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

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## **Originally approved August 2006**

**Revised during 2008** further to changes to the composition of the Council of Governors – as agreed by the Council of Governors on 12 June 2008

Revisions by Associate Director of Corporate Affairs / Trust Secretary and Hill Dickinson Solicitors

Revisions agreed by Monitor - 18 August 2008

Revised Constitution approved at the Annual Members Meeting - 6 October 2008

**Approved by Monitor – 25 November 2008**

**Revised during 2011** further to changes to the classes of the staff constituency and composition of the Council of Governors – as discussed by the Council of Governors on 14 September 2011 and noted by the Board of Directors on 3 October 2011

Revisions by Associate Director of Corporate Affairs / Trust Secretary and Hill Dickinson Solicitors

Revised Constitution approved by the Annual Members' Meeting on 6 October 2011 and agreed by the Board of Directors on 28 November 2011 and the Council of Governors on 7 December 2011

**Approved by Monitor – 13 January 2012**

**Revised during 2012** further to a change to the definition of quorum for meetings of the Council of Governors – as agreed by the Council of Governors on 7 December 2012

Revisions by Associate Director of Corporate Affairs and Trust Secretary

Amendments to the Constitution approved by the Council of Governors on 21 March 2012, Board of Directors on 26 March 2012, and members voting at a Special Members' Meeting on 25 April 2012.

**Approved by Monitor – 1 June 2012**

**Revised during 2012** further to commencement of 2012 Health Act amendments

Revisions by Associate Director of Corporate Affairs and Trust Secretary

Amendments to the Constitution approved by the Council of Governors on 12 September 2012; Board of Directors on 24 September 2012.

Approved by members at the Annual Members' Meeting on 11 October 2012

**Approved by Monitor on 17 December 2012**

**Revised during 2013** further to commencement of further 2012 Health Act amendments

Revisions by Associate Director of Corporate Affairs and Trust Secretary

Amendments to the Constitution **approved by the Board of Directors on 25 March 2013 and 29 April 2013; and by the Council of Governors on 12 June 2013.**

Monitor notified of all changes and provided with clean version on 14 June 2013.

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# **CONSTITUTION OF SALFORD ROYAL NHS FOUNDATION TRUST**

## **1 DEFINITIONS**

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

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

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

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

1.5 In this constitution:

“the 2006 Act” means the National Health Service Act 2006 as may be amended or substantially re-enacted from time to time;

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

“Accounting Officer” “means the person who from time to time discharges the functions specified in paragraph 25(5) of Schedule 7 to the 2006 Act”;

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

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

Annual Members Meeting is defined in paragraph 10.

“areas of the Foundation Trust” means the nine areas specified in Annex 1 which are (1) Claremont/Weaste & Seedley, (2) Ordsall & Langworthy, (3) East Salford, (4) Swinton, (5) Little Hulton & Walkden, (6) Eccles, (7) Irlam & Cadishead, (8) Worsley/Boothstown, and (9) Out of Salford Area;

“licence” means a licence given by Monitor;

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

Constitution means this constitution and all annexes to it.

“Council of Governors”	means the Council of Governors as constituted in accordance with this constitution, which has the same meaning as the board of governors in the 2006 Act;
“Director”	means a member of the Board of Directors;
“elected Governors”	means those Governors elected by the public constituencies and the classes of the staff constituency;
“auditor”	means the person appointed to audit the accounts of the Foundation Trust, who is called the auditor in the 2006 Act;
“Financial year”	means: <ul style="list-style-type: none"> <li>(a) the period beginning with the date on which the Foundation Trust is authorised and ending with the next 31 March; and</li> <li>(b) each successive period of twelve months beginning with 1 April;</li> </ul>
“the Foundation Trust”	means Salford Royal NHS Foundation Trust;
“Local Authority Governor”	means a Governor appointed by one or more local authorities whose area includes the whole or part of one of the areas of the Foundation Trust;
“member”	means a member of the Foundation Trust;
Monitor	is the body corporate known as Monitor, as provided by Section 61 of the 2012 Act.
“the NHS Trust”	means Salford Royal Hospitals NHS Trust which made the application to become an NHS foundation trust;
“partner”	means, in relation to another person, a member of the same household living together as a family unit;
“Partnership Governor”	means a Governor appointed by a partnership organisation;
“public constituency”	means (collectively) those members living in one of the areas of the Foundation Trust;
“Public Governor”	means a Governor elected by the members of one of the public constituencies;

“registered dentist”	means a registered dentist within the meaning of the Dentists Act 1984;
“registered medical practitioner”	means a fully registered person within the meaning of the Medicines Act 1983 who holds a licence to practice under that Act;
“Secretary”	means the Secretary of the Foundation Trust or any other person appointed to perform the duties of the Secretary, including a joint, assistant or deputy secretary;
“staff constituency”	means (collectively) those members of the five classes comprising the staff constituency;
“Staff Governor”	means a Governor elected by the members of one of the classes of the staff constituency;
“University Governor”	means a Governor appointed by University of Manchester or a Governor appointed by University of Salford.

## 2 NAME AND STATUS

- 2.1 The name of the Foundation Trust is to be “Salford Royal NHS Foundation Trust”. The Foundation Trust is a public benefit corporation authorised under the 2006 Act.

## 3 PURPOSE

- 3.1 The principal purpose of the Foundation Trust is the provision of goods and services for the purposes of the health service in England.
- 3.2 The Foundation Trust does not fulfil its principal purpose unless, in each financial year, its total income from the provision of goods and services for the purposes of the health service in England is greater than its total income from the provision of goods and services for any other purposes.
- 3.3 The Foundation 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 Foundation Trust may also carry on activities other than those mentioned in the above paragraph for the purpose of making additional income available in order better to carry on its principal purpose.

## 4 POWERS

- 4.1 The Foundation Trust may do anything which appears to it to be necessary or desirable for the purposes of or in connection with its functions.
- 4.2 In particular it may:
- 4.2.1 acquire and dispose of property,
  - 4.2.2 enter into contracts,
  - 4.2.3 accept gifts of property (including property to be held on trust for the purposes of the Foundation Trust or for any purposes relating to the health service),
  - 4.2.4 employ staff.
- 4.3 Any power of the Foundation Trust to pay remuneration and allowances to any person includes the power to make arrangements for providing or securing the provision of pensions or gratuities (including those payable by way of compensation for loss of employment or loss or reduction of pay).
- 4.4 The Foundation Trust may borrow money for the purposes of or in connection with its functions, subject to any limit imposed by its licence or specified in the prudential borrowing code published by Monitor from time to time.
- 4.5 The Foundation Trust may invest money (other than money held by it as trustee) for the purposes of or in connection with its functions. The investment may include investment by:
- 4.5.1 forming or participating in forming bodies corporate,
  - 4.5.2 otherwise acquiring membership of bodies corporate.
- 4.6 The Foundation Trust may give financial assistance (whether by way of loan, guarantee or otherwise) to any person for the purposes of or in connection with its functions.
- 4.7 All the powers of the Foundation Trust shall be executed by the Board of Directors on behalf of the Foundation Trust.
- 4.8 Any of these powers may be delegated to a committee of Directors or to an executive Director.

## 5 COMMITMENTS

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

### **Representative membership**

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

### **Respect for rights of people**

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

### **Openness**

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

### **Prohibiting distribution**

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

## **6 FRAMEWORK**

- 6.1 The affairs of the Foundation Trust are to be conducted by the Board of Directors, the Council of Governors and the members in accordance with this constitution and the Foundation Trust's licence. The members, the Council of

Governors, and the Board of Directors, are to have the roles and responsibilities set out in this constitution.

### **Members**

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

### **Council of Governors**

- 6.3 The roles and responsibilities of the Council of Governors, which are to be carried out in accordance with this constitution and the Foundation Trust's licence, are:
- 6.3.1 to hold the non-executive directors individually and collectively to account for the performance of the Board of Directors, and
  - 6.3.2 to represent the interests of the members of the Foundation Trust as a whole and the interests of the public
  - 6.3.3 at a General Meeting:
    - 6.3.3.1 to appoint or remove the Chairman and the other non-executive Directors;
    - 6.3.3.2 to approve an appointment (by the non-executive Directors) of the Chief Executive;
    - 6.3.3.3 to decide the remuneration and allowances, and the other terms and conditions of office, of the non-executive Directors;
    - 6.3.3.4 to appoint or remove the Foundation Trust's auditor;
    - 6.3.3.5 to be presented with the annual accounts, any report of the auditor on them and the annual report;
  - 6.3.4 to provide their views to the Board of Directors when the Board of Directors is preparing the document containing information about the Foundation Trust's forward planning;
  - 6.3.5 to respond as appropriate when consulted by the Board of Directors in accordance with this constitution;
  - 6.3.6 to undertake such functions as the Board of Directors shall from time to time request;
  - 6.3.7 to prepare and from time to time review the Foundation Trust's membership strategy and its policy for the composition of the Council of Governors and of the non-executive Directors;
  - 6.3.8 when appropriate to make recommendations for the revision of this constitution.

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

### **Board of Directors**

- 6.5 The business of the Foundation Trust is to be managed by the Board of Directors, who shall exercise all the powers of the Foundation Trust, subject to any contrary provisions of the 2006 Act as given effect by this constitution.

## **7 MEMBERS**

- 7.1 The members of the Foundation Trust are those individuals whose names are entered in the register of members. Every member is either a member of one of the public constituencies or a member of one of the classes of the staff constituency.

- 7.2 Subject to this constitution, membership is open to any individual who:

- 7.2.1 is sixteen years of age or older,
- 7.2.2 is entitled under this constitution to be a member of one of the public constituencies or one of the classes of the staff constituency, and
- 7.2.3 (unless they are eligible to be a member of one of the classes of the staff constituency) completes a membership application form in whatever form the Secretary specifies.

### **Public constituencies**

- 7.3 There are nine public constituencies corresponding to the nine areas of the Foundation Trust specified in Annex 1. Membership of a public constituency is open to individuals who:

- 7.3.1 live in the relevant area of the Foundation Trust,
- 7.3.2 are not a member of another public constituency, and
- 7.3.3 are not eligible to be members of any of the classes of the staff constituency.

- 7.4 The minimum number of members of each of the public constituencies is to be four.

### **Staff constituency**

- 7.5 The staff constituency is divided into classes as follows:

- 7.5.1 Salford Healthcare
- 7.5.2 Surgery

- 7.5.3 Clinical Support Services and Tertiary Medicine
  - 7.5.4 Neurosciences and Renal Services
  - 7.5.5 Corporate and General Services.
- 7.6 Membership of one of the classes of the staff constituency is open to individuals:
- 7.6.1 who are employed under a contract of employment by the Foundation Trust and who either:
    - 7.6.1.1 are employed by the Foundation Trust under a contract of employment which has no fixed term or a fixed term of at least 12 months, or
    - 7.6.1.2 who have been continuously employed by the Foundation Trust or the NHS Trust for at least 12 months; or
  - 7.6.2 who are not so employed but who nevertheless exercise functions for the purposes of the Foundation Trust and who have continuously exercised the functions for the purposes of the Foundation Trust or the NHS Trust for at least 12 months. For the avoidance of doubt, this does not include those who assist or provide services to the Foundation Trust on a voluntary basis.
- 7.7 The Secretary shall make a final decision about the class of which an individual is eligible to be a member.
- 7.8 All individuals who are entitled under this constitution to become members of one of the classes of the staff constituency, and who:
- 7.8.1 are employed under a contract of employment by the Foundation Trust, or
  - 7.8.2 are not so employed but who nevertheless exercise functions for the purposes of the Foundation Trust and who have continuously exercised the functions for the purposes of the Foundation Trust or the NHS Trust for at least 12 months
  - 7.8.3 have been invited by the Foundation Trust to become a member of the appropriate class, and
  - 7.8.4 have not informed the Foundation Trust that they do not wish to do so,
- shall become members of the appropriate class.
- 7.9 A person who is eligible to be a member of one of the classes of the staff constituency may not become or continue as a member of any of the public constituencies, and may not become or continue as a member of more than one class of the staff constituency.

- 7.10 The minimum number of members of each class of the staff constituency is to be four.

## 8 DISQUALIFICATION FROM MEMBERSHIP

- 8.1 A person may not become or remain a member of the Foundation Trust if:
- 8.1.1 they have been red-carded, or within the last three years they have been yellow-carded in accordance with the Foundation Trust's Zero Tolerance policy, or
  - 8.1.2 they have been designated a vexatious complainant in accordance with the Foundation Trust's policy.

## 9 TERMINATION OF MEMBERSHIP

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

members meetings and vote under this constitution;  
or

9.2.2.3 arrange for a resolution to expel the member complained of to be considered at the next General Meeting of the Council of Governors.

9.2.3 If a resolution to expel a member is to be considered at a General Meeting of the Board of Governors, details of the complaint must be sent to the member complained of not less than one calendar month before the meeting with an invitation to answer the complaint and attend the meeting.

9.2.4 At the meeting the Council of Governors will consider evidence in support of the complaint and such evidence as the member complained of may wish to place before them.

9.2.5 If the member complained of fails to attend the meeting without due cause the meeting may proceed in their absence.

9.3 A person expelled from membership will cease to be a member upon the declaration by the Chairman of the meeting that the resolution to expel them is carried.

9.4 No person who has been expelled from membership is to be re-admitted except by a resolution carried by the votes of two-thirds of the Council of Governors present and voting at a General Meeting.

## 10 MEMBERS MEETINGS

10.1 The Foundation Trust is to hold a members meeting (called the annual members meeting) within nine months of the end of each financial year.

10.2 All members meetings other than annual meetings are called special members meetings.

10.3 Members meetings are open to all members of the Foundation Trust, Governors and Directors, and representatives of the auditor. The Annual Members' Meeting shall be open to members of the public. The Council of Governors may, with the prior agreement of the Chairman, invite representatives of the media and any experts or advisors whose attendance they consider to be in the best interests of the Foundation Trust to attend a members meeting.

10.4 All members meetings are to be convened by the Secretary by order of the Council of Governors.

10.5 The Council of Governors may decide where a members meeting is to be held and may also for the benefit of members:

10.5.1 arrange for the annual members meeting to be held in different venues each year;

- 10.5.2 make provisions for a members meeting to be held at different venues simultaneously or at different times. In making such provision the Council of Governors shall also fix an appropriate quorum for each venue, provided that the aggregate of the quorum requirements shall not be less than the quorum set out below.
- 10.6 At the annual members meeting:
  - 10.6.1 the Board of Directors shall present to the members:
    - 10.6.1.1 the annual accounts;
    - 10.6.1.2 any report of the auditor;
    - 10.6.1.3 the annual report;
    - 10.6.1.4 forward planning information for the next financial year;
  - 10.6.2 the Council of Governors shall present to the members:
    - 10.6.2.1 a report on steps taken to secure that (taken as a whole) the actual membership of its public constituencies and of the classes of the staff constituency is representative of those eligible for such membership;
    - 10.6.2.2 the progress of the membership strategy;
    - 10.6.2.3 any proposed changes to the policy for the composition of the Council of Governors and of the non-executive Directors;
  - 10.6.3 the results of the election and appointment of Governors and the appointment of non-executive Directors will be announced.
- 10.7 Notice of a members meeting is to be given:
  - 10.7.1 by notice to all members;
  - 10.7.2 by notice prominently displayed at the head office and at all of the Foundation Trust's places of business; and
  - 10.7.3 by notice on the Foundation Trust's website;at least 14 clear days before the date of the meeting. The notice must:
  - 10.7.4 be given to the Council of Governors and the Board of Directors, and to the auditor;
  - 10.7.5 state whether the meeting is an annual or special members meeting;
  - 10.7.6 give the time, date and place of the meeting; and

- 10.7.7 indicate the business to be dealt with at the meeting.
- 10.8 Before a members meeting can do business there must be a quorum present. Except where this constitution says otherwise a quorum is one member present from each of the Foundation Trust's constituencies.
- 10.9 The Foundation Trust may make arrangements for members to vote by post, or by using electronic communications.
- 10.10 It is the responsibility of the Council of Governors, the Chairman of the meeting and the Secretary to ensure that at any members meeting:
- 10.10.1 the issues to be decided are clearly explained;
- 10.10.2 sufficient information is provided to members to enable rational discussion to take place.
- 10.11 The Chairman of the Foundation Trust, or in their absence the Vice-chairman of the Board of Directors, or in their absence one of the other non-executive Directors shall act as chairman at all members meetings of the Foundation Trust.
- 10.12 If no quorum is present within half an hour of the time fixed for the start of the meeting, the meeting shall stand adjourned to the same day in the next week at the same time and place or to such time and place as the Council of Governors determine. If a quorum is not present within half an hour of the time fixed for the start of the adjourned meeting, the number of members present during the meeting is to be a quorum.
- 10.13 A resolution put to the vote at a members meeting shall be decided upon by a poll.
- 10.14 Every member present and every member who has voted by post or using electronic communications is to have one vote. In the case of an equality of votes the Chairman of the meeting is to have a second or casting vote.
- 10.15 The result of any vote will be declared by the Chairman and entered in the minute book. The minute book will be conclusive evidence of the result of the vote.

## 11 COUNCIL OF GOVERNORS

- 11.1 The Foundation Trust is to have a Council of Governors. It is to consist of Public Governors, Staff Governors, a Local Authority Governor, University Governors and a General Practitioner Governor.
- 11.2 The aggregate number of Public Governors is to be more than half of the total number of members of the Council of Governors.
- 11.3 The Council of Governors, subject to the 2006 Act, shall seek to ensure that through the composition of the Council of Governors:

- 11.3.1 the interests of the community served by the Foundation Trust are appropriately represented;
- 11.3.2 the level of representation of the public constituencies, the classes of the staff constituency and the appointing organisations strikes an appropriate balance having regard to their legitimate interest in the Foundation Trust's affairs;

and to this end, the Council of Governors:

- 11.3.3 shall at all times maintain a policy for the composition of the Council of Governors which takes account of the membership strategy, and
- 11.3.4 shall from time to time and not less than every three years review the policy for the composition of the Council of Governors, and
- 11.3.5 when appropriate shall propose amendments to this constitution.

11.4 The Council of Governors of the Foundation Trust is to comprise:

- 11.4.1 twelve Public Governors from the following public constituencies:
  - 11.4.1.1 Claremont/Weaste & Seedley – one Public Governor
  - 11.4.1.2 Ordsall & Langworthy – one Public Governor
  - 11.4.1.3 East Salford – one Public Governor
  - 11.4.1.4 Swinton – one Public Governor
  - 11.4.1.5 Little Hulton & Walkden – one Public Governor
  - 11.4.1.6 Eccles – one Public Governor
  - 11.4.1.7 Irlam & Cadishead – one Public Governor
  - 11.4.1.8 Worsley/Boothstown – one Public Governor
  - 11.4.1.9 Out of Salford Area – four Public Governor;
- 11.4.2 five Staff Governors from the following classes;
  - 11.4.2.1 Salford Healthcare – one Staff Governor
  - 11.4.2.2 Surgery – one Staff Governor;
  - 11.4.2.3 Clinical Support Services and Tertiary Medicine – one Staff Governor
  - 11.4.2.4 Neurosciences and Renal Services – one Staff Governor
  - 11.4.2.5 Corporate and General Services – one Staff Governor.

- 11.4.3 one Local Authority Governor appointed by Salford City Council;
- 11.4.4 one University Governor appointed by University of Manchester;
- 11.4.5 one University Governor appointed by University of Salford
- 11.4.6 one General Medical Practitioner, appointed by the Salford and Trafford Local Medical Committee.

### **Elected Governors**

- 11.5 Public Governors are to be elected by members of their public constituency, and Staff Governors are to be elected by members of their class of the staff constituency. Each class/constituency may elect any of their number to be a Governor in accordance with the provisions of this constitution.
- 11.6 If contested, the elections must be by secret ballot.
- 11.7 Elections shall be carried out in accordance with the rules set out in Annex 2. The Council of Governors will decide which of the two voting methods set out in Annex 2 is to be used.
- 11.8 A member of a public constituency may not vote at an election for a Public Governor unless within twenty-one days before they vote they have made a declaration in the form specified by the Secretary that they are qualified to vote as a member of the relevant public constituency. It is an offence to knowingly or recklessly make such a declaration which is false in a material particular.

### **Local Authority Governor**

- 11.9 The Secretary, having consulted Salford City Council is to adopt a process for agreeing the appointment of a Local Authority Governor with that local authority.

### **University Governors**

- 11.10 The Secretary, having consulted with University of Manchester, is to adopt a process for agreeing the appointment of a University Governor with that University.
- 11.11 The Secretary, having consulted with University of Salford, is to adopt a process for agreeing the appointment of a University Governor with that University.

### **Appointment of Lead Governor of the Council of Governors**

- 11.12 The Council of Governors shall appoint one of the Governors to be Lead Governor of the Council of Governors. The Lead Governor's function shall be to chair such parts of meetings of the Council of Governors which cannot be chaired by the person presiding at the relevant meeting due to a conflict of interest in relation to the business being discussed.

## **Terms of office for Governors**

### 11.13 Elected Governors:

- 11.13.1 shall normally hold office for a period of three years commencing immediately after the day on which their election is announced;
- 11.13.2 are eligible for re-election at the end of that period;
- 11.13.3 may not hold office for more than nine consecutive years, and shall not be eligible for re-election if they have already held office for more than six consecutive years.

### 11.14 Appointed Governors:

- 11.14.1 shall normally hold office for a period of three years commencing immediately after the annual members meeting at which their appointment is announced;
- 11.14.2 are eligible for re-appointment at the end of that period;
- 11.14.3 may not hold office for longer than nine consecutive years, and shall not be eligible for re-appointment if they have already held office for more than six consecutive years.

### 11.15 For the purposes of these provisions concerning terms of office for Governors, "year" means:

- 11.15.1 For a newly elected or re-elected governor, a period commencing immediately after the day on which their election is announced and ending at the conclusion of the first annual members meeting to take place after the date of their election; and
- 11.15.2 In all other cases, a period commencing immediately after the conclusion of the last annual members meeting, and ending at the conclusion of the next annual members meeting.

## **Eligibility to be a Governor**

### 11.16 A person may not become a Governor of the Foundation Trust, and if already holding such office will immediately cease to do so, if:

- 11.16.1 they are under sixteen years of age;
- 11.16.2 they are a Director of the Foundation Trust, an executive director or chair of a health service body or a director of a local authority;
- 11.16.3 they are the spouse, partner, parent or child of a member of the Board of Directors of the Foundation Trust;
- 11.16.4 they are a member of a local authority's Scrutiny Committee covering health matters;
- 11.16.5 being a member of one of the public constituencies, they refuse to sign a declaration in the form specified by the Secretary of particulars of their qualification to vote as a member of the

Foundation Trust, and that they are not prevented from being a member of the Council of Governors;

- 11.16.6 if they are subject to a sex offender order;
- 11.16.7 they have been adjudged bankrupt or their estate has been sequestrated and in either case they have not been discharged;
- 11.16.8 they have made a composition or arrangement with, or granted a trust deed for, their creditors and have not been discharged in respect of it;
- 11.16.9 they have within the preceding five years been convicted in the British Islands or elsewhere of any offence and a sentence of imprisonment (whether suspended or not) for a period of three months or more (without the option of a fine) was imposed;
- 11.16.10 they have within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with a health service body;
- 11.16.11 they are a person whose tenure of office as the Chairman or as a member or director of a health service body has been terminated on the grounds that their appointment is not in the interests of the health service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest;
- 11.16.12 they are a member of the staff constituency and are subject to a final written warning in connection with any position of employment held by them;
- 11.16.13 they have a formal role with the Salford Clinical Commissioning Group
- 11.16.14 they are a Healthwatch member.

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

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

- 11.17.1 they resign by notice in writing to the Secretary;
- 11.17.2 they fail to attend three consecutive meetings, unless the other Governors are satisfied that:
  - 11.17.2.1 the absences were due to reasonable causes; and
  - 11.17.2.2 they will be able to start attending meetings of the Council of Governors again within such a period as the other Governors consider reasonable;
- 11.17.3 in the case of an elected Governor, they cease to be a member of the constituency or class of the constituency by which they were elected;

- 11.17.4 in the case of an appointed Governor, the appointing organisation terminates the appointment;
  - 11.17.5 they have refused without reasonable cause to undertake any training which the Council of Governors requires all Governors to undertake;
  - 11.17.6 they have failed to sign and deliver to the Secretary a statement in the form required by the Secretary confirming acceptance of the code of conduct for Governors;
  - 11.17.7 they are removed from the Council of Governors under the following provisions.
- 11.18 A Governor may be removed from the Council of Governors by a resolution approved by not less than three-quarters of the remaining Governors present and voting on the grounds that:
- 11.18.1 they have committed a serious breach of the code of conduct, or
  - 11.18.2 they have acted in a manner detrimental to the interests of the Foundation Trust, and
  - 11.18.3 the Council of Governors consider that it is not in the best interests of the Foundation Trust for them to continue as a Governor.

#### **Vacancies amongst Governors**

- 11.19 Where a vacancy arises on the Council of Governors for any reason other than expiry of term of office, the following provisions will apply.
- 11.20 Where the vacancy arises amongst the appointed Governors, the Secretary shall request that the appointing organisation appoints a replacement to hold office for the remainder of the term of office (such replacement to be appointed in accordance with the process which has been previously agreed with the Secretary).
- 11.21 Where the vacancy arises amongst the elected Governors, the Council of Governors shall:
- 11.21.1 invite the next highest polling candidate for that seat at the most recent election, who is willing to take office, to fill the seat until the next annual election, at which time the seat will fall vacant and subject to election for any unexpired period of the term of office, or
  - 11.21.2 if there is no next highest polling candidate for that seat willing to take office and the vacancy remains, be at liberty to call an election within three months to fill the seat for the remainder of the term of office.

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

- 11.22 The Foundation Trust may reimburse Governors for travelling and other costs and expenses incurred in carrying out their duties at such rates as the Board of Directors decides. These are to be disclosed in the annual report.

11.23 Governors are not to receive remuneration.

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

- 11.24 The Council of Governors is to meet at least three times in each financial year. Save in the case of emergencies or the need to conduct urgent business, the Secretary shall give at least fourteen days written notice of the date and place of every meeting of the Council of Governors to all Governors. Notice of every meeting of the Council of Governors which is open to the public will also be published in the Foundation Trusts' members' newsletter and on the Foundation Trust's website.
- 11.25 Meetings of the Council of Governors may be called by the Secretary, or by the Chairman, or by six Governors (including at least two elected Governors and two appointed Governors) who give written notice to the Secretary specifying the business to be carried out. The Secretary shall send a written notice to all Governors as soon as possible after receipt of such a request. The Secretary shall call a meeting on at least fourteen but not more than twenty-eight days' notice to discuss the specified business. If the Secretary fails to call such a meeting then the Chairman or six Governors, whichever is the case, shall call such a meeting.
- 11.26 All meetings of the Council of Governors are to be General Meetings open to members of the public unless the Council of Governors decides otherwise in relation to all or part of a meeting for reasons of commercial confidentiality or on other proper grounds. The Chairman may exclude any member of the public from a meeting of the Council of Governors if they are interfering with or preventing the proper conduct of the meeting.
- 11.27 Fourteen Governors (i.e. approximately two thirds of the Council) regardless of type (public, staff or appointed) shall form a quorum
- 11.28 The Chairman of the Foundation Trust or, in their absence, the Vice Chairman of the Board of Directors, or in their absence one of the non-executive Directors is to preside at meetings of the Council of Governors. If the person presiding at any such meeting has a conflict of interest in relation to the business being discussed, the Lead Governor of the Council of Governors will chair that part of the meeting.
- 11.29 The Council of Governors may invite the Chief Executive or any other member or members of the Board of Directors, or a representative of the auditor or other advisors to attend a meeting of the Council of Governors.
- 11.30 For the purposes of obtaining information about the Foundation Trust's performance of its functions or the directors' performance of their duties (and deciding whether to propose a vote on the Trust's or director's performance), the Council of Governors may require one or more of the directors to attend a meeting;
- 11.31 The Council of Governors may agree that its members can participate in its meetings by telephone, video or computer link. Participation in a meeting in this manner shall be deemed to constitute presence in person at the meeting.

- 11.32 Subject to this constitution and the following provisions of this paragraph, questions arising at a meeting of the Council of Governors shall be decided by a majority of votes.
- 11.32.1 In case of an equality of votes the person presiding at or chairing the meeting shall have a casting vote.
  - 11.32.2 No resolution of the Council of Governors shall be passed if it is opposed by all of the Public Governors present.
- 11.33 The Council of Governors may not delegate any of its powers to a committee or sub-committee, but it may appoint committees consisting of its members, Directors, and other persons to assist the Council of Governors in carrying out its functions. The Council of Governors may, through the Secretary, request that advisors assist them or any committee they appoint in carrying out its duties.
- 11.34 All decisions taken in good faith at a meeting of the Council of Governors or of any committee shall be valid even if it is discovered subsequently that there was a defect in the calling of the meeting, or the appointment of the Governors attending the meeting.
- 11.35 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:
- 11.35.1 to act in accordance with its constitution, or
  - 11.35.2 to act in accordance with provision made by or under Chapter 5 of the 2006 Act;
- 11.36 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.

### **Disclosure of interests**

- 11.37 Any Governor who has a material interest in a matter as defined below shall declare such interest to the Council of Governors and:
- 11.37.1 shall withdraw from the meeting and play no part in the relevant discussion or decision;
  - 11.37.2 shall not vote on the issue (and if by inadvertence they do remain and vote, their vote shall not be counted).
- 11.38 Any Governor who fails to disclose any interest required to be disclosed under the preceding paragraph must permanently vacate their office if required to do so by a majority of the remaining Governors.
- 11.39 Subject to the exceptions below, a material interest is:
- 11.39.1 any directorship of a company;
  - 11.39.2 any interest or position held by a Governor in any firm or company or business which, in connection with the matter, is trading with the

- Foundation Trust, or is likely to be considered as a potential trading partner with the Foundation Trust;
- 11.39.3 any interest in an organisation providing health and social care services to the National Health Service;
  - 11.39.4 a position of authority in a charity or voluntary organisation in the field of health and social care;
  - 11.39.5 any connection with any organisation, entity or company considering entering into a financial arrangement with the Foundation Trust including but not limited to lenders or banks.
- 11.40 The exceptions which shall not be treated as material interests are as follows:
- 11.40.1 shares not exceeding 2% of the total shares in issue held in any company whose shares are listed on any public exchange;
  - 11.40.2 an employment contract held by Staff Governors;
  - 11.40.3 an employment contract with their PCT held by a PCT Governor;
  - 11.40.4 an employment contract with, or a position of authority in, a local authority held by a Local Authority Governor;
  - 11.40.5 an employment contract with, or a position of authority, in a university held by a University Governor;
  - 11.40.6 an employment contract with, or a position of authority in, the Local Medical Committee held by a General Medical Practitioner Governor.
- 11.41 The Council of Governors is to adopt its own standing orders for its practice and procedure, in particular for its procedure at meetings.

### **Declaration**

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

## **12 BOARD OF DIRECTORS**

- 12.1 The general duty of the Board of Directors and of each director individually is to act with a view to promoting the success of the Foundation Trust so as to maximise the benefits for the members of the trust as a whole and for the public.

- 12.2 The Foundation Trust is to have a Board of Directors. It is to consist of executive and non-executive Directors.
- 12.3 The board is to include:
- 12.3.1 the following non-executive Directors:
- 12.3.1.1 a Chairman, who is to be appointed (and removed) by the Council of Governors at a General Meeting;
- 12.3.1.2 not less than four and not more than six other non-executive Directors who are to be appointed (and removed) by the Council of Governors at a General Meeting;
- in each case subject to the approval of a majority of the Council of Governors (in the case of an appointment) present and voting at the meeting, and three-quarters of all of the members of the Council of Governors (in the case of a removal) present and voting at the meeting;
- 12.3.2 the following executive Directors:
- 12.3.2.1 a Chief Executive (who is the accounting officer), who is to be appointed (and removed) by the non-executive Directors, and whose appointment is subject to the approval of a majority of the members of the Council of Governors present and voting at a General Meeting;
- 12.3.2.2 a Finance Director, a registered medical practitioner or a registered dentist, a registered nurse or registered midwife, and not more than three other executive Directors, all of whom are to be appointed (and removed) by a committee consisting of the Chairman, the Chief Executive and the other non-executive Directors.
- 12.4 The number of executive Directors will not exceed the number of established non-executive Directors.
- 12.5 The Board of Directors shall elect one of the non-executive Directors to be Vice-Chairman of the Board of Directors. If the Chairman is unable to discharge their office as Chairman of the Foundation Trust, the Vice-Chairman of the Board of Directors shall be acting Chairman of the Foundation Trust.
- 12.6 The Chief Executive may nominate one of the executive Directors to be Deputy Chief Executive. If the Chief Executive is unable to discharge their office as Chief Executive, the Deputy Chief Executive or, if no such appointment has been made, one of the executive Directors nominated by the Chairman and the non-executive Directors, shall act as Acting Chief Executive.

- 12.7 Only a member of one of the public constituencies or an individual exercising functions for University of Manchester is eligible for appointment as a non-executive Director.
- 12.8 Non-executive Directors are to be appointed by the Council of Governors using the following procedure.
- 12.8.1 The Council of Governors will maintain a policy for the composition of the non-executive Directors which takes account of the membership strategy, and which they shall review from time to time and not less than every three years.
- 12.8.2 The Board of Directors, (who will draw up the person specification) may work with an external organisation recognised as expert at appointments to identify the skills and experience required for non-executive Directors.
- 12.8.3 Appropriate candidates (not more than five for each vacancy) will be identified by a Nominations Committee through a process of open competition, which take account of the policy maintained by the Council of Governors and the skills and experience required.
- 12.8.4 The Nominations Committee will comprise the Chairman of the Foundation Trust (or the Vice Chairman unless they are standing for appointment, in which case another non-executive director, when a Chairman is being appointed), two elected Governors and one appointed Governor. The chairman of another Foundation Trust will be invited to act as an independent assessor to the Nominations Committee. The Nominations Committee will consult the Chief Executive.
- 12.9 The removal of the Chairman or another non-executive Director shall be in accordance with the following procedures.
- 12.9.1 Any proposal for removal must be proposed by a Governor and seconded by not less than ten Governors including at least two elected Governors and two appointed Governors.
- 12.9.2 Written reasons for the proposal shall be provided to the non-executive Director in question, who shall be given the opportunity to respond to such reasons.
- 12.9.3 In making any decision to remove a non-executive Director, the Council of Governors shall take into account the annual appraisal carried out by the Chairman.
- 12.9.4 If any proposal to remove a non-executive Director is not approved at a meeting of the Council of Governors, no further proposal can be put forward to remove such non-executive Director based upon the same reasons within 12 months of the meeting.

### **Terms of Office**

- 12.10 The Chairman and the non-executive Directors are to be appointed for a period of office in accordance with the terms and conditions of office,

including remuneration and allowances, decided by the Council of Governors at a General Meeting. Any re-appointment of a non-executive Director by the Council of Governors shall be subject to a satisfactory appraisal carried out in accordance with procedures which the Board of Directors have approved.

- 12.11 The remuneration committee of non-executive Directors shall decide the terms and conditions of office including remuneration and allowances of all the executive Directors.

### **Disqualification**

- 12.12 A person may not become or continue as a Director of the Foundation Trust if:

- 12.12.1 they are a governor of a NHS foundation trust;
- 12.12.2 they are a Healthwatch member;
- 12.12.3 they are the spouse, partner, parent or child of a member of the Board of Directors of the Foundation Trust;
- 12.12.4 they are a member of a local authority's Scrutiny Committee covering health matters;
- 12.12.5 they have been adjudged bankrupt or their estate has been sequestrated and in either case they have not been discharged;
- 12.12.6 they have made a composition or arrangement with, or granted a trust deed for, their creditors and have not been discharged in respect of it;
- 12.12.7 they have within the preceding five years been convicted in the British Islands or elsewhere of any offence, and a sentence of imprisonment (whether suspended or not) for a period of three months or more (without the option of a fine) was imposed;
- 12.12.8 they are the subject of a disqualification order made under the Company Directors Disqualification Act 1986;
- 12.12.9 in the case of a non-executive Director, they are no longer a member of one of the public constituencies or exercising functions for University of Manchester;
- 12.12.10 they are a person whose tenure of office as a Chairman or as a member or director of a health service body has been terminated on the grounds that their appointment is not in the interests of the health service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest;
- 12.12.11 they have within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with a health service body;
- 12.12.12 in the case of a non-executive Director they have refused without reasonable cause to fulfil any training requirement established by the Board of Directors; or

- 12.12.13 they have refused to sign and deliver to the Secretary a statement in the form required by the Board of Directors confirming acceptance of the code of conduct for Directors.

### **Committees and Delegation**

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

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

- 12.16 Save in the case of emergencies or the need to conduct urgent business, the Secretary shall give to all Directors at least fourteen days written notice of the date and place of every meeting of the Board of Directors.
- 12.17 Meetings of the Board of Directors will be open to members of the public. The Chairman may exclude any member of the public if they are interfering with or preventing the proper conduct of the meeting.
- 12.18 Members of the public may be excluded from a meeting of the Board of Directors for special reasons.
- 12.19 Meetings of the Board of Directors are called by the Secretary, or by the Chairman, or by four Directors who give written notice to the Secretary specifying the business to be carried out. The Secretary shall send a written notice to all Directors as soon as possible after receipt of such a request. The Secretary shall call a meeting on at least fourteen but not more than twenty-eight days' notice to discuss the specified business. If the Secretary fails to call such a meeting then the Chairman or four Directors, whichever is the case, shall call such a meeting.
- 12.20 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.
- 12.21 Four Directors including not less than two executive Directors, and not less than two non-executive Directors (one of whom must be the Chairman or the Vice-Chairman of the Board) shall form a quorum.
- 12.22 The Board of Directors may agree that its members can participate in its meetings by telephone, video or computer link. Participation in a meeting in this manner shall be deemed to constitute presence in person at the meeting.

- 12.23 The Chairman of the Foundation Trust or, in their absence, the Vice-Chairman of the Board of Directors, is to chair meetings of the Board of Directors.
- 12.24 Subject to the following provisions of this paragraph, questions arising at a meeting of the Board of Directors shall be decided by a majority of votes.
- 12.24.1 In case of an equality of votes the Chairman shall have a second and casting vote.
- 12.25 The Board of Directors is to adopt Standing Orders covering the proceedings and business of its meetings. The proceedings shall not however be invalidated by any vacancy of its membership, or defect in a Director's appointment.

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

- 12.26 The duties that a director of the Foundation Trust has by virtue of being a director include in particular:
- 12.26.1 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 Foundation Trust.
- 12.26.2 A duty not to accept benefit from a third party by reason of being a director or doing (or not doing) anything in that capacity.
- 12.27 The duty referred to in sub-paragraph 12.26.1 is not infringed if:
- 12.27.1 The situation cannot reasonably be regarded as likely to give rise to a conflict of interest, or
- 12.27.2 The matter has been authorised in accordance with the constitution.
- 12.28 The duty referred to in sub-paragraph 12.26.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- 12.29 In sub-paragraph 12.26.2 'third party' means a person other than:
- 12.29.1 The Foundation Trust
- 12.29.2 A person acting on its behalf.
- 12.30 If a director of the Foundation Trust has in any way a direct or indirect interest in a proposed transaction or arrangement with the Foundation Trust, the director must declare the nature and extent of that interest to the other directors.
- 12.31 If a declaration under this paragraph proves to be, or becomes, inaccurate, incomplete, a further declaration must be made.
- 12.32 Any declaration required by this paragraph must be made before the Foundation Trust enters into the transaction or arrangement.

- 12.33 This paragraph does not require a declaration of an interest of which the director is not aware or where the director is not aware of the transaction or arrangement in question.
- 12.34 A director need not declare an interest:
- 12.34.1 If it cannot reasonably be regarded as likely to give rise to a conflict of interest;
  - 12.34.2 If, or to the extent that, the directors are already aware of it;
  - 12.34.3 It, or to the extent it concerns terms of the director's appointment that have been or are to be considered:
    - 12.34.3.1 By a meeting of the Board of Directors;
    - 12.34.3.2 By a committee of the directors appointed for the purpose under the constitution.
- 12.35 Any Director who has a material interest in a matter as defined below shall declare such interest to the Board of Directors and:
- 12.35.1 shall withdraw from the meeting and play no part in the relevant discussion or decision; and
  - 12.35.2 shall not vote on the issue (and if by inadvertence they do remain and vote, their vote shall not be counted).
- 12.36 Details of any such interest shall be recorded in the register of the interests of Directors.
- 12.37 A material interest is:
- 12.37.1 any directorship of a company;
  - 12.37.2 any interest (excluding a holding of shares in a company whose shares are listed on any public exchange where the holding is less than 2% of the total shares in issue) or position held by a Director in any firm or company or business which, in connection with the matter, is trading with the Foundation Trust, or is likely to be considered as a potential trading partner with the Foundation Trust;
  - 12.37.3 any interest in an organisation providing health and social care services to the National Health Service;
  - 12.37.4 a position of authority in a charity or voluntary organisation in the field of health and social care;
  - 12.37.5 any connection with any organisation, entity or company considering entering into a financial arrangement with the Foundation Trust including not limited to lenders or banks.

## **Expenses**

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

## **13 SECRETARY**

13.1 The Foundation Trust shall have a Secretary who will be an employee. The Secretary may not be a Governor, or the Chief Executive or the Finance Director. The Secretary's functions shall include:

13.1.1 acting as Secretary to the Council of Governors and the Board of Directors, and any committees as directed by the Council of Governors and the Board of Directors;

13.1.2 summoning and attending all members meetings, meetings of the Council of Governors and the Board of Directors, and keeping the minutes of those meetings;

13.1.3 keeping the register of members and other registers and books required by this constitution to be kept;

13.1.4 having charge of the Foundation Trust's seal;

13.1.5 publishing to members in an appropriate form information which they should have about the Foundation Trust's affairs.

13.2 Minutes of every members meeting, of every meeting of the Council of Governors and of every meeting of the Board of Directors are to be kept. Minutes of meetings will be read at the next meeting and signed by the Chairman of that meeting. The signed minutes will be conclusive evidence of the events of the meeting.

13.3 The Secretary is to be appointed and removed by the Board of Directors, in consultation with the Council of Governors.

## **14 REGISTERS**

14.1 The Foundation Trust is to have:

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

14.1.2 a register of Governors;

14.1.3 a register of Directors;

14.1.4 a register of interests of Governors;

14.1.5 a register of interests of the Directors.

- 14.2 The Secretary shall remove from the register of members the name of any member who ceases to be entitled to be a member under the provisions of this constitution.
- 14.3 The Secretary is to send to Monitor a list of persons who were first elected or appointed as Governors and Directors.

## 15 PUBLIC DOCUMENTS

- 15.1 The following documents of the Foundation Trust are to be available for inspection by members of the public free of charge at all reasonable times, and shall be available on the Foundation Trust's website:
- 15.1.1 a copy of the current constitution;
  - 15.1.2 a copy of the latest annual accounts and of any report of the auditor on them;
  - 15.1.3 a copy of the latest annual report;
- 15.2 The Foundation Trust shall also make the following documents relating to a special administration of the Foundation Trust available for inspection by members of the public free of charge at all reasonable times:
- 15.2.1 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.
  - 15.2.2 a copy of any report laid under section 65D (appointment of trust special administrator) of the 2006 Act.
  - 15.2.3 a copy of any information published under section 65D (appointment of trust special administrator) of the 2006 Act.
  - 15.2.4 a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act.
  - 15.2.5 a copy of any statement provided under section 65F (administrator's draft report) of the 2006 Act.
  - 15.2.6 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.
  - 15.2.7 a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act.

- 15.2.8 a copy of any final report published under section 65I (administrator's final report),
  - 15.2.9 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.
  - 15.2.10 a copy of any information published under section 65M (replacement of trust special administrator) of the 2006 Act.
- 15.3 The registers shall be made available for inspection by members of the public, except in circumstances prescribed the Public Benefit Corporation (Register of Members) Regulations 2004 (SI 2004 no. 539); and so far as they are required to be available they are to be available free of charge at all reasonable times.
- 15.4 Any person who requests it is to be provided with a copy or extract from any of the above documents or registers. The Foundation Trust may impose a reasonable charge for providing the copy or extract, but a member is entitled to a copy or extract from the registers free of charge.

## 16 **AUDITOR**

- 16.1 The Foundation Trust is to have a auditor and is to provide the auditor with every facility and all information which he may reasonably require for the purposes of his functions under the 2006 Act.
- 16.2 A person may only be appointed as the auditor if they (or in the case of a firm, each of its members) are a member of one or more of the bodies referred to in paragraph 23 (4) of Schedule 7 to the 2006 Act.
- 16.3 The Council of Governors at a General Meeting shall appoint or remove the Foundation Trust's auditor.
- 16.4 The auditor is to carry out their duties in accordance with Schedule 10 to the 2006 Act and in accordance with any directions given by Monitor on standards, procedures and techniques to be adopted.

## 17 **ACCOUNTS**

- 17.1 The Foundation Trust must keep proper accounts and proper records in relation to the accounts.
- 17.2 Monitor may with the approval of the Secretary of State give directions to the Foundation Trust as to content and form of its accounts.
- 17.3 The accounts are to be audited by the Foundation Trust's auditor.
- 17.4 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.

- 17.5 The functions of the trust with respect to the preparation of the annual accounts shall be delegated to the Accounting Officer.
- 17.6 The following documents will be made available to the Comptroller and Auditor General for examination at his request:
  - 17.6.1 the accounts;
  - 17.6.2 any records relating to them; and
  - 17.6.3 any report of the financial auditor on them.
- 17.7 The annual accounts, any report of the auditor on them, and the annual report are to be presented to:
  - 17.7.1 the Council of Governors at a General Meeting;
  - 17.7.2 the members of the Foundation Trust at the Annual Members' Meeting by at least one member of the Board of Directors in attendance.
- 17.8 The Trust may combine a meeting of the Council of Governors convened for the purposes of sub-paragraph 17.7 with the Annual Members' Meeting.
- 17.9 The Accounting Officer shall cause the Foundation Trust to:
  - 17.9.1 lay a copy of the annual accounts, and any report of the auditor on them, before Parliament; and
  - 17.9.2 once it has done so, send copies of those documents to Monitor.

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

- 18.1 The Foundation Trust is to prepare an annual report and send it to Monitor.
- 18.2 The annual report is to give:
  - 18.2.1 information on any steps taken by the Foundation Trust to secure that (taken as a whole) the actual membership of its public constituencies and of the classes of the staff constituency is representative of those eligible for such membership; and
  - 18.2.2 any other information Monitor requires.
- 18.3 The Foundation Trust is to give information as to its forward planning in respect of each financial year to Monitor. The document containing this information is to be prepared by the Directors, and in preparing the document, the Board of Directors must have regard to the views of the Council of Governors
- 18.4 Each forward plan must include information about –

- 18.4.1 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
  - 18.4.2 the income it expects to receive from doing so.
- 18.5 Where a forward plan contains a proposal that the trust carry on an activity of a kind mentioned in sub-paragraph 18.4.1 the Council of Governors must –
- 18.5.1 determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfilment by the trust of its principal purpose or the performance of its other functions, and
  - 18.5.2 notify the Directors of the trust of its determination.
- 18.6 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.
- 18.7 The Foundation Trust is to comply with any decision Monitor makes as to:
- 18.7.1 the form of the reports;
  - 18.7.2 when the reports are to be sent to him;
  - 18.7.3 the periods to which the reports are to relate.

## 19 INDEMNITY

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

## 20 EXECUTION OF DOCUMENTS

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

## 21 DISPUTE RESOLUTION PROCEDURES

21.1 Every unresolved dispute which arises out of this constitution between the Foundation Trust and:

21.1.1 a member; or

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

21.1.3 any person bringing a claim under this constitution; or

21.1.4 an office-holder of the Foundation Trust;

is to be submitted to an arbitrator agreed by the parties or in the absence of agreement to be nominated by the Strategic Health Authority. The arbitrator's decision will be binding and conclusive on all parties.

21.2 Any person bringing a dispute must provide a written statement setting out in reasonable detail the grounds giving rise to the dispute and if required to do so, deposit with the Foundation Trust a reasonable sum (not exceeding £250) to be determined by the Council of Governors and approved by the Secretary. The arbitrator will decide how the costs of the arbitration will be paid and what should be done with the deposit.

## 22 AMENDMENT OF THE CONSTITUTION

22.1 No amendment shall be made to this constitution unless:

22.1.1 it has been approved by more than half of the members of the Council of Governors of the Foundation Trust voting;

22.1.2 it has been approved by more than half of the members of the Board of Directors of the Foundation Trust voting.

22.2 Where an amendment is made to the constitution in relation the powers or duties of the Council of Governors (or otherwise with respect to the role that the Council of Governors has as part of the trust) –

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

22.2.2 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.

22.3 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.

## **23 MERGERS ETC AND SIGNIFICANT TRANSACTIONS**

- 23.1 The Foundation Trust may only apply for a merger, acquisition, separation or dissolution with the approval of more than half of the members of the council of governors.
- 23.2 The Foundation Trust may enter into a significant transaction only if more than half of the members of the Council of Governors of the Trust voting approve entering into the transaction.
- 23.3 The definition of a significant transaction will be the same as Monitor's definition<sup>1</sup>.

## **24 DISSOLUTION OF THE FOUNDATION TRUST**

- 24.1 The Foundation Trust may not be dissolved except by order of the Secretary of State for Health, in accordance with the 2006 Act.

## **25 HEAD OFFICE**

- 25.1 The Foundation Trust's head office is at Chief Executive's Office, Salford Royal NHS Foundation Trust, Stott Lane, Salford, M6 8HD or such other place as the Board of Directors shall decide.

## **26 NOTICES**

- 26.1 Any notice required by this constitution to be given shall be given in writing or shall be given using electronic communications to an address for the time being notified for that purpose. "Address" in relation to electronic communications includes any number or address used for the purposes of such communications.
- 26.2 Proof that an envelope containing a notice was properly addressed, prepaid and posted shall be conclusive evidence that the notice was given. A notice shall be treated as delivered 48 hours after the envelope containing it was posted or, in the case of a notice contained in an electronic communication, 48 hours after it was sent.

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<sup>1</sup> Significant Transactions: for UK health care investments, divestments or other transactions comprising > 25% of the assets, income or capital of the NHS foundation trust (Compliance Framework 2013/14, Monitor, March 2013)

## **Transition Schedule relating to the amendments to this constitution made in 2008**

### **27 COUNCIL OF GOVERNORS**

- 27.1 All Governors in office at the time of the Annual Members Meeting of 6 October 2008 shall remain in such office until 5 January 2009 when the results of the elections will be announced, subject to any prior termination or removal from office in accordance with the terms of this constitution.
- 27.2 Thereafter not less than one half of the Public Governors who polled the highest votes on 5 January 2009 will serve a term of office ending at the conclusion of the annual members meeting in 2011; the remaining Public Governors will serve a term of office ending at the conclusion of the annual members meeting in 2010.
- 27.3 Two of the Staff Governors who polled the highest votes on 5 January 2009 will serve a term of office ending at the conclusion of the annual members meeting in 2011; the remaining Staff Governors will serve a term of office ending at the conclusion of the annual members meeting in 2010.
- 27.4 There will be no elections or appointments to take effect at the conclusion of the annual members meeting in 2009, unless any of the places on the Council of Governors are then unfilled.
- 27.5 For the purposes of eligibility to seek re-election or to be re-appointed as Governors under this constitution, the period between their election or appointment as Governors on 5 January 2009 and the conclusion of the annual members meeting in 2009 shall be treated as a year.

## **Transition Schedule relating to the amendments to this constitution made in 2011**

### **28 INTERPRETATION**

- 28.1 For the purposes of paragraphs 30 to 31, the "Date of Approval" shall mean the date on which Monitor approves the amendments to this constitution made in 2011, in accordance with paragraph 23.1.2 of this constitution.

### **29 STAFF CONSTITUENCY**

- 29.1 From the Date of Approval, the following changes to the classes of the staff constituency shall have effect:
- 29.1.1 Members of the medical services class will be transferred to the newly formed Salford Healthcare class, save for those current members of the medical services class currently providing dermatology or renal services;
- 29.1.2 Members of the surgical services class will be transferred to the newly formed Surgery class, save for those current members of

the surgical services class currently providing neurosciences services;

- 29.1.3 Members of the clinical support services class together with those members of the medical services class currently providing dermatology services will be transferred to the newly formed Clinical Support Services and Tertiary Medicine class;
- 29.1.4 Members of the medical services class currently providing renal services and members of the surgical services class currently providing neurosciences services will be transferred to the newly formed Neurosciences and Renal Services class.
- 29.1.5 Members of the corporate and general services class will be transferred to the newly formed Corporate and General Services class.

## 30 STAFF GOVERNORS

- 30.1 All Staff Governors currently in office at the Date of Approval shall remain in such office for the remainder of their term, subject to any prior termination or removal from office in accordance with the terms of this constitution.
- 30.2 From the Date of Approval, the following changes to the composition of the Council of Governors shall have effect:
  - 30.2.1 the Staff Governor previously elected to represent the medical services class will represent Salford Healthcare;
  - 30.2.2 the Staff Governor previously elected to represent the surgical services class will represent Surgery;
  - 30.2.3 the Staff Governor previously elected to represent the clinical support services class will represent Clinical Support Services and Tertiary Medicine;
  - 30.2.4 the Staff Governor previously elected to represent the corporate and general services class will continue to represent Corporate and General Services.
- 30.3 Following the Date of Approval, an election shall be held to elect a Staff Governor for the newly formed Neurosciences and Renal Services class. .
- 30.4 The Governor elected to represent the Neurosciences and Renal Services class will serve an initial term of office commencing on the date on which the results of that election are announced and ending at the conclusion of the Annual Members' Meeting in 2014.
- 30.5 For the purposes of eligibility to seek re-election or to be re-appointed as Staff Governor under this constitution, the period between the commencement of the term of office of the Staff Governor for the Neurosciences and Renal Services class (in accordance with paragraph 31.4 above) and the conclusion of the Annual Members' Meeting in 2012 shall be treated as one year.

## **Annex 1**

### AREAS OF THE FOUNDATION TRUST

Claremont/Weaste & Seedley – the electoral area covered by the wards of Claremont and Weaste & Seedley

Ordsall & Langworthy – the electoral area covered by the wards of Ordsall and Langworthy

East Salford – the electoral area covered by the wards of Irwell Riverside, Kersall and Broughton

Swinton – the electoral area covered by the wards of Swinton and Pendlebury

Little Hulton & Walkden – the electoral area covered by the wards of Walkden North, Walkden South and Little Hulton

Eccles – the electoral area covered by the wards of Winton, Barton and Eccles

Irlam & Cadishead – the electoral area covered by the wards of Irlam and Cadishead

Worsley/Boothstown – the electoral area covered by the wards of Worsley and Boothstown & Ellenbrook

Out of Salford Area – the electoral areas covered by remainder of England and Wales other than the electoral areas of Salford City Council.

## Annex 2: Model Election Rules

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2. Timetable
3. Computation of time

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5. Staff
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### *Part 1 - Interpretation*

**1. Interpretation** – (1) In these rules, unless the context otherwise requires -

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

“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 board of governors;

“Monitor” is the body corporate known as Monitor, as provided by section 61 of the Health and Social Care Act 2012;

“the 2006 Act” means the National Health Service Act 2006 as may be amended or substantially re-enacted from time to time.

(2) Other expressions used in these rules and in Schedule 7 to the 2006 Act have the same meaning in these rules as in that Schedule.

### *Part 2 – Timetable for election*

**2. Timetable** - 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 papers 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.
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**3. Computation of time** - (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.

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

#### *Part 3 – Returning officer*

**4. Returning officer** – (1) Subject to rule 64, the returning officer for an election is to be appointed by the corporation.

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

**5. Staff** – Subject to rule 64, 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** - 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** – The corporation is to co-operate with the returning officer in the exercise of his or her functions under these rules.

#### *Part 4 - Stages Common to Contested and Uncontested Elections*

**8. Notice of election** – 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 board 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 papers may be obtained;
- (e) the address for return of nomination papers 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, and
- (h) the date and time of the close of the poll in the event of a contest.

**9. Nomination of candidates** – (1) Each candidate must nominate themselves on a single nomination paper.

(2) The returning officer-

- (a) is to supply any member of the corporation with a nomination paper, and
- (b) is to prepare a nomination paper 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.

**10. Candidate's particulars** – (1) The nomination paper must state the candidate's -

- (a) full name,
- (b) contact address in full, and
- (c) constituency, or class within a constituency, of which the candidate is a member.

**11. Declaration of interests** – The nomination paper 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** – The nomination paper must include a declaration made by the candidate–

- (a) that he or she is not prevented from being a member of the board 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** – The nomination paper must be signed and dated by the candidate, 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.

**14. Decisions as to the validity of nomination** – (1) Where a nomination paper 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 paper 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.

(2) The returning officer is entitled to decide that a nomination paper 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 papers, 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, as required by rule 13.

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

(4) Where the returning officer decides that a nomination is invalid, the returning officer must endorse this on the nomination paper, stating the reasons for their decision.

(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 paper.

**15. Publication of statement of candidates –** (1) The returning officer is to prepare and publish a statement showing the candidates who are standing for election.

(2) The statement must show –

- (a) the name, contact address, and constituency or class within a constituency of each candidate standing, and
- (b) the declared interests of each candidate standing,

as given in their nomination paper.

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

(4) The returning officer must send a copy of the statement of candidates and copies of the nomination papers to the corporation as soon as is practicable after publishing the statement.

**16. Inspection of statement of nominated candidates and nomination papers –** (1) The corporation is to make the statements of the candidates and the nomination papers supplied by the returning officer under rule 15(4) available for inspection by members of the public free of charge at all reasonable times.

(2) If a person requests a copy or extract of the statements of candidates or their nomination papers, the corporation is to provide that person with the copy or extract free of charge.

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

**18. Method of election** – (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 board of governors, a poll is to be taken in accordance with Parts 5 and 6 of these rules.

(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 board of governors, those candidates are to be declared elected in accordance with Part 7 of these rules.

(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 board of governors, then –

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

#### *Part 5 – Contested elections*

**19. Poll to be taken by ballot** – (1) The votes at the poll must be given by secret ballot.

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

**20. The ballot paper** – (1) The ballot of each voter 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.

(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 board 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,
- (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.

(3) Each ballot paper must have a unique identifier.

(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) –** (1) In respect of an election for a public or patient constituency a declaration of identity must be issued with each ballot paper.

(2) The declaration of identity is to include a declaration –

- (a) that the voter is the person to whom the ballot paper was addressed,
- (b) that the voter has not marked or returned any other voting paper in the election, and
- (c) for a member of the public or patient constituency, of the particulars of that member's qualification to vote as a member of the constituency or class within a constituency for which the election is being held.

(3) The declaration of identity is to include space for –

- (a) the name of the voter,
- (b) the address of the voter,
- (c) the voter's signature, and
- (d) the date that the declaration was made by the voter.

(4) The voter must be required to return the declaration of identity together with the ballot paper.

(5) The declaration of identity must caution the voter that, if it is not returned with the ballot paper, or if it is returned without being correctly completed, the voter's ballot paper may be declared invalid.

*Action to be taken before the poll*

**22. List of eligible voters –** (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 26 as soon as is reasonably practicable after the final date for the delivery of notices of withdrawals by candidates from an election.

(2) The list is to include, for each member, a mailing address where his or her ballot paper is to be sent.

**23. Notice of poll -** The returning officer is to publish a notice of the poll stating–

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

- (c) the number of members of the board 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 address for return of the ballot papers, and the date and time of the close of the poll,
- (g) the address and final dates for applications for replacement ballot papers, and
- (h) the contact details of the returning officer.

**24. Issue of voting documents by returning officer** – (1) 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 documents to each member of the corporation named in the list of eligible voters—

- (a) a ballot paper and ballot paper envelope,
- (b) a declaration of identity (if required),
- (c) information about each candidate standing for election, pursuant to rule 59 of these rules, and
- (d) a covering envelope.

(2) The documents are to be sent to the mailing address for each member, as specified in the list of eligible voters.

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

(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.

(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 declaration of identity if required, and
- (b) the ballot paper envelope, with the ballot paper sealed inside it.

#### *The poll*

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

**27. Voting by persons who require assistance** – (1) The returning officer is to put in place arrangements to enable requests for assistance to vote to be made.

(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.

**28. Spoilt ballot papers** (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 a “spoilt ballot paper”), that voter may apply to the returning officer for a replacement ballot paper.

(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.

(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 declaration of identity, if required, has not been returned.

(4) After issuing a replacement ballot paper for a spoilt ballot paper, the returning officer shall enter in a list (“the list of spoilt ballot papers”) –

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

**29. Lost ballot papers** – (1) Where a voter has not received his or her ballot paper by the fourth day before the close of the poll, that voter may apply to the returning officer for a replacement ballot paper.

(2) The returning officer may not issue a replacement ballot paper for a lost ballot paper 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 ballot paper, and
- (c) has ensured that the declaration of identity if required has not been returned.

(3) After issuing a replacement ballot paper for a lost ballot paper, the returning officer shall enter in a list (“the list of lost ballot papers”) –

- (a) the name of the voter, and
- (b) the details of the unique identifier of the replacement ballot paper.

**30. Issue of replacement ballot paper**– (1) If a person applies for a replacement ballot paper under rule 28 or 29 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 a replacement ballot paper unless, in addition to the requirements imposed rule 28(3) or 29(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.

(2) After issuing a replacement ballot paper under this rule, the returning officer shall enter in a list (“the list of tendered ballot papers”) –

- (a) the name of the voter, and
- (b) the details of the unique identifier of the replacement ballot paper issued under this rule.

**31. Declaration of identity for replacement ballot papers (public and patient constituencies) –** (1) In respect of an election for a public or patient constituency a declaration of identity must be issued with each replacement ballot paper.

(2) The declaration of identity is to include a declaration –

- (a) that the voter has not voted in the election with any ballot paper other than the ballot paper being returned with the declaration, and
- (b) of the particulars of that member’s qualification to vote as a member of the public or patient constituency, or class within a constituency, for which the election is being held.

(3) The declaration of identity is to include space for –

- (a) the name of the voter,
- (b) the address of the voter,
- (c) the voter’s signature, and
- (d) the date that the declaration was made by the voter.

(4) The voter must be required to return the declaration of identity together with the ballot paper.

(5) The declaration of identity must caution the voter that if it is not returned with the ballot paper, or if it is returned without being correctly completed, the replacement ballot paper may be declared invalid.

*Procedure for receipt of envelopes*

**32. Receipt of voting documents –** (1) Where the returning officer receives a –

- (a) covering envelope, or
- (b) any other envelope containing a declaration of identity 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 33 and 34 are to apply.

(2) The returning officer may open any ballot paper envelope for the purposes of rules 33 and 34, 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.

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

**33. Validity of ballot paper** – (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 a declaration of identity if required that has been correctly completed, signed, and dated.

(2) Where the returning officer is satisfied that paragraph (1) has been fulfilled, he or she is to –

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

(3) Where the returning officer is not satisfied that paragraph (1) has been fulfilled, he or she is to –

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

**34. Declaration of identity but no ballot paper (public and patient constituency)** –

Where the returning officer receives a declaration of identity if required but no ballot paper, the returning officer is to –

- (a) mark the declaration of identity “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 declaration of identity in a separate packet.

**35. Sealing of packets** – As soon as is possible after the close of the poll and after the completion of the procedure under rules 33 and 34, the returning officer is to seal the packets containing–

- (a) the disqualified documents, together with the list of disqualified documents inside it,
- (b) the declarations of identity if required,
- (c) the list of spoilt ballot papers,
- (d) the list of lost ballot papers,
- (e) the list of eligible voters, and

- (f) the list of tendered ballot papers.

*Part 6 - Counting the votes*

**stv36. Interpretation of Part 6 –** In Part 6 of these rules –

“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 paper –

- (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 stv44(4) below,

“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 stv41 below,

“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 papers 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 paper” means a ballot paper 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 paper on which a second or subsequent preference is recorded for the candidate to whom that paper has been transferred, and

“transfer value” means the value of a transferred vote calculated in accordance with paragraph (4) or (7) of rule stv42 below.

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

**38. The count** – (1) The returning officer is to –

- (a) count and record the number of ballot papers that have been returned, and
- (b) count the votes according to the provisions in this Part of the rules.

(2) The returning officer, while counting and recording the number of ballot papers 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.

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

**Stv39. Rejected ballot papers** – (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.

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

(3) 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 paragraph (1).

**fpp39. Rejected ballot papers** – (1) Any ballot paper –

- (a) which does not bear the features that have been incorporated into the other ballot papers to prevent them from being reproduced,
- (b) on which votes are given for more candidates than the voter is entitled to vote,

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

shall, subject to paragraphs (2) and (3) below, be rejected and not counted.

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

(3) A ballot paper on which a vote is marked –

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

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

(4) The returning officer is to –

- (a) endorse the word “rejected” on any ballot paper which under this rule is not to be counted, and
- (b) in the case of a ballot paper on which any vote is counted under paragraph (2) or (3) above, endorse the words “rejected in part” on the ballot paper and indicate which vote or votes have been counted.

(5) The returning officer is to draw up a statement showing the number of rejected ballot papers under the following headings –

- (a) does not bear proper features that have been incorporated into the ballot paper,
- (b) voting for more candidates than the voter is entitled to,
- (c) writing or mark by which voter could be identified, and
- (d) unmarked or rejected because of uncertainty,

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

**stv40. First stage** – (1) The returning officer is to sort the ballot papers into parcels according to the candidates for whom the first preference votes are given.

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

(3) The returning officer is to also ascertain and record the number of valid ballot papers.

**stv41. The quota** – (1) The returning officer is to divide the number of valid ballot papers by a number exceeding by one the number of members to be elected.

(2) The result, increased by one, of the division under paragraph (1) above (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”).

(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 paragraphs (1) to (3) of rule stv44 has been complied with.

**stv42. Transfer of votes** – (1) Where the number of first preference votes for any candidate exceeds the quota, the returning officer is to sort all the ballot papers 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 papers for any continuing candidate, or
- (b) where no such preference is given, as the sub-parcel of non-transferable votes.

(2) The returning officer is to count the number of ballot papers in each parcel referred to in paragraph (1) above.

(3) The returning officer is, in accordance with this rule and rule stv43 below, to transfer each sub-parcel of ballot papers referred to in paragraph (1)(a) to the candidate for whom the next available preference is given on those papers.

(4) The vote on each ballot paper transferred under paragraph (3) above 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 papers on which those votes are given, the calculation being made to two decimal places (ignoring the remainder if any).

(5) Where at the end of any stage of the count involving the transfer of ballot papers, the number of votes for any candidate exceeds the quota, the returning officer is to sort the ballot papers 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 papers for any continuing candidate, or
- (b) where no such preference is given, as the sub-parcel of non-transferable votes.

(6) The returning officer is, in accordance with this rule and rule stv43 below, to transfer each sub-parcel of ballot papers referred to in paragraph (5)(a) to the candidate for whom the next available preference is given on those papers.

(7) The vote on each ballot paper transferred under paragraph (6) shall be at –

- (a) a transfer value calculated as set out in paragraph (4)(b) above, 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.

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

(9) Subject to paragraph (10), the returning officer shall proceed to transfer transferable papers until no candidate who is deemed to be elected has a surplus or all the vacancies have been filled.

(10) Transferable papers 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.

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

**stv43. Supplementary provisions on transfer** – (1) If, at any stage of the count, two or more candidates have surpluses, the transferable papers 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 papers 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 papers of the candidate on whom the lot falls shall be transferred first.

(2) The returning officer shall, on each transfer of transferable papers under rule stv42 above –

- (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.

(3) All ballot papers transferred under rule stv42 or stv44 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 paper or, as the case may be, all the papers in that sub-parcel.

(4) Where a ballot paper is so marked that it is unclear to the returning officer at any stage of the count under rule stv42 or stv44 for which candidate the next preference is recorded, the returning officer shall treat any vote on that ballot paper as a non-transferable vote; and votes on a ballot paper 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.

**stv44. Exclusion of candidates – (1) If—**

- (a) all transferable papers which under the provisions of rule stv42 above (including that rule as applied by paragraph (11) below) and this rule are required to be transferred, have been transferred, and
- (b) subject to rule stv45 below, 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 paragraph (12) below applies, the candidates with the then lowest votes).

(2) The returning officer shall sort all the ballot papers on which first preference votes are given for the candidate or candidates excluded under paragraph (1) above into two sub-parcels so that they are grouped as—

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

(3) The returning officer shall, in accordance with this rule and rule stv43 above, transfer each sub-parcel of ballot papers referred to in paragraph (2)(a) above to the candidate for whom the next available preference is given on those papers.

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

(5) If, subject to rule stv45 below, one or more vacancies still remain to be filled, the returning officer shall then sort the transferable papers, if any, which had been transferred to any candidate excluded under paragraph (1) above into sub-parcels according to their transfer value.

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

(7) The vote on each transferable paper transferred under paragraph (6) above shall be at the value at which that vote was received by the candidate excluded under paragraph (1) above.

(8) Any papers on which no next available preferences have been expressed shall be set aside as non-transferable votes.

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

(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.

(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 paragraphs (5) to (10) of rule stv42 and rule stv43.

(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.

(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.

**stv45. Filling of last vacancies** – (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.

(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.

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

**stv46. Order of election of candidates** – (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 stv42(10) above.

(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.

(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.

(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.

**fpp46. Equality of votes** – Where, after the counting of votes is completed, an equality of votes is found to exist between any candidates and the addition of a vote would entitle any of those candidates to be declared elected, the returning officer is to decide between those candidates by a lot, and proceed as if the candidate on whom the lot falls had received an additional vote.

*Part 7 – Final proceedings in contested and uncontested elections*

**fpp47. Declaration of result for contested elections** – (1) In a contested election, when the result of the poll has been ascertained, the returning officer is to –

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

(2) The returning officer is to make –

- (a) the total number of votes given for each candidate (whether elected or not), and
- (b) the number of rejected ballot papers under each of the headings in rule fpp39(5),

available on request.

**stv47. Declaration of result for contested elections** – (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.

(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 stv39(1),

available on request.

**48. Declaration of result for uncontested elections** – In an uncontested election, the returning officer is to as soon as is practicable after final day for the delivery of notices of withdrawals by candidates from the election –

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

#### *Part 8 – Disposal of documents*

**49. Sealing up of documents relating to the poll** – (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,
- (b) the ballot papers endorsed with “rejected in part”,

- (c) the rejected ballot papers, and
- (d) the statement of rejected ballot papers.

(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 declarations of identity,
- (c) the list of spoilt ballot papers,
- (d) the list of lost ballot papers,
- (e) the list of eligible voters, and
- (f) the list of tendered ballot papers.

(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.

**50. Delivery of documents** – Once the documents relating to the poll have been sealed up and endorsed pursuant to rule 49, the returning officer is to forward them to the chair of the corporation.

**51. Forwarding of documents received after close of the poll** – Where –

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

**52. Retention and public inspection of documents** – (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 Monitor, cause them to be destroyed.

(2) With the exception of the documents listed in rule 53(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.

(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.

**53. Application for inspection of certain documents relating to an election** – (1) The corporation may not allow the inspection of, or the opening of any sealed packet containing –

- (a) any rejected ballot papers, including ballot papers rejected in part,
- (b) any disqualified documents, or the list of disqualified documents,
- (c) any counted ballot papers,
- (d) any declarations of identity, or
- (e) the list of eligible voters,

by any person without the consent of Monitor.

(2) A person may apply to Monitor to inspect any of the documents listed in (1), and Monitor 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.

(3) Monitor'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.

(4) On an application to inspect any of the documents listed in paragraph (1), –

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

must 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*

**fpp54. Countermand or abandonment of poll on death of candidate** – (1) If, at a contested election, proof is given to the returning officer's satisfaction before the result of the election is declared that one of the persons named or to be named as a candidate has died, then the returning officer is to

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

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

(3) Where a poll is abandoned under paragraph (1)(a), paragraphs (4) to (7) are to apply.

(4) The returning officer shall not take any step or further step to open envelopes or deal with their contents in accordance with rules 33 and 34, and is to make up separate sealed packets in accordance with rule 35.

(5) The returning officer is to –

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

(6) The returning officer is to endorse on each packet a description of –

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

(7) Once the documents relating to the poll have been sealed up and endorsed pursuant to paragraphs (4) to (6), the returning officer is to deliver them to the chairman of the corporation, and rules 52 and 53 are to apply.

**stv54. Countermand or abandonment of poll on death of candidate** – (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 papers 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 papers 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.

(2) The ballot papers which have preferences recorded for the candidate who has died are to be sealed with the other counted ballot papers pursuant to rule 49(1)(a).

*Part 10 – Election expenses and publicity*

*Election expenses*

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

**56 Expenses and payments by candidates** - A candidate may not incur any expenses or make a payment (of whatever nature) for the purposes of an election, other than expenses or payments that relate to –

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

**57. Election expenses incurred by other persons** – (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.

(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 58 and 59.

#### *Publicity*

**58. Publicity about election by the corporation** – (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.

(2) Any information provided by the corporation about the candidates, including information compiled by the corporation under rule 59, 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.

(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.

**59. Information about candidates for inclusion with voting documents** - (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.

(2) The information must consist of –

- (a) a statement submitted by the candidate of no more than [250] words, [and]
- [(b) a photograph of the candidate.]

**60. Meaning of “for the purposes of an election”** - (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.

(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*

**61. Application to question an election** – (1) An application alleging a breach of these rules, including an electoral irregularity under Part 10, may be made to Monitor.

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

(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.

(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.

(5) The application must be presented in writing within 21 days of the declaration of the result of the election.

(6) If Monitor requests further information from the applicant, then that person must provide it as soon as is reasonably practicable.

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

b. The determination by the person or persons nominated in accordance with Rule 61(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.

c. Monitor may prescribe rules of procedure for the determination of an application including costs.

*Part 12 – Miscellaneous*

**62. Secrecy** – (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 a ballot paper or who has or has not voted,
- (ii) the unique identifier on any ballot paper,
- (iii) the candidate(s) for whom any member has voted.

(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.

(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.

**63. Prohibition of disclosure of vote** – No person who has voted at an election shall, in any legal or other proceedings to question the election, be required to state for whom he or she has voted.

**64. Disqualification** – A person may not be appointed as a returning officer, or as staff of the returning officer pursuant to these rules, if that person is –

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

**65. Delay in postal service through industrial action or unforeseen event** – If industrial action, or some other unforeseen event, results in a delay in –

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

***the returning officer may extend the time between the publication of the notice of the poll and the close of the poll, with the agreement of Monitor.***