

Southern Health NHS Foundation Trust
(A Public Benefit Corporation)

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 National Health Service Act 2006 as amended by the Health and Social Care Act 2012.
- 1.2. References in this Constitution to legislation include all amendments, replacements or re-enactments made, and include all subordinate legislation made thereunder.
- 1.3. Words importing the masculine gender only shall include the feminine gender; words importing the singular shall import the plural and vice-versa.
- 1.4. Headings are for ease of reference only and are not to affect interpretation.
- 1.5. In this Constitution:

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

"2012 Act" means the Health and Social Care Act 2012;

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

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

"Annual Governors' Meeting" means a Council of Governors' meeting held to allow the Council of Governors to receive and consider the Annual Accounts and any report of the Auditor on them. The Board of Directors is to present the Annual Report to the Council of Governors;

"Annual Members' Meeting" means an annual meeting open to members of the public, Members of the Foundation Trust, Governors and Directors;

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

"Appointed Governor" means a Local Authority Governor or a Partnership Governor;

"Appointment Committee" means a committee appointed by the Council of Governors to appoint Non-Executive Directors (including the Chairman) and determine their terms and conditions pursuant to paragraph 27.6.1 of this Constitution;

"Area of the Foundation Trust" means the area covered by the Public Constituencies of the Foundation Trust as specified in Annex 1 of this Constitution;

"Audit, Assurance & Risk Committee" means a committee of the Board of Directors to oversee the audit and risk arrangements of the Foundation Trust. Established pursuant to paragraph 38 of this Constitution;

"Auditor" means the auditor of the Foundation Trust appointed by the Council of Governors pursuant to paragraph 38 of this Constitution;

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

"Chairman" means the person appointed in accordance with this Constitution to ensure that the Board of Directors and Council of Governors successfully discharge their overall responsibilities for the Foundation Trust as a whole. The expression "the Chairman" shall be deemed to include the Deputy Chairman or any other Non-Executive Director appointed to act as Chairman if the Chairman and / or Deputy Chairman is absent from the meeting or is otherwise unavailable;

"Chief Executive" means the Chief Executive of the Foundation Trust appointed pursuant to paragraph 289 of this Constitution;

"Clear Day" means a complete day, not including the day on which the period begins or, if the end of the period is defined by reference to an event, the day of that event;

"Constitution" means this Constitution together with the annexes and appendices attached hereto;

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

"Deputy Chairman" means the Deputy Chairman of the Foundation Trust appointed pursuant to paragraph 28 of this Constitution;

"Director" means a member of the Board of Directors, and includes both Executive and Non-Executive Directors appointed pursuant to paragraphs 27 and 29 of this Constitution;

"Code of Conduct for Directors" means the Code of Conduct for Directors of the Foundation Trust, as adopted by the Foundation Trust and as amended from time to time by the Board of Directors, which all Directors must adhere to;

"Code of Conduct for Governors" means the Code of Conduct for Governors of the Foundation Trust, as adopted by the Foundation Trust and as amended from time to time by the Board of Directors, which all Governors must adhere to;

"Disclosure and Barring Service" means the Executive Agency of the Home Office which, under the Safeguarding Vulnerable Groups Act 2006 and Part V of the Police Act 1997 as amended by the Protection of Freedoms Act 2012, is responsible for issuing criminal records certificates to those working in sensitive positions of trust and maintaining the children's and adults' barred lists;

"Dispute Resolution Procedure" means the dispute resolution procedure to be established by the Foundation Trust in accordance with paragraph 45 of this Constitution;

"Elected Governor" means a Public Governor or a Staff Governor;

"Executive Director" means an executive member of the Board of Directors of the Foundation Trust appointed pursuant to paragraph 29 of this Constitution;

"Finance Director" means the Finance Director of the Foundation Trust;

"Financial Year" means each successive period of twelve months beginning with 1 April;

"Forward Plan" means the document prepared by the Foundation Trust pursuant to paragraph 26 of Schedule 7 to the 2006 Act;

"Foundation Trust" means the Southern Health NHS Foundation Trust;

"Funds held on Trust" means those funds which the Foundation Trust holds at the date of Authorisation, receives on distribution by statutory instrument, or chooses subsequently to accept under powers derived under Section 47(2)(c) of the 2006 Act. Such funds may or may not be charitable;

"Governor" means a member of the Council of Governors;

"Health Overview and Scrutiny Committee" means a local authority overview and scrutiny committee established pursuant to section 21 of the Local Government Act 2000;

"Immediate Family Member" means either a spouse, person whose status is that of "Civil Partner" as defined in the Civil Partnerships Act 2004, partner with whom you live, child, step child or adopted child, sibling or parent;

"Licence" means the licence granted to the Foundation Trust under Section 88 of the 2012 Act;

"Local Authority Governor" means a member of the Council of Governors appointed by a local authority whose area includes the whole or part of the Area of the Foundation Trust appointed pursuant to Annex 3 of this Constitution;

"Member" means a member of the Foundation Trust pursuant to paragraphs 9 and 10 of this Constitution and the term "membership" shall be construed accordingly;

"Model Rules for Elections" means the election rules set out in Annex 4 of this Constitution;

"Monitor" means the corporate body known as Monitor, as provided for by Section 61 of the 2012 Act. Monitor is currently working with the NHS Trust Development Authority under the name of NHS Improvement;

"NHS Body" shall have the meaning ascribed to it in Section 275 of the 2006 Act;

"Nominated Officer" means an Officer charged with the responsibility for discharging specific tasks within the Standing Orders, Standing Financial Instructions or Scheme of Delegation;

"Non-Executive Director" means a Non-Executive Director of the Foundation Trust including the Chairman appointed pursuant to paragraph 27 of this Constitution;

"Officer" means an employee of the Foundation Trust, or any other person holding a paid appointment or office with the Foundation Trust;

"Partnership Governor" means a member of the Council of Governors appointed by a partnership organisation to the Trust pursuant to Annex 3 of this Constitution;

"Partnership Organisation" means an organisation that may appoint Partnership Governors and which is listed at paragraph 1.4 of Annex 3 of this Constitution;

"Principal Purpose" means the purpose set out in Section 43(1) of the 2006 Act. i.e. to provide goods and services for the purposes of the health service in England;

"Public Constituency" means an area as specified in Annex 1 of this Constitution;

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

"Replacement Governor" means a partnership governor appointed for the remainder of the term of office where a vacancy arises amongst the Appointed Governors pursuant to paragraph 17.6 of this Constitution;

"Regulatory Framework" means the 2006 Act, the 2012 Act and the Constitution;

"Scheme of Delegation" means the Foundation Trust's Reservation of Powers to the Board of Directors and Delegation of Powers which regulates duties delegated from the Board of Directors and to whom, or retained by the Board of Directors;

"Secretary" means the Secretary of the Foundation Trust or any other person other than a Governor, the Chief Executive or the Finance Director of the Foundation Trust, appointed by the Foundation Trust to perform the roles and responsibilities of the Secretary, as set out in the Constitution;

"Senior Independent Director" means a Non-Executive Director appointed in accordance with Paragraph 28 of this Constitution;

"Sex Offenders Order" means either:

- a) a Sexual Offences Preventative Order made under either Section 104 or Section 105 of the Sexual Offences Act 2003; or
- b) an Interim Sexual Offences Prevention Order made under Section 109 of the Sexual Offences Act 2003; or
- c) a Foreign Travel Order made under Section 114 of the Sexual Offences Act 2003; or
- d) a Risk of Sexual Harm Order made under section 123 of the Sexual Offences Act 2003;
- e) or an Interim Risk of Sexual Harm Order made under Section 126 of the Sexual Offences Act 2003;

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

"Significant Transaction" has the meaning ascribed to it in paragraph 47.3 of this Constitution;

"Staff Constituency" means a geographic area for members of staff working at sites in the area as defined in Annex 2 of this Constitution;

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

“Standing Financial Instructions” means the Foundation Trust’s Standing Financial Instructions, which regulate the conduct of Directors and Nominated Officers in relation to all financial matters with which they are concerned and the term “SFIs” shall be construed accordingly;

“Standing Items” shall have the meaning ascribed to it in SO 4.4.1 of Annex 5;

“Standing Orders for the Practice and Procedure of the Board of Directors and the Council of Governors” means the Standing Orders set out in Annex 5 of this Constitution and the term “SO” or “Standing Order” when used in Annex 5 is to be construed accordingly;

2. Name

2.1. The name of the Foundation Trust is Southern Health NHS Foundation Trust (the Foundation Trust).

3. Principal Purpose

3.1. The Principal Purpose of the Foundation Trust is the provision of goods and services for the purposes of the health service in England.

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

3.3. The Foundation Trust may provide goods and services for any purposes related to:

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

3.3.2. the promotion and protection of public health.

3.4. The Foundation Trust may also carry on activities other than those mentioned in paragraph 3.3 above for the purpose of making additional income available in order to better carry on its Principal Purpose.

4. Powers

4.1. The powers of the Foundation Trust are set out in the 2006 Act.

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

4.3. Subject to any restriction contained within this Constitution or in the 2006 Act, and to paragraph 4.4 below, any of these powers may be delegated to a committee of Directors or to an Executive Director and set out in the Scheme of Delegation.

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

4.5. In performing its NHS functions, the Foundation Trust shall have regard to the NHS Constitution. For the purposes of this paragraph, “NHS functions” means functions under an enactment which is a function concerned with, or connected to, the provision of, commissioning or regulation of NHS services and “NHS services” means health services provided in England for the purposes of the health service under Section 1(1) of the 2006 Act.

5. Membership and Constituencies

- 5.1. The Foundation 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. Subject to paragraph 9 below, an individual who is eligible to become a Member of the Foundation Trust may do so on application to the Foundation Trust at any time as set out in the paragraphs below.

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 of the Foundation Trust.
- 7.2. Those individuals who live in an area specified for a Public Constituency are referred to collectively as the "Public Constituency".
- 7.3. The minimum number of Members in each Public Constituency is specified in Annex 1.
- 7.4. An eligible individual shall become a Member upon entry to the Foundation Trust's register of Members, pursuant to an application by them. The Secretary may require any individual to supply supporting evidence to confirm eligibility.
- 7.5. The Secretary shall, normally within 28 Clear Days of receipt of an application for membership, and subject to being satisfied that the applicant is eligible, cause the applicant's name to be entered in the Foundation Trust's register of Members.

8. Staff Constituency

- 8.1. An individual who is employed by the Foundation Trust under a contract of employment with the Foundation Trust may become or continue as a Member of the Foundation Trust provided:
 - 8.1.1. he is employed by the Foundation 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 Foundation Trust under a contract of employment for at least 12 months.
- 8.2. Individuals who exercise functions for the purposes of the Foundation Trust, otherwise than under a contract of employment with the Foundation Trust, may become or continue as Members of the Staff Constituency provided such individuals have exercised these functions continuously for a period of at least 12 months.
- 8.3. Those individuals who are eligible for Membership of the Foundation Trust by reason of paragraphs 8.1 and 8.2 above are referred to collectively as the "Staff Constituency".
- 8.4. The minimum number of Members in the Staff Constituency is specified in Annex 2.
- 8.5. The Staff Constituency shall be divided into five descriptions of individuals who are eligible for membership of the Staff Constituency, each description of individuals being specified within Annex 2 and being referred to as a class within the Staff Constituency.

9. Automatic Membership by Default – Staff

- 9.1. An individual shall become a Member of the Foundation Trust as a Member of the Staff Constituency without an application being made, unless he informs the Foundation Trust that he does not wish to do so, provided that he is:
- 9.1.1. eligible to become a Member of the Staff Constituency as outlined in paragraph 8 above; and
 - 9.1.2. invited by the Foundation Trust to become a Member of the Staff Constituency.

10. Membership

10.1. Restriction on Membership

- 10.1.1. An individual who is a Member of a constituency, or of a class within a constituency, may not while Membership of that constituency or class continues, be a Member of any other constituency or class.
- 10.1.2. 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.
- 10.1.3. All Membership is individual and there shall be no facility for corporate membership.

10.2. Disqualification from Membership

An individual shall not become or continue as a Member of the Foundation Trust if:

- 10.2.1. he is under 14 years of age at the date of his application or invitation to become a Member (as the case may be);
- 10.2.2. he has been confirmed as a “persistent and unreasonable complainant” in accordance with the relevant Foundation Trust policy for handling complaints;
- 10.2.3. he has been removed as a Member from another NHS foundation trust, or, has in the last five years, been removed as a member from this Foundation Trust;
- 10.2.4. he is, or in the last five years prior to his application to be a Member has been, involved as a perpetrator in a serious incident of assault or violence, or in one or more incidents of harassment, against any of the Foundation Trust’s employees or other persons who exercise functions for the purposes of the Foundation Trust (including volunteers), and following such behaviour he has been asked to leave, has been removed or excluded from any hospital, premises or establishment, in accordance with the relevant Foundation Trust policy for withholding treatment from violent / aggressive patients;
- 10.2.5. he has been deemed to have acted in a manner contrary to the interests of the Foundation Trust;
- 10.2.6. he fails to fulfil the criteria for Membership of the Public Constituency or the Staff Constituency;
- 10.2.7. he has been dismissed (otherwise than by reason of redundancy) from a position of employment or removed from office within the Foundation Trust or another NHS Body;
- 10.2.8. the Council of Governors resolved for reasonable cause that the individual so doing would, or would be likely to:
 - 10.2.8.1. prejudice the ability of the Foundation Trust to fulfil its Principal Purpose or any other of its purposes under this Constitution or otherwise to discharge its duties and/or functions; or

- 10.2.8.2. harm the Foundation Trust's work with other persons or bodies with whom it is engaged or may be engaged in the provision of goods and services; or
 - 10.2.8.3. adversely affect public confidence in the goods and services provided by the Foundation Trust; or
 - 10.2.8.4. otherwise bring the Foundation Trust into disrepute.
- 10.3. It is the responsibility of each Member to ensure their eligibility at all times and not the responsibility of the Foundation Trust to do so on their behalf. A Member who becomes aware of their ineligibility shall inform the Foundation Trust as soon as practicable and that person shall thereupon be removed forthwith from the Foundation Trust's register of Members and shall cease to be a Member.
- 10.4. A Member may be expelled by a resolution approved by not less than two-thirds of the members of the Council of Governors in post present and voting at a meeting of the Council of Governors following the procedure set out below:
- 10.4.1. any Member may complain to the Secretary that another Member has acted in a way detrimental to, or contrary to, the interest of the Foundation Trust as set out in paragraph 10.2.8 above, or is otherwise disqualified as set out in paragraph 10.2 above;
 - 10.4.2. if a complaint is made the Council of Governors will consider the complaint, having taken such steps as it considers appropriate, to ensure that each Member's point of view is heard and may either:
 - 10.4.2.1. dismiss the complaint and take no further action; or
 - 10.4.2.2. arrange for a resolution to expel the Member complained of to be considered at the next meeting of the Council of Governors.
- 10.5. Where the Foundation Trust is on notice that a Member may be disqualified from Membership, or may no longer be eligible to be a Member, or it appears to the Secretary that a Member no longer wishes to be a Member, the Secretary shall invite representations from the Member within 14 Clear Days or such other reasonable period as the Secretary may as a matter of absolute discretion determine. On receipt of any such information supplied by the Member, the Secretary may, if he considers it appropriate, remove the Member from the Foundation Trust's register of Members. In the event of any dispute about entitlement to Membership, the dispute shall be resolved in accordance with the procedure set out in paragraph 45 of this Constitution.
- 10.6. If no representations are received within the period of 14 Clear Days or longer period (if any) permitted under paragraph 10.5 above, the Secretary shall be entitled nonetheless to proceed and make a decision of the Member's eligibility or disqualification notwithstanding the absence of any such representations from the Member.
- 10.7. A Member shall cease to be a Member if the individual:
- 10.7.1. is deceased;
 - 10.7.2. resigns by giving notice in writing to the Secretary;
 - 10.7.3. ceases to meet the requirements of being a Member;
 - 10.7.4. is disqualified or expelled pursuant to paragraphs 10.4 to 10.6 of this Constitution.

11. Annual Members' Meeting

- 11.1. The Foundation Trust shall hold an annual meeting of its members. The Annual Members' Meeting shall be open to members of the public.
- 11.2. Further provisions about the Annual Members' Meeting are set out in Annex 6 (Annual Members' Meeting).

12. Council of Governors – Composition

- 12.1. The Foundation Trust is to have a Council of Governors, which shall comprise both Elected Governors and Appointed Governors.
- 12.2. The composition of the Council of Governors is specified in Annex 3.
- 12.3. The members of the Council of Governors, other than the Appointed Governors, shall be chosen by election by their constituency or, where there are classes within a constituency, by their class within that constituency.
- 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.

13. Council of Governors – Election of Governors

- 13.1. Elections for elected members of the Council of Governors shall be conducted in accordance with the Model Rules for Elections, as may be varied from time to time. Elections for Elected Governors shall be conducted using the first past the post system.
- 13.2. The Model Rules for Elections as published from time to time by the Department of Health form part of this Constitution. The Model Rules for Elections current at the date of publication of this Constitution are attached at Annex 4.
- 13.3. A subsequent variation of the Model Rules for Elections by the Department of Health shall not constitute a variation of the terms of this Constitution for the purposes of paragraph 46 below.
- 13.4. An election, if contested, shall be by secret ballot.

14. Council of Governors – Tenure

14.1. Elected Governors

- 14.1.1. An Elected Governor may hold office for a period of up to three years.
- 14.1.2. 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.
- 14.1.3. An Elected Governor shall be eligible for re-election at the end of his term, but shall serve for no more than three consecutive terms of office.

14.2. Appointed Governors

- 14.2.1. An Appointed Governor may hold office for a period of up to three years.
- 14.2.2. An Appointed Governor shall cease to hold office if the appointing organisation withdraws its sponsorship of him or he ceases to be employed by or associated with the relevant appointing organisation or the organisation ceases to exist.
- 14.2.3. An Appointed Governor shall be eligible for re-appointment at the end of his term, subject to paragraph 14.2.5 below.
- 14.2.4. An Appointed Governor may hold office for a maximum of six consecutive years.

15. Council of Governors – Disqualification and Removal

- 15.1. The following may not become or continue as a member of the Council of Governors:
 - 15.1.1. a person who is not a Member of the Trust;
 - 15.1.2. a person who has been adjudged bankrupt or whose estate has been sequestered and (in either case) has not been discharged;

- 15.1.3. a person who has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it;
- 15.1.4. a person who within the preceding five years has been convicted in the British Islands of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him;
- 15.1.5. in the case of an Elected Governor, he ceases to be a member of the constituency or where relevant, the class within the constituency he represents;
- 15.1.6. in the case of an Appointed Governor, the appointing organisation withdraws their sponsorship of him;
- 15.1.7. in the case of a Partnership Governor, the relevant Partnership Organisation which he represents ceases to exist;
- 15.1.8. a person whose tenure of office as the chairman or as a member or director of a NHS Body has been terminated on the grounds that his appointment is not in the interest of the health service;
- 15.1.9. a person who has had his name removed from a list maintained under regulations pursuant to Sections 91, 106, 123 or 174A of the 2006 Act, or the equivalent lists maintained by Local Health Boards in Wales under the National Health Service (Wales) Act 2006, and he has not subsequently had his name included in such a list and due to the reason(s) for such removal he is considered by the Foundation Trust to be unsuitable to be a Governor;
- 15.1.10. a person who has within the preceding two years been dismissed, otherwise than by reason of redundancy or ill health, from any paid employment with a NHS Body;
- 15.1.11. a person who is a Director of the Foundation Trust, or a governor, executive director, non-executive director, chairman, chief executive officer of another NHS foundation trust or other NHS Body (unless they are appointed by a sponsoring organisation which is an NHS foundation trust or NHS Body), or has been a Director of the Foundation Trust in the preceding five years prior to the date of his nomination to stand for election as an Elected Governor, or in the case of an Appointed Governor, the date of his appointment;
- 15.1.12. a person who is a member of a local authority Health Overview and Scrutiny Committee (unless they are a Local Authority Governor);
- 15.1.13. a person who is subject to a disqualification order made under the Company Directors' Disqualification Act 1986;
- 15.1.14. a person who has refused without reasonable cause to undertake any training which the Foundation Trust and/or Board of Directors requires all Governors to undertake;
- 15.1.15. a person who has failed to sign and deliver to the Secretary a statement in the form required by the Foundation Trust confirming acceptance of the Code of Conduct for Governors within the period of two calendar months of his election or appointment, as the case may be, and as requested by the Secretary thereafter;
- 15.1.16. a person who is the subject of a Sex Offenders Order and / or whose name is included in the Sex Offenders Register;
- 15.1.17. a person who has failed to repay (without good cause) any amount of monies properly owed to the Foundation Trust;
- 15.1.18. following disclosures obtained through an application to the Disclosure and Barring Service, the individual is not considered suitable by the Chairman;
- 15.1.19. a person who is, or in the last five years prior to his application to be a Member has been, involved as a perpetrator in a serious incident of assault or violence, or in one or more incidents of harassment, against any of the Foundation Trust's employees

or other persons who exercise functions for the purposes of the Foundation Trust (including volunteers), and following such behaviour he has been asked to leave, has been removed or excluded from any hospital, premises or establishment, in accordance with the relevant Foundation Trust policy for withholding treatment from violent / aggressive patients;

15.1.20. a person who has failed to declare an interest as required by this Constitution; or

15.1.21. a person who is an unfit person for the purposes of the conditions of the Licence.

15.2. A Governor shall vacate his office immediately if:

15.2.1. he is considered to have acted in a manner inconsistent with the values of the Foundation Trust or in a manner detrimental to or contrary to:

15.2.1.1. the interests of the Foundation Trust; or

15.2.1.2. the Licence; or

15.2.1.3. the Code of Conduct for Governors; or

15.2.2. he is adjudged to have acted in a manner inconsistent with the values of the Foundation Trust or in a manner detrimental to it by a majority of not less than three quarters of the members of the Council of Governors in post present and voting at a meeting of the Council of Governors.

15.3. Individuals must be at least 18 years of age at the date they are nominated for election or appointment.

15.4. Where an individual has been elected or appointed to be a Governor and they become disqualified under the terms of this Constitution, the individual shall notify the Secretary in writing of such disqualification as soon as practicable and in any event within 14 Clear Days of first becoming aware of those matters which render the individual disqualified. The Secretary shall forthwith remove the individual from the Foundation Trust's register of Members of the Council of Governors.

15.5. If it comes to the notice of the Secretary that the Governor is disqualified otherwise than pursuant to paragraph 15.2 above, whether at the time of the Governor's appointment or later, the Secretary shall immediately declare that the individual in question is disqualified and give notice to them in writing to that effect as soon as practicable and in any event within 14 Clear Days of the date of the said declaration. In the event that a Governor shall dispute their ineligibility the Governor may refer the matter to the relevant dispute resolution procedure described in paragraph 45 below within 28 Clear Days of the date upon which notice in writing is given to the Governor.

16. Council of Governor – Termination

16.1. A Governor may resign from office at any time during the term of that office by giving notice in writing to the Secretary whereupon that individual shall cease to hold office.

16.2. A Governor shall cease to hold office on their death.

16.3. If a Governor fails to attend two consecutive meetings of the Council of Governors without reasonable cause approved by the Chairman before the end of the period of absence, the individual's tenure of office is to be immediately terminated by the Council of Governors by delegated authority to the Chairman.

16.4. The Council of Governors may by a resolution terminate a Governor's tenure of office if for reasonable cause it considers that:

16.4.1. the individual has knowingly or recklessly made a false declaration for any purpose provided for under this Constitution or in the 2006 Act;

16.4.2. the individual has acted in a way that is judged to contravene the Code of Conduct for Governors, provided that the process set out in the Code of Conduct for

Governors relating to breaches of the Code of Conduct for Governors has been followed;

- 16.4.3. the individual continuing as a Governor would or would be likely to:
 - 16.4.3.1. prejudice the ability of the Foundation Trust to fulfil its Principal Purpose or other of its purposes under this Constitution or otherwise to discharge its duties and functions; or
 - 16.4.3.2. harm the Foundation Trust's work with other persons or bodies with whom it is engaged or may be engaged in the provisions of goods and services; or
 - 16.4.3.3. adversely affect public confidence in the goods or services provided by the Foundation Trust; or
 - 16.4.3.4. otherwise bring the Foundation Trust into disrepute;
- 16.4.4. the individual has been confirmed as a 'persistent and unreasonable complainant' in accordance with the relevant Foundation Trust policy for handling complaints.
- 16.5. Upon termination or cessation of a Governor's office under the paragraphs above the individual's name shall be forthwith removed from the Foundation Trust's register of Members of the Council of Governors.
- 16.6. Subject to the provisions of paragraph 45, any decision of the Council of Governors to terminate a Governor's tenure of office pursuant to paragraph 16.3 or 16.4 above shall be final.
- 16.7. A Governor who resigns from office under paragraph 16.1 above or whose tenure of office is terminated under paragraphs 16.3 or 16.4 above shall not be eligible to stand for re-election or re-appointment to the Council of Governors for a period of three years from the date of their resignation or removal from office or the date upon which any appeal against their removal from office is disposed of, whichever is the later.
- 16.8. The Chairman shall be authorised to take such action as may be immediately required, including the exclusion of the Governor concerned from a meeting of the Council of Governors so that any allegation made against a Governor on the following grounds can be investigated:
 - 16.8.1. any non-compliance with the Regulatory Framework or the Code of Conduct for Governors or the Standing Orders for the Practice and Procedure of the Board of Directors and the Council of Governors; or
 - 16.8.2. any misconduct detrimental to the Foundation Trust; or
 - 16.8.3. failure to attend two consecutive meetings of the Council of Governors or any meetings within a six month consecutive period without good reason established to the satisfaction of the Chairman and the Council of Governors; or
 - 16.8.4. failure to sign and deliver to the Secretary any statement in the form required by the Foundation Trust such as a the Code of Conduct for Governors or annual declaration of interest; or
 - 16.8.5. if any other of the circumstances set out in this Constitution relating to the disqualification or removal of a Governor are applicable.
- 16.9. Where any grounds within this paragraph 16 are alleged, it shall be for the Chairman to lay a formal charge of non-compliance or misconduct detrimental to the Foundation Trust.
- 16.10. The Governor in question will be notified in writing of the allegations, detailing the specific behaviour which is considered to be non-compliant or misconduct detrimental to the Foundation Trust, and inviting and considering the individual's response within a defined appropriate and reasonable timescale.

- 16.11. The Governor may be invited to address the Council of Governors in person if the matter cannot be resolved satisfactorily through correspondence.
- 16.12. The Governors, by a simple majority of those present and voting at a meeting of the Council of Governors can decide whether to uphold the charge of non-compliance or misconduct detrimental to the Foundation Trust.
- 16.13. For the avoidance of doubt, and save for where the provisions of Paragraph 16.3 above apply which lead to an automatic disqualification, the Governors can impose such sanctions as shall be deemed appropriate. Such sanctions will range from the issuing of a written warning as to the Governor's future conduct and consequences, non-payment of expenses and removal of the Governor from office.

17. Council of Governors – Vacancies

- 17.1. Where a vacancy arises on the Council of Governors for any reason other than the expiry of office, the Governor shall be replaced in accordance with paragraphs 17.2 to 17.4 below.
- 17.2. Where an Elected Governor ceases to hold office during his term of office the Foundation Trust shall invite the next highest polling candidate for that seat at the most recent election or (where relevant) by-election to take office. The term of office for the vacant office will be for the unexpired balance of the retiring Governor's tenure of office. If that candidate does not accept the opportunity to fill the vacancy it will then be offered to the next highest polling candidate until the vacancy is filled or there are no further candidates.
- 17.3. If no reserve candidate is available or willing to fill the vacancy, a by-election will then be held in accordance with Annex 4, the Model Rules for Elections, save that if an election is due to be held within six months of the vacancy having arisen the position will stand vacant until the next scheduled election unless by so doing this causes the aggregate number of Governors who are Public Governors to be less than half the total membership in post of the Council of Governors. In that event an election will be held in accordance with the Model Rules for Elections, as soon as reasonably practicable.
- 17.4. A Governor elected to replace a Governor ceasing to be a Governor under paragraphs 15 or 16 above shall be appointed for the unexpired balance of the retiring Governor's term of office.
- 17.5. The returning officer under the Model Rules for Elections shall maintain a record of votes cast at each election under the Model Rules for Elections for the above purposes and the returning officer shall conduct or shall oversee the conducting of the process set out in paragraphs 17.2 and 17.3 above.
- 17.6. Where the vacancy arises amongst the Appointed Governors, the Secretary will request that the relevant organisation appoints a Replacement Governor within 30 Clear Days to hold office for the remainder of the term of office.
- 17.7. The validity of any act of the Council of Governors is not affected by any vacancy among the Governors or by any defect in the appointment of any Governor.

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 of the Foundation Trust as a whole and the interests of the public.
- 18.2. The Foundation Trust must take steps to secure that the Governors are equipped with the skills and knowledge they require in their capacity as such.

19. Council of Governors – Meetings

- 19.1. The Chairman of the Foundation Trust (i.e. the Chairman of the Board of Directors, appointed in accordance with the provisions of paragraph 26.1 below) or, in his absence, the Deputy Chairman (appointed in accordance with the provisions of paragraph 27 below), shall preside at meetings of the Council of Governors. The person chairing the meeting shall have a casting vote.
- 19.2. Meetings of the Council of Governors shall be open to members of the public. Members of the public may be excluded from a meeting by resolution of the Council of Governors on the grounds that the Governors consider that publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted or for any other special reasons stated in the resolution and arising from the nature of the business or the proceedings.
- 19.3. The Council of Governors is to meet at least four times per year, including the Annual Governors' Meeting which shall take place no later than 30 September in each year, when the Council of Governors is to receive and consider the Annual Accounts and any report of the Auditor on them and the Board of Directors is to present to the Council of Governors the Annual Report.
- 19.4. Any meeting of the Council of Governors requires a quorum of at least one third of the total number of Governors in post to be present, with a majority of those present being Public Governors.
- 19.5. No business shall be carried out at a meeting which is not quorate.
- 19.6. For the purposes of obtaining information about the Foundation Trust's performance of its functions or the Directors' performance of their duties (and deciding whether to propose a vote on the Foundation 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 Board of Directors and Council of Governors are attached at Annex 5.

21. Council of Governors – Referral to the Panel

- 21.1. In this paragraph 21.1, the 'Panel' means a panel of persons appointed by Monitor to which a Governor of the Foundation Trust may refer a question as to whether the Foundation Trust has failed or is failing:
 - 21.1.1. to act in accordance with this 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 members of the Council of Governors present and voting at a meeting of the Council of Governors approve the referral.

22. Council of Governors – Conflicts of Interest

- 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 members of the Council of Governors as soon as he becomes aware of it.
- 22.2. The Standing Orders for the Practice and Procedure of the Board of Directors and 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. Subject to any Foundation Trust policy on the payment of expenses, the Foundation Trust may pay travelling and other expenses to members of the Council of Governors at rates as the Board of Directors decides from time to time in its absolute discretion.

24. Board of Directors – Composition

- 24.1. The Foundation Trust is to have a Board of Directors, which shall comprise both Executive Directors and Non-Executive Directors.
- 24.2. The Board of Directors is to comprise:
- 24.2.1. a Non-Executive Chairman;
 - 24.2.2. up to a maximum of nine other Non-Executive Directors; and
 - 24.2.3. up to a maximum of eight 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 shall be 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 validity of any act of the Foundation Trust is not affected by any vacancy among the Directors or by any defect in the appointment of any Director.
- 24.9. Subject to the provisions of paragraphs 24.3 to 24.7 above, the Board of Directors shall determine any change in the number of Directors, provided that any change in the number shall be in the range set out at paragraph 24.2 above, and that the number of Non-Executive Directors (including the Chairman) shall always be greater than 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 Foundation Trust so as to maximise the benefits for the Members of the Foundation Trust 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 Foundation Trust's hospitals includes a medical or dental school provided by a university, the individual exercises functions for the purposes of that university; and
 - 26.1.3. he is not disqualified by virtue of paragraph 30 below.

27. Board of Directors – Appointment and Removal of Chairman 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 Chairman of the Foundation Trust and the other Non-Executive Directors.
- 27.2. During any meeting of the Council of Governors at which the Chairman may be suspended or removed, the Deputy Chairman shall preside, or if the Deputy Chairman is absent from the meeting or is absent temporarily on the grounds of a declared conflict of interest, another Non-Executive Director, as shall be appointed by the Council of Governors, shall preside.
- 27.3. Removal of the Chairman or another Non-Executive Director shall require the approval of three-quarters of the members of the Council of Governors in post at a meeting of the Council of Governors.
- 27.4. The Chairman or other Non-Executive Director in question shall be given the opportunity to respond to such reasons at the meeting of the Council of Governors where the resolution is to be considered and voted upon. If the individual in question fails to attend the meeting without due cause, the meeting may proceed in their absence. The decision to proceed in these circumstances will be at the sole discretion of the person chairing the meeting in question.
- 27.5. If any resolution to suspend or remove either the Chairman or a non-Executive Director is not approved at a meeting of the Council of Governors in accordance with paragraph 27.3 above, no further resolution can be put forward to remove such Non-Executive Director, or the Chairman which is based on the same reasons within 12 calendar months of the meeting of the Council of Governors at which the resolution mentioned in paragraph 27.4 above was considered.
- 27.6. The process for appointing new Non-Executive Directors and the Chairman will be as follows:
- 27.6.1. Before the end of the term of office of the Chairman or a Non-Executive Director (as the case may be), the Council of Governors will appoint an Appointment Committee to seek a suitable replacement. The Appointment Committee will be constituted as set out below.
- 27.6.2. The Appointment Committee will consist of a Non-Executive Director and at least three Public Governors, one Staff Governor and one Appointed Governor (provided always there is a majority of Public Governors). The Chief Executive will attend in an advisory capacity only. A Non-Executive Director will chair the Appointment Committee. A Non-Executive Director will not participate on the Appointment Committee in relation to his/her own re-appointment. Each member of the Appointment Committee will have one vote.
- 27.6.3. The Appointment Committee will make recommendations to the Council of Governors, including recommendations about pay.
- 27.6.4. The Appointment Committee will be supported by appropriate HR advice from the Foundation Trust's Director of Human Resources (or individual exercising this function) on the qualifications, skills and experience required for each position.
- 27.6.5. An existing Chairman or Non-Executive Director, nearing the end of his term, shall be considered for a further term of office, subject to the following:
- 27.6.5.1. a satisfactory appraisal that he continues to be effective;
- 27.6.5.2. he continues to demonstrate commitment to the role;
- 27.6.5.3. he is willing to complete a further term of office;
- 27.6.5.4. he is not precluded by virtue of time already served as a Non-Executive Director.
- 27.6.6. Should the existing Chairman or Non-Executive Director not meet the criteria set out in paragraph 27.6.5, the Appointment Committee must decide to advertise externally

for a Chairman or Non-Executive Director. A specification shall be drawn up and approved by the Appointment Committee that shall set out the personal and professional qualities needed.

- 27.6.7. Where paragraph 27.6.6 applies, the Appointment Committee shall follow a process which involves advertising for the vacancy, shortlisting against the specification and interviewing candidates. In the case of appointing a Non-Executive Director or the Chairman, the interview panel will include at least one Public Governor and a Non-Executive Director.
- 27.6.8. The Council of Governors will not consider nominations for membership of the Board of Directors other than those made by the Appointment Committee.

28. Board of Directors – Appointment of the Senior Independent Director and Deputy Chairman

- 28.1. A Senior Independent Director shall be appointed by the Board of Directors in consultation with the Council of Governors.
- 28.2. A Non-Executive Director appointed as the Senior Independent Director shall be the Senior Independent Director for a period consistent with his existing term of office as a Non-Executive Director.
- 28.3. Any Non-Executive Director so appointed may at any time resign from the office of Senior Independent Director by giving notice in writing to the Secretary.
- 28.4. The Council of Governors at a meeting of the Council of Governors shall appoint one of the Non-Executive Directors as a Deputy Chairman for such period, not exceeding his term of office as a Non-Executive Director, as the Council of Governors may specify on appointing him.
- 28.5. Any Non-Executive Director so appointed under paragraph 28.4 above may at any time resign from the office of Deputy Chairman by giving notice in writing to the Secretary. The Council of Governors may thereupon appoint another Non-Executive Director in accordance with paragraph 28.4.
- 28.6. The roles of Senior Independent Director and Deputy Chairman may be held by the same Non-Executive Director. Alternatively the Board of Directors and Council of Governors, under guidance from the Chairman, may choose to appoint separate Non-Executive Directors to each of these roles.
- 28.7. If the Chairman is unable to discharge his functions as Chairman of the Foundation Trust, the Deputy Chairman will be the "acting chairman" of the Foundation Trust until such time as the Chairman is able to discharge his functions as Chairman, or a new Chairman is appointed by the Council of Governors in accordance with paragraph 27 above.

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 a majority of the members of the Council of Governors in post present and voting at a meeting of the Council of Governors.
- 29.3. A committee consisting of the Chairman, the Chief Executive and the other Non-Executive Directors shall appoint or remove the other Executive Directors.

30. Board of Directors – Disqualification

- 30.1. The following may not become or continue as a member of the Board of Directors:

- 30.1.1. a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;
- 30.1.2. a person who has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it;
- 30.1.3. a person who within the preceding five years has been convicted in the British Islands of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him;
- 30.1.4. a person whose tenure of office as a chairman or member or director of a NHS Body has been terminated on the grounds that his appointment is not in the interests of the health service;
- 30.1.5. a person who has had his name removed from a list maintained under regulations pursuant to sections 91, 106, 123, or 174A of the 2006 Act, or the equivalent lists maintained by Local Health Boards in Wales under the National Health Service (Wales) Act 2006, and he has not subsequently had his name included in such a list, and due to such reasons he is considered by the Foundation Trust to be unsuitable to be a Director;
- 30.1.6. a person who within the preceding two years has been dismissed, otherwise than by reason of redundancy or ill health, from any paid employment with a NHS Body;
- 30.1.7. a person who is an executive director, non-executive director or a governor of another NHS foundation trust, an executive director, non-executive director, chairman or chief executive officer of another NHS Body or a body corporate whose business includes the provision of health care services, including for the avoidance of doubt those who have a commercial interest in the affairs of the Foundation Trust;
- 30.1.8. a person who is a member of a local authority Health Overview and Scrutiny Committee;
- 30.1.9. a person who is subject of a disqualification order made under the Company Directors' Disqualification Act 1986;
- 30.1.10. a person who has failed without reasonable cause approved by the Chairman to fulfil any training requirement established by the Board of Directors;
- 30.1.11. a person who has failed to sign and deliver to the Secretary a statement in the form required by the Board of Directors confirming acceptance of the Code of Conduct for Directors and other documents such as the Fit and Proper Person declaration;
- 30.1.12. a person does not meet 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);
- 30.1.13. a person who is an unfit person for the purposes of the conditions of the Licence;
- 30.1.14. a person who is an Immediate Family Member of a Director or a Governor;
- 30.1.15. a person who is the subject of a Sex Offenders Order and/or his name is included in the Sex Offenders Register;
- 30.1.16. a person who by reference to information revealed by a Disclosure and Barring Service check is considered by the Chairman to be inappropriate on the grounds that his appointment may adversely affect public confidence in the Foundation Trust or otherwise bring the Foundation Trust into disrepute; or
- 30.1.17. a person who is, or in the last five years prior to his application to be a member has been, involved as a perpetrator in a serious incident of assault or violence, or in one or more incidents of harassment, against any of the Foundation Trust's employees or other persons who exercise functions for the purposes of the Foundation Trust (including volunteers), and following such behaviour he has been asked to leave,

has been removed or excluded from any hospital, premises or establishment, in accordance with the relevant Foundation Trust policy for withholding treatment from violent / aggressive patients.

31. Board of Directors – Meetings

- 31.1. Meetings of the Board of Directors shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons by resolution of the Board of Directors on the grounds that publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted or for the other special reasons stated in the resolution and arising from the business or nature of the proceedings.
- 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 and Council of Governors are attached at Annex 5.

33. Board of Directors – Conflicts of Interest of Directors

- 33.1. The duties that a Director of the Foundation Trust 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 Foundation Trust (a "Conflict");
 - 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 paragraph 33.1.1 above is not infringed if:
 - 33.2.1. the situation cannot reasonably be regarded as likely to give rise to a conflict of interest; or
 - 33.2.2. the matter has been authorised in accordance with the Constitution.
- 33.3. The duty referred to in paragraph 33.1.2 above is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- 33.4. In paragraph 33.1.2 above, "third party" means a person other than:
 - 33.4.1. the Foundation Trust; or
 - 33.4.2. a person acting on its behalf.
- 33.5. If a Director of the Foundation Trust has in any way a direct or indirect interest in a proposed transaction or arrangement with the Foundation Trust, the Director must declare the nature and extent of that interest to the other Directors.
- 33.6. If a declaration under this paragraph 33 proves to be, or becomes, inaccurate or incomplete, a further declaration must be made.
- 33.7. Any declaration required by this paragraph 33 must be made before the Foundation Trust enters into the transaction or arrangement.
- 33.8. This paragraph 33 does not require a declaration of an interest of which the Director is not aware or where the Director is not aware of the transaction or arrangement in question.

- 33.9. A Director need not declare an interest:
- 33.9.1. If it cannot reasonably be regarded as likely to give rise to a conflict of interest;
 - 33.9.2. If, or to the extent that, the Directors are already aware of it;
 - 33.9.3. If, or to the extent that, 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. A matter shall have been authorised for the purposes of paragraph 33.2.2 above if:
- 33.10.1. The Directors, in accordance with the requirements set out in this paragraph 33.10, authorise any matter or situation proposed to them by any Director which would, if not authorised, involve a Director (an "Interested Director") breaching his duty under paragraph 33.1.1 above to avoid Conflicts:
 - 33.10.1.1. the matter in question shall have been proposed by any Director for consideration in the same way that any other matter may be proposed to the Directors under the provisions of this Constitution;
 - 33.10.1.2. any requirement as to the quorum for consideration of the relevant matter is met without counting the Interested Director or any other Interest Director; and
 - 33.10.1.3. the matter was agreed to without the Interested Director voting or would have been agreed to if the Interested Director's and any other Interested Director's vote had not been counted.
 - 33.10.2. Any authorisation of a Conflict under this paragraph 33.10 may (whether at the time of giving the authorisation or subsequently):
 - 33.10.2.1. extend to any actual or potential conflict of interest which may reasonably be expected to arise out of the Conflict so authorised;
 - 33.10.2.2. provide that the Interested Director be excluded from the receipt of documents and information and the participation in discussions (whether at meetings of the Directors or otherwise) related to the Conflict;
 - 33.10.2.3. impose upon the Interested Director such other terms for the purposes of dealing with the Conflict as the Directors think fit;
 - 33.10.2.4. 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
 - 33.10.2.5. 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. 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.
- 33.12. The Directors may revoke or vary such authorisation at any time, but this will not affect anything done by the Interested Director, prior to such revocation or variation in accordance with the terms of such authorisation.
- 33.13. A Director is not required, by reason of being a Director, to account to the Trust for any remuneration, profit or other benefit which he derives from or in connection with a

relationship involving a Conflict which has been authorised by the Directors (subject in each case to any terms, limits or conditions attaching to that authorisation) and no contract shall be liable to be avoided on such grounds.

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

34. Board of Directors – Remuneration and Terms of Office

- 34.1. The Council of Governors at a meeting of the Council of Governors shall decide the remuneration and allowances, and the other terms and conditions of office, of the Chairman and the other Non-Executive Directors.
- 34.2. The Foundation Trust shall establish a committee of Non-Executive Directors to decide the remuneration and allowances, and the other terms and conditions of office, of the Chief Executive and other Executive Directors.

35. Registers

- 35.1. The Foundation 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 the members of the Council of Governors;
 - 35.1.3. a register of interests of the members of the Council of Governors;
 - 35.1.4. a register of the members of the Board of Directors; and
 - 35.1.5. a register of interests of the members of the Board of Directors.
- 35.2. The Secretary shall be responsible for compiling and maintaining the registers in paragraph 35.1 above, and the registers may be kept in either electronic or paper form. Admission to and removal from any register shall be in accordance with the provisions of this Constitution. The Secretary shall update the registers with new or amended information as soon as is practical, and in any event, within 28 Clear Days of receipt.

36. Registers – Inspection and Copies

- 36.1. The Foundation 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 Foundation Trust shall not make any part of its registers available for inspection by members of the public which shows details of any Member of the Foundation Trust, if the Member 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 of the Foundation Trust, the Foundation Trust may impose a reasonable charge for doing so.

37. Documents Available for Public Inspection

- 37.1. The Foundation 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;
 - 37.1.3. a copy of the latest Annual Report;
 - 37.1.4. 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;
 - 37.1.5. a copy of any report laid under section 65D (appointment of trust special administrator) of the 2006 Act;
 - 37.1.6. a copy of any information published under section 65D (appointment of trust special administrator) of the 2006 Act;
 - 37.1.7. a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act;
 - 37.1.8. a copy of any statement provided under section 65F (administrator's draft report) of the 2006 Act;
 - 37.1.9. 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;
 - 37.1.10. a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act;
 - 37.1.11. a copy of any final report published under section 65I (administrator's final report);
 - 37.1.12. 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;
 - 37.1.13. a copy of any information published under section 65M (replacement of trust special administrator) of the 2006 Act.
- 37.2. Any person who requests a copy of or extract from any of the above documents is to be provided with a copy, or extract.
- 37.3. If the person requesting a copy or extract is not a Member of the Foundation Trust, the Foundation Trust may impose a reasonable charge for doing so.

38. Auditor

- 38.1. The Foundation Trust shall have an Auditor.
- 38.2. The Council of Governors shall appoint or remove the Auditor at a meeting of the Council of Governors.
- 38.3. In appointing the Auditor, the Council of Governors shall have regard to the recommendations, if any, of the Audit, Assurance & Risk Committee.

39. Audit, Assurance & Risk Committee

- 39.1. The Foundation Trust shall establish a committee of Non-Executive Directors as an Audit, Assurance & Risk Committee to perform such monitoring, reviewing and other functions as are appropriate.

40. Accounts

- 40.1. The Foundation Trust must keep proper accounts and proper records in relation to the accounts.
- 40.2. Monitor may, with the approval of the Secretary of State for Health, give directions to the Foundation Trust as to the content and form of its accounts.
- 40.3. The accounts are to be audited by the Foundation Trust Auditor.
- 40.4. The Foundation Trust shall prepare in respect of each Financial Year Annual Accounts in such form as Monitor may with the approval of the Secretary of State direct.
- 40.5. The functions of the Foundation 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 Foundation Trust shall prepare Annual Reports and send them to Monitor.
- 41.2. The Foundation Trust shall give the information as to its Forward Plan in respect of each Financial Year to Monitor.
- 41.3. The information as to its Forward Plan shall be prepared by the Board of Directors.
- 41.4. In preparing the Forward Plan, the Board of 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 Foundation 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 Foundation Trust carry on an activity of a kind mentioned in paragraph 41.5.1 above, 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 Foundation Trust of its principal purpose or the performance of its other functions; and
 - 41.6.2. notify the Directors of the Foundation Trust of its determination.
- 41.7. The Foundation Trust may implement a proposal to increase by 5% or more the proportion of its total income in any Financial Year attributable to activities other than the fulfilment of the Principal Purpose only if more than half of the members of the Council of Governors in post present and voting at a meeting of the Council of Governors 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 meeting of the Council of Governors, known as the Annual Governors' Meeting:
- 42.1.1. the Annual Accounts;
 - 42.1.2. any report of the Auditor on them;

42.1.3. the Annual Report.

- 42.2. The documents set out in paragraph 42.1 above shall also be presented to the Members of the Foundation Trust at the Annual Members' Meeting by at least one member of the Board of Directors in attendance.
- 42.3. The Foundation Trust may combine a meeting of the Council of Governors convened for the purposes of paragraph 42.1 with the Annual Members' Meeting.

43. Instruments

- 43.1. The Foundation Trust shall have a seal.
- 43.2. The seal shall not be affixed except under the authority of the Board of Directors as set out in the Standing Orders for the Practice and Procedure of the Board of Directors and the Council of Governors.

44. Indemnity

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

45. Dispute Resolution Procedures

- 45.1. In the event of any dispute about the entitlement to membership, the dispute shall be referred to the Secretary who shall make a determination on the point in issue.
- 45.2. If the Member or applicant (as the case may be) is aggrieved at the decision of the Secretary he may appeal in writing within 14 Clear Days of the Secretary's decision to the Council of Governors whose decision shall be final.
- 45.3. Subject to paragraph 21 above, in the event of a dispute between the Council of Governors and the Board of Directors:
- 45.3.1. in the first instance, the Chairman, on the advice of the Secretary, and such other advice as the Chairman may see fit to obtain, shall seek to resolve the dispute;
 - 45.3.2. if the Chairman is unable to resolve the dispute he shall refer the dispute to the Secretary who shall appoint a joint special committee of the Board of Directors and the Council of Governors, comprising equal numbers of Directors and Governors, to consider the circumstances and to make recommendations to the Council of Governors and the Board of Directors with a view to resolving the dispute;
 - 45.3.3. if the recommendations (if any) of the joint special committee are unsuccessful in resolving the dispute, the Chairman may refer the dispute back to the Board of Directors who shall make the final decision.
- 45.4. In the event of any dispute in relation to this Constitution that concerns anything other than membership, or disputes between the Council of Governors and the Board of Directors, the

dispute shall be referred to the Chairman who shall make a determination on the point in issue.

- 45.5. If the Member or complainant (as the case may be) is aggrieved at the decision of the Chairman he may appeal in writing within 14 Clear Days of the Chairman's decision to the Board of Directors, whose decision shall be final.

46. Amendment of the Constitution

- 46.1. Amendments to this Constitution are to be made with the approval of:
- 46.1.1. more than half of the members of the Council of Governors in post present and voting at a meeting of the Council of Governors; and
 - 46.1.2. more than half of the members of the Board of Directors present and voting at a meeting of the Board of Directors.
- 46.2. Amendments made under paragraph 46.1 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.
- 46.3. 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 Foundation Trust):
- 46.3.1. at least one member of the Council of Governors must attend the next Annual Members' Meeting and present the amendment;
 - 46.3.2. the Foundation Trust must give the Members present an opportunity to vote on whether they approve the amendment; and
 - 46.3.3. if more than half of the Members present and voting at the Annual Members' Meeting approve the amendment, the amendment continues to have effect; otherwise, it ceases to have effect and the Foundation Trust must take such steps as are necessary as a result.
- 46.4. The Foundation Trust must notify Monitor of amendments to its Constitution. For the avoidance of doubt, Monitor's functions do not include a power or duty to determine whether or not the Constitution, as a result of the amendments, accords with Schedule 7 of the 2006 Act.

47. Mergers, etc. and Significant Transactions

- 47.1. The Foundation Trust may only apply for a merger, acquisition, separation or dissolution with the approval of more than half of the members of the Council of Governors in post at a meeting of the Council of Governors.
- 47.2. The Foundation Trust may enter into a Significant Transaction only if more than half of the members of the Council of Governors in post present and voting at a meeting of the Council of Governors approve entering into the transaction.
- 47.3. For the purposes of paragraph 47.2 above, "significant transaction" means a transaction or arrangement under which the contractual income attributable to the associated transaction or arrangement is greater than 25% of the total contractual income of the Foundation Trust as set out in the preceding Financial Year's Annual Accounts or under which the value of the assets attributable to the associated transaction to arrangement is greater than 25% of the total assets of the Foundation Trust as set out in the preceding Financial Year's Annual Accounts. For the avoidance of doubt, a significant transaction does not include a merger, acquisition, separation or dissolution pursuant to paragraph 47.1.

Annex 1 – The Public Constituencies

CONSTITUENCY	AREA	MINIMUM NUMBER OF MEMBERS	NUMBER OF GOVERNORS
Southampton	The Electoral Wards of Southampton City Council	10	3
South West Hampshire	The Electoral Wards of: <ul style="list-style-type: none"> • Eastleigh Borough Council • New Forest District Council • Test Valley Borough Council • Winchester City Council 	10	3
South East Hampshire	The Electoral Wards of: <ul style="list-style-type: none"> • Fareham Borough Council • Gosport Borough Council • Havant Borough Council 	10	3
North Hampshire	The Electoral Wards of: <ul style="list-style-type: none"> • East Hampshire District Council • Basingstoke and Deane Borough Council • Hart District Council • Rushmoor Borough Council 	10	3
Oxfordshire and Buckinghamshire	The Electoral Wards of: <ul style="list-style-type: none"> • Oxfordshire County Council • Buckinghamshire County Council • Cherwell District Council • West Oxfordshire District Council • Vale of White Horse District Council • South Oxfordshire District Council • Oxford City Council • Aylesbury Vale District Council • Wycombe District Council • Chiltern District Council 	10	2
Rest of England	All the Electoral Wards of England save those set out in the Public Constituency areas listed above.	10	1
Totals	Minimum Membership	60	
	Public Governors		15

Annex 2 – The Staff Constituency

NAME OF CLASS	DESCRIPTION OF MEMBERS	MINIMUM NUMBER OF MEMBERS	NUMBER OF GOVERNORS
Southampton	Staff employed within the Southampton Public Constituency	10	1
South West Hampshire	Staff employed within the South West Hampshire Public Constituency	10	1
North Hampshire	Staff employed within the North Hampshire Public Constituency	10	1
South East Hampshire	Staff employed within the South East Hampshire Public Constituency	10	1
Oxfordshire, Buckinghamshire and Rest of England	Staff employed within the counties of Oxfordshire and Buckinghamshire or Rest of England Public Constituencies	10	1
Total	Minimum Membership	50	
	Staff Governors		5

Individuals who are eligible to be a Member of the Staff Constituency may not become or continue as a Member of more than one class, and individuals who are eligible to join more than one class shall be allocated by the Secretary in his absolute discretion to the class for which they are primarily employed by the Foundation Trust (or any other organisation as the case may be for those persons exercising the functions of the Foundation Trust).

Annex 3 – Composition of Council of Governors

The composition of the Council of Governors shall be as follows:

1. Composition

- 1.1. The Council of Governors shall comprise:
 - 1.1.1. 15 Public Governors;
 - 1.1.2. 5 Staff Governors;
 - 1.1.3. 2 Local Authority Governor; and
 - 1.1.4. 3 Partnership Governors.
- 1.2. The Governors in the public and staff constituencies will have been elected by the Members within their constituency.
- 1.3. The number of Public Governors is to be more than half of the total membership of the Council of Governors.
- 1.4. The organisations currently specified as Partnership Organisations pursuant to paragraph 9(7) of Schedule 7 of the 2006 Act, that may appoint members of the Council of Governors are:
 - 1.4.1. Age Concern Hampshire;
 - 1.4.2. Carers Together; and
 - 1.4.3. University of Southampton.

2. Appointed Governors

2.1. Local Authority Governors

- 2.1.1. Hampshire County Council, or their successor organisation, may appoint 1 Local Authority Governor by notice in writing signed by the authorised operating officer of Hampshire County Council and delivered to the Secretary.
- 2.1.2. Southampton City Council, or their successor organisation, may appoint 1 Local Authority Governor by notice in writing signed by the authorised operating officer of Southampton City Council and delivered to the Secretary.

2.2. Partnership Governors

- 2.2.1. The following organisations may each appoint 1 Partnership governor. Notice of the appointment must be made in writing to the Secretary:
 - 2.2.1.1. Age Concern Hampshire;
 - 2.2.1.2. Carers Together; and
 - 2.2.1.3. University of Southampton;
- 2.2.2. Notwithstanding the provisions of paragraphs 2.1 and 2.2 above, the Chairman may veto the appointment of an Appointed Governor by serving notice in writing on the relevant organisation where he believes that the appointment in question is unreasonable, irrational or otherwise inappropriate.

Annex 4 – The Model Election Rules

THE MODEL RULES FOR ELECTIONS

**Model Rules for Elections
to the
Board of Governors¹**

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

¹ References in this Annex 4 to "Board of Governors" shall bear the same meaning as "Council of Governors" in the Constitution.

20. The ballot paper
21. The declaration of identity (public and patient constituencies)

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 and patient 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 and patient 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

Part 1: Interpretation

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(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

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

Proceeding	Time
Publication of notice of election	Not later than the fortieth day before the day of the close of the poll.
Final day for delivery of nomination 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 - (1) In computing any period of time for the purposes of the timetable -

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

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

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

Part 3 - Returning Officer

4. Returning Officer - (1) Subject to rule 69, the returning officer for an election is to be appointed by the corporation.

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

5. Staff - Subject to rule 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 - The corporation is to pay the returning officer -

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

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

Part 4: Stages Common to Contested and Uncontested Elections

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

- (a) the constituency, or class within a constituency, for which the election is being held,
- (b) the number of members of the council of governors to be elected from that constituency, or class within that constituency,
- (c) the details of any nomination committee that has been established by the corporation,
- (d) the address and times at which nomination 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 - (1) Subject to rule 9.2, each candidate must nominate themselves on a single nomination form.

(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 - 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 - 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 - The nomination form must include a declaration made by the candidate -

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

13. Signature of candidate - (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.
- (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 - (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.
- (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.
- (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.
- (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.
- (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 - (1) The returning officer is to prepare and publish a statement showing the candidates who are standing for election.

(2) The statement must show -

(a) the name, contact address (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.

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

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

16. Inspection of statement of nominated candidates and nomination forms - (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.

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

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

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

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

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

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

Part 5: Contested elections

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

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

(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.

(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.

(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 - (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.

(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.

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

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

21. The declaration of identity (public and patient constituencies) - (1) The corporation shall require each voter who participates in an election for a public or patient constituency to make a declaration confirming -

(a) that the voter is the person -

(i) to whom the ballot paper was addressed, and/or

(ii) to whom the voter ID number contained within the e-voting information was allocated,

(b) that he or she has not marked or returned any other voting information in the election, and

(c) the particulars of his or her qualification to vote as a member of the constituency or class within

the constituency for which the election is being held,
("declaration of identity")

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

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

(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 - (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.

(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.

(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 - (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 - (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").

(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").

(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.

(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.

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

(2) The covering envelope is to have -

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

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

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

26. E-voting systems - (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").

(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").

(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").

(4) The returning officer shall ensure that the polling website and internet voting system provided will -

(a) require a voter to -

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

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

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

(b) specify -

(i) the name of the corporation,

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

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

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

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

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

(vii) the contact details of the returning officer;

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

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

(i) the voter's voter ID number;

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

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

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

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

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

(5) The returning officer shall ensure that the telephone voting facility and telephone voting system provided will -

(a) require a voter to

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

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

(b) specify -

(i) the name of the corporation,

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

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

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

The poll

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

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

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

29. Spoilt ballot papers and spoilt text message votes - (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.

- (2) On receiving an application, the returning officer is to obtain the details of the unique identifier on the spoilt ballot paper, if he or she can obtain it.
- (3) The returning officer may not issue a replacement ballot paper for a spoilt ballot paper unless he or she -
- (a) is satisfied as to the voter's identity; and
 - (b) has ensured that the completed ID declaration form, if required, has not been returned.
- (4) After issuing a replacement ballot paper for a spoilt ballot paper, the returning officer shall enter in a list ("the list of spoilt ballot papers") -
- (a) the name of the voter, and
 - (b) the details of the unique identifier of the spoilt ballot paper (if that officer was able to obtain it), and
 - (c) the details of the unique identifier of the replacement ballot paper.
- (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.
- (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.
- (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.
- (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 - (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.

(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.

(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 - (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.

(2) After issuing replacement voting information under this rule, the returning officer shall enter in a list (“the list of tendered voting information”) -

(a) the name of the voter,

(b) the unique identifier of any replacement ballot paper issued under this rule;

(c) the voter ID number of the voter.

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

Polling by internet, telephone or text

33. Procedure for remote voting by internet - (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.

(2) When prompted to do so, the voter will need to enter his or her voter ID number.

(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.

(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.

(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 - (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.

(2) When prompted to do so, the voter will need to enter his or her voter ID number using the keypad.

(3) If the telephone voting facility authenticates the voter ID number, the voter will be prompted to vote in the election.

(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.

(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 - (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.

(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.

(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 - (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.

(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.

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

37. Validity of votes - (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.

(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.

(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.

(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.

(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.

(6) Where the returning officer is not satisfied that rule 37.4 has been fulfilled, he or she is to -

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

(b) record the voter ID number on the internet voting record, telephone voting record or text voting record (as applicable) in the list of disqualified documents; and

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

38. Declaration of identity but no ballot paper (public and patient constituency)² - 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

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

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 - (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.

(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

(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.

(4) Where an internet voting record, telephone voting record or text voting record is disqualified under this rule the returning officer shall -

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

(b) record the voter ID number on the internet voting record, telephone voting record or text voting record (as applicable) in the list of disqualified documents;

(c) place the internet voting record, telephone voting record or text voting record (as applicable) in a separate packet, and

(d) disregard the internet voting record, telephone voting record or text voting record (as applicable) when counting the votes in accordance with these rules.

40. Sealing of packets - 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.

Part 6: Counting the votes

STV41. Interpretation of Part 6 - 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 paragraph (4) or (7) of rule STV47 below.

42. Arrangements for counting of the votes - (1) The returning officer is to make arrangements for counting the votes as soon as is practicable after the close of the poll.

(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 - (1) The returning officer is to -

(a) count and record the number of -

(i) ballot papers that have been returned; and

(ii) the number of internet voting records, telephone voting records and/or text voting records that have been created, and

(b) count the votes according to the provisions in this Part of the rules and/or the provisions of any policy approved pursuant to rule 42.2(ii) where vote counting software is being used.

(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.

(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 - (1) Any ballot paper -

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

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

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

(d) which is unmarked or rejected because of uncertainty,

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

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

(3) 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.

(4) The returning officer is to endorse the word "rejected" on any text voting record which under this rule is not to be counted.

(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 paragraph (3) above.

FPP44. Rejected ballot papers and rejected text voting records - (1) Any ballot paper -

- (a) which does not bear the features that have been incorporated into the other ballot papers to prevent them from being reproduced,
- (b) on which votes are given for more candidates than the voter is entitled to vote,
- (c) on which anything is written or marked by which the voter can be identified except the unique identifier, or
- (d) which is unmarked or rejected because of uncertainty, shall, subject to paragraphs (2) and (3), be rejected and not counted.

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

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

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

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

(4) The returning officer is to -

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

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

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

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

(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.

(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.

(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.

(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 paragraphs (7) and (8), endorse the words “rejected in part” on the text voting record and indicate which vote or votes have been counted.

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

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

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

STV46. The quota - (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.

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

(3) At any stage of the count a candidate whose total votes equals or exceeds the quota shall be deemed to be elected, except that any election where there is only one vacancy a candidate shall not be deemed to be elected until the procedure set out in paragraphs (1) to (3) of rule 47 above has been complied with.

STV47. Transfer of votes - (1) Where the number of first preference votes for any candidate exceeds the quota, the returning officer is to sort all the ballot 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.

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

(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.

(4) The vote on each ballot document transferred under paragraph (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).

(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.

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

(7) The vote on each ballot document transferred under paragraph (6) shall be at -

(a) a transfer value calculated as set out in paragraph (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.

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

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

(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.

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

STV48. Supplementary provisions on transfer - (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.

(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.

(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.

(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 - (1) If -

(a) all transferable ballot documents which under the provisions of rule STV47 (including that rule as applied by paragraph (11) below and this rule are required to be transferred, have been transferred, and

(b) subject to rule 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 paragraph (12) applies, the candidates with the then lowest votes).

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

(a) ballot 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).

(3) The returning officer shall, in accordance with this rule and rule STV48, transfer each sub-parcel of ballot documents referred to in paragraph (2) above to the candidate for whom the next available preference is given on those ballot documents.

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

(5) If, subject to rule 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 paragraph (1) above into sub-parcels according to their transfer value.

(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).

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

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

(9) After the returning officer has completed the transfer of the ballot 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 paragraph (1) above.

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

(a) record -

(i) the total value of votes, or

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

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

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

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

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

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

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

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

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

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

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

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

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

FPP51. Equality of votes - Where, after the counting of votes is completed, an equality of votes is found to exist between any candidates and the addition of a vote would entitle any of those candidates to be declared elected, the returning officer is to decide between those candidates by a lot, and

proceed as if the candidate on whom the lot falls had received an additional vote.

Part 7: Final proceedings in contested and uncontested elections

FPP52. Declaration of result for contested elections - (1) In a contested election, when the result of the poll has been ascertained, the returning officer is to -

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

(2) The returning officer is to make -

- (a) the total number of votes given for each candidate (whether elected or not), and
- (b) the number of rejected ballot papers under each of the headings in rule 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 - (1) In a contested election, when the result of the poll has been ascertained, the returning officer is to -

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

(2) The returning officer is to make -

- (a) the number of first preference votes for each candidate whether elected or not,
- (b) any transfer of votes,
- (c) the total number of votes for each candidate at each stage of the count at which such transfer took place,
- (d) the order in which the successful candidates were elected, and
- (e) the number of rejected ballot papers under each of the headings in rule 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 - In an uncontested election, the returning officer is to as soon as is practicable after final day for the delivery of notices of withdrawals by candidates from the election:

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

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

Part 8: Disposal of documents

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

(a) the counted ballot papers, 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.

(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.

(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 - 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 - 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 - (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.

(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.

(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 - (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.

(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.

(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.

(4) On an application to inspect any of the documents listed in rule 58.1 the board of directors of the corporation must -

(a) in giving its consent, and

(b) in making the documents available for inspection

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

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

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

Part 9: Death of a candidate during a contested election

FPP59. Countermand or abandonment of poll on death of candidate - (1) If at a contested election, proof is given to the returning officer's satisfaction before the result of the election is declared that one of the persons named or to be named as a candidate has died, then the returning officer is to:

- (a) countermand notice of the poll, or, if 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.
- (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.
- (3) Where a poll is abandoned under paragraph (1)(a), paragraphs (4) to (7) are to apply.
- (4) The returning officer shall not take any step or further step to open envelopes or deal with their contents in accordance with rules 38 and 39, and is to make up separate sealed packets in accordance with rule 40.
- (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.
- (6) The returning officer is to endorse on each packet a description of -
- (a) its contents,
 - (b) the date of the publication of notice of the election,
 - (c) the name of the corporation to which the election relates, and
 - (d) the constituency, or class within a constituency, to which the election relates.
- (7) Once the documents relating to the poll have been sealed up and endorsed pursuant to paragraphs (4) to (6), the returning officer is to deliver them to the chairman of the corporation, and rules 57 and 58 are to apply.

STV59. Countermand or abandonment of poll on death of candidate - (1) If, at a contested election, proof is given to the returning officer's satisfaction before the result of the election is declared that one of the persons named or to be named as a candidate has died, then the returning officer is to -

- (a) publish a notice stating that the candidate has died, and
 - (b) proceed with the counting of the votes as if that candidate had been excluded from the count so that -
 - (i) ballot 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.
- (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

Election expenses

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

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

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

62. Election expenses incurred by other persons - (1) No person may -

- (a) incur any expenses or make a payment (of whatever nature) for the purposes of a candidate's election, whether on that candidate's behalf or otherwise, or
 - (b) give a candidate or his or her family any money or property (whether as a gift, donation, loan, or otherwise) to meet or contribute to expenses incurred by or on behalf of the candidate for the purposes of an election.
- (2) Nothing in this rule is to prevent the corporation from incurring such expenses, and making such payments, as it considers necessary pursuant to rules 63 and 64.

Publicity

63. Publicity about election by the corporation - (1) The corporation may -

- (a) compile and distribute such information about the candidates, and
 - (b) organise and hold such meetings to enable the candidates to speak and respond to questions, as it considers necessary.
- (2) Any information provided by the corporation about the candidates, including information compiled by the corporation under rule 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.
- (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 - (1) The corporation must compile information about the candidates standing for election, to be distributed by the returning officer pursuant to rule 24 of these rules.

(2) The information must consist of -

- (a) a statement submitted by the candidate of no more than 250 words,
- (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” - (1) In this Part, the phrase “for the purposes of an election” means with a view to, or otherwise in connection with, promoting or procuring a candidate’s election, including the prejudicing of another candidate’s electoral prospects; and the phrase “for the purposes of a candidate’s election” is to be construed accordingly.

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

Part 11: Questioning elections and the consequence of irregularities

66. Application to question an election - (1) An application alleging a breach of these rules, including an electoral irregularity under Part 10, may be made to Monitor for the purpose of seeking a referral to the independent election arbitration panel (IEAP).

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

(3) An application may only be made to Monitor by -

- (a) a person who voted at the election or who claimed to have had the right to vote, or
- (b) a candidate, or a person claiming to have had a right to be elected at the election.

(4) The application must -

- (a) describe the alleged breach of the rules or electoral irregularity, and
- (b) be in such a form as the independent panel may require.

(5) The application must be presented in writing within 21 days of the declaration of the result of the election. Monitor will refer the application to the independent election arbitration panel appointed by Monitor.

(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.

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

(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.

(9) The IEAP may prescribe rules of procedure for the determination of an application including costs.

Part 12: Miscellaneous

67. Secrecy - (1) The following persons -

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

must maintain and aid in maintaining the secrecy of the voting and the counting of the votes, and must

not, except for some purpose authorised by law, communicate to any person any information as to:

- (i) the name of any member of the corporation who has or has not been given 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.

(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.

(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 - 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 - 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 - (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 Board of Directors and Council of Governors

1. Interpretation

- 1.1. Unless a contrary intention is evident or the context requires otherwise, words or expressions contained in these Standing Orders (SOs) shall bear the same meaning as in the Constitution.
- 1.2. For the purposes of these SOs, the "Board" means the Board of Directors and the "Council" means the Council of Governors.

2. The Board

- 2.1. All business shall be conducted in the name of the Foundation Trust.
- 2.2. All funds received in trust shall be in the name of the Foundation Trust as corporate trustee. Directors acting on behalf of the Foundation Trust as corporate trustees are acting as quasi-trustees.
- 2.3. In relation to Funds held on Trust, powers exercised by the Foundation Trust as corporate trustee shall be exercised separately and distinctly from those powers exercised as the Foundation Trust. Accountability for charitable Funds held on Trust is to the Charity Commission. Accountability for non-charitable Funds held on Trust is only to Monitor.
- 2.4. The Foundation Trust has the functions conferred on it by the Regulatory Framework.
- 2.5. All powers of the Foundation Trust shall be exercised by the Board meeting either in public session except as otherwise provided for in SO 4 below.
- 2.6. The Board has resolved that certain powers and decisions may only be exercised or made by the Board in formal session. These powers and decisions are set out in the Scheme of Delegation.
- 2.7. The Board and each Director individually shall at all times seek to comply with the Foundation Trust's Code of Governance and the Code of Conduct for Directors.

3. The Council

- 3.1. The roles and responsibilities of the Council are to be carried out in accordance with the Regulatory Framework include the following:
 - 3.1.1. to hold the Board to account for the performance of the Foundation Trust;
 - 3.1.2. to respond as appropriate when consulted by the Board in accordance with the Constitution; and
 - 3.1.3. to prepare and from time to time review the Foundation Trust's membership strategy.
- 3.2. Certain powers and decisions may only be exercised by the Council in formal session.
- 3.3. The Council and each Governor individually shall at all times seek to comply with the Foundation Trust's Code of Governance and the Code of Conduct for Governors.

4. Meetings of the Board and the Council

4.1. Admission of the public

Subject to paragraphs 19 and 31 of the Constitution the following provisions shall apply:

- 4.1.1. The Chairman shall give such directions as he thinks fit (including a decision to expel or exclude any member of the public and/or press if the individual in question is interfering with or preventing the proper conduct of the meeting).
- 4.1.2. Nothing in these SOs shall require the Board or the Council (as relevant) to allow members of the public or representative of the press to record proceedings in any manner whatsoever, other than writing, or to make any oral report of proceedings as they take place without the prior agreement of the person chairing the meeting.
- 4.1.3. Matters to be dealt with by the Board of the Council following a resolution to exclude the public and representatives of the press shall be confidential to the Directors or the Governors (as relevant). Members of the Board or the Council (as relevant) and others in attendance at the request of the person chairing the meeting shall not reveal or disclose the content of papers or reports presented, or any discussion on these generally, which take place while the public and press are excluded, without the express permission of the Chairman.
- 4.1.4. The Chairman will decide what arrangements and terms and conditions he feels are appropriate to offer in extending an invitation to observers, advisors and others to attend and address any meeting of the Board or the Council (as relevant), and may change, alter or vary these terms and conditions as he deems fit.

4.2. Calling meetings

- 4.2.1. Meetings of the Board and the Council (as relevant) shall be held at such times and places as the Board or the Council (as relevant) may determine.
- 4.2.2. The Chairman may call a meeting of the Board or the Council at any time.
- 4.2.3. One third or more of the whole number of members of the Board or the Council may requisition a meeting in writing. If the Chairman refuses, or fails to call a meeting within seven Clear Days of a requisition being presented to him, the members of the Board or the Council (as relevant) signing the requisition may forthwith call a meeting for the purpose of conducting that business.

4.3. Notice of meetings

- 4.3.1. Save in an emergency, at least five Clear Days before each meeting of the Board or the Council, a written notice of the meeting, specifying the business proposed to be transacted at it, shall be delivered or posted to every Director or Governor (as relevant).
- 4.3.2. A public notice of the time and place of the meeting of the Board or the Council, and the agenda, shall be displayed at the Foundation Trust headquarters at least five Clear Days before the meeting, save in cases of emergencies.
- 4.3.3. Lack of service of the notice on any member of the Board or the Council (as relevant) shall not affect the validity of a meeting, but failure to serve such a notice on more than three Directors or Governors (as relevant) will invalidate the meeting of the Board or the Council (as relevant).
- 4.3.4. In the case of a meeting called in default of the Chairman, in accordance with SO 4.2.3 above, the notice shall be signed by those Directors or Governors (as relevant) and no business shall be transacted at the meeting other than that specified in the requisition.
- 4.3.5. In the event of an emergency giving rise to the need for an immediate meeting, failure to comply with the notice periods referred to in SOs 4.3.1 and 4.3.2 above shall not prevent the calling of or invalidate such meeting provided that every effort is made to make personal contact with every Director or Governor (as relevant) who is not absent from the United Kingdom and the agenda for the meeting is restricted to matters arising in that emergency.

4.4. Agendas and supporting papers

- 4.4.1. The Board and the Council may determine that certain matters shall appear on every agenda for a meeting and shall be addressed prior to any other business being conducted ("Standing Items").
- 4.4.2. Agendas will be sent to members of the Board or the Council (as relevant) five Clear Days before the meeting and supporting papers, whenever possible, shall accompany the agenda, but will certainly be dispatched no later than three Clear Days before the meeting, save in an emergency giving rise to the need for an immediate meeting as set out in SO 4.3.5 above, or as otherwise agreed with the Chairman. Failure to serve the agenda and (where relevant) supporting papers on more than three members of the Board or the Council (as relevant) will invalidate the meeting. The agenda and supporting papers shall be presumed to have been served one calendar day after posting, or in the case of a notice being sent electronically, on the date of transmission.
- 4.4.3. A Director or a Governor desiring a matter to be included on an agenda other than a Standing Item or a motion under SO 4.5 below (emergency motions and written motions), shall make his request in writing to the Chairman at least ten 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 ten Clear Days before a meeting may be considered for inclusion on the agenda at the discretion of the Chairman. The Chairman's decision to include items on the agenda shall be final.
- 4.4.4. No business may be transacted at any meeting of the Board or the Council which is not specified in the notice of that meeting unless the Chairman, in his absolute discretion, agrees that the item and (where relevant) any supporting papers should be considered by the Board or the Council (as relevant) as a matter of urgency. A decision by the Chairman to permit consideration of the item in question and (where relevant) the supporting papers shall be recorded in the minutes of that meeting.

4.5. **Emergency motions and written motions**

Emergency motions

- 4.5.1. A member of the Board and the Council (as relevant) may give written notice of an emergency motion after the issue of the notice of meeting and agenda, up to one hour before the time fixed for the meeting. The notice shall state the grounds of urgency. If in order, it shall be declared by the Chairman at the commencement of the business of the meeting as an additional item included in the agenda. The Chairman's decision to include the item shall be final.

Written motions

- 4.5.2. In urgent situations and with the consent of the Chairman, business may be effected by a Director or Governor's (as relevant) written motion to deal with business otherwise required to be conducted at a meeting of the Board or the Council (as relevant).
- 4.5.3. If all members of the Board or the Council (as relevant) have been notified of the proposal and a majority of Directors or the Governors (as relevant) entitled to attend and vote at a meeting of the Board or the Council (as relevant) confirms acceptance of the written motion either in writing or electronically to the Secretary within five Clear Days of dispatch then the motion will be deemed to have been resolved notwithstanding that the Directors or the Governors (as relevant) have not gathered in one place.
- 4.5.4. The effective date of the resolution shall be the date that the last confirmation is received by the Secretary and, until that date a Director or a Governor (as relevant) who has previously indicated acceptance can withdraw and the motion may fail.

- 4.5.5. Once the resolution is passed, a copy certified by the Secretary shall be recorded in the minutes of the next ensuing meeting of the Board or the Council (as relevant) where it shall be signed by the person presiding at it.

4.6. Chairman of meetings

- 4.6.1. The Chairman of the Foundation Trust will chair the meetings of the Board and the Council.
- 4.6.2. If the Chairman is absent from the meeting or is absent temporarily on the grounds of a declared conflict of interest the Deputy Chairman shall preside.
- 4.6.3. If the Chairman and the Deputy Chairman are absent from a meeting of the Board, or are absent temporarily on the grounds of a declared conflict of interest, such Non-Executive Director as the members of the Board present and voting at the meeting choose shall preside during that period.
- 4.6.4. If the Chairman and the Deputy Chairman are absent from a meeting of the Council, or are absent temporarily on the grounds of a declared conflict of interest, either a Non-Executive Director or a Governor shall be appointed by a simple majority of the Governors present and voting at the meeting to preside over the meeting.

4.7. Chairman's ruling

- 4.7.1. All meetings shall be controlled by the person chairing the meeting and any ruling of the person chairing the meeting in relation to the conduct of the meeting shall be final.
- 4.7.2. The decision of the person chairing the meeting on questions of order, relevancy and regularity (including procedure on handling motions) and the individual's interpretation of the SOs, at the meeting, shall be final.

4.8. Conduct at meetings

- 4.8.1. The decision of the person chairing the meeting on questions of order, relevance, regularity, appropriateness and any other matters shall be observed at the meeting.
- 4.8.2. Approval to speak will be given by the person chairing the meeting.

4.9. Voting

- 4.9.1. When an issue or question at a Board meeting requires a vote each Director shall have one vote. When an issue or question at a Council meeting requires a vote each Governor shall have one vote.
- 4.9.2. Subject to SO 4.9.3 below and any specific requirements of the Constitution, every question at a meeting of the Board or the Council shall be determined by a majority of the votes of the Chairman and the Directors or Governors (as relevant) present and voting on the question.
- 4.9.3. Unless otherwise specified in the Constitution, the person chairing the meeting of the Board and the Council shall in the case of an equality of votes of any question or proposition have a casting vote.
- 4.9.4. All questions put to the vote shall, at the discretion of the person chairing the meeting, be determined by oral expression or by a show of hands. A paper ballot may also be used if a majority of the Directors or Governors (as relevant) present so request.
- 4.9.5. If at least one-third of the Directors or Governors (as relevant) present so request, the voting (other than by paper ballot) on any question may be recorded to show how each Director or Governor (as relevant) present voted or abstained.
- 4.9.6. If a Director or Governor (as relevant) so requests, the individual's vote shall be recorded by name upon any vote (other than by paper ballot).

- 4.9.7. A Director or Governor (as relevant) may only vote if present at the time of the vote on which the question is to be decided; no Director or Governor (as relevant) may vote by proxy.
- 4.9.8. Every Governor must make an annual declaration that he is qualified to vote at meetings of the Council. Such declaration shall be in the form specified at SO 7.3.2 below that they are a member of the constituency which elected them and are not prevented from being a member of the Council by paragraph 8 of Schedule 7 to the 2006 Act or under the Constitution.
- 4.9.9. A Governor may not vote at a meeting of the Council unless, prior to the meeting, he has made the declaration referred to in paragraph 4.9.8 above.
- 4.9.10. Each Governor must also notify the Secretary as soon as possible and provide a further declaration at any subsequent meeting if his circumstances have changed.
- 4.9.11. All Governors shall be deemed to have confirmed the declaration upon attending any subsequent meeting of the Council, and every agenda for meetings of the Council will draw this to the attention of Governors.
- 4.9.12. If any matter for consideration at a meeting of the Board relates to the interests of the Chairman or the Non-Executive Directors as a class, neither the Chairman nor any of the Non-Executive Directors shall preside over the period of the meeting during which the matter is under discussion. The Directors (excluding the Chairman and the Non-Executive Directors) shall elect one of the number to preside during that period and that person shall exercise all the rights and obligations of the Chairman, including (for the avoidance of doubt) the right to exercise a casting vote where the numbers of votes for and against a motion is equal.
- 4.9.13. 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.

4.10. **Minutes**

- 4.10.1. The minutes of the proceedings of a meeting of the Board or the Council (as relevant) shall be drawn up and maintained as a public record by the Secretary and submitted for agreement at the next ensuing meeting of the Board or the Council (as relevant), where they will be signed by the person chairing the meeting where the minutes are agreed.
- 4.10.2. No discussion shall take place upon the minutes except upon their accuracy or where the person chairing the meeting considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded in the minutes of the meeting of the Board or the Council (as relevant) where the minutes are amended and agreed.
- 4.10.3. Minutes of meetings shall be made available to the public except for minutes relating to business conducted when members of the public are excluded under the terms of SO 4.1.1 above.

4.11. **Record of attendance**

- 4.11.1. The names of the Chairman and Directors or Governors (as relevant) present at the meeting shall be recorded in the minutes.

4.12. **Quorum**

- 4.12.1. At a Board meeting, no business shall be transacted unless at least one third of the total number of Directors, including at least one Executive Director and one Non-

Executive Director are present. The requirement for at least one Executive Director to form part of the quorum shall not apply where all the Executive Directors are excluded from a meeting (for example, when the Board considers the recommendations of the remuneration committee). The requirement for at least one Non-Executive Director to form part of the quorum shall not apply where all the Non-Executive Directors are excluded from a meeting (for example, when the Board considers the recommendations of the remuneration committee) under paragraph 4.9.12.

- 4.12.2. At a Council meeting, no business shall be transacted unless at least one third of the total number of Governors in post is present and the majority of those Governors present are members of the Public Constituency of the Foundation Trust.
- 4.12.3. If at any Board or Council meeting (as relevant) there is no quorum present within thirty minutes of the time fixed for the start of the meeting, the Board or Council meeting (as relevant) shall stand adjourned for a number of days to be fixed by the Chairman and in any event not exceeding 30 Clear Days and upon reconvening, those present shall constitute a quorum.
- 4.12.4. If a Director or Governor (as relevant) 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 the individual 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 Board or Council meeting (as relevant). Such a position shall be recorded in the minutes of the Board or Council meeting (as relevant). The Board or Council meeting (as relevant) must then proceed to the next item of business.

4.13. **Meetings: electronic communication**

- 4.13.1. In this Standing Order “communication” and “electronic communication” shall have the meanings set out in the Electronic Communications Act 2000 or any statutory modification or re-enactment thereof.
- 4.13.2. A Director or Governor (as relevant) in electronic communication with the Chairman and all other parties to a meeting of the Board or the Council (as relevant) or a committee or subcommittee of the Directors or the Governors (as relevant) shall be regarded for all purposes as personally attending such a meeting provided that, but only for so long as, at such a meeting he has the ability to communicate interactively and simultaneously with all other parties attending the meeting including all persons attending by way of electronic communication.
- 4.13.3. A meeting at which one or more of the Directors or the Governors (as relevant) attends by way of electronic communication is deemed to be held at such a place as the Directors or the Governors (as relevant) shall at the said meeting resolve. In the absence of such a resolution, the meeting shall be deemed to be held at the place (if any) where a majority of the Directors or the Governors (as relevant) attending the meeting are physically present, or in default of such a majority, the place at which the Chairman of the meeting is physically present.
- 4.13.4. Meetings of the Board or the Council (as relevant) held in accordance with this SO are subject to SO 4.12 (Quorum). For such a meeting to be valid, a quorum must be present and maintained throughout the meeting.
- 4.13.5. The minutes of a meeting of the Board or the Council (as relevant) held in this way must state that it was held by electronic communication and that the Directors or the Governors (as relevant) were all able to hear each other and were present throughout the meeting.

4.14. **Adjournment**

- 4.14.1. Any Board or Council meeting may be adjourned by the Chairman (whether or not it has commenced) and any business remaining on the agenda shall stand adjourned

until that adjourned meeting to be held at such time and place as the Chairman shall state, where acting reasonably it appears to the Chairman that:

4.14.1.1. any Directors or Governors (as relevant) wishing to attend the meeting cannot be properly or conveniently accommodated in the place appointed for the meeting;

4.14.1.2. the conduct of the persons present prevents, or is likely to prevent, the orderly continuation of the business of the meeting; or

4.14.1.3. an adjournment is otherwise necessary so that the business of the meeting may be properly conducted.

4.14.2. In addition the Chairman may at any time adjourn the meeting where a quorum is present to another place and time with the consent of the meeting and shall be obliged to do so if directed by a majority of those present at the meeting.

4.14.3. Notice of the adjourned meeting shall be dispatched to all Directors or Governors (as relevant) both present and not present at the Board or Council meeting (as relevant) as soon as possible, but in any event no later than two Clear Days prior to the date of the adjourned meeting .

4.14.4. No business other than that properly remaining on the agenda shall be discussed at the adjourned meeting.

4.15. **Repeat Considerations**

4.15.1. When any issue has been dealt with by the Board or the Council (as relevant), it shall not be competent for any member of the Board or the Council (as relevant) other than the Chairman to propose a motion to the same effect within six months. This SO shall not apply to motions moved in pursuance of a report or recommendations of a committee of the Board or the Council (as relevant) or the Chief Executive.

4.16. **Reports from the Executive Directors (Board only)**

4.16.1. At any meeting of the Board, a Director may ask any question through the Chairman without notice on any report by an Executive Director, or other Officer of the Foundation Trust, after that report has been received by or while such report is under consideration by the Board at the meeting. The Chairman may, in his absolute discretion, reject any question which is substantially the same and related to the same subject matter as a question which has already been put to that meeting or a previous meeting.

5. **Arrangement for the exercise of functions by delegation (Board only)**

5.1. **Delegation of functions**

5.1.1. Subject to the Regulatory Framework and such guidance, if any, as may be given by Monitor, the Board may make arrangements for the exercise, on behalf of the Board, of any of its functions by a committee of Directors or sub-committee appointed by virtue of SO 6 below or by an Executive Director, in each case subject to such restrictions and conditions as the Board thinks fit.

5.2. **Emergency powers**

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

5.3. **Delegation to committees**

- 5.3.1. The Board or the Council (as relevant) shall agree from time to time to the delegation of executive powers to be exercised by other committees or joint-committees, which it has formally constituted and which are made up of Directors or Governors (as relevant). The Constitution and terms of reference of these committees and their specific powers shall be approved by the Board or the Council (as relevant).
- 5.3.2. When the Board are not meeting as the Board, they shall operate as a committee and may only exercise such powers as have been delegated to them by the Board in public session.

5.4. **Delegation to an Executive Director**

- 5.4.1. Those functions of the Foundation Trust which have not been retained as reserved by the Board, or delegated to a committee or sub-committee, shall be exercised on behalf of the Board by the Chief Executive. The Chief Executive shall determine which functions they will perform personally and shall nominate an Executive Director to undertake the remaining functions for which they will still retain accountability to the Foundation Trust.
- 5.4.2. The Chief Executive shall prepare a Scheme of Delegation identifying the individual proposals which shall be considered and approved by the Board, subject to any amendment agreed during the discussion. The Chief Executive may from time to time propose amendments to the Scheme of Delegation which shall be considered and approved by the Board.
- 5.4.3. Nothing in these SOs or 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 requirements or any requirements of Monitor. For all other functions which do not form part of these requirements, the Finance Director shall be accountable to the Chief Executive.

5.5. **Schedule of matters reserved to the Board and Scheme of Delegation**

- 5.5.1. The arrangements made by the Board as set out in the Scheme of Delegation shall have effect as if incorporated in these SOs.

5.6. **Duty to report non-compliance with the SOs**

- 5.6.1. If for any reason these SOs 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 or the Council (as relevant) for action or ratification. All members of the Board or the Council (as relevant) and Officers have a duty to disclose any non-compliance with these SOs to the Secretary as soon as possible.

6. **Committees**

6.1. **Committees of the Council**

- 6.1.1. The Council is required to establish an Appointment Committee.
- 6.1.2. The Council may also establish other formal committees and working groups consisting wholly or partly of the Chairman and Governors.
- 6.1.3. The Council may appoint Governors to serve on joint committees with the Board or on committees of the Board, if invited to do so.
- 6.1.4. Where the Council is required to appoint persons to a committee to undertake statutory functions, and where such appointments are to operate independently of the Council, such appointment shall be made in accordance with applicable statute and regulations and any guidance and directions issued by Monitor.

6.2. **Committees of the Board**

- 6.2.1. The committees established by the Board shall include:
 - 6.2.1.1. Audit, Assurance & Risk Committee;
 - 6.2.1.2. Quality & Safety Committee;
 - 6.2.1.3. Nominations & Remuneration Committee;
 - 6.2.1.4. Service Performance & Transformation Committee;
 - 6.2.1.5. Strategic Workforce Committee; and
 - 6.2.1.6. any other successor committees to those listed above or any other committees as the Board deem it necessary or appropriate to establish from time to time.
- 6.2.2. The Board may also establish and dissolve such other committees as required to discharge the responsibilities of the Board.
- 6.2.3. The Board may appoint committees of the Board consisting wholly or partly of Directors.

6.3. Appointment of Committees

- 6.3.1. A committee appointed under this SO may, subject to such directions and guidance as may be given by Monitor or the Board or the Council (as relevant), appoint sub-committees consisting wholly or partly of members of the committee.
- 6.3.2. Where committees are authorised to establish sub-committees they may not delegate their powers to the sub-committee unless expressly authorised by the Board or the Council (as relevant).
- 6.3.3. Where the Council determines that persons, who are neither Governors nor members of the Board nor Officers of the Foundation Trust shall be appointed to a committee of the Council, the terms of such appointment shall be determined by the Council subject to the payment of travelling expenses and other allowances being in accordance with such sum as may be determined by the Board.
- 6.3.4. Where the Board determines, and legislation, regulations and directions or guidance issued by Monitor permit that persons who are not Directors of the Foundation Trust shall be appointed to a committee of the Board, the terms of such appointment shall be determined by the Board. The Board shall define the powers of such appointees and shall agree allowances, including reimbursement for loss of earnings, and/or expenses.
- 6.3.5. Committees will normally only make recommendations and provide advice to the Board or the Council unless the Board or the Council (as relevant) has specifically delegated powers to the committee.

6.4. Terms of Reference of Committees

- 6.4.1. Each such committee shall have such terms of reference and powers and be subject to such conditions the Board or the Council (as relevant) shall decide. Such terms of reference shall be in accordance with the Regulatory Framework and any directions and guidance issued by Monitor. The Council shall not delegate to any committee any of the powers or responsibilities which are to be exercised by the Council at a general meeting.

6.5. Approval of appointments to Committees

- 6.5.1. The Board or the Council (as relevant) shall approve the appointments of each of the committees which it has formally constituted.
- 6.5.2. Except in relation to the Appointment Committee, each committee of the Council shall elect its own chairman.

6.5.3. The Board of Directors shall elect one of the Directors to chair each of its committees.

6.6. **Appointments for statutory functions**

6.6.1. Where the Board or the Council (as relevant) is required by the Constitution, by any applicable statute or regulations or by any directions or guidance issued by Monitor to appoint persons to a committee to undertake statutory functions, and where such appointments are to operate independently of the Board or the Council (as relevant), such appointments shall be made in accordance with the Constitution or such applicable statute or regulations or such directions or guidance issued by Monitor.

6.7. **Applicability of SOs and Standing Financial Instructions to committees and sub-committees**

6.7.1. The SOs and Standing Financial Instructions of the Foundation Trust, as far as they are applicable, shall as appropriate apply to meetings and any committees and sub-committees established by the Board or the Council. In which case the term "Chairman" is to be read as a reference to the chairman of the committee or sub-committee as the context permits, and the term "member of the Board" or "member of the Council" (as relevant) is to be read as a reference to a member of the committee or sub-committee also as the context permits.

6.8. **Confidentiality**

6.8.1. A member of a committee shall not disclose a matter dealt with by, or brought before, the committee without its permission until the committee shall have reported to the Board or the Council (as relevant) or shall otherwise have concluded on that matter.

6.8.2. A Director or Governor member of a committee shall not disclose any matter reported to the Board or the Council (as relevant) or otherwise dealt with by the committee, notwithstanding that the matter has been reported or action has been concluded, if the Board or the Council (as relevant) or committee shall resolve that it is confidential.

7. **Declaration of interest**

7.1. **Interests**

Subject to paragraphs 22 and 33 of the Constitution the following provisions shall apply:

7.1.1. Interests which should be regarded as relevant and material for the purposes of this SO are:

7.1.1.1. Financial, non-financial professional, non-financial personal or indirect interests as defined in NHSE Guidance: *Managing Conflicts of Interest in the NHS: Guidance for Staff and Organisations* (Gateway Reference 06419) (7 February 2017) (or any substantive replacement thereof).

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

7.1.1.3. Ownership or part-ownership or directorship of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS.

7.1.1.4. Share holdings in organisations likely or possibly seeking to do business with the NHS.

7.1.1.5. A position of authority in a charity or voluntary organisation in the field of health and social care.

- 7.1.1.6. Any connection with a voluntary or other organisation contracting for NHS services or commissioning NHS services.
- 7.1.1.7. Research funding/ grants that may be received by an individual or their department.
- 7.1.1.8. Any connection with an organisation, entity or company considering entering into or having entered into a financial arrangement with the Foundation Trust, including but not limited to, lenders or banks.
- 7.1.1.9. Any pecuniary interest, direct or indirect, in a contract which the Foundation Trust has entered into or proposes to enter into.
- 7.1.1.10. Interests in pooled funds that are under separate management.
- 7.1.1.11. Any direct or indirect interest in a proposed transaction or arrangement with the Foundation Trust.
- 7.1.1.12. Any relationship, or of a cohabiting spouse or partner, that conflicts, or might reasonably be predicted, or perceived, to conflict with the interests of the Foundation Trust.

7.2. **Declarations by Governors**

- 7.2.1. All Governors must declare any actual or potential interest, direct or indirect, which is relevant and material to the business of the Foundation Trust, or proposed transaction involving the Foundation Trust.
- 7.2.2. Any relevant and material interests shall be declared either at the time of the Governor's election or appointment or as soon thereafter as the interest arises, but within seven Clear Days of the Governor becoming aware of the existence of that interest. The declaration upon appointment or election shall be in the following form:

Declaration to the Secretary of Southern Health NHS Foundation Trust:

I hereby declare that I am at the date of this declaration [a member of the [Public/Staff/Service Users' Constituency] [an appointed Governor], and I am not prevented from being a member of the Council of Governors by reason of any provision in the Constitution.

- 7.2.3. In addition, if a Governor is present at a meeting of the Council 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 participate in any discussion or vote on any question with respect of the matter. At the time the interest is declared, it should be recorded in the minutes of the Council meeting. Any changes in interests should be officially declared at the next relevant meeting of the Council following the change occurring.
- 7.2.4. The Secretary shall be responsible for compiling and maintaining the register of interests of Governors in accordance with paragraph 35 of the Constitution. In establishing, maintaining, updating and publicising the register of interest, the Foundation Trust shall comply with all guidance issued from time to time by Monitor. The details of the Governors' interests recorded in the register of interests of Governors will be kept up to date by means of a regular review as necessary.
- 7.2.5. The above list of potential interests applies to the Governors, their partner, and to their immediate family (parent, spouse, child or sibling).
- 7.2.6. If a Governor has any doubt about the relevance of an interest then they should discuss it with the Secretary.

7.3. **Declarations by Directors**

- 7.3.1. All Directors of the Foundation Trust are under the following duties:

- 7.3.1.1. A duty to avoid a situation in which the Director has (or can have) a direct or indirect interest that conflicts (or possibly may conflict) with the interests of the Foundation Trust; and
- 7.3.1.2. 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.
- 7.3.2. At the time Directors' interests are declared, they should be recorded in the minutes of the Board meeting. Any changes in interests should be officially declared at the next Board meeting following the change occurring. It is the obligation of the Director to inform the Secretary in writing within seven Clear Days of becoming aware of the existence of a relevant or material interest.
- 7.3.3. Directors' directorships of companies in SO 7.1.1.1 above likely or possibly seeking to do business with the NHS (SO 7.1.1.2 above) should be published in the Board's Annual Report. The information should be kept up to date for inclusion in succeeding Annual Reports.
- 7.3.4. 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. For the avoidance of doubt, this includes voting on such an issue where a conflict is established. If there is a dispute as to whether a conflict of interest does exist, a majority will resolve the issue with the Chairman having the casting vote.
- 7.3.5. The Secretary shall be responsible for compiling and maintaining the register of interests of Directors in accordance with paragraph 35 of the Constitution. In establishing, maintaining, updating and publicising the register of interest, the Foundation Trust shall comply with all guidance issued from time to time by Monitor. The details of the Directors' interests recorded in the register of interests of Directors will be kept up to date by means of a regular review as necessary.
- 7.3.6. If Directors have any doubt about the relevance or materiality of an interest, this should be discussed with the Chairman. 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.
- 7.4. **Canvassing of, and recommendations by, Directors or Governors in relation to appointments**
 - 7.4.1. Canvassing of Directors, Governors or members of any committee, sub-committee or joint committee of the Board or the Council directly or indirectly for any appointment under the Foundation Trust shall disqualify the candidate for such appointment. The contents of this SO 7.5.1 shall be included in application forms or otherwise brought to the attention of candidates.
 - 7.4.2. A Director or a Governor (as appropriate) shall not solicit for any person any appointment under the Foundation Trust or recommend any person for such appointment; but this SO 7.5.2 shall not preclude a Director or a Governor (as appropriate) from giving written testimonial of a candidate's ability, experience or character for submission to the Foundation Trust in relation to any appointment.
 - 7.4.3. Informal discussions outside appointments panels or committees, whether solicited or unsolicited, should be declared to the panel or committee in question.

8. Suspension of SOs

Suspending SOs for practice and procedure of the Board

- 8.1. Except where this would contravene any statutory provision or guidance issued by Monitor or the rules relating to the quorum, any one or more of the SOs may be suspended at any meeting of the Board, provided that at least two-thirds of the whole number of the members of the Board are present, including one Executive Director and one Non-Executive Director, and that a majority of those present vote in favour of suspension. The reason for the suspension shall be recorded in the minutes of the Board meeting.

Suspending SOs for practice and procedure of the Council

- 8.2. Except where this would contravene any statutory provision or guidance issued by Monitor or the rules relating to the quorum, any one or more of the SOs may be suspended at any meeting of the Council, provided that at least two-thirds of the whole number of the members of the Council of Governors in post are present, and that a majority of those present vote in favour of suspension. The reason for the suspension shall be recorded in the minutes of the Council meeting.

Action Suspending SOs applicable to both the Board and the Council

- 8.3. A separate record of matters discussed by the Board or the Council (as relevant) during the suspension of SOs shall be made and shall be available to the Chairman and members of the Board or Governors (as relevant).
- 8.4. No formal business may be transacted while the SOs are suspended.
- 8.5. The Audit, Assurance & Risk Committee shall review every decision to suspend SOs.

9. Custody of seal and sealing of documents (Board only)

9.1. Custody of seal

- 9.1.1. The common seal of the Foundation Trust shall be kept by the Chief Executive or a nominated Officer in a secure place.

9.2. Sealing of Documents

- 9.2.1. The common seal of the Foundation Trust shall not be fixed to any documents unless the sealing has been authorised by a resolution of the Board which expression includes, by virtue of the resolution of the Board adopting these SOs, documents approved for sealing by the Chairman and either the Chief Executive or another Executive Director.
- 9.2.2. 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 them) and authorised and countersigned by the Chief Executive (or an Officer nominated by them) provided that any Officer nominated is not from the same directorate as the person nominating them.

9.3. Register of sealing

- 9.3.1. 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 sealing shall be made to the Board at least twice a year. The report shall contain details of the seal number, the description of the document and date of sealing.

9.4. Signature of documents

- 9.4.1. Where the signature of any document will be a necessary step in legal proceedings involving the Foundation 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.
- 9.4.2. The Chief Executive or nominated Officers shall be authorised, by resolution of the Board, to sign on behalf of the Foundation 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 or sub-committee with delegated authority.

10. Miscellaneous

10.1. SOs to be given to members of the Board and Governors

- 10.1.1. It is the duty of the Chief Executive to ensure that existing members of the Board and the Council and all new appointees are notified of and understand their responsibilities within SOs. Updated copies shall be issued to staff designated by the Chief Executive.
- 10.1.2. Designated Officers shall be informed in writing and shall receive copies where appropriate of the SOs.

10.2. Review of SOs

- 10.2.1. The SOs shall be reviewed annually by the Board and the Council.

Annex 6 – Annual Members’ Meeting

1. The Foundation Trust shall hold an **Annual Members’ Meeting**. The Annual Members’ Meeting shall be open to members of the public, Members of the Foundation Trust, Governors and Directors.
2. Notice of an Annual Members’ Meeting is to be given to all Members, Governors and Directors, personally, and/or:
 - 2.1. by notice prominently displayed at the Foundation Trust headquarters; and
 - 2.2. by notice on the Foundation Trust’s website, at least five Clear Days before the date of the meeting. The notice must also state the date, time and place of the meeting, and indicate the business to be dealt with at the meeting.
3. No business may be conducted at an Annual Members’ Meeting unless a quorum is present. The quorum for an Annual Members’ Meetings is the Chairman (or the Deputy Chairman) and at least four Members.
4. If at any Annual Members’ Meeting, there is no quorum present within 60 minutes of the time fixed for the start of the meeting, the meeting shall stand adjourned to such date, time and place as the Council of Governors shall in its absolute discretion determine, and the Secretary shall give or shall procure the giving of notice to all Members, Governors, Directors and members of the public of the date, time and place of that adjourned meeting. Notwithstanding the provisions of paragraph 3 above, upon reconvening, those present shall constitute a quorum.
5. It is the responsibility of the person chairing the meeting to ensure that:
 - 5.1. any issues to be decided upon at the meeting are clearly explained; and
 - 5.2. sufficient information is provided to those in attendance to enable rational discussion to take place.
6. The Chairman of the Foundation Trust or in his absence the Deputy Chairman shall act as chair at all Annual Members’ Meetings.
7. Any resolution put to the vote at an Annual Members’ Meeting shall be decided upon by a poll.
8. Every Member present is to have one vote. In the case of an equality of votes the person chairing the meeting is to have a casting vote.
9. The result of any vote will be declared by the person chairing the meeting and the Secretary shall cause the result to be entered in the minute book. The minute book will be conclusive evidence of the result of the vote.