council of Governors shall make provision for the disclosure of interests and arrangements for the exclusion of a governor declaring any interest from any discussion or consideration of the matter in respect of which an interest has been disclosed.

**20.2** If a governor holds (prior to election) or wishes to hold (after election) a position with any other health service related body this will be considered as an exceptional circumstance and needs to be declared on their election statement or as soon as the potential arises for consideration of approval. If approved this will be declared and approved in the next available public Council of Governors meeting. If this is not approved and the position with the other health service body is to continue the governor will need to resign their position as a governor of the trust.

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

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

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

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

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

- 23.1** The trust is to have a Board of Directors, which shall comprise both executive and non-executive directors.
- 23.2** The Board of Directors is to comprise:
  - 23.2.1** a non-executive Chairman
  - 23.2.2** 6 other non-executive directors; and
  - 23.2.3** up to 7 executive directors.
- 23.3** One of the executive directors shall be the Chief Executive.
- 23.4** The Chief Executive shall be the Accounting Officer.
- 23.5** One of the executive directors shall be the finance director
- 23.6** One of the executive directors is to be a registered medical practitioner or a registered dentist (within the meaning of the Dentists Act 1984).
- 23.7** One of the executive directors is to be a registered nurse or a registered midwife.

## **24. Board of Directors – general duty and other responsibilities**

- 24.1** The general duty of the Board of Directors and of each director individually, is to act with a view to promoting the success of the trust so as to maximise the benefits for the members of the trust as a whole and for the public.
- 24.2** Subject to the terms of this constitution, the Board of Directors will be responsible for:
  - 24.2.1** exercising the powers of the trust;
  - 24.2.2** the effective management of the trust;
  - 24.2.3** in consultation with the Council of Governors, producing plans regarding the future development of the trust to be sent to Monitor;

**24.2.4** compliance with all obligations lawfully imposed upon the trust by Monitor and any other statutory body or agency;

**24.2.5** preparing the trust's annual report and accounts;

**24.2.6** taking steps to equip governors with the skills and knowledge they require in their capacity as governors.

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

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

**25.1** he is a member of a Public Constituency; and

**25.2** he is not disqualified by virtue of paragraph 29 below.

**26. Board of Directors – appointment and removal of chairman and other non-executive directors**

**26.1** The Council of Governors at a general meeting of the Council of Governors shall appoint or remove the Chairman of the trust and the other non-executive directors.

**26.2** Removal of the Chairman or another non-executive director shall require the approval of three-quarters of the members of the Council of Governors.

**27. Board of Directors – appointment of deputy chairman**

The Council of Governors at a general meeting of the Council of Governors shall appoint one of the non-executive directors as a deputy chairman.

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

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

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

**28.3** A committee consisting of the Chairman, the Chief Executive and the other non-executive directors shall appoint or remove the other executive directors.

## **29. Board of Directors – disqualification**

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

- 29.1** if the requirements of regulation 5: fit and proper persons of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 are not met

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

- 30.1** Meetings of the Board of Directors shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons.
- 30.2** Before holding a meeting, the Board of Directors must send a copy of the agenda of the meeting to the Council of Governors. As soon as practicable after holding a meeting, the Board of Directors must send a copy of the minutes of the meeting to the Council of Governors.

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

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

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

- 32.1** The duties that a director of the trust has by virtue of being a director include in particular –
- 32.1.1** A duty to avoid a situation in which the director has (or can have) a direct or indirect interest that conflicts (or possibly may conflict) with the interests of the trust.
  - 32.1.2** A duty not to accept a benefit from a third party by reason of being a director or doing (or not doing) anything in that capacity.
- 32.2** The duty referred to in sub-paragraph 32.1.1 is not infringed if –
- 32.2.1** The situation cannot reasonably be regarded as likely to give rise to a conflict of interest, or
  - 32.2.2** The matter has been authorized in accordance with the constitution; or
  - 32.2.3** In the case of the conflict being a position with any other health service related body this is considered as an exceptional circumstance at appointment and approved by the Chairman and the appropriate remuneration committee at the time of appointment to the trust or appointment to the other health

service body as appropriate. This appointment will be openly declared at the next public Board of Directors meeting. If this appointment to any other health service related body is not approved and the position with the other health service body is to continue the director will need to resign their position as a director of the trust.

- 32.3** The duty referred to in sub-paragraph 32.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- 32.4** In sub-paragraph 32.1.2, “third party” means a person other than:
  - 32.4.1** The trust, or
  - 32.4.2** A person acting on its behalf.
- 32.5** If a director of the trust has in any way a direct or indirect interest in a proposed transaction or arrangement with the trust, the director must declare the nature and extent of that interest to the other directors.
- 32.6** If a declaration under this paragraph proves to be, or becomes, inaccurate, incomplete, a further declaration must be made.
- 32.7** Any declaration required by this paragraph must be made before the trust enters into the transaction or arrangement.
- 32.8** This paragraph does not require a declaration of an interest of which the director is not aware or where the director is not aware of the transaction or arrangement in question.
- 32.9** A director need not declare an interest –
  - 32.9.1** If it cannot reasonably be regarded as likely to give rise to a conflict of interest;
  - 32.9.2** If, or to the extent that, the directors are already aware of it;
  - 32.9.3** If, or to the extent that, it concerns terms of the director’s appointment that have been or are to be considered –
    - 32.9.3.1** By a meeting of the Board of Directors, or
    - 32.9.3.2** By a committee of the directors appointed for the purpose under the constitution.
- 32.10** A matter shall have been authorised for the purposes of paragraph 32.2.2 if, where a director has a relevant and material interest, whether direct or indirect, in any contract, proposed contract or other matter which is under consideration by the board, he shall disclose that to the rest of the board as

soon as he is aware of it. The Board of Directors, in consultation with the Council of Governors, shall adopt Standing Orders specifying the arrangements for excluding, or authorising inclusion of, directors from discussion or consideration of the contract or other matter, as appropriate.

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

- 33.1** The Council of Governors at a general meeting of the Council of Governors shall decide the remuneration and allowances, and the other terms and conditions of office, of the Chairman and the other non-executive directors. Such remuneration and allowances shall be published in the trust's annual report.
- 33.2** The trust shall establish a committee of non-executive directors to decide the remuneration and allowances, and the other terms and conditions of office, of the Chief Executive and other executive directors.

### **34. Registers**

The trust shall have:

- 34.1** a register of members showing, in respect of each member, the constituency to which he belongs and, where there are classes within it, the class to which he belongs;
- 34.2** a register of members of the Council of Governors;
- 34.3** a register of interests of governors;
- 34.4** a register of directors; and
- 34.5** a register of interests of the directors.

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

- 35.1** The register of members will be held by a membership co-ordinator who will ensure all members' details are held correctly and to whom member should direct any amendments to their circumstances.
- 35.2** Members will, at the time of their application to become members, have the opportunity to have their name removed from the public register. Subsequent requests to have their name removed from the public register should be made

to the membership co-ordinator referred to in paragraph 35.1.

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

- 36.1** The trust shall make the registers specified in paragraph 34 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.
- 36.2** The trust shall not make any part of its registers available for inspection by members of the public which shows details of any member of the trust, if the member so requests.
- 36.3** So far as the registers are required to be made available:
- 36.3.1** they are to be available for inspection free of charge at all reasonable times; and
  - 36.3.2** a person who requests a copy of or extract from the registers is to be provided with a copy or extract.
- 36.4** If the person requesting a copy or extract is not a member of the trust, the trust may impose a reasonable charge for doing so.

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

- 37.1** The trust shall make the following documents available for inspection by members of the public free of charge at all reasonable times:
- 37.1.1** a copy of the current constitution,
  - 37.1.2** a copy of the latest annual accounts and of any report of the auditor on them, and
  - 37.1.3** a copy of the latest annual report.
- 37.2** The trust shall also make the following documents relating to a special administration of the trust available for inspection by members of the public free of charge at all reasonable times:
- 37.2.1** a copy of any order made under section 65D (appointment of trust special administrator), 65J (power to extend time), 65KC (action following Secretary of State's rejection of final report), 65L (trusts coming out of administration) or 65LA (trusts to be dissolved) of the 2006 Act;
  - 37.2.2** a copy of any report laid under section 65D (appointment of trust special administrator) of the 2006 Act;
  - 37.2.3** a copy of any information published under section 65D (appointment of trust special administrator) of the 2006 Act;
  - 37.2.4** a copy of any draft report published under section 65F



- (administrator's draft report) of the 2006 Act;
- 37.2.5** a copy of any statement provided under section 65F(administrator's draft report) of the 2006 Act;
  - 37.2.6** a copy of any notice published under section 65F(administrator's draft report), 65G (consultation plan), 65H (consultation requirements), 65J (power to extend time), 65KA (Monitor's decision), 65KB (Secretary of State's response to Monitor's decision), 65KC (action following Secretary of State's rejection of final report) or 65KD (Secretary of State's response to re-submitted final report) of the 2006 Act;
  - 37.2.7** a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act;
  - 37.2.8** a copy of any final report published under section 65I (administrator's final report);
  - 37.2.9** a copy of any statement published under section 65J (power to extend time) or 65KC (action following Secretary of State's rejection of final report) of the 2006 Act; and
  - 37.2.10** a copy of any information published under section 65M (replacement of trust special administrator) of the 2006 Act.

- 37.3** Any person who requests a copy of or extract from any of the above documents is to be provided with a copy.
- 37.4** If the person requesting a copy or extract is not a member of the trust, the trust may impose a reasonable charge for doing so.

### **38. Auditor**

- 38.1** The trust shall have an auditor.
- 38.2** The Council of Governors shall appoint or remove the auditor at a general meeting of the Council of Governors.

### **39. Audit committee**

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

### **40. Accounts**

- 40.1** The trust must keep proper accounts and proper records in relation to the accounts.

- 40.2** Monitor may with the approval of the Secretary of State give directions to the Trust as to the content and form of its accounts.
- 40.3** The accounts are to be audited by the trust's auditor.
- 40.4** The trust shall prepare in respect of each financial year annual accounts in such form as Monitor may with the approval of the Secretary of State direct.
- 40.5** The functions of the trust with respect to the preparation of the annual accounts shall be delegated to the Accounting Officer.

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

- 41.1** The trust shall prepare an Annual Report and send it to Monitor.
- 41.2** The trust shall give information as to its forward planning in respect of each financial year to Monitor.
- 41.3** The document containing the information with respect to forward planning (referred to above) shall be prepared by the directors.
- 41.4** In preparing the document, the directors shall have regard to the views of the Council of Governors.
- 41.5** Each forward plan must include information about:
  - 41.5.1** the activities other than the provision of goods and services for the purposes of the health service in England that the trust proposes to carry on; and
  - 41.5.2** the income it expects to receive from doing so.
- 41.6** Where a forward plan contains a proposal that the trust carry on an activity of a kind mentioned in sub-paragraph 41.5.1, the Council of Governors must:
  - 41.6.1** determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfillment by the trust of its principal purpose or the performance of its other functions; and
  - 41.6.2** notify the directors of the trust of its determination.
- 41.7** A trust which proposes to increase by 5% or more the proportion of its total income in any financial year attributable to activities other than the provision of goods and services for the purposes of the health service in England may implement the proposal only if more than half of the members of the council of governors of the trust voting approve its implementation.

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

- 42.1** The following documents are to be presented to the Council of Governors at a general meeting of the Council of Governors:
- 42.1.1** the annual accounts;
  - 42.1.2** any report of the auditor on them; and
  - 42.1.3** the annual report.
- 42.2** The documents shall also be presented to the members of the trust at the Annual Members' Meeting by at least one member of the Board of Directors in attendance.
- 42.3** The Trust may combine a meeting of the Council of Governors convened for the purposes of sub-paragraph 42.1 with the Annual Members' Meeting.

## **43. Instruments**

- 43.1** The trust shall have a seal.
- 43.2** The seal shall not be affixed except under the authority of the Board of Directors.

## **44. Amendment of the constitution**

- 44.1** The trust may make amendments of its constitution only if:
- 44.1.1** More than half of the members of the Council of Governors of the trust voting approve the amendments; and
  - 44.1.2** More than half of the members of the Board of Directors of the trust voting approve the amendments.
- 44.2** Amendments made under paragraph 44.1 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.
- 44.3** Where an amendment is made to the constitution in relation to the powers or duties of the Council of Governors (or otherwise with respect to the role that the Council of Governors has as part of the trust):
- 44.3.1** At least one member of the Council of Governors must attend the next Annual Members' Meeting and present the amendment; and
  - 44.3.2** The trust must give the members an opportunity to vote on

whether they approve the amendment.

If more than half of the members voting approve the amendment, the amendment continues to have effect, otherwise, it ceases to have effect and the trust must take such steps as are necessary as a result.

- 44.4** Amendments by the trust of its constitution are to be notified to Monitor. For the avoidance of doubt, Monitor's functions do not include a power or duty to determine whether or not the constitution, as a result of the amendments, accords with Schedule 7 of the 2006 Act.

#### **45. Mergers etc. and significant transactions**

- 45.1** The trust may only apply for a merger, acquisition, separation or dissolution with the approval of more than half of the members of the council of governors.
- 45.2** The trust may enter into a significant transaction only if more than half of the members of the Council of Governors of the trust voting approve entering into the transaction.
- 45.3** For the purposes of paragraph 45.2, whether a transaction is significant or not will be decided in accordance with paragraph 8.1 of Annex 6 but includes the following circumstances:
- 45.3.1** where the trust proposes to increase by 5% or more the proportion of its total income in any financial year attributable to activities other than the provision of goods and services for the purposes of the health service in England; and
- 45.3.2** the circumstances set out in paragraph 45.1.

## **ANNEX 1 – THE PUBLIC CONSTITUENCIES**

(Paragraphs 7.1 and 7.3)

**The area of the Trust is as defined by the following Counties and Unitary Authorities:**

**Cambridgeshire County  
Lincolnshire County  
Leicestershire County  
Northamptonshire County  
Norfolk County  
Peterborough Unitary Authority  
Rutland Unitary Authority**

The minimum number of members required for the Public Constituency is 100.

## **ANNEX 2 – THE STAFF CONSTITUENCY**

(Paragraph 8.4)

The minimum number of members required for the Staff Constituency is 50.

## **ANNEX 3 – COMPOSITION OF COUNCIL OF GOVERNORS**

(Paragraphs 12.2 and 12.3)

### **ELECTED GOVERNORS**

Number of governors to be elected per constituency and area are as follows:

**Governors elected by members of the Public Constituency (14 seats) “Public Governors”**

**Governors elected by the Staff Constituency (6 seats) “Staff Governors”**

### **APPOINTED GOVERNORS**

**Appointed Governors appointed by a local authority (2 seats) “Local Authority Governors”**

The local authorities listed below may appoint a Governor as follows:

<b>Organisation</b>	<b>Number of governors</b>
Peterborough City Council	1
Lincolnshire County Council	1

**Appointed Governors appointed by a partnership organisation (4 seats) “Partnership Governors”**

The organisations listed below may appoint a Governor as follows:

<b>Organisation</b>	<b>Number of governors</b>
Cambridgeshire and Peterborough Clinical Commissioning Group	1
South Lincolnshire Clinical Commissioning Group	1
<i>Under Review</i>	1
Friends of Peterborough Hospital or Friends of Stamford Hospital (as decided by those parties)	1

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

(Paragraph 13.2)

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### **MODEL ELECTION RULES 2014**

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3. Computation of time

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4. Returning officer
5. Staff
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## **PART 10: ELECTION EXPENSES AND PUBLICITY**

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- 61. Expenses and payments by candidates
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### *Publicity*

- 63. Publicity about election by the corporation
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- 65. Meaning of “for the purposes of an election”

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

- 66. Application to question an election

## **PART 12: MISCELLANEOUS**

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

**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

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### 2. Timetable

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

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

### 3. Computation of time

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

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

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

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

**4. Returning Officer**

- 4.1 Subject to rule 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**

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### **8. Notice of election**

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

### **9. Nomination of candidates**

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

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

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

### **10. Candidate's particulars**

- 10.1 The nomination form must state the candidate's:
- (a) full name,
  - (b) contact address in full (which should be a postal address although an e-mail address may also be provided for the purposes of electronic

communication), and

- (c) constituency, or class within a constituency, of which the candidate is a member.

## **11. Declaration of interests**

11.1 The nomination form must state:

- (a) any financial interest that the candidate has in the corporation, and
- (b) whether the candidate is a member of a political party, and if so, which party,

and if the candidate has no such interests, the paper must include a statement to that effect.

## **12. Declaration of eligibility**

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

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

## **13. Signature of candidate**

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

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

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

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

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



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

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

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

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

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

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

## **15. Publication of statement of candidates**

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

15.2 The statement must show:

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

as given in their nomination form.

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

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

**16. Inspection of statement of nominated candidates and nomination forms**

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

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

**17. Withdrawal of candidates**

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

**18. Method of election**

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

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

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

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

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

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

**20. The ballot paper**

- 20.1 The ballot of each voter (other than a voter who casts his or her ballot by an e-voting method of polling) is to consist of a ballot paper with the persons remaining validly nominated for an election after any withdrawals under these

rules, and no others, inserted in the paper.

20.2 Every ballot paper must specify:

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

20.3 Each ballot paper must have a unique identifier.

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

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

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

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

and the corporation shall make such arrangements as it considers appropriate

to facilitate the making and the return of a declaration of identity by each voter, whether by the completion of a paper form (“ID declaration form”) or the use of an electronic method.

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

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

*Action to be taken before the poll*

## **22. List of eligible voters**

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

22.2 The list is to include, for each member:

(a) a postal address; and,

(b) the member’s e-mail address, if this has been provided

to which his or her voting information may, subject to rule 22.3, be sent.

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

## **23. Notice of poll**

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

(a) the name of the corporation,

(b) the constituency, or class within a constituency, for which the election is being held,

(c) the number of members of the council of governors to be elected from that constituency, or class with that constituency,

(d) the names, contact addresses, and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,

(e) that the ballot papers for the election are to be issued and returned, if appropriate, by post,

(f) the methods of polling by which votes may be cast at the election by

voters in a constituency or class within a constituency, as determined by the corporation in accordance with rule 19.3,

- (g) the address for return of the ballot papers,
- (h) the uniform resource locator (url) where, if internet voting is a method of polling, the polling website is located;
- (i) the telephone number where, if telephone voting is a method of polling, the telephone voting facility is located,
- (j) the telephone number or telephone short code where, if text message voting is a method of polling, the text message voting facility is located,
- (k) the date and time of the close of the poll,
- (l) the address and final dates for applications for replacement voting information, and
- (m) the contact details of the returning officer.

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

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

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

("postal voting information").

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

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

("e-voting information").

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

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

for the purposes of the poll.

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

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

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

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

25.2 The covering envelope is to have:

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

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

- (a) the completed ID declaration form if required, and
- (b) the ballot paper envelope, with the ballot paper sealed inside it.

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

26.1 If internet voting is a method of polling for the relevant election then the returning officer must provide a website for the purpose of voting over the internet (in these rules referred to as "the polling website").

26.2 If telephone voting is a method of polling for the relevant election then the returning officer must provide an automated telephone system for the purpose of voting by the use of a touch-tone telephone (in these rules referred to as "the telephone voting facility").

- 26.3 If text message voting is a method of polling for the relevant election then the returning officer must provide an automated text messaging system for the purpose of voting by text message (in these rules referred to as “the text message voting facility”).
- 26.4 The returning officer shall ensure that the polling website and internet voting system provided will:
- (a) require a voter to:
    - (i) enter his or her voter ID number; and
    - (ii) where the election is for a public or patient constituency, make a declaration of identity;in order to be able to cast his or her vote;
  - (b) specify:
    - (i) the name of the corporation,
    - (ii) the constituency, or class within a constituency, for which the election is being held,
    - (iii) the number of members of the council of governors to be elected from that constituency, or class within that constituency,
    - (iv) the names and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
    - (v) instructions on how to vote and how to make a declaration of identity,
    - (vi) the date and time of the close of the poll, and
    - (vii) the contact details of the returning officer;
  - (c) prevent a voter from voting for more candidates than he or she is entitled to at the election;
  - (d) create a record ("internet voting record") that is stored in the internet voting system in respect of each vote cast by a voter using the internet that comprises of-
    - (i) the voter’s voter ID number;
    - (ii) the voter’s declaration of identity (where required);
    - (iii) the candidate or candidates for whom the voter has voted; and
    - (iv) the date and time of the voter’s vote,
  - (e) if the voter’s vote has been duly cast and recorded, provide the voter with confirmation of this; and
  - (f) prevent any voter from voting after the close of poll.



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

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

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

- (a) require a voter to:
    - (i) provide his or her voter ID number; and
    - (ii) where the election is for a public or patient constituency, make a declaration of identity;
- in order to be able to cast his or her vote;

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

*The poll*

**27. Eligibility to vote**

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

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

- 28.1 The returning officer is to put in place arrangements to enable requests for assistance to vote to be made.
- 28.2 Where the returning officer receives a request from a voter who requires assistance to vote, the returning officer is to make such arrangements as he or she considers necessary to enable that voter to vote.

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

- 29.1 If a voter has dealt with his or her ballot paper in such a manner that it cannot be accepted as a ballot paper (referred to as a "spoilt ballot paper"), that voter may apply to the returning officer for a replacement ballot paper.
- 29.2 On receiving an application, the returning officer is to obtain the details of the unique identifier on the spoilt ballot paper, if he or she can obtain it.
- 29.3 The returning officer may not issue a replacement ballot paper for a spoilt ballot paper unless he or she:
  - (a) is satisfied as to the voter's identity; and
  - (b) has ensured that the completed ID declaration form, if required, has not been returned.

- 29.4 After issuing a replacement ballot paper for a spoiled ballot paper, the returning officer shall enter in a list (“the list of spoiled ballot papers”):
- (a) the name of the voter, and
  - (b) the details of the unique identifier of the spoiled 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 “spoiled 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 spoiled 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 spoiled 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 spoiled text message vote, the returning officer shall enter in a list (“the list of spoiled text message votes”):
- (a) the name of the voter, and
  - (b) the details of the voter ID number on the spoiled text message vote (if that officer was able to obtain it), and
  - (c) the details of the replacement voter ID number issued to the voter.

**30. Lost voting information**

- 30.1 Where a voter has not received his or her voting information by the tenth day before the close of the poll, that voter may apply to the returning officer for replacement voting information.
- 30.2 The returning officer may not issue replacement voting information in respect of lost voting information unless he or she:
- (a) is satisfied as to the voter’s identity,
  - (b) has no reason to doubt that the voter did not receive the original voting information,
  - (c) has ensured that no declaration of identity, if required, has been returned.
- 30.3 After issuing replacement voting information in respect of lost voting information, the returning officer shall enter in a list (“the list of lost ballot

documents”):

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

**31. Issue of replacement voting information**

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

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

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

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

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

*Polling by internet, telephone or text*

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

33.1 To cast his or her vote using the internet, a voter will need to gain access to the polling website by keying in the url of the polling website provided in the voting information.

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

33.3 If the internet voting system authenticates the voter ID number, the system will give the voter access to the polling website for the election in which the voter is eligible to vote.

33.4 To cast his or her vote, the voter will need to key in a mark on the screen opposite the particulars of the candidate or candidates for whom he or she wishes to cast his or her vote.

33.5 The voter will not be able to access the internet voting system for an election once his or her vote at that election has been cast.

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

34.1 To cast his or her vote by telephone, the voter will need to gain access to the telephone voting facility by calling the designated telephone number provided in the voter information using a telephone with a touch-tone keypad.

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

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

34.4 When prompted to do so the voter may then cast his or her vote by keying in the numerical voting code of the candidate or candidates, for whom he or she wishes to vote.

34.5 The voter will not be able to access the telephone voting facility for an election once his or her vote at that election has been cast.

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

35.1 To cast his or her vote by text message the voter will need to gain access to the text message voting facility by sending a text message to the designated telephone number or telephone short code provided in the voter information.

35.2 The text message sent by the voter must contain his or her voter ID number and the numerical voting code for the candidate or candidates, for whom he or she wishes to vote.

35.3 The text message sent by the voter will need to be structured in accordance with the instructions on how to vote contained in the voter information, otherwise the vote will not be cast.

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

**36. Receipt of voting documents**

36.1 Where the returning officer receives:

- (a) a covering envelope, or
- (b) any other envelope containing an ID declaration form if required, a ballot paper envelope, or a ballot paper,

before the close of the poll, that officer is to open it as soon as is practicable; and rules 37 and 38 are to apply.

- 36.2 The returning officer may open any covering envelope or any ballot paper envelope for the purposes of rules 37 and 38, but must make arrangements to ensure that no person obtains or communicates information as to:
- (a) the candidate for whom a voter has voted, or
  - (b) the unique identifier on a ballot paper.

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

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

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

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

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

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

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

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

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

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

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

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

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.

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

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.



**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(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 non-transferable vote; and votes on a ballot document shall be so treated where, for example, the names of two or more candidates (whether continuing candidates or not) are so marked that, in the opinion of the returning officer, the same order of preference is indicated or the numerical sequence is broken.

#### **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 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**

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

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 chairman of the corporation, and

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

**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 spoiled ballot papers and the list of spoiled text message votes,
- (c) the list of lost ballot documents, and
- (d) the list of eligible voters,

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

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

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

**55. Delivery of documents**

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

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

56.1 Where:

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

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

**57. Retention and public inspection of documents**

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

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

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

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

58.1 The corporation may not allow:

- (a) the inspection of, or the opening of any sealed packet containing –
  - (i) any rejected ballot papers, including ballot papers rejected in part,
  - (ii) any rejected text voting records, including text voting records rejected in part,
  - (iii) any disqualified documents, or the list of disqualified documents,
  - (iv) any counted ballot papers, internet voting records, telephone voting records or text voting records, or
  - (v) the list of eligible voters, or
- (b) access to or the inspection of the complete electronic copies of the internet voting records, telephone voting records and text voting records created in accordance with rule 26 and held in a device suitable for the purpose of storage,

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

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

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

- (a) persons,
- (b) time,
- (c) place and mode of inspection,
- (d) production or opening,

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

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

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

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

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

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

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### **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

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### *Election expenses*

#### **60. Election expenses**

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

#### **61. Expenses and payments by candidates**

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

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

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

- 62.1 No person may:

- (a) incur any expenses or make a payment (of whatever nature) for the purposes of a candidate's election, whether on that candidate's behalf or otherwise, or
- (b) give a candidate or his or her family any money or property (whether as a gift, donation, loan, or otherwise) to meet or contribute to expenses incurred by or on behalf of the candidate for the purposes of an election.

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

### *Publicity*

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

- 63.1 The corporation may:

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



as it considers necessary.

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

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

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

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

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

64.2 The information must consist of:

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

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

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

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

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

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### **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.

**67. Secrecy**

67.1 The following persons:

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

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

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

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

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

**68. Prohibition of disclosure of vote**

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

**69. Disqualification**

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

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

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

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

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

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

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

(Paragraph 15.3 and 22)

### **1. Disqualification**

- 1.1 A person may not become or continue as a governor of the trust if:
- 1.1.1 the requirements of regulation 5: fit and proper persons of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 are not met;
  - 1.1.2 in the case of a staff governor or public governor, he ceases to be a member of the constituency he represents;
  - 1.1.3 in the case of a Local Authority Governor, Local Authority or Partnership Governor, the sponsoring local authority, or organisation withdraw their sponsorship of him;
  - 1.1.4 he has been involved in any act of violence against staff or other members of the trust;
  - 1.1.5 he, being a member of staff, is subject to the trust's formal disciplinary procedures;
  - 1.1.6 he has committed a material breach of any code of conduct applicable to Governors of the trust and/or the Governors standing orders; or
  - 1.1.7 Monitor has exercised its powers to remove him/her as a Governor of the trust or has suspended him/her from office or has disqualified him/her from holding office as a Governor of the trust for a specified period or Monitor has exercised any of those powers in relation to him/her on any other occasion whether in relation to the trust or some other NHS Foundation Trust.

### **2. Notification of Disqualification**

- 2.1 Where a person has been elected or appointed as a governor and he becomes disqualified for appointment under paragraph 1 above, he shall notify the Secretary in writing of such disqualification.
- 2.2 If it comes to the notice of the Secretary at the time of the appointment of a governor or later that the governor is so disqualified, the Secretary shall immediately declare that the person in question is disqualified and notify that person in writing to that effect. Upon the making of such declaration, that person's tenure of office, if any, shall be terminated and he shall cease to act as a governor.
- 2.3 Where a person has been declared disqualified by the Secretary under paragraph 2.2 above, he may appeal the Secretary's decision to the Chairman, whose decision on the matter will be final.

### **3. Termination of tenure**

- 3.1 A governor may resign from that office at any time during the term of that office by giving notice in writing to the Secretary.
- 3.2 If a governor fails to attend 3 out of any 4 meetings, his tenure of office is to be immediately terminated unless the other governors are satisfied that:
  - 3.2.1 the absence was due to a reasonable cause; and
  - 3.2.2 he will be able to start attending meetings of the trust again within such a period as they consider reasonable.

### **4. Vacancies**

- 4.1 Where membership of the Council of Governors ceases for one of the reasons set out in paragraphs 1 or 2 above or paragraph 2 (Termination of Membership) of Annex 8, Public and Staff Governors shall be replaced by by-elections, in accordance with the relevant Electoral Scheme set out in Annex 4, and Appointed Governors are to be replaced in accordance with the processes agreed pursuant to paragraph 7.1 below.
- 4.2 No defect in the election or appointment of a Governor nor any deficiency in the composition of the Council of Governors shall affect the validity of any act or decision of the Council of Governors.

### **5. Conduct of Elections of Public Governors**

- 5.1 When a vacancy arises for one or more public governors:
  - 5.1.1 the Council of Governors may appoint the next highest polling candidate at the most recent elections of public governors, if he is willing to take office. The Council of Governors may adopt this process on no more than two occasions within 12 months of the last elections. Governors appointed using this process shall hold office until the conclusion of either the next election or the unexpired term of office of the vacant seat, whichever is the earlier, subject to a minimum term of six months. If the next highest polling candidate is unwilling to take office or the Council of Governors choose not to use this process the seat will fall vacant and subject to election for any unexpired period of office;
  - 5.1.2 in all other cases, the returning officer appointed in accordance with the Model Election Rules shall notify the public members by advertisement in one local newspaper, inviting nominations within such period and subject to such other procedural requirements as the Secretary considers reasonable, save that the trust shall not be obliged to seek nominations if it is less than 3 months to the next scheduled election of public governors and if meetings of the Council of Governors in the intervening period can still be quorate without the appointment of further public governors.
- 5.2 Notwithstanding any other provision of this Annex, the candidate will not be able to vote at a meeting of the Council of Governors unless not less than seven days prior to the

date of the meeting, he has made a declaration in the form set out in the Standing Orders for the Council of Governors (Part 2 of Appendix 1 of Annex 5 to the constitution).

- 5.3 The rules in this paragraph 5 apply to the elections of public governors except where they conflict with the Model Election Rules.

## **6. Conduct of Elections of Staff Governors**

- 6.1 When a vacancy arises for one or more staff governors, the returning officer appointed under the Model Election Rules shall notify the staff members in writing or by other usual means, inviting nominations within such period and subject to such other procedural requirements as the returning officer considers reasonable.

- 6.2 The result of elections to the Council of Governors shall be notified to members by the returning officer in writing or by other usual means.

- 6.3 The rules in this paragraph 6 apply to elections of staff governors except where they conflict with the Model Election Rules.

## **7. Appointed Governors**

- 7.1 The Appointed Governors referred to in paragraph 12.1 of the constitution:

7.1.1 who are to be local authority governors appointed from a local authority shall be appointed pursuant to a process agreed by the relevant local authority and the trust; and

7.1.2 who are to be partnership governors shall be appointed by the relevant organisations listed in Annex 3, in accordance with a process agreed with the Secretary.

## **9. Advisers**

- 9.1 The Council of Governors shall include up to 3 individuals whose role is to act at meetings of the Council of Governors solely in an advisory and non-voting capacity ("Advisers").

- 9.2 The Chairman shall propose individuals to be appointed as Advisers in accordance with the process agreed by the Secretary. The Board of Directors shall select up to three Advisers from those put forward and recommend them to the Council of Governors for appointment. The Council of Governors shall make the final decision whether to appoint those recommended.

- 9.3 Advisers:

9.3.1 may hold office for a period of three years;

9.3.2 subject to 9.3.3 below, are eligible for reappointment at the end of each three year period;

9.3.3 may not hold office longer than nine years; and

9.3.4 shall cease to hold office if removed by resolution of the Council of Governors.

9.4 An Adviser shall cease to act in such capacity if he:

9.4.1 resigns by notice to the Secretary;

9.4.2 fails to agree (or, having agreed, fails) to abide by the values of the Trust;

9.4.3 is removed by a resolution of the Council of Governors;

9.4.4 is involved in any act of violence against staff or members of the trust; or

9.4.5 is or has been identified as a vexatious complainant.

## **10. Meetings**

10.2 Meetings of the Council of Governors are to be open to members of the public except in the following circumstances:

10.2.1 where issues concerning confidential details of a personal nature are to be discussed - in which case such items will be discussed as closed items at the end of the meeting from which members of the public and press will be excluded;

10.2.2 where the Council of Governors resolves that the public and representatives of the media be excluded from the meeting because the business to be conducted is confidential and/or publicity would be prejudicial to the public interest and/or the interests of the trust; or

10.2.3 where the Council of Governors resolves that the meeting be adjourned in the interests of public order and to allow them to conclude the business in hand in private. The resolution shall specify the period of any adjournment.

10.4 At a general meeting, within 6 months of the end of the financial year the Council of Governors are to receive and consider the annual accounts, any report of the auditor on them, and the annual report.

10.5 The Council of Governors is to adopt its own standing orders for its practice and procedure, in particular for its procedure at meetings (including general meetings), but these shall be in accordance with paragraph 6 of Annex 8.



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

(Paragraph 18)

**Peterborough and Stamford Hospitals**  
NHS Foundation Trust



**Council of Governors**

**Standing Orders**

**Rules for How the Council of Governors Work**

**October 2013**

Prepared by: JL Pigg, Company Secretary  
Amended: 30 September 2013  
Agreed: Council of Governors – 9 October 2013  
Next Review: April 2015  
Responsible Officer: Company Secretary

## **Council of Governors**

### **Standing Orders**

#### **Rules for How the Council of Governors Work**

##### **Contents**

- 1 Introduction
- 2 Council of Governors
- 3 Meetings
- 4 Conduct
- 5 Appointments and Disqualifications
- 6 Conflicts of Interest
- 7 Appointment of Committees and Sub-Committees
- 8 Significant Transactions

## **1. Introduction**

1.1 These standing orders set out how the Council of Governors meetings will operate and how statutory obligations will be met.

1.2 These standing orders need to be read in conjunction with:

- the constitution for the Peterborough and Stamford Hospitals NHS Foundation Trust
- the standing orders for the Board of Directors

## **2. The Council of Governors**

2.1 Detailed requirements for the Council of Governors are set out in schedule 7 to the NHS Act 2006 and in the constitution for Peterborough and Stamford Hospitals NHS Foundation Trust. The following paragraphs re-state these requirements.

2.2 The Council of Governors is responsible for:

2.2.1 representing the interests of members of the Trust, the public and partnership organisations in the governance of the Trust regularly feeding back information about the Trust, its vision and its performance to the constituency they represent and confirming the appointment of advisors;

2.2.2 appointing and removing the non-executive directors, including the Chairman, of the Trust at a general meeting;

2.2.3 holding the non-executive directors to account for the performance of the Board of Directors;

2.2.4 appointing and removing the Trust's auditor at a general meeting;

2.2.5 receiving and giving their view on plans from the Board of Directors regarding the future development of the Trust;

2.2.6 providing approval for the Trust to enter into significant transactions

2.2.7 receiving at a public meeting, copies of the Trust's annual accounts, auditor reports and annual reports; and

2.2.8 informing the Independent Regulator if concerns about the performance of the Board of Directors cannot be resolved at local level;

2.2.9 calling meetings of members.

2.3 The Council of Governors is to consist of 26 Governors of which 14 are elected from amongst the public membership, 6 are elected from amongst

the staff membership and 6 are appointed by identified partner organisations. 3 additional members can be appointed by the governors to serve as advisors. Advisors have no voting rights.

- 2.4 For clarification it is the Board of Directors who is responsible for exercising the powers of the Foundation Trust and ensuring its effective management

### **3. Meetings**

#### **3.1 Holding Meetings**

##### **3.1.1 Ordinary Meetings**

Public meetings of the Council of Governors are to be held at least on a quarterly basis.

##### **3.1.2 Annual Meetings**

A joint annual public meeting will be held with the Board of Directors at which the annual accounts and reports will be received.

##### **3.1.3 Extraordinary Meetings**

The Chairman may call a meeting of the Council of Governors at any time.

An extraordinary meeting may be called by more than a third of the whole number of Governors of which a majority must be public members. If a meeting is not called by the Chairman after receiving a signed request from these Governors, those Governors may call a meeting immediately. For the avoidance of doubt this meeting could be called by 9 Governors, 5 of which must be Public Governors.

#### **3.2 Notice of Meetings**

- 3.2.1 Before each meeting, a notice, consisting of an agenda and papers will be sent by post to each Governor, so as to be available 3 clear days prior to the meeting. Public meetings will be advertised in the local media and on the Trust's website.

- 3.2.2 Receipt or non-receipt of such notice by any Governor shall not affect the validity of the meeting.

- 3.2.3 No business shall be transacted at the meeting other than that specified in the notice.

### **3.3 Chairman**

The Chairman is appointed by the Council of Governors. The Chairman will be the Chairman of the Council of Governors and the Board of Directors.

At any meeting of the Council of Governors the Chairman shall preside. If neither the chairman nor deputy chairman is available a non-executive director may be chosen by the Governors to preside. Only a non-executive director may preside.

### **3.4 Deputy Chairman (Non-Executive)**

The Board of Directors is to select a Deputy Chairman from amongst the non-executive directors. The selection is to be endorsed by the Council of Governors. The Deputy Chairman will be Deputy Chairman of the Council of Governors and the Board of Directors.

### **3.5 Vice Chairman (Governor)**

The Council of Governors is to select a Vice Chairman from amongst the governors who is to preside on issues concerning the appointment, remuneration or dismissal of non-executive directors. This post is also referred to as the Lead Governor

### **3.6 Record of Attendance**

The names of Governors and other officers present at the meeting shall be recorded.

As part of the record of attendance, each Governor will be asked to declare by signature their eligibility to vote in the form laid out in annex 4 of the constitution.

### **3.7 Quorum**

No business shall be transacted at a meeting unless more than a third (at least 9) of the whole number of Governors is present of which five are public governors. If at any meeting there is no quorum within 30 minutes of the time fixed for the start of the meeting, the meeting shall stand adjourned for 7 days and upon reconvening, those present shall constitute a quorum.

### **3.8 Motions and Items for Discussion**

Governors desiring to place an item for discussion at a meeting must give at least 12 clear days notice before the meeting to the Chairman, who shall add the item to the agenda as long as it is in accordance with the roles of the Council of Governors set out above in section 2.

### **3.9 Conflict of Interest**

As well as the detail covered in paragraph 6, all Governors or Directors present at a meeting of the Council of Governors should declare, prior to the start of the meeting, any potential conflicts they think they may have regarding items on the agenda. They will be entered at the time they were declared in the Council of Governors minutes.

### **3.10 Chairman's Ruling**

The decision of the Chairman of the meeting on questions of order, relevancy and regularity (including procedure on handling motions and items) and his interpretation of the Standing Orders shall be final. In this interpretation he shall be advised by the Company Secretary.

### **3.11 Voting**

When voting is required on a motion, this shall be determined by a majority of the votes of Governors present and voting on the question and, in the case of an equality of votes, the person presiding shall have a second and casting vote.

All questions put to the vote shall, at the discretion of the Chairman, be determined by oral expression or by a show of hands provided that, upon question the Chairman may direct, or it may be proposed, seconded and carried that a vote be taken by paper ballot.

For the avoidance of doubt an abstention is not a vote and the calculated majority required for approval is taken only from those who vote either in favour or against an resolution.

If at least three Governors so request, the voting on any question may be recorded so as to show how each Governor present voted or did not vote.

If a Governor so requests, his vote shall be recorded by name.

In no circumstances may an absent Governor vote by proxy.

### **3.12 Minutes**

Minutes of the proceeding of a meeting shall be drawn up and held as a permanent record and shall be signed at same or next ensuing meeting by the person presiding thereat.

No discussion shall take place upon the minutes except upon their accuracy unless the Chairman considers discussion appropriate.

#### **4. Conduct**

Governors are to act in accordance with Trust Principles as outlined in annex 8 of the constitution and with the Code of Conduct for the Council of Governors in operation at that time.

All Governors are to sign their acceptance of this Code of Conduct.

#### **5. Appointments and Disqualifications**

5.1 All governor appointments and disqualifications will be made in accordance with the Constitution.

##### **5.2 Appointment of Non Executive Directors**

5.2.1 When a non-executive director is required to be appointed, a review of the skills of the existing board of directors will be made to identify skills that will be desirable in the new appointee.

5.2.2 The post will be advertised amongst the public membership and also in the local media. Non-executive directors will need to public members of the NHS Foundation Trust.

5.2.3 The Council of Governors will appoint a committee to advise on the appointments. However all decisions will require ratification by the Council of Governors.

##### **5.3 Appointment of Chairman**

The Chairman will be appointed through the same process as the non-executive directors. Non-executive directors will be eligible to apply for the post of chairman.

##### **5.4 Appointment of Chief Executive**

The Chief Executive will be appointed by a panel of non-executive directors, presided over by the Chairman.

The appointment will be recommended to the Council of Governors. The appointment will be approved unless a majority respond against the recommended appointment.

##### **5.5 Disqualifications**

Disqualifications will be as set out in the constitution. All disqualifications for members or governors will be recorded by the Company Secretary and be assessed by a committee of the Council of Governors. Appeals will be heard by the sub-committee. All decisions will require ratification by the Council of Governors.

## **6. Conflicts of Interest**

- 6.1 A register of Governor's interests is to be kept. Governors are required to declare relevant and material interests on election.
- 6.2 Interests which are regarded as relevant and material, and which for the guidance of doubt should be included in the register are:
- (a) paid employment (other than that with Peterborough and Stamford Hospitals NHS Foundation Trust)
  - (b) direct or indirect involvement in a contract for the supply or receipt of goods, services or works to or from Peterborough and Stamford Hospitals NHS Foundation Trust
  - (c) proprietary interest in land (including buildings) which is subject or becomes subject to any transaction made by Peterborough and Stamford Hospitals NHS Foundation Trust
  - (d) directorships, including non-executive directorships held in private companies or PLCs (with the exception of those of dormant companies)
  - (e) substantial interests (ownership, part-ownership, directorship, minimum 1% share holding) in organisations likely or possibly seeking to do business with the NHS
  - (f) involvement in a charity or voluntary organisation
  - (g) a direct relationship with an individual who is employed by or who has a potential conflict of interest with the Trust
  - (h) membership or association with an organisation that promotes a private or personal interest different from that of the Trust
- 6.3 If governors have any doubt about the relevance or materiality of an interest, this should be discussed with the Chairman.
- 6.4 Any changes in interests should be officially declared at the next Council of Governors meeting following the change occurring. It is the obligation of the Governor to inform the Company Secretary of the NHS Foundation Trust in writing within 7 days of becoming aware of the existence of a relevant or material interest. The Secretary will amend the Register upon receipt within 3 working days.
- 6.5 Directorships of companies in 6.2(a) above or in companies likely or possibly seeking to do business with the NHS (6.2(b) above) are to be published in the NHS Foundation Trust's annual report.
- 6.6 During the course of a Council of Governors meeting, if a conflict of interest is established the governor affected is to take no part in the



relevant discussion or decision. For the avoidance of doubt, this includes voting on an issue where a conflict is established. If there is a dispute as to whether a conflict of interest does exist, the majority will resolve the issue with the Chairman having the casting vote.

6.7 There is no requirement for the interests of directors' or governors' spouses or partners to be declared.

6.8 The details of Governors interests recorded in the Register will be kept up to date by means of a quarterly review of the Register by the Company Secretary of the Trust during which any changes of interests declared during the preceding quarter will be incorporated.

6.9 The Register will be available for inspection by the public free of charge. Copies or extracts of the Register will be provided to members of the NHS Foundation Trust free of charge and within a reasonable time period of the request.

## **7 Appointment of Committees and Sub-Committees**

7.1 The Council of Governors may appoint committees or sub-committees. Such committees can not be delegated authority and will recommend decisions to the Council of Governors.

## **8 Significant Transactions**

8.1 The Council of Governors is required to approve significant transactions. There is no national definition of significant transactions, except for the required governor approval of increases of more than 5 per cent in private patient income, the following process is agreed:

(a) Planned changes/developments to be made in each year are identified in advance as part of the Trust's annual planning activities.

(b) These are reviewed by the governors to determine "significance" by applying a number of tests including the following questions:

- i. Will the transaction be subject to public consultation?
- ii. Does the transaction contradict the Trust's current agreed strategy?
- iii. Does the transaction adversely affect the Trust's ability to meet CQC, Monitor or Contractual standards?
- iv. If private patient activity, is the impact >5% of current income?
- v. Is there reputational risk?
- vi. Will the transaction require separate reporting to Monitor?

If the answer to any of these questions is "yes" the transaction is significant: however other transactions may be identified as significant for other reasons on a case by case basis.

- 8.2 Consideration should be given as to whether approval can be granted at the annual planning cycle stage (normally in May).
- 8.3 For those considered as significant governors are briefed on the development through the planned seminar sessions in tandem with business case development by Trust officers. At this stage any further requirement for gaining additional Council of Governors approval is considered on a case by case basis.
- 8.4 The timing of approvals is to be considered at the start of the planning stage to ensure that the implementation of significant transactions are not delayed – additional Council of Governors meetings may therefore be required.
- 8.5 The non-executive chairman presiding at the Council of Governors will not vote at the Council of Governors on decisions regarding significant transactions.

**Appendix 1 to Council of Governors Standing Orders**

**GOVERNORS' DECLARATIONS  
PART 1**

**PETERBOROUGH AND STAMFORD NHS FOUNDATION TRUST (the "Trust")**

I, [insert name] of [insert address] hereby declare that I am entitled to stand for election to the Council of Governors as a governor elected by the public constituency because I am a member of the public constituency, and that I am not prevented from being a member of the Council of Governors of the Trust by paragraph 8 of Schedule 7 to the National Health Service Act 2006 or under the constitution of the Trust.

Signed.....  
Print Name.....  
Date of Declaration.....

**PART 2**

**PETERBOROUGH AND STAMFORD NHS FOUNDATION TRUST (the "Trust")**

I, [insert name] of [insert address] hereby declare that I am entitled to vote at meetings of the Council of Governors as a governor elected by the public constituency because I am a member of the public constituency, and that I am not prevented from being a member of the Council of Governors of the Trust by paragraph 8 of Schedule 7 to the National Health Service Act 2006 or under the constitution of the Trust.

Signed.....  
.....  
Print  
Name.....  
Date of  
Declaration.....

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

(Paragraph 35)

Peterborough and Stamford Hospitals   
NHS Foundation Trust

**STANDING ORDERS  
BOARD OF DIRECTORS  
SEPTEMBER 2013**

Prepared by: J L Pigg, Company Secretary  
Date Reviewed: September 2013  
Next Review: November 2015  
Responsible Officer: Company Secretary

## CORPORATE GOVERNANCE

### STANDING ORDERS – BOARD OF DIRECTORS

#### CONTENTS

- 1 Introduction
  - 2 Meetings
  - 3 Appointment of Committees and Sub Committees
  - 4 Delegation of Board of Directors Authority and Functions
  - 5 Trust Seal
  - 6 Interest of Directors in Contracts and Other Matters
  - 7 Canvassing of and Recommendation by Directors
  - 8 Patient and Public Involvement
  - 9 Waiver and Variation of Standing Orders
  - 10 Standing Financial Instructions
  - 11 Liabilities
  - 12 Trust Charitable Funds
- Appendices
- A Board of Directors-Only Decisions
  - B Authorised Committees of the Board of Directors
  - C Arrangements for Major Projects and Significant Transactions

The current Corporate Governance Manual consists of:

- Standing Orders – Board of Directors
- Standing Financial Instructions
- Scheme of Delegation
- Standing Orders – Council of Governors
- Licence
- Constitution
- Terms of Reference of Board of Directors and Council of Governors Committees

A copy of the complete Corporate Governance Manual is available from the Company Secretary.

## 1. INTRODUCTION

- 1.1 The work of the Peterborough and Stamford Hospitals NHS Foundation Trust is directed by the Board of Directors comprising the Non-Executive Chairman; 6 Non-Executive Directors; and 6 Executive Directors of which one is the Chief Executive Officer.
- 1.2 The **Chairman** is appointed by the Council of Governors. The Non-Executive Directors are also appointed by the Council of Governors, after consulting the Chairman. The Chairman and Non-Executive Directors will normally be appointed for a renewable 3-year term, with a maximum of 9 years continuous appointment, with a rigorous review after 6 years and appointments renewable on an annual basis only in exceptional circumstances.
- 1.3 A **Senior Independent Director** will be appointed from amongst the Non-Executive Directors by the Board of Directors, in consultation with the Council of Governors. The role of the Senior Independent Director is to act as an independent resource for members, staff, Board of Directors and Council of Governors if there are concerns which contact through the normal channels of Chairman, Chief Executive, Finance Director or Company Secretary have failed to resolve or for which such contact is inappropriate.
- 1.4 A **Deputy Chairman** is to be appointed from amongst the Non-Executive Directors by the Council of Governors for any period up to the end of his/her term of office. This appointment may also be held by the same Non-Executive Director appointed as Senior Independent Director.
- 1.5 The Executive Directors are to include the Chief Executive (who is the accountable officer) and the Finance Director. Of the Executive Directors one is to be a registered medical practitioner or registered dentist and one is to be a registered nurse or registered midwife.
- 1.6 The Chief Executive is appointed by the Chairman and the Non-Executive Directors. The Chief Executive's appointment is ratified by the Council of Governors.
- 1.7 The Remuneration and Nominations Committee of the Board of Directors, being a committee whose membership is of non-executive directors, with appropriate executive support, will appoint all Executive Directors with the exception of the Chief Executive. They will also determine the role of the other Executive Directors.
- 1.8 The Board of Directors is responsible for determining the overall strategy and decision making processes of the Trust, for monitoring strategy, for ensuring service safety, delivery and quality to agreed standards and for maintaining the Trust's financial viability. The Board

of Directors is also responsible for ensuring that an effective system of internal financial control is maintained and operated in connection with the organisation's resources. The Board of Directors will have due regard to the views of the Council of Governors in setting strategic service aims.

- 1.9 These Standing Orders, taken together with the Standing Financial Instructions provide a business and financial framework which Directors and officers of the Trust will be required to follow, in carrying out their duties.

## **2 MEETINGS**

### **2.1 CALLING MEETINGS**

#### 2.1.1 Ordinary Meetings

Ordinary Meetings of the Board of Directors shall be held at regular intervals at such times and places as the Board of Directors may determine.

- 2.1.2 Meetings of the Board of Directors shall be held in public subject to the provisions of 2.1.3 below.

Questions from members of the public attending meetings are allowed at the discretion of the Chairman.

#### 2.1.3 Private Business

The Board of Directors may meet privately if it considers it necessary in order to discuss items where, in its opinion, having regard to the confidential nature of the business to be transacted, publicity would be prejudicial to the public interest. This may include commercially confidential items or items to safeguard individual patient or staff confidentiality

#### 2.1.4 Annual Public Meeting

The Trust will hold an Annual Public Meeting at which the Board of Directors will present its Annual Report and Accounts to the Council of Governors. The meeting at which these are presented must be held no later than 30 September following the end of the financial year.

#### 2.1.5 Extraordinary Meetings

The Chairman may call a meeting of the Board of Directors at any time. In addition an extraordinary meeting may be called by one third of the whole number of Directors. If the Chairman refuses to call a meeting

after receiving a signed request from those Directors, or if, without so refusing, the Chairman does not call a meeting within seven days after the request has been presented to him, those Directors may call a meeting immediately. For the avoidance of doubt one third of the whole number of Directors equates to five individuals.

## **2.2 NOTICE OF MEETINGS**

2.2.1 Before each meeting of the Board of Directors, a notice and agenda of the meeting shall be delivered to every Director, or sent by post to the usual place of residence of such Director, so as to be available to such Directors at least three clear working days before the meeting.

Papers should be made publicly available through the Trust's website at least three clear working days before the meeting.

Provided that want of service of such notice on any Director shall not affect the validity of a meeting: and provided also that in the case of a meeting called by Directors in default of the Chairman, the notice shall be signed by those Directors and no business shall be transacted at the meeting other than that specified in the notice.

## **2.3 CHAIRMAN OF MEETING**

2.3.1 At any meeting of the Board of Directors the Chairman, if present, shall preside. If neither the Chairman nor Deputy Chairman is able to be present a Non-Executive Director may be chosen by Directors to preside. An Executive Director cannot take the chair.

## **2.4 RECORD OF ATTENDANCE**

The names of Directors and others present at the meeting shall be recorded.

## **2.5 QUORUM**

No business shall be transacted at a meeting unless one third of the whole number of the Chairman and Directors (including at least one Director who is also an Executive Director of the Trust and one who is not) are present. Observers shall not be counted for the purposes of a quorum. For the avoidance of doubt this quorum requires five Directors to be present.

## **2.6 NOTICE OF MOTION**

Subject to the provisions of Paragraph 2.8 a Director of the Board desiring to move a motion must give at least ten clear working days notice before the meeting to the Company Secretary, who shall insert in the agenda for the meeting all notices so received that are in order.



This shall not prevent any motion being withdrawn or moved without notice on any business mentioned on the agenda for the meeting.

## 2.7 **MOTIONS**

2.7.1 The mover of a motion shall have a right of reply at close of any discussion or any amendment thereto.

2.7.2 When a motion is under discussion or immediately prior to discussion it shall be open to a Director to move:

- (a) an amendment to the motion;
- (b) the adjournment of the discussion or the meeting;
- (c) that the meeting proceed to the next business;
- (d) the appointment of an ad hoc committee to deal with a specific item of business; or
- (e) that the question now be put.

## 2.8 **MOTION TO RESCIND A RESOLUTION**

Notice of motion to rescind any resolution (or the general substance of any resolution) which has been passed within the preceding six calendar months shall bear the signature of the Director who gives it and also the signature of four other Directors. When any such motion has been disposed of by the Board of Directors it shall not be competent for any Director other than the Chairman to propose a motion to the same effect within six months.

## 2.9 **CHAIRMAN'S RULING**

The decision of the Chairman of the meeting on questions of order, relevancy and regularity (including procedure on handling motions) and his interpretation of the Standing Orders, shall be final. In his interpretation he shall be advised by the Company Secretary and in the case of Standing Financial Instructions by the Finance Director.

## 2.10 **VOTING**

2.10.1 Every question at a meeting shall be determined by a majority of the votes of Directors present and voting on the question and, in the case of an equality of votes, the person presiding shall have a second and casting vote.

- 2.10.2 All questions put to the vote shall, at the discretion of the Chairman, be determined by oral expression or by a show of hands provided that, upon question the Chairman may direct, or it may be proposed, seconded and carried that a vote be taken by paper ballot.
- 2.10.3 If at least four Directors so request, the voting on any question may be recorded so as to show how each Director present voted or did not vote.
- 2.10.4 If a Director so requests, his vote shall be recorded by name.
- 2.10.5 In no circumstances may an absent Director vote by proxy.

## 2.11 **MINUTES**

- 2.11.1 The minutes of the proceedings of a meeting shall be drawn up and entered in a book or other permanent record kept for that purpose and shall be signed at same or next ensuing meeting by the person presiding thereat.
- 2.11.2 No discussion shall take place upon the minutes except upon their accuracy unless the Chairman considers discussion appropriate.
- 2.11.3 Minutes of meetings of Committees or Sub-committees of the Board of Directors will be presented to or discussed at the Board of Directors at its next available meeting. The Board of Directors will receive these minutes on request and consider any recommendations or other matters referred back to it for decision. It will remain the responsibility of the Committee or Sub-committee to ensure the accuracy and approval of its relevant minutes.
- 2.11.4 The agenda and minutes of meetings of the Board of Directors are to be sent to the Council of Governors at the same time as the Board of Directors.

## 3 **APPOINTMENT OF COMMITTEES AND SUB-COMMITTEES**

- 3.1 Subject to any directions by Monitor, the Board of Directors may, and if directed as aforesaid shall, appoint committees of the Board of Directors, or together with one or more Boards appoint joint committees consisting in either case wholly or partly of persons who are Directors of the Board or other Boards.
- 3.2 A committee or joint committee appointed under this regulation may, subject to such directions as may be given by Monitor or the appointing Board or Boards, appoint sub-committees consisting wholly or partly of Directors of the committee or joint committees.

- 3.3 The standing orders of the Board of Directors as far as they are applicable, shall apply with appropriate alteration to meetings of any committees established by the Board of Directors.
- 3.4 A list of authorised committees of the Board of Directors is set out in Appendix B.

## **4 DELEGATION OF BOARD OF DIRECTORS AUTHORITY AND FUNCTIONS**

- 4.1 Subject to any directions by Monitor, the Board of Directors may, pursuant to paragraphs 4.2 and 4.3 of the constitution, make arrangements for the exercise on behalf of the Board of Directors, of any of their functions by a committee, sub-committees or joint committees appointed by virtue of Paragraphs 3.1 or 3.2 above or by an officer of the Trust, in each case subject to such restrictions and conditions as the Board of Directors thinks fit or as Monitor may direct.
- 4.2 Certain decisions may not be delegated and may only be made by the Board of Directors. A list of Board of Directors-only decisions is set out in Appendix A. This may be amended from time to time by the Board of Directors.
- 4.3 Major projects including those designated as significant transactions (as set out in the Standing Orders of the Council of Governors) are to be undertaken in line with the procedures as outlined in Appendix C.

## **5 TRUST SEAL**

### **5.1 CUSTODY OF THE SEAL**

- 5.1.1 The Common Seal of Peterborough and Stamford Hospitals NHS Foundation Trust shall be kept in safe custody by the Company Secretary.

### **5.2 SEALING OF DOCUMENTS**

- 5.2.1 The Common Seal of Peterborough and Stamford Hospitals NHS Foundation Trust shall be affixed to all documents required to be under its Seal and shall be so affixed in the presence of the Chairman and Chief Executive or their nominated officers.

### **5.3 REGISTER OF SEALING**

- 5.3.1 A Register shall be kept by the Company Secretary in which shall be recorded all documents to which the Common Seal is affixed and each

entry shall be initialled by the Chief Executive or his/her nominated officer attesting to the sealing of the document or documents to which the entry refers, the entries to be consecutively numbered.

## **6 INTEREST OF DIRECTORS IN CONTRACTS AND OTHER MATTERS**

- 6.1 Subject to the following provisions of this regulation if a Director has any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter and is present at a meeting of the Board of Directors at which the contract or other matter is the subject of consideration, he shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not take part in the consideration or discussion of the contract or other matter or vote in any question with respect to it.
- 6.2 The Chairman may, subject to such conditions as he may think fit to impose, remove by exception any disability imposed by this regulation in any case in which it appears to him in the interest of the National Health Service and the function of the Trust that the disability should be removed. This decision is to be recorded in the minutes of the relevant Board of Directors meeting.
- 6.3 Any remuneration, compensation or allowance payable to the Chairman or other Director by:
- (a) virtue of paragraph 9 of Schedule 5 to the National Health Service Act 1977;
  - (b) for Non-Executive Directors, a decision of the Council of Governors as in paragraph 33.1 of the constitution;
  - (c) for Executive Directors, a decision of the Remuneration and Nominations Committee of the Board of Directors as in paragraphs 33.2 of the constitution;

shall not be treated as a pecuniary interest for the purpose of this regulation.

- 6.4 For the purpose of this regulation a Director shall be treated, subject to Paragraphs 6.2 and 6.5, as having indirectly a pecuniary interest in a contract, proposed contract or other matter if:
- (a) he or a nominee of his is a director or employee of a company or other body not being a public body, with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration: or

- (b) he is a partner or is in the employment of a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration. In the case of married persons living together, or persons living together as married, the interest of one spouse or partner shall, if known to the other, be deemed for the purpose of this regulation to be also an interest of the other.

6.5 A Director shall not be treated as having an indirect pecuniary interest in any contract proposed contract or other matter by reason only:

- (a) of his Directorship of a company or other body if he has no beneficial interest in any securities of that company or other body;
- (b) of an interest of his or of any company, body or person with which he is connected as mentioned in Paragraph 6.4 which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a Director in the consideration or discussion of or in voting on, any question with respect to that contract or matter.

6.6 The Chief Executive or his/her nominated officer shall ensure that all declarations of pecuniary interest are recorded.

6.7 Where a Director has an indirect pecuniary interest in a contract, proposed contract or other matter by reason only of a beneficial interest in securities of a company or other body, and the total nominal value of those securities does not exceed £1,000 or one hundredth of the total nominal value of the issued share capital of the company or body, whichever is the less, and if the share capital is of more than one class, the total nominal value of shares of any one class in which he has a beneficial interest does not exceed one hundredth of the total issued share capital of that class, this regulation shall not prohibit him from taking part in the consideration or discussion of the contract or other matter or from voting on any question with respect to it, without prejudice however to his duty to disclose his interest.

6.8 If it comes to the knowledge of an officer of the Trust that a contract in which he has any pecuniary interest, not being a contract to which he is himself a party, has been, or is proposed to be, entered into by the Trust, he shall, at once give notice in writing to the Trust of the fact that he is interested therein. In the case of married persons living together, or persons living together as married, the interest of one spouse or partner shall, if known to the other, be deemed to be also the interest of that spouse or partner. The provisions of this standing order shall also apply to any registered medical practitioner who is a Director of the Board.

- 6.9 The Company Secretary shall maintain a Register of Pecuniary and Non-Pecuniary Interest of officers made in accordance with the Standing Orders of the Trust and the requirements of Monitor.

## **7 CANVASSING OF AND RECOMMENDATION BY DIRECTORS**

- 7.1 The canvassing of Directors or of any committee of the Trust directly or indirectly for any appointment under the Trust shall disqualify the candidate for such appointment. The purport of this paragraph of this Standing Order shall be included in any form of application or otherwise brought to the attention of candidates.
- 7.2 A Director of the Board shall not solicit for any person any appointment under the Trust or recommend any person for such an appointment; but this shall not preclude a Director from giving a written testimonial of a candidate's ability, experience or character for submission to the Trust.
- 7.3 Candidates for any appointment under the Trust shall, when making application, disclose in writing to the Trust whether they are related to any Director or the holder of any senior office under the Trust. Failure to disclose such a relationship shall disqualify a candidate and, if appointed, render him liable to instant dismissal. Every Director and senior officer of the Trust shall disclose to the Chief Executive any relationship between himself and a candidate of whose candidature that Director or senior officer is aware. It shall be the duty of the Chief Executive to report to the Board of Directors any such disclosure made.
- 7.4 Where the relationship to a Director of the Trust is disclosed the Standing Order headed "Interest of Directors in Contracts and other Matters" (Paragraph 6) shall apply.
- 7.5 Relationships to which this order applies are those of husband and wife (or the partner of those living together as married) or where either of the two or the spouse or partner of either of them is the son or daughter or grandson or grand-daughter or brother or sister or nephew or niece of the other or of the spouse or partner of the other.

## **8 PATIENT AND PUBLIC INVOLVEMENT**

- 8.1 Under the requirements of section 12 of the National Health Service Act 2006, and the obligations placed on the Trust in being a public benefit corporation, the Board of Directors has responsibility to ensure patient and public involvement in the delivery and development of services.

- 8.2 The Council of Governors, under the Health and Social Care Act 2012, have a duty to represent the views of Trust members and the public. The Board of Directors will therefore make arrangements to assist in the performance of this duty.
- 8.2 The Board of Directors will expect to see evidence of patient and public involvement in any service review or development that requires Board of Directors approval. Ongoing responsibility will be discharged through the oversight of the Trust's Clinical Directorate governance structure, and support for activities will be directed through the Trust's Community Engagement Committee.
- 8.3 The Board of Directors is also committed to working with patient and public involvement groups including statutory organisations (Local Healthwatch , Local Health and Wellbeing Boards, Local Authority Health Overview and Scrutiny Committees) and other local patient or public representative groups.
- 8.4 Involvement of specific groups or on specific issues will not be to the detriment of the overall management and provision of services to the wider population.
- 8.5 The Board of Directors is also committed to ensuring openness and transparency through the continuous development and adherence to policies and processes for the publication of information as required both by the Freedom of Information Act 2000 and to fulfil obligations for patient and public involvement stated above.

## **9 WAIVER OR VARIATION OF STANDING ORDERS**

- 9.1 Except where this would contravene any statutory provision or any provision by Monitor, any one or more of the Standing Orders may be suspended at any meeting, provided that at least two-thirds of the whole number of the Directors of the Board are present. For the avoidance of doubt two-thirds equates to ten Directors.
- 9.2 These Standing Orders shall not be varied except upon a notice of motion under Paragraph 2.6 and unless there are at least two-thirds of the whole number of Directors present and provided that any variations do not contravene a statutory provision or direction made by Monitor. For the avoidance of doubt two-thirds equates to ten Directors.
- 9.3 Where the Chairman of the Trust (or, in his absence, the Deputy Chairman) authorises urgent action in respect of a matter on behalf of the Trust which would have been considered by the Trust itself, such action shall be reported to the next meeting of the Board of Directors.

- 9.4 Standing Orders may be waived by the Chief Executive in respect of the need for competitive tendering provided the circumstances are in accordance with section 12.2 of the Standing Financial Instructions. A note of waivers granted by the Chief Executive shall be kept and reported at the earliest opportunity to a meeting of the Audit Committee.
- 9.5 Where a Director or Employee suspects that Standing Orders have been breached – not adhered to – they should inform their line manager immediately. Where they consider that this compromises them in any way, they should contact the Company Secretary, or in the case of Standing Financial Instructions the Finance Director, directly.
- 9.6 If the matter concerns the Company Secretary or the Finance Director the approach may be made directly to the Chief Executive. Where it concerns the Chief Executive the approach may be made to the Trust Chairman.
- 9.7 The line manager must contact the Company Secretary (or Finance Director as appropriate) immediately who will investigate the matter. Any information received will be treated as confidential.
- 9.8 To promote the reporting of suspected irregularity, no employee should be penalised as a result of reporting any reasonably held suspicions. This excludes allegations that are found to have been made maliciously.
- 9.9 The Company Secretary has responsibility for the investigation of any breaches of the Trust’s Standing Orders; the Finance Director has responsibility for the investigation of any breaches of the Trust’s Standing Financial Instructions. In the event of either the Company Secretary or Finance Director being involved in the alleged breach, the investigation will be directed by the Chief Executive. If the alleged breach involves the Chief Executive, the investigating officer will be appointed by the Chairman.
- 9.10 Investigations will be reported to the Board of Directors. The Finance Director will take action in accordance with the requirements of the NHS Counter-Fraud and Corruption Manual, and will liaise with the Local Counter-Fraud Specialist and the NHS Directorate of Counter-Fraud Services as necessary and required.

## **10 STANDING FINANCIAL INSTRUCTIONS**

- 10.1 Standing Financial Instructions adopted by the Board of Directors in accordance with the Financial Regulations shall have effect as if incorporated in these Standing Orders.



## **11 LIABILITIES**

### **11.1 LIABILITY COVER**

11.1.1 Members of the Board of Directors and officers of the Trust will have access to cover provided under the NHSLA Liabilities to Third Parties Scheme and under any additional commercial cover as authorised by the Board of Directors.

### **11.2 ASSOCIATE, DEPUTY, ASSISTANT AND MANAGING DIRECTORS**

11.2.1 The use of the term “director” is recognised in a number of Acts of Parliament. Associate, deputy, assistant and managing directors may carry equivalent liability to Executive Directors if they are part of the decision making process of the Board of Directors. The arrangements in sections 11.2.2 to 11.2.4 are to be followed to assist with such liability.

11.2.2 The Trust’s scheme of delegation will set out differentiated financial limits for these postholders

11.2.3 The Board of Directors will consider the attendance of such post holders to ensure liability is not unnecessarily assigned to those providing advice, especially in the absence of the relevant Executive Director who has a line management role to these officers.

11.2.4 On occasions where attendance is required at meetings of the Board of Directors, such officers may be asked to leave the meeting when any final decisions are being made.

## **12 TRUST CHARITABLE FUNDS**

12.1 These Standing Orders also cover the work of the Corporate Trustee of the Trust’s Charitable Funds. A committee of the Corporate Trustee will be established to oversee the management of the Trust’s Charitable Funds and will report to the Corporate Trustee at least once a year.

## **APPENDIX A**

### **BOARD OF DIRECTORS-ONLY DECISIONS**

- A.1 The Board of Directors will delegate its executive responsibility for the performance of its functions to the Chief Executive.
- A.2 The Board of Directors will exercise financial supervision and control by requiring the submission and approval of business plans and budgets, by defining and approving essential features of financial arrangements in respect of important procedures and financial systems, including the need to obtain value for money, and by defining specific responsibilities on management and staff.
- A.3 The Board of Directors will set budgetary limits within which the Chief Executive may operate and delegate.
- A.4 The Board of Directors will consider whether to adopt the Annual Report and Accounts of the Trust following certification by the External Auditors.
- A.5 The Board of Directors will approve the opening and closure of bank accounts and will set the mandate and approve the subsequent addition and deletion of authorised signatories.
- A.6 The Board of Directors will determine the Trust's policy for the investment of cash surpluses which may arise from time to time.
- A.7 The Board of Directors will approve all loan and overdraft facilities and the issue of guarantees on behalf of the Secretary of State or commercial lenders.
- A.8 The Board of Directors will establish an Audit Committee consisting of Non-Executive Directors to whom both the Chief Internal Auditor and the External Auditor will have direct access.
- A.9 The Board of Directors, through the Audit Committee, will approve the annual and three year Internal Audit Strategic Plan and will receive and consider reports on the Trust's systems of internal control and procedures from the Chief Internal Auditor.
- A.10 The Board of Directors may not appoint External Auditors, this being the prerogative of the Council of Governors. However it will, through the Audit Committee, approve the level of fees payable to the External Auditor and the Audit Planning Memorandum. The Audit Committee will also receive and consider the management letter produced by the External Auditor and determine subsequent action to be taken on it.

- A.11 The Board of Directors will act as Corporate Trustee for the Trust Charitable Funds and will approve the purposes for which the funds may be used, to the extent that this is not specified by the donor, and will set delegated limits on officers authorised to commit expenditure.
- A.12 The Corporate Trustee will determine the investment policy for Charitable Funds, subject to any statutory limitations.
- A.13 The Board of Directors will approve the writing off of losses and authorise special payments over the limits specified in the Scheme of Delegation.
- A.14 The Board of Directors will set Standards of Business Conduct for the Trust's officers and staff.
- A.15 The Chairman and Non-Executive Directors will be responsible for the appointment of the Chief Executive. This appointment needs to be approved by the Council of Governors.
- A.16. The Non-Executive Directors together with the Chief Executive will be responsible for the appointment of the Executive Directors.
- A.17 The Board of Directors will appoint a Remuneration and Nominations Committee of Non-Executive Directors to determine the remuneration of the Chief Executive and Executive Directors
- A.18 The Board of Directors will approve the use of the Common Seal of the Trust.
- A.19 The Board of Directors will approve the acquisition or disposal of land and buildings and will approve the entering into a lease agreement to occupy additional land or buildings, or the letting of a lease agreement to a tenant to occupy any of the land or buildings owned or leased by the Trust.
- A.20 The Board of Directors will prescribe the terms on which committees and sub-committees of the Board of Directors may hold delegated functions.
- A.21 The Board of Directors will approve policy matters of a strategic nature which may include:
- (a) Major changes in the Trust's service provision (e.g. opening or closure of a major department)
  - (b) Trade union recognition
  - (c) Pay and reward policy

- (d) Budget parameters (e.g. internal efficiency targets, income assumptions, acknowledged levels of risk and uncertainty)
- (e) External communications strategy

A.22 The Board of Directors will take decisions on forward service planning and corporate strategy including approval of the Trust's annual plan and 5-year strategic plan. These decisions will be taken with due regard to the views of the Council of Governors, with the Council of Governors approving significant transactions.

A.23 The Board of Directors will approve the Standing Orders and Standing Financial Instructions and may at any time make amendments to them, provided always that they conform to national legislation and the requirements of Monitor.

A.24 The Board of Directors may at any time make amendments to the above list of decisions.

## **APPENDIX B**

### **AUTHORISED COMMITTEES OF THE BOARD OF DIRECTORS**

#### **B.1 BOARD OF DIRECTORS ARRANGEMENTS**

- B.1.1 The Board of Directors has authorised the standing committees listed in B.2, which have delegated authority to approve policies and strategies that fall within their terms of reference.
- B.1.2 The Board of Directors will authorise the terms of reference, and any changes to them, of these committees.
- B.1.3 All committees are to be chaired by a Non-Executive Director.
- B.1.4 All committees report to the Board of Directors at the next Board of Directors meeting that follows a meeting of a committee.
- B.1.5 All members of the Board of Directors are to receive minutes of committee meetings on request.

#### **B.2 STANDING COMMITTEES**

B.2.1 Authorised standing committees of the Board of Directors are:

- Audit Committee;
- Remuneration and Nominations Committee;
- Finance and Investment Committee;
- Quality Assurance Committee.

There is one authorised standing committee of the Corporate Trustee:

- Charitable Funds Committee.

B.2.2 Copies of current terms of reference for these committees are to be kept by the Company Secretary

#### **B.3 AD HOC COMMITTEES**

B.3.1 Time-limited ad hoc committees of the Board of Directors may also be established. This will be noted in the minutes of the Board of Directors meeting that authorise the creation of such a committee. All such committees must have approved terms of reference and an identified lead executive director.

## **APPENDIX C**

### **ARRANGEMENTS FOR MAJOR PROJECTS AND SIGNIFICANT TRANSACTIONS**

#### **C.1 DEFINITION OF MAJOR PROJECTS**

C.1.1 Major projects are defined as all those either requiring Board of Directors approval under the Trust's Scheme of Delegation or Council of Governors approval as a significant transaction.

C.1.2 The Trust's Board of Directors can by exception define an activity as a major project that does not meet the criteria in C.1.1, but which it requires to undergo the same level of scrutiny.

#### **C.2 DEVELOPMENT AND APPROVAL**

C.2.1 All major projects are to be considered by the Finance and Investment Committee prior to going forward for approval by the Board of Directors.

C.2.2 Unless by exception agreed with the Chief Executive Officer, proposals should be supported by an investment appraisal considered by the Investment Appraisal Group. Any exception should be reported to the Audit Committee.

C.2.3 Those major projects that are also significant transactions are to be authorised by the Council of Governors.

#### **C.3 PROJECT MANAGEMENT**

C.3.1 All major projects will be managed and delivered according to standard project management methodology with the following criteria:

- each project will have an executive sponsor and an identified project lead;
- each project will have its own project group supported by clear terms of reference, project management statement and project objectives;
- a clear timeline and separate budget will be set for each project;
- a process for appropriate patient, commissioner, governor engagement will be set for each project
- the progress of the project will be reported to the Trust Management Board against the objectives of the project, timeline and budget;

- each project will have risk assessment detailed on the Trust's risk management system;
- progress on each project will be reported to the Board of Directors through the relevant executive directors report or by exception through a time-limited committee of the Board of Directors set up specifically to lead the project;
- dedicated project records are to be maintained throughout the project and securely archived for future reference, with records kept in line with the Trust's retention of records policy;

#### **C.4 POST PROJECT IMPLEMENTATION**

- C.4.1 All major projects are subject to post project implementation to demonstrated the delivery of the objectives of the project and to provide a a benefits realisation.
- C.4.2 The plans for post project implementation should be included in the original project management statement.

## **ANNEX 8 – FURTHER PROVISIONS**

(Paragraph 10.4)

### **1. Framework**

- 1.1 Subject to the terms of this constitution, the members of the trust will be able to:
  - 1.1.1 elect representatives to the Council of Governors;
  - 1.1.2 stand for election to the Council of Governors;
  - 1.1.3 (if they are members of the public constituency) put themselves forward for appointment as Chairman of the trust or (if they are members of the public constituency) put themselves forward for appointment as non-executive directors on the Board of Directors;
  - 1.1.4 through the Council of Governors, receive information about the trust and be consulted on plans regarding the future development of the trust and its services.

### **2. Disqualification from membership of the trust**

- 2.1 A person may not become or continue as a member of the trust unless he agrees to and abides by the Trust Values.
- 2.2 It is the responsibility of members to ensure their eligibility and not the trust, but if the trust is on notice that a Member may be disqualified from membership, it shall carry out all reasonable enquiries to establish if this is the case.
- 2.3 A person may not be a member of the trust if he or she has been involved in any act of violence against staff or other members of the trust.
- 2.4 A person may not be a member of the trust if he or she is or has been identified as a vexatious complainant.

### **3. Termination of membership**

- 3.1 A member shall cease to be a member if he:
  - 3.1.1 resigns by notice to the Secretary;
  - 3.1.2 ceases to fulfil the requirements of paragraphs 7 or 8 of the Constitution;
  - 3.1.3 fails to agree (or, having agreed, fails) to abide by the values of the Trust;
  - 3.1.4 is disqualified under paragraph 2 above or any other provision of this constitution;



- 3.1.5 is involved in any act of violence against staff or other members of the trust; or
- 3.1.6 is or has been identified as a vexatious complainant.

#### **4. Dispute as to eligibility for membership**

- 4.1 Should a dispute arise as to the eligibility of an individual to be a member of the trust the Secretary shall determine the dispute in accordance with the 2006 Act and the eligibility criteria set out in the constitution. There will be a right of appeal to the Council of Governors. In any event the Secretary's decision shall be considered and either approved or overturned by the Council of Governors at the next meeting of the Council of Governors immediately following the Secretary's decision. The Council of Governors' decision shall be final.

#### **6. Practice and Procedure for Meetings**

- 6.1 The standing orders adopted by the Council of Governors and the standing orders adopted by the Board of Directors shall comply with the following minimum requirements:
  - 6.1.1 A framework for calling meetings which may allow for shorter notice in case of urgency.
  - 6.1.2 A framework for managing meetings and resolving questions of irregularity and other procedural issues.
  - 6.1.3 Provisions as to the quorum for business to be transacted and the manner in which votes shall be taken. If at any meeting there is no quorum within 30 minutes of the time fixed for the start of the meeting, the meeting shall stand adjourned for 7 days and upon reconvening, those present shall constitute a quorum.
  - 6.1.4 A framework to permit meetings to be conducted in an orderly and civilised manner and as efficiently as possible.
  - 6.1.5 A framework for appointments.
  - 6.1.6 A framework for managing conflicts of interest.
- 6.2 The standing orders are to be published separately and shall be available on the trust's internet site.

#### **7. Board of Directors – disqualification**

In addition to the grounds of disqualification set out in paragraph 29 of the constitution, a person may also not be or continue as a Director of the Trust if:

- 7.1 in the case of a Non-Executive Director, he/she no longer satisfies the relevant requirements for appointment;
- 7.2 in the case of an Executive Director, he/she is no longer employed by the Trust;
- 7.3 he/she has persistently failed or refused to undertake any training which the Board of Directors requires all Directors to undertake;
- 7.4 he/she has failed to sign and deliver to the Secretary in the form required by the Board of Directors confirmation that he/she accepts the Code of Conduct of NHS Managers;

**8. Indemnity**

Members of the Council of Governors and Board of directors who act honestly and in good faith will not have to meet out of their personal resources any personal civil liability which is incurred in the execution or purported execution of their Council or Board functions, save where they have acted recklessly and the trust may also take out and maintain insurance against such risks. Any costs arising in this way will be met by the trust.

## **ANNEX 8 APPENDIX - STATEMENT OF TRUST VALUES**

### **FAILURE TO ABIDE BY THE FOLLOWING VALUES IS A GROUND FOR DISQUALIFICATION FROM MEMBERSHIP**

#### **Caring**

- Working as a team player
- Managing your own attitude and behaviour
- Caring with compassion and respect
- Addressing concerns with colleagues
- Communicating respectfully, openly and professionally

#### **Creative**

- Embracing change, developing best practice & open to challenge new ways of working
- Accessing opportunities for learning & development
- Being the best you can everyday
- Working creatively and in partnership with' patients and the health community

#### **Community**

- Taking pride in yourself and our organisation
- Promoting a positive culture
- Focusing on achievements and what we can do together