

CONSTITUTION

OF

THE ROTHERHAM NHS FOUNDATION TRUST

**(A Public Benefit Corporation)**

**Approved from 1<sup>st</sup> January 2007**

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## THE ROTHERHAM NHS FOUNDATION TRUST

### 1. DEFINITIONS

1.1 In this Constitution:

“**2006 Act**” means the NHS Act 2006;

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

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

“**Applicant NHS Trust**” means Rotherham General Hospitals NHS Trust which made the application to become an NHS foundation trust;

“**Area of the Trust**” means all of the areas A-H specified in Annex I and any future amendments made to these areas which are necessary to reflect changes to electoral ward boundaries;

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

“**Chairman**” means the Chairman of the Trust;

“**Cooptee**” means an individual nominated in accordance with the provisions of paragraph 7.9 of this Constitution and formally appointed by resolution of the Council of Governors to advise the Council of Governors at meetings of the Council of Governors in an advisory and non-voting capacity;

“**Council of Governors**” means the Council of Governors as constituted in accordance with this Constitution;

“**Chief Executive**” means the Chief Executive Officer and Accounting Officer of the Trust;

“**Director**” means a director on the Board of Directors;

“**Executive Director**” means an Executive Director of the Trust appointed in accordance with paragraph 8 of the Constitution;

“**Financial Year**” means:

- (a) the period beginning with the date on which the Trust is authorised and ending with the next 31st March; and
- (b) each successive period of twelve months beginning with the 1st April.

“**Governor**” means a member of the Council of Governors;

**“Local Authority Governors”** means a Member of the Council of Governors appointed by one or more local authorities whose area includes the whole or part of an area specified in Annex 1 as an area for a Public Constituency;

**“Member”** means a Member of the Trust;

**“Monitor”** means the body corporate known as Monitor referred to in section 61 of the 2012 Act;

**“Nolan Principles”** means the seven principles of conduct for holders of public office enunciated by the Nolan Committee in its Report on Standards in Public Office;

**“Other Partnership Governors”** means a member of the Council of Governors appointed by a Governor partnership organisation other than a Clinical Commissioning Group or university providing a medical or dental school to the Trust and as specified in paragraph 7.8;

**“CCG Governor”** means a member of the Council of Governors appointed by a Clinical Commissioning Group for which the Trust provides goods or services;

**“Principle Purpose”** means the provision of goods and services for the purposes of the health service in England;

**“Public Governor”** means a member of the Council of Governors elected by the Members of a Public Constituency;

**“Public Constituency”** means the constituency of the Trust constituted in accordance with paragraph 6.2 of this Constitution;

**“Registered Dentist”** means a dentist within the meaning of the Dentists Act 1984;

**“Registered Medical Practitioner”** means a medical practitioner within the meaning of the Medical Act 1983 who holds a licence to practice under that Act;

**“Rotherham Ethnic Minority Alliance”** means the organisation established to promote positive change for Rotherham’s diverse minority ethnic communities;

**“Rotherham Metropolitan Borough Council Health Overview and Scrutiny Committee”** means the Overview and Scrutiny Committee established under the Local Government Act 2000 with responsibility for, or whose powers extend to, the services provided by the Trust;

**“Rotherham Partnership”** means the organisation which is from time to time established as the local accredited partnership for the Rotherham area and which brings together public, private, voluntary and community sector organisations for the benefit of the population of Rotherham;

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

**“Staff Governor”** means a member of the Council of Governors elected by the Members of a Staff Class;

**“Staff Class”** means those classes of staff as classified by the relevant staff grouping described in paragraph 6.4;

**“Staff Constituency”** means the constituency of the Trust constituted in accordance with paragraph 6.4 of this Constitution;

**“Trust”** means The Rotherham NHS Foundation Trust;

**“Vice Chairman”** means the Vice Chairman of the Trust appointed pursuant to paragraph 7.17.1 of this Constitution;

**“Voluntary Action Rotherham”** means the body established for supporting, developing and promoting the voluntary and community sector in the Borough of Rotherham;

**“Zero Tolerance Policy”** means the Trust’s policy from time to time directed towards discouraging violence towards its staff.

- 1.2 Unless the contrary intention appears or the context otherwise requires, words or expressions contained in this Constitution bear the same meaning as in the 2006 Act.
- 1.3 References in this Constitution to legislation include all amendments, replacements, or re-enactments made.
- 1.4 References to legislation include all regulations, statutory guidance or directions.
- 1.5 Headings are for ease of reference only and are not to affect interpretation.
- 1.6 Words importing the masculine gender only shall include the feminine gender; words importing the singular shall include the plural and vice-versa.
- 1.7 All Annexes referred to in this Constitution form part of it.

## **2. NAME**

- 2.1 The name of the Trust shall be The Rotherham NHS Foundation Trust.

## **3. PRINCIPAL PURPOSE**

- 3.1 The Trust’s principal purpose shall be the provision of goods and services for the purposes of the health service in England (the "Principal Purpose").
- 3.2 The Trust shall 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.

## **4. OTHER PURPOSES**

- 4.1 The Trust may provide goods and services for any purposes related to:
  - 4.1.1 the provision of services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness; and

4.1.2 the promotion and protection of public health.

4.2 Subject to the requirements of paragraph 15, the Trust may also carry on activities other than those mentioned in paragraph 4.1 for the purpose of making additional income available in order better to carry on its Principal Purpose

## **5. POWERS**

5.1 The Trust shall have all the powers of an NHS foundation trust set out in the 2006 Act.

## **6. MEMBERS**

6.1 The Trust shall have two membership constituencies, namely:

6.1.1 a “Public Constituency” comprising eight separate Public Constituencies as set in Table 1 of Annex 1; and

6.1.2 a “Staff Constituency” comprising five separate Staff Classes as set out in paragraph 6.3.

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

### **6.3 Public Constituency**

6.3.1 Members of the Trust who are Members of a Public Constituency are to be individuals:

(a) who live in an area specified in column 2 of Table 1 in Annex 1 and who have attained the age of sixteen years at or before the time of their application for membership; and

(b) who are not eligible to become a Member of the Staff Constituency; and

(c) who have each made an application for membership to the Trust.

6.3.2 The minimum number of Members of each of the areas of the Public Constituency set out in Table 1 in Annex 1 is to be 10.

6.3.3 For the avoidance of doubt, those who live in an area specified in the Constitution as an area for any Public Constituency are referred to collectively as a “Public Constituency” in accordance with paragraph 4(2) of Schedule 7 of the 2006 Act.

### **6.4 Staff Constituency**

6.4.1 The staff constituency is to be divided into 5 classes of individuals as follows:

(a) the “Medical and Dental Practitioners Staff Class”

- (b) the “Nurses and Midwives Staff Class”;
- (c) the “Other Health Professionals Staff Class”;
- (d) the “Support Staff Staff Class”; and
- (e) the “Other Staff Staff Class”.

6.4.2 The members of the “Medical and Dental Practitioners Staff Class” are individuals who are:

- (a) Members of the Staff Constituency who are fully registered persons within the meaning of the Medical Act 1983 and the Dentists Act 1984 (as the case may be) and who are otherwise fully authorised and licensed to practice in England and Wales; or
- (b) who are otherwise designated by the Trust from time to time as eligible to be Members of this Staff Class for the purposes of this paragraph, having regard to the usual definitions applicable at that time for persons carrying on the professions of Registered Medical Practitioner or Dentist; and
- (c) who are employed by the Trust in that capacity at the date of their application to become a Member and who at all times thereafter remain employed by the Trust in that capacity.

6.4.3 The Members of the “Nurses and Midwives Staff Class” are individuals who:

- (a) are Members of the Staff Constituency who are registered nurses or midwives and who are otherwise fully authorised and licensed to practice in England and Wales; or
- (b) are otherwise designated by the Trust from time to time as eligible to be Members of this Staff Class for the purposes of this paragraph, having regard to the usual definitions applicable at that time for the persons carrying on the profession of registered nurse or registered midwife; and
- (c) who are employed by the Trust in that capacity at the date of their application to become a Member and who at all times thereafter remain employed by the Trust in that capacity.

6.4.4 The Members of the “Other Health Professionals Staff Class” are individuals who:

- (a) are Members of the Staff Constituency whose regulatory body falls within the remit of the Council for the Regulation of Health Care Professionals established by Section 25 of the National Health Service and Health Care Professions Act 2002 which do not fall within paragraphs 6.4.2 or paragraph 6.4.3 above or who are otherwise designated by the Trust from time to time as eligible to be Members of this Staff Class for the purposes of this paragraph, having regard to the usual definitions applicable at that time for persons carrying on such professions; and
- (b) who are employed by the Trust in that capacity at the date of their

application to become a Member and who at all times thereafter remain employed by the Trust in that capacity.

6.4.5 The Members of the “Support Staff Class” are individuals who:

- (a) are Members of the Staff Constituency who are employed or engaged by the Trust in the full-time support of those persons falling within paragraphs 6.4.2 or 6.4.3 above or who are otherwise designated by the Trust from time to time as eligible to be Members of this Staff Class for the purposes of this paragraph, having regard to the usual definitions applicable at that time for persons discharging such functions; and
- (b) who are employed by the Trust in that capacity at the date of their application to become a Member and who at all times thereafter remain employed by the Trust in that capacity.

6.4.6 The Members of the “Other Staff Class” are individuals who:

- (a) are Members of the Staff Constituency who do not come within paragraphs 6.4.2 to 6.4.5 above and who are designated by the Trust from time to time as eligible to be Members of this Staff Class and who are not otherwise eligible to be Members of another Staff Class for the purposes of this paragraph; and
- (b) who are employed by the Trust in that capacity at the date of their application to become a Member and who at all times thereafter remain employed by the Trust in that capacity.

6.4.7 Members of the Trust who are Members of the Staff Constituency are to be individuals who are employed under a contract of employment by the Trust; and

6.4.7.1 who satisfy the minimum duration requirements set out in paragraphs 3(3) of Schedule 1 to the 2003 Act, that is to say in the case of individuals described at paragraph 6.3.7.1 above:

6.4.7.2 (i) who are employed by the Trust under a contract of employment which has no fixed term or a fixed term of at least 12 months; or

6.4.7.3 (ii) have been continuously employed by the Trust for at least 12 months;

6.4.7.4 who are not disqualified for membership under paragraph 6.5 below; and

6.4.7.5 who have been invited by the Trust to become a Member of the Staff Constituency and a Member of the appropriate Staff Class and who have not within the period of 21 days following that



invitation informed the Trust that they do not wish to do so.

6.4.8 The minimum number of members required for each Staff Class of the Staff Constituency shall be five.

6.4.9 An individual who is eligible to be a Member of the Staff Constituency may not become or continue as a member of any constituency other than the Staff Constituency and may not become or continue as a Member of more than one Staff Class.

6.4.10 For the avoidance of doubt, those individuals who are eligible to be Members of the Staff Constituency are referred to collectively as "the Staff Constituency" in accordance with paragraph 4(3) of Schedule 7 of the 2003 Act.

**6.5 Disqualification for membership**

6.5.1 A person may not be a Member of the Trust if he is ineligible for membership under paragraphs 6.3 and 6.4 above

6.5.2 It is the responsibility of the Member to ensure his eligibility and not the Trust, but if the Trust is on notice that a Member may be disqualified from membership it shall carry out all reasonable enquiries to establish if this is the case.

**6.6 Termination of membership**

6.6.1 A Member shall cease to be a Member if he

(a) resigns by notice in writing to the Chief Executive or such other person as the Chief Executive may nominate for this purpose; or

(b) ceases to fulfil the requirements of paragraphs 6.3 or 6.4; or

(c) is disqualified under paragraph 6.5.

**6.7 Voting at Governor Elections**

6.7.1 A person may not vote at an election for a Public Governor unless within the specified period he has made a declaration in the specified form stating the particulars of his qualification to vote as a Member of the constituency and class for which an election is being held.

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

**6.8 Annual Members' Meeting**

6.8.1 The Trust shall hold an annual meeting of its Members ("Annual Members' Meeting") which shall be open to members of the public.

6.8.2 The following documents shall be presented to the Members of the Trust

at the Annual Members' Meeting by at least one member of the Board of Directors:

- (a) the annual accounts;
- (b) any report of the auditor on the annual accounts; and
- (c) the annual report.

6.9 In accordance with paragraph 20.3 where an amendment has been made to the Constitution in relation the powers or duties of the Council of Governors, Members must be given an opportunity to vote at the Annual Members' Meeting on whether they approve the amendment.

6.9.1 The Trust may combine a meeting of the Council of Governors convened for the purposes of being presented with the documents in sub-paragraph 6.8.2 with the Annual Members' Meeting.

## **7. COUNCIL OF GOVERNORS**

7.1 The Trust shall have a Council of Governors which shall consist of Public Governors, Staff Governors, a CCG Governor, a Local Authority Governor, other Partnership Governors and Cooptees.

7.2 More than half the members of the Council of Governors shall be elected by Members of the Public Constituency.

7.3 The Council of Governors of the Trust shall comprise:

7.3.1 16 Public Governors elected in accordance with paragraph 7.4 below;

7.3.2 5 Staff Governors elected in accordance with paragraph 7.5 below;

7.3.3 1 CCG Governor appointed in accordance with paragraph 7.6 below;

7.3.4 1 Local Authority Governor appointed in accordance with paragraph 7.7 below;

7.3.5 7 Partnership Governors appointed in accordance with paragraph 7.8 below; and

7.3.6 up to 3 Cooptees appointed in accordance with paragraph 7.8 below.

### **7.4 Public Governors**

7.4.1 The Public Constituencies of the Trust are as set out in Annex 1 and each such Public Constituency may elect two Governors.

7.4.2 Members of a Public Constituency may elect any of their number to be a Public Governor.

7.4.3 If contested the election must be by secret ballot.

7.4.4 The Election Scheme (including the specified forms of and periods for declarations to be made by candidates standing for office and members as a condition of voting and the process if the election is contested) is set out in Annex 2.

7.4.5 A person may not stand for election to the Council of Governors as a Public Governor unless, within the period specified in Annex 2, he has made a declaration in the form specified in Part 4 of that Annex of his qualification to vote as a Member of its Public Constituency for which the election is being held and is not prevented from being a member of the Council of Governors by paragraph 8 to Schedule 7 of the 2006 Act or paragraph 7.12 below (“Disqualification”). It is an offence to knowingly or recklessly make a declaration under section 60 of the 2006 Act which is false in a material particular.

7.4.6 Paragraph 6.7.1 (“Voting at Governor Elections”) applies.

#### **7.5 Staff Governors**

7.5.1 Each Staff Class may elect one Governor and the Members of a Staff Class may elect any of their number to be a Staff Governor for that Staff Class.

7.5.2 If contested, the election must be by secret ballot.

7.5.3 The Election Scheme (including the specified forms of and periods for declarations to be made by candidates standing for office and by members as a condition of voting and the process if the election is uncontested) is set out in Annex 2.

#### **7.6 CCG Governor**

The Rotherham Clinical Commissioning Group is authorised to appoint 1 CCG Governor pursuant to a process agreed between the Clinical Commissioning Group and the Trust.

#### **7.7 Local Authority Governor**

The Rotherham Metropolitan Borough Council is authorised to appoint a Local Authority Governor pursuant to a process agreed between the said local authority and the Trust.

#### **7.8 Partnership Governors**

7.8.1 The organisations specified as Partnership Organisations that may each appoint a member of the Council of Governors are:

7.8.1.1 Rotherham Partnership

7.8.1.2 Barnsley and Rotherham Chamber of Commerce

7.8.1.3 Voluntary Action Rotherham

7.8.1.4 Rotherham Ethnic Minority Alliance

7.8.1.5 Sheffield University

7.8.1.6 Sheffield Hallam University

7.8.2 The Partnership Governors are to be appointed by the organisations listed in paragraph 7.8 above pursuant to a process agreed by the said Partnership Organisation with the Trust.

## 7.9 Cooptees

7.9.1 Where any vacancy remains unfilled notwithstanding compliance with the procedures described in paragraph 7.12.1 and 7.12.2, the Lead Governor shall put forward to the Council of Governors individuals to be Cooptees in accordance with the process agreed by the Secretary. Each such individual shall be a Member of the constituency to which the vacancy relates.

7.9 The Council of Governors shall select up to 3 Cooptees from those put forward and recommend them to the Council of Governors for appointment.

7.9 The Council of Governors shall make the final decision whether to appoint those recommended.

7.9 For the avoidance of doubt, Cooptees shall have no voting rights and shall act in an advisory capacity only.

## 7.10 Terms of Office

### 7.10.1 Public Governors

(a) shall hold office for a period of three years;

(b) are eligible for re-election at the end of that period;

(c) may in exceptional circumstances serve longer than 9 years, but will be subject to annual re-election up to a total of 12 years; and

(d) shall cease to hold office if they cease to be a Member of the Public Constituency by which they were elected as a Public Governor.

### 7.10.2 Staff Governors

(a) shall hold office for a period of three years.

(b) are eligible for re-election at the end of that period;

(c) may in exceptional circumstances serve longer than 9 years, but will be subject to annual re-election up to a total of 12 years; and

(d) shall cease to hold office if they cease to be a Member of the Staff Constituency or cease to be a Member of the relevant Staff Class by which they were elected as a Staff Governor.

7.10.3 The CCG Governor

- (a) shall hold office for a period of three years;
- (b) is eligible for reappointment at the end of that period;
- (c) may in exceptional circumstances serve longer than 9 years, but will be subject to annual re-appointment up to a total of 12 years; and
- (d) shall cease to hold office if the Clinical Commissioning Group which appointed him withdraws its appointment of him.

7.10.4 The Local Authority Governor

- (a) shall hold office for a period of three years;
- (b) is eligible for reappointment at the end of that period;
- (c) may in exceptional circumstances serve longer than 9 years, but will be subject to annual re-appointment up to a total of 12 years; and
- (d) shall cease to hold office if the local authority which appointed him withdraws its appointment of him.

7.10.5 Other Partnership Governors

- (a) shall hold office for a period of three years;
- (b) are eligible for reappointment at the end of that period;
- (c) may in exceptional circumstances serve longer than 9 years, but will be subject to annual re-appointment up to a total of 12 years; and
- (d) shall cease to hold office if the Partnership Organisation which appointed him withdraws its appointment of them.

7.10.5 Cooptees

- (a) subject to (b) below, may hold office only until the next election for the vacancy, whereupon the appointment as an Cooptee shall automatically cease;
- (b) subject to (c) below, shall be eligible for re-appointment at the end of the period referenced in (a) where the vacancy remains unfilled following the next election;
- (c) may not (pursuant to (b) above) hold office for longer than 3 years; and
- (d) shall cease to hold office if removed by resolution of the Council of Governors.

**7.11 Termination of Tenure**

- 7.11.1 A Governor may resign from that office at any time by giving notice in writing to the Chairman

- 7.11.2 If a Governor fails to attend 3 successive meetings of the Council of Governors his tenure of office is to be immediately terminated unless the other Governors are satisfied that:
- (a) the absence was due to a reasonable cause; and
  - (b) he will be able to start attending meetings of the Trust again within such a period as they may consider reasonable.
- 7.11.3 A Governor's tenure shall be terminated if the Council of Governors resolves that a Governor has failed to comply with any code of conduct for the Council of Governors as may be implemented by the Trust from time to time, which code shall incorporate the Nolan Principles and shall have as its basis the principles and values expressed in the "Code of Conduct" and "Code of Accountability" published by the Department of Health.
- 7.11.4 A Governor's tenure shall be terminated if the Council of Governors resolves that he has conducted himself in an inappropriate manner which would adversely affect public confidence in the Trust or is otherwise likely to bring the Trust into disrepute including but without prejudice to the generality of the foregoing the failure to declare a material or pecuniary interest which would or would be likely to result in a conflict of interest.
- 7.11.5 Staff Governors may have their tenure of office terminated by the Council of Governors so resolving if and to the extent that the Staff Governor has, without reasonable cause, been absent from work for a continuous period of not less than 4 months.
- 7.11.6 The Council of Governors may establish a committee to investigate any matter which would give rise to them exercising their powers in paragraphs 7.11.2 to 7.11.5 (inclusive) above and to receive the representations of the relevant Governor and any representative appointed by him for that purpose. The committee shall make such report and recommendations to the Council of Governors as they deem fit and shall, as far as practicable, submit any report and recommendations to the Council of Governors within 4 months of commencing their investigation.
- 7.11.7 A Cooptee shall cease to act in such capacity if he:
- (a) resigns by notice to the Chairman;
  - (b) fails to agree (or, having agreed, fails) to abide by the values of the Nolan Principles; or
  - (c) is removed by a resolution of the Council of Governors;
  - (d) is involved in any act of violence against staff or members of the Trust;
  - (e) is or has been identified as a vexatious complainant;

(f) ceases to be a member of the relevant constituency from which he was nominated by the Council of Governors pursuant to paragraph 7.9.

## 7.12 Disqualification

7.12.1 A person may not become or continue as a Governor of the Trust if:

- (a) in the case of a Staff Governor or a Public Governor, he ceases to be a Member of the constituency or class by which he was elected;
- (b) subject to the provisions of paragraph 7.12.2 below, in the case of a Staff Governor he has been made the subject of a written disciplinary warning or has been suspended from duty for a period of suspension in excess of 28 days or where he has been absent from his post for a continuous period of not less than four months and no reasonable cause has been given for his absence.
- (c) in the case of the **CCG** Governor, a Local Authority Governor, or Partnership Governor, the relevant appointing Clinical Commissioning Group Local Authority or Partnership Organisation withdraws its appointment of him;
- (d) he has been adjudged bankrupt or his estate has been sequestrated and in either case he has not been discharged;
- (e) he has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it;
- (f) he has within the preceding five years been convicted in the British Islands of any offence, and a sentence of imprisonment (whether suspended or not) for a period of three months or more (without the option of a fine) was imposed on him;
- (g) he has within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with a health service body;
- (h) he has within the preceding five years been dismissed by reason of redundancy from the Trust;
- (i) he is 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 his appointment is not in the interests of the health service, for non attendance at meetings or for non-disclosure of a pecuniary interest;
- (j) he is an Executive or Non-Executive Director of the Trust, or a Governor, Non-Executive Director, Chairman, Chief Executive Officer of another NHS foundation trust;
- (k) he has had his name removed from any list prepared pursuant to paragraph 10 of the National Health Service (Performers List) Regulations 2004 or section 151 of the 2006 Act (or similar provision elsewhere) and has not subsequently had his name included in such a list;

- (l) he is incapable by reason of mental disorder, illness or injury of managing and administering his property and affairs;
- (m) he is registered as a sex offender pursuant to Part 1 of the Sex Offenders Act 1997;
- (n) he has been identified and given notice in writing to that effect by the Chief Executive as a vexatious complainant;
- (o) he has been identified as a person who has failed to comply with or otherwise contravened the Trust's Zero-Tolerance Policy (as amended from time to time) and has been given notice to that effect by the Chief Executive;
- (p) in the case of a Staff Governor, he is employed by the Trust on a temporary contract which contract is or was identified on the face of it as a temporary contract;
- (q) he is a member of the Rotherham Metropolitan Borough Council Health Overview and Scrutiny Committee.

7.12.2 Where a Staff Governor has been made the subject of a written warning or a period of suspension in excess of 28 days or where he has been absent from his post as an employee of the Trust for a continuous period of not less than four months and no reasonable cause has been given for his absence, his term of office as Governor may be suspended by the Council of Governors (or by a Committee of the Council of Governors or by the Secretary as the Council of Governors may duly authorise) for such period of time as the Council of Governors, Committee or Secretary (as the case may be) deems fit and so as to enable, if necessary, an investigation to be carried out to determine whether or not the tenure of that Staff Governor should then be terminated. The Staff Governor in question may submit reasons to the Council of Governors, Committee or Secretary (as the case may be) as to why he should still be eligible to continue as a Staff Governor but the determination of the Council of Governors, Committee or Secretary as to whether to terminate the Governor's term of office shall be final.

7.12.3 Where a Governor:

- 7.12.3.1 has given notice of resignation in accordance with paragraph 7.11.1;
- 7.12.3.2 or has had his term of office terminated pursuant to the terms of this Constitution in any manner whatsoever; or
- 7.12.3.3 is otherwise disqualified from holding office pursuant to the Constitution or the 2006 Act,

that Governor shall thereupon cease to be a Governor and his name shall be forthwith removed from the Register of Governors.

7.12.4 Where a person has been elected or appointed to be a Governor and he becomes disqualified for appointment under paragraph 7.12.1 (other than



under paragraph 7.12.1(b) and paragraph 7.12.2), he shall notify the Chairman in writing of such disqualification.

7.12.5 If it comes to the notice of the Chairman that a Governor is so disqualified, whether at the time of his appointment or later, he shall immediately declare that the person in question is disqualified and notify him in writing to that effect.

7.12.6 A Governor who resigns or whose tenure of office is terminated shall not be eligible to stand for re-election for a period of three years from the date of his resignation or termination of office.

### 7.13 Vacancies

7.13.1 Where a Governor's membership of the Council of Governors ceases for one or more of the reasons set out in paragraph 7.12, Public Governors and Staff Governors shall, subject to provisions of paragraphs 7.12.2 and 7.12.3, either be replaced by elections or in accordance with the relevant Electoral Scheme(s) set out in Annex 2, and the CCG Governor, the Local Authority Governor and the Partnership Governors are to be replaced in accordance with the processes agreed pursuant to paragraphs 7.6 to 7.8.

7.13.2 Where an elected Governor ceases to hold office during his term of office the Trust shall offer the candidate who secured the second highest number of votes in the last election for the constituency (or Staff Class, as the case may be) in which the vacancy has arisen the opportunity to assume the vacant office for the unexpired balance of the retired Governor's term of office. If that candidate does not accept to fill the vacancy, it shall then be offered to that candidate who secured the next higher of votes until the vacancy is filled.

7.13.3 If no candidate is available or is willing to fill a vacancy arising pursuant to paragraphs 7.12.1 and 7.12.2 above, the provisions of paragraph 7.9 Cooptee(s) shall apply.

7.12.4 To avoid doubt where a vacancy remains unfilled notwithstanding the application of the provisions of paragraph 7.9 (Cooptees) such office shall stand vacant until the next scheduled election (unless by so doing this causes the aggregate number of Governors who are Public Governors to be less than half the total membership of the Council of Governors (excluding Cooptees). In that event, an election will be held in accordance with the Election Scheme as soon as reasonably practicable).

### 7.14 Roles and responsibilities of Governors

7.14.1 The general duties of the Council of Governors are:

- (a) to hold the non-executive Directors individually and collectively to account for the performance of the Board of Directors; and
- (b) to represent the interests of the Members of the Trust as a whole and the interests of the public.

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

7.14.3 The roles and responsibilities of the Governors are:

- (a) at a General Meeting:
  - (i) to appoint or remove the Chairman and the other Non-Executive Directors. The removal of the Chairman or a Non-Executive Director requires the approval of three-quarters of the members of the Council of Governors;
  - (ii) to approve (by a majority of the Council of Governors voting) the appointment (by the Non-Executive Directors) of the Chief Executive;
  - (iii) to decide the remuneration and allowances, and other terms and conditions of office of the Non-Executive Directors;
  - (iv) to appoint or remove the Trust's auditors at a general meeting of the Council of Governors; and
  - (v) to be presented with the annual accounts, any report of the auditor on them and the annual report.
- (b) to give the views of the Council of Governors to the Board of Directors for the purposes of the preparation by the Board of Directors of the document containing the information to be given to Monitor as to the Trust's forward planning in respect of each financial year;
- (c) to consider the annual accounts, any report of the auditor on them and the annual report;
- (d) to respond as appropriate when consulted by the Directors in accordance with this Constitution;
- (e) to permit to attend at any meeting of the Council of Governor, by way of a standing invitation to that effect, the Chief Executive and Executive Directors of the Trust; and
- (f) to represent the interests of members of the Trust and partnership organisations in the governance of the Trust, regularly feeding back information about the Trust, its vision and its performance to the constituency they represent and confirming the appointment of the Cooptees.

## 7.15 Expenses

7.15.1 The Trust may pay travelling and other expenses to Governors at such rates as it decides and these shall be published in the Annual Report.

7.15.2 The remuneration and allowances for Non-Executive Directors shall be set by the Council of Governors and shall be published in the Annual Report.

**7.16 Remuneration**

7.16.1 Governors shall not receive remuneration for acting as Governors.

**7.17 Meetings**

7.17.1 The Chairman of the Trust or in his absence the Vice Chairman shall preside over meetings of the Council of Governors. The Governors shall at their first meeting in each year appoint the Vice Chairman as recommended by the Board of Directors. Only those persons who are Non-Executive Directors shall be eligible to be considered for the office of Vice Chairman.

7.17.2 The Chairman or in his absence the Vice Chairman shall be entitled to exercise a casting vote where the number of votes for or against a motion is equal.

7.17.3 For the purposes of enabling the proceedings of the Council of Governors in the absence of the Chairman and Vice Chairman, the Governors shall appoint one of their number to preside in those circumstances and that person shall exercise all the rights and perform all the obligations of the Chairman including the right to exercise a casting vote where the number of votes for and against a motion is equal.

7.17.4 If any matter for consideration at a meeting of the Council of Governors relate to the conduct or interest of the Chairman or to the conduct or interest of the Vice Chairman or Non-Executive Directors as a class, neither the Chairman, Vice Chairman nor any of the Non-Executive Directors shall preside over that period of meeting during which the matter is under discussion and the Council of Governors shall elect one of their numbers to preside during that period and that person shall exercise all the rights and obligations of the Chairman including the right to exercise a casting vote where the number of votes for and against a motion is equal.

7.17.5 Meetings of the Council of Governors shall be open to members of the public unless, in accordance with paragraph 13(24) of Schedule 7 of the 2006 Act, they resolve to exclude the public for special reasons.

7.17.6 The Council of Governors shall meet at least 3 times per year.

7.17.7 At the annual general meeting of the Council of Governors, which shall take place by no later than the 30<sup>th</sup> September of any year, the Council of Governors shall receive and consider the annual accounts any report of the auditor on them and the annual report.

7.17.8 The Council of Governors shall adopt its own standing orders for its practice and procedure, in particular for its procedure at meetings (including general meetings).

7.17.9 Where any matter is to be put to a vote each Governor shall be entitled to exercise one vote. A Governor may not appoint a proxy to exercise that vote.

7.17.10 A meeting of the Council of Governors shall be quorate if not less than half of the elected Governors are present.

7.17.11 A Governor elected to the Council of Governors by a Public Constituency shall not vote at a meeting of the Council of Governors unless the Secretary has satisfied himself that each duly elected Public Governor is eligible to vote at any meeting where a vote, either on a poll or a show of hands, is proposed, by seeking from each duly elected Public Governor a declaration to the effect that he is eligible to vote or not, as the case may be, in the form specified at paragraph 7.17.12 stating which constituency he is a member of and that he is not prevented from being a member of the Council of Governors by paragraph 9 of Schedule 7 to the 2006 Act or under this Constitution.

7.17.12 The form referred to in paragraph 7.17.11 shall be such declaration of eligibility as the Trust may from time to time specify in accordance with the requirement of Section 60 of the 2006 Act.

7.17.13 The Council of Governors may require one or more of the Directors to attend a meeting for the purposes of obtaining information about the Trust's performance of its functions or the Directors' performance of their duties (and deciding whether to propose a vote on the Trust's or Directors' performance), Unless otherwise agreed, at least five working days' notice of the meeting must be provided.

#### **7.18 Committees and sub-committees**

7.18.1 The Council of Governors may appoint committees consisting of its members to assist it in carrying out its functions. A committee appointed under this paragraph may appoint a sub-committee.

7.18.2 Such committees or sub-committees may call upon outside advisers to help them in their tasks.

#### **7.19 Conflicts of interest of Governors**

7.19.1 If a Governor has a pecuniary, personal or family interest, whether direct or indirect, in any contract or proposed contract or other matter which is under consideration by the Council of Governors, he shall disclose that to the Council of Governors as soon as he is aware of it and shall retire from the meeting or that part of it where that matter is under consideration.

7.19.2 The Council of Governors, in consultation with the Board of Directors, shall adopt Standing Orders specifying arrangements for excluding Governors from discussion or consideration of any contract or other matters of a kind referred to in paragraph 7.19.1 above as appropriate.

7.19.3 If a Governor is in any doubt whether an interest should be disclosed, he should discuss the position with the Chairman.

7.20 Referral to the Panel

7.20.1 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.

7.20.2 In this paragraph, the Panel means a panel of persons appointed by Monitor to which a Governor of the Trust may refer a question as to whether the Trust has failed or is failing;

(a) to act in accordance with its Constitution; or

(b) to act in accordance with provision made by or under Chapter 5 of the 2006 Act.

**8. BOARD OF DIRECTORS**

8.1 The Trust shall have a Board of Directors which shall consist of Executive and Non-Executive Directors.

8.2 The Board shall comprise:

8.2.1 the following Non-Executive Directors:

(a) a Chairman; and

(b) at least 5 other Non-Executive Directors

8.2.2 the following Executive Directors:

(a) a Chief Executive (and accounting officer)

(b) a Finance Director; and

(c) at least 3 other Executive Directors, one of whom is to be a registered medical practitioner or a registered dentist and another of whom is to be a registered nurse or registered midwife.

8.3 Only a Member of the Public Constituency shall be eligible for appointment as a Non-Executive Director.

8.4 Non-Executive Directors shall be appointed in accordance with a process of open competition as follows:

8.4.1 The Council of Governors shall establish a Nominations Committee comprising the Chairman, two Public Governors, two Staff Governors and two Governors who shall not be from a Public Constituency or a Staff Constituency to consider candidates for appointment as Non-Executive Directors against an agreed person specification.

8.4.2 The said Nominations Committee shall shortlist from those candidates

meeting the specified criteria, those candidates whom it wishes to interview and shall conduct interviews with the said candidates and thereafter make its recommendation as to who should be appointed. This recommendation shall be submitted to a meeting of the Council of Governors for its consideration and decision.

8.5 The validity of any act of the Trust shall not be affected by any vacancy among the Directors or by any defect in the appointment of any Director.

**8.6 Terms of office**

8.6.1 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 decided by the Council of Governors at a general meeting.

8.6.2 The Chief Executive (and Accounting Officer) and the Finance Director of the Trust shall hold offices for a period in accordance with the terms and conditions of office decided by the relevant committee of Non-Executive Directors or, pending the establishment of such a committee, in accordance with terms and conditions decided by the Chairman and Vice Chairman who shall first seek the advice of the Director of Personnel in that regard.

8.6.3 The Executive Directors, other than the Chief Executive and the Finance Director, shall hold office for a period in accordance with the terms and conditions decided by the relevant committee of Non-Executive Directors or, pending the establishment of such a committee, in accordance with terms and conditions decided by the Chairman and Vice Chairman who shall first seek the advice of the Director of Personnel in that regard.

**8.7 Disqualification**

8.7.1 A person may not become or continue as a Director of the Trust if:

- (a) in the case of an Executive Director or a Non-Executive Director, he has been adjudged bankrupt or his estate has been sequestrated and in either case he has not been discharged;
- (b) in the case of an Executive Director or a Non-Executive Director, he has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it;
- (c) in the case of an Executive Director or a Non-Executive Director, he has within the preceding five years been convicted in the British Islands of any offence and a sentence of imprisonment (whether suspended or not) for a period of three months or more (without the option of a fine) was imposed on him;
- (d) in the case of a Non-Executive Director, he no longer satisfies the requirements of paragraph 8.3;
- (e) he is 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 his appointment is not in the interests of public service, for non

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

- (f) he has had his name removed from any list prepared pursuant to paragraph 10 of the National Health Service (Performers List) Regulations 2004 or Section 151 of the 2006 Act (or similar provision elsewhere) and has not subsequently had his name included on such a list;
- (g) he has been dismissed otherwise than by reason of redundancy from any paid employment with a health service body;
- (h) Monitor has exercised its powers under the 2006 Act to remove that person as a Director of the Trust or any other NHS foundation trust within his jurisdiction or has suspended him from office or has disqualified him from holding office as a Director of the Trust or of any other NHS foundation trust for a specified period.
- (i) he is an executive or Non-Executive Director or Governor or Chief Executive of another NHS Trust or foundation trust;
- (j) he is incapable by reason of mental disorder, illness or injury of managing and administering his property and affairs;
- (k) he is registered as a sex offender pursuant to Part I of the Sex Offenders Act 1997;
- (l) he has been identified as a vexatious complainant and has been notified to the effect by notice in writing given by the Chief Executive;
- (m) he is a member of the Rotherham Metropolitan Borough Council Health Overview and Scrutiny Committee;
- (n) he has been unable to dedicate adequate time to the role and responsibilities of a Director of the Trust; or
- (o) he has been identified as a person who has failed to comply with or otherwise contravened the Trust's Zero-Tolerance Policy (as amended from time to time) and has been given notice to that effect by the Chief Executive.

8.7.2 The Board of Directors may in their discretion appoint a Committee of the Board of Directors to enquire into any such matter as may be raised in connection with paragraph 8.7.1 above in accordance with terms of reference as determined by the Board of Directors and to make recommendations to the Board of Directors in respect thereof.

## 8.8 Roles and responsibilities

8.8.1 The general duty of the Board of Directors and of each Director individually, is to act with a view to promoting the success of the Trust so as to maximise the benefits for the Members of the Trust as a whole and for the public.

8.8.2 The powers of the Trust are to be exercisable by the Board of Directors on its behalf.

- 8.8.3 Any of those powers may be delegated to a committee of Directors or to an Executive Director.
- 8.8.4 A committee of Non-Executive Directors established as an audit committee is to monitor, review and carry out such other functions in relation to the Auditor as are appropriate.
- 8.8.5 The Non-Executive Directors shall appoint (subject to the approval of the Council of Governors) or remove the Chief Executive (and Accounting Officer).
- 8.8.6 A committee consisting of the Chairman, the Chief Executive (and Accounting Officer) and the other Non-Executive Directors shall appoint or remove the Executive Directors.
- 8.8.7 The Trust shall establish a committee of Non-Executive Directors to decide the remuneration and allowances, and the other terms and conditions of office of the Executive Directors.
- 8.8.8 The Board of Directors, having regard to the views of the Council of Governors, are to prepare the information as to the Trust's forward planning in respect of each Financial Year to be given to Monitor.
- 8.8.9 The Board of Directors are to present to the Council of Governors at a general meeting the annual accounts, any report of the auditor on them and the annual report.
- 8.8.10 The functions of the Trust under paragraph 14.5 below are delegated to the Chief Executive as Accounting Officer.

## **9. MEETINGS OF DIRECTORS**

- 9.1 The Board of Directors, in consultation with the Council of Governors, shall adopt Standing Orders and may vary the same from time to time covering the proceedings and business of its meetings. These shall include setting a quorum for meetings, both of Executive and Non-Executive Directors. The proceedings shall not however be invalidated by any vacancy of its membership or defect in a Director's appointment.
- 9.2 Each Director shall be entitled to exercise one vote (which may be exercised by proxy provided the holder of that proxy is another Director) save that if the number of Executive Directors appointed exceeds the number of Non-Executive Directors appointed the vote of each such Non-Executive Director shall be deemed to be increased by a mathematical factor sufficient to ensure that the Non-Executive Directors hold a bare voting majority over the Executive Directors.
- 9.3 For the avoidance of doubt and in the event of an equality of votes, the Chairman shall have a casting vote.
- 9.4 Meetings of the Board of Directors shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons.



- 9.5 Before holding a meeting (as soon as practicable after it has been provided to the Board of Directors), the Board of Directors must send a copy of the agenda of the meeting to the Council of Governors.
- 9.6 As soon as practicable after holding a meeting, the Board of Directors must send a copy of the minutes of the Board of Directors meeting to the Council of Governors.

## **10. CONFLICT OF INTEREST OF DIRECTORS**

- 10.1 The duties that a Director of the Trust has by virtue of being a Director include in particular:
  - 10.1.1 a duty to avoid a situation in which the Director has (or can have) a direct or indirect interest that conflicts (or possibly may conflict) with the interests of the Trust;
  - 10.1.2 a duty not to accept a benefit from a third party by reason of being a Director or doing (or not doing) anything in that capacity.
- 10.2 The duty referred to in sub-paragraph 10.1.1 is not infringed if:
  - 10.2.1 the situation cannot reasonably be regarded as likely to give rise to a conflict of interest; or
  - 10.2.2 the matter has been authorised in accordance with the Constitution.
- 10.3 The duty referred to in sub-paragraph 10.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- 10.4 In sub-paragraph 10.1.2, “third party” means a person other than:
  - 10.4.1 the Trust; or
  - 10.4.2 a person acting on its behalf.
- 10.5 If a Director of the Trust has in any way a direct or indirect interest in a proposed transaction or arrangement with the Trust, the Director must declare the nature and extent of that interest to the other Directors.
- 10.6 If a declaration under this paragraph proves to be, or becomes, inaccurate, incomplete, a further declaration must be made.
- 10.7 Any declaration required by this paragraph must be made before the Trust enters into the transaction or arrangement.
- 10.8 This paragraph does not require a declaration of an interest of which the Director is not aware or where the Director is not aware of the transaction or arrangement in question.
- 10.9 A Director need not declare an interest:
  - 10.9.1 if it cannot reasonably be regarded as likely to give rise to a conflict of interest;

10.9.2 if, or to the extent that, the Directors are already aware of it;

10.9.3 if, or to the extent that, it concerns terms of the Director's appointment that have been or are to be considered:

10.9.3.1 by a meeting of the Board of Directors, or

10.9.3.2 by a committee of the Directors appointed for the purpose under the Constitution.

10.10 If a Director is in any doubt whether an interest should be disclosed he should discuss the position with the Chairman.

## 11. REGISTERS

11.1 The Trust shall to have:

- (a) a Register of Members showing, in respect of each Member, the constituency and where there are classes within it, the class to which he belongs;
- (b) a Register of Members of the Council of Governors;
- (c) a Register of Directors;
- (d) a Register of Interests of the Directors;
- (e) a Register of Interests of the Governors.

11.2 The Secretary shall:

- 11.2.1 admit to the Register of Members the name and constituency of a Member upon receipt of a signed declaration from the Member confirming their eligibility as a Member;
- 11.2.2 remove from the Register of Members any Member who is, or who is no longer, eligible to be a Member or indicates in writing that they no longer wish to be a Member or upon receipt of a notice to that effect from the Member's next of kin or personal representative that the Member has died;
- 11.2.3 admit to the Register of Governors the name and constituency of those members who have been elected or appointed as a Governor of the Trust;
- 11.2.4 remove from the Register of Governors those Governors who have not been re-elected or who have had their appointment withdrawn or whose tenure of office as a Governor has been terminated or who is otherwise disqualified from office; and,
- 11.2.5 maintain the respective Registers of Interests of Directors and Governors and undertake a review of the same at least once in every year by notice to that effect to all Directors and Governors.

## 12. PUBLIC DOCUMENTS

- 12.1 The following documents of the Trust shall be available for inspection by members of the public free of charge at all reasonable times:
- (a) a copy of the current Constitution;
  - (c) a copy of the latest annual accounts and of any report of the auditor on them;
  - (d) a copy of the latest annual report;
- 12.2 The Trust shall also make the following documents relating to a special administration of the Trust available for inspection by members of the public free of charge at all reasonable times:
- 12.2.1 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;
  - 12.2.2 a copy of any report laid under section 65D (appointment of trust special administrator) of the 2006 Act;
  - 12.2.3 a copy of any information published under section 65D (appointment of trust special administrator) of the 2006 Act;
  - 12.2.4 a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act;
  - 12.2.5 a copy of any statement provided under section 65F(administrator's draft report) of the 2006 Act;
  - 12.2.6 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;
  - 12.2.7 a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act;
  - 12.2.8 a copy of any final report published under section 65I (administrator's final report) of the 2006 Act;
  - 12.2.9 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;
  - 12.2.10 a copy of any information published under section 65M (replacement of

trust special administrator) of the 2006 Act.

- 12.3 Any person who requests it shall be provided with a copy or extract from any of the above documents.
- 12.4 The registers mentioned in paragraph 12.1 above are also to be made available for inspection by members of the public, except in circumstances prescribed by regulations made under the 2006 Act, and, so far as those registers are required to be available:
- (a) they are to be available free of charge at all reasonable times.
  - (b) a person who requests shall be provided with a copy of or extract from them.
- 12.5 If the person requesting a copy or extract is not a Member of the Trust, the Trust may impose a reasonable charge for providing the copy or extract.

### **13. AUDITOR**

- 13.1 The Trust shall have an auditor and shall provide the auditor with every facility and all information which he may reasonably require for the purposes of his functions under Chapter 5 of Part 2 of the 2006 Act.
- 13.2 A person may only be appointed auditor if he (or in the case of a firm each of its Members) is a Member of one or more of the bodies referred to in paragraph 23(4) of Schedule 7 to the 2006 Act.
- 13.3 Appointment of the auditor by the Council of Governors shall be as provided for in paragraph 7.14.1 and the monitoring of the auditor's functions by a committee of Non-Executive Directors shall be as provided for in paragraph 8.8.4.
- 13.4 An officer of the Audit Commission may be appointed as auditor of the Trust with the agreement of the Audit Commission. In accordance with paragraph 23(5) of Schedule 1 to the Act, if such an officer is appointed the Audit Commission may charge the Trust such fees for his services as will cover the full cost of providing them.
- 13.5 The auditor shall carry out his 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.

### **14. ACCOUNTS**

- 14.1 The Trust must keep proper accounts and proper records in relation to the accounts.
- 14.2 Monitor may with the approval of the Secretary of State give directions to the Trust as to the content and form of its accounts
- 14.3 The accounts shall be audited by the Trust's auditor.
- 14.4 The following documents shall be made available to the Comptroller and Auditor

General for examination at his request:

- (a) the accounts;
  - (b) any records relating to them; and
  - (c) any report of the auditor on them.
- 14.5 The Trust (through its Chief Executive and Accounting Officer) 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.
- 14.6 The Trust shall comply with any directions given by Monitor with the approval of the Secretary of State as to:
- 14.6.1 the period or periods in respect of which the Trust shall prepare accounts; and
  - 14.6.2 the audit requirements of any such accounts.
- 14.7 The Trust shall:
- (a) lay a copy of the annual accounts, and any report of the auditor on them, before Parliament; and
  - (b) send copies of those documents to Monitor within such period as Monitor may direct; and
  - (c) send copies of any accounts prepared pursuant to paragraph 14.7 and any report of an auditor on them to Monitor within such period as Monitor may direct.

## **15. ANNUAL REPORT, FORWARD PLANS AND NON-NHS WORK**

- 15.1 The Trust shall prepare annual reports and send them to Monitor.
- 15.2 The reports shall give information on:
- 15.2.1 the impact that income received by the Trust from activities other than the provision of goods and services for the purposes of the health service in England has had on the Principal Non-Executive Directors established to decide the remuneration and allowances and the other terms and conditions of office of the Executive Directors, and on such other procedures as the Trust has on pay;
  - 15.2.2 the remuneration of the Directors and the expenses of the Governors and the Directors; and
  - 15.2.3 any other information Monitor requires.
- 15.3 The Trust shall comply with any decision Monitor makes as to:

- (a) the form of the reports;
  - (b) when the reports are to be sent to it;
  - (c) the periods to which the reports are to relate.
- 15.4 The Trust shall give information as to its forward planning in respect of each Financial Year to the Secretary of State. This information shall be prepared by the Board of Directors, who shall have regard to the views of the Council of Governors in accordance with paragraph 7.14.3 above.
- 15.5 Each forward plan must include information about:
- 15.5.1 the activities other than the provision of goods and services for the purposes of the health service in England that the Trust proposes to carry on; and
  - 15.5.2 the income it expects to receive from doing so.
- 15.6 Where a forward plan contains a proposal that the Trust carry on an activity of a kind mentioned in sub-paragraph 15.5.1 the Council of Governors must:
- 15.6.1 determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfilment by the Trust of its Principal Purpose or the performance of its other functions; and
  - 15.6.2 notify the Directors of the Trust of its determination.

If the Trust proposes to increase by 5% or more the proportion of its total income in any financial year attributable to activities other than the Principle Purpose it may implement the proposal only if more than half of the members of the Council of Governors of the Trust voting approve its implementation.

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

- 16.1 The Trust may only apply for a merger, acquisition, separation or dissolution with the approval of more than half of the members of the Council of Governors.
- 16.2 The Trust may enter into a Significant Transaction only if more than half of the members of the Council of Governors of the Trust voting approve entering into the transaction.
- 16.3 “Significant Transaction” means:
- 16.3.1 the acquisition of, or an agreement to acquire, whether contingent or not, assets the value of which is more than 20% of the value of the Trust's gross assets before the acquisition; or
  - 16.3.2 the disposition of, or an agreement to dispose of, whether contingent or not, assets of the Trust the value of which is more than 20% of the value

of the Trust's gross assets before the disposition; or

16.3.3 a transaction that has or is likely to have the effect of the Trust acquiring rights or interests or incurring obligations or liabilities, including contingent liabilities, the value of which is more than 20% of the value of the Trust's gross assets before the transaction.

16.4 For the purpose of this paragraph 16:

16.4.1 "gross assets" means the total of fixed assets and current assets;

16.4.2 in assessing the value of any contingent liability for the purposes of subparagraph 16.3.3, the Directors:

16.4.2.1 must have regard to all circumstances that the Directors know, or ought to know, affect, or may affect, the value of the contingent liability; and

16.4.2.2 may rely on estimates of the contingent liability that are reasonable in the circumstances; and

16.4.2.3 may take account of the likelihood of the contingency occurring.

16.5 Where the Trust has a single requirement for goods, services or works, and a number of transactions are to be entered into to fulfil that requirement, the value of the transaction for the purpose of paragraph 16.3 is the aggregate of the value of each of those transactions

## **17. INDEMNITY**

17.1 Members of the Council of Governors and Board of Directors who act honestly and in good faith shall not have to meet out of their personal resources any personal civil liability which is incurred in the execution or purported execution of their board functions, save where they have acted recklessly. Any costs arising in this way shall be met by the Trust following approval by the Audit Committee.

17.2 The Trust may make such arrangements as it considers appropriate for the provision of indemnity insurance or similar arrangement for the benefit of the Trust, Governors or Directors to meet all or any liabilities which are properly the liability of the Trust under paragraph 17.1

## **18. INSTRUMENTS ETC**

18.1 A document purporting to be duly executed under the Trust's seal or to be signed on its behalf is to be received in evidence and, unless the contrary is proved, taken to be so executed or signed.

18.2 The Trust shall have a seal but this shall not to be affixed except under the authority of the Board of Directors.

**19. DISPUTE RESOLUTION PROCEDURES**

- 19.1 The Trust shall establish appropriate dispute resolution procedures with its employees, contractors and members.
- 19.2 The procedure to be followed in the event of a dispute between the Council of the Governors and the Board of Directors is set out in Annex 3.

**20. AMENDMENT OF THE CONSTITUTION**

- 20.1 The trust may make amendments of its Constitution only if:
  - 20.1.1 More than half of the members of the Council of Governors of the Trust voting approve the amendments; and
  - 20.1.2 More than half of the members of the Board of Directors of the Trust voting approve the amendments.
- 20.2 Amendments made under paragraph 20.1 take effect as soon as the conditions in that paragraph are satisfied, but the amendment has no effect in so far as the constitution would, as a result of the amendment, not accord with Schedule 7 of the 2006 Act.
- 20.3 Where an amendment is made to the Constitution in relation to the powers or duties of the Council of Governors (or otherwise with respect to the role that the Council of Governors has as part of the Trust):
  - 20.3.1 at least one member of the Council of Governors must attend the next Annual Members' Meeting and present the amendment; and
  - 20.3.2 the Trust must give the members an opportunity to vote on whether they approve the amendment.
- 20.4 If more than half of the members voting approve the amendment, the amendment continues to have effect; otherwise, it ceases to have effect and the Trust must take such steps as are necessary as a result.
- 20.5 [The Trust shall inform Monitor of any amendments to the Constitution.](#)



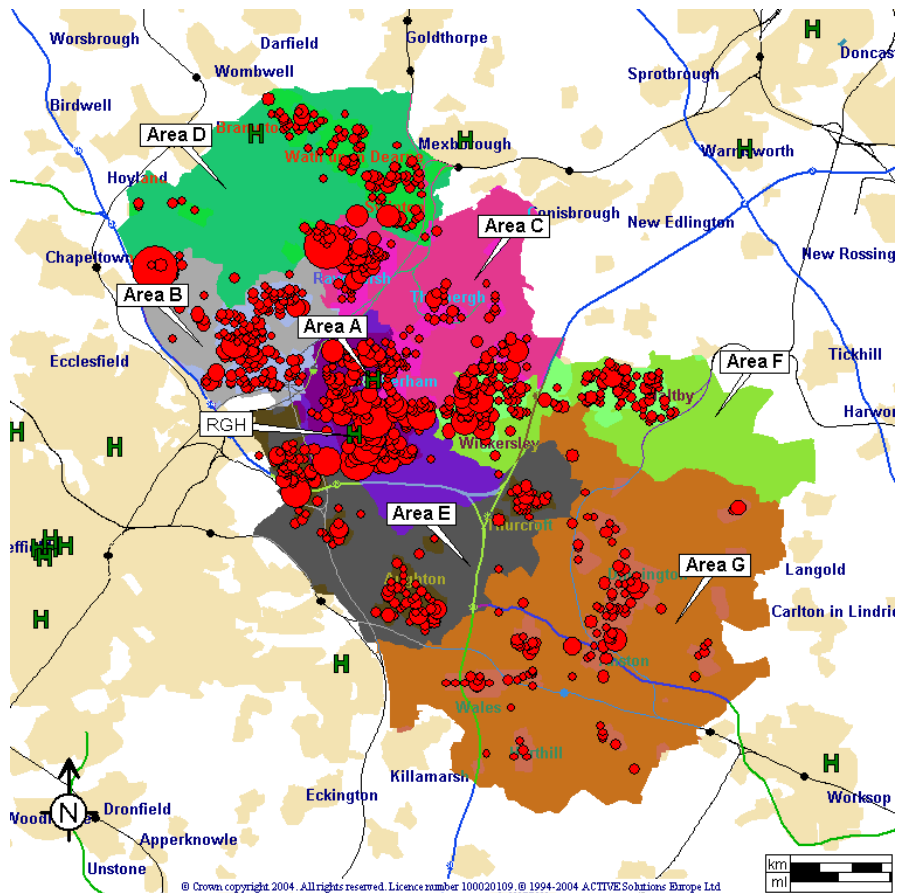
**ANNEX 1**  
**Public Constituencies of the Trust**

**Table 1**

Name of Constituency	Area (Wards)	Minimum Number of Members	Number of Governors
Rotherham South Area A	Boston Castle, Rotherham East, Sitwell	10	2
Rotherham North Area B	Keppel, Rotherham West, Wingfield	10	2
Wentworth South Area C	Rawmarsh, Silverwood, Valley	10	2
Wentworth North Area D	Hooper, Swinton, Wath	10	2
Rother Valley West Area E	Brinsworth & Catcliffe, Holderness, Rother Vale	10	2
Wentworth Valley Area F	Hellaby, Maltby, Wickersley	10	2
Rother Valley South Area G	Anston & Woodsetts, Dinnington, Wales	10	2
All England Area H	The rest of England excluding areas A-G	10	2

**ROTHERHAM**

**Table 2**



1. The Public Constituencies of the Trust are therefore constituted in accordance with Table 1 above.

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**Election Scheme**

**The Rotherham NHS Foundation Trust**

**Election Rules**

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**PART 1 - INTERPRETATION**

**1. Interpretation**

1.1 In these Rules, unless the context otherwise requires -

1.2 “Trust” means the public benefit corporation subject to this Constitution;

1.3 “election” means an election by a constituency, or by a class within a constituency, to fill a vacancy among one or more posts on the Council of Governors;

1.4 “the Independent Regulator” means the Independent Regulator for NHS foundation trusts; and

1.5 “the 2006 Act” means the National Health Service Act 2006.

1.6 Save where this Constitution provides otherwise, all 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**

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

<b>Proceedings</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	Not later than the twenty seventh day

nominated candidates.	before the day of the close of the poll.
Final day for delivery of notices of withdrawals by candidates from election.	Not later than twenty fifth day before the day of the close of the poll.
Notice of the poll.	Not later than the fifteenth day before the day of the close of the poll.
Close of the poll.	By 5.00pm on the final day of the election.

### **3. Computation of time**

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

3.2 a Saturday or Sunday;

3.3 Christmas day, Good Friday, or a bank holiday, or

3.4 a day appointed for public thanksgiving or mourning,

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

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

## **PART 3 – RETURNING OFFICER**

### **4. Returning Officer**

4.1 Subject to Rule 64, the Returning Officer for an election is to be appointed by the Trust.

4.2 Where two or more elections are to be held concurrently, the same Returning Officer may be appointed for all those elections.

### **5. Staff**

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**

6.1 The Trust is to pay the Returning Officer:

6.2 any expenses incurred by that officer in the exercise of his or her functions under these Rules,

6.3 such remuneration and other expenses as the Trust may determine.

**7. Duty of co-operation**

The Trust is to co-operate with the Returning Officer in the exercise of his or her functions under these Rules.

**PART 4 - STAGES COMMON TO CONTESTED AND UNCONTESTED ELECTIONS**

**8. Notice of election**

8.1 The Returning Officer is to publish a notice of the election stating —

- 8.1.1 the constituency, or class within a constituency, for which the election is being held,
- 8.1.2 the number of members of the Council of Governors to be elected from that constituency, or class within that constituency,
- 8.1.3 the details of any nomination committee that has been established by the Trust,
- 8.1.4 the address and times at which nomination papers may be obtained;
- 8.1.5 the address for return of nomination papers and the date and time by which they must be received by the Returning Officer,
- 8.1.6 the date and time by which any notice of withdrawal must be received by the Returning Officer
- 8.1.7 the contact details of the Returning Officer, and
- 8.1.8 the date and time of the close of the poll in the event of a contest.

**9. Nomination of candidates**

9.1 Each candidate must nominate themselves on a single nomination paper.

9.2 The Returning Officer:-

- 9.2.1 is to supply any Member of the Trust with a nomination paper, and
- 9.2.2 is to prepare a nomination paper for signature at the request of any Member of the Trust,

but it is not necessary for a nomination to be on a form supplied by the Returning Officer.

**10. Candidate's particulars**

10.1 The nomination paper must state the candidate's:-

- 10.1.1 full name,
- 10.1.2 contact address in full, and



10.1.3 constituency, or class within a constituency, of which the candidate is a Member.

**11. Declaration of interests**

11.1 The nomination paper must state:-

11.1.1 any financial interest that the candidate has in the Trust, and

11.1.2 whether the candidate is a member of a political party, and if so, which party,

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

**12. Declaration of eligibility**

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

12.1.1 that he or she is not prevented from being a Member of the Council of Governors by paragraph 8 of Schedule 7 of the 2006 Act or by any provision of the Constitution; and,

12.1.2 for a member of the Public Constituency, of the particulars of his or her qualification to vote as a Member of that constituency, for which the election is being held.

**13. Signature of candidate**

13.1 The nomination paper must be signed and dated by the candidate, indicating that:-

13.1.1 they wish to stand as a candidate,

13.1.2 their declaration of interests as required under Rule 11, is true and correct, and

13.1.3 their declaration of eligibility, as required under Rule 12, is true and correct.

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

14.1 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:-

14.1.1 decides that the candidate is not eligible to stand;

14.1.2 decides that the nomination paper is invalid;

14.1.3 receives satisfactory proof that the candidate has died; or

14.1.4 receives a written request by the candidate of their withdrawal from candidacy.

14.2 The Returning Officer is entitled to decide that a nomination paper is invalid only on one of the following grounds

- 14.2.1 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,
  - 14.2.2 that the paper does not contain the candidate's particulars, as required by Rule 10;
  - 14.2.3 that the paper does not contain a declaration of the interests of the candidate, as required by Rule 11,
  - 14.2.4 that the paper does not include a declaration of eligibility as required by Rule 12, or
  - 14.2.5 that the paper is not signed and dated by the candidate, as required by Rule 13.
- 14.3 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.
- 14.4 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.
- 14.4.1 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**

- 15.1 The Returning Officer is to prepare and publish a statement showing the candidates who are standing for election.
- 15.2 The statement must show:-
- 15.2.1 the name, contact address, and constituency or class within a constituency of each candidate standing, and
  - 15.2.2 the declared interests of each candidate standing,
- as given in their nomination paper.
- 15.3 The statement must list the candidates standing for election in alphabetical order by surname.
- 15.4 The Returning Officer must send a copy of the statement of candidates and copies of the nomination papers to the Trust as soon as is practicable after publishing the statement.

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

- 16.1 The Trust 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.
- 16.2 If a person requests a copy or extract of the statements of candidates or their nomination papers, the Trust 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**

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

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

18.3 If the number of candidates remaining validly nominated for an election after any withdrawals under these Rules is less than the number of members to be elected to be Council of Governors, then:-

18.3.1 the candidates who remain validly nominated are to be declared elected in accordance with Part 7 of these Rules, and

18.3.2 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 Trust.

**PART 5 — CONTESTED ELECTIONS**

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

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

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

**20. The ballot paper**

20.1 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.

20.2 Every ballot paper must specify:-

20.2.1 the name of the Trust;

20.2.2 the constituency, or class within a constituency, for which the election is being held;

20.2.3 the number of members of the Council of Governors to be elected from that constituency, or class within that constituency;

- 20.2.4 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;
  - 20.2.5 instructions on how to vote;
  - 20.2.6 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
  - 20.2.7 the contact details of the Returning Officer.
- 20.3 Each ballot paper must have a unique identifier.
- 20.4 Each ballot paper must have features incorporated into it to prevent it from being reproduced.

**21. The declaration of identity (Public Constituency)**

- 21.1 In respect of an election for a Public Constituency a declaration of identity must be issued with each ballot paper.
- 21.2 The declaration of identity is to include a declaration:-
- 21.2.1 that the voter is the person to whom the ballot paper was addressed;
  - 21.2.2 that the voter has not marked or returned any other voting paper in the election; and
  - 21.2.3 for a Member of the Public Constituency, of the particulars of that Member's qualification to vote as a Member of the constituency for which the election is being held.
- 21.3 The declaration of identity is to include space for:-
- 21.3.1 the name of the voter;
  - 21.3.2 the address of the voter;
  - 21.3.3 the voter's signature; and
  - 21.3.4 the date that the declaration was made by the voter.
- 21.4 The voter must be required to return the declaration of identity together with the ballot paper.
- 21.5 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**

- 22.1 The Trust 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.
- 22.2 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**

- 23.1 The Returning Officer is to publish a notice of the poll stating:-
- 23.1.1 the name of the Trust;
  - 23.1.2 the constituency, or class within a constituency, for which the election is being held;
  - 23.1.3 the number of members of the Council of Governors to be elected from that constituency, or class with that constituency;
  - 23.1.4 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;
  - 23.1.5 that the ballot papers for the election are to be issued and returned, if appropriate, by post;
  - 23.1.6 the address for return of the ballot papers, and the date and time of the close of the poll;
  - 23.1.7 the address and final dates for applications for replacement ballot papers; and
  - 23.1.8 the contact details of the Returning Officer.

**24. Issue of voting documents by Returning Officer**

- 24.1 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 Trust named in the list of eligible voters:-
- 24.1.1 a ballot paper and ballot paper envelope;
  - 24.1.2 a declaration of identity (if required);
  - 24.1.3 information about each candidate standing for election, pursuant to Rule 59 of these Rules; and
  - 24.1.4 a covering envelope.
- 24.2 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**

- 25.1 The ballot paper envelope must have clear instructions to the voter printed on it, instructing the voter to seal the ballot paper inside the envelope once the ballot paper has been marked.
- 25.2 The covering envelope is to have:-
  - 25.2.1 the address for return of the ballot paper printed on it; and
  - 25.2.2 pre-paid postage for return to that address.
- 25.3 There should be clear instructions, either printed on the covering envelope or elsewhere, instructing the voter to seal the following documents inside the covering envelope and return it to the Returning Officer:-
  - 25.3.1 the completed declaration of identity if required; and
  - 25.3.2 the ballot paper envelope, with the ballot paper sealed inside it.

***The poll***

**26. Eligibility to vote**

- 26.1 An individual who becomes a Member of the Trust 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**

- 27.1 The Returning Officer is to put in place arrangements to enable requests for assistance to vote to be made.
- 27.2 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**

- 28.1 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.
- 28.2 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.
- 28.3 The Returning Officer may not issue a replacement ballot paper for a spoilt ballot paper unless he or she:-
  - 28.3.1 is satisfied as to the voter's identity; and

28.3.2 has ensured that the declaration of identity, if required, has not been returned.

28.4 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"):-

28.4.1 the name of the voter; and

28.4.2 the details of the unique identifier of the spoilt ballot paper (if the Returning Officer was able to obtain it); and

28.4.3 the details of the unique identifier of the replacement ballot paper.

## **29. Lost ballot papers**

29.1 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.

29.2 The Returning Officer may not issue a replacement ballot paper for a lost ballot paper unless he or she:-

29.2.1 is satisfied as to the voter's identity;

29.2.2 has no reason to doubt that the voter did not receive the original ballot paper; and

29.2.3 has ensured that the declaration of identity if required has not been returned.

29.3 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"):-

29.3.1 the name of the voter; and

29.3.2 the details of the unique identifier of the replacement ballot paper.

## **30. Issue of replacement ballot paper**

30.1 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.

30.2 After issuing a replacement ballot paper under this Rule, the Returning Officer shall enter in a list ("the list of tendered ballot papers"):-

30.2.1 the name of the voter; and

30.2.2 the details of the unique identifier of the replacement ballot paper issued under this Rule.

**31. Declaration of identity for replacement ballot papers (Public Constituencies)**

- 31.1 In respect of an election for a Public Constituency a declaration of identity must be issued with each replacement ballot paper.
- 31.2 The declaration of identity is to include a declaration:-
  - 31.2.1 that the voter has not voted in the election with any ballot paper other than the ballot paper being returned with the declaration; and
  - 31.2.2 of the particulars of that Member's qualification to vote as a Member of the Public Constituency for which the election is being held
  - 31.2.3 The declaration of identity is to include space for:-
    - 31.2.3.1 the name of the voter;
    - 31.2.3.2 the address of the voter;
    - 31.2.3.3 the voter's signature; and
    - 31.2.3.4 the date that the declaration was made by the voter.
- 31.3 The voter must be required to return the declaration of identity together with the ballot paper.
- 31.4 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**

- 32.1 Where the Returning Officer receives a:-
  - 32.1.1 covering envelope; or
  - 32.1.2 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.
- 32.2 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:-
  - 32.2.1 the candidate for whom a voter has voted; or
  - 32.2.2 the unique identifier on a ballot paper.



32.3 The Returning Officer must make arrangements to ensure the safety and security of the ballot papers and other documents.

**33. Validity of ballot paper**

33.1 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.

33.2 Where the Returning Officer is satisfied that paragraph 33.1 has been fulfilled, he or she is to:-

33.2.1 put the declaration of identity if required in a separate packet; and

33.2.2 put the ballot paper aside for counting after the close of the poll.

33.3 Where the Returning Officer is not satisfied that paragraph 33.1 has been fulfilled, he or she is to:-

33.3.1 mark the ballot paper “disqualified”;

33.3.2 if there is a declaration of identity accompanying the ballot paper, mark it as “disqualified” and attach it the ballot paper;

33.3.3 record the unique identifier on the ballot paper in a list (the “list of disqualified documents”); and

33.3.4 place the document or documents in a separate packet.

**34. Declaration of identity but no ballot paper (Public Constituency)**

34.1 Where the Returning Officer receives a declaration of identity if required but no ballot paper, the Returning Officer is to:-

34.1.1 mark the declaration of identity “disqualified”;

34.1.2 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

34.1.3 place the declaration of identity in a separate packet.

**35. Sealing of packets**

35.1 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:-

35.1.1 the disqualified documents, together with the list of disqualified documents inside it;

35.1.2 the declarations of identity if required;

- 35.1.3 the list of spoilt ballot papers;
- 35.1.4 the list of lost ballot papers;
- 35.1.5 the list of eligible voters; and
- 35.1.6 the list of tendered ballot papers.

## **PART 6- COUNTING THE VOTES**

### **36. Interpretation of Part 6**

36.1 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:-

36.1.1 on which no second or subsequent preference is recorded for a continuing candidate; or

36.1.2 which is excluded by the Returning Officer under Rule 44.4 below;

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

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

36.1.4 “**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

36.1.5 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 41 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:-

36.1.6 the determination of the first preference vote of each candidate;

36.1.7 the transfer of a surplus of a candidate deemed to be elected; or

36.1.8 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 42.4 or 42.7 of Rule 42 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**

38.1 The Returning Officer is to:-

38.1.1 count and record the number of ballot papers that have been returned; and

38.1.2 count the votes according to the provisions in this Part of the Rules.

38.2 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.

38.3 The Returning Officer is to proceed continuously with counting the votes as far as is practicable.

### **39. Rejected ballot papers**

39.1 Any ballot paper:-

39.1.1 which does not bear the features that have been incorporated into the other ballot papers to prevent them from being reproduced;

39.1.2 on which the figure “1” standing alone is not placed so as to indicate a first preference for any candidate;

39.1.3 on which anything is written or marked by which the voter can be identified except the unique identifier; or

39.1.4 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.

39.2 The Returning Officer is to endorse the word "rejected" on any ballot paper which under this Rule is not to be counted.

39.3 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 39.1 to 39.1.4 of paragraph 39.1.

#### **40. First stage**

40.1 The Returning Officer is to sort the ballot papers into parcels according to the candidates for whom the first preference votes are given.

40.2 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.

40.3 The Returning Officer is to also ascertain and record the number of valid ballot papers.

#### **41. The quota**

41.1 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.

41.2 The result, increased by one, of the division under paragraph 41.1 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").

41.3 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 44.1 to 44.3 of Rule 44 has been complied with.

#### **42. Transfer of votes**

42.1 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:-

42.1.1 according to next available preference given on those papers for any continuing candidate; or

42.1.2 where no such preference is given, as the sub-parcel of non-transferable votes.

42.2 The Returning Officer is to count the number of ballot papers in each parcel referred to in paragraph 42.1 above.

- 42.3 The Returning Officer is, in accordance with this Rule and Rule 43 below, to transfer each sub-parcel of ballot papers referred to in paragraph 42.1.1 to the candidate for whom the next available preference is given on those papers.
- 42.4 The vote on each ballot paper transferred under paragraph 42.3 above shall be at a value (“the transfer value”) which:-
- 42.4.1 reduces the value of each vote transferred so that the total value of all such votes does not exceed the surplus; and
- 42.4.2 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).
- 42.5 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:-
- 42.5.1 according to the next available preference given on those papers for any continuing candidate; or
- 42.5.2 where no such preference is given, as the sub-parcel of non-transferable votes.
- 42.6 The Returning Officer is, in accordance with this Rule and Rule 43 below, to transfer each sub-parcel of ballot papers referred to in paragraph 42.5.1 to the candidate for whom the next available preference is given on those papers.
- 42.7 The vote on each ballot paper transferred under paragraph 42.6 shall be at:-
- 42.7.1 a transfer value calculated as set out in paragraph 42.4.2 above; or
- 42.7.2 at the value at which that vote was received by the candidate from whom it is now being transferred;
- whichever is the less.
- 42.8 Each transfer of a surplus constitutes a stage in the count.
- 42.9 Subject to paragraph 42.10, 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.
- 42.10 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:-
- 42.10.1 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
- 42.10.2 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.

42.11 This Rule does not apply at an election where there is only one vacancy.

**43. Supplementary provisions on transfer**

43.1 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:-

43.1.1 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

43.1.2 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.

43.2 The Returning Officer shall, on each transfer of transferable papers under Rule 42 above:-

43.2.1 record the total value of the votes transferred to each candidate;

43.2.2 add that value to the previous total of votes recorded for each candidate and record the new total;

43.2.3 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

43.2.4 compare:-

43.2.4.1 the total number of votes then recorded for all of the candidates together with the total number of non-transferable votes; with

43.2.4.2 the recorded total of valid first preference votes.

43.3 All ballot papers transferred under Rule 42 or 44 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.

43.4 Where a ballot paper is so marked that it is unclear to the Returning Officer at any stage of the count under Rule 42 or 44 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.

#### **44. Exclusion of candidates**

44.1 If:-

44.1.1 all transferable papers which under the provisions of Rule 42 or 44 above (including that Rule as applied by paragraph 44.1.11 below) and this Rule are required to be transferred, have been transferred; and

44.1.2 subject to Rule 45 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 44.12 below applies, the candidates with the then lowest votes).

44.2 The Returning Officer shall sort all the ballot papers on which first preference votes are given for the candidate or candidates excluded under paragraph 44.1 above into two sub-parcels so that they are grouped as:-

44.2.1 ballot papers on which a next available preference is given; and

44.2.2 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).

44.3 The Returning Officer shall, in accordance with this Rule and Rule 43 above, transfer each sub-parcel of ballot papers referred to in paragraph 44.2.1 above to the candidate for whom the next available preference is given on those papers.

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

44.5 If, subject to Rule 45 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 44.1 above into sub-parcels according to their transfer value.

44.6 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).

44.7 The vote on each transferable paper transferred under paragraph 44.6 above shall be at the value at which that vote was received by the candidate excluded under paragraph 44.1 above.

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

44.9 After the Returning Officer has completed the transfer of the ballot papers in the sub-parcel of ballot papers with the highest transfer value he or she shall proceed to transfer in the same way the sub-parcel of ballot papers with the next highest value and so on until he has dealt with each sub-parcel of a candidate excluded under paragraph 44.1 above.

44.10 The Returning Officer shall after each stage of the count completed under this Rule:-

44.10.1 record:-

- 44.10.1.1 the total value of votes; or
- 44.10.1.2 the total transfer value of votes transferred to each candidate;
- 44.10.1.3 add that total to the previous total of votes recorded for each candidate and record the new total;
- 44.10.1.3. record the value of non-transferable votes and add that value to the previous non-transferable votes total; and

44.10.2 compare:-

- 44.10.2.1 the total number of votes then recorded for each candidate together with the total number of non-transferable votes; with
- 44.10.2.2 the recorded total of valid first preference votes.

44.11 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 42.5 to 42.10 of Rule 42 and Rule 43.

44.12 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.

44.13 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:-

44.13.1 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

44.13.2 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.

#### **45. Filling of last vacancies**

45.1 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.

45.2 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.

45.3 Where the last vacancies can be filled under this Rule, no further transfer of votes shall



be made.

**46. Order of election of candidates**

- 46.1 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 42.10 above.
- 46.2 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.
- 46.3 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.
- 46.4 Where the number of votes credited to two or more candidates were equal at all stages of the count, the Returning Officer shall decide between them by lot and the candidate on whom the lot falls shall be deemed to have been elected first.

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

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

- 47.1 In a contested election, when the result of the poll has been ascertained, the Returning Officer is to:-
  - 47.1.1 declare the candidates who are deemed to be elected under Part 6 of these Rules as elected;
  - 47.1.2 give notice of the name of each candidate who he or she has declared elected:-
    - 47.1.2.1 where the election is held under a proposed Constitution pursuant to powers conferred on The Rotherham NHS Foundation Trust by section 33(4) of the 2006 Act, to the chairman of the NHS Trust; or
    - 47.1.2.2 in any other case, to the chairman of the Trust; and
  - 47.1.3 give public notice of the name of each candidate who he or she has declared elected.
- 47.2 The Returning Officer is to make:-
  - 47.2.1 the number of first preference votes for each candidate whether elected or not;
  - 47.2.2 any transfer of votes;
  - 47.2.3 the total number of votes for each candidate at each stage of the count at which such transfer took place;

47.2.4 the order in which the successful candidates were elected; and

47.2.5 the number of rejected ballot papers under each of the headings in Rule 39.1; available on request.

**48. Declaration of result for uncontested elections**

48.1 In an uncontested election, the Returning Officer is to as soon as is practicable after final day for the delivery of notices of withdrawals by candidates from the election:-

48.1.1 declare the candidate or candidates remaining validly nominated to be elected;

48.1.2 give notice of the name of each candidate who he or she has declared elected to the chairman of the Trust, and

48.1.3 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**

49.1 On completion of the counting at a contested election, the Returning Officer is to seal up the following documents in separate packets:-

49.1.1 the counted ballot papers;

49.1.2 the ballot papers endorsed with “rejected in part”;

49.1.3 the rejected ballot papers; and

49.1.4 the statement of rejected ballot papers.

49.2 The Returning Officer must not open the sealed packets of:-

49.2.1 the disqualified documents, with the list of disqualified documents inside it;

49.2.2 the declarations of identity;

49.2.3 the list of spoilt ballot papers;

49.2.4 the list of lost ballot papers;

49.2.5 the list of eligible voters; and

49.2.6 the list of tendered ballot papers.

49.3 The Returning Officer must endorse on each packet a description of:-

49.3.1 its contents;

49.3.2 the date of the publication of notice of the election;

49.3.3 the name of the Trust to which the election relates; and

49.3.4 the constituency, or class within a constituency, to which the election relates.

**50. Delivery of documents**

50.1 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 Trust.

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

51.1 Where:-

51.1.1 any voting documents are received by the Returning Officer after the close of the poll; or

51.1.2 any envelopes addressed to eligible voters are returned as undelivered too late to be resent; or

51.1.3 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 Trust.

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

52.1 The Trust is to retain the documents relating to an election that are forwarded to the chair by the Returning Officer under these Rules for one year, and then, unless otherwise directed by the Independent Regulator, cause them to be destroyed.

52.2 With the exception of the documents listed in Rule 53.1, the documents relating to an election that are held by the Trust shall be available for inspection by members of the public at all reasonable times.

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

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

53.1 The Trust may not allow the inspection of, or the opening of any sealed packet containing:-

53.1.1 any rejected ballot papers, including ballot papers rejected in part;

53.1.2 any disqualified documents, or the list of disqualified documents;

53.1.3 any counted ballot papers;

53.1.4 any declarations of identity; or

53.1.5 the list of eligible voters;

by any person without the consent of the Independent Regulator.

53.2 A person may apply to the Independent Regulator to inspect any of the documents listed in 53.1, and the Independent Regulator 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.

53.3 The Independent Regulator's consent may be on any terms or conditions that it thinks necessary, including conditions as to:-

53.3.1 persons;

53.3.2 time;

53.3.3 place and mode of inspection;

53.3.4 production or opening;

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

53.4 On an application to inspect any of the documents listed in paragraph 53.1

53.4.1 in giving its consent, the Independent Regulator; and

53.4.2 and making the documents available for inspection, the Trust;

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:-

53.4.3 that his or her vote was given; and

53.4.4 that the Independent Regulator has declared that the vote was invalid.

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

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

54.1 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:-

54.1.1 publish a notice stating that the candidate has died; and

54.1.2 proceed with the counting of the votes as if that candidate had been excluded from the count so that:-

54.1.2.1 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

54.1.2.2 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.

54.2 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 49.1.1.

## **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 the Independent Regulator under Part 11 of these Rules.

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

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

56.1.1 personal expenses;

56.1.2 travelling expenses, and expenses incurred while living away from home; and

56.1.3 expenses for stationery, postage, telephone, internet (or any similar means of communication) and other petty expenses, to a limit of £50.

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

57.1 No person may:-

57.1.1 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

57.1.2 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;

57.1.3 Nothing in this Rule is to prevent the Trust 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 Trust**

58.1 The Trust may:-

- 58.1.1 compile and distribute such information about the candidates; and
  - 58.1.2 organise and hold such meetings to enable the candidates to speak and respond to questions;
- as it considers necessary.
- 58.2 Any information provided by the Trust about the candidates, including information compiled by the Trust under Rule 59, must be:-
- 58.2.1 objective, balanced and fair;
  - 58.2.2 equivalent in size and content for all candidates;
  - 58.2.3 compiled and distributed in consultation with all of the candidates standing for election; and
  - 58.2.4 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.
- 58.3 Where the Trust proposes to hold a meeting to enable the candidates to speak, the Trust must ensure that all of the candidates are invited to attend, and in organising and holding such a meeting, the Trust 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**

- 59.1 The Trust must compile information about the candidates standing for election, to be distributed by the Returning Officer pursuant to Rule 24 of these Rules.
- 59.2 The information must consist of:-
- 59.2.1 a statement submitted by the candidate of no more than 250 words;
  - 59.2.2 a photograph of the candidate.

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

- 60.1 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.
- 60.2 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**

- 61.1 An application alleging a breach of these Rules, including an electoral irregularity under

Part 10, may be made to the Independent Regulator.

- 61.2 An application may only be made once the outcome of the election has been declared by the Returning Officer.
- 61.3 An application may only be made to the Independent Regulator by:-
  - 61.3.1 a person who voted at the election or who claimed to have had the right to vote; or
  - 61.3.2 a candidate, or a person claiming to have had a right to be elected at the election.
- 61.4 The application must:-
  - 61.4.1 describe the alleged breach of the Rules or electoral irregularity; and
  - 61.4.2 be in such a form as the Independent Regulator may require.
- 61.5 The application must be presented in writing within 21 days of the declaration of the result of the election.
- 61.6 If the Independent Regulator requests further information from the applicant, then that person must provide it as soon as is reasonably practicable.
- 61.7 The Independent Regulator shall delegate the determination of an application to a person or persons to be nominated for the purpose of the Independent Regulator.
- 61.8 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 Trust, 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.
- 61.9 The Independent Regulator may prescribe Rules of procedure for the determination of an application including costs.

## **PART 12— MISCELLANEOUS**

### **62. Secrecy**

- 62.1 The following persons:-
  - 62.1.1 the Returning Officer;
  - 62.1.2 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:-
  - 62.1.3 the name of any Member of the Trust who has or has not been given a ballot paper or who has or has not voted;

62.1.4 the unique identifier on any ballot paper;

62.1.5 the candidate(s) for whom any Member has voted.

62.2 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.

62.3 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**

64.1 A person may not be appointed as a Returning Officer, or as staff of the Returning Officer pursuant to these Rules, if that person is:-

64.1.1 a Member of the Trust;

64.1.2 an employee of the Trust;

64.1.3 a Director of the Trust; or

64.1.4 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**

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

65.1.1 the delivery of the documents in Rule 24; or

65.1.2 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 the Independent Regulator.



## Annex 3

### Relationship between the Council of Governors and the Board of Directors

#### 1. Communication and Conflict

1.1 This annex describes the processes intended to ensure a successful and constructive relationship between the Council of Governors and the Board of Directors. It emphasises the importance of informal and formal communication, and confirms the formal arrangements for communication within the Trust. It suggests an approach to informal communications, and sets out the formal arrangements for resolving conflicts between the Council of Governors and the Board of Directors.

#### 1.2 Informal Communications

1.2.1 Informal and frequent communication between the Governors and the Directors is an essential feature of a positive and constructive relationship designed to benefit the Trust and the services it provides.

1.2.2 The Chairman shall use his reasonable endeavours to encourage effective informal methods of communication including:

- (a) participation of the Board of Directors in the induction, orientation and training of Governors;
- (b) development of special interest relationships between Non-Executive Directors and Governors;
- (c) discussions/meetings between Governors and the Chairman and/or the Chief Executive and/or Directors facilitated through the office of the Company Secretary. The Governors shall be able to request to meet individually with any member of the Board through the office of the Company Secretary;
- (d) involvement in Membership recruitment and briefing at public events organised by the Trust.

#### 1.3 Formal Communication

1.3.1 Some aspects of formal communication are defined by the constitutional roles and responsibilities of the Council of Governors and the Board of Directors respectively.

1.3.2 Formal communications initiated by the Council of Governors and intended for the Board of Directors will be conducted as follows:

- (a) specific requests by the Council of Governors will be made through the Chairman to the Board of Directors;
- (b) any Governor has the right to raise specific issues to be put to the Board of Directors at a duly constituted meeting of the Council of Governors through the Chairman. In the event of disagreement, two thirds of the Governors present must approve the request. The Chairman will raise the matter with the Board of Directors and provide the response to the Council of Governors;

- (c) joint meetings will take place annually or as and when appropriate between the Council of Governors and the Board of Directors.

1.3.3 The Board of Directors may request the Chairman to seek the views of the Council of Governors on such matters as the Board of Directors may from time to time determine.

1.3.4 Communications initiated by the Board of Directors and intended for the Council of Governors will be conducted as follows:

- (a) request the Chairman to seek the view of the Council of Governors on the Board of Directors' proposals for the Strategic Direction/Forward Plans;
- (b) presentation and approval of annual accounts, annual report and auditor's report;
- (c) request the Chairman to seek the view of the Council of Governors on the Board of Directors' proposals for developments;
- (d) request the Chairman to seek the view of the Council of Governors on Trust Performance ie finance and quality metrics;
- (e) request the Chairman to seek the view of the Council of Governors for involvement in service reviews and evaluation;
- (f) request the Council of Governors to seek views of the Membership on proposed changes, plans and developments.

1.3.5 Formal communications will normally be conducted as follows:

- (a) attendance by the Board of Directors at a meeting of the Council of Governors;
- (b) formal reports or presentation by Executive Directors to a meeting of the Council of Governors;
- (c) inclusion of minutes for information on the Agenda of a meeting of the Council of Governors;
- (d) reporting the views of the Council of Governors to the Board of Directors through the Chairman, Lead Governor, Vice-Chairman or Senior Independent Director;
- (e) Governors attend meetings in public of the Board of Directors as observers.

1.3.6 Wherever possible and practical, written communications will be conducted by e-mail.

#### 1.4 Resolving Conflict

1.4.1 The Council of Governors and the Board of Directors must be committed to developing and maintaining a constructive and positive relationship. The aim at all times is to resolve any potential or actual differences of view quickly, through discussion and negotiation.

1.4.2 If as the first step, the informal efforts the Chairman do not achieve resolution of a disagreement or a conflict, the Chairman will follow the process described in paragraphs below. The aim is to resolve the matter at the first available opportunity, and only to escalate to the next step if the step taken fails to achieve resolution.

1.4.3 In the event of a conflict between the Council of Governors and Board of Directors, the following action will be taken, in the sequence shown:

- (a) the Chairman will call a Resolution Meeting of the members of the Council of Governors and Board of Directors, to take place as soon as possible, but no later than twenty working days following the date of the request. The meeting must comprise of two thirds of the Membership of the Council of Governors and two thirds of the membership of the Board of Directors, otherwise the meeting shall not be quorate and shall not proceed further. The meeting will be held in private. The Agenda and any papers for the meeting shall be issued in accordance with the Standing Orders of the Council of Governors. The aim of the meeting will be to achieve resolution of the conflict. The Chairman, in discussion with the Lead Governor, will have the right to appoint an independent facilitator to assist the process. Every effort must be made to reach agreement;
- (b) if a Resolution Meeting of the members of the Council of Governors and Board of Directors fails to resolve a conflict, the matter may be referred to mediation by either party;
- (c) if, the Council of Governors consider that the Trust is failing or has failed to act in accordance with its Constitution or to act in accordance with the provisions made by or under Chapter 5 of the 2006 Act, then subject to paragraph 7.20 of this Constitution, they may refer the matter to the panel referred to in paragraph 7.20 of this Constitution.

1.4.4 The right to call a Resolution Meeting rests with the following, in the sequence of escalation shown:

- (a) the Chairman;
- (b) the Chief Executive;
- (c) two thirds of the members of the Council of Governors;
- (d) two thirds of the members of the Board of Directors.