

YEOVIL DISTRICT HOSPITAL NHS FOUNDATION TRUST
(A PUBLIC BENEFIT CORPORATION)
CONSTITUTION

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YEOVIL DISTRICT HOSPITAL NHS FOUNDATION TRUST (A PUBLIC BENEFIT CORPORATION) CONSTITUTION

INTRODUCTION

An NHS Foundation Trust is a Public Benefit Corporation which is authorised under the National Health Service Act 2006 to provide goods and services for the purposes of the health service in England. A Public Benefit Corporation is a body corporate which is constituted in accordance with Schedule 7 of the 2006 Act. The Constitution provides, inter alia, for the Trust to have Members, Governors and Directors, and determines who may be eligible for membership and how Governors and Directors are appointed and defines their respective roles and powers. Further, Members of the Trust may vote in elections to, and stand for election for, the membership Council, as provided in this Constitution.

1 DEFINITIONS AND INTERPRETATION

1.1 In this Constitution:

"the 2006 Act"

means the National Health Service Act 2006 (as amended);

"the 2012 Act"

means the Health and Social Care Act 2012;

"Accounting Officer"

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

"Annual Accounts"

means those accounts prepared by the Trust pursuant to paragraph 25 of Schedule 7 to the 2006 Act;

"Annual General Meeting"

has the meaning ascribed to it in paragraph 6.7 of the Constitution;

"Annual Report"

means a report prepared by the Trust pursuant to paragraph 26 of Schedule 7 to the 2006 Act;

"Applicant NHS Trust"

means the East Somerset NHS Trust which made the application to become the Trust;

"Appointed Governor"

means a Local Authority Governor, or an Other Partnership Governor;

"Area of the Trust"

means the area consisting of all the areas specified in Annex 1 as an area for a Public Constituency;

"Auditor"

means the Auditor of the Trust appointed by the Council of Governors pursuant to paragraph 13 of the Constitution;

"Audit Committee"

means a committee of the Board of Directors as established pursuant to paragraph 8.7.4 of the Constitution;

"Authorisation"

means the authorisation issued to the Trust by Monitor under section 35 of the 2006 Act;

"Board of Directors"

means the Board of Directors of the Trust as constituted in accordance with this Constitution;

"Council of Governors"

means the Council of Governors of the Trust as constituted in accordance with this Constitution;

"Chairman"

means the Chairman of the Trust;

"Chief Executive"

means the Chief Executive of the Trust;

"Constitution"

means this Constitution together with the annexes attached hereto;

"Director"

means a member of the Board of Directors and includes both Executive and Non-Executive Directors;

"Elected Governor"

means a Staff Governor or a Public Governor;

"Election Scheme"

means the election rules set out at Annex 3 of the Constitution;

"Executive Director"

means an executive member of the Board of Directors of the Trust;

"Finance Director"

means the Chief Financial and Commercial Officer of the Trust;

"Financial Year"

means:

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

"Forward Plan"

means the document prepared by the Trust pursuant to paragraph 27 of Schedule 7 to the 2006 Act;

"Governor"

means a member of the Council of Governors;

"Governor's Code of Conduct"

means the Code of Conduct for Governors of the Trust, as amended from time to time by the Council of Governors, to which all Governors must subscribe;

"Health Service Body"

[shall have the meaning ascribed to it in section 65 (1) of the 2006 Act;]¹

"Local Authority"

means the local authority that may appoint a Local Authority Governor and which is listed at paragraph 7.6.1 of the Constitution;

"Local Authority Governor"

means a member of the Council of Governors appointed pursuant to paragraph 7.6.1 by one or more Local Authority whose area includes the whole or part of the Area of the Trust;

"Member"

means a member of the Trust and the term "membership" shall be construed accordingly;

"Monitor"

means the body corporate known as Monitor, as provided by section 61 of the 2012 Act;

"Non-Executive Director"

means a non-executive member of the Board of Directors of the Trust including the Chairman;

"Officer"

means an employee of the Trust;

"Other Partnership Governor"

means a member of the Council of Governors appointed by a Partnership Organisation other than a Local Authority;

"Partnership Organisation"

means an organisation that may appoint Other Partnership Governors and which is listed at paragraph 8.2.4 of the Constitution;

"Public Constituency"

has the meaning ascribed to it in paragraph 6.2 of the Constitution;

"Public Governor"

means a member of the Council of Governors elected by the members of one of the Public Constituencies;

"Secretary"

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

¹ Section 65(1) defines 'health service body' as Strategic Health Authority, a Primary Care Trust, an NHS Trust, a Special Health Authority or an NHS foundation trust. As a result of legislative amendments, many of the bodies set out in the definition of 'health service body' at section 65(1) do not exist, resulting in quite a narrow definition for the purposes of the Constitution. The Trust may consider defining 'Health Service Body' in the Constitution by reference to the meaning given to 'NHS Body' in section 275 of the 2006 Act. The definition of 'NHS Body' in section 275 is much wider and includes, CCGs and the NHS Commissioning Board

"Sex Offenders Order"

means either:

- (a) a Sexual Offences Prevention Order made under either Section 104 or 105 of the Sexual Offences Act 2003; or
- (b) an Interim Sexual Offences Prevention Order made under Section 109 of the Sexual Offences Act 2003; or
- (c) a Risk of Sexual Harm Order made under Section 123 of the Sexual Offences Act 2003; or
- (d) the Interim Risk of Sexual Harm Order made under Section 126 of the Sexual Offences Act 2003;

"Sex Offenders Register"

means the notification requirements, set out in Part 2 of the Sexual Offences Act 2003, commonly known as the 'Sex Offenders Register';

"Staff Constituency"

has the meaning ascribed to it in paragraph 6.3 of the Constitution;

"Staff Governor"

means a member of the Council of Governors elected by the members of the Staff Constituency;

"Standing Orders for the Board of Directors"

means the standing orders referred to in Part 2 of Annex 2 of this Constitution;

"Standing Orders for the Council of Governors"

means the standing orders referred to in Part 1 of Annex 2 of this Constitution;

"Trust"

means Yeovil District Hospital NHS Foundation Trust; and

"Vice Chairman"

means a vice chairman appointed by the Board of Directors in accordance with paragraph 8.4.3 of the Constitution.

- 1.2 Unless the contrary intention appears or the context otherwise requires, words or expressions contained in this Constitution bear the same meaning as in the 2006 Act.
- 1.3 References in this Constitution to legislation include all amendments, replacements, or re-enactments made.
- 1.4 Headings are for ease of reference only and are not to affect interpretation.
- 1.5 Words importing the masculine gender only shall include the feminine gender; words importing the singular shall include the plural and vice-versa.
- 1.6 Any reference to any organisation shall include a reference to any successor in title or any organisation or entity which has taken over its functions or responsibilities.

2 NAME

2.1 The name of this Trust is to be "Yeovil District Hospital NHS Foundation Trust".

3 PRINCIPAL PURPOSE

3.1 The Trust's principal purpose is the provision of goods and services for the purposes of the health service in England.

3.2 The Trust does not fulfil its principal purpose unless, in each Financial Year, its total income from the provision of goods and services for the purposes of the health service in England is greater than its total income from the provision of goods and services for any other purposes.

3.3 The Trust may provide goods and services for any purpose related to –

3.3.1 the provision of services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness, and

3.3.2 the promotion and protection of public health.

3.4 The Trust may also carry on activities other than those mentioned in the above paragraph for the purpose of making additional income available in order better to carry on its principal purpose.

4 OTHER PURPOSES

4.1 Subject always to the provisions of the 2006 Act:

4.1.1 the purpose of the Trust is to provide goods and services for purposes related to the provision of healthcare in accordance with its statutory duties.

4.1.2 the Trust may carry out research in connection with the provision of health care and make facilities and staff available for the purposes of education, training or research carried on by others.

5 POWERS

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

5.2 In the exercise of its powers the Trust shall have regard to the core principles of the NHS and the Trust.

5.3 Where the Trust is exercising the functions of managers pursuant to Section 23 of the Mental Health Act 1983 (as amended), those functions may be exercised by any three or more persons authorised each of whom must be neither an Executive Director of the Trust, nor an employee of the Trust.

5.4 All the powers of the Trust shall be exercised by the Board of Directors on behalf of the Trust.

5.5 Any of these powers may be delegated to a committee of Directors or to an Executive Director.

6 MEMBERS

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

6.1.1 a Public Constituency; or

6.1.2 the Staff Constituency.

6.2 Public Constituency

6.2.1 Subject to paragraph 6.4 below, an individual is eligible to become a Member of a Public Constituency listed in column 1 of Annex 1 if he or she lives in the area specified for that constituency in the corresponding entry in column 2 of Annex 1, and is not eligible to become a Member of the Staff Constituency and is not a Member of another Public Constituency.

6.2.1.1 Any member of the first five public constituencies identified in column 1 of Annex 1 is eligible to have their membership transferred to the Rest of Somerset and England constituency, subject to the provisions of section 7.3.5 below.

6.2.2 An eligible individual shall become a Member upon entry to the membership register pursuant to an application by them. Subject to the Trust's approval from time to time, membership applications may be made electronically. The Secretary may require any individual to supply supporting evidence to confirm eligibility.

6.2.3 On receipt of an application for membership and subject to being satisfied that the applicant is eligible, the Secretary shall cause the applicant's name to be entered in the Trust's register of Members.

6.2.4 The minimum number of Members of each Public Constituency is to be the number set out in the third column of Annex 1.

6.2.5 Those individuals who live in an area for any Public Constituency are referred to collectively as the "Public Constituency".

6.3 Staff Constituency

6.3.1 Subject to paragraphs 6.3.2 and 6.4 below, individuals are eligible to become members of the Staff Constituency if they are employed under a contract of employment with the Trust (provided that the Non-Executive Directors of the Trust shall not be regarded as employees for this purpose);

6.3.2 An individual is only eligible to become a Member of the Staff Constituency under paragraph 6.3.1 above if they have been employed by the Trust under a contract of employment which has no fixed term or a fixed term of at least 12 months; or they have been continuously employed by the Trust under a contract of employment for at least 12 months.

6.3.3 Subject to paragraph 6.3.5 below, an individual who is eligible to become a member of the Staff Constituency will become a Member of the Staff Constituency if they apply to the Secretary to become a Member and are entered in the Trust's register of Members. Subject to the Trust's approval from time to time, membership applications to the Trust may be made electronically.

6.3.4 On receipt of an application for membership as described in paragraph 6.3.3 above and subject to being satisfied that the applicant is eligible, the

Secretary shall cause the applicant's name to be entered in the Trust's register of Members.

- 6.3.5 An individual who is eligible to become a member of the Staff Constituency under this paragraph 6.3 and who is invited by the Trust to become a member of the Staff Constituency, shall become a Member of the Trust without an application unless he informs the Trust that he does not wish to do so.
- 6.3.6 Individuals who are eligible to join both the Public Constituency and the Staff Constituency will be allocated to the Staff Constituency.
- 6.3.7 The minimum number of Members of the Staff Constituency is to be 100.
- 6.3.8 Those individuals who are eligible for membership of the Trust pursuant to paragraph 6.3.1 above are collectively known as the "Staff Constituency".

6.4 **Disqualification for membership²**

- 6.4.1 A person may not become or continue as a Member of the Trust if:
 - 6.4.1.1 they are under 14 years of age as at the date of his application or invitation to become a Member (as the case may be);
- 6.4.2 A person may not become or remain a member of a Public Constituency if they are eligible to be a member of the Staff Constituency.
- 6.4.3 A person may not be a Member of more than one constituency.
- 6.4.4 Where the Trust is on notice that a Member may be disqualified from membership, or may no longer be eligible to be a Member, it shall give the Member 14 days' written notice to show cause why his name should not be removed from the register of Members. On receipt of any such information supplied by the Member, the Secretary may, if he considers it appropriate, remove the Member from the register of Members. In the event of any dispute the Secretary shall refer the matter to the Council of Governors to determine.
- 6.4.5 All Members of the Trust shall be under a duty to notify the Secretary of any change in their particulars which may affect their entitlement as a Member.

6.5 **Termination of membership**

- 6.5.1 A Member shall cease to be a Member on:
 - 6.5.1.1 death;
 - 6.5.1.2 resignation by notice in writing to the Secretary;
 - 6.5.1.3 ceasing to fulfil the requirements of paragraph 6.2 or 6.3 above as the case may be; or
 - 6.5.1.4 being disqualified pursuant to paragraph 6.4 above.

² Please note that the highlighted provisions are non-statutory disqualification triggers. The Trust may remove these from the Constitution.

6.6 Voting at Governor elections

6.6.1 A Member of the Trust may not vote at an election for a Public Governor unless he has made a declaration in the specified form setting out the particulars of his qualification to vote as a Member of the constituency for which the election is being held. It is an offence to knowingly or recklessly make such a declaration which is false in a material particular in respect of elections for a Public Constituency. The forms and period are specified in Annex 3.

6.7 Annual members' meeting

6.7.1 The Trust shall hold an annual meeting of its members ("**Annual General Meeting**"). The Annual General Meeting shall be open to the members of the public.

6.7.2 At least one member of the Board of Directors must attend the Annual General Meeting and present the following documents to the Members at the meeting:

6.7.2.1 the Annual Accounts;

6.7.2.2 any report of the Auditor on them; and

6.7.2.3 the Annual Report.

6.7.3 The Trust may combine the Annual General Meeting with the meeting of the Council of Governors held in accordance with paragraph 7.15.3 below.

7 COUNCIL OF GOVERNORS

7.1 The Trust is to have a Council of Governors, which shall comprise both Elected Governors and Appointed Governors. It is to be chaired by the Chairman of the Trust and it is to consist of Public Governors, Staff Governors, Local Authority Governors, and Other Partnership Governors.

7.2 Council of Governors – Composition

7.2.1 The Governors shall comprise:

7.2.1.1 13 Public Governors;

7.2.1.2 5 Staff Governors;

7.2.1.3 3 Local Authority Governors; and

7.2.1.4 2 Other Partnership Governors.

7.2.2 The members of the Council of Governors, other than the Appointed Governors, 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 paragraph 7.2.1 above.

7.2.3 The aggregate number of Public Governors is to be more than half of the total membership of the Council of Governors.

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

7.2.4.1 NHS Somerset Clinical Commissioning Group; and

7.2.4.2 NHS Dorset Clinical Commissioning Group.

7.3 Council of Governors – election of Governors

7.3.1 Elections for elected members of the Council of Governors shall be conducted in accordance with the Election Scheme using the first past the post system. Thus, where appropriate, the alternative rules marked “FPP” (First Past the Post) should be used.

7.3.2 The Election Scheme as published from time to time by the Department of Health form part of this Constitution. The Election Scheme current at the date of the Trust's Authorisation are attached at Annex 3.

7.3.3 A subsequent variation of the Election Scheme by the Department of Health shall not constitute a variation to the terms of this Constitution for the purposes of paragraph 20 below of the Constitution.

7.3.4 An election, if contested, shall be by secret ballot.

7.3.5 7.3.5.1 Candidates who were unsuccessful in the most recent contested election(s) for other public constituencies may choose to transfer their membership to the Rest of Somerset and England constituency on the understanding that they will stand in the next election held in that constituency.

7.3.5.1 More than one such unsuccessful candidate may have their membership transferred.

7.3.5.2 Members who have their membership transferred on this basis may not have their membership transferred back to their original constituency.

7.3.5.3 If one or more transfers take place, the Trust shall hold a further election process for the Rest of Somerset and England constituency as soon as possible.

7.3.5.4 The purpose of these provisions is to secure representation for the members of the Rest of Somerset and England constituency and that consideration must determine the application of these provisions.

7.4 Public Governors

7.4.1 There shall be 13 Public Governors. Each Public Constituency shall elect the number of Governors set against it in Column 4 of Annex 1.

7.4.2 Members of each Public Constituency may elect any of their number who is eligible to be a Public Governor.

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

7.4.4 A person may not vote at an election or stand for election to the Council of Governors as a Public Governor unless, within the period specified in Annex 3, he has made a declaration in the specified form setting out the particulars of his qualification to vote as a member of the Public Constituency for which the election is being held and is not prevented from being a member of the Council of Governors by paragraph 7.10 (disqualification) below. It is an offence to knowingly or recklessly make a declaration which is false in a material particular.

7.4.5 Paragraph 7.3 above shall apply to all elections for Public Governors.

7.5 **Staff Governors**

7.5.1 There shall be 5 Staff Governors.

7.5.2 Members of the Staff Constituency may elect any of the members of the Staff Constituency who are eligible to be a Staff Governor.

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

7.5.4 Paragraph 7.3 above shall apply to all elections for Staff Governors.

7.6 **Local Authority Governors**

7.6.1 Somerset County Council, South Somerset District Council and Dorset County Council may each appoint one Local Authority Governor by notice in writing signed by the leader of each respective Local Authority or a member of that Local Authority's executive, and delivered to the Secretary.

7.6.2 Notwithstanding the provisions of paragraph 7.6.1 above, the Chairman may veto the appointment of a Local Authority Governor by serving notice in writing on the relevant Local Authority where he believes that the appointment in question is unreasonable, irrational, or otherwise inappropriate

7.7 **Other Partnership Governors**

7.7.1 Each Partnership Organisation as specified in paragraph 7.2.4 above may appoint one Other Partnership Governor.

7.7.2 The Trust and the other Partnership Organisations may agree a process for the selection and approval of the nominee.

7.7.3 Notwithstanding the provisions of paragraph 7.7.1 above, the Chairman may veto the appointment of an Other Partnership Governor by serving notice in writing on the relevant Partnership Organisation where he believes that the appointment in question is unreasonable, irrational, or otherwise inappropriate.

7.8 **Terms of office**

7.8.1 Elected Governors:

7.8.1.1 may hold office for a period of up to three years;

7.8.1.2 shall be eligible for re-election at the end of their term of office;

- 7.8.1.3 may hold office for a maximum of up to 9 years; and
- 7.8.1.4 shall cease to hold office if they cease to be a member of the constituency by which they were elected.

7.8.2 Appointed Governors:

- 7.8.2.1 may hold office for a period of up to 3 years;
- 7.8.2.2 shall be eligible for reappointment at the end of their term of office;
- 7.8.2.3 may hold office for a maximum of up to 9 years;
- 7.8.2.4 shall cease to hold office if the appointing organisation withdraws its sponsorship of them by notice in writing to the Trust; and
- 7.8.2.5 shall cease to hold office if they cease to be employed by or associated with the appointing organisation.

7.9 Termination of tenure

7.9.1 A Governor may resign from that office at any time during the term of that office by giving notice in writing to the Secretary.

7.9.2 If a Governor fails to attend 3 consecutive meetings of the Council of Governors, in any 12 months, his tenure of office is to be immediately terminated unless the other Governors are satisfied by a three quarters majority of the number of Governors present and voting at the relevant meeting that:

- 7.9.2.1 the absence was due to a reasonable cause; and
- 7.9.2.2 he will be able to start attending meetings of the Council of Governors again within such a period as they consider reasonable.

7.9.3 If a Governor is considered to have acted in a manner inconsistent with:

- 7.9.3.1 the Authorisation; or
- 7.9.3.2 the Standing Orders for the Council of Governors; or
- 7.9.3.3 the Governor's Code of Conduct; or
- 7.9.3.4 he has failed to declare an interest as required by this Constitution or the Trust's Standing Orders for the Council of Governors or he has spoken or voted at a meeting on a matter in which he has 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

he is adjudged to have so acted by a majority of not less than 75% of the members of the Council of Governors present and voting at a meeting of the Council of Governors then the Governor shall immediately vacate his office.

7.9.4 The Standing Orders for the Council of Governors shall provide for the process to be adopted in cases relating to the termination of a Governor's tenure.

7.9.5 A Governor whose office is terminated under this paragraph 7.9 shall not be eligible to stand for re-election or re-appointment to the Council of Governors for a period of three years from the date of his removal from office.

7.10 Disqualification³

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

7.10.1.1 in the case of an Elected Governor, he ceases to be a Member of the constituency he represents;

7.10.1.2 in the case of an Appointed Governor, the appointing organisation withdraw their sponsorship of him;

7.10.1.3 he has been adjudged bankrupt or whose estate has been sequestrated and in either case he has not been discharged;

7.10.1.4 he is the subject of a moratorium period under a debt relief order (under Part 7A of the Insolvency Act 1986);

7.10.1.5 he has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it;

7.10.1.6 he has within the preceding five years been convicted in the British Islands of any offence, and a sentence of imprisonment (whether suspended or not) for a period of three months or more (without the option of a fine) was imposed on him;

7.10.1.7 he is under 18 years of age.

7.10.2 Where a person has been elected or appointed to be a Governor and he becomes disqualified or removed from office under paragraph 7.10.1 above, he shall notify the Secretary in writing of such disqualification. If it comes to the notice of the Secretary at the time of his taking office or later that the Governor is so disqualified, the Secretary shall immediately declare that the person in question is disqualified and notify him in writing to that effect as soon as is practicable. Upon despatch of any such notification, that person's tenure of office, if any, shall be terminated and he shall cease to act as a Governor, and the Secretary shall cause his name to be removed from the Register of Governors.

7.11 Vacancies

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

7.11.2 Where a vacancy arises amongst the Elected Governors, the Council of Governors shall either:

³ Please note that the highlighted provisions are non-statutory disqualification triggers. The Trust may remove these from the Constitution.

- 7.11.2.1 to co-opt the next highest polling candidate for that seat at the most recent election, or where relevant, by-election, who is willing to take office, to fill the seat until the next annual election, at which time the seat will fall vacant and be subject to election for any unexpired period of the term of office; or
 - 7.11.2.2 if there is no such candidate as described in paragraph 7.11.2.1 above, or there is a candidate but he is unwilling or unable to take office to fill the seat, leave the seat vacant until the next scheduled elections are held, provided that the next scheduled elections are due to be held in the next four months; or
 - 7.11.2.3 if the next scheduled elections are not due to be held in the next four months, call a by-election within three months to fill the seat for the remainder of the unexpired term of office.
- 7.11.3 Where a seat falls vacant, any unexpired term of office referred to in paragraph 7.11.2 above shall be deemed to end on 31 May.
- 7.11.4 Where the vacancy arises amongst the Appointed Governors, the Trust will request that the relevant appointing organisation appoints a replacement Governor within 30 days to hold office for the remainder of the term of office.
- 7.11.5 The validity of any act of the Council of Governors is not affected by any vacancy among the Governors or by any defect in the appointment of any Governor.

7.12 Roles and responsibilities of Governors

- 7.12.1 The roles and responsibilities of the Governors at a general meeting of the Council of Governors are:
- 7.12.1.1 subject to paragraph 8.4 below, to appoint or remove the Chairman and the other Non-Executive Directors. The removal of a Non-Executive Director requires the approval of three-quarters of the members of the Council of Governors;
 - 7.12.1.2 to decide the remuneration and allowances, and the other terms and conditions of office, of the Non-Executive Directors;
 - 7.12.1.3 to appoint or remove the Trust's Auditor;
 - 7.12.1.4 to be presented with the Annual Accounts, any report of the Auditor on them and the Annual Report;
 - 7.12.1.5 to consider disputes as to membership as may be referred to it; and
 - 7.12.1.6 to consider resolutions to remove a Governor pursuant to clause 7.9.3.
- 7.12.2 The roles and responsibilities of the Governors at a general meeting of the Council of Governors or otherwise are:

- 7.12.2.1 to hold the Non-Executive Directors individually and collectively to account for the performance of the Board of Directors;
 - 7.12.2.2 to represent the interests of the Members of the Trust as a whole and the interest of the public;
 - 7.12.2.3 to approve (by a majority of the Council of Governors present and voting at a meeting of the Council of Governors) 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;
 - 7.12.2.4 to give the views of the Council of Governors to the Board of Directors for the purposes of the preparation (by the Directors) of the Forward Plan in respect of each Financial Year to be given to the Monitor;
 - 7.12.2.5 to consider the Annual Accounts, any report of the Auditor on them and the Annual Report; and
 - 7.12.2.6 to respond as appropriate when consulted by the Board of Directors.
- 7.12.3 The Governors also have the specific role and function of developing membership and representing the interests of the Members and holding the Board of Directors to account in relation to the Trust's performance.
- 7.12.4 Notwithstanding the provisions of paragraph 7.12.1 and 7.12.2, the Governors may exercise other functions at the request of the Board of Directors.
- 7.12.5 The Trust must take steps to secure that the Governors are equipped with the skills and knowledge they require in their capacity as such.

7.13 Referral to the Panel

- 7.13.1 In this paragraph, the "Panel" means a panel of persons appointed by Monitor to which a Governor of the Trust may refer a question as to whether the Trust has failed or is failing:
- 7.13.1.1 to act in accordance with this Constitution; or
 - 7.13.1.2 to act in accordance with provision made by or under Chapter 5 of the 2006 Act.
- 7.13.2 A Governor may refer a question to the Panel only if more than half of the members of the Council of Governors present and voting at a meeting of the Council of Governors approve the referral.

7.14 Remuneration and Expenses

- 7.14.1 Governors are not to receive remuneration, provided that this shall not prevent the remuneration of Governors by their employer.
- 7.14.2 The Trust may pay travelling and other expenses to Governors at rates determined by the Trust.

7.15 Meetings

- 7.15.1 At any meeting of the Council of Governors:
- 7.15.1.1 the Chairman of the Trust (i.e. the Chairman of the Board of Directors appointed in accordance with paragraph 8.4 below), if present, shall preside; or
 - 7.15.1.2 if the Chairman is absent from the meeting or is absent temporarily on the grounds of a declared conflict of interest, the Vice Chairman appointed by the Board of Directors in accordance with paragraph 8.4 below shall preside; or
 - 7.15.1.3 if the Vice Chairman is absent from the meeting or is absent temporarily on the grounds of a declared conflict of interest, a Governor as shall be appointed by the Council of Governors (either generally or for that specific meeting) shall preside, and whoever is chairman of the meeting of the Council of Governors shall in the case of an equality of votes on any question or proposal have the casting vote.
- 7.15.2 Meetings of the Council of Governors are to be open to members of the public, but the public may be excluded from all or part of any meeting by resolution of the Council of Governors on the grounds that publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted or for other special reasons stated in the resolution, and arising from the nature of the business or of the proceedings.
- 7.15.3 The Council of Governors is to meet at least four times per Financial Year, including an annual meeting no later than 31 October in each year apart from the first year, when the Council of Governors are to receive and consider the Annual Accounts, any report of the Auditor on them, and the Annual Report.
- 7.15.4 Not less than 8 Governors may by notice in writing to the Secretary requisition an extraordinary meeting of the Council of Governors and on receipt of such notice the Secretary shall cause such a meeting to be called within 28 days of receipt of the notice.
- 7.15.5 The Council of Governors is to adopt standing orders for its practice and procedure, in particular for its procedure at meetings (including general meetings), but these shall be in accordance with Annex 2 Part 1.
- 7.15.6 A Governor elected to the Council of Governors by the Public Constituency may not vote at a meeting of the Council of Governors unless, within 7 days prior to the commencement of the meeting he has made a declaration in the form specified that he is a Member of the Public Constituency which elected him or the Staff Constituency as the case may be and is not prevented from being a member of the Council of Governors by paragraph 8 of Schedule 7 to the 2006 Act or under this Constitution.
- 7.15.7 The form referred to in paragraph 7.15.5 above is set out in Annex 2 Part 1.
- 7.15.8 For the purposes of obtaining information about the Trust's performance of its functions or the Directors' performance of their duties (and deciding whether to propose a vote on the Trust's or Director's performance), the Council of Governors

may, upon giving reasonable notice, require one or more of the Directors to attend a meeting of the Council of Governors.

7.16 Committees and sub-committees

- 7.16.1 The Council of Governors may appoint committees consisting wholly or partly of its members to assist it in carrying out its functions. A committee appointed under this paragraph may appoint a sub-committee.
- 7.16.2 The Council of Governors may appoint members to serve on joint committees with the Board of Directors or committees thereof.
- 7.16.3 These committees or sub-committees may call upon outside advisers to help them in their tasks provided that the financial and 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 paragraph 19 below of this Constitution (Dispute Resolution Procedure).

7.17 Conflicts of interest

- 7.17.1 If a Governor has a pecuniary interest, whether direct or indirect, or any material non financial interest in any contract, proposed contract or other matter which is under consideration by the Council of Governors, he shall disclose that to the rest of the Council of Governors as soon as he is aware of it.
- 7.17.2 The Council of Governors shall adopt standing orders specifying the arrangements for excluding Governors from discussion or consideration of the contract or other matter, as appropriate. In determining the materiality of any interest, the Trust shall comply with any guidance or best practice advice issued by Monitor.

8 BOARD OF DIRECTORS

- 8.1 The Trust is to have a Board of Directors. It is to consist of the Chairman, Executive Directors and Non-Executive Directors.
- 8.2 The Board of Directors is to include:
 - 8.2.1 the following Non-Executive Directors:
 - 8.2.1.1 the Chairman; and
 - 8.2.1.2 a maximum of 6 other Non-Executive Directors;
 - 8.2.2 the following Executive Directors:
 - 8.2.2.1 a Chief Executive who shall be the Accounting Officer;
 - 8.2.2.2 a Finance Director; and
 - 8.2.2.3 a maximum of 4 other Executive Directors who must include a registered medical practitioner (within the meaning of the Medical Act 1983) or registered dental practitioner (within the meaning of the Dentists Act 1984), and a registered nurse or registered midwife (within

the meanings of the Nursing and Midwifery Order (SI2002/253)).

8.2.3 The post of an Executive Director may be held by 2 individuals on a job-share basis (the executive positions of registered medical practitioner/registered dental practitioner and nurse/midwife cannot be shared between the two professions), but where such an arrangement is in force, the 2 individuals may only exercise 1 vote between them at any meeting of the Board of Directors.

8.2.4 Subject to the provisions of paragraphs 8.2.1 and 8.2.2 above, the Board of Directors shall determine any change in the number of Directors, provided that any change in the number of Directors is within the range set out in those paragraphs.

8.3 Only a member of a Public Constituency is eligible for appointment as Non-Executive Director save that this shall not apply to the Chairman and Non-Executive Directors formerly holding office in the Applicant NHS Trust appointed under 8.4.1 below.

8.4 **Appointment of Chairman and Non-Executive Directors**

8.4.1 The Council of Governors shall appoint as the initial Chairman and Non-Executive Directors of the Trust, the chairman and Non-Executive directors of the Applicant NHS Trust unless they notify the Council of Governors that they do not wish to be appointed.

8.4.2 The Council of Governors shall adopt a procedure for appointing Non-Executive directors including the Chairman, which shall provide for the process to be open fair and in accordance with such guidance and/or best practice advice as may be issued by Monitor.

8.4.3 The Board of Directors shall appoint one of the Non-Executive Directors as Vice Chairman.

8.4.4 The validity of any act of the Trust is not affected by any vacancy among the Directors or by any defect in the appointment of any Director.

8.5 **Terms of office**

8.5.1 The Chairman and the Non-Executive Directors are to be appointed for a period of office in accordance with the terms and conditions of office decided by the Council of Governors at a general meeting of the Council of Governors.

8.5.2 The initial Chairman and the initial Non-Executive Directors are to be appointed for the unexpired period of their respective terms of office as chairman or (as the case may be) non-executive director of the Applicant NHS Trust or 12 months whichever is the longer.

8.5.3 The Executive Director, including the Chief Executive (and Accounting Officer) and the Finance Director shall hold office for a period in accordance with the terms and conditions of office decided by the relevant committee of Non-Executive Directors.

8.6 Disqualification⁴

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

8.6.1.1 he has been adjudged bankrupt or his estate has been sequestrated and in either case he has not been discharged;

8.6.1.2 is the subject of a moratorium period under a debt relief order (under Part 7A of the Insolvency Act 1986);

8.6.1.3 he has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it;

8.6.1.4 he has within the preceding five years been convicted in the British Islands of any offence and a sentence of imprisonment (whether suspended or not) for a period of three months or more (without the option of a fine) was imposed on him;

8.6.1.5 in the case of a Non-Executive Director, he no longer satisfies paragraph 8.3 above;

8.7 Roles and responsibilities

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

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

8.7.3 Any of those powers may be delegated to a committee consisting of Directors or to an Executive Director.

8.7.4 A committee of Non-Executive Directors is established as an Audit Committee to monitor, review and carry out other such functions in relation to the Auditor as appropriate.

8.7.5 It is for the Chairman and the Non-Executive Directors to appoint (subject to the approval of a majority of the members of the Council of Governors present and voting at a meeting of the Council of Governors) or remove the Chief Executive. The initial Chief Executive is to be the Chief Executive of the Applicant NHS Trust if he wishes to be appointed.

8.7.6 It is for a committee consisting of the Chairman, the Chief Executive and the Non-Executive Directors to appoint or remove the Executive Directors.

8.7.7 The Trust is to establish a committee of Non-Executive Directors to decide the remuneration, and the other terms and conditions of office of the Executive Directors.

⁴ Please note that the highlighted provisions are non-statutory disqualification triggers. The Trust may remove these from the Constitution.

- 8.7.8 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.
- 8.7.9 The Directors are to present to the Council of Governors at a general meeting of the Council of Governors, no later than 31 October in each year, the Annual Accounts, any report of the Auditor on them, and the Annual Report.
- 8.7.10 The Board of Directors may establish committees to advise the Council of Governors and the Board of Directors on issues relating to specific sub-areas of the Area of the Trust.

9 MEETINGS OF DIRECTORS

- 9.1 The Board of Directors is to adopt Standing Orders for the Board of Directors covering the proceedings and business of its meetings in accordance with Part 2 of Annex 2. These are to include setting a quorum for meetings, both of executive and Non-Executive Directors. The proceedings shall not however be invalidated by any vacancy of its membership, or defect in a Director's appointment.
- 9.2 Meetings of the Board of Directors shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons.
- 9.3 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 Council of Governors.
- 9.4 At any meeting of the Board of Directors, the Chairman, if present, shall preside. If the Chairman is absent from the meeting or is absent temporarily on the grounds of a declared conflict of interest, the Vice Chairman, if present, shall preside. If both the Chairman and Vice Chairman are absent or are absent temporarily on the grounds of a declared conflict of interest, such non-executive Director as the members of the Board of Directors present shall choose, shall preside.
- 9.5 Every question at a meeting of the Board of Directors 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, or in the case that there are equal numbers of Executive Directors and Non-Executive Directors participating in the vote, the Chairman of the meeting shall have the casting vote.

10 CONFLICTS OF INTEREST OF DIRECTORS

- 10.1 The duties that a Director of the Trust has by virtue of being a Director include in particular:
- 10.1.1 a duty to avoid a situation in which the Director has (or can have) a direct or indirect interest that conflicts (or possibly may conflict) with the interests of the Trust (a "Conflict").
- 10.1.2 a duty not to accept a benefit from a third party by reason of being a Director or doing (or not doing) anything in that capacity
- 10.2 The duty referred to in sub-paragraph 10.1.1 above is not infringed if:
- 10.2.1 the situation cannot reasonably be regarded as likely to give rise to a Conflict, or

- 10.2.2 the matter has been authorised in accordance with the Constitution.
- 10.3 The duty referred to in paragraph 10.1.2 above is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a Conflict.
- 10.4 In paragraph 10.1.2 above, "third party" means a person other than:
 - 10.4.1 the Trust; or
 - 10.4.2 a person acting on its behalf.
- 10.5 If a Director of the Trust has in any way a direct or indirect interest in a proposed transaction or arrangement with the Trust, the Director must declare the nature and extent of that interest to the other Directors.
- 10.6 If a declaration under this paragraph proves to be, or becomes, inaccurate, incomplete, a further declaration must be made.
- 10.7 Any declaration required by this paragraph must be made before the Trust enters into the transaction or arrangement.
- 10.8 This paragraph does not require a declaration of an interest of which the Director is not aware or where the Director is not aware of the transaction or arrangement in question.
- 10.9 A Director need not declare an interest:
 - 10.9.1 if the interest cannot reasonably be regarded as likely to give rise to a Conflict;
 - 10.9.2 if, or to the extent that, the Directors are already aware of the interest; or
 - 10.9.3 if, or to the extent that, it concerns terms of the Director's appointment that have been or are to be considered:
 - 10.9.3.1 by a meeting of the Board of Directors, or
 - 10.9.3.2 by a committee of the Directors appointed for the purpose under the Constitution.
- 10.10 A matter shall have been authorised for the purposes of paragraph 10.2.2 above if:
 - 10.10.1 the Directors, in accordance with the requirements set out in this paragraph 10.10, authorise any matter or situation proposed to them by any Director which would, if not authorised, involve a Director (an "Interested Director") breaching his duty under paragraph 10.1.1 above to avoid Conflicts:
 - 10.10.1.1 the matter in question shall have been proposed by any Director for consideration in the same way that any other matter may be proposed to the Directors under the provisions of this Constitution;
 - 10.10.1.2 any requirement as to the quorum for consideration of the relevant matter is met without counting the Interested Director or any other Interest Director; and

- 10.10.1.3 the matter was agreed to without the Interested Director voting or would have been agreed to if the Interested Director's and any other Interested Director's vote had not been counted.
- 10.10.2 Any authorisation of a Conflict under this paragraph 10.10 may (whether at the time of giving the authorisation or subsequently):
 - 10.10.2.1 extend to any actual or potential conflict of interest which may reasonably be expected to arise out of the Conflict so authorised;
 - 10.10.2.2 provide that the Interested Director be excluded from the receipt of documents and information and the participation in discussions (whether at meetings of the Directors or otherwise) related to the Conflict;
 - 10.10.2.3 provide that the Interested Director be excluded from the receipt of documents and information and the participation in discussions (whether at meetings of the Directors or otherwise) related to the Conflict;
 - 10.10.2.4 impose upon the Interested Director such other terms for the purposes of dealing with the Conflict as the Directors think fit;
 - 10.10.2.5 provide that, where the Interested Director obtains, or has obtained (through his involvement in the Conflict and otherwise than through his position as a Director of the Trust) information that is confidential to a third party, he will not be obliged to disclose that information to the Board of Directors, or to use it in relation to the Trust's affairs where to do so would amount to a breach of that confidence; and
 - 10.10.2.6 permit the Interested Director to absent himself from the discussion of matters relating to the Conflict at any meeting of the Directors and be excused from reviewing papers prepared by, or for, the Directors to the extent they relate to such matters.
- 10.11 Where the Directors authorise a Conflict, the Interested Director will be obliged to conduct himself in accordance with any terms imposed by the Directors in relation to the Conflict.
- 10.12 The Directors may revoke or vary such authorisation at any time, but this will not affect anything done by the Interested Director, prior to such revocation or variation in accordance with the terms of such authorisation.
- 10.13 A Director is not required, by reason of being a Director, to account to the Trust for any remuneration, profit or other benefit which he derives from or in connection with a relationship involving a Conflict which has been authorised by the Directors (subject in each case to any terms, limits or conditions attaching to that authorisation) and no contract shall be liable to be avoided on such grounds.

11 REGISTERS

- 11.1 The Trust is to have:

- 11.1.1 a register of Members showing, in respect of each Member, the constituency to which he belongs and where there are classes within it, the class to which he belongs;
 - 11.1.2 a register of members of the Council of Governors;
 - 11.1.3 a register of interests of the Governors;
 - 11.1.4 a register of Directors; and
 - 11.1.5 a register of interests of the Directors.
- 11.2 The Secretary shall be responsible for keeping the registers up to date with information received, and the registers may be kept in either paper or electronic form. Removal from any register shall be in accordance with the provisions of this Constitution. The Secretary shall update the registers with new or amended information as soon as is practical and in any event within 14 days of receipt.
- 11.3 The Trust shall make the registers specified in paragraph 11.1 above available for inspection by members of the public, except in the circumstances set out below in paragraph 11.4 below or as otherwise prescribed by regulations.
- 11.4 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.
- 11.5 Insofar as the registers are required to be made available:
- 11.5.1 they are, subject to paragraph 12.4 below, to be available for inspection free of charge at all reasonable times; and
 - 11.5.2 a person who requests a copy of or extract from the registers is to be provided with a copy or extract.

12 PUBLIC DOCUMENTS

- 12.1 The following documents of the Trust are to be available for inspection by members of the public free of charge at all reasonable times:
- 12.1.1 a copy of the Constitution;
 - 12.1.2 a copy of the latest Annual Accounts and of any report of the Auditor on them; and
 - 12.1.3 a copy of the latest Annual Report;
- 12.2 The Trust shall also make the following documents relating to special administration of the Trust available for inspection by members of the public free of charge at all reasonable times:
- 12.2.1 a copy of any order made under section 65D (appointment of trust special administrator), 65J (power to extend time), 65KC (action following Secretary of State's rejection of final report), 65L(trusts coming out of administration) or 65LA (trusts to be dissolved) of the 2006 Act;

- 12.2.2 a copy of any report laid under section 65D (appointment of trust special administrator) of the 2006 Act;
 - 12.2.3 a copy of any information published under section 65D (appointment of trust special administrator) of the 2006 Act;
 - 12.2.4 a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act;
 - 12.2.5 a copy of any statement provided under section 65F(administrator's draft report) of the 2006 Act;
 - 12.2.6 a copy of any notice published under section 65F(administrator's draft report), 65G (consultation plan), 65H (consultation requirements), 65J (power to extend time), 65KA(Monitor's decision), 65KB (Secretary of State's response to Monitor's decision), 65KC (action following Secretary of State's rejection of final report) or 65KD (Secretary of State's response to re-submitted final report) of the 2006 Act;
 - 12.2.7 a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act;
 - 12.2.8 a copy of any final report published under section 65I (administrator's final report);
 - 12.2.9 a copy of any statement published under section 65J (power to extend time) or 65KC (action following Secretary of State's rejection of final report) of the 2006 Act; and
 - 12.2.10 a copy of any information published under section 65M (replacement of trust special administrator) of the 2006 Act;
- 12.3 Any person who requests a copy of or extract from any of the above documents is to be provided with a copy.
- 12.4 If the person requesting a copy or extract is not a Member of the Trust, the Trust may impose a reasonable charge for providing the copy or extract.

13 AUDITOR

- 13.1 The Trust is to have an Auditor and is to provide the Auditor with every facility and all information which he may reasonably require for the purposes of his functions under Schedule 10 of the 2006 Act.
- 13.2 A person may only be appointed as Auditor if he (or in the case of a firm, it) satisfies the requirement in paragraph 23(4) of Schedule 7 to the 2006 Act.
- 13.3 The Auditor is to carry out his duties in accordance with Schedule 10 to the 2006 Act and in accordance with any guidance and/or best practice advice issued by Monitor on standards, procedures and techniques to be adopted.

14 ACCOUNTS

- 14.1 The Trust must keep proper accounts and proper records in relation to the accounts.

- 14.2 Monitor may with the approval of the Secretary of State give directions to the Trust as to the content and form of its accounts.
- 14.3 The accounts are to be audited by the Auditor.
- 14.4 The Trust (through its Accounting Officer) is to prepare in respect of each financial year, Annual Accounts in such form as Monitor may, with the approval of the Secretary of State, direct.

15 ANNUAL REPORTS, FORWARD PLANS AND NON-NHS WORK

- 15.1 The Trust is to prepare an Annual Report and send it to Monitor.
- 15.2 The Trust is to give its Forward Plan in respect of each Financial Year to Monitor. This information is to be prepared by the Board of Directors, who must have regard to the views of the Council of Governors.
- 15.3 Each Forward Plan must include information about –
- 15.3.1 the activities other than the provision of goods and services for the purposes of the health service in England that the Trust proposes to carry on, and
 - 15.3.2 the income it expects to receive from doing so.
- 15.4 Where a Forward Plan contains a proposal that the Trust carry on an activity of a kind mentioned in sub-paragraph 15.3.1 above the Council of Governors must –
- 15.4.1 determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfilment by the Trust of its principal purpose or the performance of its other functions, and
 - 15.4.2 notify the Directors of the Trust of its determination.
- 15.5 The Trust may implement a proposal 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 only if more than half of the members of the Council of Governors of the Trust present and voting at a meeting of the Council of Governors approve the implementation of the proposal.

16 PRESENTATION OF THE ANNUAL ACCOUNTS AND REPORTS TO THE GOVERNORS AND MEMBERS

- 16.1 The following documents are to be presented to the Council of Governors at a general meeting of the Council of Governors:
- 16.1.1 the Annual Accounts;
 - 16.1.2 any report of the Auditor on them; and
 - 16.1.3 the Annual Report.
- 16.2 The documents shall also be presented to the Members of the Trust at the Annual General Meeting by at least one member of the Board of Directors in attendance.

16.3 The Trust may combine a meeting of the Council of Governors convened for the purposes of paragraph 16.1 above with the Annual General Meeting.

17 INDEMNITY

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

17.2 The Trust may purchase and maintain insurance against this liability for its own benefit and for the benefit of members of the Council of Governors, the Board of Directors and the Secretary.

17.3 The Trust may take out insurance either through the NHS Litigation Authority or otherwise in respect of Directors and officers liability.

18 INSTRUMENTS ETC.

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

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

19 DISPUTE RESOLUTION PROCEDURES

Membership disputes

19.1 In the event of any dispute about the entitlement to membership the dispute shall be referred to the Secretary who shall make a determination on the point in issue. If the Member is aggrieved at the decision of the Secretary he may appeal in writing within 14 days of the Secretary's decision to the Council of Governors whose decision shall be final.

Directorship disputes

19.2 In the In the event of any dispute in relation to Directorship or meetings of the Board of Directors the dispute shall be referred to the Secretary who shall make a determination on the point in issue. If the dispute remains unresolved, or if the Director is aggrieved at the decision of the Secretary, he may refer the matter to the Chairman whose decision shall be final and binding except in the case of manifest error.

Disputes between the Council of Governors and the Board of Directors

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

19.3.1 in the first instance the Chairman on advice of the Secretary, and such other advice as the Chairman may see fit to obtain, shall seek to resolve the dispute;

19.3.2 if the Chairman is unable to resolve the dispute he shall appoint a special committee comprising equal numbers of Directors and Governors to consider the circumstances and to make recommendations to the Council of Governors and the Board with a view to resolving the dispute; and

19.3.3 if the recommendations (if any) of the special joint committee are unsuccessful in resolving the dispute, the Chairman may refer the dispute back to an external mediator appointed by an organisation selected by him.

20 AMENDMENT OF THE CONSTITUTION

20.1 The Trust may make amendment of its Constitution only if:

20.1.1 more than half of the members of the Council of Governors of the Trust present and voting at a meeting of the Council of Governors approve the amendments, and

20.1.2 more than half of the members of the Board of Directors of the Trust present and voting at a meeting of the Board of Directors approve the amendments.

20.2 Amendments made under paragraph 20.1 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, not accord with Schedule 7 of the 2006 Act.

20.3 Where an amendment is made to the Constitution in relation to the powers or duties of the Council of Governors (or otherwise with respect to the role that the Council of Governors has as part of the Trust):

20.3.1 at least one member of the Council of Governors must attend the next Annual General Meeting and present the amendment, and

20.3.2 the Trust must give the Members an opportunity to vote on whether they approve the amendment.

20.4 If more than half of the Members present and voting at the Annual General Meeting approve the amendment, the amendment continues to have effect; otherwise, it ceases to have effect and the Trust must take such steps as are necessary as a result.

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

21 NOTICES

21.1 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.

21.2 In this paragraph 21 of this Constitution, "electronic communication" shall have the meaning set out in the Electronic Communications Act 2000 or any statutory modification or re-enactment thereof.

21.3 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 21.1 above shall be deemed to have been received 48 hours after the envelope containing it was posted, or in this case of a notice contained in an electronic communication, 48 hours after it was sent.

22 MERGERS ETC. AND SIGNIFICANT TRANSACTIONS

- 22.1 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 at a meeting of the Council of Governors.
- 22.2 Significant Transaction has the meaning ascribed to it in Annex 4 of the Constitution.

Annex 1

AREA OF THE TRUST

The Area of the Trust comprises the local government areas specified in each of the six constituencies set out below.

Constituency	Area	Minimum number of Members	Number of Governors
Greater Yeovil	The electoral wards of:- Yeovil Without Yeovil Brympton	50	3
South Somerset NE	The electoral wards of :- Islemoore Curry Rivel Burrow Hill Turn Hill Martock Wessex Northstone Ivelchester Camelot Cary Milborne Port Blackmoor Vale Bruton Tower Wincanton	50	3
South Somerset SW	The electoral wards of :- Blackdown Neroche Ilminster Tatworth & Forton Chard Windwhisle South Petherton Eggwood Crewkerne Hamdon Parrett St Michael's Coker	50	3
Mendip	The area of Mendip District Council	50	1

Dorset	The area of Dorset County Council	50	2
Rest of Somerset and England	The area of England including the parts included in the other constituencies described above	25	1

ANNEX 2: PRACTICE AND PROCEDURE FOR MEETINGS

In accordance with paragraphs 7.15.5 and 9.1 of the Constitution the Council of Governors and the Board of Directors must adopt standing orders for the regulation of their procedure in accordance with the minimum terms set out in this annex.

Part 1: Council of Governors

The Standing Orders for the Council of Governors must provide for:

- 1 A minimum notice period for meetings and the agenda and supporting papers of not less than 4 days
- 2 Provision for the conduct of meetings including:-
 - 2.1 Notices of motion, petitions, the withdrawal of motions and motions to rescind resolutions including any special rules relating to motions under paragraph 7.9.3 (removal of Governors) of the Constitution. Provision may be made to cover the position where there is a vacancy in the Public Governors
 - 2.2 Voting, which may not provide for voting otherwise than on the basis of one vote for each Governor apart from the chairman of the meeting
 - 2.3 Provision for proxies who must be Governors in their own right.
 - 2.4 Chairing the meeting in the absence of the Chairman.
 - 2.5 Powers of the Chairman to determine the conduct of the meeting.
 - 2.6 Circumstances where persons other than Governors may be allowed to speak at meetings.
 - 2.7 Quorum, which must provide for there to be a majority of public Members at any meeting.
- 3 Provision for a record of attendance and the requirement for minutes of the meetings to be kept.
- 5 Provision for the establishment of committees, sub-committees and working groups.
- 6 Provision for the delivery to the Secretary at or immediately before the commencement of the meeting of a declaration in the following form:

“To the Secretary of Yeovil District Hospital 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 in the Trust Constitution.

Dated

Signed.....”

Part 2: Board of Directors

The Standing Orders for the Board of Directors must provide for:

- 1 A minimum notice period for meetings and the agenda and supporting papers of not less than 4 days, save with the consent of a majority of those entitled to be present and actually present at the meeting.
- 2 Provision for the conduct of meetings including:-
 - 2.1 Notices of motion, petitions, the withdrawal of motions and motions to rescind resolutions;
 - 2.2 Voting, which may not provide for voting otherwise than on the basis of one vote for each Director apart from the chairman of the meeting;
 - 2.3 Provision for proxies;
 - 2.4 Chairing the meeting in the absence of the Chairman;
 - 2.5 Powers of the Chairman to determine the conduct of the meeting;
 - 2.6 Circumstances where persons other than Directors may be allowed to speak at meetings;
 - 2.7 Quorum; and
 - 2.8 Provisions setting out the scope for meetings to be held in public, or for the public to be excluded as the case may be.
- 3 Provision for a record of attendance and the requirement for minutes of the meetings to be kept.
- 4 Provision for the approval of decisions without meetings.
- 5 Provision for meetings to be held using telephone or electronic means.
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Annex 3

Model Rules for Elections to the Council of Governors

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Part 1 – Interpretation

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

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

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

“the regulator” means the Independent Regulator for NHS foundation Trusts; and

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

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

Part 2 – Timetable for election

- 2. Timetable - The proceedings at an election shall be conducted in accordance with the following timetable.

Proceeding	Time
Publication of notice of election	Not later than the fortieth day before the day of the close of the poll.
Final day for delivery of nomination papers to returning officer	Not later than the twenty eighth day before the day of the close of the poll.
Publication of statement of nominated candidates.	Not later than the twenty seventh day before the day of the close of the poll.

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

3. Computation of time - (1) In computing any period of time for the purposes of the timetable –

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

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

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

Part 3 – Returning officer

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

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

5. Staff – Subject to rule 64, the returning officer may appoint and pay such staff, including such technical advisers, as he or she considers necessary for the purposes of the election.

6. Expenditure - The corporation is to pay the returning officer –

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

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

Part 4 - Stages Common to Contested and Uncontested Elections

8. Notice of election – The returning officer is to publish a notice of the election stating –

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

- (b) the number of members of the 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 papers may be obtained;
- (e) the address for return of nomination papers and the date and time by which they must be received by the returning officer,
- (f) the date and time by which any notice of withdrawal must be received by the returning officer
- (g) the contact details of the returning officer, and
- (h) the date and time of the close of the poll in the event of a contest.

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

(2) The returning officer-

- (a) is to supply any member of the corporation with a nomination paper, and
- (b) is to prepare a nomination paper for signature at the request of any member of the corporation, but it is not necessary for a nomination to be on a form supplied by the returning officer.

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

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

11. Declaration of interests – The nomination paper must state –

- (a) any financial interest that the candidate has in the corporation, and
- (b) whether the candidate is a member of a political party, and if so, which party, and if the candidate has no such interests, the paper must include a statement to that effect.

12. Declaration of eligibility – The nomination paper must include a declaration made by the candidate–

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

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

14. Decisions as to the validity of nomination – (1) Where a nomination paper is received by the returning officer in accordance with these rules, the candidate is deemed to stand for election unless and until the returning officer-

- (a) decides that the candidate is not eligible to stand,
 - (b) decides that the nomination paper is invalid,
 - (c) receives satisfactory proof that the candidate has died, or
 - (d) receives a written request by the candidate of their withdrawal from candidacy.
- (2) The returning officer is entitled to decide that a nomination paper is invalid only on one of the following grounds –
- (a) that the paper is not received on or before the final time and date for return of nomination papers, as specified in the notice of the election,
 - (b) that the paper does not contain the candidate's particulars, as required by rule 10;
 - (c) that the paper does not contain a declaration of the interests of the candidate, as required by rule 11,
 - (d) that the paper does not include a declaration of eligibility as required by rule 12, or
 - (e) that the paper is not signed and dated by the candidate, as required by rule 13.
- (3) The returning officer is to examine each nomination paper as soon as is practicable after he or she has received it, and decide whether the candidate has been validly nominated.
- (4) Where the returning officer decides that a nomination is invalid, the returning officer must endorse this on the nomination paper, stating the reasons for their decision.
- (5) The returning officer is to send notice of the decision as to whether a nomination is valid or invalid to the candidate at the contact address given in the candidate's nomination paper.

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

- (2) The statement must show –
- (a) the name, contact address, and constituency or class within a constituency of each candidate standing, and
 - (b) the declared interests of each candidate standing, as given in their nomination paper.
- (3) The statement must list the candidates standing for election in alphabetical order by surname.

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

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

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

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

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

18. Method of election – (1) If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is greater than the number of members to be elected to the Council of Governors, a poll is to be taken in accordance with Parts 5 and 6 of these rules.

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

(3) If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is less than the number of members to be elected to be Council of Governors, then –

(a) the candidates who remain validly nominated are to be declared elected in accordance with Part 7 of these rules, and

(b) the returning officer is to order a new election to fill any vacancy which remains unfilled, on a day appointed by him or her in consultation with the corporation.

Part 5 – Contested elections

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

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

20. The ballot paper – (1) The ballot of each voter is to consist of a ballot paper with the persons remaining validly nominated for an election after any withdrawals under these rules, and no others, inserted in the paper.

(2) Every ballot paper must specify –

(a) the name of the corporation,

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

(c) the number of members of the 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,

(f) if the ballot paper is to be returned by post, the address for its return and the date and time of the close of the poll, and

(g) the contact details of the returning officer.

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

(4) Each ballot paper must have features incorporated into it to prevent it from being reproduced.

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

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

(a) that the voter is the person to whom the ballot paper was addressed,

(b) that the voter has not marked or returned any other voting paper in the election, and

(c) for a member of the public or patient constituency, of the particulars of that member's qualification to vote as a member of the constituency or class within a constituency for which the election is being held.

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

(a) the name of the voter,

(b) the address of the voter,

(c) the voter's signature, and

(d) the date that the declaration was made by the voter.

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

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

Action to be taken before the poll

22. List of eligible voters – (1) The corporation is to provide the returning officer with a list of the members of the constituency or class within a constituency for which the election is being held who are eligible to vote by virtue of rule 26 as soon as is reasonably practicable after the final date for the delivery of notices of withdrawals by candidates from an election.

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

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

(a) the name of the corporation,

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

(c) the number of members of the 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 address for return of the ballot papers, and the date and time of the close of the poll,

(g) the address and final dates for applications for replacement ballot papers, and

(h) the contact details of the returning officer.

24. Issue of voting documents by returning officer – (1) As soon as is reasonably practicable on or after the publication of the notice of the poll, the returning officer is to send the following documents to each member of the corporation named in the list of eligible voters—

(a) a ballot paper and ballot paper envelope,

(b) a declaration of identity (if required),

(c) information about each candidate standing for election, pursuant to rule 59 of these rules, and

(d) a covering envelope.

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

25. Ballot paper envelope and covering envelope – (1) The ballot paper envelope must have clear instructions to the voter printed on it, instructing the voter to seal the ballot paper inside the envelope once the ballot paper has been marked.

(2) The covering envelope is to have –

(a) the address for return of the ballot paper printed on it, and

(b) pre-paid postage for return to that address.

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

(a) the completed declaration of identity if required, and

(b) the ballot paper envelope, with the ballot paper sealed inside it.

The poll

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

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

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

28. Spoilt ballot papers – (1) If a voter has dealt with his or her ballot paper in such a manner that it cannot be accepted as a ballot paper (referred to a “spoilt ballot paper”), that voter may apply to the returning officer for a replacement ballot paper.

(2) On receiving an application, the returning officer is to obtain the details of the unique identifier on the spoilt ballot paper, if he or she can obtain it.

(3) The returning officer may not issue a replacement ballot paper for a spoilt ballot paper unless he or she –

(a) is satisfied as to the voter’s identity, and

(b) has ensured that the declaration of identity, if required, has not been returned.

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

(a) the name of the voter, and

(b) the details of the unique identifier of the spoilt ballot paper (if that officer was able to obtain it), and

(c) the details of the unique identifier of the replacement ballot paper.

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

(2) The returning officer may not issue a replacement ballot paper for a lost ballot paper unless he or she –

(a) is satisfied as to the voter’s identity,

(b) has no reason to doubt that the voter did not receive the original ballot paper, and

(c) has ensured that the declaration of identity if required has not been returned.

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

(a) the name of the voter, and

(b) the details of the unique identifier of the replacement ballot paper.

30. Issue of replacement ballot paper– (1) If a person applies for a replacement ballot paper under rule 28 or 29 and a declaration of identity has already been received by the returning officer in the name of that voter, the returning officer may not issue a replacement ballot paper unless, in addition to the requirements imposed rule 28(3) or 29(2), he or she is also satisfied that that person has not already voted in the election, notwithstanding the fact that a declaration of identity if required has already been received by the returning officer in the name of that voter.

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

(a) the name of the voter, and

(b) the details of the unique identifier of the replacement ballot paper issued under this rule.

31. Declaration of identity for replacement ballot papers (public and patient constituencies)

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

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

(a) that the voter has not voted in the election with any ballot paper other than the ballot paper being returned with the declaration, and

(b) of the particulars of that member’s qualification to vote as a member of the public or patient constituency, or class within a constituency, for which the election is being held.

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

(a) the name of the voter,

(b) the address of the voter,

(c) the voter’s signature, and

(d) the date that the declaration was made by the voter.

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

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

Procedure for receipt of envelopes

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

(a) covering envelope, or

(b) any other envelope containing a declaration of identity if required, a ballot paper envelope, or a ballot paper, before the close of the poll, that officer is to open it as soon as is practicable; and rules 33 and 34 are to apply.

(2) The returning officer may open any ballot paper envelope for the purposes of rules 33 and 34, but must make arrangements to ensure that no person obtains or communicates information as to –

(a) the candidate for whom a voter has voted, or

(b) the unique identifier on a ballot paper.

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

33. Validity of ballot paper – (1) A ballot paper shall not be taken to be duly returned unless the returning officer is satisfied that it has been received by the returning officer before the close of the poll, with a declaration of identity if required that has been correctly completed, signed, and dated.

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

(a) put the declaration of identity if required in a separate packet, and

(b) put the ballot paper aside for counting after the close of the poll.

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

(a) mark the ballot paper “disqualified”,

(b) if there is a declaration of identity accompanying the ballot paper, mark it as “disqualified” and attach it to the ballot paper,

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

(d) place the document or documents in a separate packet.

34. Declaration of identity but no ballot paper (public and patient constituency) – Where the returning officer receives a declaration of identity if required but no ballot paper, the returning officer is to –

(a) mark the declaration of identity “disqualified”,

(b) record the name of the voter in the list of disqualified documents, indicating that a declaration of identity was received from the voter without a ballot paper; and

(c) place the declaration of identity in a separate packet.

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

(a) the disqualified documents, together with the list of disqualified documents inside it,

(b) the declarations of identity if required,

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

Part 6 - Counting the votes

STV36. Interpretation of Part 6 – In Part 6 of these rules –

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

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

“deemed to be elected” means deemed to be elected for the purposes of counting of votes but without prejudice to the declaration of the result of the poll, “mark” means a figure, an identifiable written word, or a mark such as “X”,

“non-transferable vote” means a ballot paper –

- (a) on which no second or subsequent preference is recorded for a continuing candidate, or
- (b) which is excluded by the returning officer under rule STV44(4) below,

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

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

“quota” means the number calculated in accordance with rule STV41 below,

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

“stage of the count” means –

- (a) the determination of the first preference vote of each candidate,
- (b) the transfer of a surplus of a candidate deemed to be elected, or

(c) the exclusion of one or more candidates at any given time,

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

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

“transfer value” means the value of a transferred vote calculated in accordance with paragraph (4) or (7) of rule STV42 below.

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

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

(a) count and record the number of ballot papers that have been returned, and

(b) count the votes according to the provisions in this Part of the rules.

(2) The returning officer, while counting and recording the number of ballot papers and counting the votes, must make arrangements to ensure that no person obtains or communicates information as to the unique identifier on a ballot paper.

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

STV39. Rejected ballot papers – (1) Any ballot paper –

(a) which does not bear the features that have been incorporated into the other ballot papers to prevent them from being reproduced,

(b) on which the figure “1” standing alone is not placed so as to indicate a first preference for any candidate,

(c) on which anything is written or marked by which the voter can be identified except the unique identifier, or

(d) which is unmarked or rejected because of uncertainty, shall be rejected and not counted, but the ballot paper shall not be rejected by reason only of carrying the words “one”, “two”, “three” and so on, or any other mark instead of a figure if, in the opinion of the returning officer, the word or mark clearly indicates a preference or preferences.

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

(3) The returning officer is to draw up a statement showing the number of ballot papers rejected by him or her under each of the subparagraphs (a) to (d) of paragraph (1).

FPP39. Rejected ballot papers – (1) Any ballot paper –

(a) which does not bear the features that have been incorporated into the other ballot papers to prevent them from being reproduced,

(b) on which votes are given for more candidates than the voter is entitled to vote,

(c) on which anything is written or marked by which the voter can be identified except the unique identifier, or

(d) which is unmarked or rejected because of uncertainty, shall, subject to paragraphs (2) and (3) below, be rejected and not counted.

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

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

(a) elsewhere than in the proper place,

(b) otherwise than by means of a clear mark,

(c) by more than one mark,

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

(4) The returning officer is to –

(a) endorse the word “rejected” on any ballot paper which under this rule is not to be counted, and

(b) in the case of a ballot paper on which any vote is counted under paragraph (2) or (3) above, endorse the words “rejected in part” on the ballot paper and indicate which vote or votes have been counted.

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

(a) does not bear proper features that have been incorporated into the ballot paper,

(b) voting for more candidates than the voter is entitled to,

(c) writing or mark by which voter could be identified, and

(d) unmarked or rejected because of uncertainty,

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

STV40. First stage – (1) The returning officer is to sort the ballot papers into parcels according to the candidates for whom the first preference votes are given.

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

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

STV41. The quota – (1) The returning officer is to divide the number of valid ballot papers by a number exceeding by one the number of members to be elected.

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

(3) At any stage of the count a candidate whose total votes equals or exceeds the quota shall be deemed to be elected, except that any election where there is only one vacancy a candidate shall not be deemed to be elected until the procedure set out in paragraphs (1) to (3) of rule 44 has been complied with.

STV42. Transfer of votes – (1) Where the number of first preference votes for any candidate exceeds the quota, the returning officer is to sort all the ballot papers on which first preference votes are given for that candidate into sub-parcels so that they are grouped –

(a) according to next available preference given on those papers for any continuing candidate, or

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

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

(3) The returning officer is, in accordance with this rule and rule STV43 below, to transfer each sub-parcel of ballot papers referred to in paragraph (1)(a) to the candidate for whom the next available preference is given on those papers.

(4) The vote on each ballot paper transferred under paragraph (3) above shall be at a value (“the transfer value”) which –

(a) reduces the value of each vote transferred so that the total value of all such votes does not exceed the surplus, and

(b) is calculated by dividing the surplus of the candidate from whom the votes are being transferred by the total number of the ballot papers on which those votes are given, the calculation being made to two decimal places (ignoring the remainder if any).

(5) Where at the end of any stage of the count involving the transfer of ballot papers, the number of votes for any candidate exceeds the quota, the returning officer is to sort the ballot papers in the sub-parcel of transferred votes which was last received by that candidate into separate sub-parcels so that they are grouped –

(a) according to the next available preference given on those papers for any continuing candidate, or

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

(6) The returning officer is, in accordance with this rule and rule STV43 below, to transfer each sub-parcel of ballot papers referred to in paragraph (5)(a) to the candidate for whom the next available preference is given on those papers.

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

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

(b) at the value at which that vote was received by the candidate from whom it is now being transferred, whichever is the less.

- (8) Each transfer of a surplus constitutes a stage in the count.
- (9) Subject to paragraph (10), the returning officer shall proceed to transfer transferable papers until no candidate who is deemed to be elected has a surplus or all the vacancies have been filled.
- (10) Transferable papers shall not be liable to be transferred where any surplus or surpluses which, at a particular stage of the count, have not already been transferred, are –
- (a) less than the difference between the total vote then credited to the continuing candidate with the lowest recorded vote and the vote of the candidate with the next lowest recorded vote, or
- (b) less than the difference between the total votes of the two or more continuing candidates, credited at that stage of the count with the lowest recorded total numbers of votes and the candidate next above such candidates.
- (11) This rule does not apply at an election where there is only one vacancy.

STV43. Supplementary provisions on transfer – (1) If, at any stage of the count, two or more candidates have surpluses, the transferable papers of the candidate with the highest surplus shall be transferred first, and if –

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

(2) The returning officer shall, on each transfer of transferable papers under rule STV42 above –

- (a) record the total value of the votes transferred to each candidate,
- (b) add that value to the previous total of votes recorded for each candidate and record the new total,
- (c) record as non-transferable votes the difference between the surplus and the total transfer value of the transferred votes and add that difference to the previously recorded total of non-transferable votes,

And

- (d) compare—
- (i) the total number of votes then recorded for all of the candidates, together with the total number of non-transferable votes, with
- (ii) the recorded total of valid first preference votes.

(3) All ballot papers transferred under rule STV42 or STV44 shall be clearly marked, either individually or as a sub-parcel, so as to indicate the transfer value recorded at that time to each vote on that paper or, as the case may be, all the papers in that sub-parcel.

(4) Where a ballot paper is so marked that it is unclear to the returning officer at any stage of the count under rule STV42 or STV44 for which candidate the next preference is recorded, the returning officer shall treat any vote on that ballot paper as a non-transferable vote; and votes on a ballot paper shall be so treated where, for example, the names of two or more candidates (whether continuing candidates or not) are so marked that, in the opinion of the returning officer, the same order of preference is indicated or the numerical sequence is broken.

STV44. Exclusion of candidates – (1) If—

(a) all transferable papers which under the provisions of rule STV42 above (including that rule as applied by paragraph (11) below) and this rule are required to be transferred, have been transferred, and

(b) subject to rule STV45 below, one or more vacancies remain to be filled, the returning officer shall exclude from the election at that stage the candidate with the then lowest vote (or, where paragraph (12) below applies, the candidates with the then lowest votes).

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

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

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

(3) The returning officer shall, in accordance with this rule and rule STV43 above, transfer each sub-parcel of ballot papers referred to in paragraph (2)(a) above to the candidate for whom the next available preference is given on those papers.

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

(5) If, subject to rule STV45 below, one or more vacancies still remain to be filled, the returning officer shall then sort the transferable papers, if any, which had been transferred to any candidate excluded under paragraph (1) above into sub-parcels according to their transfer value.

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

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

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

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

(10) The returning officer shall after each stage of the count completed under this

rule—

(a) record –

(i) the total value of votes, or

(ii) the total transfer value of votes transferred to each candidate,

(b) add that total to the previous total of votes recorded for each candidate and record the new total,

(c) record the value of non-transferable votes and add that value to the previous non-transferable votes total, and

(d) compare—

(i) the total number of votes then recorded for each candidate together with the total number of non-transferable votes, with

(ii) the recorded total of valid first preference votes.

(11) If after a transfer of votes under any provision of this rule, a candidate has a surplus, that surplus shall be dealt with in accordance with paragraphs (5) to (10) of rule STV42 and rule STV43.

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

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

(a) regard shall be had to the total number of votes credited to those candidates at the earliest stage of the count at which they had an unequal number of votes and the candidate with the lowest number of votes at that stage shall be excluded, and

(b) where the number of votes credited to those candidates was equal at all stages, the returning officer shall decide between the candidates by lot and the candidate on whom the lot falls shall be excluded.

STV45. Filling of last vacancies – (1) Where the number of continuing candidates is equal to the number of vacancies remaining unfilled the continuing candidates shall thereupon be deemed to be elected.

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

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

STV46. Order of election of candidates – (1) The order in which candidates whose votes equal or exceed the quota are deemed to be elected shall be the order in which their respective surpluses were transferred, or would have been transferred but for rule STV42(10) above.

(2) A candidate credited with a number of votes equal to, and not greater than, the quota shall, for the purposes of this rule, be regarded as having had the smallest surplus at the stage of the count at which he obtained the quota.

(3) Where the surpluses of two or more candidates are equal and are not required to be transferred, regard shall be had to the total number of votes credited to such candidates at the earliest stage of the count at which they had an unequal number of votes and the surplus of the candidate who had the greatest number of votes at that stage shall be deemed to be the largest.

(4) Where the number of votes credited to two or more candidates were equal at all stages of the count, the returning officer shall decide between them by lot and the candidate on whom the lot falls shall be deemed to have been elected first.

FPP46. Equality of votes – Where, after the counting of votes is completed, an equality of votes is found to exist between any candidates and the addition of a vote would entitle any of those candidates to be declared elected, the returning officer is to decide between those candidates by a lot, and proceed as if the candidate on whom the lot falls had received an additional vote.

Part 7 – Final proceedings in contested and uncontested elections

FPP47. Declaration of result for contested elections – (1) In a contested election, when the result of the poll has been ascertained, the returning officer is to –

(a) declare the candidate or candidates whom more votes have been given than for the other candidates, up to the number of vacancies to be filled on the 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 East Somerset NHS Trust by section 33 of the 2006 Act, to the chairman of the NHS Foundation Trust, or

(ii) in any other case, to the chairman of the corporation; and

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

(2) The returning officer is to make –

(a) the total number of votes given for each candidate (whether elected or not), and

(b) the number of rejected ballot papers under each of the headings in rule FPP39(5), available on request.

STV47. Declaration of result for contested elections – (1) In a contested election, when the result of the poll has been ascertained, the returning officer is to—

(a) declare the candidates who are deemed to be elected under Part 6 of these rules as elected,

(b) give notice of the name of each candidate who he or she has declared elected –

(i) where the election is held under a proposed constitution pursuant to powers conferred on East Somerset NHS Trust by section 33 of the 2006 Act, to the chairman of the NHS Trust, or

- (ii) in any other case, to the chairman of the corporation, and
 - (c) give public notice of the name of each candidate who he or she has declared elected.
- (2) The returning officer is to make –
- (a) the number of first preference votes for each candidate whether elected or not,
 - (b) any transfer of votes,
 - (c) the total number of votes for each candidate at each stage of the count at which such transfer took place,
 - (d) the order in which the successful candidates were elected, and
 - (e) the number of rejected ballot papers under each of the headings in rule STV39(1), available on request.

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

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

Part 8 – Disposal of documents

49. Sealing up of documents relating to the poll – (1) On completion of the counting at a contested election, the returning officer is to seal up the following documents in separate packets –

- (a) the counted ballot papers,
 - (b) the ballot papers endorsed with “rejected in part”,
 - (c) the rejected ballot papers, and
 - (d) the statement of rejected ballot papers.
- (2) The returning officer must not open the sealed packets of –
- (a) the disqualified documents, with the list of disqualified documents inside it,
 - (b) the declarations of identity,
 - (c) the list of spoilt ballot papers,
 - (d) the list of lost ballot papers,
 - (e) the list of eligible voters, and

(f) the list of tendered ballot papers.

(3) The returning officer must endorse on each packet a description of –

(a) its contents,

(b) the date of the publication of notice of the election,

(c) the name of the corporation to which the election relates, and

(d) the constituency, or class within a constituency, to which the election relates.

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

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

(a) any voting documents are received by the returning officer after the close of the poll, or

(b) any envelopes addressed to eligible voters are returned as undelivered too late to be resent, or

(c) any applications for replacement ballot papers are made too late to enable new ballot papers to be issued, the returning officer is to put them in a separate packet, seal it up, and endorse and forward it to the chairman of the corporation.

52. Retention and public inspection of documents – (1) The corporation is to retain the documents relating to an election that are forwarded to the chair by the returning officer under these rules for one year, and then, unless otherwise directed by the regulator, cause them to be destroyed.

(2) With the exception of the documents listed in rule 53(1), the documents relating to an election that are held by the corporation shall be available for inspection by members of the public at all reasonable times.

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

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

(1) The corporation may not allow the inspection of, or the opening of any sealed packet containing –

(a) any rejected ballot papers, including ballot papers rejected in part,

(b) any disqualified documents, or the list of disqualified documents,

(c) any counted ballot papers,

(d) any declarations of identity, or

(e) the list of eligible voters, by any person without the consent of the Regulator.

(2) A person may apply to the Regulator to inspect any of the documents listed in (1), and the Regulator may only consent to such inspection if it is satisfied that it is necessary for the purpose of questioning an election pursuant to Part 11

(3) The Regulator's consent may be on any terms or conditions that it thinks necessary, including conditions as to –

(a) persons,

(b) time,

(c) place and mode of inspection,

(d) production or opening, and the corporation must only make the documents available for inspection in accordance with those terms and conditions.

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

(a) in giving its consent, the regulator, and

(b) and making the documents available for inspection, the corporation, must ensure that the way in which the vote of any particular member has been given shall not be disclosed, until it has been established –

(i) that his or her vote was given, and

(ii) that the regulator has declared that the vote was invalid.

Part 9 – Death of a candidate during a contested election

FPP54. Countermand or abandonment of poll on death of candidate – (1) If, at a contested election, proof is given to the returning officer's satisfaction before the result of the election is declared that one of the persons named or to be named as a candidate has died, then the returning officer is to

(a) countermand notice of the poll, or, if ballot papers have been issued, direct that the poll be abandoned within that constituency or class, and

(b) order a new election, on a date to be appointed by him or her in consultation with the corporation, within the period of 40 days, computed in accordance with rule 3 of these rules, beginning with the day that the poll was countermanded or abandoned.

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

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

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

(5) The returning officer is to –

- (a) count and record the number of ballot papers that have been received, and
 - (b) seal up the ballot papers into packets, along with the records of the number of ballot papers.
- (6) The returning officer is to endorse on each packet a description of –
- (a) its contents,
 - (b) the date of the publication of notice of the election,
 - (c) the name of the corporation to which the election relates, and
 - (d) the constituency, or class within a constituency, to which the election relates.
- (7) Once the documents relating to the poll have been sealed up and endorsed pursuant to paragraphs (4) to (6), the returning officer is to deliver them to the chairman of the corporation, and rules 52 and 53 are to apply.

STV54. Countermand or abandonment of poll on death of candidate – (1) If, at a contested election, proof is given to the returning officer's satisfaction before the result of the election is declared that one of the persons named or to be named as a candidate has died, then the returning officer is to –

- (a) publish a notice stating that the candidate has died, and
 - (b) proceed with the counting of the votes as if that candidate had been excluded from the count so that –
 - (i) ballot papers which only have a first preference recorded for the candidate that has died, and no preferences for any other candidates, are not to be counted, and
 - (ii) ballot papers which have preferences recorded for other candidates are to be counted according to the consecutive order of those preferences, passing over preferences marked for the candidate who has died.
- (2) The ballot papers which have preferences recorded for the candidate who has died are to be sealed with the other counted ballot papers pursuant to rule 49(1)(a).

Part 10 – Election expenses and publicity

Election expenses

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

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

- (a) personal expenses,
- (b) travelling expenses, and expenses incurred while living away from home, and

(c) expenses for stationery, postage, telephone, internet (or any similar means of communication) and other petty expenses, to a limit of £100.

57. Election expenses incurred by other persons – (1) No person may –

(a) incur any expenses or make a payment (of whatever nature) for the purposes of a candidate's election, whether on that candidate's behalf or otherwise, or

(b) give a candidate or his or her family any money or property (whether as a gift, donation, loan, or otherwise) to meet or contribute to expenses incurred by or on behalf of the candidate for the purposes of an election.

(2) Nothing in this rule is to prevent the corporation from incurring such expenses, and making such payments, as it considers necessary pursuant to rules 58 and 59.

Publicity

58. Publicity about election by the corporation – (1) The corporation may –

(a) compile and distribute such information about the candidates, and

(b) organise and hold such meetings to enable the candidates to speak and respond to questions, as it considers necessary.

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

(a) objective, balanced and fair,

(b) equivalent in size and content for all candidates,

(c) compiled and distributed in consultation with all of the candidates standing for election, and

(d) must not seek to promote or procure the election of a specific candidate or candidates, at the expense of the electoral prospects of one or more other candidates.

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

59. Information about candidates for inclusion with voting documents - (1) The corporation must compile information about the candidates standing for election, to be distributed by the returning officer pursuant to rule 24 of these rules.

(2) The information must consist of –

(a) a statement submitted by the candidate of no more than 250 words, and

(b) a photograph of the candidate.

60. Meaning of “for the purposes of an election” - (1) In this Part, the phrase “for the purposes of an election” means with a view to, or otherwise in connection with, promoting or procuring a

candidate's election, including the prejudicing of another candidate's electoral prospects; and the phrase "for the purposes of a candidate's election" is to be construed accordingly.

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

Part 11 – Questioning elections and the consequence of irregularities

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

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

(3) An application may only be made to the Regulator by

–

(a) a person who voted at the election or who claimed to have had the right to vote,

or (b) a candidate, or a person claiming to have had a right to be elected at the

election. (4) The application must –

(a) describe the alleged breach of the rules or electoral irregularity,
and

(b) be in such a form as the Regulator may
require.

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

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

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

b. The determination by the person or persons nominated in accordance with Rule 61(7) shall be binding on and shall be given effect by the corporation, the applicant and the members of the constituency (or class within a constituency) including all the candidates for the election to which the application relates.

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

Part 12 – Miscellaneous

62. Secrecy – (1) The following persons

– (a) the returning officer,

(b) the returning officer's staff, must maintain and aid in maintaining the secrecy of the voting and the counting of the votes, and must not, except for some purpose authorised by law, communicate to any person any information as to –

(i) the name of any member of the corporation who has or has not been given a ballot paper or who has or has not voted,

(ii) the unique identifier on any ballot paper,

(iii) the candidate(s) for whom any member has voted.

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

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

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

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

(a) a member of the corporation,

(b) an employee of the

corporation, (c) a director of the

corporation, or

(d) employed by or on behalf of a person who has been nominated for election.

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

(a) the delivery of the documents in rule 24,
or

(b) the return of the ballot papers and declarations of identity, the returning officer may extend the time between the publication of the notice of the poll and the close of the poll, with the agreement of the Regulator.

ANNEX 4: SIGNIFICANT TRANSACTIONS

1 A Significant Transaction is a transaction which meets any of the following criteria:

Ratio	Description	Percentage
<i>Assets</i>	<i>The Gross Assets subject to the transaction divided by the gross assets of the Trust.</i>	>25
<i>Income</i>	<i>The income attributable to:</i> <ul style="list-style-type: none"> • <i>the assets; or</i> • <i>the contract</i> <i>associated with the transaction divided by the income of the Trust.</i>	>25
<i>Consideration to total Trust Capital</i>	<i>The Gross Capital of the company or business being acquired/divested, divided by the Total Capital of the Trust following completion, or the effects on the Total Capital of the Trust resulting from a transaction.</i>	>25

2 For the purposes of this Annex 4:

“Gross Assets” is the total of fixed assets and current assets;

“Gross Capital” equals the market value of the target’s shares and debt securities, plus the excess of current liabilities over current assets; and

“Total Capital” of the Trust equals taxpayers’ equity.

3 Notwithstanding the above provisions and for the avoidance of doubt, a Significant Transaction does not include:

3.1 transaction pursuant to: Sections 56, 56A 56B and 57A of the 2006 Act; or

3.2 contracts in place, from time to time, with NHS Somerset Clinical Commissioning Group (or its successor organisation); or

3.3 contracts in place, from time to time, with any other Clinical Commissioning Groups, or the NHS Commissioning Board; or

3.4 contracts in place, from time to time, with Public Health England and local authorities