

**GUY'S & ST THOMAS' NHS FOUNDATION TRUST
(A PUBLIC BENEFIT CORPORATION)**

CONSTITUTION

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GUY'S & ST THOMAS' NHS FOUNDATION TRUST CONSTITUTION**1. DEFINITIONS**

1.1 In this Constitution:

“Accounting Officer”	means that person who from time to time discharges the functions of Accounting Officer of the Trust for the purposes of Government accounting, the identity and functions of whom are set out in the “NHS Foundation Trust Accounting Officer Memorandum” issued by Monitor.
“Area of the Trust”	means the area specified as the area of the Public Constituency in Annex 1.
“Board of Directors”	means the board of directors of the Trust as constituted pursuant to this Constitution and the 2006 Act.
“Chairman”	means the chairman of the Trust.
"Chief Executive"	means the chief executive of the Trust.
“Class”	means the division of a Membership Constituency by reference to the description of individuals eligible to be Members of it.
"Clinicians Staff Class"	means the Staff Class defined in paragraph 7.3.5.
“Code of Conduct for Governors”	means the code of conduct for Governors as set out in Annex 5.
“Council of Governors”	means the Council of Governors as constituted pursuant to this Constitution.
"CSD Staff Class"	means the Staff Class defined in paragraph 7.3.4
“Director”	means a director on the Board of Directors.
"Dispute Resolution Procedure"	means the dispute resolution procedure set out at Annex 6.
"Election Scheme"	means the electoral system specified at Annex 3 or as otherwise may be specified in regulations made by the Secretary of State.
“Financial Year”	means any period of twelve months beginning on 1st April.
"Forward Plan"	Is defined in paragraph 16.4
“Governor”	means a person who is a member of the Council of Governors.
“Health Service Body”	shall have the same meaning as in Section 9(4) of the 2006 Act.

“Local Authority Governor”	means a Governor appointed in accordance with paragraph 8.8 of this Constitution (which for the avoidance of doubt is not to mean a councillor of a Local Authority).
“Member”	means a member of the Trust.
“Membership Constituency”	means any of (1) the Patients' Constituency; (2) the Public Constituency; or (3) the Staff Constituency.
“Monitor”	means the body corporate known as Monitor referred to in section 61 of the Health and Social Care Act 2012.
“Nominations Committee”	means a committee of the Council of Governors established in accordance with paragraph 8.18.
“Non Principal Purpose Activities”	means activities other than the provision of goods and services for the purposes of the National Health Service in England.
“Other Staff Class”	means the Staff Class defined in paragraph 7.3.6.
“Partnership Organisation”	mean any organisation specified in paragraph 8.10.1.
“Partnership Organisation Governor”	means a Governor appointed in accordance with paragraph 8.10.
“Patient”	means a person within the definition at paragraph 7.4.2.
“Patient Carer”	means a person within the definition at paragraph 7.4.3.
“Patients' Constituency”	means a constituency of the Trust constituted in accordance with paragraph 7.4.
“Patient Governor”	means a Governor elected by the Members of the Patients' Constituency in accordance with paragraph 8.5.
“PCT Governor”	means a Governor appointed in accordance with paragraph 8.7.
“Principal Purpose”	is defined in paragraph 3.1.
“Public Constituency”	means the constituency of the Trust constituted in accordance with paragraph 7.2.
“Public Governor”	means a Governor elected by the Members of the Public Constituency in accordance with paragraph 8.4.
“Register of Members”	means the register of members which the Trust is required to have and maintain under Paragraph 20 of Schedule 7 to the 2006 Act.

“Secretary”	means the Trust Secretary or any other person appointed by the Trust to perform the duties of the Trust Secretary including a joint, assistant or deputy Secretary or such other person as may be appointed by the Trust to perform the functions of the Secretary under this Constitution.
"Staff Class"	means any of the CSD Staff Class, the Clinicians Staff Class or the Other Staff Class.
“Staff Constituency”	means the constituency of the Trust constituted in accordance with paragraph 7.3.
“Staff Governor”	means a Governor elected by the Members of the Staff Constituency in accordance with paragraph 8.6.
“the 2006 Act”	means the National Health Service Act 2006.
“the Trust”	means the Guy's & St Thomas' NHS Foundation Trust.
“Trust Hospital”	means all or any hospital or other patient care facilities administered by the Trust from time to time and designated by the Trust as falling within this definition.
“University Governor”	means a Governor appointed in accordance with paragraph 8.9.

1.2 Headings are for ease of reference only and are not to affect interpretation.

1.3 Unless the contrary intention appears or the context otherwise requires:

- 1.3.1 words or expressions contained in this Constitution bear the same meaning as in the 2006 Act.
- 1.3.2 references in this Constitution to legislation include all amendments, replacements, or re-enactments made to that legislation;
- 1.3.3 references to legislation include all regulations, statutory guidance or directions made in respect of that legislation;
- 1.3.4 references to paragraphs are to paragraphs in this Constitution;
- 1.3.5 all annexes referred to in this Constitution form part of it; and
- 1.3.6 words importing the masculine gender only shall include the feminine gender; words importing the singular shall include the plural and vice versa.

2. NAME

2.1 The name of the foundation trust is Guy's & St Thomas' NHS Foundation Trust.

3. PRINCIPAL PURPOSE

3.1 The Trust's principal purpose is the provision of goods and services for the purposes of the National Health Service in England (“the **Principal Purpose**”).

- 3.2 The Trust's total income in each Financial Year from the Principal Purpose must be greater than its total income from Non Principal Purpose Activities.

4. OTHER PURPOSES

- 4.1 The Trust may provide goods and services for any purposes related to:
- 4.1.1 the provision of services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness; and
 - 4.1.2 the promotion and protection of public health.
- 4.2 Subject to the requirements set out in paragraph 16, the Trust may also carry on other activities for the purpose of making additional income available in order better to carry on the Principal Purpose.

5. POWERS

- 5.1 The Trust shall have all the powers of an NHS foundation trust as set out in the 2006 Act, subject to the terms of its authorisation.

6. FRAMEWORK

- 6.1 The Trust shall have three Membership Constituencies, a Council of Governors and a Board of Directors. The Board of Directors will exercise the powers of the Trust. The Membership Constituencies will elect certain of their Members to the Council of Governors in accordance with this Constitution and other Governors will be appointed by various bodies which are also set out in this Constitution. The Council of Governors will fulfil those functions imposed on it by the 2006 Act and by this Constitution.

7. MEMBERS

7.1 The Membership Constituencies

- 7.1.1 The Trust shall have three Membership Constituencies, namely:
- 7.1.1.1 the Public Constituency constituted in accordance with paragraph 7.2;
 - 7.1.1.2 the Staff Constituency constituted in accordance with paragraph 7.3; and
 - 7.1.1.3 the Patients' Constituency constituted in accordance with paragraph 7.4.
- 7.1.2 An individual may become a Member by application to the Trust in accordance with this Constitution or, where so provided for in this Constitution, by being invited by the Trust to become a Member of a Staff Class of the Staff Constituency in accordance with paragraph 7.3.
- 7.1.3 Where an individual applies to become a Member of the Trust, the Trust shall consider his application for membership as soon as reasonably practicable following its receipt and in any event no later than 28 days from the date upon which the application is received and unless that individual is ineligible for membership or is disqualified from membership the Secretary shall cause his name to be entered forthwith on the Trust's Register of Members and that individual shall thereupon become a

Member.

- 7.1.4 Where an individual is invited by the Trust to become a Member in accordance with paragraph 7.3.1.3 that individual shall automatically become a Member and shall have their name entered on the Trust's Register of Members following the expiration of 14 days after the giving of that invitation unless within that period the individual has informed the Trust that he does not wish to become a Member.
- 7.1.5 An individual shall become a Member on the date upon which his name is entered on the Trust's Register of Members and that individual shall cease to be a Member upon the date upon which his name is removed from the Register of Members as provided for in this Constitution.
- 7.1.6 If required to do so by its authorisation the Trust shall take reasonable steps to secure that taken as a whole the actual Membership of the Public Constituency and the Patients' Constituency is representative of those eligible for such Membership.

7.2 Public Constituency

- 7.2.1 Members of the Public Constituency shall be individuals who:
- 7.2.1.1 live in the Area of the Trust;
 - 7.2.1.2 are not eligible to become a Member of any other Constituency and are not Members of any other Membership Constituency;
 - 7.2.1.3 are not disqualified from membership under paragraph 7.5;
 - 7.2.1.4 are at least 18 years of age at the time of their application to become a Member; and
 - 7.2.1.5 have applied to the Trust to become a Member and that application has been accepted by the Trust in accordance with paragraph 7.1.3.
- 7.2.2 The minimum number of Members required for the Public Constituency shall be the number given in the corresponding entry in column 3 of Annex 1.
- 7.2.3 An individual shall be deemed to live in the Area of the Trust if this is evidenced by his name appearing on the then current Electoral Roll at an address within the Area of the Trust or the Trust acting by the Secretary is otherwise satisfied that the individual lives within the Area of the Trust.

7.3 Staff Constituency

- 7.3.1 Members of the Staff Constituency shall be individuals:
- 7.3.1.1 who:
 - (a) are employed under a contract of employment with the Trust which has no fixed term or is for a fixed term of at least 12 months; or
 - (b) have been continuously employed under a contract of employment with the Trust for at least 12 months; or

- (c) are employed by Kings College London or London South Bank University and have continuously exercised functions for the Trust for at least 12 months and whose place of work is at the Trust and who are acknowledged in writing by the Trust as falling within the parameters of this paragraph 7.3.1.1(c); or
 - (d) work on behalf of a voluntary organisation within the meaning of the 2006 Act or are registered volunteers at the Trust and in either case have continuously exercised functions for the Trust for at least 12 months and whose place of work is at the Trust and who are acknowledged in writing by the Trust as falling within the parameters of this paragraph 7.3.1(d); and
- 7.3.1.2 who have not been disqualified from membership under paragraph 7.5; and
- 7.3.1.3 who have made an application to the Trust to become a Member of the relevant Class of the Staff Constituency applicable to them as defined in paragraph 7.3.3 and whose name has been entered on the Register of Members in accordance with paragraph 7.1.3 or have been invited by the Trust to become a Member of the relevant Class of that Membership Constituency as defined in paragraph 7.3.3 and their name has been entered on the Register of Members; and
- 7.3.1.4 who are at least 18 years of age at the date of their application or invitation to become a Member (as the case may be) under paragraph 7.3.1.3.
- 7.3.2 Chapter 1 of Part XIV of the Employment Rights Act 1996 applies for the purpose of determining whether an individual has been continuously employed by the Trust for the purposes of paragraph 7.3.1.1(b) or has continuously exercised functions for the Trust for the purposes of paragraphs 7.3.1.1(c) and 7.3.1.1(d).
- 7.3.3 The Staff Constituency is to be divided into three Staff Classes as follows:
 - 7.3.3.1 the CSD Staff Class;
 - 7.3.3.2 the Clinicians Staff Class; and
 - 7.3.3.3 the Other Staff Class.
- 7.3.4 The Members of the CSD Staff Class are Members of the Staff Constituency who are employed under a contract of employment with the Trust in the Trust's Community Services Directorate.
- 7.3.5 The Members of the Clinicians Staff Class are Members of the Staff Constituency who are not Members of the CSD Staff Class, are not eligible to be Members of the CSD Staff Class, and:
 - 7.3.5.1 who are fully registered medical practitioners within the meaning of the Medical Act 1983 or dentists within the meaning of the Dentists Act 1984 and who are otherwise fully authorised and licensed to practise in England and Wales or who are otherwise designated by the Trust from time to time as eligible

to be Members of this Staff Class, having regard to the usual definitions applicable at that time for persons carrying on the professions of medical practitioner or dentist, and who are employed by the Trust in that capacity at the date of their application or invitation (as the case may be) under paragraph 7.3.1.3 and who at all times remain employed by the Trust in that capacity, or

7.3.5.2 who are registered under the Nurses, Midwives and Health Visitors Act 1997 and who are otherwise fully authorised and licensed to practise in England and Wales or are otherwise designated by the Trust from time to time as eligible to be Members of this Staff Class, having regard to the usual definitions applicable at that time for persons carrying on the profession of registered nurse or registered midwife, and who are employed by the Trust in that capacity at the date of their application or invitation (as the case may be) under paragraph 7.3.1.3 and who at all times remain employed by the Trust in that capacity, or

7.3.5.3 whose regulatory body falls within the remit of the Council for Healthcare Regulatory Excellence established by Section 25 of the NHS Reform and Health Care Professions Act 2002 or who are otherwise designated by the Trust from time to time as eligible to be Members of this Staff Class, having regard to the usual definitions applicable at that time for persons carrying on such professions, and who are employed by the Trust in that capacity at the date of their application or invitation (as the case may be) under paragraph 7.3.1.3 and who at all times remain employed by the Trust in that capacity.

7.3.6 The Members of the Other Staff Class are individuals who are Members of the Staff Constituency who are not Members of the CSD Staff Class or Clinicians Staff Class, are not eligible to be Members of the CSD Staff Class or Clinicians Staff Class and who are designated by the Trust from time to time as eligible to be Members of the Other Staff Class.

7.3.7 The minimum number of Members required for each Staff Class shall be the number given in the corresponding entry in column 3 of Annex 1.

7.3.8 A person who is eligible to be a Member of the Staff Constituency may not become or continue as a Member of any other Membership Constituency.

7.3.9 Members of the Clinicians Staff Class shall be considered to remain employed in the relevant capacity if they shall have been appointed to a position within the management structure of the Trust.

7.3.10 In accordance with paragraph 7.3.2, employment of Members of the CSD Staff Class by Lambeth PCT or Southwark PCT shall count as part of their continuous employment with the Trust for the purpose of paragraph 7.3.1.1(b).

7.4 Patients' Constituency

7.4.1 Members of the Patients' Constituency shall be individuals who:

7.4.1.1 are Patients or Patient Carers;

- 7.4.1.2 are not eligible to become a Member of the Staff Constituency and are not Members of any other Membership Constituency and are not otherwise disqualified for membership;
 - 7.4.1.3 have made an application to the Trust to become a Member and whose name has been entered on the Register of Members in accordance with paragraph 7.1.3; and
 - 7.4.1.4 are not less than 18 years of age at the time of their application to become a Member.
- 7.4.2 A Patient is an individual whose name is recorded as a patient on the Trust's patient administration system or other record maintained by the Trust for the purpose of identifying patients of the Trust and who has attended the Trust as a patient within the period of five years immediately prior to that person applying to become a Member. A person ceases to be a Patient when five years have elapsed since his last attendance at the Trust as a patient.
- 7.4.3 A Patient Carer is an individual who:
- 7.4.3.1 is not less than 18 years of age at the date of applying to become a Member; and
 - 7.4.3.2 provides care on a regular basis for a Patient who has not attained the age of 18 years or who is by reason of physical or mental incapacity unable to discharge the functions of a Member; and
 - 7.4.3.3 does not (as set out in Paragraph 3(6) of Schedule 7 to the 2006 Act) provide that care:
 - (a) by virtue of a contract of employment or other contract with any person; or
 - (b) as a volunteer for a voluntary organisation; and
 - 7.4.3.4 has either been:
 - (a) nominated by that Patient as his Patient Carer for the time being for the purposes of this paragraph and has been accepted by the Trust as that Patient's Patient Carer for that purpose; or
 - (b) has been accepted by the Trust as a Patient Carer for the purposes of this paragraph where the Patient is under 18 years of age or lacks the legal or mental capacity to nominate that individual as his Patient Carer and the Trust has to the extent that it is reasonably practicable to do so consulted with that Patient as to his wishes and has then agreed to treat that individual as the Patient Carer for the purposes of this paragraph provided the individual has agreed in writing to act in that capacity and he is otherwise qualified in accordance with this paragraph 7.4.3.
 - 7.4.3.5 An individual shall not be eligible to apply to become a Member as a Patient Carer or to continue as a Member as a Patient Carer if:

- (a) the Patient is a Member; or
- (b) the Patient has withdrawn his nomination of that individual under paragraph 7.4.3.4(a) as his Patient Carer; or
- (c) the Patient Carer is a Member of some other Membership Constituency or Class of Membership Constituency under this Constitution; or
- (d) the Patient on whose behalf he is a Patient Carer is ineligible or disqualified from membership under paragraph 7.5; or
- (e) where paragraph 7.4.3.4(b) applies the Patient becomes capable of discharging the functions of a Member and attains the age of 18 years of age.

7.5 Disqualification from Membership

7.5.1 An individual shall not become or continue as a Member if:

7.5.1.1 he is or becomes ineligible under paragraphs 7.2, 7.3 or 7.4 to be a Member; or

7.5.1.2 the Council of Governors resolves for reasonable cause that his so doing would or would be likely to:

- (a) prejudice the ability of the Trust to fulfil its principal purpose or other of its purposes under this Constitution or otherwise to discharge its duties and functions; or
- (b) harm the 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
- (c) adversely affect public confidence in the goods or services provided by the Trust; or
- (d) otherwise bring the Trust into disrepute; or

7.5.1.3 the Council of Governors resolves or ever has resolved in accordance with paragraph 8.12.3 that his tenure as a Governor be terminated.

7.5.2 It is the responsibility of each Member to ensure his eligibility at all times and not the responsibility of the Trust to do so on his behalf. A Member who becomes aware of his ineligibility shall inform the Trust as soon as practicable and that person shall thereupon be removed forthwith from the Register of Members and shall cease to be a Member.

7.5.3 Where the Trust has reason to believe that a Member is ineligible for Membership under paragraphs 7.2, 7.3 or 7.4 or may be disqualified from Membership under this paragraph 7.5, the Secretary shall carry out reasonable enquiries to establish if this is the case.

7.5.4 Where the Secretary considers that there may be reasons for concluding that a Member or an applicant for membership may be ineligible or be disqualified from Membership he shall advise that individual of those

reasons in summary form and invite representations from the Member or applicant for membership within 28 days or such other reasonable period as the Secretary may in his absolute discretion determine. Any representations received shall be considered by the Secretary and he shall make a decision on the Member's or applicant's eligibility or disqualification as soon as reasonably practicable and shall give notice in writing of that decision to the Member or applicant within 14 days of the decision being made.

7.5.5 If no representations are received within the said period of 28 days or such longer period (if any) permitted under the preceding paragraph, the Secretary shall be entitled nonetheless to proceed and make a decision on the Member's or applicant's eligibility or disqualification notwithstanding the absence of any such representations from him.

7.5.6 Any decision made under this paragraph 7.5 to disqualify a Member or an applicant for membership may be referred by the Member or applicant concerned to the Dispute Resolution Procedure under paragraph 19.

7.6 Termination of Membership

7.6.1 A person's Membership shall be terminated if he:

7.6.1.1 resigns by giving notice in writing to the Secretary;

7.6.1.2 is disqualified under paragraph 7.5; or

7.6.1.3 dies.

7.6.2 When any of the circumstances set out in paragraph 7.6.1 arise the Secretary shall cause that person's name to be removed from the Register of Members forthwith and he shall thereupon cease to be a Member.

7.7 Voting at Council of Governors Elections

7.7.1 A Member may not vote at an election for a Public Governor or Patient Governor (as the case may be) unless within the specified period he has made a declaration in the specified form that he is a Member of the Public Constituency or Patients' Constituency (as the case may be) and stating the particulars of his qualification to vote as a Member of that Membership Constituency for which an election is being held. It is an offence knowingly or recklessly to make such a declaration which is false in a material particular.

7.7.2 The form and content of the declaration and the period for making such a declaration for the purposes of paragraph 7.7.1 shall be specified and published by the Trust from time to time and shall be so published not less than 28 days prior to an election.

8. COUNCIL OF GOVERNORS

8.1 The Trust shall have a Council of Governors which, subject to the provisions of paragraphs 8.10.5 to 8.10.8 and paragraph 8.21.1.2 shall consist of thirty Governors as set out in paragraph 8.2. The aggregate number of Governors who are Public Governors or Patient Governors shall be more than half the total number of Governors.

8.2 The Council of Governors shall consist of:-

- 8.2.1 eight Public Governors elected in accordance with paragraph 8.4.
 - 8.2.2 eight Patient Governors elected in accordance with paragraph 8.5.
 - 8.2.3 six Staff Governors elected in accordance with paragraph 8.6.
 - 8.2.4 two PCT Governors appointed in accordance with paragraph 8.7.
 - 8.2.5 two Local Authority Governors appointed in accordance with paragraph 8.8.
 - 8.2.6 one University Governor appointed in accordance with paragraph 8.9.
 - 8.2.7 three Partnership Organisation Governors appointed in accordance with paragraph 8.10.
- 8.3 No person shall be eligible to be elected or appointed (as the case may be) a Governor in accordance with the terms of this Constitution unless at the date of their nomination for election or upon the date of their appointment they have attained the age of 18 years.
- 8.4 **Public Governors**
- 8.4.1 There shall be eight Public Governors elected from the Public Constituency.
 - 8.4.2 Members of the Public Constituency may elect any of their number to be a Public Governor, subject to paragraph 8.3 and 8.4.4.
 - 8.4.3 If contested, the election shall be by secret ballot in accordance with the Election Scheme, using the first past the post method of voting.
 - 8.4.4 A person shall not stand for election to the Council of Governors as a Public Governor unless he has made a declaration in the form specified in Annex 4:
 - 8.4.4.1 of the particulars of his qualification to vote as a Member of the Public Constituency;
 - 8.4.4.2 that he is not prevented from being a Governor by Paragraph 8 of Schedule 7 to the 2006 Act; and
 - 8.4.4.3 that he is not otherwise disqualified under paragraph 8.13.
 - 8.4.5 A Public Governor shall not vote at a meeting of the Council of Governors unless within the previous twelve months he has made a declaration in the form specified in Annex 4.
 - 8.4.6 The declaration required under paragraphs 8.4.4.1 and 8.4.4.2 and the equivalent provisions of the declaration required under paragraph 8.4.5 are required by Section 60 of the 2006 Act. It is a criminal offence knowingly or recklessly to make a declaration under Section 60 of the 2006 Act which is false in a material particular.
- 8.5 **Patient Governors**
- 8.5.1 There shall be eight Patient Governors elected from the Patients' Constituency.

- 8.5.2 Members of the Patients' Constituency may elect any of their number to be a Patient Governor, subject to paragraph 8.3 and paragraph 8.5.4.
- 8.5.3 If contested, the election shall be by secret ballot in accordance with the Election Scheme, using the first past the post method of voting.
- 8.5.4 A person shall not stand for election to the Council of Governors as a Patient Governor unless he has made a declaration in the form specified in Annex 4:
- 8.5.4.1 of the particulars of his qualification to vote as a Member of the Patients' Constituency;
- 8.5.4.2 that he is not prevented from being a Governor by Paragraph 8 of Schedule 7 to the 2006 Act; and
- 8.5.4.3 that he is not otherwise disqualified under paragraph 8.13.
- 8.5.5 A Patient Governor shall not vote at a meeting of the Council of Governors unless within the previous twelve months he has made a declaration in the form specified in Annex 4.
- 8.5.6 The declaration required under paragraphs 8.5.4.1 and 8.5.4.2 and the equivalent provisions of the declaration required under paragraph 8.5.5 are required by Section 60 of the 2006 Act. It is a criminal offence knowingly or recklessly to make a declaration under Section 60 of the 2006 Act which is false in a material particular.

8.6 **Staff Governors**

- 8.6.1 There shall be six Staff Governors elected from the Staff Constituency. The number of Governors to be elected from each Staff Class shall be as set out in Annex 1.
- 8.6.2 Members of a Staff Class within the Staff Constituency may elect any of their number to be a Staff Governor for that Staff Class subject to paragraph 8.3.
- 8.6.3 If contested, the election will be by secret ballot in accordance with the Election Scheme, using the first past the post method of voting.

8.7 **PCT Governors**

- 8.7.1 Each of the Lambeth Primary Care Trust and the Southwark Primary Care Trust shall be entitled to appoint one PCT Governor in accordance with a process of appointment agreed by it with the Secretary. The absence of any such agreed process shall not preclude either of Lambeth Primary Care Trust or Southwark Primary Care Trust from appointing its PCT Governor.
- 8.7.2 If a Primary Care Trust named in paragraph 8.7.1 declines or fails to appoint a Governor within three months of being requested to do by the Trust, the Secretary shall consult with other Primary Care Trusts for which the Trust provides goods or services, and the Trust in its absolute discretion shall then extend an invitation to any of those other Primary Care Trusts to appoint a PCT Governor in substitution for the Primary Care Trust which failed or declined to do so and shall give notice of that fact to Monitor.

- 8.7.3 The Trust shall give notice forthwith to Monitor of all invitations the Trust may extend under the preceding paragraph and of any acceptances.
- 8.7.4 Any PCT Governor appointed under paragraph 8.7.2 shall serve on the Council of Governors for the period stipulated in paragraph 8.11.4. At the end of that period the Trust shall in its absolute discretion decide whether for the purposes of paragraph 8.7.1 to permit that Primary Care Trust which had failed or declined to appoint a PCT Governor to appoint a PCT Governor for the next period or to invite that Primary Care Trust which had appointed a PCT Governor in substitution to do so.
- 8.7.5 Notwithstanding the foregoing provisions of this paragraph the Trust shall in its absolute discretion be entitled:
- 8.7.5.1 to give not less than six months notice to either of the Primary Care Trusts referred to in paragraph 8.7.1 (or any substituted Primary Care Trust appointed under paragraph 8.7.2) terminating its right to appoint a PCT Governor and upon the expiration of that notice period or such other date as the Trust and the relevant Primary Care Trust may agree that Primary Care Trust's right to appoint a PCT Governor shall be terminated and the period of office of the Governor appointed by that PCT shall also come to an end on that date; and
- 8.7.5.2 to appoint another Primary Care Trust for which the Trust provides goods and services to replace that Primary Care Trust to which notice has been given under paragraph 8.7.5.1,

save that these provisions shall at all times be operated so as to ensure that the number of Primary Care Trusts entitled to appoint a PCT Governor under paragraph 8.7.1 remains equal to the number of PCT Governors specified in paragraph 8.2.4.

8.8 Local Authority Governors

- 8.8.1 Each of the London Borough of Lambeth and the London Borough of Southwark shall be entitled to appoint one Local Authority Governor in accordance with a process of appointment agreed by it with the Secretary. The absence of any such agreed process of appointment shall not preclude either of the London Borough of Lambeth or the London Borough of Southwark from appointing its Local Authority Governor.
- 8.8.2 If a local authority named in paragraph 8.8.1 declines or fails to appoint a Local Authority Governor within three months of being requested to do so by the Trust, the Secretary shall consult each local authority whose area includes the whole or part of the Area of the Trust and the Trust in its absolute discretion shall extend an invitation to any of those local authorities to appoint a Local Authority Governor in substitution for the local authority which has failed or declined to do so.
- 8.8.3 A Local Authority Governor appointed under paragraph 8.8.2 shall then serve on the Council of Governors for the period stipulated in paragraph 8.11.5. At the end of that period the Trust shall in its absolute discretion decide whether for the purposes of paragraph 8.8.1 to permit that local authority which had failed or declined to appoint a Local Authority Governor to appoint a Local Authority Governor for the next period (provided it remains eligible to do so) or to invite the local authority which had appointed a Local Authority Governor in substitution to do so.

8.9 University Governors

- 8.9.1 King's College London shall be entitled to appoint one University Governor in accordance with a process agreed by it with the Secretary. The absence of any such agreed process shall not preclude King's College London from appointing its University Governor.

8.10 Partnership Organisation Governors

- 8.10.1 The following organisations ("**Partnership Organisations**") are specified organisations for the purposes of sub-Paragraph 9(7) of Schedule 7 to the 2006 Act:

8.10.1.1 London Southbank University;

8.10.1.2 South London and Maudsley NHS Foundation Trust;
and

8.10.1.3 King's College Hospital NHS Foundation Trust.

- 8.10.2 Each of the said Partnership Organisations shall be entitled to appoint one Partnership Organisation Governor in accordance with a process of appointment agreed by it with the Secretary. The absence of any such agreed process of appointment shall not preclude any Partnership Organisation from appointing its Governor.

- 8.10.3 Subject to Monitor's prior consent having been obtained in accordance with paragraph 8.10.4 the Trust shall be entitled in its absolute discretion to:

8.10.3.1 give notice to any of those Partnership Organisations except London Southbank University that they are no longer to be a Partnership Organisation for the purposes of this Constitution; and

8.10.3.2 appoint some other organisation as a Partnership Organisation in their place for the purposes of this paragraph.

- 8.10.4 If the Trust wishes to exercise the power set out in paragraph 8.10.3 it shall give notice to Monitor together with details of the processes of appointment agreed for the purposes of paragraph 8.10.2, the name of the proposed new Partnership Organisation and the name of the Partnership Organisation which it is intended to replace. No change shall be made without the prior consent of Monitor and of the proposed new Partnership Organisation.

- 8.10.5 The Trust may at any time and following consultation between the Board of Directors and the Council of Governors on any proposals under consideration amend the overall number of Partnership Organisations under this Constitution with the prior consent of Monitor.

- 8.10.6 If the Trust resolves to increase the numbers of Partnership Organisations under paragraph 8.10.5 it shall give notice of its proposals to Monitor and shall as soon as practicable provide him with details of:

8.10.6.1 the name of any additional Partnership Organisation and such further particulars of that organisation as he may require; and

8.10.6.2 any revised number of Public or Patient Governors under this Constitution, as may be required by paragraph 8.10.7.

8.10.7 If the power provided for in paragraph 8.10.5 is proposed to be exercised by the Trust, the proposals it shall submit to Monitor shall if necessary provide for the number of Public and Patient Governors to be increased to ensure that the Trust continues to comply with its obligations under paragraph 8.1 and for an additional Public or Patient Governor or Governors to be elected if necessary before any increase in the number of Partnership Organisations takes effect.

8.10.8 No increase in the overall number of Partnership Organisations under this Constitution shall be made until Monitor's consent has first been obtained.

8.11 Terms of Office

8.11.1 A Public Governor:

8.11.1.1 shall hold office for a period of three years;

8.11.1.2 is eligible for re-election at the end of that period for one further and final three year term; and

8.11.1.3 shall cease to hold office if he ceases to be a Member of the Public Constituency.

8.11.2 A Patient Governor:

8.11.2.1 shall hold office for a period of three years;

8.11.2.2 is eligible for re-election at the end of that period for one further and final three year term; and

8.11.2.3 shall cease to hold office if he ceases to be a Member of the Patients' Constituency.

8.11.3 A Staff Governor:

8.11.3.1 shall hold office for a period of three years;

8.11.3.2 is eligible for re-election at the end of that period for one further and final three year term; and

8.11.3.3 shall cease to hold office if he ceases to be a Member of the Staff Constituency.

8.11.4 A PCT Governor:

8.11.4.1 shall hold office for a period of three years;

8.11.4.2 is eligible for reappointment at the end of that period; and

8.11.4.3 shall cease to hold office if the Primary Care Trust which appointed him withdraws its appointment of him.

8.11.5 A Local Authority Governor:

8.11.5.1 shall hold office for a period of three years;

8.11.5.2 is eligible for reappointment at the end of that period; and

8.11.5.3 shall cease to hold office if the Local Authority which appointed him withdraws its appointment of him.

8.11.6 A University Governor:

8.11.6.1 shall hold office for a period of three years;

8.11.6.2 is eligible for reappointment at the end of that period; and

8.11.6.3 shall cease to hold office if the University which appointed him withdraws its appointment of him.

8.11.7 A Partnership Organisation Governor:

8.11.7.1 shall hold office for a period of three years;

8.11.7.2 is eligible for reappointment at the end of that period;

8.11.7.3 shall cease to hold office if the Partnership Organisation which appointed him withdraws its appointment of him.

8.11.8 Governors shall cease to be Governors forthwith if their tenure is terminated under paragraph 8.12 or they are disqualified from being a Governor under paragraph 8.13.

8.12 **Governor Termination of Tenure**

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

8.12.2 If a Governor fails to attend any meeting of the Council of Governors for a consecutive period of twelve months or alternatively for three successive meetings of the Council of Governors, his tenure of office shall be terminated immediately by the Secretary unless, on application by that Governor to the Council of Governors, the Council of Governors resolves that:

8.12.2.1 the absence was due to reasonable cause; and

8.12.2.2 the Governor will be able to start attending meetings of the Council of Governors within such a specified period as the Council of Governors considers reasonable.

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

8.12.3.1 he is disqualified from becoming or continuing as a Member under this Constitution; or

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

8.12.3.3 his continuing as a Governor would or would be likely to:

- (a) contravene the Code of Conduct for Governors as set out at Annex 5 or as may be otherwise adopted by the Trust from time to time; or
- (b) prejudice the ability of the Trust to fulfil its principal purpose or other of its purposes under this Constitution or otherwise to discharge its duties and functions; or
- (c) harm the 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
- (d) adversely affect public confidence in the goods or services provided by the Trust; or
- (e) otherwise bring the Trust into disrepute.

8.12.4 Upon a Governor resigning under paragraph 8.12.1, or upon the Council of Governors resolving to terminate a Governor's tenure of office under paragraphs 8.12.2 or 8.12.3 that Governor shall cease to be a Governor and his name shall be forthwith removed from the Register of Governors notwithstanding any reference to the Dispute Resolution Procedure.

8.12.5 Any decision of the Council of Governors to terminate a Governor's tenure of office may be referred by that Governor to the Dispute Resolution Procedure within 28 days of the date upon which notice in writing of the Council of Governors' decision is given to the Governor.

8.12.6 A Governor who resigns under paragraph 8.12.1 or whose tenure of office is terminated under paragraph 8.12.2 shall not be eligible to stand for re-election for a period of three years from the date of his resignation or removal from office or the date upon which any appeal against his removal from office is disposed of, whichever is the later.

8.12.7 A Governor whose tenure of office is terminated under paragraph 8.12.3 shall not be eligible to stand for re-election.

8.13 Disqualification

8.13.1 A person may not become or continue as a Governor if:

8.13.1.1 in the case of a Staff Governor, Public Governor or Patient Governor he ceases to be a Member of the Membership Constituency or the Class of a Membership Constituency by which he was elected;

8.13.1.2 in the case of any other Governor the appointing organisation withdraws its appointment of him;

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

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

8.13.1.5 he has within the preceding five years been convicted in the British Islands of any offence, and a sentence of imprisonment

- (whether suspended or not) for a period of three months or more (without the option of a fine) was imposed on him;
- 8.13.1.6 Monitor has exercised its powers to remove that person as a Governor or has suspended him from office or has disqualified him from holding office as a Governor for a specified period or Monitor has exercised any of those powers in relation to the person concerned at any other time whether in relation to the Trust or some other NHS foundation trust;
- 8.13.1.7 he has within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with a Health Service Body;
- 8.13.1.8 he is a person whose tenure of office as the chairman or as a governor, member or director of a Health Service Body has been terminated on the grounds that his appointment was not in the interests of the health service, for non attendance at meetings, or for non-disclosure of a pecuniary interest;
- 8.13.1.9 he has had his name removed, from a relevant list of medical practitioners pursuant to Paragraph 10 of the National Health Service (Performers Lists) Regulations 2004 or Section 151 of the 2006 Act (or similar provision elsewhere), and has not subsequently had his name included in such a list;
- 8.13.1.10 he is incapable by reason of mental disorder, illness or injury of managing and administering his property and affairs;
- 8.13.1.11 he has failed or refused to make any declaration required by paragraph 8.4 or 8.5; or
- 8.13.1.12 he refuses to confirm that he will abide by the Code of Conduct for Governors as set out at Annex 5 or as may be otherwise adopted by the Trust from time to time.
- 8.13.2 The provisions of paragraph 8.13.1 apply to elected and appointed Governors and to those seeking election or appointment.
- 8.13.3 Where an individual has been elected or appointed to be a Governor and he becomes disqualified for appointment he shall notify the Secretary in writing of such disqualification as soon as practicable and in any event within 14 days of first becoming aware of those matters which render him disqualified.
- 8.13.4 If it comes to the notice of the Secretary that the Governor is disqualified, 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 him in writing to that effect as soon as practicable and in any event within 14 days of the date of the said declaration.
- 8.13.5 Upon the giving of notice under paragraph 8.13.3 or paragraph 8.13.4 that individual's tenure of office, if any, shall be terminated forthwith and he shall cease to be a Governor and his name shall be removed from the Register of Governors. Any Governor may refer any dispute he may have with regard to that decision to the Dispute Resolution Procedure at paragraph 19.

8.14 Vacancies

- 8.14.1 Where a Governor's membership of the Council of Governors ceases for one of the reasons set out in paragraph 8.12 or paragraph 8.13, Public Governors, Staff Governors and Patient Governors shall be replaced in accordance with paragraphs 8.14.2 to 8.14.4 and other Governors shall be replaced in accordance with the processes for appointment agreed with the relevant appointing body pursuant to paragraphs 8.7 to 8.10.
- 8.14.2 Where an elected Governor ceases to hold office during his term of office the Trust shall offer the candidate who secured the second highest number of votes in the last election for the Membership Constituency (or Class of Membership Constituency, as the case may be) in which the vacancy has arisen the opportunity to assume the vacant office for the unexpired balance of the retiring Governor's term of office. If that candidate does not agree to fill the vacancy it will then be offered to that candidate who secured the next highest number of votes until the vacancy is filled.
- 8.14.3 If no reserve candidate is available or willing to fill the vacancy, an election will then be held in accordance with the Election Scheme save that if an election is due to be held within nine months of the vacancy having arisen the office will stand vacant until the next scheduled election unless by so doing this causes the aggregate number of Governors who are Public Governors and Patient Governors to be less than half the total membership of the Council of Governors. In that event an election will be held in accordance with the Election Scheme as soon as reasonably practicable.
- 8.14.4 The Returning Officer under the Election Scheme shall maintain a record of votes cast at each election under the Election Scheme for the above purposes and the Returning Officer shall conduct or shall oversee the conducting of the process set out in paragraphs 8.14.2 and 8.14.3.

8.15 Roles and Responsibilities of the Council of Governors

- 8.15.1 The general responsibilities of the Council of Governors are to:
- 8.15.1.1 support the Board of Directors in setting the longer-term vision for the Trust, to influence proposals to make changes to services and to act in a way that is consistent with NHS principles and values and the terms of the Trust's authorisation;
 - 8.15.1.2 engage in dialogue with and provide advice to the Board of Directors with regard to the Trust's future vision and strategy and to act as a source of ideas about how the Trust can provide its services in ways that meet the needs of the community it serves;
 - 8.15.1.3 review annually the extent to which the Trust is meeting its objective of delivering high quality services; and
 - 8.15.1.4 work with the Board of Directors on such other matters for the benefit of the Trust as may be agreed between them.
- 8.15.2 The specific rights and duties of the Council of Governors are:
- 8.15.2.1 in a General Meeting to:

- (a) appoint or remove the Chairman and the other non-executive Directors of the Trust. The removal of any non-executive Director shall require the approval of three-quarters of the total number of Governors;
- (b) approve the appointment of the Chief Executive of the Trust by the non-executive Directors;
- (c) decide the remuneration and expenses and the other terms and conditions of office of the non-executive Directors;
- (d) appoint or remove the Trust's auditor; and
- (e) receive and consider the Trust's annual accounts, any auditor's reports on those annual accounts and the annual report from the Board of Directors;

8.15.2.2 to be consulted by the Board of Directors regarding the Board of Directors' preparation of the Forward Plan for each Financial Year;

8.15.2.3 to respond as appropriate when consulted by the Board of Directors; and

8.15.2.4 to exercise such other powers and to discharge such other duties as may be conferred on the Council of Governors under this Constitution.

8.15.3 All Governors shall comply with the Code of Conduct for Governors set out in Annex 5.

8.16 Expenses

8.16.1 Governors shall not receive remuneration for acting as Governors but may receive expenses as provided for in this paragraph.

8.16.2 The Trust may pay travelling and other expenses to Governors at the rates set out in the Trust's policy on Business Travel and Subsistence.

8.17 Meetings

8.17.1 The Council of Governors shall comply with the Standing Orders for its practice and procedure set out in Annex 2.

8.17.2 The Council of Governors shall meet not less than three times in each Financial Year.

8.17.3 The Trust shall publicise and hold a general meeting to take place in September of each year at which the Council of Governors shall receive from the Board of Directors in accordance with paragraph 9.10.8 and shall then consider the Trust's annual accounts, any report of the auditor on them and the Trust's annual report.

8.17.4 No proceedings of the Council of Governors shall be invalidated by any vacancy in its membership or any defect in the appointment or election of any Governor.

8.18 Lead Governor

8.18.1 In this paragraph 8.18 only:

8.18.1.1 "**Appointment Meeting**" means:

- if there is an Election in a calendar year, the first meeting of the Council of Governors to take place after the Election; or
- if there is no Election scheduled in a calendar year, the first meeting of the Council of Governors to take place after the anniversary of the last Election, and

8.18.1.2 "**Election**" means an election to fill a vacancy on the Council of Governors other than an election under paragraph 8.14.3.

8.18.2 Any Governor who, immediately after the Appointment Meeting, will have at least one year of his term remaining, may nominate himself for the office of Lead Governor by giving notice to the Chairman at least ten clear days before the Appointment Meeting.

8.18.3 As long as at least one nomination has been received in accordance with paragraph 8.18.2, the Council of Governors shall appoint the Lead Governor at the Appointment Meeting.

8.18.4 If:

8.18.4.1 one nomination has been received, the nominated Governor shall be appointed Lead Governor at the Appointment Meeting;

8.18.4.2 more than one nomination has been received, the Council of Governors shall choose the Lead Governor by paper ballot at the Appointment Meeting, and if there is an equality of votes, the tied nominees shall draw lots to decide which of them shall be chosen;

8.18.4.3 no nomination has been received, the office shall lie vacant until the next Appointment Meeting.

8.18.5 The Secretary shall ensure that Monitor is provided with details of the serving Lead Governor.

8.18.6 Subject to paragraph 8.18.7, the Lead Governor shall hold office until the results are announced of the next Election after his appointment.

8.18.7 If no Election is held within one calendar year of the incumbent Lead Governor's appointment, the Lead Governor shall hold office for one year.

8.18.8 The serving Lead Governor may nominate himself for re-appointment as long as he will have at least one year of his term as a Governor remaining after the next Appointment Meeting.

8.18.9 The Lead Governor may resign from the office at any time by giving written notice to the Chairman, and shall cease to hold the office immediately if he ceases to be a Governor or if he becomes leader of any

working group of the Council of Governors.

8.18.10 If a Lead Governor ceases to hold office during his term, the second-placed nominee in the last ballot for the office shall be offered the opportunity to assume the vacant office for the unexpired balance of the retiring Lead Governor's term. If that candidate does not agree to fill the vacancy it will then be offered to the third-placed nominee and so on until the vacancy is filled. If no candidate is available or willing to fill the vacancy, the office shall remain vacant until the next Appointment Meeting.

8.18.11 The Lead Governor's duties shall be as follows:

8.18.11.1 facilitating communication between Governors and members of the Board of Directors;

8.18.11.2 facilitating communication between Monitor and the Council of Governors if necessary (which may include, but shall not be limited to the following circumstances:

- where Monitor has concerns as to the Board of Directors' leadership of the Trust; or
- where Monitor has concerns that the process for appointment of the Chairman or other members of the Board of Directors may not have complied with the 2006 Act or this Constitution;

8.18.11.3 assisting the Chairman in settling the agenda for meetings of the Council of Governors and other meetings involving Governors;

8.18.11.4 chairing the Council of Governors when required to do so by the Standing Orders attached at Annex 2;

8.18.11.5 contributing to the appraisal of the Chairman in such manner and to such extent as the person conducting the appraisal may see fit;

8.18.11.6 initiating proceedings to remove a Governor where circumstances set out in this Constitution for removal have arisen (without prejudice to the right of any other Governor to initiate such proceedings);

8.18.11.7 liaising, as appropriate, with councils of governors for other NHS foundation trusts, and

8.18.11.8 such other duties, consistent with the 2006 Act and this Constitution, as may be approved by the Governors.

8.19 **Nominations Committee**

8.19.1 The Council of Governors may appoint a Nominations Committee consisting of all or some Governors to assist it in carrying out the functions set out in paragraph 9.6 but not otherwise.

8.20 **Conflict of Interest of Governors**

8.20.1 If a Governor has a pecuniary interest, whether direct or indirect, in any

contract, proposed contract or other matter which is under consideration by the Council of Governors or has any other conflict of interest he shall disclose that to the rest of the Council of Governors as soon as he is aware of it.

- 8.20.2 The Council of Governors shall abide by the Standing Orders attached at Annex 2 specifying the arrangements for excluding Governors from discussion or consideration of the contract or other matter as appropriate where the Governor has a pecuniary interest or any other conflict of interest in relation to it.

8.21 Transitional provisions

- 8.21.1 Notwithstanding anything to the contrary in this Constitution:

8.21.1.1 From the date of adoption of this revised Constitution all Governors shall be appointed or elected (as the case may be) in accordance with its provisions.

8.21.1.2 Each Governor serving at the date of adoption of this revised Constitution shall serve under the arrangements existing at the time of his election or appointment (as the case may be).

8.21.1.3 For the avoidance of doubt, at all times more than half the Governors will be elected by members of the Public Constituency or the Patients' Constituency and the composition of the Council of Governors will satisfy the provisions of paragraph 9 of Schedule 7 to the Act.

9. BOARD OF DIRECTORS

- 9.1 The Trust shall have a Board of Directors which shall consist of executive and non-executive Directors.

- 9.2 The Board of Directors shall comprise:

- 9.2.1 the following non-executive Directors:

9.2.1.1 a Chairman; and

9.2.1.2 no fewer than five nor more than eight other non-executive Directors one of whom shall be appointed having been nominated by King's College London; and

- 9.2.2 the following executive Directors:

9.2.2.1 a Chief Executive (who shall also at all times be the Accounting Officer);

9.2.2.2 a Finance Director; and

9.2.2.3 not less than three nor more than six other executive Directors.

- 9.3 The executive Directors shall include one person who is a registered medical practitioner or registered dentist (within the meaning of the Dentists Act 1984) and one other who is to be a registered nurse or registered midwife.

- 9.4 The power to appoint non-executive Directors and executive Directors shall at all

times be exercised so as to ensure that the aggregate voting rights vested in the Chairman and non-executive Directors exceed the aggregate of those votes vested in the executive Directors. The Directors shall at all times have one vote each save that the Chairman shall be entitled to exercise a second or casting vote where the number of votes for and against a motion is equal.

- 9.5 Only a Member of the Public Constituency or the Patients Constituency or an individual exercising functions for King's College London may be appointed as a non-executive Director.
- 9.6 Non-executive Directors are to be appointed as follows:
- 9.6.1 The Council of Governors shall create a duly authorised Nominations Committee consisting of some or all Governors in accordance with paragraph 8.18;
- 9.6.2 The Nominations Committee shall seek the views of the Board of Directors as to their recommended criteria and process for the selection of candidates and, having regard to those views, shall then seek, shortlist and interview such candidates as the Nominations Committee considers appropriate and shall make recommendations to the Council of Governors as to potential appointments as non-executive Directors and shall advise the Board of Directors of those recommendations;
- 9.6.3 The Nominations Committee shall be at liberty to request the attendance of and seek advice and assistance from persons other than members of the Nominations Committee or other Governors in arriving at its said recommendations; and
- 9.6.4 The Nominations Committee shall provide advice to the Council of Governors on the levels of remuneration for the Chairman and non-executive Directors.
- 9.6.5 The Nominations Committee shall receive reports on behalf of the Council of Governors on the process and outcome of appraisal for the Chairman and non-executive Directors.
- 9.6.6 The Council of Governors shall resolve in general meeting to appoint such candidate or candidates as they consider appropriate and shall have regard to the recommendation of the Nominations Committee and views of the Chief Executive and the Board of Directors in reaching that decision. The Secretary will convey the decision of the Council of Governors to the successful candidate.
- 9.7 The validity of any act of the Trust shall not be affected by any vacancy among the Directors or by any defect in the appointment of any Director.
- 9.8 **Terms of Office**
- 9.8.1 The non-executive Directors (excluding the Chairman) shall be eligible for appointment for two four year terms of office, and in exceptional circumstances a further term of two years. No non-executive Director (excluding the Chairman) shall be appointed to that office for a total period which exceeds ten years in aggregate.
- 9.8.2 The Chairman shall be eligible for appointment for two four year terms of office, and in exceptional circumstances a further term of two years. The Chairman shall not be appointed to that office for a total period which exceeds ten years in aggregate.

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

9.8.4 Where a non-executive Director, other than a non-executive Director appointed having been nominated by King's College London, ceases to be a Member he shall cease to be eligible to be a non-executive Director and shall resign as such or if he fails or declines to do so he shall be removed from office in accordance with the terms of this Constitution.

9.9 Disqualification

9.9.1 A person may not become or continue as a Director if:

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

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

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

9.9.1.4 in the case of a non-executive Director, he no longer satisfies paragraph 9.5;

9.9.1.5 he is otherwise disqualified at law from acting as a director of an NHS foundation trust;

9.9.1.6 Monitor has exercised its powers under the 2006 Act to remove that person as a Director of the Trust or any other foundation trust within his jurisdiction or has suspended him from office or has disqualified him from holding office as a Director of the Trust or of any other foundation trust for a specified period;

9.9.1.7 he is a person whose tenure of office as a chairman or as a member or director of a Health Service Body has been terminated on the grounds that his appointment is not in the interests of the public service, for non attendance at meetings or for non-disclosure of a pecuniary interest;

9.9.1.8 he has had his name removed, from a relevant list of medical practitioners pursuant to Paragraph 10 of the National Health Service (Performers Lists) Regulations 2004 or Section 151 of the 2006 Act (or similar provision elsewhere), and has not subsequently had his name included in such a list; or

9.9.1.9 he has within the preceding two years been dismissed otherwise than by reason of redundancy from any paid employment with a Health Service Body.

9.9.2 Any person who is disqualified from becoming or continuing as a Director on any of the grounds set out in paragraph 9.9.1 shall forthwith resign as a Director of the Trust or if he declines or fails to do so shall be removed forthwith by the Board of Directors and a new Director appointed in his

place in accordance with the provisions of this Constitution.

9.10 Roles and Responsibilities

- 9.10.1 The powers of the Trust shall be exercisable by the Board of Directors on its behalf.
- 9.10.2 Any of those powers may be delegated to a committee of Directors or to an executive Director in accordance with a Scheme of Delegation approved by the Board of Directors.
- 9.10.3 A committee of non-executive Directors established as an audit committee shall monitor, review and carry out such functions in relation to the auditor outlined in paragraph 14 as are appropriate.
- 9.10.4 The non-executive Directors shall appoint or remove the Chief Executive (and Accounting Officer). The appointment of a Chief Executive (but not his removal) shall require the approval of the Council of Governors.
- 9.10.5 A committee consisting of the Chairman, the Chief Executive (and Accounting Officer) and the other non-executive Directors shall appoint the executive Directors.
- 9.10.6 The Trust shall establish a committee of non-executive Directors to decide the remuneration and allowances and the other terms and conditions of office of the executive Directors.
- 9.10.7 The Board of Directors shall provide a Forward Plan in respect of each Financial Year to Monitor. The Board of Directors shall have regard to the views of the Council of Governors when preparing the Forward Plan.
- 9.10.8 The Board of Directors shall present to the Council of Governors in a general meeting the Trust's annual accounts, any report of the auditor on them, and the Trust's annual report.
- 9.10.9 All the functions of the Trust under paragraphs 15.4, 15.6 and 15.7 are delegated by this Constitution to the Chief Executive as Accounting Officer.

9.11 Annual Public Meeting

- 9.11.1 The Trust shall hold a public meeting in September each year.

10. MEETINGS OF DIRECTORS

- 10.1 The Board of Directors shall adopt Standing Orders covering the proceedings and business of its meetings. These shall include setting a quorum for meetings, both of executive and non-executive Directors. The proceedings shall not however be invalidated by any vacancy of its membership or defect in a Director's appointment.

11. CONFLICTS OF INTEREST OF DIRECTORS

- 11.1 If a Director has a pecuniary interest, whether direct or indirect, in any contract, proposed contract or other matter which is under consideration by the Board or has any other conflict of interest, he shall disclose that to the rest of the Board as soon as he is aware of it. The Board of Directors shall adopt Standing Orders specifying the arrangements for excluding Directors from discussion or consideration of the contract or other matter as appropriate.

12. REGISTERS

- 12.1 The Trust shall have and maintain:
- 12.1.1 a Register of Members showing, in respect of each Member, the Membership Constituency (and Class within a Membership Constituency, where appropriate) to which he belongs;
 - 12.1.2 a register of Governors;
 - 12.1.3 a register of interests of Governors;
 - 12.1.4 a register of Directors; and
 - 12.1.5 a register of interests of Directors.
- 12.2 The information to be included in the above registers shall be such as will comply with the requirements of the 2006 Act, any subordinate legislation made under it and the provisions of this Constitution.
- 12.3 Members will be removed from the Register of Members if:
- 12.3.1 the Member is no longer eligible or is disqualified; or
 - 12.3.2 the Member dies.

13. PUBLIC DOCUMENTS

- 13.1 The following documents of the Trust shall be available for inspection by members of the public free of charge at all reasonable times:
- 13.1.1 a copy of the current Constitution;
 - 13.1.2 a copy of the current authorisation;
 - 13.1.3 a copy of the latest annual accounts and of any report of the auditor on them;
 - 13.1.4 a copy of the latest annual report;
 - 13.1.5 a copy of the latest information as to its forward planning; and
 - 13.1.6 a copy of any notice given under Section 52 of the 2006 Act ("Failing NHS foundation trusts").
- 13.2 Any person who requests it shall be provided with a copy or extract from any of the above documents.
- 13.3 If the person requesting a copy or extract under this paragraph is not a Member of the Trust, the Trust may impose a reasonable charge for providing the copy or extract.
- 13.4 The registers mentioned in paragraph 12 shall all be made available for inspection by members of the public except in circumstances prescribed by regulations made under the 2006 Act. The Trust shall not make any part of its Register of Members available for inspection by members of the public that shows details of:
- 13.4.1 any Member who belongs to the Patients' Constituency where that

Member has not consented to his details being made so available; or

13.4.2 any other Member if he so requests.

14. AUDITOR

- 14.1 The Trust shall have an auditor and shall provide the auditor with every facility and all information which he may reasonably require for the purposes of his functions under Chapter 5 of Part 2 of the 2006 Act.
- 14.2 A person may only be appointed auditor if he (or in the case of a firm each of its members) is a member of one or more of the bodies referred to in Paragraph 23(4) of Schedule 7 to the 2006 Act.
- 14.3 The appointment of the auditor by the Council of Governors is covered in paragraph 8.15.2.1(d), and the monitoring of the auditor's functions by a committee of non-executive Directors is covered in paragraph 9.10.3.
- 14.4 An officer of the Audit Commission may be appointed with the agreement of the Audit Commission to act as auditor.
- 14.5 The auditor shall carry out his duties in accordance with Schedule 10 to the 2006 Act and in accordance with any directions given by Monitor on standards, procedures and techniques to be adopted.

15. ACCOUNTS

- 15.1 The Trust shall keep proper accounts and proper records in relation to the accounts, which shall comply with any directions made by Monitor with the approval of the Secretary of State, as to the content and form of the Trust's accounts.
- 15.2 The accounts shall be audited by the Trust's auditor.
- 15.3 The following documents shall be made available to the Comptroller and Auditor General for examination at his request:
- 15.3.1 the accounts;
- 15.3.2 the records relating to them; and
- 15.3.3 any report of the auditor on them.
- 15.4 The Trust (through its Chief Executive and Accounting Officer) shall prepare in respect of each Financial Year annual accounts in such form as Monitor may with the approval of the Secretary of State direct.
- 15.5 The Trust shall comply with any directions given by Monitor with the approval of the Secretary of State as to:
- 15.5.1 the period or periods in respect of which the Trust should prepare accounts; and
- 15.5.2 the audit requirements of any such accounts.
- 15.6 In preparing accounts the Trust shall comply with any directions given by Monitor with the approval of the Secretary of State as to:

15.6.1 the methods and principles according to which the accounts are to be prepared; and

15.6.2 the content and form of the accounts.

15.7 The Trust shall:

15.7.1 lay a copy of the annual accounts, and any report of the auditor on them, before Parliament;

15.7.2 send copies of those documents to Monitor within such period as Monitor may direct; and

15.7.3 send copies of any accounts prepared pursuant to paragraph 15.5, and any report of an auditor on them to Monitor within such period as Monitor may direct.

16. ANNUAL REPORTS AND FORWARD PLANS

16.1 The Trust shall prepare annual reports and send them to Monitor.

16.2 The reports shall give information on:

16.2.1 the impact that income received by the Trust from Non Principal Purpose Activities has had on the Principal Purpose.

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

16.2.3 any other information Monitor requires.

16.3 The Trust shall comply with any decision Monitor makes as to:

16.3.1 the form of the reports;

16.3.2 when the reports are to be sent to it; and

16.3.3 the periods to which the reports are to relate.

16.4 The Trust shall give information to Monitor as to its forward planning in respect of each Financial Year (the "**Forward Plan**"). The Forward Plan shall be prepared by the Board of Directors who in doing so shall have regard to the views of the Council of Governors.

16.5 The Forward Plan shall include information on:

16.5.1 the Non Principal Purpose Activities that the Trust proposes to carry on; and

16.5.2 the income that the Trust expects to receive from doing so.

16.6 Where the Forward Plan contains a proposal that the Trust carry out Non Principal Purpose Activities, the Council of Governors shall:

16.6.1 determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfilment by the Trust of the Principal Purpose or the performance of its other functions; and

16.6.2 notify the Board of Directors of its determination.

16.7 The Trust may not implement a proposal for Non Principal Purpose Activities if the Council of Governors has:

16.7.1 determined that it is not satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfilment by the Trust of the Principal Purpose or the performance of its other functions; and

16.7.2 has notified the Board of Directors of that determination.

The Trust may only implement any proposal to increase by 5% or more the proportion of its total income in any Financial Year attributable to Non Principal Purpose Activities if more than half of the members of the Council of Governors voting approve the proposal's implementation.

17. INDEMNITY

17.1 Governors and Directors who act honestly and in good faith and not recklessly 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 Council of Governors or Board of Directors functions. Any such liabilities will be liabilities of the Trust.

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

18. INSTRUMENTS ETC

18.1 The Trust is to have a seal which shall not be affixed except under the authority of the Board of Directors.

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

19. DISPUTE RESOLUTION PROCEDURE

19.1 The Trust shall apply the Dispute Resolution Procedure set out at Annex 6 to this Constitution in regard to disputes:

19.1.1 with Members and potential Members in relation to matters of eligibility and disqualification; and

19.1.2 with Governors in relation to matters of eligibility, disqualification and termination of tenure; and

19.1.3 between the Council of Governors and the Board of Directors in relation to the interpretation and application of their respective powers and obligations under this Constitution.

20. AMENDMENT OF THE CONSTITUTION

20.1 The Trust may make amendments to this Constitution with the approval of Monitor.

20.2 No proposal for the amendment of this Constitution shall be put to Monitor unless it has been approved by the Board of Directors who shall have consulted with the

Council of Governors before so doing.

21. DISSOLUTION OF THE TRUST

- 21.1 The Trust may not be dissolved except by Order of the Secretary of State for Health in accordance with the 2006 Act.

ANNEX 1:**CONSTITUENCIES OF THE TRUST**

1.	2.	3.	4.
Name of Membership Constituency	Area/Qualification	Minimum number of Members	Number of Governors
Public Constituency	The London Borough of Lambeth, the London Borough of Southwark, the London Borough of Lewisham, the London Borough of Wandsworth and the City of Westminster.	250	8
Patients' Constituency	Patients and Patient Carers as defined in paragraph 7.4 of this Constitution	250	8
CSD Staff Class	As defined in paragraph 7.3.4 of this Constitution	100	1
Clinicians Staff Class	As defined in paragraph 7.3.5 of this Constitution	100	3
Other Staff Class	As defined in paragraph 7.3.6 of this Constitution	100	2

ANNEX 2:**STANDING ORDERS FOR THE REGULATION OF PROCEEDINGS AND BUSINESS OF THE COUNCIL OF GOVERNORS**

These Standing Orders form part of the Constitution of the Guy's & St. Thomas' Hospital NHS Foundation Trust.

1. INTERPRETATION

1.1 The Chairman shall be the final authority on the interpretation of Standing Orders.

2. THE TRUST

2.1 All business shall be conducted in the name of the Trust.

3. MEETINGS OF THE COUNCIL OF GOVERNORS

3.1 **Admission of the Public and the Press** - The public and representatives of the press shall be afforded facilities to attend all meetings of the Council of Governors but shall be required to withdraw upon the Council of Governors resolving as follows:

“That representatives of the Press and other members of the public be excluded from the remainder of this meeting having regard to the confidential nature of the business to be transacted publicly on which would be prejudicial to the public interest”.

3.2 The right of attendance referred to above carries no right to ask questions or otherwise participate in the meeting.

3.3 The Chairman (or other person presiding under the provisions of Standing Order 3.14) shall give such directions as he thinks fit in regard to the arrangements for meetings and accommodation of the public and representatives of the press to ensure that the business of the meeting shall be conducted without interruption and disruption and, without prejudice to the power to exclude on grounds of the confidential nature of the business to be transacted, the public will be required to withdraw upon the Council of Governors resolving as follows:

“That in the interests of public order the meeting adjourn for (the period to be specified) to enable the completion of business without the presence of the public”.

Nothing in these Standing Orders shall require the Council of Governors to allow members of the public or representatives 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 Council of Governors.

3.4 **Calling Meetings** - Ordinary meetings of the Council of Governors shall be held at such times and places as it may determine.

3.5 The Chairman may call a meeting of the Council of Governors at any time. If the Chairman refuses to call a meeting after a requisition for that purpose, signed by at least one-third of the whole number of Governors, has been presented to him, or if, without so refusing, the Chairman does not call a meeting within seven days after such requisition has been presented to him/her, at the Trust's headquarters, such one third or more Members may forthwith call a meeting.

- 3.6 **Notice of Meetings** - Before each meeting of the Council of Governors a notice of the meeting, specifying the business proposed to be transacted at it and signed by the Chairman or by an officer of the Trust authorised by the Chairman to sign on his/her behalf shall be delivered to every Governor or sent by post to the usual place of residence of such Governor so as to be available to him/her at least seven clear days before the meeting.
- 3.7 Subject to Standing Order 3.9, lack of service of the notice on any Governor shall not affect the validity of a meeting.
- 3.8 In the case of a meeting called by Governors in default of the Chairman, the notice shall be signed by those Governors and no business shall be transacted at the meeting other than that specified in the notice.
- 3.9 Failure to serve such a notice on more than three Governors will invalidate the meeting. A notice shall be presumed to have been served at the time at which the notice would be delivered in the ordinary course of the post.
- 3.10 Before each meeting of the Council of Governors a public notice of the time and place of the meeting, and the public part of the agenda, shall be displayed at the Trust's office at least three clear days before the meeting.
- 3.11 **Setting the Agenda** - The Council of Governors may determine that certain matters shall appear on every agenda for a meeting of the Council of Governors and shall be addressed prior to any other business being conducted. (Such matters may be identified within these Standing Orders or following subsequent resolution shall be listed in an Appendix to the Standing Orders.)
- 3.12 A Governor desiring a matter to be included on an agenda shall make his/her request in writing to the Chairman at least 10 clear days before the meeting, subject to Standing Order 3.6. Requests made less than 10 days before a meeting may be included on the agenda at the discretion of the Chairman.
- 3.13 **Chairman of Meeting** – The Chairman shall preside at meetings of the Council of Governors and shall be entitled to exercise a casting vote where the number of votes for and against a motion is equal.
- 3.14 If the Chairman is absent from a meeting of the Council of Governors, the Governors shall appoint another non-executive Director to preside over that meeting and he shall exercise all the rights and obligations of the Chairman including the right to exercise a second or casting vote where the number of votes for and against a motion is equal.
- 3.15 If any matter for consideration at a meeting of the Council of Governors relates to the conduct or interests of the Chairman or of 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. In these circumstances the period of the meeting shall be chaired by the Lead Governor, or in his absence, by another Governor chosen by the Governors. This person shall exercise all the rights and obligations of the Chairman including the right to exercise a second or casting vote where the number of votes for and against a motion is equal.
- 3.16 **Notices of Motion** – A Governor desiring to move or amend a motion shall send a written notice thereof at least 10 clear days before the meeting to the Chairman, who shall insert in the agenda for the meeting all notices so received subject to the notice being permissible under the appropriate regulations. This Standing Order shall not prevent any motion being moved during the meeting, without notice on any business mentioned on the agenda subject to Standing Order 3.8.
- 3.17 **Withdrawal of Motion or Amendments** - A motion or amendment once moved and seconded may be withdrawn by the proposer with the concurrence of the seconder

and the consent of the Chairman

- 3.18 **Motion to Rescind a Resolution** - Notice of motion to amend or rescind any resolution (or the general substance of any resolution) which has been passed within the preceding six calendar months shall bear the signature of the Governor(s) who gives it and also the signature of four other Governors. When any such motion has been disposed of by the Council of Governors, it shall not be competent for any Governor to propose a motion to the same effect within six months; however the Chairman may do so if he/she considers it appropriate.
- 3.19 **Motions** - The mover of a motion shall have a right of reply at the close of any discussion on the motion or any amendment thereto.
- 3.20 When a motion is under discussion or immediately prior to discussion it shall be open to a Governor to move.
- 3.20.1 An amendment to the motion.
- 3.20.2 The adjournment of the discussion or the meeting.
- 3.20.3 That the meeting proceed to the next business.
- 3.20.4 The appointment of an ad hoc committee to deal with a specific item of business.
- 3.20.5 That the motion be now put.
- 3.21 No amendment to the motion shall be admitted if, in the opinion of the Chairman of the meeting, the amendment negates the substance of the motion.
- 3.22 **Chairman's Ruling** - Statements of Governors made at meetings of the Council of Governors shall be relevant to the matter under discussion at the material time and the decision of the Chairman of the meeting on questions of order, relevance, regularity and any other matters shall be observed at the meeting.
- 3.23 **Voting** – If, in the opinion of the Chairman, a vote should be required on a question at a meeting, the result shall be determined by a majority of the votes of the Governors present and voting on the question.
- 3.24 All questions put to the vote shall, at the discretion of the Chairman of 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 Governors present so request.
- 3.25 If a Governor so requests, his/her vote shall be recorded by name upon any vote (other than by paper ballot).
- 3.26 In no circumstances may an absent Governor vote by proxy. Absence is defined as being absent at the time of the vote.
- 3.27 **Minutes** - The Minutes of the proceedings of a meeting shall be drawn up and submitted for agreement at the next ensuing meeting where they will be signed by the person presiding at it.
- 3.28 No discussion shall take place upon the minutes except upon their accuracy or where the Chairman considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the next meeting.
- 3.29 Minutes shall be circulated with the notice of the next meeting or otherwise in accordance with Governors' wishes. Where providing a record of a public meeting, the

minutes shall be made available to the public

- 3.30 **Suspension of Standing Orders** - Except where this would contravene any provision of the constitution or authorisation or any statutory provision or any direction made by Monitor, any one or more of the Standing Orders may be suspended at any meeting, provided that at least two-thirds of the Governors are present, including one elected Governor and one nominated Governor and that a majority of those present vote in favour of suspension.
- 3.31 A decision to suspend Standing Orders shall be recorded in the minutes of the meeting.
- 3.32 A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the Governors.
- 3.33 No formal business may be transacted while Standing Orders are suspended. Formal business shall include the proposal of motions and the determination of questions and resolutions, by voting or otherwise.
- 3.34 The Audit Committee of the Board of Directors shall review every decision of the Council of Governors to suspend Standing Orders.
- 3.35 **Record of Attendance** - The names of the Governors present at the meeting shall be recorded in the minutes.
- 3.36 **Quorum** - No business shall be transacted at a meeting of the Council of Governors unless at least one-third of the whole number of the Governor are present including at least one elected Member from the Public Constituency, one elected member from the Patients' Constituency, one elected Member from the Staff Constituency and one nominated Governor.
- 3.37 If a Governor has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of the declaration of a conflict of interest (see Standing Order 6 or 7) he/she shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business.
- 3.38 Any resolution for the removal of a non-executive Director shall require the approval of three-quarters of the total number of Governors.

4. **NOMINATIONS COMMITTEE**

- 4.1 The Council of Governors shall create a duly authorised Nominations Committee consisting of some or all of its Members in accordance with paragraph 8.18 of the Constitution.
- 4.2 The Nominations Committee shall seek the views of the Board of Directors as to their recommended criteria and process for the selection of candidates and, having regard to those views, shall then seek, shortlist and interview such candidates as the Nominations Committee considers appropriate and shall make recommendations to the Council of Governors as to potential appointments as non-executive Directors and shall advise the Board of Directors of those recommendations.
- 4.3 Subject to any provisions to the contrary in this Standing Order 4, the provisions of Standing Order 3, as far as they are applicable, shall apply with appropriate alteration

to meetings of the Nominations Committee.

- 4.4 The Secretary shall attend the Nominations Committee and take minutes of any proceedings.
- 4.5 The Nominations Committee shall have such terms of reference and powers and be subject to such conditions (as to reporting back to the Council of Governors), as the Council of Governors, shall decide subject to the provisions of the Constitution. Such terms of reference shall have effect as if incorporated into the Standing Orders.
- 4.6 The Council of Governors shall approve the appointments to the Nominations Committee. The chairman of the Nominations Committee shall be the Chairman.
- 4.7 **Confidentiality** - A member of the Nominations Committee shall not disclose a matter dealt with by, or brought before, the Nominations Committee without its permission until the Nominations Committee shall have reported to the Council of Governors or shall otherwise have concluded on that matter.
- 4.8 A member of the Nominations Committee shall not disclose any matter reported to or otherwise dealt with by the committee, notwithstanding that the matter has been reported or action has been concluded, if the Council of Governors or the committee shall resolve that it is confidential.

5. DECLARATIONS OF INTERESTS AND REGISTER OF INTERESTS

- 5.1 Interests which should be regarded as "relevant and material" and which, for the avoidance of doubt, should be included in the register, are:
- (a) Directorships, including non-executive directorships held in private companies or PLCs (with the exception of those of dormant companies).
 - (b) Ownership, part-ownership or directorship of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS.
 - (c) Majority or controlling share holdings in organisations likely or possibly seeking to do business with the NHS.
 - (d) A position of authority in a charity or voluntary organisation in the field of health and social care.
 - (e) Any connection with a voluntary or other organisation contracting for NHS services or commissioning NHS services.
 - (f) Any connection with an organisation, entity or company considering entering into or having entered into a financial arrangement with the NHS Foundation Trust, including but not limited to, lenders or banks.
 - (g) Membership of clubs, societies or organisations whose purpose may include furthering the business or personal interests of their members by undeclared or informal means. Such organisations include Masonic lodges and religious societies whose membership consists of professional and business people.

If Governors have any doubt about the relevance or materiality of an interest, this should be discussed with the Chairman

- 5.2 At the time the interests are declared, they should be recorded in the Council of Governors minutes as appropriate. Any changes in interests should be officially declared at the next Council meeting following the change occurring. It is the obligation of the Governor to inform the Secretary of the Trust in writing within 7 days

of becoming aware of the existence of a relevant or material interest. The Secretary will amend the Register upon receipt within 3 working days.

- 5.3 Governors' directorships of companies (Standing Order 5.1(a)), or in companies likely or possibly seeking to do business with the NHS (Standing Order 5.1(b)), should be published in the Trust's annual report. The information should be kept up to date for inclusion in succeeding annual reports.
- 5.4 During the course of a Council meeting, if a conflict of interest is established, the Governor(s) 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.
- 5.5 There is no requirement for the interests of Governors' spouses or partners to be declared. Note however that Standing Order 7 requires that the interest of Governors' spouses, if living together, in contracts should be declared.
- 5.6 **Register of Interests** - The Chief Executive will ensure that a Register of Interests is established to record formally declarations of interests of Member Governors. In particular the Register will include details of all directorships and other relevant and material interests which have been declared, as defined in Standing Order 5.2.
- 5.7 These details will be kept up to date by means of an annual review of the Register in which any changes to interests declared during the preceding twelve months will be incorporated.
- 5.8 The Register will be available to the public and the Chief Executive will take reasonable steps to bring the existence of the Register to the attention of the local population and to publicise arrangements for viewing it.

6. DISABILITY OF CHAIRMAN OR GOVERNOR IN PROCEEDINGS ON ACCOUNT OF PECUNIARY INTEREST

- 6.1 Subject to the following provisions of this Standing Order, if a Governor or the Chairman has any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter and is present at a meeting of the Council of Governors at which the contract or other matter is the subject of consideration, he/she shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not take part in the consideration or discussion of the contract or other matter or vote on any question with respect to it.
- 6.2 The Trust may require the Chairman or a Governor to withdraw from a meeting of the Council of Governors while any contract, proposed contract or other matter in which he/she has a pecuniary interest, is under consideration.
- 6.3 For the purpose of this Standing Order the Chairman or Governor shall be treated, subject to Standing Order 7.2 and Standing Order 7.6, as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if:
 - (a) he/she, or a nominee of his/hers, is a director of a company or other body, not being a public body, with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration;
 - (b) he/she is a partner of, or is in the employment of a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration;

- (c) and in the case of family or close personal relationships the interest of one party shall, if known to the other, be deemed for the purposes of this Standing Order to be also an interest of the other.
- 6.4 The Chairman or Governor shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only of his/her membership of a company or other body, if he/she has no beneficial interest in any securities of that company or other body of an interest in any company, body or person with which he/she is connected as mentioned in Standing Order 6.3 which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a member or director in the consideration or discussion of or in voting on, any question with respect to that contract or matter.
- 6.5 Where the Chairman or a Governor:
- (a) has an indirect pecuniary interest in a contract, proposed contract or other matter by reason only of a beneficial interest in securities of a company or other body, and
- (b) the total nominal value of those securities does not exceed one-hundredth of the total nominal value of the issued share capital of the company or body, and
- (c) if the share capital is of more than one class, the total nominal value of shares of any one class in which he/she has a beneficial interest does not exceed one-hundredth of the total issued share capital of that class; and
- (d) this Standing Order shall not prohibit him/her from taking part in the consideration or discussion of a contract or other matter or from voting on any question with respect to it without prejudice however to his/her duty to disclose his/her interest.
- 6.6 Standing Order 7 applies to the committee of the Council of Governors as it applies to the Council of Governors and applies to any member of the committee as it applies to a Governor.

7. STANDARDS OF BUSINESS CONDUCT

- 7.1 **Interest of Governors in Contracts** - If it comes to the knowledge of a Governor, that a contract in which he/she has any pecuniary interest not being a contract to which he/she is himself/herself a party, has been, or is proposed to be, entered into by the Trust he/she shall, at once, give notice in writing to the Chief Executive of the fact that he/she is interested therein. In the case of married persons, or persons living together as partners, the interest of one partner shall, if known to the other, be deemed to be also the interest of that partner.
- 7.2 A Governor must also declare to the Chief Executive any other employment or business or other relationship of his/hers, or of a member of his/her family or of someone with whom he/she has a close personal relationship, that conflicts, or might reasonably be predicted could conflict with the interests of the Trust.
- 7.3 **Canvassing of, and Recommendations by, Governors in Relation to Appointments** - Canvassing of Governors directly or indirectly for any appointment under the Trust shall disqualify the candidate for such appointment. The contents of this Standing Order shall be included in application forms or otherwise brought to the attention of candidates.
- 7.4 A Governor shall not solicit for any person any appointment under the Trust or recommend any person for such appointment: but this Standing Order shall not

preclude a Governor from giving written testimonial of a candidate's ability, experience or character for submission to the Trust.

- 7.5 Informal discussions outside appointments panels or committees, whether solicited or unsolicited, should be declared to the panel or committee.
- 7.6 **Relatives of Governor** - Candidates for any staff appointment shall when making application disclose in writing whether they are related to any Governor. Failure to disclose such a relationship shall disqualify a candidate and, if appointed, render him/her liable to instant dismissal.
- 7.7 The Governors shall disclose to the Chief Executive any relationship with a candidate of whose candidature that Governor is aware. It shall be the duty of the Chief Executive to report to the Council of Governors and Board of Directors any such disclosure made.
- 7.8 On election or appointment, Governors should disclose to the Trust whether they are related to any other Governor or holder of any office under the Trust.
- 7.9 Where the relationship of a Governor is disclosed, the Standing Order headed 'Disability of Chairman or Governor in proceedings on account of pecuniary interest' (Standing Order 6) shall apply.

8. MISCELLANEOUS

- 8.1 **Standing Orders to be given to Governors** - It is the duty of the Chief Executive to ensure that existing Governors and all new Governors are notified of and understand their responsibilities within Standing Orders.
- 8.2 **Review of Standing Orders** – These Standing Orders shall be reviewed annually by the Council of Governors. The requirement for review extends to all documents having the effect as if incorporated in Standing Orders.
- 8.3 Variation and Amendment of Standing Orders - These Standing Orders shall be amended only if:
- (a) a notice of motion under Standing Order 3.16 has been given; and no fewer than two thirds of the total of the Governors vote in;
 - (b) favour of amendment; and
 - (c) the variation proposed does not contravene a statutory provision or direction made by Monitor; and
 - (d) Monitor has approved the amendment to the Constitution.

ANNEX 3:
ELECTION SCHEME

Model Election Rules

(for inclusion within the model core constitution)

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 consent and particulars
11. Declaration of interests
12. Declaration of eligibility
13. Signature of candidate
14. Decisions as to validity of nomination papers
15. Publication of statement of nominated candidates
16. Inspection of statement of nominated candidates and nomination papers
17. Withdrawal of candidates
18. Method of election

Part 5 – Contested elections

19. Poll to be taken by ballot
20. The ballot paper
21. The declaration of identity

Action to be taken before the poll

22. List of eligible voters
23. Notice of poll
24. Issue of voting documents
25. Ballot paper envelope and covering envelope

The poll

26. Eligibility to vote
27. Voting by persons who require assistance
28. Spoilt ballot papers
29. Lost ballot papers
30. Issue of replacement ballot paper
31. Declaration of identity for replacement ballot papers

Procedure for receipt of envelopes

- 32. Receipt of voting documents
- 33. Validity of ballot paper
- 34. Declaration of identity but no ballot paper
- 35. Sealing of packets

Part 6 - Counting the votes

- stv36. Interpretation of Part 6
- 37. Arrangements for counting of the votes
- 38. The count
- stv39. Rejected ballot papers
- fpp39. Rejected ballot papers
- stv40. First stage
- stv41. The quota
- stv42. Transfer of votes
- stv43. Supplementary provisions on transfer
- stv44. Exclusion of candidates
- stv45. Filling of last vacancies
- stv46. Order of election of candidates
- fpp46. Equality of votes

Part 7 – Final proceedings in contested and uncontested elections

- fpp47. Declaration of result for contested elections
- stv47. Declaration of result for contested elections
- 48. Declaration of result for uncontested elections

Part 8 – Disposal of documents

- 49. Sealing up of documents relating to the poll
- 50. Delivery of documents
- 51. Forwarding of documents received after close of the poll
- 52. Retention and public inspection of documents
- 53. Application for inspection of certain documents relating to election

Part 9 – Death of a candidate during a contested election

- fpp54. Countermand or abandonment of poll on death of candidate
- stv54. Countermand or abandonment of poll on death of candidate

Part 10 – Election expenses and publicity

Expenses

- 55. Expenses incurred by candidates
- 56. Expenses incurred by other persons
- 57. Personal, travelling, and administrative expenses

Publicity

- 58. Publicity about election by the corporation
- 59. Information about candidates for inclusion with voting documents
- 60. Meaning of “for the purposes of an election”

Part 11 – Questioning elections and irregularities

- 61. Application to question an election

Part 12 – Miscellaneous

- 62. Secrecy
- 63. Prohibition of disclosure of vote
- 64 Disqualification
- 65 Delay in postal service through industrial action or unforeseen event

Part 1 - Interpretation

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

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

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

“the regulator” means Monitor; and

“the 2006 Act” means the NHS Act 2006

(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 election

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

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

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

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

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

(2) In this rule, “bank holiday” means a day which is a bank holiday under the Banking and Financial

Dealings Act 1971 in England and Wales.

Part 3 – Returning officer

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

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

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

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

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

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

Part 4 - Stages Common to Contested and Uncontested Elections

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

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

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

(2) The returning officer-

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

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

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

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

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

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

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

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

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

13. Signature of candidate – The nomination paper must be signed and dated by the candidate, indicating that –

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

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

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

(2) The returning officer is entitled to decide that a nomination paper is invalid only on one of the following grounds -

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

- (d) that the paper does not include a declaration of eligibility as required by rule 12, or
- (e) that the paper is not signed and dated by the candidate, as required by rule 13.

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

(4) Where the returning officer decides that a nomination is invalid, the returning officer must endorse this on the nomination paper, stating the reasons for their decision.

(5) The returning officer is to send notice of the decision as to whether a nomination is valid or invalid to the candidate at the contact address given in the candidate's nomination paper.

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

(2) The statement must show –

- (a) the name, contact address, and constituency or class within a constituency of each candidate standing, and
- (b) the declared interests of each candidate standing,

as given in their nomination paper.

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

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

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

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

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

18. Method of election – (1) If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is greater than the number of members to be elected to the board 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 board 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 board of governors, then –

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

Part 5 – Contested elections

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

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

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

(2) Every ballot paper must specify –

- (a) the name of the corporation,
- (b) the constituency, or class within a constituency, for which the election is being held,
- (c) the number of members of the board of governors to be elected from that constituency, or class within that constituency,
- (d) the names and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
- (e) instructions on how to vote,
- (f) if the ballot paper is to be returned by post, the address for its return and the date and time of the close of the poll, and
- (g) the contact details of the returning officer.

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

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

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

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

- (a) that the voter is the person to whom the ballot paper was addressed,
- (b) that the voter has not marked or returned any other voting paper in the election, and
- (c) for a member of the public or patient constituency, of the particulars of that member's qualification to vote as a member of the constituency or class within a constituency for which the election is being held.

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

- (a) the name of the voter,
- (b) the address of the voter,
- (c) the voter's signature, and

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

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

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

Action to be taken before the poll

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

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

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

- (a) the name of the corporation,
- (b) the constituency, or class within a constituency, for which the election is being held,
- (c) the number of members of the board of governors to be elected from that constituency, or class with that constituency,
- (d) the names, contact addresses, and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
- (e) that the ballot papers for the election are to be issued and returned, if appropriate, by post,
- (f) the address for return of the ballot papers, and the date and time of the close of the poll,
- (g) the address and final dates for applications for replacement ballot papers, and
- (h) the contact details of the returning officer.

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

- (a) a ballot paper and ballot paper envelope,
- (b) a declaration of identity (if required),
- (c) information about each candidate standing for election, pursuant to rule 59 of these rules, and
- (d) a covering envelope.

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

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

once the ballot paper has been marked.

(2) The covering envelope is to have –

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

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

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

The poll

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

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

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

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

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

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

- (a) is satisfied as to the voter's identity, and
- (b) has ensured that the declaration of identity, if required, has not been returned.

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

- (a) the name of the voter, and
- (b) the details of the unique identifier of the spoilt ballot paper (if that officer was able to obtain it), and
- (c) the details of the unique identifier of the replacement ballot paper.

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

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

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

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

- (a) the name of the voter, and
- (b) the details of the unique identifier of the replacement ballot paper.

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

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

- (a) the name of the voter, and
- (b) the details of the unique identifier of the replacement ballot paper issued under this rule.

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

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

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

- (a) that the voter has not voted in the election with any ballot paper other than the ballot paper being returned with the declaration, and
- (b) of the particulars of that member's qualification to vote as a member of the public or patient constituency, or class within a constituency, for which the election is being held.

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

- (a) the name of the voter,
- (b) the address of the voter,
- (c) the voter's signature, and
- (d) the date that the declaration was made by the voter.

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

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

Procedure for receipt of envelopes

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

- (a) covering envelope, or
- (b) any other envelope containing a declaration of identity if required, a ballot paper envelope, or a ballot paper,

before the close of the poll, that officer is to open it as soon as is practicable; and rules 33 and 34 are to apply.

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

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

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

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

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

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

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

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

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

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

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

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

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

Part 6 - Counting the votes

stv36. Interpretation of Part 6 – In Part 6 of these rules –

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

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

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

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

“non-transferable vote” means a ballot paper –

- (a) on which no second or subsequent preference is recorded for a continuing candidate, or
- (b) which is excluded by the returning officer under rule stv44(4) below,

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

- (a) “first preference” means the figure “1” or any mark or word which clearly indicates a first (or only) preference,
- (b) “next available preference” means a preference which is the second, or as the case may be, subsequent preference recorded in consecutive order for a continuing candidate (any candidate who is deemed to be elected or is excluded thereby being ignored); and
- (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 stv41 below,

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

“stage of the count” means –

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

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

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

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

“transfer value” means the value of a transferred vote calculated in accordance with paragraph (4) or (7) of rule stv42 below.

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

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

- (a) count and record the number of ballot papers that have been returned, and
- (b) count the votes according to the provisions in this Part of the rules.

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

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

Stv39. Rejected ballot papers – (1) Any ballot paper –

- (a) which does not bear the features that have been incorporated into the other ballot papers to prevent them from being reproduced,
- (b) on which the figure “1” standing alone is not placed so as to indicate a first preference for any candidate,
- (c) on which anything is written or marked by which the voter can be identified except the unique identifier, or
- (d) which is unmarked or rejected because of uncertainty,

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

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

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

fpp39. Rejected ballot papers – (1) Any ballot paper –

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

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

shall, subject to paragraphs (2) and (3) below, be rejected and not counted.

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

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

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

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

(4) The returning officer is to –

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

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

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

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

stv40. First stage – (1) The returning officer is to sort the ballot papers into parcels according to the candidates for whom the first preference votes are given.

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

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

stv41. The quota – (1) The returning officer is to divide the number of valid ballot papers by a number exceeding by one the number of members to be elected.

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

(3) At any stage of the count a candidate whose total votes equals or exceeds the quota shall be

deemed to be elected, except that any election where there is only one vacancy a candidate shall not be deemed to be elected until the procedure set out in paragraphs (1) to (3) of rule stv44 has been complied with.

stv42. Transfer of votes – (1) Where the number of first preference votes for any candidate exceeds the quota, the returning officer is to sort all the ballot papers on which first preference votes are given for that candidate into sub-parcels so that they are grouped –

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

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

(3) The returning officer is, in accordance with this rule and rule stv43 below, to transfer each sub-parcel of ballot papers referred to in paragraph (1)(a) to the candidate for whom the next available preference is given on those papers.

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

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

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

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

(6) The returning officer is, in accordance with this rule and rule stv43 below, to transfer each sub-parcel of ballot papers referred to in paragraph (5)(a) to the candidate for whom the next available preference is given on those papers.

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

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

whichever is the less.

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

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

(10) Transferable papers shall not be liable to be transferred where any surplus

or surpluses which, at a particular stage of the count, have not already been transferred, are –

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

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

stv43. Supplementary provisions on transfer – (1) If, at any stage of the count, two or more candidates have surpluses, the transferable papers of the candidate with the highest surplus shall be transferred first, and if –

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

(2) The returning officer shall, on each transfer of transferable papers under rule stv42 above –

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

(3) All ballot papers transferred under rule stv42 or stv44 shall be clearly marked, either individually or as a sub-parcel, so as to indicate the transfer value recorded at that time to each vote on that paper or, as the case may be, all the papers in that sub-parcel.

(4) Where a ballot paper is so marked that it is unclear to the returning officer at any stage of the count under rule stv42 or stv44 for which candidate the next preference is recorded, the returning officer shall treat any vote on that ballot paper as a non-transferable vote; and votes on a ballot paper shall be so treated where, for example, the names of two or more candidates (whether continuing candidates or not) are so marked that, in the opinion of the returning officer, the same order of preference is indicated or the numerical sequence is broken.

stv44. Exclusion of candidates – (1) If—

- (a) all transferable papers which under the provisions of rule stv42 above (including that

rule as applied by paragraph (11) below) and this rule are required to be transferred, have been transferred, and

- (b) subject to rule stv45 below, one or more vacancies remain to be filled,

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

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

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

(3) The returning officer shall, in accordance with this rule and rule stv43 above, transfer each sub-paragraph of ballot papers referred to in paragraph (2)(a) above to the candidate for whom the next available preference is given on those papers.

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

(5) If, subject to rule stv45 below, one or more vacancies still remain to be filled, the returning officer shall then sort the transferable papers, if any, which had been transferred to any candidate excluded under paragraph (1) above into sub-parcels according to their transfer value.

(6) The returning officer shall transfer those papers in the sub-paragraph of transferable papers with the highest transfer value to the continuing candidates in

accordance with the next available preferences given on those papers (thereby passing over candidates who are deemed to be elected or are excluded).

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

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

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

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

- (a) record –
- (i) the total value of votes, or
- (ii) the total transfer value of votes transferred to each candidate,
- (b) add that total to the previous total of votes recorded for each candidate and record the new total,
- (c) record the value of non-transferable votes and add that value to the previous non-

transferable votes total, and

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

(11) If after a transfer of votes under any provision of this rule, a candidate has a surplus, that surplus shall be dealt with in accordance with paragraphs (5) to (10) of rule stv42 and rule stv43.

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

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

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

stv45. Filling of last vacancies – (1) Where the number of continuing candidates is equal to the number of vacancies remaining unfilled the continuing candidates shall thereupon be deemed to be elected.

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

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

stv46. Order of election of candidates – (1) The order in which candidates whose votes equal or exceed the quota are deemed to be elected shall be the order in which their respective surpluses were transferred, or would have been transferred but for rule stv42(10) above.

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

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

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

fpp46. Equality of votes – Where, after the counting of votes is completed, an equality of votes is found to exist between any candidates and the addition of a vote would entitle any of those candidates to be declared elected, the returning officer is to decide between those candidates by a lot, and proceed as if the candidate on whom the lot falls had received an additional vote.

Part 7 – Final proceedings in contested and uncontested elections

fpp47. Declaration of result for contested elections – (1) In a contested election, when the result of the poll has been ascertained, the returning officer is to –

- (a) declare the candidate or candidates whom more votes have been given than for the other candidates, up to the number of vacancies to be filled on the board 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 Guy's and St Thomas' 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 fpp39(5),

available on request.

stv47. Declaration of result for contested elections – (1) In a contested election, when the result of the poll has been ascertained, the returning officer is to—

- (a) declare the candidates who are deemed to be elected under Part 6 of these rules as elected,
- (b) give notice of the name of each candidate who he or she has declared elected –
 - (i) where the election is held under a proposed constitution pursuant to powers conferred on the Guy's and St Thomas' 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 stv39(1),

available on request.

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

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

Part 8 – Disposal of documents

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

- (a) the counted ballot papers,
- (b) the ballot papers endorsed with “rejected in part”,
- (c) the rejected ballot papers, and
- (d) the statement of rejected ballot papers.

(2) The returning officer must not open the sealed packets of –

- (a) the disqualified documents, with the list of disqualified documents inside it,
- (b) the declarations of identity,
- (c) the list of spoilt ballot papers,
- (d) the list of lost ballot papers,
- (e) the list of eligible voters, and
- (f) the list of tendered ballot papers.

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

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

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

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

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

- (b) any envelopes addressed to eligible voters are returned as undelivered too late to be resent, or
- (c) any applications for replacement ballot papers are made too late to enable new ballot papers to be issued,

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

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

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

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

53. Application for inspection of certain documents relating to an election – (1) The corporation may not allow the inspection of, or the opening of any sealed packet containing –

- (a) any rejected ballot papers, including ballot papers rejected in part,
- (b) any disqualified documents, or the list of disqualified documents,
- (c) any counted ballot papers,
- (d) any declarations of identity, or
- (e) the list of eligible voters,

by any person without the consent of the regulator.

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

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

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

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

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

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

- (b) and making the documents available for inspection, the corporation,

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

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

Part 9 – Death of a candidate during a contested election

fpp54. Countermand or abandonment of poll on death of candidate – (1) If, at a contested election, proof is given to the returning officer's satisfaction before the result of the election is declared that one of the persons named or to be named as a candidate has died, then the returning officer is to

- (a) countermand notice of the poll, or, if ballot papers have been issued, direct that the poll be abandoned within that constituency or class, and
 (b) order a new election, on a date to be appointed by him or her in consultation with the corporation, within the period of 40 days, computed in accordance with rule 3 of these rules, beginning with the day that the poll was countermanded or abandoned.

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

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

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

(5) The returning officer is to –

- (a) count and record the number of ballot papers that have been received, and
 (b) seal up the ballot papers into packets, along with the records of the number of ballot papers.

(6) The returning officer is to endorse on each packet a description of –

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

(7) Once the documents relating to the poll have been sealed up and endorsed pursuant to paragraphs (4) to (6), the returning officer is to deliver them to the chairman of the corporation, and rules 52 and 53 are to apply.

stv54. Countermand or abandonment of poll on death of candidate – (1) If, at a contested election, proof is given to the returning officer's satisfaction before the result of the election is declared that one of the persons named or to be named as a candidate has died, then the returning officer is to

–

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

(2) The ballot papers which have preferences recorded for the candidate who has died are to be sealed with the other counted ballot papers pursuant to rule 49(1)(a).

Part 10 – Election expenses and publicity

Election expenses

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

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

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

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

- (a) incur any expenses or make a payment (of whatever nature) for the purposes of a candidate's election, whether on that candidate's behalf or otherwise, or
- (b) give a candidate or his or her family any money or property (whether as

a gift, donation, loan, or otherwise) to meet or contribute to expenses incurred by or on behalf of the candidate for the purposes of an election.

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

Publicity

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

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

as it considers necessary.

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

- (a) objective, balanced and fair,
- (b) equivalent in size and content for all candidates,
- (c) compiled and distributed in consultation with all of the candidates standing for election, and
- (d) must not seek to promote or procure the election of a specific candidate or candidates, at the expense of the electoral prospects of one or more other candidates.

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

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

(2) The information must consist of –

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

60. Meaning of “for the purposes of an election” - (1) In this Part, the phrase “for the purposes of an election” means with a view to, or otherwise in connection with, promoting or procuring a candidate’s election, including the prejudicing of another candidate’s electoral prospects; and the phrase “for the purposes of a candidate’s election” is to be construed accordingly.

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

Part 11 – Questioning elections and the consequence of irregularities

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

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

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

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

(4) The application must –

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

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

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

- a. The regulator shall delegate the determination of an application to a person or persons to be nominated for the purpose of the regulator.
- b. The determination by the person or persons nominated in accordance with Rule 61(7) shall be binding on and shall be given effect by the corporation, the applicant and the members of the constituency (or class within a constituency) including all the candidates for the election to which the application relates.
- c. The regulator may prescribe rules of procedure for the determination of an application including costs.

Part 12 – Miscellaneous

62. Secrecy – (1) The following persons –

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

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

- (i) the name of any member of the corporation who has or has not been given a ballot paper or who has or has not voted,
- (ii) the unique identifier on any ballot paper,
- (iii) the candidate(s) for whom any member has voted.

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

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

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

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

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

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

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

(b) the return of the ballot papers and declarations of identity,

the returning officer may extend the time between the publication of the notice of the poll and the close of the poll, with the agreement of the regulator.

ANNEX 4:**DECLARATION OF ELIGIBILITY TO VOTE AT A MEETING OF THE COUNCIL OF GOVERNORS****GUY'S & ST THOMAS' NHS FOUNDATION TRUST**

1. Before Governors elected by the Patients' Constituency or the Public Constituency or the Staff Constituency are legally entitled to vote at a meeting of the Trust's Council of Governors you must make a declaration of your qualification to vote as Member of the Membership Constituency for which the election is being held and that you are not prevented from being a Governor by Paragraph 8 of Schedule 7 to the National Health Service Act 2006.
2. Paragraph 8 of Schedule 7 to the 2006 Act provides that you may not become or continue as a Governor of the Trust if you have been:
 - 2.1 adjudged bankrupt or your estate has been sequestrated and, in either case you have not been discharged;
 - 2.2 you have made a composition or arrangement with, or entered into a Trust Deed for your creditors and you have not been discharged in respect of it; or
 - 2.3 you are a person who has in the preceding five years has been convicted in the British Islands of any offence for which 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 you;
3. There are other circumstances in which you may not become or continue as a Member of the Trust or a Governor. Before voting at a Council of Governor's meeting you should satisfy yourself as to your eligibility and that you are not disqualified. A copy of the Constitution can be [obtained from/is available for inspection] [insert Trust contact details]
4. If you are in any doubt as to your eligibility please contact [Trust contact details].
5. Would you therefore please complete the information below and return it to the Trust in accordance with the instructions given in the final paragraph.
6. If you are elected by the Patients' Constituency or the Public Constituency this document constitutes your formal declaration for the purposes of Section 60(3) of the 2006 Act.
7. **IT IS A CRIMINAL OFFENCE** if you make a declaration which you know to be false in some material respect or if you make such a declaration recklessly which is false in some material respect.
8. ***If you wish to vote at a meeting of the Council of Governors this form must be returned to [Trust contact details] not later than [insert date] otherwise you will not be eligible to vote after [insert date].***

1. My Name	
2. My Address	
3. My Trust Membership Number	
4. The Membership Constituency of which I am a Member is as appears opposite <i>(insert full name of Membership Constituency of which you are a Member)</i>	
5. The details of why I am entitled to be a Member of that Class are as appears opposite <i>(insert details)</i>	
<p>6. I declare</p> <p>(a). that the above statements are correct to the best of my knowledge and belief and</p> <p>(b). I remain eligible to be a Member of the above Membership Constituency and am not otherwise disqualified from membership of the Trust</p> <p>(c). I am not prevented from being a Governor by Paragraph 8 of Schedule 7 to the National Health Service Act 2006</p>	
Signature	Date

ANNEX 5:**CODE OF CONDUCT FOR GOVERNORS**

As a member of the Guy's and St Thomas' NHS Foundation Trust Council of Governors I will:

- Actively support the values of the Trust in developing as a successful Foundation Trust;
- Act in the best interests of the Trust at all times;
- Contribute to the work of the Council of Governors in order for it to fulfil its role as defined in the Trust's constitution;
- Recognise that the Council of Governors exercises collective decision-making on behalf of all patients, local public and staff;
- Acknowledge that, other than when attending meetings and events as a Governor, I have no rights or privileges over any other member of the Foundation Trust;
- Recognise that the Council of Governors has no managerial role within the Foundation Trust;
- Value and respect Governor colleagues, and all members of Foundation Trust staff I come in contact with;
- Respect the confidentiality of information I receive in my role as a Governor;
- Act with integrity and objectivity and in the best interests of the Foundation Trust, without any expectation of personal benefit;
- Attend meetings of the Council of Governors, members' meetings and training events, on a regular basis, in order to carry out my role;
- Conduct myself in a manner that reflects positively on the Foundation Trust, acting as an ambassador for the Trust;
- Abide by the Trust's policies and procedures.

In undertaking the role of Governor of this Foundation Trust:

- I note the Foundation Trust is an apolitical organisation;
- If I am a member of any trade union, political party or other organisation, I recognise that should I be elected, I will not be representing those organisations (or the views of those organisations) but will be representing the Membership Constituency (patient, public or staff) that elected me;
- I will be honest and act with integrity and probity at all times;
- I will respect and treat with dignity and fairness, the public, patients, relatives, carers, NHS staff and partners in other agencies;
- I will seek to ensure that my fellow Governors are valued as colleagues and that judgements about colleagues are consistent, fair and unbiased and are properly founded;
- I will accept responsibility for my own actions;
- I will show my commitment to working as a team member by working with all my colleagues in the NHS and the wider community;

- I will seek to ensure that no one is discriminated against because of their religion, belief, race, colour, gender, marital status, disability, sexual orientation, age, social and economic status or national origin;
- I will at all times, comply with the Trust's Standing Orders and Standing Financial Instructions;
- I will respect the confidentiality of individual patients and comply with the confidentiality policies of the Foundation Trust;
- I will not make, permit or knowingly allow to be made, any untrue or misleading statement relating to my own duties or the functions of the Foundation Trust;
- I will seek to ensure that the best interests of the public and patients are upheld in decision making and that decisions are not improperly influenced by gifts or inducements;
- I will support and assist the Accountable Officer of the Foundation Trust in his responsibility to answer to Monitor, commissioners of health services and the public in terms of fully and faithfully declaring and explaining the use of resources and the performance of the local NHS in putting national policy into practice and delivering targets;
- I will uphold the seven principles of public life as detailed by the Nolan Committee.

The Seven Principles of Public Life (Nolan)

Selflessness

Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

Integrity

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organisations that might influence them in the performance of their official duties.

Objectivity

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

Accountability

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

Openness

Holders of public office should be as open as possible about all the decisions and actions they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

Honesty

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

Leadership

Holders of public office should promote and support these principles by leadership and example.

These principles apply to all aspects of public life. The Nolan Committee has set them out here for the benefit of all who serve the public in any way.

ANNEX 6:**DISPUTE RESOLUTION PROCEDURE**

1. In the event of a dispute with:
 - (a) a Member or prospective Member in relation to matters of eligibility or disqualification;
or
 - (b) a Governor or prospective Governor in relation to matters of eligibility, disqualification or termination of tenure,

the individual concerned shall be invited to an informal meeting with the Secretary or with one or more Directors to discuss the matters in dispute, any Director(s) to be determined by mutual agreement of the Secretary and the individual concerned. If not resolved, the dispute shall be referred to a panel consisting of the Chairman, at least one elected Governor and either the Secretary or at least one Director. The decision of that panel shall be final.

2. A dispute arising between the Council of Governors and the Board of Directors shall be referred to the joint consideration of a panel consisting of the Chairman, the Chief Executive and two Governors nominated by the Council of Governors. The Chairman shall not participate in the nomination of Governors to this panel. The panel shall use all reasonable endeavours to facilitate the resolution of the dispute.
3. In the event that a resolution is not reached under paragraph 2 of this Dispute Resolution Procedure the panel constituted pursuant to that paragraph shall consult the Council of Governors and Board of Directors to determine whether the matter should be referred to mediation, in which case, an external mediator shall be appointed by the Centre for Dispute Resolution or such other organisation as the panel shall agree.
4. Nothing in this Dispute Resolution Procedure shall preclude any party from referring any dispute to a court of competent jurisdiction in England and Wales.