

**Birmingham Women's and Children's NHS Foundation Trust**

**Core Constitution**

**December 2016**

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## 1. Interpretation and definitions

Unless otherwise stated, words or expressions contained in this constitution shall bear the same meaning as in the National Health Service Act 2006 as amended by the Health and Social Care Act 2012

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

- **The 2006 Act** is the National Health Service Act 2006.
- **The 2012 Act** is the Health and Social Care Act 2012.
- **Annual Members Meeting** is defined in paragraph 13 of the constitution
- **Constitution** means this constitution and all annexes to it.
- **NHS Improvement** is the body corporate previously known as Monitor, as provided by Section 61 of the 2012 Act.
- The **Accounting Officer** is the person who from time to time discharges the functions specified in paragraph 25(5) of Schedule 7 to the 2006 Act.
- The **Acquisition Date** is the date of the acquisition by the Trust of Birmingham Women's Hospital NHS Foundation Trust, being the date on which NHS Improvement grants the application of the Trust to acquire it pursuant to s56A of the 2006 Act.

## 2. Name

The name of the foundation trust is Birmingham Women's and Children's NHS Foundation Trust (the Trust).

## 3. Principal purpose

- 3.1 The principal purpose of the trust is the provision of goods and services for the purposes of the health service in England.
- 3.2 The trust does not fulfil its principal purpose unless, in each financial year, its total income from the provision of goods and services for the purposes of the health service in England is greater than its total income from the provision of goods and services for any other purposes.
- 3.3 The trust may provide goods and services for any purposes related to—
  - 3.3.1 the provision of services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness, and
  - 3.3.2 the promotion and protection of public health.
- 3.4 The trust may also carry on activities other than those mentioned in the above paragraph for the purpose of making additional income available in order better to carry on its principal purpose.

#### 4. **Powers**

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

#### 5. **Membership and constituencies**

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

- 5.1 a public constituency
- 5.2 a staff constituency
- 5.3 a patients' and carers' constituency

#### 6. **Application for membership**

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

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

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

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

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

a contract of employment with the trust, may become or continue as members of the staff constituency provided such individuals have exercised these functions continuously for a period of at least 12 months.

- 8.3 Those individuals who are eligible for membership of the trust by reason of the previous provisions are referred to collectively as the Staff Constituency.
- 8.4 The Staff Constituency shall be divided into six descriptions of individuals who are eligible for membership of the Staff Constituency, each description of individuals being specified within Annex 2 and being referred to as a class within the Staff Constituency.
- 8.5 The minimum number of members in each class of the Staff Constituency is specified in Annex 2.

#### **9. Automatic membership by default – staff**

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

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

#### **10. Patients and Carers Constituency**

- 10.1 An individual who has, within the period specified below, attended any of the trust's hospitals or services as either a patient or as the carer of a patient may become a member of the trust.
- 10.2 The period referred to above shall be the period of five years immediately preceding the date of an application by the patient or carer to become a member of the trust.
- 10.3 A carer is an individual who:
  - is not less than 18 years of at the date of applying to become a member; and
  - provides care on a regular basis for a patient: and
  - does not provide that care in pursuance of a contract, including a contract of employment, or as a volunteer for a voluntary organisation
- 10.4 Those individuals who are eligible for membership of the trust by reason of the previous provisions are referred to collectively as the Patients' and Carers' Constituency.

- 10.5 The minimum number of members in the Patients' and Carers' Constituency is specified in Annex 3.

#### **11. Restriction on membership**

- 11.1 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.
- 11.2 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.
- 11.3 An individual must be at least 10 years old to become a member of the trust.

#### **12. Automatic Membership by Default – Patient and Carer**

- 12.1 An individual who is a Member of the Patients' Constituency of Birmingham Women's NHS Foundation Trust (otherwise than as the carer of a patient) on the date immediately preceding the Acquisition Date and invited by the Trust to become a Member of the Patients' and Carers' Constituency, shall become a Member of the Trust as a member of that Constituency (and class) for which he is eligible without an application being made, unless he informs the Trust that he does not wish to do so.

#### **13. Annual Members' Meeting**

- 13.1 The Trust shall hold an annual meeting of its members ('Annual Members' Meeting'). The Annual Members' Meeting shall be open to members of the public. This meeting shall be known as the Annual General Meeting.
- 13.2 Further provisions about the Annual Members' Meeting are set out in Annex 10 – Annual Members' Meeting.

#### **14. Council of Governors – composition**

- 14.1 The trust is to have a Council of Governors, which shall comprise both elected and appointed governors.
- 14.2 The composition of the Council of Governors is specified in Annex 4.
- 14.3 The members of the Council of Governors, other than the appointed members, shall be chosen by election by their constituency or, where there are classes within a constituency, by their class within that constituency. The number of governors to be elected by each constituency, or, where appropriate, by each class of each constituency, is specified in Annex 4.



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

- 15.1 Elections for elected members of the Council of Governors shall be conducted in accordance with the Model Election Rules on the basis of Single Transferable Vote (STV) polling and the Model Rules for Elections shall be construed accordingly.
- 15.2 The Model Election Rules as published from time to time by the Department of Health form part of this constitution. The Model Election Rules current at the date of the trust's Authorisation are attached at Annex 5.
- 15.3 A subsequent variation of the Model Election Rules by the Department of Health shall not constitute a variation of the terms of this constitution for the purposes of paragraph 44 of the constitution (amendment of the constitution).
- 15.4 An election, if contested, shall be by secret ballot.

**16. Council of Governors - tenure**

- 16.1 An elected governor may hold office for a period of up to 3 years.
- 16.2 An elected governor shall cease to hold office if he ceases to be a member of the constituency or class by which he was elected.
- 16.3 An elected governor shall be eligible for re-election at the end of his term.
- 16.4 An appointed governor may hold office for a period of up to 3 years.
- 16.5 An appointed governor shall cease to hold office if the appointing organisation withdraws its sponsorship of him.
- 16.6 An appointed governor shall be eligible for re-appointment at the end of his term.
- 16.7 An elected or an appointed Governor may be re-elected or re-appointed for consecutive terms provided that a Governor shall not hold office for longer than nine years, or more than three non-consecutive terms.

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

- 17.1 The following may not become or continue as a member of the Council of Governors:
  - 17.1.1 a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;
  - 17.1.2 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;

- 17.1.3 a person who within the preceding five years has been convicted in the British Islands of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him.
  - 17.1.4 Disclosure and Barring Service checks (or any other checks required by the Trust from time to time as being consistent with its license conditions or good governance arrangements) have not been undertaken concerning that person or that the results received by the Trust are not acceptable in all respects by the Trust.
  - 17.1.5 a person in relation to whom a moratorium period under a debt relief order applies (under Part 7A of the Insolvency Act 1986) – para 8 of Sch 7 of the NHS Act 2006.
- 17.2 Governors must be at least 16 years of age at the date they are nominated for election or appointment.
  - 17.3 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.
  - 17.4 A Governor may resign from that office at any time during his Term by giving notice in writing to the Company Secretary or the Chairman, such notice is to specify the date of resignation.
  - 17.5 A Governor may be removed from the Council of Governors by a resolution approved by the majority of the remaining Governors present at the meeting for:
    - a) Acting in a manner prejudicial to the good conduct of the Council of Governors;
    - b) Acting in a manner prejudicial to the best interests of the Foundation Trust
    - c) Bringing the Foundation Trust into disrepute.
    - d) Failure to attend 60% or more meetings of the Council of Governors in any continuous 12 months' period unless the other Governors are satisfied that:
      - i. The absence was due to a reasonable cause
      - ii. They will be able to start attending meetings of the Trust again within such a period as the Governors consider reasonable.

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

- 18.1 The general duties of the Council of Governors are –
  - 18.1.1 to hold the non-executive directors individually and collectively to account for the performance of the Board of Directors, and
  - 18.1.2 to represent the interests of the members of the trust as a whole and the interests of the public.
- 18.2 The Trust must take steps to ensure that the governors are equipped with the skills and

knowledge they require in their capacity as such.

**19. Council of Governors – meetings of governors**

- 19.1 The Chairman of the trust (i.e. the Chairman of the Board of Directors, appointed in accordance with the provisions of paragraph 22.1 or paragraph 23.1 below) or, in his absence the Deputy Chairman shall preside at meetings of the Council of Governors.
- 19.2 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.
- 19.3 For the purposes of obtaining information about the trust’s performance of its functions or the directors’ performance of their duties (and deciding whether to propose a vote on the Trust’s or directors’ performance), the Council of Governors may require one or more of the directors to attend a meeting.

**20. Council of Governors – standing orders**

The standing orders for the practice and procedure of the Council of Governors are attached at Annex 7.

**21. Council of Governors – referral to the Panel**

- 21.1 In this paragraph, the Panel means a panel of persons appointed by NHS Improvement to which a governor of an NHS foundation trust may refer a question as to whether the trust has failed or is failing—
  - 21.1.1 to act in accordance with its constitution, or
  - 21.1.2 to act in accordance with provision made by or under Chapter 5 of the 2006 Act.
- 21.2 A governor may refer a question to the Panel only if more than half of the members of the Council of Governors voting approve the referral.

**22. Council of Governors - conflicts of interest of governors**

- 22.1 If a governor has a pecuniary, personal or family interest, whether that interest is actual or potential and whether that interest is direct or indirect, in any proposed contract or other matter which is under consideration or is to be considered by the Council of Governors, the governor shall disclose that interest to the members of the Council of Governors as soon as he becomes aware of it.
- 22.2 The Standing Orders for the Council of Governors at paragraph 6, Annex 7 make provision for the disclosure of interests and arrangements for the exclusion of a governor declaring any interest from any discussion or consideration of the matter in respect of which an interest has been disclosed.

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

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

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

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

**25. Board of Directors – composition**

- 25.1 The trust is to have a Board of Directors, which shall comprise both executive and non-executive directors.
- 25.2 The Board of Directors is to comprise:
  - 25.2.1 a non-executive Chairman
  - 25.2.2 a maximum of 8 other non-executive directors; and
  - 25.2.3 a maximum of 8 executive directors.
- 25.3 One of the executive directors shall be the Chief Executive.
- 25.4 The Chief Executive shall be the Accounting Officer
- 25.5 One of the executive directors shall be the finance director
- 25.6 One of the executive directors is to be a registered medical practitioner or a registered dentist (within the meaning of the Dentists Act 1984).
- 25.7 One of the executive directors is to be a registered nurse or a registered midwife.

**26. Board of Directors – general duty**

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

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

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

- 27.1 he is a member of a Public Constituency, or
- 27.2 he is a member of the Patients’ Constituency and
- 27.3 he is not disqualified by virtue of paragraph 30 below.

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

- 28.1 The Council of Governors at a general meeting of the Council of Governors shall appoint or remove the chairman of the trust and the other non-executive directors.
- 28.2 Removal of the chairman or another non-executive director shall require the approval of three-quarters of the members of the Council of Governors.
- 28.3 The initial chairman and the initial non-executive directors are to be appointed in accordance with paragraph 29 below.

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

- 29.1 The non-executive directors shall appoint or remove the Chief Executive.
- 29.2 The appointment of the Chief Executive shall require the approval of the Council of Governors.
- 29.3 A committee consisting of the Chairman, the Chief Executive and the other non-executive directors shall appoint or remove the other executive directors. This Committee shall be known as the Appointments and Remuneration Committee.

**30. Board of Directors – disqualification**

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

- 30.1 a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged.
- 30.2 a person who has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it.
- 30.3 a person who within the preceding five years has been convicted in the British Islands of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him.
- 30.4 a person in relation to whom a moratorium period under a debt relief order applies (under Part 7A of the Insolvency Act 1986)” – para 8 of Sch 7 of the NHS Act 2006.

**31. Board of Directors – meetings**

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

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

The standing orders for the practice and procedure of the Board of Directors are attached at Annex 8.

### **33. Board of Directors - conflicts of interest of directors**

- 33.1 The duties that a director of the trust has by virtue of being a director include in particular –
- 33.1.1 A duty to avoid a situation in which the director has (or can have) a direct or indirect interest that conflicts (or possibly may conflict) with the interests of the trust.
  - 33.1.2 A duty not to accept a benefit from a third party by reason of being a director or doing (or not doing) anything in that capacity.
- 33.2 The duty referred to in sub-paragraph 33.1.1 is not infringed if –
- 33.2.1 The situation cannot reasonably be regarded as likely to give rise to a conflict of interest, or
  - 33.2.2 The matter has been authorised in accordance with the constitution.
- 33.3 The duty referred to in sub-paragraph 36.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- 33.4 In sub-paragraph 36.1.2, “third party” means a person other than –
- 33.4.1 The trust, or
  - 33.4.2 A person acting on its behalf.
- 33.5 If a director of the trust has in any way a direct or indirect interest in a proposed transaction or arrangement with the trust, the director must declare the nature and extent of that interest to the other directors.
- 33.6 If a declaration under this paragraph proves to be, or becomes, inaccurate, incomplete, a further declaration must be made.
- 33.7 Any declaration required by this paragraph must be made before the trust enters into the transaction or arrangement.
- 33.8 This paragraph does not require a declaration of an interest of which the director is not aware or where the director is not aware of the transaction or arrangement in question.
- 33.9 A director need not declare an interest –
- 33.9.1 If it cannot reasonably be regarded as likely to give rise to a conflict of interest;
  - 33.9.2 If, or to the extent that, the directors are already aware of it;
  - 33.9.3 If, or to the extent that, it concerns terms of the director’s appointment

that have been or are to be considered –

- 33.9.3.1 By a meeting of the Board of Directors, or
- 33.9.3.2 By a committee of the directors appointed for the purpose under the constitution.

33.10 A matter shall have been authorised for the purposes of paragraph 33.2.2 if:

33.10.1 the Board of Directors by majority, disapplies the provision of the Constitution which would otherwise prevent a Director from being counted as participating in the decision-making process;

33.10.2. the Director's conflict of interest arises from a permitted cause (as determined by the Board of Directors from time to time). For the purposes of this paragraph 33.10, a permitted cause may include (without limitation):

33.10.2.1. a guarantee given, or to be given, by or to a Director in respect of an obligation incurred by or on behalf of the Trust or any of its subsidiaries; and/or

33.10.2.2. arrangements pursuant to which benefits are made available to employees and Directors or former employees and Directors of the Trust or any of its subsidiaries which do not provide special benefits for Directors or former Directors.

33.11 The Standing Orders for the Board of Directors at paragraph 8, Annex 8 make provision for the disclosure of interests and arrangements for the exclusion of a Director declaring any interest from any discussion or consideration of the matter in respect of which an interest has been disclosed.

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

34.1 The Council of Governors at a general meeting of the Council of Governors shall decide the remuneration and allowances, and the other terms and conditions of office, of the Chairman and the other non-executive directors.

34.2 The trust shall establish a committee of 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. This Committee shall be known as the Nominations Committee.

#### **35. Registers**

The trust shall have:

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

35.2 a register of members of the Council of Governors;

35.3 a register of interests of governors;

- 35.4 a register of directors; and
- 35.5 a register of interests of the directors.

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

- 36.1 The trust shall make the registers specified in paragraph 35 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.
- 36.2 The trust shall not make any part of its registers available for inspection by members of the public which shows details of –
  - 36.2.1 any member of the Patients’ Constituency; or
  - 36.2.2 any other member of the trust, if he so requests.
- 36.3 So far as the registers are required to be made available:
  - 36.3.1 they are to be available for inspection free of charge at all reasonable times; and
  - 36.3.2 a person who requests a copy of or extract from the registers is to be provided with a copy or extract.
- 36.4 If the person requesting a copy or extract is not a member of the trust, the trust may impose a reasonable charge for doing so.

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

- 37.1 The trust shall make the following documents available for inspection by members of the public free of charge at all reasonable times:
  - 37.1.1 a copy of the current constitution,
  - 37.1.2 a copy of the latest annual accounts and of any report of the auditor on them, and
  - 37.1.3 a copy of the latest annual report.
- 37.2 The trust shall also make the following documents relating to a special administration of the trust available for inspection by members of the public free of charge at all reasonable times:
  - 37.2.1 a copy of any order made under section 65D (appointment of trust special administrator), 65J (power to extend time), 65KC (action following Secretary of State’s rejection of final report), 65L (trusts coming out of administration) or 65LA (trusts to be dissolved) of the 2006 Act.
  - 37.2.2 a copy of any report laid under section 65D (appointment of trust special administrator) of the 2006 Act.
  - 37.2.3 a copy of any information published under section 65D (appointment of trust special administrator) of the 2006 Act.



- 37.2.4 a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act.
- 37.2.5 a copy of any statement provided under section 65F(administrator's draft report) of the 2006 Act.
- 37.2.6 a copy of any notice published under section 65F(administrator's draft report), 65G (consultation plan), 65H (consultation requirements), 65J (power to extend time), 65KA(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.
- 37.2.7 a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act.
- 37.2.8 a copy of any final report published under section 65I (administrator's final report),
- 37.2.9 a copy of any statement published under section 65J (power to extend time) or 65KC (action following Secretary of State's rejection of final report) of the 2006 Act.
- 37.2.10 a copy of any information published under section 65M (replacement of trust special administrator) of the 2006 Act.

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

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

### 38. **Auditor**

38.1 The trust shall have an auditor.

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

### 39. **Audit committee**

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

### 40. **Accounts**

40.1 The Trust must keep proper accounts and proper records in relation to the accounts.

40.2 NHS Improvement may with the approval of the Secretary of State give directions to the Trust as to the content and form of its accounts.

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

- 40.4 The trust shall prepare in respect of each financial year annual accounts in such form as NHS Improvement may with the approval of the Secretary of State direct
- 40.5 The functions of the trust with respect to the preparation of the annual accounts shall be delegated to the Accounting Officer.

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

- 41.1 The trust shall prepare an Annual Report and send it to NHS Improvement.
- 41.2 The trust shall give information as to its forward planning in respect of each financial year to NHS Improvement.
- 41.3 The document containing the information with respect to forward planning (referred to above) shall be prepared by the directors.
- 41.4 In preparing the document, the directors shall have regard to the views of the Council of Governors.
- 41.5 Each forward plan must include information about –
- 41.5.1 the activities other than the provision of goods and services for the purposes of the health service in England that the trust proposes to carry on, and
  - 41.5.2 the income it expects to receive from doing so.
- 41.6 Where a forward plan contains a proposal that the trust carry on an activity of a kind mentioned in sub-paragraph 41.5.1 the Council of Governors must –
- 41.6.1 determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfillment by the trust of its principal purpose or the performance of its other functions, and
  - 41.6.2 notify the directors of the trust of its determination.
- 41.7 A trust which proposes to increase by 5% or more the proportion of its total income in any financial year attributable to activities other than the provision of goods and services for the purposes of the health service in England may implement the proposal only if more than half of the members of the council of governors of the trust voting approve its implementation.

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

- 42.1 The following documents are to be presented to the Council of Governors at a general meeting of the Council of Governors:
- 42.1.1 the annual accounts
  - 42.1.2 any report of the auditor on them

42.1.3 the annual report

42.2 The documents shall also be presented to the members of the Trust at the Annual Members' Meeting by at least one member of the Board of Directors in attendance. This meeting shall be known as the Annual General Meeting.

42.3 The Trust may combine a meeting of the Council of Governors convened for the purposes of sub-paragraph 42.1 with the Annual Members' Meeting.

#### **43. Instruments**

43.1 The trust shall have a seal.

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

#### **44. Amendment of the constitution**

44.1 The trust may make amendments of its constitution only if –

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

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

44.2 Amendments made under paragraph 44.1 take effect as soon as the conditions in that paragraph are satisfied, but the amendment has no effect in so far as the constitution would, as a result of the amendment, not accord with schedule 7 of the 2006 Act.

44.3 Where an amendment is made to the constitution in relation the powers or duties of the Council of Governors (or otherwise with respect to the role that the Council of Governors has as part of the trust) –

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

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

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

44.4 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.

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

- 45.1 The trust may only apply for a merger, acquisition, separation or dissolution with the approval of more than half of the members of the council of governors.
- 45.2 The trust may enter into a significant transaction only if more than half of the members of the Council of Governors of the Trust voting approve entering into the transaction.
- 45.3 “Significant transaction” means a transaction which meets any one of the tests below:
- 45.3.1. the fixed asset test; or
- 45.3.2. the turnover test; or
- 45.3.3. the gross capital test (relating to acquisitions or divestments).
- 45.3.4 The fixed asset test: is met if the assets which are the subject of the transaction exceed 25% of the fixed assets of the Trust;
- 45.3.5. The turnover test: is met if, following the completion of the relevant transaction, the gross income of the Trust will increase or decrease by more than 25%;
- 45.3.6. The gross capital test: is met if the gross capital of the company or business being acquired or divested represents more than 25% of the capital of the Trust following completion (where “gross capital” is the market value of the relevant company or business’s shares and debt securities, plus the excess of current liabilities over current assets, and the Trust’s capital is determined by reference to its balance sheet); and
- 45.3.7. For the purposes of calculating the tests in this paragraph 45.3, figures used to classify assets and profits must be the figures shown in the latest published audited consolidated accounts.

A transaction:

- 45.3.8. includes all agreements (including amendments to agreements) entered into by the Trust;
- 45.3.9. excludes a transaction in the ordinary course of business (including the renewal, extension or entering into an agreement in respect of healthcare services carried out by the Trust);
- 45.3.10. excludes any agreement or changes to healthcare services carried out by the Trust following a reconfiguration of services led by the commissioners of such services; and
- 45.3.11. excludes any grant of public dividend capital or the entering into of a working capital facility or other loan, which does not involve the acquisition or disposal of any fixed asset of the Trust.

In addition, any matter may be treated as a significant transaction on the agreement of the Board and the Council of Governors.

## ANNEX 1 – THE PUBLIC CONSTITUENCIES

The areas specified as an area for the Public Constituency are as set out in the table below:

Name of constituency	Electoral wards	Minimum number of members	Number of Governors
Birmingham and Solihull	<ul style="list-style-type: none"> <li>• Birmingham City Council</li> <li>• Solihull Metropolitan Borough Council</li> </ul>	400	5
The Black Country	<ul style="list-style-type: none"> <li>• Sandwell Metropolitan Borough Council</li> <li>• Walsall Metropolitan Borough Council</li> <li>• Wolverhampton Metropolitan Borough Council</li> <li>• Dudley Metropolitan Borough Council</li> </ul>	300	4
Rest of West Midlands	<ul style="list-style-type: none"> <li>• Bridgnorth District Council</li> <li>• North Shropshire District Council</li> <li>• Oswestry Borough Council</li> <li>• Shrewsbury &amp; Atcham Borough Council</li> <li>• South Shropshire District Council</li> <li>• Staffordshire Moorlands District Council</li> <li>• Tamworth Borough Council</li> <li>• Cannock Chase District Council</li> <li>• Lichfield City Council</li> <li>• Lichfield District Council</li> <li>• Newcastle under Lyme Borough Council</li> <li>• Stafford Borough Council</li> <li>• North Warwickshire District Council</li> <li>• Bedworth District Council</li> <li>• Stratford upon Avon District Council</li> <li>• Warwick District Council</li> <li>• Rugby District Council</li> <li>• Malvern Hills District Council</li> <li>• Worcester District Council</li> <li>• Wychavon District Council</li> <li>• Wyre Forest District Council</li> <li>• Redditch District Council</li> <li>• Bromsgrove District Council</li> <li>• Coventry City Council</li> <li>• Herefordshire County Council</li> <li>• Worcestershire County Council</li> <li>• Warwickshire County Council</li> <li>• South Staffordshire County Council</li> <li>• Stoke On Trent City Council</li> <li>• Shropshire County Council</li> <li>• Telford and Wrekin Borough Council</li> <li>• Staffordshire County Council</li> </ul>	200	3

## **ANNEX 2 – THE STAFF CONSTITUENCY**

(Paragraphs 8.4 and 8.5)

The classes of individuals within the Staff Constituency are set out in the table below:

<b>Staff constituency class</b>	<b>Minimum number of members</b>	<b>Number of governors</b>
Medical	100	1
Nursing	100	1
Midwifery	100	1
Other clinical	100	1
Non-Clinical	100	1
Mental health	100	1

**ANNEX 3 – THE PATIENTS’ AND CARERS’ CONSTITUENCY**

(Paragraphs 10.4 and 10.5)

The classes of individuals within the Patients’ and Carer’s Constituency are set out below:

<b>Patient constituency class</b>	<b>Minimum number of members</b>	<b>Number of governors</b>
Birmingham Children’s Hospital Patient	100	2
Carer of a patient at Birmingham Children’s Hospital	100	2
Patient or carer of a patient of Birmingham Women’s Hospital	100	3

**ANNEX 4 – COMPOSITION OF COUNCIL OF GOVERNORS**

The Trust is to have a Council of Governors, which shall comprise both elected and appointed Governors as set out in the table below:

<b>Elected Governor Constituencies</b>	<b>Number of Governors</b>	<b>Elected Governor Constituencies</b>	<b>Number of Governors</b>
<b>Public total 12:</b>		<b>Staff total 6:</b>	
1. Birmingham and Solihull	5	1. Medical	1
2. The Black Country	4	2. Nursing	1
3. Rest of the West Midlands	3	3. Midwifery	1
		4. Clinical Other	1
		5. Non-Clinical	1
		6. Mental Health	1
<b>Patient total: 7</b>			
1. Birmingham Children's Hospital Patient	2		
2. Carer of a patient at Birmingham Children's Hospital	2		
3. Patient or carer of a patient of Birmingham Women's Hospital	3		

<b>Appointed Governor Organisations</b>	<b>Number of Governors</b>
1. Local Authority - Birmingham City Council	1
2. Higher Education - University of Birmingham, Birmingham City University	2
3. Clinical Commissioning Group – Birmingham South Central	1

<b>TOTAL GOVERNORS</b>	
<b>Constituency</b>	<b>Total Governors</b>
Public	12
Patient	7
Staff	6
Appointed	4
<b>TOTAL</b>	<b>29</b>

**ANNEX 5 –THE MODEL ELECTION RULES**



## **PART 1: INTERPRETATION**

1. Interpretation

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

2. Timetable
3. Computation of time

## **PART 3: RETURNING OFFICER**

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

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

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

## **PART 5: CONTESTED ELECTIONS**

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

### *Action to be taken before the poll*

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

### *The poll*

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

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

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

**PART 6: COUNTING THE VOTES**

- 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

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

- 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

**1. Interpretation**

1.1 In these rules, unless the context otherwise requires:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*“telephone short code”* means a short telephone number used for the purposes of submitting a vote by text message;

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

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

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

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

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

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

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

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

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

**2. Timetable**

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

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

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

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

**20. The ballot paper**

- 20.1 The ballot of each voter (other than a voter who casts his or her ballot by an e-voting

method of polling) is to consist of a ballot paper with the persons remaining validly nominated for an election after any withdrawals under these rules, and no others, inserted in the paper.

20.2 Every ballot paper must specify:

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

20.3 Each ballot paper must have a unique identifier.

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

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

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

- (a) that the voter is the person:
  - (i) to whom the ballot paper was addressed, and/or
  - (ii) to whom the voter ID number contained within the e-voting information was allocated,
- (b) that he or she has not marked or returned any other voting information in the election, and
- (c) the particulars of his or her qualification to vote as a member of the constituency or class within the constituency for which the election is being held,

("declaration of identity")

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

- 21.2 The voter must be required to return his or her declaration of identity with his or her ballot.
- 21.3 The voting information shall caution the voter that if the declaration of identity is not duly returned or is returned without having been made correctly, any vote cast by the voter may be declared invalid.

*Action to be taken before the poll*

**22. List of eligible voters**

- 22.1 The corporation is to provide the returning officer with a list of the members of the constituency or class within a constituency for which the election is being held who are eligible to vote by virtue of rule 27 as soon as is reasonably practicable after the final date for the delivery of notices of withdrawals by candidates from an election.
- 22.2 The list is to include, for each member:
  - (a) a postal address; and,
  - (b) the member's e-mail address, if this has been providedto which his or her voting information may, subject to rule 22.3, be sent.
- 22.3 The corporation may decide that the e-voting information is to be sent only by e-mail to those members in the list of eligible voters for whom an e-mail address is included in that list.

**23. Notice of poll**

- 23.1 The returning officer is to publish a notice of the poll stating:
  - (a) the name of the corporation,
  - (b) the constituency, or class within a constituency, for which the election is being held,
  - (c) the number of members of the council of governors to be elected from that constituency, or class with that constituency,

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

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

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

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

("postal voting information").

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



- (a) instructions on how to vote and how to make a declaration of identity (if required),
  - (b) the voter's voter ID number,
  - (c) information about each candidate standing for election, pursuant to rule 64 of these rules, or details of where this information is readily available on the internet or available in such other formats as the Returning Officer thinks appropriate, (d) contact details of the returning officer,
- ("e-voting information").

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

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

for the purposes of the poll.

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

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

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

25.1 The ballot paper envelope must have clear instructions to the voter printed on it, instructing the voter to seal the ballot paper inside the envelope once the ballot paper has been marked.

25.2 The covering envelope is to have:

- (a) the address for return of the ballot paper printed on it, and
- (b) pre-paid postage for return to that address.

25.3 There should be clear instructions, either printed on the covering envelope or elsewhere, instructing the voter to seal the following documents inside the covering envelope and return it to the returning officer –

- (a) the completed ID declaration form if required, and
- (b) the ballot paper envelope, with the ballot paper sealed inside it.

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

- 26.1 If internet voting is a method of polling for the relevant election then the returning officer must provide a website for the purpose of voting over the internet (in these rules referred to as "the polling website").
- 26.2 If telephone voting is a method of polling for the relevant election then the returning officer must provide an automated telephone system for the purpose of voting by the use of a touch-tone telephone (in these rules referred to as "the telephone voting facility").
- 26.3 If text message voting is a method of polling for the relevant election then the returning officer must provide an automated text messaging system for the purpose of voting by text message (in these rules referred to as "the text message voting facility").
- 26.4 The returning officer shall ensure that the polling website and internet voting system provided will:
- (a) require a voter to:
    - (i) enter his or her voter ID number; and
    - (ii) where the election is for a public or patient constituency, make a declaration of identity;in order to be able to cast his or her vote;
  - (b) specify:
    - (i) the name of the corporation,
    - (ii) the constituency, or class within a constituency, for which the election is being held,
    - (iii) the number of members of the council of governors to be elected from that constituency, or class within that constituency,
    - (iv) the names and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
    - (v) instructions on how to vote and how to make a declaration of identity,
    - (vi) the date and time of the close of the poll, and
    - (vii) the contact details of the returning officer;
  - (c) prevent a voter from voting for more candidates than he or she is entitled to at the election;
  - (d) create a record ("internet voting record") that is stored in the internet voting system in respect of each vote cast by a voter using the internet that comprises

of-

- (i) the voter's voter ID number;
  - (ii) the voter's declaration of identity (where required);
  - (iii) the candidate or candidates for whom the voter has voted; and
  - (iv) the date and time of the voter's vote,
- (e) if the voter's vote has been duly cast and recorded, provide the voter with confirmation of this; and
- (f) prevent any voter from voting after the close of poll.

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

- (a) require a voter to
  - (i) enter his or her voter ID number in order to be able to cast his or her vote; and
  - (ii) where the election is for a public or patient constituency, make a declaration of identity;
- (b) specify:
  - (i) the name of the corporation,
  - (ii) the constituency, or class within a constituency, for which the election is being held,
  - (iii) the number of members of the council of governors to be elected from that constituency, or class within that constituency,
  - (iv) instructions on how to vote and how to make a declaration of identity,
  - (v) the date and time of the close of the poll, and
  - (vi) the contact details of the returning officer;
- (c) prevent a voter from voting for more candidates than he or she is entitled to at the election;
- (d) create a record ("telephone voting record") that is stored in the telephone voting system in respect of each vote cast by a voter using the telephone that comprises of:
  - (i) the voter's voter ID number;
  - (ii) the voter's declaration of identity (where required);
  - (iii) the candidate or candidates for whom the voter has voted; and
  - (iv) the date and time of the voter's vote

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

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

- (a) require a voter to:
  - (i) provide his or her voter ID number; and
  - (ii) where the election is for a public or patient constituency, make a declaration of identity;in order to be able to cast his or her vote;
- (b) prevent a voter from voting for more candidates than he or she is entitled to at the election;
- (d) create a record ("text voting record") that is stored in the text messaging voting system in respect of each vote cast by a voter by text message that comprises of:
  - (i) the voter's voter ID number;
  - (ii) the voter's declaration of identity (where required);
  - (ii) the candidate or candidates for whom the voter has voted; and
  - (iii) the date and time of the voter's vote
- (e) if the voter's vote has been duly cast and recorded, provide the voter with confirmation of this;
- (f) prevent any voter from voting after the close of poll.

### *The poll*

#### **27. Eligibility to vote**

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

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

28.1 The returning officer is to put in place arrangements to enable requests for assistance to vote to be made.

28.2 Where the returning officer receives a request from a voter who requires assistance to vote, the returning officer is to make such arrangements as he or she considers necessary to enable that voter to vote.

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

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

(c) the details of the replacement voter ID number issued to the voter.

**30. Lost voting information**

30.1 Where a voter has not received his or her voting information by the tenth day before the close of the poll, that voter may apply to the returning officer for replacement voting information.

30.2 The returning officer may not issue replacement voting information in respect of lost voting information unless he or she:

- (a) is satisfied as to the voter's identity,
- (b) has no reason to doubt that the voter did not receive the original voting information,
- (c) has ensured that no declaration of identity, if required, has been returned.

30.3 After issuing replacement voting information in respect of lost voting information, the returning officer shall enter in a list ("the list of lost ballot documents"):

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

**31. Issue of replacement voting information**

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

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

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

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

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

*Polling by internet, telephone or text*

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

- 33.1 To cast his or her vote using the internet, a voter will need to gain access to the polling website by keying in the url of the polling website provided in the voting information.
- 33.2 When prompted to do so, the voter will need to enter his or her voter ID number.
- 33.3 If the internet voting system authenticates the voter ID number, the system will give the voter access to the polling website for the election in which the voter is eligible to vote.
- 33.4 To cast his or her vote, the voter will need to key in a mark on the screen opposite the particulars of the candidate or candidates for whom he or she wishes to cast his or her vote.
- 33.5 The voter will not be able to access the internet voting system for an election once his or her vote at that election has been cast.

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

- 34.1 To cast his or her vote by telephone, the voter will need to gain access to the telephone voting facility by calling the designated telephone number provided in the voter information using a telephone with a touch-tone keypad.
- 34.2 When prompted to do so, the voter will need to enter his or her voter ID number using the keypad.
- 34.3 If the telephone voting facility authenticates the voter ID number, the voter will be prompted to vote in the election.
- 34.4 When prompted to do so the voter may then cast his or her vote by keying in the numerical voting code of the candidate or candidates, for whom he or she wishes to vote.
- 34.5 The voter will not be able to access the telephone voting facility for an election once his or her vote at that election has been cast.

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

- 35.1 To cast his or her vote by text message the voter will need to gain access to the text message voting facility by sending a text message to the designated telephone number or telephone short code provided in the voter information.
- 35.2 The text message sent by the voter must contain his or her voter ID number and the numerical voting code for the candidate or candidates, for whom he or she wishes to vote.
- 35.3 The text message sent by the voter will need to be structured in accordance with the instructions on how to vote contained in the voter information, otherwise the vote will not be cast.

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

**36. Receipt of voting documents**

- 36.1 Where the returning officer receives:
- (a) a covering envelope, or
  - (b) any other envelope containing an ID declaration form if required, a ballot paper envelope, or a ballot paper,
- before the close of the poll, that officer is to open it as soon as is practicable; and rules 37 and 38 are to apply.
- 36.2 The returning officer may open any covering envelope or any ballot paper envelope for the purposes of rules 37 and 38, but must make arrangements to ensure that no person obtains or communicates information as to:
- (a) the candidate for whom a voter has voted, or
  - (b) the unique identifier on a ballot paper.
- 36.3 The returning officer must make arrangements to ensure the safety and security of the ballot papers and other documents.

**37. Validity of votes**

- 37.1 A ballot paper shall not be taken to be duly returned unless the returning officer is satisfied that it has been received by the returning officer before the close of the poll, with an ID declaration form if required that has been correctly completed, signed and dated.
- 37.2 Where the returning officer is satisfied that rule 37.1 has been fulfilled, he or she is to:
- (a) put the ID declaration form if required in a separate packet, and
  - (b) put the ballot paper aside for counting after the close of the poll.



- 37.3 Where the returning officer is not satisfied that rule 37.1 has been fulfilled, he or she is to:
- (a) mark the ballot paper “disqualified”,
  - (b) if there is an ID declaration form accompanying the ballot paper, mark it “disqualified” and attach it to the ballot paper,
  - (c) record the unique identifier on the ballot paper in a list of disqualified documents (the “list of disqualified documents”); and
  - (d) place the document or documents in a separate packet.
- 37.4 An internet, telephone or text message vote shall not be taken to be duly returned unless the returning officer is satisfied that the internet voting record, telephone voting record or text voting record (as applicable) has been received by the returning officer before the close of the poll, with a declaration of identity if required that has been correctly made.
- 37.5 Where the returning officer is satisfied that rule 37.4 has been fulfilled, he or she is to put the internet voting record, telephone voting record or text voting record (as applicable) aside for counting after the close of the poll.
- 37.6 Where the returning officer is not satisfied that rule 37.4 has been fulfilled, he or she is to:
- (a) mark the internet voting record, telephone voting record or text voting record (as applicable) “disqualified”,
  - (b) record the voter ID number on the internet voting record, telephone voting record or text voting record (as applicable) in the list of disqualified documents; and
  - (c) place the document or documents in a separate packet.
- 38. Declaration of identity but no ballot paper (public and patient constituency)<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

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

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

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

**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 subparagraphs (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 voter could be identified, and
- (c) unmarked or rejected because of uncertainty,

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

#### **STV45. First stage**

- STV45.1 The returning officer is to sort the ballot documents into parcels according to the candidates for whom the first preference votes are given.
- STV45.2 The returning officer is to then count the number of first preference votes given on ballot documents for each candidate, and is to record those numbers.
- STV45.3 The returning officer is to also ascertain and record the number of valid ballot documents.

#### **STV46. The quota**

- STV46.1 The returning officer is to divide the number of valid ballot documents by a number exceeding by one the number of members to be elected.
- STV46.2 The result, increased by one, of the division under rule STV46.1 (any fraction being disregarded) shall be the number of votes sufficient to secure the election of a candidate (in these rules referred to as “the quota”).
- STV46.3 At any stage of the count a candidate whose total votes equals or exceeds the quota shall be deemed to be elected, except that any election where there is only one vacancy a candidate shall not be deemed to be elected until the procedure set out in rules STV47.1 to STV47.3 has been complied with.

#### **STV47. Transfer of votes**

- STV47.1 Where the number of first preference votes for any candidate exceeds the quota, the returning officer is to sort all the ballot documents on which first preference votes are given for that candidate into sub- parcels so that they are grouped:
- (a) according to next available preference given on those ballot documents for any continuing candidate, or
  - (b) where no such preference is given, as the sub-parcel of non-transferable votes.
- STV47.2 The returning officer is to count the number of ballot documents in each parcel referred to in rule STV47.1.
- STV47.3 The returning officer is, in accordance with this rule and rule STV48, to transfer each sub-parcel of ballot documents referred to in rule STV47.1(a) to the candidate for whom the next available preference is given on those ballot documents.

- STV47.4 The vote on each ballot document transferred under rule STV47.3 shall be at a value (“the transfer value”) which:
- (a) reduces the value of each vote transferred so that the total value of all such votes does not exceed the surplus, and
  - (b) is calculated by dividing the surplus of the candidate from whom the votes are being transferred by the total number of the ballot documents on which those votes are given, the calculation being made to two decimal places (ignoring the remainder if any).
- STV47.5 Where at the end of any stage of the count involving the transfer of ballot documents, the number of votes for any candidate exceeds the quota, the returning officer is to sort the ballot documents in the sub-parcel of transferred votes which was last received by that candidate into separate sub-parcels so that they are grouped:
- (a) according to the next available preference given on those ballot documents for any continuing candidate, or
  - (b) where no such preference is given, as the sub-parcel of non-transferable votes.
- STV47.6 The returning officer is, in accordance with this rule and rule STV48, to transfer each sub-parcel of ballot documents referred to in rule STV47.5(a) to the candidate for whom the next available preference is given on those ballot documents.
- STV47.7 The vote on each ballot document transferred under rule STV47.6 shall be at:
- (a) a transfer value calculated as set out in rule STV47.4(b), or
  - (b) at the value at which that vote was received by the candidate from whom it is now being transferred,
- whichever is the less.
- STV47.8 Each transfer of a surplus constitutes a stage in the count.
- STV47.9 Subject to rule STV47.10, the returning officer shall proceed to transfer transferable ballot documents until no candidate who is deemed to be elected has a surplus or all the vacancies have been filled.
- STV47.10 Transferable ballot documents shall not be liable to be transferred where any surplus or surpluses which, at a particular stage of the count, have not already been transferred, are:
- (a) less than the difference between the total vote then credited to the continuing candidate with the lowest recorded vote and the vote of the candidate with the next lowest recorded vote, or

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

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

#### **STV48. Supplementary provisions on transfer**

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

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

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

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

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

STV48.4 Where a ballot document is so marked that it is unclear to the returning officer at any stage of the count under rule STV47 or STV49 for which candidate the next preference is recorded, the returning officer shall treat any vote on that ballot document as a non-transferable vote; and votes on a ballot document shall be so treated where, for

example, the names of two or more candidates (whether continuing candidates or not) are so marked that, in the opinion of the returning officer, the same order of preference is indicated or the numerical sequence is broken.

#### **STV49. Exclusion of candidates**

- STV49.1 If:
- (a) all transferable ballot documents which under the provisions of rule STV47 (including that rule as applied by rule STV49.11) and this rule are required to be transferred, have been transferred, and
  - (b) subject to rule STV50, one or more vacancies remain to be filled,
- the returning officer shall exclude from the election at that stage the candidate with the then lowest vote (or, where rule STV49.12 applies, the candidates with the then lowest votes).
- STV9.2 The returning officer shall sort all the ballot documents on which first preference votes are given for the candidate or candidates excluded under rule STV49.1 into two sub-parcels so that they are grouped as:
- (a) ballot documents on which a next available preference is given, and
  - (b) ballot documents on which no such preference is given (thereby including ballot documents on which preferences are given only for candidates who are deemed to be elected or are excluded).
- STV49.3 The returning officer shall, in accordance with this rule and rule STV48, transfer each sub-parcel of ballot documents referred to in rule STV49.2 to the candidate for whom the next available preference is given on those ballot documents.
- STV49.4 The exclusion of a candidate, or of two or more candidates together, constitutes a further stage of the count.
- STV49.5 If, subject to rule STV50, one or more vacancies still remain to be filled, the returning officer shall then sort the transferable ballot documents, if any, which had been transferred to any candidate excluded under rule STV49.1 into sub- parcels according to their transfer value.
- STV49.6 The returning officer shall transfer those ballot documents in the sub-parcel of transferable ballot documents with the highest transfer value to the continuing candidates in accordance with the next available preferences given on those ballot documents (thereby passing over candidates who are deemed to be elected or are excluded).
- STV49.7 The vote on each transferable ballot document transferred under rule STV49.6 shall be at the value at which that vote was received by the candidate excluded under rule

STV49.1.

STV9.8 Any ballot documents on which no next available preferences have been expressed shall be set aside as non-transferable votes.

STV49.9 After the returning officer has completed the transfer of the ballot documents in the sub-parcel of ballot documents with the highest transfer value he or she shall proceed to transfer in the same way the sub-parcel of ballot documents with the next highest value and so on until he has dealt with each sub-parcel of a candidate excluded under rule STV49.1.

STV49.10 The returning officer shall after each stage of the count completed under this rule:

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

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

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

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

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

the returning officer shall decide between the candidates by lot and the candidate on whom the lot falls shall be excluded.

#### **STV50. Filling of last vacancies**

- STV50.1 Where the number of continuing candidates is equal to the number of vacancies remaining unfilled the continuing candidates shall thereupon be deemed to be elected.
- STV50.2 Where only one vacancy remains unfilled and the votes of any one continuing candidate are equal to or greater than the total of votes credited to other continuing candidates together with any surplus not transferred, the candidate shall thereupon be deemed to be elected.
- STV50.3 Where the last vacancies can be filled under this rule, no further transfer of votes shall be made.

#### **STV51. Order of election of candidates**

- STV51.1 The order in which candidates whose votes equal or exceed the quota are deemed to be elected shall be the order in which their respective surpluses were transferred, or would have been transferred but for rule STV47.10.
- STV51.2 A candidate credited with a number of votes equal to, and not greater than, the quota shall, for the purposes of this rule, be regarded as having had the smallest surplus at the stage of the count at which he obtained the quota.
- STV51.3 Where the surpluses of two or more candidates are equal and are not required to be transferred, regard shall be had to the total number of votes credited to such candidates at the earliest stage of the count at which they had an unequal number of votes and the surplus of the candidate who had the greatest number of votes at that stage shall be deemed to be the largest.
- STV51.4 Where the number of votes credited to two or more candidates were equal at all stages of the count, the returning officer shall decide between them by lot and the candidate on whom the lot falls shall be deemed to have been elected first.

## **FPP51. Equality of votes**

FPP51.1        Where, after the counting of votes is completed, an equality of votes is found to exist between any candidates and the addition of a vote would entitle any of those candidates to be declared elected, the returning officer is to decide between those candidates by a lot, and proceed as if the candidate on whom the lot falls had received an additional vote.



**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.

**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 spoilt ballot papers and the list of spoilt text message votes,
- (c) the list of lost ballot documents, and
- (d) the list of eligible voters,

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

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

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

**55. Delivery of documents**

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

**56. Forwarding of documents received after close of the poll**

56.1 Where:

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

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

**57. Retention and public inspection of documents**

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

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

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

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

58.1 The corporation may not allow:

- (a) the inspection of, or the opening of any sealed packet containing –
  - (i) any rejected ballot papers, including ballot papers rejected in part,
  - (ii) any rejected text voting records, including text voting records rejected in part,
  - (iii) any disqualified documents, or the list of disqualified documents,
  - (iv) any counted ballot papers, internet voting records, telephone voting records or text voting records, or
  - (v) the list of eligible voters, or

(b) access to or the inspection of the complete electronic copies of the internet voting records, telephone voting records and text voting records created in accordance with rule 26 and held in a device suitable for the purpose of storage, by any person without the consent of the board of directors of the corporation.

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

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

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

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

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

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

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

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

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

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### 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).

*Election expenses*

**60. Election expenses**

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

**61. Expenses and payments by candidates**

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

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

**62. Election expenses incurred by other persons**

62.1 No person may:

- (a) incur any expenses or make a payment (of whatever nature) for the purposes of a candidate's election, whether on that candidate's behalf or otherwise, or
- (b) give a candidate or his or her family any money or property (whether as a gift, donation, loan, or otherwise) to meet or contribute to expenses incurred by or on behalf of the candidate for the purposes of an election.

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

*Publicity*

**63. Publicity about election by the corporation**

63.1 The corporation may:

- (a) compile and distribute such information about the candidates, and
- (b) organise and hold such meetings to enable the candidates to speak and respond to questions,



as it considers necessary.

63.2 Any information provided by the corporation about the candidates, including information compiled by the corporation under rule 64, must be:

- (a) objective, balanced and fair,
- (b) equivalent in size and content for all candidates,
- (c) compiled and distributed in consultation with all of the candidates standing for election, and
- (d) must not seek to promote or procure the election of a specific candidate or candidates, at the expense of the electoral prospects of one or more other candidates.

63.3 Where the corporation proposes to hold a meeting to enable the candidates to speak, the corporation must ensure that all of the candidates are invited to attend, and in organising and holding such a meeting, the corporation must not seek to promote or procure the election of a specific candidate or candidates at the expense of the electoral prospects of one or more other candidates.

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

64.1 The corporation must compile information about the candidates standing for election, to be distributed by the returning officer pursuant to rule 24 of these rules.

64.2 The information must consist of:

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

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

65.1 In this Part, the phrase “for the purposes of an election” means with a view to, or otherwise in connection with, promoting or procuring a candidate’s election, including the prejudicing of another candidate’s electoral prospects; and the phrase “for the purposes of a candidate’s election” is to be construed accordingly.

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

this Part.

**66. Application to question an election**

- 66.1 An application alleging a breach of these rules, including an electoral irregularity under Part 10, may be made to Monitor for the purpose of seeking a referral to the independent election arbitration panel ( IEAP).
- 66.2 An application may only be made once the outcome of the election has been declared by the returning officer.
- 66.3 An application may only be made to Monitor by:
- (a) a person who voted at the election or who claimed to have had the right to vote, or
  - (b) a candidate, or a person claiming to have had a right to be elected at the election.
- 66.4 The application must:
- (a) describe the alleged breach of the rules or electoral irregularity, and
  - (b) be in such a form as the independent panel may require.
- 66.5 The application must be presented in writing within 21 days of the declaration of the result of the election. Monitor will refer the application to the independent election arbitration panel appointed by Monitor.
- 66.6 If the independent election arbitration panel requests further information from the applicant, then that person must provide it as soon as is reasonably practicable.
- 66.7 Monitor shall delegate the determination of an application to a person or panel of persons to be nominated for the purpose.
- 66.8 The determination by the IEAP shall be binding on and shall be given effect by the corporation, the applicant and the members of the constituency (or class within a constituency) including all the candidates for the election to which the application relates.
- 66.9 The IEAP may prescribe rules of procedure for the determination of an application including costs.

**67. Secrecy**

67.1 The following persons:

- (a) the returning officer,
- (b) the returning officer's staff,

must maintain and aid in maintaining the secrecy of the voting and the counting of the votes, and must not, except for some purpose authorised by law, communicate to any person any information as to:

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

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

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

**68. Prohibition of disclosure of vote**

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

**69. Disqualification**

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

- (a) a member of the corporation,
- (b) an employee of the corporation,
- (c) a director of the corporation, or

(d) employed by or on behalf of a person who has been nominated for election.

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

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

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

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

## ANNEX 6 – ADDITIONAL PROVISIONS – COUNCIL OF GOVERNORS

### **Vacancies**

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

- a) where the vacancy arises amongst the appointed Governors, the Company Secretary shall request that the appointing organisation appoints a replacement to hold office for the remainder of the term of office; and
- b) where the vacancy arises amongst the elected Governors, the Council of Governors may:
  - i. call an election within three months to fill the seat for the remainder of that term of office;
  - ii. where the vacancy arises within three months of an election for that seat, invite the next highest polling candidate, provided that that candidate received at least 10% of the vote in the last election for that seat, who is willing to take office, to fill the vacant seat until the next election, at which time the seat will fall vacant and be subject to election for any unexpired period of the term of office; or
  - iii. if the unexpired period of the term of office is less than nine months (or such other period as the Council of Governors may from time to time determine by majority vote), leave the seat vacant until the next elections are held.

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

**INTERPRETATION**

- 1.1 Save as permitted by law, at any meeting the Chairman of the Trust shall be the final authority on the interpretation of these Standing Orders (on which he/she should be advised by the Company Secretary).
- 1.2 Any expression to which a meaning is given in the NHS Acts or in the Regulations or Orders made under the Acts shall have the same meaning in these Council Standing Orders. and in addition:

"**TRUST**" means Birmingham Women's and Children's NHS Foundation Trust

"**BOARD OF DIRECTORS**" means the board of executive and non-executive directors as constituted in accordance with the Trust's constitution

"**COUNCIL OF GOVERNORS**" shall mean the council of governors as constituted in accordance with the Trust's constitution

"**CHAIRMAN**" is the Chairman of the Board of Directors and the Council of Governors

"**CHIEF EXECUTIVE**" means the chief officer of the Trust

"**COMMITTEE**" means a committee of the Council of Governors

"**COMMITTEE MEMBERS**" shall be persons formally appointed to sit on or to chair specific committees

"**EXECUTIVE DIRECTOR**" means a Member of the Board of Directors who holds an executive office within the Trust

"**NON-EXECUTIVE DIRECTORS**" means a Member of the Board of Directors who does not hold an executive office of the Corporation

"**DEPUTY CHAIRMAN**" means the Non-Executive Director appointed from among the Non-Executives to take on the Chairman's duties if the Chairman is absent for any reason

"**GOVERNOR**" means a Public, Patient, Staff or appointed Governor

"**VICE-CHAIRMAN**" means the Governor appointed from the Public Governors to take on the Chairman's duties if the Chairman, Deputy Chairman or any other Non-Executive is absent or unable to chair the Council of Governors for any reason

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

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



"**COMPANY SECRETARY**" means a person appointed to act independently of the Board to provide advice on corporate governance issues to the Board and the Chairman and monitor the Corporation's compliance with the regulatory framework and monitor the Trust's compliance with the law, standing orders, and observance of NHS Executive guidance

## **2. THE COUNCIL OF GOVERNORS**

- 2.1 **Composition of the Council** - In accordance with the Constitution the composition of the Council of Governors of the Trust shall be as per annex 4:
- 2.2 The Chief Executive or any other member or members of the Board of Directors, or a representative of the Trust's auditors or other advisors can attend a meeting of the Council of Governors unless the Council of Governors agrees otherwise.
- 2.3 **Role of the Chairman** – The Chairman is not a member of the Council of Governors. However under the Regulatory Framework, she/he presides at meetings of the Council of Governors and has a casting vote.
- 2.4 Where the Chairman of the Trust is unable to perform their duties, the Deputy Chairman from the Board of Directors shall perform his/her duties until a new Chairman is appointed or the existing Chairman resumes their duties.
- 2.5 **Appointment of a Vice Chairman** - For the purpose of enabling the proceedings of the Council to be conducted in the absence of the Chairman or Deputy Chairman or due to a conflict of interest, the Public Governors of the Trust may appoint a Governor from amongst them to be Vice Chairman for such a period, not exceeding the remainder of his/her term as Governor of the Trust, as they may specify on appointing him/her.

## **3. MEETINGS OF THE COUNCIL OF GOVERNORS**

### **3.1 Admission of the Public and the Press**

- 3.1.1 The public and representatives of the press shall be afforded facilities to attend all formal meetings of the Council of Governors but shall be required to withdraw upon the Council of Governors resolving as follows:
- a) That members of the public and press be excluded from the remainder of the meeting having regard to the confidential nature of the business to be transacted, publicity on which would be prejudicial to the public; and/or
  - b) That in the interests of public order the meeting adjourn for a period of up to 6 hours to enable the Council to complete business without the presence of the public
- 3.1.2 Nothing in these Standing Orders shall require the Council to allow members of the public or representatives of the press to record proceedings in any manner whatsoever, other than in writing, or to make any oral report of proceedings as they take place without the prior agreement of the Council.

### **3.2 Calling Meetings**

3.2.1 Ordinary meetings of the Council of Governors shall be held at such times and places as the Council may determine and there will be no fewer than three meetings (in addition to the Annual General Meeting) per year.

3.2.2 The Chairman may call a meeting of the Council at any time. If the Chairman refuses to call a meeting of the Council, after a request for that purpose signed by at least 66% of the Governors entitled to attend such a meeting, has been presented to him/her, or if, without refusing, the Chairman does not call a meeting within seven days after such request has been made to him/her, such Governors may call a meeting themselves. The Company Secretary shall send written notice to all Governors as soon as possible after the Chairman or Governors call a meeting,

### 3.3 **Notice of Meetings**

3.3.1 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 to all Governors.

3.3.2 Before each meeting of the Council of Governors, a notice of the meeting specifying the business to be proposed to be transacted at it shall be delivered to each Governor by post or email so as to be available to him/her at least five clear days before the meeting.

3.3.3 Lack of service of the notice of date and place or notice specifying business on any Governor shall not affect the validity of a meeting.

3.3.4 If the notice is not served to 66% of Governors or more, the meeting will be invalidated. A notice will be presumed to have been served at the time at which the notice would be delivered in the ordinary course of post or email.

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

### 3.4 **Setting the Agenda**

Governors desiring a matter to be included on an agenda shall make his/her request in writing to the Chairman and Secretary at least 10 clear working days before the meeting. The request should include appropriate supporting information. Requests made less than 10 working days before a meeting may be included on the agenda at the discretion of the Chairman.

### 3.5 **Annual General Meeting**

The Trust will publicise and hold an Annual General Meeting in accordance with the Constitution within eight months of the end of the financial year.

### 3.6 **Notices of Motion**

A Governor desiring to move or amend a motion shall send a written notice at least 10 working days before the meeting to the Chairman, who shall insert in the agenda for the meeting all notices so received subject to the notice being permissible under the appropriate regulations. This paragraph shall not prevent any motion being moved during the meeting, without notice on any business mentioned on the agenda.

### 3.6 **Withdrawal of Motion or Amendments**

A motion or amendment once moved and seconded may be withdrawn by the proposer with the concurrence of the seconder and the consent of the Chairman.

### 3.7 **Motion to Rescind a Resolution**

Notice of motion to amend or rescind any resolution (or the general substance of any resolution) which has been passed within the preceding 6 calendar months shall bear the signature of the Governor who gives it and also the signature of 4 other Governors. When any such motion has been disposed of by the Trust, it shall not be competent for anyone other than the Chairman to propose a motion to the same effect within 6 calendar months.

### 3.8 **Motions**

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

3.8.2 When a motion is under discussion or immediately prior to discussion it shall be open to a Governor to move:

- a) An amendment to the motion.
- b) The adjournment of the discussion or the meeting.
- c) That the meeting proceed to the next business. (\*)
- d) The appointment of an ad hoc committee to deal with a specific item of business.
- e) That the motion be now put. (\*)

3.8.3 In the case of sub-paragraphs denoted by (\*) above, to ensure objectivity motions may only be put by a Governor who has not previously taken part in the debate.

3.8.4 No amendment to the motion shall be admitted if, in the opinion of the Chairman of the meeting, the amendment negates the substance of the motion.

### 3.9 **Chairman's Ruling**

Statements of Governors made at meetings of the 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, relevance, regularity and any other matters shall be final.

### 3.10 **Voting**

3.10.1 Every motion at a meeting shall be determined by a simple majority of the votes of the governors voting on the question and, in the case of any equality of votes, the Chairman or person presiding shall have a second or casting vote.

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

- 3.10.3 If at least one-third of the Governors present so request, the voting (other than by paper ballot) on any question may be recorded to show how each Member of the Council present voted or abstained.
- 3.10.4 If a Governor so requests, his/her vote shall be recorded by name upon any vote (other than by paper ballot).
- 3.10.5 A Governor may grant to the Chair a "Proxy" or their power to vote in their absence at a Council of Governors meeting:
- a) The proxy must be in writing and signed;
  - b) The proxy must be lodged with the Company Secretary at no later than 24 hours before the meeting. No proxies will be allowed after that deadline. Proxies will be date and time stamped on receipt;
  - c) Proxies will be revoked by:
    - i. The filing of a subsequent proxy (before the above time limit has passed) in which case the later proxy revokes the former;
    - ii. The resignation or death of a governor providing this is known before the above time limit; or
    - iii. The attendance of the governor in person at the meeting.

### 3.11 **Minutes**

- 3.11.1 The Minutes of the previous Council of Governors meeting shall be drawn up and submitted for agreement at the next formal meeting where they will be approved by the person presiding at it.
- 3.11.2 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.
- 3.11.3 Minutes shall be circulated in accordance with Governors wishes.

### 3.12 **Suspension of Standing Orders**

- 3.12.1 Except where this would contravene any statutory provision any one or more of these Standing Orders may be suspended at any meeting, provided that at least two thirds of the Council of Governors are present, and that a majority of those present vote in favour of suspension.
- 3.12.2 A decision to suspend Standing Orders shall be recorded in the minutes of the meeting.
- 3.12.3 A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be made available to the Chairman and Governors.
- 3.12.4 No formal business may be transacted while Standing Orders are suspended.
- 3.12.5 The Audit Committee shall review every decision to suspend Standing Orders.

### **3.13 Variation and Amendment of Standing Orders**

These Standing Orders shall be amended only if:

- a notice of motion under Standing Order 3.14 has been given; and
- no fewer than half the total of the Governors vote in favour of amendment; and
- provided that at least two-thirds of the Governors are present and
- the variation proposed does not contravene a statutory provision or direction made by NHS Improvement.

### **3.14 Record of Attendance**

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

### **3.15 Quorum**

3.15.1 To be quorate there must be at least six Governors present, of which at least four must be Public or Patient Governors. For the avoidance of doubt, the number of Public and Patient Governors present at a meeting should be in the majority.

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

### **3.16 Written resolutions**

3.15.1 If all Governors entitled to attend and vote at a meeting of the Council, instead of meeting, sign and return a copy of a resolution then that resolution will be deemed to have been passed notwithstanding that the Governors have not gathered in one place.

3.15.2 The effective date of the resolution is the date that the last Governor signs and returns the resolution.

3.15.3 Once the resolution is passed, a copy certified by the Company Secretary or a Director must be recorded in the minutes of the previous Council meeting.

### **3.16 Committees**

3.16.1 These Standing Orders, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees or sub-committees established by the Council of Governors.

3.16.2 Each committee or sub-committee shall have such terms of reference and powers and be subject to such as the Council of Governors shall decide.

3.16.2 The Council of Governors shall approve the appointments to each of the committees which it has formally constituted.

3.17.3 Where the Council determines that persons who are not governors shall be appointed as advisors to a committee, the terms of such appointment shall be determined by the Council.

#### **4.0 Confidentiality**

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

4.2 A Governor of the Trust or a member of a committee shall not disclose any matter reported to the Council or otherwise dealt with by the committee, if the Council or committee shall resolve that it is confidential.

### **5. DECLARATIONS OF INTERESTS AND REGISTER OF INTERESTS**

#### **5.1 Declaration of Interests**

5.1.1 Governors are to declare interests which are relevant and material to the Council of which they are a Member. All existing Council members should declare such interests. Any Governors appointed subsequently should do so on appointment.

5.1.2 Interests which should be regarded as "relevant and material" are to be interpreted in accordance with guidance issued by NHS Improvement and in the Constitution.

5.1.3 If Governors have any doubt about the relevance of an interest, this should be discussed with the Company Secretary.

5.1.4 It is the obligation of the Governor to inform the Company Secretary in writing within 7 days of becoming aware of the existence of a relevant and material interest. The Secretary will amend the Register upon receipt within 3 working days.

5.1.5 If a Governor has a relevant and material interest (including a pecuniary interest), whether direct or indirect, in any contract, proposed contract or other matter which is under consideration by the Council at a meeting of the Council, he shall disclose that to the rest of the Council as soon as he is aware of it and where there is a conflict of interest he shall withdraw from the meeting and take no further part in it. If there is a dispute as to whether a conflict of interest does exist the majority will resolve the issue with the Chairman having the casting vote.

5.1.6 Interests of Governor's spouses or partners in contracts are to be discussed with the Company Secretary to ascertain whether a conflict exists.

5.1.7 This paragraph 6 applies to a committee or sub-committee as it applies to the Council and applies to a member of any such committee or sub-committee.

5.1.8 Directorships of companies likely or possibly seeking to do business with the NHS should be published in the Trust's annual report. The information should be kept up to date for inclusion in succeeding annual reports.

## 5.2 Register of Interests

- 5.2.1 The Company Secretary will ensure that a Register of Interests is established to record formally declarations of interests of Governors. In particular the Register will include details of all Directorships and other relevant and material interests which have been declared by the Governors.
- 5.2.1 The Register will be available to the public.
- 5.13 In establishing, maintaining, updating and publicising the Register, the Trust shall comply with all guidance issued from time to time by NHS Improvement.

## 6. DISABILITY OF THE CHAIRMAN AND GOVERNORS IN PROCEEDINGS ON ACCOUNT OF PECUNIARY INTEREST

- 6.1 Subject to the following provisions of these Standing Orders, if the Chairman or another Governor has any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter and is present at a meeting of the Trust at which the contract or other matter is the subject of consideration, he shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not take part in the consideration or discussion of the contract or other matter or vote on any question with respect to it.
- 6.2 The Council may exclude the Chairman or a Governor from a meeting of the Council while any contract, proposed contract or other matter in which he/she has a pecuniary interest, is under consideration.
- 6.3 Any remuneration, compensation or allowances payable to the Chairman or a Governor by virtue of paragraph 9 of Schedule 2 to the NHS & Civil Contingency Act 1990 shall not be treated as a pecuniary interest for the purpose of this Standing order.
- 6.4 For the purpose of this Standing Order the Chairman or Governor shall be treated, subject to Standing Order 6.5, as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if:
- a) he, or a nominee of his, is a director of a company or other body, not being a public body, with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration; or
  - b) he is a partner of, or is in the employment of a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration
- 6.5 The Chairman or Governor shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only:
- (a) of his membership of a company or other body, if he/she has no beneficial interest in any securities of that company or other body;
  - (b) of an interest in any company, body or person with which he is connected as mentioned in Standing Order 6.4 above which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a director in the

consideration or discussion of or in voting on, any question with respect to that contract or matter.

6.6 Where the Chairman or Governor:

- (a) has an indirect pecuniary interest in a contract, proposed contract or other matter by reason only of a beneficial interest in securities of a company or other body, and
- (b) the total nominal value of those securities does not exceed £5,000 or one-hundredth of the total nominal value of the issued share capital of the company or body, whichever is the less, and
- (c) if the share capital is of more than one class, the total nominal value of shares of any one class in which he has a beneficial interest does not exceed one-hundredth of the total issued share capital of that class,

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

6.7 This Standing Order applies to a committee or sub-committee of the Council as it applies to the Council and applies to any member of any such committee or sub-committee as it applies to a Governor.

## **7. STANDARDS OF BUSINESS CONDUCT**

### **7.1 Interest of Governors in Contracts**

7.1.2 If it comes to the knowledge of a Governor that a contract in which he/she has any pecuniary interest not being a contract to which he is himself a party, has been, or is proposed to be, entered into by the Trust he/she shall, at once, give notice in writing to the Secretary of the fact that he/she is interested therein.

7.1.3 A Governor must also declare to the Secretary any other employment or business or other relationship of his that conflicts, or might reasonably be predicted could conflict with the interests of the Trust.

7.1.4 The Trust will require interests, employment or relationships so declared by Governors to be entered in a register of interests of governors.

### **7.2 Canvassing of, and Recommendations by, Governors in Relation to Appointments**

7.2.1 Canvassing of Governors of the Trust or of any members of any Committee of the Trust directly or indirectly for any appointment under the Trust shall disqualify the candidate for such appointment. The contents of this paragraph shall be included in application forms or otherwise brought to the attention of candidates.

7.2.3 A Governor shall not solicit for any person any appointment under the Trust or recommend any person for such appointment: but this paragraph of this CSO shall not preclude a Member of the Council from giving written testimonial of a candidate's ability, experience or character for submission to the Trust.



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

### **7.3 Relatives of Governors or Officers**

7.3.1 Candidates for any staff appointment under the Trust shall, when making application, disclose in writing whether they are related to any Governor or the holder of any office under the Trust. Failure to disclose such a relationship shall disqualify a candidate and, if appointed, render him/her liable to instant dismissal.

7.3.2 The Chairman and every Governor and every Officer of the Trust shall disclose to the Secretary any relationship with a candidate of whose candidature that Governor or Officer is aware. It shall be the duty of the Secretary to report to the Trust any such disclosure made.

7.3.4 On appointment, Governors should disclose to the Trust whether they are related to any director or Governors or holder of any office under the Trust.

7.3.5 Where the relationship to a Governor of the Trust is disclosed, the Standing Order headed 'Disability of directors in proceedings on account of pecuniary interest' (Standing Order 6) shall apply.

## **8 APPOINTMENT OF A LEAD GOVERNOR**

8.1 The Council of Governors shall appoint a Lead Governor from its membership.

8.2 The Council of Governors may also appoint a Deputy Lead Governor.

8.3 The terms of office of the Lead Governor and Deputy shall be 12 months, not exceeding the remaining terms of office as a Governor. A Governor may be reappointed as the Lead Governor or Deputy by the Council of Governors at the end of that term. Only in exceptional circumstances shall a Lead Governor or Deputy serve for more than two years.

8.4 Nominations for appointment as Lead Governor and Deputy Lead Governor shall be made in writing by the Governor seeking appointment and must be returned to the principal place of business of the Trust addressed to the Company Secretary to arrive by a stipulated time.

8.5 In the event of there being two or more nominations a vote shall be held by show of hands.

8.6 Should more than half the Council of Governors so request the vote shall be by secret postal ballot with each Governor having one vote. The ballot will be overseen by the Company Secretary.

8.7 The Governor whose nomination receives the largest number of votes for each position shall be appointed as Lead Governor with the Governor whose nomination receives the second highest number of votes being appointed as Deputy Lead Governor. In the event of the number of votes being equal the Chairman shall have a casting vote.

8.8 The duties of the Lead Governor and Deputy Lead Governor shall be set out in a role description agreed by the Council of Governors.

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

**1 INTERPRETATION**

1.1 Save as permitted by law at any meeting the Chairman of the Trust shall be the final authority on the interpretation of these Council Standing Orders (on which he/she should be advised by the Company Secretary).

1.2 Any expression to which a meaning is given in the NHS Acts or in the Regulations or Orders made under the Acts shall have the same meaning in these Council Standing Orders and in addition:

"**TRUST**" means the Birmingham Children's Hospital NHS Foundation Trust

"**BOARD OF DIRECTORS**" means the board of executive and non-executive directors as constituted in accordance with the Trust's constitution

"**COUNCIL OF GOVERNORS**" shall mean the council of governors as constituted in accordance with the Trust's constitution.

"**CHAIRMAN**" is the Chairman of the Board of Directors and the Council of Governors

"**CHIEF EXECUTIVE**" means the chief officer of the Trust

"**COMMITTEE**" means a committee of the Council of Governors.

"**COMMITTEE MEMBERS**" shall be persons formally appointed to sit on or to chair specific committees.

"**EXECUTIVE DIRECTOR**" means a Member of the Board of Directors who holds an executive office within the Trust.

"**NON-EXECUTIVE DIRECTORS**" means a Member of the Board of Directors who does not hold an executive office of the Corporation.

"**DEPUTY CHAIRMAN**" means the Non-Executive Director appointed from among the Non-Executives to take on the Chairman's duties if the Chairman is absent for any reason.

"**GOVERNOR**" means a Public, Patient, Staff or Stakeholder Governor

"**VICE - CHAIRMAN**" means the Governor appointed from the Public Governors to take on the Chairman's duties if the Chairman, Deputy Chairman or any other Non-Executive is absent or unable to chair the Council of Governors for any reason.

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

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

"**SECRETARY**" means a person appointed to act independently of the Board to provide

advice on corporate governance issues to the Board and the Chairman and monitor the Trust's compliance with the regulatory framework and monitor the Trust's compliance with the law, SOs, and observance of NHS Executive guidance.

## **2. THE BOARD OF DIRECTORS**

2.1 All business shall be conducted in the name of the Trust.

2.2 All funds received in Trust shall be in the name of the Trust as corporate trustee.

2.3 The Board has resolved that certain powers and decisions may only be exercised or made by the Board in formal session. These powers and decisions are set out in "Reservation of Powers to the Board" Appendix 1 and have effect as if incorporated into these Standing Orders.

2.4 In accordance with the Constitution the composition of the Board of Directors of the Trust shall be as per paragraph 9.2:

2.5 In accordance with the Constitution the Chairman and the other Non-Executive Directors are appointed and removed by the Council of Governor at a Council of Governors' meeting.

2.6 The Chief Executive and Executive Directors are appointed in accordance with the Constitution (Paragraphs 8.8, 9.5 and 9.6). The Non-Executives appoint and remove the Chief Executive and a committee consisting of the Chairman, Chief Executive and Non- Executives appoint or remove other Executive Directors.

### **2.6 Terms of Office of the Chairman and Directors**

The regulations governing the period of tenure of office of the Chairman and Directors and the termination or suspension of office of the Chairman and Directors are contained in the Constitution (Paragraph 9.6).

### **2.7 Appointment of Deputy Chairman**

2.7.1 For the purpose of enabling the proceedings of the Trust to be conducted in the absence of the Chairman, the Chairman will appoint a Non-Executive Director to be Deputy Chairman or Chairman for such a period, not exceeding the remainder of his/her term as Non-Executive Director of the Trust, as they may specify on appointing him/her.

2.7.2 Any Non-Executive Director so elected may at any time resign from the office of Deputy Chairman by giving notice in writing to the Chairman and the Chairman may thereupon appoint another Non-Executive Director as Deputy Chairman.

### **2.8 Powers of Deputy Chairman**

Where the Chairman of an NHS Foundation Trust has ceased to hold office or where he/she has been unable to perform his/her duties as Chairman owing to illness or absence, references to the Chairman in the Schedule to these Regulations shall, be taken to include references to the Deputy Chairman.

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

3.1 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.

3.2 Before holding a meeting, the Board of Directors must send a copy of the agenda of the meeting to the Council of Governors. The Board of Directors must send a copy of the minutes of the meeting to the Council of Governors.

### 3.3 **Calling Meetings and Quorum**

3.3.1 Meetings of the Board of Directors shall be held at such times and places as the Board may determine and there will be no fewer than six meetings per year.

3.3.2 Six Directors including not less than three Executive Directors (one of whom must be either the Chief Executive or the Chief Financial Officer), and not less than two Non-Executive Directors shall form a quorum.

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

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

3.3.5 Meetings of the Board of Directors are 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.

3.3.6 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.

3.3.7 Before each meeting of the Board, a notice of the meeting specifying the business to be proposed to be transacted at it shall be delivered to each Member of the Board of Directors so as to be available to him/her at least three clear days before the meeting.

3.3.8 Lack of service of the notice of the date and place or notice specifying business on any Director shall not affect the validity of a meeting.

3.3.9 If the notice is not served to 3 Directors or more, the meeting will be invalidated. A notice will be presumed to have been served at the time at which the notice would be delivered in the ordinary course of email.

### 3.4 **Setting the Agenda**

3.4.1 The Board of Directors may determine that certain matters shall appear on every agenda for

a meeting of the Board and shall be addressed prior to any other business being conducted.

- 3.4.2 A Member of the Board desiring a matter to be included on an agenda shall make his/her request in writing to the Chairman at least 14 clear days before the meeting. . Requests made less than 14 days before a meeting may be included on the agenda at the discretion of the Chairman.

### 3.5 **Chairman of Meeting**

- 3.5.1 At any meeting of the Board of Directors, the Chairman, if present, shall preside. If the Chairman is absent from the meeting the Deputy Chairman, if there is one and he/she is present, shall preside. If the Chairman and Deputy Chairman are absent such Non-Executive Director as the Directors present shall choose shall preside.
- 3.5.2 If the Chairman is absent from a meeting temporarily on the grounds of a declared conflict of interest the Deputy Chairman, if present, shall preside. If the Chairman and Deputy Chairman are absent, or are disqualified from participating, such Non-Executive Director as the Directors present shall choose shall preside.

### 3.6 **Annual General Meeting**

The Trust will publicise and hold an Annual General Meeting in accordance with the Constitution within eight months of the end of the financial year.

### 3.7 **Motions**

- 3.7.1 A Member of the Board desiring to move or amend a motion shall send a written notice at least 14 clear days before the meeting to the Chairman, who shall insert in the agenda for the meeting all notices so received subject to the notice being permissible under the appropriate regulations. This paragraph shall not prevent any motion being moved during the meeting, without notice on any business mentioned on the agenda.
- 3.7.2 A motion or amendment once moved and seconded may be withdrawn by the proposer with the concurrence of the seconder and the consent of the Chairman.
- 3.7.3 Notice of motion to amend or rescind any resolution (or the general substance of any resolution) which has been passed within the preceding 6 calendar months shall bear the signature of the Member of the Board who gives it and also the signature of 4 other directors. When any such motion has been disposed of by the Trust, it shall not be allowed for anyone other than the Chairman to propose a motion to the same effect within 6 calendar months.
- 3.7.4 The mover of a motion shall have a right of reply at the close of any discussion on the motion or any amendment thereto.
- 3.7.5 When a motion is under discussion or immediately prior to discussion it shall be open to a Member of the Board to move:
- a) An amendment to the motion.
  - b) The adjournment of the discussion or the meeting.
  - c) That the meeting proceed to the next business. (\*)
  - d) The appointment of an ad hoc committee to deal with a specific item of business.
  - e) That the motion be now put. (\*)

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

3.7.6 No amendment to the motion shall be admitted if, in the opinion of the Chairman of the meeting, the amendment negates the substance of the motion.

### 3.8 **Chairman's Ruling and Voting**

3.8.1 Statements of Members of the Board made at meetings of the 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.

3.8.2 Every motion at a meeting shall be determined by a simple majority of the votes of the Members of the Board voting on the question and, in the case of any equality of votes, the Chair or person presiding shall have a second or casting vote, but: no resolution of the Board of Directors shall be passed if it is unanimously opposed by all of the Executive Directors present or by all of the Non-Executive Directors present.

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

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

3.8.5 If a Member of the Board so requests, his/her vote shall be recorded by name upon any vote (other than by paper ballot).

3.8.6 A Member of the Board may grant to the Chair a "Proxy" or their power to vote in their absence at a Board meeting: The proxy must be in writing and signed and lodged with the Company Secretary no later than 24 hours before the meeting. No proxies will be allowed after that deadline. Proxies will be date and time stamped on receipt.

3.8.7 Proxies will be revoked by:

- a) The filing of a subsequent proxy (before the above time limit has passed) in which case the later proxy revokes the former;
- b) The resignation or death of the Board member providing this is known before the above time limit; or
- c) The attendance of the Board member in person at the meeting.

3.8.8 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 a meeting shall be recorded in the minutes.

### 3.9 **Minutes**

3.9.1 The Minutes of the proceedings of a meeting shall be drawn up and submitted for agreement at

the next formal meeting where they will be approved by the person presiding at it.

- 3.9.2 The names of the Chairman and Members of the Board present at the meeting shall be recorded in the minutes. Members of the Board who are unable to attend the Board of Directors meeting should advise the Secretary in advance of the meeting so that their apologies may be submitted.
- 3.9.3 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.
- 3.9.4 Minutes shall be circulated in accordance with Members' wishes.

#### **4.0 Variation and Suspension of Standing Orders**

- 4.1 Except where this would contravene any statutory provision or any direction made by the Regulator, any one or more of these Standing Orders may be suspended at any meeting, provided that at least six Members of the Board of Directors are present, including no less than three Executive Directors (one of whom must be either the Chief Executive or the Finance Director) and three Non-Executive Director, and that a majority of those present vote in favour of suspension.
- 4.2 A decision to suspend Standing Orders shall be recorded in the minutes of the meeting.
- 4.3 A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be made available to the Chairman and the Members of the Board.
- 4.4 No formal business may be transacted while Standing Orders are suspended.
- 4.5 The Audit Committee shall review every decision to suspend Standing Orders.
- 4.6 These Standing orders shall be amended only if:
  - a) a notice of motion under Standing Order 3.9 has been given; and
  - b) no fewer than half the total of the Corporation's Non-Executive Directors vote in favour of amendment; and
  - c) provided that at least six Members of the Board of Director are present, including no less than three Executive Directors (one of whom must be either the Chief Executive or the Finance Director) and three Non-Executive Directors
  - d) the variation proposed does not contravene a statutory provision or direction made by NHS Improvement.
- 4.7 If for any reason these Standing Orders are not complied with, full details of the non-compliance and any justification for non-compliance and the circumstances around the non-compliance, shall be reported to the next formal meeting of the Board for action or ratification. All Members of the Board have a duty to disclose any non-compliance with these Standing Orders to the Secretary as soon as possible.

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

- 5.1 Subject to the Regulatory Framework and such directions as may be given by the Regulator, the Board may make arrangements for the exercise, on behalf of the Board, of any of its

functions by a committee or sub-committee, in each case subject to such restrictions and conditions as the Board sees fit.

## 5.2 **Emergency Powers**

The powers which the Board has retained to itself 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 the Chairman shall be reported to the next formal meeting of the Board for ratification.

## 5.3 **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 in accordance with directions issued by NHSI. The terms of reference of these committees, or sub-committees, and their specific executive powers shall be approved by the Board.

## 5.4 **Delegation to Officers**

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

5.4.2 The Chief Executive shall prepare a Scheme of Delegation identifying his/her 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 Delegation which shall be considered and approved by the Board as indicated above.

5.4.3 Nothing in the Scheme of Delegation shall impair the discharge of the direct accountability to the Board of the Chief Financial Officer to provide information and advise the Board in accordance with statute or NHSI's requirements. Outside these regulatory requirements the Chief Financial Officer shall be accountable to the Chief Executive for operational matters.

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

## 6. **COMMITTEES**

6.1 Subject to such directions and guidance as may be given by the Regulator, the Board may appoint committees of the Board.

6.2 A committee so appointed may, subject to such directions as may be given by the Board, appoint sub-committees consisting wholly or partly of members of the committee.

6.3 The Standing Orders, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees or sub-committee established by the Board.

6.4 Each such committee or sub-committee shall have such terms of reference and powers and be subject to such conditions as the Board shall decide. Such terms of reference shall have



effect as if incorporated into these Standing Orders.

- 6.5 Committees may not delegate their executive powers to a sub-committee unless expressly authorised by the Board.
- 6.6 The Board shall approve the appointments to each of the committees which it has formally constituted.
- 6.7 Where the Board determines that persons who are not Board members shall be appointed as advisors to a committee, the terms of such appointment shall be determined by the Board.
- 6.8 A member of a committee shall not disclose a matter dealt with by, or brought before, the committee without its permission until the committee shall have reported to the Board or shall otherwise have concluded on that matter.
- 6.9 A Director of the Trust or a Member of a committee shall not disclose any matter reported to the Board or otherwise dealt with by the committee, if the Board or committee shall resolve that it is confidential.

## **7. DECLARATIONS OF INTERESTS AND REGISTER OF INTERESTS**

### **Declarations of Interests**

- 7.1. The Regulatory Framework requires Board Members to declare interests which are relevant and material to the Board of which they are a Member. All existing Board Members should declare such interests. Any Board Members appointed subsequently should do so on appointment.
- 7.2 Interests which should be regarded as "relevant and material" are to be interpreted in accordance with guidance issued by the Regulator and in the Constitution paragraph 11.
- 7.3 No Board Member shall be treated as having a relevant and material interest in any contract, proposed contract or other matter by reason only –
  - a) of his membership of a company or other body if he has no beneficial interest in any securities of that company or other body; or
  - b) of an interest in any company, body or person with which he is connected which is so remote or insignificant that it cannot reasonably be regarded as likely to influence him in the consideration or discussion of, or in voting on, any question with respect to that contract, proposed contract or other matter.
- 7.4 If Board Directors have any doubt about the relevance of an interest, this should be discussed with the Company Secretary.
- 7.5 It is the obligation of the Director to inform the Company Secretary in writing within 7 days of becoming aware of the existence of a relevant and material interest. The Secretary will amend the Register upon receipt within 3 working days.
- 7.6 If a Director has a relevant and material interest (including a pecuniary interest), whether direct or indirect, in any contract, proposed contract or other matter which is

under consideration by the Board of Directors at a Board meeting, he shall disclose that to the rest of the Board as soon as he is aware of it and where there is a conflict of interest he shall withdraw from the meeting and take no further part in it. If there is a dispute as to whether a conflict of interest does exist the majority will resolve the issue with the Chairman having the casting vote.

- 7.7 Interests of Board members' spouses or partners in contracts are to be discussed with the Company Secretary to ascertain whether a conflict exists.
- 7.8 This paragraph applies to a committee or sub-committee as it applies to the Board of Directors and applies to a member of any such committee or sub-committee.

### **Register of Interests**

- 7.9 The Secretary will ensure that a Register of Interests is established to record formally declarations of interests of Board Members. In particular the Register will include details of all directorships and other relevant and material interests that have been declared by both Executive and Non-Executive Board directors.
- 7.10 The Register will be available to the public.
- 7.11 In establishing, maintaining, updating and publicising the Register, the Trust shall comply with all guidance issued from time to time by the Regulator.

### **8.0 DISABILITY OF DIRECTORS IN PROCEEDINGS ON ACCOUNT OF PECUNIARY INTEREST**

- 8.1 Subject to the following provisions of this Standing Order, if any Member of the Board has any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter and is present at a meeting of the Trust at which the contract or other matter is the subject of consideration, he shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not take part in the consideration or discussion of the contract or other matter or vote on any question with respect to it.
- 8.2 The Board may exclude any member of the Board from a meeting of the Board while any contract, proposed contract or other matter in which he/she has a pecuniary interest, is under consideration.
- 8.3 Any remuneration, compensation or allowances payable to a Member of the Board by virtue of paragraph 9 of Schedule 2 to the NHS & Community Care Act 1990 shall not be treated as a pecuniary interest for the purpose of this Standing Order.
- 8.4 For the purpose of this Standing Order a Member of the Board shall be treated as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if:
- a) he, or a nominee of his, is a director of a company or other body, not being a public body, with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration; or
  - b) he is a partner of, or is in the employment of a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration.
- 8.5 The Chairman or a Member of the Board shall not be treated as having a

pecuniary interest in any contract, proposed contract or other matter by reason only:

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

8.6 Where the Member of the Board:

- a) has an indirect pecuniary interest in a contract, proposed contract or other matter by reason only of a beneficial interest in securities of a company or other body, and
- b) the total nominal value of those securities does not exceed £5,000 or one-hundredth of the total nominal value of the issued share capital of the company or body, whichever is the less, and
- c) if the share capital is of more than one class, the total nominal value of shares of any one class in which he has a beneficial interest does not exceed 2% of the total issued share capital of that class.

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

8.7 This Standing Order applies to a committee or sub-committee of the Board as it applies to the Board and applies to any member of any such committee or sub-committee as it applies to a Member of the Board.

## 9. STANDARDS OF BUSINESS CONDUCT

9.1 Staff must comply with national guidance 'Standards of Business Conduct for NHS Staff' and any guidance and directions issued by the Regulator.

### 9.2 Interest of Officers in Contracts

9.2.1 If it comes to the knowledge of an officer of the Trust that a contract in which he has any pecuniary interest not being a contract to which he is himself a party, has been, or is proposed to be, entered into by the Trust he/she shall, at once, give notice in writing to the Company Secretary of the fact that he/she is interested therein.

9.2.2 An officer must also declare to the Secretary any other employment or business or other relationship of his that conflicts, or might reasonably be predicted could conflict with the interests of the Trust.

9.2.3 The Trust will require interests, employment or relationships so declared by Board members to be entered in a register of interests of Board members.

9.3 **Canvassing of, and Recommendations by, Directors in Relation to Appointments** Canvassing of Directors of the Trust or of any members of any Committee of the Trust directly or indirectly for any appointment under the Trust shall disqualify the candidate for such appointment. The contents of this paragraph of the Standing Orders shall be included in

application forms or otherwise brought to the attention of candidates.

9.4 A Member of the Board shall not solicit for any person any appointment under the Trust or recommend any person for such appointment: but this paragraph of this BSO shall not preclude a Member of the Board from giving written testimonial of a candidate's ability, experience or character for submission to the Trust.

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

#### 9.6 **Relatives of Members of the Board or Officers**

9.6.1 Candidates for any staff appointment under the Trust shall, when making application, disclose in writing whether they are related to any Member of the Board or the holder of any office under the Trust. Failure to disclose such a relationship shall disqualify a candidate and, if appointed, render him/her liable to instant dismissal.

9.6.2 Every Member of the Board and every Officer of the Trust shall disclose to the Company Secretary any relationship with a candidate of whose candidature that Member of the Board or Officer is aware. It shall be the duty of the Company Secretary to report to the Trust any such disclosure made.

9.6.3 On appointment, Board Members should disclose to the Trust whether they are related to any Director or Governor or holder of any office under the Trust.

9.6.4 Where the relationship to a Member of the Board of the Trust is disclosed, the BSO headed 'Disability of directors in proceedings on account of pecuniary interest' shall apply.

### 10.0 **TENDERING AND CONTRACT PROCEDURE**

#### 10.1 **Duty to comply with Standing Orders**

The procedure for making all contracts by or on behalf of the Trust shall comply with these Standing Orders.

#### 10.2 **Contracts**

The Board may enter into contracts on behalf of the Trust within the Regulatory Framework and shall comply with:

- a) these Standing Orders; and
- b) the Trust's Standing Financial Instructions.

#### 10.3 **Personnel and Agency or Temporary Staff Contracts**

The Chief Executive shall nominate officers with delegated authority to enter into contracts of employment, regarding staff, agency staff or temporary staff service contracts.

#### 10.4 **Contracts involving Funds Held on Trust**

Such contracts involving charitable funds shall comply with the requirements of the

Charities Act.

## **11.0 CUSTODY OF SEAL AND SEALING OF DOCUMENTS**

- 11.1 The Common Seal of the Trust shall be kept by the Company Secretary in a secure place.
- 11.2 The Seal of the Trust shall not be fixed to any documents unless the sealing has been authorised by a resolution of the Board.
- 11.3 An entry of every sealing shall be made and numbered consecutively in a book provided for that purpose, and shall be signed by the persons who shall have approved and authorised the document and those who attested the seal. A report of all sealing shall be made to the Trust at least quarterly, unless no sealing has taken place. (the report shall detail a description of the document and date of sealing).The seal should be used to execute deeds (e.g. conveyances of land) or where otherwise required by law.

## **12.0 SIGNATURE OF DOCUMENTS**

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

## **13. MISCELLANEOUS**

### **13.1 Standing Orders to be given to Members of the Board and Officers**

It is the duty of the Chief Executive to ensure that existing Members of the Board and officers and all new appointees are notified of and understand their responsibilities within Standing Orders and Standing Financial Instructions. Updated copies shall be issued to staff designated by the Chief Executive. New designated officers shall be informed in writing and shall receive copies where appropriate of Standing Orders.

### **13.2 Documents having the standing of Standing Orders**

Standing Financial Instructions and Reservation of Powers to the Board and Delegation of Powers shall have the effect as if incorporated into the Standing Orders.

### **13.3 Review of Standing Orders**

Standing Orders shall be reviewed by the Trust. The requirement for review extends to all documents having the effect as if incorporated in Standing Orders.

### **13.4 Dispute Resolution**

Questions and disputes regarding the interpretation of these Standing Orders and the

procedure to be followed at meetings of the Board of Directors shall be resolved in accordance with the procedure set out in the Constitution.

