

*excellent care for every patient,  
every day, everywhere*

## CONSTITUTION

### THE ROYAL BOURNEMOUTH AND CHRISTCHURCH HOSPITALS NHS FOUNDATION TRUST

Approval Process	Version	Issue Date	Review Date	Document Author(s)
Council of Governors; Board of Directors	V2	July 2015	July 2016	Trust Secretary

## CONTENTS

1.	Interpretation and Definitions .....	4
2.	Name .....	6
3.	Principal Purpose .....	6
4.	Powers .....	7
5.	Membership and Constituencies .....	7
6.	Application for Membership .....	7
7.	Public Constituency .....	7
8.	Staff Constituency .....	7
9.	Automatic Membership by Default – Staff .....	8
10.	Restriction on Membership .....	8
11.	Annual Members' Meeting .....	9
12.	Council of Governors – Composition .....	9
13.	Council of Governors – Election .....	9
14.	Council of Governors - Tenure .....	9
15.	Council of Governors – Disqualification and Removal .....	10
16.	Council of Governors – Duties .....	10
17.	Council of Governors – Meetings .....	11
18.	Council of Governors – Standing Orders .....	11
19.	Council of Governors – Referral to the Panel .....	11
20.	Council of Governors - Conflicts of Interest .....	11
21.	Council of Governors – Travel Expenses .....	12
22.	Council of Governors – further provisions .....	12
23.	Board of Directors – Composition .....	12
24.	Board of Directors – General Duty .....	13
25.	Board of Directors – Qualification for Appointment as a Non-Executive Director .....	13
26.	Board of Directors – Appointment and Removal of Chairperson and Other Non-Executive Directors .....	13
27.	Board of Directors – Appointment of Vice-Chairperson .....	13
28.	Board of Directors - Appointment and Removal of the Chief Executive and Other Executive Directors .....	13
29.	Board of Directors – Disqualification .....	14
30.	Board of Directors – Meetings .....	14
31.	Board of Directors – Standing Orders .....	14
32.	Board of Directors - Conflicts of Interest .....	14
33.	Board of Directors – Remuneration and Terms of Office .....	16
34.	Registers .....	16
35.	Admission to and removal from the registers .....	16
36.	Registers – inspection and copies .....	16
37.	Documents available for public inspection .....	17
38.	Auditor .....	18
39.	Audit committee .....	18
40.	Accounts .....	18
41.	Annual report, forward plans and non-NHS work .....	19
42.	Presentation of the annual accounts and reports to the Governors and members ...	19
43.	Instruments .....	20
44.	Amendment of the Constitution .....	20
45.	Mergers etc. and significant transactions .....	21
	ANNEX 1 - THE PUBLIC CONSTITUENCY .....	23
	ANNEX 2 - THE STAFF CONSTITUENCY .....	26
	ANNEX 3 - COMPOSITION OF THE COUNCIL OF GOVERNORS .....	27
	ANNEX 4 - MODEL ELECTION RULES .....	29
	ANNEX 5 – ADDITIONAL PROVISIONS – COUNCIL OF GOVERNORS .....	69

ANNEX 6 .....	74
STANDING ORDERS - COUNCIL OF GOVERNORS .....	74
ANNEX 7 .....	87
STANDING ORDERS - BOARD OF DIRECTORS .....	87
ANNEX 8 – FURTHER PROVISIONS .....	102
Appendix 1: Trust Core Principles .....	102
ANNEX 8 – FURTHER PROVISIONS .....	103
Appendix 2: Membership .....	103
ANNEX 8 – FURTHER PROVISIONS .....	105
Appendix 3: Members' Meetings.....	105
ANNEX 8 – FURTHER PROVISIONS .....	108
Appendix 4: Board of Directors – Further Provisions .....	108

## 1. Interpretation and Definitions

- 1.1 Unless otherwise stated, words or expressions contained in this Constitution shall bear the same meaning as in the National Health Service Act 2006 as amended by the Health and Social Care Act 2012.
- 1.2 References in this Constitution to any statute, statutory provision or subordinate legislation is a reference to it as it is in force from time to time including any amendment or re-enactment or subordinate legislation made under it.
- 1.3 Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.4 Headings in this Constitution are used for convenience only and shall not affect the construction or interpretation of this Constitution.
- 1.5 Words importing the masculine gender only shall include the feminine gender; words importing the singular shall import the plural and vice versa.

<b>2006 Act</b>	means the National Health Service Act 2006.
<b>2012 Act</b>	means the Health and 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>Annual Members' Meeting</b>	is defined in paragraph 11 of the Constitution.
<b>Appointed Governors</b>	means those Governors appointed by the Appointing Organisations.
<b>Appointing Organisations</b>	means those organisations named in this Constitution who are entitled to appoint Governors.
<b>Auditor</b>	means the person appointed to audit the accounts of the Trust who is called the auditor in the 2006 Act.
<b>Board of Directors</b>	means the Board of Directors of the Trust as constituted in accordance with this Constitution.
<b>Chairperson</b>	means the chair of the Trust or, in relation to the function of presiding at or chairing a meeting where another person is carrying out that role as required by the Constitution.
<b>Constitution</b>	means this constitution and all annexes to it.
<b>Council of Governors</b>	means the Council of Governors as constituted in accordance with this Constitution, which has the same meaning as in the 2006 Act, as amended by the 2012 Act.
<b>Director</b>	means a member of the Board of Directors.

<b>Elected Governor</b>	means each Governor elected by the Public Constituency and the classes of the Staff Constituency.
<b>Executive Director</b>	means an executive director on the Board of Directors of the Trust.
<b>Financial Year</b>	means each successive period of twelve months beginning with 1 April.
<b>Governor</b>	means a member of the Council of Governors.
<b>Head Office</b>	The Trust's head office is at the Royal Bournemouth Hospital, Castle Lane East, Bournemouth BH7 7DW.
<b>Health Service in England</b>	means the provision of Health Care in line with NHS core principles; that care should be universal, comprehensive and free at the point of need.
<b>Lead Governor</b>	means one (1) Governor appointed by the Council of Governors to lead the Council of Governors and to communicate directly with Monitor in certain circumstances.
<b>Local Authority Governor</b>	means a Governor appointed by the local authorities listed in Annex 3 whose area includes the whole or part of the Trust.
<b>Members' Meetings</b>	means the Annual Members' Meeting and any Special Members' Meeting.
<b>Monitor</b>	is the body corporate known as Monitor, as provided by section 61 of the 2012 Act.
<b>NHS Body</b>	means an NHS foundation trust, the NHS Commissioning Board, an NHS trust, a clinical commissioning group, a special health authority or a Local Health Board.
<b>Non-Executive Director</b>	means a non-executive director on the Board of Directors of the Trust.
<b>Panel</b>	is defined in paragraph 19 of this Constitution.
<b>Partner</b>	means, in relation to another person, a member of the same household living together as a family unit.
<b>Partnership Governor</b>	means a Governor appointed by a Partnership Organisation.
<b>Partnership Organisation</b>	means those organisations specified in Annex 3 of this Constitution as Partnership Organisations, which are specified organisations for the purposes of subparagraph 9(7) of Schedule 7 of the 2006 Act, as amended by the 2012 Act.
<b>Public Constituency</b>	means that part of the Trust's membership consisting of members living in the area of the Trust specified in Annex 1.

<b>Public Governor</b>	means a Governor elected by the Public Constituency.
<b>Secretary</b>	means the person appointed as the Secretary to the Trust or any other person appointed to perform the duties of secretary to the Trust, including a joint, assistant or deputy secretary, hereinafter to be referred to as the Secretary.
<b>Senior Independent Director</b>	means the non-executive Director appointed by the Board of Directors in accordance with paragraph 29.3 of this Constitution.
<b>Special Members' Meeting</b>	shall have the meaning set out in Annex 8, Appendix 3, paragraph 1.2.
<b>Staff Classes</b>	means the classes of the Staff Constituency as specified in Annex 2.
<b>Staff Constituency</b>	means that that part of the Trust's membership consisting of the staff of the Trust and other person as described in paragraph 8 of this Constitution and which is divided into the Staff Classes.
<b>Staff Governor</b>	means a Governor elected by the members of one of the classes of Staff Constituency.
<b>Trust</b>	means The Royal Bournemouth and Christchurch Hospitals NHS Foundation Trust.
<b>Vice Chairperson</b>	means the non-executive director appointed by the Council of Governors in accordance with paragraph 27.1 of this Constitution.

## 2. Name

2.1 The name of the Trust is The Royal Bournemouth and Christchurch Hospitals NHS Foundation Trust.

## 3. Principal Purpose

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

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

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

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

3.3.2 the promotion and protection of public health.

3.4 The Trust may also carry on activities other than those mentioned in

paragraph 3.3 for the purpose of making additional income available in order better to carry on its principal purpose.

#### **4. Powers**

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

#### **5. Membership and Constituencies**

- 5.1 The Trust shall have members, each of whom shall be a member of one of the following constituencies:
  - 5.1.1 a Public Constituency; and
  - 5.1.2 a Staff Constituency.

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

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

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

- 7.1 An individual who lives in an area specified in Annex 1 as an area for a public constituency may become or continue as a member of the Trust.
- 7.2 Those individuals who live in an area specified for a public constituency are referred to collectively as a Public Constituency.
- 7.3 The minimum number of members in each Public Constituency is specified in Annex 1.

#### **8. Staff Constituency**

- 8.1 An individual who is employed by the Trust under a contract of employment with the Trust may become or continue as a member of the Trust provided:
  - 8.1.1 he is employed by the Trust under a contract of employment which has no fixed term or has a fixed term of at least 12 months; or
  - 8.1.2 he has been continuously employed by the Trust under a contract of employment for at least 12 months.
- 8.2 Individuals, who exercise functions for the purposes of the Trust, otherwise than under a contract of employment with the Trust, may

become or continue as members of the Staff Constituency provided such individuals have exercised these functions continuously for a period of at least 12 months. For the avoidance of doubt this does not include individuals who assist or provide services to the Trust on a voluntary basis.

- 8.3 Those individuals who are eligible for membership of the Trust by reason of the previous provisions are referred to collectively as the Staff Constituency.
- 8.4 The Staff Constituency shall be divided into five descriptions of individuals who are eligible for membership of the Staff Constituency, each description of individuals being specified within Annex 2 and being referred to as a class within the Staff Constituency.
- 8.5 The Secretary shall make a final decision about the class of the Staff Constituency of which an individual is eligible for membership.
- 8.6 The minimum number of members in each class of the Staff Constituency is specified in Annex 2.

## **9. Automatic Membership by Default – Staff**

- 9.1 An individual who is:
  - 9.1.1 eligible to become a member of the Staff Constituency, and
  - 9.1.2 invited by the Trust to become a member of the Staff Constituency and a member of the appropriate class within the Staff Constituency,

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

## **10. Restriction on Membership**

- 10.1 An individual, who is a member of a constituency, or of a class within a constituency, may not while membership of that constituency or class continues, be a member of any other constituency or class.
- 10.2 An individual who satisfies the criteria for membership of the Staff Constituency may not become or continue as a member of any constituency other than the Staff Constituency.
- 10.3 An individual must be at least 12 years old to become a member of the Trust. Members must be 16 years old or over to vote in elections for Governors.
- 10.4 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 8, Appendix 2 – Further Provisions (Membership).

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

- 11.1 The Trust shall hold an annual meeting of its members. The Annual Members' Meeting shall be open to members of the public.
- 11.2 Further provisions about the Annual Members' Meeting are set out in Annex 8, Appendix 3 – Further Provisions (Members' Meetings).

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

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

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

- 13.1 Elections for elected members of the Council of Governors shall be conducted in accordance with the Model Election Rules using the first past the post system.
- 13.2 The Model Election Rules as published from time to time by the Department of Health form part of this Constitution. The Model Election Rules current at the date of this Constitution are attached at Annex 4.
- 13.3 A subsequent variation of the Model Election Rules by the Department of Health shall not constitute a variation of the terms of this Constitution for the purposes of paragraph 44 of the Constitution (Amendment of the Constitution).
- 13.4 An election, if contested, shall be by secret ballot.

## **14. Council of Governors - Tenure**

- 14.1 An Elected Governor may hold office for a period of up to three years.
- 14.2 An Elected Governor shall cease to hold office if he ceases to be a member of the constituency or class by which he was elected.
- 14.3 Subject to paragraph 14.7, an Elected Governor shall be eligible for re-election at the end of his term.

- 14.4 An Appointed Governor may hold office for a period of up to three years.
- 14.5 An Appointed Governor shall cease to hold office if the Appointing Organisation withdraws its sponsorship of him.
- 14.6 Subject to paragraph 14.7, an Appointed Governor shall be eligible for re-appointment at the end of his term.
- 14.7 No Governor may serve for more than a total of nine consecutive years.
- 14.8 For the purposes of these provisions concerning terms of office for Governors, **year** means a period commencing immediately after the conclusion of the Annual Members' Meeting, and ending at the conclusion of the next Annual Members' Meeting.

## **15. Council of Governors – Disqualification and Removal**

- 15.1 The following may not become or continue as a member of the Council of Governors:
  - 15.1.1 a person under 18 years of age;
  - 15.1.2 a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;
  - 15.1.3 a person who has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it;
  - 15.1.4 a person who within the preceding five years has been convicted in the British Islands of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him.
- 15.2 Further provisions as to the circumstances in which an individual may not become or continue, or may be removed, as a member of the Council of Governors are set out in Annex 5.

## **16. Council of Governors – Duties**

- 16.1 The general duties of the Council of Governors are:
  - 16.1.1 to hold the Non-Executive Directors individually and collectively to account for the performance of the Board of Directors; and
  - 16.1.2 to represent the interests of the members of the Trust as a whole and the interests of the public.

- 16.2 The Trust must take steps to secure that the Governors are equipped with the skills and knowledge they require in their capacity as such.

## **17. Council of Governors – Meetings**

- 17.1 The Chairperson of the Trust (i.e. the Chairperson of the Board of Directors, appointed in accordance with the provisions of paragraph 26.1 below) or, in his absence the Vice-Chairman (appointed in accordance with the provisions of paragraph 27 below), shall preside at meetings of the Council of Governors.
- 17.2 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.
- 17.3 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.

## **18. Council of Governors – Standing Orders**

- 18.1 The standing orders for the practice and procedure of the Council of Governors are attached at Annex 6.

## **19. Council of Governors – Referral to the Panel**

- 19.1 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:

19.1.1 to act in accordance with its constitution; or

19.1.2 to act in accordance with provision made by or under Chapter 5 of the 2006 Act.

- 19.2 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.

## **20. Council of Governors - Conflicts of Interest**

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

## **21. Council of Governors – Travel Expenses**

21.1 The Trust may pay travelling and other expenses to members of the Council of Governors at rates determined by the Trust. These are to be disclosed in the annual report.

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

22.1 Further provisions with respect to the Council of Governors are set out in Annex 5.

## **23. Board of Directors – Composition**

23.1 The Trust is to have a Board of Directors, which shall comprise both Executive and Non-Executive Directors.

23.2 The Board of Directors is to comprise:

23.2.1 a non-executive Chairperson;

23.2.2 six other Non-Executive Directors; and

23.2.3 seven Executive Directors.

23.3 One of the Executive Directors shall be the Chief Executive.

23.4 The Chief Executive shall be the Accounting Officer.

23.5 One of the Executive Directors shall be the finance director.

23.6 One of the Executive Directors is to be a registered medical practitioner (a fully registered person within the meaning of the Medical Act 1983) or a registered dentist (within the meaning of the Dentists Act 1984).

23.7 One of the Executive Directors is to be a registered nurse or a registered midwife.

23.8 The Board of Directors shall elect one of the Non-Executive Directors, in consultation with the Council of Governors, to be the Senior Independent Director of the Board. Any Non-Executive Director so elected may at any time resign from the office of Senior Independent Director by giving notice in writing to the Chairman, and the Directors of the Trust may thereupon appoint another Non-Executive Director as Senior Independent Director in accordance with this paragraph.

23.9 The Directors shall at all times have one vote each save that where the number of votes for and against a motion is equal, the Chairperson shall be entitled to exercise a second and casting vote.

#### **24. Board of Directors – General Duty**

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

#### **25. Board of Directors – Qualification for Appointment as a Non-Executive Director**

25.1 A person may be appointed as a Non-Executive Director only if:

25.1.1 he is a member of a Public Constituency, and

25.1.2 he is not disqualified by virtue of paragraph 29 below.

#### **26. Board of Directors – Appointment and Removal of Chairperson and Other Non-Executive Directors**

26.1 The Council of Governors at a general meeting of the Council of Governors shall appoint or remove the Chairperson of the Trust and the other Non-Executive Directors.

26.2 Removal of the Chairperson or another Non-Executive Director shall require the approval of three-quarters of the members of the Council of Governors.

#### **27. Board of Directors – Appointment of Vice-Chairperson**

27.1 The Council of Governors at a general meeting of the Council of Governors shall approve the appointment by the NED Nomination and Remuneration Committee of a Non-Executive Director as Vice-Chairperson. The appointed Non-Executive Director may also be the Senior Independent Director who will be appointed by the Board of Directors.

#### **28. Board of Directors - Appointment and Removal of the Chief Executive and Other Executive Directors**

28.1 A committee whose members shall be the Chairperson and at least two

other 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 A committee consisting of the Chairperson, the Chief Executive and at least two other Non-Executive Directors shall appoint or remove the other Executive Directors.

## **29. Board of Directors – Disqualification**

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

29.1.1 a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged.

29.1.2 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.

29.1.3 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.

29.2 Further provisions as to the circumstances in which an individual may not become or continue as a Director on the Board of Directors are set out in Annex 8, Appendix 4 - Board of Directors – Further Provisions.

## **30. Board of Directors – Meetings**

30.1 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.

30.2 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.

## **31. Board of Directors – Standing Orders**

31.1 The standing orders for the practice and procedure of the Board of Directors are attached at Annex 7.

## **32. Board of Directors - Conflicts of Interest**

32.1 The duties that a Director of the Trust has by virtue of being a Director

include in particular:

- 32.1.1 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.
- 32.1.2 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.
- 32.2 The duty referred to in sub-paragraph 32.1.1 is not infringed if:
  - 32.2.1 the situation cannot reasonably be regarded as likely to give rise to a conflict of interest, or
  - 32.2.2 the matter has been authorised in accordance with the Constitution.
- 32.3 The duty referred to in sub-paragraph 32.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- 32.4 In sub-paragraph 32.1.2, **third party** means a person other than:
  - 32.4.1 the Trust, or
  - 32.4.2 a person acting on its behalf.
- 32.5 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.
- 32.6 If a declaration under this paragraph proves to be, or becomes, inaccurate, incomplete, a further declaration must be made.
- 32.7 Any declaration required by this paragraph must be made before the Trust enters into the transaction or arrangement.
- 32.8 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.
- 32.9 A Director need not declare an interest:
  - 32.9.1 if it cannot reasonably be regarded as likely to give rise to a conflict of interest;
  - 32.9.2 if, or to the extent that, the Directors are already aware of it;
  - 32.9.3 if, or to the extent that, it concerns terms of the Director's appointment that have been or are to be considered –

32.9.3.1 by a meeting of the Board of Directors, or

32.9.3.2 by a committee of the Directors appointed for the purpose under the Constitution.

### **33. Board of Directors – Remuneration and Terms of Office**

33.1 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 Chairperson and the other Non-Executive Directors.

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

### **34. Registers**

34.1 The Trust shall have:

34.1.1 a register of members showing, in respect of each member, the constituency to which he belongs and, where there are classes within it, the class to which he belongs;

34.1.2 a register of members of the Council of Governors;

34.1.3 a register of interests of Governors;

34.1.4 a register of Directors; and

34.1.5 a register of interests of the Directors.

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

35.1 The members of the Trust are those individuals whose names are entered in the register of members.

35.2 The Secretary shall remove from the register of members the name of any member who ceases to be entitled to be a member under the provisions of this Constitution.

35.3. The Secretary is to send to Monitor a list of persons who are elected or appointed as Governors or Directors.

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

36.1 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.

36.2 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.

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

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

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

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

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

37.1 The Trust shall make the following documents available for inspection by members of the public free of charge at all reasonable times:

37.1.1 a copy of the current Constitution;

37.1.2 a copy of the latest annual accounts and of any report of the Auditor on them;

37.1.3 a copy of the latest annual report;

37.1.4 a copy of the latest information as to its forward planning;

37.1.5 a copy of the Trust's membership development strategy; and

37.1.6 a copy of the Trust's policy for the composition of the Council of Governors.

37.2 The Trust shall also make the following documents relating to a special administration of the Trust available for inspection by members of the public free of charge at all reasonable times:

37.2.1 a copy of any order made under section 65D (appointment of trust special administrator), 65J (power to extend time), 65KC (action following Secretary of State's rejection of final report), 65L (trusts coming out of administration) or 65LA (trusts to be dissolved) of the 2006 Act.

37.2.2 a copy of any report laid under section 65D (appointment of trust special administrator) of the 2006 Act.

37.2.3 a copy of any information published under section 65D (appointment of trust special administrator) of the 2006 Act.

37.2.4 a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act.

- 37.2.5 a copy of any statement provided under section 65F (administrator's draft report) of the 2006 Act.
- 37.2.6 a copy of any notice published under section 65F (administrator's draft report), 65G (consultation plan), 65H (consultation requirements), 65J (power to extend time), 65KA (Monitor's decision), 65KB (Secretary of State's response to Monitor's decision), 65KC (action following Secretary of State's rejection of final report) or 65KD (Secretary of State's response to re-submitted final report) of the 2006 Act.
- 37.2.7 a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act.
- 37.2.8 a copy of any final report published under section 65I (administrator's final report).
- 37.2.9 a copy of any statement published under section 65J (power to extend time) or 65KC (action following Secretary of State's rejection of final report) of the 2006 Act.
- 37.2.10 a copy of any information published under section 65M (replacement of trust special administrator) of the 2006 Act.
- 37.3 Any person who requests a copy of or extract from any of the above documents is to be provided with a copy.
- 37.4 If the person requesting a copy or extract is not a member of the Trust, the Trust may impose a reasonable charge for doing so.

### **38. Auditor**

- 38.1 The Trust shall have an Auditor.
- 38.2 The Council of Governors shall appoint or remove the Auditor at a general meeting of the Council of Governors.

### **39. Audit committee**

- 39.1 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.

### **40. Accounts**

- 40.1 The Trust must keep proper accounts and proper records in relation to the accounts.
- 40.2 Monitor may with the approval of the Secretary of State give directions to the Trust as to the content and form of its accounts.
- 40.3 The accounts are to be audited by the Trust's Auditor.

- 40.4 The Trust shall prepare in respect of each Financial Year annual accounts in such form as Monitor may with the approval of the Secretary of State direct.
- 40.5 The functions of the Trust with respect to the preparation of the annual accounts shall be delegated to the Accounting Officer.

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

- 41.1 The Trust shall prepare an Annual Report and send it to Monitor.
- 41.2 The Trust shall give information as to its forward planning in respect of each Financial Year to Monitor.
- 41.3 The document containing the information with respect to forward planning (referred to above) shall be prepared by the Directors.
- 41.4 In preparing the document, the Directors shall have regard to the views of the Council of Governors.
- 41.5 Each forward plan must include information about:
- 41.5.1 the activities other than the provision of goods and services for the purposes of the health service in England that the Trust proposes to carry on, and
  - 41.5.2 the income it expects to receive from doing so.
- 41.6 Where a forward plan contains a proposal that the Trust carry on an activity of a kind mentioned in sub-paragraph 41.7 the Council of Governors:
- 41.6.1 must determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfilment by the Trust of its principal purpose or the performance of its other functions, and
  - 41.6.2 notify the Directors of the Trust of its determination.
- 41.7 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.

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

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

- 42.1.1 the annual accounts;
  - 42.1.2 any report of the Auditor on them; and
  - 42.1.3 the annual report.
- 42.2 The documents shall also be presented to the members of the Trust at the Annual Members' Meeting by at least one member of the Board of Directors in attendance.
- 42.3 The Trust may combine a meeting of the Council of Governors convened for the purposes of sub-paragraph 42.1 with the Annual Members' Meeting.

### **43. Instruments**

- 43.1 The Trust shall have a seal.
- 43.2 The seal shall not be affixed except under the authority of the Board of Directors.

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

- 44.1 The Trust may make amendments of its Constitution only if:
- 44.1.1 more than half of the members of the Council of Governors of the Trust voting approve the amendments, and
  - 44.1.2 more than half of the members of the Board of Directors of the Trust voting approve the amendments.
- 44.2 Amendments made under paragraph 44.1 take effect as soon as the conditions in that paragraph are satisfied, but the amendment has no effect in so far as the Constitution would, as a result of the amendment, not accord with schedule 7 of the 2006 Act.
- 44.3 Where an amendment is made to the Constitution in relation the powers or duties of the Council of Governors (or otherwise with respect to the role that the Council of Governors has as part of the Trust):
- 44.3.1 at least one member of the Council of Governors must attend the next Annual Members' Meeting and present the amendment, and
  - 44.3.2 the Trust must give the members an opportunity to vote on whether they approve the amendment.
- 44.4 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.
- 44.5 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.

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

- 45.1 The Trust may only apply for a merger, acquisition, separation or dissolution with the approval of more than half of the members of the Council of Governors.
- 45.2 The Constitution does not contain any descriptions of the term 'significant transaction' for the purposes of section 51A of the 2006 Act (Significant Transactions).

#### **46. Dispute Resolution Procedures**

- 46.1 In the event of any dispute about the entitlement to membership the dispute shall be referred to the Secretary who shall make a determination on the point in issue. If a member or applicant (as they case may be) is aggrieved of the decision of the Secretary he may appeal in writing to the Council of Governors within 14 days of the Secretary's decision. The decision of the Council of Governors shall be final.
- 46.2 In the event of any dispute about the eligibility, disqualification and removal of a Governor, the dispute shall be referred to the Council of Governors whose decision shall be final. The dispute must be notified to the Secretary within 28 days of the decision leading to the dispute.
- 46.3 In the event of dispute between the Council of Governors and the Board of Directors or between a Governor and the Council of Governors:
  - 46.3.1 In the first instance the Chairperson on advice of the Secretary, and such other advice as the Chairperson may see fit to obtain, shall seek to resolve the dispute;
  - 46.3.2 If the Chairperson is unable to resolve the dispute he shall appoint a special Committee comprising equal numbers of Directors and Governors to consider the circumstances and to make recommendations to the Council of Governors and the Board of Directors with a view to resolving the dispute; and
  - 46.3.3 If the recommendations (if any) of the special committee are unsuccessful in resolving the dispute, the Chairperson may refer the dispute back to the Board of Directors who shall make the final decision.
- 46.4 In the event of any dispute between a governor and the Council of Governors the dispute shall be referred within 28 days of it arising to the Secretary who shall make a determination on the point in issue and will reference the Chairperson and Council of Governors as necessary.

## **47. Indemnity**

- 47.1 Members of the Council of Governors and the Board of Directors and the Secretary who act honestly and in good faith will not have to meet out of their personal resources any personal civil liability which is incurred in the execution or purported execution of their functions, save where they have acted recklessly. Any costs arising in this way will be met by the Trust. The Trust may purchase and maintain insurance against this liability for its own benefit and for the benefit of the Council of Governors and the Board of Directors and the Secretary.

## **48. Notices**

- 48.1 Any notice required by this Constitution to be given shall be given in writing or shall be given using electronic communications to an address for the time being notified for that purpose. Address in relation to electronic communications includes any number or address used for the purposes of such communications.
- 48.2 Proof that an envelope containing a notice was properly addressed, prepaid and posted shall be conclusive evidence that the notice as given. A notice shall be treated as delivered 48 hours after the envelope containing it was posted or, in the case of a notice contained in an electronic communication, 48 hours after it was sent.

## ANNEX 1 - THE PUBLIC CONSTITUENCY

Name of Area	Description	Minimum Number of Members
Bournemouth and Poole	The electoral area covered by Bournemouth and Poole Borough Councils	4
Christchurch and Dorset County	The electoral areas covered by Christchurch Borough Council and the rest of Dorset County Council	4
New Forest, Hampshire and Salisbury	The following electoral divisions covered by New Forest Council: Downlands and Forest Fordingbridge Forest North West Ringwood North Ringwood South Ringwood East and Sopley Bransgore and Burley Bashley Fernhill Milton Barton Becton Milford Hordle Pennington Lymington town Buckland Boldre and Sway Brockenhurst and forest South East Lyndhurst Bramshaw, Copythorne North and Minstead Ashurst, Copythorne South and Netley Totton North Totton West Totton East Totton Central Totton South Marchwood Dibden and Hythe East Hythe and Langdown Butts Ash and Dibden Purlieu Furzedown and Hardley Holbury and North Blackfield Fawley, Blackfield and Langley	4

The following electoral divisions covered by Wiltshire Council:  
Bemerton  
St. Mark and Stratford  
Bishopdown  
St. Paul  
Fisherton and Bemerton Village  
St. Edmund and Milford  
St. Martin and Milford  
Harnham West  
Harnham East  
Ebble  
Downton and Redlynch  
Aldbury and Whiteparish

The following electoral divisions covered by Hampshire County Council:  
Blackwater  
Romsey Extra  
Chilworth, Nursling and Rownhams  
Cupernham  
Abbey  
Tadburn  
North Baddesley  
Valley Park  
Hiltingbury West  
Hiltingbury East  
Chandlers Ford West  
Chandlers Fords East  
Eastleigh North  
Eastleigh Central  
Eastleigh South  
Bishopstoke West  
Bishopstoke East  
Fair Oak and Horton Heath  
West End North  
West End South  
Botley  
Hedge End Grange Park  
Hedge End Wildern  
Hedge End St John's  
Bursledon and Old Netley  
Netley Abbey  
Hamble-le-Rice and Butlocks Heath

The following electoral divisions covered by Southampton City Council:



	Redbridge Coxford Bassett Millbrook Shirley Portswood Swaythling Freemantle Bargate Bevois Bitterne Park Harefield Peartree Sholing Woolston	
--	--	--

## ANNEX 2 - THE STAFF CONSTITUENCY

<b>Name of Class</b>	<b>Minimum Number of Members</b>
Medical and Dental	4
Nursing, Midwifery and Healthcare Assistants	4
Estates and Ancillary Services	4
Allied Health Professions, Scientific and Technical	4
Administrative, Clerical and Management	4

## ANNEX 3 - COMPOSITION OF THE COUNCIL OF GOVERNORS

### 1. Public Elected Governors

There are 18 Governors in the Public Constituency.

Area	Number of Governors
Bournemouth and Poole	9
Christchurch and Dorset County	6
New Forest, Hampshire and Salisbury	3

### 2. Staff Elected Governors

There are five Governors in the Staff Constituency from the following Staff Classes:

Staff Class	Number of Governors
Medical and Dental	1
Nursing, Midwifery and Healthcare Assistants	1
Estates and Ancillary Services	1
Allied Health Professions, Scientific and Technical	1
Administrative, Clerical and Management	1

### 3. Appointed Governors

There are six Appointed Governors.

Appointing Organisation	Number of Governors
<b>Local Authority Governors</b>	
Bournemouth Borough Council	1
Borough of Poole	1
Dorset County Council	1
<b>Partnership Organisations</b>	
Bournemouth University	1
NHS Dorset Clinical Commissioning Group	1
The Royal Bournemouth and Christchurch Hospitals Volunteers Group	1

### 4. Majority of Public Governors

4.1. The aggregate number of Governors on the Council of Governors in the Public Constituency must be more than half of the total number of members of the Council of Governors.

4.2. Where for any reason the aggregate number of Governors on the Council of Governors in the Public Constituency falls to the same number or below the number of the other Governors then the Appointed Governors shall temporarily

stand down in the following order, until there is a majority of Governors on the Council of Governors in the Public Constituency. In such circumstances, the Governors that have stood down will be permitted to attend Council of Governors meetings but will not have a vote:

- firstly, the Governor from NHS Dorset Clinical Commissioning Group;
- secondly, the most recently appointed Local Authority Governor; and
- thirdly, the most recently appointed Partnership Governor (not including the Governor from NHS Dorset Clinical Commissioning Group).

4.3. The validity of any act of the Trust is not affected by any vacancy among the Governors or by any defect in the appointment of any Governor.

## **5. Appointment Process for Appointed Governors**

Each of the Appointing Organisations listed above are entitled to appoint a Governor in accordance with a process agreed with the Trust.

## **6. Policy on Composition of the Council of Governors**

6.1. The Council of Governors, subject to the 2006 Act, shall seek to ensure that through the composition of the Council of Governors:

- 6.1.1. the interest of the community served by the Trust are appropriately represented;
- 6.1.2. the level of representation of the Public Constituency and the classes of the Staff Constituency and the Appointing Organisations strikes an appropriate balance having regard to their legitimate interest in the Trust's affairs,

and to this end, the Council of Governors

- 6.1.3. shall at all times maintain a policy for the composition of the Council of Governors which takes account of the membership strategy; and
- 6.1.4. shall from time to time and not less than every three years review the policy for the composition of the Council of Governors; and
- 6.1.5. when appropriate shall propose amendments to the Constitution.

## **ANNEX 4 - MODEL ELECTION RULES**

### **PART 1: INTERPRETATION**

1. Interpretation

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

2. Timetable
3. Computation of time

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

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

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

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

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

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

*Action to be taken before the poll*

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

### *The poll*

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

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

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

### **PART 6: COUNTING THE VOTES**

41. Arrangements for counting of the votes
42. The count
43. Rejected ballot papers and rejected text voting records
44. Equality of votes

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

45. Declaration of result for contested elections
46. Declaration of result for uncontested elections

### **PART 8: DISPOSAL OF DOCUMENTS**

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

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

52. Countermand or abandonment of poll on death of candidate

### **PART 10: ELECTION EXPENSES AND PUBLICITY**

#### *Expenses*

- 53. Election expenses
- 54. Expenses and payments by candidates
- 55. Expenses incurred by other persons

*Publicity*

- 56. Publicity about election by the corporation
- 57. Information about candidates for inclusion with voting information
- 58. Meaning of “for the purposes of an election”

**PART 11: QUESTIONING ELECTIONS AND IRREGULARITIES**

- 59. Application to question an election

**PART 12: MISCELLANEOUS**

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

## PART 1: INTERPRETATION

### 1. Interpretation

1.1 In these rules, unless the context otherwise requires:

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

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

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

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

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

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

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

“*ID declaration form*” has the meaning set out in Rule 21.1;

“*internet voting record*” has the meaning set out in rule 26.4(d);

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

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

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

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

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

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

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

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

“*telephone short code*” means a short telephone number used for



the purposes of submitting a vote by text message;

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

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

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

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

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

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

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

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

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

## PART 2: TIMETABLE FOR ELECTION

### 2. Timetable

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

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

### 3. Computation of time

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

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

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

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

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

#### **4. Returning Officer**

- 4.1 Subject to rule 62, the returning officer for an election is to be appointed by the corporation.
- 4.2 Where two or more elections are to be held concurrently, the same returning officer may be appointed for all those elections.

#### **5. Staff**

- 5.1 Subject to rule 62, the returning officer may appoint and pay such staff, including such technical advisers, as he or she considers necessary for the purposes of the election.

#### **6. Expenditure**

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

#### **7. Duty of co-operation**

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

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

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

- 8.1 The returning officer is to publish a notice of the election stating:
- (a) the constituency, or class within a constituency, for which the election is being held,
  - (b) the number of members of the council of governors to be elected from that constituency, or class within that constituency,
  - (c) the details of any nomination committee that has been established by the corporation,
  - (d) the address and times at which nomination forms may be obtained;

- (e) the address for return of nomination forms (including, where the return of nomination forms in an electronic format will be permitted, the e-mail address for such return) and the date and time by which they must be received by the returning officer,
- (f) the date and time by which any notice of withdrawal must be received by the returning officer
- (g) the contact details of the returning officer
- (h) the date and time of the close of the poll in the event of a contest.

## **9. Nomination of candidates**

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

9.2 The returning officer:

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

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

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

10.1 The nomination form must state the candidate's:

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

## **11. Declaration of interests**

11.1 The nomination form must state:

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

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

## **12. Declaration of eligibility**

- 12.1 The nomination form must include a declaration made by the candidate:
- (a) that he or she is not prevented from being a member of the council of governors by paragraph 8 of Schedule 7 of the 2006 Act or by any provision of the constitution;
  - (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 and;
  - (c) they are 18 years of age or over.

## **13. Signature of candidate**

- 13.1 The nomination form must be signed and dated by the candidate, in a manner prescribed by the returning officer, indicating that:
- (a) they wish to stand as a candidate,
  - (b) their declaration of interests as required under rule 11, is true and correct, and
  - (c) their declaration of eligibility, as required under rule 12, is true and correct.
- 13.2 Where the return of nomination forms in an electronic format is permitted, the returning officer shall specify the particular signature formalities (if any) that will need to be complied with by the candidate.

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

- 14.1 Where a nomination form is received by the returning officer in accordance with these rules, the candidate is deemed to stand for election unless and until the returning officer:
- (a) decides that the candidate is not eligible to stand,
  - (b) decides that the nomination form is invalid,
  - (c) receives satisfactory proof that the candidate has died, or
  - (d) receives a written request by the candidate of their withdrawal from candidacy.
- 14.2 The returning officer is entitled to decide that a nomination form is

invalid only on one of the following grounds:

- (a) that the paper is not received on or before the final time and date for return of nomination forms, as specified in the notice of the election,
- (b) that the paper does not contain the candidate's particulars, as required by rule 10;
- (c) that the paper does not contain a declaration of the interests of the candidate, as required by rule 11,
- (d) that the paper does not include a declaration of eligibility as required by rule 12, or
- (e) that the paper is not signed and dated by the candidate, if required by rule 13.

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

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

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

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

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

15.2 The statement must show:

- (a) the name, contact address (which shall be the candidate's postal address), and constituency or class within a constituency of each candidate standing, and
- (b) the declared interests of each candidate standing, as given in their nomination form.

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

15.4 The returning officer must send a copy of the statement of candidates and copies of the nomination forms to the corporation

as soon as is practicable after publishing the statement.

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

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

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

**17. Withdrawal of candidates**

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

**18. Method of election**

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

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

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

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

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

## **PART 5: CONTESTED ELECTIONS**

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

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



**20. The ballot paper**

20.1 The ballot of each voter (other than a voter who casts his or her ballot by an e-voting method of polling) is to consist of a ballot paper with the persons remaining validly nominated for an election after any withdrawals under these rules, and no others, inserted in the paper.

20.2 Every ballot paper must specify:

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

20.3 Each ballot paper must have a unique identifier.

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

**21. The declaration of identity (public and patient constituencies)**

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

- (a) that the voter is the person:
  - (i) to whom the ballot paper was addressed, and/or
  - (ii) to whom the voter ID number contained within the e-voting information was allocated,

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

(c) the particulars of his or her qualification to vote as a member of the constituency or class within the constituency for which the election is being held,

("declaration of identity")

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

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

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

*Action to be taken before the poll*

## **22. List of eligible voters**

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

22.2 The list is to include, for each member:

(a) a postal address; and,

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

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

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

## **23. Notice of poll**

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

- (a) the name of the corporation,
- (b) the constituency, or class within a constituency, for which the election is being held,
- (c) the number of members of the council of governors to be elected from that constituency, or class with that constituency,
- (d) the names, contact addresses, and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
- (e) that the ballot papers for the election are to be issued and returned, if appropriate, by post,
- (f) the methods of polling by which votes may be cast at the election by voters in a constituency or class within a constituency, as determined by the corporation in accordance with rule 19.3,
- (g) the address for return of the ballot papers,
- (h) the uniform resource locator (url) where, if internet voting is a method of polling, the polling website is located;
- (i) the telephone number where, if telephone voting is a method of polling, the telephone voting facility is located,
- (j) the telephone number or telephone short code where, if text message voting is a method of polling, the text message voting facility is located,
- (k) the date and time of the close of the poll,
- (l) the address and final dates for applications for replacement voting information, and
- (m) the contact details of the returning officer.

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

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

- (a) a ballot paper and ballot paper envelope,

- (b) the ID declaration form (if required),
- (c) information about each candidate standing for election, pursuant to rule 61 of these rules, and
- (d) a covering envelope;

("postal voting information").

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

- (a) instructions on how to vote and how to make a declaration of identity (if required),
- (b) the voter's voter ID number,
- (c) information about each candidate standing for election, pursuant to rule 57 of these rules, or details of where this information is readily available on the internet or available in such other formats as the Returning Officer thinks appropriate,
- (d) contact details of the returning officer,

("e-voting information").

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

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

for the purposes of the poll.

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

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

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

- 25.1 The ballot paper envelope must have clear instructions to the voter printed on it, instructing the voter to seal the ballot paper inside the envelope once the ballot paper has been marked.
- 25.2 The covering envelope is to have:
- (a) the address for return of the ballot paper printed on it, and
  - (b) pre-paid postage for return to that address.
- 25.3 There should be clear instructions, either printed on the covering envelope or elsewhere, instructing the voter to seal the following documents inside the covering envelope and return it to the returning officer –
- (a) the completed ID declaration form if required, and
  - (b) the ballot paper envelope, with the ballot paper sealed inside it.

## **26. E-voting systems**

- 26.1 If internet voting is a method of polling for the relevant election then the returning officer must provide a website for the purpose of voting over the internet (in these rules referred to as "the polling website").
- 26.2 If telephone voting is a method of polling for the relevant election then the returning officer must provide an automated telephone system for the purpose of voting by the use of a touch-tone telephone (in these rules referred to as "the telephone voting facility").
- 26.3 If text message voting is a method of polling for the relevant election then the returning officer must provide an automated text messaging system for the purpose of voting by text message (in these rules referred to as "the text message voting facility").
- 26.4 The returning officer shall ensure that the polling website and internet voting system provided will:
- (a) require a voter to:
    - (i) enter his or her voter ID number; and
    - (ii) where the election is for a public or patient constituency, make a declaration of identity;in order to be able to cast his or her vote;
  - (b) specify:
    - (i) the name of the corporation,

- (ii) the constituency, or class within a constituency, for which the election is being held,
  - (iii) the number of members of the council of governors to be elected from that constituency, or class within that constituency,
  - (iv) the names and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
  - (v) instructions on how to vote and how to make a declaration of identity,
  - (vi) the date and time of the close of the poll, and
  - (vii) the contact details of the returning officer;
- (c) prevent a voter from voting for more candidates than he or she is entitled to at the election;
  - (d) create a record ("internet voting record") that is stored in the internet voting system in respect of each vote cast by a voter using the internet that comprises of-
    - (i) the voter's voter ID number;
    - (ii) the voter's declaration of identity (where required);
    - (iii) the candidate or candidates for whom the voter has voted; and
    - (iv) the date and time of the voter's vote,
  - (e) if the voter's vote has been duly cast and recorded, provide the voter with confirmation of this; and
  - (f) prevent any voter from voting after the close of poll.

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

- (a) require a voter to:
  - (i) enter his or her voter ID number in order to be able to cast his or her vote; and
  - (ii) where the election is for a public or patient constituency, make a declaration of identity;
- (b) specify:
  - (i) the name of the corporation,
  - (ii) the constituency, or class within a constituency, for

which the election is being held,

- (iii) the number of members of the council of governors to be elected from that constituency, or class within that constituency,
  - (iv) instructions on how to vote and how to make a declaration of identity,
  - (v) the date and time of the close of the poll, and
  - (vi) the contact details of the returning officer;
- (c) prevent a voter from voting for more candidates than he or she is entitled to at the election;
- (d) create a record ("telephone voting record") that is stored in the telephone voting system in respect of each vote cast by a voter using the telephone that comprises of:
- (i) the voter's voter ID number;
  - (ii) the voter's declaration of identity (where required);
  - (iii) the candidate or candidates for whom the voter has voted; and
  - (iv) the date and time of the voter's vote
- (e) if the voter's vote has been duly cast and recorded, provide the voter with confirmation of this;
- (f) prevent any voter from voting after the close of poll.

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

- (a) require a voter to:
- (i) provide his or her voter ID number; and
  - (ii) where the election is for a public or patient constituency, make a declaration of identity;
- in order to be able to cast his or her vote;
- (b) prevent a voter from voting for more candidates than he or she is entitled to at the election;
- (d) create a record ("text voting record") that is stored in the text messaging voting system in respect of each vote cast by a voter by text message that comprises of:
- (i) the voter's voter ID number;
  - (ii) the voter's declaration of identity (where required);
  - (ii) the candidate or candidates for whom the voter has

- voted; and
- (iii) the date and time of the voter's vote
- (e) if the voter's vote has been duly cast and recorded, provide the voter with confirmation of this;
- (f) prevent any voter from voting after the close of poll.

### *The poll*

## **27. Eligibility to vote**

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

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

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

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

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



- (b) the details of the unique identifier of the spoiled ballot paper (if that officer was able to obtain it), and
  - (c) the details of the unique identifier of the replacement ballot paper.
- 29.5 If a voter has dealt with his or her text message vote in such a manner that it cannot be accepted as a vote (referred to as a “spoilt text message vote”), that voter may apply to the returning officer for a replacement voter ID number.
- 29.6 On receiving an application, the returning officer is to obtain the details of the voter ID number on the spoiled text message vote, if he or she can obtain it.
- 29.7 The returning officer may not issue a replacement voter ID number in respect of a spoiled text message vote unless he or she is satisfied as to the voter’s identity.
- 29.8 After issuing a replacement voter ID number in respect of a spoiled text message vote, the returning officer shall enter in a list (“the list of spoiled text message votes”):
  - (a) the name of the voter, and
  - (b) the details of the voter ID number on the spoiled text message vote (if that officer was able to obtain it), and
  - (c) the details of the replacement voter ID number issued to the voter.

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

- 30.1 Where a voter has not received his or her voting information by the tenth day before the close of the poll, that voter may apply to the returning officer for replacement voting information.
- 30.2 The returning officer may not issue replacement voting information in respect of lost voting information unless he or she:
  - (a) is satisfied as to the voter’s identity,
  - (b) has no reason to doubt that the voter did not receive the original voting information,
  - (c) has ensured that no declaration of identity, if required, has been returned.
- 30.3 After issuing replacement voting information in respect of lost voting information, the returning officer shall enter in a list (“the list of lost ballot documents”):

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

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

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

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

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

### **32. ID declaration form for replacement ballot papers (public and patient constituencies)**

32.1 In respect of an election for a public or patient constituency an ID declaration form must be issued with each replacement ballot paper requiring the voter to make a declaration of identity.

*Polling by internet, telephone or text*

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

33.1 To cast his or her vote using the internet, a voter will need to gain access to the polling website by keying in the url of the polling website provided in the voting information.

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

33.3 If the internet voting system authenticates the voter ID number, the system will give the voter access to the polling website for the election in which the voter is eligible to vote.

33.4 To cast his or her vote, the voter will need to key in a mark on the screen opposite the particulars of the candidate or candidates for whom he or she wishes to cast his or her vote.

33.5 The voter will not be able to access the internet voting system for an election once his or her vote at that election has been cast.

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

34.1 To cast his or her vote by telephone, the voter will need to gain access to the telephone voting facility by calling the designated telephone number provided in the voter information using a telephone with a touch-tone keypad.

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

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

34.4 When prompted to do so the voter may then cast his or her vote by keying in the numerical voting code of the candidate or candidates, for whom he or she wishes to vote.

34.5 The voter will not be able to access the telephone voting facility for an election once his or her vote at that election has been cast.

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

35.1 To cast his or her vote by text message the voter will need to gain access to the text message voting facility by sending a text message to the designated telephone number or telephone short code provided in the voter information.

35.2 The text message sent by the voter must contain his or her voter ID number and the numerical voting code for the candidate or candidates, for whom he or she wishes to vote.

35.3 The text message sent by the voter will need to be structured in accordance with the instructions on how to vote contained in the voter information, otherwise the vote will not be cast.

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

#### **36. Receipt of voting documents**

36.1 Where the returning officer receives:

- (a) a covering envelope, or

- (b) any other envelope containing an ID declaration form if required, a ballot paper envelope, or a ballot paper,

before the close of the poll, that officer is to open it as soon as is practicable; and rules 37 and 38 are to apply.

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

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

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

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

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

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

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

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

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

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

required that has been correctly made.

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

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

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

**38. Declaration of identity but no ballot paper (public and patient constituency)<sup>1</sup>**

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

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

**39. De-duplication of votes**

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

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

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

---

<sup>1</sup> It should not be possible, technically, to make a declaration of identity electronically without also submitting a vote.

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

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

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

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

#### **40. Sealing of packets**

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

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

and ensure that complete electronic copies of the internet voting records, telephone voting records and text voting records created

in accordance with rule 26 are held in a device suitable for the purpose of storage.

## **PART 6: COUNTING THE VOTES**

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

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

41.2 The returning officer may make arrangements for any votes to be counted using vote counting software where:

(a) the board of directors and the council of governors of the corporation have approved:

(i) the use of such software for the purpose of counting votes in the relevant election, and

(ii) a policy governing the use of such software, and

(b) the corporation and the returning officer are satisfied that the use of such software will produce an accurate result.

### **42. The count**

42.1 The returning officer is to:

(a) count and record the number of:

(iii) ballot papers that have been returned; and

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

(b) count the votes according to the provisions in this Part of the rules and/or the provisions of any policy approved pursuant to rule 41.2(ii) where vote counting software is being used.

42.2 The returning officer, while counting and recording the number of ballot papers, internet voting records, telephone voting records and/or text voting records and counting the votes, must make arrangements to ensure that no person obtains or communicates information as to the unique identifier on a ballot paper or the voter ID number on an internet voting record, telephone voting record or text voting record.

42.3 The returning officer is to proceed continuously with counting the votes as far as is practicable.

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

#### 43.1 Any ballot paper:

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

shall, subject to rules 43.2 and 43.3, be rejected and not counted.

43.2 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.

#### 43.3 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.

#### 43.4 The returning officer is to:

- (a) endorse the word “rejected” on any ballot paper which under this rule is not to be counted, and
- (b) in the case of a ballot paper on which any vote is counted under rules 43.2 and 43.3, endorse the words “rejected in part” on the ballot paper and indicate which vote or votes have been counted.

43.5 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.

43.6 Any text voting record:

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

shall, subject to rules 43.7 and 43.8, be rejected and not counted.

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

43.8 A text voting record on which a vote is marked:

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

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

43.9 The returning officer is to:

- (a) endorse the word "rejected" on any text voting record which under this rule is not to be counted, and
- (b) in the case of a text voting record on which any vote is counted under rules 43.7 and 43.8, endorse the words "rejected in part" on the text voting record and indicate which vote or votes have been counted.

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

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

(c) unmarked or rejected because of uncertainty,

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

#### **44. Equality of votes**

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

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

#### **45. Declaration of result for contested elections**

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

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

45.2 The returning officer is to make:

- (a) the total number of votes given for each candidate (whether elected or not), and
- (b) the number of rejected ballot papers under each of the headings in rule 43.5,
- (c) the number of rejected text voting records under each of the headings in rule 43.10,

available on request.

#### **46. Declaration of result for uncontested elections**

- 46.1 In an uncontested election, the returning officer is to as soon as is practicable after final day for the delivery of notices of withdrawals by candidates from the election:
- (a) declare the candidate or candidates remaining validly nominated to be elected,
  - (b) give notice of the name of each candidate who he or she has declared elected to the Chairperson 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**

#### **47. Sealing up of documents relating to the poll**

- 47.1 On completion of the counting at a contested election, the returning officer is to seal up the following documents in separate packets:
- (a) the counted ballot papers, internet voting records, telephone voting records and text voting records,
  - (b) the ballot papers and text voting records endorsed with “rejected in part”,
  - (c) the rejected ballot papers and text voting records, and
  - (d) the statement of rejected ballot papers and the statement of rejected text voting records,

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

- 47.2 The returning officer must not open the sealed packets of:
- (a) the disqualified documents, with the list of disqualified documents inside it,
  - (b) the list of spoilt ballot papers and the list of spoilt text message votes,
  - (c) the list of lost ballot documents, and

(d) the list of eligible voters,

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

47.3 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.

#### **48. Delivery of documents**

48.1 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.

#### **49. Forwarding of documents received after close of the poll**

49.1 Where:

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

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

#### **50. Retention and public inspection of documents**

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

50.2 With the exception of the documents listed in rule 51.1, 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.

50.3 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.

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

51.1 The corporation may not allow:

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

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

51.2 A person may apply to the board of directors of the corporation to inspect any of the documents listed in rule 51.1, and the board of directors of the corporation may only consent to such inspection if it is satisfied that it is necessary for the purpose of questioning an election pursuant to Part 11.

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

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

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

51.4 On an application to inspect any of the documents listed in rule 51.1 the board of directors of the corporation must:

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

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

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

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

### **52. Countermand or abandonment of poll on death of candidate**

52.1 If at a contested election, proof is given to the returning officer's satisfaction before the result of the election is declared that one of the persons named or to be named as a candidate has died, then the returning officer is to:

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

52.2 Where a new election is ordered under rule 52.1, no fresh nomination is necessary for any candidate who was validly nominated for the election where the poll was countermanded or abandoned but further candidates shall be invited for that constituency or class.

52.3 Where a poll is abandoned under rule 52.1(a), rules 52.4 to 52.7 are to apply.

52.4 The returning officer shall not take any step or further step to open envelopes or deal with their contents in accordance with rules 38 and 39, and is to make up separate sealed packets in accordance with rule 40.

52.5 The returning officer is to:

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

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

52.6 The returning officer is to endorse on each packet a description of:

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

52.7 Once the documents relating to the poll have been sealed up and endorsed pursuant to rules 52.4 to 52.6, the returning officer is to deliver them to the Chairperson of the corporation, and rules 49 and 50 are to apply.

## **PART 10: ELECTION EXPENSES AND PUBLICITY**

### *Election expenses*

#### **53. Election expenses**

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

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

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

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

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

55.1 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.

55.2 Nothing in this rule is to prevent the corporation from incurring such expenses, and making such payments, as it considers necessary pursuant to rules 56 and 57.

### *Publicity*

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

56.1 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.

56.2 Any information provided by the corporation about the candidates, including information compiled by the corporation under rule 57, 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.



56.3 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.

## **57. Information about candidates for inclusion with voting information**

57.1 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.

57.2 The information must consist of:

(a) a statement submitted by the candidate of no more than 250 words,

(b) if voting by telephone or text message is a method of polling for the election, the numerical voting code allocated by the returning officer to each candidate, for the purpose of recording votes using the telephone voting facility or the text message voting facility (“numerical voting code”), and a photograph of the candidate.

## **58. Meaning of “for the purposes of an election”**

58.1 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.

58.2 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**

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

59.1 An application alleging a breach of these rules, including an electoral irregularity under Part 10, may be made to Monitor for the purpose of seeking a referral to the independent election

arbitration panel (IEAP).

- 59.2 An application may only be made once the outcome of the election has been declared by the returning officer.
- 59.3 An application may only be made to Monitor by:
- (a) a person who voted at the election or who claimed to have had the right to vote, or
  - (b) a candidate, or a person claiming to have had a right to be elected at the election.
- 59.4 The application must:
- (a) describe the alleged breach of the rules or electoral irregularity, and
  - (b) be in such a form as the independent panel may require.
- 59.5 The application must be presented in writing within 21 days of the declaration of the result of the election. Monitor will refer the application to the independent election arbitration panel appointed by Monitor.
- 59.6 If the independent election arbitration panel requests further information from the applicant, then that person must provide it as soon as is reasonably practicable.
- 59.7 Monitor shall delegate the determination of an application to a person or panel of persons to be nominated for the purpose.
- 59.8 The determination by the IEAP shall be binding on and shall be given effect by the corporation, the applicant and the members of the constituency (or class within a constituency) including all the candidates for the election to which the application relates.
- 59.9 The IEAP may prescribe rules of procedure for the determination of an application including costs.

## **PART 12: MISCELLANEOUS**

### **60. Secrecy**

- 60.1 The following persons:
- (a) the returning officer,
  - (b) the returning officer's staff,
- must maintain and aid in maintaining the secrecy of the voting

and the counting of the votes, and must not, except for some purpose authorised by law, communicate to any person any information as to:

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

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

60.3 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.

## **61. Prohibition of disclosure of vote**

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

## **62. Disqualification**

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

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

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

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

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

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

## ANNEX 5 – ADDITIONAL PROVISIONS – COUNCIL OF GOVERNORS

(Paragraph 22)

### 1. Eligibility to be on the Council of Governors

- 1.1. A person may not become or continue as a Governor, and if already holding such office will immediately cease to do so if:
  - 1.1.1. any of the grounds contained in paragraph 15 of the Constitution apply to him;
  - 1.1.2. they are under 18 years of age;
  - 1.1.3. they are a Director of the Trust, or a governor or director of another NHS Body or of an independent/private sector healthcare provider. These restrictions do not apply to Appointed Governors;
  - 1.1.4. they are the spouse, Partner, parent or child of a member of the Board of Directors;
  - 1.1.5. being a member of the Public Constituency, they refuse 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;
  - 1.1.6. they are subject to a sex offender order;
  - 1.1.7. they are subject to an unexpired disqualification order made under the Company Directors Disqualification Act 1986;
  - 1.1.8. they have within the preceding two years been lawfully dismissed, otherwise than by reason of redundancy, from any paid employment with an NHS Body;
  - 1.1.9. they are a person whose tenure of office as the Chairperson or as a member or director of an NHS Body has been terminated on the grounds that their appointment is not in the interests of the NHS, for non-attendance at meetings, or for non-disclosure of a pecuniary interest;
  - 1.1.10. they have had their name removed from any list maintained by health and care professional bodies in the UK, and have not subsequently had their name included on such a list;
  - 1.1.11. they have previously been expelled as a governor of a foundation trust in the previous nine years.

## **2. Disqualification as a Governor**

- 2.1. A person holding office as a Governor shall immediately cease to do so if:
  - 2.1.1. they cease to fulfil the requirements of paragraph 1 above;
  - 2.1.2. they resign by notice in writing to the Secretary;
  - 2.1.3. they fail to attend two consecutive meetings of the Council of Governors, unless the Council of Governors is satisfied that:
    - 2.1.3.1. the absences were due to reasonable causes; and
    - 2.1.3.2. they will be able to start attending meetings of the Council of Governors again within such a periods as is considered reasonable by the Council of Governors;
  - 2.1.4. in the case of an Elected Governor, they cease to be a member of the constituency or class of constituency by which they were elected;
  - 2.1.5. in the case of an Appointed Governor, the Appointing Organisation terminates the appointment or the Appointing Organisation ceases to exist;
  - 2.1.6. they have refused without reasonable cause to undertake any training which the Council of Governors requires all Governors to undertake;
  - 2.1.7. they have 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;
  - 2.1.8. they are removed from the Council of Governors pursuant to paragraph 3 below
- 2.2. The process for disqualification of a Governor is set out in paragraph 6.1 of the Council of Governor's Standing Orders (Annex 6).

## **3. Removal as a Governor**

- 3.1. A Governor may be removed from the Council of Governors by a resolution approved by not less than three-quarters of the remaining Governors present and voting at a meeting of the Council of Governors on the grounds that:
  - 3.1.1. they have committed a serious breach of the code of conduct for Governors;

- 3.1.2. they have acted in a manner detrimental to the interests of the Trust; and
- 3.1.3. the Council of Governors consider that it is not in the best interests of the Trust for them to continue as a Governor.
- 3.2. The process for removing a Governor from office is set out in paragraph 6.2 of the Council of Governor's Standing Orders (Annex 6).

#### **4. Roles and responsibilities of the Council of Governors**

- 4.1. The roles and responsibilities of the Council of Governors, which are to be carried out in accordance with this Constitution are to:
  - 4.1.1. carry out in the general duties of the Council of Governors as set out in paragraph 16 of the Constitution;
  - 4.1.2. appoint or remove the Chairperson and the other Non-Executive Directors;
  - 4.1.3. approve an appointment (by the Non-Executive Directors) of the Chief Executive;
  - 4.1.4. decide the remuneration and allowances and the other terms and conditions of office of the Non-Executive Directors;
  - 4.1.5. appoint or remove the Trust's Auditor;
  - 4.1.6. be presented with the annual accounts, any report of the Auditor on them and the annual report;
  - 4.1.7. approve the application for any merger, acquisition, separation, dissolution or the entering into of any significant transaction by the Trust;
  - 4.1.8. approve changes to the Constitution;
  - 4.1.9. vote on whether to approve the referral of a question to any Panel appointed by Monitor as to whether the Trust has failed or is failing to act in accordance with this Constitution or to act in accordance with provision made by or under Chapter 5 of the 2006 Act;
  - 4.1.10. require one or more of the Directors to attend a general meeting of the Council of Governors for the purpose of obtaining information about the Trust's performance of its functions or the Directors' performance of their duties;
  - 4.1.11. decide whether to propose a vote on the Trust's or Directors' performance;

- 4.1.12. provide their views to the Board of Directors when the Board of Directors is preparing any document containing information about the Trust's forward planning;
- 4.1.13. determine whether it is satisfied that the carrying on of activities other than the provision of goods and services for the purposes of the health service in England proposed in the forward plan will not to any significant extent interfere with the fulfilment by the Trust of its principal purpose or the performance of its other functions;
- 4.1.14. approve the implementation of any increase of 5% or more in the proportion of the Trust's 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;
- 4.1.15. respond as appropriate when consulted by the Board of Directors in accordance with this Constitution;
- 4.1.16. undertake such functions as the Board of Directors may from time to time request;
- 4.1.17. prepare and from time to time review the Trust's membership strategy, and its policies for the composition of the Council of Governors and Non-Executive Directors, and when appropriate, to make recommendations;
- 4.1.18. to approve and from time to time (and at least every three years) review the Trust's membership strategy and its policy for the composition of the Council of Governors;
- 4.1.19. to consider disputes as to membership referred to them; and
- 4.1.20. exercise such other powers and to discharge such other duties as may be conferred on the Council of Governors under this Constitution and the 2006 Act.

## **5. Governors vacancies**

- 5.1. Where a vacancy arises on the Council of Governors for any reason other than expiry of term of office, the following provisions will apply:
  - 5.1.1. 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.
  - 5.1.2. If the term of office of an Elected Governor is terminated before it expires, the Council of Governors shall be at liberty either:



5.1.2.1. to call an election within three months to fill the seat for the remainder of that term of office; or

5.1.2.2. to invite the next highest polling candidate for that seat at the most recent election, who is willing to take office to fill the seat for any unexpired period of the term of office or;

5.1.2.3. Carry the vacancy.

## **6. Remuneration of Governors**

6.1. Governors are not to receive remuneration.

**ANNEX 6**

**STANDING ORDERS - COUNCIL OF GOVERNORS**

This document provides a regulatory and business framework for the conduct of the Council of Governors.

## 1. INTERPRETATION AND DEFINITIONS

- 1.1 Save as otherwise permitted by law and subject to the Constitution, at any Council of Governors' meeting the Chairperson's interpretation of these Standing Orders (on which he should be advised by the Chief Executive or Secretary) shall be final.
- 1.2 Unless a contrary intention is evident or the context otherwise requires, the provisions relating to Interpretation and Definitions in paragraph 1 of the Constitution shall apply and the words or expressions contained in these Standing Orders shall bear the same meaning.
- 1.3 In these Standing Orders the following defined terms shall have the specific meanings given to them below:

**Chairperson** means the Chairperson of the Trust.

**Lead Governor** means one (1) Governor appointed by the Council of Governors to lead the Council of Governors and to communicate directly with Monitor in certain circumstances.

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

**Secretary** means the Trust Secretary or officer to whom he has delegated this duty.

**SFIs** means Standing Financial Instructions.

**SOs** means these Standing Orders of the Council of Governors.

## 2. MEETINGS OF THE COUNCIL OF GOVERNORS

### 2.1 Admission of the Public

The meetings of the Council of Governors shall be open to members of the public except when the Council of Governors decides otherwise in relation to all or part of a meeting for reasons of commercial confidentiality or on other proper grounds. The Chairperson 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.

## 2.2 **Chairperson of the Meeting**

At any meeting of the Council of Governors, the Chairperson, if present, shall preside. If the Chairperson is absent from the meeting or is absent temporarily on the grounds of a declared conflict of interest the Vice-Chairperson shall preside. If the Chairperson and Vice-Chairperson are absent from the meeting or absent temporarily on the grounds of a declared conflict of interest, such Non-Executive Director as the Governors present shall choose shall preside. If the person presiding has a conflict of interest in relation to the business being discussed the Lead Governor will chair that part of the meeting.

## 2.3 **Calling Meetings**

2.3.1 The Council of Governors will meet at least four times in each Financial Year. Save in the case of emergencies or the need to conduct urgent business, the Secretary shall give at least 14 days' written notice of the date and place of every meeting of the Council of Governors to all Governors. Notice will also be published on the Trust's website and in other locations and media as considered appropriate. Seminars, workshops or similar events involving governors are not to be treated as meetings of the Council of Governors.

2.3.2 Meetings of the Council of Governors are called by the Secretary or by the Chairperson or by ten governors (including at least two Public or Staff Governors and two Appointed Governors) who give written notice 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. The Secretary shall call a meeting within at least fourteen but not more than 28 days to discuss the specified business. If the Secretary fails to call such a meeting, within seven clear days, then the Chairperson or ten governors, whichever is the case, shall call such a meeting.

2.3.3 Subject to SO 2.3.4 below, lack of service of the notice of the business of the meeting on any governor shall not affect the validity of a meeting.

2.3.4 Failure to serve such a notice on more than half of the governors will invalidate the meeting. A notice shall be presumed to have been served at the time at which the notice would be delivered in the ordinary course of the post or, where the notice is sent by email, at the time at which the email is sent.

2.3.5 In the case of a meeting being called by ten governors in default of the Secretary or Chairperson, the notice shall be signed by those members of the Council of Governors and no business

shall be transacted at the meeting other than that specified in the notice.

## **2.4 Agenda of Meetings and Motions on Notice**

- 2.4.1 Agendas and supporting papers will normally be issued to arrive with governors no later than seven days in advance of the meeting. Draft minutes of the previous meeting will be circulated with these papers for approval as a specific agenda item.
- 2.4.2 A governor desiring a matter to be included on an agenda including a formal proposition for discussion and voting on at a meeting shall make his request in writing to the Secretary at least 21 clear days before the meeting. The request should state whether the item of business is proposed to be transacted in the presence of the public and should include appropriate supporting information. Requests made less than 21 clear days before a meeting may be included on the agenda at the discretion of the Chairperson. Receipt of such matters via electronic means is acceptable.
- 2.4.3 Motions for which notice has been given will be listed on the agenda unless the governor giving notice states, in writing, that they propose to move it to a later meeting or withdraw it.
- 2.4.4 Motions must be about matters for which the Council of Governors has a responsibility or which affect the area covered by the Trust.
- 2.4.5 There will not be an agenda item entitled 'Any Other Business'. See Standing Order 2.4.2 for inclusion of agenda items. Instead, there will be an item for Questions on Notice, which is subject to Standing Order 2.7 below.

## **2.5 Motions without Notice**

- 2.5.1 The following motions may be moved without notice:
- (a) To change the order of business on the agenda
  - (b) To refer a matter to an appropriate body or individual
  - (c) To appoint a working group arising from an item on the agenda for the meeting
  - (d) To receive reports or adopt recommendations made by the Board of Directors
  - (e) To withdraw a motion
  - (f) To amend a motion
  - (g) To proceed to the next business
  - (h) That the question now be put
  - (i) To adjourn a debate

- (j) To adjourn a meeting
- (k) To suspend a particular Standing Order; see Standing Order 7.1 for further details.
- (l) To not hear further a governor, or to exclude them from the meeting. If a governor persistently disregards the ruling of the Chairperson by behaving improperly or offensively or deliberately obstructs business, the Chairperson may move that the governor not be heard further. If seconded, the motion will be voted on without discussion. If the governor continues to behave improperly after such a motion is carried the Chairperson may move that the governor leaves the meeting room or that the meeting is adjourned for a specified period. If seconded, the motion will be voted on without discussion.
- (m) To give consent of the Council where its consent is required by the Constitution.

## 2.6 **Voting/Decision-Making**

- 2.6.1 Save as provided otherwise in the Constitution, and/or the 2006 Act and/or the 2012 Act, and these Standing Orders, questions arising at a meeting of the Council of Governors shall be decided by a majority of votes of those present (in person) and voting.
- 2.6.2 Where a vote or approval of the Council of Governors is required pursuant to sections 37 (Amendments of constitution), 39A (Panel for advising governors), 43(3D) (Authorised services), 51A (Significant transactions), 56 (Mergers), 56A (Acquisitions), 56B (Separations) or 57A (Dissolutions) of the 2006 Act, a Governor entitled to attend and vote at the meeting of the Council of Governors may appoint the Chairperson, or anyone else presiding at the meeting or another governor as his proxy to attend and, on a paper ballot, to vote at the meeting on his behalf. Proxies validly appointed in accordance with these Standing Orders shall be deemed to be present at the meeting of the Council of Governors in determining the required majority on any vote in respect of which a proxy may be appointed.
- 2.6.3 The governor appointing a proxy may direct the proxy how to vote at the meeting or may allow the proxy to choose how to vote. A governor appointing a proxy may revoke the proxy by delivering a notice in writing to the Secretary before the start of the meeting to which it relates or by attending the meeting in person.
- 2.6.4 The form for appointing a proxy shall be in writing, signed by the governor appointing the proxy and made in such form and include such declarations as the Council of Governors may from time to time determine. Any proxy appointed not using the agreed form shall be invalid. The signed form appointing a proxy must be received by the Secretary not less than 48 hours before

the time and date of the meeting, or adjourned meeting, and shall not be treated as valid if received after this time.

- 2.6.5 At a meeting of the Council of Governors a vote shall be decided on a show of hands, the result being declared by the Chairperson and recorded in the minutes. The entry in the minutes shall confirm the result without recording the number or proportion in favour or against the motion unless a request is made under Standing Order 2.6.7. Every Governor shall have one vote whether voting in person or by proxy. All valid proxies received for a vote at a meeting of the Council of Governors shall be declared at the meeting and recorded in the minutes regardless of whether a vote is taken by paper ballot.
- 2.6.6 A paper ballot may be used if a majority of the governors present so request. A proxy shall be deemed to have the authority to join in the request for a paper ballot on behalf of the governor(s) appointing the proxy. If a paper ballot is to be used, it shall be taken at such time and place and in such a manner as the Chairperson of the meeting shall direct and the result of the ballot shall be deemed to be the resolution of the meeting at which the ballot was demanded. The demand for a ballot shall not prevent the continuance of a meeting for the transaction of any business other than the question on which a ballot has been demanded.
- 2.6.7 If at least one-third of the governors present so request, the voting on any question may be recorded to show how each governor present voted or abstained.
- 2.6.8 In the case of an equality of votes, whether on a show of hands or a ballot, the Chairperson shall have a second or casting vote.
- 2.6.9 No resolution of the Council of Governors shall be passed if it is opposed by all of the Public Governors present.
- 2.6.10 All decisions taken in good faith at a meeting of the Council of Governors shall be valid even if it is discovered subsequently that there was a defect in the calling of the meeting, or the appointment of the governors attending the meeting.

## **2.7 Questions from Governors**

- 2.7.1 A governor may ask any question through the Chairperson without notice upon a report from an Executive Director or other Officer of the Trust when that item is being received or under consideration by the Council of Governors.
- 2.7.2 Questions relating to matters other than those under report may be asked with due notice. For the avoidance of confusion,

questions on notice must be given in writing (including email) to the Secretary at least 14 days in advance of the meeting. If the question is urgent and with the agreement of the person to whom the question is to be put, the content of the question may be given to the Secretary by 10.00 a.m. on the day of the meeting (if the meeting is scheduled for the afternoon) or by 2.00 p.m. on the preceding day (if the meeting is scheduled for the morning). Urgent is defined as a matter that will adversely affect the Trust in the next seven days.

## **2.8 Chairperson's Ruling**

Statements of members of the Council of Governors made at meetings of the Council of Governors shall be relevant to the matter under discussion at the material time and the decision of the Chairperson of the meeting on questions of order, relevancy, regularity and any other matters shall be final.

## **2.9 Attendance**

The names of the Chairperson and Governors present at the meeting shall be recorded in the minutes. Governors who are unable to attend the Council of Governors meeting should advise the Secretary in advance so that their apologies may be recorded.

## **2.10 Quorum**

2.10.1 No business shall be transacted at a meeting unless at least twelve governors are present in person, which must include at least four Public Governors and one Staff Governor.

2.10.2 If at any meeting there is no quorum present within 30 minutes of the time fixed for the start of the meeting the meeting will stand adjourned for five clear days and upon reconvening those present shall constitute a quorum.

2.10.3 If the Chairperson or any governor has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of the declaration of a conflict of interest he shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business.

## **2.11 Minutes**

2.11.1 The minutes of the proceedings of a meeting shall be prepared and submitted to be read and for agreement at the next meeting



of the Council of Governors where they will be considered to have been signed by the person presiding at it. The approved minutes will be conclusive evidence of the events of the meeting and retained in an electronic minute book held by the Trust Secretary.

2.11.2 No discussion shall take place upon the minutes, except upon their accuracy, or where the Chairperson considers discussion appropriate. Any amendments to the minutes shall be agreed and recorded at the next meeting.

### **3. COMMITTEES**

- 3.1 The Council of Governors may not delegate any of its powers to a committee or sub-committees, but it may appoint committees to assist the Council of Governors in carrying out its functions. The Council of Governors may, through the Secretary, request that advisors assist them or any committee they appoint in carrying out its duties.
- 3.2 These Standing Orders, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees established by the Council of Governors.
- 3.2 Each committee and sub-committee shall have such terms of reference and be subject to such conditions as the Council of Governors shall decide and shall be in accordance with any guidance issued by Monitor and any legislation or applicable guidance issued by the Secretary of State.
- 3.3 The Council of Governors shall establish the Non-Executive Director Nomination and Remuneration Committee and such other committees as required to assist the Council of Governors in discharging its responsibilities.
- 3.4 A member of a committee shall not disclose a matter dealt with by, or brought before, the committee without its permission until the committee shall have reported to the Council of Governors or shall otherwise have concluded on that matter.
- 3.5 A governor or a member of a committee shall not disclose any matter reported to the Council of Governors or otherwise dealt with by the committee, notwithstanding that the matter has been reported or action has been concluded, if the Council of Governors or the committee shall resolve that it is confidential.

## 4. DECLARATIONS OF INTERESTS AND REGISTER OF INTERESTS

### 4.1. Declaration of Interests

- 4.1.1 Any governor who has a material interest in a matter as defined below shall declare such interest to the Council of Governors via the Secretary.
- 4.1.2 Any governor who fails to declare any interest required to be disclosed under the preceding paragraph must permanently vacate their office if required to do so by a majority of the remaining governors.
- 4.1.3 Subject to the exceptions below, a material interest
- is any directorship of a company;
  - any interest held by a governor or his spouse/partner in any firm or company or business which, in connection with the matter, is trading with the Trust, or is likely to be considered as a potential trading partner with the Trust;
  - any interest in an organisation providing health and social care services to the National Health Service; and
  - a position of authority in a charity or voluntary organisation in the field of health and social care.
- 4.1.4 The exceptions which shall not be treated as material interests are as follows:
- shares not exceeding 2% of the total shares in issue held in any company whose shares are listed on any public exchange;
  - an employment contract held by Staff Governors;
  - a contract with their Clinical Commissioning Group held by a Partnership Governor appointed by a Clinical Commissioning Group;
  - an employment contract with a Local Authority held by a Local Authority Governor; and
  - an employment contract with a Partnership Organisation held by a Partnership Governor.
- 4.1.5 It is the obligation of the governor to inform the Secretary in writing within seven days of becoming aware of the existence of an interest. If a governor is in any doubt whether an interest should be disclosed, they should discuss the position with the Chairperson or Secretary

- 4.1.6 A governor may not vote at a meeting of the Council of Governors unless, before attending the meeting, they have made a declaration in the form specified by the Secretary of the 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. A governor shall be deemed to have confirmed the declaration upon attending any subsequent meeting of the Council of Governors, and every agenda for meetings of the Council of Governors will draw this to the attention of governors.

## **4.2 Conflict of Interest**

- 4.2 During the course of a Council of Governors meeting, if a conflict of interest is disclosed the governor concerned shall withdraw from the meeting and take no further part in the matter under discussion.

## **4.3 Register of Interests**

- 4.3.1 The Secretary will ensure that a register of interests is maintained to record formally the declarations of interests of governors.
- 4.3.2 The details on the register shall be reviewed at every meeting of the Council of Governors.
- 4.3.3 The register will be available to the public on request.
- 4.3.4 In establishing, maintaining, updating and publicising the register, the Trust shall comply with all guidance issued from time to time by Monitor.

## **5. STANDARDS OF BUSINESS CONDUCT**

- 5.1 Governors must comply with the Constitution, the Trust's Governor Code of Conduct, the NHS Foundation Trust Code of Governance, the requirements of the law and any guidance issued by Monitor.
- 5.2 Governors will confirm their agreement to adhere to the Trust's Governor Code of Conduct by signing a copy annually and returning it to the Secretary.
- 5.3 Canvassing of Directors or governors or of any members of any committee of the Trust directly or indirectly for any appointment by the Trust shall disqualify the candidate for such appointment.
- 5.4 A governor shall not solicit for any person any appointment under the Trust or recommend any person for such appointment but this Standing Order shall not preclude a governor from giving written testimonial of a candidate's ability, experience or character for submission to the Trust.

5.5 Informal discussions outside appointment panels or committees, whether solicited or unsolicited, should be declared to the panel or committee.

5.6 Governors will be permitted to gain access to membership data if:

5.6.1 they have explained the intended use to the Secretary;

5.6.2 the Secretary has agreed the use; and

5.6.3 they agree to keep the information secure and have regard for the Data Protection Principles.

## **6. SPECIAL PROVISIONS RELATING TO THE DISQUALIFICATION AND REMOVAL OF A GOVERNOR'S TENURE**

### **6.1 Disqualification**

6.1.1 Grounds - The grounds for disqualification are as set out in paragraph 15 of the Constitution.

6.1.2 Process - Where a person has been elected or appointed to be a governor and he becomes disqualified from office under paragraph 15 of the Constitution, he shall notify the Secretary in writing of such disqualification as soon as practicable and in any event within 14 days of first becoming aware of those matters which render him disqualified. The Secretary shall remove him from the register of the governors immediately.

6.1.3 If it comes to the notice of the Secretary that the governor is disqualified under paragraph 15 of the Constitution, whether at the time of the governor's appointment or later, the Secretary shall immediately declare that the individual in question is disqualified and give him notice in writing to that effect as soon as practicable and in any event within 14 days of the date of the said declaration. In the event that the governor shall dispute that he is disqualified the governor may refer the matter to the dispute resolution procedures set out in Annex 5 of this Constitution within 28 days of the date upon which the notice was given to the governor.

### **6.2 Removal**

6.2.1 Grounds – The grounds for removal are as set out in paragraph 15 of the Constitution.

6.2.2 Process - The Chairperson shall be authorised to take such action as may be immediately required, including but not limited to exclusion of the governor concerned so that any allegation made against a governor on any of the grounds set out in paragraph 15 of the Constitution can be investigated.

- 6.2.3 Where any grounds within paragraph 15 of the Constitution are alleged, it shall be open to the Council of Governors to decide, by three-quarters of those present and voting, to lay a formal charge of non-compliance or misconduct.
- 6.2.4 The governor in question will be notified in writing of the allegations. The notification will detail the specific behaviour which is considered to be detrimental to the Trust and invite him to respond. His response will be considered within a defined, appropriate and reasonable timescale.
- 6.2.5 The governor may be invited to address the Council of Governors in person if the matter cannot be resolved satisfactorily through correspondence.
- 6.2.6 The governors, by three-quarters majority of those present and voting can decide whether to uphold the charge of non-compliance or misconduct detrimental to the Trust. If the charge is upheld then the governor will cease to be a governor with immediate effect and the Secretary shall cause his name to be removed immediately from the register of governors.
- 6.2.7 The governor in question will be permitted to appeal any decision of the Council of Governors to terminate his tenure of office made in accordance with Annex 5, Paragraph 3, in writing, within 28 days of the date upon which notice of the decision is received.
- 6.2.8 Any appeal of the decision of the Council of Governors to terminate a governor's tenure of office may be referred by the governor concerned to the dispute resolution procedures set out in Paragraph 46 of the Constitution, within 28 days of the date upon which notice in writing of the Council of Governors' decision made in accordance with Annex 5, Paragraph 3 of the Constitution is communicated to the governor concerned.
- 6.2.9 A governor who has been removed in accordance with these provisions shall not be eligible to stand for re-election to the Council of Governors for a period of nine years from the date of his removal from office or the date upon which any appeal against his removal from office is disposed of, whichever is later.

## **7 STANDING ORDERS**

### **7.1 Suspension of Standing Orders**

- 7.1.1 Except where this would contravene any statutory provision or any direction made by Monitor, any one or more of the Standing Orders may be suspended at any meeting, provided that at least two-thirds of the Council of Governors are present and that a majority of those present vote in favour of suspension.

- 7.1.2 A decision to suspend Standing Orders shall be recorded in the minutes of the meeting.
- 7.1.3 A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the Chairperson and the members of the Council of Governors.
- 7.1.4 No formal business may be transacted while the Standing Orders are suspended.

## **7.2 Amendment of Standing Orders**

These Standing Orders may be amended only in accordance with paragraph 44 of the Constitution.

## **7.3 Review of Standing Orders**

These Standing Orders shall be reviewed annually by the Council of Governors. The requirement for review extends to all documents having effect as if incorporated in these Standing Orders.

**ANNEX 7**

**STANDING ORDERS - BOARD OF DIRECTORS**

This document provides a regulatory and business framework for the conduct of the Board of Directors.

## 1 INTERPRETATION AND DEFINITIONS

- 1.1. Save as otherwise permitted by law, and subject to the Constitution, at any Board of Directors' meeting the Chairperson's interpretation of these Standing Orders (on which he should be advised by the Chief Executive or Secretary) shall be final.
- 1.2. Wherever the title Chief Executive, Director or other Nominated Officer is used in these Standing Orders, it should be deemed to include such other officers who have been duly authorised to represent them in their absence.
- 1.3. Unless a contrary intention is evident or the context otherwise requires the provisions relating to Interpretation and Definitions in paragraph 1 of the Constitution shall apply and the words or expressions contained in these Standing Orders shall bear the same meaning.
- 1.4. In these Standing Orders the following defined terms shall have the specific meanings given to them below:

**Chief Executive** or **CEO** shall mean the Chief Officer of the Trust.

**Committee** shall mean a Committee appointed by the Trust.

**Committee Members** shall be persons formally appointed by the Trust to sit on or to chair specific Committees.

**Director of Finance** or **DOF** shall mean the Chief Finance Officer of the Trust.

**Funds Held On Trust** shall mean those funds which the Trust holds at its date of incorporation, receives on distribution by statutory instrument, or chooses subsequently to accept under powers derived under section 51 of the 2006 Act. Such funds may or may not be charitable.

**Motion** means a formal proposition to be discussed and voted on during the course of a meeting.

**Nominated Officer** means an officer charged with the responsibility for discharging specific tasks within SOs and SFIs.

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

**SFIs** means Standing Financial Instructions.

**SOs** means these Standing Orders of the Board of Directors.



## **2 THE TRUST**

- 2.1 All business shall be conducted in the name of the Trust.
- 2.2 All funds received in trust shall be in the name of the Trust as corporate trustee. In relation to Funds Held On Trust, powers exercised by the Trust as corporate trustee shall be exercised separately and distinctly from those powers exercised as a Trust.
- 2.3 Directors acting on behalf of the Trust as a corporate trustee are acting as quasi-trustees. Accountability for charitable Funds Held On Trust is to the Charity Commission and to Monitor. Accountability for non-charitable Funds Held On Trust is only to Monitor.
- 2.4 The Trust has resolved that certain powers and decisions may only be exercised or made by the Board of Directors in formal session. These powers and decisions are set out in the Reservation of Powers and Scheme of Delegation of the Board of Directors.
- 2.5 Powers of the Vice-Chairperson - Where the Chairperson of an NHS Foundation Trust has died or has otherwise ceased to hold office or where he has been unable to perform his duties as Chairperson owing to illness, absence from England and Wales or any other cause, references to the Chairperson in these SOs shall, so long as there is no Chairperson able to perform his duties, be taken to include references to the Vice-Chairperson.
- 2.6 Joint Directors - Where more than one person is appointed jointly to a post in the Trust which qualifies the holder for Executive Directorship or in relation to which an Executive Director is to be appointed, those persons shall become appointed as an Executive Director jointly, and shall count for the purpose of SO 3.8.1 as one person.

## **3. MEETINGS OF THE BOARD OF DIRECTORS**

### **3.1 Admission of the Public**

- 3.1.1 The meetings of the Board of Directors shall be open to members of the public unless the Board of Directors decides otherwise in relation to all or part of the meeting for reasons of commercial confidentiality or on other proper grounds. The Chairperson may exclude any member of the public from a meeting of the Board of Directors if they are interfering with or preventing the proper conduct of the meeting.

### **3.2 Chairperson of the Meeting**

- 3.2.1 At any meeting of the Trust, the Chairperson, if present, shall preside. If the Chairperson is absent from the meeting the Vice-Chairperson shall preside. If the Chairperson and Vice-Chairperson are absent such Non-Executive Director as the Directors present shall choose shall preside.

3.2.2 If the Chairperson is absent from a meeting temporarily on the grounds of a declared conflict of interest the Vice-Chairperson, if present, shall preside. If the Chairperson and Vice-Chairperson are absent, or are disqualified from participating, such Non-Executive Director as the Directors present shall choose shall preside.

### **3.3 Calling Meetings**

3.3.1 Ordinary meetings of the Board of Directors shall be held at such times and places as the Board of Directors may determine.

3.3.2 Meetings of the Board of Directors are called by the Secretary, or by the Chairperson, or by four Directors who give written notice 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. The Secretary shall call a meeting within at least 14 but not more than 28 days to discuss the specified business. If the Secretary fails to call such a meeting within seven clear days the Chairperson or four Directors, whichever is the case, shall call such a meeting.

3.3.3 Subject to Standing Order 3.3.4 below, lack of service of the notice on any Director shall not affect the validity of a meeting.

3.3.4 Failure to serve such a notice on more than three Directors will invalidate the meeting. A notice shall be presumed to have been served 48 hours after it was posted or sent or, where the notice is sent by email, at the time when the email is sent.

3.3.5 In the case of a meeting called by Directors in default of the Chairperson, the notice shall be signed by those Directors and no business shall be transacted at the meeting other than that specified in the notice.

### **3.3 Agenda of Meetings and Motions on Notice**

3.4.1 The Trust may determine that certain matters shall appear on every agenda for a meeting of the Trust and shall be addressed prior to any other business being conducted. (Such matters may be identified within these Standing Orders or following subsequent resolution shall be listed in an Appendix to the Standing Orders.). Before holding a meeting, a copy of the agenda shall be provided to the Council of Governors.

3.4.2 A Director desiring a matter to be included on an agenda shall make his request in writing to the Chairperson at least ten clear days before the meeting, subject to Standing Order 3.3.2. Requests made less than ten days before a meeting may be included on the agenda at the discretion of the Chairperson.

3.4.3 A Director desiring to move or amend a Motion shall send a written notice thereof at least ten clear days before the meeting to the Chairperson, who shall insert in the agenda for the meeting all Motions

so received subject to the notice being permissible under the appropriate regulations. This paragraph shall not prevent any Motion being moved during the meeting, without notice, on any business mentioned on the agenda subject to Standing Order 3.3.5.

3.4.4 A Motion or amendment once moved and seconded may be withdrawn by the proposer with the concurrence of the seconder and the consent of the Chairperson.

3.4.5 Notice of Motion to amend or rescind any resolution (or the general substance of any resolution) which has been passed within the preceding six calendar months shall bear the signature of the Director who gives it and also the signature of four other Directors. When any such Motion has been disposed of by the Board of Directors, it shall not be competent for any Director other than the Chairperson to propose a Motion to the same effect within six months; however the Chairperson may do so if he considers it appropriate.

3.4.6 The mover of a Motion shall have a right of reply at the close of any discussion on the Motion or any amendment thereto.

3.4.7 When a Motion is under discussion, or immediately prior to discussion, it shall be open to a Director to move:

- An amendment to the Motion.
- The adjournment of the discussion or the meeting.
- That the meeting proceed to the next business.\*
- The appointment of an ad hoc committee to deal with a specific item of business.
- That the Motion be now put.\*

In the case of sub-paragraphs denoted by \* above to ensure objectivity Motions may only be put by a Director who has not previously taken part in the debate.

3.4.8 No amendment to the Motion shall be admitted if, in the opinion of the Chairperson of the meeting, the amendment negates the substance of the Motion.

### **3.5 Voting/Decision-Making**

3.5.1 Every question at a meeting shall be determined by a majority of the votes of the Directors present and voting on the question and, in the case of any equality of votes, the person presiding shall have a second or casting vote. However, no resolution shall be passed if it is opposed by all of the Non-Executive Directors or by all of the Executive Directors present.

3.5.2 All questions put to the vote shall, at the discretion of the Chairperson of

the meeting, be determined by oral expression or by a show of hands. A paper ballot may also be used if a majority of the Directors present so request.

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

3.5.4 If a Director so requests, his vote shall be recorded by name upon any vote (other than by paper ballot).

3.5.5 In no circumstances may an absent Director vote by proxy. This does not prohibit an absent Director recording their vote with the Secretary in the election of the Vice-Chairperson and Senior Independent Director. Absence is defined as being absent at the time of the vote.

3.5.6 An Officer, who has been appointed formally by the Board of Directors to act up for an Executive Director during a period of incapacity or temporarily to fill an Executive Director vacancy, shall be entitled to exercise the voting rights of the Executive Director. An Officer attending the Board of Directors to represent an Executive Director during a period of incapacity or temporary absence without formal acting up status may not exercise the voting rights of the Executive Director. An Officer's status when attending a meeting shall be recorded in the minutes.

3.5.7 Where a post of Executive Director is shared by more than one person:

- both persons shall be entitled to attend meetings of the Trust;
- either, but not both, of those persons shall be eligible to vote in the case of agreement between them;
- in the case of disagreement between them no vote should be cast;
- the presence of either or both of those persons shall count as one person for the purposes of Standing Order 3.8.1.

### **3.6 Chairperson's Ruling**

3.6.1 Statements of Directors made at meetings of the Trust shall be relevant to the matter under discussion at the material time and the decision of the Chairperson of the meeting on questions of order, relevancy, regularity and any other matters shall be observed at the meeting.

### **3.7 Attendance**

3.7.1 The names of the Directors present at the meeting shall be recorded in the minutes.

### **3.8 Quorum**

3.8.1 No business shall be transacted at a meeting of the Board of Directors unless at least six Directors are present including at least two Executive Directors, one of whom must be the Chief Executive or Deputy Chief

Executive, and two Non-Executive Directors, one of whom must be the Chairperson or the Vice-Chairperson.

3.8.2 An Officer in attendance for an Executive Director but without formal acting up status may not count towards the quorum.

3.8.3 If a Director has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of the declaration of a conflict of interest (see SO 6 or 7) he shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business. The above requirement for at least two Executive Directors to form part of the quorum shall not apply where the Executive Directors are excluded from a meeting (for example when the Board of Directors considers the recommendations of the Remuneration Committee).

### **3.9 Minutes**

3.9.1 The minutes of the proceedings of a meeting shall be prepared and submitted to be read and for agreement at the next ensuing meeting where they will be considered to have been signed by the person presiding at it. The approved minutes will be conclusive evidence of the events of the meeting and retained in an electronic minute book held by the Trust Secretary.

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

3.9.3 Minutes shall be circulated in accordance with Directors' wishes. A copy of the minutes of the meetings of the Board of Directors shall be sent to the Council of Governors as soon as practicable following the meeting. Where providing a record of a public meeting the minutes shall be made available to the public.

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

4.1 Subject to paragraph 4.3 of the Constitution, Standing Order 2.4 or any relevant statutory provision, the Board of Directors may make arrangements for the exercise, on behalf of the Trust, of any of its functions by a committee or sub-committee, appointed by virtue of Standing Order 5.1 or 5.2 below or by a Director or an Officer of the Trust in each case subject to such restrictions and conditions as the Board of Directors thinks fit.

4.2 Emergency Powers - The powers which the Board of Directors has retained to itself under Standing Order 2.4 may in emergency be

exercised by the Chief Executive and the Chairperson after having consulted at least two Non-Executive Directors. The exercise of such powers by the Chief Executive and the Chairperson shall be reported to the next formal meeting of the Board of Directors for ratification.

- 4.3 Delegation to Committees - The Board of Directors shall agree from time to time to the delegation of executive powers to be exercised by committees or sub-committees, which it has formally constituted. The constitution and terms of reference of these committees, or sub-committees, and their specific executive powers shall be approved by the Board of Directors.
- 4.4 Delegation to Officers - Those functions of the Trust which have not been retained as reserved by the Board of Directors or delegated to a committee or sub-committee shall be exercised on behalf of the Board of Directors by the Chief Executive. The Chief Executive shall determine which functions he will perform personally and shall nominate officers to undertake the remaining functions for which he will still retain accountability to the Board of Directors.
- 4.5 The Chief Executive shall prepare a Scheme of Delegation identifying his proposals which shall be considered and approved by the Board of Directors, subject to any amendment agreed during the discussion. The Chief Executive may periodically propose amendment to the Scheme of Delegation which shall be considered and approved by the Board of Directors as indicated above.
- 4.6 Nothing in the Scheme of Delegation shall impair the discharge of the direct accountability to the Board of Directors of the DOF or other Executive Director to provide information and advise the Board of Directors in accordance with any statutory or Monitor requirements.

## **5 COMMITTEES**

- 5.1 Subject to paragraph 4.3 of the Constitution, Standing Order 2.4 and such other guidance as may be given by Monitor, the Trust may and, if directed by Monitor, shall appoint Committees of the Trust, consisting wholly or partly of Directors of the Trust or wholly of persons who are not Directors of the Trust.
- 5.2A Committee appointed under Standing Order 5.1 may, subject to such directions as may be given by Monitor or the Trust, appoint sub-committees consisting wholly or partly of members of the Committee (whether or not they include Directors of the Trust or wholly of persons who are not members of that Committee).
- 5.3 The Standing Orders of the Trust, as far as they are applicable, shall apply with appropriate alteration to meetings of any Committees or sub-committee established by the Trust.

5.4 Each such Committee or sub-committee shall have such terms of reference and powers and be subject to such conditions (as to reporting back to the Board of Directors), as the Board of Directors shall decide.

5.5 Committees may not delegate their executive powers to a sub-committee unless expressly authorised by the Board of Directors.

5.6 The Board of Directors shall approve the appointments to each of the Committees which it has formally constituted. Where the Board of Directors determines that persons, who are neither Directors nor Officers, shall be appointed to a Committee, the terms of such appointment (including payment of travelling and other allowances) shall be determined by the Board of Directors.

5.7 Where the Board of Directors needs to appoint persons to a Committee and/or to undertake required statutory functions, and where such appointments are to operate independently of the Trust such appointment shall be made in accordance with any national regulations laid down.

5.8 The Committees and Sub-Committees established by the Trust are:

Audit Committee

Nomination and Remuneration Committee

and such other Committees as the Board of Directors determines are required to discharge the Board of Directors' responsibilities in relation to quality, finance and performance.

5.9 A member of a Committee shall not disclose a matter dealt with by, or brought before, the Committee without its permission until the Committee shall have reported to the Board of Directors or shall otherwise have concluded on that matter.

5.10 A Director of the Trust or a member of a Committee shall not disclose any matter reported to the Board of Directors or otherwise dealt with by the Committee, notwithstanding that the matter has been reported or action has been concluded, if the Board of Directors or Committee shall resolve that it is confidential.

## **6. DECLARATION OF INTERESTS AND REGISTER OF INTERESTS**

### **6.1 Declaration of Interests**

6.1.1 The Constitution, the 2006 Act and the Code of Accountability for NHS Boards require Directors to declare interests which are relevant and material to the Board of Directors. All existing Directors should declare such interests. Any Directors appointed subsequently should do so on appointment. Any Director who fails to disclose any interest required to be disclosed under this section must permanently vacate their office if required to do so by a majority of the remaining Directors and (in the case of a Non-Executive Director) by the requisite majority of the Council

of Governors.

6.1.2 Interests which should be regarded as **relevant and material** are:

- a. Any directorship of a company;
- b. Any interest (excluding a holding of shares in a company whose shares are listed on any public exchange where the holding is less than 2% of the total shares in issue) held by a Director in any firm or company or business which, in connection with the matter, is trading with the Trust or is likely to be considered as a potential trading partner with the Trust;
- c. Any interest in an organisation providing health and social care services to the National Health Service;
- d. A position of authority in a charity or voluntary organisation in the field of health and social care.

6.1.3 If Directors have any doubt about the relevance of an interest, this should be discussed with the Chairperson.

6.1.4 At the time a Directors' interests are declared, they should be recorded in the minutes. Any changes in interests should be declared at the next Board of Directors' meeting following the change occurring.

6.1.5 Directors' directorships of companies likely or possibly seeking to do business with the NHS should be published in the Trust's Annual Report. The information should be kept up to date for inclusion in succeeding Annual Reports.

6.1.6 There is no requirement for the interests of Directors' spouses or Partners to be declared, but for pecuniary interests see Standing Order 7.5.

6.1.7 A separate policy exists for the declaration of interests for all other staff.

## **6.2 Conflict of Interest**

6.2.1 During the course of a Board of Directors' meeting, if a conflict of interest is established, the Director concerned should withdraw from the meeting and play no part in the relevant discussion or decision and shall not vote on the issue (and if by inadvertence they do remain and vote, their vote shall not be counted).

## **6.3 Register of Interests**

6.3.1 The Chief Executive will ensure that a Register of Interests is established to record formally declarations of interests of Directors. In particular the Register will include details of all directorships and other relevant and material interests which have been declared by both Executive and Non-Executive Directors.

6.3.2 These details will be kept up to date by means of an annual review of the Register in which any changes to interests declared during the



preceding twelve months will be incorporated.

6.3.3 The Register will be available to the public and the Chief Executive will take reasonable steps to bring the existence of the Register to the attention of the local population and to publicise arrangements for viewing it.

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

7.1 Subject to the Constitution and the following provisions of this Standing Order, if any member of staff or Director of the Trust has any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter and is present at a meeting of the Trust at which the contract or other matter is the subject of consideration, he shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not take part in the consideration or discussion of the contract or other matter or vote on any question with respect to it.

7.2 Monitor may, subject to such conditions as it may think fit to impose, remove any disability imposed by this Standing Order in any case in which it appears to Monitor in the interests of the National Health Service that the disability should be removed.

7.3 The Trust shall exclude a Director from a meeting of the Trust while any contract, proposed contract or other matter in which he has a pecuniary interest, is under consideration.

7.4 Any remuneration, compensation or allowances payable to a Director by virtue of paragraph 18 of Schedule 7 to the 2006 Act or pursuant to the Constitution shall not be treated as a pecuniary interest for the purpose of this Standing Order.

7.5 For the purpose of this Standing Order the Chairperson or a Director shall be treated, subject to Standing Order 7.2 and Standing Order 7.6, as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if:

a. he, or a nominee of his, is a director of a company or other body, not being a public body, with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration;

or

b. he is a partner of, or is in the employment of, a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration;

and in the case of married persons or civil partners living together the interest of one shall, if known to the other, be deemed for the purposes of this Standing Order to be also an interest of the other.

7.6A Director shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only:

- a. of his membership of a company or other body, if he has no beneficial interest in any securities of that company or other body;
- b. of an interest in any company, body or person with which he is connected as mentioned in Standing Order 7.5 above which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a Director in the consideration or discussion of, or in voting on, any question with respect to that contract or matter.

7.7 Where a Director:

- a. has an indirect pecuniary interest in a contract, proposed contract or other matter by reason only of a beneficial interest in securities of a company or other body; and
- b. the total nominal value of those securities does not exceed £10,000 or one-hundredth of the total nominal value of the issued share capital of the company or body, whichever is the less; and
- c. if the share capital is of more than one class, the total nominal value of shares of any one class in which he has a beneficial interest does not exceed one-hundredth of the total issued share capital of that class,

this Standing Order shall not prohibit him from taking part in the consideration or discussion of the contract or other matter or from voting on any question with respect to it without prejudice however to his duty to disclose his interest.

7.8 Standing Order 7 applies to a Committee or sub-committee of the Trust as it applies to the Trust and applies to any member of any such Committee or sub-committee (whether or not he is also a Director of the Trust) as it applies to a Director of the Trust.

## **8 STANDARDS OF BUSINESS CONDUCT**

8.1 Policy – All staff must comply with the national guidance contained in HSG(93)5 'Standards of Business Conduct for NHS staff' as amended by the Bribery Act 2010 and the 'Code of Conduct and Accountability for all NHS Boards. The following provisions should be read in conjunction with this document.

8.2 Interest of Officers in Contracts - If it comes to the knowledge of a Director or an Officer of the Trust that a contract in which he has any pecuniary interest not being a contract to which he is himself a party, has been, or is proposed to be, entered into by the Trust he shall, at once, give notice in writing to the Chief Executive of the fact that he is interested therein. In the case of married persons, civil partners or persons living together as partners, the interest of one partner shall, if known to the other, be deemed to be also the interest of that partner.

- 8.3 All Officers involved in contracting, tendering and procurement are required to make the appropriate declarations of actual or nil interests, hospitality or sponsorship both at the start and conclusion of each process.
- 8.4 An Officer must also declare to the Chief Executive any other employment or business or other relationship of his, or of a cohabiting spouse, civil partner or partner, that conflicts, or might reasonably be predicted could conflict with the interests of the Trust.
- 8.5 The Trust may require interests, employment or relationships so declared by staff to be entered in a Register of Interests of staff.
- 8.6 Canvassing of, and Recommendations by, Directors in Relation to Appointments - Canvassing of Directors of the Trust or members of any Committee of the Trust directly or indirectly for any appointment under the Trust shall disqualify the candidate for such appointment. The contents of this paragraph of the Standing Orders shall be included in application forms or otherwise brought to the attention of candidates.
- 8.7 A Director of the Trust shall not solicit for any person any appointment under the Trust or recommend any person for such appointment: but this paragraph of these Standing Orders shall not preclude a Director from giving written testimonial of a candidate's ability, experience or character for submission to the Trust.
- 8.8 Informal discussions outside appointments panels or committees, whether solicited or unsolicited, should be declared to the panel or committee.
- 8.9 Relatives of Directors or Officers - Candidates for any staff appointment shall when making application disclose in writing whether they are related to any Director or the holder of any office under the Trust. Failure to disclose such a relationship shall disqualify a candidate and, if appointed, render him liable to instant dismissal.
- 8.10 The Directors and every Officer of the Trust shall disclose to the Chief Executive any relationship with a candidate of whose candidature that Director or Officer is aware. It shall be the duty of the Chief Executive to report to the Trust any such disclosure made.
- 8.11 On appointment, Directors should disclose to the Trust whether they are related to any other Director or holder of any office under the Trust.
- 8.12 Where the relationship of an Officer or another Director to a Director of the Trust is disclosed, the Standing Order headed 'Disability of Directors in Proceedings on Account of Pecuniary Interest' (Standing Order 7) shall apply.

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

- 9.1 Custody of Seal -The Common Seal of the Trust shall be kept by the Secretary in a secure place.

- 9.2 Sealing of Documents - The Seal of the Trust shall not be fixed to any documents unless the sealing has been authorised by a resolution of the Board of Directors or of a Committee thereof or where the Board of Directors has delegated its powers.
- 9.3 Before any document is sealed it must be approved and signed by the Chief Executive (or an Officer nominated by him who shall not be within the originating directorate) and authorised and countersigned by the Chairperson (or an Officer nominated by him who shall not be within the originating directorate).
- 9.4 Register of Sealing - An entry of every sealing shall be made and numbered consecutively in a book provided for that purpose, and shall be signed by the persons who shall have approved and authorised the document and those who attested the seal.
- [Note the legal requirement to seal documents executed as a deed has been removed. Trusts may however, choose to continue to use the seal].
- 9.5 A document purporting to be duly executed under the Trust's seal or to be signed on its behalf is to be received in evidence and, unless the contrary is proved, taken to be so executed or signed.

## **10. SIGNATURE OF DOCUMENTS**

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

## **11. STANDING ORDERS**

### **11.1 Standing Orders to be given to Directors and Officers**

- 11.1.1 It is the duty of the Chief Executive to ensure that existing Directors and Officers and all new appointees are notified of and understand their responsibilities within Standing Orders and Standing Financial Instructions. Updated copies shall be issued to staff designated by the Chief Executive. New designated officers shall receive advice on where to find Standing Orders and Standing Financial Instructions.

### **11.2 Suspension of Standing Orders**

11.2.1 Except where this would contravene any statutory provision or any provision in the Constitution, any one or more of the Standing Orders may be suspended at any meeting, provided that at least two-thirds of the Board of Directors are present, including one Executive Director and one Non-Executive Director, and that a majority of those present vote in favour of suspension.

11.2.2 A decision to suspend Standing Orders shall be recorded in the minutes of the meeting.

11.2.3 A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the Directors.

11.2.4 No formal business may be transacted while Standing Orders are suspended.

11.2.5 The Audit Committee shall review every decision to suspend Standing Orders

### **11.3 Amendment of Standing Orders**

11.3.1 These Standing Orders may be amended only in accordance with paragraph 44 of the Constitution.

### **11.4 Review of Standing Orders**

11.4.1 The Standing Orders shall be reviewed annually by the Trust.

## **ANNEX 8 – FURTHER PROVISIONS**

### **Appendix 1: Trust Core Principles**

#### **1. Trust Commitment**

1.1 The Trust shall exercise its functions effectively, efficiently and economically.

#### **2. Representative Membership**

2.1 The Trust shall take steps to secure that taken as a whole its actual membership is representative of those eligible for membership.

To this end:

2.2 the Trust shall at all times have in place and pursue a membership strategy which shall be approved by the Council of Governors, and shall be reviewed by them from time to time, and at least every three years; and

2.3 the Council of Governors will report to the members at each Annual Members' Meeting in accordance with the provisions in Annex 8, Appendix 3, Paragraph 1.6.2.

#### **3 Co-operation with NHS Bodies**

3.1 In exercising its functions the Trust shall co-operate with other NHS Bodies. For the purposes of this section, each of National Institute for Health and Care Excellence and the Health and Social Care Information Centre is an NHS Body.

#### **4. Respect for rights of people**

4.1 In conducting its affairs, the Trust shall respect the rights of members of the community it serves, its employees and people dealing with the Trust as set out in the Human Rights Act 1998.

#### **5. Openness**

5.1 In conducting its affairs, the Trust shall have regard to the need to provide information to members and conduct its affairs in an open and accessible way.

#### **6. Prohibiting distribution**

6.1 The profits and surpluses of the Trust are not to be distributed either directly or indirectly in any way at all among members of the Trust.

## **ANNEX 8 – FURTHER PROVISIONS**

### **Appendix 2: Membership**

#### **1. Disqualification from membership**

- 1.1 A person may not become or continue as a member of the Trust if:
- 1.1.1 within the last five years they have shown aggressive or violent behaviour towards Trust staff which has resulted in a Violent and Aggressive Patient Assessment being completed and/or a warning letter being sent in accordance with the Trust's Policy for Managing Violence and Aggression;
  - 1.1.2 they have been confirmed as an unreasonable or persistent complainant in accordance with the relevant Trust policy for handling complaints; or
  - 1.1.3 they have been removed as a member from another NHS foundation trust.

#### **2. Termination of membership**

- 2.1 A member shall cease to be a member of the Trust if:
- 2.1.1 they resign by notice to the Secretary;
  - 2.1.2 they die;
  - 2.1.3 they are expelled from membership under the Constitution;
  - 2.1.4 they are disqualified from membership under the Constitution;
  - 2.1.5 they cease to be entitled under this Constitution to be a member of the Public Constituency or of any of the classes of the Staff Constituency; or
  - 2.1.6 if it appears to the Secretary that they no longer wish to be a member of the Trust, and after enquiries made in accordance with a process approved by the Council of Governors, they fail to demonstrate that they wish to continue to be a member of the Trust.

#### **3. Expulsion from membership**

- 3.1 A member may be expelled by a resolution approved by not less than two-thirds of the members of the Council of Governors present and voting at a general meeting of the Council of Governors. The following procedure is to be adopted:
- 3.1.1 Any member may complain to the Secretary that another member of the Trust has acted in a way detrimental to the interests of the Trust.

3.1.2 If a complaint is made, the Council of Governors will consider the complaint having taken such steps as it considers appropriate to ensure that each member of the Trust's point of view is heard and may:

3.1.2.1 dismiss the complaint and take no further action; or

3.1.2.2 for a period not exceeding twelve months suspend the rights of the member of the Trust complained of to attend Members' Meetings and vote under the Constitution; or

3.1.2.3 arrange for a resolution to expel the member of the Trust complained of to be considered at the next general meeting of the Council of Governors.

3.1.3 If a resolution to expel a member of the Trust is to be considered at a general meeting of the Council of Governors, details of the complaint must be sent to the member complained of not less than one calendar month before the meeting with an invitation to answer the complaint and attend the meeting.

3.1.4 At the meeting the Council of Governors will consider evidence in support of the complaint and such evidence as the member complained of may wish to place before them.

3.1.5 If the member complained of fails to attend the meeting without due cause the meeting may proceed in their absence.

3.3 A person expelled from membership will cease to be a member of the Trust upon the declaration of the Chairperson of the meeting that the resolution to expel them is carried.

3.4 No person who has been expelled from membership is to be readmitted except by a resolution approved by not less than two-thirds of the members of the Council of Governors present and voting at a general meeting of the Council of Governors.

#### **4. Member declaration**

4.1 A member of a Public Constituency may not vote at an election for a Public Constituency unless within 21 days before they vote they have made a declaration in the form specified by the Secretary that they are qualified to vote as a Member of the relevant Public Constituency. It is an offence to knowingly or recklessly make such a declaration which is false in a material particular.



## ANNEX 8 – FURTHER PROVISIONS

### Appendix 3: Members' Meetings

#### 1. Members' Meetings

- 1.1 The Trust shall hold the Annual Members' Meeting within nine months of the end of each Financial Year.
- 1.2 All Members' Meetings other than Annual Members' Meetings are called Special Members' Meetings.
- 1.3 Both Annual and Special Members' Meetings are open to all members of the Trust, governors and Directors, representatives of the Auditor, and members of the public. The Council of Governors may invite representatives of the media and any experts or advisors whose attendance they consider to be in the best interests of the Trust to attend a Members' Meeting.
- 1.4 All Members' Meetings are to be convened by the Secretary by order of the Council of Governors.
- 1.5 The Council of Governors may decide where a Members' Meeting is to be held and may also for the benefit of members:
  - 1.5.1 arrange for the Annual Members' Meeting to be held in different venues each year; and/or
  - 1.5.2 make provisions for an Annual or Special Members' Meeting to be held at different venues simultaneously or at different times. In making such provision the Council of Governors shall also fix an appropriate quorum for each venue, provided that the aggregate of the quorum requirements shall not be less than the quorum set out below.
- 1.6 At the Annual Members' Meeting:
  - 1.6.1 the documents below shall be presented to the members with at least one member of the Board of Directors in attendance:
    - 1.6.1.1 the annual accounts;
    - 1.6.1.2 any report of the Auditor on them;
    - 1.6.1.3 the annual report; and
    - 1.6.1.4 forward planning information for the next Financial Year;
  - 1.6.2 the Council of Governors shall present to the members:
    - 1.6.2.1 a report on steps taken to secure that (taken as a whole) the actual membership of its Public Constituency and of the

classes of the Staff Constituency is representative of those eligible for such membership;

1.6.2.2 the progress of, and any changes to, the membership strategy;

1.6.2.3 any proposed changes to the policies for the composition of the Council of Governors and of the Non-Executive Directors;

1.6.3 the results of any election or appointment of Governors and the appointment of any Non-Executive Directors in the year will be announced.

1.7 Notice of a Members' Meeting is to be given:

1.7.1 by notice to all members;

1.7.2 by notice prominently displayed at the head office and at all of the Trust's places of business; and

1.7.3 by notice on the Trust's website,

at least 14 clear days before the date of the meeting. The notice must:

1.7.4 be given to the Council of Governors and the Board of Directors, and to the Auditor;

1.7.5 state whether the meeting is an Annual or Special Members' Meeting;

1.7.6 give the time, date and place of the meeting; and

1.7.7 indicate the business to be dealt with at the meeting.

1.8 Before a Members' Meeting can do business there must be a quorum present. Except where this Constitution says otherwise a quorum is three members present from any of the Trust's constituencies.

1.9 The Trust may make arrangements for members to vote by post, or by using electronic communications.

1.10 It is the responsibility of the Council of Governors, the Chairperson of the meeting and the Secretary to ensure that at any Members' Meeting:

1.10.1 the issues to be decided are clearly explained; and

1.10.2 sufficient information is provided to members to enable rational discussion to take place.

1.11 The Chairperson of the Trust, or in their absence the Lead Governor, or in their absence one of the other governors from the Public Constituency shall act as Chairperson at all Members' Meetings of the Trust. If neither the Chairperson nor the Lead Governor is present, the members of the Council of

Governors present shall elect a governor from the Public Constituency to be Chairperson and if there is only one such governor present and willing to act they shall be Chairperson.

- 1.12 If no quorum is present within half an hour of the time fixed for the start of the meeting, the meeting shall stand adjourned to the same day in the next week at the same time and place or to such time and place as the Council of Governors determine. If a quorum is not present within half an hour of the time fixed for the start of the adjourned meeting, the number of members present during the meeting is to be a quorum.
- 1.13 A resolution put to the vote at a Members' Meeting shall be decided upon by a poll.
- 1.14 Every member present and every member who has voted by post or using electronic communications is to have one vote. In the case of an equality of votes the Chairperson of the meeting is to have a second or casting vote.
- 1.15 The result of any vote will be declared by the Chairperson and recorded in the minutes. The minutes will be conclusive evidence of the result of the vote.
- 1.16 Minutes of the proceeding of a Members' Meeting shall be prepared and submitted to be read and for agreement at the next Members' Meeting where they will be considered to have been signed by the person presiding at it. The approved minutes will be conclusive evidence of the events of the meeting and retained in an electronic minute book held by the Secretary

## **ANNEX 8 – FURTHER PROVISIONS**

### **Appendix 4: Board of Directors – Further Provisions**

#### **1. Board of Director's Disqualification**

1.1A person may not become or continue as a Director of the Trust if:

- 1.1.1 they are a member of the Council of Governors, or a governor or director of another NHS Body;
- 1.1.2 they are a member of a Patient's Forum of an NHS Body;
- 1.1.3 they are the spouse, Partner, parent or child of a member of the Board of Directors;
- 1.1.4 they are a member of Bournemouth Borough Council's Oversight and Scrutiny Committee covering health matters;
- 1.1.5 they are subject to an unexpired disqualification order made under the Company Directors Disqualification Act 1986;
- 1.1.6 in the case of a Non-Executive Director, they are no longer a member of the Public Constituency;
- 1.1.7 they are a person whose tenure of office as a Chairperson or as a member or director of an NHS Body has been terminated on the grounds that their appointment is not in the interests of the health service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest;
- 1.1.8 they have had their name removed, from any list maintained by health and social care professional bodies in the UK and have not subsequently had their name included on such a list;
- 1.1.9 they have within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with an NHS Body;
- 1.1.10 in the case of a Non-Executive Director they have refused without reasonable cause to fulfil any training requirement established by the Board of Directors; or
- 1.1.11 they have 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.

#### **2. Process for appointing Non-Executive Directors and the Chairperson**

- 2.1 Non-Executive Directors are to be appointed by the Council of Governors using the following procedure:

- 2.1.1 The Council of Governors will maintain a policy for the composition of the Non-Executive Directors which takes account of the skills and experience required for Non-Executive Directors identified by the Board of Directors, and which they shall review from time to time and not less than every three years.
- 2.1.2 The Board of Directors will identify the skills and experience required for Non-Executive Directors and may work with an external organisation recognised as expert at such appointments.
- 2.1.3 Appropriate candidates (not more than five for each vacancy) will be identified by a Nominations Committee through a process of open competition, which take account of the policy maintained by the Council of Governors and the skills and experience required.
- 2.1.4 The Nominations Committee will comprise a majority of Governors.
- 2.1.5 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 has approved.

### **3. Process for removal of Non-Executive Directors and the Chairperson**

- 3.1 The removal of the Chairperson or another Non-Executive Director shall be in accordance with the following procedure:
  - 3.1.3 Any proposal for removal must be proposed by a Governor and seconded by not less than ten Governors including at least two Elected Governors and two Appointed Governors.
  - 3.1.4 Written reasons for the proposal shall be provided to the Non-Executive Director in question, who shall be given the opportunity to respond to such reasons.
  - 3.1.5 In making any decision to remove a Non-Executive Director, the Council of Governors shall take into account the annual appraisal carried out by the Chairperson.
  - 3.1.6 If any proposal to remove a Non-Executive Director is not approved at a meeting of the Council of Governors, no further proposal can be put forward to remove such Non-Executive Director based upon the same reasons within 12 months of the meeting.

### **4. Expenses**

- 4.1 The Trust may reimburse Directors' travelling and other costs and expenses at such rates as the remuneration committee of Non-Executive Directors decides. These are to be disclosed in the annual report.
- 4.2 The remuneration and allowances for Directors are to be disclosed in bands in the annual report.