

**HEART OF ENGLAND NHS FOUNDATION TRUST**

**(A Public Benefit Corporation)**

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**Constitution**

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Amended by resolution of the Council of Governors (previously known as the  
Governors Consultative Council) dated 6 March 2006  
And by authority of Monitor dated 28 March 2006

Amended by resolution of the Council of Governors dated 12 March 2007  
And by authority of Monitor dated 14 May 2007

Amended by resolution of the Council of Governors dated 18 September 2012  
And by authority of Monitor dated 16 November 2012

Amended by resolution of the Board of Directors dated 5 March 2013  
Amended by resolution of the Council of Governors dated 21 March 2013  
*All amendments made to the Constitution to reflect the National Health Service Act 2006, as  
amended by the Health and Social Care Act 2012, (other than those relating to Constituency and  
Governor Changes described below), came into effect on 1 April 2013.  
With effect from the result of the transitional Governor elections in July 2013, the constituencies  
and their Governor representatives shall be as set out in this Constitution.*

Amended by resolution of the Board of Directors dated 7 May 2013  
Amended by resolution of the Council of Governors dated 22 May 2013

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## 1. DEFINITIONS

In this Constitution: -

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| <b>"the 2006 Act"</b>                  | means the National Health Service Act 2006;   |
| <b>"the 2012 Act"</b>                  | means the Health and Social Care Act 2012;  |
| <b>"the Accounting Officer"</b>        | is the person who from time to time discharges the functions specified in paragraph 25(5) of Schedule 7 to the 2006 Act;  |
| <b>"Advisor"</b>                       | means an individual formally appointed in accordance with paragraph 8.9 of this Constitution by resolution of the Council of Governors to advise the Council of Governors at meetings of the Council of Governors in an advisory and non-voting capacity; |
| <b>"Annual Members' Meeting"</b>       | is defined in paragraph 7A of this Constitution;  |
| <b>"Area of the Trust"</b>             | means any area specified in Annex 1 as the area for a public constituency, each of which is an electoral area for the purposes of local government elections in England and Wales or an area consisting of two or more such electoral areas;              |
| <b>"Board of Directors"</b>            | means the board of directors comprising of statutory directors of the Trust for the purposes of the 2006 Act and as constituted in accordance with paragraph 9.2 of this Constitution;  |
| <b>"Clinical Support Staff Class"</b>  | means the Staff Class defined in paragraph 7.3.6 of this Constitution;  |
| <b>"Constitution"</b>                  | means this constitution and all annexes to it;  |
| <b>"Council of Governors" or "CoG"</b> | means the council of governors of the Trust as constituted in accordance with paragraph 8.2 of this Constitution;   |
| <b>"Deputy Lead Governor"</b>          | means a Governor appointed by the Council of Governors who is responsible for supporting the Lead Governor in his/her role and assuming the responsibilities of the Lead Governor whenever he/she is unavailable;   |
| <b>"Director"</b>                      | means a director on the Board of Directors;   |
| <b>"Dispute Resolution Procedure"</b>  | means the dispute resolution procedure set out in paragraph 19 of this Constitution;  |
| <b>"Election Scheme"</b>               | means the NHS Foundation Trust's (CoG) Election Rules set out in Annex 2 (as amended from time to time);  |
| <b>"Financial Year"</b>                | means each successive period of twelve months beginning on 1st April;   |
| <b>"Governor"</b>                      | means a governor on the Council of Governors and either being a Public Governor, Staff Governor or Stakeholder Governor;  |
| <b>"Lead Governor"</b>                 | means the Governor appointed by the Council of Governors to lead the Council of Governors and to communicate directly with Monitor in certain circumstances;  |

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| <b>"Licence"</b>                           | means the licence granted to the Trust by Monitor pursuant to the 2012 Act;   |
| <b>"Local Authority Governor"</b>          | means a Governor appointed by a local authority specified in paragraph 8.2.3 of this Constitution whose area includes the whole or part of an Area of the Trust;  |
| <b>"Medical and Dental Staff Class"</b>    | means the Staff Class defined in paragraph 7.3.4 of this Constitution;  |
| <b>"Member"</b>                            | means a member of the Trust;  |
| <b>"Monitor"</b>                           | is the body corporate known as Monitor, as provided by Section 61 of the 2012 Act;  |
| <b>"Non Clinical Support Staff Class"</b>  | means the Staff Class defined in paragraph 7.3.7 of this Constitution;  |
| <b>"Nursing and Midwifery Staff Class"</b> | means the Staff Class defined in paragraph 7.3.5 of this Constitution;  |
| <b>"Partnership Governor"</b>              | means a Governor appointed by a partnership organisation specified in paragraph 8.2.4 of this Constitution;   |
| <b>"Public Constituency"</b>               | those Members who live in an Area of the Trust are referred to collectively as a Public Constituency;   |
| <b>"Public Governor"</b>                   | means a Governor elected by the Members of a Public Constituency;   |
| <b>"Register of Members"</b>               | means the register of Members which the Trust is required to have and maintain under paragraph 20 Schedule 7 to the 2006 Act;   |
| <b>"Secretary"</b>                         | means the Company Secretary of the Trust or any other person appointed to perform the duties of the secretary of the Trust, including a joint, assistant or deputy secretary;   |
| <b>"Staff Class"</b>                       | means a class of the Staff Constituency as specified in paragraph 7.3.3 of this Constitution;   |
| <b>"Staff Constituency"</b>                | means the part of the Trust's membership consisting of the staff of the Trust and other persons as more particularly provided for in paragraph 7.3 of this Constitution, and which is divided into the Staff Classes; |
| <b>"Staff Governor"</b>                    | means a Governor elected by the Members of the relevant Staff Class of the Staff Constituency;  |
| <b>"Stakeholder Governors"</b>             | means Local Authority Governors, the University Governor and the Partnership Governors;   |
| <b>"the Trust"</b>                         | means Heart of England NHS Foundation Trust;  |
| <b>"University Governor"</b>               | means a Governor appointed by the University of Birmingham;   |
| <b>"Year"</b>                              | means the 12 months commencing 1 April;   |
| <b>"12 month period"</b>                   | means any Year.   |

Unless otherwise stated, words or expressions contained in this Constitution shall bear the same meaning as in the National Health Service Act 2006 (as amended from time to time).

Words importing the masculine gender only shall include the feminine gender and vice versa; words importing the singular shall import the plural and vice-versa.

References in this Constitution to legislation include all amendments, replacements or re-enactments made, and all regulations, statutory guidance or directions.

## **2. NAME**

2.1 The name of this Trust is Heart of England NHS Foundation Trust.

## **3. PRINCIPAL PURPOSE**

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

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

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

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

3.3.2 the promotion and protection of public health.

## **4. OTHER PURPOSES**

4.1 The Trust may also carry on activities other than those mentioned in paragraph 3 of this Constitution subject to any restrictions in its Licence for the purpose of making additional income available in order to better carry on its principal purpose.

## **5. POWERS**

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

## **6. FRAMEWORK**

6.1 The Trust shall have two membership constituencies, a Council of Governors and a Board of Directors. The Board of Directors will exercise all the powers of the Trust. Any of these powers may be delegated to a committee of Directors or to an executive Director. The membership constituencies, or a class within them, will elect certain of their Members to the CoG in accordance with this Constitution and other members of the CoG will be appointed by various bodies which are also set out in this Constitution. The CoG will fulfil those functions imposed on it by the 2006 Act and by this Constitution.

## **7. MEMBERSHIP AND CONSTITUENCIES**

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

7.1.1 a Public Constituency; and

7.1.2 a Staff Constituency.

7.1A An individual, who is a member of a constituency, or of a class within a constituency, may not while membership of that constituency or class continues, be a member of any other constituency or class.

7.1B An individual who satisfies the criteria for membership of the Staff Constituency may not become or continue as a member of any constituency other than the Staff Constituency and may not become or continue as a member of more than one Staff Class.

## 7.2 Public Constituency

7.2.1 Members who are members of a Public Constituency are to be individuals who:-

- (a) live in an Area of the Trust;
- (b) are not eligible to become a member of the Staff Constituency and who are not otherwise disqualified from membership under paragraph 7.5 of this Constitution;
- (c) have each made an application for membership to the Trust; and
- (d) are at least 16 years of age at the date of their application to become a Member under paragraph 7.2.1(c) of this Constitution.

7.2.2 The minimum number of Members in each Public Constituency shall be 100.

## 7.3 Staff Constituency

7.3.1 Members of the Staff Constituency shall be individuals 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; and
- (c) are not disqualified from membership under paragraph 7.5 of this Constitution; and
- (d) have been invited by the Trust to become a member of the Staff Constituency and a member of the appropriate Staff Class within the Staff Constituency without an application being made and have not informed the Trust that they do not wish to do so, or who have made an application to the Trust to become a member of the Staff Constituency and appropriate Staff Class within the Staff Constituency and whose name has been entered on the Register of Members; and
- (e) are at least 16 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(d) of this Constitution.

7.3.2 Chapter 1 of Part 14 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(b) of this Constitution.

7.3.3 The Staff Constituency is to be divided into four Staff Classes as follows:

- (a) the Medical and Dental Staff Class;
- (b) the Nursing and Midwifery Staff Class;
- (c) the Clinical Support Staff Class; and

- (d) the Non-Clinical Support Staff Class.
- 7.3.4 The members of the Medical and Dental Staff Class are individuals who are members of the Staff Constituency 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(d) of this Constitution and who at all times remain employed by the Trust in that capacity or who for the purposes of their substantive role must hold a valid registration relevant to this Staff Class.
- 7.3.5 The members of the Nursing and Midwifery Staff Class are individuals 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 individuals who are health care assistants and (in the case of all such individuals) who are employed by the Trust in that capacity at the date of their invitation or application (as the case may be) under paragraph 7.3.1(d) of this Constitution and who at all times remain employed by the Trust in that capacity or who for the purposes of their substantive role must hold a valid registration relevant to this Staff Class.
- 7.3.6 The members of the Clinical Support Staff Class are individuals who are members of the Staff Constituency 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(d) of this Constitution and who at all times remain employed by the Trust in that capacity or who for the purposes of their substantive role must hold a valid registration relevant to this Staff Class.
- 7.3.7 The members of the Non Clinical Support Staff Class are individuals who are members of the Staff Constituency, who do not come within paragraphs 7.3.4, 7.3.5 or 7.3.6 of this Constitution including ancillary, administrative, or management staff or who are designated by the Trust from time to time as eligible to be members of another Staff Class for the purposes of this paragraph of this Constitution having regard to the relevant definitions applicable at that time.
- 7.3.8 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.
- 7.4 Not Used
- 7.5 **Disqualification from membership**
- 7.5.1 An individual shall not become or continue as a Member if:
- (a) he/she is or becomes ineligible under paragraphs 7.2 or 7.3 of this Constitution to be a Member; or

- (b) the CoG resolves by two thirds of the members of the CoG present and voting at a meeting convened for that purpose for reasonable cause that his/her so doing would or would be likely to:
  - (i) prejudice or impede 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
  - (ii) adversely affect public confidence in the goods or services provided by the Trust; or
  - (iii) 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
  - (iv) otherwise bring the Trust into disrepute.

7.5.2 Examples (without limitation) of behaviour by individuals which may lead to disqualification under one or more of the grounds in paragraph 7.5.1(b) of this Constitution will include making vexatious complaints and verbally or physically assaulting any staff, patient or visitor of the Trust in contravention of the Trust's policy of zero tolerance of such matters (or any replacement thereof).

7.5.3 It shall be the responsibility of each Member to ensure his/her eligibility at all times and not the responsibility of the Trust to do so on his/her behalf. A Member who becomes aware of his/her 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.

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

7.5.5 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 the Secretary 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/her absolute discretion determine. Any representations received shall be considered by the Secretary and he/she 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.

7.5.6 If no representations are received within the said period of 28 days or other reasonable period (if any) permitted under the preceding paragraph of this Constitution, 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.

7.5.7 Upon a decision being made under paragraphs 7.5.1, 7.5.5 or 7.5.6 of this Constitution that the Member is ineligible for or disqualified from membership the Member's name shall be removed from the Register of Members forthwith and he/she shall thereupon cease to be a Member.

7.5.8 Any decision made under this paragraph 7.5 of this Constitution 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 19.1 of this Constitution.

## 7.6 Termination of membership

7.6.1 A Member shall cease to be a Member if he/she:-

- (a) resigns by notice to the Secretary;
- (b) ceases to fulfil the requirements of paragraph 7.2 or 7.3 of this Constitution;
- (c) is deemed to be disqualified by the application of paragraph 7.5 of this Constitution.

## 7.7 Voting at Governor elections

7.7.1 A Member may not vote at an election for a Public Governor unless within the specified period he/she has made a declaration in the specified form (as detailed more specifically in Rule 13 of Annex 2) stating the particulars of his/her qualification to vote as a Member of the Public Constituency. It is an offence under section 60(6) of the 2006 Act knowingly or recklessly to make such a declaration which is false in a material particular.

## 7A ANNUAL MEMBERS' MEETING

7A.1 The Trust shall hold an annual meeting of its Members ("Annual Members' Meeting"). The Annual Members Meeting shall be open to members of the public.

## 8. COUNCIL OF GOVERNORS - COMPOSITION

8.1 The Trust is to have a Council of Governors. It is to consist of Public Governors, Staff Governors, Local Authority Governors, a University Governor and Partnership Governors.

8.2 The CoG of the Trust is to include:

8.2.1 22 Public Governors the composition of which is specified in Column 4 of Annex 1;

8.2.2 5 Staff Governors comprising:

- (a) 1 Medical and Dental Staff Class Governor;
- (b) 2 Nursing and Midwifery Staff Class Governors;
- (c) 1 Clinical Support Staff Class Governor; and
- (d) 1 Non Clinical Support Staff Class Governor;

8.2.3 3 Local Authority Governors with one from Birmingham City Council, one from Solihull Metropolitan Borough Council and one joint appointment from Lichfield District Council and Tamworth Borough Council;

8.2.4 3 Partnership Governors with one from University of Central England, one from Aston University and one from Warwick University; and

8.2.5 1 University Governor from University of Birmingham.

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

8.3A The validity of any act of the Trust and/or the Council of Governors is not affected by any vacancy among the Governors or by any defect in the appointment of any Governor.

#### 8.4 **Public Governors**

8.4.1 Members of a Public Constituency may elect any of their number up to the number set out in Column 4 of Annex 1 to be a Public Governor.

8.4.2 Elections for Public Governors shall be conducted on a first past the post basis and in accordance with the Election Scheme. If contested, the election must be by secret ballot.

8.4.3 The Election Scheme, which should be interpreted as including the right to conduct elections electronically, includes the specified forms of and periods for declarations to be made by candidates standing for office and Members as a condition of voting and the process if the election is uncontested, is set out in Annex 2.

8.4.3A Elections will take place as at 1 April or such other date as the Secretary deems appropriate in any Financial Year.

8.4.4 A person may not stand for election to the CoG as a Public Governor unless, within the period specified in Annex 2 of this Constitution, he/she has made a declaration in the form specified in paragraph 13 of Annex 2 of his/her qualification to vote as a member of the Public Constituency for which the election is being held that he/she is a member of the Public Constituency and is not prevented from being a member of the CoG by paragraph 8 of Schedule 7 to the 2006 Act or paragraph 8.12 of this Constitution (disqualification). It is an offence to knowingly or recklessly make a declaration under section 60 of the 2006 Act which is false in a material particular.

8.4.5 Paragraph 7.7 (Voting at Governor elections) of this Constitution applies.

#### 8.5 **Staff Governors**

8.5.1 Members of a Staff Class of the Staff Constituency may elect any of their number to be a Staff Governor for that Staff Class up to the number set out in Column 4 of Annex 1.

8.5.2 Elections for Staff Governors shall be conducted on a first past the post basis and in accordance with the Election Scheme. If contested, the election must be by secret ballot.

8.5.3 The Election Scheme, which should be interpreted as including the right to conduct elections electronically, includes the specified forms of and periods for declarations to be made by candidates standing for office and Members as a condition of voting and the process if the election is uncontested, is set out in Annex 2.

8.5.4 Elections will take place as at 1 April or such other date as the Secretary deems appropriate in any Financial Year.

#### 8.6 **Local Authority Governors**

8.6.1 Each of the local authorities listed in paragraph 8.2.3 of this Constitution is authorised to appoint a single Local Authority Governor pursuant to a process agreed by the Trust.

#### 8.7 **Partnership Governors**

8.7.1 The Partnership Governors are to be appointed by the organisations listed in paragraph 8.2.4 of this Constitution in accordance with a process agreed with the Trust.

## 8.8 **University Governor**

8.8.1 The University Governor is to be appointed by the University of Birmingham, in accordance with the process agreed by the Trust.

## 8.9 **Advisors**

8.9.1 The Council of Governors may at its discretion appoint a maximum of four Advisors at any one time if more than half of the members of the Council of Governors present and voting at the meeting approve the appointment. For the avoidance of doubt, Advisors shall have no voting rights and shall act in an advisory capacity only.

## 8.10 **Council of Governors – tenure**

8.10.1 Governors -

- (a) may hold office for a period of up to three years;
- (b) are eligible for re-election or reappointment (as the case may be) at the end of that period;
- (c) shall serve no more than a maximum of nine years in office in aggregate;
- (d) will cease to hold office if they cease to be a member of the Public Constituency or Staff Constituency or if the organisation which appointed them withdraws its appointment of them (as the case may be).

8.10.2 Governors shall cease to be Governors if their tenure is terminated in accordance with paragraph 8.11 of this Constitution or they are disqualified by reason of paragraph 8.12 of this Constitution.

## 8.11 **Council of Governors - termination of tenure**

8.11.1 A Governor may resign from that office at any time during the term of that office by giving notice in writing to the Secretary and shall be deemed to have resigned if he does not confirm acceptance of his appointment within 14 days of being requested to do so by the Secretary.

8.11.2 If a Governor fails to attend any meeting of the CoG and meetings of any relevant committees to which he/she has agreed to be appointed for a consecutive period of 6 months the situation is to be reported to the next duly convened meeting of the CoG and thereupon his/her tenure of office shall be terminated immediately by the Council of Governors unless the Council of Governors is satisfied that-

- (a) the absence was due to a reasonable cause; and
- (b) the Governor will be able to start attending meetings of the Council of Governors and meetings of any relevant committees to which he/she has agreed to be appointed within such a period as the Council of Governors considers reasonable.

8.11.3 If the CoG determines by two thirds of the members of the CoG present and voting at a meeting convened for that purpose that a Public, or Staff Governor is at any time not representative of the constituency or Staff Class which they represent having regard to the manifesto of the Governor

then they may, acting reasonably, terminate, upon notice to him, his/her tenure of office.

8.11.4 If a Governor fails to attend a training session for Governors as recommended by the Trust and approved by the CoG, within 6 months of becoming a Governor, his/her tenure of office is to be reviewed at the next duly convened meeting of the CoG and thereupon his/her tenure of office is to be immediately terminated unless in the meantime the Governor has satisfied the CoG that:-

- (a) the absence was due to a reasonable cause; and
- (b) he/she will be able to attend a training session within such a period as they consider reasonable.

8.11.5 The CoG may resolve by two thirds of the CoG present and voting at a meeting convened for that purpose to terminate a Governor's tenure of office for reasonable cause if it considers that his/her continuing as a Governor 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 provisions 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.

The Governor concerned will have the opportunity to make representations on his/her own behalf to the CoG but shall not be entitled to vote on the issue of his/her removal.

8.11.6 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 at paragraph 19.1.2 of this Constitution within twenty-eight (28) days of the date upon which notice in writing of the Council of Governors' decision is given to the Governor.

## 8.12 Council of Governors - disqualification

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

- (a) he/she has not attained the age of 16;
- (b) in the case of a Staff Governor or Public Governor he/she ceases to be a member of the constituency or the class of the constituency he/she represents;
- (c) in the case of a Stakeholder Governor, the appointing organisation withdraws its appointment of him/her;
- (d) he/she has been adjudged bankrupt or his/her estate has been sequestrated and in either case he/she has not been discharged;
- (e) he/she has made a composition or arrangement with, or granted a trust deed for, his/her creditors and has not been discharged in respect of it;

- (f) he/she has within the preceding five years been convicted in the British Islands of any offence, or convicted of an offence which would, if committed in England and Wales constitute a criminal 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/her;
- (g) he/she has within the preceding two years been dismissed, otherwise than by reason of redundancy or ill health, from any paid employment with a health service body;
- (h) he/she is a person whose tenure of office as the chairman or as a member or director of a health service body has been terminated on the grounds that his/her appointment is not in the interests of the health service, or for non-disclosure of a pecuniary interest;
- (i) he/she is an executive or non-executive Director of the Trust, or a non-executive director, chairman, chief executive officer of another NHS foundation trust;
- (j) he/she has had his/her name removed from a relevant list of medical practitioners pursuant to paragraph 10 of the National Health Service (Performers List) Regulations 2004 or Section 151 of the 2006 Act (or similar provision elsewhere), and has not subsequently had his/her name included in such a list;
- (k) he/she is incapable by reason of mental disorder, illness or injury of managing and administering his/her property and affairs;
- (l) he/she is a registered sex offender pursuant to the Sex Offenders Act 2003;
- (m) he/she has failed to abide by the Trust's Code of Conduct and accountability and any Code of Values and principles in such form as the Trust may publish from time to time; and
- (n) he/she is or becomes a member of a Scrutiny Committee of any of the local authorities specified in paragraph 8.2.3 of this Constitution concerned with health matters.

8.12.2 Where a person has been elected or appointed to be a Governor and he/she becomes disqualified for appointment under paragraph 8.12.1 of this Constitution he/she shall notify the Secretary in writing of such disqualification.

8.12.3 If it comes to the notice of the Secretary at the time of his/her appointment or later that the Governor is so disqualified, he/she shall immediately declare that the person in question is disqualified and notify him/her in writing to that effect. Upon receipt of any such notification, that person's tenure of office as Governor, if any, shall be terminated and he/she shall cease to act as a Governor. Any Governor may refer any dispute he/she may have with regard to that decision to the Dispute Resolution Procedure at paragraph 19 of this Constitution.

## 8.13 Council of Governors - Vacancies

8.13.1 Where a Governor's membership of the CoG ceases for one of the reasons set out in paragraph 8.11 or 8.12 of this Constitution, Public Governors and Staff Governors shall be replaced in accordance with paragraphs 8.13.2 to 8.13.4 of this Constitution. Stakeholder Governors shall be replaced in accordance with the processes of appointment agreed pursuant to paragraphs 8.6 to 8.8 of this Constitution.

- 8.13.2 Where an elected Governor ceases to hold office during his/her term of office the Secretary shall offer the candidate who secured the second highest number of votes in the last election for the constituency, or class of 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 (the "Reserve Governor"). If the vacancy is filled in this way the Reserve Governor shall be eligible to serve a maximum of nine years in office in aggregate (subject to re-election) in addition to the partial term served.
- 8.13.3 In the event that a Reserve Governor is not available the Secretary will call an election in accordance with the Election Scheme on the next 1 April or such other date as the Secretary deems appropriate, and 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 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. A Governor elected pursuant to an election held in accordance with this paragraph 8.13.3 of this Constitution may hold office for a period of between one and three years.
- 8.13.4 For the avoidance of doubt, each Governor serving at the date of adoption of this revised Constitution shall be eligible to serve a maximum of nine years in office in aggregate (subject to re-election) in addition to any partial term he/she may have served in assuming the vacant office of a retiring Governor.

#### 8.14 **Council of Governors – duties, roles and responsibilities**

- 8.14.1 The general duties and responsibilities of the CoG shall be:
- (a) to hold the non-executive Directors individually and collectively to account for the performance of the Board of Directors;
  - (b) to represent the interests of the members of the Trust as a whole and the interests of the public;
  - (c) to 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 Licence;
  - (d) to 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;
  - (e) to review annually the extent to which the Trust is meeting its objective of delivering high quality services; and
  - (f) to work with the Board of Directors on such other matters for the benefit of the Trust as may be agreed between them.
- 8.14.2 The specific rights and duties of the CoG are:
- (a) in a General Meeting to:
    - (i) appoint or remove the Chairman and the other non-executive Directors of the Trust. The removal of the Chairman and a non-executive Director shall require the approval of three quarters of the total number of Governors;

- (ii) approve the appointment of the Chief Executive of the Trust by the non-executive Directors;
  - (iii) decide the remuneration and allowances and the other terms and conditions of office of the non-executive Directors;
  - (iv) appoint or remove the Trust's auditor;
  - (v) receive and consider the Trust's annual accounts, any auditors reports on those annual accounts and the annual report from the Board of Directors;
  - (vi) appoint the Advisors; and
  - (vii) appoint one of the non-executive Directors to be Vice Chairman of the Trust;
- (b) to be consulted by the Board of Directors regarding the information to be given to Monitor as to the Trust's forward planning in respect of each Financial Year and to give their views to the Board of Directors for the purposes of the preparation by the Board of Directors of any document containing such information which is to be given to Monitor;
  - (c) to respond as appropriate when consulted by the Board of Directors;
  - (d) to require one or more Directors to attend a meeting of the Council of Governors for the purpose of obtaining information about the Trust's performance of its functions or the Directors' performance of their duties (and deciding whether to propose a vote on the Trust or Directors' performance);
  - (e) to approve any merger, acquisition, separation or dissolution application in respect of the Trust before the application is made to Monitor and the entering into of any significant transactions; and
  - (f) to exercise such others powers and to discharge such other duties as may be conferred on the CoG under this Constitution.

#### 8.15 **Council of Governors - expenses**

- 8.15.1 The Trust may pay travelling and other expenses to Governors at such rates as it decides. Aggregated details are to be published in the Trust's annual report.
- 8.15.2 The remuneration and allowances for non-executive Directors set by the Governors are also to be published in the Annual Report.

#### 8.16 **Council of Governors - remuneration**

- 8.16.1 Governors are not to receive remuneration.

#### 8.17 **Council of Governors - meetings of Governors**

- 8.17.1 At any meeting of the Council of Governors, the Chairman of the Trust, if present, shall preside. If the Chairman is absent from the meeting the Vice Chairman of the Trust, if there is one and he/she is present, shall preside. If the Chairman and the Vice Chairman of the Trust are absent such other non-executive Director as shall be available shall preside at the meeting.

- 8.17.2 Meetings of the CoG are to be open to members of the public unless the CoG resolves to exclude the public (for either the whole or part of the proceedings) where it considers that publicity would be prejudicial to the Trust by reason of the confidential nature of the business to be transacted or for other exceptional reasons stated in the resolution.
- 8.17.3 For the purposes of 8.17.2 of this Constitution and without limitation the CoG may treat the following as matters of a confidential nature:
- (a) any matter arising from a contract of employment with the Trust;
  - (b) any matter which involves the consideration of confidential information held by the Trust;
  - (c) commercial matters;
  - (d) legal matters;
  - (e) actual or anticipated litigation, including any arbitration or dispute resolution process; and
  - (f) recommendations or advice from sources other than the Board of Directors and any committee or sub-committee referred to in this Constitution.
- 8.17.4 The CoG is to meet at least four times in each Financial Year.
- 8.17.5 The CoG is to adopt its own standing orders for its practice and procedure, in particular for its procedure at meetings (including general meetings) as appropriate.
- 8.17.6 A Governor elected to the CoG by the Public Constituency may not vote at a meeting of the CoG unless he/she has made a declaration in the period commencing with the date of the publicised nomination date and ending with the date of the relevant election for which he/she has made his/her nomination, in the form specified in the paragraph of this Constitution below stating which constituency or class he/she is a member of and is not prevented from being a member of the CoG pursuant to paragraph 8 of Schedule 7 to the 2006 Act.
- 8.17.7 The form referred to in paragraph 8.17.6 of this Constitution is more particularly described in Rule 13 of the Election Scheme.
- 8.17.8 For the purposes of obtaining information about the Trust's performance of its functions or the Directors' performance of their duties (and deciding whether to propose a vote on the Trust's or Directors' performance), the Council of Governors may require one or more of the Directors to attend a meeting.
- 8.17A Council of Governors – referral to the Panel**
- 8.17A.1 In this paragraph of this Constitution, the Panel means a panel of persons appointed by Monitor to which a governor of an NHS foundation trust may refer a question as to whether the trust has failed or is failing:
- (a) to act in accordance with its constitution; or
  - (b) to act in accordance with provision made by or under Chapter 5 of the 2006 Act.
- 8.17A.2 A Governor may refer a question to the Panel only if more than half of the members of the Council of Governors voting approve the referral.



## 8.18 **Council of Governors - committees and sub-committees**

8.18.1 The CoG may appoint committees consisting of its members to assist it in carrying out its functions. A committee appointed under this paragraph of this Constitution may appoint a sub-committee.

8.18.2 These committees or sub-committees may call upon outside advisers to help them in their tasks.

## 8.19 **Council of Governors - conflicts of interest of Governors**

8.19.1 If a Governor has a pecuniary interest, whether direct or indirect, in any contract or proposed contract or other matter which is under consideration by the CoG, he/she shall disclose that to the CoG as soon as he/she is aware of it. The CoG shall adopt Standing Orders specifying arrangements for excluding Governors from discussion or consideration of the contract or other matter as appropriate.

## 9. **BOARD OF DIRECTORS – COMPOSITION**

9.1 The Trust is to have a Board of Directors. It is to consist of executive and non-executive Directors.

9.2 The Board of Directors is to include (subject always to at least half of the total number of Directors (excluding the Chairman) being non-executive Directors):-

9.2.1 the following non-executive Directors:-

- (a) a chairman; and
- (b) no fewer than five nor more than eight other non-executive Directors; and

9.2.2 the following executive Directors

- (a) a Chief Executive (and Accounting Officer),
- (b) a Finance Director; and
- (c) no fewer than three nor more than five other executive Directors, at least one of whom is a registered medical practitioner (within the meaning of the Medical Act 1983) or a registered dentist (within the meaning of the Dentists Act 1984) and one of whom is to be a registered nurse or registered midwife.

## 9.3 **Board of Directors – qualification for appointment as a non-executive Director**

9.3.1 Only a Member of the Public Constituency or an individual exercising functions for the purposes of the University of Birmingham and in each case not being disqualified by virtue of paragraph 9.6 of this Constitution is eligible for appointment as a non-executive Director.

## 9.4 **Board of Directors – appointment and removal of Chairman and other non-executive Directors**

9.4.1 The Council of Governors at a general meeting of the Council of Governors shall appoint or remove the Chairman and the other non-executive Directors.

9.4.2 Removal of the Chairman or another non-executive Director shall require the approval of three-quarters of the members of the Council of Governors.

- 9.4.3 The CoG shall establish a committee consisting of some or all Governors to be called the Appointments Committee to consider candidates for appointment as non-executive Directors as and when vacancies arise against an agreed person specification and in accordance with a process of open competition. The Appointments Committee will be advised by a recognised human resources external expert or internal expert approved by the Chairman. The Appointments Committee will shortlist those candidates they wish to interview and conduct interviews with the candidates or seek the support of an external human resources expert to do so and thereafter make their selection to recommend for appointment. This recommendation for potential candidates for appointment as Chairman or other non-executive Director will be put to the CoG.
- 9.4.4 Non-Executive Directors may be recommended by the Appointments Committee for reappointment at the end of any specified term of office other than by a process of open competition but having regard to their performance and ability to contribute to the Board of Directors in the light of the knowledge, skills and experience required. The recommendation for potential re-appointment as Chairman or other non-executive Director shall be put to the CoG.
- 9.4.5 The validity of any act of the Trust is not affected by any vacancy among the Directors or by any defect in the appointment of any Director.

#### 9.5 **Board of Directors - tenure of office**

- 9.5.1 The Chairman and the non-executive Directors are to be appointed for a period of office in accordance with the terms and conditions of office decided by the CoG at a general meeting. No non-executive Director (including the Chairman) shall be appointed to that office for a total period which exceeds nine years in aggregate.
- 9.5.2 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 decided by the relevant committee of non-executive Directors.

#### 9.6 **Board of Directors - Disqualification**

- 9.6.1 A person may not be a Director if:-
- (a) he/she has been adjudged bankrupt or his/her estate has been sequestrated and in either case he/she has not been discharged;
  - (b) he/she has made a composition or arrangement with, or granted a trust deed for, his/her creditors and has not been discharged in respect of it;
  - (c) he/she has within the preceding five years been convicted in the British Islands of any offence, or convicted of an offence which would, if committed in England and Wales constitute a criminal 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;
  - (d) in the case of a non-executive Director, he/she no longer satisfies paragraph 9.3 of this Constitution;
  - (e) he/she 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/her appointment is not in the interests of public service, or for non-disclosure of a pecuniary interest;

- (f) he/she has had his/her 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/her name included in such a list;
- (g) he/she has within the preceding two years been dismissed, otherwise than by reason of redundancy or ill health from any paid employment with a health service body.

#### 9.6A **Board of Directors – general duty**

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

#### 9.7 **Board of Directors - Roles and responsibilities**

- 9.7.1 All the powers of the Trust are to be exercisable by the Board of Directors on its behalf.
- 9.7.2 Any of those powers may be delegated to a committee of Directors or to an executive Director.
- 9.7.3 A committee of non-executive Directors established as an audit committee is to monitor, review and carry out such other functions as are appropriate.
- 9.7.4 The non-executive Directors shall appoint the Chief Executive (and Accounting Officer). The appointment of a Chief Executive (but not the removal) shall require the approval of the Council of Governors.
- 9.7.5 A committee consisting of the Chairman, the Chief Executive (and Accounting Officer) and the other non-executive Directors shall appoint or remove the executive Directors.
- 9.7.6 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.
- 9.7.7 The functions of the Trust under paragraph 15.5 of this Constitution are delegated to the Chief Executive as Accounting Officer.
- 9.7.8 The Trust shall have a Secretary who may be an employee. The Secretary may not be a Governor, or the Chief Executive or the Finance Director. The Secretary shall be accountable to the Chief Executive and their functions shall be as listed in his/her job description. The Secretary shall be appointed and removed by the Appointments Committee of the Board of Directors.
- 9.7.9 The Directors shall review the provisions, and the effect thereof, of this Constitution with the intent of determining, in the interests of the Trust, whether any proposal shall be submitted to the CoG for amendment to this Constitution which amendment shall be made in accordance with paragraph 20 of this Constitution.

### 10. **BOARD OF DIRECTORS - MEETINGS**

- 10.1 Meetings of the Board of Directors shall be open to members of the public. Members of the public may be excluded from a meeting or part of a meeting for special reasons.
- 10.2 Before holding a meeting, the Board of Directors must send a copy of the agenda of the meeting to the Council of Governors. As soon as practicable after holding a

meeting, the Board of Directors must send a copy of the minutes of the meeting to the Council of Governors.

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

## 11. BOARD OF DIRECTORS - CONFLICTS OF INTEREST OF DIRECTORS

- 11.1 The duties that a Director has by virtue of being a Director include in particular:
- 11.1.1 a duty to avoid a situation in which the Director has (or can have) a direct or indirect interest that conflicts (or possibly may conflict) with the interests of the Trust;
  - 11.1.2 a duty not to accept a benefit from a third party by reason of being a Director or doing (or not doing) anything in that capacity.
- 11.2 The duty referred to in sub-paragraph 11.1.1 of this Constitution is not infringed if:
- 11.2.1 the situation cannot reasonably be regarded as likely to give rise to a conflict of interest, or
  - 11.2.2 the matter has been authorised in accordance with this Constitution.
- 11.2A The duty referred to in sub-paragraph 11.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- 11.3 In sub-paragraph 11.1.2 of this Constitution, "third party" means a person other than:
- 11.3.1 the Trust; or
  - 11.3.2 a person acting on its behalf.
- 11.4 If a Director has in any way a direct or indirect interest in a proposed transaction or arrangement with the Trust, the Director must declare the nature and extent of that interest to the other Directors.
- 11.5 If a declaration under this paragraph of this Constitution proves to be, or becomes, inaccurate or incomplete, a further declaration must be made.
- 11.6 Any declaration required by this paragraph of this Constitution must be made before the Trust enters into the transaction or arrangement.
- 11.7 This paragraph of this Constitution does not require a declaration of an interest of which the Director is not aware or where the Director is not aware of the transaction or arrangement in question.
- 11.8 A Director need not declare an interest:
- 11.8.1 if it cannot reasonably be regarded as likely to give rise to a conflict of interest;
  - 11.8.2 if, or to the extent that, the Directors are already aware of it;
  - 11.8.3 if, or to the extent that, it concerns terms of the Director's appointment that have been or are to be considered:
    - (a) by a meeting of the Board of Directors;
    - (b) or by a committee of the Directors appointed for the purpose under this Constitution.

- 11.8.4 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 is to have:-
- 12.1.1 a Register of Members showing, in respect of each Member, the constituency and where there are classes within it, the class to which he/she belongs;
  - 12.1.2 a register of members of the CoG;
  - 12.1.3 a register of interests of Governors;
  - 12.1.4 a register of Directors;
  - 12.1.5 a register of interests of the Directors.
- 12.2 The Secretary or his/her nominee shall:-
- 12.2.1 remove from the Register of Members any Member who is no longer eligible to be a Member or indicates in writing that they no longer wish to be a Member or upon receipt of a notice to that effect that the Member has died;
  - 12.2.2 admit to the register of members of the Council of Governors the name and constituency of those Members who have been elected or appointed as a Governor of the Trust;
  - 12.2.3 remove from the register of members of the Council of Governors those Governors who have not been re-elected or who have had their sponsorship withdrawn, notice having been given to the Secretary.
  - 12.2.4 maintain the respective registers of interests of Directors and Governors and undertake a review of the same at least once in every Year by notice to that effect to all Directors and Governors.
- 12.3 The Trust shall make the registers specified in paragraph 12.1 of this Constitution available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.
- 12.4 The Trust shall not make any part of its registers available for inspection by members of the public which shows details of any Member, if he so requests.
- 12.5 So far as the registers are required to be made available:-
- 12.5.1 they are to be available free of charge at all reasonable times,
  - 12.5.2 a person who requests a copy of or extract from the registers is to be provided with a copy or extract.
- 12.6 If the person requesting a copy or extract is not a Member, the Trust may impose a reasonable charge for providing the copy or extract.

## 13. PUBLIC DOCUMENTS

- 13.1 The following documents of the Trust are to be available for inspection by members of the public free of charge at all reasonable times:

- 13.1.1 a copy of the current Constitution;
  - 13.1.2 a copy of the latest annual accounts and of any report of the auditor on them; and
  - 13.1.3 a copy of the latest annual report.
- 13.2 The Trust shall also make the following documents relating to a special administration of the Trust available for inspection by members of the public free of charge at all reasonable times:
- 13.2.1 a copy of any order made under section 65D (appointment of trust special administrator), 65J (power to extend time), 65K (action following Secretary of State's rejection of final report), 65L (trusts coming out of administration) or 65LA (trusts to be dissolved) of the 2006 Act;
  - 13.2.2 a copy of any report laid under section 65D (appointment of trust special administrator) of the 2006 Act;
  - 13.2.3 a copy of any information published under section 65D (appointment of trust special administrator) of the 2006 Act;
  - 13.2.4 a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act;
  - 13.2.5 a copy of any statement provided under section 65F (administrator's draft report) of the 2006 Act;
  - 13.2.6 a copy of any notice published under section 65F (administrator's draft report), 65G (consultation plan), 65H (consultation requirements), 65J (power to extend time), 65KA (Monitor's decision), 65KB (Secretary of State's response to Monitor's decision), 65KC (action following Secretary of State's rejection of final report) or 65KD (Secretary of State's response to re-submitted final report) of the 2006 Act;
  - 13.2.7 a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act;
  - 13.2.8 a copy of any final report published under section 65I (administrator's final report) of the 2006 Act;
  - 13.2.9 a copy of any statement published under section 65J (power to extend time) or 65KC (action following Secretary of State's rejection of final report) of the 2006 Act;
  - 13.2.10 a copy of any information published under section 65M (replacement of trust special administrator) of the 2006 Act.
- 13.3 Any person who requests it is to be provided with a copy or extract from any of the above documents.
- 13.4 If the person requesting a copy or extract is not a Member, the Trust may impose a reasonable charge for providing the copy or extract.

## 14. AUDITOR

- 14.1 The Trust shall have an auditor and shall provide the auditor with every facility and all information which he/she may reasonably require for the purposes of his/her functions under Chapter 5 of Part 2 of the 2006 Act.
- 14.2 A person may only be appointed auditor if he/she (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 Appointment and removal of the auditor by the Council of Governors is covered in paragraph 8.14.2(iv) of this Constitution, and monitoring of the auditor's functions by a committee of non-executive Directors is covered in paragraph 9.7.3 of this Constitution.
- 14.4 The auditor may not also be the Trust's internal auditor.
- 14.5 An auditor may not be appointed for in excess of five years without seeking formal reappointment by the Council of Governors.
- 14.6 An officer of the Audit Commission may be appointed with the agreement of the Audit Commission to act as auditor.
- 14.7 The auditor shall carry out his/her duties in accordance with Schedule 10 to the 2006 Act.

## 15. ACCOUNTS

- 15.1 The Trust must keep proper accounts and proper records in relation to the accounts.
- 15.2 Monitor may with the approval of the Secretary of State give directions to the Trust as to the content and form of its accounts.
- 15.3 The accounts are to be audited by the Trust's auditor.
- 15.4 The following documents will be made available to the Comptroller and Auditor General for examination at his/her request:-
- 15.4.1 the accounts;
  - 15.4.2 the records relating to them; and
  - 15.4.3 any report of the auditor on them.
- 15.5 The Trust shall prepare in respect of each Financial Year annual accounts in such form and within such timescales as Monitor may with the approval of the Secretary of State direct.

## 16. ANNUAL REPORTS, FORWARD PLANS AND NON-NHS WORK

- 16.1 The Trust shall prepare annual reports and send them to Monitor.
- 16.2 The reports are to give information on
- 16.2.1 any steps taken by the Trust to secure that (taken as a whole) the actual membership of any Public Constituency is representative of those eligible for such membership;
  - 16.2.2 any occasions in the period to which the report relates on which the Council of Governors exercised its powers under paragraph 8.17.8 of this Constitution;
  - 16.2.3 the Trust's policy on pay and on the work of the committee of non-executive Directors established pursuant to paragraph 9.7.6 of this Constitution and such other procedures as the Trust has on pay;
  - 16.2.4 the remuneration of the Directors and on the expenses of the Governors and Directors;
  - 16.2.5 the impact of income received by the Trust otherwise than from the provision of goods and services for the purposes of the health service in England has had on the provision by the Trust of goods and services for those purposes; and

- 16.2.6 any other information Monitor requires.
- 16.3 The Trust is to 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;
  - 16.3.3 the periods to which the reports are to relate.
- 16.4 The Trust is to give information as to its forward planning in respect of each Financial Year to Monitor. This information is to be prepared by the Directors, who must have regard to the views of the CoG when doing so.
- 16.5 Each forward plan must include information about:-
  - 16.5.1 the activities other than the provision of goods and services for the purposes of the health service in England that the Trust proposes to carry on, and
  - 16.5.2 the income it expects to receive from doing so.
- 16.6 Where a forward plan contains a proposal that the Trust carry on an activity of a kind mentioned in sub-paragraph 16.5.1 of this Constitution the Council of Governors must
  - 16.6.1 determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfillment by the Trust of its principal purpose or the performance of its other functions, and
  - 16.6.2 notify the Directors of its determination.
- 16.7 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 activities other than the provision of goods and services for the purposes of the health service in England if more than half of the members of the Council of Governors voting approve its implementation.

## **16A PRESENTATION OF THE ANNUAL ACCOUNTS AND REPORTS TO THE GOVERNORS AND MEMBERS**

- 16A.1 The following documents are to be presented to the Council of Governors at a general meeting of the Council of Governors:
  - 16A.1.1 the annual accounts;
  - 16A.1.2 any report of the auditor on them; and
  - 16A.1.3 the annual report.
- 16A.2 The documents shall also be presented to the Members of the Trust at the Annual Members' Meeting by at least one member of the Board of Directors in attendance.
- 16A.2 The Trust may combine a meeting of the Council of Governors convened for the purposes of sub-paragraph 16A.1 of this Constitution with the Annual Members' Meeting.

## **17. INDEMNITY**

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

## 18. INSTRUMENTS ETC.

- 18.1 A document purporting to be duly executed under the Trust's seal or to be signed on its behalf is to be received in evidence and, unless the contrary is proved, taken to be so executed or signed.
- 18.2 The Trust is to have a seal, but this is not to be affixed except under the authority of the Board of Directors

## 19. DISPUTE RESOLUTION PROCEDURES

- 19.1 In the event of a dispute with:
- 19.1.1 a Member or prospective Member in relation to matters of eligibility or disqualification; or
- 19.1.2 a Governor or prospective Governor in relation to matters of eligibility, disqualification or termination of tenure,

the individual shall have a right of appeal to a panel consisting of the Chairman, Lead Governor and Deputy Lead Governor or, if the Lead Governor and Deputy Lead Governor has an interest or is not able to attend, such other persons as the Chairman deems (in his absolute discretion) to be appropriate. In the absence of the Chairman, the Vice Chairman shall act as the Chairman of the appeal panel. Subject to paragraph 19.1A of this Constitution, the outcome reached by the appeal panel shall be final.

- 19.1A If the appeal panel upholds a decision of the Council of Governors to terminate a Governor's tenure of office pursuant to paragraph 8.11 of this Constitution or remove a Member pursuant to paragraph 7.5.1 of this Constitution, that outcome shall be final. To the extent that the appeal panel conclude that it is appropriate for the Council of Governors to reconsider a decision to terminate a Governor's tenure of office or remove a Member, the Chairman will refer the appeal panel's findings back to the Council of Governors who shall re-vote on its decision to terminate a Governor's tenure of office or remove a Member (taking the appeal panel's findings into consideration) by resolving by two thirds of the CoG present and voting at a meeting convened for that purpose.
- 19.2 Disputes between the Board of Directors and the CoG are to be resolved in accordance with Annex 3.

## 20. AMENDMENT OF THE CONSTITUTION

- 20.1 The Trust may make amendments to this Constitution only if:
- 20.1.1 more than half of the members of the Council of Governors voting approve the amendments; and
- 20.1.2 more than half of the members of the Board of Directors voting approve the amendments.
- 20.2 Amendments made under paragraph 20.1 of this Constitution take effect as soon as the conditions in that paragraph are satisfied, but the amendment has no effect in so far as this Constitution would, as a result of the amendment, not accord with Schedule 7 of the 2006 Act.
- 20.3 Where an amendment is made to this Constitution in relation to the powers or duties of the Council of Governors (or otherwise with respect to the role that the Council of Governors has as part of the Trust):

- 20.3.1 at least one member of the Council of Governors must attend the next Annual Members' Meeting and present the amendment; and
- 20.3.2 the Trust must give the Members an opportunity to vote on whether they approve the amendment.
- 20.4 If more than half the Members voting approve the amendment, the amendment continues to have effect; otherwise, it ceases to have effect and the Trust must take such steps as are necessary as a result.
- 20.5 Amendments by the Trust of its Constitution are to be notified to Monitor. For the avoidance of doubt, Monitor's functions do not include a power or duty to determine whether or not this Constitution, as a result of the amendments, accords with Schedule 7 of the 2006 Act.

**21. MERGERS, ACQUISITIONS, SEPARATIONS, DISSOLUTION AND SIGNIFICANT TRANSACTIONS**

- 21.1 The Trust may only apply for a merger, acquisitions, separation or dissolution with the approval of more than half of the members of the Council of Governors.
- 21.2 The Trust may enter into a significant transaction only if more than half of the members of the Council of Governors voting approve entering into the transaction.
- 21.3 "Significant transaction" means any transaction that the Board of Directors considers in its reasonable opinion to be significant.

## ANNEX 1

### Constituencies of the Trust

| <i>Constituency</i>        | <i>Area</i>   | <i>Minimum Number of Members</i> | <i>Number of Governors</i> |
|----------------------------|---|----------------------------------|----------------------------|
| Column 1                   | Column 2  | Column 3                         | Column 4                   |
| <b>Public Constituency</b> |   |                                  |                            |
| Erdington                  | As defined by Birmingham City Council                       | 100                              | 2                          |
| Hall Green                 | As defined by Birmingham City Council                       | 100                              | 2                          |
| Hodge Hill                 | As defined by Birmingham City Council                       | 100                              | 2                          |
| Perry Barr                 | As defined by Birmingham City Council                       | 100                              | 2                          |
| Sutton Coldfield           | As defined by Birmingham City Council                       | 100                              | 2                          |
| Yardley                    | As defined by Birmingham City Council                       | 100                              | 2                          |
| Solihull                   | As defined by Solihull Metropolitan Borough Council         | 300                              | 4                          |
| Tamworth                   | As defined by Tamworth Borough Council                      | 100                              | 2                          |
| South Staffordshire        | As defined by Lichfield District Council                    | 100                              | 2                          |
| Rest of England & Wales    | Any electoral areas of England and Wales not set out above. | 100                              | 2                          |
|                            |   |                                  | Total 22                   |

| <b>Staff Constituency</b>         |  |                                  |                            |
|-----------------------------------|--|----------------------------------|----------------------------|
| <i>Staff Class</i>                | <i>Eligible Members</i>                            | <i>Minimum Number of Members</i> | <i>Number of Governors</i> |
| Medical and Dental Staff Class    | As defined in paragraph 7.3.4 of this Constitution | 50                               | 1                          |
| Nursing and Midwifery Staff Class | As defined in paragraph 7.3.5 of this Constitution | 100                              | 2                          |
| Clinical Support Staff Class      | As defined in paragraph 7.3.6 of this Constitution | 100                              | 1                          |
| Non Clinical Support Staff Class  | As defined in paragraph 7.3.7 of this Constitution | 100                              | 1                          |

## **ANNEX 2**

### Model Election Rules

The Trust has adopted the Model Election Rules contained in this Annex. It will determine the result of elections using the First Past the Post option (fpp).

#### *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
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#### *Part 4 - Stages Common to Contested and Uncontested Elections*

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*Part 8 – Disposal of documents*

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- 50. Delivery of documents
- 51. Forwarding of documents received after close of the poll
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- 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 the Independent Regulator for NHS foundation trusts; 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.

| <b>Proceeding</b>  | <b>Time</b>  |
|--|--|
| Publication of notice of election  | Not later than the fortieth day before the day of the close of the poll.       |
| Final day for delivery of nomination 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 spoiled 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 paper

- (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-parcel of ballot papers referred to in paragraph (2)(a) above to the candidate for whom the next available preference is given on those papers.
- (4) The exclusion of a candidate, or of two or more candidates together, constitutes a further stage of the count.
- (5) If, subject to rule stv45 below, one or more vacancies still remain to be filled, the returning officer shall then sort the transferable papers, if any, which had been transferred to any candidate excluded under paragraph (1) above into sub-parcels according to their transfer value.
- (6) The returning officer shall transfer those papers in the sub-parcel of transferable papers with the highest transfer value to the continuing candidates in accordance with the next available preferences given on those papers (thereby passing over candidates who are deemed to be elected or are excluded).
- (7) The vote on each transferable paper transferred under paragraph (6) above shall be at the value at which that vote was received by the candidate excluded under paragraph (1) above.
- (8) Any papers on which no next available preferences have been expressed shall be set aside as non-transferable votes.

- (9) After the returning officer has completed the transfer of the ballot papers in the sub-parcel of ballot papers with the highest transfer value he or she shall proceed to transfer in the same way the sub-parcel of ballot papers with the next highest value and so on until he has dealt with each sub-parcel of a candidate excluded under paragraph (1) above.
- (10) The returning officer shall after each stage of the count completed under this rule—
- (a) record:-
    - (i) the total value of votes, or
    - (ii) the total transfer value of votes transferred to each candidate,
  - (b) add that total to the previous total of votes recorded for each candidate and record the new total,
  - (c) record the value of non-transferable votes and add that value to the previous non-transferable votes total, and
  - (d) compare:-
    - (i) the total number of votes then recorded for each candidate together with the total number of non-transferable votes, with
    - (ii) the recorded total of valid first preference votes.
- (11) If after a transfer of votes under any provision of this rule, a candidate has a surplus, that surplus shall be dealt with in accordance with paragraphs (5) to (10) of rule stv42 and rule stv43.
- (12) Where the total of the votes of the two or more lowest candidates, together with any surpluses not transferred, is less than the number of votes credited to the next lowest candidate, the returning officer shall in one operation exclude such two or more candidates.
- (13) If when a candidate has to be excluded under this rule, two or more candidates each have the same number of votes and are lowest-
- (a) regard shall be had to the total number of votes credited to those candidates at the earliest stage of the count at which they had an unequal number of votes and the candidate with the lowest number of votes at that stage shall be excluded, and
  - (b) where the number of votes credited to those candidates was equal at all stages, the returning officer shall decide between the candidates by lot and the candidate on whom the lot falls shall be excluded.

stv45. Filling of last vacancies

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

stv46. Order of election of candidates

- (1) The order in which candidates whose votes equal or exceed the quota are deemed to be elected shall be the order in which their respective surpluses were transferred, or would have been transferred but for rule stv42(10) above.
- (2) A candidate credited with a number of votes equal to, and not greater than, the quota shall, for the purposes of this rule, be regarded as having had the smallest surplus at the stage of the count at which he obtained the quota.
- (3) Where the surpluses of two or more candidates are equal and are not required to be transferred, regard shall be had to the total number of votes credited to such candidates at the earliest stage of the count at which they had an unequal number of votes and the surplus of the candidate who had the greatest number of votes at that stage shall be deemed to be the largest.
- (4) Where the number of votes credited to two or more candidates were equal at all stages of the count, the returning officer shall decide between them by lot and the candidate on whom the lot falls shall be deemed to have been elected first.

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

*Part 7 - Final proceedings in contested and uncontested elections*

fpp47. Declaration of result for contested elections

- (1) In a contested election, when the result of the poll has been ascertained, the returning officer is to:-
  - (a) declare the candidate or candidates whom more votes have been given than for the other candidates, up to the number of vacancies to be filled on the 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 [insert name] NHS Trust by section 33(4) of the 2006 Act, to the chairman of the NHS Trust, or
    - (ii) in any other case, to the chairman of the corporation; and
  - (c) give public notice of the name of each candidate whom he or she has declared elected.
- (2) The returning officer is to make:-
  - (a) the total number of votes given for each candidate (whether elected or not), and
  - (b) the number of rejected ballot papers under each of the headings in rule 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 [insert name] NHS Trust by section 33(4) of the 2006 Act, to the chairman of the NHS Trust, or
    - (ii) in any other case, to the chairman of the corporation, and
  - (c) give public notice of the name of each candidate who he or she has declared elected.
- (2) The returning officer is to make –
- (a) the number of first preference votes for each candidate whether elected or not,
  - (b) any transfer of votes,
  - (c) the total number of votes for each candidate at each stage of the count at which such transfer took place,
  - (d) the order in which the successful candidates were elected, and
  - (e) the number of rejected ballot papers under each of the headings in rule 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

- (c) 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 3

### Governors and Directors: Communication and Conflict

#### 1. Summary

This Annex 3 describes the processes intended to ensure a successful and constructive relationship between the CoG and the Board of Directors. It emphasises the importance of informal and formal communication, and confirms the formal arrangements for communication within the Trust. It suggests an approach to informal communications, and sets out the formal arrangements for resolving conflicts between the CoG and the Board of Directors.

#### 2. Informal Communications

Informal and frequent communication between the Governors and the Directors is an essential feature of a positive and constructive relationship designed to benefit the Trust and the services it provides.

The Chairman of the CoG and the Board of Directors will encourage informal methods of communication including:-

- ◆ Participation of the Board of Directors in the induction, orientation and training of Governors.
- ◆ Development of special interest links between non-executive Directors and Governors.
- ◆ Discussions between Governors and the Chairman, the Chief Executive or a Director, through the office of the Chief Executive or any other person appointed to perform the duties of the Chief Executive to the Board.
- ◆ Involvement in membership recruitment and briefings at public events organised by the Trust.

#### 3. Formal Communication

Some aspects of communication are defined by the constitutional roles and responsibilities of the CoG and the Board of Directors respectively. Communications initiated by the CoG, and intended for the Board of Directors, will be conducted as follows:-

- ◆ Specific requests by the CoG will be made through the Chairman, to the Board of Directors;
- ◆ Any Governor has the right to raise specific issues at a duly constituted meeting of the CoG through the Chairman. In the event of disagreement, two thirds of the Governors present must approve the request. The Chairman will raise the matter with the Board of Directors and provide the response to the CoG.
- ◆ Joint meetings will take place between the CoG and the Board of Directors as and when necessary.

The Board of Directors will request the Chairman to seek the views of the CoG:-

- ◆ on the Board of Directors proposal for the Strategic Direction, and the Annual Business Plan.
- ◆ on the Board of Directors proposals for developments.
- ◆ on Trust performance.
- ◆ on their involvement in service reviews and evaluation.
- ◆ on proposed changes, plans and developments for the Trust.

The following formal methods of communication will also be used:-

- ◆ Attendance by the Board of Directors at a meeting of the CoG.
- ◆ Provision of formal reports or presentations by executive Directors to a meeting of the CoG.



- ◆ Inclusion of appropriate minutes for information on the Agenda of a meeting of the CoG.
- ◆ Reporting the views of the CoG to the Board of Directors through the Chairman or Vice Chairman.

#### **4. Resolving Conflict**

The CoG and the Board of Directors must be committed to develop and maintain a constructive and positive relationship. The aim at all times is to resolve any potential or actual differences of opinion quickly, through discussion and negotiation.

If through informal efforts the Chairman cannot achieve resolution of a disagreement or conflict, the Chairman will follow the dispute resolution procedure described below. The aim is to resolve the matter at the first available opportunity, and only to follow this procedure if initial action fails to achieve resolution:

- a) The Chairman will call a Resolution Meeting of the members of the CoG and Board of Directors, to take place as soon as possible, but no later than twenty working days following the date of the request. The meeting must comprise two thirds of the membership of the CoG and two thirds of the membership of the Board of Directors. The meeting will be held in private in accordance with 8.17.2 and 8.17.3 of this Constitution. The Agenda and any papers for the meeting will be issued in accordance with the Council of Governors' standing orders. The aim of the meeting will be to achieve resolution of the conflict. The Chairman will have the right to appoint an independent facilitator to assist the process. Every effort must be made to reach agreement.
- b) If a Resolution Meeting of the members of the CoG and Board of Directors fails to resolve a conflict, the Board of Directors will decide the disputed matter.
- c) If following the formal Resolution Meeting, and the decision of the Board of Directors, the CoG considers that implementation of the decision will result in the Trust failing to comply with its Licence or the 2006 Act, the CoG will refer the specific issue of non-compliance to Monitor.

The right to call a Resolution Meeting rests with the following, in the sequence of escalation shown:

- a) The Chairman
- b) The Chief Executive
- c) Two thirds of the members of the CoG
- d) Two thirds of the members of the Board of Directors

## ANNEX 4

### Further provisions

Annex 4 contains further terms which form part of this Constitution"

#### 1. Title of "Director"

- 1.1 The Trust may confer on senior staff the title "Director" as an indication of their corporate responsibility within the Trust but such persons will not be executive Directors of the Trust for the purposes of the 2006 Act ("statutory Directors") unless they are members of the Board of Directors as defined by paragraph 9 of this Constitution. They will not have the voting rights of statutory Directors.

#### 2. Absent Directors

- 2.1 If:
- 2.1.1 an executive Director is temporarily unable to perform his/her duties due to illness or some other reason (the "Absent Director"); and
  - 2.1.2 the Board of Directors agree that it is inappropriate to terminate the Absent Director's term of office and appoint a replacement Director; and
  - 2.1.3 the Board of Directors agree that the duties of the Absent Director need to be carried out,
- the Appointments Committee of the Board of Directors may appoint an acting director as an additional director to carry out the Absent Director's duties temporarily. Where the acting director is being appointed to carry out the Chief Executive's duties, the Council of Governors will approve the appointment.
- 2.2 For the purposes of paragraph 2.1 of this Annex, the maximum number of Directors that may be appointed under paragraph 9.2.2(c) of the Constitution may be relaxed accordingly.
- 2.3 The acting Director will vacate office as soon as the Absent Director returns to office or, if earlier, the date on which the person entitled to appoint him under this paragraph of this Constitution notifies him that he/she is no longer to act as an acting director.
- 2.4 The acting director shall be an executive Director for the purposes of the 2006 Act. He shall be responsible for his/her own acts and defaults and he/she shall not be deemed to be the agent of the Absent Director.

#### 3. Vacant Positions

- 3.1 If:
- 3.1.1 an executive Director post is vacant ("Vacant Position"); and
  - 3.1.2 the Board of Directors agree that the Vacant Position needs to be filled by an interim post holder pending appointment of a permanent post holder, then the Appointments Committee of the Board of Directors may appoint a director as an interim director ("Interim Director") to fill the Vacant Position pending appointment of a permanent post holder.
  - 3.1.3 The Interim Director will vacate office on the appointment of a permanent post holder or, if earlier, the date on which the persons entitled to appoint him under this paragraph of this Constitution notifies him that he/she is no longer to act as an Interim Director.
- 3.2 The Interim Director shall be an executive Director for the purposes of the 2006 Act.

#### **4. Elections**

- 4.1 Elections shall not be invalidated by any administrative or clerical error on the part of the Trust or any acts or omissions of the returning officer acting in good faith on the basis of such error.
- 4.2 Notwithstanding any provision of the Election Rules, the Trust and the Returning Officer shall:
  - 4.2.1 not be obliged to send any information unless received by the Trust from the candidate;
  - 4.2.2 not be in breach of any obligation to include in any communication, or otherwise provide, information which is equivalent in size and content for all candidates if the information provided by one or more of the candidates does not so allow;
  - 4.2.3 have the right to edit or not publish any election statement if it exceeds the permitted number of words or because it contains statements which the Trust or the Returning Officer reasonably believes are factually inaccurate, offensive, libellous or unlawful and to indicate that the statement has been edited or not published with or without including the reasons therefor.