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**CONSTITUTION OF**

**CESHIRE AND WIRRAL PARTNERSHIP  
NHS FOUNDATION TRUST**

**(A PUBLIC BENEFIT CORPORATION)**

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**Version 5**

**(SEPTEMBER 2016)**

# Constitution of Cheshire and Wirral Partnership

## NHS Foundation Trust

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1. **Name**

The name of the foundation trust is Cheshire and Wirral Partnership NHS Foundation Trust (“the Foundation Trust”).

2. **Principal Purpose**

2.1 The Principal Purpose of the Foundation Trust is the provision of goods and services for the purposes of the health service in England.

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

2.3 The Foundation Trust may provide goods and services for any purposes related to:-

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

2.3.2 the promotion of public health.

2.4 The Foundation Trust may also carry on activities other than those mentioned in paragraph 2.3 above for the purpose of making additional income available in order to better carry on its Principal Purpose.

3. **Powers**

3.1 The powers of the Foundation Trust are set out in the 2006 Act.

3.2 All the powers of the Foundation Trust shall be exercised by the Board of Directors on behalf of the Foundation Trust.

3.3 Any of these powers may be delegated to a committee of Directors or to an Executive Director.

4. **Membership and constituencies**

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

4.1 a Public Constituency;

4.2 a Staff Constituency; or

4.3 a Service Users’ and Carers’ Constituency.

5. **Application for membership**

An individual who is eligible to become a Member of the Foundation Trust may do so on application to the Foundation Trust.

6. **Public Constituency**

6.1 An individual who lives in an area specified in Annex 1 as an area for a public constituency may become or continue as a Member of the Foundation Trust.

6.2 Those individuals who live in an area specified for a public constituency are referred to collectively as the Public Constituency.

6.3 The minimum number of Members in each Public Constituency is specified in Annex 1.

7. **Staff Constituency**

7.1 An individual who is employed by the Foundation Trust under a contract of employment with the Foundation Trust may become or continue as a Member of the Foundation Trust provided:

7.1.1 s/he is employed by the Foundation Trust under a contract of employment which has no fixed term or has a fixed term of at least 12 months; or

7.1.2 s/he has been continuously employed by the Foundation Trust under a contract of employment for at least 12 months.

7.2 Individuals who exercise functions for the purposes of the Foundation Trust, otherwise than under a contract of employment with the Foundation Trust, may become or continue as members of the staff constituency provided such individuals have exercised these functions continuously for a period of at least 12 months. For the avoidance of doubt this shall include individuals who assist or provide services to the Foundation Trust on a voluntary basis.

7.3 Those individuals who are eligible for membership of the Foundation Trust by reason of the provisions of paragraphs 7.1 and 7.2 above are referred to collectively as the Staff Constituency.

7.4 The Staff Constituency shall be divided into five descriptions of individuals who are eligible for membership of the Staff Constituency, each description of individuals being specified within Annex 2 and being referred to as a class within the Staff Constituency.

7.5 An individual who is:

7.5.1 eligible to become a member of the Staff Constituency, and

7.5.2 invited by the Foundation 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 Foundation Trust as a member of the Staff Constituency without an application being made, unless s/he informs the Foundation Trust that he does not wish to do so.

7.6 The minimum number of Members of the Staff Constituency is specified in Annex 2.

7.7 The Secretary shall make a final decision about the class of which an individual is eligible to be a Member.

8. **Service Users' and Carers' Constituency**

8.1 An individual who has, within the period specified below, attended any of the Foundation Trust's premises as either a service user or as the carer of a service user may become or continue as a Member of the Foundation Trust.

8.2 The period referred to above shall be the period of 12 months immediately preceding the date of an application by the service user or carer to become a Member of the Foundation Trust.

8.3 Those individuals who are eligible for membership of the Foundation Trust by reason of the previous provisions are referred to collectively as the Service Users' and Carers' Constituency.

8.4 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 Service Users' and Carers' Constituency.

8.5 The minimum number of Members of the Service Users' and Carers' Constituency is specified in Annex 3.

9. **Restriction on membership**

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

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

- 9.3 Further provisions as to the circumstances in which an individual may not become or continue as a Member of the Foundation Trust are set out in Annex 10.

9A. **Annual Members' Meeting**

9A.1 The Foundation Trust shall hold an annual meeting of its Members ("Annual Members' Meeting"). The Annual Members' Meeting shall be open to members of the public.

9A.2 At least one member of the Board of Directors must attend the meeting and present the following documents to the Members at the meeting:

9A.2.1 the Annual Accounts;

9A.2.2 any report of the Auditor on them; and

9A.2.3 the Annual Report.

9A.3 Further provisions about the Annual Members' Meeting are set out in Annex 10.

10. **Council of Governors – composition**

10.1 The Foundation Trust is to have a Council of Governors, which shall comprise both Elected Governors and Appointed Governors.

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

10.3 The members of the Council of Governors, other than the Appointed Governors, shall be chosen by election by their constituency or, where there are classes within a constituency, by their class within that constituency. The number of Governors to be elected by each constituency, or, where appropriate, by each class of each constituency, is specified in Annex 4.

11. **Council of Governors – election of governors**

11.1 Elections for Elected Governors shall be conducted in accordance with the Model Rules for Elections, as may be varied from time to time.

11.2 The Model Rules for Elections, as published from time to time by the Department of Health, form part of this Constitution. The Model Rules for Elections current at the date of the Foundation Trust's Authorisation are attached at Annex 5.

11.3 A variation of the Model Rules for Elections by the Department of Health shall not constitute a variation of the terms of this Constitution. For the avoidance of doubt, the Foundation Trust cannot amend the Model Rules for Elections.

11.4 An election, if contested, shall be by secret ballot.

12. **Council of Governors - tenure**

12.1 An Elected Governor shall normally hold office for a period of 3 years commencing immediately after the Annual Members' Meeting at which his/her election is announced.

12.2 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.

12.3 An Elected Governor shall be eligible for re-election at the end of his/ her term.

12.4 An Elected Governor may not hold office for more than ten consecutive years and shall not be eligible for re-election if s/he has already held office for more than seven consecutive years.

12.5 For the purposes of the tenure provisions set out in paragraphs 12.1 to 12.4 above, a "year" means a period commencing immediately after the conclusion of the Annual Members' Meeting, and ending at the conclusion of the next Annual Members' Meeting.

12.6 Further provisions as to tenure for Appointed Governors are set out at Annex 6.

13. **Council of Governors – disqualification and removal**

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

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

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

13.1.3 a person who within the preceding five years has 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.

13.2 Governors must be at least 16 years of age at the date they are nominated for election or appointment.

13.3 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.



13A **Council of Governors – duties of Governors**

13A.1 The general duties of the Council of Governors are:

13A.1.1 to hold the Non-Executive Directors individually and collectively to account for the performance of the Board of Directors, and

13A.1.2 to represent the interests of the Members of the Foundation Trust as a whole and the interests of the public.

13A.2 The Trust must take steps to secure that the Governors are equipped with the skills and knowledge they require in their capacity as such.

14. **Council of Governors – meetings of Governors**

14.1 The Chairman of the Foundation Trust (i.e. the Chairman of the Board of Directors, appointed in accordance with the provisions of paragraph 21.1 below) or, in his absence the Deputy Chairman (appointed in accordance with the provisions of paragraph 22 below) or, in his absence, one of the Non-Executive Directors, shall preside at meetings of the Council of Governors. If the person presiding at any such meeting has a conflict of interest in relation to the business being discussed, the Vice Chairman of the Council of Governors (appointed in accordance with the provisions of paragraph 6 of Annex 6) will chair that part of the meeting.

14.2 Meetings of the Council of Governors shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons by resolution of the Council of Governors on the grounds that publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted or for other special reasons stated in the resolution and arising from the nature of the business or the proceedings.

14.3 For the purposes of obtaining information about the Foundation Trust's performance of its functions or the Directors' performance of their duties (and deciding whether to propose a vote on the Foundation Trust's or Directors' performance), the Council of Governors may require one or more of the Directors to attend a meeting of the Council of Governors..

15. **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 by the Council of Governors, are attached at Annex 8.

15A **Council of Governors – referral to the Panel**

15A.1 In this paragraph 15A, the 'Panel' means a panel of persons appointed by NHS Improvement to which a Governor of the Foundation Trust may refer a question as to whether the Foundation Trust has failed or is failing:

15A.1.1 to act in accordance with its Constitution, or

15A.1.2 to act in accordance with provision made by or under Chapter 5 of the 2006 Act.

15A.2 A Governor may refer a question to the Panel only if more than half of the members of the Council of Governors present and voting at a meeting of the Council of Governors approve the referral.

16. **Council of Governors - conflicts of interest of Governors**

16.1 Members of the Council of Governors shall disclose to the Council of Governors any material interests (as defined below) held by a Governor, their spouse or Partner, which shall be recorded in the register of interests of Governors.

16.2 Subject to the exceptions below a material interest is:

16.2.1 any directorship of a company;

16.2.2 any interest or position in any firm, company, business or organisation (including any charitable or Voluntary Organisation) which has or is likely to have a trading or commercial relationship with the Foundation Trust;

16.2.3 any interest in an organisation providing health and social care services to the National Health Service;

16.2.4 a position of authority in a charity or Voluntary Organisation in the field of health and social care;

16.2.5 any connection with any organisation, entity or company considering entering into a financial arrangement with the Foundation Trust including but not limited to lenders or banks.

16.3 The exceptions which shall not be treated as interests or material interests for the purposes of these provisions are as follows:

16.3.1 shares not exceeding 2% of the total shares in issue held in any company whose shares are listed on any public exchange;

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

- 16.3.3 an employment contract with a Clinical Commissioning Group held by a Governor appointed by a Clinical Commissioning Group;
  - 16.3.4 an employment contract with a local authority held by a Local Authority Governor;
  - 16.3.5 an employment contract with a University held by a University Governor;
  - 16.3.6 an employment contract with or other position of authority within a Partnership Organisation held by a Partnership Governor.
- 16.4 Any Governor who has an interest in a matter to be considered by the Council of Governors (whether because the matter involves a firm, company, business or organisation in which the Governor or his spouse or Partner has a material interest or otherwise) shall declare such interest to the Council of Governors and:
- 16.4.1 shall withdraw from the meeting and play no part in the relevant discussion or decision; and
  - 16.4.2 shall not vote on the issue (and if by inadvertence they do remain and vote, their vote shall not be counted).
- 16.5 Details of any such interest shall be recorded in the register of interests of Governors.
- 16.6 Any Governor who fails to disclose any interest or material interest required to be disclosed under these provisions must permanently vacate their office if required to do so by a majority of the remaining Governors.

17. **Council of Governors – travel expenses**

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

18. **Council of Governors – further provisions**

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

19. **Board of Directors – composition**

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

19.2 The Board of Directors is to comprise:

- 19.2.1 a non-executive Chairman

19.2.2 not less than five but not more than six other Non-Executive Directors; and

19.2.3 not less than five but not more than six Executive Directors.

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

19.4 The Chief Executive shall be the Accounting Officer.

19.5 One of the Executive Directors shall be the Finance Director.

19.6 One of the Executive Directors is to be a registered medical practitioner or a registered dentist (within the meaning of the Dentists Act 1984).

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

19A **Board of Directors – general duty**

19A.1 The general duty of the Board of Directors and of each Director individually, is to act with a view to promoting the success of the Foundation Trust so as to maximise the benefits for the Members of the Foundation Trust as a whole and for the public.

20. **Board of Directors – qualification for appointment as a Non-Executive Director**

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

20.1 s/he is a member of the Public Constituency, or

20.2 s/he is a member of the Service Users' and Carers' Constituency, or

20.3 where any of the Foundation Trust's hospitals includes a medical or dental school provided by a University, s/he exercises functions for the purposes of that University, and

20.4 s/he is not disqualified by virtue of paragraph 24 below or Annex 7.

21. **Board of Directors – appointment and removal of Chairman and other Non-Executive Directors**

21.1 The Council of Governors at a general meeting of the Council of Governors shall appoint or remove the Chairman of the Foundation Trust and the other Non-Executive Director.

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

21.3 Further provisions as to the appointment and removal of the Chairman and other Non-Executive Director are set out at Annex 7.

22. **Board of Directors – appointment of Deputy Chairman**

The Council of Governors at a general meeting of the Council of Governors shall appoint one of the Non-Executive Director as a Deputy Chairman. If the Chairman is unable to discharge his office as Chairman of the Foundation Trust the Deputy Chairman of the Board of Directors shall be acting Chairman of the Foundation Trust.

23. **Board of Directors - appointment and removal of the Chief Executive and other Executive Directors**

23.1 The Non-Executive Director shall appoint or remove the Chief Executive.

23.2 The appointment of the Chief Executive shall require the approval of a majority of the members of the Council of Governors present and voting at a meeting of the Council of Governors.

23.3 A committee consisting of the Chairman, the Chief Executive and the other Non-Executive Directors shall appoint or remove the other Executive Directors.

23.4 The Board of Directors shall appoint one of the Executive Directors as Deputy Chief Executive.

24. **Board of Directors – disqualification**

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

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

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

24.3 a person who within the preceding five years has 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.

Further provisions as to the circumstances in which an individual may not become or continue as a member of the Board of Directors are set out at Annex 7.

24A **Board of Directors – meetings**

24A.1 Meetings of the Board of Directors shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons by resolution of the Board of Directors on the grounds that publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted or for the other special reasons stated in the resolution and arising from the business or nature of the proceedings.

24A.2 Before holding a meeting, the Board of Directors must send a copy of the agenda of the meeting to the Council of Governors. As soon as practicable after holding a meeting, the Board of Directors must send a copy of the minutes of the meeting to the Council of Governors.

25. **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 by the Board of Directors, are attached at Annex 9.

26. **Board of Directors - conflicts of interest of directors**

26.1 The duties that a Director of the Foundation Trust has by virtue of being a Director include in particular:

26.1.1 a duty to avoid a situation in which the Director has (or can have) a direct or indirect interest that conflicts (or possibly may conflict) with the interests of the Foundation Trust.

26.1.2 a duty not to accept a benefit from a third party by reason of being a Director or doing (or not doing) anything in that capacity.

26.2 The duty referred to in sub-paragraph 26.1.1 above is not infringed if:

26.2.1 the situation cannot reasonably be regarded as likely to give rise to a conflict of interest, or

26.2.2 the matter has been authorised in accordance with the Constitution.

26.3 The duty referred to in paragraph 26.1.2 above is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.

26.4 In paragraph 26.1.2 above, “third party” means a person other than:

- 26.4.1 the Foundation Trust, or
  - 26.4.2 a person acting on its behalf.
- 26.5 If a Director of the Foundation Trust has in any way a direct or indirect interest in a proposed transaction or arrangement with the Foundation Trust, the Director must declare the nature and extent of that interest to the other Directors.
- 26.6 If a declaration under this paragraph 26 proves to be, or becomes, inaccurate, or incomplete, the Director must make a further declaration before the Foundation Trust enters into the transaction or arrangement.
- 26.7 Any declaration required by this paragraph 26 must be made before the Foundation Trust enters into the transaction or arrangement.
- 26.8 This paragraph 26 does not require a declaration of an interest of which the Director is not aware or where the Director is not aware of the transaction or arrangement in question.
- 26.9 A Director need not declare an interest:
- 26.9.1 if it cannot reasonably be regarded as likely to give rise to a conflict of interest;
  - 26.9.2 if, or to the extent that, the Directors are already aware of it;
  - 26.9.3 if, or to the extent that, it concerns terms of the Director's appointment that have been or are to be considered:
    - 26.9.3.1 by a meeting of the Board of Directors, or
    - 26.9.3.2 by a committee of the Directors appointed for the purpose under the Constitution.
- 26.10 A matter shall have been authorised for the purposes of paragraph 26.2.2 if:
- 26.10.1 The Directors, in accordance with the requirements set out in this paragraph 26.10, authorise any matter or situation proposed to them by any Director which would, if not authorised, involve a Director (an "Interested Director") breaching his duty under paragraph 26.1.1 above to avoid conflicts of interest (a "Conflict").
  - 26.10.2 Any authorisation under this paragraph will be effective only if:
    - 26.10.2.1 the matter in question shall have been proposed by any Director for consideration in

the same way that any other matter may be proposed to the Directors under the provisions of the Constitution or in such other manner as the Directors may determine;

26.10.2.2 any requirement as to the quorum for consideration of the relevant matter is met without counting the Interested Director or any other Interested Director; and

26.10.2.3 the matter was agreed to without the Interested Director voting or would have been agreed to if the Interested Director's and any other Interested Director's vote had not been counted.

26.10.3 Any authorisation of a Conflict under this paragraph 26.10 may (whether at the time of giving the authorisation or subsequently):

26.10.3.1 extend to any actual or potential conflict of interest which may reasonably be expected to arise out of the Conflict so authorised;

26.10.3.2 provide that the Interested Director be excluded from the receipt of documents and information and the participation in discussions (whether at meetings of the Directors or otherwise) related to the Conflict;

26.10.3.3 provide that the Interested Director shall or shall not be an eligible Director in respect of any future decision of the Directors in relation to any resolution related to the Conflict;

26.10.3.4 impose upon the Interested Director such other terms for the purposes of dealing with the Conflict as the Directors think fit;

26.10.3.5 provide that, where the Interested Director obtains, or has obtained (through his involvement in the Conflict and otherwise than through his position as a Director of the Foundation Trust) information that is confidential to a third party, he will not be obliged to disclose that information to the Board of Directors, or to use it in relation to the Foundation Trust's affairs where to do so



would amount to a breach of that confidence; and

- 26.10.3.6 permit the Interested Director to absent himself from the discussion of matters relating to the Conflict at any meeting of the Directors and be excused from reviewing papers prepared by, or for, the Directors to the extent they relate to such matters.
- 26.10.4 Where the Directors authorise a Conflict, the Interested Director will be obliged to conduct himself in accordance with any terms imposed by the Directors in relation to the Conflict.
- 26.10.5 The Directors may revoke or vary such authorisation at any time, but this will not affect anything done by the Interested Director, prior to such revocation or variation in accordance with the terms of such authorisation.
- 26.10.6 A Director is not required, by reason of being a Director to account to the Foundation Trust for any remuneration, profit or other benefit which he derives from or in connection with a relationship involving a Conflict which has been authorised by the Directors (subject in each case to any terms, limits or conditions attaching to that authorisation) and no contract shall be liable to be avoided on such grounds.
- 26.11 Subject to paragraph 26.12 below if a question arises at a meeting of Directors or of a committee of Directors as to the right of a Director to participate in the meeting (or part of the meeting) for voting or quorum purposes, the question may, before the conclusion of the meeting, be referred to the Chairman whose ruling in relation to any Director other than the Chairman is to be final and conclusive.
- 26.12 If any question as to the right to participate in the meeting (or part of the meeting) should arise in respect of the Chairman, the question is to be decided by a decision of the Directors (other than the Chairman) at that meeting, for which purpose the Chairman is not to be counted as participating in the meeting (or that part of the meeting) for voting or quorum purposes.
- 26.13 Details of any such interest declared in accordance with this paragraph 26, shall be recorded in the register of interests of the Directors.
- 26.14 Any Director who fails to disclose any interest or material interest required to be disclosed under this paragraph 26 must permanently vacate their office if required to do so by a majority of the remaining

Directors and (in the case of a Non-Executive Director) by a majority of the Council of Governors .

27. **Board of Directors – remuneration and terms of office**

27.1 The Council of Governors at a general meeting of the Council of Governors shall decide the remuneration and allowances, and the other terms and conditions of office, of the Chairman and the other Non-Executive Directors.

27.2 The Foundation 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.

28. **Registers**

The Foundation Trust shall have:

28.1 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;

28.2 a register of members of the Council of Governors;

28.3 a register of interests of the members of the Council of Governors;

28.4 a register of members of the Board of Directors; and

28.5 a register of interests of the members of the Board of Directors.

29. **Admission to and removal from the registers**

29.1 The Secretary shall remove from the register of Members the name of any Member who ceases to be entitled to be a Member under the provisions of this Constitution.

29.2 The Secretary is to send to NHS Improvement a list of persons who were first elected or appointed as Governors and Directors.

30. **Registers – inspection and copies**

30.1 The Foundation Trust shall make the registers specified in paragraph 28 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.

30.2 The Foundation Trust shall not make any part of its registers available for inspection by members of the public which shows details of –

- 30.2.1 any member of the Service Users' and Carers' Constituency; or
- 30.2.2 any other member of the Foundation Trust, if s/he so requests.
- 30.3 So far as the registers are required to be made available:
  - 30.3.1 they are to be available for inspection free of charge at all reasonable times; and
  - 30.3.2 a person who requests a copy of or extract from the registers is to be provided with a copy or extract.
- 30.4 If the person requesting a copy or extract is not a Member of the Foundation Trust, the Foundation Trust may impose a reasonable charge for doing so.

31. **Documents available for public inspection**

- 31.1 The Foundation Trust shall make the following documents available for inspection by members of the public free of charge at all reasonable times:
  - 31.1.1 a copy of the current Constitution;
  - 31.1.2 a copy of the latest Annual Accounts and of any report of the auditor on them; and
  - 31.1.3 a copy of the latest Annual Report.
- 31.2 The Foundation Trust shall also make the following documents relating to a special administration of the Foundation Trust available for inspection by members of the public free of charge at all reasonable times:
  - 31.2.1 a copy of any order made under section 65D (appointment of trust special administrator), 65J (power to extend time), 65KC (action following Secretary of State's rejection of final report), 65L(trusts coming out of administration) or 65LA (trusts to be dissolved) of the 2006 Act;
  - 31.2.2 a copy of any report laid under section 65D (appointment of trust special administrator) of the 2006 Act;
  - 31.2.3 a copy of any information published under section 65D (appointment of trust special administrator) of the 2006 Act;

- 31.2.4 a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act;
  - 31.2.5 a copy of any statement provided under section 65F(administrator's draft report) of the 2006 Act;
  - 31.2.6 a copy of any notice published under section 65F(administrator's draft report), 65G (consultation plan), 65H (consultation requirements), 65J (power to extend time) 65KA(NHS Improvement's decision), 65KB (Secretary of State's response to NHS Improvement's decision), 65KC (action following Secretary of State's rejection of final report) or 65KD (Secretary of State's response to re-submitted final report) of the 2006 Act;
  - 31.2.7 a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act;
  - 31.2.8 a copy of any final report published under section 65I (administrator's final report);
  - 31.2.9 a copy of any statement published under section 65J (power to extend time) or 65KC (action following Secretary of State's rejection of final report) of the 2006 Act; and
  - 31.2.10 a copy of any information published under section 65M (replacement of trust special administrator) of the 2006 Act.
- 31.3 Any person who requests a copy of or extract from any of the above documents is to be provided with a copy or extract.
- 31.4 If the person requesting a copy or extract is not a Member of the Foundation Trust, the Foundation Trust may impose a reasonable charge for doing so.

32. **Auditor**

- 32.1 The Foundation Trust shall have an Auditor.
- 32.2 The Council of Governors shall appoint or remove the Auditor at a general meeting of the Council of Governors.
- 32.3 Further provisions as to the Auditor and other external auditors are set out at Annex 11.

33. **Audit committee**

The Foundation Trust shall establish a committee of Non-Executive directors as an audit committee to perform such monitoring, reviewing and other functions as are appropriate.

34. **Accounts and records**

- 34.1 The Foundation Trust must keep proper accounts and proper records in relation to those accounts.
- 34.2 NHS Improvement may, with the approval of the Secretary of State for Health, give directions to the Foundation Trust as to the content and form of its accounts.
- 34.3 The accounts are to be audited by the Foundation Trust's Auditor.
- 34.4 The following documents will be made available to the Comptroller and Auditor General for examination at his request:
- 34.4.1 the accounts;
  - 34.4.2 any records relating to them; and
  - 34.4.3 any report of the Auditor on them.
- 34.5 The Foundation Trust is to prepare in respect of each Financial Year Annual Accounts in such form as NHS Improvement may with the approval of the Secretary of State for Health direct.
- 34.6 NHS Improvement may with the approval of the Secretary of State for Health direct the Foundation Trust:
- 34.6.1 to prepare accounts in respect of such period or periods as may be specified in the direction; and/or
  - 34.6.2 that any accounts prepared by it by virtue of paragraph 34.6.1 above are to be audited in accordance with such requirements as may be specified in the direction.
- 34.7 In preparing its Annual Accounts or in preparing any accounts by virtue of paragraph 34.6.1 above, the Foundation Trust must comply with any directions given by NHS Improvement with the approval of the Secretary of State for Health as to:
- 34.7.1 the methods and principles according to which the Annual Accounts must be prepared; and/or
  - 34.7.2 the content and form of the Annual Accounts.
- 34.8 The Foundation Trust must:
- 34.8.1 lay a copy of the Annual Accounts, and any report of the Auditor on them, before Parliament; and

- 34.8.2 send copies of the Annual Accounts, and any report of the Auditor on them to NHS Improvement within such a period as NHS Improvement may direct.
- 34.9 The Foundation Trust must send a copy of any accounts prepared by virtue of paragraph 34.6.1 above and a copy of any report of the Auditor to NHS Improvement within such a period as NHS Improvement may direct.
- 34.10 The functions of the Foundation Trust referred to in this paragraph 34 shall be delegated to the Accounting Officer.

35. **Annual Reports, Forward Plans and non-NHS work**

- 35.1 The Foundation Trust is to prepare Annual Reports and send them to NHS Improvement.
- 35.2 Each Annual Report must give:
  - 35.2.1 information on any steps taken by the Foundation Trust to secure that (taken as a whole) the actual membership of any Public Constituency is representative of those eligible for such membership;
  - 35.2.2 information on the impact that income received by the Foundation Trust otherwise than from the fulfillment of the Principal Purpose has had on the provision by the Foundation Trust of goods and services for those purposes; and
  - 35.2.3 such other information as may be prescribed by NHS Improvement.
- 35.3 The Foundation Trust shall give the Forward Plan in respect of each Financial Year to NHS Improvement.
- 35.4 The Forward Plan shall be prepared by the Board of Directors.
- 35.5 In preparing the Forward Plan, the Board of Directors shall have regard to the views of the Council of Governors.
- 35.6 Each Forward Plan must include information about:
  - 35.6.1 the activities other than the provision of goods and services for the purposes of the health services in England that the Foundation Trust proposes to carry on; and
  - 35.6.2 the income that it expects to receive from doing so.
- 35.7 Where a Forward Plan contains a proposal that the Foundation Trust carry on an activity of a kind mentioned in paragraph 35.6.1 above, the Council of Governors must:

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

35.7.2 notify the Directors of the Foundation Trust of its determination.

35.8 The Foundation Trust may implement a proposal to increase by 5% or more the proportion of its total income in any Financial Year attributable to activities other than the fulfillment of the Principal Purpose only if more than half of the members of the Council of Governors present and voting approve the implementation of the proposal.

36. **Presentation of the Annual Accounts and reports to the Governors and Members**

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

36.1.1 the Annual Accounts;

36.1.2 any report of the Auditor on them; and

36.1.3 the Annual Report.

36.2 The Foundation Trust may combine a meeting of the Council of Governors convened for the purposes of paragraph 36.1 above with the Annual Members' Meeting.

37. **Instruments**

37.1 The Foundation Trust shall have a seal.

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

38. **Amendment of the Constitution**

38.1 The Foundation Trust may make amendments to the Constitution only if:

38.1.1 more than half of the members of the Council of Governors of the Foundation Trust present and voting at a meeting of the Council of Governors approve the amendments, and

38.1.2 more than half of the members of the Board of Directors of the Foundation Trust present and voting at a meeting of the Board of Directors approve the amendments.

- 38.2 Amendments made under paragraph 38.1 above take effect as soon as the conditions in that paragraph are satisfied, but the amendment has no effect in so far as the Constitution would, as a result of the amendment, not accord with Schedule 7 of the 2006 Act.
- 38.3 Where an amendment is made to the Constitution in relation the powers or duties of the Council of Governors (or otherwise with respect to the role that the Council of Governors has as part of the Foundation Trust):
- 38.3.1 at least one member of the Council of Governors must attend the next Annual Members' Meeting and present the amendment;
  - 38.3.2 the Foundation Trust must give the Members an opportunity to vote on whether they approve the amendment; and
  - 38.3.3 if more than half of the Members present and voting at the Annual Members' Meeting approve the amendment, the amendment continues to have effect; otherwise, it ceases to have effect and the Foundation Trust must take such steps as are necessary as a result.
- 38.4 Amendments by the Trust of its Constitution are to be notified to NHS Improvement. For the avoidance of doubt, NHS Improvement's functions do not include a power or duty to determine whether or not the Constitution, as a result of the amendments, accords with Schedule 7 of the 2006 Act.

39. **Mergers and significant transactions**

- 39.1 The Foundation 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.
- 39.2 The Foundation Trust may enter into a Significant Transaction only if more than half of the members of the Council of Governors of the Foundation Trust present and voting at the meeting of the Council of Governors approve entering into the transaction.
- 39.3 For the purposes of paragraph 39.2 above, a "Significant Transaction" means a transaction or arrangement under which the income or expenditure attributable to the assets and/or the contract associated with the transaction or arrangement is greater than 25% of the total income of the Trust as set out in the preceding Financial Year's annual accounts.



40. **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.

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

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

“2006 Act”	means the National Health Service Act 2006;
“2012 Act”	means the Health and Social Care Act 2012;
“the Accounting Officer”	means the person who from time to time discharges the functions specified in paragraph 25(5) of Schedule 7 to the 2006 Act;
“Annual Accounts”	means those accounts prepared by the Foundation Trust pursuant to paragraph 26 of Schedule 7 to the 2006 Act;
“Annual Governors’ Meeting”	has the meaning ascribed to it in paragraph 16 of Annex 6 of this Constitution;
“Annual Members’ Meeting”	has the meaning ascribed to it in paragraph 9A of this Constitution;
“Annual Report”	means a report prepared by the Foundation Trust pursuant to paragraph 25 of Schedule 7 to the 2006 Act;
“Appointed Governor”	means those Governors appointed by the Appointing Organisations as specified in Annex 4 of this Constitution;
“Appointing Organisations”	means those organisations named in this Constitution who are entitled to appoint Governors as specified in Annex 4 of this Constitution;
“Auditor”	means the auditor of the Foundation Trust appointed by the Council of Governors

	pursuant to paragraph 32 of this Constitution;
“Authorisation”	means the authorisation of the Foundation Trust by NHS Improvement under Section 35 of the 2006 Act;
“Board of Directors”	means the Board of Directors of the Foundation Trust as constituted in accordance with this Constitution;
“Chairman”	means the person appointed in accordance with this Constitution;
“Cheshire East Council”	means the council for Cheshire East with offices at Westfields, Middlewich Road, Sandbach, CW11 1HZ;
“Cheshire West and Chester Council”	means the council for Cheshire West and Chester with offices at Nicholas Street, Chester, CH1 2NP;
“Chief Executive”	means the Chief Executive of the Trust;
“Comptroller and Auditor General”	means the individual engaged in the position of Comptroller and Auditor General to the National Audit Office (UK government department) or its statutory successor from time to time;
“Council of Governors”	means the Council of Governors of the Foundation Trust as constituted in accordance with this Constitution;
“Constitution”	means this Constitution together with the annexes attached hereto;
“Deputy Chairman”	means the Deputy Chairman of the Foundation Trust appointed pursuant to paragraph 22 of this Constitution;
“Deputy Chief Executive”	means the Deputy Chief Executive appointed pursuant to paragraph 23.4 of this Constitution;
“Deputy Lead Governor”	means the person appointed in accordance with Standing Order 2.4 of Annex 11 of this Constitution;
“Director”	means a member of the Board of Directors and includes both Executive Directors and

Non-Executive Directors;

"Eastern Cheshire Commissioning Group"	Clinical	means the clinical commissioning group whose address is 1 <sup>st</sup> Floor, West Wing, New Alderley House, Victoria Road, Macclesfield, Cheshire, SK10 3BL;
"Elected Governors"		means those Governors elected by the Public Constituency, the Service Users' and Carers' Constituency and the Staff Constituency;
"Executive Director"		means an executive member of the Board of Directors of the Foundation Trust;
"Finance Director"		means the Finance Director of the Foundation Trust;
"Financial Year"		means:  (a) the period beginning with the date on which the Foundation Trust is authorised and ending with the next 31 March; and  (b) each successive period of twelve months beginning with 1 April;
"Forward Plan"		means the document prepared by the Foundation Trust pursuant to paragraph 27 of Schedule 7 of the 2006 Act;
"Foundation Trust"		means Cheshire and Wirral Partnership NHS Foundation Trust;
"Governor"		means a member of the Council of Governors and includes both Elected Governors and Appointed Governors;
"Lead Governor"		means the person appointed in accordance with Standing Order 5.1 of Annex 11 of this Constitution;
"Local Authority Governor"		means a Governor appointed by one or more local authorities whose area includes the whole or part of one of an area for a Public Constituency of the Foundation Trust;
"Member"		means a Member of the Trust and the term "membership" shall be construed

	accordingly;
“Metropolitan Borough of Wirral”	means Wirral Council with offices at Wallasey Town Hall, Brighton Street, Wallasey, Wirral, CH44 8ED;
“Model Rules for Elections”	means the election rules set out in Annex 5 of this Constitution;
“NHS Improvement”	means the corporate body of that name as provided by Section 61 of the 2012 Act;
“NHS Body”	has the meaning ascribed to it in Section 275 of the 2006 Act;
“Nominations Committee”	means a committee appointed pursuant to paragraphs 1.4 and 1.5 of Annex 7 of this Constitution;
“Non-Executive Director”	means a non-executive member of the Board of Directors of the Foundation Trust;
“Partner”	means, in relation to another person, a member of the same household living together as a family unit;
“Partnership Governor”	means a member of the Council of Governors appointed by a Partnership Organisation and for the avoidance of doubt, does not include a Public Governor, Staff Governor, Local Authority Governor, Service Users’ and Carers’ Governor or University Governor;
“Partnership Organisation”	means an organisation that may appoint Partnership Governors as specified in Annex 4 of this Constitution;
“Principal Purpose”	means the purpose set out in Section 43(1) of the 2006 Act;
“Public Constituency”	has the meaning ascribed to it in paragraph 6.2 of this Constitution;
“Public Governor”	means a member of the Council of Governors elected by the members of one of the Public Constituencies;
“Regulatory Framework”	means the 2006 Act, 2012 Act and the Constitution;

"Role Specification"	means the document produced by the Foundation Trust, as amended from time to time, which sets out the detail of the lead governor and deputy governor(s);
"Secretary"	means the Secretary of the Foundation Trust or any other person appointed to perform the duties of the Secretary, including a joint, assistant or deputy secretary;
"Service Users' and Carers' Constituency";	has the meaning ascribed to it in paragraph 8.3 of this Constitution, and shall have the same meaning as the "patients' constituency" in paragraph 4 of Schedule 7 to the 2006 Act;
"Service Users' and Carers' Governor"	means a member of the Council of Governors elected by the members of the Service Users' and Carers' Constituency;
"Sex Offenders Order"	means either: <ul style="list-style-type: none"> <li>(a) a Sexual Offences Prevention Order made under either Section 104 or Section 105 of the Sexual Offences Act 2003; or</li> <li>(b) an Interim Sexual Offences Prevention Order made under Section 109 of the Sexual Offences Act 2003; or</li> <li>(c) a Risk of Sexual Harm Order made under Section 123 of the Sexual Offences Act 2003; or</li> <li>(d) an Interim Risk of Sexual Harm Order made under Section 126 of the Sexual Offences Act 2003;</li> </ul>
"Sex Offenders Register"	means the notification requirements set out in Part 2 of the Sexual Offences Act 2003, commonly known as the Sex Offenders Register;
"Significant Transaction"	is defined in paragraph 39.3 of this Constitution;
"South Cheshire Clinical Commissioning Group"	means the clinical commissioning group whose address is Bevan House, Barony Court; Nantwich, Cheshire, CW5 5RD;

“Staff Constituency”	has the meaning ascribed to it in paragraph 7.3 of this Constitution;
“Staff Governor”	means a member of the Council of Governors elected by the members of one of the classes of the Staff Constituency;
“Staff Side”	means the trade union within the Foundation Trust;
“Universities”	means the universities that provide a medical or dental school to a hospital of the Foundation Trust (each a “University”);
“University Governor”	means a member of the Council of Governors appointed by the Universities as specified in Annex 4 of this Constitution;
"Vale Royal Clinical Commissioning Group"	means the clinical commissioning group whose address is Bevan House, Barony Court; Nantwich, Cheshire, CW5 5RD;
“Vice Chairman”	means the person appointed in accordance with paragraph 6 of Annex 6 of this Constitution;
“Voluntary Organisation”	means a body, other than a public or local authority, the activities of which are not carried on for profit;
"Western Cheshire Clinical Commissioning Group"	means the clinical commissioning group whose address is 1829 Building, Countess of Chester Health Park, Liverpool Rd, Chester, Cheshire CH2 1HJ; and
"Wirral Clinical Commissioning Group"	means the clinical commissioning group whose address is Old Market House, Hamilton Street, Birkenhead, Wirral, CH41 8AL.

**ANNEX 1 THE PUBLIC CONSTITUENCY**  
(Paragraphs 6.1 and 6.3)

1. An individual who lives in one of the following Public Constituencies may become or continue as a Member of the Foundation Trust:
  - 1.1 Metropolitan Borough of Wirral;
  - 1.2 Cheshire East Council;
  - 1.3 Cheshire West & Chester Council; and
  - 1.4 Out of area.
  
2. The minimum number of Members of each Public Constituency is to be four.

## **ANNEX 2 THE STAFF CONSTITUENCY**

(Paragraph 7.4 and 7.6)

- 1 The classes of the Staff Constituency are:
  - 1.1 Medical;
  - 1.2 Registered and non-registered Nursing;
  - 1.3 Therapy;
  - 1.4 Non-clinical; and
  - 1.5 Clinical Psychology.
- 2 The minimum number of Members for each class of the Staff Constituency is to be four.



### **ANNEX 3 THE SERVICE USERS' AND CARERS' CONSTITUENCY**

(Paragraph 8.5)

1. The minimum number of Members of the Service Users' and Carers' Constituency is to be four.

## **ANNEX 4 COMPOSITION OF COUNCIL OF GOVERNORS**

(Paragraphs 10.2 and 10.3)

- 1 The aggregate number of Public Governors and Service Users' and Carers' Governors is to be more than half of the total number of members of the Council of Governors.
- 2 The Council of Governors, subject to the 2006 Act, shall seek to ensure that through the composition of the Council of Governors:
  - 2.1 the interests of the community served by the Foundation Trust are appropriately represented;
  - 2.2 the level of representation of the Public Constituency, the Service Users' and Carers' Constituency, the Staff Constituency and the Appointing Organisations strikes an appropriate balance having regard to their legitimate interest in the Foundation Trust's affairs;

and to this end, the Council of Governors:

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

### **Composition of the Council of Governors**

#### **3 Composition**

- 3.1 The Council of Governors shall be composed of 34 Governors, comprised of:
  - 3.1.1 Seven Public Governors from the following areas of the Public Constituency:
    - 3.1.1.1 Metropolitan Borough of Wirral – 2 Public Governors;
    - 3.1.1.2 Cheshire East Council – 2 Public Governors;
    - 3.1.1.3 Cheshire West & Chester Council – 2 Public Governors; and
    - 3.1.1.4 Out of area – 1 Public Governor;
  - 3.1.2 Twelve Service Users' and Carers' Governors;
  - 3.1.3 Seven Governors from the following classes:

- 3.1.3.1 Medical – 1 Staff Governor;
  - 3.1.3.2 Registered and non-registered Nursing – 2 Staff Governors;
  - 3.1.3.3 Therapy – 2 Staff Governor;
  - 3.1.3.4 Non-clinical – 1 Staff Governor; and
  - 3.1.3.5 Clinical Psychology – 1 Staff Governor;
  - 3.1.4 Three Local Authority Governors;
  - 3.1.5 One University Governor to be appointed by the Universities; and
  - 3.1.6 Four Partnership Governors.
- 3.2 The organisations specified as Partnership Organisations that may appoint members of the Council of Governors from 18 November 2013 are:
- 3.2.1 Staff Side;
  - 3.2.2 Wirral Clinical Commissioning Group;
  - 3.2.3 Western Cheshire Clinical Commissioning Group;
  - 3.2.4 Eastern Cheshire Clinical Commissioning Group;
  - 3.2.5 South Cheshire Clinical Commissioning Group; and
  - 3.2.6 Vale Royal Clinical Commissioning Group.
- 3.3 The Partnership Organisations listed at paragraph 5.2 above may be varied from time to time by the Foundation Trust.

## 4 **Appointed Governors**

### 4.1 **Local Authority Governors:**

- 4.1.1 The Metropolitan Borough of Wirral or its successor organisation may appoint one Local Authority Governor by notice in writing signed by the leader of the Council and delivered to the Secretary;
- 4.1.2 Cheshire East Council or its successor organisation may appoint one Local Authority Governor by notice in writing signed by the leader of the Council and delivered to the Secretary; and

4.1.3 Cheshire West and Chester Council or its successor organisation may appoint one Local Authority Governor by notice in writing signed by the leader of the Council and delivered to the Secretary.

**4.2 Partnership Governors:**

4.2.1 Staff Side or its successor organisation may appoint one Partnership Governor by notice in writing signed by the chief executive or equivalent of Staff Side and delivered to the Secretary;

4.2.2 Wirral Clinical Commissioning Group or its successor organisation may appoint one Partnership Governor by notice in writing signed by the chair or equivalent of its governing body and delivered to the Secretary;

4.2.3 Western Cheshire Clinical Commissioning Group or its successor organisation may appoint one Partnership Governor by notice in writing signed by the chair or equivalent of its governing body and delivered to the Secretary; and

4.2.4 Eastern Cheshire Clinical Commissioning Group; South Cheshire Clinical Commissioning Group; and Vale Royal Clinical Commissioning Group or their respective successor organisation(s) may jointly appoint one Partnership Governor between them by notice in writing signed by the chairs or equivalent of their governing bodies and delivered to the Secretary.

4.3 Notwithstanding the provisions of paragraphs 6.2.1 to 6.2.4 above, the Chairman may veto the appointment of a Partnership Governor by serving notice in writing to the relevant Partnership Organisation(s) where he believes that the appointment in question is unreasonable, irrational or otherwise inappropriate.

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

### **Model Election Rules 2014**

#### **PART 1 INTERPRETATION**

1. Interpretation

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

2. Timetable
3. Computation of time

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

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

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

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

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

19. Poll to be taken by ballot

20. The ballot paper
21. The declaration of identity (public and patient constituencies)

*Action to be taken before the poll*

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

*The poll*

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

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

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

## **PART 6 COUNTING THE VOTES**

- STV41. Interpretation of Part 6
- 42. Arrangements for counting of the votes
- 43. The count
- STV44. Rejected ballot papers and rejected text voting records
- FPP44. Rejected ballot papers and rejected text voting records
- STV45. First stage
- STV46. The quota
- STV47. Transfer of votes
- STV48. Supplementary provisions on transfer
- STV49. Exclusion of candidates
- STV50. Filling of last vacancies
- STV51. Order of election of candidates
- FPP51. Equality of votes
- FPP52. Declaration of result for contested elections
- STV52. Declaration of result for contested elections
- 53. Declaration of result for uncontested elections

## **PART 8 DISPOSAL OF DOCUMENTS**

- 54. Sealing up of documents relating to the poll
- 55. Delivery of documents
- 56. Forwarding of documents received after close of the poll
- 57. Retention and public inspection of documents
- 58. Application for inspection of certain documents relating to election

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

- FPP59. Countermand or abandonment of poll on death of candidate
- STV59. Countermand or abandonment of poll on death of candidate

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

### *Expenses*

- 60. Election expenses
- 61. Expenses and payments by candidates
- 62. Expenses incurred by other persons

### *Publicity*

- 63. Publicity about election by the corporation
- 64. Information about candidates for inclusion with voting information
- 65. Meaning of “for the purposes of an election”

## **PART 11 QUESTIONING ELECTIONS AND IRREGULARITIES**

- 66. Application to question an election

## **PART 12 MISCELLANEOUS**

- 67. Secrecy
- 68. Prohibition of disclosure of vote
- 69. Disqualification
- 70. Delay in postal service through industrial action or unforeseen event

## **PART 1 INTERPRETATION**

- 1. Interpretation

- 1.1 In these rules, unless the context otherwise requires:

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

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

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

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

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

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

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



“*ID declaration form*” has the meaning set out in Rule 21.1; “internet voting record” has the meaning set out in rule 26.4(d);

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

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

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

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

“*NHS Improvement*” means the corporate body known as NHS Improvement 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 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.

### 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.
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 provided

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

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

## 23. Notice of poll

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

- (a) the name of the corporation,
- (b) the constituency, or class within a constituency, for which the election is being held,
- (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;
- (c) 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
- (d) if the voter's vote has been duly cast and recorded, provide the voter with confirmation of this;
- (e) 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)<sup>1</sup>
- 38.1 Where the returning officer receives an ID declaration form if required but no ballot paper, the returning officer is to:
  - (a) mark the ID declaration form “disqualified”,
  - (b) record the name of the voter in the list of disqualified documents, indicating that a declaration of identity was received from the voter without a ballot paper, and
  - (c) place the ID declaration form in a separate packet.
- 39. De-duplication of votes
- 39.1 Where different methods of polling are being used in an election, the returning officer shall examine all votes cast to ascertain if a voter ID number has been used more than once to cast a vote in the election.
- 39.2 If the returning officer ascertains that a voter ID number has been used more than once to cast a vote in the election he or she shall:
  - (a) only accept as duly returned the first vote received that was cast using the relevant voter ID number; and
  - (b) mark as “disqualified” all other votes that were cast using the relevant voter ID number
- 39.3 Where a ballot paper is disqualified under this rule the returning officer shall:
  - (a) mark the ballot paper “disqualified”,
  - (b) if there is an ID declaration form accompanying the ballot paper, mark it “disqualified” and attach it to the ballot paper,
  - (c) record the unique identifier and the voter ID number on the ballot paper in the list of disqualified documents;
  - (d) place the document or documents in a separate packet; and
  - (e) disregard the ballot paper when counting the votes in accordance with these rules.
- 39.4 Where an internet voting record, telephone voting record or text voting record is disqualified under this rule the returning officer shall:

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

#### 40. Sealing of packets

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

- (a) the disqualified documents, together with the list of disqualified documents inside it,
- (b) the ID declaration forms, if required,
- (c) the list of 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.

FPP44.8 A text voting record on which a vote is marked:

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

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

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 the 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

STV49.8 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 NHS Improvement 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 NHS Improvement 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 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 NHS Improvement.

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 NHS Improvement 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 NHS Improvement may require.

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

66.6 If NHS Improvement requests further information from the applicant, then that person must provide it as soon as is reasonably practicable.

66.7 NHS Improvement 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 person or panel of persons nominated in accordance with rule 66.7 shall be binding on and shall be given effect by the corporation, the applicant and the members of the constituency (or class within a constituency) including all the candidates for the election to which the application relates.

66.9 NHS Improvement 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**

(Paragraphs 12.6, 13.3, 16 and 18)

### **Elected Governors**

1. A member of the Public Constituency may not vote at an election for a Public Governor and a member of the Service Users' and Carers' Constituency may not vote at an election for a Service Users' and Carers' Governor unless within twenty-one days before they vote they have made a declaration in the form specified by the Secretary that they are qualified to vote as a member of the relevant area of the Public Constituency or the Service Users' and Carers' Constituency (as the case may be). It is an offence (other than in relation to the Staff Constituency) to knowingly or recklessly make such a declaration which is false in a material particular.
2. An individual wishing to be elected as a Governor must be a Member of the Foundation Trust on the last day of the nomination process.

### **Appointed Governors**

3. The Appointed Governors are to be appointed by the Appointing Organisations, in accordance with a process agreed with the Secretary.
4. The Secretary, having consulted the Universities is to adopt a process for agreeing the appointment of the University Governor with the Universities.
5. The Partnership Governors are to be appointed by the Partnership Organisations, in accordance with a process agreed with the Secretary.

### **Appointment of Vice Chairman of the Council of Governors**

6. The Council of Governors shall appoint one of the Governors to be Vice Chairman of the Council of Governors.

### **Tenure for Appointed Governors**

7. An Appointed Governor:
  - 7.1 shall normally hold office for a period of three years commencing immediately after the Annual Members' Meeting at which his/her appointment is announced;
  - 7.2 shall be eligible for re-appointment at the end of his/her term;
  - 7.3 may not hold office for longer than ten consecutive years, and shall not be eligible for re-appointment if s/he has already held office for more than seven consecutive years.
8. For the purposes of the tenure provisions set out in paragraphs 7.1 to 7.3 above, a "year" means a period commencing immediately after the

conclusion of the Annual Members' Meeting, and ending at the conclusion of the next Annual Members' Meeting.

9. An Appointed Governor shall cease to hold office if the Appointing Organisation which appointed him/her terminates the appointment.

**Further provisions as to eligibility to be a Governor**

10. A person may not become a Governor of the Foundation Trust, and if already holding such office will immediately cease to do so, if:
  - 10.1 they are a Director of the Foundation Trust or a governor or director of an NHS Body (unless they are appointed by an Appointing Organisation which is an NHS Body);
  - 10.2 they are the spouse, Partner, parent or child of a member of the Board of Directors of the Foundation Trust;
  - 10.3 they are a member of a local authority's Scrutiny Committee covering health matters;
  - 10.4 they are a member of a Service Users' Forum unless that Service Users' Forum is a Partnership Organisation which has appointed them as a Partnership Governor;
  - 10.5 they have been previously removed as a Governor pursuant to paragraph 12 of this Annex 6.
  - 10.6 being a member of the Public Constituency or the Service Users' and Carers' Constituency, they refuse to sign a declaration in the form specified by the Secretary of particulars of their qualification to vote as a Member of the Foundation Trust, and that they are not prevented from being a member of the Council of Governors;
  - 10.7 they are subject to a Sex Offenders Order and/or their name is included in the Sex Offenders Register;
  - 10.8 they have within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with an NHS Body;
  - 10.9 they are a person whose tenure of office as the Chairman or as a member or director of an NHS Body has been terminated on the grounds that their appointment is not in the interests of the health service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest; and
  - 10.10 for an Elected Governor they must meet the eligibility requirement set out in paragraph 2 above.
11. A person holding office as a Governor shall immediately cease to do so if:

- 11.1 they resign by notice in writing to the Secretary;
  - 11.2 they fail to attend three consecutive meetings of the Council of Governors, unless the other Governors are satisfied that:
    - 11.2.1 the absences were due to reasonable causes; and
    - 11.2.2 they will be able to start attending meetings of the Council of Governors again within such a period as the other Governors consider reasonable;
  - 11.3 they have refused without reasonable cause to undertake any training which the Council of Governors requires all Governors to undertake;
  - 11.4 they have failed to sign and deliver to the Secretary a statement in the form required by the Secretary confirming acceptance of the code of conduct for Governors;
  - 11.5 they are removed from the Council of Governors under the following provisions.
12. A Governor may be removed from the Council of Governors by a resolution approved by not less than three-quarters of the remaining Governors present and voting at a meeting of the Council of Governors on the grounds that:
- 12.1 they have committed a serious breach of the code of conduct; or
  - 12.2 they have acted in a manner detrimental to the interests of the Foundation Trust; and
  - 12.3 the Council of Governors consider that it is not in the best interests of the Foundation Trust for them to continue as a Governor.

### **Vacancies amongst Governors**

- 13. Where a vacancy arises on the Council of Governors for any reason other than expiry of term of office, the following provisions will apply.
- 14. Where the vacancy arises amongst the Appointed Governors, the Secretary shall request that the Appointing Organisation appoints a replacement to hold office for the remainder of the term of office.
- 15. Where the vacancy arises amongst the Elected Governors, the Council of Governors shall be at liberty either:
  - 15.1 to call an election within three months to fill the seat for the remainder of that term of office; or
  - 15.2 to invite the next highest polling candidate for that seat at the most recent election, who is willing to take office, to fill the seat until the

next annual election, at which time the seat will fall vacant and subject to election for any unexpired period of the term of office; or

- 15.3 if the unexpired period of the term of office is less than three months, to leave the seat vacant until the next elections are held.

### **Further provisions as to meetings of Governors**

16. The Council of Governors is to meet at least four times in each Financial Year, including an annual meeting no later than 30<sup>th</sup> November in each Financial Year, when the Council of Governors is to receive and consider the Annual Accounts and any report of the Auditor on them and the Board of Directors is to present to the Council of Governors the Annual Report (the “Annual Governors’ Meeting”) in accordance with paragraph 36.1 of this Constitution. Save in the case of emergencies or the need to conduct urgent business, the Secretary shall give at least fourteen days written notice of the date and place of every meeting of the Council of Governors together with an agenda and any supporting papers to all Governors. Notice will also be published in a local newspaper or newspapers circulating in the area served by the Foundation Trust, and on the Foundation Trust’s website.
17. Meetings of the Council of Governors may be called by the Secretary, or by the Chairman, or by ten Governors (including at least two Elected Governors and two Appointed Governors) who give written notice to the Secretary specifying the business to be carried out. The Secretary shall send a written notice to all Governors as soon as possible after receipt of such a request. The Secretary shall call a meeting on at least fourteen but not more than twenty-eight days’ notice to discuss the specified business. If the Secretary fails to call such a meeting then the Chairman or ten Governors, whichever is the case, shall call such a meeting.
18. The quorum shall be at least fifty percent of the total members of the Council of Governors including at least:
  - 18.1 one Public Governor;
  - 18.2 one Staff Governor;
  - 18.3 one Appointed Governor; and
  - 18.4 three Service Users’ and Carers’ Governors.
19. The Council of Governors may invite the Chief Executive or any other member or members of the Board of Directors, or a representative of the auditor or other advisors to attend a meeting of the Council of Governors.
20. Members of the Council of Governors can participate in its meetings by two-way audio link including telephone, video or computer link (excepting email communication). Participation in a meeting in this manner shall be deemed to constitute presence in person at the meeting. Participation

must be throughout the discussion of any given item up and including the decision-point to enable governors to hear, contribute to and influence the debate.

21. Subject to the following provisions of this paragraph, questions arising at a meeting of the Council of Governors shall be decided by a majority of votes.
  - 21.1 In case of an equality of votes the person presiding at or chairing the meeting shall have a second and casting vote.
  - 21.2 No resolution of the Council of Governors shall be passed if it is opposed by all of the Public Governors and Service Users' and Carers' Governors present.
22. The Council of Governors may not delegate any of its powers to a committee or sub-committee, but it may appoint committees consisting of its members, Directors, and other persons to assist the Council of Governors in carrying out its functions. The Council of Governors may, through the Secretary, request that advisors assist them or any committee they appoint in carrying out its duties.
23. All decisions taken in good faith at a meeting of the Council of Governors or of any committee shall be valid even if it is discovered subsequently that there was a defect in the calling of the meeting, or the appointment of the Governors attending the meeting.

### **Declaration**

24. 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 Secretary of the particulars of their qualification to vote as a Member of the Foundation Trust and that they are not prevented from being a member of the Council of Governors. An Elected Governor shall be deemed to have confirmed the declaration upon attending any subsequent meeting of the Council of Governors, and every agenda for meetings of the Council of Governors will draw this to the attention of Elected Governors.



## **ANNEX 7 ADDITIONAL PROVISIONS BOARD OF DIRECTORS**

(Paragraphs 20.4, 21.3, and 24.3)

### **Appointment and Removal of Chairman and other Non-Executive directors**

1. Non-Executive Directors are to be appointed by the Council of Governors using the following procedure.
  - 1.1 The Council of Governors will maintain a policy for the composition of the Non-Executive Directors, and which they shall review from time to time and not less than every three years.
  - 1.2 The Board of Directors will work with an external organisation recognised as expert at appointments to identify the skills and experience required for Non-Executive Directors.
  - 1.3 Appropriate candidates (not more than five for each vacancy) will be identified by a Nominations Committee through a process of open competition, which take account of the policy maintained by the Council of Governors and the skills and experience required.
  - 1.4 The Nominations Committee will comprise the Chairman of the Foundation Trust (or, when a Chairman is being appointed, the Deputy Chairman unless s/he is standing for appointment, in which case another Non-Executive Director), two Elected Governors and one Appointed Governor. The chairman of another foundation trust will be invited to act as an independent assessor to the Nominations Committee.
  - 1.5 The Nominations Committee will be brought together at the commencement of each appointment process. Its membership will be determined at that point in accordance with paragraph 1.4 above.
2. The removal of the Chairman or another Non-Executive Director shall be in accordance with the following procedures:
  - 2.1 any proposal for removal must be proposed by a Governor and seconded by not less than ten Governors including at least two Elected Governors and two Appointed Governors;
  - 2.2 written reasons for the proposal shall be provided to the Non-Executive Director in question, who shall be given the opportunity to respond to such reasons;
  - 2.3 in making any decision to remove a Non-Executive Director, the Council of Governors shall take into account the annual appraisal carried out by the Chairman; and

- 2.4 if any proposal to remove a Non-Executive Director is not approved at a meeting of the Council of Governors, no further proposal can be put forward to remove such Non-Executive Director based upon the same reasons within 12 months of the meeting.

### **Further provisions as to disqualification of Directors**

3. A person may not become or continue as a Director of the Foundation Trust if:
  - 3.1 they are a member of the Council of Governors, or (unless the Board of Directors so agrees) a governor or director of an NHS Body;
  - 3.2 they are a member of the Foundation Trusts' Patient's Forum (or any successor organisation);
  - 3.3 they are the spouse, Partner, parent or child of a member of the Board of Directors of the Foundation Trust;
  - 3.4 they are a member of a local authority's Scrutiny Committee covering health matters;
  - 3.5 they are the subject of a disqualification order made under the Company Directors Disqualification Act 1986;
  - 3.6 they are a person whose tenure of office as a Chairman or as a member or director of an NHS Body has been terminated on the grounds that their appointment is not in the interests of the health service, for non attendance at meetings, or for non-disclosure of a pecuniary interest;
  - 3.7 they have within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with an NHS Body;
  - 3.8 in the case of a Non-Executive Director they have refused without reasonable cause to fulfill any training requirement established by the Board of Directors; or
  - 3.9 they have refused to sign and deliver to the Secretary a statement in the form required by the Board of Directors confirming acceptance of the code of conduct for Directors.

### **Meetings of the Board of Directors**

4. Save in the case of emergencies or the need to conduct urgent business, the Secretary shall give to all Directors at least fourteen days written notice of the date and place of every meeting of the Board of Directors.
5. Held at least four times in every Financial Year, the meeting of the Board of Directors shall be open to members of the public. Members of the public

may be excluded from a meeting for special reasons by resolution of the Board of Directors on the grounds that publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted or for the other special reasons stated in the resolution and arising from the business or nature of the proceedings.

6. Meetings of the Board of Directors may be called by the Secretary, or by the Chairman, or by four Directors who give written notice to the Secretary specifying the business to be carried out. The Secretary shall send a written notice to all Directors as soon as possible after receipt of such a request. The Secretary shall call a meeting on at least fourteen but not more than twenty-eight days' notice to discuss the specified business. If the Secretary fails to call such a meeting then the Chairman or four Directors, whichever is the case, shall call such a meeting.
7. Subject to the provisions of paragraph 26 of this Constitution, five Directors including not less than two Executive Directors (one of whom must be the Chief Executive or the Deputy Chief Executive and not less than three Non-Executive Directors (one of whom must be the Chairman or the Deputy Chairman of the Board of Directors) shall form a quorum.
8. The Board of Directors may agree that its members can participate in its meetings by telephone, video or computer link. Participation in a meeting in this manner shall be deemed to constitute presence in person at the meeting.
9. The Chairman of the Foundation Trust or, in their absence, the Deputy Chairman of the Board of Directors, is to chair meetings of the Board of Directors.
10. Subject to the following provisions of this paragraph, questions arising at a meeting of the Board of Directors shall be decided by a majority of votes.
  - 10.1 in case of an equality of votes the Chairman shall have a second and casting vote; and
  - 10.2 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.

## **Expenses**

11. The Foundation Trust may reimburse Executive Directors travelling and other costs and expenses incurred in carrying out their duties at such rates as the remuneration committee of Non-Executive Directors decides. These are to be disclosed in the Annual Report.
12. The remuneration and allowances for Directors are to be disclosed in bands in the Annual Report.

## **ANNEX 8 STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE COUNCIL OF GOVERNORS**

(Paragraph 15)

### **1 INTERPRETATION**

In these Standing Orders:

- (a) unless the context otherwise requires, the following expressions have the following meanings:

“the Board”	means the board of directors of the Foundation Trust;
“the Chair”	means the Chairman of the Foundation Trust, or, in relation to the function of presiding at or chairing a meeting where another person is carrying out that role as required by the Constitution, such person;
“the Constitution”	means the constitution of the Foundation Trust as amended from time to time;
“the Council”	means the Council of Governors of the Foundation Trust;
“the Foundation Trust”	means Cheshire and Wirral Partnership NHS Foundation Trust;
“Meeting”	means a duly convened meeting of the Council;
“Agenda Item”	means an item from a Governor or Governors (notice of which has been given pursuant to Standing Order 7) about a matter over which the Council has powers or duties or which affects the services provided by the Foundation Trust;
“Secretary”	means the Secretary of the Foundation Trust or any other person appointed to perform the duties of the Secretary, including a joint, assistant or deputy secretary;

- (b) other terms defined in the Constitution shall have the same meaning in these Standing Orders.

## **2 THESE STANDING ORDERS**

These Standing Orders for the Practice and Procedures of the Council of Governors are the standing orders referred to in paragraph 15 of the Constitution. They may be amended in accordance with the procedure set out in Standing Order 19 below. If there is any conflict between these Standing Orders and the Constitution, the Constitution shall prevail.

## **3 MEETINGS**

Meetings of the Council shall be held at regular intervals, at least four times per year, including the Annual Governors' Meeting, at such times and places as the Chair may determine. The Secretary will publish the dates, times and locations of meetings of the Council for the year 6 months in advance. Other, or emergency, meetings of the Council may be called in accordance with the Constitution.

## **4 AGENDAS AND PAPERS**

An agenda, copies of any agenda items on notice and/or motions on notice to be considered at the relevant Meeting and any supporting papers shall be sent to each Governor so as to arrive with each Governor normally no later than 7 days in advance of each Meeting. Minutes of the previous Meeting will be circulated with these papers for approval and this will be a specific agenda item.

## **5 REPORTS FROM THE EXECUTIVE DIRECTORS**

At any Meeting a Governor may ask any question through the Chair without notice on any report by an Executive Director, or other officer of the Foundation Trust, after that report has been received by or while such report is under consideration by the Council at the Meeting. Unless the Chair decides otherwise no statements will be made other than those which are strictly necessary to define any question posed and in any event no statements will be allowed to last longer than 3 minutes each. A Governor who has put such a question may also put one supplementary question if the supplementary question arises directly out of the reply given to the initial question. The Chair may, in its absolute discretion, reject any question from any Governor if in the opinion of the Chair the question is substantially the same and relates to the same subject matter as a question which has already been put to that Meeting or a previous Meeting. At the absolute discretion of the Chair, questions may, at any Meeting which is held in public, be asked of the Executive Directors present by Members of the Foundation Trust or any other members of the public present at the Meeting.

**6 AGENDA ITEM ON NOTICE AT MEETINGS**

Subject to the provisions of Standing Order 7, a Governor may ask for an Agenda item on Notice of:

- (a) the Chair;
- (b) another Governor;
- (c) an Executive Director of the Foundation Trust;
- (d) the chair of any sub-committee or working group of the Council.

**7 NOTICE OF AGENDA ITEM**

Notice of an Agenda item on Notice must be given in writing to the Secretary at least 14 days prior to the relevant Meeting. For the purposes of this Standing Order 7, receipt of any such Agenda item on Notice via electronic means is acceptable.

**8 RESPONSE TO AN AGENDA ITEM ON NOTICE**

An answer to an Agenda item on Notice may take the form of:

- (a) a direct oral answer at the relevant Meeting (which may, where the desired information is in a publication of the Foundation Trust or other published work, take the form of a reference to that publication);
- (b) where the reply cannot conveniently be given orally at the relevant Meeting, a written answer which will be circulated as soon as reasonably practicable to the questioner and to the other Governors with the agenda for the next Meeting; or
- (c) a brief oral answer at the relevant Meeting supplemented by a written answer circulated as soon as reasonably practicable to the questioner and to the other Governors with the agenda for the next Meeting.

**9 SUPPLEMENTARY QUESTIONS IN RESPECT OF AN AGENDA ITEM ON NOTICE**

Supplementary questions for the purpose of clarification of a reply to an Agenda item on Notice may be asked at the absolute discretion of the Chair.

**10 MOTIONS ON NOTICE**

- (a) Notice

Subject to Standing Order 11, a motion may only be submitted by Governors and must be received by the Secretary in writing at least 14 days prior to the Meeting at which it is proposed to be considered, together with any relevant supporting papers. Except for motions which can be moved without notice under Standing Order 11, the notice of every motion must be signed or transmitted by at least two Governors. For the purposes of this Standing Order 10, receipt of any such motions via electronic means is acceptable. All motions received by the Secretary will be acknowledged by the Secretary in writing to the Governors who have signed or transmitted the same.

(b) Scope

Motions may only be about matters for which the Council has a responsibility or which affect the services provided by the Foundation Trust.

**11 MOTIONS WITHOUT NOTICE**

The following motions may be moved at any Meeting without notice:

- (a) in relation to the accuracy of the minutes of the previous Meeting;
- (b) to change the order of business in the agenda for the Meeting;
- (c) to refer a matter discussed at a Meeting to an appropriate body or individual;
- (d) to appoint a working group arising from an item on the agenda for the Meeting;
- (e) to receive reports or adopt recommendations made by the Board of Directors;
- (f) to withdraw a motion;
- (g) to amend a motion;
- (h) to proceed to the next business on the agenda;
- (i) that the question be now put;
- (j) to adjourn a debate;
- (k) to adjourn a Meeting;
- (l) to suspend a particular Standing Order contained within these Standing Orders (provided that any Standing Order may only be suspended if at least one half of the aggregate number of Governors

are present at the Meeting in question and provided also that the Standing Order in question may only be suspended for the duration of the Meeting in question);

- (m) to exclude the public and press from the Meeting in question (the motion shall be “To exclude the press and public from the remainder of the Meeting, owing to the confidential nature of the business to be transacted.”);
- (n) to not hear further from a Governor, or to exclude them from the Meeting in question (if a Governor persistently disregards the ruling of the Chair or behaves improperly or offensively or deliberately obstructs business, the Chair, in its absolute discretion, may move that the Governor in question be not heard further at the Meeting in question. If seconded, the motion will be voted on without discussion. If the Governor continues to behave improperly after such a motion is carried, the Chair may move that either the Governor leaves the meeting room or that the Meeting in question is adjourned for a specified period. If seconded, the motion will be voted on without discussion);
- (o) to give the consent of the Council to any matter where its consent is required pursuant to the Constitution.

## 12 URGENT MOTIONS AND AGENDA ITEMS

Urgent motions or agenda items may only be submitted by a Governor and must be received by the Secretary in writing before the commencement of the Meeting in question. The Chair shall decide whether the motion or agenda item in question should be tabled.

## 13 ANY OTHER BUSINESS

There will not be an agenda item entitled “Any Other Business”. Instead, there will an item for “Motions or Agenda Items on Notice”, (which are subject to the other provisions of these Standing Orders). There will be another item for “Urgent Motions or Agenda Items”, (which are subject to Standing Order 12).

## 14 SPEAKING

This Standing Order applies to all forms of speech/debate by Governors or Members of the Foundation Trust and the public in relation to the motion or question under discussion at a Meeting.

- (a) Content and Length of Speeches

Any approval to speak must be given by the Chair. Speeches must be directed to the matter, motion or question under discussion or to a point of order. Unless in the opinion of the Chair it would not be



desirable or appropriate to time limit speeches on any topic to be discussed having regard to its nature complexity or importance, no proposal, speech, nor any reply, may exceed three minutes. In the interests of time the Chair may, in its absolute discretion, limit the number replies questions or speeches which are heard at any one Meeting.

(b) When a person may speak again

A person who has already spoken on a matter at a Meeting may not speak again at that Meeting in respect of the same matter, except:

- (i) in exercise of a right of reply;
- (ii) on a point of order.

(c) Identification

All speakers must state their name and role before starting to speak to ensure the accuracy of the minutes.

15 **VOTING**

All questions put to the vote shall, at the discretion of the Chair, be decided by a show of hands. A paper ballot may be used if a majority of the Governors present so request.

16 **ATTENDANCE**

Governors who are unable to attend a Meeting shall notify the Secretary in writing in advance of the Meeting in question so that their apologies may be submitted.

17 **QUORUM**

The quorum for a Meeting will be as set out in the Constitution.

18 **CHAIR**

The arrangements for presiding at or chairing meetings of the Council of Governors are set out in the Constitution.

19 **AMENDMENTS TO STANDING ORDERS**

These Standing Orders may only be amended at a Meeting. A motion to change the Standing Orders must be signed by five Governors and submitted to the Secretary in writing at least 21 days before the Meeting at which the motion is intended to be proposed.

20 **DISPUTE BETWEEN THE COUNCIL AND THE BOARD**

Subject to paragraph 15A of this Constitution, in the event of any unresolved dispute between the Council and the Board, the Chair or the Secretary may arrange for independent professional advice to be obtained for the Foundation Trust. The Chair may also initiate an independent review to investigate and make recommendations in respect of how the dispute may be resolved.

## **ANNEX 9 STANDING ORDERS FOR THE PRACTICE AND PROCEDURES OF THE BOARD OF DIRECTORS OF CHESHIRE AND WIRRAL PARTNERSHIP NHS FOUNDATION TRUST**

### **1 INTERPRETATION**

In these Standing Orders:

- (a) unless the context otherwise requires, the following expressions have the following meanings:

“Board of Directors”	means the Board of Directors of the Foundation Trust as constituted in accordance with this Constitution;
“Chairman”	means the person appointed in accordance with this Constitution;
“the Constitution”	means the constitution of the Foundation Trust as amended from time to time;
“Council of Governors”	means the Council of Governors of the Foundation Trust as constituted in accordance with this Constitution;
“the Foundation Trust”	means Cheshire and Wirral Partnership NHS Foundation Trust;
“Meeting”	means a duly convened meeting of the Board;
“Agenda items”	means an item from a Board Member (notice of which has been given) about a matter over which the Board has powers or duties or which affects the services provided by the Foundation Trust;
“Secretary”	means the Secretary of the Foundation Trust or any other person appointed to perform the duties of the Secretary, including a joint, assistant or deputy secretary;
“the Accounting Officer”	means the person who from time to time discharges the functions specified in paragraph 25(5) of Schedule 7 to the 2006 Act;

- (b) other terms defined in the Constitution shall have the same meaning in these Standing Orders.

## **2 THESE STANDING ORDERS**

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

These Standing Orders for the Practice and Procedures of the Board of Directors are the standing orders referred to in paragraph 25 of the Constitution. They may be amended in accordance with the procedure set out in Standing Order 15 below. If there is any conflict between these Standing Orders and the Constitution, the Constitution shall prevail.

## **3. COMPOSITION OF THE BOARD**

The composition of the Board of Directors will be as detailed in the Constitution.

## **4. TERMS OF OFFICE**

Regulations governing the eligibility, the appointment, removal and terms of office of the directors are contained within the Constitution.

## **5. MEETINGS**

Ordinary meetings of the Board of Directors shall be held at regular intervals at such times and places as the Board may determine. The Secretary will publish the dates, times and locations of meetings of the Board in advance. Other, or emergency, meetings of the Board may be called in accordance with the Constitution.

Meetings of the Board of Directors shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons by resolution of the Board of Directors on the grounds that publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted or for the other special reasons stated in the resolution and arising from the business or nature of the proceedings.

## **6. CALLING MEETINGS**

Meetings of the Board of Directors may be called by the Secretary, or by the Chairman, or by four Directors who have given written notice to the Secretary specifying the business to be carried out as detailed in the Constitution.

Save in the case of emergencies or the need to conduct urgent business, the Secretary shall give to all Directors at least fourteen days written notice of the date and place of every meeting of the Board of Directors.

An agenda, copies of any Agenda Items and any supporting papers shall be sent to each Director so as to arrive with each Director normally no later than 7 days in advance of each Meeting. Minutes of the previous Meeting will be circulated with these papers for approval and this will be a specific agenda item.

Before each meeting being held in public, the notice of the date, time and venue of the meeting shall be publicised at least 7 days in advance of the meeting.

Before holding a Meeting, the Board of Directors must send a copy of the agenda of the Meeting to the Council of Governors. As soon as practicable after holding a Meeting, the Board of Directors must send a copy of the minutes of the Meeting to the Council of Governors.

## **7. SETTING THE AGENDA**

There should be a formal schedule of matters specifically reserved for decision by the board of directors.

The Board of Directors may determine that certain matters shall appear on every agenda for a meeting of the Foundation Trust and shall be addressed prior to any other business being conducted. The Board of Directors may agree an annual cycle of business which will change from time to time and will be used to inform the agenda.

A Director desiring a matter to be included on the agenda shall make their request to the Chairman and the Secretary at least 10 days in advance of the meeting. Requests made less than 10 days before a meeting may be included at the discretion of the Chairman.

## **8. CHAIRING THE MEETING**

The Chairman of the NHS Foundation Trust shall normally chair the meeting. In the absence of the Chairman, then the Deputy Chairman will chair the meeting. If both are incapacitated or unable to attend a properly called meeting of the Board, then the Directors at the meeting will nominate a Non-Executive Director chair for the duration of the meeting.

## **9. REPORTS FROM THE EXECUTIVE DIRECTORS**

At any Meeting a Director may ask any question through the Chair without notice on any report by an Executive Director, or other officer of the Foundation Trust, after that report has been received by or while such report is under consideration by the Board at the Meeting. The Chair may, in its absolute discretion, reject any question from any Director if in the opinion of the Chair the question is substantially the same and relates to

the same subject matter as a question which has already been put to that Meeting or a previous Meeting.

10. **CHAIRMAN'S RULING**

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

11. **VOTING**

All questions put to the vote shall, at the discretion of the Chair, be decided by a show of hands. A paper ballot may be used if a majority of the Directors present so request. In case of an equality of votes the Chairman shall have a second and casting vote.

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.

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

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

12. **ATTENDANCE**

The Board of Directors may agree that Directors can participate in its meetings by telephone, video or computer link. Participation in a meeting in this manner shall be deemed to constitute presence in person at the meeting.

Directors who are unable to attend a Meeting shall notify the Secretary in writing in advance of the Meeting in question so that their apologies may be submitted.

13. **QUORUM**

Subject to the provisions of paragraph 26 of this Constitution, five Directors including not less than two Executive Directors (one of whom must be the Chief Executive or the Deputy Chief Executive and not less than three Non-

Executive Directors (one of whom must be the Chairman or the Deputy Chairman of the Board of Directors, or other nominated Non-Executive Director in accordance with Standing Order 8) shall form a quorum.

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

Subject to the provisions of paragraph 26 of this Constitution, if a director has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of declaration of a conflict of interests, they 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.

#### **14. MINUTES**

The Minutes of the proceedings of a meeting shall be drawn up and submitted for agreement at the next ensuing meeting where they will be signed by the person presiding at it.

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

The names of those in attendance at the meetings shall be recorded.

#### **15. AMENDMENTS TO STANDING ORDERS**

These Standing Orders may only be amended following Board approval.

#### **16. DISPUTE BETWEEN THE BOARD AND THE COUNCIL**

In the event of any unresolved dispute between the Board and the Council, the Chair or the Secretary may arrange for independent professional advice to be obtained for the Foundation Trust. The Chair may also initiate an independent review to investigate and make recommendations in respect of how the dispute may be resolved.

#### **17. DELEGATION**

Subject to the Scheme of Reservation and Delegation, and such directions as may be given by Statute, NHS Improvement or the Secretary of State, the Board may make arrangements for the exercise, on behalf of the Foundation Trust, of any of its functions by a committee or sub-committee, or by a Director or an officer of the Foundation Trust in each case subject to such restrictions and conditions as the Board thinks fit.

S16B of the NHS Act 1977 allows for regulations to provide for the functions of Trusts to be carried out for the Trust by third parties.

Where a function is delegated by these regulations to another NHS Body, the Foundation Trust has responsibility to ensure that the proper delegation is in place. In other situations, i.e. delegation to committees, sub-committees or officers, the Foundation Trust retains full responsibility.

## **18. EMERGENCY POWERS**

The powers which the Board has retained to itself within these Standing Orders may in emergency be exercised by the Chief Executive and the Chairman after having consulted at least two Non-Executive Directors. The exercise of such powers by the Chief Executive and Chairman shall be reported to the next formal meeting of the Board in public session for ratification.

## **19. 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, and annexed within the Corporate Governance Manual. No executive powers may be delegated by a committee to a sub-committee without express authority by the Board.

## **20. DELEGATION TO OFFICERS**

Those functions of the Foundation Trust which have not been retained as reserved by the Board or delegated to an executive committee or sub-committee shall be exercised on behalf of the Board by the Chief Executive. The Chief Executive shall determine which functions they will perform personally and shall nominate officers to undertake the remaining functions for which they will still retain accountability to the Board.

The Chief Executive shall prepare a Scheme of Reservation and Delegation identifying proposals which shall be considered and approved by the Board, subject to any amendment agreed during the discussion. The Chief Executive may periodically propose amendment to the Scheme of Reservation and Delegation which shall be considered and approved by the Board as indicated above.

Nothing in the Scheme of Reservation and Delegation shall impair the discharge of the direct accountability to the Board or the Director of Finance or of any other Executive Director to provide information and advise the Board in accordance with any statutory requirements. Outside these statutory requirements the roles of the Director of finance shall be accountable to the Chief Executive for operational matters.



The arrangements made by the Board as set out in the "Scheme of Reservation and Delegation" shall have effect as if incorporated in these Standing Orders.

**21. DECLARATIONS OF INTERESTS AND REGISTER OF INTERESTS**

As detailed in the Constitution.

## **ANNEX10 ADDITIONAL PROVISIONS MEMBERS**

(Paragraphs 9A and 9.3)

### **1. DISQUALIFICATION FROM MEMBERSHIP**

- 1.1 An individual may not become a Member of the Foundation Trust if they are under 11 years of age.
- 1.2 This provision applies to any person who within the last five years has been involved as a perpetrator in a serious incident of violence at any of the Foundation Trust's hospitals or facilities or against any of the Foundation Trust's employees or other persons who exercise functions for the purposes of the Foundation Trust, or against any registered volunteer. Any such person may be refused or expelled from membership of the Foundation if the Board of Directors considers that it is not in the best interests of the Foundation Trust for them to become or remain a Member.

### **2. TERMINATION OF MEMBERSHIP**

- 2.1 A Member shall cease to be a Member if:
  - 2.1.1 they resign by notice to the Secretary;
  - 2.1.2 they die;
  - 2.1.3 they are expelled from membership under this Constitution;
  - 2.1.4 they cease to be entitled under this Constitution to be a member of the Public Constituency or the Service Users' and Carers' Constituency or of any of the classes of the Staff Constituency;
  - 2.1.5 it appears to the Secretary that they no longer wish to be a Member of the Foundation Trust, and after enquiries made in accordance with a process approved by the Council of Governors, they fail to demonstrate that they wish to continue to be a Member of the Foundation Trust.
- 2.2 A Member may be expelled by a resolution approved by not less than two-thirds of the Governors present and voting at General Meeting. The following procedure is to be adopted:
  - 2.2.1 any Member may complain to the Secretary that another Member has acted in a way detrimental to the interests of the Foundation Trust;

- 2.2.2 if a complaint is made, the Council of Governors may itself consider the complaint having taken such steps as it considers appropriate to ensure that each Member's point of view is heard and may either:
  - 2.2.2.1 dismiss the complaint and take no further action;
  - 2.2.2.2 for a period not exceeding twelve months suspend the rights of the Member complained of to attend members' meetings and vote under this Constitution; and/or
  - 2.2.2.3 arrange for a resolution to expel the Member complained of to be considered at the next Annual Governors' Meeting of the Council of Governors;
- 2.2.3 if a resolution to expel a Member is to be considered at a Annual Governors' Meeting of the Council of Governors, details of the complaint must be sent to the Member complained of not less than one calendar month before the meeting with an invitation to answer the complaint and attend the meeting;
- 2.2.4 at the meeting the Council of Governors will consider evidence in support of the complaint and such evidence as the Member complained of may wish to place before them; and
- 2.2.5 if the Member complained of fails to attend the meeting without due cause the meeting may proceed in their absence.
- 2.3 A person expelled from membership will cease to be a Member upon the declaration by the Chairman of the meeting that the resolution to expel them is carried.
- 2.4 No person who has been expelled from membership is to be re-admitted except by a resolution carried by the votes of two-thirds of the Council of Governors present and voting at a General Meeting.

### 3. **MEMBERS' MEETINGS**

- 3.1 The Foundation Trust shall hold an annual meeting of its members (called the Annual Members' Meeting) within nine months of the end of each Financial Year. The Annual Members Meeting shall be open to the members of the public.
- 3.2 Any members' meetings other than the Annual Members' Meeting shall be called Special Members' Meetings.

- 3.3 Special Members' Meetings are open to all Members of the Foundation Trust, Governors and Directors, and representatives of the Foundation Trust's Auditor, 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 Foundation Trust to attend.
- 3.4 All members' meetings are to be convened by the Secretary by order of the Council of Governors.
- 3.5 The Foundation Trust shall make provision for either the Annual Members' Meeting and/or the Special Members' Meeting to be held at different venues whether simultaneously or at different times. In making such provision the Council of Governors shall also fix an appropriate quorum for each venue, provided that the aggregate of the quorum requirements shall not be less than the quorum set out below.
- 3.6 At the Annual Members' Meeting:
- 3.6.1 the Board of Directors shall present to the members:
    - 3.6.1.1 the Annual Accounts;
    - 3.6.1.2 any report of the Auditor on them;
    - 3.6.1.3 any report of any other external auditor of the Foundation Trust's affairs;
    - 3.6.1.4 the Forward Plan; and
    - 3.6.1.5 the Annual Report.
  - 3.6.2 the Council of Governors shall present to the Members a report on:
    - 3.6.2.1 steps taken to secure that (taken as a whole) the actual membership of the Public Constituency, of the Service Users' and Carers' Constituency and of the classes of the Staff Constituency is representative of those eligible for such membership;
    - 3.6.2.2 the progress of the membership strategy; and
    - 3.6.2.3 any proposed changes to the policy for the composition of the Council of Governors and of the Non-Executive Directors.

- 3.6.3 the results of the election and appointment of Governors and the appointment of Non-Executive Directors will be announced.
- 3.7 Notice of the Annual Members' Meeting or a Special Members' Meeting is to be given:
- 3.7.1 by notice to all Members;
- 3.7.2 by notice prominently displayed at the Foundation Trust's head office and at all of the Foundation Trust's places of business; and
- 3.7.3 by notice on the Foundation Trust's website.
- at least 14 clear days before the date of the meeting. The notice must:
- 3.7.4 be given to the Council of Governors and the Board of Directors, and to the Auditor;
- 3.7.5 state whether the meeting is an Annual Members' Meeting or a Special Members' Meeting;
- 3.7.6 give the time, date and place of the meeting; and
- 3.7.7 indicate the business to be dealt with at the meeting.
- 3.8 Before an Annual Members' Meeting and/or a Special Members' Meeting can do business there must be a quorum present. Except where this Constitution says otherwise a quorum is one Member present from each of the Foundation Trust's constituencies.
- 3.9 The Foundation Trust may make arrangements for Members to vote at an Annual Members' Meeting or a Special Members' Meeting by post, or by using electronic communications.
- 3.10 It is the responsibility of the Council of Governors, the Chairman of the meeting and the Secretary to ensure that at any Annual Members' Meeting or a Special Members' Meeting:
- 3.10.1 the issues to be decided are clearly explained;
- 3.10.2 sufficient information is provided to Members to enable rational discussion to take place.
- 3.11 The Chairman of the Foundation Trust, or in their absence the Deputy Chairman of the Board of Directors, shall act as chairman at all Annual Members' Meetings or a Special Members' Meetings of the Foundation Trust. If neither the Chairman nor the Deputy Chairman of the Board of Directors is present, the members of the Council of Governors present shall elect one of their number to be

chairman of either the Annual Members' Meeting or a Special Members' Meeting and if there is only one Governor present and willing to act that person shall be Chairman.

- 3.12 If no quorum is present within half an hour of the time fixed for the start of either the Annual Members' Meeting or a Special Members' 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.
- 3.13 A resolution put to the vote at an Annual Members' Meeting or a Special Members' Meeting shall be decided upon by a poll.
- 3.14 Every Member present and every Member who has voted by post or using electronic communications is to have one vote. In the case of an equality of votes the Chairman of the meeting is to have a second and casting vote.
- 3.15 The result of any vote will be declared by the Chairman and entered in the minute book. The minute book will be conclusive evidence of the result of the vote.

## **ANNEX 11 FURTHER PROVISIONS**

### **1. COMMITMENTS**

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

#### **Representative membership**

- 1.2 The Foundation Trust shall at all times strive to ensure that taken as a whole its actual membership is representative of those eligible for membership. To this end:

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

1.2.2 the Council of Governors shall present at each Annual Members' Meeting a report on:

1.2.2.1 steps taken to secure that (taken as a whole) the actual membership of the Public Constituency, of the Service Users' and Carers' Constituency and of the classes of the Staff Constituency is representative of those eligible for such membership;

1.2.2.2 the progress of the membership strategy; and

1.2.2.3 any changes to the membership strategy.

#### **Co-operation with NHS bodies and local authorities**

- 1.3 In exercising its functions the Foundation Trust shall co-operate with NHS bodies and local authorities.

#### **Openness**

- 1.4 In conducting its affairs, the Foundation Trust shall have regard to the need to provide information to Members and conduct its affairs in an open and accessible way.

#### **Prohibiting distribution**

- 1.5 The profits or surpluses of the Foundation Trust are not to be distributed either directly or indirectly in any way at all among Members of the Foundation Trust.

## 2. **FRAMEWORK**

2.1 The affairs of the Foundation Trust are to be conducted by the Board of Directors, the Council of Governors and the Members in accordance with the Regulatory Framework. The Members, the Council of Governors and the Board of Directors are to have the roles and responsibilities set out in this Constitution.

### **Members**

2.2 Members may attend and participate at members' meetings, vote in elections to, and stand for election, to the Council of Governors, and take such other part in the affairs of the Foundation Trust as is provided in this Constitution.

### **Council of Governors**

2.3 The further roles and responsibilities of the Council of Governors, which are to be carried out in accordance with the Regulatory Framework, are:

2.3.1 at a General Meeting:

2.3.1.1 to appoint or remove the Chairman and the other Non-Executive Directors;

2.3.1.2 to approve an appointment (by the Non-Executive Directors) of the Chief Executive;

2.3.1.3 to decide the remuneration and allowances, and the other terms and conditions of office, of the Non-Executive Directors;

2.3.1.4 to appoint or remove the Foundation Trust's auditor;

2.3.1.5 to appoint or remove any other external auditor appointed to review and publish a report on any other aspect of the Foundation Trust's affairs;

2.3.1.6 to be presented with the Annual Accounts, any report of the auditor on them and the Annual Report;

2.3.2 to provide their views to the Board of Directors when the Board of Directors is preparing the document containing information about the Foundation Trust's forward planning;

2.3.3 to respond as appropriate when consulted by the Board of Directors in accordance with this Constitution;



- 2.3.4 to undertake such functions as the Board of Directors shall from time to time request;
- 2.3.5 to prepare and from time to time review the Foundation Trust's membership strategy and its policy for the composition of the Council of Governors and of the Non-Executive Directors and when appropriate to make recommendations for the revision of this Constitution.
- 2.4 The Council of Governors may elect a Lead Governor and Deputy Lead Governor(s). The detail of the process for doing so is set out in the Role Specification.
- 2.5 Provisions for the roles and responsibilities of the Lead Governor and the Deputy Lead Governor(s) are also detailed in the Role Specification.

### **Board of Directors**

- 2.6 The business of the Foundation Trust is to be managed by the Board of Directors, who shall exercise all the powers of the Foundation Trust, subject to any contrary provisions of the 2006 Act as given effect by this Constitution.

## **3. SECRETARY**

- 3.1 The Foundation Trust shall have a Secretary who may be an employee. The Secretary may not be a Governor, or the Chief Executive or the Finance Director. The Secretary's functions shall include:
  - 3.1.1 acting as Secretary to the Council of Governors and the Board of Directors, and any committees;
  - 3.1.2 summoning and attending all members' meetings, meetings of the Council of Governors and the Board of Directors, and keeping the minutes of those meetings;
  - 3.1.3 keeping the register of Members and other registers and books required by this Constitution to be kept;
  - 3.1.4 having charge of the Foundation Trust's seal;
  - 3.1.5 publishing to Members in an appropriate form information which they should have about the Foundation Trust's affairs;
  - 3.1.6 preparing (or ensuring the preparation of) and sending to NHS Improvement and any other statutory body, all returns which are required to be made.

- 3.2 Minutes of every members' meeting, of every meeting of the Council of Governors and of every meeting of the Board of Directors are to be kept. Minutes of meetings will be read at the next meeting and signed by the Chairman of that meeting. The signed minutes will be conclusive evidence of the events of the meeting.
- 3.3 The Secretary is to be appointed and removed by the Board of Directors, in consultation with the Council of Governors.
- 3.4 The Board of Directors of the applicant NHS Trust shall appoint the first Secretary of the Foundation Trust.

4. **FURTHER PROVISIONS AS TO AUDITOR AND OTHER EXTERNAL AUDITORS**

- 4.1 A person may only be appointed as the Auditor if they (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.
- 4.2 An officer of the Audit Commission may be appointed as Auditor with the agreement of the Audit Commission. Where an officer of the Audit Commission is appointed as Auditor, the Commission is to charge the Foundation Trust such fees for their services as will cover the full cost of providing them.
- 4.3 The Auditor is to carry out their duties in accordance with Schedule 10 to the 2006 Act and in accordance with any directions given by NHS Improvement on standards, procedures and techniques to be adopted.
- 4.4 The Board of Directors may resolve that external auditors be appointed to review and publish a report on any other aspect of the Foundation Trust's performance. Any such external auditors are to be appointed by the Council of Governors.

5. **INDEMNITY**

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

## 6. **DISPUTE RESOLUTION PROCEDURES**

6.1 Every unresolved dispute which arises out of this Constitution between the Foundation Trust and:

6.1.1 a Member; or

6.1.2 any person aggrieved who has ceased to be a Member within the six months prior to the date of the dispute; or

6.1.3 any person bringing a claim under this Constitution; or

6.1.4 an office-holder of the Foundation Trust

is to be submitted to an arbitrator agreed by the parties or in the absence of agreement to be nominated by the President of the Law Society. The arbitrator's decision will be binding and conclusive on all parties.

6.2 Any person bringing a dispute must, if required to do so, deposit with the Foundation 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.

## 7. **DISSOLUTION**

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

## 8. **HEAD OFFICE**

The Foundation Trust's head office is at Redesmere, Countess of Chester Health Park, Liverpool Road, Chester CH2 1BQ or such other place as the Board of Directors shall decide.

## 9. **NOTICES**

9.1 Any notice required by this Constitution to be given shall be given in writing or shall be given using electronic communications to an address for the time being notified for that purpose. "Address" in relation to electronic communications includes any number or address used for the purposes of such communications.

9.2 Proof that an envelope containing a notice was properly addressed, prepaid and posted shall be conclusive evidence that the notice was given. A notice shall be treated as delivered 48 hours after the envelope containing it was posted or, in the case of a notice contained in an electronic communication, 48 hours after it was sent.

