

# **University Hospitals Bristol NHS Foundation Trust**

## **Constitution**

**[as at 29 November 2018]**

Approved by the Council of Governors on 31 October 2018  
Approved by the Board of Directors on 29 November 2018

To be reviewed not later than March 2020

## University Hospitals Bristol NHS Foundation Trust Constitution

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1. **Interpretation and definitions**

- 1.1 Unless otherwise stated, words or expressions contained in this constitution shall bear the same meaning as in the 2006 Act.
- 1.2 Words importing the masculine gender only shall include the feminine gender, words importing the singular shall import the plural and vice-versa.
- 1.3 References to statutory provisions shall be construed as references to those provisions as subsequently amended or re-enacted (whether before or after the date of this Agreement) from time to time and shall include any provisions of which they are re-enactments (whether with or without modification).
- 1.4 The following expressions have the following meanings, unless the context requires otherwise—

**"the 2006 Act"** is the National Health Service Act 2006 (as amended by the 2012 Act).

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

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

**"Annual Members Meeting"** means an annual meeting of the Members.

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

**"Director"** means a member of the Board of Directors of the Trust.

**"Governor"** means a member of the Council of Governors of the Trust.

**"health service body"** means an NHS foundation trust or any of the bodies listed in Section 9(4) of the 2006 Act.

**"Member"** means a member of the Trust.

**"NHS Improvement/ (Monitor)"** Monitor is the body corporate, as provided by Section 61 of the 2012 Act. From 1 April 2016, Monitor is now part of NHS Improvement and therefore references to Monitor have now been replaced, where appropriate, by NHS Improvement.

**"voluntary organisation"** means a body, other than a public or local authority, the activities of which are not carried on for profit.

2. **Name**

- 2.1 The name of the foundation trust is University Hospitals Bristol NHS Foundation Trust (the Trust).

3. **Principal purpose**

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

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

#### **4. Powers**

- 4.1 The powers of the Trust are set out in the 2006 Act.
- 4.2 All the powers of the Trust shall be exercised by the Board of Directors on behalf of the Trust.
- 4.3 Any of these powers may be delegated to a committee of Directors or to an Executive Director.

#### **5. Membership and constituencies**

- 5.1 The Trust shall have Members, each of whom shall be a Member of one of the following constituencies—
- 5.1.1 a Public Constituency, or
- 5.1.2 the Staff Constituency

#### **6. Application for Membership**

- 6.1 An individual who is eligible to become a Member may do so on application to the Trust or by being invited by the Trust to become a Member of the Staff Constituency in accordance with paragraph 9.
- 6.2 An individual shall become a Member on the date his name is added to the Trust's register of Members, and shall cease to be a Member on the date is removed from the register of Members.

#### **7. Public Constituency**

- 7.1 An individual who lives in an area specified in Annex 1 as an area for a Public Constituency may become or continue as a Member.
- 7.2 Those individuals who live in an area specified for a Public Constituency are referred to collectively as a Public Constituency.
- 7.3 An individual who ceases to live in any area specified in Annex 1 shall cease to be a Member of any Public Constituency. A Member who moves from one area to another shall become a Member of the Public Constituency for that new area. Members should notify the Trust of any change of address.
- 7.4 In the case of any doubt, the Trust's decision as to whether or not an individual lives in an area will be final.
- 7.5 The minimum number of Members for each Public Constituency is specified in Annex 1.

**8. Staff Constituency**

- 8.1 An individual who is employed by the Trust under a contract of employment with the Trust may become or continue as a Member provided—
- 8.1.1 he is employed by the Trust under a contract of employment which has no fixed term or has a fixed term of at least 12 months, or
  - 8.1.2 he has been continuously employed by the Trust under a contract of employment for at least 12 months.
- 8.2 Individuals who exercise functions for the purposes of the Trust, otherwise than under a contract of employment with the Trust, may become or continue as Members of the Staff Constituency if they have exercised these functions continuously for a period of at least 12 months.
- 8.3 Those individuals who are eligible for membership by reason of this paragraph 8 are referred to collectively as the Staff Constituency.
- 8.4 The Staff Constituency shall be divided into four descriptions of individuals who are eligible for membership of the Staff Constituency, each description of individuals being specified within Annex 2 and being referred to as a Staff Class within the Staff Constituency.
- 8.5 The minimum number of Members in each Staff Class is specified in Annex 2.

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

- 9.1 An individual who is—
- 9.1.1 Eligible under paragraph 8.1 to become a Member of the Staff Constituency, and
  - 9.1.2 invited by the Trust to become a Member of the Staff Constituency
- shall become a Member as a Member of the Staff Constituency and appropriate Staff Class without an application being made, unless he informs the Trust that he does not wish to do so.

**10. Restriction on membership**

- 10.1 A Member of a constituency, or of a class within a constituency, may not while membership of that constituency or class continues, be a Member of any other constituency or class.
- 10.2 An individual who satisfies the criteria for membership of the Staff Constituency may not become or continue as a Member of any constituency other than the Staff Constituency.
- 10.3 An individual shall not be eligible for membership if he—
- 10.3.1 fails or ceases to fulfil the criteria for membership of any of the constituencies,
  - 10.3.2 was formerly employed by the Trust or its predecessor applicant NHS Trust and was dismissed for gross misconduct,
  - 10.3.3 was formerly employed by the Trust and in the preceding two years was lawfully dismissed other than by reason of redundancy,
  - 10.3.4 has been involved as a perpetrator in a serious incident of violence or abuse in the last five years at any of the Trust's hospitals or against any of the Trust's staff members or patients,

- 10.3.5 has been placed on the registers of Schedule 1 Offenders pursuant to the Sexual Offences Act 2003 (as amended) and/or the Children & Young Person's Acts 1933 to 1969 (as amended) and his or her conviction is not spent under the Rehabilitation of Offenders Act 1974,
  - 10.3.6 does not agree to, or by his actions or conduct shows that he does not (in the reasonable opinion of the Trust), abide by the Trust values as set out in the Trust's Integrated Business Plan or elsewhere,
  - 10.3.7 has been identified as a vexatious complainant by the Trust or other authority or has been excluded from treatment at any of the Trust's hospitals due to unacceptable behaviour,
  - 10.3.8 is deemed, in the reasonable opinion of the Trust, to have acted in a manner contrary to the interests of the Trust,
  - 10.3.9 is deemed, in the reasonable opinion of the Trust, to have failed to comply in a material way with the values and principles of the National Health Service or the Trust, and/or this constitution, or
  - 10.3.10 is under the age of seven (7) years.
- 10.4 Members should ensure their own eligibility for membership and inform the Trust if they cease to be eligible.
- 10.5 A Member shall cease to be a Member if—
- 10.5.1 he resigns by notice in writing to the Membership Manager,
  - 10.5.2 he dies,
  - 10.5.3 he ceases to be entitled under this constitution to be a Member,
  - 10.5.4 he is expelled under this constitution, or
  - 10.5.5 it appears to the Membership Manager that the Member no longer wishes to be involved in the affairs of the Trust as a Member, and after enquiries made in accordance with a process approved by the Governors, the Member does not establish that he has a continuing wish to be involved in the affairs of the Trust as a Member.
- 10.6 The Trust shall give any Member at least 14 days' written notice before removing him from Membership under paragraphs 10.5.3, 10.5.4, or 10.5.5. The Trust shall consider any representations made by the Member during that notice period.

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

- 11.1 The Trust shall hold an Annual Members' Meeting no later than 30 September every year. The Annual Members' Meeting shall be open to the public.
- 11.2 Any Members' meetings other than the Annual Members' Meeting shall be called "Special Members' Meetings".
- 11.3 Special Members' Meetings shall be open to all Members, Governors and Directors, and to representatives of the Trust's financial auditors. Special Members' Meetings shall not be open to anyone else unless invited by the Trust.
- 11.4 All Members' meetings are to be convened by the Directors.
- 11.5 The Directors shall decide where any Members' meeting is to be held and may provide that the same meeting can be conducted in multiple venues.

- 11.6 The Directors shall set the quorum for any Members' meeting.
- 11.7 The Trust shall give at least 14 clear days' notice of any Members' meeting—
- 11.7.1 by notice in writing to all Members (by email where email addresses are held),
  - 11.7.2 by notice on the Trust's website, and
  - 11.7.3 to the Governors and the Directors, and to the Trust's auditors,
- stating whether the meeting is an Annual Members' Meeting or a Special Members' Meeting, giving the time, date and place of the meeting and indicating the business to be dealt with at the meeting.
- 11.8 The Directors shall present to the Members at the Annual Members' Meeting—
- 11.8.1 a report on steps taken to secure that (taken as a whole) the actual membership is representative of those eligible for such membership,
  - 11.8.2 the progress of the membership strategy,
  - 11.8.3 any proposed changes to the policy for the composition of the Governors and of the Non-Executive Directors,
  - 11.8.4 the results of the election and appointment of Governors, and
  - 11.8.5 any other reports or documentation it considers necessary or otherwise required by NHS Improvement or the 2006 Act, including the annual accounts, any report of the auditor and the annual report.
- 11.9 The Chair or in his absence the Vice Chair shall chair any Members' meetings. If neither the Chair nor the Vice Chair is present, the Governors present shall elect one of their number to chair the meeting. If there is only one Governor present and willing to act that person shall chair the meeting. If no Governor is present and willing to chair the meeting within fifteen minutes after the notified start time of the meeting, the Members present and entitled to vote shall choose one of their number to chair the meeting.

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

- 12.1 The Trust is to have a Council of Governors, which shall comprise both elected and appointed Governors.
- 12.2 The composition of the Council of Governors is specified in Annex 3.
- 12.3 The 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.
- 12.4 The number of Governors to be elected by each constituency, or, where appropriate, by each class of each constituency, is specified in Annex 3.
- 12.5 At all times more than half of the Governors shall be Governors who are elected by Members of the Public Constituency.

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

- 13.1 Elections for elected Governors shall be conducted in accordance with the Model Election Rules.

- 13.2 The Model Election Rules as published from time to time by the Department of Health form part of this constitution. The Model Election Rules current at the date of the Trust's Authorisation are attached at Annex 4.
- 13.3 A subsequent variation of the Model Election Rules by the Department of Health shall not constitute a variation of the terms of this constitution for the purposes of paragraph 45 of the constitution (amendment of the constitution).
- 13.4 An election, if contested, shall be by secret ballot.
- 13.5 A Member of a Public Constituency standing for election as Governor must, at the time of his nomination, make a declaration for the purposes of Section 60 of the 2006 Act in the form specified by the Trust, stating the particulars of his qualification to vote as a Member and that he is not prevented from being a Governor by virtue of any provisions of this constitution.

**14. Council of Governors – tenure**

- 14.1 An elected Governor may hold office for a period of up to three years.
- 14.2 An elected Governor shall cease to hold office if he ceases to be a Member of the constituency or class by which he was elected (except that a Public Governor who moves from one Public Constituency to another during his term of office shall continue in office as a Public Governor for the constituency which elected him for the remainder of his term).
- 14.3 Subject to paragraph 14.7, an elected Governor shall be eligible for re-election at the end of his term.
- 14.4 An appointed Governor may hold office for a period of up to three years (except for Governors appointed by the Trust's Youth Involvement Group who may hold office for a period of up to one year).
- 14.5 An appointed Governor shall cease to hold office if the appointing organisation withdraws his appointment.
- 14.6 Subject to paragraph 14.7, an appointed Governor shall be eligible for re-appointment at the end of his term.
- 14.7 No Governor may serve for more than a total of nine years.

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

- 15.1 Governors must be at least 16 years of age at the date they are nominated for election or appointment.
- 15.2 A person may not become or continue as a Governor if he—
  - 15.2.1 has been adjudged bankrupt or his estate has been sequestrated and (in either case) has not been discharged,
  - 15.2.2 has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it,
  - 15.2.3 within the preceding five years has been convicted in the British Islands of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him,
  - 15.2.4 has within the preceding two years been lawfully dismissed otherwise than by reason of redundancy from any paid employment with a Health Service Body,

- 15.2.5 was formerly employed by the Trust or its predecessor application NHS trust and was dismissed for gross misconduct,
  - 15.2.6 is a person whose term of office as the chair or as a member or director of a Health Service Body has been terminated on the grounds that his continuance in office is no longer in the best interests of the health service, for non-attendance at meetings or for non-disclosure of a pecuniary interest,
  - 15.2.7 has had his name removed by a direction under Section 154 of the 2006 Act from any list prepared under Part 4 of that Act and has not subsequently had his name included in such a list,
  - 15.2.8 has failed to make, or has falsely made, any declaration as required to be made under Section 60 of the 2006 Act or has spoken or voted in a meeting on a matter in which he had a direct or indirect pecuniary or non-pecuniary interest and he is judged to have acted so by a majority of the Council of Governors,
  - 15.2.9 has been removed as a Governor, suspended from office or disqualified from holding office as a Governor by NHS Improvement, or NHS Improvement has exercised any of those powers in relation to him on any other occasion whether in relation to the Trust or some other NHS Foundation Trust,
  - 15.2.10 has received a written warning from the Trust for verbal and/or physical abuse towards Trust staff or patients,
  - 15.2.11 has been placed on the registers of Schedule 1 Offenders pursuant to the Sexual Offences Act 2003 (as amended) and/or the Children and Young Person's Act 1933 to 1969 (as amended) and his conviction is not spent under the Rehabilitation of Offenders Act 1974,
  - 15.2.12 is a Member of a Staff Class and any professional registration relevant to his eligibility to be a Member of that Staff Class has been suspended for a continuous period of more than six months,
  - 15.2.13 is incapable by reason of mental disorder, illness or injury in managing and administering his property and/or affairs,
  - 15.2.14 is appointed by an organisation that ceases to exist,
  - 15.2.15 is a member of the UK Parliament,
  - 15.2.16 is a director or a governor of another NHS Foundation Trust,
  - 15.2.17 is a member of a health related local authority overview and scrutiny committee.
- 15.3 A Governor who becomes disqualified must notify the Trust as soon as practicable and in any event within 14 days of first becoming aware that he is disqualified.
- 15.4 If the Trust becomes aware that a Governor is disqualified, the Trust will give him notice that he is disqualified as soon as practicable.

**16. Council of Governors: Termination of Tenure**

- 16.1 A Governor's term of office shall be terminated—
  - 16.1.1 by the Governor giving notice in writing to the Trust of his resignation from office at any time during that term of office,

- 16.1.2 by the giving of a notice under either paragraph 15.3 or 15.4,
- 16.1.3 by the Council of Governors if he has failed to attend two successive meetings of the Council of Governors unless the Council of Governors is satisfied:
  - 16.1.3.1 the absence was due to reasonable cause, and
  - 16.1.3.2 that the Governor will resume attendance at meetings of the Council of Governors within such period as it considers reasonable.
- 16.1.4 if the Council of Governors resolves that—
  - 16.1.4.1 his continuing as a Governor would or would be likely to prejudice the ability of the Trust to fulfil its principal purpose or of its purposes under this constitution or otherwise to discharge its duties and functions,
  - 16.1.4.2 his continuing as a Governor would or would be likely to prejudice the Trust's work with other persons or body with whom it is engaged or may be engaged in the provision of goods and services,
  - 16.1.4.3 his continuing as a Governor would or would be likely to adversely affect public confidence in the goods and services provided by the Trust,
  - 16.1.4.4 his continuing as a Governor would or would be likely to otherwise bring the Trust into disrepute or be detrimental to the interest of the Trust,
  - 16.1.4.5 it would not be in the best interests of the Council of Governors for him to continue in office as a Governor,
  - 16.1.4.6 it would not be in the best interests of the Trust for him to continue in office as a Governor,
  - 16.1.4.7 he is a vexatious or persistent litigant or complainant with regard to the Trust's affairs and his continuance in office would not be in the best interests of the Trust,
  - 16.1.4.8 he has failed or refused to undertake and/or satisfactorily complete any training which the Council of Governors has required him to undertake in his capacity as a Governor,
  - 16.1.4.9 he has in his conduct as a Governor failed to comply in a material way with the values and principles of the National Health Service or the Trust, and/ or this constitution, or
  - 16.1.4.10 he has committed a material breach of any code of conduct applicable to Governors and/or the Standing Orders for Governors.
- 16.2 A resolution under paragraph 16.1.4 shall be proposed by the Chair (or in his absence, the Vice Chair) and considered in a meeting of the Council of Governors convened for that purpose and to pass requires a majority of three quarters of the Governors voting at that meeting.
- 16.3 If the Chair is minded to propose a resolution under paragraph 16.1.4, the Chair shall first offer the Governor in question the opportunity to have the evidence

reviewed by an independent assessor agreeable to that Governor and to the Chair.

- 16.4 The Standing Orders adopted by the Council of Governors may contain provisions governing its procedure for terminating a Governor's term of office.
- 16.5 A Governor whose term of office is terminated before it expires shall not be eligible to be a Governor for three years from the date of termination, except by resolution carried by a majority of the Council of Governors voting.

**17. Council of Governors: vacancies**

- 17.1 If an appointed Governor's seat falls vacant for any reason before his term of office was due to expire, the Trust will invite the relevant appointing body to appoint a new Governor to hold office for the remainder of the term of office.
- 17.2 If an elected Governor's seat falls vacant for any reason more than 90 days before his term office was due to expire, the Trust will invite the candidate who secured the second highest number of votes in the last election for that office to assume the position for the remainder of the retiring Governor's term, provided that he achieved at least five percent (5%) of the number of votes for that constituency (or class of constituency, as the case may be). If that candidate does not accept, the vacancy will be offered to the candidate who secured the next highest number of votes (provided that he achieved at least five percent (5%) of the number of votes), and so on.
- 17.3 If no reserve candidate is available or willing to fill the vacancy and the relevant term of office has an unexpired period of at least 12 months and:
  - 17.3.1 an election is not due to be held within 6 months of the vacancy arising, an election will be held in accordance with the Election Scheme as soon as is reasonably practicable to fill the unexpired period; or
  - 17.3.2 an election is due to be held within 6 months, the office will stand vacant until the next scheduled election,provided always that any such vacancy shall not cause the aggregate number of Public Governors to be less than half the total membership of the Council of Governors. In that case an election will be held in accordance with the Election Scheme as soon as reasonably practicable to fill the unexpired period.
- 17.4 If no reserve candidate is available or willing to fill the vacancy and the relevant term of office has an unexpired period of less than 12 months, the office will stand vacant until the next scheduled election provided always that any such vacancy shall not cause the aggregate number of Public Governors to be less than half the total membership of the Council of Governors. In that case an election will be held in accordance with the Election Scheme as soon as reasonably practicable to fill the unexpired period
- 17.5 No defect in the election or appointment of a Governor or deficiency in the composition of the Council of Governors shall affect the validity of any act or decision of the Council of Governors.

**18. Council of Governors – duties of Governors**

- 18.1 The general duties of the Council of Governors are—
  - 18.1.1 to hold the Non-Executive Directors individually and collectively to account for the performance of the Board of Directors, and

- 18.1.2 to represent the interests of the Members as a whole and the interests of the public.
- 18.2 The Trust must take steps to secure that the Governors are equipped with the skills and knowledge they require in their capacity as such.
19. **Council of Governors – meetings of Governors**
- 19.1 The Chair or, in his absence the Vice Chair, shall preside at meetings of the Council of Governors.
- 19.2 Meetings of the Council of Governors shall be open to members of the public, unless members of the public are excluded for special reasons.
- 19.3 For the purposes of obtaining information about the Trust's performance of its functions or the Directors' performance of their duties (and deciding whether to propose a vote on the Trust's or Directors' performance), the Council of Governors may require one or more of the Directors to attend a meeting of the Council of Governors.
20. **Council of Governors – standing orders**
- 20.1 The standing orders for the practice and procedure of the Council of Governors are attached at Annex 5.
21. **Council of Governors – referral to the Panel**
- 21.1 In this paragraph, the Panel means a panel of persons appointed by NHS Improvement to which a governor of an NHS foundation trust may refer a question as to whether the trust has failed or is failing—
- 21.1.1 to act in accordance with its Constitution, or
- 21.1.2 to act in accordance with provision made by or under Chapter 5 of the 2006 Act.
- 21.2 A Governor may refer a question to the Panel only if more than half of the Governors voting approve the referral.
22. **Council of Governors – conflicts of interest of Governors**
- 22.1 If a Governor has a pecuniary, personal or family interest, whether that interest is actual or potential and whether that interest is direct or indirect, in any proposed contract or other matter which is under consideration or is to be considered by the Council of Governors, the Governor shall disclose that interest to the Governors as soon as he becomes aware of it.
- 22.2 The Standing Orders for the Council of Governors shall make provision for the disclosure of interests and arrangements for the exclusion of a Governor declaring any interest from any discussion or consideration of the matter in respect of which an interest has been disclosed.
23. **Council of Governors – travel expenses**
- 23.1 The Trust may pay travelling and other expenses to Governors at rates determined by the Trust.
24. **Board of Directors – composition**
- 24.1 The Trust has a Board of Directors, which comprises both Executive and Non-Executive Directors.
- 24.2 The Board of Directors comprises—

- 24.2.1 a Non-Executive Chairman,
  - 24.2.2 up to 8 other Non-Executive Directors (one of whom may be nominated as the Senior Independent Director), and
  - 24.2.3 up to 7 Executive Directors.
- 24.3 One of the Executive Directors shall be the Chief Executive.
- 24.4 The Chief Executive shall be the Accounting Officer
- 24.5 One of the Executive Directors is the Finance Director
- 24.6 One of the Executive Directors is to be a registered medical practitioner or a registered dentist (within the meaning of the Dentists Act 1984)
- 24.7 One of the Executive Directors is to be a registered nurse or a registered midwife
- 24.8 The Board of Directors shall at all times be constituted so that the number of Non-Executive Directors (excluding the Chair) equals or exceeds the number of Executive Directors.
25. **Board of Directors – general duty**
- 25.1 The general duty of the Board of Directors and of each Director individually, is to act with a view to promoting the success of the Trust so as to maximise the benefits for the Members as a whole and for the public.
26. **Board of Directors – qualification for appointment as a Non-Executive Director**
- 26.1 A person may be appointed as a Non-Executive Director only if—
- 26.1.1 he is a Member of a Public Constituency, or
  - 26.1.2 where any of the Trust’s hospitals includes a medical or dental school provided by a university, he exercises functions for the purposes of that university, and
  - 26.1.3 he is not disqualified by virtue of paragraph 31 below.
27. **Board of Directors – appointment and removal of the Chair and other Non-Executive Directors**
- 27.1 The Council of Governors at a general meeting of the Council of Governors shall appoint or remove the Chair and the other Non-Executive Directors.
- 27.2 Removal of the Chair or another Non-Executive Director shall require the approval of at least three-quarters of the Council of Governors.
28. **Board of Directors – appointment of the Vice Chair**
- 28.1 The Council of Governors at a general meeting shall appoint one of the Non-Executive Directors to be the Vice Chair.
29. **Board of Directors – appointment and removal of the Chief Executive and other Executive Directors**
- 29.1 The Non-Executive Directors shall appoint or remove the Chief Executive.
- 29.2 The appointment of the Chief Executive shall require the approval of the more than half of the Council of Governors voting.

29.3 A committee consisting of the Chief Executive, the Chair and the other Non-Executive Directors shall appoint or remove the other Executive Directors.

**30. Board of Directors – disqualification**

30.1 A person may not become or continue as a Director if he—

- 30.1.1 has been adjudged bankrupt or his estate has been sequestrated and (in either case) has not been discharged,
- 30.1.2 has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it,
- 30.1.3 within the preceding five years has been convicted in the British Islands of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him,
- 30.1.4 in the case of a Non-Executive Director, no longer satisfies the relevant requirements for appointment,
- 30.1.5 is a person whose tenure of office as a Chair or as a member or Director of a Health Service Body has been terminated on the grounds that his appointment is not in the interests of public service, or for non-disclosure of a pecuniary interest,
- 30.1.6 has within the preceding two years been dismissed, otherwise than by reason of redundancy, by the coming to an end of fixed term contract or through ill health, from any paid employment with a Health Service Body,
- 30.1.7 in the case of an Executive Director, is no longer employed by the Trust,
- 30.1.8 has had his name removed by a Direction under section 154 of the 2006 Act from any list prepared under Part 4 of that Act, and has not subsequently had his name included on such a list,
- 30.1.9 is a member of a patient and public involvement forum,
- 30.1.10 is a member of a local authority's overview and scrutiny committee,
- 30.1.11 is the subject of a disqualification order made under the Company Directors' Disqualifications Act 1986,
- 30.1.12 has failed or refused to undertake any training which the Board of Directors requires all Directors to undertake,
- 30.1.13 has failed to sign and deliver to the Secretary in the form required by the Board of Directors confirmation that he accepts the Code of Conduct for Directors and other documents such as the Fit and Proper Person declaration,
- 30.1.14 is a partner, spouse, person whose status is that of "Civil Partner" as defined in the Civil Partnerships Act 2004, child, step child or adopted child, sibling or parent of an existing Director,
- 30.1.15 is an 'unfit person' as defined in the Trust's provider licence (as may be amended from time to time), or
- 30.1.16 does not meet any other statutory requirement for being a Director of an NHS foundation trust including but not limited to the criteria set out in Regulation 5(3) of the Health and Social Care Act 2008

(Regulated Activities) Regulations 2014 (including any modification or re-enactment thereof) .

**31. Board of Directors – meetings**

- 31.1 Meetings of the Board of Directors shall be open to members of the public, unless members of the public are excluded for special reasons<sup>1</sup>.
- 31.2 Before holding a meeting, the Board of Directors must send a copy of the agenda of the meeting to the Council of Governors. As soon as practicable after holding a meeting, the Board of Directors must send a copy of the minutes of the meeting to the Council of Governors.

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

- 32.1 The standing orders for the practice and procedure of the Board of Directors are attached at Annex 6.

**33. Board of Directors – conflicts of interest of Directors**

- 33.1 The duties that a Director has by virtue of being a Director include in particular—
  - 33.1.1 a duty to avoid a situation in which the Director has an actual or potential, financial, non-financial professional, non-financial personal or indirect interest that conflicts (or possibly may conflict) with the interests of the Trust (a "Conflict"); and
  - 33.1.2 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.
- 33.2 The duty referred to in sub-paragraph 33.1.1 is not infringed if—
  - 33.2.1 the situation cannot reasonably be regarded as likely to give rise to a conflict of interest, or
  - 33.2.2 the matter has been authorised in accordance with the constitution.
- 33.3 The duty referred to in sub-paragraph 33.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- 33.4 In sub-paragraph 33.1.2, "third party" means a person other than—
  - 33.4.1 the Trust, or
  - 33.4.2 a person acting on its behalf.
- 33.5 If a Director has in any way a direct or indirect interest in a proposed transaction or arrangement with the Trust, the Director must declare the nature and extent of that interest to the other Directors.
- 33.6 If a declaration under this paragraph proves to be, or becomes, inaccurate, incomplete, a further declaration must be made.
- 33.7 Any declaration required by this paragraph must be made before the Trust enters into the transaction or arrangement.
- 33.8 This paragraph does not require a declaration of an interest of which the Director is not aware or where the Director is not aware of the transaction or arrangement in question.
- 33.9 A Director need not declare an interest—

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<sup>1</sup> Annex 6, paragraph 3.1 sets out such reasons in greater detail.

- 33.9.1 if it cannot reasonably be regarded as likely to give rise to a conflict of interest,
  - 33.9.2 if, or to the extent that, the Directors are already aware of it, or
  - 33.9.3 if, or to the extent that, it concerns terms of the Director's appointment that have been or are to be considered—
    - 33.9.3.1 by a meeting of the Board of Directors, or
    - 33.9.3.2 by a committee of the Directors appointed for the purpose under the constitution.
- 33.10 The Standing Orders of the Board of Directors shall include provisions about the disclosure of interests and arrangements for a Director with an interest to withdraw from a meeting in relation to the matter in respect of which he has declared an interest.
- 33.11 A matter shall have been authorised for the purposes of paragraph 33.2.2 above if:
- 33.11.1 The Directors, in accordance with the requirements set out in this paragraph 33.11, 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 33.1.1 above to avoid Conflicts:
    - 33.11.1.1 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;
    - 33.11.1.2 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
    - 33.11.1.3 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.
  - 33.11.2 Any authorisation of a Conflict under this paragraph 33.11 may (whether at the time of giving the authorisation or subsequently):
    - 33.11.2.1 extend to any actual or potential conflict of interest which may reasonably be expected to arise out of the Conflict so authorised;
    - 33.11.2.2 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;
    - 33.11.2.3 impose upon the Interested Director such other terms for the purposes of dealing with the Conflict as the Directors think fit;
    - 33.11.2.4 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

33.11.2.5 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.

33.11.3 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.

33.11.4 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.

33.11.5 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.

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

34.1 The Council of Governors at a general meeting shall decide the remuneration and allowances, and the other terms and conditions of office, of the Chair and the other Non-Executive Directors.

34.2 The Trust shall maintain a committee of Non-Executive Directors to decide the remuneration and allowances, and the other terms and conditions of office, of the Chief Executive and other Executive Directors.

**35. Registers**

35.1 The Trust shall have—

35.1.1 a register of Members showing, in respect of each Member, the constituency to which he belongs and, where there are classes within it, the class to which he belongs,

35.1.2 a register of Governors,

35.1.3 a register of interests of Governors,

35.1.4 a register of Directors, and

35.1.5 a register of interests of Directors.

**36. Registers – inspection and copies**

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

36.2 The Trust shall not make any part of its registers available for inspection by members of the public which shows details of—

36.2.1 any Member of the Public Constituency, or

- 36.2.2 any other Member, if he so requests.
- 36.3 So far as the registers are required to be made available—
  - 36.3.1 they are to be available for inspection free of charge at all reasonable times, and
  - 36.3.2 a person who requests a copy of or extract from the registers is to be provided with a copy or extract.
- 36.4 If the person requesting a copy or extract is not a Member, the Trust may impose a reasonable charge for doing so.

**37. Documents available for public inspection**

- 37.1 The Trust shall make the following documents available for inspection by members of the public free of charge at all reasonable times—
  - 37.1.1 a copy of the current Constitution,
  - 37.1.2 a copy of the latest annual accounts and of any report of the auditor on them, and
  - 37.1.3 a copy of the latest annual report.
- 37.2 The Trust shall also make the following documents relating to a special administration of the Trust available for inspection by members of the public free of charge at all reasonable times—
  - 37.2.1 a copy of any order made under section 65D (appointment of trust special administrator), 65J (power to extend time), 65KC (action following Secretary of State's rejection of final report), 65L(trusts coming out of administration) or 65LA (trusts to be dissolved) of the 2006 Act,
  - 37.2.2 a copy of any report laid under section 65D (appointment of trust special administrator) of the 2006 Act,
  - 37.2.3 a copy of any information published under section 65D (appointment of trust special administrator) of the 2006 Act,
  - 37.2.4 a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act,
  - 37.2.5 a copy of any statement provided under section 65F(administrator's draft report) of the 2006 Act,
  - 37.2.6 a copy of any notice published under section 65F(administrator's draft report), 65G (consultation plan), 65H (consultation requirements), 65J (power to extend time), 65KA(Monitor's decision), 65KB (Secretary of State's response to Monitor's decision), 65KC (action following Secretary of State's rejection of final report) or 65KD (Secretary of State's response to re-submitted final report) of the 2006 Act,
  - 37.2.7 a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act,
  - 37.2.8 a copy of any final report published under section 65I

(administrator's final report),

37.2.9 a copy of any statement published under section 65J (power to extend time) or 65KC (action following Secretary of State's rejection of final report) of the 2006 Act,

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

37.3 Any person who requests a copy of or extract from any of the above documents is to be provided with a copy.

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

**38. Auditor**

38.1 The Trust shall have an auditor.

38.2 The Council of Governors shall appoint or remove the auditor by a majority vote at a general meeting of the Council of Governors.

**39. Audit committee**

39.1 The Trust shall maintain a statutory committee of Non-Executive Directors as an audit committee to perform such monitoring, reviewing and other functions as are appropriate.

**40. Accounts**

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

40.2 NHS Improvement may with the approval of the Secretary of State give directions to the Trust as to the content and form of its accounts.

40.3 The accounts are to be audited by the Trust's auditor.

40.4 The Trust shall prepare in respect of each financial year annual accounts in such form as NHS Improvement may with the approval of the Secretary of State direct.

40.5 The functions of the Trust with respect to the preparation of the annual accounts shall be delegated to the Accounting Officer.

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

41.1 The Trust shall prepare an annual report and send it to NHS Improvement.

41.2 The Trust shall give information as to its forward planning in respect of each financial year to NHS Improvement.

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

41.4 In preparing the document, the Directors shall have regard to the views of the Council of Governors.

41.5 Each forward plan must include information about—

41.5.1 the activities other than the provision of goods and services for the purposes of the health service in England that the Trust proposes to

carry on, and

41.5.2 the income it expects to receive from doing so.

41.6 Where a forward plan contains a proposal that the Trust carry on an activity of a kind mentioned in sub-paragraph 41.5.1 the Council of Governors must—

41.6.1 determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfilment by the Trust of its principal purpose or the performance of its other functions, and

41.6.2 notify the Directors of its determination.

41.7 If the Trust proposes to increase by 5% or more the proportion of its total income in any financial year attributable to activities other than the provision of goods and services for the purposes of the health service in England, the Trust may implement the proposal only if more than half of the Governors voting approve its implementation.

#### **42. Presentation of the annual accounts and reports to the Governors and Members**

42.1 The following documents are to be presented to the Council of Governors at a general meeting of the Council of Governors—

42.1.1 the annual accounts,

42.1.2 any report of the auditor on them, and

42.1.3 the annual report.

42.2 The documents shall also be presented to the Members at the Annual Members' Meeting by at least one Director in attendance.

42.3 The Trust may combine a meeting of the Council of Governors convened for the purposes of sub-paragraph 42.1 with the Annual Members' Meeting.

#### **43. Instruments**

43.1 The Trust shall have a seal.

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

#### **44. Amendment of the Constitution**

44.1 The Trust may make amendments of its Constitution only if—

44.1.1 more than half of the Council of Governors voting approve the amendments, and

44.1.2 more than half of the Directors voting approve the amendments.

44.2 Amendments made under paragraph 44.1 take effect as soon as the conditions in that paragraph are satisfied, but the amendment has no effect in so far as the constitution would, as a result of the amendment, not accord with schedule 7 of the 2006 Act.

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

44.3.1 at least one Governor must attend the next Annual Members' Meeting and present the amendment,

44.3.2 the Trust must give the Members an opportunity to vote on whether they approve the amendment, and

44.3.3 if more than half of the Members voting approve the amendment, the amendment continues to have effect, otherwise, it ceases to have effect and the Trust must take such steps as are necessary as a result.

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

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

45.1 The Trust may only apply for a merger, acquisition, separation or dissolution with the approval of more than half of the members of the Council of Governors.

45.2 The Trust may enter into a significant transaction only if more than half of the members of the Council of Governors voting approve entering into the significant transaction.

45.3 Significant transaction is defined as investments, divestments or other transactions comprising more than 25% of the assets, income or capital of the NHS Foundation Trust, in line with NHS Improvement's Single Oversight Framework.

46. **Indemnity**

46.1 Governors and Directors who act honestly and in good faith will not have to meet out of their personal resources any personal civil liability which is incurred in the execution or purported execution of their Board functions, save where they have acted recklessly. Any costs arising in this way will be met by the Trust and the Trust shall have the power to purchase suitable insurance or make appropriate arrangements with the National Health Service Resolution to cover such costs.

**ANNEX 1**  
**THE PUBLIC CONSTITUENCIES (from 1 June 2019)**

<b>The Public Constituencies</b>	<b>Area of each Public Constituency (as defined by Local Authority boundaries)</b>	<b>Minimum Number of Members</b>
Bristol	Bristol City Council	2271
North Somerset	North Somerset District Council	1058
South Gloucestershire	South Gloucestershire Council	1388
Rest of England and Wales	Rest of England and Wales	5

The minimum number of members is based on 0.5% of the population in each Public Constituency as reported in the ONS 2016 based sub-national population data:

Rest of England and Wales – fixed value at 5 members

**ANNEX 2**  
**THE STAFF CONSTITUENCIES**

<b>Classes within the Staff Constituency</b>	<b>Individuals Eligible for Membership of that Staff Class</b>	<b>Minimum Number of Members in each Staff Class</b>
Medical and Dental Staff	Those individuals defined in paragraph 1 below.	1166
Nursing and Midwifery Staff	Those individuals defined in paragraph 2 below.	3007
Other Clinical Healthcare Staff	Those individuals defined in paragraph 3 below.	1313
Non-Clinical Healthcare Staff	Those individuals defined in paragraph 4 below.	2289

**The minimum number of members is based on 75% of the headcount of the eligible workforce in each Staff Constituency as at July 2018.**

**1. Medical and Dental Staff**

1.1 Members of the Staff Constituency who are fully registered persons within the meaning of the Medical Act 1983 or the Dentists Act 1984 and who are otherwise fully authorised and licensed to practise in England and Wales or who are otherwise designated by the Trust from time to time as eligible to be members of this Staff Class for the purposes of this paragraph having regard to the usual definitions applicable at that time for persons carrying on the professions of medical practitioner or dentist.

**2. Nursing and Midwifery Staff**

2.1 Members of the Staff Constituency who are registered under the Nurses, Midwives and Health Visitors Act 1997 and who are otherwise fully authorised and licensed to practise in England and Wales or are otherwise designated by the Trust from time to time as eligible to be Members of this Staff Class for the purposes of this paragraph, having regard to the usual definitions applicable at that time for persons carrying on the profession of registered nurse or registered midwife and individuals who are health care assistants.

**3. Other Clinical Healthcare Staff**

3.1 Members of the Staff Constituency who do not come within paragraphs 1 or 2 above and are regulated by a regulatory body that falls within the remit of the Professional Standards Authority for Health and Social Care established by the NHS Reform Act 2002 (as amended by the 2012 Act), or who are otherwise designated by the Trust from time to time as eligible Members of this Staff Class for the purposes of this paragraph, having regard to the usual definitions applicable at that time for persons carrying on such professions.

**4. Non-Clinical Staff**

4.1 Members of the Staff Constituency, who do not come within paragraphs 1, 2 or 3 above and are designated by the Trust from time to time as eligible to be a

Member of this Staff Class.

5. **Honorary contract holders**

5.1 Those individuals who are Members of the Staff Constituency pursuant to paragraph 8.2 of this constitution (academic staff under an honorary contract with the Trust) shall be members of a Staff Class detailed in paragraphs 1, 2, 3 or 4 above as appropriate.

6. **Continuous Employment**

6.1 For the purposes of paragraph 8.1.2 and 8.2 of this constitution, Chapter 1 of Part 14 of the Employment Rights Act 1996 shall apply for the purposes of determining whether an individual has been continuously employed by the Trust or has continuously exercised functions for the purposes of the Trust.

7. **Exercise of Functions**

7.1 For the purposes of paragraph 8.2 of this constitution it shall be for the Trust in its absolute discretion to determine whether an individual exercises functions for the purposes of the Trust and whether that individual has done so continuously for a period of at least 12 months.

### ANNEX 3

#### COMPOSITION OF COUNCIL OF GOVERNORS (from 1 June 2019)

	<b>Electing/Appointing Body</b>	<b>Number of Governors</b>	<b>Total</b>
<b>1.</b>	<b>Public Constituencies</b>		
	Bristol	9	
	South Gloucestershire	3	
	North Somerset	3	
	Rest of England and Wales	2	<b>17</b>
<b>2.</b>	<b>Staff Constituency</b>		
	Medical and Dental Staff Class	1	
	Nursing and Midwifery Staff Class	2	
	Other Clinical Healthcare Staff Class	1	
	Non-Clinical Healthcare Staff Class	2	<b>6</b>
<b>4.</b>	<b>Appointed Governors</b>		
	<u>Local Authority</u>		
	Bristol City Council	1	
	<u>Universities</u>		
	University of Bristol	1	
	University of West of England	1	
	<u>Partnership Organisations</u>		
	Joint Union Committee	1	
	University Hospitals Bristol NHS Foundation Trust Youth Involvement Group	2	<b>6</b>
	<b>Total Number of Governors</b>		29

#### 1. **Appointed Governors**

1.1 Each appointing body shall be entitled to appoint a Governor or Governors (as set out in the table above) in accordance with a process of appointment agreed by it with the Trust. The absence of any such agreed process of appointment shall not prevent an appointing body from appointing it Governor(s).

1.2 If Bristol City Council declines or fails to appoint a Governor within three months of

being requested to do so by the Trust, the Trust shall consult North Somerset District Council and South Gloucestershire Council and the Trust shall invite one of those local authorities to appoint a Governor in substitution for Bristol City Council.

- 1.3 At the end of the term of appointment of that Governor the Trust shall in its absolute discretion decide whether to permit Bristol City Council to appoint a Governor for the next period of office (provided it remains eligible to do so) or to invite the local authority which had appointed a Governor in substitution to do so.

## ANNEX 4

### THE MODEL ELECTION RULES 2014

#### **PART 1: INTERPRETATION**

1. Interpretation

#### **PART 2: TIMETABLE FOR ELECTION**

2. Timetable
3. Computation of time

#### **PART 3: RETURNING OFFICER**

4. Returning officer
5. Staff
6. Expenditure
7. Duty of co-operation

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

8. Notice of election
9. Nomination of candidates
10. Candidate's particulars
11. Declaration of interests
12. Declaration of eligibility
13. Signature of candidate
14. Decisions as to validity of nomination forms
15. Publication of statement of nominated candidates
16. Inspection of statement of nominated candidates and nomination forms
17. Withdrawal of candidates
18. Method of election

#### **PART 5: CONTESTED ELECTIONS**

19. Poll to be taken by ballot
20. The ballot paper
21. The declaration of identity (public constituency)

##### *Action to be taken before the poll*

22. List of eligible voters
23. Notice of poll
24. Issue of voting information by returning officer
25. Ballot paper envelope and covering envelope
26. E-voting systems

##### *The poll*

27. Eligibility to vote
28. Voting by persons who require assistance
29. Spoilt ballot papers and spoilt text message votes
30. Lost voting information
31. Issue of replacement voting information
32. ID declaration form for replacement ballot papers (public constituencies)
33. Procedure for remote voting by internet
34. Procedure for remote voting by telephone
35. Procedure for remote voting by text message

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

- 36. Receipt of voting documents
- 37. Validity of votes
- 38. Declaration of identity but no ballot (public constituency)
- 39. De-duplication of votes
- 40. Sealing of packets

**PART 6: COUNTING THE VOTES**

- STV41. Interpretation of Part 6
- 42. Arrangements for counting of the votes
- 43. The count
- STV44. Rejected ballot papers and rejected text voting records
- FPP44. Rejected ballot papers and rejected text voting records
- STV45. First stage
- STV46. The quota
- STV47. Transfer of votes
- STV48. Supplementary provisions on transfer
- STV49. Exclusion of candidates
- STV50. Filling of last vacancies
- STV51. Order of election of candidates
- FPP51. Equality of votes

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

- FPP52. Declaration of result for contested elections
- STV52. Declaration of result for contested elections
- 53. Declaration of result for uncontested elections

**PART 8: DISPOSAL OF DOCUMENTS**

- 54. Sealing up of documents relating to the poll
- 55. Delivery of documents
- 56. Forwarding of documents received after close of the poll
- 57. Retention and public inspection of documents
- 58. Application for inspection of certain documents relating to election

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

- FPP59. Countermand or abandonment of poll on death of candidate
- STV59. Countermand or abandonment of poll on death of candidate

**PART 10: ELECTION EXPENSES AND PUBLICITY**

*Expenses*

- 60. Election expenses
- 61. Expenses and payments by candidates
- 62. Expenses incurred by other persons

*Publicity*

- 63. Publicity about election by the corporation
- 64. Information about candidates for inclusion with voting information
- 65. Meaning of "for the purposes of an election"

**PART 11: QUESTIONING ELECTIONS AND IRREGULARITIES**

66. Application to question an election

**PART 12: MISCELLANEOUS**

67. Secrecy

68. Prohibition of disclosure of vote

69. Disqualification

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

**1. Interpretation**

1.1 In these rules, unless the context otherwise requires:

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

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

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

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

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

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

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

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

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

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

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

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

“NHS Improvement (Monitor)” means the corporate body known as Monitor as provided by section 61 of the 2012 Act. From 1 April 2016, Monitor is now part of NHS Improvement and therefore references to Monitor have now been replaced, where appropriate, by NHS Improvement;

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

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

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

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

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

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

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

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

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

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

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

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

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

## PART 2: TIMETABLE FOR ELECTIONS

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### 2. Timetable

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

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

### 3. Computation of time

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

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

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

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

**4. Returning Officer**

4.1 Subject to rule 69, the returning officer for an election is to be appointed by the corporation.

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

**5. Staff**

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

**6. Expenditure**

6.1 The corporation is to pay the returning officer:

(a) any expenses incurred by that officer in the exercise of his or her functions under these rules,

(b) such remuneration and other expenses as the corporation may determine.

**7. Duty of co-operation**

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

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

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

8.1 The returning officer is to publish a notice of the election stating:

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

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

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

9.2 The returning officer:

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

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

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

10.1 The nomination form must state the candidate's:

- (a) full name,
- (b) contact address in full (which should be a postal address although an e-mail address may also be provided for the purposes of electronic communication), and
- (c) constituency, or class within a constituency, of which the candidate is a member.

### **11. Declaration of interests**

11.1 The nomination form must state:

- (a) any financial interest that the candidate has in the corporation, and

- (b) whether the candidate is a member of a political party, and if so, which party,

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

## **12. Declaration of eligibility**

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

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

## **13. Signature of candidate**

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

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

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

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

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

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

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

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

- (e) that the paper is not signed and dated by the candidate, if required by rule 13.

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

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

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

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

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

15.2 The statement must show:

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

as given in their nomination form.

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

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

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

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

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

## **17. Withdrawal of candidates**

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

## **18. Method of election**

18.1 If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is greater than the number of members to be

elected to the council of governors, a poll is to be taken in accordance with Parts 5 and 6 of these rules.

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

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

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

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

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

**20. The ballot paper**

- 20.1 The ballot of each voter (other than a voter who casts his or her ballot by an e-voting method of polling) is to consist of a ballot paper with the persons remaining validly nominated for an election after any withdrawals under these rules, and no others, inserted in the paper.
- 20.2 Every ballot paper must specify:
- (a) the name of the corporation,
  - (b) the constituency, or class within a constituency, for which the election is being held,
  - (c) the number of members of the council of governors to be elected from that constituency, or class within that constituency,

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

20.3 Each ballot paper must have a unique identifier.

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

**21. The declaration of identity (public constituency)**

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

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

("declaration of identity")

and the corporation shall make such arrangements as it considers appropriate to facilitate the making and the return of a declaration of identity by each voter, whether by the completion of a paper form ("ID declaration form") or the use of an electronic method.

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

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

*Action to be taken before the poll*

**22. List of eligible voters**

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

election.

22.2 The list is to include, for each member:

(a) a postal address; and,

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

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

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

### **23. Notice of poll**

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

(a) the name of the corporation,

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

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

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

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

(f) the methods of polling by which votes may be cast at the election by voters in a constituency or class within a constituency, as determined by the corporation in accordance with rule 19.3,

(g) the address for return of the ballot papers,

(h) the uniform resource locator (url) where, if internet voting is a method of polling, the polling website is located;

(i) the telephone number where, if telephone voting is a method of polling, the telephone voting facility is located,

(j) the telephone number or telephone short code where, if text message voting is a method of polling, the text message voting facility is located,

(k) the date and time of the close of the poll,

(l) the address and final dates for applications for replacement voting information, and

(m) the contact details of the returning officer.

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

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

(a) a ballot paper and ballot paper envelope,

(b) the ID declaration form (if required),

- (c) information about each candidate standing for election, pursuant to rule 61 of these rules, and
  - (d) a covering envelope;
- ("postal voting information").

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

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

("e-voting information").

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

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

for the purposes of the poll.

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

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

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

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

25.2 The covering envelope is to have:

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

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

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

**26. E-voting systems**

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

confirmation of this; and

(f) prevent any voter from voting after the close of poll.

26.5

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

(a) require a voter to

(i) enter his or her voter ID number in order to be able to cast his or her vote; and

(ii) where the election is for a public constituency, make a declaration of identity;

(b) specify:

(i) the name of the corporation,

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

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

(iv) instructions on how to vote and how to make a declaration of identity,

(v) the date and time of the close of the poll, and

(vi) the contact details of the returning officer;

(c) prevent a voter from voting for more candidates than he or she is entitled to at the election;

(d) create a record ("telephone voting record") that is stored in the telephone voting system in respect of each vote cast by a voter using the telephone that comprises of:

(i) the voter's voter ID number;

(ii) the voter's declaration of identity (where required);

(iii) the candidate or candidates for whom the voter has voted; and

(iv) the date and time of the voter's vote

(e) if the voter's vote has been duly cast and recorded, provide the voter with confirmation of this;

(f) prevent any voter from voting after the close of poll.

26.6

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

(a) require a voter to:

(i) provide his or her voter ID number; and

(ii) where the election is for a public constituency, make a declaration of identity;

in order to be able to cast his or her vote;

(b) prevent a voter from voting for more candidates than he or she is entitled to at the election;

(d) create a record ("text voting record") that is stored in the text messaging voting system in respect of each vote cast by a voter by text message that

comprises of:

- (i) the voter's voter ID number;
  - (ii) the voter's declaration of identity (where required);
  - (ii) the candidate or candidates for whom the voter has voted; and
  - (iii) the date and time of the voter's vote
- (e) if the voter's vote has been duly cast and recorded, provide the voter with confirmation of this;
- (f) prevent any voter from voting after the close of poll.

*The poll*

**27. Eligibility to vote**

- 27.1 An individual, aged 16 or over, who becomes a member of the corporation on or before the closing date for the receipt of nominations by candidates for the election, is eligible to vote in that election.

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

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

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

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

ID number on the spoilt text message vote, if he or she can obtain it.

29.7 The returning officer may not issue a replacement voter ID number in respect of a spoilt text message vote unless he or she is satisfied as to the voter's identity.

29.8 After issuing a replacement voter ID number in respect of a spoilt text message vote, the returning officer shall enter in a list ("the list of spoilt text message votes"):

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

(c) the details of the replacement voter ID number issued to the voter.

### **30. Lost voting information**

30.1 Where a voter has not received his or her voting information by the tenth day before the close of the poll, that voter may apply to the returning officer for replacement voting information.

30.2 The returning officer may not issue replacement voting information in respect of lost voting information unless he or she:

- (a) is satisfied as to the voter's identity,
- (b) has no reason to doubt that the voter did not receive the original voting information,
- (c) has ensured that no declaration of identity, if required, has been returned.

30.3 After issuing replacement voting information in respect of lost voting information, the returning officer shall enter in a list ("the list of lost ballot documents"):

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

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

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

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

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

### **32. ID declaration form for replacement ballot papers (public constituency)**

32.1 In respect of an election for a public constituency an ID declaration form must be

issued with each replacement ballot paper requiring the voter to make a declaration of identity.

*Polling by internet, telephone or text*

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

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

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

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

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

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

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

**36. Receipt of voting documents**

36.1 Where the returning officer receives:  
(a) a covering envelope, or  
(b) any other envelope containing an ID declaration form if required, a ballot paper envelope, or a ballot paper,  
before the close of the poll, that officer is to open it as soon as is practicable; and rules 37 and 38 are to apply.

36.2 The returning officer may open any covering envelope or any ballot paper envelope for the purposes of rules 37 and 38, but must make arrangements to ensure that no person obtains or communicates information as to:

- (a) the candidate for whom a voter has voted, or
- (b) the unique identifier on a ballot paper.

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

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

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

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

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

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

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

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

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

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

- (a) mark the internet voting record, telephone voting record or text voting record (as applicable) “disqualified”,

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

**38. Declaration of identity but no ballot paper (public constituency)<sup>2</sup>**

38.1 Where the returning officer receives an ID declaration form if required but no ballot paper, the returning officer is to:

- (a) mark the ID declaration form “disqualified”,
- (b) record the name of the voter in the list of disqualified documents, indicating that a declaration of identity was received from the voter without a ballot paper, and
- (c) place the ID declaration form in a separate packet.

**39. De-duplication of votes**

39.1 Where different methods of polling are being used in an election, the returning officer shall examine all votes cast to ascertain if a voter ID number has been used more than once to cast a vote in the election.

39.2 If the returning officer ascertains that a voter ID number has been used more than once to cast a vote in the election he or she shall:

- (a) only accept as duly returned the first vote received that was cast using the relevant voter ID number; and
- (b) mark as “disqualified” all other votes that were cast using the relevant voter ID number

39.3 Where a ballot paper is disqualified under this rule the returning officer shall:

- (a) mark the ballot paper “disqualified”,
- (b) if there is an ID declaration form accompanying the ballot paper, mark it “disqualified” and attach it to the ballot paper,
- (c) record the unique identifier and the voter ID number on the ballot paper in the list of disqualified documents;
- (d) place the document or documents in a separate packet; and
- (e) disregard the ballot paper when counting the votes in accordance with these rules.

39.4 Where an internet voting record, telephone voting record or text voting record is disqualified under this rule the returning officer shall:

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

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<sup>2</sup> It should not be possible, technically, to make a declaration of identity electronically without also submitting a vote.

record (as applicable) when counting the votes in accordance with these rules.

**40. Sealing of packets**

40.1 As soon as is possible after the close of the poll and after the completion of the procedure under rules 37 and 38, the returning officer is to seal the packets containing:

- (a) the disqualified documents, together with the list of disqualified documents inside it,
- (b) the ID declaration forms, if required,
- (c) the list of spoiled ballot papers and the list of spoiled text message votes,
- (d) the list of lost ballot documents,
- (e) the list of eligible voters, and
- (f) the list of tendered voting information

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

**STV41. Interpretation of Part 6**

STV41.1 In Part 6 of these rules:

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

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

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

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

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

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

(a) on which no second or subsequent preference is recorded for a continuing candidate,

or

(b) which is excluded by the returning officer under rule STV49,

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

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

(b) “next available preference” means a preference which is the second, or as the case may be, subsequent preference recorded in consecutive order for a continuing candidate (any candidate who is deemed to be elected or is excluded thereby being ignored); and

(c) in this context, a “second preference” is shown by the figure “2” or any mark or word which clearly indicates a second preference, and a third preference by the figure “3” or any mark or word which clearly indicates a third preference, and so on,

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

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

“*stage of the count*” means:

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

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

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

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

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

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

## **43. The count**

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

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

- STV44.1 Any ballot paper:
- (a) which does not bear the features that have been incorporated into the other ballot papers to prevent them from being reproduced,

- (b) on which the figure “1” standing alone is not placed so as to indicate a first preference for any candidate,
- (c) on which anything is written or marked by which the voter can be identified except the unique identifier, or
- (d) which is unmarked or rejected because of uncertainty,

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

STV44.2 The returning officer is to endorse the word “rejected” on any ballot paper which under this rule is not to be counted.

STV44.3 Any text voting record:

- (a) on which the figure “1” standing alone is not placed so as to indicate a first preference for any candidate,
- (b) on which anything is written or marked by which the voter can be identified except the unique identifier, or
- (c) which is unmarked or rejected because of uncertainty,

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

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

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

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

FPP44.1 Any ballot paper:

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

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

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

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

- (a) elsewhere than in the proper place,

- (b) otherwise than by means of a clear mark,
- (c) by more than one mark,

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

FPP44.4 The returning officer is to:

- (a) endorse the word “rejected” on any ballot paper which under this rule is not to be counted, and
- (b) in the case of a ballot paper on which any vote is counted under rules FPP44.2 and FPP 44.3, endorse the words “rejected in part” on the ballot paper and indicate which vote or votes have been counted.

FPP44.5 The returning officer is to draw up a statement showing the number of rejected ballot papers under the following headings:

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

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

FPP44.6 Any text voting record:

- (a) on which votes are given for more candidates than the voter is entitled to vote,
- (b) on which anything is written or marked by which the voter can be identified except the voter ID number, or
- (c) which is unmarked or rejected because of uncertainty,

shall, subject to rules FPP44.7 and FPP44.8, be rejected and not counted.

FPP44.7 Where the voter is entitled to vote for more than one candidate, a text voting record is not to be rejected because of uncertainty in respect of any vote where no uncertainty arises, and that vote is to be counted.

FPP44.8 A text voting record on which a vote is marked:

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

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

FPP44.9 The returning officer is to:

- (a) endorse the word “rejected” on any text voting record which under this rule is not to be counted, and
- (b) in the case of a text voting record on which any vote is counted under rules

FPP44.7 and FPP 44.8, endorse the words “rejected in part” on the text voting record and indicate which vote or votes have been counted.

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

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

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

#### **STV45. First stage**

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

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

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

#### **STV46. The quota**

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

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

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

#### **STV47. Transfer of votes**

STV47.1 Where the number of first preference votes for any candidate exceeds the quota, the returning officer is to sort all the ballot documents on which first preference votes are given for that candidate into sub- parcels so that they are grouped:

- (a) according to next available preference given on those ballot documents for any continuing candidate, or
- (b) where no such preference is given, as the sub-parcel of non-transferable votes.

STV47.2 The returning officer is to count the number of ballot documents in each parcel referred to in rule STV47.1.

STV47.3 The returning officer is, in accordance with this rule and rule STV48, to transfer each sub-parcel of ballot documents referred to in rule STV47.1(a) to the candidate for whom the next available preference is given on those ballot documents.

STV47.4 The vote on each ballot document transferred under rule STV47.3 shall be at a value (“the transfer value”) which:

- (a) reduces the value of each vote transferred so that the total value of all such votes does not exceed the surplus, and
- (b) is calculated by dividing the surplus of the candidate from whom the votes are being transferred by the total number of the ballot documents on which those votes are given, the calculation being made to two decimal places (ignoring the remainder if any).

STV47.5 Where at the end of any stage of the count involving the transfer of ballot documents, the number of votes for any candidate exceeds the quota, the returning officer is to sort the ballot documents in the sub-parcel of transferred votes which was last received by that candidate into separate sub-parcels so that they are grouped:

- (a) according to the next available preference given on those ballot documents for any continuing candidate, or
- (b) where no such preference is given, as the sub-parcel of non-transferable votes.

STV47.6 The returning officer is, in accordance with this rule and rule STV48, to transfer each sub-parcel of ballot documents referred to in rule STV47.5(a) to the candidate for whom the next available preference is given on those ballot documents.

STV47.7 The vote on each ballot document transferred under rule STV47.6 shall be at:

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

whichever is the less.

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

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

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

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

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

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

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

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

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

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

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

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

#### **STV49. Exclusion of candidates**

STV49.1 If:

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

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

STV9.2 The returning officer shall sort all the ballot documents on which first preference votes are given for the candidate or candidates excluded under rule STV49.1 into two sub-parcels so that they are grouped as:

- (a) ballot documents on which a next available preference is given, and
- (b) ballot documents on which no such preference is given (thereby including ballot documents on which preferences are given only for candidates who

- are deemed to be elected or are excluded).
- STV49.3 The returning officer shall, in accordance with this rule and rule STV48, transfer each sub-parcel of ballot documents referred to in rule STV49.2 to the candidate for whom the next available preference is given on those ballot documents.
- STV49.4 The exclusion of a candidate, or of two or more candidates together, constitutes a further stage of the count.
- STV49.5 If, subject to rule STV50, one or more vacancies still remain to be filled, the returning officer shall then sort the transferable ballot documents, if any, which had been transferred to any candidate excluded under rule STV49.1 into sub- parcels according to their transfer value.
- STV49.6 The returning officer shall transfer those ballot documents in the sub-parcel of transferable ballot documents with the highest transfer value to the continuing candidates in accordance with the next available preferences given on those ballot documents (thereby passing over candidates who are deemed to be elected or are excluded).
- STV49.7 The vote on each transferable ballot document transferred under rule STV49.6 shall be at the value at which that vote was received by the candidate excluded under rule STV49.1.
- STV9.8 Any ballot documents on which no next available preferences have been expressed shall be set aside as non-transferable votes.
- STV49.9 After the returning officer has completed the transfer of the ballot documents in the sub-parcel of ballot documents with the highest transfer value he or she shall proceed to transfer in the same way the sub-parcel of ballot documents with the next highest value and so on until he has dealt with each sub-parcel of a candidate excluded under rule STV49.1.
- STV49.10 The returning officer shall after each stage of the count completed under this rule:
- (a) record:
    - (i) the total value of votes, or
    - (ii) the total transfer value of votes transferred to each candidate,
  - (b) add that total to the previous total of votes recorded for each candidate and record the new total,
  - (c) record the value of non-transferable votes and add that value to the previous non-transferable votes total, and
  - (d) compare:
    - (i) the total number of votes then recorded for each candidate together with the total number of non-transferable votes, with
    - (ii) the recorded total of valid first preference votes.
- STV49.11 If after a transfer of votes under any provision of this rule, a candidate has a surplus, that surplus shall be dealt with in accordance with rules STV47.5 to STV47.10 and rule STV48.
- STV49.12 Where the total of the votes of the two or more lowest candidates, together with any surpluses not transferred, is less than the number of votes credited to the next lowest candidate, the returning officer shall in one operation exclude such two or more candidates.
- STV49.13 If when a candidate has to be excluded under this rule, two or more candidates each have the same number of votes and are lowest:

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

**STV50. Filling of last vacancies**

- STV50.1 Where the number of continuing candidates is equal to the number of vacancies remaining unfilled the continuing candidates shall thereupon be deemed to be elected.
- STV50.2 Where only one vacancy remains unfilled and the votes of any one continuing candidate are equal to or greater than the total of votes credited to other continuing candidates together with any surplus not transferred, the candidate shall thereupon be deemed to be elected.
- STV50.3 Where the last vacancies can be filled under this rule, no further transfer of votes shall be made.

**STV51. Order of election of candidates**

- STV51.1 The order in which candidates whose votes equal or exceed the quota are deemed to be elected shall be the order in which their respective surpluses were transferred, or would have been transferred but for rule STV47.10.
- STV51.2 A candidate credited with a number of votes equal to, and not greater than, the quota shall, for the purposes of this rule, be regarded as having had the smallest surplus at the stage of the count at which he obtained the quota.
- STV51.3 Where the surpluses of two or more candidates are equal and are not required to be transferred, regard shall be had to the total number of votes credited to such candidates at the earliest stage of the count at which they had an unequal number of votes and the surplus of the candidate who had the greatest number of votes at that stage shall be deemed to be the largest.
- STV51.4 Where the number of votes credited to two or more candidates were equal at all stages of the count, the returning officer shall decide between them by lot and the candidate on whom the lot falls shall be deemed to have been elected first.

**FPP51. Equality of votes**

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

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

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### FPP52. Declaration of result for contested elections

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

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

FPP52.2 The returning officer is to make:

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

available on request.

### STV52. Declaration of result for contested elections

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

- (a) declare the candidates who are deemed to be elected under Part 6 of these rules as elected,
- (b) give notice of the name of each candidate who he or she has declared elected –
  - (i) where the election is held under a proposed constitution pursuant to powers conferred on the [insert name] NHS Trust by section 33(4) of the 2006 Act, to the chairman of the NHS Trust, or
  - (ii) in any other case, to the chairman of the corporation, and
- (c) give public notice of the name of each candidate who he or she has declared elected.

STV52.2 The returning officer is to make:

- (a) the number of first preference votes for each candidate whether elected or not,
- (b) any transfer of votes,
- (c) the total number of votes for each candidate at each stage of the count at

which such transfer took place,

- (d) the order in which the successful candidates were elected, and
- (e) the number of rejected ballot papers under each of the headings in rule STV44.1,
- (f) the number of rejected text voting records under each of the headings in rule STV44.3,

available on request.

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

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

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

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

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

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

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

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

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

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

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

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

**55. Delivery of documents**

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

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

56.1 Where:

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

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

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

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

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

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

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

58.1 The corporation may not allow:

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

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

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

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

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

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

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

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

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

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

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

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

- FPP59.1 If at a contested election, proof is given to the returning officer's satisfaction before the result of the election is declared that one of the persons named or to be named as a candidate has died, then the returning officer is to:
- (a) countermand notice of the poll, or, if voting information has been issued, direct that the poll be abandoned within that constituency or class, and
  - (b) order a new election, on a date to be appointed by him or her in consultation with the corporation, within the period of 40 days, computed in accordance with rule 3 of these rules, beginning with the day that the poll was countermanded or abandoned.
- FPP59.2 Where a new election is ordered under rule FPP59.1, no fresh nomination is necessary for any candidate who was validly nominated for the election where the poll was countermanded or abandoned but further candidates shall be invited for that constituency or class.
- FPP59.3 Where a poll is abandoned under rule FPP59.1(a), rules FPP59.4 to FPP59.7 are to apply.
- FPP59.4 The returning officer shall not take any step or further step to open envelopes or deal with their contents in accordance with rules 38 and 39, and is to make up separate sealed packets in accordance with rule 40.
- FPP59.5 The returning officer is to:
- (a) count and record the number of ballot papers, internet voting records, telephone voting records and text voting records that have been received,
  - (b) seal up the ballot papers, internet voting records, telephone voting records and text voting records into packets, along with the records of the number of ballot papers, internet voting records, telephone voting records and text voting records and
- ensure that complete electronic copies of the internet voting records telephone voting records and text voting records created in accordance with rule 26 are held in a device suitable for the purpose of storage.
- FPP59.6 The returning officer is to endorse on each packet a description of:
- (a) its contents,
  - (b) the date of the publication of notice of the election,
  - (c) the name of the corporation to which the election relates, and
  - (d) the constituency, or class within a constituency, to which the election relates.
- FPP59.7 Once the documents relating to the poll have been sealed up and endorsed pursuant to rules FPP59.4 to FPP59.6, the returning officer is to deliver them to the chairman of the corporation, and rules 57 and 58 are to apply.

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

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

named as a candidate has died, then the returning officer is to:

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

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

## PART 10: ELECTION EXPENSES AND PUBLICITY

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### *Election expenses*

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

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

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

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

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

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

62.1 No person may:

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

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

### *Publicity*

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

63.1 The corporation may:

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

as it considers necessary.

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

- (a) objective, balanced and fair,
- (b) equivalent in size and content for all candidates,
- (c) compiled and distributed in consultation with all of the candidates standing for election, and

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

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

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

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

64.2 The information must consist of:

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

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

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

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

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

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### **66. Application to question an election**

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

**67. Secrecy**

67.1 The following persons:

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

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

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

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

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

**68. Prohibition of disclosure of vote**

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

**69. Disqualification**

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

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

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

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

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

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

## ANNEX 5

### STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE COUNCIL OF GOVERNORS

#### 1. INTERPRETATION

- 1.1 In these Standing Orders, the provisions relating to Interpretation in the Constitution shall apply and the words and expressions defined in the Constitution shall have the same meaning.

#### 2. MEETINGS OF THE COUNCIL OF GOVERNORS

##### 2.1 Calling Meetings

- 2.1.1 Save in the case of emergencies or the need to conduct urgent business, the Secretary shall give at least fourteen days written notice of the date and place of every meeting of the Council of Governors to all Governors. Notice will also be published on the Trust's website.
- 2.1.2 The Secretary shall ensure that within the meeting cycle of the Council of Governors, general meetings are called at appropriate times to consider matters as required by the 2006 Act and the Constitution.
- 2.1.3 If the Chair fails to call a meeting of the Council of Governors after a requisition for that purpose, signed by at least one-third of the whole number of the Council of Governors has been presented to him at Trust Headquarters, such one third or more members of the Council of Governors may forthwith call a meeting.
- 2.1.4 **Admission of the Public and the Press**– The meetings of the Council of Governors shall be open to members of the public and press unless the Council of Governors decides otherwise in relation to all of the meeting for reasons of confidentiality, or on other proper grounds, or for other special reasons. Matters to be dealt with by the Council of Governors following the exclusion of members of the public and/or press shall be confidential to the members of the Council of Governors. Governors and any employees of the Trust in attendance shall not reveal or disclose the contents of papers marked 'In Confidence' or minutes headed 'Items Taken in Private' outside of the Trust, without the express permission of the Trust.
- 2.1.5 In the event that the public and press are admitted to all or part of a meeting by reason of SO 2.1.4 above, the Chair (or Vice Chair) shall give such directions as he thinks fit in regard to the arrangements for meetings and accommodation of the public and representatives of the press such as to ensure that the Council's business shall be conducted without interruption and disruption and the public will be required to withdraw upon the Council of Governors resolving "that in the interests of public order the meeting adjourn for (*the period to be specified*) to enable the Board to complete business without the presence of the public".
- 2.1.6 The Trust may make such arrangements from time to time as it sees fit with regards to the extending of invitations to observers to attend and address any of the Council of Governor meetings.
- 2.1.7 Nothing in these Standing Orders shall be construed as permitting the introduction by the public or press representatives of recording, transmitting, video or small apparatus into meetings of the Council of Governors. Such permission shall be granted only upon resolution of the Trust.
- 2.1.8 The Council of Governors may agree further provisions in respect of the admission of the public and the press, to be set out in a policy.
- 2.1.9 **Chair of Meetings** – The Chair of the Trust, or in his absence, the Vice Chair, is to preside at meetings of the Council of Governors.

- 2.1.10 The Vice Chair may preside at meetings of the Council of Governors in the following circumstances:
- 2.1.10.1 When there is a need for someone to have the authority to chair any meeting of the Council of Governors when the Chair is not present.
  - 2.1.10.2 On those occasions when the Council of Governors is considering matters relating to Non-Executive Directors and it would be inappropriate for the Chair to preside.
  - 2.1.10.3 When the remuneration, allowance and other terms and conditions of the Chair are being considered.
  - 2.1.10.4 When the appointment of the Chair is being considered, should the current Chair be a candidate for re-appointment.
  - 2.1.10.5 On occasions when the Chair declares a pecuniary interest that prevents him from taking part in the consideration or discussion of a matter before the Council of Governors.
- 2.1.11 **Setting the Agenda** – The Council of Governors may determine that certain matters shall appear on every agenda for a meeting of the Council of Governors and shall be addressed prior to any other business being conducted.
- 2.1.12 **Agenda** – A Governor desiring a matter to be included on an agenda shall specify the question or issue to be included by request in writing to the Chair or Secretary at least three clear business days before Notice of the meeting is given. Requests made less than three days before the Notice is given may be included on the agenda at the discretion of the Chair.
- 2.1.13 **Notices of Motion** – A Governor desiring to move or amend a motion shall send a written notice thereof at least ten clear days before the meeting to the Chair or Secretary, who shall insert in the agenda for the meeting all notices so received subject to the Notice being permissible under the appropriate regulations. This paragraph shall not prevent any motion being moved during the meeting, without Notice on any business mentioned on the agenda in accordance with SO 2.1.13, subject to the Chair's discretion.
- 2.1.14 **Withdrawal of Motion or Amendments** – A motion or amendment once moved and seconded may be withdrawn by the proposer with the concurrence of the seconder and the consent of the Chair.
- 2.1.15 **Motion to Rescind a Resolution** – Notice of motion to amend or rescind any resolution (or the general substance of any resolution) which has been passed within the preceding six calendar months shall be in writing, be in accordance of SO 2.1.14 and shall bear the signature of the Governor who gives it and also the signature of four other Governors. When any such motion has been disposed of by the Council of Governors, it shall not be competent for any Governor other than the Chair to propose a motion to the same effect within six months; however the Chair may do so if he considers it appropriate.
- 2.1.16 **Motions** – The mover of a motion shall have a right of reply at the close of any discussion on the motion or any amendment thereto.
- 2.1.17 When a motion is under discussion or immediately prior to discussion it shall be open to a Governor to move:
- 2.1.17.1 An amendment to the motion.
  - 2.1.17.2 The adjournment of the discussion or the meeting.

2.1.17.3 That the meeting proceed to the next business.

2.1.17.4 That the motion be now put.

No amendment to the motion shall be admitted if, in the opinion of the Chair of the meeting, the amendment negates the substance of the motion.

2.1.18 **Chair's Ruling** – Statements of Governors made at meetings of the Council of Governors shall be relevant to the matter under discussion at the material time and the decision of the Chair of the meeting on questions of order, relevancy, regularity and any other matters shall be observed at the meeting.

Save as permitted by law, at any meeting the person presiding shall be the final authority on the interpretation of Standing Orders (on which he should be advised by the Chief Executive).

2.1.19 **Voting** – Save as otherwise provided in the Constitution and/or the 2006 Act, if the Chair so determines or if a Governor requests, a question at a meeting shall be determined by a majority of the votes of the Governors present and voting on the question and, in the case of any equality of votes, the person presiding shall have a casting vote.

2.1.20 All questions put to the vote shall, at the discretion of the person presiding, be determined by oral expression or by a show of hands. A paper ballot may also be used if a majority of the Governors present so request.

2.1.21 If at least one-third of the Governors present so request, the voting (other than by paper ballot) on any question may be recorded to show how each Governor present voted or abstained.

2.1.22 If a Governor so requests, his/her vote shall be recorded by name upon any vote (other than by paper ballot).

2.1.23 In no circumstances may an absent Governor vote by proxy. Absence is defined as being absent at the time of the vote.

2.1.24 **Minutes** – The Minutes of the proceedings of a matter shall be drawn up and submitted for agreement at the next ensuing meeting where they will be signed by the person presiding at it.

2.1.25 No discussion shall take place upon the minutes except upon their accuracy or where the Chair considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the next meeting.

2.1.26 **Suspension of Standing Orders (SOs)** – Except where this would contravene any statutory provision, or any provision of the Constitution, any one or more of the SOs may be suspended at any meeting provided that at least two thirds of the Council of Governors are present, including one Public Governor and one Staff Governor, and that a majority of those present vote in favour of suspension.

2.1.27 A decision to suspend SOs shall be recorded in the minutes of the meeting.

2.1.28 A separate record of matters discussed during the suspension of SOs shall be made and shall be available to the Governors.

2.1.29 No formal business may be transacted while SOs are suspended.

2.1.30 **Record of Attendance** – the names of the Governors present at the meeting shall be recorded in the minutes.

2.1.31 **Quorum** – A meeting of the Council of Governors shall be quorate and quoracy shall require that there shall be present at the meeting not less than 50% of all

Governors and of those not less than 51% shall be Elected Governors (excluding those Governors representing the Staff Constituency).

2.1.32 A Governor who has declared a non-pecuniary interest in any matter may participate in the discussion and consideration of the matter but may not vote in respect of it: in these circumstances the Governor will count towards the quorum of the meeting. If a Governor has declared a pecuniary interest in any matter, the Governor must leave the meeting room, and will not count towards the quorum of the meeting, during the consideration, discussion and voting on the matter. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business.

2.1.33 Subject to SOs in relation to interests, any Director or their nominated representatives shall have the right to attend meetings of the Council of Governors and, subject to the overall control of the Chair, to speak to any item under consideration.

### **3. COMMITTEES**

3.1 Except as required by paragraph 9 of this Annex 5, the Council of Governors shall exercise its functions in general meeting and shall not delegate the exercise of any function or any power in relation to any function to a committee.

### **4. DECLARATIONS OF INTERESTS AND REGISTER OF INTERESTS**

4.1 **Declaration of Interests** – in accordance with the Constitution, Governors are required to declare formally any direct or indirect pecuniary interest and any other interest which is relevant and material to the business of the Trust. The responsibility for declaring an interest is solely that of the Governor concerned.

4.2 A Governor must declare to the Secretary:

4.2.1 any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter concerning the Trust, and

4.2.2 any interests which are relevant and material to the business of the Trust.

4.3 Such a declaration shall be made by completing and signing a form, as prescribed by the Secretary from time to time setting out any interests required to be declared in accordance with the Constitution or these SOs and delivering it to the Secretary within 28 days of a Governor's election or appointment or otherwise within seven days of becoming aware of the existence of a relevant or material interest. The Secretary shall amend the Register of Interests upon receipt of notification within three working days.

4.4 If a Governor is present at a meeting of the Council of Governors and has an interest of any sort in any matter which is the subject of consideration, he shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not vote on any question with respect to the matter and, if he has declared a pecuniary interest, he shall not take part in the consideration or discussion of the matter. The provisions of this paragraph are subject to paragraph 4.5.

4.5 "relevant and material" interests may include but may not be limited to the following:

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

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

- 4.5.3 majority or controlling share holdings in organisations likely or possibly seeking to do business with the NHS;
  - 4.5.4 a position of authority in a charity or voluntary organisation in the field of health and social care;
  - 4.5.5 any connection with a voluntary or other organisation contracting for or commissioning NHS services;
  - 4.5.6 any connection with an organisation, entity or company considering entering into or having entered into a financial arrangement with the Trust, including but not limited to, lenders or banks;
  - 4.5.7 research funding/grants that may be received by an individual or their department;
  - 4.5.8 interests in pooled funds that are under separate management.
- 4.6 Any travelling or other expenses or allowances payable to a Governor in accordance with this Constitution shall not be treated as a pecuniary interest.
- 4.7 Subject to any other provision of this Constitution, a Governor shall be treated as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if:
- 4.7.1 he, or a nominee of his, is a director of a company or other body not being a public body, with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration; or
  - 4.7.2 he is a partner, associate or employee of any person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the same.
- 4.8 A Governor shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only:
- 4.8.1 of his membership of a company or other body, if he has no beneficial interest in any securities of that company or other body;
  - 4.8.1 of an interest in any company, body, or person with which he is connected as mentioned in paragraphs 4.2, 4.5 and 4.7, which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a Governor in the consideration or discussion of or in voting on, any question with respect to that contract or matter.
- 4.9 Where a Governor:
- 4.9.1 has an indirect pecuniary interest in a contract, proposed contract or other matter by reason only of a beneficial interest in securities of a company or other body; and
  - 4.9.1 the total nominal value of those securities does not exceed £5,000 or one-hundredth of the total nominal value of the issued share capital of the company or body, whichever is the less, and
  - 4.9.3 if the share capital is of more than one class, the total nominal value of shares of any one class in which he has a beneficial interest does not exceed one-hundredth of the total issued share capital of that class;
- 4.10 the Governor shall not be prohibited from taking part in the consideration or discussion of the contract or other matter or from voting on any question with respect to it, without prejudice however to his duty disclose his interest.
- 4.11 In the case of persons living together the interest of one partner or spouse shall, if known to the other, be deemed for the purposes of these SOs to be also an interest of the other.

- 4.12 If Governors have any doubt about the relevance of an interest, this should be discussed with the Trust Secretary.
- 4.13 **Register of Interests** – the Trust Secretary shall record any declarations of interest made in a Register of Interests kept by him in accordance with paragraph 36 of the Constitution. Any interest declared at a meeting shall also be recorded in the minutes of the meeting.
- 4.14 The Register will be available for inspection by members of the public free of charge at all reasonable times. A person who requests it is to be provided with a copy or extract from the register. If the person requesting a copy or extract is not a member of the Trust then a reasonable charge may be made for doing so.

## 5. STANDARDS OF BUSINESS CONDUCT

- 5.1 **Policy** – in relation to their conduct as a Governor of the Trust, each Governor must comply with the Code of Conduct for Governors. In particular, the Trust must be impartial and honest in the conduct of its business and its office holders and staff must remain beyond suspicion. Governors are expected to be impartial and honest in the conduct of official business.
- 5.2 **Interest of Governors in Contracts** – if it comes to the knowledge of a Governor that a contract in which he/she has any pecuniary interest not being a contract to which he is himself a party, has been, or is proposed to be, entered into by the Trust he/she shall, at once, give notice in writing to the Secretary of the fact that he/she is interested therein. In the case of married persons or persons living together as partners, the interest of one partner shall, if known to the other, be deemed to be also the interest of that partner.
- 5.3 A Governor shall not solicit for any person any appointment in the Trust.

## 6. REMUNERATION

- 6.1 Governors are not to receive remuneration.

## 7. PAYMENT OF EXPENSES TO GOVERNORS

- 7.1 The Trust will pay travelling expenses to Governors at the prevalent NHS Public Transport rate for attendance at General Meetings of the Governors, or any other business authorised by the Trust Secretary as being under the auspices of the Council of Governors.
- 7.2 Expenses will be authorised and reimbursed through the Trust Secretary's office on receipt of a completed and signed expenses form provided by the Trust Secretary.
- 7.3 A summary of expenses paid to Governors will be published in the Trust's Annual Report.

## 8. MISCELLANEOUS

- 8.1 **Review of Standing Orders** – These Standing Orders shall be reviewed annually by the Council of Governors and any requirements for amendments must be approved by both the Board of Directors and the Council of Governors.
- 8.2 **Vice Chair** – In relation to any matter concerning the Council of Governors or a Governor outside a meeting of the Council of Governors, which arises the Vice Chair may exercise such power as the Chair would have in those circumstances.
- 8.3 **Notice** – Any written notice required by these SOs shall be deemed to have been given on the day the notice was sent to the recipient.
- 8.4 **Confidentiality** – A Governor shall not disclose any matter reported to the Council of Governors notwithstanding that the matter has been reported or action has been concluded, if the Council of Governors shall resolve that it is confidential.

**9. COUNCIL OF GOVERNORS : NOMINATIONS AND APPOINTMENTS COMMITTEE**

- 9.1 The Chair and other Non-Executive Directors shall be appointed following a process of open competition conducted in accordance with a policy to be agreed by the Council of Governors.
- 9.2 The Council of Governors shall establish a committee of its members to be called the Nominations and Appointments Committee (“the Committee”) to discharge those functions in relation to the selection of the Chair and Non-Executive Directors described in Terms of Reference to be approved by the Council of Governors.

## ANNEX 6

### STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE BOARD OF DIRECTORS

#### 1. INTERPRETATIONS AND DEFINITIONS

- 1.1 Save as otherwise permitted by law, at any meeting the Chair of the Trust shall be the final authority on the interpretation of Standing Orders (on which he should be advised by the Chief Executive).
- 1.2 All references in these Standing Orders to the masculine gender shall be read equally applicable to the feminine gender.
- 1.3 For convenience, and unless the context otherwise requires, the terms and expressions contained within the Interpretations and Definitions section of the Constitution at page 4 are incorporated and are deemed to have been repeated here verbatim for the purposes of interpreting words contained in this Annex 8 and in addition:

**"AUDIT COMMITTEE"** means a committee whose functions are concerned with providing the Trust Board with a means of independent and objective review and monitoring financial systems and information, quality and clinical effectiveness, compliance with law, guidance and codes of conduct, effectiveness of risk management, the processes of governance and the delivery of the Board assurance framework.

**"COMMITTEE"** means a committee or sub-committee appointed by the Trust.

**"COMMITTEE MEMBERS"** shall be persons formally appointed by the Trust to sit on or to chair specific committees.

**"CONTRACTING AND PROCURING"** means the systems for obtaining the supply of goods, materials, manufactured items, services, building and engineering services, works of construction and maintenance and for disposal of surplus and obsolete assets.

**"FUNDS HELD ON TRUST"** means those funds which the Trust holds at its date of incorporation, receives on distribution by statutory instrument, or chooses subsequently to accept under powers derived under Schedule 6, paragraph 8 of the 2006 Act. Such funds may or may not be charitable.

**"COMMISSIONING"** means the process for determining the need for and for obtaining the supply of healthcare and related services by the Trust within available resources.

**"NOMINATED OFFICER"** means an Officer charged with the responsibility for discharging specific tasks within Standing Orders and standing financial instructions.

**"OFFICER"** means an employee of the Trust or any other person holding a paid appointment or office with the Trust.

**"SFIs"** means standing financial instructions.

**"SOs"** means Standing Orders.

#### 2. THE BOARD

- 2.1 All business shall be conducted in the name of the Trust.
- 2.2 All funds received in trust shall be held in the name of the Trust as corporate trustee.
- 2.3 The power of the Trust shall be exercised in public or private session as provided for in SO 3.

- 2.4 The Board has resolved that certain powers and decisions may only be exercised by the Board in formal session. These powers and decisions are set out in the Schedule of Matters reserved to the Board and Scheme of Delegation and have effect as if incorporated into the Standing Orders.

### 3. MEETINGS OF THE BOARD

- 3.1 **Admission of the Public and the Press** – The meetings of the Board of Directors shall be open to members of the public and press unless the Board decides otherwise in relation to all of the meeting for reasons of confidentiality, or on other proper grounds, or for other special reasons. Matters to be dealt with by the Board following the exclusion of members of the public and/or press shall be confidential to the members of the Board. Directors and any employees of the Trust in attendance shall not reveal or disclose the contents of papers marked 'In Confidence' or minutes headed 'Items Taken in Private' outside of the Trust, without the express permission of the Trust.
- 3.2 In the event that the public and press are admitted to all or part of a Board meeting by reason of SO 3.1 above, the Chair (or Vice Chair) shall give such directions as he thinks fit in regard to the arrangements for meetings and accommodation of the public and representatives of the press such as to ensure that the Board's business shall be conducted without interruption and disruption and the public will be required to withdraw upon the Board resolving "that in the interests of public order the meeting adjourn for (*the period to be specified*) to enable the Board to complete business without the presence of the public".
- 3.3 The Board of Directors may agree further provisions in respect of the admission of the public and the press, to be set out in a policy.
- 3.4 **Observers at Board Meetings** – The Trust may make such arrangements from time to time as it sees fit with regards to the extending of invitations to observers to attend and address any of the Board meetings.
- 3.4.1 The Trust may appoint Non-Executive Directors (Designate) to the Board of Directors on such terms as the Board of Directors may direct. Non-Executive Directors (Designate) will attend Board of Director meetings and relevant Committee meetings at the discretion of the Chair, and will play an active role in such meetings by providing advice and appropriate challenge across the range of Trust healthcare services and supporting business areas. For the avoidance of doubt, Non-Executive Directors (Designate) are not formally appointed as members of the Board of Directors and, should circumstances arise, will not be eligible to vote.
- 3.5 Nothing in these Standing Orders shall be construed as permitting the introduction by the public or press representatives of recording, transmitting, video or small apparatus into meetings of the Board or Committees. Such permission shall be granted only upon resolution of the Trust.
- 3.6 **Calling of Meetings** – Ordinary meetings of the Board shall be held at such times and places as the Board determines.
- 3.7 The Chair of the Trust may call a meeting of the Board at any time. If the Chair refuses to call a meeting after a requisition for that purpose, signed by at least one-third of the whole number of Directors, has been presented to him/her, or if, without so refusing, the Chair does not call a meeting within seven days after such requisition has been presented to him at the Trust's Headquarters, such one third or more Directors may forthwith call a meeting.
- 3.8 **Notice of Meetings** – Before each meeting of the Board, a written notice of the meeting, specifying the business proposed to be transacted at it shall be delivered to every Director, or sent by post to the usual place of residence of such Director, so as to be available to him at least three clear days before the meeting.

- 3.9 Want of service of the notice on any Director shall not affect the validity of a meeting.
- 3.10 In the case of a meeting called by Directors in default of the Chair, the notice shall be signed by those Directors and no business shall be transacted at the meeting other than that specified in the notice, or emergency motions permitted under SO 3.21.
- 3.11 Agendas will normally be sent to members of the Board five days before the meeting and supporting papers, whenever possible, shall accompany the agenda, but will certainly be despatched no later than five clear days before the meeting, save in emergency. Failure to serve such a notice on more than three Directors will invalidate the meeting. A notice shall be presumed to have been served one day after posting.
- 3.12 Before any meeting of the Board which is to be held in public, a public notice of the time and place of the meeting, and the public part of the agenda, shall be displayed on the Trust's website at least five clear days before the meeting.
- 3.13 **Setting the Agenda** – The Board may determine that certain matters shall appear on every agenda for a meeting and shall be addressed prior to any other business being conducted. (Such matters may be identified within these Standing Orders or following subsequent resolution shall be listed in an Appendix to the Standing Orders).
- 3.14 A Director desiring a matter to be included on an agenda shall make his/her request in writing to the Chair at least 12 clear days before the meeting. The request should state whether the item of business is proposed to be transacted in the presence of the public and should include appropriate supporting information. Requests made less than 12 days before a meeting may be included on the agenda at the discretion of the Chair.
- 3.15 **Petitions** – Where a petition has been received by the Trust, the Chair of the Board shall include the petition as an item for the agenda of the next Board meeting.
- 3.16 **Chair of Meeting** – At any meeting of the Board, the Chair of the Board, if present, shall preside. If the Chair is absent from the meeting the Vice Chair, if there is one and he/she is present, shall preside. If the Chair and Vice Chair are absent, such Non-Executive as the Directors present shall choose shall preside.
- 3.17 If the Chair is absent temporarily on the grounds of a declared conflict of interest the Vice Chair, if present, shall preside. If the Chair and Vice Chair are absent, or are disqualified from participating, such Non-Executive Director as the Directors present shall choose shall preside.
- 3.18 **Notices of Motion** – A Director of the Board desiring to move or amend a motion shall send a written notice thereof at least 12 clear days before the meeting to the Chief Executive, who shall ensure that it is brought to the immediate attention of the Chair. The Chief Executive shall insert in the agenda for the meeting all notices so received, subject to the notice being permissible under the appropriate regulations. Subject to SO 3.21.8, this paragraph shall not prevent any motion being moved during the meeting without notice on any business mentioned on the agenda.
- 3.19 **Withdrawal of Motion or Amendments** – A motion or amendment once moved and seconded may be withdrawn by the proposer with the concurrence of the seconder and the consent of the Chair.
- 3.20 **Motion to Rescind a Resolution** – Notice of motion to amend or rescind any resolution (or the general substance of any resolution) which has been passed within the preceding six calendar months shall bear the signature of the Director who gives it and also the signature of three other Board Directors and, before considering any such motion, the Board may refer the matter to any appropriate Committee or the Chief Executive for recommendation. When any such motion has been disposed of by the Board, it shall not be competent for any Director other than the Chair to propose a motion to the same effect within six months, however the Chair may do so if he/she considers it appropriate. This

Standing Order 3.19 shall not apply to motions moved in pursuance of a report or recommendations of a Committee or the Chief Executive.

- 3.21 **Motions** – A motion may be proposed by the Chair or any Director present at the meeting. Such motion shall be seconded by another Director. The mover of a motion shall have a right of reply at the close of any discussion on the motion or any amendment thereto.

***Emergency Motions***

3.21.1 Subject to the agreement of the Chair and SO 3.22 below, a Director may give written notice of an emergency motion after the issue of the notice of meeting and agenda (by reason of SO 3.6 and SO 3.9), up to one hour before the time fixed for the meeting. The notice shall state the grounds of urgency. At the Chair's discretion, the emergency motion shall be declared to the Board at the commencement of the business of the meeting as an additional item included on the agenda. The Chair's decision to include the item shall be final.

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

3.22.1 an amendment to the motion;

3.22.2 the adjournment of the discussion or the meeting;

3.22.3 that the meeting proceed to the next business; (\*)

3.22.4 the appointment of an ad hoc committee to deal with a specific item of business;

3.22.5 that the motion be now put; (\*)

3.22.6 that a Director be not further heard; (\*)

3.22.7 that the public be excluded pursuant to SO 3.1;

- 3.23 \*in the case of sub-paragraphs denoted by (\*) above, to ensure objectivity motions may only be put by a Director who has not previously taken part in the debate and who is eligible to vote.

- 3.24 no amendment to the motion shall be admitted if, in the opinion of the Chair of the meeting, the amendment negates the substance of the motion. If there are a number of amendments, they shall be considered one at a time. When a motion has been amended, the amended motion shall become the substantive motion before the meeting, upon which any further amendment may be moved;

- 3.25 the Chair may (at his discretion) refuse to admit any motion of which notice was not given in accordance with SO 3.16, other than a motion relating to:

(a) the reception of a report;

(b) consideration of any item of business before the Trust Board;

(c) the accuracy of minutes;

(d) that the Board proceed to next business;

(e) that the Board adjourn;

(f) that the question be now put.

- 3.26 **Chair's Ruling** – Statements of Directors made at meetings of the Board shall be relevant to the matter under discussion at the material time and the decision of the Chair of the meeting on questions of order, relevancy, regularity and any other matter shall be final.

- 3.27 **Voting** – Save as provided in SO 3.32 every question at a meeting shall be determined by a majority of the votes of the Chair of the meeting and Directors present and voting on the question and, in the case of the number of votes for and against a motion being equal, the Chair of the meeting (or any other person presiding in accordance with the terms of these Standing Orders) shall have a second or casting vote.
- 3.28 All questions put to the vote shall, at the discretion of the Chair of the meeting, be determined by oral expression or by a show of hands. A paper ballot may also be used if the Chair so directs or it is proposed and seconded by any of the Directors present.
- 3.29 If at least one-third of the Directors present so request, the voting (other than by paper ballot) on any question may be recorded to show how each Director present voted or abstained.
- 3.30 If a Director so requests, his/her vote shall be recorded by name upon any vote (other than by paper ballot).
- 3.31 In no circumstances may an absent Director vote by proxy. Absence is defined as being absent at the time of the vote.
- 3.32 An Officer who has been appointed formally by the Board to act up for an Executive Director during a period of incapacity or temporarily to fill an Executive Director vacancy, shall be entitled to exercise the voting rights of the Executive Director. An Officer attending the Board to represent an Executive Director during a period of incapacity or temporary absence without formal acting up status may not exercise the voting rights of the Executive Director. An Officer's status when attending a meeting shall be recorded in the minutes.
- 3.33 **Minutes** – The Minutes of the proceedings of a meeting shall be drawn up and submitted for agreement at the next ensuing meeting where they will be signed by the person presiding at it.
- 3.34 No discussion shall take place upon the minutes except upon their accuracy or where the Chair considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the next meeting.
- 3.35 Minutes shall be circulated in accordance with Director wishes. Where providing a record of a meeting in public the minutes shall be made available to the public.
- 3.36 **Joint Directors** – Where the Office of a Director is shared jointly by more than one person:
- 3.36.1 either or both of those persons may attend or take part in meetings of the Board:
- 3.36.2 if both are present at a meeting they should cast one vote if they agree:
- 3.36.3 in the case of disagreements no vote should be cast:
- 3.36.4 the presence of either or both of those persons should count as the presence of one person for the purposes of SO 3.38 (Quorum).
- 3.37 **Suspension of Standing Orders** – Except where it would contravene any statutory provision or any provision in the Constitution, any one or more of the Standing Orders may be suspended at any meeting, provided that at least two-thirds of the Board are present, including one Executive Director and one Non-Executive Director, and at least two-thirds of those present vote in favour of suspension.
- 3.38 A decision to suspend Standing Orders shall be recorded in the minutes of the meeting.
- 3.39 A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the Chair and Directors of the Board.

- 3.40 No formal business may be transacted while Standing Orders are suspended.
- 3.41 The Audit Committee shall review every decision to suspend Standing Orders.
- 3.42 **Record of Attendance** – The names of the Chair and Directors present at the meeting shall be recorded in the minutes.
- 3.43 **Quorum** – No business shall be transacted at a meeting unless at least one half of the whole number of the voting Chair and Directors appointed are present (including at least two Non-Executive Directors and one Executive Director, and a majority of Non-Executive Directors).
- 3.44 An Officer in attendance for an Executive Director but without formal acting-up status may not count towards the quorum.
- 3.45 If the Chair or Director has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of the declaration of a conflict of interest (see Standing Order 6 or 7) he shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business. The above requirement for at least one Executive Director to form part of the quorum shall not apply where the Executive Directors are excluded from a meeting (for example when the Board considers the recommendations of the Remuneration and Nominations Committee).

#### 4. ARRANGEMENTS FOR THE EXERCISE OF FUNCTIONS BY DELEGATION

- 4.1 Subject to the Constitution, or any relevant statutory provision, the Board may make arrangements for the exercise, on behalf of the Board, of any of its functions:
  - 4.1.1 by a committee, sub-committee or,
  - 4.1.2 appointed by virtue of Standing Order 5.1 or 5.2 below or by an Officer of the Trust,
  - 4.1.3 or by another body as defined in Standing Order 4.2 below,
 in each case subject to such restrictions and conditions as the Trust thinks fit.
- 4.2 Where a function is delegated to a third party, the Trust has responsibility to ensure that the proper delegation is in place. In other situations, i.e. delegation to committees, sub committees or Officers, the Trust retains full responsibility.
- 4.3 **Emergency Powers** – The powers which the Board has retained to itself within these Standing Orders (Standing Order 2.4) may in emergency be exercised by the Chief Executive and the Chair after having consulted at least two Non-Executive Directors. The exercise of such powers by the Chief Executive and Chair shall be reported to the next formal meeting of the Board in public or private session (as appropriate) for ratification.
- 4.4 **Delegation to Committees** – The Board shall agree from time to time to the delegation of executive powers to be exercised by committees, or sub-committees, or joint-committees, which it has formally constituted. The constitution and terms of reference of these committees, or sub-committees, or joint committees and their specific executive powers shall be approved by the Board in respect of its sub-committees.
- 4.5 **Delegation to Officers** – Those functions of the Trust which have not been retained as reserved by the Board or delegated to a committee or sub-committee or joint-committee shall be exercised on behalf of the Trust by the Chief Executive. The Chief Executive shall determine which functions he/she will perform personally and shall nominate Officers to undertake the remaining functions for which he/she will still retain an accountability to the Trust.

- 4.6 The Chief Executive shall prepare a Scheme of Delegation identifying his/her proposals which shall be considered and approved by the Board, subject to any amendment agreed during the discussion. The Chief Executive may periodically propose amendment to the Scheme of Delegation that shall be considered and approved by the Board as indicated above.
- 4.7 Nothing in the Scheme of Delegation shall impair the discharge of the direct accountability to the Board of the Finance Director to provide information and advise the Board in accordance with statutory or NHS Improvement requirements. Outside these requirements the roles of the Finance Director shall be accountable to the Chief Executive for operational matters.
- 4.8 The arrangements made by the Board as set out in the Schedule of Matters reserved to the Board and Scheme of Delegation shall have effect as if incorporated in these Standing Orders.
- 4.9 **Overriding Standing Orders** – If for any reason these Standing Orders are not complied with, full details of the non-compliance and any justification for non-compliance and the circumstances around the non-compliance, shall be reported to the next formal meeting of the Board for action or ratification. All Directors of the Board and staff have a duty to disclose any non-compliance with these Standing Orders to the Chief Executive as soon as possible.

## 5. COMMITTEES

- 5.1 Subject to the Constitution, (and to any guidance issued by the Department of Health applicable to Foundation Trusts or as may be given by NHS Improvement), the Trust may appoint committees of the Trust, or together with one or more Health Authorities or other Trusts, appoint joint committees, consisting wholly or partly of the Chair and members of the Trust or other health service bodies or wholly of persons who are not members of the Trust or other health service bodies in question.
- 5.2 A committee or joint committee appointed under SO 5.1 may, subject to such directions as may be given by the Trust or other health service bodies in question, appoint sub-committees consisting wholly or partly of members of the committee or joint committee (whether or not they are members of the Trust or other health service bodies in question); or wholly of persons who are not members of the Trust or other health service bodies or the committee of the Trust or other health service bodies in question.
- 5.3 The Standing Orders of the Trust, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees established by the Trust. In which case the term “Chair” is to be read as a reference to the Chair of the committee as the context permits, and the term “member” is to be read as a reference to a member of the committee also as the context permits. (There is no requirement to hold meetings of committees established by the Trust in public).
- 5.4 Each such committee shall have such terms of reference and powers and be subject to such conditions (as to reporting back to the Board), as the Board shall decide and shall be in accordance with any applicable legislation and regulation or direction. Such terms of reference shall have effect as if incorporated into the Standing Orders.
- 5.5 The Board of Directors may appoint committees consisting wholly or partly of persons who are not Executive Directors or Non-Executive Directors of the Trust for any purpose that is calculated or likely to contribute, or assist it in the exercise of its powers. It may delegate powers to such committees only if the membership consists wholly of Directors.
- 5.6 Where committees are authorised to establish sub-committees they may not delegate executive powers to the sub-committee unless expressly authorised by the Board.
- 5.7 The Board shall approve the appointments to each of the committees which it has formally constituted. Where the Board determines, and regulations permit, that persons, who are neither Directors nor Officers, shall be appointed to a committee the terms of such

appointment shall be within the powers of the Board. The Board shall define the powers of such appointees and shall agree allowances, including reimbursement for loss of earnings, and/or expenses in accordance where appropriate with national guidance.

- 5.8 Where the Board is required to appoint persons to a committee and/or to undertake statutory functions, and where such appointments are to operate independently of the Board, such appointment shall be made in accordance with the Constitution, the Terms of Reference and any applicable regulations and directions.
- 5.9 The Trust Board of Directors shall establish an Audit Committee and Remuneration and Nomination Committee, as standing Committees of the Trust Board of Directors. In addition, the Trust Board of Directors shall establish such other Committees as it deems necessary and appropriate from time to time.

## **6 DECLARATIONS OF INTERESTS AND REGISTER OF INTERESTS**

- 6.1 **Declaration of Interests** – The Constitution, the 2006 Act and the Code of Conduct and Accountability requires Board Directors to declare interests which are relevant and material to the NHS board of which they are a director. All existing Board Directors should declare such interests. Any Board Directors appointed subsequently should do so on appointment.
- 6.2 Interests which should be regarded as "relevant and material" are:
- 6.2.1 directorships, including non-executive directorships held in private companies or public limited companies (with the exception of those of dormant companies);
  - 6.2.2 ownership or part-ownership of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS;
  - 6.2.3 majority or controlling share holdings in organisations likely or possibly seeking to do business with the NHS;
  - 6.2.4 a position of trust in a charity or voluntary organisation in the field of health and social care;
  - 6.2.5 any connection with a voluntary or other organisation contracting for NHS services;
  - 6.2.6 any connection with an organisation, entity or company considering entering into or having entered into a financial arrangement with the Trust including but not limited to, lenders or banks;
  - 6.2.7 interests in pooled funds that are under separate management;
  - 6.2.8 research funding/grants that may be received by an individual or their department;
  - 6.2.9 any other commercial interest in the decision before the meeting.
- 6.3 At the time Board Directors' interests are declared, they should be recorded in the Board minutes. Any changes in interests should be declared at the next Board meeting following the change occurring and recorded in the minutes of that meeting.
- 6.4 Board Directors' directorships of companies likely or possibly seeking to do business with the NHS should be published in the Board's Annual Report. The information should be kept up to date for inclusion in succeeding annual reports.
- 6.5 During the course of a Board meeting, if a conflict of interest is established, the Director concerned should withdraw from the meeting and play no part in the relevant discussion or decision.

- 6.6 There is no requirement in the Code of Conduct and Accountability for the interests of Board Directors' spouses or partners to be declared. However SO 7 requires that the interest of Directors' spouses, if living together, in contracts should be declared. Therefore the interests of Board Directors' spouses and cohabiting partners should also be regarded as relevant.
- 6.7 If Board Directors have any doubt about the relevance of an interest, this should be discussed with the Chair or the Secretary. Financial Reporting Standard No 8 (issued by the Accounting Standards Board) specifies that influence rather than the immediacy of the relationship is more important in assessing the relevance of an interest. The interests of partners in professional partnerships including general practitioners should also be considered.
- 6.8 **Register of Interests** – The Chief Executive will ensure that a Register of Interests is established to record formally declarations of interests of Board Directors. In particular, the Register will include details of all directorships and other relevant and material interests which have been declared by both Executive and Non-Executive Directors, as defined in Standing Order 6.2.
- 6.9 These details will be kept up to date by means of an annual review of the Register in which any changes to interests declared during the preceding 12 months will be incorporated.
- 6.10 The Register will be available to the public in accordance with paragraph 36 and 37 of the Constitution and the Chief Executive will take reasonable steps to bring the existence of the Register to the attention of the local population and to publicise arrangements for viewing it.
- 6.11 All senior managers and clinicians have a duty to ensure that declaration of interests are made which could materially affect the outcome of decisions made by them. Where in doubt, all senior managers and clinicians should contact their respective Directors for clarification.

## **7 DISABILITY OF CHAIR AND DIRECTORS IN PROCEEDINGS ON ACCOUNT OF PECUNIARY INTEREST**

- 7.1 Subject to the following provisions of this Standing Order, if the Chair or a Director has any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter and is present at a meeting of the Trust at which the contract or other matter is the subject of consideration, he shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not take part in the consideration or discussion of the contract or other matter or vote on any question with respect to it.
- 7.2 The Board may exclude the Chair or a Director of the Board from a meeting of the Board while any contract, proposed contract or other matter in which he has a pecuniary interest, is under consideration.
- 7.3 Any remuneration, compensation or allowances payable to the Chair or a Director by virtue of the 2006 Act shall not be treated as a pecuniary interest for the purpose of this Standing Order.
- 7.4 For the purpose of this Standing Order the Chair or a Director shall be treated, subject to SO 7.5, as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if:
- 7.4.1 he, or a nominee of his, is a director of a company or other body, not being a public body, with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration; or
- 7.4.2 he is a partner / associate of, or is in the employment of, a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration;

- 7.4.3 and in the case of persons living together as partners, the interest of one partner shall, if known to the other, be deemed for the purposes of this Standing Order to be also an interest of the other.
- 7.5 The Chair or a Director shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only:
- 7.5.1 of his membership of a company or other body, if he has no beneficial interest in any securities of that company or other body;
- 7.5.2 of an interest in any company, body or person with which he is connected as mentioned in SO 7.4 above which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a Director in the consideration or discussion of or in voting on, any question with respect to that contract or matter.
- 7.6 Where the Chair or a Director has an indirect pecuniary interest in a contract, proposed contract or other matter by reason only of a beneficial interest in securities of a company or other body, and the total nominal value of those securities does not exceed £5,000 or one-hundredth of the total nominal value of the issued share capital of the company body, whichever is the less, and if the share capital is of more than one class, the total nominal value of shares of any one class in which he has a beneficial interest does not exceed one-hundredth of the total issued share capital of that class, this Standing Order shall not prohibit him/her from taking part in the consideration or discussion of the contract or other matter or from voting on any question with respect to it, without prejudice however to his/her duty to disclose his/her interest.
- 7.7 This SO 7 applies to a committee or sub-committee and to a joint committee as it applies to the Trust and applies to a Director of any such committee or sub-committee (whether or not he is also a Director of the Trust) as it applies to a Director of the Trust.

## 8 STANDARDS OF BUSINESS CONDUCT POLICY

- 8.1 Staff should comply with the national guidance contained in HSG 1993/5 "Standards of Business Conduct for NHS Staff". This section of Standing Orders should be read in conjunction with this document.
- 8.2 **Interest of Officers in Contracts** – If it comes to the knowledge of an Officer of the Trust that a contract in which he has any pecuniary interest not being a contract to which he is himself a party, has been, or is proposed to be, entered into by the Trust he shall, at once, give notice in writing to the Chief Executive or the Secretary of the fact that he is interested therein. In the case of persons living together as partners, the interest of one partner shall, if known to the other, be deemed to be also the interest of that partner.
- 8.3 An Officer should also declare to the Chief Executive any other employment or business or other relationship of his, or of a cohabiting spouse, that conflicts, or might reasonably be predicted could conflict with the interests of the Trust.
- 8.4 The Trust requires interests, employment or relationships declared, to be entered in a register of interests of staff.
- 8.5 **Canvassing of and Recommendations by, Directors in Relation to Appointments** – Canvassing of Directors of the Trust or of any Committee of the Trust directly or indirectly for any appointment under the Trust shall disqualify the candidate for such appointment. The contents of this paragraph of Standing Order 8 shall be included in application forms or otherwise brought to the attention of candidates.
- 8.6 A Director of the Board shall not solicit for any person any appointment under the Trust or recommend any person for such appointment, but this paragraph of this Standing Order 8 shall not preclude a Director from giving written testimonial of a candidate's ability, experience or character for submission to the Trust.

- 8.7 Informal discussions outside appointments panels or committees, whether solicited or unsolicited, should be declared to the panel or committee.
- 8.8 **Relatives of Directors or Officers** – Candidates for any staff appointment under the Trust shall, when making application, disclose in writing to the Trust whether they are related to any Director or the holder of any office under the Trust. Failure to disclose such a relationship shall disqualify a candidate and, if appointed, render him liable to instant dismissal.
- 8.9 The Chair and every Director and Officer of the Trust shall disclose to the Chief Executive any relationship between himself and a candidate of whose candidature that Director or Officer is aware. It shall be the duty of the Chief Executive to report to the Board any such disclosure made.
- 8.10 On appointment, Directors (and prior to acceptance of an appointment in the case of Executive Directors) should disclose to the Board whether they are related to any other Director or holder of any office in the Trust.
- 8.11 Where the relationship to a Director of the Trust is disclosed, the Standing Order headed 'Disability of Chair and Directors in proceedings on account of pecuniary interest' (SO 7) shall apply.

## **9 CUSTODY OF SEAL AND SEALING OF DOCUMENTS**

- 9.1 **Custody of Seal** – The Common Seal of the Trust shall be kept by the Chief Executive or designated Officer in a secure place.
- 9.2 **Sealing of Documents** – The seal of the Trust shall not be fixed to any documents unless the sealing has been authorised by a resolution of the Board or of a committee thereof, or where the Board has delegated its powers. Where it is necessary that a document be sealed, the seal shall be affixed in the presence of two Directors; OR, one Director and the Trust Secretary; OR two senior managers (not being from the originating department) duly authorised by the Chief Executive, and shall be attested by them.
- 9.3 Before any building, engineering, property or capital document is sealed it must be approved and signed by the Finance Director (or an Officer nominated by him) and authorised and countersigned by the Chief Executive (or an Officer nominated by him who shall not be within the originating directorate).
- 9.4 **Register of Sealing** – An entry of every sealing shall be made and numbered consecutively in a book provided for that purpose and shall be signed by the persons who shall have approved and authorised the document and those who attested the seal. A report of all applications of the Trust seal shall be made to the Board at least quarterly. (The report shall contain details of the seal number, a description of the document and the date of sealing).

## **10 SIGNATURE OF DOCUMENTS**

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

## **11 MISCELLANEOUS**

- 11.1 **Standing Orders to be given to Directors and Officers** – It is the duty of the Chief Executive to ensure that existing Directors and Officers and all new appointees are

notified of and understand their responsibilities within Standing Orders and standing financial instructions. Updated copies shall be issued to staff designated by the Chief Executive. New designated Officers shall be informed in writing and shall receive copies where appropriate of Standing Orders.

- 11.2 **Documents having the standing of Standing Orders** – standing financial instructions (including provisions as to tendering and contract procedures, disposals and in-house services), Schedule of Matters reserved to the Board and Scheme of Delegation, the Policy on the Register of Interests, Gifts and Hospitality and the Staff Disciplinary and Appeals Procedures document shall be read in conjunction with the Standing Orders. The Board may also, from time to time, agree and approve policy statements / procedures which will apply to all or specific groups of staff employed by the Trust. The decision to approve such policies and procedures shall be recorded in an appropriate Trust Board minute to be read in conjunction with these Standing Orders.
- 11.3 **Review of Standing Orders** – Standing Orders shall be reviewed annually by the Board and any requirements for amendments must be directed to both the Board of Directors and the Council of Governors. The requirement for review extends to all documents having the effect as if incorporated in Standing Orders.
- 11.4 The Board may confirm contracts to purchase from a voluntary organisation or a local authority using appropriate powers under the 2006 Act and shall comply with procedures laid down by the Finance Director which shall be in accordance with this Act.

## ANNEX 7

### COUNCIL OF GOVERNORS CODE OF CONDUCT

#### UNIVERSITY HOSPITALS BRISTOL NHS FOUNDATION TRUST

#### CODE OF CONDUCT FOR GOVERNORS

#### 1. Introduction

- 1.1 As defined by legislation, the Trust's Council of Governors have a formal role in the governance of the Trust, working with the Board of Directors to promote the success of the organisation for its members and the public. To support the proper discharge of the Council of Governors' statutory duties and to promote the success of the relationship between the Council of Governors and the Board of Directors, it is essential that Governors adopt high standards of personal conduct. Recognising this, this document sets out the Council's expectations for the way in which Governors will conduct themselves in all aspects of their role within the Trust.

#### 2. Framework for Council of Governors

- 2.1 The Trust operates within a legal, regulatory and governance framework which includes the NHS Act 2006, the Health and Social Care Act 2012, the Foundation Trust Code of Governance and the Trust's Constitution. The Constitution defines the composition of the Council of Governors and the arrangements for appointing (and, where necessary, removing) Governors. The Constitution's annexes include the Standing Orders for the Council of Governors and Board of Directors.
- 2.2 This Code of Conduct is subject to the Constitution; nothing within this shall take precedence over or in any way amend the Constitution or any legal or regulatory requirements. This Code of Conduct is to be read in the context of that legal and regulatory framework.

#### 3. Role of the Council of Governors

- 3.1 The role of the Council of Governors is defined in law and in NHS Improvement's regulatory and governance framework. Although the role definition is not repeated here it is important as context for this Code of Conduct to recognise that good governance in the Trust depends upon active and constructive engagement between the Board of Directors and the Council of Governors. Adopting this approach will ensure that the Council of Governors is able to discharge its statutory duties, particularly in relation to:
- 3.1.1 Holding the Non-Executive Directors individually and collectively to account for the performance of the Board; and
- 3.1.2 Representing the interests of the members as a whole and of the public.

#### 4. Board of Directors/Council of Governors Engagement

- 4.1 The Constitution and supporting guidance commit the Board of Directors and the Council of Governors (as a whole and Governors individually) to engaging proactively and constructively with the Board of Directors, acting through the Chairman, Senior Independent Director and the Lead Governor where appropriate according to their roles.
- 4.2 The Council of Governors will work with the Board of Directors for the best interests of the Trust as a whole, taking into account all relevant advice and information presented to, or requested by, the Council of Governors. The Council of Governors will not unduly delay responses to proposals or other reports from the Board of Directors, acting proactively to

agree with the Board of Directors the information which the Council of Governors will need in order properly to discharge its statutory duties.

## **5. Conduct of Governors**

5.1 This section of the Code sets out the conduct which all Governors agree to abide by. These commitments are in addition to compliance with NHS Improvement's requirements, the Code of Governance and the Constitution.

### **5.1.1 Personal Conduct**

Governors agree that they will:

- a) Act in the best interests of patients and the Trust as a whole in the delivery of services within relevant financial and operational parameters, seeking at all times to properly discharge their statutory duties;
- b) Comply at all times with legal and regulatory requirements and with the Constitution, Standing Orders, relevant Terms of Reference, policies and guidance;
- c) Be honest and act with integrity and probity at all times;
- d) Respect and treat with dignity and fairness, the public; patients; relatives; carers; NHS staff and partners in other agencies;
- e) Respect and value all Governors and Directors as colleagues;
- f) Not seek to profit from their position as a Governor or in any way use their position to gain advantage for any person;
- g) Accept responsibility for their actions and generally take seriously the responsibilities which are commensurate with the decision-making rights assigned to the Council of Governors through the legal and regulatory framework;
- h) Ensure that the interests of the members as a whole and the public are represented and upheld in decision making such that in accordance with the requirements of the Constitution and relevant policies, those decisions are not influenced by gifts or inducements or any interests outside the Trust;
- i) Not be influenced in any way and not represent any outside interests which they may hold, including any membership of trade unions or political organisations;
- j) Ensure that no person is discriminated against on grounds of religion or belief; ethnic origin; gender; marital status; age; disability; sexual orientation or socio-economic status;
- k) Show their commitment to team working by working constructively with their fellow Governors and the Board of Directors as well as with their colleagues in the NHS and the wider community;
- l) Not make, permit or knowingly allow to be made, any untrue; misleading or misrepresentative statement either relating to their own role or to the functions or business of the Trust;
- m) At all times, uphold the values and core principles of the NHS and the Trust as set out in its Constitution;
- n) Conduct themselves in a manner which reflects positively on the Trust and not in any manner which could be regarded as bringing it into disrepute;
- o) Seek to ensure that the membership of the constituency from which they are elected/their appointing organisation is both properly informed and represented
- p) At all times, uphold the seven principles of public life as set out by the Committee on Standards in Public Life (also known as the Nolan Principles) as below:
  - (i) Selflessness: Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves; their family or friends or other interested parties.
  - (ii) Integrity: Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.
  - (iii) Objectivity: In carrying out public business, including making public appointments; awarding contracts or recommending individuals for

- (iv) awards or benefits, holders of public office should make choices on merit.
  - (iv) Accountability: Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.
  - (v) Openness: Holders of public office should be as open as possible about all the decision and actions they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.
  - (vi) Honesty: Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.
  - (vii) Leadership: Holders of public office shall promote and support these principles by leadership and example.
- q) seek advice from the Chairman or the Trust Secretary on matters relating the Constitution, governance requirements or conduct, and have regard to the advice given to them.

### 5.1.2 Confidentiality

Governors agree that they will:

- r) Respect the confidentiality of the information they are made privy to as a result of their membership of the Council of Governors, except where information is made available in the public domain.
- s) Understand, endorse and promote the Trust's Data Protection Policy in every aspect of their work. A copy of this policy will be provided to each Governor and training will be provided where necessary.
- t) Make no public statements on behalf of the Trust or communicate in any way with the media without the prior consent of the Chairman or a designated officer from the Trust's Communications Department.

### 5.1.3 Declaration of Interests

Governors agree that:

- u) It is essential for good corporate governance and to maintain public confidence in the Trust that all decision making is robust and transparent. To support this, the Constitution and the Trust's Policy on the Register of Interests, Gifts and Hospitality set out requirements for Governors to declare relevant interests (as defined in the Constitution).
- v) Governors will declare interests on request from the Trust Secretary or, as required by the Constitution, whenever they become aware of a potential conflict of interest in respect of a matter being considered by the Council of Governors. Governors should seek advice from the Trust Secretary or the Chairman where they are unsure as to whether an interest needs to be declared. Declared interests will be included in a Register of Interests, which will be published

## 6. Participation in Meetings and in Training and Development

- 6.1 The Council of Governors will hold a number of meetings per year, the number to be determined by the Chairman. The schedule for these meetings and for other activities will be proposed by the Trust Secretary and is subject to approval by the Council of Governors.
- 6.2 It is expected that Governors will attend meetings of the Council of Governors and any committees to which they are appointed but it is accepted that there will be occasions on which Governors cannot attend, in which case they will give apologies for absence.

- 6.3 The Constitution provides for the Council of Governors to remove any Governor from office where he/she fails to attend two consecutive Council of Governor meetings and where the Council is not satisfied that the absence was due to a reasonable cause and that the attendance record will be rectified.
- 6.4 The Board of Directors has a statutory duty to take steps to ensure that the Governors are equipped with the skills and knowledge they need to discharge their responsibilities appropriately. A programme of training and development will be agreed with the Council of Governors and it is expected that Governors will participate in such activities unless, in reasonable circumstances, this is not possible.

## **7. Upholding this Code of Conduct**

- 7.1 Following approval of this Code of Conduct by the Council of Governors, individual Governors agree to comply with all of its content.
- 7.2 Where possible or appropriate, any concerns about the conduct or performance of a Governor will be addressed under the leadership of the Chairman through training, development or other means which are considered appropriate. Where such concerns exist the Chairman will write to the Governor concerned to set out the concerns and the action agreed to rectify or otherwise address them.
- 7.3 The Constitution provides for the circumstances in which a Governor can be removed from office, including where any Governor fails to comply with this Code of Conduct. It is for the Chairman to propose removal from office if this is necessary after all other course of action, including training and development where relevant, have been exhausted. The Constitution provides for an independent review of evidence associated with such a proposal, reflecting the Foundation Trust Code of Governance. As required by the Constitution, it is for the Council of Governors to determine (in accordance with rules set out in the Constitution) whether any Governor should be removed from office following a proposal from the Chairman and an independent review if one is commissioned.

Approved by the Council of Governors on 31 October 2018  
Approved by the Board of Directors on 29 November 2018

To be reviewed not later than March 2020

**UNIVERSITY HOSPITALS BRISTOL NHS FOUNDATION TRUST**

**CODE OF CONDUCT FOR GOVERNORS**

**DECLARATION OF ACCEPTANCE**

I confirm that I have received, read and understood the Code of Conduct for Governors (the Code).

I further confirm that I will comply with the provisions of the Code.

.....  
Signature of Governor

.....  
Name of Governor

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.....  
Address for Governor

.....  
Date of signature

**Please return the completed form to:**

Trust Secretariat  
Trust Headquarters  
University Hospitals Bristol NHS Foundation Trust