



**West Midlands Ambulance Service**

University NHS Foundation Trust

# Constitution

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## TABLE OF CONTENTS

<i>Paragraph</i>	<i>Page</i>
1. Name	5
2. Principal Purpose	5
3. Powers	5
4. Framework	5
5. Membership and Constituencies	6
6. Application for Membership	6
7. Public Constituency	6
8. Staff Constituency	7
9. Restriction of Membership	7
10. Annual Members Meeting	8
11. Council of Governors- Composition	8
12. Council of Governors- Election of Governors	8
13. Council of Governors- Tenure	9
14. Council of Governors- Disqualification and Removal	9
15. Council of Governors- Duties of Governors	10
16. Council of Governors- Meeting of Governors	11
17. Council of Governors- Standing Orders	11
18. Council of Governors- Referral to the Panel	11
19. Council of Governors- Conflicts of Interest of Governors	11
20. Council of Governors- Travel Expenses	12
21. Council of Governors- Further Provisions	12
22. Board of Directors- Composition	12
23. Board of Directors- General Duty	12
24. Board of Directors- Qualification for appointment as Non-Executive Directors	12
25. Board of Directors- Appointment, Suspension and Removal of Non-Executive Directors	13
26. Board of Directors- Appointment of Initial Chair etc.	13
27. Board of Directors- Appointment of Deputy Chair	13
28. Board of Directors- Appointment and Removal of Chief Executive and Other Executive Directors	13
29. Board of Directors- Appointment and Removal of initial Chief Executive	14

30. Board of Directors- Disqualification	14
31. Board of Directors- Meetings	14
32. Board of Directors- Standing Orders	15
33. Board of Directors- Conflicts of Interest of Directors	15
34. Board of Directors- Remuneration and terms of office	16
35. Registers	16
36. Admission to and removal from the registers	17
37. Registers- Inspection and Copies	17
38. Documents available for public inspection	17
39. Auditor	18
40. Audit Committee	19
41. Accounts	19
42. Annual Report forward plans and non- NHS work	19
43. Presentation of the Annual Accounts and report to the Governors and Members	20
44. Instruments	20
45. Amendment of the Constitution	20
46. Mergers etc. and significant transactions	21
47. Interpretation and Definitions	22
ANNEX 1- THE PUBLIC CONSTITUENCY	25
ANNEX 2- THE STAFF CONSTITUENCY	26
ANNEX 3- COMPOSITION OF COUNCIL OF GOVERNORS	27
ANNEX 4- NHS PROVIDERS MODEL ELECTION RULES 2014	29
ANNEX 5- ADDITIONAL PROVISIONS- COUNCIL OF GOVERNORS	78
Appendix 1- Objectives of the Council of Governors	78
Appendix 2- Roles and Responsibilities of Council of Governors	79
Appendix 3- Eligibility to be a Governor	82
Appendix 4- The Council of Governors (Further Provisions)	86
ANNEX 6- STANDING ORDERS- COUNCIL OF GOVERNORS	89
ANNEX 7- STANDING ORDERS- BOARD OF DIRECTORS	110
ANNEX 8- FURTHER PROVISIONS	134
Appendix 1- Board of Directors- Further Provisions	134
Appendix 2- Further Provisions- Indemnity	138
Appendix 3- Further Provisions- Dispute Resolution Procedure	139

Appendix 4- Further Provisions- Notices	141
Appendix 5- Membership	142
Appendix 6- Members' Meetings	144
Appendix 7- Role and Responsibility of Trust Secretary	146

## **1 Name**

- 1.1 The name of the foundation trust is West Midlands Ambulance Service University NHS Foundation Trust (the Trust).

## **2 Principal purpose**

- 2.1 The principal purpose of the Trust is the provision of goods and services for the purposes of the health service in England.
- 2.2 The Trust does not fulfil its principal purpose unless, in each Financial Year, its total income from the provision of goods and services for the purposes of the health service in England is greater than its total income from the provision of goods and services for any other purposes.
- 2.3 The Trust may provide goods and services for any purposes related to:
  - 2.3.1 the provision of services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness, and
  - 2.3.2 the promotion and protection of public health
- 2.4 The Trust may also carry on activities other than those mentioned in the above paragraph for the purpose of making additional income available in order better to carry on its principal purpose.

## **3 Powers**

- 3.1 The powers of the Trust are set out in the 2006 Act, subject to any restrictions in the Terms of Authorisation.
- 3.2 The powers of the Trust shall be exercised by the Board of Directors on behalf of the Trust.
- 3.3 Any of these powers may be delegated to a committee of Directors or to an Executive Director.

## **4 Framework**

- 4.1 The affairs of the Trust are to be conducted in accordance with this Constitution by:
  - 4.1.1 The Membership
  - 4.1.2 The Council of Governors
  - 4.1.3 The Board of Directors.

## 4.2 The Membership

- 4.2.1 Members may vote in elections to, and may stand for election to, the Council of Governors and may take such other part in the affairs of the Trust as is provided in this Constitution.

## 4.3 The Council of Governors

- 4.3.1 The roles and responsibilities of Governors on the Council of Governors which are to be carried out in accordance with this Constitution are contained in Annex 5, Appendix 2.

## 4.4 The Board of Directors

- 4.4.1 All business shall be conducted in the name of the Trust
- 4.4.2 The powers of the Trust shall be exercised by the Board of Directors either in public or private session except as provided for within this Constitution.
- 4.4.3 Certain powers and decisions may only be exercised or made by the Board of Directors. These powers and decisions are to be set out in the Trust's Scheme of Delegation.

# 5 Membership and Constituencies

- 5.1 The Trust shall have Members, each of whom shall be a member of one of the following constituencies:

- 5.1.1 a Public Constituency

- 5.1.2 a Staff Constituency

# 6 Application for Membership

- 6.1 An individual who is eligible to become a Member of the Trust may do so on application to the Trust.

# 7 Public Constituency

- 7.1 An individual aged not less than 14 years who lives in the area specified in Annex 1 as an area for a Public Constituency may become or continue as a Member of the Trust.
- 7.2 Those individuals who live in an area specified as an area for any Public Constituency are referred to collectively as the Public Constituency
- 7.3 The minimum number of Members in each area for the Public Constituency is specified in Annex 1.

- 7.4 An eligible member shall become a Member on entry to the Trust's register of public members pursuant to an application by them. The Trust Secretary may require any individual to supply supporting evidence to confirm eligibility.
- 7.5 The Trust Secretary shall normally within 14 days of receipt of an application for membership, and subject to being satisfied that the applicant is eligible, cause the applicant's name to be entered in the Trust's register of Members.

## **8 Staff Constituency**

- 8.1 An individual who is employed by the Trust under a contract of employment with the Trust may become or continue as a Member of the Trust provided:
- 8.1.1 he is employed by the Trust under a contract of employment which has no fixed term or has a fixed term of at least 12 months; or
- 8.1.2 he has been continuously employed by the Trust under a contract of employment for at least 12 months.
- 8.2 Those individuals who are eligible for membership of the Trust by reason of the previous provisions are referred to collectively as the Staff Constituency
- 8.3 The Staff Constituency shall be divided into four descriptions of individuals who are eligible for membership of the Staff Constituency, each description of individuals being specified within Annex 2 and being referred to as a class within the Staff Constituency.
- 8.4 The minimum number of Members in the Staff Constituency is specified in Annex 2.
- 8.5 An individual who is:
- 8.5.1 eligible to become a member of the Staff Constituency, and
- 8.5.2 invited by the Trust to become a Member of the Staff Constituency and a Member of the appropriate class within the Staff Constituency,

Shall become a Member of the Trust as a member of the Staff Constituency and appropriate class within the Staff Constituency without an application being made, unless they inform the Trust that they do not wish to do so.

## **9 Restriction on Membership**

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

- 9.2 An individual who satisfies the criteria for membership of the Staff Constituency may not become or continue as a member of any constituency other than the Staff Constituency.
- 9.3 An individual must be at least 16 years old to become a Member of the Trust.
- 9.4 No Member may represent themselves in writing or verbally as belonging to any category of membership of the Trust:
- 9.4.1 in a manner which might associate the Trust with the personal opinions expressed by the Member in question; and
- 9.4.2 save for members of the Staff Constituency no Member shall designate the Trust as their personal or professional postal address in any published works or communication to the media.
- 9.5 Further provisions as to the circumstances in which an individual may not become or continue as a Member of the Trust are set out in Annex 8, Appendix 5.

## **10 Annual Members Meeting**

- 10.1 The Trust shall hold an annual meeting of its members (Annual Members Meeting). The Annual Members Meeting shall be open to members of the public.

## **11 Council of Governors – Composition**

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

## **12 Council of Governors – election of Governors**

- 12.1 Elections for elected Members of the Council of Governors shall be conducted in accordance with the Model Election Rules as may be varied from time to time.
- 12.2 The Model Election Rules as published from time to time by NHS Providers form part of this constitution. The Model Election Rules current at 1 October 2014 are attached at Annex 4.



- 12.3 A subsequent variation of the Model Election Rules by the Foundation Trust Network shall not constitute a variation of the terms of this Constitution for the purposes of paragraph 45 of the Constitution (amendment of the Constitution).
- 12.4 An election, if contested, shall be by secret ballot.

### **13 Council of Governors - Tenure**

- 13.1 An Elected Governor may hold office for a period of up to 3 years.
- 13.2 An Elected Governor shall cease to hold office if he ceases to be a member of the constituency or class by which they were elected.
- 13.3 An Elected Governor shall be eligible for re-election at the end of their term.
- 13.4 An Appointed Governor may hold office for a period of up to 3 years.
- 13.5 An Appointed Governor shall cease to hold office if the appointing organisation withdraws its sponsorship.
- 13.6 An Appointed Governor shall be eligible for re-appointment at the end of his term.
- 13.7 For the purposes of the tenure provisions above, a “year” means a period of twelve consecutive calendar months commencing immediately on the date of Authorisation and each successive period of 12 months thereafter.

### **14 Council of Governors – Disqualification and Removal**

- 14.1 The following may not become or continue as a member of the Council of Governors:
- 14.1.1 a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;
  - 14.1.2 a person in relation to whom a moratorium period under a debt relief order applies (under Part 7A of the Insolvency Act 1986);
  - 14.1.3 a person who has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it;
  - 14.1.4 a person who within the preceding five years has been convicted in the British Islands of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed.
- 14.2 Governors must be at least 16 years of age at the date they are nominated for election or appointment.

- 14.3 A Governor may resign from office at any time during the term of that office by giving notice in writing to the Trust Secretary.
- 14.4 If a Governor is considered to have acted in a manner inconsistent with:
- 14.4.1 the values of the Trust or in a manner detrimental to the interests of the Trust; or
  - 14.4.2 the Standing Orders of the Council of Governors; or
  - 14.4.3 the Governors Code of Conduct; or
  - 14.4.4 they have failed to declare an interest as required by this Constitution or the Standing Orders of the Council of Governors, or they have spoken or voted at a meeting on a matter in which they had an interest contrary to this Constitution or the Standing Orders for the Council of Governors, and in this paragraph “interest” includes a pecuniary and a non-pecuniary interest and in either case whether direct or indirect,
- and they are adjudged to have so acted by not less than 75% of the Council of Governors present and voting at a meeting of the Council of Governors then the Governor shall vacate the role of Governor immediately.
- 14.5 The Standing Orders for the Council of Governors shall provide for the process to be adopted in relation to the Governor’s tenure.
- 14.6 A Governor, who is removed from office or resigns from office under paragraph 14.3 above, shall not be eligible to stand for election or appointment to the Council of Governors for a period of three years from the date of their removal or resignation from office unless a majority at a meeting of the Council of Governors agrees to waive this period.
- 14.7 Further provisions as to the circumstances in which an individual may not become or continue as a member of the Council of Governors are set out in Annex 5 – Appendix 3.

## **15 Council of Governors – Duties of Governors**

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

## **16 Council of Governors – Meetings of Governors**

- 16.1 The Chair of the Trust (i.e. the Chair of the Board of Directors, appointed in accordance with the provisions of paragraph 25.1 or paragraph 26.1 below) or, in their absence the Deputy Chair (appointed in accordance with the provisions of paragraph 27 below), shall preside at meetings of the Council of Governors.
- 16.2 Meetings of the Council of Governors shall be open to members of the public unless the Council of Governors decides otherwise in relation to all or part of a meeting for reasons of commercial or individual confidentiality, or other proper grounds. Members of the public may be excluded from a meeting if it is considered that their behaviour prevents the proper conduct of the meeting.
- 16.3 For the purposes of obtaining information about the trust's performance of its functions or directors' performance of their duties (and deciding whether to propose a vote on the Trust's or directors' performance), the Council of Governors may require one or more of the directors to attend a meeting.

## **17 Council of Governors – Standing Orders**

- 17.1 The Standing Orders for the practice and procedure of the Council of Governors are attached at Annex 6.

## **18 Council of Governors – Referral to the Panel**

- 18.1 In this paragraph, the Panel means a panel of persons appointed by the Monitor to which a governor of an NHS foundation trust may refer a question as to whether the trust has failed or is failing:
  - 18.1.1 To act in accordance with its constitution, or
  - 18.1.2 To act in accordance with provision made by or under chapter 5 of the 2006 Act
- 18.2 A governor may refer a question to the panel only if more than half of the members of the Council of Governors voting approve the referral.

## **19 Council of Governors - Conflicts of Interest of Governors**

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

## **20 Council of Governors – Travel and Other Expenses**

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

## **21 Council of Governors – Further Provisions**

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

## **22 Board of Directors – Composition**

- 22.1 The Trust is to have a Board of Directors, which shall comprise both Executive Directors and Non-Executive Directors.
- 22.2 The Board of Directors is to comprise:
- 22.2.1 a non-executive Chair; and,
  - 22.2.2 up to six other Non-Executive Directors; and
  - 22.2.3 up to six Executive Directors.
- 22.3 One of the Executive Directors shall be the Chief Executive.
- 22.4 The Chief Executive shall be the Accounting Officer.
- 22.5 One of the Executive Directors shall be the Finance Director.
- 22.6 One of the Executive Directors is to be a Registered Medical Practitioner or a Registered Dentist (within the meaning of the Dentists Act 1984).
- 22.7 One of the Executive Directors is to be a Registered Nurse or a Registered Midwife.

## **23 Board of Directors – General Duty**

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

## **24 Board of Directors – Qualification for Appointment as a Non-Executive Director**

- 24.1 A person may be appointed as a Non-Executive Director only if:
- 24.1.1 they are a member of the Public Constituency, or
  - 24.1.2 they are not disqualified by virtue of paragraph 30 below.

**25 Board of Directors – Appointment, Suspension and Removal of the Chair and other Non-Executive Directors**

- 25.1 The Council of Governors at a general meeting of the Governors shall appoint, suspend or remove the Chair of the Trust and the other Non-Executive Directors, and the process is set out in Annex 8, Appendix 1.
- 25.2 Removal or suspension of the Chair or another Non-Executive Director shall require the approval of three-quarters of the members of the Council of Governors.
- 25.3 The initial Chair and the initial Non-Executive Directors are to be appointed in accordance with paragraph 26 below.

**26 Board of Directors – appointment of initial Chair and initial other Non-Executive Directors**

- 26.1 The Council of Governors shall appoint the Chair of the Applicant Trust as the initial Chair of the Trust, if he wishes to be appointed.
- 26.2 The power of the Council of Governors to appoint the other Non-Executive Directors of the Trust is to be exercised, so far as possible, by appointing as the initial Non-Executive Directors of the Trust any of the Non-Executive Directors of the Applicant Trust (other than the Chair) who wish to be appointed.
- 26.3 The criteria for qualification for appointment as a Non-Executive Director set out in paragraph 24 above (other than disqualification by virtue of paragraph 30 below) do not apply to the appointment of the initial Chair and the initial other Non-Executive Directors in accordance with the procedures set out in this paragraph.
- 26.4 An individual appointed as the initial Chair or as an initial Non-Executive Director in accordance with the provisions of this paragraph shall be appointed for the unexpired period of their term of office as Chair or (as the case may be) Non-Executive Director of the Applicant Trust; but if, on appointment, that period is less than 12 months, they shall be appointed for 12 months.

**27 Board of Directors – appointment of Deputy Chair**

The Council of Governors at a general meeting shall appoint one of the Non-Executive Directors as a Deputy Chair for a period not exceeding their term of office as a Non-Executive Director as the Council of Governors may specify upon making the appointment.

## **28 Board of Directors - appointment and removal of the Chief Executive and other Executive Directors**

- 28.1 The Non-Executive Directors shall appoint or remove the Chief Executive.
- 28.2 The appointment of the new Chief Executive shall require the approval of the Council of Governors.
- 28.3 The initial Chief Executive is to be appointed in accordance with paragraph 29 below.
- 28.4 A committee consisting of the Chair, the Chief Executive and the other Non-Executive Directors shall appoint or remove the other Executive Directors.

## **29 Board of Directors – appointment and removal of initial Chief Executive**

- 29.1 The Non-Executive Directors shall appoint the Chief Executive of the Applicant Trust as the initial Chief Executive of the Trust, if he wishes to be appointed.
- 29.2 The appointment of the Chief Executive of the Applicant Trust as the initial Chief Executive of the Trust shall not require the approval of the Council of Governors.

## **30 Board of Directors – disqualification**

- 30.1 The following may not become or continue as a member of the Board of Directors:
  - 30.1.1 a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged.
  - 30.1.2 a person who has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it.
  - 30.1.3 a person who within the preceding five years has been convicted in the British Islands of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him.
  - 30.1.4 a person who does not meet all the requirements prescribed in regulations for a director of a Care Quality Commission registered service provider.

## **31 Board of Directors – Meetings**

- 31.1 Meetings of the Board of Directors shall be open to members of the public.
- 31.2 Members of the public may be excluded from a meeting for special

reasons.

- 31.3 Before holding a meeting, the Board of Directors must send a copy of the agenda of the meeting to the Council of Governors. As soon as practicable after holding a meeting, the Board of Directors must send a copy of the minutes of the meeting to the Council of Governors.

## **32 Board of Directors – standing orders**

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

## **33 Board of Directors - conflicts of interest of Directors**

- 33.1 The duties that a Director of the trust has by virtue of being a director include in particular:

33.1.1 If a Director has a pecuniary, personal or family interest, whether that interest is actual or potential and whether that interest is direct or indirect, in any proposed contract or other matter which is under consideration or is to be considered by the Board of Directors, the Director shall disclose that interest to the members of the Board of Directors as soon as he becomes aware of it.

33.1.2 The Standing Orders for the Board of Directors shall make provision for the disclosure of interests and arrangements for the exclusion of a Director declaring any interest from any discussion or consideration of the matter in respect of which an interest has been disclosed.

33.1.3 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.

33.1.4 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.

- 33.2 The duty referred to in sub paragraph 33.1.3 above is not infringed if:

33.2.1 The situation cannot reasonably be regarded as likely to give rise to a conflict of interest, or

33.2.2 The matter has been authorised in accordance with the constitution.

- 33.3 The duty referred to in sub paragraph 33.1.4 above is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.

- 33.4 In sub paragraph 33.1.4 “third party” means a person other than:
- 33.4.1 The Trust
  - 33.4.2 A person acting on its behalf.
- 33.5 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.
- 33.6 If a declaration under this paragraph proves to be, or becomes inaccurate, or incomplete, a further declaration must be made.
- 33.7 Any declaration required by this paragraph must be made before the trust enters into the transaction or arrangement.
- 33.8 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.
- 33.9 A Director need not declare an interest:
- 33.9.1 If it cannot reasonably be regarded as likely to give rise to a conflict of interest;
  - 33.9.2 If, or to the extent that the directors are already aware of it;
  - 33.9.3 If, or to the extent that the directors are already aware of it;
  - 33.9.4 If or to the extent that it concerns terms of the directors appointment that have been or are to be considered:
    - 33.9.4.1 By a meeting of the Board of Directors, or
    - 33.9.4.2 By a committee of the Directors appointed for the purpose under the constitution.

## **34 Board of Directors – remuneration and terms of office**

- 34.1 The Council of Governors at a general meeting shall decide the remuneration and allowances, and the other terms and conditions of office, of the Chair and the other Non-Executive Directors; but pending its decision on these matters, these matters are to continue in accordance with the remuneration and allowances, and other terms and conditions of office of the respective individuals as engaged by the Applicant Trust.
- 34.2 The Trust shall establish a committee of Non-Executive Directors to decide the remuneration and allowances, and the other terms and conditions of office, of the Chief Executive and other Executive Directors; but pending its decision on these matters, these matters are to continue in accordance with the remuneration and allowances, and other terms and conditions of office of the respective individuals as engaged by the Applicant Trust.



## **35 Registers**

35.1 The Trust shall have:

- 35.1.1 a register of Members showing, in respect of each Member, the constituency to which they belong and, where there are classes within it, the class to which they belong;
- 35.1.2 a register of members of the Council of Governors;
- 35.1.3 a register of interests of Governors;
- 35.1.4 a register of Directors; and
- 35.1.5 a register of interests of the Directors.

## **36 Admission to and removal from the registers**

36.1 The Trust Secretary shall remove from the register of Members the names of any Members who cease to be Members under the provisions of this Constitution.

## **37 Registers – inspection and copies**

37.1 The Trust shall make the registers specified in paragraph 35 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.

37.2 The Trust shall not make any part of its registers available for inspection by members of the public which shows details of any Member of the Trust, if the Member so requests.

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

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

37.4 If the person requesting a copy or extract is not a Member of the Trust, the Trust may impose a reasonable charge for doing so.

## **38 Documents available for public inspection**

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

- 38.1.1 a copy of the current Constitution;
- 38.1.2 a copy of the latest Annual Accounts and of any report of the

auditor on them;

38.1.3 a copy of the latest Annual Report;

38.2 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:

38.2.1 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.

38.2.2 A copy of any report laid under section 65D (appointment of Trust special administrator) of the 2006 Act.

38.2.3 A copy of any information published under section 65D (appointment of trust special administrator) of the 2006 Act.

38.2.4 A copy of any statement provided under section 65F (administrators draft report) of the 2006 Act.

38.2.5 A copy of any notice published under section 65F (administrator's draft report), 65G (consultation plan), 65H (consultation requirement), 65J (power to extend time), 65KA (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.

38.2.6 A copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act

38.2.7 A copy of any final report published under section 65I (administrator's final report)

38.2.8 A copy of any statement published under section 65J (power to extend time) or 65KC (action following Secretary state's rejection of final report) of the 2006 Act.

38.2.9 A copy of any information published under section 65M (a replacement of trust special administrator) of the 2006 Act.

38.3 Subject to 38.4 below any person who requests a copy of or extract from any of the above documents is to be provided with a copy.

38.4 If the person requesting a copy or extract is not a Member of the Trust, the Trust may impose a reasonable charge for doing so.

## **39 Auditor**

39.1 The Trust shall have an auditor.

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

## **40 Audit Committee**

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

## **41 Accounts**

41.1 The Trust shall keep proper accounts and proper records in relation to such accounts.

41.2 The Monitor may with the approval of the Secretary of State give directions to the Trust as to the content and form of its accounts

41.3 The accounts are to be audited by the Trust's Auditor.

41.4 The Trust shall prepare in respect of each Financial Year Annual Accounts in such form as the Secretary of State may direct.

41.5 The functions of the Trust with respect to the preparation of the Annual Accounts shall be delegated to the Accounting Officer.

## **42 Annual Report, forward plans and non NHS work**

42.1 The Trust shall prepare an Annual Report and send it to Monitor.

42.2 The Trust shall give information as to its forward planning in respect of each financial year to the Monitor.

42.3 The document containing the information with respect to forward planning (referred to above) shall be prepared by the Directors.

42.4 In preparing the document, the directors shall have regard to the views of the Council of Governors.

42.5 Each forward plan must include information about:

42.5.1 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

42.5.2 the income it expects to receive from doing so.

42.6 Where a Forward Plan contains a proposal that the Trust carry on an activity of a kind mentioned in sub-paragraph 42.5.1 the Council of Governors must:

42.6.1 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

42.6.1 notify the Directors of the Trust of its determination.

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

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

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

43.1.1 the Annual Accounts

43.1.2 any report of the auditor on them

43.1.3 the annual report.

43.2 The documents shall also be presented to the members of the Trust at the Annual Members' Meeting by at least one member of the Board of Directors in attendance.

43.3 The Trust may combine a meeting of the Council of Governors convened for the purposes of paragraph 43.1 with the Annual Members Meeting.

#### **44 Instruments**

44.1 The Trust shall have a seal.

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

#### **45 Amendment of the Constitution**

45.1 The Trust may make amendments of its constitution only if:

45.1.1 More than half of the members of the Council of Governors of the trust voting approve the amendments, and

45.1.2 More than half of the Board of Directors of the trust voting approve the amendments.

- 45.2 Amendments made under paragraph 46.1 above 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 would not accord with schedule 7 of the 2006 Act.
- 45.3 Where an amendment is made to the constitution in relation to the powers of duties of the Council of Governors (or otherwise with respect to the role that the Council of Governors has as part of the trust):
  - 46.3.1 At least one member from the Council of Governors must attend the next Annual Members' Meeting and present the amendment, and
  - 46.3.2 The Trust must give the members an opportunity to vote on whether they approve the amendment.
- 45.4 If more than half 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.
- 45.5 Amendments by the trust of its constitution are to be notified to Monitor. For the avoidance of doubt, Monitor's functions do not include a power or duty to determine whether or not the constitution as a result of the amendments accord with Schedule 7 of the 2006 Act.

## **46 Mergers etc and significant transactions**

- 46.1 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.
- 46.2 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.
- 46.3 "Significant transaction" means a transaction which meets any one of the below criteria:
  - 46.3.1 the total of the fixed assets and current assets subject to the transaction represents more than 25% of the value of the total fixed assets and current assets of the Trust;
  - 46.3.2 the increase or decrease in income attributable to:
    - the assets; or
    - the contract
 associated with the transaction represents more than 25% of the value of the Trust's income; or
  - 46.3.3 the gross capital of the company or business being acquired/divested represents more than 25% of the total capital of the

- Trust following completion (where gross capital is the market value of the relevant company or business's shares and debt securities, plus the excess of current liabilities over current assets).
- 46.3.4 That the transaction is of nature that the Board of Directors in its absolute discretion consider to be in its opinion a novel or contentious matter

## **47 Interpretation and definitions**

- 47.1 Questions of interpretation of this Constitution shall be decided by the Chair, who shall seek the advice of the Chief Executive and the Trust Secretary before determining the matter.
- 47.2 Unless a contrary intention is evident or the context requires otherwise, words or expressions contained in this Constitution shall bear the same meaning as in the 2006 Act.
- 47.3 Words importing the masculine gender only shall include the feminine gender; words importing the singular shall import the plural and vice-versa.
- 47.4 **The '2006 Act'** is the National Health Service Act 2006;
- 47.5 **The '2012 Act'** is the Health and Social Care Act 2012;
- 47.6 **'Accounting Officer'** means the person who from time to time discharges the functions specified in paragraph 25(5) of Schedule 7 to the 2006 Act;
- 47.7 **'Annual Accounts'** means the accounts kept by the Trust in such form as Monitor may with the approval of the Secretary of State direct;
- 47.8 **'Annual Report'** means the annual report prepared by the Trust and sent to Monitor;
- 47.9 **'Applicant Trust'** means the West Midlands Ambulance Service NHS Trust that made the application to become an NHS Foundation Trust;
- 47.10 **'Appointed Governors'** means those Governors appointed by the Appointing Organisations;
- 47.11 **'Appointing Organisations'** means those organisations named in this Constitution who are entitled to appoint Appointed Governors;
- 47.12 **'Area'** means the counties of Shropshire, Staffordshire, Warwickshire and Worcestershire; the unitary authorities of Herefordshire, Stoke-on-Trent and Telford and Wrekin; and the seven metropolitan districts of Birmingham, Coventry, Dudley, Sandwell, Solihull, Walsall and Wolverhampton as specified in Annex 1;
- 47.13 **'Auditor'** means a person appointed at a general meeting of the Council of Governors to audit the Trust's accounts;

- 47.14 **‘Board of Directors’** means the Board of Directors as constituted in accordance with this Constitution;
- 47.15 **‘Chair’** means the chairman of the Board of Directors of the Trust, appointed in accordance with paragraph 26 of this Constitution;
- 47.16 **‘Chief Executive’** means the chief officer of the Trust, appointed in accordance with paragraph 28 or 29 of this Constitution;
- 47.17 **‘Constitution’** means this constitution and all annexes to it;
- 47.18 **‘Deputy Chair’** means the person appointed by the Board of Directors to take on the Chair’s duties if the Chair is absent for any reason;
- 47.19 **‘Director’** means a member of the Board of Directors;
- 47.20 **‘Elected Governors’** means those Governors elected by the Public Constituency and the classes of the Staff Constituency;
- 47.21 **‘Executive Director’** means a member of the Board of Directors of the Trust who is an officer of the Trust;
- 47.22 **‘Finance Director’** means the chief financial officer of the Trust, appointed to discharge the usual functions of its chief finance officer;
- 47.23 **‘Financial Year’** means:
- 47.23.1 A period beginning with the date on which the Trust is authorised and ending with the next 31 March; and
- 47.23.2 Each successive period of twelve months beginning with 1 April.
- 47.24 **‘Forward Plan’** means the document prepared by the Trust pursuant to paragraph 27 of schedule 7 to the 2006 Act.
- 47.25 **‘Governor’** means a person who is a member of the Council of Governors of the Trust, being either an Elected Governor or an Appointed Governor;
- 47.26 **‘Member’** means a member of the Trust;
- 47.27 **‘Council of Governors’** means the Council of Governors as constituted in accordance with this Constitution, which has the same meaning as the Council of Governors in the 2006 Act, as amended by the Health and Social Care Act 2012;
- 47.28 **‘Monitor’** means the body corporate known as Monitor, as provided by Section 61 of the 2012 Act;
- 47.29 **‘Non-Executive Director’** means a member of the Board of Directors of the Trust who is not an executive officer of the Trust;

- 47.30 **'Partner'** means, in relation to another person, a member of the same household living together as a family unit;
- 47.31 **'Partnership Governor'** means a Governor appointed by a Partnership Organisation;
- 47.32 **'Partnership Organisation'** means those organisations nominated by the Trust to be designated as partnership organisations for the purposes of this Constitution;
- 47.33 **'Public Constituency'** means (collectively) those members living in one of the areas of the Trust;
- 47.34 **'Public Governor'** means a Governor elected by the members of one of the Public Constituencies;
- 47.35 **'Registered Medical Practitioner'** means a fully registered person within the meaning of the Medicines Act 1983 who holds a licence to practice under that Act;
- 47.36 **'Staff Constituency'** means (collectively) those members of the five classes comprising the Staff Constituency;
- 47.37 **'Staff Governor'** means a Governor elected by the members of one of the classes of the Staff Constituency.
- 47.38 **The 'Trust'** means West Midlands Ambulance Service University NHS Foundation Trust;
- 47.39 **'Trust Secretary'** means the Secretary of the Trust or any other person appointed to perform the duties of the Secretary, including a joint, assistant or deputy secretary;



## **ANNEX 1 – THE PUBLIC CONSTITUENCY**

- 1** There are five constituent areas of the Trust that make up the Public Constituency. The constituent areas reflect the boundaries of the following areas:
  - 1.1 Birmingham (Comprising Birmingham City Council, Solihull MBC);
  - 1.2 Coventry and Warwickshire (Comprising Coventry City Council, Warwickshire County Council, North Warwickshire District Council, Nuneaton & Bedworth District Council, Rugby District Council, Stratford on Avon District Council and Warwick District Council);
  - 1.3 Herefordshire, Shropshire and Worcestershire (Comprising Herefordshire County Council, Shropshire County Council, Worcestershire County Council, Bromsgrove District Council, Malvern Hills District Council, Redditch District Council, Worcester City Council, Wychavon District Council, Wyre Forest District Council and Telford & Wrekin Council);
  - 1.4 Staffordshire (Comprising Staffordshire County Council, Stoke on Trent City Council, Cannock Chase District Council, East Staffordshire District Council, Lichfield District Council, Newcastle under Lyme District Council, South Staffordshire District Council, Stafford District Council, Staffordshire Moorlands District Council, Tamworth District Council.);
  - 1.5 The Black Country (Comprising Dudley Metropolitan Council, Sandwell Metropolitan Council, Walsall Metropolitan Council and Wolverhampton City Council).
- 2** Membership of the Public Constituency is open to individuals who:
  - 2.1 live within in the relevant area of the Trust;
  - 2.2 Are not eligible to be members of any of the classes of the Staff Constituency.
- 3.** The minimum number of members of each of the constituent areas is to be 100 (one hundred).

## ANNEX 2 – THE STAFF CONSTITUENCY

- 1 The Staff Constituency may elect five (5) Governors to represent the following four classes:
  - 1.1 Emergency and Urgent Operational Staff **(This class may elect two (2) Governors at least one of which must be a state registered paramedic.)**
  - 1.2 Emergency Operations Centre staff.
  - 1.3 Non-emergency operational staff (including patient and courier transport services and non-emergency call centre staff).
  - 1.4 Support staff and those not included in one of the categories above.
- 2 All individuals who are entitled under this Constitution to become members of one of the classes of the Staff Constituency, and who:
  - 2.1 have been invited by the Trust to become a member of the appropriate class; and
  - 2.2 have not informed the Trust that they do not wish to do so
  - 2.3 Shall become members of the appropriate class.
- 3 A person who is eligible to be a member of one of the classes of the Staff Constituency may not become or continue as a member of the Public Constituency, and may not become or continue as a member of more than one class of the Staff Constituency.
- 4 The minimum number of members of each class of the Staff Constituency is to be 20.

## ANNEX 3 – COMPOSITION OF COUNCIL OF GOVERNORS

- 1 The Council of Governors of the Trust shall comprise Elected Governors and Appointed Governors.
- 2 Elected Governors include those elected by the Members of the areas within the Public Constituency, and those elected by the Members of the classes within the Staff Constituency.
- 3 Appointed Governors will include those appointed by bodies as required by statute, and also those appointed by Partnership Organisations identified by the Trust. More than half the aggregate number of Governors within the Council of Governors shall be those within the Public Constituency:

### Elected Governors:

Electoral Areas within the Public Constituency	Number
Birmingham (Comprising Birmingham City Council, Solihull MBC);	3
Coventry and Warwickshire (Comprising Coventry City Council, Warwickshire County Council, North Warwickshire District Council, Nuneaton & Bedworth District Council, Rugby District Council, Stratford on Avon District Council and Warwick District Council);	3
Herefordshire, Shropshire and Worcestershire (Comprising Herefordshire County Council, Shropshire County Council, Worcestershire County Council, Bromsgrove District Council, Malvern Hills District Council, Redditch District Council, Worcester City Council, Wychavon District Council, Wyre Forest District Council and Telford & Wrekin Council)	3
Staffordshire (Comprising Staffordshire County Council, Stoke on Trent City Council, Cannock Chase District Council, East Staffordshire District Council, Lichfield District Council, Newcastle under Lyme District Council, South Staffordshire District Council, Stafford District Council, Staffordshire Moorlands District Council, Tamworth District Council.)	3
The Black Country Comprising Dudley Metropolitan Council, Sandwell Metropolitan Council, Walsall Metropolitan Council and Wolverhampton City Council)	3
Classes within the Staff Constituency	Number
Emergency and Urgent Operational Staff ( <b>This class may elect two (2) Governors, at least one of which must be a <u>State Registered Paramedic</u> who will have received the greatest number of votes for the paramedic nominated within this class.</b> )	2

Emergency Operations Centre staff	1
Non-emergency operational staff (including patient and courier transport services and non-emergency call centre staff)	1
Support Staff and those not included in one of the categories above.	1

### Appointed Governors:

Statutory – 1	Number
At its sole discretion, the Board of Directors shall invite one qualifying local authority to appoint a Governor, who shall be appointed to serve a three year term. A qualifying local authority shall mean a local authority for an area which includes the whole or part of an area specified in this Constitution as an area for a Public Constituency.	1

Partnership Organisations – 5	Number
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At its sole discretion, the Board of Directors shall invite the following organisations to appoint a Governor, who shall be appointed for a three year term:

An emergency service provider from within an area which includes the whole or part of an area specified in this Constitution as an area for a Public Constituency; acting by its Chief Executive, may appoint one (1) Governor.	1
An NHS provider from within an area which includes the whole or part of an area specified in this Constitution as an area for a Public Constituency, may appoint one (1) Governor	1
The West Midlands Community First Responders Regional Forum may appoint one (1) Governor	1
The Universities that are represented on the West Midlands Ambulance Service University NHS Foundation Trust HEI Consortium may appoint one (1) Governor	1
St John Ambulance may appoint one (1) Governor from their Cadets scheme.	1

## ANNEX 4 – NHS PROVIDERS NETWORK MODEL ELECTION RULES 2014

	Page
<b>PART 1: INTERPRETATION</b>	
1. Interpretation	32
<b>PART 2: TIMETABLE FOR ELECTION</b>	
2. Timetable	34
3. Computation of time	34
<b>PART 3: RETURNING OFFICER</b>	
4. Returning officer	35
5. Staff	35
6. Expenditure	35
7. Duty of co-operation	35
<b>PART 4: STAGES COMMON TO CONTESTED AND UNCONTESTED ELECTIONS</b>	
8. Notice of election	36
9. Nomination of candidates	36
10. Candidate's particulars	37
11. Declaration of interests	37
12. Declaration of eligibility	37
13. Signature of candidate	37
14. Decisions as to validity of nomination forms	37
15. Publication of statement of nominated candidates	38
16. Inspection of statement of nominated candidates and nomination forms	39
17. Withdrawal of candidates	39
18. Method of election	39
<b>PART 5: CONTESTED ELECTIONS</b>	
19. Poll to be taken by ballot	40
20. The ballot paper	40
21. The declaration of identity (public and patient constituencies)	41
<i>Action to be taken before the poll</i>	
22. List of eligible voters	42
23. Notice of poll	42
24. Issue of voting information by returning officer	43
25. Ballot paper envelope and covering envelope	44
26. E-voting systems	44
<i>The poll</i>	
27. Eligibility to vote	46
28. Voting by persons who require assistance	46
29. Spoilt ballot papers and spoilt text message votes	47
30. Lost voting information	48
31. Issue of replacement voting information	48

		Page
32.	ID declaration form for replacement ballot papers (public and patient constituencies)	49
33	Procedure for remote voting by internet	49
34.	Procedure for remote voting by telephone	49
35.	Procedure for remote voting by text message	50
<i>Procedure for receipt of envelopes, internet votes, telephone vote and text message votes</i>		
36.	Receipt of voting documents	50
37.	Validity of votes	50
38.	Declaration of identity but no ballot (public and patient constituency)	51
39.	De-duplication of votes	52
40.	Sealing of packets	52
<b>PART 6: COUNTING THE VOTES</b>		
STV41	Interpretation of Part 6	54
42.	Arrangements for counting of the votes	55
43.	The count	56
STV44	Rejected ballot papers and rejected text voting records	56
FPP44	Rejected ballot papers and rejected text voting records	57
STV45	First stage	59
STV46	The quota	59
STV47	Transfer of votes	60
STV48	Supplementary provisions on transfer	61
STV49	Exclusion of candidates	62
STV50	Filling of last vacancies	64
STV51	Order of election of candidates	64
FPP51	Equality of votes	65
<b>PART 7: FINAL PROCEEDINGS IN CONTESTED AND UNCONTESTED ELECTIONS</b>		
FPP52	Declaration of result for contested elections	66
STV52	Declaration of result for contested elections	66
53.	Declaration of result for uncontested elections	67
<b>PART 8: DISPOSAL OF DOCUMENTS</b>		
54.	Sealing up of documents relating to the poll	68
55.	Delivery of documents	68
56.	Forwarding of documents received after close of the poll	69
57.	Retention and public inspection of documents	69
58.	Application for inspection of certain documents relating to election	69
<b>PART 9: DEATH OF A CANDIDATE DURING A CONTESTED ELECTION</b>		
FPP59	Countermand or abandonment of poll on death of candidate	71
STV59	Countermand or abandonment of poll on death of candidate	72

		Page
<b>PART 10: ELECTION EXPENSES AND PUBLICITY</b>		
<i>Expenses</i>		
60.	Election expenses	73
61.	Expenses and payments by candidates	73
62.	Expenses incurred by other persons	73
<i>Publicity</i>		
63.	Publicity about election by the corporation	73
64.	Information about candidates for inclusion with voting information	74
65.	Meaning of “for the purposes of an election”	74
<b>PART 11: QUESTIONING ELECTIONS AND IRREGULARITIES</b>		
66.	Application to question an election	75
<b>PART 12: MISCELLANEOUS</b>		
67.	Secrecy	76
68.	Prohibition of disclosure of vote	76
69.	Disqualification	76
70.	Delay in postal service through industrial action or unforeseen event	77

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**1 Interpretation**

1.1 In these rules, unless the context otherwise requires:

“*2006 Act*” means the National Health Service Act 2006;

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

“*council of governors*” means the council of governors of the corporation;

“*declaration of identity*” has the meaning set out in rule 21.1;

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

“*e-voting*” means voting using either the internet, telephone or text message;

“*e-voting information*” has the meaning set out in rule 24.2;

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

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

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

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

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

“*Monitor*” means the corporate body known as Monitor as provided by section 61 of the 2012 Act;

“*numerical voting code*” has the meaning set out in rule 64.2(b)

“*polling website*” has the meaning set out in rule 26.1;

“*postal voting information*” has the meaning set out in rule 24.1;

“*telephone short code*” means a short telephone number used for the purposes of submitting a vote by text message;



*“telephone voting facility”* has the meaning set out in rule 26.2;

*“telephone voting record”* has the meaning set out in rule 26.5 (d);

*“text message voting facility”* has the meaning set out in rule 26.3;

*“text voting record”* has the meaning set out in rule 26.6 (d);

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

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

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

*“voting information”* means postal voting information and/or e-voting information

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

**2 Timetable**

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

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

**3 Computation of time**

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

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

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

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

**4 Returning Officer**

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

**5 Staff**

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

**6 Expenditure**

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

**7 Duty of co-operation**

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

## **PART 4: STAGES COMMON TO CONTESTED AND UNCONTESTED ELECTIONS**

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### **8 Notice of election**

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

### **9 Nomination of candidates**

- 9.1 Subject to rule 9.2, each candidate must nominate themselves on a single nomination form.
- 9.2 The returning officer:
- (a) is to supply any member of the corporation with a nomination form, and
  - (b) is to prepare a nomination form for signature at the request of any member of the corporation,
- but it is not necessary for a nomination to be on a form supplied by the returning officer and a nomination can, subject to rule 13, be in an electronic format.

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

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

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

## **11 Declaration of interests**

11.1 The nomination form must state:

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

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

## **12 Declaration of eligibility**

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

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

## **13 Signature of candidate**

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

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

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

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

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

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

- 14.2 The returning officer is entitled to decide that a nomination form is invalid only on one of the following grounds:
- (a) that the paper is not received on or before the final time and date for return of nomination forms, as specified in the notice of the election,
  - (b) that the paper does not contain the candidate's particulars, as required by rule 10;
  - (c) that the paper does not contain a declaration of the interests of the candidate, as required by rule 11,
  - (d) that the paper does not include a declaration of eligibility as required by rule 12, or
  - (e) that the paper is not signed and dated by the candidate, if required by rule 13.
- 14.3 The returning officer is to examine each nomination form as soon as is practicable after he or she has received it, and decide whether the candidate has been validly nominated.
- 14.4 Where the returning officer decides that a nomination is invalid, the returning officer must endorse this on the nomination form, stating the reasons for their decision.
- 14.5 The returning officer is to send notice of the decision as to whether a nomination is valid or invalid to the candidate at the contact address given in the candidate's nomination form. If an e-mail address has been given in the candidate's nomination form (in addition to the candidate's postal address), the returning officer may send notice of the decision to that address.

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

- 15.1 The returning officer is to prepare and publish a statement showing the candidates who are standing for election.
- 15.2 The statement must show:
- (a) the name, contact address (which shall be the candidate's postal address), and constituency or class within a constituency of each candidate standing, and
  - (b) the declared interests of each candidate standing,
- as given in their nomination form.
- 15.3 The statement must list the candidates standing for election in alphabetical order by surname.
- 15.4 The returning officer must send a copy of the statement of candidates and copies of the nomination forms to the corporation as soon as is practicable after publishing the statement.

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

- 16.1 The corporation is to make the statement of the candidates and the nomination forms supplied by the returning officer under rule 15.4 available for inspection by members of the corporation free of charge at all reasonable times.
- 16.2 If a member of the corporation requests a copy or extract of the statement of candidates or their nomination forms, the corporation is to provide that member with the copy or extract free of charge.

## **17 Withdrawal of candidates**

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

## **18 Method of election**

- 18.1 If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is greater than the number of members to be elected to the council of governors, a poll is to be taken in accordance with Parts 5 and 6 of these rules.
- 18.2 If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is equal to the number of members to be elected to the council of governors, those candidates are to be declared elected in accordance with Part 7 of these rules.
- 18.3 If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is less than the number of members to be elected to be council of governors, then:
  - (a) the candidates who remain validly nominated are to be declared elected in accordance with Part 7 of these rules, and
  - (b) the returning officer is to order a new election to fill any vacancy which remains unfilled, on a day appointed by him or her in consultation with the corporation.

**19 Poll to be taken by ballot**

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

**20 The ballot paper**

- 20.1 The ballot of each voter (other than a voter who casts his or her ballot by an e-voting method of polling) is to consist of a ballot paper with the persons remaining validly nominated for an election after any withdrawals under these rules, and no others, inserted in the paper.



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

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

- 21.1 The corporation shall require each voter who participates in an election for a public or patient constituency to make a declaration confirming:
- (a) that the voter is the person:
    - (i) to whom the ballot paper was addressed, and/or
    - (ii) to whom the voter ID number contained within the e-voting information was allocated,
  - (b) that he or she has not marked or returned any other voting information in the election, and
  - (c) the particulars of his or her qualification to vote as a member of the constituency or class within the constituency for which the election is being held,
- ("declaration of identity")
- and the corporation shall make such arrangements as it considers appropriate to facilitate the making and the return of a declaration of identity by each voter, whether by the completion of a paper form ("ID declaration form") or the use of an electronic method.
- 21.2 The voter must be required to return his or her declaration of identity with his or her ballot.

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

*Action to be taken before the poll*

**22 List of eligible voters**

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

**23 Notice of poll**

- 23.1 The returning officer is to publish a notice of the poll stating:
- (a) the name of the corporation,
  - (b) the constituency, or class within a constituency, for which the election is being held,
  - (c) the number of members of the council of governors to be elected from that constituency, or class with that constituency,
  - (d) the names, contact addresses, and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
  - (e) that the ballot papers for the election are to be issued and returned, if appropriate, by post,
  - (f) the methods of polling by which votes may be cast at the election by voters in a constituency or class within a constituency, as determined by the corporation in accordance with rule 19.3,
  - (g) the address for return of the ballot papers,
  - (h) the uniform resource locator (url) where, if internet voting is a method of polling, the polling website is located;
  - (i) the telephone number where, if telephone voting is a method of polling, the telephone voting facility is located,

- (j) the telephone number or telephone short code where, if text message voting is a method of polling, the text message voting facility is located,
- (k) the date and time of the close of the poll,
- (l) the address and final dates for applications for replacement voting information, and
- (m) the contact details of the returning officer.

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

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

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

("postal voting information").

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

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

("e-voting information").

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

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

for the purposes of the poll.

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

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

- 25.1 The ballot paper envelope must have clear instructions to the voter printed on it, instructing the voter to seal the ballot paper inside the envelope once the ballot paper has been marked.
- 25.2 The covering envelope is to have:
- (a) the address for return of the ballot paper printed on it, and
  - (b) pre-paid postage for return to that address.
- 25.3 There should be clear instructions, either printed on the covering envelope or elsewhere, instructing the voter to seal the following documents inside the covering envelope and return it to the returning officer –
- (a) the completed ID declaration form if required, and
  - (b) the ballot paper envelope, with the ballot paper sealed inside it.

## **26 E-voting systems**

- 26.1 If internet voting is a method of polling for the relevant election then the returning officer must provide a website for the purpose of voting over the internet (in these rules referred to as "the polling website").
- 26.2 If telephone voting is a method of polling for the relevant election then the returning officer must provide an automated telephone system for the purpose of voting by the use of a touch-tone telephone (in these rules referred to as "the telephone voting facility").
- 26.3 If text message voting is a method of polling for the relevant election then the returning officer must provide an automated text messaging system for the purpose of voting by text message (in these rules referred to as "the text message voting facility").
- 26.4 The returning officer shall ensure that the polling website and internet voting system provided will:
- (a) require a voter to:
    - (i) enter his or her voter ID number; and
    - (ii) where the election is for a public or patient constituency, make a declaration of identity;
- in order to be able to cast his or her vote;

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

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

- (a) require a voter to
  - (i) enter his or her voter ID number in order to be able to cast his or her vote; and
  - (ii) where the election is for a public or patient constituency, make a declaration of identity;
- (b) specify:
  - (i) the name of the corporation,
  - (ii) the constituency, or class within a constituency, for which the election is being held,
  - (iii) the number of members of the council of governors to be elected from that constituency, or class within that constituency,
  - (iv) instructions on how to vote and how to make a declaration of identity,
  - (v) the date and time of the close of the poll, and
  - (vi) the contact details of the returning officer;

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

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

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

*The poll*

## **27 Eligibility to vote**

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

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

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

- 28.2 Where the returning officer receives a request from a voter who requires assistance to vote, the returning officer is to make such arrangements as he or she considers necessary to enable that voter to vote.

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

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

- b) the details of the voter ID number on the spoilt text message vote (if that officer was able to obtain it), and
- c) the details of the replacement voter ID number issued to the voter.

### **30 Lost voting information**

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

### **31 Issue of replacement voting information**

- 31.1 If a person applies for replacement voting information under rule 29 or 30 and a declaration of identity has already been received by the returning officer in the name of that voter, the returning officer may not issue replacement voting information unless, in addition to the requirements imposed by rule 29.3 or 30.2, he or she is also satisfied that that person has not already voted in the election, notwithstanding the fact that a declaration of identity if required has already been received by the returning officer in the name of that voter.
- 31.2 After issuing replacement voting information under this rule, the returning officer shall enter in a list ("the list of tendered voting information"):
  - (a) the name of the voter,
  - (b) the unique identifier of any replacement ballot paper issued under this rule;
  - (c) the voter ID number of the voter.



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

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

*Polling by internet, telephone or text*

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

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

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

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

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

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

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

## **36 Receipt of voting documents**

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

## **37 Validity of votes**

- 37.1 A ballot paper shall not be taken to be duly returned unless the returning officer is satisfied that it has been received by the returning officer before the close of the poll, with an ID declaration form if required that has been correctly completed, signed and dated.
- 37.2 Where the returning officer is satisfied that rule 37.1 has been fulfilled, he or she is to:
- (b) put the ID declaration form if required in a separate packet, and
  - (c) put the ballot paper aside for counting after the close of the poll.

- 37.3 Where the returning officer is not satisfied that rule 37.1 has been fulfilled, he or she is to:
- (a) mark the ballot paper “disqualified”,
  - (b) if there is an ID declaration form accompanying the ballot paper, mark it “disqualified” and attach it to the ballot paper,
  - (c) record the unique identifier on the ballot paper in a list of disqualified documents (the “list of disqualified documents”); and
  - (d) place the document or documents in a separate packet.
- 37.4 An internet, telephone or text message vote shall not be taken to be duly returned unless the returning officer is satisfied that the internet voting record, telephone voting record or text voting record (as applicable) has been received by the returning officer before the close of the poll, with a declaration of identity if required that has been correctly made.
- 37.5 Where the returning officer is satisfied that rule 37.4 has been fulfilled, he or she is to put the internet voting record, telephone voting record or text voting record (as applicable) aside for counting after the close of the poll.
- 37.6 Where the returning officer is not satisfied that rule 37.4 has been fulfilled, he or she is to:
- (a) mark the internet voting record, telephone voting record or text voting record (as applicable) “disqualified”,
  - (b) record the voter ID number on the internet voting record, telephone voting record or text voting record (as applicable) in the list of disqualified documents; and
  - (c) place the document or documents in a separate packet.

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

- 38.1 Where the returning officer receives an ID declaration form if required but no ballot paper, the returning officer is to:
- a) mark the ID declaration form “disqualified”,
  - b) record the name of the voter in the list of disqualified documents, indicating that a declaration of identity was received from the voter without a ballot paper, and
  - c) place the ID declaration form in a separate packet.

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

## **39 De-duplication of votes**

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

## **40 Sealing of packets**

- 40.1 As soon as is possible after the close of the poll and after the completion of the procedure under rules 37 and 38, the returning officer is to seal the packets containing:
- (a) the disqualified documents, together with the list of disqualified documents inside it,
  - (b) the ID declaration forms, if required,
  - (c) the list of spoilt ballot papers and the list of spoilt text message votes,

- (d) the list of lost ballot documents,
- (e) the list of eligible voters, and
- (f) the list of tendered voting information

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

**STV41 Interpretation of Part 6**

STV41.1 In Part 6 of these rules:

*“ballot document”* means a ballot paper, internet voting record, telephone voting record or text voting record.

*“continuing candidate”* means any candidate not deemed to be elected, and not excluded,

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

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

*“mark”* means a figure, an identifiable written word, or a mark such as “X”,

*“non-transferable vote”* means a ballot document:

- (a) on which no second or subsequent preference is recorded for a continuing candidate,
- or
- (b) which is excluded by the returning officer under rule STV49,

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

below:

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

*“quota”* means the number calculated in accordance with rule STV46,

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

*“stage of the count”* means:

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

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

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

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

## **42 Arrangements for counting of the votes**

- 42.1 The returning officer is to make arrangements for counting the votes as soon as is practicable after the close of the poll.
- 42.2 The returning officer may make arrangements for any votes to be counted using vote counting software where:
  - (a) the board of directors and the council of governors of the corporation have approved:
    - (i) the use of such software for the purpose of counting votes in the relevant election, and
    - (ii) a policy governing the use of such software, and
  - (b) the corporation and the returning officer are satisfied that the use of such software will produce an accurate result.

## **43 The count**

- 43.1 The returning officer is to:
- a) count and record the number of:
    - (i) ballot papers that have been returned; and
    - (ii) the number of internet voting records, telephone voting records and/or text voting records that have been created, and
  - (b) count the votes according to the provisions in this Part of the rules and/or the provisions of any policy approved pursuant to rule 42.2(ii) where vote counting software is being used.
- 43.2 The returning officer, while counting and recording the number of ballot papers, internet voting records, telephone voting records and/or text voting records and counting the votes, must make arrangements to ensure that no person obtains or communicates information as to the unique identifier on a ballot paper or the voter ID number on an internet voting record, telephone voting record or text voting record.
- 43.3 The returning officer is to proceed continuously with counting the votes as far as is practicable.

## **STV44 Rejected ballot papers and rejected text voting records**

- STV44.1 Any ballot paper:
- (a) which does not bear the features that have been incorporated into the other ballot papers to prevent them from being reproduced,
  - (b) on which the figure “1” standing alone is not placed so as to indicate a first preference for any candidate,
  - (c) on which anything is written or marked by which the voter can be identified except the unique identifier, or
  - (d) which is unmarked or rejected because of uncertainty,
- shall be rejected and not counted, but the ballot paper shall not be rejected by reason only of carrying the words “one”, “two”, “three” and so on, or any other mark instead of a figure if, in the opinion of the returning officer, the word or mark clearly indicates a preference or preferences.
- STV44.2 The returning officer is to endorse the word “rejected” on any ballot paper which under this rule is not to be counted.
- STV44.3 Any text voting record:
- (a) on which the figure “1” standing alone is not placed so as to indicate a first preference for any candidate,



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

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

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

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

#### **FPP44 Rejected ballot papers and rejected text voting records**

FPP44.1 Any ballot paper:

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

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

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

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

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

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

- FPP44.4 The returning officer is to:
- (a) endorse the word “rejected” on any ballot paper which under this rule is not to be counted, and
  - (b) in the case of a ballot paper on which any vote is counted under rules FPP44.2 and FPP 44.3, endorse the words “rejected in part” on the ballot paper and indicate which vote or votes have been counted.
- FPP44.5 The returning officer is to draw up a statement showing the number of rejected ballot papers under the following headings:
- (a) does not bear proper features that have been incorporated into the ballot paper,
  - (b) voting for more candidates than the voter is entitled to,
  - (c) writing or mark by which voter could be identified, and
  - (d) unmarked or rejected because of uncertainty,
- and, where applicable, each heading must record the number of ballot papers rejected in part.
- FPP44.6 Any text voting record:
- (a) on which votes are given for more candidates than the voter is entitled to vote,
  - (b) on which anything is written or marked by which the voter can be identified except the voter ID number, or
  - (c) which is unmarked or rejected because of uncertainty,
- shall, subject to rules FPP44.7 and FPP44.8, be rejected and not counted.
- FPP44.7 Where the voter is entitled to vote for more than one candidate, a text voting record is not to be rejected because of uncertainty in respect of any vote where no uncertainty arises, and that vote is to be counted.
- FPP44.8 A text voting record on which a vote is marked:
- (a) otherwise than by means of a clear mark,
  - (b) by more than one mark,
- is not to be rejected for such reason (either wholly or in respect of that vote) if an intention that the vote shall be for one or other of the candidates clearly appears, and the way the text voting record is marked does not itself identify the voter and it is not shown that he or she can be identified by it.

FPP44.9 The returning officer is to:

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

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

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

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

#### **STV45 First stage**

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

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

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

#### **STV46 The quota**

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

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

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

## **STV47 Transfer of votes**

- STV47.1 Where the number of first preference votes for any candidate exceeds the quota, the returning officer is to sort all the ballot documents on which first preference votes are given for that candidate into sub- parcels so that they are grouped:
- (a) according to next available preference given on those ballot documents for any continuing candidate, or
  - (b) where no such preference is given, as the sub-parcel of non-transferable votes.
- STV47.2 The returning officer is to count the number of ballot documents in each parcel referred to in rule STV47.1.
- STV47.3 The returning officer is, in accordance with this rule and rule STV48, to transfer each sub-parcel of ballot documents referred to in rule STV47.1(a) to the candidate for whom the next available preference is given on those ballot documents.
- STV47.4 The vote on each ballot document transferred under rule STV47.3 shall be at a value ("the transfer value") which:
- (a) reduces the value of each vote transferred so that the total value of all such votes does not exceed the surplus, and
  - (b) is calculated by dividing the surplus of the candidate from whom the votes are being transferred by the total number of the ballot documents on which those votes are given, the calculation being made to two decimal places (ignoring the remainder if any).
- STV47.5 Where at the end of any stage of the count involving the transfer of ballot documents, the number of votes for any candidate exceeds the quota, the returning officer is to sort the ballot documents in the sub-parcel of transferred votes which was last received by that candidate into separate sub-parcels so that they are grouped:
- (a) according to the next available preference given on those ballot documents for any continuing candidate, or
  - (b) where no such preference is given, as the sub-parcel of non-transferable votes.
- STV47.6 The returning officer is, in accordance with this rule and rule STV48, to transfer each sub-parcel of ballot documents referred to in rule STV47.5(a) to the candidate for whom the next available preference is given on those ballot documents.
- STV47.7 The vote on each ballot document transferred under rule STV47.6 shall be at:

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

whichever is the less.

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

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

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

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

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

#### **STV48 Supplementary provisions on transfer**

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

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

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

- (a) record the total value of the votes transferred to each candidate,

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

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

STV48.4 Where a ballot document is so marked that it is unclear to the returning officer at any stage of the count under rule STV47 or STV49 for which candidate the next preference is recorded, the returning officer shall treat any vote on that ballot document as a non-transferable vote; and votes on a ballot document shall be so treated where, for example, the names of two or more candidates (whether continuing candidates or not) are so marked that, in the opinion of the returning officer, the same order of preference is indicated or the numerical sequence is broken.

## **STV49 Exclusion of candidates**

STV49.1 If:

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

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

STV49.2 The returning officer shall sort all the ballot documents on which first preference votes are given for the candidate or candidates excluded under rule STV49.1 into two sub-parcels so that they are grouped as:

- (a) ballot documents on which a next available preference is given, and

- (b) ballot documents on which no such preference is given (thereby including ballot documents on which preferences are given only for candidates who are deemed to be elected or are excluded).
- STV49.3 The returning officer shall, in accordance with this rule and rule STV48, transfer each sub-parcel of ballot documents referred to in rule STV49.2 to the candidate for whom the next available preference is given on those ballot documents.
- STV49.4 The exclusion of a candidate, or of two or more candidates together, constitutes a further stage of the count.
- STV49.5 If, subject to rule STV50, one or more vacancies still remain to be filled, the returning officer shall then sort the transferable ballot documents, if any, which had been transferred to any candidate excluded under rule STV49.1 into sub- parcels according to their transfer value.
- STV49.6 The returning officer shall transfer those ballot documents in the sub-parcel of transferable ballot documents with the highest transfer value to the continuing candidates in accordance with the next available preferences given on those ballot documents (thereby passing over candidates who are deemed to be elected or are excluded).
- STV49.7 The vote on each transferable ballot document transferred under rule STV49.6 shall be at the value at which that vote was received by the candidate excluded under rule STV49.1.
- STV49.8 Any ballot documents on which no next available preferences have been expressed shall be set aside as non-transferable votes.
- STV49.9 After the returning officer has completed the transfer of the ballot documents in the sub-parcel of ballot documents with the highest transfer value he or she shall proceed to transfer in the same way the sub-parcel of ballot documents with the next highest value and so on until he has dealt with each sub-parcel of a candidate excluded under rule STV49.1.
- STV49.10 The returning officer shall after each stage of the count completed under this rule:
  - (a) record:
    - (i) the total value of votes, or
    - (ii) the total transfer value of votes transferred to each candidate,
  - (b) add that total to the previous total of votes recorded for each candidate and record the new total,
  - (c) record the value of non-transferable votes and add that value to the previous non-transferable votes total, and
  - (d) compare:

- (i) the total number of votes then recorded for each candidate together with the total number of non-transferable votes, with
- (ii) the recorded total of valid first preference votes.

STV49.11 If after a transfer of votes under any provision of this rule, a candidate has a surplus, that surplus shall be dealt with in accordance with rules STV47.5 to STV47.10 and rule STV48.

STV49.12 Where the total of the votes of the two or more lowest candidates, together with any surpluses not transferred, is less than the number of votes credited to the next lowest candidate, the returning officer shall in one operation exclude such two or more candidates.

STV49.13 If when a candidate has to be excluded under this rule, two or more candidates each have the same number of votes and are lowest:

- (a) regard shall be had to the total number of votes credited to those candidates at the earliest stage of the count at which they had an unequal number of votes and the candidate with the lowest number of votes at that stage shall be excluded, and
- (b) where the number of votes credited to those candidates was equal at all stages, the returning officer shall decide between the candidates by lot and the candidate on whom the lot falls shall be excluded.

## **STV50 Filling of last vacancies**

STV50.1 Where the number of continuing candidates is equal to the number of vacancies remaining unfilled the continuing candidates shall thereupon be deemed to be elected.

STV50.2 Where only one vacancy remains unfilled and the votes of any one continuing candidate are equal to or greater than the total of votes credited to other continuing candidates together with any surplus not transferred, the candidate shall thereupon be deemed to be elected.

STV50.3 Where the last vacancies can be filled under this rule, no further transfer of votes shall be made.

## **STV51 Order of election of candidates**

STV51.1 The order in which candidates whose votes equal or exceed the quota are deemed to be elected shall be the order in which their respective surpluses were transferred, or would have been transferred but for rule STV47.10.



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

#### **FPP51 Equality of votes**

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

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

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### **FPP52 Declaration of result for contested elections**

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

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

FPP52.2 The returning officer is to make:

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

available on request.

### **STV52 Declaration of result for contested elections**

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

- (a) declare the candidates who are deemed to be elected under Part 6 of these rules as elected,
- (b) give notice of the name of each candidate who he or she has declared elected
- (c) give public notice of the name of each candidate who he or she has declared elected.

STV52.2 The returning officer is to make:

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

available on request.

### **53 Declaration of result for uncontested elections**

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

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

### **54 Sealing up of documents relating to the poll**

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

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

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

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

- (a) the disqualified documents, with the list of disqualified documents inside it,
- (b) the list of spoilt ballot papers and the list of spoilt text message votes,
- (c) the list of lost ballot documents, and
- (d) the list of eligible voters,

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

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

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

### **55 Delivery of documents**

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

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

56.1 Where:

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

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

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

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

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

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

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

58.1 The corporation may not allow:

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

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

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

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

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

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

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

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

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

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

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

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### FPP59 Countermand or abandonment of poll on death of candidate

- FPP59.1 If at a contested election, proof is given to the returning officer's satisfaction before the result of the election is declared that one of the persons named or to be named as a candidate has died, then the returning officer is to:
- (a) countermand notice of the poll, or, if voting information has been issued, direct that the poll be abandoned within that constituency or class, and
  - (b) order a new election, on a date to be appointed by him or her in consultation with the corporation, within the period of 40 days, computed in accordance with rule 3 of these rules, beginning with the day that the poll was countermanded or abandoned.
- FPP59.2 Where a new election is ordered under rule FPP59.1, no fresh nomination is necessary for any candidate who was validly nominated for the election where the poll was countermanded or abandoned but further candidates shall be invited for that constituency or class.
- FPP59.3 Where a poll is abandoned under rule FPP59.1(a), rules FPP59.4 to FPP59.7 are to apply.
- FPP59.4 The returning officer shall not take any step or further step to open envelopes or deal with their contents in accordance with rules 38 and 39, and is to make up separate sealed packets in accordance with rule 40.
- FPP59.5 The returning officer is to:
- (a) count and record the number of ballot papers, internet voting records, telephone voting records and text voting records that have been received,
  - (b) seal up the ballot papers, internet voting records, telephone voting records and text voting records into packets, along with the records of the number of ballot papers, internet voting records, telephone voting records and text voting records and
- ensure that complete electronic copies of the internet voting records telephone voting records and text voting records created in accordance with rule 26 are held in a device suitable for the purpose of storage.
- FPP59.6 The returning officer is to endorse on each packet a description of:
- (a) its contents,
  - (b) the date of the publication of notice of the election,

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

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

## **STV59 Countermand or abandonment of poll on death of candidate**

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

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

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



### *Election expenses*

#### **60 Election expenses**

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

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

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

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

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

### *Publicity*

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

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

- 63.2 Any information provided by the corporation about the candidates, including information compiled by the corporation under rule 64, must be:
- (a) objective, balanced and fair,
  - (b) equivalent in size and content for all candidates,
  - (c) compiled and distributed in consultation with all of the candidates standing for election, and
  - (d) must not seek to promote or procure the election of a specific candidate or candidates, at the expense of the electoral prospects of one or more other candidates.
- 63.3 Where the corporation proposes to hold a meeting to enable the candidates to speak, the corporation must ensure that all of the candidates are invited to attend, and in organising and holding such a meeting, the corporation must not seek to promote or procure the election of a specific candidate or candidates at the expense of the electoral prospects of one or more other candidates.

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

- 64.1 The corporation must compile information about the candidates standing for election, to be distributed by the returning officer pursuant to rule 24 of these rules.
- 64.2 The information must consist of:
- (a) a statement submitted by the candidate of no more than 250 words,
  - (b) if voting by telephone or text message is a method of polling for the election, the numerical voting code allocated by the returning officer to each candidate, for the purpose of recording votes using the telephone voting facility or the text message voting facility ("numerical voting code"), and
  - (c) a photograph of the candidate.

#### **65 Meaning of "for the purposes of an election"**

- 65.1 In this Part, the phrase "for the purposes of an election" means with a view to, or otherwise in connection with, promoting or procuring a candidate's election, including the prejudicing of another candidate's electoral prospects; and the phrase "for the purposes of a candidate's election" is to be construed accordingly.
- 65.2 The provision by any individual of his or her own services voluntarily, on his or her own time, and free of charge is not to be considered an expense for the purposes of this Part.

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

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### 66 Application to question an election

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

**67        Secrecy**

67.1        The following persons:

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

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

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

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

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

**68        Prohibition of disclosure of vote**

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

**69        Disqualification**

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

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

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

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

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

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

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

### **Appendix 1**

#### **Objectives of the Council of Governors**

- 1** The Trust shall seek to ensure, subject to the requirements of the 2006 Act (as amended), that the composition of the Council of Governors meets the following objectives:
  - 1.1 the interests of the community served by the Trust are appropriately represented and the values of the Trust are upheld; and
  - 1.2 the level of representation of the Public Constituency, the Staff Constituency, and the Partnership Organisations strikes an appropriate balance having regard to their legitimate interest in the Trust's affairs and, to this end, the Council of Governors:
    - 1.2.1 shall at all times maintain a policy for the composition of the Council of Governors and the Non-Executive Directors which takes account of the Trust's membership strategy, and
    - 1.2.2 shall from time to time, and not less than every three years, review the Membership Strategy;
    - 1.2.3 when appropriate, shall propose to the Board of Directors amendments to this Constitution;
    - 1.2.4 shall provide to the Members relevant information concerning the performance and Forward Plan of the Trust;
    - 1.2.5 shall act as an ambassador for the Trust at all times and act as guardians for the Members by ensuring that the Trust acts in accordance with the regulatory framework;
    - 1.2.6 shall act in an advisory capacity to the Board of Directors concerning the wishes of the Members and the wider community,
    - 1.2.7 shall act as a guardian of the Trust on behalf of the local community; and
    - 1.2.8 shall undertake a strategic role to inform the development of the future strategy of the Trust.

## **Appendix 2**

### **Roles and Responsibilities of the Council of Governors**

- 1** The roles and responsibilities of the Council of Governors are:
  - 1.1** at a general meeting:
    - 1.1.1** to appoint or remove the Chair and the other Non-Executive Directors;
    - 1.1.2** to decide the remuneration and allowances, and the other terms and conditions of office, of the Non-Executive Directors;
    - 1.1.3** to appoint or remove the Auditor;
    - 1.1.4** to be presented with the approved Annual Accounts, any report of the Auditor on them and the Annual Report;
    - 1.1.5** to consider disputes as to membership referred to it pursuant to Appendix 3 of Annex 8; and
    - 1.1.6** to consider resolutions to remove a Governor pursuant to paragraph 14 of this Constitution.
    - 1.1.7** approve (by a majority of the Council of Governors present and voting) an appointment (by the Non-Executive Directors) of the Chief Executive (and Accounting Officer) other than the initial Chief Executive appointed in accordance with paragraph 19 (5) of Schedule 7 to the 2006 Act;
    - 1.1.8** Approve by more than half of the members of the Council of Governors voting to refer to the panel constituted for that purpose by Monitor a question as to whether the trust has failed or is failing to either:
      - 1.1.8.1** Act in accordance with its constitution, or
      - 1.1.8.2** To act in accordance with provision made under Chapter 5 of the 2006 Act.
    - 1.1.9** To give the views of the Council of Governors to the Directors for the purposes of the preparation (by the Directors) of the forward plan in respect of each Financial Year; and if the forward plan contains a proposal that the trust carry on an activity of a kind other than the provision of goods and services for the purposes of the health service in England then the Council of Governors must:

- 1.1.9.1 determine whether the activity will not to any significant extent interfere with the fulfilment by the trust of its principle purpose or the performance of its other functions and then notify the Board of Directors of its determination; and,
- 1.1.9.2 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 provision of goods or services for the purposes of the health service in England, then the trust may only implement the proposal if more than half of the members of the Council of Governors voting approve its implementation.
- 1.1.10 Approve by more than half of the members of the Council of Governors voting any merger, acquisition, separation or dissolution.
- 1.1.11 The trust may make amendments of its constitution only if –
  - 1.1.11.1 More than half of the members of the Council of Governors of the trust voting approve the amendments, and
  - 1.1.11.2 More than half of the Board of Directors of the trust voting approve the amendments.
- 1.1.12 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.
  - 1.1.12.1 “Significant transaction” means a transaction which meets any one of the below criteria:
    - A the total of the fixed assets and current assets subject to the transaction represents more than 25% of the value of the total fixed assets and current assets of the Trust; or
    - B the increase or decrease in income attributable to the assets or the contract associated with the transaction represents more than 25% of the value of the Trust’s income; or
    - C the gross capital of the company or business being acquired/divested represents more than 25% of the total capital of the Trust following completion (where gross capital is the market value of the relevant company or business’s shares and debt securities, plus the excess of current liabilities over current assets). or
    - D That the transaction is of nature that the Board of Directors in its absolute discretion consider to be in its opinion a novel or contentious matter



- 1.1.13 consider the approved Annual Accounts, any report of the Auditor on them and the Annual Report; and
- 1.1.14 respond as appropriate when consulted by the Directors.
- 1.1.15 For the purposes of obtaining information about the trust's performance of its functions or directors' performance of their duties (and deciding whether to propose a vote on the Trust's or directors' performance), the Council of Governors may require one or more of the directors to attend a meeting.

**2** The Council of Governors also have the specific role and function of:

- 2.1 providing views to the Board of Directors on the strategic direction of the Trust and targets for the Trust's performance and in monitoring the Trust's performance in terms of achieving those strategic aims and targets which have been set;
- 2.2 developing and recruiting a representative membership;
- 2.3 represent the interests of the Members of the trust as a whole and the interests of the public;
- 2.4 holding the non-executive directors individually and collectively to account for the performance of the Board of Directors.
- 2.5 Preparing and from time to time, and at least every three years reviewing the Membership Strategy of the Trust and its policy for the composition of the Council of Governors and the Non-Executive Directors, save for the first versions of these, which shall be prepared and approved by the Board of Directors of the Applicant Trust;
- 2.6 Notwithstanding the provisions of paragraphs above, the Council of Governors may exercise any other functions at the request of the Board of Directors.

## **Appendix 3**

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

#### **Appendix 3**

- 1 A person may not become a Governor of a Foundation Trust, and if already holding such office will immediately cease to do so, if:
  - 1.1 they are under sixteen years of age;
  - 1.2 in the case of an Elected Governor, they cease to be a member of the constituency or (where relevant) the class within the constituency they represent;
  - 1.3 in the case of an Appointed Governor, the sponsoring organisation withdraws their sponsorship of them;
  - 1.4 In the case of an Appointed Governor their primary place of business is located in an area other than an area specified in Annex 1 as an area for a Public Constituency;
  - 1.5 the relevant Partnership Organisation which they represent ceases to exist;
  - 1.6 they are either a Director of the Trust, or a Governor, Executive Director, Non-Executive Director, Chair, Chief Executive Officer of another NHS Foundation Trust or other Health Service Body (unless they are appointed by a sponsoring organisation which is an NHS Foundation Trust or Health Service Body) (in this clause the terms “Director” include a person holding that title whether or not they are a voting member of the Board of Directors); or
  - 1.7 they have been a Director of the Applicant Trust or after Authorization a Director of the Trust in the preceding 3 years prior to the date of their nomination to stand for election as an Elected Governor, or in the case of an Appointed Governor, the date of their appointment by a Partnership Organisation (in this clause the terms “Director” include a person holding that title whether or not they are a voting member of the Board of Directors);
  - 1.8 subject to paragraph 5 below they are incapable by reason of mental disorder, illness or injury of managing and administering their property and affairs;
  - 1.9 they have refused without reasonable cause to undertake any training which the Trust and/or Council of Governors requires all Governors to undertake;
  - 1.10 they have been expelled from the post of Governor of another NHS foundation trust;
  - 1.11 they are the spouse, Partner, parent or child of a member of the Board of Directors of the Trust;

- 1.12 they are a member of a local authority's Scrutiny Committee covering health matters within the Trust area;
- 1.13 they are a member of the Healthwatch;
- 1.14 being a member of one of the Public Constituencies, they refuse to sign a declaration in the form specified by the Secretary of particulars of their qualification to vote as a Member of the Trust, and that they are not prevented from being a member of the Council of Governors;
- 1.15 being a person who by reference to information revealed by a Criminal Records Bureau check is considered by the Chief Executive to be inappropriate on the grounds that their appointment might adversely affect public confidence in the Trust or otherwise bring the Trust into disrepute
- 1.16 if they are subject to a sex offender order;
- 1.17 being a person who is included in any barred list established under the Safeguarding Vulnerable Groups Act 2006 or who is in an equivalent list maintained under the laws of Scotland or Northern Ireland;
- 1.18 they have been adjudged bankrupt or their estate has been sequestrated and in either case they have not been discharged;
- 1.19 they have been disqualified from being a member of a relevant authority under the provisions of the Local Government Act 2000;
- 1.20 they have made a composition or arrangement with, or granted a trust deed for, their creditors and have not been discharged in respect of it;
- 1.21 they have within the preceding five years been convicted in the British Islands of any offence, and a sentence of imprisonment (whether suspended or not) for a period of three months or more (without the option of a fine) was imposed;
- 1.22 being a person who is the subject of a disqualification order made under the Company Directors' Disqualification Act 1986;
- 1.23 they have within the preceding three years been dismissed, otherwise than by reason of redundancy or incapacity, from any paid employment with a health service body;
- 1.24 they are a person whose tenure of office as the chair or as a member or director of a health service body has been terminated on the grounds that their appointment is not in the interests of the health service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest (in this clause the terms "director" include a person holding that title whether or not they are a voting member of the Board of Directors);

- 1.25 being a person who is an active member of a body or organisation with policies or objectives such that their membership would be likely to cause the Trust to be in breach of its statutory obligations or to bring the Trust into disrepute.
  - 1.26 they are eligible to become a member of the Staff Constituency and have either sought election from the Public Constituency or appointment as a Partnership Governor.
  - 1.27 If they are a CFR who are registered and actively respond on behalf of the Trust, if they are already holding office will immediately cease to do so.
- 2 Where a person has been elected or appointed to be a Governor and they become disqualified from office under paragraph 14 of the Constitution or paragraph 1 above, they shall notify the Trust Secretary in writing of such disqualification and/or (as the case may be), removal as soon as is practicable and, in any event, within 14 days of first becoming aware of those matters which rendered them disqualified.
  - 3 If it comes to the notice of the Trust Secretary at the time of their taking office or later that the Governor is so disqualified, the Trust Secretary shall immediately declare that the person in question is disqualified and notify that person in writing to that effect as soon as is practicable.
  - 4 Upon dispatch of any such notification under paragraphs 2 or 3 above, that person's tenure of office, if any, shall be terminated immediately and they shall cease to act as a Governor, and the Trust Secretary shall cause their name to be removed from the register of the Council of Governors.
  - 5 Where an individual is deemed by the Trust Secretary, in his/her absolute discretion, to be incapable by reason of mental disorder, illness or injury of managing and/or administering their property and/or affairs for the purposes of paragraph 1.8 above the Trust Secretary shall either:
    - 5.1 temporarily suspend the individual from office until such time as the Trust Secretary, in her/his absolute discretion, considers that person to be capable of managing and/or administering their property and affairs; or
    - 5.2 (where the Trust Secretary, in his/her absolute discretion, considers that person to be permanently incapable of managing and/or administering their property and affairs), declare that the individual is disqualified from office:
      - 5.2.1 In the case of a Governor, in accordance with paragraphs 3 and 4 above; and
      - 5.2.2 In the case of a Director, in accordance with the individual's terms and conditions of employment, service or engagement (as the case may be).

5.3 In considering whether an individual is incapable by reason of mental disorder, illness or injury of managing and/or administering their property and/or affairs, the Trust Secretary shall take appropriate professional advice from internal Trust advisors, and/or external advisors, as necessary on this matter.

**6** If a Governor fails to attend meetings of the Council of Governors in any rolling 12-month period they cease to hold office unless the Chair is satisfied that:

6.1 The absence was due to a reasonable cause; and

6.2 The person will be able to start attending meetings of the Council of Governors again within such a period as the Chair considers reasonable.

## **Appendix 4**

### **The Council of Governors (Further Provisions)**

#### **1 Composition of the Members' Council and Declaration**

##### **1.1 Elected Governors**

- 1.1.1 Public Governors are to be elected by members of their Public Constituency, and Staff Governors are to be elected by members of their class of the Staff Constituency. Each class/constituency may elect any of their number to be a Governor in accordance with the provisions of this Constitution.
- 1.1.2 If contested, the elections must be by secret ballot.
- 1.1.3 Elections shall be carried out in accordance with the rules set out in Annex 4 using the single transferable vote method of voting.
- 1.1.4 An Elected Governor may not vote at a meeting of the Council of Governors unless, before attending the meeting they have made a declaration in the form specified by the Secretary of the particulars of their qualification to vote as a Member of the Trust and that they are not prevented from being a member of the Council of Governors. An Elected Governor shall be deemed to have confirmed the declaration upon attending any subsequent meeting of the Council of Governors, and every agenda for meetings of the Council of Governors will draw this to the attention of Elected Governors.

##### **1.2 Appointed Governors**

- 1.2.1 Local authorities whose area includes the whole or part of one of the areas of the Trust will nominate individuals for appointment as Governors in accordance with the terms of this Constitution. Prior to appointment the nominations will be reviewed by the Trust Secretary in consultation with the Chair and Chief Executive.
- 1.2.2 Partnership Organisations will nominate individuals for appointment as Partnership Governors. Prior to appointment the nominations will be reviewed by the Trust Secretary in consultation with the Chair and Chief Executive.

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

##### **2.1 Elected Governors**

- 2.1.1 shall normally hold office for a period of three years;

- 2.1.2 are eligible for re-election at the end of that period;
- 2.1.3 may not hold office for more than nine consecutive years, and shall not be eligible for re-election if they have already held office for more than six consecutive years.

## 2.2 Appointed Governors

- 2.2.1 shall normally hold office for a period of three years commencing from the general meeting at which their appointment is announced;
- 2.2.2 are eligible for re-appointment at the end of that period;
- 2.2.3 may not hold office for longer than nine consecutive years, and shall not be eligible for re-appointment if they have already held office for more than six consecutive years.

## 2.3 Tenure for Initial Appointed and Elected Governors

- 2.3.1 Initial tenure of appointments and elections to the Council of Governors will be for periods of one, two or three years determined by the drawing of lots. One third (rounded down where this is not an integer) of appointments will be for a duration of one year, one third (rounded down where this is not an integer) of appointments will be for a duration of two years. The remainder of appointments will be for duration of three years.

# 3 Remuneration

- 3.1 The Trust may reimburse Governors for travelling and other costs and expenses incurred in carrying out their duties at such rates as the Board of Directors decides. These are to be disclosed in the Annual Report.
- 3.2 Governors are not to receive remuneration.

# 4 Vacancies

- 4.1 Where a vacancy arises on the Council of Governors for any reason other than expiry of term of office, the following provision will apply.
  - 4.1.1 Where the vacancy arises amongst the Appointed Governors, the Secretary shall request that the Appointing Organisation appoints a replacement to hold office for the remainder of the term of office.
  - 4.1.2 Where the vacancy arises amongst the Elected Governors, the Council of Governors shall be at liberty either:
    - 4.1.2.1 to call an election within three months to fill the seat for the remainder of that term; or

- 4.1.2.2 to invite the next highest polling candidate for that seat at the most recent election, who is willing to take office, to fill the seat for any unexpired period of the term of office.

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

- 5.1 The Council of Governors is to meet at least four times (one of which shall be the Annual Members Meeting) in each Financial Year. Save in the case of emergencies or the need to conduct urgent business, the Trust Secretary shall give at least fourteen days written notice of the date and place of every meeting of the Council of Governors to all Governors. Notice will also be published on the Trust's website.
- 5.2 An annual meeting of the Council of Governors shall be convened each Financial Year (the "Annual Members' Meeting") by no later than 30 September apart from the first year; the Annual Members' Meeting is to receive and consider the Annual Accounts and any report of the Auditor on them, and the Board of Directors are to present the Annual Report to the Annual Members' Meeting.
- 5.3 Subject to paragraph 5.4 below, any meeting of the Council of Governors requires a quorum of one-third of the total number of Governors to be present.
- 5.4 For the avoidance of doubt and subject to paragraph 5.5 below, no business shall be carried out at a meeting which is not quorate.
- 5.5 If at any meeting of the Council of Governors, there is no quorum present within 30 minutes of the time fixed for the start of the meeting the meeting shall stand adjourned for a minimum period of 5 Clear Days and the Trust Secretary shall give or shall procure the giving of notice to all Governors of the date, time and place of that adjourned meeting. Notwithstanding paragraph 5.3 above, upon reconvening, those present shall constitute a quorum.

## **6 Governor Panels of the Council of Governors**

- 6.1 The Council of Governors may appoint panels consisting of its members to assist it in carrying out its functions.
- 6.2 The Council of Governors may appoint members to serve on joint committees or panels with the Board of Directors or committees thereof.
- 6.3 The Council of Governors may call upon outside advisers to help them in their tasks, provided that the financial and any other implications of seeking outside advisers have been discussed and agreed by the Board of Directors. Any conflict arising between the Council of Governors and the Board of Directors under this paragraph will be determined in accordance with Appendix 3 of Annex 8 of this Constitution.



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

### **1 Interpretation**

- 1.1 Save as otherwise permitted by law, at any meeting of the Council of Governors, the Chair of the Trust shall be the final authority on the interpretation of the Standing Orders.
- 1.2 Unless a contrary intention is evident or the context requires otherwise, words or expressions contained in these Standing Orders shall bear the same meaning as in the Constitution.
- 1.3 The provisions of paragraphs of the Constitution apply to these Standing Orders save that any reference to "Constitution" shall be read as a reference to these "Standing Orders".

### **2 Council of Governors**

- 2.1 The objective, roles and responsibilities of the Council of Governors are set out in Annex 5 of the Constitution and have effect as if incorporated into these Standing Orders. Certain powers and decisions may only be exercised by the Council of Governors in formal session. These powers and decisions are set out in Appendix 2 of Annex 5 of the Constitution.

### **3 These Standing Orders**

- 3.1 These Standing Orders for the Practice and Procedures of the Council of Governors are the Standing Orders referred to in paragraph 17 of the Constitution. They may be amended in accordance with the procedure set out in paragraph 45 of the Constitution. If there is any conflict between these Standing Orders and the Constitution, the Constitution shall prevail.

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

#### **4.1 Convening meetings of the Council of Governors**

- 4.1.1 Meetings of the Council of Governors shall be convened by the Trust Secretary at such times and places as the Council of Governors may determine.
- 4.1.2 The Chair may instruct the Trust Secretary to call a meeting of the Council of Governors at any time. If the Chair refuses to call a meeting after a requisition for that purpose, signed by at least eight Governors, of which two must be Elected Governors, and specifying the business to be transacted at the meeting, has been presented to him, or if, without so refusing, the Chair does not call a meeting within 5 Clear Days after such requisition has been presented to him/her at the Trust's Headquarters, the eight Governors or more

may forthwith call a meeting for the purpose of conducting that business.

4.1.3 The Council of Governors may invite the Chief Executive, members of the Board of Directors or a representative of the Auditor or other advisors to attend a meeting of the Council of Governors.

4.1.4 The Council of Governors may agree that Governors can participate in its meetings by telephone or video link. Participation in a meeting in this manner shall be deemed to be exceptional but shall constitute presence in person at the meeting for the purposes of a quorum.

## **4.2 Notice of meetings and agenda**

4.2.1 Before each meeting of the Council of Governors, the Trust Secretary in consultation with the Chair will give notice of the meeting, specifying the business proposed to be transacted at it. The notice will be signed by the Chair or by an officer authorised by the Chair to sign on his/her behalf, and it shall be delivered to, or sent by post to the usual place of residence of every Governor; or sent electronically, so as to be available to them at least five clear days before the meeting save in the case of emergencies.

4.2.2 Before each meeting of the Council of Governors the Secretary shall cause to be displayed on the Trust website and at the Trust Offices a public notice of the time and place of the meeting; and the public part of the agenda and available papers shall be displayed on the Trust's website at least five clear days before the meeting, save in the case of emergencies.

4.2.3 Want of service of the notice of meeting on any Governor shall not affect the validity of a meeting. A notice of meeting shall be presumed to have been served one day after posting or, in the case of a notice sent electronically, on the date of transmission.

4.2.4 In the case of a meeting called by Governors in default of the Chair in accordance with Standing Order 4.1.2 the notice shall be signed by those Governors and no business shall be transacted at the meeting other than that specified in the requisition.

4.2.5 The Trust Secretary shall arrange for agenda to be sent to Governors before the meeting and supporting papers (including draft minutes of the previous meeting), whenever possible shall accompany the agenda, but will certainly be dispatched no later than five clear days before the meeting, save in the case of emergencies, papers may be tabled only with the express permission of the Chair of the meeting.

4.2.6 In the event of an emergency giving rise to the need for an immediate meeting failure to comply with the notice periods referred to in these Standing Orders shall not prevent the calling of or invalidate such meeting provided that every effort is made to contact members of the Council of Governors who are not absent from the

United Kingdom, and the agenda for the meeting shall be restricted to matters arising in that emergency.

#### **4.3 Annual Members' Meeting**

4.3.1 In accordance with paragraph 5.2 of Appendix 4 to Annex 5 of the Constitution, the Council of Governors shall hold an Annual Members' Meeting in each Financial Year (apart from the first year) and shall present to that meeting:

4.3.1.1 a report by the Chair on the proceedings of its meetings held since the last Annual Members' Meeting;

4.3.1.2 a report by the Trust Secretary on the progress since the last Annual Members' Meeting in developing the Membership Strategy including the steps taken to ensure that the actual membership of the Public Constituencies is representative of the persons who are eligible to be Members under the Constitution;

4.3.1.3 a report by the Trust Secretary on any change to the Governors which has taken place since the last Annual Members' Meeting; and

4.3.1.4 a report by the Chair, the Chief Executive and the Finance Director containing such comments as they wish to make regarding the performance of the Trust and the accounts of the Trust for the preceding Financial Year and the future service development plans of the Trust.

4.3.2 The reports set out in Standing Orders 4.3.1.1 to 4.3.1.4 for the first Annual Members' Meeting shall cover the period from the date of Authorisation to the date of that meeting.

#### **4.4 Setting the agenda**

4.4.1 The Council of Governors may determine that certain matters shall appear on every agenda for a meeting and shall be addressed prior to any other business being conducted ("Standing Items").

4.4.2 A member of the Council of Governors desiring a matter other than a Standing Item to be included on an agenda, including a formal motion for discussion and voting on at a meeting, shall make the request in writing to the Trust Secretary at least 10 Clear Days before the meeting. For these purposes any such requests via electronic communications is acceptable. A request for a formal motion must be signed or transmitted by at least 2 Governors. The request should state whether the item of business is proposed to be transacted in the presence of the public and should include appropriate supporting information. Requests made less than 10 Clear Days before a meeting may be included on the agenda at the discretion of the Chair.

- 4.4.3 All requests received by the Trust Secretary pursuant to Standing Order 4.4.2 will be acknowledged by the Trust Secretary in writing to the Governors who have signed or transmitted the same.

#### **4.5 Petitions**

- 4.5.1 Where a petition has been received by the Trust, the Chair shall include the petition as an item for the agenda of the next meeting of the Council of Governors.

#### **4.6 Written motions**

- 4.6.1 In urgent situations and with the consent of the Chair, business may be affected by a Governor's written motion to deal with business otherwise required to be conducted at a meeting of the Council of Governors.
- 4.6.2 If all members of the Council of Governors have been notified of the proposal and a majority of Governors who are normally entitled to attend and vote at a meeting of the Council of Governors confirms acceptance of the written motion either in writing or electronically to the Trust Secretary within five clear Days of dispatch then the motion will be deemed to have been resolved, notwithstanding that the Governors have not gathered in one place.
- 4.6.3 The effective date of the resolution shall be the date that the five clear days in paragraph 4.6.2 expires and, until that date, a Governor who has previously indicated acceptance can withdraw, and the motion shall fail.
- 4.6.4 Once the resolution has been passed, a copy certified by the Trust Secretary shall be recorded in the minutes of the next ensuing meeting.

#### **4.7 Chair of meetings**

- 4.7.1 At any meeting of the Council of Governors, the Chair of the Board of Directors, if present, shall preside.
- 4.7.2 If the Chair is absent from the meeting or is absent temporarily on the grounds of a declared conflict of interest, the Deputy Chair shall preside.
- 4.7.3 If the Deputy Chair is absent from the meeting or is absent temporarily on the grounds of a declared conflict of interest, another Non-Executive Director as shall be appointed by the Council of Governors at that meeting shall preside at that meeting.

## 4.8 Motions

- 4.8.1 Where a Governor has requested inclusion of a matter on the agenda in accordance with Standing Order 4.4.2 above as a matter to be formally proposed for discussion and voting on at the meeting, the provisions of this Standing Order shall apply in respect of the motion.
- 4.8.2 Subject to Standing Order 4.8.6 below, the mover of the motion shall have a right of reply at the close of any discussion on the motion or any amendment thereto, or to raise a point of order.
- 4.8.3 When a motion is under discussion or immediately prior to discussion it shall be open to a Governor to move (without prior notice having been given):
  - 4.8.3.1 that the motion be withdrawn; or
  - 4.8.3.2 an amendment to the motion; or
  - 4.8.3.3 the adjournment of the discussion or the meeting; or
  - 4.8.3.4 that the meeting proceed to the next item of business on the agenda; or
  - 4.8.3.5 the appointment of an ad hoc panel of the Council of Governors be constituted to deal with a specific item of business; or
  - 4.8.3.6 that the motion be now put; or
  - 4.8.3.7 that the public be excluded from the meeting subject to stating the reasons for excluding the public.
- 4.8.4 In the case of Standing Orders 4.8.3.4 and 4.8.3.6 above, to ensure objectivity these matters may only be put by a Governor who has not previously taken part in the debate and who is eligible to vote.
- 4.8.5 No amendment to the motion shall be admitted if, in the opinion of the Chair the amendment negates the substance of the motion.
- 4.8.6 Subject to paragraph 4.11.3.1 the mover of a motion shall have a maximum of five minutes to move and three minutes to reply. Once a motion has been moved, no Governor shall speak more than once or for more than three minutes.
- 4.8.7 For the avoidance of doubt, the following motions may be moved at a meeting of the Council of Governors without the notice required under Standing Order 4.4.2 above:

- 4.8.7.1 the accuracy of the minutes of the previous meeting of the Council of Governors;
- 4.8.7.2 to change the order of business in the agenda for that meeting;
- 4.8.7.3 to refer a matter discussed at a meeting to an appropriate body or individual;
- 4.8.7.4 to seek to appoint an ad hoc panel to deal with a specific item of business and make an appropriate recommendation to a subsequent meeting of the Council of Governors or to determine a matter under Standing Order 4.6;
- 4.8.7.5 to receive reports or adopt recommendations made by the Board of Directors;
- 4.8.7.6 to withdraw a motion
- 4.8.7.7 to amend a motion
- 4.8.7.8 to proceed to the next item of business on the agenda;
- 4.8.7.9 that the question be now put;
- 4.8.7.10 to adjourn a debate;
- 4.8.7.11 to adjourn a meeting;
- 4.8.7.12 to suspend a particular Standing Order subject to the reasons for doing so being recorded in the minutes;
- 4.8.7.13 to exclude the public and press from the meeting in question subject to the reasons for doing so being recorded in the minutes;
- 4.8.7.14 to not hear further from a Governor, or to exclude them from the meeting in question; if a Governor persistently disregards the ruling of the Chair or behaves improperly or offensively or deliberately obstructs business, the Chair, in his/her absolute discretion, may move that the Governor in question be not heard further at the meeting in question and if seconded, the motion will be voted on without discussion. If the Governor continues to behave improperly after such a motion is carried, the Chair may move that either the Governor leaves the meeting room or that the meeting in question is adjourned for a specified period and if seconded, the motion will be voted

on without discussion; and

- 4.8.7.15 a motion to give the consent of the Council of Governors to any matter where its consent is required pursuant to the Constitution.

#### **4.9 Admission of the public**

- 4.9.1 The public and representatives of the press shall be afforded facilities to attend all formal meetings of the Council of Governors except where it resolves by resolution, the reasons for doing so are to be recorded in the minutes of the meeting, that members of the public and representatives of the press be excluded from all or part of a meeting on the grounds that:
  - 4.9.1.1 any publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted; or
  - 4.9.1.2 for other reasons stated in the resolution and arising from the nature of the business or the proceedings that the Council of Governors believe are special reasons for excluding the public from the meeting in accordance with the Constitution.
- 4.9.2 Nothing in these Standing Orders shall require the Council of Governors to allow members of the public and representatives of the press to electronically record proceedings in any manner whatsoever, other than in writing, or to make any oral report of proceedings as they take place, without the prior agreement of the Chair.

#### **4.10 Reports from the Board of Directors**

- 4.10.1 Unless otherwise agreed in writing between the Council of Governors and the Board of Directors, at each meeting of the Council of Governors, the Board of Directors through the Chair or an Executive Director (or a nominated officer of the Trust) is required to report to the Council of Governors on the Trust's general progress in relation to its Forward Plan.
- 4.10.2 At any meeting a Governor may ask any question through the Chair without notice on any report made pursuant to Standing Order 4.10.1 above after that report has been received by or while such report is under consideration at the meeting. Unless the Chair decides otherwise no statements will be made other than those which are strictly necessary to define any question posed and in any event no statements will be allowed to last longer than three minutes each. A Governor who has put such a question may also put one supplementary question, if the supplementary question arises directly out of the reply given to the initial question.

The Chair may, in his/her absolute discretion reject any question from any Governor if in his/her opinion the question is substantially the same and relates to the same subject matter as a question which has already been put to that meeting or a previous meeting. At the absolute discretion of the Chair questions may, at any meeting which is held in public, be asked of the Executive Directors present by Members of the Trust or any other members of the public present at the meeting.

#### **4.11 Chair's ruling**

4.11.1 Subject to Standing Order 4.11.2 below, statements of Governors made at meetings of the Council of Governors shall be relevant to the matter under discussion at the material time, and subject to Standing Order 1.2, the decision of the Chair on questions of order, relevancy, regularity and any other matters shall be final.

4.11.2 This Standing Order applies to all forms of speech/debate by Governors in relation to motions or questions under discussion at a meeting of the Council of Governors.

4.11.3 Content and length of speeches

4.11.3.1 any approval to speak must be given by the Chair. Speeches must be directed to the matter, motion or question under discussion or to a point of order. Unless in the opinion of the Chair it would not be desirable or appropriate to limit speeches on any topic to be discussed having regard to its nature, complexity or importance, no proposal, speech nor any reply may exceed three minutes. In the interests of time the Chair may, in his/her absolute discretion, limit the number of replies, questions or speeches which are heard at any one meeting.

4.11.4 When a person may speak again

4.11.4.1 A person who has already spoken on a matter at a meeting may not speak again at that meeting in respect of the same matter, except:

- 4.11.4.1.1 in exercise of a right of reply; or
- 4.11.4.1.2 on a point of order

4.11.5 Identification

4.11.5.1 All speakers must state their name and role before starting to speak to ensure the accuracy of the minutes



## 4.12 Voting

- 4.12.1 A Governor may not vote at a meeting of the Council of Governors unless prior to the commencement of the meeting he/she has:
- 4.12.1.1 made a standing declaration that has been received by the Secretary in the form specified within Annex A of these Standing Orders, that he/she is a member of the constituency which elected him/her; and
  - 4.12.1.2 that he/she is not prevented from being a member of the Council of Governors under this Constitution.
- 4.12.2 If necessary and subject to Standing Order 4.12.3 below, any question at a meeting shall be determined by a majority of the votes of the Chair and the Governors present and voting on the question.
- 4.12.3 Whoever is Chair of the meeting of the Council of Governors shall in the case of an equality of votes on any question or proposal have a second or casting vote.
- 4.12.4 A resolution for the removal of the Chair or a Non-Executive Director shall be passed only if three-quarters of the total number of Governors vote in favour of it and the provisions of paragraphs 25.1 to 25.3 of the Constitution have been complied with
- 4.12.5 All questions put to the vote shall, at the discretion of the Chair, be determined by oral expression or by a show of hands. A paper ballot may also be used if a majority of the Governors present so request.
- 4.12.6 If at least one-third of the Governors present so request, the voting (other than by paper ballot) on any question may be recorded to show how each Governor present voted or abstained.
- 4.12.7 If a Governor so requests, the vote shall be recorded by name upon any vote (other than by paper ballot).
- 4.12.8 A Governor may only vote if present at the time of the vote on which the question is to be decided; no Governor may vote by proxy but a Governor is considered to have been present at the meeting if they took part by telephone or video link or computer and so is therefore entitled to vote.
- 4.12.9 All decisions taken in good faith at the meeting of the Council of Governors or at any meeting of a panel shall be valid even if it is subsequently discovered that there was a defect in the calling of the meeting or the appointment of the Governors attending the meeting.

#### **4.13 Special provisions relating to termination of Governors' tenure:**

- 4.13.1 Where a person has been elected or appointed to be a Governor and they become disqualified from office under paragraph 14 of the Constitution, or the provisions of Appendix 3 of Annex 5 of the Constitution, they shall notify the Trust Secretary in writing of such disqualification as soon as practicable and in any event within 14 days of first becoming aware of those matters which render them disqualified. The Trust Secretary shall forthwith remove the name from the register of Members of the Council of Governors.
- 4.13.2 If it comes to the notice of the Trust Secretary that the Governor is disqualified from office in accordance with the provisions of paragraph 14 of this Constitution, whether at the time of the Governor's appointment or (as the case may be) election, or later, the Trust Secretary shall immediately declare that the individual in question is disqualified and give notice in writing to that effect as soon as practicable and in any event within 14 days of the date of the said declaration. In the event that the Governor shall dispute that they are disqualified the Governor may refer the matter to the dispute resolution procedure set out in Appendix 3 of Annex 8 of the Constitution within 28 days of the date upon which the notice was given to the Governor.
- 4.13.3 The Chair shall be authorised to take such action as may be immediately required, including but not limited to exclusion of the Governor concerned from the meeting so that any allegation made against a Governor under paragraph 14.4 of the Constitution can be investigated.
- 4.13.4 Where any allegations under paragraph 14.4 of the Constitution are made, it shall be open to the Council of Governors to decide, by two-thirds majority of those present and voting at the meeting, to lay a formal charge of non-compliance or misconduct.
- 4.13.5 The Governor in question will be notified in writing of the allegations and grounds upon which the charges referred to in Standing Order 4.13.4 are made, inviting and considering his response within a defined, appropriate and reasonable timescale.
- 4.13.6 The Governor may be invited to address the Council of Governors in person if the matter cannot be resolved satisfactorily through correspondence.
- 4.13.7 The Governors, by three-quarters majority of those present and voting can decide whether to uphold the charge.

- 4.13.8 Should the Governors uphold the charge in accordance with Standing Order 4.13.7, the Governors can impose such sanctions as shall be deemed appropriate. Such sanctions may range from the issuing of a written warning as to the Governor's future conduct and consequences, to non-payment of expenses, or removal of the Governor from office in accordance with paragraph 14 of the Constitution.
- 4.13.9 Upon disqualification, removal or termination of a Governor's office under this Standing Order, the Trust Secretary shall cause their name to be removed immediately from the register of members of the Council of Governors.
- 4.13.10 Any decision of the Council of Governors to terminate a Governor's tenure of office may be referred by the Governor concerned to the dispute resolution procedure set out in paragraph 1.2.2 of Appendix 3 of Annex 8 of the Constitution within 28 days of the date upon which notice in writing of the Council of Governors decision made in accordance with Standing Orders 4.13.7 and 4.13.8 is communicated to the Governor concerned.
- 4.13.11 A Governor may resign from that office at any time during the term of that office by giving notice to the Trust Secretary in writing, upon which that person shall cease to hold office.
- 4.13.12 A Governor who resigns under Standing Order 4.13.11 above or whose office is terminated under this Standing Order or paragraph 14 of the Constitution shall not be eligible to stand for re-election or re-appointment to the Council of Governors for a period of 3 years from the date of their resignation or removal from office or the date upon which any appeal against their removal from office is disposed of whichever is later, unless a majority at a meeting of the Council of Governors agrees to waive this period.
- 4.13.13 Where a vacancy arises on the Council of Governors, the provisions of paragraph 4 of Appendix 4 of Annex 5 of the Constitution shall apply.

#### **4.14 Minutes**

- 4.14.1 The minutes of the proceedings of a meeting of the Council of Governors shall be drawn up by the Trust Secretary (or his/her nominee) and submitted for agreement at the next ensuing meeting where they will be signed by the person presiding at it.
- 4.14.2 No discussion shall take place upon the minutes except upon their accuracy or where the person chairing the meeting considers discussion appropriate.

- 4.14.3 Any amendment to the minutes shall be agreed and recorded.

#### **4.15 Suspension of Standing Orders**

- 4.15.1 Except where this would contravene any provision of the regulatory framework or any guidance or best practice advice issued by Monitor, any one or more of the Standing Orders may be suspended at any meeting, provided that at least two-thirds of the Governors are present, and there is a majority of Governors who are members of the Public Constituency in attendance, and that a majority of those present vote in favour of suspension.
- 4.15.2 A decision to suspend the Standing Orders shall be recorded in the minutes of the meeting and shall only be suspended for the duration of the meeting in question.
- 4.15.3 A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be made available to the Chair and Governors.

#### **4.16 Variation and amendment of Standing Orders**

- 4.16.1 These Standing Orders shall be amended in compliance with section 45 of the Constitution

#### **4.17 Record of attendance**

- 4.17.1 The names of the person chairing the meeting and Governors present at the meeting shall be recorded in the minutes.

#### **4.18 Quorum**

- 4.18.1 No business shall be transacted at a meeting unless at least one-third of the total number of Governors is present.
- 4.18.2 If at any meeting there is no quorum present within 30 minutes of the time fixed for the start of the meeting, the meeting shall stand adjourned for a minimum period of 5 Clear Days and the Trust Secretary shall give or shall procure the giving of notice to all Governors of the date, time and place of the adjourned meeting. Notwithstanding Standing Order 4.18.1 above, upon reconvening, those present shall constitute a quorum.

- 4.18.3 If a Governor has been disqualified from participating in the discussion on any matter and/or from other voting on any resolution by reason of the declaration of a conflict of interest as provided in Standing Order 7, they shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business.

## **5 Lead Governor and Deputy Lead Governor**

- 5.1 The Governors shall appoint a lead Governor and a deputy lead Governor at each Annual Meeting of the Council of Governors.
- 5.2 The role and responsibilities of the lead Governor will be produced by the Board of Directors following consultation with the Council of Governors and consideration of their views (save for the first version of this, which shall be produced by the Applicant Trust) and should include the relevant provisions of Appendix B of the NHS Foundation Trust Code of Governance.
- 5.3 The deputy lead Governor shall be responsible for supporting the lead Governor in the role and for performing the responsibilities of the lead Governor whenever he/she is known to be unavailable.
- 5.4 The appointments of the lead Governor and deputy lead Governor shall be made from those Governors who have been elected as Governors from the Public Constituency only.
- 5.5 The lead Governor and deputy lead Governor so appointed shall hold office until the next Annual Members Meeting but shall be eligible for re-appointment at that time.
- 5.6 Nomination forms for appointment as lead Governor and deputy lead Governor shall be sent out with the papers for the Annual Members Meeting. Each nomination shall be made in writing by the Governor seeking appointment and must be returned to the Trust Headquarters addressed to the Secretary to arrive 3 Clear Days before the meeting.
- 5.7 There shall be separate forms of nomination for appointment to the position of lead Governor and the position of deputy lead Governor and eligible Governors may be nominated for both positions.
- 5.8 In the event of there being two or more nominations for either appointment a secret ballot shall be held of all the Governors present at the meeting with each Governor present having one vote for each contested appointment.
- 5.9 The meeting shall adjourn while the ballots are counted by the person chairing the meeting in the presence of the Trust Secretary, and the Governor whose nomination receives the largest number of votes for each

- position shall be appointed.
- 5.10 In the event of an equality of votes the meeting shall adjourn for a further ten minutes and then a second ballot shall take place, if an equality of votes still occurs then the matter shall be determined by each candidate drawing lots for the position.
- 5.11 If one Governor receives the largest number of votes for appointment as both the lead Governor and the deputy lead Governor that Governor shall be appointed as lead Governor.
- 5.12 The results of the ballot shall be announced at the reconvened meeting referred to in paragraph 5.9 above.
- 5.13 Any individual appointed under the provisions of paragraphs 5.10 to 5.12 above may at any time resign from the office of lead Governor or deputy lead Governor by giving notice in writing to the Trust Secretary. The Council of Governors shall thereupon appoint another lead Governor or deputy lead Governor (as required) at either the next meeting of the Council of Governors or the Annual Meeting (whichever is the earlier) in accordance with the provisions of paragraphs 5.7 to 5.12 above.

## **6 Council of Governors Establishment of Member Panels**

- 6.1 Subject to any guidance or best practice advice as may be issued by Monitor, the Council of Governors may and, if directed by Monitor, shall appoint panels of the Council of Governors to assist it in the proper performance of its functions under the regulatory framework, consisting of the Chair and Governors.
- 6.2 These Standing Orders, as far as they are applicable, shall apply with appropriate alteration to meetings of any panel established by the Council of Governors with the terms:
- 6.2.1 Chair to be read as a reference to the Chair of the Panel
- 6.2.2 Governor to be read as a reference to a member of the Panel as the context permits.
- 6.3 Each Panel shall have such terms of reference and powers and be subject to such conditions as the Council of Governors shall decide and shall be in accordance with the regulatory framework and any guidance or best practice advice issued by Monitor, but the Council of Governors shall not delegate to any Panel any of the powers or responsibilities which are to be exercised by the Council of Governors at a formal meeting.
- 6.4 Any Panel established under this Standing Order 6 may call upon outside advisors to assist them with their tasks, subject to the advance agreement of the Board of Directors. Any conflict arising between the Council of Governors and the Board of Directors under this paragraph shall be determined in accordance with the dispute resolution procedure set out in Appendix 3 of

- Annex 8 of the Constitution.
- 6.5 The Council of Governors shall approve the appointments to each of the panels which it has formally constituted.
- 6.6 Where the Council of Governors is required to appoint persons to a panel to undertake statutory functions, and where such appointments are to operate independently of the Council of Governors, such appointments shall be made in accordance with applicable statute and regulations and with guidance or best practice advice issued by Monitor.
- 6.7 Where the Council of Governors determines that persons who are neither Governors, nor Directors or Officers of the Trust, shall be appointed as an advisor to a panel, the terms of such appointment shall be determined by the Council of Governors subject to the payment of travelling expenses and other allowances being in accordance with such sum as may be determined by the Board of Directors.
- 6.8 The Council of Governors may appoint Governors to serve on committees or panels with members of the Board of Directors at the request of the Chair.

## **7 Declarations of Interests and Register of Interests**

### **7.1 Declaration of interests**

- 7.1.1 The regulatory framework requires each Governor to declare to the Trust Secretary:
- 7.1.1.1 any actual or potential interest, direct or indirect, which is relevant and material to the business of the Trust, as described in Standing Order 7.2.1; and
  - 7.1.1.2 any actual or potential pecuniary interest, direct or indirect, in any contract, proposed contract or other matter concerning the Trust, as described in Standing Order 7.2.2 and 7.2.3; and
  - 7.1.1.3 any actual or potential family interest, direct or indirect, of which the Governor is aware, as described in Standing Order 7.2.5.
- 7.1.2 Such a declaration shall be made either at the time of the Governor's election or appointment or as soon thereafter as the interest arises, and in a form prescribed by the Trust Secretary attached at Annex B to these Standing Orders.
- 7.1.3 In addition, if a Governor is present at a meeting of the Council of Governors and has an interest of any sort in any matter which is the subject of consideration, they shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not vote on any question with respect to the matter.

7.1.4 Subject to Standing Order 7.2.4, if a Governor has declared a pecuniary interest (as described in Standing Order 7.2.2 and 7.2.3) they shall not take part in the consideration or discussion of the matter. At the time the interests are declared, they should be recorded in the minutes of the meeting. Any changes in interests should be officially declared at the next relevant meeting following the change occurring.

7.1.5 This Standing Order 7 applies to the members of any panel of the Council of Governors or a committee or panel established jointly with the Board of Directors and applies to any member of any such panel or Committee (whether or not they are a Governor).

7.1.6 The interests of Governors in companies likely or possibly seeking to do business with the Trust should be published in the Annual Report. The information should be kept up to date for inclusion in succeeding Annual Reports.

## 7.2 Nature of interests

7.2.1 Interests which should be regarded as "relevant and material" are as follows and are to be interpreted in accordance with guidance issued by Monitor; the following list is not meant to be exhaustive but is meant as guidance, the advice of the Trust Secretary should be sought in the event of any doubt:

7.2.1.1 directorships, including non-executive directorships held in private companies or public limited companies (with the exception of those of dormant companies); or

7.2.1.2 ownership, part-ownership or directorship of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS or the Trust; or

7.2.1.3 majority or controlling shareholdings in organisations likely or possibly seeking to do business with the NHS or the Trust; or

7.2.1.4 a position of authority in a charity or voluntary organisation in the field of health and social care; or

7.2.1.5 any connection with a voluntary or other organisation contracting for NHS or Trust services or commissioning NHS or services; or

7.2.1.6 any connection with an organisation, entity or company considering entering into or having entered into a financial agreement with the Trust, including but not limited to, lenders or banks.



- 7.2.2 A Governor shall be treated as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if:
- 7.2.2.1 he/she is a director of a company or other body, not being a public body, with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration; or
  - 7.2.2.2 he/she is a Partner of, or is in the employment of, a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration.
- 7.2.3 A Governor shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only:
- 7.2.3.1 of their membership of a company or other body, if they have no significant beneficial interest in any securities of that company or other body; or
  - 7.2.3.2 of an interest in any company, body or person with which they are connected which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a Governor in the consideration or discussion of or in voting on, any question with respect to that contract or matter; or
  - 7.2.3.3 of any travelling or other expenses or allowances payable to a Governor in accordance with the Constitution.
- 7.2.4 Where a Governor:
- 7.2.4.1 has an indirect pecuniary interest in a contract, proposed contract or other matter by reason only of a beneficial interest in securities of a company or other body, and
  - 7.2.4.2 the total nominal value of those securities does not exceed £5,000 or one-hundredth of the total nominal value of the issued share capital of the company or body, whichever is the less, and
  - 7.2.4.3 if the share capital is of more than one class, the total nominal value of shares of any one class in which he has a beneficial interest does not exceed one-hundredth of the total issued share capital of that class,
  - 7.2.4.4 they shall not be prohibited from taking part in the consideration or discussion of the contract or other matter or from voting on any question with respect to it, without prejudice however to their duty to disclose their interest which shall be recorded in the minutes of the meeting.

7.2.5 A family interest is an interest of an Immediate Family Member of a Governor which if it were the interest of that Governor would be a personal interest or a pecuniary interest of his/her.

7.2.6 If Governors have any doubt about the relevance or materiality of an interest, this should be discussed with the Trust Secretary. Influence rather than the immediacy of the relationship is more important in assessing the relevance of an interest. The interests of Partners in professional partnerships should also be considered.

### **7.3 Register of members of the Council of Governors**

7.3.1 The register of members of the Council of Governors shall list:

7.3.1.1 the names of Governors,

7.3.1.2 their category of membership of the Council of Governors, and;

7.3.1.3 an address through which they may be contacted which may be the Trust Secretary.

### **7.4 Register of interests of the Council of Governors**

7.4.1 The Trust Secretary shall keep a register of interests of Members of the Council of Governors which shall contain the names of each Governor, whether they have declared any interest, and in relation to public Elected Governors any party political affiliation.

## **8 Standards of Business Conduct**

8.1 Members shall comply with the Governors' Code of Conduct and any guidance or best practice advice issued by Monitor or the Trust.

### **8.2 Appointments and Recommendations**

8.2.1 A Governor shall not solicit for any person any appointment under the Trust or recommend any person for such appointment, but this paragraph of this Standing Order shall not preclude a Governor from giving written testimonial of a candidate's ability, experience or character for submission to the Trust in relation to any appointment.

8.2.2 Any informal discussions outside the Remuneration, Terms of Service and Nominations panel, whether solicited or unsolicited in relation to the appointment or nomination of an individual should be declared to the meeting of the panel determining the appointment or nomination of the individual, any advice should be sought from the Trust's Director that has responsibility for personnel and employment matters of the Trust.

- 8.2.3 Every Governor shall disclose to the Chief Executive or his delegated Officer any relationship between himself and a candidate for appointment or nomination as soon as they become aware of the candidature. It shall be the duty of the Chief Executive or his delegated Officer to report to the Council of Governors any such disclosure made.
- 8.2.4 On appointment, members of the Council of Governors should disclose to the Trust Secretary whether they are related to any other member of the Council of Governors or holder of any office in the Trust.
- 8.2.5 Where the relationship to a member of the Council of Governors is disclosed, Standing Order 7 shall apply.

## **9 Miscellaneous**

- 9.1 The Trust Secretary shall provide a copy of these Standing Orders to each Governor and endeavour to ensure that each Governor understands their responsibilities within these Standing Orders and the Constitution.
- 9.2 If for any reason these Standing Orders are not complied with, full details of the non-compliance and any justification for non-compliance and the circumstances around the non-compliance, shall be reported to the next formal meeting of the Council of Governors for action or ratification. All Governors and Officers of the Trust have a duty to disclose any non-compliance with these Standing Orders to the Chair as soon as possible.

## **ANNEX A**

### **Declaration to the Trust Secretary of West Midlands Ambulance Service University NHS Foundation Trust**

I hereby declare that I am at the date of this declaration a member of the [Public/Staff]\* Constituency, and I am not prevented from being a member of the Council of Governors by reason of any provision of paragraph 8 of Schedule 7 to the 2006 Act or the Constitution.

**Signed.....**

**Dated.....**

\* Delete as appropriate

## **Annex B**

### **Prescribed Form of Declaration of Interests**

Declaration to the Trust Secretary of West Midlands Ambulance Service University NHS Foundation Trust

Date [insert]

To the Trust Secretary of the West Midlands Ambulance Service University NHS Foundation Trust.

Dear [insert]

In fulfilment of the obligations imposed on me by paragraph 16 of the Constitution of the Trust and the provisions of Standing Order 7 of the Standing Orders for the Council of Governors generally, and in particular Standing Order 7.1.2, I hereby give notice to the Trust of my interest in [insert details of the nature and extent of the relevant interest(s) (e.g. pecuniary, non-pecuniary, direct, indirect, actual, potential, etc.)] as of the date posted above.

I require the nature and extent of my interest(s) to be recorded in the Trust's register of interests of the members of the Council of Governors.

Yours faithfully [insert name]

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

### **1 Introduction**

#### **1.1 Statutory Framework**

- 1.1.1 The Trust became a Public Benefit Corporation on 1<sup>st</sup> January 2013 and a licensed provider of NHS services on 1<sup>st</sup> April 2013.
- 1.1.2 The Trust's principal place of business is the Trust Headquarters.
- 1.1.3 Paragraph 27 of the Constitution requires the Board Directors to adopt Standing Orders for the regulation of its proceedings and business.
- 1.1.4 As a Public Benefit Corporation, the Trust has specific powers to contract in its own name and to act as a corporate trustee. In the latter role it is accountable to the Charity Commission for those funds deemed to be charitable. The Trust also has a common law duty as a bailee for patients' property held by the Trust on behalf of patients.
- 1.1.5 The Scheme of Delegation and Standing Financial Instructions provide a comprehensive business framework for the administration of the Trust's affairs, and these need to be read in conjunction with this Constitution. All Directors and nominated officers should be aware of the existence of these documents and, where necessary, be familiar with the detailed provisions contained within them.
- 1.1.6 The Trust will deal with Monitor in an open and co-operative manner and must promptly notify Monitor of anything relating to the Trust which Monitor would reasonably expect prompt notice of, including, without prejudice to the foregoing generality, any anticipated failure or anticipated prospect of failure on the part of the Trust to meet its obligations under the terms of its licence or any financial or performance thresholds which Monitor may specify from time to time.

#### **1.2 Delegation of Powers – Scheme of Delegation**

- 1.2.1 Under SO 5 (arrangements for the exercise of functions by delegation) the Board of Directors exercises its power to make arrangements for the exercise, on behalf of the Trust, of any of its functions by a committee of the Board of Directors appointed by virtue of SO 6 or by an Executive Director of the Trust, in each case subject to such restrictions and conditions as the Board of Directors thinks fit. Delegated powers are covered in the Scheme of Delegation.

## **2 Interpretation**

- 2.1 Questions of interpretation of these Standing Orders shall be decided by the Chair, who shall seek the advice of the Chief Executive and/or the Trust Secretary before making his determination.
- 2.2 Unless a contrary intention is evident or the context requires otherwise, words or expressions contained in these Standing Orders shall bear the same meaning as in the Constitution.
- 2.3 The provisions of Paragraphs 45 and 47 of the Constitution apply to these Standing Orders, save that any reference to "Constitution" shall be read as a reference to these "Standing Orders".

## **3 The Foundation Trust Board of Directors**

- 3.1 All business shall be conducted in the name of the Trust.
- 3.2 All funds received in trust shall be in the name of the Trust as corporate trustee. Directors acting on behalf of the Trust as corporate trustees are acting as quasi-trustees.
- 3.3 In relation to Funds held on trust, powers exercised by the Trust as corporate trustee shall be exercised separately and distinctly from those powers exercised as the Trust. Accountability for charitable funds held on trust is to the Charity Commission.
- 3.4 The Trust has the functions conferred on it by the regulatory framework.
- 3.5 The powers of the Trust shall be exercised by the Board of Directors meeting either in public or private session as provided for in Standing Order 4.1.
- 3.6 The Trust has resolved that certain powers and decisions may only be exercised or made by the Board of Directors. These powers and decisions are set out in the Scheme of Delegation.
- 3.7 The Board of Directors (in consultation with the Council of Governors) may appoint any Non-Executive Director as the "senior independent director", for such period not exceeding the remainder of their term as a Non-Executive Director, as they may specify on appointment.
- 3.8 Any Non-Executive Director appointed under Standing Order 3.7 may at any time resign from the office of "senior independent director" by giving notice in writing to the Chair. The Board of Directors (in consultation with the Council of Governors) may thereupon appoint another Non-Executive Director as "senior independent director" in accordance with the provisions in SO 3.7.

## 4 Meeting of the Board of Directors

### 4.1 Admission of the public and the press

4.1.1 Meetings of the Board of Directors shall be held in public unless the Board of Directors in its absolute discretion determines that any meeting of the Board of Directors shall be held in private.

4.1.2 Where a meeting of the Board of Directors is held in public, the public and representatives of the press shall be afforded facilities to attend such meeting of the Board of Directors but shall be required to withdraw upon the Board of Directors resolving as follows:

*“...that representatives of the press and other members of the public be excluded from the remainder of this meeting having regard to the confidential nature of the business to be transacted, publicity of which would be prejudicial to the public interest”.*

4.1.3 The Chair shall give such directions as he thinks fit (including a decision to expel or exclude any member of the public and/or press if the individual in question is interfering with or preventing the proper conduct of the meeting) in regard to the arrangements for meetings of the Board of Directors and (where relevant) accommodation of the public and representatives of the press such as to ensure that the Board of Directors' business shall be conducted without interruption or disruption and, without prejudice to the power to exclude the public and representatives of the press under Standing Order 4.1.2 above, members of the public and representatives of the press will be required to withdraw upon the Board of Directors resolving as follows:

*“...that in the interests of public order the meeting adjourn for [**the period to be specified**] to enable the Board of Directors to complete business without the presence of the public or press.”*

4.1.4 Nothing in these Standing Orders shall require the Board of Directors to allow members of the public or representative of the press to record proceedings in any manner whatsoever, other than writing, or to make any oral report of proceedings as they take place without the prior agreement of the Chair.

4.1.5 Matters to be dealt with by the Board of Directors following the exclusion of the public and representatives of the press under Standing Orders 4.1.2 or 4.1.3 above shall be confidential to the Directors. Members of the Board of Directors, nominated officers, officers and/or others in attendance at the request of the Chair shall not reveal or disclose the content of papers or reports presented, or any discussion on these generally, which take place while the public and press are excluded, without the express permission of the Chair.



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

## **4.2 Calling meetings**

- 4.2.1 Subject to Standing Order 4.2.2 below, meetings of the Board of Directors shall be held at such times and places as the Board of Directors may, in its absolute discretion, determine.
- 4.2.2 The Chair may call a meeting of the Board of Directors at any time. If the Chair refuses to call a meeting after a requisition for that purpose, signed by at least one-third of the whole number of members of the Board of the Directors and specifying the business to be transacted at the meeting, and this has been presented to him, or if, without so refusing, the Chair does not call a meeting within 5 Clear Days after such requisition has been presented to him, at the Trust's Headquarters, such one-third or more members of the Board of Directors may forthwith call a meeting for the purpose of conducting that business.

## **4.3 Notice of meetings**

- 4.3.1 Before each meeting of the Board of Directors, a notice of the meeting, specifying the business proposed to be transacted at it, shall be delivered to every Director, or sent by post to the usual place of residence of every Director or sent electronically so as to be available to him at least 5 (five) Clear Days before the meeting, save in the case of emergencies.
- 4.3.2 Before a public meeting of the Board of Directors, a public notice of the time and place of the meeting shall be displayed at the Trust's Headquarters and shall be advertised on the Trust's website at least 5 Clear Days before the meeting, save in the case of emergencies.
- 4.3.3 Want of service of the notice on any one member of the Board of Directors shall not affect the validity of a meeting but failure to serve such a notice on more than 2 Executive Directors and also 2 Non-Executive Directors will invalidate the meeting. A notice of the meeting shall be presumed to have been served one day after posting or, in the case of a notice sent electronically, on the date of transmission.
- 4.3.4 In the case of a meeting called by the Directors in default of the Chair in accordance with Standing Order 4.2.2 above, the notice shall be signed by those Directors and no business shall be transacted at the meeting other than that specified in the requisition.

- 4.3.5 In the event of an emergency giving rise to the need for an immediate meeting, failure to comply with the notice periods referred to in Standing Order 4.3.1 and (where relevant) Standing Order 4.3.2 above shall not prevent the calling of, or invalidate, such a meeting provided that every effort is made to make personal contact with every Director who is not absent from the United Kingdom and the agenda for the meeting is restricted to matters arising in that emergency.

#### **4.4 Agendas and supporting papers**

- 4.4.1 Agendas will be sent to members of the Board of Directors 5 Clear Days before the meeting and supporting papers (including the minutes of the previous meeting of the Board of Directors), shall accompany the agenda, save in an emergency giving rise to the need for an immediate meeting of the Board of Directors, as set out in Standing Order 4.3.5 above. The agenda and supporting papers shall be presumed to have been served one day after posting or, in the case of a notice being sent electronically, on the date of transmission.

#### **4.5 Setting the agenda**

- 4.5.1 The Board of Directors may determine that certain matters shall appear on every agenda for a meeting of the Board of Directors and shall be addressed prior to any other business being conducted ("Standing Items").
- 4.5.2 A Director desiring a matter to be included on an agenda, other than a Standing Item or a motion under Standing Order 4.10 (emergency motions and written motions) below, including a formal proposition for discussion and voting on at a meeting, shall make his request in writing to the Chair at least 14 Clear Days before the meeting. Requests made less than 14 Clear Days before a meeting may be included on the agenda at the sole discretion of the Chair.
- 4.5.3 No business may be transacted at any meeting of the Board of Directors which is not specified in the notice of that meeting unless the Chair, in his absolute discretion, agrees that the item and (where relevant) any supporting papers should be considered by the Board of Directors as a matter of urgency. A decision by the Chair to permit consideration of the item in question and (where relevant) the supporting papers shall be recorded in the minutes of that meeting.

#### **4.6 Petitions**

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

#### **4.7 Presiding at meetings of the Board of Directors**

- 4.7.1 At any meeting of the Board of Directors, the Chair, if present, shall preside. If the Chair is absent from the meeting the Deputy Chair, if there is one and present, shall preside. If the Chair and Deputy Chair are absent such Non-Executive Director as the members of the Board of Directors present shall choose, shall preside.
- 4.7.2 If the Chair is absent temporarily on the grounds of a declared conflict of interest, the Deputy-Chair, if present, shall preside. If the Chair and Deputy-Chair are absent, or are disqualified from participating, such Non-Executive Director as the members of the Board of Directors present shall choose shall preside.
- 4.7.3 If any matter for consideration at a meeting of the Board of Directors relates to the interests of the Chair or the Non-Executive Directors as a class, neither the Chair nor any of the Non-Executive Directors shall preside over the period of the meeting during which the matter is under discussion. The Directors (excluding the Chair and the Non-Executive Directors) shall elect one of their number to preside during that period and that person shall exercise all the rights and obligations of the Chair, including (for the avoidance of doubt) the right to exercise a second or casting vote where the numbers of votes for and against a motion is equal.

#### **4.8 Conduct of the meeting**

- 4.8.1 Statements of Directors made at meetings of the Board of Directors shall be relevant to the matter under discussion at the material time and subject to SO 2.1, the decision of the person presiding at the meeting on questions of order, relevancy, regularity and any other matters shall be final.

#### **4.9 Notices of motion**

- 4.9.1 Notwithstanding the provisions of Standing Order 4.5 above, and subject to the provisions of Standing Order 4.11 (Motions: procedure at and during a meeting) and Standing Order 4.12 (Motion to rescind a resolution) below, a member of the Board of Directors wishing to move (or amend) a motion shall send a written notice to the Chair.
- 4.9.2 The notice shall be delivered at least 14 Clear Days before the meeting. The Chair shall include in the agenda for the meeting all notices so received that are in order and permissible under these Standing Orders. Subject to Standing Order 4.3.4, this Standing Order shall not prevent any motion being moved without notice on any business mentioned on the agenda for the meeting.

#### **4.10 Emergency motions and written motions**

4.10.1 Subject to the agreement of the Chair, and subject also to the provisions of Standing Order 4.11 (Motions: procedure at and during a meeting), a member of the Board of Directors may give the Chair written notice of an emergency motion after the issue of the notice of meeting and agenda, up to one hour before the time fixed for the meeting. The notice shall state the grounds of urgency. If in order, it shall be declared by the Chair to the Board of Directors at the commencement of the business of the meeting as an additional item included in the agenda. The Chair's decision to include the item shall be final.

##### **4.10.2 Written motions**

4.10.2.1 In urgent situations and with the consent of the Chair, business may be effected by a Director's written motion to deal with business otherwise required to be conducted at a meeting of the Board of Directors.

4.10.2.2 If all members of the Board of Directors have been notified of the proposal and a majority of Directors that would be entitled to attend and vote at a meeting of the Board of Directors confirm acceptance of the written motion either in writing or electronically to the Trust Secretary within 5 Clear Days of dispatch then the motion will be deemed to have been resolved notwithstanding that the Directors have not gathered in one place.

4.10.2.3 The effective date of the resolution shall be the date on which the five days for determining the matter expires, and, until that date a Director who has previously indicated acceptance can withdraw and the motion shall fail.

4.10.2.4 Once the resolution is passed, a copy certified by the Trust Secretary shall be recorded in the minutes of the next ensuing meeting.

#### **4.11 Motions: procedure at and during a meeting**

##### **4.11.1 Who may propose**

4.11.1.1 A motion properly notified under Standing Order 4.9 above may be proposed by the Chair of the meeting or any other member of the Board of Directors present at the meeting. All motions so proposed must be seconded by another member of the Board of Directors.

#### **4.11.2 Contents of motions**

4.11.2.1 The Chair may exclude from the debate at his sole discretion any motion of which notice was not given on the notice summoning the meeting other than a motion relating to:

4.11.2.1.1 the reception of a report;

4.11.2.1.2 consideration of any item of business before the Board of Directors;

4.11.2.1.3 the accuracy of minutes;

4.11.2.1.4 that the Board of Directors proceed to the next item of business on the agenda;

4.11.2.1.5 that the Board of Directors adjourn the discussion or the meeting; or

4.11.2.1.6 that the question be now put.

#### **4.11.3 Amendments to motions**

4.11.3.1 A motion for amendment shall not be discussed unless it has been proposed and seconded.

4.11.3.2 Amendments to motions shall be moved relevant to the motion and shall not have the effect of negating the motion before the Board of Directors.

4.11.3.3 If there are a number of amendments proposed and seconded to a motion, they shall be considered one at a time. When a motion has been amended, the amended motion shall become the substantive motion before the meeting, upon which any further amendment may be moved.

#### **4.11.4 Rights of reply to motions**

4.11.4.1 Amendments

4.11.4.1.1 The mover of an amendment may reply to the debate on their amendment immediately prior to the mover of the original motion, who shall have the right of reply at the close of debate on the amendment, but may not otherwise speak on it.

#### **4.11.4.2 Substantive/original motion**

- 4.11.4.2.1 The mover who proposed the substantive motion shall have a right of reply at the close of any debate on the motion.

#### **4.11.5 Withdrawing a motion**

- 4.11.5.1 A motion or an amendment to a motion, once moved and seconded may be withdrawn by the proposer with the concurrence of the seconder and the consent of the Chair.

#### **4.11.6 Motions once under debate**

- 4.11.6.1 When a motion is under debate, no motion may be moved other than:
  - 4.11.6.1.1 an amendment to the motion; or
  - 4.11.6.1.2 the adjournment of the discussion, or the meeting; or
  - 4.11.6.1.3 that the meeting proceed to the next item of business on the agenda; or
  - 4.11.6.1.4 the appointment of an ad hoc committee to deal with a specific item of business; or
  - 4.11.6.1.5 that the motion be now put; or
  - 4.11.6.1.6 (where relevant), a motion under Standing Order 4.1 above resolving to exclude the public (including the press); or
  - 4.11.6.1.7 that a member of the Board of Directors be not further heard.
- 4.11.6.2 In the case of motions under Standing Order 4.11.6.1.3 (proceed to next business) or 4.11.6.1.5 (motion be now put), in the interests of objectivity these motions should only be put forward by a member of the Board of Directors who has not previously taken part in the debate and who is eligible to vote.
- 4.11.6.3 If a motion to proceed to the next business or that the question be now put, is carried, the Chair should give the mover of the substantive motion under debate a right of reply, if not already exercised. The matter should then be put to the vote.
- 4.11.6.4 The mover of a motion shall have a maximum of 5 minutes to move and 5 minutes to reply. Once a motion has been moved, no member of the Board of Directors shall speak more than once or for more than 5 minutes.

#### **4.12 Motion to rescind a resolution**

- 4.12.1 Notice of motion to rescind any resolution (or the general substance of any resolution) which has been passed within the preceding 6 calendar months shall bear the signature of the member of the Board of Directors who gives it and also the signature of four other members of the Board of Directors, and before considering any such motion of which notice shall have been given, the Board of Directors may refer the matter to an appropriate committee of the Board of Directors or the Chief Executive for recommendation.
- 4.12.2 When any such motion has been dealt with by the Board of Directors, it shall not be competent for any member of the Board of Directors other than the Chair to propose a motion to the same effect within 6 calendar months. However, the Chair may do so if he considers it appropriate. This Standing Order shall not apply to motions moved in pursuance of a report or recommendations of a committee of the Board of Directors or the Chief Executive.

#### **4.13 Voting**

- 4.13.1 Subject to Standing Order 4.15 (Suspension of Standing Orders), or as otherwise provided by the Standing Orders, every question at a meeting shall be determined by a majority of the votes of the Directors present and voting on the question and, in the case of the number of votes for and against a motion being equal, the Chair shall have a second or casting vote.
- 4.13.2 All questions put to the vote shall, at the discretion of the Chair, be determined by a show of hands. A paper ballot may also be used if a majority of the Directors present so request.
- 4.13.3 If at least one-third of the members of the Board of Directors present so request, the voting (other than by paper ballot), on any question may be recorded to show how each Director present voted or abstained.
- 4.13.4 If a Director so requests, his vote shall be recorded by name upon any vote (other than by paper ballot).
- 4.13.5 In no circumstances may:
  - 4.13.5.1 an absent Director vote by proxy (absence is defined as being absent at the time of the vote); or
  - 4.13.5.2 a resolution be passed if it is opposed by all of the Non-Executive Directors present and voting, or by all of the Executive Directors present and voting.
- 4.13.6 If an Executive Director is temporarily unable to perform his/her duties due to illness or some other reason (the "Absent Director")

- 4.13.6.1 the Board of Directors agree that it is appropriate to terminate the Absent Director's term of office and appoint a replacement Director; and,
- 4.13.6.2 the Board of Directors agree that the duties of the Absent Director need to be carried out;
- 4.13.6.3 then the Chair (if the Absent Director is a Chief Executive) or the Chief Executive (in any other case) may appoint an acting Director as an additional Director to carry out the Absent Director's duties temporarily.
- 4.13.7 For the purposes of paragraph 4.13.6 above the maximum number of Directors that may be appointed under 22.2.3 of the Constitution shall be relaxed accordingly.
- 4.13.8 The acting Director shall vacate office as soon as the Absent Director returns to office or, if earlier, the date on which the person entitled to appoint that person under this paragraph notifies the acting Director that he/she is no longer to act as an acting Director.
- 4.13.9 The acting Director shall be an Executive Director for the purposes of the 2006 Act. He/she will be responsible for his/her own acts and defaults and he/she shall not be deemed to be the agent of the Absent Director.

#### **4.14 Minutes**

- 4.14.1 The minutes of the proceedings of a meeting of the Board of Directors shall be drawn up by the Trust Secretary and submitted for agreement at the next ensuing meeting, where they will be signed by the person presiding at it.
- 4.14.2 No discussion shall take place upon the minutes except upon their accuracy or where the Chair considers discussion appropriate.
- 4.14.3 Any amendment to the minutes shall be agreed and recorded at the next meeting.
- 4.14.4 Minutes of the meetings of the Board of Directors shall be retained by the Trust Secretary.
- 4.14.5 Minutes shall be circulated in accordance with Directors' wishes
- 4.14.6 Where providing a record of a public meeting the minutes shall be made available to the public, save for items discussed by the Directors following the exclusion of the public and representatives of the press under Standing Order 4.1.2 and 4.1.3.



#### **4.15 Suspension of Standing Orders**

- 4.15.1 Except where this would contravene any provision of the regulatory framework or any guidance or best practice advice issued by Monitor, any one or more of the Standing Orders may be suspended at any meeting, provided that at least two-thirds of the Directors are present, including one Executive Director and one Non-Executive Director, and that a majority of those present vote in favour of suspension.
- 4.15.2 A decision to suspend the Standing Orders shall be recorded in the minutes of the meeting.
- 4.15.3 A separate record of matters discussed during the suspension of Standing Orders shall be made by the Trust Secretary and shall be available to the Directors.
- 4.15.4 No formal business may be transacted while the Standing Orders are suspended.
- 4.15.5 The audit committee shall review every decision to suspend these Standing Orders.

#### **4.16 Variation and amendment of Standing Orders**

- 4.16.1 These Standing Orders shall be amended in compliance with section 45 of the Constitution.

#### **4.17 Record of attendance and apologies**

- 4.17.1 The names of the Directors present at the meeting shall be recorded in the minutes, together with the names of any nominated officers, officers and others invited by the Chair to be in attendance, save for members of the public or representatives of the press.
- 4.17.2 Directors who are unable to attend a meeting of the Board of Directors shall notify the Trust Secretary in advance of the meeting in question so that their apologies may be submitted.

#### **4.18 Quorum**

- 4.18.1 No business shall be transacted at a meeting of the Board of Directors unless at least one-third of the whole number of the Directors is present, including at least one Executive Director, one Non-Executive Director and the Chair.
- 4.18.2 For the avoidance of doubt an “acting Director” under 4.13.6 to 4.13.9 shall count towards the quorum.

- 4.18.3 If a Director has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of the declaration of a conflict of interest as provided in Standing Order 8 below, he shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business. The above requirement for at least one Executive Director to form part of the quorum shall not apply where the Executive Directors are excluded from a meeting (for example when the Board of Directors considers the recommendations of the Remuneration and Terms of Service Committee established under Standing Order 6.1.7.2 below).

#### **4.19 Meetings: electronic communication**

- 4.19.1 In this Standing Order “communication” and “electronic communication” shall have the meanings set out in the Electronic Communications Act 2000 or any statutory modification or re-enactment thereof.
- 4.19.2 A Director in electronic communication with the Chair and all other parties to a meeting of the Board of Directors or of a committee of the Directors shall be regarded for all purposes as personally attending such a meeting provided that, but only for so long as, at such a meeting he has the ability to communicate interactively and simultaneously with all other parties attending the meeting including all persons attending by way of electronic communication.
- 4.19.3 A meeting at which one or more of the Directors attends by way of electronic communication is deemed to be held at such a place as the Directors shall at the said meeting resolve. In the absence of such a resolution, the meeting shall be deemed to be held at the place (if any) where a majority of the Directors attending the meeting are physically present, or in default of such a majority, the place at which the Chair of the meeting is physically present.
- 4.19.4 Meetings held in accordance with this Standing Order are subject to Standing Order 4.18 (Quorum). For such a meeting to be valid, a quorum must be present and maintained throughout the meeting.
- 4.19.5 The minutes of a meeting held in this way must state that it was held by electronic communication and that the Directors were all able to hear each other and were present throughout the meeting.

## **4.20 Adjournment of meetings**

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

## **4.21 Reports from the Executive Directors**

- 4.21.1 At any meeting of the Board of Directors a Director may ask any question through the Chair without notice on any report by an Executive Director, or other officer of the Trust, after that report has been received by or while such report is under consideration by the Board of Directors at the meeting. The Chair may, in his absolute discretion, reject any question from any Director if, in his opinion, the question is substantially the same and relates to the same subject matter as a question which has already been put to that meeting or a previous meeting.

## **5 Arrangements for the exercise of functions by delegation**

- 5.1 Subject to Standing Order 3.6, the regulatory framework and such guidance or best practice advice as may be issued by Monitor, the Board of Directors may make arrangements for the exercise of any of its functions by a committee appointed by virtue of Standing Order 5.3 below or by an Executive Director subject to such restrictions and conditions as the Board of Directors considers appropriate.

## **5.2 Emergency powers**

- 5.2.1 The powers which the Board of Directors has retained to itself within these Standing Orders or the Scheme of Delegation may, in emergency or for an urgent decision, be exercised by the Chief Executive and the Chair after having consulted at least two Non-Executive Directors. The exercise of such powers by the Chief Executive and the Chair shall be reported to the next formal meeting of the Board of Directors for ratification.

### **5.3 Delegation to committees**

- 5.3.1 The Board of Directors shall agree from time to time to the delegation of powers to be exercised by committees of the Board of Directors consisting of voting members of the Board of Directors, which it has been formally constituted in compliance with the terms of this Constitution and terms of reference of these committees and their specific powers shall be approved by the Board of Directors.

### **5.4 Delegation to Nominated Officers**

- 5.4.1 Those functions of the Trust which have not been retained as reserved by the Board of Directors or delegated to a committee of the Board of Directors shall be exercised on behalf of the Board of Directors by the Chief Executive. The Chief Executive shall determine which functions he will perform personally and shall nominate officers to undertake the remaining functions for which he will still retain accountability to the Board of Directors.
- 5.4.2 The Chief Executive shall prepare a Scheme of Delegation which shall be considered and approved by the Board of Directors, subject to any amendment agreed during the discussion. The Chief Executive may periodically propose amendment to the Scheme of Delegation, which shall be considered and approved by the Board of Directors as indicated above.
- 5.4.3 Nothing in the Scheme of Delegation shall impair the discharge of the direct accountability to the Board of Directors of the Finance Director or other Executive Director to provide information and advise the Board of Directors in accordance with any statutory requirements.
- 5.4.4 The arrangements made by the Board of Directors as set out in the Scheme of Delegation shall have effect as if incorporated in these Standing Orders, but for the avoidance of doubt, the Scheme of Delegation does not form part of the Constitution.

### **5.5 Duty to report non-compliance with Standing Orders**

- 5.5.1 If for any reason these Standing Orders are not complied with, full details of the non-compliance and any justification for non-compliance and the circumstances around the non-compliance, shall be reported to the next formal meeting of the Board of Directors for action or ratification. All members of the Board of Directors and all officers (including nominated officers) have a duty to disclose any non-compliance with these Standing Orders to the Trust Secretary as soon as possible.

## 6 Committees

### 6.1 Appointment of committees

- 6.1.1 Subject to Standing order 3.6, the regulatory framework and such guidance or best practice advice issued by Monitor, the Board of Directors may and, if directed by Monitor, shall appoint committees of the Trust consisting wholly or partly of Directors or wholly of persons who are not Directors.
- 6.1.2 A committee appointed under Standing Order 6.1.1 may, subject to the regulatory framework and such guidance and/or best practice advice as may be issued by Monitor or the Board of Directors, appoint sub-committees consisting wholly or partly of Directors or wholly of persons who are not Directors.
- 6.1.3 These Standing Orders, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees (and any sub-committees appointed under Standing Order 6.1.2) established by the Board of Directors, in which case the term "Chair" is to be read as a reference to the Chair of the committee (or sub-committee) as the context permits, and the term "member" is to be read as a reference to a member of the committee (or sub-committee) also as the context permits.
- 6.1.4 Each such committee, sub-committee shall have such terms of reference and powers and be subject to such conditions (as to reporting back to the Board of Directors), as the Board of Directors shall decide in accordance with any legislation, and/or regulations and/or such guidance or best practice advice issued by Monitor. Such terms of reference shall have effect as if incorporated into the Standing Orders, but for the avoidance of doubt, these terms of reference do not form part of the Constitution.
- 6.1.5 Where committees are authorised to establish sub-committees they may not delegate powers to the sub-committee unless expressly authorised by the Board of Directors.
- 6.1.6 The Board of Directors shall approve the appointments to each of the committees, which it has formally constituted. Where the Board of Directors determines, and the regulatory framework permits, those persons, who are neither Directors nor officers, shall be appointed to a committee the terms of such appointment shall be within the powers of the Board of Directors as defined by the regulatory framework. The Board of Directors shall define the powers of such appointees and shall agree allowances, including reimbursement for loss of earnings, and/or expenses.
- 6.1.7 The committees established by the Board of Directors are:
  - 6.1.7.1 Audit Committee; and

6.1.7.2 Remuneration, Terms of Service and Nominations Committee.

6.1.8 The Constitution and terms of reference of the committees listed in Standing order 6.1.7 above shall be agreed by the Board of Directors.

6.1.9 Notwithstanding the provisions of Standing Order 6.1.7 above, and subject to the Constitution and terms of reference of the committees being agreed by the Board of Directors, the Board of Directors may establish other committees, sub committees, including ad hoc committees, sub-committees from time to time at its discretion.

**6.2 Confidentiality**

6.2.1 A member of a committee (including sub-committees) shall not disclose any matter dealt with, by, or brought before, the committee, sub-committee without its permission until the committee, sub-committee (as appropriate) shall have reported to the Board of Directors or shall otherwise have concluded on that matter.

6.2.2 A Director or a member of a committee, sub-committee shall not disclose any matter reported to the Board of Directors or otherwise dealt with by the committee, sub-committee, notwithstanding that the matter has been reported or action has been concluded, if the Board of Directors or committee, sub-committee resolve that it is confidential.

**7 Interface between the board of directors and the council of Governors**

7.1 The Board of Directors will cooperate with the Council of Governors as far as possible in order to comply with the regulatory framework in all respects and in particular in relation to the following matters which are set out specifically within the Constitution:

7.1.1 The Directors, having regard to the views of the Council of Governors are to prepare the Forward Plan in respect of each Financial Year to be given to Monitor;

7.1.2 The Directors are to present to the Council of Governors at the Annual General Meeting of the Council of Governors the Annual Accounts, any report of the Auditor on them, and the Annual Report.

7.2 The Annual Report is to give:

7.2.1 information on any steps taken by the Trust to secure that (taken as a whole) the actual membership of its Public Constituency is representative of those eligible for such membership; and

7.2.2 any other information which Monitor requires.

- 7.3 In order to comply with the regulatory framework in all respects and in particular in relation to the matters which are set out in Standing Orders 7.1 and 7.2 above, the Council of Governors may request that a matter which relates to paragraphs 42 and 43 of the Constitution is included on the agenda for a meeting of the Board of Directors.
- 7.4 If the Council of Governors so desires such a matter as described within Standing Order 7.3 above is to be included on an agenda item, they shall make their request in writing to the Chair at least 14 Clear Days before the meeting of the Board of Directors, subject to Standing Order 4.3. The Chair shall decide whether the matter is appropriate to be included on the agenda. Requests made less than 14 Clear Days before a meeting may be included on the agenda at the discretion of the Chair.

## **8 Declarations of interests and register of interests of the members of the board of Directors**

- 8.1 The Constitution requires members of the Board of Directors to declare:
- 8.1.1 any pecuniary interest in any contract, proposed contract or other matter which is under consideration or is to be considered by the Board of Directors; and
  - 8.1.2 any interests including but not limited to any personal or family interests which are relevant and material to the business of the Trust, irrespective of whether those interests are direct or indirect, actual or potential.
- 8.2 All members of the Board of Directors must declare such interests as soon as the Director in question becomes aware of it. Any members of the Board of Directors appointed subsequently to the date of Authorisation must do so on appointment.
- 8.3 Such a declaration shall be made by completing and signing a form, as prescribed by the Trust Secretary from time to time, setting out any interests required to be declared outside a meeting in accordance with the Constitution or the Standing Orders and delivering it to the Trust Secretary on appointment or as soon thereafter as the interest arises, but within 7 Clear Days of becoming aware of the existence of a relevant and material interest.
- 8.4 In addition, if a Director is present at a meeting of the Board of Directors and has an interest of any sort in any matter which is the subject of consideration, he must at the meeting and as soon as practicable after its commencement disclose the fact and he must then withdraw from the meeting and play no part in the relevant discussion and he shall not vote on any question with respect to the matter.

- 8.5 If a Director has declared a pecuniary interest in accordance with Standing Order 8.8 below he shall not take part in the consideration or discussion of the matter in respect of which an interest has been disclosed and shall be excluded from the meeting whilst that matter is under consideration. At the time the interests are declared, they should be recorded in the Director's meeting minutes. Any changes in interests should be officially declared at the next relevant meeting following the change occurring.
- 8.6 Subject to any guidance or best practice advice issued by Monitor, interests which should be regarded as "relevant and material" for the purposes of these Standing orders are:
- 8.6.1 Directorships, including non-executive directorships held in private companies or public listed companies (with the exception of those of dormant companies);
  - 8.6.2 Ownership or part-ownership of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS or the Trust;
  - 8.6.3 majority or controlling share holdings in organisations likely or possibly seeking to do business with the NHS or the Trust;
  - 8.6.4 a position of authority in a charity or voluntary organisation in the field of health and social care;
  - 8.6.5 any connection with a voluntary or other organisation contracting for NHS or Trust services or commissioning NHS or Trust services;
  - 8.6.6 any connection with an organisation, entity or company considering entering into or having entered into a financial agreement with the Trust, including but not limited to, lenders or banks;
  - 8.6.7 research funding or grants that may be received by an individual or their department; and
  - 8.6.8 interests in pooled funds that are under separate management.
- 8.7 Members of the Board of Directors who hold directorships in companies likely or possibly seeking to do business with the NHS or the Trust should be published in the Annual Report. The information should be kept up to date for inclusion in succeeding Annual Reports.
- 8.8 A Director shall be treated as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if:
- 8.8.1 he, or a nominee of his, is a director of a company or other body, not being a public body, with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration; or



- 8.8.2 he is a Partner or associate of, or is in the employment of, a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration.
- 8.9 A Director shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only:
- 8.9.1 of his membership of a company or other body, if he has no beneficial interest in any securities of that company or other body; or
- 8.9.2 of an interest in any company, body or person with which he is connected which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a Director in the consideration or discussion of or in voting on, any question with respect to that contract or matter.
- 8.10 Where a Director:
- 8.10.1 has an indirect pecuniary interest in a contract, proposed contract or other matter by reason only of a beneficial interest in securities of a company or other body, and
- 8.10.2 the total nominal value of those securities does not exceed £5,000 or one-hundredth of the total nominal value of the issued share capital of the company or body, whichever is the less, and
- 8.10.3 if the share capital is of more than one class, the total nominal value of shares of any one class in which he has a beneficial interest does not exceed one-hundredth of the total issued share capital of that class,
- 8.10.4 the Director shall not be prohibited from taking part in the consideration or discussion of the contract or other matter or from voting on any question with respect to it, without prejudice however to his duty to disclose his interest in accordance with the Constitution and these Standing Orders.
- 8.11 In the case of Immediate Family Members, the interest of one Immediate Family Member shall, if known to the other, be deemed for the purposes of the Constitution and these Standing Orders to be also an interest of the other.
- 8.12 If Directors have any doubt about the relevance or materiality of an interest, this should be discussed with the Trust Secretary. Influence rather than the immediacy of the relationship is more important in assessing the relevance of an interest. The interests of Partners in professional partnerships should also be considered.

8.13 Any remuneration, compensation or allowances payable to a Director by virtue of paragraph 18 to Schedule 7 of the 2006 Act shall not be treated as a pecuniary interest for the purpose of these Standing Orders.

8.14 Standing Order 8 applies to any committee, sub-committee of the Board of Directors and applies to any member of any such committee, sub-committee (whether or not he is also a Director).

#### **8.15 Register of interests of the members of the Board of Directors**

8.15.1 The register of interests of members of the Board of Directors shall contain the names of each Director, whether he has declared any interests and, if so, the interests declared in accordance with the Constitution or these Standing Orders.

8.15.2 In accordance with Standing Order 8.3 above, it is the obligation of the Director to inform the Trust Secretary in writing within 7 Clear Days of becoming aware of the existence of a relevant or material interest. The Trust Secretary must then amend the register of interests of members of the Board of Directors upon receipt of new or amended information as soon as is practical and, in any event, within 14 days of receipt.

8.15.3 The register of interests of members of the Board of Directors will be available to the public in accordance with paragraph 33 of the Constitution.

### **9 Standards of business conduct**

#### **9.1 Policy**

9.1.1 Directors shall ensure that they follow any guidance and best practice advice issued by Monitor or the Trust.

#### **9.2 Interest of Directors and Officers in contracts**

9.2.1 Any Director or Officer who comes to know that the Trust has entered into or proposes to enter into a contract in which he has any pecuniary interest, direct or indirect, shall give notice in writing of such fact to the Chief Executive or Trust Secretary as soon as practicable, but in any event within 7 days of first becoming aware of the fact. In the case of Immediate Family Members, the interest of one Immediate Family Member shall, if known to the other, be deemed to be also the interest of that Immediate Family Member.

9.2.2 A Director or officer must also declare to the Chief Executive or Trust Secretary any other employment or business or other relationship of his, or of an Immediate Family Member, that conflicts, or might reasonably be predicted could conflict with the interests of the Trust in accordance with Standing Order 8. The Trust shall require such interests to be recorded in the register of interests of members of the Board of Directors.

### **9.3 Canvassing of, and recommendations by, Directors in relation to appointments**

- 9.3.1 Canvassing of Directors or members of any committee, sub-committee or joint committee of the Board of Directors directly or indirectly for any appointment under the Trust shall disqualify the candidate for such appointment. The contents of this paragraph of these Standing Orders shall be included in application forms or otherwise brought to the attention of candidates.
- 9.3.2 A Director of the Board of Directors shall not solicit for any person any appointment under the Trust or recommend any person for such appointment; but this paragraph of this Standing order shall not preclude a Director from giving written testimonial of a candidate's ability, experience or character for submission to the Trust in relation to any appointment.
- 9.3.3 Informal discussions outside appointments panels or committees, whether solicited or unsolicited, should be declared to the panel or committee in question.

### **9.4 Relatives of Directors or Officers**

- 9.4.1 Directors and officers shall bear in mind that candidates for any staff appointment under the Trust shall, when making an application, disclose in writing to the Trust whether they are related to any Director or the holder of any office under the Trust. Failure to disclose such a relationship shall disqualify a candidate and, if appointed, render him liable to instant dismissal.
- 9.4.2 Directors and officers shall disclose to the Trust Secretary any relationship between himself and a candidate of whose candidature that Director or officer is aware. It shall be the duty of the Trust Secretary to report to the Board of Directors any such disclosure made.
- 9.4.3 On appointment, Directors (and prior to acceptance of an appointment in the case of Executive Directors) must disclose to the Trust Secretary whether they are related to any other member of the Board of Directors, the Council of Governors, or holder of any office in the Trust.
- 9.4.4 Where the relationship to an officer, Governor, or another Director is disclosed, Standing Order 8 shall apply.

### **9.5 External consultants**

- 9.5.1 Standing Order 9 will apply equally to all external consultants or other agents acting on behalf of the Trust.

## **10 Custody of seal and sealing of documents**

### **10.1 Custody of seal**

- 10.1.1 The common seal of the Trust shall be kept by the Trust Secretary or his nominated officer in a secure place.

### **10.2 Sealing of documents**

- 10.2.1 The common seal of the Trust shall not be fixed to any documents unless the sealing has been authorised by a resolution of the Board of Directors or of a committee, thereof or where the Board of Directors has delegated its powers in accordance with the Scheme of Delegation.
- 10.2.2 Before any building, engineering, property or capital document is sealed it must be approved and signed by the Director of Finance (or his nominated officer) and authorised and countersigned by the Chief Executive (or his nominated officer who shall not be within the originating directorate).
- 10.2.3 Where it is necessary that a document shall be sealed, the common seal of the Trust shall be affixed in the presence of two officers duly authorised by the Chief Executive, and also not from the originating department, and shall be attested by them.

### **10.3 Register of Sealing**

- 10.3.1 The Trust Secretary or his nominee shall make an entry of every sealing (numbered consecutively) in a book provided for that purpose, and shall ensure that each entry is signed by the persons who shall have approved and authorised the document and those who attested the seal. The Trust Secretary shall make a report of all sealings to the Board of Directors at least annually (the report shall contain details of the seal number, the description of the document and date of sealing).

## **11 Signature of documents**

- 11.1 Where the signature of any document will be a necessary step in legal proceedings involving the Trust, it shall be signed by the Chief Executive, unless any enactment otherwise requires or authorises, or the Board of Directors shall have given the necessary authority to some other person for the purpose of such proceedings.
- 11.2 The Chief Executive or nominated officers shall be authorised, by resolution of the Board of Directors, to sign on behalf of the Trust any agreement or other document (not required to be executed as a deed) the subject matter of which has been approved by the Board of Directors or committee of the Board of Directors to which the Board of Directors has delegated appropriate authority.

- 11.3 Notwithstanding the generality of Standing Orders 11.1 and 11.2 above, in land transactions the signing of certain supporting documents may be delegated to nominated officers, as set out in the Scheme of Delegation, but will not include the main or principal documents effecting the transfer (e.g. sale/purchase agreement, lease, contracts for construction works, or main warranty agreements) or any document which is required to be executed as a deed.

## **12 Miscellaneous**

### **12.1 Standing Orders to be given to Directors and nominated officers**

- 12.1.1 It is the duty of the Chief Executive to ensure that existing Directors and nominated officers and all new appointees are notified of and understand their responsibilities within these Standing Orders.
- 12.1.2 Copies of the Standing Orders shall be issued to Directors and nominated officers designated by the Trust Secretary. The Trust Secretary shall ensure that new Directors and nominated officers are informed of these Standing Orders in writing and shall receive copies of these Standing Orders.

### **12.2 Documents having the standing of Standing Orders**

- 12.2.1 The Standing Financial Instructions and the Scheme of Delegation shall have the effect as if incorporated into these Standing Orders, but for the avoidance of doubt, neither the Standing Financial Instructions nor the Scheme of Delegation form part of this Constitution.

## **ANNEX 8 - FURTHER PROVISIONS**

### **Appendix 1**

#### **Board of Directors – Further Provisions**

#### **1 Process for appointing, removing and agreeing the remuneration of the Non-Executive Directors and the Chair**

1.1 Subject to the provisions of paragraphs 25 to 30 of the Constitution, the process for appointing, removing and agreeing the remuneration of the Non-Executive Directors and the Chair will be as follows:

1.1.1 That

1.1.1.1 in relation to the re appointment of the Chair or Non-Executive Director, then not less than six months before the end of the term of office of the Chair or a Non-Executive Director (as the case may be), or;

1.1.1.2 in relation to the appointment of the Chair or a Non-Executive Director as a result of a vacancy, or;

1.1.1.3 in relation to considering the remuneration and terms of service of the Chair or a Non-Executive Director;

the Council of Governors will convene a Remuneration, Terms of Service and Nominations Panel to seek a suitable replacement or agree the remuneration of the Chair or Non-Executive Director.

1.1.2 The Chair of the Council of Governors will normally preside at meetings of the Remuneration, Terms of Service and Nominations Panel unless the panel is considering the appointment or reappointment of a Chair of the Board of Directors or their remuneration and terms of service, in which case the Deputy Chair will preside at the meeting of the Remuneration, Terms of Service and Nominations Panel.

1.1.3 Each member of the Remuneration, Terms of Service and Nominations Panel will have one vote and, in the event of equality in votes, the person chairing the Remuneration, Terms of Service and Nominations Panel will have a second or casting vote

1.1.4 Where the Remuneration, Terms of Service and Nominations Panel considers that either the Chair or the Non-Executive Director coming to the end of their term of office should be reappointed for a further term, the Remuneration, Terms of Service and Nominations Panel shall make a recommendation to the Council of Governors to that effect, save that the Remuneration, Terms of Service and Nominations Panel may not make any such recommendation other than for a first re-appointment of the Chair or the Non-Executive Director in question.

1.1.5 Where:

- 1.1.5.1 the Panel does not make a recommendation that the Chair or a Non-Executive Director should be reappointed in accordance with paragraph 1.1.4 above; or
- 1.1.5.2 the Chair or (as the case may be) the Non-Executive Director in question does not want to be reappointed; or
- 1.1.5.3 A vacancy arises due to the resignation of the Chair or a Non-Executive Director; or
- 1.1.5.4 the Council of Governors rejects a recommendation that the Chair or (as the case may be) a Non-Executive Director should be reappointed in accordance with paragraph 1.1.4 above,

the Remuneration, Terms of Service and Nominations Panel shall initiate a process of open competition for the appointment of the Chair and/or Non-Executive Director, and the post will be advertised. Further, the Remuneration, Terms of Service and Nominations Panel shall identify the balance of individual skills, knowledge and experience that is required at the time a vacancy arises and, accordingly, draft a job description and person profile for each new appointment.

- 1.1.6 The Remuneration, Terms of Service and Nominations Panel of the Council of Governors will also make recommendations to the Council of Governors on the level of remuneration and allowances to be paid to the Chair and the Non-Executive Directors, the Remuneration, Terms of Service and Nominations Panel shall from time to time, and at least every 3 years, consult, at the Trust's expense, with external professional advisors recognised as experts at appointments and/or remuneration to identify the proper level of remuneration and allowances to be paid to the Chair and/or the Non-Executive Directors, as recommended by the Trust Secretary and the Trust's Director of Workforce (or equivalent position).
- 1.1.7 The Remuneration, Terms of Service and Nominations Panel constituted under paragraphs 1.1.1 above may, if it considers it appropriate, be supported by appropriate advice from a human resources specialist and it may also engage an external organisation or individual recognised as expert to identify the qualifications, skills and experience required for the positions of Chair and/or Non-Executive Director to assist in the process generally.
- 1.1.8 The Remuneration, Terms of Service and Nominations Panel may invite an independent assessor to attend its meetings in an advisory capacity only.

- 1.1.9 The Council of Governors will not consider nominations for membership of the Board of Directors or determine the remuneration or allowances other than those made by the Remuneration, Terms of Service and Nominations Panel.

## **2 Criteria for suspension and removal of Non-Executive Directors and the Chair**

### **2.1 General criteria**

- 2.1.1 The Council of Governors, when exercising the powers of suspension or removal in accordance with paragraph 25 of this Constitution, shall have regard to the following criteria (this is not an exhaustive list and each case shall be considered on its own merits taking into account all relevant factors, including any representations made by the Non-Executive Directors or Chair in question):

- 2.1.1.1 if a Non Executive Director fails to attend 3 consecutive meetings of the Board of Directors in any Financial Year they may be removed from office unless the Council of Governors is satisfied by a 75% majority of the Council of Governors present and voting that:

2.1.1.1.1 the absence was due to a reasonable cause; and

2.1.1.1.2 the person will be able to start attending meetings of the Board of Directors again within such a period as the Council of Governors considers reasonable;

- 2.1.1.2 failure to disclose an interest in accordance with paragraph 29 of this Constitution and Standing Order 8 of the Standing Orders for the Board of Directors (Annex 7 of this Constitution);

### **2.2 Further criteria: suspensions**

- 2.2.1 Suspension is a temporary measure which shall be used to prevent a Non-Executive Director or Chair from exercising his or her functions pending the completion of an investigation or removal from office under paragraph 25 of the Constitution. The Council of Governors, when exercising the power of suspension in accordance with paragraph 25 of the Constitution, shall have regard to the following criteria (this is not an exhaustive list and each case shall be considered on its own merits taking into account all relevant factors, including any representations made by the Non-Executive Director or the Chair in question);

- 2.2.1.1 the criteria referred to in paragraph 2.1.1 above;



- 2.2.1.2 where the Trust or the Council of Governors is in receipt of information which gives cause for concern about a Non-Executive Director or Chair continuing to hold office;
  - 2.2.1.3 where there is sufficient evidence to warrant removal from office under paragraph 25 of the Constitution, but before the removal takes effect; or
  - 2.2.1.4 where there is an allegation of fraud or other impropriety or other alleged misconduct that would require the Non-Executive Director or Chair to be suspended in order to protect patients, staff or public funds, or which is likely to impair the work of the Trust.
- 2.3 During any general meeting of the Council of Governors at which the Chair may be suspended or removed, the Deputy Chair shall preside, or if the Deputy Chair is absent from the meeting or is absent temporarily on the grounds of a declared conflict of interest, another Non-Executive Director, as shall be appointed by the Council of Governors, shall preside.
- 2.4 The Governors sponsoring the resolution to either suspend or remove the Chair or a Non-Executive Director shall provide written reasons to the Trust Secretary in support of the resolution. The Chair or other Non-Executive Director in question shall be given the opportunity to respond to such reasons at the meeting of the Council of Governors that is to consider and determine the resolution. If the individual in question fails to attend the meeting without due cause, the meeting may proceed in their absence. The decision to proceed in these circumstances will be at the sole discretion of the person chairing the meeting in question.
- 2.5 In making any decision to remove either the Chair or a Non-Executive Director the Council of Governors shall:
- 2.5.1 take into account the results (if any) of any appraisals concerning the Chair or (as the case may be) the Non-Executive Director in question;
  - 2.5.2 have regard to the criteria set out in section 2.1.above; and
  - 2.5.3 follow the relevant Trust procedures for investigating and handling concerns and complaints.
- 2.6 If any resolution to suspend or remove either the Chair or a Non-Executive Director is not approved at a meeting of the Council of Governors no further resolution can be put forward to remove such Non-Executive Directors, or the Chair which is based on the same reasons within twelve calendar months of the meeting of the Council of Governors at which the recommendation was considered.

## **Appendix 2**

### **Further Provisions: Indemnity**

#### **1 Indemnity**

- 1.1 The Council of Governors, the Board of Directors and the Trust Secretary who act honestly and in good faith will not have to meet out of their personal resources any personal civil liability which is incurred in the execution or purported execution of their functions save where they have acted recklessly. Any costs arising in this way will be met by the Trust.
- 1.2 The Trust may purchase and maintain insurance against this liability for its own benefit and for the benefit of the Council of Governors, the Board of Directors and the Trust Secretary.
- 1.3 The Trust may take out insurance either through the NHS Litigation Authority or otherwise in respect of Directors and officers liability, including liability arising by reason of the Trust acting as a corporate trustee of a charity.

## **Appendix 3**

### **Further Provisions: Dispute Resolution Procedures**

#### **1 Dispute Resolution Procedures**

##### **1.1 Membership disputes**

- 1.1.1 In the event of any dispute about the entitlement to membership, the dispute shall be referred to the Trust Secretary who shall make a determination on the point in issue. If the Member or applicant (as the case may be) is aggrieved at the decision of the Trust Secretary they may appeal in writing within 14 days of the Trust Secretary's decision to a panel of the Council of Governors formally constituted to consider the appeal and make an appropriate recommendation to the Council of Governors, The decision of the Council of Governors shall be final.

##### **1.2 Other disputes**

- 1.2.1 Any dispute in relation to this Constitution shall be referred to the Chair who shall make a determination on the point in issue. If the Member or complainant (as the case may be) is aggrieved at the decision of the Chair they may appeal in writing within 14 days of the Chair's decision to the Board of Directors whose decision shall, subject to the provisions of paragraphs 1.2.2 and 1.2.3 below, be final.
- 1.2.2 In the event of a dispute being referred to the Chair under Standing Order 4.13.10 of Annex 6 of this Constitution and a determination being made in accordance with the procedure set out in paragraph 1.2.1 above, if the Governor in question is aggrieved at the decision of the Board of Directors they may apply in writing within 7 days to the Board of Directors for the decision to be referred to an independent assessor (to be agreed by the Governor in question and the Board of Directors). The independent assessor will then consider the evidence and conclude whether the proposed removal is reasonable or otherwise.
- 1.2.3 On receipt of an application under paragraph 1.2.2 above the Board of Directors and the applicant Governor will co-operate in good faith to agree on the appointment of the independent assessor. The independent assessor's decision will be binding and conclusive on the parties.

##### **1.3 Disputes between the Council of Governors and the Board of Directors**

- 1.3.1 In the event of dispute between the Council of Governors and the Board of Directors:

- 1.3.1.1 in the first instance the Chair on the advice of the Trust Secretary, and such other advice as the Chair may see fit to obtain, shall seek to resolve the dispute;
- 1.3.1.2 if the Chair is unable to resolve the dispute then a joint committee comprising equal numbers of Directors and Governors shall be convened to consider the circumstances and to make recommendations to the Council of Governors and the Board of Directors with a view to resolving the dispute (the joint Committee will be called the "Special Committee" and will meet at the call of the Chair);
- 1.3.1.3 if the recommendations (if any) of the Special Committee are unsuccessful in resolving the dispute, the Chair may refer the dispute back to the Board of Directors who shall make the final decision.

## **Appendix 4**

### **Further Provisions: Notices**

#### **1 Notices**

- 1.1 Save where a specific provision of the Constitution otherwise requires or permits; any notice required by this Constitution to be given shall be given in writing or shall be given using electronic communications to an address for the time being notified for that purpose.
- 1.2 "electronic communication" shall have the meaning ascribed to it in statute.
- 1.3 Proof that an envelope containing a notice was properly addressed, prepaid and posted shall be conclusive evidence that the notice was given. A notice served pursuant to paragraph 1.1 above shall be deemed to have been received 48 hours after the envelope containing it was posted, or in the case of a notice contained in an electronic communication, 48 hours after it was sent.

## **Appendix 5**

### **Membership**

#### **1 Disqualification from membership of the Trust**

- 1.1 A person may not become or continue as a Member of the Trust if:
- 1.1.1 they are under 16 years of age at the date of the application or invitation to become a Member (as the case may be);
  - 1.1.2 It comes to the attention of the Trust that they have been convicted by the courts of aggressive or violent behaviour (such as verbal assault, physical assault, violence or harassment) at any NHS hospital, NHS premises or NHS establishment against any of the Applicant Trust's or (as the case may be) the Trust's employees or other persons who exercise functions for the purposes of the Trust whether or not in circumstances leading to their removal or exclusion from any NHS hospital, premises or establishment;
  - 1.1.3 they have been removed as a member from another NHS foundation trust;
  - 1.1.4 they fail or cease to fulfil the criteria for membership of the Public Constituency or the Staff Constituency; or
  - 1.1.5 they have been dismissed (otherwise than by reason of redundancy) from a position of employment with the Trust.
- 1.2 Where the Trust is on notice that a Member may be disqualified from membership, or may no longer be eligible to be a Member, or it appears to the Trust Secretary that a Member no longer wishes to be a Member, the Trust Secretary shall give the Member 14 days written notice to show cause why their name should not be removed from the Trust's register of Members. On receipt of any such information supplied by the Member, the Trust Secretary may, if they consider it appropriate, remove the Member from the Trust's register of Members. In the event of any dispute about entitlement to membership, the dispute shall be resolved in accordance with the procedure set out in Appendix 3 of this Annex 8.
- 1.3 All Members of the Trust shall be under a duty to notify the Trust Secretary of any change in their particulars which may affect their entitlement as a Member.

#### **2 Expulsion from membership of the Trust**

- 2.1 A Member may be expelled by a resolution approved by not less than two-thirds of the members of the Council of Governors present and voting at a meeting of the Council of Governors. The following procedure is to be adopted:

- 2.1.1 Any Member may complain to the Trust Secretary that another Member has acted in a way detrimental to or contrary to the interests of the Trust, or is otherwise disqualified as set out in paragraph 1 above.
- 2.1.2 Subject to paragraphs 2.2 to 2.6 below, if a complaint is made, the Council of Governors and the Board of Directors will consider the complaint, having taken such steps as it (or they) consider appropriate, to ensure that each Member's point of view is heard and may either:
  - 2.1.2.1 dismiss the complaint and take no further action; or
  - 2.1.2.2 arrange for a resolution to expel the Member complained of to be considered at the next meeting of the Council of Governors.
- 2.2 If a resolution to expel a Member is to be considered at a meeting of the Council of Governors pursuant to paragraph 2.1.2.2 above, details of the complaint must be sent to the Member complained of not less than one calendar month before the meeting with an invitation to answer the complaint and to attend the meeting.
- 2.3 At the meeting referred to in paragraph 2.2 above, the Council of Governors will consider the evidence and any representations made in support of the complaint and such other evidence and any representations made by the Member making the complaint which is placed before them.
- 2.4 If the Member complained of fails to attend the meeting mentioned in paragraph 2.2 above without due cause, the meeting may proceed in their absence. The decision to proceed in these circumstances will be at the sole discretion of the person chairing the meeting in question.
- 2.5 A person expelled from membership under the provisions of paragraphs 2.1 to 2.4 above will cease to be a Member upon the declaration by the person chairing the meeting that the resolution to expel them is carried.
- 2.6 No person who has been expelled from membership pursuant to the provisions of paragraphs 2.1 to 2.5 above is to be re-admitted as a Member except by a resolution of the Council of Governors carried by a vote of two-thirds of the Council of Governors present and voting at a general meeting of the Council of Governors.

### **3 Termination of Membership**

- 3.1 A Member shall cease to be a Member on:
  - 3.1.1 death; or
  - 3.1.2 resignation by notice in writing to the Trust Secretary; or
  - 3.1.3 being disqualified pursuant to paragraph 1 above, or being expelled pursuant to paragraph 2 above.

## **Appendix 6**

### **Members' Meetings**

#### **1 Members' Meetings**

- 1.1 Notwithstanding any provisions contained in this Constitution regarding meetings of the Council of Governors (including the Annual Members' Meeting) and the Board of Directors, the Board of Directors may resolve to call special meetings of the Trust for the benefit of its Members (a "Special Members' Meeting") for the purpose of providing Members with information and to offer Members an opportunity to provide feedback to the Trust.
- 1.2 Special Members' Meetings are open to all Members of the Trust, Governors, Directors and representatives of the Auditor and any external consultant, but not to members of the general public or representatives of the press unless the Board of Directors determines otherwise.
- 1.3 Notwithstanding the provisions of paragraph 1.2 above, the Board of Directors may invite representatives of the press and any experts or advisors whose attendance they consider to be in the best interests of the Trust to attend a Special Members' Meeting.
- 1.4 All Special Members' Meetings are to be convened by the Trust Secretary by order of the Board of Directors and the following provisions of paragraphs 1.5 and 1.6 below shall apply for these purposes.
- 1.5 Notice of a Special Members' Meeting is to be given to all Members, Governors, Directors, the Auditor and any external consultant personally, or:
  - 1.5.1 And by notice prominently displayed at the Trust's Headquarters;
  - 1.5.2 by notice on the Trust's website, at least 14 Clear Days before the date of the meeting.
- 1.6 The notice referred to in paragraph 1.5 above must:
  - 1.6.1 state the time, date and place of the meeting; and
  - 1.6.2 indicate the business to be dealt with at the meeting.
- 1.7 No business may be conducted at a Special Members' Meeting unless a quorum is present. The quorum for Special Members' Meetings is the Chair (or Deputy Chair) and at least one Member from each of the Staff Constituency and the Public Constituencies.
- 1.8 It is the responsibility of the person chairing the meeting to ensure that:
  - 1.8.1 any issues to be decided upon at the meeting are clearly explained; and



- 1.8.2 sufficient information is provided to those in attendance to enable rational discussion to take place.
- 1.9 The Chair, or in his absence the Deputy Chair, shall act as Chair at all Special Members' Meetings. If neither the Chair nor the Deputy Chair is present, the members of the Board of Directors present shall elect one of their number to chair the meeting. If there is only one Director present and willing to act, then he/she shall chair the meeting.
- 1.10 If at any Special Members' Meeting there is no quorum present within 30 minutes of the time fixed for the start of the meeting, the meeting shall stand adjourned to such date, time and place as the person chairing the meeting shall in his/her absolute discretion determine, and the Trust Secretary shall give or shall procure the giving of notice to all Members, Governors, Directors, the Auditor and any external consultant of the date, time and place of that adjourned meeting. Notwithstanding the provisions of paragraph 1.7 above upon reconvening, those present shall constitute a quorum.
- 1.11 Any resolution put to the vote at a Special Members' Meeting shall be decided upon by a poll.
- 1.12 Every Member present and every Member who has voted by post or using electronic communications is to have one vote. In the case of an equality of votes the person chairing the meeting is to have a second or casting vote.
- 1.13 The result of any vote will be declared by the person chairing the meeting and the Trust Secretary shall cause the result to be entered in the minute book. The minute book will be conclusive evidence of the result of that vote.
- 1.14 In this Appendix 6 "electronic communications" shall have the meaning ascribed to it in the Electronic Communications Act 2000 or any statutory modification or re-enactment thereof.

## **Appendix 7**

### **The Role and Responsibilities of the Trust Secretary**

- 1** The Trust shall have a Secretary who may not be a Governor or Director of the Trust.
- 2** Notwithstanding the specific functions of the Trust Secretary, as set out in this Constitution, the Trust Secretary (or their nominee as appropriate) will be expected inter alia to:
  - 2.1 ensure good information flows within the Board of Directors and its committees and between senior management and the Council of Governors, and Members;
  - 2.2 ensure that the procedures of the Board of Directors (as set out in this Constitution and the Standing Orders for the Board of Directors) are complied with;
  - 2.3 ensure that the procedures of the Council of Governors (as set out in this Constitution and the Standing Orders for the Council of Governors) are complied with;
  - 2.4 advise the Board of Directors and the Council of Governors (through the Chair or the Deputy Chair, as the case may be) on all governance matters;
  - 2.5 be available to give advice and support to individual Directors and Governors and assistance with professional development;
  - 2.6 be available to give advice and guidance to Directors and Governors on their respective statutory duties and corporate governance-related matters;
  - 2.7 attend as necessary all meetings of the Board of Directors and Council of Governors including their committees, sub-committees panels and joint committees, and to keep accurate minutes of these meetings; and
  - 2.8 attend Members' meetings and keep accurate minutes of these meetings.