

Constitution of  
The Hillingdon Hospitals NHS Foundation Trust  
(A public benefit corporation)

## 1. Record of changes to the document

Version number	Amendment	Date of Change
Issue 2	<ul style="list-style-type: none"> <li>Annex 1: addition of 'Rest of England Public Constituency' with minimum of 40 members</li> <li>Annex 4: composition of the Council of Governors expanded to include a Governor to represent the 'Rest of England Public Constituency'</li> </ul>	21.11.11
Issue 3	<p>Changes to reflect sections of Health &amp; Social Care Act 2012 that take effect in October 2012:</p> <ul style="list-style-type: none"> <li>Principal purpose</li> <li>Accounts</li> <li>Forward plan</li> <li>Interpretation &amp; definition</li> </ul> <p>Changes to annex 9 in relation to appointment of Chairman and Non-Executive Directors</p>	11.12.12
Issue 4	<p>Amendments to reflect sections of Health &amp; Social Care Act 2012 that took effect on 1<sup>st</sup> April 2013, plus further amendments identified by Trust.</p> <p>Amended paragraphs: 7.2, 10, 12.3, 15, 16.2, 16.3, 18, 22.8, 23, 27, 31, 33, 38.2, 43, 46, 47, 48, 49, 50; and annexes 4, 6, 7, 8, 9.</p>	31.7.13

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## **1. Name**

The name of the foundation trust is The Hillingdon Hospitals NHS Foundation Trust (the trust).

## **2. Principal Purpose**

**2.1** The principal purpose of the trust is the provision of goods and services for the purposes of the health service in England.

**2.2** 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.

**2.3** The trust may provide goods and services for any purposes related to—

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

**2.3.2** the promotion and protection of public health.

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

## **3. Powers**

**3.1** The powers of the trust are set out in the 2006 Act.

**3.2** The powers of the trust shall be exercised by the Board of Directors on behalf of the trust.

**3.3** Any of these powers may be delegated to a committee of directors or to an executive director.

## **4. Membership and constituencies**

The trust shall have members, each of whom shall be a member of one of the following constituencies:

**4.1** A public constituency;

**4.2** A staff constituency.

## **5. Application for membership**

An individual who is eligible to become a member of the trust may do so on application to the trust.

## **6. Public constituency**

- 6.1** An individual who lives in an area specified in Annex 1 as an area for a public constituency may become or continue as a member of the trust.
- 6.2** Those individuals who live in an area specified as an area for any public constituency are referred to collectively as a Public Constituency.
- 6.3** The minimum number of members in each area for the Public Constituency is specified in Annex 1.

## **7. Staff constituency**

- 7.1** An individual who is employed by the trust under a contract of employment with the trust may become or continue as a member of the trust provided:
  - 7.1.1** He is employed by the trust under a contract of employment which has no fixed term or has a fixed term of at least 12 months; or
  - 7.1.2** He has been continuously employed by the trust under a contract of employment for at least 12 months.
- 7.2** Individuals who from time to time provide services to the trust under bank worker arrangements pursuant to which there is no relationship of mutual obligations are also eligible for staff membership, provided such individuals have been registered on the trust's bank under its worker arrangements for at least 12 months and continue to be registered.
- 7.3** Those individuals who are eligible for membership of the trust by reason of the previous provisions are referred to collectively as the Staff Constituency.
- 7.4** The Staff Constituency shall be divided into 4 descriptions of individuals who are eligible for membership of the Staff Constituency, each description of individuals being specified within Annex 2 and being referred to as a class within the Staff Constituency.

**7.5** The minimum number of members in each class of the Staff Constituency is specified in Annex 2.

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

**8.1** An individual who is:

**8.1.1** eligible to become a member of the Staff Constituency; and is

**8.1.2** invited by the trust to become a member of the Staff Constituency,

shall become a member of the trust as a member of the Staff Constituency and the appropriate class within the Staff Constituency without an application being made, unless he informs the trust that he does not wish to do so.

**9. Restriction on membership**

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

**9.2** An individual who satisfies the criteria for membership of the Staff Constituency may not become or continue as a member of any constituency other than the Staff Constituency.

**9.3** Further provisions as to the circumstances in which an individual may not become or continue as a member of the trust are set out in Annex 9 – Further Provisions.

**10. Annual Members' Meeting**

**10.1** 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.

**11. Council of Governors – composition**

**11.1** The trust is to have a Council of Governors, which shall comprise both elected and appointed governors.

**11.2** The composition of the Council of Governors is specified in Annex 4.



**11.3** The members of the Council of Governors, other than the appointed members, shall be chosen by election by their constituency or where there are classes within a constituency, by their class within that constituency. The number of governors to be elected by each constituency is specified in annex 4.

## **12. Council of Governors – election of governors**

**12.1** Elections for elected members of the Council of Governors shall be conducted in accordance with the Model Rules for Elections, as may be varied from time to time.

**12.2** The Model Rules for Elections, as may be varied from time to time, form part of this constitution and are attached at Annex 5.

**12.3** A variation of the Model Rules by the Department of Health shall not constitute a variation of the terms of this constitution for the purposes of paragraph 45 of the constitution (amendment of the constitution).

**12.4** An election, if contested, shall be by secret ballot.

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

**13.1** An elected governor may hold office for a period of up to three years.

**13.2** An elected governor shall cease to hold office if he ceases to be a member of the constituency or class by which he was elected.

**13.3** An elected governor shall be eligible for re-election at the end of his term for a maximum of 3 terms (whether elected consecutively or otherwise).

**13.4** An appointed governor may hold office for a period of up to 3 years.

**13.5** An appointed governor shall cease to hold office if the appointing organisation withdraws its sponsorship of him.

**13.6** An appointed governor shall be eligible for re-appointment at the end of his term.

## **14. Council of Governors – disqualification and removal**

**14.1** The following may not become or continue as a member of the Council of Governors:

**14.1.1** A person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;

**14.1.2** A person who has made a composition or arrangement with or granted a trust deed for his creditors and has not been discharged in respect of it;

**14.1.3** A person who within the preceding five years has been convicted in the British Islands of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him.

**14.2** Governors must be at least 18 years of age at the date they are nominated for election or appointment.

**14.3** Further provisions as to the circumstances in which an individual may not become or continue as a member of the Council of Governors are set out in Annex 6.

**14.4** Provisions for the removal of a governor from the Council of Governors are set out in Annex 6.

## **15. Council of Governors – duties of governors**

**15.1** The general duties of the Council of Governors are –

**15.1.1** to hold the non-executive directors individually and collectively to account for the performance of the Board of Directors, and

**15.1.2** to represent the interests of the members of the trust as a whole and the interests of the public.

**15.2** The Trust must take steps to secure that the governors are equipped with the skills and knowledge they require in their capacity as such.

## **16. Council of Governors – meetings of governors**

- 16.1** The Chairman of the trust (i.e. the Chairman of the Board of Directors, appointed in accordance with the provisions of paragraph 25.1 or paragraph 26.1 below) or, in his absence, the Deputy Chairman (appointed in accordance with the provisions of paragraph 27 below), shall preside at meetings of the Council of Governors.
- 16.2** Meetings of the Council of Governors shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons.
- 16.3** For the purposes of obtaining information about the trust's performance of its functions or the directors' performance of their duties (and deciding whether to propose a vote on the trust's or directors' performance), the Council of Governors may require one or more of the directors to attend a meeting.

## **17. Council of Governors – standing orders**

The standing orders for the practice and procedure of the Council of Governors, as may be varied from time to time, are attached at Annex 7.

## **18. Council of Governors – referral to the Panel**

- 18.1** In this paragraph, 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—
- 18.1.1** to act in accordance with its constitution, or
- 18.1.2** to act in accordance with provision made by or under Chapter 5 of the 2006 Act.
- 18.2** 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.

## **19. Council of Governors – conflicts of interest of governors**

If a governor has a pecuniary, personal or family interest, whether that interest is actual or potential and whether that interest is direct or indirect, in any proposed contract or other matter which is under consideration or is to be considered by the Council of Governors, the governor shall disclose that interest to the members of the Council of Governors as soon as he becomes aware of it. The Standing Orders for the Council of Governors shall make

provision for the disclosure of interests and arrangements for the exclusion of a governor declaring any interest from any discussion or consideration of the matter in respect of which an interest has been disclosed.

## **20. Council of Governors – travel expenses**

The trust may pay travelling and other expenses to members of the Council of Governors at rates determined by the trust.

## **21. Council of Governors – further provisions**

Further provisions with respect to the Council of Governors are set out in Annex 6.

## **22. Board of Directors – composition**

**22.1** The trust is to have a Board of Directors, which shall comprise both executive and non-executive directors. At all times the number of non-executive directors, not to include the Chairman, must be greater than or equal to the number of executive directors.

**22.2** The Board of Directors is to comprise:

**22.2.1** A non-executive Chairman

**22.2.2** A maximum of 7 other non-executive directors;

and

**22.2.3** A maximum of 7 executive directors

**22.3** One of the executive directors shall be the Chief Executive.

**22.4** The Chief Executive shall be the Accounting Officer.

**22.5** One of the executive directors shall be the finance director.

**22.6** One of the executive directors is to be a registered medical practitioner or a registered dentist (within the meaning of the Dentists Act 1984).

**22.7** One of the executive directors is to be a registered nurse or a registered midwife.

**22.8** In line with paragraph 3 the authority to determine the size of the Board shall remain with the Board of Directors subject to the provisions of paragraph 22.

**23. 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 of the trust as a whole and for the public.

**24. Board of Directors – qualification for appointment as a non-executive director**

A person may be appointed as a non-executive director only if;

**24.1** He is a member of a Public Constituency, and

**24.2** He is not disqualified by virtue of paragraph 30 below

**25. Board of Directors – appointment and removal of chairman and other non-executive directors**

**25.1** The Governors at a general meeting of the Council of Governors shall appoint or remove the chairman of the trust and the other non-executive directors.

**25.2** Removal of the chairman or another non-executive director shall require the approval of three-quarters of the members of the Council of Governors.

**25.3** The initial chairman and the initial non-executive directors are to be appointed in accordance with paragraph 26 below.

**26. Board of Directors – appointment of initial chairman and initial other non-executive directors**

**26.1** The Chairman of The Hillingdon Hospital NHS trust shall be appointed as the initial Chairman of the trust if he wishes to be appointed.

**26.2** The power of the Council of Governors to appoint the other non-executive directors of the trust is to be exercised, so far as possible, by appointing as the initial non-executive directors of the trust any of the non-executive directors of The Hillingdon Hospital NHS Trust (other than the Chairman) who wish to be appointed.

**26.3** The criteria for qualification for appointment as a non-executive director set out in paragraph 24 above (other than disqualification by virtue of paragraph 30 below) do not apply to the appointment of the initial chairman and the initial other non-

executive directors in accordance with the procedures set out in this paragraph.

- 26.4** An individual appointed as the initial Chairman or as an initial non-executive director in accordance with the provision of this paragraph shall be appointed for the unexpired period of his term of office as Chairman or (as the case may be) non-executive director of the Applicant NHS Trust; but if, on appointment, that period is less than 12 months, he shall be appointed for 12 months.

**27. Board of Directors – appointment of the deputy chairman**

The Council of Governors at a general meeting of the Council of Governors shall appoint one of the non-executive directors as a deputy chairman in consultation with the Board of Directors.

**28. Board of Directors – appointment and removal of the Chief Executive and other executive directors**

- 28.1** The non-executive directors shall appoint or remove the Chief Executive.
- 28.2** The appointment of the Chief Executive shall require the approval of the Council of Governors.
- 28.3** The initial Chief Executive is to be appointed in accordance with paragraph 29 below.
- 28.4** A committee consisting of the Chairman, the Chief Executive and the other non-executive directors shall appoint or remove the other executive directors.

**29. Board of Directors – appointment and removal of initial Chief Executive**

- 29.1** The chief executive of the Applicant NHS Trust shall be appointed as the initial Chief Executive of the trust if he wishes to be appointed.
- 29.2** The appointment of the chief executive of the Applicant NHS Trust as the initial Chief Executive of the trust shall not require the approval of the Council of Governors.

**30. Board of Directors – disqualification**

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

- 30.1** A person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged.
- 30.2** A person who has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it.
- 30.3** A person who within the preceding five years has been convicted in the British Islands of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him.
- 30.4** A member of the Council of Governors.
- 30.5** A member of the Healthwatch Board (or any successor body in respect of patient engagement).
- 30.6** A spouse, partner, parent or child of a member of the Board of Directors.
- 30.7** A member of a local authority's Scrutiny Committee covering health matters.
- 30.8** A person who is the subject of an unexpired disqualification order made under the Company Directors Disqualification Act 1986.
- 30.9** A person whose tenure in office as a chair or as a member or director of a health service (whether National Health Service, private or independent care commissioner or provider) body has been terminated on the grounds that their appointment is not in the interests of the health service, non attendance at meetings, or for non-disclosure of a pecuniary interest.
- 30.10** A person who within the preceding two years has been dismissed, otherwise than by reasons of redundancy, from any paid employment with a health service body (whether National Health Service, private or independent care commissioner or provider) .
- 30.11** In the case of a non-executive director, a person who has refused without reasonable cause to fulfil any training requirement established by the Board of Directors.

- 30.12** A person who has refused to sign and deliver to the Secretary a statement in the form required by the Board of Directors confirming acceptance of the code of conduct for directors.
- 30.13** In the case of a non-executive director (other than the initial chairman and other non-executive directors appointed under paragraph 26 (if any)), a person who is no longer a member of the Public Constituency.
- 30.14** The Board of Directors may exercise its discretion to allow any individual to become or continue as a member of the Board of Directors in respect of any matter that would otherwise bar such membership under paragraph 30.10.

**31. Board of Directors – meetings**

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

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

The standing orders for the practice and procedure of the Board of Directors, as may be varied from time to time, are attached at Annex 8.

**33. Board of Directors – conflicts of interests of directors**

- 33.1** The duties that a director of the trust has by virtue of being a director include in particular –
- 33.1.1** A duty to avoid a situation in which the director has (or can have) a direct or indirect interest that conflicts (or possibly may conflict) with the interests of the trust.
- 33.1.2** A duty not to accept a benefit from a third party by reason of being a director or doing (or not doing) anything in that capacity.
- 33.2** The duty referred to in sub-paragraph 33.1.1 is not infringed if –
- 33.2.1** The situation cannot reasonably be regarded as likely to give rise to a conflict of interest, or



- 33.2.2** The matter has been authorised in accordance with the constitution.
- 33.3** The duty referred to in sub-paragraph 33.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- 33.4** In sub-paragraph 33.1.2, “third party” means a person other than –
- 33.4.1** The trust, or
- 33.4.2** A person acting on its behalf.
- 33.5** If a director of the trust has in any way a direct or indirect interest in a proposed transaction or arrangement with the trust, the director must declare the nature and extent of that interest to the other directors.
- 33.6** If a declaration under this paragraph proves to be, or becomes, inaccurate, incomplete, a further declaration must be made.
- 33.7** Any declaration required by this paragraph must be made before the trust enters into the transaction or arrangement.
- 33.8** This paragraph does not require a declaration of an interest of which the director is not aware or where the director is not aware of the transaction or arrangement in question.
- 33.9** A director need not declare an interest –
- 33.9.1** If it cannot reasonably be regarded as likely to give rise to a conflict of interest;
- 33.9.2** If, or to the extent that, the directors are already aware of it;
- 33.9.3** If, or to the extent that, it concerns terms of the director’s appointment that have been or are to be considered –
- 33.9.3.1** By a meeting of the Board of Directors, or
- 33.9.3.2** By a committee of the directors appointed for the purpose under the constitution.
- 33.10** A matter shall have been authorised for the purposes of paragraph 33.2.2 if:

- 33.10.1** The Board of Directors by majority disapplies the provision of the constitution which would otherwise prevent a director from being counted as participating in the decision-making process;
- 33.10.2** The director's interest cannot reasonably be regarded as likely to give rise to a conflict of interest; or
- 33.10.3** The director's conflict of interest arises from a permitted cause (as determined by the Board of Directors from time to time).

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

- 34.1** The Council of Governors at a general meeting of the Council of Governors shall decide the remuneration and allowances, and the other terms and conditions of office, of the Chairman and the other non-executive directors.
- 34.2** The trust shall establish a committee of not less than three non-executive directors to decide the remuneration and allowances, and the other terms and conditions of office, of the Chief Executive and other executive directors.

#### **35. Registers**

The trust shall have:

- 35.1** A register of members showing, in respect of each member, the constituency to which he belongs and, where there are classes within it, the class to which he belongs;
- 35.2** A register of members of the Council of Governors;
- 35.3** A register of interests of governors;
- 35.4** A register of directors; and
- 35.5** A register of interests of directors.

#### **36. Admission to and removal from the registers**

- 36.1** Any person entitled to be a Member who, as appropriate, applies or is invited to become a Member, shall have their name added to the register of Members. Such person's membership of the Trust shall

commence from the date of their name being added to the register of Members.

**36.2** Members will be removed from the register of Members if:

**36.2.1** the Member is no longer eligible or is disqualified;

**36.2.2** the Member is deceased.

**36.3** The register of Governors shall list the names of Governors, their category of membership of the Council of Governors and an address through which they may be contacted (which may be the Secretary).

**36.4** The register of interests of Governors shall contain the names of each Governor, whether he has declared any interests and, if so, the interests declared in accordance with this constitution or the standing orders for Governors.

**36.5** The register of Directors shall list the names of Directors, their capacity on the Board of Directors and an address through which they may be contacted (which may be the Secretary).

**36.6** The register of interests of Directors shall contain the names of each Director, whether he has declared any interests and, if so, the interests declared in accordance with this constitution or the standing orders for Directors.

## **37. Registers – inspection and copies**

**37.1** The trust shall make the registers specified in paragraph 34 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.

**37.2** The trust shall not make any part of its registers available for inspection by members of the public which shows details of any member of the trust, if the member so requests.

**37.3** So far as the registers are required to be made available:

**37.3.1** they are to be available for inspection free of charge at all reasonable times; and

**37.3.2** a person who requests a copy of or extract from the registers is to be provided with a copy or extract.

**37.4** If the person requesting a copy or extract is not a member of the trust, the trust may impose a reasonable charge for doing so.

## **38. Documents available for public inspection**

- 38.1** The trust shall make the following documents available for inspection by members of the public free of charge at all reasonable times;
- 38.1.1** A copy of the current constitution;
- 38.1.2** A copy of the latest annual accounts and of any report of the auditor on them;
- 38.1.3** A copy of the latest annual report;
- 38.2** 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:
- 38.2.1** A copy of any order made under section 65D (appointment of trust special administrator), 65J (power to extend time), 65KC (action following Secretary of State's rejection of final report), 65L (trusts coming out of administration) or 65LA (trusts to be dissolved) of the 2006 Act.
- 38.2.2** A copy of any report laid under section 65D (appointment of trust special administrator) of the 2006 Act.
- 38.2.3** A copy of any information published under section 65D (appointment of trust special administrator) of the 2006 Act.
- 38.2.4** A copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act.
- 38.2.5** A copy of any statement provided under section 65F (administrator's draft report) of the 2006 Act.
- 38.2.6** 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.

**38.2.7** A copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act.

**38.2.8** A copy of any final report published under section 65I (administrator's final report),

**38.2.9** 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.

**38.2.10** A copy of any information published under section 65M (replacement of trust special administrator) of the 2006 Act.

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

**38.4** If the person requesting a copy or extract is not a member of the trust, the trust may impose a reasonable charge for doing so.

## **39. Auditor**

**39.1** The trust shall have an auditor.

**39.2** The Council of Governors shall appoint or remove the auditor at a general meeting of the Council of Governors.

## **40. Audit committee**

The trust shall establish a committee of non-executive directors as an audit committee to perform such monitoring, reviewing and other functions as are appropriate.

## **41. Accounts**

**41.1** The trust shall keep proper accounts and proper records in relation to the accounts.

**41.2** Monitor may with the approval of the Secretary of State give directions to the trust as to the content and form of the accounts.

**41.3** The accounts are to be audited by the trust's auditor.

**41.4** The trust shall prepare in respect of each financial year annual accounts in such form as Monitor may with the approval of the Secretary of State direct.

- 41.5** The functions of the trust with respect to the preparation of the annual accounts shall be delegated to the Accounting Officer.

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

- 42.1** The trust shall prepare an Annual Report and send it to Monitor.
- 42.2** The trust shall give information as to its forward planning in respect of each financial year to Monitor.
- 42.3** The document containing the information with respect to forward planning (referred to above) shall be prepared by the directors.
- 42.4** In preparing the document, the directors shall have regard to the views of the Council of Governors.
- 42.5** Each forward plan must include information about –
- 42.5.1** 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
  - 42.5.2** the income it expects to receive from doing so.
- 42.6** Where a forward plan contains a proposal that the trust carry on an activity of a kind mentioned in sub-paragraph 42.5.1 the Council of Governors must –
- 42.6.1** 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
  - 42.6.2** notify the directors of the trust of its determination.
- 42.7** A trust which proposes to increase by 5% or more the proportion of its total income in any financial year attributable to activities other than the provision of goods and services for the purposes of the health service in England may implement the proposal only if more than half of the members of the Council of Governors of the trust voting approve its implementation.

## **43. Presentation of the annual accounts and reports to governors and members**

- 43.1** The following documents are to be presented to the Council of Governors at a general meeting of the Council of Governors:

**43.1.1** the annual accounts

**43.1.2** any report of the auditor on them

**42.1.3** the annual report.

**43.2** 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.

**43.3** The trust may combine a meeting of the Council of Governors convened for the purposes of sub-paragraph 43.1 with the Annual Members' Meeting.

#### **44. Instruments**

**44.1** The trust shall have a seal.

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

#### **45. Dispute resolution procedures**

The Board of Directors shall adopt such procedures and protocols in connection with the resolution of disputes between Members, Governors and Directors (and/or between the Trust and any such person) as it shall deem to be appropriate for the good governance of the Trust from time to time.

#### **46. Amendment of the constitution**

**46.1** The trust may make amendments of its constitution only if –

**46.1.1** More than half of the members of the Council of Governors of the trust voting approve the amendments, and

**46.1.2** More than half of the members of the Board of Directors of the trust voting approve the amendments.

**46.2** Amendments made under paragraph 46.1 take effect as soon as the conditions in that paragraph are satisfied, but the amendment has no effect in so far as the constitution would, as a result of the amendment, not accord with schedule 7 of the 2006 Act.

**46.3** Where an amendment is made to the constitution in relation 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) –

**46.3.1** At least one member of the Council of Governors must attend the next Annual Members' Meeting and present the amendment, and

**46.3.2** The trust must give the members an opportunity to vote on whether they approve the amendment.

**46.4** If more than half of the members voting approve the amendment, the amendment continues to have effect; otherwise, it ceases to have effect and the trust must take such steps as are necessary as a result.

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

## **47. Mergers etc. and significant transactions**

**47.1** The trust may only apply for merger, acquisition, separation or dissolution with the approval of more than half of the members of the Council of Governors.

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

**47.3** In paragraph 47.2, the following words have the following meanings:  
"Significant transaction" means a transaction which meets any one of the tests below:

**47.3.1** the fixed asset test; or

**47.3.2** the turnover test; or

**47.3.3** the gross capital test (relating to acquisitions or divestments)

The fixed asset test:

**47.3.4** is met if the assets which are the subject of the transaction exceed 25% of the fixed assets of the Trust.



The turnover test:

**47.3.5** is met if, following the completion of the relevant transaction, the income of the Trust will increase or decrease by more than 25%;

The gross capital test:

**47.3.6** is met if the gross capital of the company or business being acquired or divested represents more than 25% of the capital of the Trust following completion (where “gross capital” is the market value of the relevant company or business’s shares and debt securities, plus the excess of current liabilities over current assets, and the Trust’s capital as defined as its taxpayers’ equity in the latest published audited accounts).

**47.3.7** for the purposes of calculating the tests in this paragraph 47.3, figures used to classify assets and profits must be the figures shown in the latest published audited consolidated accounts.

**47.3.8** A transaction is any agreement (including an amendment to an agreement) entered into by the Trust in respect of the acquisition or disposal of a business, service, or asset. It does not include any contract the Trust may have from time to time with commissioners of NHS funded services.

## **48. Procedures and Protocols**

The Board of Directors shall adopt such procedures and protocols as it shall deem to be appropriate for the good governance of the trust from time to time.

## **49. Indemnity**

Members of the Board of Directors and Council of Governors 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 of their functions, save where they have acted recklessly. Any costs arising in this way will be met by the trust.

## **50. Interpretation and definitions**

**50.1** In this Constitution the following expressions shall have the following meanings assigned to them:

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

<b>“2012 Act”</b>	means the Health & Social Care Act 2012
<b>“Accounting Officer”</b>	means the person who from time to time discharges the functions specified in paragraph 25(5) of Schedule 7 to the 2006 Act.
<b>“Applicant NHS Trust”</b>	means The Hillingdon Hospital NHS Trust;
<b>“annual members’ meeting”</b>	is defined in paragraph 10 of the Constitution;
<b>“Appointed Member Representatives”</b>	means the Clinical Commissioning Group Member Representative, the Local Authority Member Representative and the Partnership Membership Representative;
<b>“Area of the Trust”</b>	means the area consisting of all the areas specified in Annex 1 as an area for a Public Constituency;
<b>“Board of Directors”</b>	means the Board of Directors of the Trust as constituted in accordance with this Constitution and referred to in Clause 22 of this Constitution and “Board” shall be construed accordingly;
<b>“Chairman”</b>	means the chairman of the Trust appointed in accordance with Clause 25 and 26 of this Constitution;
<b>“Chief Executive”</b>	means the Chief Executive (and Accounting Officer) of the Trust appointed in accordance with Clause 28 of this Constitution;
<b>“Constituencies”</b>	means the Public Constituencies and the Staff Constituency;
<b>“Constitution”</b>	means this constitution of The Hillingdon Hospitals NHS Foundation Trust;
<b>“Council of Governors”</b>	means the Council of Governors of the Trust as constituted in accordance with this Constitution;
<b>“Director”</b>	means a director on the Board of Directors;
<b>“Elected Governors”</b>	means those Governors elected by the public constituencies and the classes of

staff constituency;

- “Election Scheme”** means the election scheme and rules set out in Annex 4 and which are to be used in connection with the election of the Elected Governors;
- “Executive Director”** means an Executive Director of the Trust;
- “Financial Year”** means:  
(a) the period beginning with the date on which the Trust is authorised and ending with the next 31st March; and  
(b) each successive period of twelve months beginning with 1st April;
- “Initial Council of Governors”** means the first Council of Governors constituted under this Constitution;
- “Local Authority Governor”** means a Governor appointed by a local authority whose area includes the whole or part of the Area of the Trust;
- “Member”** means a member of the Trust;
- “Membership”** means membership of the Trust through being a Member of one of its constituencies;
- “Members’ Meetings”** means a meeting of the Members;
- “Monitor”** means the body corporate known as Monitor, as provided by Section 61 of the 2012 Act;
- “Model Election Rules”** means the model form rules for the conduct of elections published from time to time by the Department of Health and as currently set out in Annex 4;
- “the NHS Trust”** means the Applicant NHS Trust;
- “Partnership Organisations”** means those organisations designated as partnership organisations for the purposes of this Constitution specified in Annex 3;
- “Partnership Organisation Governor”** means a Governor appointed under this constitution by a partnership organisation;

<b>“Non-Executive Director”</b>	means a Non-Executive Director of the Trust;
<b>“Public Constituencies”</b>	means that part of the Trust’s membership consisting of Members living in the Area of the Trust;
<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;
<b>“Staff Classes”</b>	means the classes of the Staff Constituency as specified in Annex 2;
<b>“Staff Constituency”</b>	means (collectively) those members of the four classes comprising the staff constituency as specified in Annex 2;
<b>“Staff Governor”</b>	means a Governor elected by a Staff Class;
<b>“The Trust”</b>	means The Hillingdon Hospitals NHS Foundation Trust;
<b>“voluntary organisation”</b>	is a body, other than a public or local authority, the activities of which are not carried on for profit.

**50.2** Unless a contrary intention is evident or the context requires otherwise, words or expressions contained in this Constitution shall bear the same meaning as in the National Health Service Act 2006 as amended by the Health & Social Care Act 2012.

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

**50.4** References in this Constitution to legislation include all amendments, replacements or re-enactments made and references to clause numbers are references to clauses of this Constitution unless the context provides otherwise.

**50.5** References to legislation include all regulations, statutory guidance or directions.

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

**50.7** If there is a conflict between the provisions of this Constitution and the provisions of any document referred to herein or the law then the

provisions of this Constitution shall prevail unless the law requires otherwise.

**50.8** All Annexes referred to in this Constitution form part of it.

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## ANNEX 1 – THE PUBLIC CONSTITUENCIES

The Trust has four public constituencies that consist of the following electoral areas for the purpose of local government elections in England:

<b>Constituency</b>	<b>Electoral Areas:</b>
<p style="text-align: center;"><b>North</b></p> <p>Minimum number of members: 200</p>	<ul style="list-style-type: none"> <li>• Maple Cross and Mill End</li> <li>• Rickmansworth</li> <li>• Moor Park &amp; Eastbury</li> <li>• Ashridge</li> <li>• Denham North</li> <li>• Denham South</li> <li>• Harefield</li> <li>• Northwood</li> <li>• Northwood Hills</li> <li>• Pinner</li> <li>• Pinner South</li> <li>• Eastcote &amp; Ruislip</li> <li>• West Ruislip</li> </ul>
<p style="text-align: center;"><b>Central</b></p> <p>Minimum number of members: 200</p>	<ul style="list-style-type: none"> <li>• Iver Heath</li> <li>• Uxbridge South</li> <li>• Ickenham</li> <li>• Uxbridge North</li> <li>• Brunel</li> <li>• Manor</li> <li>• South Ruislip</li> <li>• Cavendish</li> <li>• Rayners Lane</li> <li>• Roxbourne</li> <li>• Roxeth</li> <li>• Northolt</li> <li>• Mandeville</li> <li>• Northolt West End</li> <li>• Charville</li> <li>• Hillingdon East</li> </ul>
<p style="text-align: center;"><b>South</b></p> <p>Minimum number of members: 200</p>	<ul style="list-style-type: none"> <li>• Iver Village &amp; Richings Park</li> <li>• Yiewsley</li> <li>• West Drayton</li> <li>• Botwell</li> <li>• Pinkwell</li> <li>• Heathrow Villages</li> <li>• Barnhill</li> <li>• Townfield</li> <li>• Yeading</li> <li>• Greenford</li> <li>• Broadway</li> <li>• Lady Margaret</li> <li>• Southall</li> <li>• Broadway</li> <li>• Southall Green</li> </ul>
<p style="text-align: center;"><b>Rest of England</b></p> <p>Minimum number of members: 40</p>	<p>All electoral areas in England other than those listed above</p>

## ANNEX 2 – THE STAFF CONSTITUENCY

The Trust has a staff constituency of Members pursuant to paragraph 7 of this Constitution made up of 4 classes described below.

<b>Staff Constituency</b>	<b>Staff group</b>
Doctors and dentists	Doctors Dentists
Nurses and midwives (including health care assistants)	Health care assistants Midwifery staff Nursing staff
Allied Health Professionals	Allied Health Professionals Scientific staff Technical staff
Support staff	Ancillary, administrative and other staff Maintenance staff

The minimum membership for each class within the staff constituency is 50.

### **ANNEX 3 – THE PATIENTS’ CONSTITUENCY**

Not applicable



## ANNEX 4 – COMPOSITION OF COUNCIL OF GOVERNORS

From the 1<sup>st</sup> April 2014 the Council of Governors is to comprise:

<b>Council of Governors</b>		
<b>Public Governors (elected)</b>		
North Constituency		4
Central Constituency		4
South Constituency		4
Rest of England Constituency		1
	<b>Sub total</b>	<b>13</b>
<b>Staff Governors (elected)</b>		
Doctors and dentists		1
Nurses and midwives (including health care assistants)		3
Allied Health Professionals		1
Support staff		2
	<b>Sub total</b>	<b>7</b>
<b>Partner Governors (appointed)</b>		
Hillingdon Clinical Commissioning Group		1
London Borough of Hillingdon		1
Joint Negotiating & Consultative Committee		1
London Ambulance Service		1
	<b>Sub total</b>	<b>4</b>
	<b>Total</b>	<b>24</b>

Until and including 31<sup>st</sup> March 2014 the Council of Governors is to comprise:

<b>Council of Governors</b>		
<b>Public Governors (elected)</b>		
North Constituency		5
Central Constituency		5
South Constituency		6
Rest of England Constituency		1
	<b>Sub total</b>	<b>17</b>
<b>Staff Governors (elected)</b>		
Doctors and dentists		1
Nurses and midwives (including health care assistants)		3
Allied Health Professionals		1
Support staff		2

	<b>Sub total</b>	<b>7</b>
<b>Partner Governors (appointed)</b>		
Hillingdon Clinical Commissioning Group		1
London Borough of Hillingdon		1
Joint Negotiating & Consultative Committee		1
London Ambulance Service		1
	<b>Sub total</b>	<b>4</b>
	<b>Total</b>	<b>28</b>

## **ANNEX 5 –THE MODEL RULES FOR ELECTIONS**

(Paragraph 12.2)

**The Hillingdon Hospitals NHS Foundation Trust  
(Council of Governors)  
Rules for the Conduct of Elections for Public and Staff Governors**

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### ***Part 1 – Interpretation***

**1. Interpretation** – (1) In these rules, unless the context otherwise requires - “corporation” means the public benefit corporation subject to this constitution; “election” means an election by a constituency, or by a class within a constituency, to fill a vacancy among one or more posts on the board of governors; “the regulator” is the body corporate known as Monitor, as provided by Section 61 of the Health & Social Care Act 2012; and “the 2006 Act” means the National Health Service Act 2006.

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

### ***Part 2 – Timetable for election***

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

#### **Proceeding Time**

**Publication of notice of election:** Not later than the fortieth day before the day of the close of the poll.

**Final day for delivery of nomination papers to returning officer:** Not later than the twenty eighth day before the day of the close of the poll.

**Publication of statement of nominated candidates:** Not later than the twenty seventh day before the day of the close of the poll.

**Final day for delivery of notices of withdrawals by candidates from election:** Not later than twenty fifth day before the day of the close of the poll.

**Notice of the poll:** Not later than the fifteenth day before the day 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*

**36. 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 44(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 hereby 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 41 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 42 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.

**39. Rejected ballot papers** – (1) Any ballot paper –  
(a) which does not bear the features that have been incorporated into the other ballot papers to prevent them from being reproduced,  
(b) on which the figure “1” standing alone is not placed so as to indicate a first preference for any candidate,  
(c) on which anything is written or marked by which the voter can be identified except the unique identifier, or  
(d) which is unmarked or rejected because of uncertainty, shall be rejected and not counted, but the ballot paper shall not be rejected by reason only of carrying the words “one”, “two”, “three” and so on, or any other mark instead of a figure if, in the opinion of the returning officer, the word or mark clearly indicates a preference or preferences.  
(2) The returning officer is to endorse the word “rejected” on any ballot paper which under this rule is not to be counted.  
(3) The returning officer is to draw up a statement showing the number of ballot papers rejected by him or her under each of the subparagraphs (a) to (d) of paragraph (1).

**39. 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.

**40. 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.

**41. The quota** – (1) The returning officer is to divide the number of valid ballot papers by a number exceeding by one the number of members to be elected.  
(2) The result, increased by one, of the division under paragraph (1) above (any fraction being disregarded) shall be the number of votes sufficient to secure the election of a candidate (in these rules referred to as “the quota”).  
(3) At any stage of the count a candidate whose total votes equals or exceeds the quota shall be deemed to be elected, except that any election where there is only one vacancy a candidate shall not be deemed to be elected until the procedure set out in paragraphs (1) to (3) of rule 44 has been complied with.

**42. 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 43 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 43 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.

**43. 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 42 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 42 or 44 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 42 or 44 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.

**44. Exclusion of candidates – (1) If—**

(a) all transferable papers which under the provisions of rule 42 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 45 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 43 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 45 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 42 and rule 43.

(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.

**45. 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.

**46. 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 42(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.

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

**47. 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 Hillingdon Hospital 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 39(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 spoiled ballot papers,
  - (d) the list of lost ballot papers,
  - (e) the list of eligible voters, and
  - (f) the list of tendered ballot papers.
- (3) The returning officer must endorse on each packet a description of –
- (a) its contents,
  - (b) the date of the publication of notice of the election,
  - (c) the name of the corporation to which the election relates, and
  - (d) the constituency, or class within a constituency, to which the election relates.

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

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

- (a) any voting documents are received by the returning officer after the close of the poll, or
- (b) any envelopes addressed to eligible voters are returned as undelivered too late to be resent, or
- (c) any applications for replacement ballot papers are made too late to enable new ballot papers to be issued, the returning officer is to put them in a separate packet, seal it up, and endorse and forward it to the chairman of the corporation.

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

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

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

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

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

- (a) any rejected ballot papers, including ballot papers rejected in part,
- (b) any disqualified documents, or the list of disqualified documents,
- (c) any counted ballot papers,
- (d) any declarations of identity, or
- (e) the list of eligible voters, by any person without the consent of the Regulator.

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

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

- (a) persons,
- (b) time,
- (c) place and mode of inspection,
- (d) production or opening, and the corporation must only make the documents available for inspection in accordance with those terms and conditions.

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

- (a) in giving its consent, the regulator, and
- (b) and making the documents available for inspection, the corporation, must ensure that the way in which the vote of any particular member has been given shall not be disclosed, until it has been established –
  - (i) that his or her vote was given, and
  - (ii) that the regulator has declared that the vote was invalid.

*Part 9 – Death of a candidate during a contested election*

**54. 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.

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

(8) 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.

- (9) 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 6 – ADDITIONAL PROVISIONS – COUNCIL OF GOVERNORS

### Membership of the Council of Governors

1. The following may not become or continue as a member of the Council of Governors:
  - (a) a director of the Trust;
  - (b) A person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;
  - (c) A person who has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it;
  - (d) A person who within the preceding five years has been convicted in the British Islands of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him;
  - (e) A person who is the subject of an unexpired disqualification order made under the Company Directors Disqualification Act 1986;
  - (f) a governor or director of another NHS trust or foundation trust;
  - (g) a spouse, partner, parent or child of a member of the Board of Directors of the Trust;
  - (h) being a member of the Public Constituency, a person who refuses to sign a declaration in the form specified by the Secretary of particulars of their qualification to vote as a member of the Trust and that they are not prevented from being a member of the Council of Governors;
  - (i) a vexatious complainant;
  - (j) a person who is required to notify the police of his name and address as a result of being convicted or cautioned for relevant sex offences pursuant to the Sex Offenders' Act 1997 or other relevant legislation;
  - (k) a person who has been disqualified from being a member of a relevant authority under the provisions of the Local Government Act 2000;
  - (l) a person who, on the basis of disclosures obtained through an application to the Criminal Records Bureau, is considered unsuitable by the Trust's Board of Directors;

- (m) a person who within the preceding two years has been dismissed, otherwise than by reason of redundancy, from any paid employment with a health service (whether National Health Service, private or independent care commissioner or provider) body;
- (n) a person whose tenure of office as the chair or as a member or director of a health service body has been terminated on the grounds that his appointment is not in the interests of the health service, or for non-attendance at meetings, or for non-disclosure of a pecuniary interest;
- (o) he has refused without reasonable cause to undertake any training which the Chair requires all governors to undertake; or
- (p) he has failed to sign and deliver to the Secretary a statement in the form required by the Secretary confirming acceptance of the code of conduct for Governors.

Any member of the Council of Governors, or prospective member as the case shall be, shall notify the Secretary of any bar to his membership of the Council of Governors under the above paragraphs of this Annex as soon as becoming aware of such a bar. The Board of Directors may exercise its discretion to allow any individual to become or continue as a member of the Council of Governors in respect of any matter that would otherwise bar such membership under paragraphs 1(f) or 1(n) of this Annex where there is no conflict or potential conflict of interest on the part of the governor.

## **Removal**

2. A governor may be removed from the Council of Governors by a resolution approved by not less than two-thirds of the remaining governors present and voting on the grounds that:
  - (a) he has committed a serious breach of the code of conduct; or
  - (b) he has acted in a manner detrimental to the interests of the Trust; and/or
  - (c) the Council of Governors consider that it is not in the best interest of the Trust for him to continue as a governor.

## **Vacancies**

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

- (a) where the vacancy arises amongst the appointed governors, the Secretary shall request that the appointing organisation appoints a replacement to hold office for the remainder of the term of office; and
- (b) where the vacancy arises amongst the elected governors, the Council of Governors may:
  - (i) invite the next highest polling candidate for that seat at the most recent election, who is willing to take office, to fill the vacant seat for the remainder of the term of office; or
  - (ii) if the unexpired period of the term of office is less than 6 months, leave the seat vacant until the next elections are held.

## ANNEX 7 – STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE COUNCIL OF GOVERNORS

### 1. Meetings of the Council of Governors

#### Admission of the Public and the Press

All meetings of the Council of Governors are to be open to members of the public unless members of the public are excluded for reasons of commercial confidentiality or other special reasons. The Chairman may exclude any member of the public from a meeting of the Council of Governors if they are interfering with or preventing the proper conduct of the meeting.

#### Calling and Notice of Meetings

The Council of Governors is to meet a minimum of four times in each financial year. Before each meeting of the Council of Governors, a notice of the meeting specifying the business proposed to be transacted shall be delivered to every governor so as to be available to him at least three clear working days before the meeting. Notice will also be published on the Trust's website and, if practicable, in the Trust's membership newsletter.

Meetings of the Council of Governors may be called by the Secretary, the Chairman, or by ten governors (including at least two elected governors and two appointed governors) who give written notice (including by fax and email) to the Secretary specifying the business to be carried out. The Secretary shall send a written notice to all governors as soon as possible after receipt of such a request and will call a meeting of the Council of Governors within the next twenty eight days. If the Secretary fails to convene such a meeting then the Chairman or ten governors, whichever is the case, shall convene such a meeting.

#### Chair of the Meeting

In accordance with paragraph 16 of the Constitution the Chairman of the Trust (i.e. the Chairman of the Board of Directors) or in his absence, the Deputy Chairman of the Board of Directors, shall preside at meetings of the Council of Governors. If the Chairman and Deputy Chairman are absent, or are disqualified from participating, then the Lead Governor shall preside for that part of the meeting.

#### Quorum

No business shall be transacted at a meeting of the Council of Governors unless at least one third of the Council of Governors are present.

#### Voting

Except on the issues which the Constitution requires to be settled by a larger majority, questions arising at a meeting of the Council of Governors shall be decided by a majority of votes. In any vote, in the case of an equality of votes the person presiding at or chairing the meeting shall have a casting vote.

### Committees

The Council of Governors may not delegate any of its powers to a committee or sub-committee, but it may appoint committees to assist the Council of Governors in carrying out its functions. The Council of Governors may appoint governors to such committees and may invite directors and other persons to attend in an advisory, non-voting capacity. The Council of Governors may, through the Secretary request that external advisors assist them or any committee they appoint in carrying out its duties. Committees established by the Council of Governors may meet in private for reasons of commercial confidentiality or other special reasons if the members of the Committee so decide.

### Confidentiality

In the event of the Council of Governors, or any Committee established by the Governors, meeting in private for all or part of a meeting, governors shall not disclose outside of the Council of Governors meetings the contents of the papers, discussions or minutes of the items taken in private.

## **2. Disclosure of interests**

The Constitution requires governors to declare any pecuniary, personal or family interest, whether that interest is direct or indirect, in any proposed contract or other matter which is under consideration or is to be considered by the Council of Governors. A family interest will include those of a governor's spouse or partner. All governors should declare such interests. Any governors appointed or elected subsequently should do so on appointment or election.

Such interests should include:

- a) Directorships, including non-executive directorships held in private companies, plcs or public benefit corporations (with the exception of those of dormant companies).
- b) Ownership or part-ownership of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS.
- c) Majority or controlling share holdings in organisations likely or possibly seeking to do business with the NHS.
- d) A position of authority in a charity or voluntary organisation in the field of health and social care.
- e) Any connection with a voluntary or other organisation contracting for NHS services.
- f) Any other commercial interest in the decision before the meeting.

The following exceptions shall not be treated as interests:

- an employment contract with the Trust held by a Staff Governor;

- an employment contract with their employing Clinical Commissioning Group held by a Clinical Commissioning Group Governor;
- an employment contract with a local authority held by a Local Authority Governor;
- an employment contract with a partnership organisation held by a Partnership Governor.

### **3. Declaring interests**

At the time governors' interests are declared, they should be recorded in the Council of Governors' minutes and entered on a register of interests of governors to be maintained by the Trust Secretary. Any changes in interests should be declared at the next Council of Governors meeting following the change occurring.

During the course of a Council of Governors meeting, if a conflict of interest is established, the governor concerned shall disclose the fact, and withdraw from the meeting and play no part in the relevant discussion or decision.

If a governor has any doubt about the relevance of an interest, he should discuss it with the Chairman or Trust Secretary who shall advise him on whether or not to disclose the interest.

### **4. Code of Conduct**

All members of the Council of Governors are required to comply with the Code of Conduct for Governors adopted by the Council of Governors or Board of Directors from time to time.

### **5. Additional Provisions**

The Board of Directors may establish additional protocols and procedures for the operation of the Council of Governors as appropriate from time to time.

## **ANNEX 8 – STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE BOARD OF DIRECTORS**

### **1. Appointments to the Board of Directors**

#### *Appointment of the Chairman and Non Executive Directors*

The Governors at a general meeting of the Council of Governors shall appoint or remove the Chairman of the Trust and the other non-executive directors, subject to the other provisions of the Constitution. Any re-appointment of a non-executive director by the Council of Governors shall be subject to a satisfactory appraisal carried out in accordance with procedures which the Board of Directors may approve from time to time.

#### *Appointment of the Chief Executive and other Executive Directors*

The Chief Executive is appointed by the non-executive directors subject to the approval of the Council of Governors. A committee consisting of the Chairman, the Chief Executive and the other non-executive directors shall appoint the other executive directors.

#### *Appointment and Powers of Deputy Chairman*

The Governors at a general meeting of the Council of Governors shall appoint one of the non-executive directors to be Deputy Chairman of the Board of Directors, in consultation with the Board of Directors. If the Chairman is unable to discharge their office as Chairman of the NHS Foundation Trust, the Deputy Chairman of the Board of Directors shall be acting Chairman of the NHS Foundation Trust.

#### *Appointment of a Senior Independent Director*

The Board of Directors shall appoint one of the independent non-executive directors to be the senior independent director, in consultation with the Council of Governors. The senior independent director should be available to members and governors if they have concerns which contact through the normal channels of Chairman, Chief Executive or Director of Finance has failed to resolve or for which such contact is inappropriate. The senior independent director could be the Deputy Chairman.

### **2. Meetings of the Board of Directors**

#### *Calling and Notice of Meetings*

Before each meeting of the Board of Directors, a notice of the meeting specifying the business proposed to be transacted shall be delivered to every director so as to be available to him at least three clear working days before the meeting.

Meetings of the Board of Directors are called by the Secretary, the Chairman, or by four Directors who give written notice (including by fax or email) to the



Secretary specifying the business to be carried out. The Secretary shall send a written notice to all directors as soon as possible after receipt of such a request and shall call a meeting of the Board of Directors within the next twenty eight days. If the Secretary fails to convene such a meeting then the Chairman or four directors, whichever is the case, shall convene such a meeting.

#### Chair of the Meeting

At any meeting of the Board of Directors, the Chairman of the Board, if present, shall preside. If the Chairman is absent from the meeting the Deputy Chairman, if there is one and he/she is present, shall preside. If the Chairman and Deputy Chairman are absent then the non-executive directors present shall choose which non-executive director present shall preside.

If the Chairman is absent temporarily on the grounds of a declared conflict of interest the Deputy Chairman, if present, shall preside. If the Chairman and Deputy Chairman are absent, or are disqualified from participating, then the remaining non-executive directors present shall choose which non-executive director present shall preside.

#### Quorum

No business shall be transacted at a meeting unless at least five directors are present including not less than three non-executive directors and two executive directors.

#### Voting

Questions arising at a meeting of the Board of Directors shall be decided by a majority of votes. In the case of an equality of votes, the person presiding at or chairing the meeting shall have a casting vote.

### **3. Committees and Delegation**

The Board of Directors may from time to time delegate any of its powers to a committee of directors or to an executive director, in each case subject to such restrictions and conditions as the Board thinks fit.

The Board of Directors will have a range of committees which will advise it (and the Council of Governors if appropriate). These will include an Audit Committee and a committee or committees for dealing with nominations to, and the remuneration of, the Board of Directors.

Each such committee shall have such terms of reference and powers and be subject to such procedures as the Board shall from time to time decide.

### **4. Disclosure of interests**

The Constitution requires directors to declare any pecuniary, personal or family interest, whether that interest is direct or indirect, in any proposed

contract or other matter which is under consideration or is to be considered by the Board of Directors. A family interest will include those of a Director's spouse or partner. All directors should declare such interests. Any directors appointed subsequently should do so on appointment.

Such interests should include:

- a) Directorships, including non-executive directorships held in private companies, plcs or public benefit corporations (with the exception of those of dormant companies). Ownership or part-ownership of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS.
- b) Majority or controlling share holdings in organisations likely or possibly seeking to do business with the NHS.
- c) A position of authority in a charity or voluntary organisation in the field of health and social care.
- d) Any connection with a voluntary or other organisation contracting for NHS services.
- e) Any other commercial interest in the decision before the meeting.

## **5. Declaring interests**

At the time directors' interests are declared, they should be recorded in the Board minutes and entered on a register of interests of directors to be maintained by the Trust Secretary. Any changes in interests should be declared at the next Board meeting following the change occurring.

During the course of a Board meeting, if a conflict of interest is established, the director concerned shall disclose the fact, and withdraw from the meeting and play no part in the relevant discussion or decision.

If a director has any doubt about the relevance of an interest, he should discuss it with the Chairman or Trust Secretary who shall advise him on whether or not to disclose the interest.

## **6. Additional Provisions**

The Board of Directors may establish additional protocols and procedures for the operation of the Board of Directors and the economic, effective and efficient operation and good governance of the Trust generally, as appropriate from time to time.

## ANNEX 9 – FURTHER PROVISIONS

### 1. Disqualification from membership of the Trust

- 1.1. A person may not be a member of the Trust if he is under 16 years of age at the time of his application to become a member.
- 1.2. A person may not become or remain a member of the Trust if during the five years prior to his application, he has demonstrated aggressive or violent behaviour at any hospital or towards any person working for a health service body and following such behaviour he has been excluded from any hospital or other health service body under either the Trust's or other health service body's policy for withholding treatment from violent/aggressive patients, or equivalent.
- 1.3. A person may not become or continue as a member of the Trust if they have been confirmed as a 'vexatious complainant' in accordance with the Trust's complaints handling policy.
- 1.4. It is the responsibility of each member to ensure his eligibility at all times.
- 1.5. The Trust may carry out reasonable enquiries if it has reason to believe a member is ineligible for membership under the provisions of this constitution.
- 1.6. Ineligible or disqualified members will be removed from the register of members immediately and shall cease to be a member.

### 2. Termination of membership

- 2.1. A member shall cease to be a member on:
  - 2.1.1. death
  - 2.1.2. resignation by notice to the Membership Office or Trust Secretary
  - 2.1.3. ceasing to fulfil paragraphs 6 or 7 of this constitution

### 3. Process for appointing non-executive directors and the Chairman

- 3.1. Subject to the provisions of paragraph 26 of this constitution the process for appointing new non-executive directors and the Chairman will be as per the following paragraphs.
- 3.2. In accordance with paragraph 25.1 of this constitution, the Chairman and other non-executive directors are to be appointed by the Council of Governors.

- 3.3. At the start of each financial year the Council of Governors shall appoint a “Nominations and Remuneration Committee” that will be constituted in accordance with paragraphs 3.5 and 3.6 below. In the six months before the end of the term of office of the Chairman or a non-executive director (as the case may be), the Committee shall consider whether the retiring Chairman or non-executive director should be reappointed for a further term of office up to three years, provided that such an appointment is consistent with any corporate governance guidance published by Monitor in relation to Board members’ length of tenure. Alternatively, the Committee may decide that the position should be advertised and subject to open competition. In making such a decision the Committee shall consider the views of any nominations committee that may be established by the Board of Directors from time to time in order to advise on the qualifications, skills and experience required for appointment to the position of Chairman and non-executive director.
- 3.4. The Nominations and Remuneration Committee will make recommendations to the Council of Governors, including recommendations about pay.
- 3.5. The Nominations and Remuneration Committee for the Chairman will consist of three Public Governors, one Staff Governor, one Appointed or Staff Governor and one Non-Executive Director (usually the Senior Independent Director). The quorum for meetings of such Nominations and Remuneration Committee shall be three Governors (which must include one Public Governor). If the number of Governors prepared to serve on the Nominations and Remuneration Committee is greater than the number of places available, the committee members shall be selected by election by their peer Governors. The Non-Executive Director on the Committee will chair the Nominations and Remuneration Committee. Each member of the Nominations and Remuneration Committee will have one vote. The Chief Executive is invited to attend in an advisory capacity.
- 3.6. The Nominations and Remuneration Committee for the non-executive directors will consist of the Chairman, three Public Governors, one Staff Governor and one Staff or Appointed Governor. The quorum for meetings of such Nominations and Remuneration Committee shall be three Governors (which must include one Public Governor). If the number of Governors prepared to serve on the Nominations and Remuneration Committee is greater than the number of places available, the committee members will be selected by election by their peer Governors. The Chairman will chair the Nominations and Remuneration Committee. Each member of the Nominations and Remuneration Committee will have one vote. The Chief Executive is invited to attend in an advisory capacity.

3.7. The Nominations and Remuneration Committees constituted under paragraphs 3.5 and 3.6 above will be supported by appropriate advice from the Trust's Director with responsibility for the Human Resources function.

3.8. The Council of Governors will not consider nominations for membership of the Board of Directors other than those made by the appropriate Nominations and Remuneration Committee.