

Constitution for Greater Manchester West Mental Health NHS Foundation Trust

July 2016

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1. Interpretation and definitions

Unless a contrary intention is evident or the context requires otherwise, words or expressions contained in this constitution shall bear the same meaning as in the National Health Service Act 2006.

Words importing the masculine gender in the model constitution will be changed to s/he. Words importing the singular shall import the plural and vice versa.

The 2006 Act is the National Health Service Act 2006.

The 2012 Act is the Health and Social Care Act 2012

The **Accounting Officer** is the person who from time to time discharges the functions specified in paragraph 25(5) of Schedule 7 to the 2006 Act.

The **Applicant NHS Trust** means the NHS trust which made the application to become an NHS Foundation Trust.

Carer means a person who provides, or has provided, regular and substantial care and support to a service user and who has attended any of the trust's hospitals as the carer of that service user within the period of 5 years immediately preceding the date of an application by him/her to become a member of the trust, providing that such a person is not providing care in pursuance of a contract (including a contract of employment) or a volunteer for a voluntary organisation.

Chair means the Chairman of the trust.

Council of Governors means the Council of Governors (referred to in the 2006 Act as the Board of Governors) as constituted in accordance with this constitution.

Governor means a person who is a member of the Council of Governors

Hospital means:

- a) any institution for the reception and treatment of persons suffering from illness,
- b) any maternity home, and
- c) any institution for the reception and treatment of persons during convalescence or persons requiring medical rehabilitation, and includes clinics, dispensaries and out-patient departments maintained in connection with any such home or institution.

Monitor is the body corporate known as Monitor, Independent Regulator of NHS Foundation Trusts, as provided by Section 61 of the 2012 Act.

Partnership organisation means any organisation that the trust has named in this constitution as able to appoint a governor or governors to the Council of Governors.

Public governor means a governor elected by the members of the public constituency.

Secretary means the secretary of the trust or any other persons appointed by the Trust to perform the duties of the secretary of the trust including a joint, assistance or deputy secretary or such other person as may be appointed by the trust to perform the functions of the secretary under this constitution.

Service user – any reference to patient in the 2006 Act is replaced in this constitution with the phrase service user.

Service user and carer governor means a governor elected by the members of the service user and carer constituency.

Staff governor means a governor elected by the members of the staff constituency.

Terms of authorisation are the terms of authorisation issued by Monitor under Section 35 of the 2006 Act.

Voluntary organisation is a body, other than a public or local authority, the activities of which are not carried on for profit, and that has any interest in the services provided by the trust.

2. Name

The name of the foundation trust is Greater Manchester West Mental Health NHS Foundation Trust (the 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 principle 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 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 the above paragraph 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, subject to any restrictions in the terms of Authorisation.
- 4.2 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
 - 5.1.2 a staff constituency, and
 - 5.1.3 a service user and carers' constituency
- 5.2 The names of members shall be entered in the register of members
- 5.3 Members may attend and participate in members meetings, vote in members elections, and stand for election, to the Council of Governors, and take such other part in the affairs of the trust as is provided for in this constitution.

6. Eligibility for membership

- 6.1 Members shall:
 - 6.1.1 be fourteen years of age or over; and
 - 6.1.2 meet the criteria for membership of one or more of the trust's constituencies
- 6.2 Individuals who meet the criteria for membership of the public constituency and also membership of the service user and carers constituency shall choose which constituency s/he would like to apply for membership of.

7. Representative membership

- 7.1 The trust shall at all times ensure that its membership is representative of those eligible for membership. To this end, the trust shall comply with its 'Membership Strategy'.
- 7.2 The 'Membership Strategy' shall be reviewed from time to time by the Council of Governors, and at least annually.
- 7.3 The Council of Governors shall present to each general members meeting:
 - 7.3.1 a report on steps taken to ensure that the trust's membership is representative of those eligible for membership;

7.3.2 any changes to the 'Membership Strategy'

8. Conditions of membership

8.1 Members:

- 8.1.1 will not receive payment or any fees associated with becoming or remaining a member of the trust;
- 8.1.2 will not receive any preferential care or treatment as a consequence of being a member;
- 8.1.3 can resign their membership at any time;
- 8.1.4 can be members of more than one trust.

9. Application for membership

An individual who is eligible to become a member of the trust may do so on application to the trust, subject to paragraph 11.7.

10. Public Constituency

- 10.1 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.
- 10.2 Those individuals who live in an area specified as an area for any public constituency are referred to collectively as the Public Constituency.
- 10.3 The minimum number of members in each area for the Public Constituency is specified in Annex 1.

11. Staff Constituency

- 11.1 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:
 - 11.1.1 s/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
 - 11.1.2 s/he has been continuously employed by the trust under a contract of employment for at least 12 months.
- 11.2 Individuals, including staff seconded by local authorities and people working as volunteers, who exercise functions for the purposes of the trust, otherwise than under a contract of employment with the trust, and in either case are acknowledged in writing by the Trust as so doing for the purposes of this paragraph, 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.

- 11.3 Those individuals who are eligible for membership of the trust by reason of the previous provisions are referred to collectively as the Staff Constituency.
- 11.4 The Staff Constituency shall be divided into six 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.
- 11.5 The minimum number of members in each class of the Staff Constituency is specified in Annex 2.
- 11.6 The secretary shall take the final decision about which class of the Staff Constituency an individual is eligible to be a member of.
- 11.7 An individual who is:
 - 11.7.1 eligible to become a member of the Staff Constituency, and
 - 11.7.2 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 s/he informs the trust that s/he does not wish to do so.

12. Service user and carers' constituency

- 12.1 An individual:
 - 12.1.1 whose name is recorded as a service user on the trust's patient administration system or other record maintained by the trust for the purpose of identifying service users of the trust and who has, within the period specified below, attended one of the trust's hospitals as a service user, or
 - 12.1.2 who has within the period specified below attended any of the trust's hospitals as the carer of a service user,may become or continue as a member of the trust.
- 12.2 The period referred to above shall be the period of 5 years immediately preceding the date of an application by the patient or carer to become a member of the trust.
- 12.3 Those individuals who are eligible for membership of the trust by reason of the previous provisions are referred to collectively as the Service User and Carers' Constituency.
- 12.4 The Service User and Carers' Constituency shall be divided into 3 descriptions of individuals who are eligible for membership of the Service User and Carers' Constituency, each description of individuals being specified within Annex 3 and being referred to as a class within the Service User and Carers' Constituency.
- 12.5 An individual providing care in pursuance of a contract (including a contract of employment) with a voluntary organisation, or as a volunteer

for a voluntary organisation, does not come within the category of those who qualify for membership of the Patient Constituency.

- 12.6 The minimum number of members in each class of the Service User and Carers' Constituency is specified in Annex 3.

13. Restriction on membership

- 13.1 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.
- 13.2 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.
- 13.3 Further provisions as to the circumstances in which an individual may not become or continue as a member of the trust are set out in Annex 9 – Further Provisions.

14. Members meetings

- 14.1 The Trust is to hold a members meeting (called the Annual Members Meeting) within 9 months of the end of each financial year and additional members meetings may be held as and when considered necessary.
- 14.2 Members meetings are open to all members of the Trust, Governors and Directors, and representatives of the financial auditor and any external auditors, but not to members of the public unless the Council of Governors decides otherwise. 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.
- 14.3 All members meetings are to be convened by the Secretary by order of the Council of Governors.
- 14.4 The Council of Governors may decide whether a members meeting is to be held and may also for the benefit of members arrange for the Annual Members Meeting to be held in different venues each year.
- 14.5 At the Annual Members Meeting the Board of Directors shall present to the members:
- 14.5.1 the annual accounts;
 - 14.5.2 any report of the financial auditor;
 - 14.5.3 any report of any other external auditor of the Trust's affairs;
 - 14.5.4 the forward planning information provided to the Regulator for that financial year;
 - 14.5.5 the Annual Report.
- 14.6 At the Annual Members Meeting the Council of Governors shall present to the members: -

- 14.6.1 any proposed changes to the composition of the Council of Governors;
- 14.6.2 the results of any election, the appointment of Governors and the appointment of Non-Executive Directors;
- 14.6.3 any other matters set out in this Constitution.
- 14.7 Notice of a members meeting is to be given:
 - 14.7.1 by notice to all members;
 - 14.7.2 by notice prominently displayed at the Trust's Head Office; and
 - 14.7.3 by notice on the Trust's website,
 - 14.7.4 at least 14 clear days before the date of the meeting.
- 14.8 The notice must:
 - 14.8.1 be given to the Council of Governors and to the Board of Directors, and to the financial auditor and any external auditors;
 - 14.8.2 state whether the meeting is an Annual Members Meeting;
 - 14.8.3 give the time, date and place of the meeting; and
 - 14.8.4 indicate the business to be dealt with at the meeting.
- 14.9 Before a members' meeting can undertake business there must be a quorum present. Except where this Constitution says otherwise, a quorum is one member present from each of the Trust's Constituencies. In the case of the Annual Members Meeting, a quorum shall be one member present from each of the Trust's Constituencies, one Governor elected from each of the Trust's Constituencies, one appointed Governor, one Executive Director, the Chair (or, in his/her absence, the Vice Chair of the Board of Directors (who shall be Deputy Chair of the Council of Governors), or, in his/her absence, a Non-Executive Director appointed by the Council of Governors to fulfil the role of Chair) and one other Non-Executive Director.
- 14.10 The Trust may make arrangements for members to vote by post, or by using electronic communications.
- 14.11 It is the responsibility of the Chair of the meeting to ensure that at any members meeting: -
 - 14.11.1 the issues to be decided are clearly explained;
 - 14.11.2 sufficient information is provided to members to enable rational discussion to take place.
- 14.12 The Chair of the Trust or, in their absence, the Vice Chair, or, in their absence, one of the Non-Executive Directors shall act as Chair at all members meetings of the Trust.
- 14.13 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.
- 14.14 A resolution put to the vote at a members meeting shall be decided upon by a poll.

- 14.15 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 Chair of the meeting is to have a second or casting vote.
- 14.16 The result of any vote will be declared by the Chair and entered in the minutes.
- 14.17 The minutes will be conclusive evidence of the result of the vote.

15. Council of Governors – composition

- 15.1 The trust is to have a Council of Governors, which shall comprise both elected and appointed governors.
- 15.2 The composition of the Council of Governors is specified in Annex 4.
- 15.3 The aggregate number of Public Governors and Service User and Carer Governors is to be more than half of the total number of members of the Council of Governors.
- 15.4 The Council of Governors, subject to the 2006 Act, shall seek to ensure that through the composition of the Council of Governors:
 - 15.4.1 the interests of the community served by the trust are appropriately represented;
 - 15.4.2 the level of representation of the public constituencies, the classes of the staff constituency, the classes of the service user and carer constituency, and the appointing organisations strikes an appropriate balance having regard to their legitimate interest in the trust's affairsAnd to this end, the Council of Governors shall:
 - 15.4.3 at all times maintain a policy for the composition of the Council of Governors which takes account of the Membership Strategy, and
 - 15.4.4 from time to time, and not less than every three years, review the policy for the composition of the Council of Governors, and
 - 15.4.5 when appropriate shall propose amendments to the composition of the Council of Governors.
- 15.5 The members of the Council of Governors, other than the appointed members, shall be chosen by election by their constituency or, where there are classes within a constituency, by their class within that constituency. The number of governors to be elected by each constituency, or, where appropriate, by each class of each constituency, is specified in Annex 4.
- 15.6 The appointed governors are to be appointed in accordance with paragraph 10 of Annex 6 to this constitution.
- 15.7 At a full meeting of the Council of Governors, a Lead Governor shall be appointed for such a length of term that the Council shall decide.

16. Council of Governors – election of governors

- 16.1 Elections for elected members of the Council of Governors shall be conducted in accordance with the Model Rules for Elections, as may be varied from time to time.
- 16.2 The Model Rules for Elections, as may be varied from time to time, form part of this constitution and are attached at Annex 5.
- 16.3 A variation of the Model Rules by the Department of Health shall not constitute a variation of the terms of this constitution. For the avoidance of doubt, the trust cannot amend the Model Rules.
- 16.4 An election, if contested, shall be by secret ballot.
- 16.5 To be eligible to vote at an election for the Council of Governors, members of the public constituency or a class of the service users and carers' constituency must, within fourteen days of their vote, make a declaration in the form specified by the Trust of the particulars of his/her qualification to vote as a member of the constituency, or class of constituency, for which the election is being held. Making a false declaration is an offence.
- 16.6 To be eligible to stand for election as a public governor, service user or carer governor a person must, within the period specified within Annex 5, make a declaration in the form specified by the Trust that they are qualified to vote as a member of the relevant area of the public constituency or class of the service user and carers' constituency and are not prevented from being a governor under Paragraph 8 of Schedule 7 of the 2006 Act or this constitution. Making a false declaration is an offence.

17. Council of Governors - tenure

- 17.1 An elected governor may hold office for a period of up to 3 years.
- 17.2 An elected governor shall cease to hold office if s/he ceases to be a member of the constituency or class by which s/he was elected.
- 17.3 An elected governor shall be eligible for re-election after a three year period of office and after a six year period of office, but may not hold office for more than 9 consecutive years
- 17.4 An appointed governor shall normally hold office for a period of 3 years.
- 17.5 An appointed governor shall be eligible for re-appointment after a three year period of office and after a six year period of office, but may not hold office for more than 9 consecutive years.
- 17.6 The above provisions are subject to the provisions of paragraph 9 of Annex 6 to this constitution as regards the initial Council of Governors.

18. Council of Governors – disqualification and removal

- 18.1 A person may not become or continue as a member of the Council of Governors if:

- 18.1.1 s/he is a governor, executive or non-executive director of another NHS foundation trust or any other NHS body unless that NHS foundation trust or NHS body is an appointing organisation appointing him/her to the Council of Governors under this constitution;
 - 18.1.2 s/he has been removed from office as a governor of the trust;
 - 18.1.3 s/he is a spouse, partner, parent or child of a member of the Council of Governors or Board of Directors;
 - 18.1.4 s/he is a member of a local authority's scrutiny committee covering health matters;
 - 18.1.5 s/he has been adjudged bankrupt or his/her estate has been sequestrated and (in either case) has not been discharged;
 - 18.1.6 s/he has made a composition or arrangement with, or granted a trust deed for, his/her creditors and has not been discharged in respect of it;
 - 18.1.7 s/he has, within the preceding five years, been convicted in the British Isles 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/her.
- 18.2 Governors must be at least 16 years of age at the date they are nominated for election or appointment.
- 18.3 Further provisions as to the circumstances in which an individual may not become or continue as a member of the Council of Governors are set out in Annex 6.
- 18.4 Upon a governor resigning under Annex 6, or upon the Council of Governors resolving to terminate a governor's tenure of office under Annex 6, that governor shall cease to be a governor and his/her name shall be forthwith removed from the Register of the Council of Governors.
- 18.5 Any decision of the Council of Governors to terminate a governor's tenure of office may be referred by the governor to the Dispute Resolution Procedure, established in accordance with paragraph 10 of Annex 9 to this constitution, within 28 days of the date upon which notice in writing of the Council of Governor's decision is given to the Governor.
- 18.6 The Standing Orders adopted by the Council of Governors under paragraph 20 shall contain provisions governing the procedure for Termination of Tenure under this paragraph and for the governors to appeal.
- 18.7 A governor who resigns or whose tenure of office is terminated under this paragraph 18 shall not be eligible to stand for re-election for a period of three years from the date of his or her resignation or removal from office or the date upon which any appeal against his or her removal from office is disposed of, whichever is the later.
- 18.8 Where an individual has been elected or appointed to be a governor and s/he becomes disqualified for appointment s/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 or her disqualified.

- 18.9 If it comes to the notice of the secretary that the governor is disqualified, whether at the time of the governor's appointment or later, the secretary shall immediately declare that the individual in question is disqualified and give notice to him or her in writing to that effect as soon as practicable and in any event within 14 days of the date of the said declaration.
- 18.10 Upon the giving of notice under paragraph 18.8 or 18.9 above that individual's tenure of office, if any, shall thereupon be terminated forthwith and s/he shall cease to be a governor and his or her name shall be removed from the Register of Governors any governor may refer any dispute s/he may have with regard to that decision to the Dispute Resolution Procedure.

19. Council of Governors – meetings of governors

- 19.1 The Council of Governors is to meet at least three times in each financial year.
- 19.2 The Chair of the trust (i.e. the Chair of the Board of Directors, appointed in accordance with the provisions of paragraph 26.1 or paragraph 27.1 below) or, in his/her absence, the Vice-Chair, shall preside at meetings of the Council of Governors.
- 19.3 All meetings of the Council of Governors are to be general meetings open to members of the public
- 19.4 Members of the public shall be required to withdraw upon the Council of Governors resolving as follows:

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

- 19.5 Members of the public may also be required to withdraw from a meeting of the Council of Governors if the Chair considers that he/she is interfering with, or preventing, the proper conduct of the meeting.
- 19.6 Further provisions as to the meetings of the Council of Governors are set out in Annex 6 and in the Council of Governors Standing Orders at Annex 7.

20. Council of Governors – standing orders

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

21. Council of Governors - conflicts of interest of governors

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

22. Council of Governors – travel expenses

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

23. Council of Governors – further provisions

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

24. Board of Directors – composition

- 24.1 The trust is to have a Board of Directors, which shall comprise both executive and non-executive directors.
- 24.2 The Board of Directors is to comprise:
 - 24.2.1 a non-executive Chair
 - 24.2.2 not less than five nor more than eight other non-executive directors; and
 - 24.2.3 not less than five nor more than seven executive directors.
- 24.3 One of the executive directors shall be the Chief Executive.
- 24.4 The Chief Executive shall be the Accounting Officer.
- 24.5 One of the executive directors shall be the finance director.
- 24.6 One of the executive directors is to be a registered medical practitioner or a registered dentist (within the meaning of the Dentists Act 1984).
- 24.7 One of the executive directors is to be a registered nurse or a registered midwife.

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

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

- 25.1 s/he is a member of the Public Constituency, or
- 25.2 s/he is a member of the Service User and Carers' Constituency, and

25.3 s/he is not disqualified by virtue of paragraph 30 below.

26. Board of Directors – appointment and removal of chair 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 chair of the trust and the other non-executive directors.

26.2 The Council of Governors shall appoint the Chair and other non-executive directors in accordance with the following procedures:

26.2.1 The Council of Governors shall appoint a Nominations Committee, chaired by the Chair of the trust (or when a chair is being appointed, the vice-chair, unless the vice-chair is standing for appointment, in which case another non-executive director if the Chair is absent) and comprising some or all of its members.

26.2.2 The Nominations Committee shall seek the views of the Board of Directors as to their recommended criteria and process for selection of candidates and, having regard to those views, shall then seek, short-list and interview such candidates as the committee considers appropriate.

26.2.3 The Nominations Committee shall make recommendations to the Council of Governors as to potential appointments as non-executive directors and shall advise the Board of Directors of those recommendations.

26.2.4 The Nominations Committee shall have such terms of reference and powers as agreed by the Council of Governors. The terms of reference shall have effect as if incorporated into the Standing Orders of the Council of Governors.

26.3 Removal of the chair or another non-executive director shall require the approval of not less than three-quarters of the members of the Council of Governors.

26.4 The initial Chair and the initial non-executive directors are to be appointed in accordance with paragraph 27 below.

27. Board of Directors – appointment of initial chair and initial other non-executive directors

27.1 The Chair of the applicant NHS Trust shall be appointed as the initial Chair of the trust if s/he wishes to be appointed.

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

27.3 The criteria for qualification for appointment as a non-executive director set out in paragraph 25 above (other than disqualification by virtue of paragraph 30 below) do not apply to the appointment of the initial Chair and the initial other non-executive directors in accordance with the procedures set out in this paragraph

27.4 An individual appointed as the initial Chair or as an initial non-executive director in accordance with the provisions of this paragraph shall be appointed for the unexpired period of his/her term of office as Chair or (as the case may be) non-executive director of the applicant NHS Trust; but if, on appointment, that period is less than 12 months, s/he shall be appointed for 12 months.

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

28.1 The non-executive directors shall appoint or remove the Chief Executive.

28.2 The appointment of the Chief Executive shall require the approval of the Council of Governors.

28.3 The initial Chief Executive is to be appointed in accordance with paragraph 29 below.

28.4 A committee consisting of the Chair, the Chief Executive and the other non-executive directors shall appoint or remove the other executive directors.

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

29.1 The chief officer of the applicant NHS Trust shall be appointed as the initial Chief Executive of the trust if s/he wishes to be appointed.

29.2 The appointment of the chief officer of the applicant NHS trust as the initial Chief Executive of the trust shall not require the approval of the Council of Governors.

30. Board of Directors – disqualification

A person may not become or continue as a member of the Board of Directors if:

30.1 s/he is a member of the Council of Governors, or is a governor or director of another NHS Foundation Trust or any other NHS body;

30.2 s/he has been removed from office as a governor of the Trust;

30.3 s/he is a spouse, partner, parent or child of a member of the Council of Governors or Board of Directors;

30.4 s/he is a member of a local authority's scrutiny committee covering health matters;

30.5 s/he has been adjudged bankrupt or his/her estate has been sequestrated and (in either case) has not been discharged;

- 30.6 s/he has made a composition or arrangement with, or granted a trust deed for, his/her creditors and has not been discharged in respect of it;
- 30.7 s/he has, within the preceding five years, been convicted in the British Isles or elsewhere of any offence and 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/her;
- 30.8 on the basis of disclosures obtained through an application to the Criminal Records Bureau, s/he is not considered suitable by the trust's executive director responsible for human resources;
- 30.9 s/he is or has been the subject of a sex offender order;
- 30.10 s/he is the subject of a disqualification order made under the Company Directors Disqualification Act 1986;
- 30.11 s/he is incapable by reason of mental disorder, illness or injury of managing or administering his/her property or affairs;
- 30.12 in the case of a non-executive director, s/he is no longer a member of the Public Constituency or the carer class of the Service User and Carers' Constituency;
- 30.13 s/he has within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with a health service body;
- 30.14 s/he is a person whose tenure of office as the Chair or as a member or director of a health service body has been terminated on the grounds that his/her appointment was not in the interests of the health service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest;
- 30.15 s/he has had his/her name removed from any list prepared under Part II of the 2006 Act and, due to the reason(s) for such removal, s/he is not considered suitable by the trust's executive director responsible for human resources;
- 30.16 in the case of a non-executive director, s/he has refused without reasonable cause to fulfil any training requirements established by the Board of Directors;
- 30.17 s/he has refused to sign and deliver to the secretary a statement in the form specified by the Board of Directors confirming acceptance of the trust's Code of Conduct for directors.

31. Board of Directors – standing orders

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

32. Board of Directors - conflicts of interest of directors

If a director 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 Board of

Directors, the director shall disclose that interest to the members of the Board of Directors as soon as s/he becomes aware of it. The Standing Orders for the Board of Directors shall make provision for the disclosure of interests and arrangements for the exclusion of a director declaring any interest from any discussion or consideration of the matter in respect of which an interest has been disclosed.

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 Chair 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. Secretary

- 34.1 The Trust shall have a Secretary who may be an employee. The Secretary may not be a Governor, or the Chief Executive or the Finance Director.
- 34.2 The Secretary's functions shall include, but shall not be limited to:
 - 34.2.1 Acting as Secretary to the Council of Governors and the Board of Directors, and any committees;
 - 34.2.2 Attending all members meetings, meetings of the Council of Governors and the Board of Directors and keeping the minutes at those meetings;
 - 34.2.3 Maintaining and keeping up to date the register of members and other registers and books required by this Constitution;
 - 34.2.4 Taking charge of the Trust's seal;
 - 34.2.5 Publishing to members in an appropriate form relevant information about the Trust's affairs;
 - 34.2.6 Preparing and sending to the Regulator and any other statutory body all returns which are required to be made.
- 34.3 The Secretary shall be appointed and removed by the Board of Directors in consultation with the Council of Governors.
- 34.4 The Board of Directors of the applicant NHS Trust shall appoint the first Secretary of the Trust.

35. Registers

The trust shall have:

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

36. Admission to and removal from the registers

- 36.1 In all cases where a person ceases to be a member, the secretary shall cause their name to be removed from the register of members forthwith and they shall thereupon cease to be a member.
- 36.2 Members will be removed from the register of members if:
 - 36.2.1 the member is no longer eligible or is disqualified;
 - 36.2.2 the member is deceased; or
 - 36.2.3 the member is a governor whose tenure of office has been terminated.

37. Registers – inspection and copies

- 37.1 The trust shall make the registers specified in paragraph 35 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.
- 37.2 The trust shall not make any part of its registers available for inspection by members of the public which shows details of –
 - 37.2.1 any member of the Service User and Carers' Constituency; or
 - 37.2.2 any other member of the trust, if s/he so requests.
- 37.3 So far as the registers are required to be made available:
 - 37.3.1 they are to be available for inspection free of charge at all reasonable times; and
 - 37.3.2 a person who requests a copy of or extract from the registers is to be provided with a copy or extract.
- 37.4 If the person requesting a copy or extract is not a member of the trust, the trust may impose a reasonable charge for doing so.

38. Documents available for public inspection

- 38.1 The trust shall make the following documents available for inspection by members of the public free of charge at all reasonable times:
 - 38.1.1 a copy of the current constitution;
 - 38.1.2 a copy of the current authorisation;
 - 38.1.3 a copy of the latest annual accounts and of any report of the auditor on them;

- 38.1.4 a copy of the latest annual report;
 - 38.1.5 a copy of the latest information as to its forward planning;
 - and
 - 38.1.6 a copy of any notice given under section 52 of the 2006 Act.
- 38.2 Any person who requests a copy of or extract from any of the above documents is to be provided with a copy.
- 38.3 If the person requesting a copy or extract is not a member of the trust, the trust may impose a reasonable charge for doing so.

39. Auditor

- 39.1 The trust shall have a financial auditor and shall provide the financial auditor with every facility and all information which s/he may reasonably require for the purpose of fulfilling his/her functions under the 2006 Act.
- 39.2 A person may only be appointed as the financial auditor if s/he (or, in the case of a firm, each of its members) are a member of one or more of the bodies referred to in paragraph 23(4) of Schedule 7 to the 2006 Act.
- 39.3 The Council of Governors shall appoint or remove the auditor at a general meeting of the Council of Governors.
- 39.4 An officer of the Audit Commission may be appointed as the financial auditor with the agreement of the Audit Commission.
- 39.5 The financial auditor is to carry out his/her duties in accordance with Schedule 10 to the 2006 Act and in accordance with any directions given by the Regulator on standards, procedures and techniques to be adopted.
- 39.6 The Board of Directors may resolve that external auditors be appointed to review and publish a report on any other aspect of the trust's performance. Any such auditors are to be appointed by the Council of Governors.

40. Audit committee

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

41. Accounts

- 41.1 The Trust must keep proper accounts and proper records in relation to the accounts.
- 41.2 Monitor may with the approval of the Secretary of State give directions to the Trust as to the content and form of its accounts.
- 41.3 The Accounts are to be audited by the Trust's auditor.
- 41.4 The Trust shall prepare in respect of each financial year annual accounts in such form as Monitor may with the approval of the Secretary of State direct.

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

42. Annual report and forward plans and non NHS work

- 42.1 The trust shall prepare an Annual Report and send it to Monitor.
- 42.2 The trust shall give information as to its forward planning in respect of each financial year to Monitor.
- 42.3 The document containing the information with respect to forward planning (referred to above) shall be prepared by the directors.
- 42.4 In preparing the document, the directors shall have regard to the views of the Council of Governors.
- 42.5 Each forward plan must include information about:-
- 42.5.1 the activities other than the provision of goods and services for the purposes of the health service in England that the Trust proposes to carry on and
- 42.5.2 the income it expects to receive from doing so
- 42.6 Where a forward plan contains a proposal that the Trust can carry on an activity of a kind mentioned in sub-paragraph 42.5.1 the Council of Governors must:-
- 42.6.1 determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfilment by the Trust of its principal purpose or the performance of its other functions, and
- 42.6.2 notify the directors of the Trust and its determination.
- 42.7 A Trust which proposes to increase by 5% or more of 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 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 its approve its implementation

43. Meeting of Council of Governors to consider annual accounts and reports

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

- 43.1 the annual accounts
- 43.2 any report of the auditor on them
- 43.3 the annual report.

44. Instruments

- 44.1 The trust shall have a seal.

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

45. Mergers

45.1 The trust may, in accordance with Section 56 of the 2006 Act, apply to the Regulator jointly with another NHS Foundation Trust or another NHS Trust for authorisation of the dissolution of the trust and the transfer of some or all of its property and liabilities to a new NHS Foundation Trust established under that Section. Such application shall only be made if a majority of those Directors present and voting at a meeting of the Board of Directors shall have approved the making of such an application.

46. Head Office

The trust's Head Office will be on its Prestwich site or such other place as the Board of Directors shall decide.

47. Notices

47.1 Any notice required by this Constitution to be given shall be given in writing to an address for the time being notified for that purpose.

47.2 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.

48. Amendment to the Constitution

48.1 Amendments by the Trust to its Constitution are to be made with the approval of Monitor, for the avoidance of doubt, any amendments to the annexes attached to this Constitution must also be approved by Monitor.

49. Mergers and Significant Transactions

49.1 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.

49.2 The Trust may enter into a significant transaction only if majority of the members of the Council of Governors of the Trust vote at a general meeting, or a special meeting convened by the Chair of the Trust if deemed necessary.

49.3 "Significant transaction" is defined as amounts equal to or greater than 25% of:-

- a) In relation to assets, the gross assets (behind the sum of fixed assets and current assets) subject to the transaction, divided by the gross assets of the Foundation Trust
- b) In relation to income, the income attributable to the assets or the contract associated with the transaction, divided by the income of the Foundation Trust
- c) In relation to acquisitions or disinvestments, the gross capital (being the market valued of the target's shares and debt securities plus the excess of current liabilities over current assets) of the company being acquired or divested, divided by the total capital (being the total taxpayers' equity) or the foundation Trust following completion, or the effects on the total capital of the Foundation Trust resulting from a transaction.

ANNEX 1 THE PUBLIC CONSTITUENCY

Paragraph 10.3

Name of Constituency	Area of Constituency	Qualification	Minimum Number of Members	Number of Governors
Public Constituency	Bolton	Residents of the Metropolitan Borough of Bolton	20	3
	Salford	Residents of the City of Salford	20	3
	Trafford	Residents of the Metropolitan Borough of Trafford	20	3
	North West England	Residents of Greater Manchester (other than Bolton, Salford or Trafford), Cumbria, Lancashire, Cheshire or Merseyside.	20	3

ANNEX 2 – THE STAFF CONSTITUENCY

(Paragraphs 11.4 and 11.5)

Staff Classes	Minimum Number of Members	Number of Governors
Health care clinical staff <ul style="list-style-type: none">• Medical• Nursing• Allied Health Professionals• Psychological Therapies	60	1 2 1 1
Social care staff	10	1
Non-clinical staff	30	3
Total	100	9

ANNEX 3 – THE SERVICE USERS AND CARERS’ CONSTITUENCY

(Paragraphs 12.4 and 12.6)

Service User & Carers’ Constituency Classes	Minimum Number of Members	Number of Governors
	5	2
Users of Mental Health Services	20	4
Substance misuse	10	2
Carer	10	2
Total	40	8

Service User Member Definitions:

“Users of Mental Health Services” – Individuals who are 14 years or older (with no maximum age limit) and eligible for membership of the Service User and Carer Constituency.

ANNEX 4 – COMPOSITION OF COUNCIL OF GOVERNORS

(Paragraphs 15.2 and 15.5)

Elected Public, Service User and Carer Governors	No.	Appointed Governors	No.
Public Governors		PCT and Local Authorities Commissioners:	
Bolton	3	Bolton PCT	1
Salford	3	Salford PCT	1
Trafford	3	Trafford PCT	1
Other North West England	3	Bolton MBC	1
		Salford City Council	1
		Trafford MBC	1
Total	12	Total	6
Service Users and Carers		Partnership organisations	1
Users of Mental Health Services	6	University of Salford	1
	2	National Offenders Management Service	1
Carers		Cloughside School	
Total	8	Total	3
<i>More than half of the members of the Council of Governors are to be elected by members of the Trust other than those individuals within the staff constituency</i>		Elected Staff Governors	
		Health care clinical staff:	
		Medical	1
		Nursing	2
		Psychological Therapies	1
		Allied Health Professional	1
Social care staff	1		
Non-clinical staff	3		
Total		Total	9
Total Elected Public, Service User and Carer Governors	20	Total Appointed Governors and Elected Staff Governors	18

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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 ELECTIONS

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 69, 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 69, the returning officer may appoint and pay such staff, including such technical advisers, as he or she considers necessary for the purposes of the election.

6. Expenditure

- 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; and,
- (b) for a member of the public or patient constituency, of the particulars of his or her qualification to vote as a member of that constituency, or class within that constituency, for which the election is being held.

13. Signature of candidate

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 providedto 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 64 of these rules, or details of where this information is readily available on the internet or available in such other formats as the Returning Officer thinks appropriate, (d) contact details of the returning officer,

("e-voting information").

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 spoilt ballot paper (if that officer was able to obtain it), and
 - (c) the details of the unique identifier of the replacement ballot paper.
- 29.5 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 spoilt 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 spoilt 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 spoilt text message vote, the returning officer shall enter in a list ("the list of spoilt text message votes"):
- (a) the name of the voter, and
 - (b) the details of the voter ID number on the spoilt text message vote (if that officer was able to obtain it), and
 - (c) the details of the replacement voter ID number issued to the voter.

30. Lost voting information

- 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)¹

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

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

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

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 spoilt ballot papers and the list of spoilt text message votes,
- (d) the list of lost ballot documents,
- (e) the list of eligible voters, and
- (f) the list of tendered voting information

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

PART 6: COUNTING THE VOTES

STV41. Interpretation of Part 6

STV41.1 In Part 6 of these rules:

"ballot document" means a ballot paper, internet voting record, telephone voting record or text voting record.

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

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

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

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

"non-transferable vote" means a ballot document:

(a) on which no second or subsequent preference is recorded for a continuing candidate,

or

(b) which is excluded by the returning officer under rule STV49,

"preference" as used in the following contexts has the meaning assigned below:

(a) "first preference" means the figure "1" or any mark or word which clearly indicates a first (or only) preference,

(b) "next available preference" means a preference which is the second, or as the case may be, subsequent preference recorded in consecutive order for a continuing candidate (any candidate who is deemed to be elected or is excluded thereby being ignored); and

(c) in this context, a "second preference" is shown by the figure "2" or any mark or word which clearly indicates a second preference, and

a third preference by the figure "3" or any mark or word which clearly indicates a third preference, and so on,

"*quota*" means the number calculated in accordance with rule STV46,

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

"*stage of the count*" means:

- (a) the determination of the first preference vote of each candidate,
- (b) the transfer of a surplus of a candidate deemed to be elected, or
- (c) the exclusion of one or more candidates at any given time,

"*transferable vote*" means a ballot document on which, following a first preference, a second or subsequent preference is recorded in consecutive numerical order for a continuing candidate,

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

"*transfer value*" means the value of a transferred vote calculated in accordance with rules STV47.4 or STV47.7.

42. Arrangements for counting of the votes

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

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

- (a) the board of directors and the council of governors of the corporation have approved:
 - (i) the use of such software for the purpose of counting votes in the relevant election, and
 - (ii) a policy governing the use of such software, and
- (b) the corporation and the returning officer are satisfied that the use of such software will produce an accurate result.

43. The count

43.1 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 42.2(ii) where vote counting software is being used.

43.2 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.

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

STV44. Rejected ballot papers and rejected text voting records

STV44.1 Any ballot paper:

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

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

STV44.2 The returning officer is to endorse the word "rejected" on any ballot paper which under this rule is not to be counted.

STV44.3 Any text voting record:

- (a) on which the figure "1" standing alone is not placed so as to indicate a first preference for any candidate,
- (b) on which anything is written or marked by which the voter can be

- identified except the unique identifier, or
- (c) which is unmarked or rejected because of uncertainty,

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

STV44.4 The returning officer is to endorse the word "rejected" on any text voting record which under this rule is not to be counted.

STV44.5 The returning officer is to draw up a statement showing the number of ballot papers rejected by him or her under each of the subparagraphs (a) to (d) of rule STV44.1 and the number of text voting records rejected by him or her under each of the sub-paragraphs (a) to (c) of rule STV44.3.

FPP44. Rejected ballot papers and rejected text voting records

FPP44.1 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 FPP44.2 and FPP44.3, be rejected and not counted.

FPP44.2 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.

FPP44.3 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.

- FPP44.4 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 FPP44.2 and FPP 44.3, endorse the words "rejected in part" on the ballot paper and indicate which vote or votes have been counted.

- FPP44.5 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.

- FPP44.6 Any text voting record:
- (a) on which votes are given for more candidates than the voter is entitled to vote,
 - (b) on which anything is written or marked by which the voter can be identified except the voter ID number, or
 - (c) which is unmarked or rejected because of uncertainty,

shall, subject to rules FPP44.7 and FPP44.8, be rejected and not counted.

- FPP44.7 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.

FPP448A 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.

- FPP44.9 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 FPP44.7 and FPP 44.8, endorse the words "rejected in part" on the text voting record and indicate which vote or votes have been counted.

FPP44.10 The returning officer is to draw up a statement showing the number of rejected text voting records under the following headings:

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

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

STV45. First stage

STV45.1 The returning officer is to sort the ballot documents into parcels according to the candidates for whom the first preference votes are given.

STV45.2 The returning officer is to then count the number of first preference votes given on ballot documents for each candidate, and is to record those numbers.

STV45.3 The returning officer is to also ascertain and record the number of valid ballot documents.

STV46. The quota

STV46.1 The returning officer is to divide the number of valid ballot documents by a number exceeding by one the number of members to be elected.

STV46.2 The result, increased by one, of the division under rule STV46.1 (any fraction being disregarded) shall be the number of votes sufficient to secure the election of a candidate (in these rules referred to as "the quota").

STV46.3 At any stage of the count a candidate whose total votes equals or exceeds the quota shall be deemed to be elected, except that any election where there is only one vacancy a candidate shall not be deemed to be elected until the procedure set out in rules STV47.1 to STV47.3 has been complied with.

STV47. Transfer of votes

- STV47.1 Where the number of first preference votes for any candidate exceeds the quota, the returning officer is to sort all the ballot documents on which first preference votes are given for that candidate into sub- parcels so that they are grouped:
- (a) according to next available preference given on those ballot documents for any continuing candidate, or
 - (b) where no such preference is given, as the sub-parcel of non-transferable votes.
- STV47.2 The returning officer is to count the number of ballot documents in each parcel referred to in rule STV47.1.
- STV47.3 The returning officer is, in accordance with this rule and rule STV48, to transfer each sub-parcel of ballot documents referred to in rule STV47.1(a) to the candidate for whom the next available preference is given on those ballot documents.
- STV47.4 The vote on each ballot document transferred under rule STV47.3 shall be at a value ("the transfer value") which:
- (a) reduces the value of each vote transferred so that the total value of all such votes does not exceed the surplus, and
 - (b) is calculated by dividing the surplus of the candidate from whom the votes are being transferred by the total number of the ballot documents on which those votes are given, the calculation being made to two decimal places (ignoring the remainder if any).
- STV47.5 Where at the end of any stage of the count involving the transfer of ballot documents, the number of votes for any candidate exceeds the quota, the returning officer is to sort the ballot documents in the sub-parcel of transferred votes which was last received by that candidate into separate sub-parcels so that they are grouped:
- (a) according to the next available preference given on those ballot documents for any continuing candidate, or
 - (b) where no such preference is given, as the sub-parcel of non-transferable votes.
- STV47.6 The returning officer is, in accordance with this rule and rule STV48, to transfer each sub-parcel of ballot documents referred to in rule STV47.5(a) to the candidate for whom the next available preference is given on those ballot documents.

STV47.7 The vote on each ballot document transferred under rule STV47.6 shall be at:

- (a) a transfer value calculated as set out in rule STV47.4(b), or
 - (b) at the value at which that vote was received by the candidate from whom it is now being transferred,
- whichever is the less.

STV47.8 Each transfer of a surplus constitutes a stage in the count.

STV47.9 Subject to rule STV47.10, the returning officer shall proceed to transfer transferable ballot documents until no candidate who is deemed to be elected has a surplus or all the vacancies have been filled.

STV47.10 Transferable ballot documents shall not be liable to be transferred where any surplus or surpluses which, at a particular stage of the count, have not already been transferred, are:

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

STV47.11 This rule does not apply at an election where there is only one vacancy.

STV48. Supplementary provisions on transfer

STV48.1 If, at any stage of the count, two or more candidates have surpluses, the transferable ballot documents of the candidate with the highest surplus shall be transferred first, and if:

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

STV48.2 The returning officer shall, on each transfer of transferable ballot documents under rule STV47:

- (a) record the total value of the votes transferred to each candidate,

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

STV48.3 All ballot documents transferred under rule STV47 or STV49 shall be clearly marked, either individually or as a sub-parcel, so as to indicate the transfer value recorded at that time to each vote on that ballot document or, as the case may be, all the ballot documents in that sub-parcel.

STV48.4 Where a ballot document is so marked that it is unclear to the returning officer at any stage of the count under rule STV47 or STV49 for which candidate the next preference is recorded, the returning officer shall treat any vote on that ballot document as a non-transferable vote; and votes on a ballot document shall be so treated where, for example, the names of two or more candidates (whether continuing candidates or not) are so marked that, in the opinion of the returning officer, the same order of preference is indicated or the numerical sequence is broken.

STV49. Exclusion of candidates

STV49.1 If:

- (a) all transferable ballot documents which under the provisions of rule STV47 (including that rule as applied by rule STV49.11) and this rule are required to be transferred, have been transferred, and
- (b) subject to rule STV50, one or more vacancies remain to be filled,

the returning officer shall exclude from the election at that stage the candidate with the then lowest vote (or, where rule STV49.12 applies, the candidates with the then lowest votes).

STV9.2 The returning officer shall sort all the ballot documents on which first preference votes are given for the candidate or candidates excluded under rule STV49.1 into two sub-parcels so that they are grouped as:

- (a) ballot documents on which a next available preference is given, and
- (b) ballot documents on which no such preference is given (thereby including ballot documents on which preferences are given only for

- candidates who are deemed to be elected or are excluded).
- STV49.3 The returning officer shall, in accordance with this rule and rule STV48, transfer each sub-parcel of ballot documents referred to in rule STV49.2 to the candidate for whom the next available preference is given on those ballot documents.
- STV49.4 The exclusion of a candidate, or of two or more candidates together, constitutes a further stage of the count.
- STV49.5 If, subject to rule STV50, one or more vacancies still remain to be filled, the returning officer shall then sort the transferable ballot documents, if any, which had been transferred to any candidate excluded under rule STV49.1 into sub- parcels according to their transfer value.
- STV49.6 The returning officer shall transfer those ballot documents in the sub-parcel of transferable ballot documents with the highest transfer value to the continuing candidates in accordance with the next available preferences given on those ballot documents (thereby passing over candidates who are deemed to be elected or are excluded).
- STV49.7 The vote on each transferable ballot document transferred under rule STV49.6 shall be at the value at which that vote was received by the candidate excluded under rule STV49.1.
- STV9.8 Any ballot documents on which no next available preferences have been expressed shall be set aside as non-transferable votes.
- STV49.9 After the returning officer has completed the transfer of the ballot documents in the sub-parcel of ballot documents with the highest transfer value he or she shall proceed to transfer in the same way the sub-parcel of ballot documents with the next highest value and so on until he has dealt with each sub-parcel of a candidate excluded under rule STV49.1.
- STV49.10 The returning officer shall after each stage of the count completed under this rule:
- (a) record:
 - (i) the total value of votes, or
 - (ii) the total transfer value of votes transferred to each candidate,
 - (b) add that total to the previous total of votes recorded for each candidate and record the new total,
 - (c) record the value of non-transferable votes and add that value to the previous non-transferable votes total, and
 - (d) compare:
 - (i) the total number of votes then recorded for each candidate together with the total number of non-transferable votes, with

(ii) the recorded total of valid first preference votes.

STV49.11 If after a transfer of votes under any provision of this rule, a candidate has a surplus, that surplus shall be dealt with in accordance with rules STV47.5 to STV47.10 and rule STV48.

STV49.12 Where the total of the votes of the two or more lowest candidates, together with any surpluses not transferred, is less than the number of votes credited to the next lowest candidate, the returning officer shall in one operation exclude such two or more candidates.

STV49.13 If when a candidate has to be excluded under this rule, two or more candidates each have the same number of votes and are lowest:

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

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

STV50. Filling of last vacancies

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

STV50.2 Where only one vacancy remains unfilled and the votes of any one continuing candidate are equal to or greater than the total of votes credited to other continuing candidates together with any surplus not transferred, the candidate shall thereupon be deemed to be elected.

STV50.3 Where the last vacancies can be filled under this rule, no further transfer of votes shall be made.

STV51. Order of election of candidates

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

STV51.2 A candidate credited with a number of votes equal to, and not greater than, the quota shall, for the purposes of this rule, be regarded as having had the smallest surplus at the stage of the count at which he obtained the quota.

STV51.3 Where the surpluses of two or more candidates are equal and are not required to be transferred, regard shall be had to the total number of votes credited to such candidates at the earliest stage of the count at which they had an unequal number of votes and the surplus of the candidate who had the greatest number of votes at that stage shall be deemed to be the largest.

STV51.4 Where the number of votes credited to two or more candidates were equal at all stages of the count, the returning officer shall decide between them by lot and the candidate on whom the lot falls shall be deemed to have been elected first.

FPP51. Equality of votes

FPP51.1 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

FPP52. Declaration of result for contested elections

FPP52.1 In a contested election, when the result of the poll has been ascertained, the returning officer is to:

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

FPP52.2 The returning officer is to make:

- (a) the total number of votes given for each candidate (whether elected or not), and
- (b) the number of rejected ballot papers under each of the headings in rule FPP44.5,
- (c) the number of rejected text voting records under each of the headings in rule FPP44.10,

available on request.

STV52. Declaration of result for contested elections

STV52.1 In a contested election, when the result of the poll has been ascertained, the returning officer is to:

- (a) declare the candidates who are deemed to be elected under Part 6 of these rules as elected,
- (b) give notice of the name of each candidate who he or she has

declared elected –

(i) where the election is held under a proposed constitution pursuant to powers conferred on the [insert name] NHS Trust by section 33(4) of the 2006 Act, to the chairman of the NHS Trust, or

(ii) in any other case, to the chairman of the corporation, and

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

STV52.2 The returning officer is to make:

(a) the number of first preference votes for each candidate whether elected or not,

(b) any transfer of votes,

(c) the total number of votes for each candidate at each stage of the count at which such transfer took place,

(d) the order in which the successful candidates were elected, and

(e) the number of rejected ballot papers under each of the headings in rule STV44.1,

(f) the number of rejected text voting records under each of the headings in rule STV44.3,

available on request.

53. Declaration of result for uncontested elections

53.1 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 chairman of the corporation, and

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

PART 8: DISPOSAL OF DOCUMENTS

54. Sealing up of documents relating to the poll

54.1 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.

54.2 The returning officer must not open the sealed packets of:

- (a) the disqualified documents, with the list of disqualified documents inside it,
- (b) the list of spoiled ballot papers and the list of spoiled text message votes,
- (c) the list of lost ballot documents, and
- (d) the list of eligible voters,

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

54.3 The returning officer must endorse on each packet a description of:

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

55. Delivery of documents

55.1 Once the documents relating to the poll have been sealed up and endorsed pursuant to rule 56, the returning officer is to forward them to the chair of the corporation.

56. Forwarding of documents received after close of the poll

56.1 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 chairman of the corporation.

57. Retention and public inspection of documents

57.1 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.

57.2 With the exception of the documents listed in rule 58.1, the documents relating to an election that are held by the corporation shall be available for inspection by members of the public at all reasonable times.

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

58. Application for inspection of certain documents relating to an election

58.1 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.

58.2 A person may apply to the board of directors of the corporation to inspect any of the documents listed in rule 58.1, and the board of directors of the corporation may only consent to such inspection if it is satisfied that it is necessary for the purpose of questioning an election pursuant to Part 11.

58.3 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.

58.4 On an application to inspect any of the documents listed in rule 58.1 the board of directors of the corporation must:

(a) in giving its consent, and

(b) in making the documents available for inspection

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

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

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

PART 9: DEATH OF A CANDIDATE DURING A CONTESTED ELECTION

FPP59. Countermand or abandonment of poll on death of candidate

FPP59.1 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.

FPP59.2 Where a new election is ordered under rule FPP59.1, no fresh nomination is necessary for any candidate who was validly nominated for the election where the poll was countermanded or abandoned but further candidates shall be invited for that constituency or class.

FPP59.3 Where a poll is abandoned under rule FPP59.1(a), rules FPP59.4 to FPP59.7 are to apply.

FPP59.4 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.

FPP59.5 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.

FPP59.6 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.

FPP59.7 Once the documents relating to the poll have been sealed up and endorsed pursuant to rules FPP59.4 to FPP59.6, the returning officer is to deliver them to the chairman of the corporation, and rules 57 and 58 are to apply.

STV59. Countermand or abandonment of poll on death of candidate

STV59.1 If, at a contested election, proof is given to the returning officer's satisfaction before the result of the election is declared that one of the persons named or to be named as a candidate has died, then the returning officer is to:

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

STV59.2 The ballot documents which have preferences recorded for the candidate who has died are to be sealed with the other counted ballot documents pursuant to rule 54.1(a).

PART 10: ELECTION EXPENSES AND PUBLICITY

Election expenses

60. Election expenses

- 60.1 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.

61. Expenses and payments by candidates

- 61.1 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.

62. Election expenses incurred by other persons

- 62.1 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.
- 62.2 Nothing in this rule is to prevent the corporation from incurring such expenses, and making such payments, as it considers necessary pursuant to rules 63 and 64.

Publicity

63. Publicity about election by the corporation

- 63.1 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.
- 63.2 Any information provided by the corporation about the candidates, including information compiled by the corporation under rule 64, must be:
- (a) objective, balanced and fair,
 - (b) equivalent in size and content for all candidates,
 - (c) compiled and distributed in consultation with all of the candidates standing for election, and
 - (d) must not seek to promote or procure the election of a specific candidate or candidates, at the expense of the electoral prospects of one or more other candidates.
- 63.3 Where the corporation proposes to hold a meeting to enable the candidates to speak, the corporation must ensure that all of the candidates are invited to attend, and in organising and holding such a meeting, the corporation must not seek to promote or procure the election of a specific candidate or candidates at the expense of the electoral prospects of one or more other candidates.

64. Information about candidates for inclusion with voting information

- 64.1 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.
- 64.2 The information must consist of:
- (a) a statement submitted by the candidate of no more than 250 words,
 - (b) if voting by telephone or text message is a method of polling for the election, the numerical voting code allocated by the returning officer to each candidate, for the purpose of recording votes using the telephone voting facility or the text message voting facility ("numerical voting code"), and
 - (c) a photograph of the candidate.

65. Meaning of "for the purposes of an election"

- 65.1 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.
- 65.2 The provision by any individual of his or her own services voluntarily, on his or her own time, and free of charge is not to be considered an expense for the purposes of this Part.

PART 11: QUESTIONING ELECTIONS AND THE CONSEQUENCE OF IRREGULARITIES

66. Application to question an election

- 66.1 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).
- 66.2 An application may only be made once the outcome of the election has been declared by the returning officer.
- 66.3 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.
- 66.4 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.
- 66.5 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.
- 66.6 If the independent election arbitration panel requests further information from the applicant, then that person must provide it as soon as is reasonably practicable.
- 66.7 Monitor shall delegate the determination of an application to a person or panel of persons to be nominated for the purpose.
- 66.8 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.
- 66.9 The IEAP may prescribe rules of procedure for the determination of an application including costs.

67. Secrecy

67.1 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.

67.2 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.

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

68. Prohibition of disclosure of vote

68.1 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.

69. Disqualification

69.1 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.

70. Delay in postal service through industrial action or unforeseen event

70.1 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 6 – ADDITIONAL PROVISIONS – COUNCIL OF GOVERNORS

(Paragraph 18.3)

1 Termination of Tenure

- 1.1 An appointed governor shall cease to hold office if the organisation which appointed him or her withdraws its appointment of him.
- 1.2 A governor may resign from that office at any time during the term of that office by giving notice in writing to the Secretary.
- 1.3 If a governor fails to attend any meeting of the Council of Governors for a consecutive period of twelve months or alternatively for three successive meetings of the Council of Governors, his or her tenure of office is to be immediately terminated by the Council of Governors unless the Council of Governors is satisfied that:
 - 1.3.1 the absence was due to reasonable cause; and
 - 1.3.2 that the governor will be able to start attending meetings of the Council of Governors within such a period as it considers reasonable.
- 1.4 The Council of Governors may by a resolution terminate a governor's tenure of office if for reasonable cause it considers that:
 - 1.4.1 S/he is disqualified from becoming or continuing as a Member under this Constitution
 - 1.4.2 S/he has knowingly or recklessly made a false declaration for any purpose provided for under this Constitution or in the 2006 Act
 - 1.4.3 S/he has committed a serious breach of the Trust's Code of Conduct
 - 1.4.4 S/he has failed to declare a relevant and material interest in accordance with the Council of Governor's Standing Orders; and/or
 - 1.4.5 S/he has acted in a manner detrimental to the interests of the Trust
 - 1.4.6 His or her continuing as a Council Member would or would be likely to:
 - 1.4.6.1 prejudice the ability of the Trust to fulfil its principal purpose or other of its purposes under this Constitution or otherwise to discharge its duties and functions; or
 - 1.4.6.2 harm the Trust's work with other persons or bodies with whom it is engaged or may be engaged in the provisions of goods and services; or
 - 1.4.6.3 adversely affect public confidence in the goods or services provided by the Trust; or
 - 1.4.7 otherwise bring the Trust into disrepute.

2 A person may not become or continue as a governor if:

- 2.1 S/he is an executive or non-executive director of the Trust,
 - 2.2 S/he is a governor, executive or non-executive director of another NHS Foundation Trust or any other NHS body unless that NHS Foundation Trust or NHS Body is an appointing organisation appointing him or her to the Council of Governors under this constitution,
 - 2.3 In the case of an elected governor s/he ceases to be a Member of the constituency or the class of a constituency by which s/he was elected;
 - 2.4 In the case of an appointed governor the appointing organisation withdraws its appointment of him or her;
 - 2.5 Monitor has exercised its powers to remove that person as a governor of the Council of Governors of the Trust or has suspended him or her from office or has disqualified him or her from holding office as a governor of the Trust for a specified period or Monitor has exercised any of those powers in relation to the person concerned at any other time whether in relation to the Trust or some other NHS Foundation Trust;
 - 2.6 S/he has within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with a health service body;
 - 2.7 S/he is a person whose tenure of office as the Chair or as a Member or Director of a Health Service Body has been terminated on the grounds that his or her appointment was not in the interests of the health service, for non attendance at meetings, or for non-disclosure of a pecuniary interest;
 - 2.8 S/he has had his/her name removed, by a direction under Section 151 of the National Health Service Act 2006 from any list prepared under Part 7 of the Act, and has not subsequently had his/her name included in such a list; or
 - 2.9 S/he has failed or refused to confirm in writing that s/he will abide by any Code of Conduct for Council of Governors that the Trust shall have published from time to time.
- 3 The provisions of paragraph 2 of this annex 6 apply to both elected and appointed governors and to those seeking election or appointment.
 - 4 Vacancies
 - 4.1 Where an elected governor's membership of the Council of Governors ceases for any reason other than expiry of term of office, elected governors shall be replaced in accordance with paragraphs 4.2 to 4.4 of this Annex 6 below.

- 4.2 Where an elected governor of the Council of Governors ceases to hold office during his or her term of office the Trust shall offer the candidate who secured the second highest number of first preference votes in the last election for the Constituency (or class of Constituency, as the case may be) in which the vacancy has arisen the opportunity to assume the vacant office for the unexpired balance of the retiring governor's term of office. If that candidate does not accept to fill the vacancy it will then be offered to that candidate who secured the next highest number of first preference votes until the vacancy is filled.
- 4.3 If no reserve candidate is available or willing to fill the vacancy, an election will then be held in accordance with the Election Scheme save that if an election is due to be held within 9 months of the vacancy having arisen the office will stand vacant until the next scheduled election unless by so doing this causes the aggregate number of governors who are Public governors and Patient governors be less than half the total membership of the Council of Governors. In that event an election will be held in accordance with the Election Scheme as soon as reasonably practicable.
- 4.4 The Returning Officer under the Election Scheme shall maintain a record of votes cast at each election under the Election Scheme for the above purposes and the Returning Officer shall conduct or shall oversee the conducting of the process set out in paragraphs 4.2 and 4.3 of this annex 6 above.
- 4.5 In the case of vacancies amongst appointed governors, the Trust's Secretary shall request that the appointing organisation appoints a replacement governor to hold office for the remainder of the term of office.
- 4.6 No proceedings of the Council of Governors shall be invalidated by any vacancy in its membership or any defect in the appointment or election of any governor.

5 Roles and Responsibilities of the Council of Governors

- 5.1 The statutory responsibilities of the Council of Governors are:
 - 5.1.1 It is for the Council of Governors at a general meeting to appoint or remove the chairman and the other non-executive directors,
 - 5.1.2 It is for the Council of Governors at a general meeting to decide the remuneration and allowances, and the other terms and conditions of office, of the non-executive directors,
 - 5.1.3 It is for the Council of Governors to appoint or remove the auditor at a general meeting,

- 5.1.4 To be consulted by the Board of Directors of the Trust regarding the information to be given to Monitor as to the Trust's forward planning in respect of each Financial Year,
 - 5.1.5 To give their views to the Board of Directors for the purposes of the preparation by the Board of Directors of any document containing such information which is to be given to Monitor,
 - 5.1.6 It is for the Council of Governors at a general meeting to consider annual accounts and reports,
 - 5.1.7 It is for the Council of Governors at a general meeting to receive (a) the annual accounts (b) any report of the auditor on them, (c) the annual report.
- 5.2 The general responsibilities of the Council of Governors shall be:
- 5.2.1 To advise the Board of Directors in setting the longer-term vision for the Trust, to influence proposals that will make changes to services and to act in a way that is consistent with NHS principles and values and the terms of the Trust's authorisation,
 - 5.2.2 To engage in dialogue with and provide advice to the Board of Directors with regard to the Trust's future vision and strategy and to act as a source of ideas about how the Trust can provide its services in ways that meet the needs of the community it serves,
 - 5.2.3 To promote social inclusion, tackle stigma and discrimination, and develop innovative ways of making the Trust's role in relation to corporate social responsibility visible,
 - 5.2.4 To ensure that each governor's constituency's, or organisational, perspective is included in the planning and development of the Trust's long-term vision and services,
 - 5.2.5 To act as ambassadors for the Foundation Trust, helping to publicise the Trust's aim, vision & services by establishing and maintaining links with all stakeholders,
 - 5.2.6 To develop positive working relationships with other governors from differing backgrounds, aiding understanding and communication between all groups associated with the Trust,
 - 5.2.7 To help and support the Trust's non-executive directors,
 - 5.2.8 To review annually the membership strategy,

- 5.2.9 To review annually the extent to which the Trust is meeting its objectives of delivering high quality services,
- 5.2.10 To work with the Board of Directors on such other matters for the benefit of the Trust as may be agreed between them,
- 5.2.11 To exercise other functions at the request of the Board of Directors,
- 5.2.12 To respond as appropriately when consulted by the Board of Directors,
- 5.2.13 To exercise such other powers and to discharge such other duties as may be conferred on the Council of Governors under this Constitution.

- 6 The Council of Governors shall meet not less than three times each Financial Year.
- 7 At a general meeting to take place in September of each year the Council of Governors shall receive from the Board of Directors the documents set out in paragraph 43 of this Constitution and shall then consider the Trust's annual accounts, any report of the auditor on them and the Trust's annual report.
- 8 A governor elected to the Council of Governors by the Public Constituency or the Service Users and Carers Constituency may not vote at a meeting of the Council of Governors unless within the previous 12 months s/he has made a declaration in the form specified at paragraph 8.1 of this Annex 6 stating the constituency of which s/he is a Member and that s/he is not prevented from being a member of the Council of Governors under this Constitution and that s/he will at all times abide by the Trust's Code of Conduct for governors or as may be otherwise adopted by the Trust from time to time.
 - 8.1 The form referred to in paragraph 8 of this Annex 6 shall be in such form as will comply with all relevant requirements of the 2006 Act and this Constitution and will be as determined by the Trust from time to time.
- 9 Terms of Office of Initial Council of Governors
 - 9.1 Notwithstanding the prior provisions of this constitution, those governors who are elected to the Initial Council of Governors shall hold office initially for those periods set out in Table 1 of this Annex 6. Those elected governors who secure the greatest number of votes in their class shall serve for three years and those securing fewer votes in their class shall serve for two years. An elected council Governor shall be eligible for re-election at the end of his/her first term for a period of one further term of three years.
 - 9.2 A governor appointed to the initial Council of Governors shall hold office initially for three years and be eligible for re-appointment at the end of his/her first term for a period of one further term of three years.

10 Appointment of appointed Governors

10.1 PCT Governors

The Chair, having consulted Bolton PCT, Salford PCT and Trafford PCT, is to ask that those organisations agree a process with the secretary by which they will then appointment PCT Governors.

10.2 Local Authority Governors

The Chair, having consulted Bolton Metropolitan Borough Council, Salford City Council and Trafford Metropolitan Borough Council is to ask that those organisations agree a process with the Secretary by which they will then appoint Local Authority Governors.

10.3 Partnership Governors

The Partnership Governors are to be appointed by the partnership organisations, in accordance with a process agreed within their organisations, with those organisations whose interests they may be asked to represent and with the Secretary.

11 Council of Governors – further provisions

11.1 The Council of Governors may appoint committees consisting of all or some of its Governors to assist it in carrying out those functions set out in paragraph 26 and 33.1 of the constitution but not otherwise.

11.2 A committee appointed under this paragraph may appoint a sub-committee. Their recommendations should be reported back to the Council of Governors.

11.3 The Secretary shall attend a committee or sub-committee appointed by the Council of Governors under paragraphs 11.1 or 11.2 of this annex and take minutes of any proceedings.

ANNEX 7 – STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE COUNCIL OF GOVERNORS FOR GREATER MANCHESTER WEST MENTAL HEALTH NHS FOUNDATION TRUST

(Paragraph 20)

1 Interpretation

2 General Information

3 Composition of the Council of Governors

Appointment and Removal of the Chair and Deputy Chair of the Council of Governors

Duties of Deputy Chair

4 Meetings of the Council of Governors

Meetings held in Public

Calling Meetings

Notice of Meetings

Setting the Agenda

Chair of Meeting

Notices of Motions

Chair's Ruling

Voting

Suspension of Standing Orders

Variation and Amendment of Standing Orders

Record of Attendance

Minutes

Quorum

5 Arrangements for the Exercise of Functions by Delegation

6 Confidentiality

7 Declaration of Interests and Register of Interests

Declaration of Interests

Register of Interests

8 Compliance - Other Matters

9 Resolution of Disputes with Board of Directors

10 Council Performance

1. Interpretation

- 1.1. Save as permitted by law, the Chair of the Trust shall be the final authority on the interpretation of Standing Orders (on which s/he shall be advised by the Chief Executive and Director of Finance).
- 1.2. Any expression to which a meaning is given in the 2006 Act shall have the same meaning in this interpretation and in addition:
 - 1.2.1 "Accounting Officer" SHALL BE THE OFFICER RESPONSIBLE AND ACCOUNTABLE FOR FUNDS ENTRUSTED TO THE TRUST. S/HE SHALL BE RESPONSIBLE FOR ENSURING THE PROPER STEWARDSHIP OF PUBLIC FUNDS AND ASSETS. FOR THIS TRUST IT SHALL BE THE CHIEF EXECUTIVE.
 - 1.2.2 "Board" SHALL MEAN THE CHAIR AND NON-EXECUTIVE DIRECTORS, APPOINTED BY THE COUNCIL OF GOVERNORS, AND THE EXECUTIVE DIRECTORS APPOINTED BY THE APPOINTMENTS AND REMUNERATION COMMITTEE OF THE BOARD.
 - 1.2.3 "Budget" SHALL MEAN A RESOURCE, EXPRESSED IN FINANCIAL TERMS, PROPOSED BY THE BOARD FOR THE PURPOSE OF CARRYING OUT, FOR A SPECIFIC PERIOD, ANY OR ALL OF THE FUNCTIONS OF THE TRUST.
 - 1.2.4 "Chair" IS THE PERSON APPOINTED BY THE COUNCIL OF GOVERNORS IN ACCORDANCE WITH PARAGRAPHS 26.1 AND 27.1 OF THIS CONSTITUTION. THE EXPRESSION "THE CHAIR OF THE TRUST" SHALL BE DEEMED TO INCLUDE THE NON-EXECUTIVE DIRECTOR APPOINTED BY THE COUNCIL OF GOVERNORS TO TAKE ON THE CHAIR'S DUTIES IF THE CHAIR IS ABSENT OR IS OTHERWISE UNAVAILABLE (THE DEPUTY CHAIR).
 - 1.2.5 "Chief Executive" SHALL MEAN THE CHIEF OFFICER OF THE TRUST.
 - 1.2.6 "Committee" SHALL MEAN A COMMITTEE APPOINTED BY THE COUNCIL OF GOVERNORS.
 - 1.2.7 "Committee members" SHALL BE PERSONS FORMALLY APPOINTED BY THE COUNCIL OF GOVERNORS TO SIT ON OR TO CHAIR SPECIFIC COMMITTEES.
 - 1.2.8 "Director" SHALL MEAN A PERSON APPOINTED TO THE BOARD OF DIRECTORS IN ACCORDANCE WITH THE TRUST'S CONSTITUTION AND INCLUDES THE CHAIR.
 - 1.2.9 "Motion" MEANS A FORMAL PROPOSITION TO BE DISCUSSED AND VOTED ON DURING THE COURSE OF A MEETING.

1.2.10 "Nominated officer" MEANS AN OFFICER CHARGED WITH THE RESPONSIBILITY FOR DISCHARGING SPECIFIC TASKS WITHIN STANDING ORDERS.

1.2.11 "Officer" MEANS AN EMPLOYEE OF THE TRUST.

1.2.12 "SOs" MEAN STANDING ORDERS.

2. General Information

The purpose of the Council of Governors Standing Orders is to ensure that the highest standards of corporate governance and conduct are applied to all Council meetings and associated deliberations. The Council shall at all times seek to comply with the Trust's Code of Conduct for Governors.

- 2.1 All business shall be conducted in the name of the Trust.
- 2.2 The Board of Directors shall appoint trustees to administer separately charitable funds received by the Trust and for which they are accountable to the Charity Commission.
- 2.3 A Governor who has acted honestly and in good faith will not have to meet out of his or her own personal resources any personal civil liability which is incurred in the execution or purported execution of his or her functions as a Governor save where the Governor has acted recklessly. On behalf of the Council of Governors, and as part of the Trust's overall insurance arrangements, the Board of Directors shall put in place appropriate insurance provision to cover such indemnity.

3. Composition of the Council of Governors

- 3.1 The composition of the Council of Governors shall be in accordance with paragraph 15 of the Trust's Constitution.
- 3.2 Appointment and Removal of the Chair and Vice Chair of the Council of Governors - These appointments shall be made by the Governors in accordance with paragraph 26.1 of the Trust's Constitution.
- 3.3 Duties of Vice Chair - Where the Chair of the Trust has died or has otherwise ceased to hold office or where s/he has been unable to perform his/her duties as Chair owing to illness, absence from England and Wales or any other cause, references to the Chair shall, so long as there is no Chair able to perform his/her duties, be taken to include references to the Vice Chair or the Non-Executive Director nominated by the Council of Governors to take on the duties of the Chair or Vice Chair

should both be absent from a meeting or otherwise unavailable or unable to perform his/her duties.

4. Meetings of the Council of Governors

4.1 Meetings held in Public

4.1.1 Meetings of the Council of Governors must be open to the public, subject to paragraphs 4.1.2 and 4.1.3 below.

4.1.2 The Council of Governors may resolve to exclude members of the public from any meeting or part of a meeting on the grounds that it considers that:

4.1.2.1 publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted; or

4.1.2.2 there are special reasons stated in the resolution and arising from the nature of the business of the proceedings.

4.1.3 The Chair may exclude any member of the public from the meeting of the Council if s/he considers that s/he is interfering with or preventing any conduct of the meeting.

4.1.4 Meetings of the Council of Governors shall be held at least three times each year at times and places that the Council of Governors may determine.

4.1.5 The Council may invite the Chief Executive, and other appropriate Directors, to attend any meeting of the Council to enable Governors to raise questions about the Trust's affairs.

4.2 Calling Meetings

Notwithstanding paragraph 4.1.4 above, the Chair may call a meeting of the Council of Governors at any time. If the Chair refuses to call a meeting after a requisition for that purpose, signed by a majority of the Governors, or if without so refusing the Chair does not call a meeting within fourteen days after requisition to do so, then the Governors may forthwith call a meeting provided they have been requisitioned to do so by more than 50% of their members.

4.3 Notice of Meetings

4.3.1 Before each meeting of the Council of Governors, a notice of the meeting, specifying the business proposed to be transacted at it,

and signed by the Chair or by an Officer of the Trust authorised by the Chair to sign on his/her behalf [subject to paragraphs 4.3.2 and 4.3.3 below] shall be delivered to every Governor, or sent by post to the usual place of residence of such Governor, so as to be available to him/her at least twenty-one clear days before the meeting. Lack of service of the notice on any Governor shall not affect the validity of a meeting, subject to paragraph 4.3.4 below.

4.3.2 Notwithstanding the above requirement for notice, the Chair may waive notice in the case of emergencies or in the case of the need to conduct urgent business.

4.3.3 In the case of a meeting called by Governors in default of the Chair, the notice shall be signed by those Governors calling the meeting and no business shall be transacted at the meeting other than that specified in the notice.

4.3.4 Subject to paragraph 4.3.2, failure to serve notice on more than three quarters of Governors will invalidate any meeting. A notice will be presumed to have been served 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.

4.4 Setting the Agenda

4.4.1 The Council of Governors may determine that certain matters shall appear on every agenda for a meeting of the Council and shall be addressed prior to any other business being conducted.

4.4.2 In the case of a meeting called by the Chair, a Governor desiring a matter to be included on an agenda shall make his/her request in writing to the Chair at least ten clear days before the meeting. Requests made less than ten days before a meeting may be included on the agenda at the discretion of the Chair.

4.4.3 The Chair shall make arrangements to ensure that the final agenda and any supporting papers for the meeting, following the receipt of any requests in accordance with 4.4.2 above, are delivered to every Governor, or sent by post to the usual place of residence of such Governor, so as to be available to him/her at least five clear days before the meeting.

4.5 Chair of Meeting

At any meeting of the Council of Governors, the Chair, if present, shall preside. If the Chair is absent from the meeting or the Council of Governors is meeting to appoint or remove the Chair or decide his/her remuneration and allowances and other terms and conditions of office,

the Deputy Chair shall preside. Otherwise, another Non-Executive Director shall preside.

4.6 Notices of Motions

- 4.6.1 A Governor of the Trust desiring to move or amend a motion shall send a written notice thereof at least ten clear days before the meeting to the Chair, who shall insert this in the agenda for the meeting. All notices so received are subject to the notice given 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 section 4.3.3 of these Standing Orders.
- 4.6.2 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 Chair.
- 4.6.3 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 Governors who gave it and also the signature of four other Governors. When any such motion has been disposed of by the Council it shall not be competent for any Governor, other than the Chair, to propose a motion to the same effect within six months; however the Chair may do so if s/he considers it appropriate.
- 4.6.4 The mover of a motion shall have a right of reply at the close of any discussion on the motion or any amendment thereto.
- 4.6.5 When a motion is under discussion or immediately prior to discussion it shall be open to a Governor to move:
- 4.6.5.1 An amendment to the motion.
 - 4.6.5.2 The adjournment of the discussion or the meeting.
 - 4.6.5.3 The appointment of an ad hoc committee to deal with a specific item of business.
 - 4.6.5.4 That the meeting proceed to the next business.
 - 4.6.5.5 That the motion be now put.

Such a motion, if seconded, shall be disposed of before the motion, which was originally under discussion or about to be discussed. No amendment to the motion shall be admitted if, in the opinion of the Chair of the meeting, the amendment negates the substance of the motion.

In the case of motions under paragraphs 4.6.5.4 and 4.6.5.5 of these standing orders, to ensure objectivity, motions may only be put by a Governor who has not previously taken part in the debate.

4.7 Chair's Ruling

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

4.8 Voting

4.8.1 An elected 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 Trust of the particulars of their qualification to vote as a member of the Trust and that they are not prevented from being a governor. Making a false declaration may be an offence.

4.8.2 Decisions at meetings shall be determined by a majority of the votes of the Governors present and voting. In the case of any equality of votes, the person presiding shall have a second or casting vote.

4.8.3 All decisions put to the vote shall, at the discretion of the Chair of the meeting, be determined by oral expression or by a show of hands. A paper ballot may also be used if a majority of the Governors present so request.

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

4.8.5 If a Governor so requests, his/her vote shall be recorded by name upon any vote (other than by paper ballot).

4.8.6 In no circumstances may an absent Governor vote by proxy. Absence is defined as being absent at the time of the vote.

4.8.7 A Governor who is a member of the Public Constituency or one of the classes of the Service Users and Carers' Constituency 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 Trust. 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 shall draw this to the attention of the Governors.

4.9 Suspension of Standing Orders

- 4.9.1 Except where this would contravene any statutory provision, any one or more of these standing orders may be suspended at any meeting, provided that at least two-thirds of members of the Council are present and that a majority of those present vote in favour of suspension.
- 4.9.2 A decision to suspend standing orders shall be recorded in the minutes of the meeting.
- 4.9.3 A separate record of matters discussed during the suspension of standing orders shall be made and shall be available to the Directors.
- 4.9.4 No formal business may be transacted whilst standing orders are suspended.
- 4.9.5 The Trust's Audit Committee shall review every decision to suspend standing orders.

4.10 Variation and Amendment of Standing Orders

These Standing Orders shall be amended only if:

- 4.10.1 a notice of motion has been given; and
- 4.10.2 no fewer than two thirds of the total number of Governors approve the variation/amendment; and
- 4.10.3 the variation/amendment proposed does not contravene a statutory provision.

4.11 Record of Attendance

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

4.12 Minutes

- 4.12.1 The minutes of the proceedings of the meeting shall be drawn up and maintained as a public record. They will be submitted for agreement at the next meeting where they will be signed by the person presiding at it.
- 4.12.2 No discussion shall take place upon the minutes except upon their accuracy or where the Chair considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the next meeting.

4.12.3 Minutes shall be circulated in accordance with the Governors' wishes. The minutes of the meeting shall be made available to the public except for minutes relating to business conducted when members of the public are excluded under the terms of section 4.1.2 of these Standing Orders (required by Code of Practice on Openness in the NHS).

4.13 Quorum

4.13.1 A quorum for a Meeting of the Council of Governors shall be:

'9 governors and where a majority of governors present are public and service user and carer governors'.

4.13.2 No business shall be transacted at a meeting of the Council of Governors unless a quorum of the Council of Governors is present.

4.13.3 If a Governor has been disqualified from participating in the discussion on any matter and from voting on any resolution by reason of the declaration of a conflict of interest s/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.

5. Arrangements for the Exercise of Functions by Delegation

5.1 Emergency Powers - The powers which the Council of Governors has retained to itself within these Standing Orders may in an emergency be exercised by the Chair after having consulted at least five elected Governors. The exercise of such powers by the Chair shall be reported to the next formal meeting of the Council for ratification.

5.2 The Nominations Committee of the Council of Governors shall exercise the functions set out in its Terms of Reference on behalf of the Council.

6. Confidentiality

6.1 A member of the Council of Governors shall not disclose a matter dealt with by, or brought before, the Council of Governors without its permission.

6.2 Members of the Nominations Committee shall not disclose any matter dealt with by the Committee, notwithstanding that the matter has been reported

or action has been concluded, if the Council of Governors or Committee resolves that it is confidential.

7. Declaration of Interests and Register of Interests

7.1 Declaration of Interests

Governors are required to comply with the Trust's Standards of Business Conduct and to declare interests that are relevant and material to the Council. All Governors should declare such interests on appointment and on any subsequent occasion that a conflict arises.

- 7.1.1 Interests regarded as "relevant and material" include any of the following, held by a Governor, or the spouse, partner, parent or child of a Governor:
 - 7.1.1.1 Directorships, including non-executive directorships, held in private companies or PLCs (with the exception of those of dormant companies).
 - 7.1.1.2 Ownership or part-ownership of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS.
 - 7.1.1.3 Employment with any private company, business or consultancy.
 - 7.1.1.4 Significant share holdings (more than 5%) in organisations likely or possibly seeking to do business with the NHS.
 - 7.1.1.5 A position of authority in a charity or voluntary organisation in the field of health and social care.
 - 7.1.1.6 Any connection with a voluntary or other organisation contracting for NHS services.
- 7.1.2 If a Governor has any doubt about the relevance of an interest, s/he should discuss it with the Chair who shall advise him/her whether or not to disclose the interest.
- 7.1.3 At the time Governors' interests are declared, they should be recorded in the Council of Governors minutes and entered on a Register of Interests of Governors to be maintained by the Secretary. Any changes in interests should be declared at the next Council meeting following the change occurring.
- 7.1.4 Governors' directorships of companies likely or possibly seeking to do business with the NHS should be published in the Trust's annual report.

7.1.5 During the course of a Council meeting, if a conflict of interest is established, the Governor concerned shall, unless two thirds of those Governors present agree, otherwise withdraw from the meeting and play no part in the relevant discussion or decision. If the Governor remains present at the meeting on the agreement of two thirds of those Governors present, s/he shall not be entitled to vote on the issue in respect of which the conflict of interest has been established.

7.2 Register of Interests

7.2.1 The Trust Secretary, will ensure that a Register of Interests is established to record formally declarations of interests of Governors.

7.2.2 Details of the Register will be kept up to date and reviewed annually.

7.2.3 The Register will be available to the public.

8. Compliance - Other Matters

8.1 All Governors of the Council shall comply with the Standards of Business Conduct set by the Board of Directors for the guidance of all staff employed by the Trust.

8.2 All Governors of the Trust shall comply with Standing Financial Instructions prepared by the Director of Finance and approved by the Board of Directors for the guidance of all staff employed by the Trust.

8.3 All Governors must behave in accordance with the seven Nolan principles of behaviour in Public Life (and the Trust's Code of Conduct for Governors as amended from time to time): -

- Selflessness;
- Integrity;
- Objectivity;
- Accountability;
- Openness;
- Honesty, and
- Leadership.

9. Resolution of Disputes with Board of Directors

- 9.1 Should a dispute arise between the Council and the Board of Directors, then the Trust's dispute resolution procedure set out below shall be followed.
- 9.2 The Chair, or Vice Chair (if the dispute involves the Chair), shall first endeavour, through discussion with Governors and Directors or, to achieve the earliest possible conclusion, appropriate representatives of them, to resolve the matter to the reasonable satisfaction of both parties.
- 9.3 Failing resolution under 9.2 above, then the Board or the Council of Governors, as appropriate, shall at its next formal meeting approve the precise wording of a Disputes Statement setting out clearly and concisely the issue or issues giving rise to the dispute.
- 9.4 The Chair shall ensure that the Disputes Statement, without amendment or abbreviation in any way, shall be an agenda item and agenda paper at the next formal meeting of the Board or Council of Governors as appropriate. That meeting shall agree the precise wording of a Response to Disputes Statement.
- 9.5 The Chair or Vice Chair (if the dispute involves the Chair) shall immediately, or as soon as is practical, communicate the outcome to the other party and deliver the written Response to Disputes Statement. If the matter remains unresolved or only partially resolved then the procedure outlined in 9.2 above shall be repeated.
- 9.6 If, in the opinion of the Chair or Vice Chair (if the dispute involves the Chair) and following the further discussions prescribed in 9.5 above, there is no further prospect of a full resolution or, if at any stage in the whole process, in the opinion of the Chair or Vice Chair, as the case may be, there is no prospect of a resolution (partial or otherwise) then s/he shall advise the Council of Governors and Board accordingly.
- 9.7 On the satisfactory completion of this disputes process, the Board of Directors shall implement agreed changes.
- 9.8 On the unsatisfactory completion of this disputes process the view of the Board of Directors shall prevail.
- 9.9 Nothing in this procedure shall prevent the Council of Governors, if it so desires, from informing the Regulator that, in the Council's opinion, the Board has not responded constructively to concerns of the Council that the Trust is not meeting the terms of its authorisation.

10. Council Performance

The Chair shall, at least annually, lead a performance assessment process for the Council of Governors to enable the Council to review its roles, structure and composition, and procedures, taking into account emerging best practice.

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

GREATER MANCHESTER WEST MENTAL HEALTH NHS FOUNDATION TRUST

STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE BOARD OF DIRECTORS

DEFINITIONS

Within these Standing Orders:

- (a) "Accounting Officer" means the NHS Officer responsible and accountable for funds entrusted to the Trust who shall be responsible for ensuring the proper stewardship of public funds and assets. For this Trust it shall be the Chief Executive;
- (b) "Board" means the Board of Directors of the Trust;
- (c) "Chair" means the person appointed by the Council of Governors to act as Chair of the Trust or the person acting as Chair of a meeting in accordance with the Constitution;
- (d) "Chief Executive" means the Chief Executive of the Trust;
- (e) "Constitution" means the constitution of the Trust
- (f) "Council" means the Council of Governors of the Trust;
- (g) "Finance Director" means the Finance Director of the Trust;
- (h) "Secretary" means the Secretary of the Trust;
- (i) "Trust" means Greater Manchester West Mental Health NHS Foundation Trust;
- (j) "Vice-Chair" means the person appointed to act as Vice-Chair of the Trust in accordance with the Constitution
- (k) "Formal Competitive tendering" covers the tendering of supplies, works/construction and professional and consultancy services.

PART 1

MEETINGS

1. Board of Directors

Meetings of the Board of Directors are to be held and conducted in accordance with the Constitution.

2. Attendance at Board of Directors meetings

A director who is not able to attend a Board meeting must communicate his or her apologies to the Secretary. The names of the Chair and members present at the meeting shall be recorded.

3. Minutes

Minutes of the proceedings of meetings of the Board of Directors shall be kept by the Committee Secretary and submitted for agreement at the next ensuing meeting where subject to such agreement they will be signed by the Chair. No discussion shall take place upon the minutes except upon their accuracy or where the Chair considers discussion appropriate.

4. Notice of Motion

- (i) Subject to the provision of Standing Orders 5 'Motions: Procedure at and during a meeting' and 'Motions to rescind a resolution', a Director wishing to move a motion shall send a written notice to the Chief Executive who will ensure that it is brought to the prompt attention of the Chair.
- (ii) The notice shall be delivered at least 8 days before the meeting. The Chief Executive shall include in the agenda for the meeting all notices so received that are in order and permissible under governing regulations. This Standing Order shall not prevent any motion being withdrawn or moved without notice on any business mentioned on the agenda for the meeting.

5. Emergency Motions

Subject to the agreement of the Chair, and subject also to the provision of Standing Order 5 'Motions: Procedure at and during a meeting', a Director of the Board of Directors may give written notice of an emergency motion after the issue of the notice of meeting and agenda, up to one hour before the time fixed for the meeting. The notice shall state the grounds of urgency. If in order, it shall be declared to the Trust Board at the commencement of the business of the meeting as an additional item included in the agenda. The Chair's decision to include the item shall be final.

6. Motions: Procedure at and during a meeting

(i) Who may propose

A motion may be proposed by the Chair of the meeting or any Director present.

(ii) Contents of motions

The Chair may exclude from the debate at their discretion any such motion of which notice was not given on the notice summoning the meeting other than a motion relating to:

- the reception of a report;
- consideration of any item of business before the Trust Board;
- the accuracy of minutes;
- that the Board proceed to next business;
- that the Board adjourn;
- that the question be now put.

(iii) Amendments to motions

Amendments to motions shall be moved relevant to the motion, and shall not have the effect of negating the motion before the Board.

If there are a number of amendments, they shall be considered one at a time. When a motion has been amended, the amended motion shall become the substantive motion before the meeting, upon which any further amendment may be moved.

(iv) Motions once under debate

When a motion is under debate, no motion may be moved other than:

- an amendment to the motion;
- the adjournment of the discussion, or the meeting;
- that the meeting proceed to the next business;
- that the question should be now put;
- the appointment of an 'ad hoc' committee to deal with a specific item of business;
- that a member/director be not further heard;
- a motion to exclude the public, including the press.

In those cases where the motion is either that the meeting proceeds to the 'next business' or 'that the question be now put' in the interests of objectivity these should only be put forward by a Director of the Board who has not taken part in the debate and who is eligible to vote.

If a motion to proceed to the next business or that the question be now put, is carried, the Chair should give the mover of the substantive motion under debate a right of reply, if not already exercised. The matter should then be put to the vote.

7. Chair of meeting

At any meeting of the Board of Directors the Chair, if present, shall preside. If the Chair is absent from the meeting, the Vice-Chair, if present, shall preside.

8. Chair's ruling

The decision of the Chair of the meeting on questions of order, relevancy and regularity (including procedure on handling motions) and their interpretation of the Standing Orders and Standing Financial Instructions, at the meeting, shall be final.

9. Quorum

Seven Directors including not less than two executive Directors (one of whom must be the Chief Executive or Deputy Chief Executive) and not less than two non-executive Directors (one of whom must be the Chair, or the Vice Chair of the Board) shall form a quorum.

A Director who is excluded from voting due to a conflict of interest shall not form part of the quorum.

Participation by telephone, video or computer link shall constitute being present for the purposes of forming a quorum.

10. Voting

- (i) Save as provided in Standing Orders: 11. Suspension of Standing Orders and 12. Variation and Amendment of Standing Orders, every question put to a vote at a meeting shall be determined by a majority of the votes of members present and voting on the question. In the case of an equal vote, the person presiding (i.e. the Chair of the meeting) shall have a second, and casting vote.
- (ii) At the discretion of the Chair all questions put to the vote shall be determined by oral expression or by a show of hands, unless the Chair directs otherwise, or it is proposed, seconded and carried that a vote be taken by paper ballot.
- (iii) If at least one third of the members present so request, the voting on any question may be recorded so as to show how each member present voted or did not vote (except when conducted by paper ballot).

- (iv) If a member so requests, their vote shall be recorded by name.
- (v) In no circumstances may an absent member vote by proxy. If permitted, participation by telephone, video or computer link shall constitute being present.
- (vi) A manager who has been formally appointed 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 Director.

A manager attending the Board of Directors meeting 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.

- (vii) A representative status when attending a meeting shall be recorded in the minutes.
- (viii) No resolution of the Board of Directors shall be passed if it is opposed by all of the Non-Executive Directors present or by all of the Executive Directors present.

11. Suspension of Standing Orders

- (i) Except where this would contravene any statutory provision or the rules relating to the Quorum, any one or more of the Standing Orders may be suspended at any meeting, and that at least two-thirds of those members present signify their agreement to such suspension. The reason for the suspension shall be recorded in the Trust Board's minutes.
- (ii) A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the Chair and members of the Trust.
- (iii) No formal business may be transacted while Standing Orders are suspended.
- (iv) The Audit Committee shall review every decision to suspend Standing Orders.

12. Variation and amendment of Standing Orders

See SO.36. These Standing Orders shall not be varied except in the following circumstances:

- upon a notice of motion under Standing Order 4;

- upon a recommendation of the Chair or Chief Executive included on the agenda for the meeting;
- that at least two thirds of the Board of Directors, including at least half of the Non-Executive Director members, vote in favour of the variation or amendment;
- providing that any variation or amendment does not contravene a statutory provision.

13. Record of Attendance

The names of the Chair and Directors/members present at the meeting shall be recorded.

14. Observers at Trust meetings

- (ii) The Board has the option to decide whether to meet in public or in private.
- (iii) If the Board meets in public, it may resolve to exclude members of the public from any meeting or part of a meeting on the grounds that it considers that:
 - (a) publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted; or
 - (b) there are special reasons stated in the resolution and arising from the nature of the business of the proceedings.
- (iv) If the Board meets in public, the Chair may exclude any member of the public from the meeting of the Board if s/he considers that s/he is interfering with or preventing any conduct of the meeting.
- (v) Meetings of the Board shall be held at least three times each year at times and places that the Board may determine.
- (vi) The Board shall arrange for an annual public meeting to be held within 9 months of the end of each financial year. The registers and documents set out in paragraphs 35 and 38 of this Constitution shall be available for inspection at the meeting subject to the provisions of paragraphs 37.1 and 37.2 of this Constitution.

PART II

COMMITTEES

15. Appointment of Committees and Sub-Committees

- 15.1 **Delegation to Committees** - The Board 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.
- 15.2 The Board may appoint committees of the Board, consisting wholly or partly of Directors of the Trust or wholly of persons who are not Directors of the Trust.
- 15.3 A committee so appointed may 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 the committee (whether or not they include Directors of the Trust).
- 15.4 The Standing Orders of the Board, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees or sub-committees established by the Board.
- 15.5 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) as the Board shall decide from time to time following reviews of the terms of reference, powers and conditions. Such terms of reference shall have effect as if incorporated into these Standing Orders.
- 15.6 Committees may not delegate their executive powers to a sub-committee unless expressly authorised by the Board.
- 15.7 The Board shall approve the appointments to each of the committees that it has formally constituted. Where the Board determines that persons, who are neither Directors nor Officers, shall be appointed to a committee, the terms of such appointment shall be determined by the Board.
- 15.8 Where the Trust is required to appoint persons to a committee, which is to operate independently of the Trust, such appointment shall be approved by the Board.
- 15.9 The Board of Directors may delegate its powers and appoint committees and sub-committees in accordance with the Constitution.

PART III

CUSTODY AND SEAL AND SEALING OF DOCUMENTS

16. Custody of Seal

The common seal of the Trust shall be kept by the Secretary in a secure place in accordance with arrangements approved by the Board of Directors.

17. Sealing of Documents

Where a document needs to be sealed, the seal shall be affixed in the presence of the Chair (or other authorised member of the Board) and of the Secretary of the Trust (or a member of the Board authorised by the Secretary) and shall be attested by them.

18. Register of Sealings

The Secretary shall keep a register in which a record shall be kept of the sealing of every document and every such entry shall be signed by those present when the document is sealed. The entries in the register shall be consecutively numbered.

PART IV

OFFICERS: APPOINTMENT AND DECLARATION OF INTEREST

19. Canvassing of and recommendations by Members

19.1 Canvassing of members of the Board of Directors or the Council of Governors directly or indirectly for any appointment under the Trust shall disqualify the candidate for such appointment. The purport of this paragraph of this Standing Order shall be included in any form of application or otherwise brought to the attention of candidates.

19.2 A member of the Board of Directors or the Council of Governors shall not solicit for any person any appointment under the Trust or recommend any person for such appointment; but this paragraph of this Standing Order shall not preclude a member from giving a written testimonial of a candidate's ability, experience or character for submission to the Trust.

20. Relatives of Members or Officers

- 20.1 Candidates for any appointment under the Trust shall, when making application, disclose in writing to the Trust whether they are related to any member of the Board of Directors or the Council of Governors or the holder of any senior office under the Trust. Failure to disclose such a relationship shall disqualify a candidate and, if appointed, render them liable to instant dismissal. Every member and senior officer of the Trust shall disclose to the Trust any relationship between them and a candidate of whose candidature that member or senior officer is aware. Any such disclosure made shall be recorded formally and reported to the Trust Board.
- 20.2 Where the relationship to a member of the Board is disclosed the provisions in the Constitution concerning conflicts of interest in the Council of Governors and the Board shall apply.
- 20.3 Relationships to which this order applies are those of two persons who are closely related. The interest of one shall, if known to the other, be deemed for the purpose of this Standing Order to be also any interest of the other. For the purpose of this paragraph, two persons are closely related if they are husband and wife, or living together as such, or if either of the two, or the spouse of either of them, is the son or daughter, grandson or granddaughter, brother or sister or nephew or niece of the other, or of the spouse of the other.

21. Interest of Officers in Contracts

- 21.1 If it comes to the knowledge of an officer of the Trust that a contract in which they have any pecuniary interest, not being a contract to which they are themselves a party, has been, or is proposed to be, entered into by the Trust, they shall at once give notice in writing to the Secretary of the fact that they are interested therein. In the case of persons closely related (see Standing Order 20.3), the interest of one shall, if known to the other, be deemed to be also the interest of the other. Immediately on receiving notice of an interest, the Secretary shall inform the appropriate Director who, after consultation with the Chief Executive, may take action to exclude the officer from any involvement with tendering procedures relevant to the specific contract if the Director or Chief Executive see fit in order to protect the interest of the Trust.
- 21.2 The Secretary shall keep, and have available for inspection by any Director, a Register of Officer's Interests which shall include the original notification by the officer concerned and action taken by the appropriate Director or Chief Executive.

PART V

TENDERING AND CONTRACT PROCEDURE

22. Duty to Comply with Standing Orders

- 22.1 The procedure for making all contracts by or on behalf of the Trust shall comply with these Standing Orders.
- 22.2 Formal tendering procedures need not be applied:
- (i) in the circumstances set out in this part of these Standing Orders;
 - (ii) where the supply is proposed under special arrangements negotiated by the Department of Health in which event the special arrangements must be complied with.
- 22.3 Any of the provisions of this part of these Standing Orders may be waived:
- (i) by the Chief Executive; or
 - (ii) where a decision is urgently required in relation to a contract by the appropriate Director after consultation with the Chief Executive.
- 22.4 The reasons for any waiver under:
- (i) SO.22.3(i) shall be contained in a written report to the Trust by the Chief Executive; and
 - (ii) SO.21.3(ii) shall be contained in a written report by the appropriate Director to the Chief Executive.

23. EU Directives

Directives of the European Union prescribing procedures for awarding contracts for building and engineering works and for the supply of goods, materials and manufactured articles and services shall have effect as if incorporated in these Standing Orders and shall override any contrary provision.

24. Formal Competitive Tendering

- 24.1 The Board of Directors shall ensure that financial limits for formal tenders are set. Formal tendering procedures shall not be required where the estimated expenditure or income does not exceed the financial limits laid down by the Board.
- 24.2 The Board shall ensure that competitive tenders are invited for the following:
- (i) design, construction and maintenance of building and engineering works (including construction and maintenance of grounds and gardens) and for demolitions and disposals
 - (ii) the purchase or sale of goods, materials and manufactured articles, energy, for the rendering of services and maintenance (other than grounds and gardens maintenance)

- (iii) professional and consultancy services

24.3 The following exceptions apply:

- (i) the requirement is ordered under existing contracts;
- (i) as provided for in this part of these Standing Orders;
- (iii) where the supply is proposed under special arrangements negotiated by the DoH in which event the said special arrangements must be complied with (eg Procure21)
- (iv) for work by statutory undertakers and local authorities carrying out statutory functions;
- (v) where PASA agreements are in place
- (vi) where the timescale genuinely precludes competitive tendering but failure to plan the work properly would not be regarded as a justification for a single tender
- (vii) where the supply is proposed under special arrangements negotiated by the government in which event the said special arrangements must be complied with (eg Office of Government Commerce frameworks)
- (viii) when the task is essential to complete the project, and arises as a consequence of a recently completed assignment and engaging different consultants/suppliers/contractors for the new task would be inappropriate
- (ix) there is a clear benefit to be gained from maintaining continuity with an earlier project. However in such cases the benefits of such continuity must outweigh any potential financial advantage to be gained by competitive tendering.
- (x) for the provision of legal advice and services providing that any legal firm or partnership commissioned by the trust is regulated by the Law Society for England and Wales for the conduct of their business (or by the Bar Council for England and Wales in relation to the obtaining of Counsel's opinion) and are generally recognized as having sufficient expertise in the area of work for which they are commissioned.

The Director of Finance will ensure that any fees paid are reasonable and within commonly accepted rates for the costing of such work.

- (xi) Where the trust is in contract with a private finance partner, or is a tenant or sub-contractor to another NHS body who is in contract with a private finance partner, and consultancy/supply/construction services are required, the terms of the Project Agreement will apply. The private

finance partner will undertake the alteration process and the selection of a consultant/supplier/contractor will be on the basis of value for money. It will be the responsibility of the private finance partner to prove value for money and other relevant contract details.

- (xii) where there is only one supplier and no reasonably satisfactory alternative product
- (xiii) the supply of proprietary or other goods of a special character and the rendering of services of a special character, for which it is not, in the opinion of the appropriate Director, possible or desirable to obtain competitive quotations provided that where an exception applies the reasons are set down in a permanent record.

25. Quotations

Where formal tendering procedures are not applied, the Board shall ensure that competitive quotations in writing are normally obtained, wherever possible, from firms on approved lists. Exceptions may be made for the same reasons as Formal Competitive Tendering (see section 23).

A permanent record of all cases in which an exception is made shall be maintained.

26. Private Finance Initiative (PFI)

The Trust should normally test for PFI when considering a capital procurement. When the Board of Directors proposes, or is required, to use finance provided by the private sector the following should apply:

- (i) The Chief Executive shall demonstrate that the use of private finance represents value for money and genuinely transfers risk to the private sector.
- (ii) The Board shall agree the service(s) and activity levels proposed in the PFI business case with the PCT(s) and SHA.
- (iii) The Board shall determine when the proposed PFI is reported to Monitor for consideration of the impact on the Trust's financial risk rating (FRR), and the information required.
- (iv) The proposal must be specifically approved, or rejected, by the Board of Directors. This decision should take into account the findings of Monitor's review under section 26 (ii) and DoH guidance on the issuing of Deeds of Safeguards.
- (v) Where the proposal is approved, the selection of a contractor/finance company must be on the basis of competitive tendering or quotations.

- (vi) Reference should be made to all Monitor, DoH and government guidance and procedures relating to PFI.

27. List of Approved Firms

- (i) The Trust shall maintain lists of approved firms from whom tenders and quotations may be invited and shall keep these under review. The lists shall include all firms who have applied for permission to tender as to whose technical and financial competence the Board of Directors is satisfied and the following provisions shall also apply.
- (ii) Approved lists of building and engineering contractors and professional works consultants shall comprise firms selected in accordance with any relevant code or guidance issued by the Department of Health and the Trust's Standing Instructions. The following shall be deemed to be included on the list:-
 - (a) firms on the approved list of contractors with appraised values within the Trust's delegated limit;
 - or (b) statutory undertakers and local authorities carrying out statutory duties;
 - or (c) Construction line listed firms
 - (d) Firms that have been admitted to the approved list of the Department of Health, other Government Departments and other Health Authorities.

28. Invitations to Tender

- 28.1 The Board of Directors shall ensure that invitations to tender are sent to a sufficient number of firms to provide fair and adequate competition as appropriate, having regard to their capacity to supply the goods or materials or to undertake the services or works required.
- 28.2 All invitations to tender on a competitive basis shall state that no tender will be accepted unless submitted in either:
 - (i) a sealed package bearing a pre-printed label supplied by the Trust (or the word "Tender" followed by the subject to which it relates and the latest date and time for the receipt of such tender) or
 - (i) a special envelope supplied by the Trust to prospective tenders.

- 28.3 Every tender for goods, materials, services or disposals shall embody such of the NHS Standard Contract Conditions as are applicable.
- 28.4 Every tender for building and engineering works, except any tender for maintenance work only, including Measured Term Contracts, shall be in accordance with any relevant code of guidance issued by the Department of Health. Contracts will be recommended by the Construction Industry Council and relevant chartered professional bodies, i.e. RIBA, RICS, CIOB, ICE, IMechE or by the Department of Health or Office of Government Commerce. These base documents should be modified and amplified to accord with any relevant code of guidance issued by the Department of Health and in minor respects to cover special features of individual projects. Tendering based on other forms of contract may be used with the agreement of the Board.

29. Receipt and Safe Custody of Tenders and Records

- 29.1 The date and time of receipt of each tender shall be endorsed on the unopened tender envelope/package.
- 29.2 The Board of Directors shall designate an officer or officers, not from the originating department, to be responsible for the receipt, endorsement and safe custody of tenders received until the time appointed for their opening, and of records maintained in accordance with SO.30.
- 29.3 If the Board of Directors so resolves, the requirements of this Standing Order may be undertaken on behalf of the Trust by a nominated Health Authority or Authorities in respect of the receipt and safe custody of supplies tenders and records.

30. Opening Tenders

- 30.1 The receipt of tenders they shall be opened in the presence of a member or members of the Board of Directors or, if the Board so resolves, in the presence of an officer or officers designated by the Board, and a senior officer not from the originating department.
- 30.2 Every tender received shall be stamped with the date of opening and initialled by two of those present at the opening.
- 30.3 A record shall be maintained to show for each set of competitive tender invitations dispatched:-
- (iii) the names of all firms invited;
 - (iv) the names of and the number of firms from which tenders have been received;
 - (v) the date the tenders were opened.

The record shall be signed by the persons present at the opening.

- 30.4 Except as in SO.30.5 below, a record shall be maintained of all price alternations on tenders, i.e. where a price has apparently been altered, the final price shown shall be recorded. The record shall be initialled by two of those present at the opening.
- 30.5 A report shall be made in the record if on any one tender price alternations are so numerous as to render the procedure at SO.30.4 unreasonable. The report shall be signed by two of those present at the opening.
- 30.6 If the Board of Directors so resolves, the requirements of this Standing Order may be undertaken on behalf of the Trust by a nominated Health Authority or Authorities in respect of Supplies/ Works/Consultancy tenders.

31. Admissibility of Tenders

- 31.1 If the number of tenders received is insufficient to provide adequate competition, or tenders are late, amended, incomplete, qualified, or otherwise not strictly competitive, they shall, where necessary or appropriate, be dealt with in accordance with any relevant code of guidance issued by the Department of Health and the Trust's Standing Instructions. The Chief Executive and Finance Director shall, as far practicable, ensure that the price to be paid is fair and reasonable and will ensure value for money for the Trust
- 31.2 Tenders received after the due time and date may be considered only if the appropriate Director decides that there are exceptional circumstances, e.g. where marked financial, technical or delivery advantages would accrue, and is satisfied that there is no reason to doubt the bonafides of the tenders concerned.
- 31.3 The appropriate Director shall decide where such tenders are admissible and whether re-tendering is desirable, the reason being set down in a permanent record. Re-tendering may be limited to those tenders reasonably in the field of consideration in the original competition.
- 31.4 Technically late tenders (i.e. those despatched in good time but delayed through no fault of the tenderer) may be regarded as having arrived in due time.
- 31.5 Incomplete tenders (i.e. those from which information necessary for the adjudication of the tender is missing) and amended tenders (i.e. those amended by the tenderer upon his own initiative either orally or in writing after the due time for receipt) should be dealt with in the same way as late tenders.

- 31.6 Necessary discussions with a tenderer of the contents of his tender, in order to elucidate technical points etc., before the award of a contract, need not disqualify the tender.
- 31.7 While decisions as to the admissibility of late, incomplete, or amended tenders are under consideration and while re-tenders are being obtained, the tender documents shall be kept strictly confidential and held in safe custody by the initiating officer.

32. Post Offer Negotiation

32.1 Supplies Tenders/Quotations

- (i) At any time prior to acceptance of an offer by the Trust, the appropriate Director, or any Officer authorised by him, may conduct post offer negotiations if it appears that a commercial and/or financial advantage may accrue to the Trust; or, if subsequently there has been a bona fide change in specification which is not so significant as to warrant the abandonment of the procedure and the invitation of further offers.
- (ii) Each offeror shall be notified that the Trust wishes to enter into post offer negotiations, and at least each of the three lowest (or highest in the case of a sale) offerors, or all the offerors if less than three submitted valid tenders shall be invited to attend separate meetings. At each such meeting the Trust shall be represented by at least two Officers, one of whom shall write a record of the meeting, which as soon as practicable thereafter shall be confirmed as correct by the other Officer, and each offeror shall be given equal opportunity on an equal footing in so far as is reasonably practicable to negotiate his offer, whether as to price, quality or in any other respect. Negotiations with each offeror may continue over a series of meetings and any amendment finally negotiated shall be confirmed by the offeror in writing to the Trust.
- (iii) The time during which all negotiations shall be completed by receipt of written confirmation of any amendments shall be specified in the invitation referred to in Standing Order 32.1ii) and may be extended by notice in writing from the Trust to all offerors at any time.
- (ii) Upon the expiration of the time for negotiation, or any extended period, any amended offer shall be considered in accordance with this part of these Standing Orders.

32.2 Work Tenders

Post offer negotiations in relation to Works Contracts shall only take place in accord with the guidance given in the current edition of the Code of Procedure for Single Stage Selective Tendering issued by the National Joint Consultative

Committee for Building and in any relevant code of guidance issued by the Department of Health.

32.3 Professional and Consultancy Services Tenders

- (i) Where competitive offers have been received for a Professional or Consultancy Service Contract, post offer negotiations may take place if a commercial and/or financial advantage would accrue to the Trust; or, if subsequently there has been a bona fide change in specification which is not so significant as to warrant the abandonment of the procedure and the invitation of further offers.
- (ii) All such post offer negotiations shall take place in accordance with this part of these Standing Orders.

33. Acceptance of Tenders/Quotations

33.1 Where only one tender/quotation is sought and/or received, the Trust shall, as far as is practicable, ensure that the price to be paid is fair and reasonable.

33.2 The lowest acceptable tender/quotation, if payment is to be made by the Trust, or the highest, if payment is to be received by the Trust, shall be accepted unless there are good and sufficient reasons to the contrary; such reason shall be set out in a permanent record.

33.3 The appropriate Director shall formally approve the acceptance of any tender and such approval shall be entered into a written report on tenders which shall form a permanent record. The reporting on tenders shall be undertaken in accordance with the instructions and procedures laid down by the Board.

34. Disposals

Competitive tendering or quotation procedures shall not apply for the disposal of:

- (i) growing crops, fixtures and fittings, machinery, vehicles and old materials, in respect of any of which a fair price can be obtained only by negotiations or sale by auction;
- (ii) obsolete or condemned articles and stores, which may be disposed of in accordance with the supplies policy of the Trust;
- (iii) items arising from works of construction, demolition or site clearance, which should be dealt with in accordance with the relevant contract.

35. Form of Contract

- 35.1 Every contract resulting from an acceptance of an offer shall be embodied in a formal document or formally accepted.
- 35.2 Every contract for building and engineering work, except contracts for maintenance work only where any relevant code of guidance issued by the Department of Health should be followed, shall embody or be in the same terms and conditions of contract as those on the basis of which tenders were invited.

PART VI

MISCELLANEOUS

36. Adoption and Amendment of Standing Orders

- 36.1 These Standing Orders shall be approved by the Board of Directors. Any motion to amend the Standing Orders shall be put to the Board. A motion to amend shall not be valid if it contravenes the Constitution or any statutory provision.

37. Standing Orders to be given to Members and Officers

The Secretary shall give a copy of the Standing Orders to each member of the Council of Governors and the Board and appropriate officers.

38. Signature of Documents

Where any documents will be a necessary step in legal proceedings on behalf of the Trust, it shall, unless any enactment otherwise requires or authorises, be signed by an officer of the Trust duly authorised for this purpose.

39. Standing Financial Instructions

Standing Financial Instructions adopted by the Trust in accordance with the Financial Regulations shall have effect as if incorporated in these Standing Orders.

40. Urgent Decision

Where decisions which would normally be taken by the Board of Directors are needed between meetings, and it is not practicable to call a meeting of the Board, the Chief Executive, in consultation with the Chair or Vice-Chair shall be authorised to deal with the matter on behalf of the Trust. Such decisions will be presented to the Board at the following Board meeting.

PART VII

INTERPRETATION

41. Interpretation of Standing Orders

The Chair shall be the final authority in the interpretation of Standing Orders on which he shall be advised by the Secretary and in the case of Standing Financial Instructions by the Director of Finance.

ANNEX 9 – FURTHER PROVISIONS

- 1 An individual shall not become or continue as a Member if:
 - 1.1 s/he is less than 14 years of age at the time of his/her application to become a Member;
 - 1.2 s/he were formerly employed by the Trust or the Applicant NHS Trust and were dismissed for gross misconduct
 - 1.3 if s/he is or has at any time been a Vexatious Complainant²
 - 1.4 s/he is ineligible under paragraphs 7, 8 or 9 of the constitution to be a Member; or
 - 1.5 s/he is prohibited from entering any of the Trust's hospitals
 - 1.6 the Council of Governors resolves for reasonable cause that his or her so doing would or would be likely to:
 - 1.6.1 prejudice the ability of the Trust to fulfil its principal purpose or other of its purposes under this Constitution or otherwise to discharge its duties and functions; or
 - 1.6.2 harm the Trust's work with other persons or bodies with whom it is engaged or may be engaged in the provision of goods and services; or
 - 1.6.3 adversely affect public confidence in the goods or services provided by the Trust; or
 - 1.6.4 otherwise bring the Trust into disrepute.
- 2 A Member shall cease to be a Member if s/he:

² A vexatious complainant is a complainant who:

- Persists in pursuing a complaint where the NHS complaints procedure has been fully and properly implemented and exhausted;
- Changes the substance of a complaint; continually raises new issues; or seeks to prolong contact by continually raising further concerns or questions whilst the complaint is being addressed;
- Is unwilling to accept documented evidence in relation to their complaint or does not accept that facts can be difficult to verify after a long period of time has elapsed;
- Does not clearly identify the precise issues which they wish to be investigated despite reasonable efforts of Trust staff to help them specify their concerns and/or where the concerns are identified they are not within the remit of Trust staff to investigate;
- Has threatened or used actual physical violence against staff in the course of dealing with their complaint;
- Has, in the course of addressing a complaint, had an excessive number of contacts with Trust staff;
- Has harassed or been personally or verbally abusive on more than one occasion to staff dealing with their complaint.;
- Makes unreasonable demands on staff dealing with their complaint and fails to accept that these might be unreasonable.

- 2.1 resigns by giving notice in writing to the Secretary;
 - 2.2 is deceased
- 3 It is the responsibility of each Member to ensure his or her eligibility at all times and not the responsibility of the Trust to do so on his or her behalf. A Member who becomes aware of his or her ineligibility shall inform the Trust as soon as practicable and that person shall thereupon be removed forthwith from the Register of Members and shall cease to be a Member.
- 4 Where the Trust has reason to believe that a Member is ineligible for Membership or may be disqualified for Membership under this constitution and annexes, the Secretary shall carry out reasonable enquiries to establish if this is the case.
- 5 Where the Secretary considers that there may be reasons for concluding that a Member or an applicant for membership may be ineligible or be disqualified for Membership s/he shall advise that individual of those reasons in summary form and invite representations from the Member or applicant for membership within 28 days or such other reasonable period as the Secretary may in his or her absolute discretion determine. Any representations received shall be considered by the Secretary and s/he shall make a decision on the Member's or applicant's eligibility or disqualification as soon as reasonably practicable and shall give notice in writing of that decision to the Member or applicant within 14 days of the decision being made.
- 6 If no representations are received within the said period of 28 days or longer period (if any) permitted under the preceding paragraph, the Secretary shall be entitled nonetheless to proceed and make a decision on the Member's or applicant's eligibility or disqualification notwithstanding the absence of any such representations from him or her.
- 7 Upon a decision being made under paragraphs 5 or 6 of this Annex 9 above that the Member is ineligible or disqualified for Membership the Member's name shall be removed from the Register of Members forthwith and s/he shall thereupon cease to be a Member.
- 8 Any decision made under this annex 9 to disqualify a Member or an applicant for membership may be referred by the Member or applicant concerned to the Dispute Resolution Procedure under paragraph 10 of this annex 9.
- 9 Indemnity

- 9.1 Governors of the Council of Governors and directors of the Board of Directors who act honestly and in good faith will not have to meet out of their personal resources any personal civil liability which is incurred in the execution or purported execution of their Council of Governors or Board of Directors functions, save where they have acted recklessly. Any costs arising in this way will be met by the Trust.
- 9.2 The Trust may make such arrangements as it considers appropriate for the provision of indemnity insurance or similar arrangement for the benefit of the Trust, governors or Directors to meet all or any liabilities which are properly the liabilities of the Trust under paragraph above.

10 Dispute Resolution Procedures

- 10.1 Every unresolved dispute that arises out of this constitution between the Trust and:
 - 10.1.1 members and potential members in relation to matters of eligibility and disqualification; and
 - 10.1.2 governors in relation to matters of eligibility, disqualification and termination of tenure and
 - 10.1.3 an office holder of the Trustis to be submitted to an arbitrator agreed by the parties or in the absence of agreement to be nominated by the Strategic Health Authority. The arbitrator's decision will be binding and conclusive on all parties.
- 10.2 Any person bringing a dispute must, if required to do so, deposit with the Trust a reasonable sum (not exceeding £250) to be determined by the Council of Governors and approved by the Secretary. The arbitrator will decide how the costs of the arbitration will be paid and what should be done with the deposit.
- 10.3 Disputes arising between the Council of Governors and Board of Directors in relation to the interpretation of their respective powers and obligations under this constitution should be resolved in accordance with the procedures set out in paragraph 9 of Annex 8 to this constitution.

11 Amendment of the Constitution

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

11.2 No proposal for the amendment of this Constitution shall be put to Monitor unless it has been approved by the Board of Directors who shall have consulted with the Council of Governors before so doing.

12 Dissolution of the Trust

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