

The Robert Jones and Agnes Hunt  
Orthopaedic Hospital



NHS Foundation Trust

**Constitution**

**September 2018**

# Constitution

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## 1. Interpretation and Definitions

- 1.1 Unless otherwise stated, words or expressions contained in this Constitution shall bear the same meaning as in the National Health Service Act 2006 as amended by the Health and Social Care Act 2012.
- 1.2 Words importing the masculine gender only shall include the feminine gender; words importing the singular shall import the plural and vice-versa.
- 1.3 In this Constitution:

**the 2006 Act** is the National Health Service Act 2006.

**the 2012 Act** is the Health and Social Care Act 2012.

**Accounting Officer** means the person who from time to time discharges the functions specified in paragraph 25(5) of Schedule 7 to the 2006 Act. For the Trust it shall be the Chief Executive.

**Annual General Meeting** is defined in paragraph 10.

**Board of Directors** means the Board of Directors as constituted in accordance with the Constitution.

**Chairman** means the Chairman of the Trust.

**Chief Executive** means the Chief Executive of the Trust.

**Clear Day** means a day of the week not including a Saturday, Sunday or Public Holiday.

**Constitution** means this constitution, comprising the Core Constitution and all annexes .

**Core Constitution** means paragraphs 1 to 46 of this document.

**Council of Governors** means the Council of Governors as constituted in accordance with Annex 3 of the Constitution and has the same meaning as "Council of Governors" in the 2006 Act.

**Deputy Chairman** means one of the Non-Executive Directors of the Trust who is appointed by the Council of Governors.

**Director** means a member of the Board of Directors appointed in accordance with the Constitution and includes both Executive and Non-Executive Directors.

**Executive Director** means a member of the Board of Directors who holds an executive office of the Trust.

**FT Code** means the NHS Foundation Trust Code of Governance published by Monitor in July 2014 and any subsequent updates.

**Funds held on trust** means those funds which the Trust holds at its date of incorporation, receives on distribution by statutory instrument or chooses subsequently to accept under powers derived under section 14 of Part 2, Schedule 4 of the 2006 Act. Such funds may or may not be charitable.

**Governor** means a member of the Council of Governors elected or appointed as provided by the Constitution.

**Member** means a member of the Trust.

**Monitor** is the body corporate known as Monitor, as provided by Section 61 of the 2012 Act (since April 2016 it is part of NHS Improvement and therefore references to Monitor in accordance with the Act are applicable to NHS Improvement)

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

**Nominated Officer** means an officer charged with the responsibility for discharging specific tasks within the Standing Orders (SOs) and Standing Financial Instructions (SFIs).

**Non-Executive Director** means a member of the Board of Directors who does not hold an executive office of the Trust.

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

**Regulatory Framework** means the 2006 Act, the Constitution and the Licence.

**Scheme of Delegation** means the Schedule of Matters Reserved to the Board of Directors and the Delegation of Powers, as approved by the Board of Directors and reviewed from time to time.

**Secretary** means a person appointed by the Trust in accordance with the Constitution to be the Trust Secretary.

**Significant Transaction** means a transaction as defined in paragraph 46 in this document

**SFIs** mean the Standing Financial Instructions (including the Tendering and Contract Procedure) as approved by the Board of Directors.

**SOs** means the Standing Orders of the Council of Governors set out in Annex 6 and the Standing Orders of the Board of Directors set out in Annex 7.

**Terms of Authorisation** means the Terms of authorisation issued by Monitor under Section 35 of the 2006 Act and any subsequent authorisations by Monitor.

**Trust** means The Robert Jones and Agnes Hunt Orthopaedic Hospital NHS Foundation Trust.

**Trust Headquarters** means The Robert Jones and Agnes Hunt Orthopaedic Hospital, Oswestry, Shropshire SY10 7AG.

## 2. Name

The name of the Trust is The Robert Jones and Agnes Hunt Orthopaedic Hospital 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 fulfill 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:

- the provision of services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness, and
- the promotion and protection of public health.

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

#### **4. Powers**

4.1 The powers of the Trust are set out in the 2006 Act, subject to any restrictions in the Terms of Authorisation.

4.2 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 of the Trust.

#### **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; or

5.2 a staff 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 Public member of the Trust.

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

7.3 The minimum number of Members in each area for the Public Constituency is specified in Annex 1.

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

8.1 A person who is employed by the Trust under a contract of employment with the Trust may become or continue as a Staff member of the Trust provided that:

8.1.1 he or she 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 or she has been continuously employed by the Trust under a contract of employment for at least 12 months.

8.2 A person who exercises functions for the purposes of the Trust, otherwise than under a contract of employment with the Trust, may become or continue as a member of the Staff Constituency provided that he or she has 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 minimum number of Members in the Staff Constituency is specified in Annex 2.
- 8.5 An individual who is:
  - 8.5.1 eligible to become a member of the Staff Constituency; and
  - 8.5.2 invited by the Trust to become a member of the Staff Constituency shall become a member of the Trust as a member of the Staff Constituency without an application being made, unless he or she informs the Trust that he or she does not wish to do so.

## **9. Restriction on Membership**

- 9.1 An individual who is a member of a constituency or of a class within a constituency, may not while membership of that constituency or class continues, be a member of any other constituency or class.
- 9.2 An individual who satisfies the criteria for membership of the Staff Constituency may not become or continue as a member of any constituency other than the Staff Constituency.
- 9.3 An individual must be at least 14 years old to become a member of the Trust.
- 9.4 Further provisions as to the circumstances in which an individual may not become or continue as a member of the Trust are set out in paragraphs 3, 4 and 5 of Annex 8.

## **10. Annual General Meeting**

- 10.1 The Trust shall hold an annual meeting of its members ('Annual General Meeting'). The Annual General Meeting shall be open to members of the public.

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

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

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

- 12.1 Elections for elected Members of the Council of Governors shall be conducted in accordance with the Model Election Rules.
- 12.2 The Model Election Rules as published from time to time by the Department of Health form part of this Constitution. The Model Election Rules current at the date of this Constitution are attached at Annex 4.

12.3 A subsequent variation of the Model Election Rules by the Department of Health shall not constitute a variation of the terms of the Constitution for the purposes of paragraph 45 of the Core Constitution.

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

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

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

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

13.3 An elected Governor shall be eligible for re-election at the end of his or her term, but shall not hold office for longer than nine consecutive years or three consecutive terms each of three years.

13.4 An appointed Governor may hold office for a period of up to three years.

13.5 An appointed Governor shall cease to hold office if the appointing organisation withdraws its sponsorship of him or her.

13.6 An appointed Governor shall be eligible for re-appointment at the end of his or her term, but shall not hold office for longer than nine consecutive years or three consecutive terms each of three years.

### **14. Council of Governors – Disqualification, Removal and Termination**

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

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

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

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

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

14.3 Further provisions as to the circumstances in which an individual may not become or continue as a member of the Council of Governors are set out in paragraph 7 of Annex 5.

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

15.1 The general duties of the Council of Governors are –

15.1.1 to hold the Non-Executive Directors individually and collectively to account for the performance of the Board of Directors, and

15.1.2 to represent the interests of the Members of the Trust as a whole and the interests of the public.



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

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

- 16.1 The Chairman of the Trust (i.e. the Chairman of the Board of Directors, appointed in accordance with the provisions of paragraph 25.1) or, in his or her absence, the Deputy Chairman appointed in accordance with the provisions of paragraph 26), shall preside at meetings of the Council of Governors.
- 16.2 Meetings of the Council of Governors shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons by resolution of the Council of Governors on the grounds that publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted or for other special reasons stated in the resolution and arising from the nature of the business or the proceedings.
- 16.3 For the purposes of obtaining information about the Trust's performance of its functions or the Directors' performance of their duties (and deciding whether to propose a vote on the Trust's or Directors' performance), the Council of Governors may require one or more of the Directors to attend a meeting.

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

The Standing Orders of the Council of Governors are attached at Annex 6.

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

- 18.1 In this paragraph, the Panel means a panel of persons appointed by Monitor to which a governor of an NHS foundation trust may refer a question as to whether the Trust has failed or is failing:-
- 18.1.1. to act in accordance with its Constitution, or
- 18.1.2 to act in accordance with provision made by or under Chapter 5 of the 2006 Act.
- 18.2 A governor may refer a question to the Panel only if more than half of the Members of the Council of Governors voting approve the referral.

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

- 19.1 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 or she becomes aware of it.
- 19.2 Further provisions on 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 are set out in paragraph 5 of Annex 6.

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

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

#### **21. Council of Governors – Further Provisions**

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

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

- 22.1 The Trust is to have a Board of Directors, which shall comprise both Executive and Non-Executive Directors.
- 22.2 The Board of Directors is to comprise:
  - 22.2.1 a Non-Executive Chairman;
  - 22.2.2 no fewer than four and no more than six other Non-Executive Directors; and
  - 22.2.3 no fewer than four and no more than six Executive Directors. such that at any time at least half the Board of Directors (excluding the Chairman) shall be Non-Executive Directors.
- 22.3 One of the Executive Directors shall be the Chief Executive.
- 22.4 The Chief Executive shall be the Accounting Officer.
- 22.5 One of the Executive Directors shall be the Finance Director.
- 22.6 One of the Executive Directors is to be a registered medical practitioner or a registered dentist (within the meaning of the Dentists Act 1984).
- 22.7 One of the Executive Directors is to be a registered nurse or a registered midwife.
- 22.8 The validity of any act of the Trust is not affected by any vacancy among the directors or by any defect in the appointment of any director.

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

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

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

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

- 24.1 he or she is a member of the Public Constituency; and
- 24.2 he or she is not disqualified by virtue of paragraph 30 below or paragraph 3.10 of Annex 7.

## **25. Board of Directors – Appointment, Re-Appointment and Removal of Chairman and other Non-Executive Directors**

- 25.1 The Council of Governors at a general meeting of the Council of Governors shall appoint, re-appoint or remove the Chairman of the Trust and the other Non-Executive Directors.

- 25.2 Removal of the Chairman or another Non-Executive Director shall require the approval of three-quarters of the Members of the Council of Governors.
- 25.3 Further provisions as to the process to be followed for the appointment, re-appointment and removal of Non-Executive Directors by the Council of Governors are set out in Appendix 5A of Annex 5.

## **26. Board of Directors – Appointment of Deputy Chairman**

The Council of Governors at a general meeting of the Council of Governors shall appoint one of the Non-Executive Directors as Deputy Chairman. Further provisions on the appointment and powers of the Deputy Chairman are set out in paragraph 3.6 of Annex 7.

## **27. Board of Directors - Appointment of Senior Independent Director**

The Board of Directors shall in consultation with the Council of Governors appoint as Senior Independent Director one of the Non-Executive Directors who is deemed by the Board of Directors to be independent by reference to FT Code Provision B.1.1. Further provisions on the appointment and powers of the Senior Independent Director are set out in paragraph 3.7 of Annex 7.

## **28. Board of Directors - Tenure of Non-Executive Directors**

- 28.1 A Non-Executive Director (including the Chairman) may be appointed for a maximum period of up to three years.
- 28.2 A Non-Executive Director (including the Chairman) may be eligible for re-appointment at the end of his or her term, but shall not normally hold office for longer than six consecutive years or two consecutive terms each of three years.
- 28.3 In accordance with FT Code Provision B.7.1, any term beyond six years (i.e. two consecutive terms each of three years) for a Non-Executive Director should be subject to rigorous review, which should take into account the need for progressive refreshing of the Board of Directors. A Non-Executive Director may, in exceptional circumstances, serve for longer than six years (i.e. two consecutive terms each of three-years), but this must be subject to annual re-appointment by the Council of Governors.

## **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.

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

- 30.1 The following may not become or continue as a member of the Board of Directors:
- 30.1.1 a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged.
- 30.1.2 a person who has made a composition or arrangement with, or granted a Trust deed for, his or her creditors and has not been discharged in respect of it.

30.1.3 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 or her.

30.2 Further provisions as to the circumstances in which an individual may not become or continue as a member of the Board of Directors are set out in paragraph 3.10 of Annex 7.

### **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 of the Board of Directors are attached at Annex 7.

### **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 authorized in accordance with the Constitution.

33.3 The duty referred to in sub-paragraph 33.1.1 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.

33.4 In sub-paragraph 33.1.2, “third party” means a person other than –

33.4.1 The Trust, or

33.4.2 A person acting on its behalf.

33.5 If a Director of the Trust has in any way a direct or indirect interest in a proposed transaction or arrangement with the Trust, the Director must declare the nature and extent of that interest to the other Directors.

33.6 If a declaration under this paragraph proves to be, or becomes, inaccurate, incomplete, a further declaration must be made.

33.7 Any declaration required by this paragraph must be made before the Trust enters into the transaction or arrangement.

- 33.8 This paragraph does not require a declaration of an interest of which the Director is not aware or where the Director is not aware of the transaction or arrangement in question.
- 33.9 A Director need not declare an interest –
- 33.9.1 If it cannot reasonably be regarded as likely to give rise to a conflict of interest;
- 33.9.2 If, or to the extent that, the Directors are already aware of it;
- 33.9.3 If, or to the extent that, it concerns terms of the Director's appointment that have been or are to be considered –
- 33.9.3.1 By a meeting of the Board of Directors, or
- 33.9.3.2 By a committee of the Directors appointed for the purpose under the Constitution.
- 33.10 Further provisions on 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 are set out in paragraph 9 of Annex 7.

#### **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.

#### **35. Registers**

The Trust shall have:

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

#### **36. Admission to and Removal from the Registers**

##### **36.1 Register of Members**

- 36.1.1 Except as provided in paragraph 8.5 above, applicants for membership of the Trust must complete and sign an application in the form prescribed by the Secretary.
- 36.1.2 The Secretary shall maintain the register of Members in two parts:

36.1.1.1 Part 1, which shall be the register referred to in the 2006 Act, shall include the name of each member and the constituency or class to which they belong, and shall be open to inspection by the public in accordance with paragraphs 37 and 38 below; and

36.1.1.2 Part 2, which shall contain all the information from the application form and shall not be open to inspection by the public nor may copies or extracts from it be made available to any third party.

36.1.3 Notwithstanding the provision in paragraph 36.1.1.2 above, the Trust shall extract such information as it needs in aggregate to satisfy itself that the actual membership of the Trust is representative of those eligible for membership and for the administration of the provisions of this Constitution.

#### **36.2 Register of Governors**

The Register of Governors shall list the names of Governors, their category of membership of the Council of Governors and an address through which they may be contacted, which may be the Secretary.

#### **36.3 Register of Governors' Interests**

The Register of Governors' interests shall contain the names of each governor, whether he or she has declared any interests and, if so, the interests declared in accordance with this Constitution and the Standing Orders of the Council of Governors set out in Annex 6.

#### **36.4 Register of Directors**

The Register of Directors shall list the names of Directors, their capacity on the Board of Directors and an address through which they may be contacted, which may be the Secretary.

#### **36.5 Register of Directors' Interests**

The Register of Directors' interests shall contain the names of each Director, whether he or she has declared any interests and, if so, the interests declared in accordance with this Constitution and the Standing Orders of the Board of Directors set out in Annex 7.

### **37. Registers – Inspection and Copies**

37.1 The Trust shall make the registers specified in paragraph 36 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.

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

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

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

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

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

### **38. Documents Available for Public Inspection**

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

38.1.1 a copy of the current Constitution;

38.1.2 a copy of the latest annual accounts and of any report of the auditor on them;

38.1.3 a copy of the latest annual report;

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

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

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

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

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

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

38.2.5 a copy of any statement provided under section 65F (administrator's draft report) of the 2006 Act.

38.2.6 a copy of any notice published under section 65F (administrator's draft report), 65G (consultation plan), 65H (consultation requirements), 65J (power to extend time), 65KA (Monitor's decision), 65KB (Secretary of State's response to Monitor's decision), 65KC (action following Secretary of State's rejection of final report) or 65KD (Secretary of State's response to re-submitted final report) of the 2006 Act.

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

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

38.2.9 a copy of any statement published under section 65J (power to extend time) or 65KC (action following Secretary of State's rejection of final report) of the 2006 Act.

38.2.10 a copy of any information published under section 65M (replacement of Trust special administrator) of the 2006 Act.

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

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

### **39. Auditor**

39.1 The Trust shall have an auditor.

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

### **40. Audit Committee**

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

### **41. Accounts**

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

41.2 Monitor may, with the approval of the Secretary of State, give directions to the Trust as to the content and form of its accounts.

41.3 The accounts are to be audited by the Trust's Auditor.

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

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

### **42. Annual Report, Forward Plans and Non-NHS Work**

42.1 The Trust shall prepare an Annual Report and send it to Monitor.

42.2 The Trust shall give information as to its forward planning in respect of each financial year to Monitor.

42.3 The document containing the information with respect to forward planning (referred to above) shall be prepared by the Directors.

42.4 In preparing the document, the Directors shall have regard to the views of the Council of Governors.

42.5 Each forward plan must include information about –

42.5.1 the activities other than the provision of goods and services for the purposes of the health service in England that the Trust proposes to carry on, and

42.5.2 the income it expects to receive from doing so.

42.6 Where a forward plan contains a proposal that the Trust carry on an activity of a



kind mentioned in sub-paragraph 42.5.1 the Council of Governors must –

42.6.1 determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfillment by the Trust of its principal purpose or the performance of its other functions, and

42.6.2 notify the Directors of the Trust and its determination.

42.7 A Trust which proposes to increase by 5% or more the proportion of its total income (definition as agreed by the Board of Directors and Council of Governors) in any financial year attributable to activities other than the provision of goods and services for the purposes of the National Health Service in England may implement the proposal only if more than half of the members of the Council of Governors of the Trust voting approve its implementation.

#### **43. Presentation of the Annual Accounts and Reports to the Governors and Members**

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

43.1.1 the annual accounts

43.1.2 any report of the auditor on them

43.1.3 the annual report.

43.2 The documents shall also be presented to the Members of the Trust at the Annual General Meeting by at least one member of the Board of Directors in attendance.

43.3 The Trust may combine a meeting of the Council of Governors convened for the purposes of sub-paragraph 44.1 with the Annual General Meeting.

#### **44 Instruments**

44.1 The Trust shall have a seal.

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

#### **45 Amendment of the Constitution**

45.1 The Trust may make amendments of its Constitution only if –

45.1.1 More than half of the Members of the Board of Directors of the Trust voting approve the amendments.

45.1.2 More than half of the Members of the Council of Governors of the Trust voting approve the amendments, and

45.2 Amendments made under paragraph 45.1 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.

45.3 Where an amendment is made to the Constitution in relation to 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) –

- 45.3.1 At least one member of the Council of Governors must attend the next Annual General Meeting and present the amendment, and
- 45.3.2 The Trust must give the Members an opportunity to vote on whether they approve the amendment.
- 45.4 If more than half of the Members voting approve the amendment, the amendment continues to have effect; otherwise, it ceases to have effect and the Trust must take such steps as are necessary as a result.
- 45.5 Amendments by the Trust of its Constitution are to be notified to Monitor. For the avoidance of doubt, Monitor's functions do not include a power or duty to determine whether or not the Constitution, as a result of the amendments, accords with Schedule 7 of the 2006 Act.

#### **46 Mergers Etc. and Significant Transactions**

- 46.1 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.

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. A Significant Transaction means a transaction which relates to;

- For UK Healthcare: investments, divestments or other transactions comprising more than 25% of the assets, income or capital of the NHS Foundation Trust.
- For non-healthcare related and/or international; investments, divestments or other transactions comprising more than 25% of the assets, income or capital of the Trust.
- or if the Trust is in significant breach of its Terms of Authorisation, any investment/divestment comprising more than 10% of the assets, income or capital of the Trust in each case measured by reference to the latest audited Accounts of the Trust.

## Annex 1:

### THE PUBLIC CONSTITUENCY

(Paragraph 7)

#### Areas of the Public Constituency of the Trust

<b>Name of area</b>	<b>Coverage</b>	<b>Minimum number of Members</b>
Shropshire (excluding Telford and Wrekin)	The electoral wards within the Shropshire Council area	[50]  (Total population 306,100)
North Wales	The electoral wards within the following areas: <ul style="list-style-type: none"><li>• Anglesey County Council</li><li>• Conwy County Borough Council</li><li>• Denbighshire County Council</li><li>• Flintshire County Council</li><li>• Gwynedd Council</li><li>• Wrexham County Borough Council</li></ul>	[50]  (Total population 694,100)
Cheshire and Merseyside	The electoral wards within the following areas: <ul style="list-style-type: none"><li>• Cheshire West and Chester Council</li><li>• Cheshire East Council</li><li>• Halton Borough Council</li><li>• Knowsley Metropolitan Borough Council</li><li>• Liverpool City Council</li><li>• Sefton Council</li><li>• St Helens Council</li><li>• Warrington Borough Council</li><li>• Wirral Metropolitan Borough Council</li></ul>	[10]  (Total population 2,408,900)

West Midlands	<p>The electoral wards within the following areas:</p> <ul style="list-style-type: none"> <li>• Birmingham City Council</li> <li>• Coventry City Council</li> <li>• Dudley Metropolitan Borough Council</li> <li>• Sandwell Metropolitan Borough Council</li> <li>• Walsall Metropolitan Borough Council</li> <li>• Wolverhampton City Council</li> <li>• Herefordshire Council</li> <li>• Stoke-on-Trent City Council</li> <li>• Telford &amp; Wrekin Council</li> <li>• Staffordshire County Council</li> <li>• Warwickshire County Council</li> <li>• Worcestershire County Council</li> </ul>	<p>[10]</p> <p>(Total population 3,496,100)</p>
Powys	The electoral wards within Powys County Council	<p>[10]</p> <p>(Total population 133,000)</p>
Rest of England & Wales	All other electoral wards in England and Wales	<p>[10]</p> <p>(Total population 50,370,454)</p>
<b>Totals</b>	<b>Population</b>	<b>57,408,654</b>
	<b>Minimum membership</b>	<b>140</b>
	<b>Public Governors</b>	<b>10</b>

**Annex 2:**

**THE STAFF CONSTITUENCY**

(Paragraph 8)

There are no classes within the Staff Constituency. The minimum number of Members required in the Staff Constituency is 50.

## **Annex 3:**

### **COMPOSITION OF THE COUNCIL OF GOVERNORS**

(Paragraph 11)

#### **1. Principles**

- 1.1. The composition of the Council of Governors shall, subject to the 2006 Act, seek to ensure that:
  - 1.1.1. the interests of the community served by the Trust are appropriately representative of the areas in which the Trust operates and the people using the services; and
  - 1.1.2. the level of representation of the Public and Staff Constituencies and Partnership Organisations provides an appropriate balance having regard to their respective interests in the Trust's affairs.
- 1.2. To this end, the Council of Governors shall:
  - 1.2.1. maintain a policy for the composition of the Council of Governors which takes into account the Trust's membership strategy, the allocation of elected Governors across the Public and Staff Constituencies and the representation of Partnership Organisations;
  - 1.2.2. from time to time, and not less than every three years, review the policy for the composition of the Council of Governors; and
  - 1.2.3. when necessary, propose amendments to this Constitution in accordance with paragraph 45 of the Core Constitution.

#### **2. Composition of Council of Governors**

- 2.1. The Council of Governors shall consist of 15 Members, to be composed as follows:
  - 2.1.1. Nine Public Governors;  
  
Shropshire (excluding Telford and Wrekin) – 3 Governors  
North Wales – 2 Governors  
Cheshire and Merseyside – 1 Governor  
West Midlands – 1 Governor  
Powys – 1 Governor  
Rest of England & Wales – 1 Governor
  - 2.1.2. Three Staff Governors.
  - 2.1.3. Three appointed Governors, comprising:
    - 2.1.3.1. One local authority governor; and
    - 2.1.3.2. Two further Governors appointed by Partnership Organisations as defined in paragraph 2.3 below.

2.2 The number of Public Governors is to be more than half of the total membership of the Council of Governors.

2.3 The organisations specified as Partnership Organisations that may each appoint one member of the Council of Governors are:

2.3.1 Keele University;

2.3.2 League of Friends.

### **3. Appointed Governors**

#### **3.1 Local Authority Governor**

Shropshire Council or its successor organisation may appoint one local authority governor by notice in writing signed by the Chairman or Chief Executive of the Council and delivered to the Secretary.

#### **3.2 Other Appointed Governors**

3.2.1 Keele University of Keele, Staffordshire ST5 5BG or its successor organisation may appoint one governor by notice in writing signed by the Dean of the Faculty of Health and delivered to the Secretary.

3.2.2 The League of Friends or its successor organisation may appoint one governor by notice in writing signed by the Chairman of the Committee and delivered to the Secretary.

**Annex 4:**

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**Election Rules**

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

- STV41. Interpretation of Part 6
- 42. Arrangements for counting of the votes
- 43. The count
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- 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
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#### **PART 8: DISPOSAL OF DOCUMENTS**

- 54. Sealing up of documents relating to the poll
- 55. Delivery of documents
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- 57. Retention and public inspection of documents
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## **PART 9: DEATH OF A CANDIDATE DURING A CONTESTED ELECTION**

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### *Expenses*

- 60. Election expenses
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- 63. Publicity about election by the corporation
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## **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.

## PART 2: TIMETABLE FOR ELECTIONS

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### 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.

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

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### **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 1



- 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 provided
- to which his or her voting information may, subject to rule 22.3, be sent.
- 22.3 The corporation may decide that the e-voting information is to be sent only by e-mail to those Members in the list of eligible voters for whom an e-mail address is included in that list.

**23. Notice of poll**

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

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

- 24.1 Subject to rule 24.3, as soon as is reasonably practicable on or after the

publication of the notice of the poll, the returning officer is to send the following information by post to each member of the corporation named in the list of eligible voters:

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

("postal voting information").

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

- (a) instructions on how to vote and how to make a declaration of identity (if required),
- (b) the voter's voter ID number,
- (c) information about each candidate standing for election, pursuant to rule 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, on next paragraph (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





able to obtain it), and

(c) the details of the unique identifier of the replacement ballot paper.

29.5 If a voter has dealt with his or her text message vote in such a manner that it cannot be accepted as a vote (referred to as a “spoilt text message vote”), that voter may apply to the returning officer for a replacement voter ID number.

29.6 On receiving an application, the returning officer is to obtain the details of the voter ID number on the spoilt text message vote, if he or she can obtain it.

29.7 The returning officer may not issue a replacement voter ID number in respect of a spoilt text message vote unless he or she is satisfied as to the voter’s identity.

29.8 After issuing a replacement voter ID number in respect of a spoilt text message vote, the returning officer shall enter in a list (“the list of spoilt text message votes”):

(a) the name of the voter, and

(b) the details of the voter ID number on the spoilt text message vote (if that officer was able to obtain it), and

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

**30. Lost voting information**

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

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

(a) is satisfied as to the voter’s identity,

(b) has no reason to doubt that the voter did not receive the original voting information,

(c) has ensured that no declaration of identity, if required, has been returned.

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

(a) the name of the voter

(b) the details of the unique identifier of the replacement ballot paper, if applicable, and

(c) the voter ID number of the voter.

**31. Issue of replacement voting information**

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

31.2 After issuing replacement voting information under this rule, the returning officer

shall enter in a list (“the list of tendered voting information”):

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

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

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

*Polling by internet, telephone or text*

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

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

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

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

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

- 35.1 To cast his or her vote by text message the voter will need to gain access to the text message voting facility by sending a text message to the designated

telephone number or telephone short code provided in the voter information.

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

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

**36. Receipt of voting documents**

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

**37. Validity of votes**

- 37.1 A ballot paper shall not be taken to be duly returned unless the returning officer is satisfied that it has been received by the returning officer before the close of the poll, with an ID declaration form if required that has been correctly completed, signed and dated.
- 37.2 Where the returning officer is satisfied that rule 37.1 has been fulfilled, he or she is to:
  - (a) put the ID declaration form if required in a separate packet, and
  - (b) put the ballot paper aside for counting after the close of the poll.
- 37.3 Where the returning officer is not satisfied that rule 37.1 has been fulfilled, he or she is to:
  - (a) mark the ballot paper “disqualified”,
  - (b) if there is an ID declaration form accompanying the ballot paper, mark it “disqualified” and attach it to the ballot paper,
  - (c) record the unique identifier on the ballot paper in a list of disqualified documents (the “list of disqualified documents”); and
  - (d) place the document or documents in a separate packet.
- 37.4 An internet, telephone or text message vote shall not be taken to be duly returned unless the returning officer is satisfied that the internet voting record, telephone voting record or text voting record (as applicable) has been received by the

returning officer before the close of the poll, with a declaration of identity if required that has been correctly made.

- 37.5 Where the returning officer is satisfied that rule 37.4 has been fulfilled, he or she is to put the internet voting record, telephone voting record or text voting record (as applicable) aside for counting after the close of the poll.
- 37.6 Where the returning officer is not satisfied that rule 37.4 has been fulfilled, he or she is to:
- (a) mark the internet voting record, telephone voting record or text voting record (as applicable) “disqualified”,
  - (b) record the voter ID number on the internet voting record, telephone voting record or text voting record (as applicable) in the list of disqualified documents; and
  - (c) place the document or documents in a separate packet.

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

- 38.1 Where the returning officer receives an ID declaration form if required but no ballot paper, the returning officer is to:
- (a) mark the ID declaration form “disqualified”,
  - (b) record the name of the voter in the list of disqualified documents, indicating that a declaration of identity was received from the voter without a ballot paper, and
  - (c) place the ID declaration form in a separate packet.

**39. De-duplication of votes**

- 39.1 Where different methods of polling are being used in an election, the returning officer shall examine all votes cast to ascertain if a voter ID number has been used more than once to cast a vote in the election.
- 39.2 If the returning officer ascertains that a voter ID number has been used more than once to cast a vote in the election he or she shall:
- (a) only accept as duly returned the first vote received that was cast using the relevant voter ID number; and
  - (b) mark as “disqualified” all other votes that were cast using the relevant voter ID number
- 39.3 Where a ballot paper is disqualified under this rule the returning officer shall:
- (a) mark the ballot paper “disqualified”,
  - (b) if there is an ID declaration form accompanying the ballot paper, mark it “disqualified” and attach it to the ballot paper,
  - (c) record the unique identifier and the voter ID number on the ballot paper in the list of disqualified documents;
  - (d) place the document or documents in a separate packet; and
  - (e) disregard the ballot paper when counting the votes in accordance with these rules.

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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.

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

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

**40. Sealing of packets**

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

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

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

**STV41. Interpretation of Part 6**

STV41.1 In Part 6 of these rules:

*“ballot document”* means a ballot paper, internet voting record, telephone voting record or text voting record.

*“continuing candidate”* means any candidate not deemed to be elected, and not excluded,

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

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

*“mark”* means a figure, an identifiable written word, or a mark such as “X”,

*“non-transferable vote”* means a ballot document:

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

or

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

*“preference”* as used in the following contexts has the meaning assigned below:

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

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

(c) in this context, a “second preference” is shown by the figure “2” or any mark or word which clearly indicates a second preference, and a third preference by the figure “3” or any mark or word which clearly indicates a third preference, and so on,

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

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

*“stage of the count”* means:

(a) the determination of the first preference vote of each candidate,

(b) the transfer of a surplus of a candidate deemed to be elected, or

(c) the exclusion of one or more candidates at any given time,

*“transferable vote”* means a ballot document on which, following a first preference,

a second or subsequent preference is recorded in consecutive numerical order for a continuing candidate,

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

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

**42. Arrangements for counting of the votes**

- 42.1 The returning officer is to make arrangements for counting the votes as soon as is practicable after the close of the poll.
- 42.2 The returning officer may make arrangements for any votes to be counted using vote counting software where:
  - (a) the Board of Directors and the Council of Governors of the corporation have approved:
    - (i) the use of such software for the purpose of counting votes in the relevant election, and
    - (ii) a policy governing the use of such software, and
  - (b) the corporation and the returning officer are satisfied that the use of such software will produce an accurate result.

**43. The count**

- 43.1 The returning officer is to:
  - (a) count and record the number of:
    - (iii) ballot papers that have been returned; and
    - (iv) the number of internet voting records, telephone voting records and/or text voting records that have been created, and
  - (b) count the votes according to the provisions in this Part of the rules and/or the provisions of any policy approved pursuant to rule 42.2(ii) where vote counting software is being used.
- 43.2 The returning officer, while counting and recording the number of ballot papers, internet voting records, telephone voting records and/or text voting records and counting the votes, must make arrangements to ensure that no person obtains or communicates information as to the unique identifier on a ballot paper or the voter ID number on an internet voting record, telephone voting record or text voting record.
- 43.3 The returning officer is to proceed continuously with counting the votes as far as is practicable.

**STV44. Rejected ballot papers and rejected text voting records**

- STV44.1 Any ballot paper:
  - (a) which does not bear the features that have been incorporated into the other ballot papers to prevent them from being reproduced,
  - (b) on which the figure “1” standing alone is not placed so as to indicate a first



preference for any candidate,

- (c) on which anything is written or marked by which the voter can be identified except the unique identifier, or
- (d) which is unmarked or rejected because of uncertainty,

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

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

STV44.3 Any text voting record:

- (a) on which the figure "1" standing alone is not placed so as to indicate a first preference for any candidate,
- (b) on which anything is written or marked by which the voter can be identified except the unique identifier, or
- (c) which is unmarked or rejected because of uncertainty,

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

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

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

#### **FPP44. Rejected ballot papers and rejected text voting records**

FPP44.1 Any ballot paper:

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

shall, subject to rules FPP44.2 and FPP44.3, be rejected and not counted.

FPP44.2 Where the voter is entitled to vote for more than one candidate, a ballot paper is not to be rejected because of uncertainty in respect of any vote where no uncertainty arises, and that vote is to be counted.

FPP44.3 A ballot paper on which a vote is marked:

- (a) elsewhere than in the proper place,
- (b) otherwise than by means of a clear mark,
- (c) by more than one mark,

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

FPP44.4 The returning officer is to:

- (a) endorse the word “rejected” on any ballot paper which under this rule is not to be counted, and
- (b) in the case of a ballot paper on which any vote is counted under rules FPP44.2 and FPP 44.3, endorse the words “rejected in part” on the ballot paper and indicate which vote or votes have been counted.

FPP44.5 The returning officer is to draw up a statement showing the number of rejected ballot papers under the following headings:

- (a) does not bear proper features that have been incorporated into the ballot paper,
- (b) voting for more candidates than the voter is entitled to,
- (c) writing or mark by which voter could be identified, and
- (d) unmarked or rejected because of uncertainty,

and, where applicable, each heading must record the number of ballot papers rejected in part.

FPP44.6 Any text voting record:

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

(c) which is unmarked or rejected because of uncertainty,

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

FPP44.7 Where the voter is entitled to vote for more than one candidate, a text voting record is not to be rejected because of uncertainty in respect of any vote where no uncertainty arises, and that vote is to be counted.

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

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

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

FPP44.9 The returning officer is to:

- (a) endorse the word "rejected" on any text voting record which under this rule is not to be counted, and
- (b) in the case of a text voting record on which any vote is counted under rules FPP44.7 and FPP 44.8, endorse the words "rejected in part" on the text voting record and indicate which vote or votes have been counted.

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

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

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

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

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

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

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

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

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

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

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

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

STV47.1 Where the number of first preference votes for any candidate exceeds the quota, the returning officer is to sort all the ballot documents on which first preference votes are given for that candidate into sub- parcels so that they are grouped:

- (a) according to next available preference given on those ballot documents for any continuing candidate, or
- (b) where no such preference is given, as the sub-parcel of non-transferable votes.

STV47.2 The returning officer is to count the number of ballot documents in each parcel referred to in rule STV47.1.

STV47.3 The returning officer is, in accordance with this rule and rule STV48, to transfer each sub-parcel of ballot documents referred to in rule STV47.1(a) to the candidate for whom the next available preference is given on those ballot documents.

STV47.4 The vote on each ballot document transferred under rule STV47.3 shall be at a value ("the transfer value") which:

- (a) reduces the value of each vote transferred so that the total value of all such votes does not exceed the surplus, and
- (b) is calculated by dividing the surplus of the candidate from whom the votes are being transferred by the total number of the ballot documents on which those votes are given, the calculation being made to two decimal places (ignoring the remainder if any).

STV47.5 Where at the end of any stage of the count involving the transfer of ballot documents, the number of votes for any candidate exceeds the quota, the returning officer is to sort the ballot documents in the sub-parcel of transferred votes which was last received by that candidate into separate sub-parcels so that they are grouped:

- (a) according to the next available preference given on those ballot documents for any continuing candidate, or
- (b) where no such preference is given, as the sub-parcel of non-transferable votes.

STV47.6 The returning officer is, in accordance with this rule and rule STV48, to transfer each sub-parcel of ballot documents referred to in rule STV47.5(a) to the candidate for whom the next available preference is given on those ballot documents.

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

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

whichever is the less.

- STV47.8 Each transfer of a surplus constitutes a stage in the count.
- STV47.9 Subject to rule STV47.10, the returning officer shall proceed to transfer transferable ballot documents until no candidate who is deemed to be elected has a surplus or all the vacancies have been filled.
- STV47.10 Transferable ballot documents shall not be liable to be transferred where any surplus or surpluses which, at a particular stage of the count, have not already been transferred, are:
- (a) less than the difference between the total vote then credited to the continuing candidate with the lowest recorded vote and the vote of the candidate with the next lowest recorded vote, or
  - (b) less than the difference between the total votes of the two or more continuing candidates, credited at that stage of the count with the lowest recorded total numbers of votes and the candidate next above such candidates.
- STV47.11 This rule does not apply at an election where there is only one vacancy.

**STV48. Supplementary provisions on transfer**

- STV48.1 If, at any stage of the count, two or more candidates have surpluses, the transferable ballot documents of the candidate with the highest surplus shall be transferred first, and if:
- (a) The surpluses determined in respect of two or more candidates are equal, the transferable ballot documents of the candidate who had the highest recorded vote at the earliest preceding stage at which they had unequal votes shall be transferred first, and
  - (b) the votes credited to two or more candidates were equal at all stages of the count, the returning officer shall decide between those candidates by lot, and the transferable ballot documents of the candidate on whom the lot falls shall be transferred first.
- STV48.2 The returning officer shall, on each transfer of transferable ballot documents under rule STV47:
- (a) record the total value of the votes transferred to each candidate,
  - (b) add that value to the previous total of votes recorded for each candidate and record the new total,
  - (c) record as non-transferable votes the difference between the surplus and the total transfer value of the transferred votes and add that difference to the previously recorded total of non-transferable votes, and
  - (d) compare:
    - (i) the total number of votes then recorded for all of the candidates, together with the total number of non-transferable votes, with
    - (ii) the recorded total of valid first preference votes.
- STV48.3 All ballot documents transferred under rule STV47 or STV49 shall be clearly marked, either individually or as a sub-parcel, so as to indicate the transfer value recorded at that time to each vote on that ballot document or, as the case may be, all the ballot documents in that sub-parcel.

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

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

STV49.1 If:

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

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

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

- (a) ballot documents on which a next available preference is given, and
- (b) ballot documents on which no such preference is given (thereby including ballot documents on which preferences are given only for candidates who are deemed to be elected or are excluded).

STV49.3 The returning officer shall, in accordance with this rule and rule STV48, transfer each sub-parcel of ballot documents referred to in rule STV49.2 to the candidate for whom the next available preference is given on those ballot documents.

STV49.4 The exclusion of a candidate, or of two or more candidates together, constitutes a further stage of the count.

STV49.5 If, subject to rule STV50, one or more vacancies still remain to be filled, the returning officer shall then sort the transferable ballot documents, if any, which had been transferred to any candidate excluded under rule STV49.1 into sub- parcels according to their transfer value.

STV49.6 The returning officer shall transfer those ballot documents in the sub-parcel of transferable ballot documents with the highest transfer value to the continuing candidates in accordance with the next available preferences given on those ballot documents (thereby passing over candidates who are deemed to be elected or are excluded).

STV49.7 The vote on each transferable ballot document transferred under rule STV49.6 shall be at the value at which that vote was received by the candidate excluded under rule STV49.1.

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

STV49.9 After the returning officer has completed the transfer of the ballot documents in the sub-parcel of ballot documents with the highest transfer value he or

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

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

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

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

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

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

- (a) regard shall be had to the total number of votes credited to those candidates at the earliest stage of the count at which they had an unequal number of votes and the candidate with the lowest number of votes at that stage shall be excluded, and
- (b) where the number of votes credited to those candidates was equal at all stages, the returning officer shall decide between the candidates by lot and the candidate on whom the lot falls shall be excluded.

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

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

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

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

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

STV51.1 The order in which candidates whose votes equal or exceed the quota are

deemed to be elected shall be the order in which their respective surpluses were transferred, or would have been transferred but for rule STV47.10.

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



**FPP51. Equality of votes**

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

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

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### 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 Robert Jones and Agnes Hunt Orthopaedic Hospital NHS Foundation 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 spoiled ballot papers and the list of spoiled text message votes,
- (c) the list of lost ballot documents, and
- (d) the list of eligible voters,

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

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

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

**55. Delivery of documents**

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

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

56.1 Where:

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

enable new voting information to be issued,

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

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

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

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

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

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

58.1 The corporation may not allow:

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

by any person without the consent of the Board of Directors of the corporation.

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

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

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

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

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

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

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

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

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

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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).



## PART 10: ELECTION EXPENSES AND PUBLICITY

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### *Election expenses*

#### **60. Election expenses**

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

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

- 61.1 A candidate may not incur any expenses or make a payment (of whatever nature) for the purposes of an election, other than expenses or payments that relate to:
- (a) personal expenses,
  - (b) travelling expenses, and expenses incurred while living away from home, and
  - (c) expenses for stationery, postage, telephone, internet (or any similar means of communication) and other petty expenses, to a limit of £100.

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

- 62.1 No person may:
- (a) incur any expenses or make a payment (of whatever nature) for the purposes of a candidate's election, whether on that candidate's behalf or otherwise, or
  - (b) give a candidate or his or her family any money or property (whether as a gift, donation, loan, or otherwise) to meet or contribute to expenses incurred by or on behalf of the candidate for the purposes of an election.
- 62.2 Nothing in this rule is to prevent the corporation from incurring such expenses, and making such payments, as it considers necessary pursuant to rules 63 and 64.

### *Publicity*

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

- 63.1 The corporation may:
- (a) compile and distribute such information about the candidates, and
  - (b) organise and hold such meetings to enable the candidates to speak and respond to questions,
- as it considers necessary.
- 63.2 Any information provided by the corporation about the candidates, including information compiled by the corporation under rule 64, must be:
- (a) objective, balanced and fair,
  - (b) equivalent in size and content for all candidates,
  - (c) compiled and distributed in consultation with all of the candidates standing for election, and

- (d) must not seek to promote or procure the election of a specific candidate or candidates, at the expense of the electoral prospects of one or more other candidates.

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

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

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

64.2 The information must consist of:

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

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

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

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

## PART 11: QUESTIONING ELECTIONS AND THE CONSEQUENCE OF IRREGULARITIES

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### **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 5:**

### **COUNCIL OF GOVERNORS: ADDITIONAL PROVISIONS**

(Paragraphs 13 and 20)

#### **1. Council of Governors – duties of Governors**

- 1.1. The general duties of the Council of Governors are –
  - 1.1.1. to hold the non-Executive Directors individually and collectively to account for the performance of the Board of Directors, and
  - 1.1.2. to represent the interests of the Members of the Trust as a whole and the interests of the public.

#### **2. Role and Responsibilities of the Council of Governors**

- 2.1. The roles and responsibilities of the Council of Governors to be exercised at a general meeting are:
  - 2.1.1. subject to paragraph 25 of the Core Constitution, to appoint, re-appoint or remove the Chairman and the other Non-Executive Directors in accordance with the processes set out in Appendix 5A to this Annex 5;
  - 2.1.2. to decide the remuneration and allowances, and the other terms and conditions of office, of the Non-Executive Directors as provided in paragraph 34 of the Core Constitution;
  - 2.1.3. to appoint or remove the Auditor as provided in paragraph 39 of the Constitution in accordance with the process set out in Appendix 5B to this Annex 5;
  - 2.1.4. to be presented with the annual accounts, any report of the Auditor on them and the annual report as provided in paragraph 43 of the Core Constitution;
  - 2.1.5. to consider disputes as to membership referred to it pursuant to paragraph 7 of Annex 8; and
  - 2.1.6. to consider resolutions to remove a governor pursuant to paragraph 14 of the Core Constitution and paragraph 7 below.
  - 2.1.7. approve Significant Transactions being undertaken by the Trust. Approval will require the approval of more than half of the members of the Council of Governors of the Trust voting.
  - 2.1.8. approve the application for a merger acquisition, separation or dissolution. Approval will require the approval of more than half of the members of the Council of Governors of the Trust voting.
  - 2.1.9. approve amendments to the Constitution as set out in paragraph 45 of the Core Constitution.

- 2.1.10. approve a proposal to increase by 5% or more the proportion of the Trusts' total income (definition as agreed by the Board of Directors and Council of Governors) in any financial year attributable to activities other than the provision of goods and services for the purposes of health service in England. Approval will require more than half of the members of the Council of Governors of the Trust voting.
- 2.1.11. utilise the Panel if the Trust is at significant risk of breaching the regulatory framework in this paragraph, the Panel means a panel of persons appointed by Monitor to which a governor of an NHS Foundation Trust may refer a question as to whether the Trust has failed or is failing.
  - 2.1.11.1. to act in accordance with its Constitution, or
  - 2.1.11.2. to act in accordance with provision made by or under Chapter 5 of the 2006 Act.
- 2.1.12. 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.
- 2.2. The roles and responsibilities of the Council of Governors, to be exercised at a general meeting or otherwise, are:
  - 2.2.1. to approve (by a majority of the Governors present and voting) an appointment by the Non-Executive Directors of the Chief Executive other than the initial Chief Executive appointed in accordance with paragraph 19 (5) of schedule 7 to the 2006 Act;
  - 2.2.2. to be consulted by the Board of Directors regarding the information to be given to Monitor as to the Trust's forward planning in respect of each financial year and to give its views to the Board of Directors for the purposes of the preparation by the Board of Directors of any document containing such information which is to be given to Monitor;
  - 2.2.3. to consider the annual accounts, any report of the Auditor on them and the annual report as provided in paragraph 42 of the Core Constitution
  - 2.2.4. to respond as appropriate when consulted by the Directors; and
  - 2.2.5. to communicate directly with Monitor, through a nominated lead governor, if the Trust is at risk of significantly breaching its Terms of its authorisation and concerns cannot be resolved.
- 2.3. Governors also have the specific role and functions of:
  - 2.3.1. reviewing annually the extent to which the Trust is meeting its objective of delivering high-quality services;
  - 2.3.2. working with the Board of Directors on such other matters for the benefit of the Trust as may be agreed between them;
  - 2.3.3. developing membership in accordance with the Trust's membership strategy;
  - 2.3.4. representing the interests of the Members of the Trust as a whole and the interests of the public;
  - 2.3.5. holding the Non-Executive Directors individually and collectively to account for the performance of the Board of Directors; and

2.3.6. take steps to be appropriately equipped with the skills and knowledge to perform the duties required.

2.4. Notwithstanding the provisions of paragraphs 1 above and this paragraph 2 above, the Governors may exercise other functions at the request of the Board of Directors.

### **3. Elected Governors**

Public Governors are to be elected by Members of the area of the Public Constituency to which they belong and Staff Governors are to be elected by Members of the Staff Constituency.

### **4. Tenure of Elected Governors**

4.1. An elected governor:

4.1.1. shall normally hold office for a period of three years commencing immediately after the conclusion of the general meeting of the Council of Governors at which his or her election is announced;

4.1.2. shall be eligible for re-election at the end of his or her first and second terms of office;

4.1.3. may not hold office for longer than nine consecutive years or three consecutive terms each of three years.

4.2. For the purposes of these provisions concerning the terms of office of elected Governors, "year" means a period of twelve months commencing immediately after the conclusion of a general meeting of the Council of Governors.

### **5. Appointed Governors**

The Secretary shall agree with each of the Partnership Organisations identified in Annex 3 a process for the appointment of one Governor by each such organisation.

### **6. Tenure of Appointed Governors**

An appointed governor:

6.1. shall normally hold office for a period of up to three years commencing immediately after the conclusion of the general meeting of the Council of Governors at which his or her appointment is announced;

6.2. shall cease to hold office if the appointing organisation withdraws its appointment of him or her;

6.3. shall be eligible for re-election at the end of his or her first and second terms of office;

6.4. may not hold office for longer than nine consecutive years or three consecutive terms each of three years.

### **7. Further Provisions as to Disqualification, Termination and Removal**

#### **7.1. Disqualification**

A person may not become or continue as a Governor of the Trust in the circumstances set out in paragraph 14 of the Core Constitution or if:

- 7.1.1. in the case of an elected governor:
  - 7.1.1.1. he or she is not or ceases to be a member of the constituency by which he or she was elected; or
  - 7.1.1.2. he or she fails to sign a declaration in the form set out in Appendix 5C to this Annex 5 setting out the particulars of his or her qualification to vote as a member of the Trust and confirming that he or she is not prevented from being a member of the Council of Governors;
- 7.1.2. in the case of an Appointed Governor, the appointing Partnership Organisation withdraws their appointment of him or her;
- 7.1.3. he or she is under 16 years of age at the time he or she is nominated for election or appointment;
- 7.1.4. he or she has failed or refused to sign and deliver to the Secretary a statement confirming his or her agreement to comply with the Governors' Code of Conduct;
- 7.1.5. he or she has refused without reasonable cause to undertake any training which the Trust and/or the Council of Governors requires all Governors to undertake;
- 7.1.6. he or she is an Executive or Non-Executive Director or the Secretary of the Trust or of a body corporate whose business competes with the mandatory services of the Trust as defined in Schedule 2 of the Trust's Terms of Authorisation;
- 7.1.7. he or she is a member of a local authority's Overview and Scrutiny Committee covering health matters;
- 7.1.8. he or she is incapable by reason of mental disorder, illness or injury of managing or administering his or her property and affairs;
- 7.1.9. he or she has within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with a health service body;
- 7.1.10. he or she is a person whose tenure of office as the Chairman or as a member or Director of a Health Service Body has been terminated on the grounds that his or her appointment is not in the interests of the health service, including for non-attendance at meetings or for non-disclosure of a pecuniary interest;
- 7.1.11. Monitor has exercised its powers to remove him or her as a member of the Council of Governors of the Trust or has suspended him or her from office or has disqualified him or her from holding office as a governor of the Trust for a specified period or has exercised any of those powers in relation to him or her at any time, whether in relation to the Trust or to any other NHS Foundation Trust;
- 7.1.12. he or she has had his or her name removed from any list maintained by any Clinical Commissioning Group pursuant to Parts 4, 5, 6 or 7 of the 2006 Act and/or Regulations made under those Parts and has not subsequently had his or her name included on such a list and in view of the reason or reasons for such removal he or she is not considered by the Chairman to be a fit and proper person to hold the office of governor;



- 7.1.13. on the basis of disclosures obtained through an application to the Disclosures and Barring Service, he or she is not considered by the Chairman to be a fit and proper person to hold the office of governor; or
- 7.1.14. he or she is or has been subject to a Sexual Risk Order or a Sexual Harm Prevention Order made under the provisions of the Anti-social Behaviour, Crime and Policing Act 2014.
- 7.1.15. he or she is the subject of a disqualification order made under the Company Directors Disqualification Act 1986;

## **7.2. Duty of Governor to Notify Trust on Becoming Disqualified**

- 7.2.1. Where a person elected or appointed to be a governor becomes disqualified from office under the provisions of paragraph 14 of the Core Constitution or of paragraph 7.1 above, he or she shall notify the Secretary in writing of such disqualification as soon as practicable and in any event within 14 days of becoming aware of those matters which render him or her disqualified. The Secretary shall then remove him or her from the register of Governors.
- 7.2.2. If it comes to the attention of the Secretary that a governor is disqualified otherwise than by notification in accordance with paragraph 7.2.1 above (whether at the time of the governor's election or appointment or subsequently), the Secretary shall immediately declare that the individual in question is disqualified and give notice to him or her in writing to that effect as soon as practicable and in any event within 14 days of the date of the declaration.
- 7.2.3. In the event of any dispute as to whether a governor is disqualified, the governor concerned may refer the matter to the dispute resolution procedure set out in paragraph 7 of Annex 8 within 28 days of the date upon which notice in writing is given to the governor.

## **7.3. Termination of Office**

- 7.3.1. A governor may resign from that office at any time during the term of that office by giving notice to the Secretary in writing, upon which he or she shall cease to hold office.
- 7.3.2. A governor shall cease to hold office on his or her death.

## **7.4. Removal of a Governor from Office**

- 7.4.1. The Chairman shall be authorised to take such action as may be immediately required, including but not limited to exclusion of the governor concerned from Council meetings, so that any allegation made against a governor on the following grounds can be investigated:
  - 7.4.1.1. non-compliance with the Regulatory Framework, the Governors' Code of Conduct, the Standing Orders of the Council of Governors set out in Annex 6 and/or the Standing Financial Instructions of the Trust; or
  - 7.4.1.2. misconduct detrimental to the Trust; or

- 7.4.1.3. failure to attend any meeting of the Council of Governors for a consecutive period of six months or alternatively two consecutive meetings of the Council of Governors unless the Council of Governors is satisfied by a two-thirds majority that:
  - 7.4.1.3.1. the absence was due to reasonable cause; and
  - 7.4.1.3.2. the governor concerned will be able and intends to start attending meetings of the Council of Governors again within such period as the Council of Governors considers reasonable.
- 7.4.2. Where any grounds within paragraph 7.4.1 are alleged, it shall be open to the Council of Governors to decide, by two-thirds majority of those present and voting, to lay a formal charge of non-compliance or misconduct.
- 7.4.3. The governor in question will be notified in writing of the allegations, detailing the specific behavior which is considered to be detrimental to the Trust, and inviting and considering his or her response within a defined appropriate and reasonable timescale.
- 7.4.4. The governor may be invited to address the Council of Governors in person if the matter cannot be resolved satisfactorily through correspondence.
- 7.4.5. The Council of Governors, by a two-thirds majority of those present and voting and a majority of Governors who are members of the Public Constituency of the Trust, can decide whether to uphold the charge of non-compliance or misconduct detrimental to the Trust.
- 7.4.6. The Council of Governors can impose such sanctions as shall be deemed appropriate. Such sanctions may be the issuing of a written warning as to the governor's future conduct; non-payment of expenses; and/or removal of the governor from office.
- 7.4.7. Upon disqualification, removal or termination of a governor's office in accordance with this paragraph 7, the Secretary shall cause his or her name to be removed immediately from the register of Governors.
- 7.4.8. Any decision of the Council of Governors to terminate a governor's tenure of office may be referred by the governor concerned to the dispute resolution procedure under paragraph 7 of Annex 8 within 28 days of the date upon which notice in writing of the Council of Governors' decision made in accordance with this paragraph 7.4 is communicated to the governor concerned.
- 7.4.9. A governor who resigns under paragraph 7.3.1 above or whose office is terminated under this paragraph 7.4 shall not be eligible to stand for re-election to the Council of Governors for a period of three years from the date of his or her resignation or removal from office or the date upon which any appeal against his or her removal from office is disposed of whichever is later.
- 7.4.10. In the event that an elected governor's seat falls vacant before the end of the term of office, the provisions as set out at paragraph 9 below shall apply.

## **8. Suspension from Duties of Staff Governors**

A Staff governor who is suspended from duties for any reason will also be suspended from his or her role as governor for the duration of his or her suspension and may not attend meetings of the Council of Governors in his or her capacity as a governor. Absence from meetings of the Council of Governors during a period of suspension from duties shall not count as failure to attend for the purposes of paragraph 7.4.1.3 above.

## **9. Vacancies Amongst Governors**

- 9.1. Where a vacancy arises on the Council of Governors for any reason other than expiry of term of office, the following provisions shall apply.
- 9.2. Where the vacancy arises amongst the appointed Governors, the Secretary shall request the appointing Partnership Organisation to appoint a replacement.
- 9.3. Where the vacancy arises amongst the elected Governors, the Council of Governors shall be at liberty to:
  - 9.3.1. call an election within three months to fill the seat; or
  - 9.3.2. invite the next highest polling candidate for that seat at the most recent election, who is willing to take office, to fill the seat for the unexpired period of the term of office; or
  - 9.3.3. leave the vacancy outstanding until the next scheduled general election of Governors, provided that the vacancy shall not be for more than nine months.

## **10. Remuneration of Governors**

Governors are not to receive remuneration, provided that this shall not prevent the remuneration of Governors by their employer or the reimbursement in accordance with paragraph 20 of the Core Constitution of travelling and other expenses reasonably incurred by Governors in carrying out their responsibilities as Members of the Council of Governors.

**Appendix 5A:**

**APPOINTMENT, RE-APPOINTMENT AND REMOVAL OF**  
**NON-EXECUTIVE DIRECTORS (INCLUDING CHAIRMAN)**

(Paragraph 25)

**1. Power of Council of Governors**

As provided by paragraph 25 of the Constitution, the power to appoint, re-appoint and remove Non-Executive Directors (including the Chairman) shall lie with the Council of Governors.

**2. Appointment of Nomination Committee**

2.1. The Council of Governors shall appoint an ad hoc Nomination Committee for the purpose of making recommendations to it on each exercise of its powers to appoint and re-appoint the Chairman and other Non-Executive Directors and to remove a Non-Executive Director (including the Chairman).

2.2. The members of a Nomination Committee appointed by the Council of Governors shall comprise:

2.2.1. two Public Governors;

2.2.2. one Staff governor;

2.2.3. one appointed governor; and

2.2.4. a chairman who shall be:

2.2.4.1. the Chairman of the Trust; or

2.2.4.2. (where the Nomination Committee has been appointed to make recommendations to the Council of Governors on the exercise of its powers to appoint, re-appoint or remove the Chairman) the Senior Independent Director; or

2.2.4.3. (where the Senior Independent Director has expressed an interest in applying for the post of Chairman in the event of a vacancy) a Non-Executive Director who has declared that he or she does not intend to apply for appointment as Chairman.

2.3. Each of the members of a Nomination Committee appointed by the Council of Governors shall have one vote.

2.4. The quorum required for the transaction of business at any meeting of a Nomination Committee appointed by the Council of Governors shall be three Members, of whom two must be elected Governors.

2.5. A Nomination Committee appointed by the Council of Governors may:

- 2.5.1. call upon the advice and support of the Chief Executive, the Secretary and any other Director or officer of the Trust as it sees fit;
- 2.5.2. invite the Chairman of another NHS Foundation Trust to act as an independent assessor to advise the Committee as required; and
- 2.5.3. appoint external search consultants to assist it in identifying suitable candidates for appointment, subject to the advance agreement of the Board of Directors. Any conflict arising between the Council of Governors and the Board of Directors under this provision shall be determined in accordance with the dispute resolution procedure set out in paragraph 7 of Appendix 8.

### **3. Re-appointment of Serving Non-Executive Director (including Chairman)**

- 3.1. Not less than six months before the end of the current term of office of a Non-Executive Director (including a Chairman) who has served no more than one term of office as a Non-Executive Director of the Trust and who is willing to continue to serve in that capacity, the Council of Governors shall appoint an ad hoc Nomination Committee composed in accordance with paragraph 2.2 above.
- 3.2. The responsibilities of the Nomination Committee appointed by the Council of Governors shall be to:
  - 3.2.1. seek assurance on behalf of the Council of Governors that, following formal performance evaluation, the performance of the non-Executive Director proposed for re-appointment continues to be effective and to demonstrate commitment to the role;
  - 3.2.2. consider whether the re-appointment of the Non-Executive Director concerned would be in the continuing best interests of the Trust having regard to the qualifications, skills and experience required for the position and to the membership qualification set out in paragraph 24 of the Core Constitution;
  - 3.2.3. report to the Council of Governors on its proceedings in formulating its recommendations; and
  - 3.2.4. make recommendations to the Council of Governors as to whether:
    - 3.2.4.1. the Non-Executive Director concerned should be re-appointed for a further term of office; or
    - 3.2.4.2. a process of open competition should be initiated for the appointment of a new Non-Executive Director (including a new Chairman).
- 3.3. Having considered the recommendations of the Nomination Committee, the Council of Governors shall, subject to the approval of a simple majority of the Members present and voting at a general meeting of the Council of Governors, either:
  - 3.3.1. re-appoint the Non-Executive Director concerned for a single further term of office of not more than three years; or
  - 3.3.2. determine to initiate a process of open competition for the appointment of a new Non-Executive Director (including a new Chairman), in which event the current Non-Executive Director may stand for re-appointment provided that he or she has served no more than one term of office as a Non-Executive Director of the Trust.

- 3.4. On completion of the process set out in paragraphs 3.1 - 3.3 above, the Nomination Committee appointed by the Council of Governors shall be dissolved and a fresh Nomination Committee shall be appointed as and when the need arises.

#### **4. Appointment of New Non-Executive Director (including new Chairman)**

- 4.1. On a determination by the Council of Governors to initiate a process of open competition for the appointment of a new Non-Executive Director or a new Chairman, the Council of Governors shall appoint an ad hoc Nomination Committee composed in accordance with paragraph 2.2 above.
- 4.2. The responsibilities of the Nomination Committee appointed by the Council of Governors shall be to:
- 4.2.1. prepare a job description and person specification for the appointment of a new Non-Executive Director or a new Chairman, having regard to the views of the Board of Directors on the qualifications, skills and experience required for the position and to the membership qualification set out in paragraph 24 of the Core Constitution;
  - 4.2.2. arrange for the post to be advertised in local, regional and national media as appropriate and agree with the Board of Directors any use to be made of external search consultants;
  - 4.2.3. agree selection criteria and apply them in shortlisting and conducting formal interviews with candidates;
  - 4.2.4. report to the Council of Governors on its proceedings in formulating its recommendations; and
  - 4.2.5. recommend to the Council of Governors no fewer than three and no more than five candidates whom it considers suitable for appointment to the vacant post or posts.
- 4.3. Having considered the recommendations of the Nomination Committee, the Council of Governors shall, subject to the approval of a simple majority of the Members present and voting at a general meeting of the Council of Governors, either appoint a new Non-Executive Director or a new Chairman from amongst the candidates recommended by the Nomination Committee or shall invite the Nomination Committee to make an alternative recommendation.
- 4.4. On completion of the appointment process set out in paragraphs 4.1 - 4.3 above, the Nomination Committee appointed by the Council of Governors shall be dissolved and a fresh Nomination Committee shall be appointed as and when the need arises.

#### **5. Removal of Non-Executive Director (including Chairman)**

- 5.1. In accordance with paragraph 4.6.2 of Annex 6, a governor wishing to propose a formal motion for the removal of a Non-Executive Director (including the Chairman) for consideration by the Council of Governors must make a request in writing to the Chairman at least 10 Clear Days (as defined in Annex 6) before the meeting of the Council of Governors at which he or she wishes the matter to be considered. The request should be accompanied by a written statement of the reasons for the proposal to remove the Non-Executive Director concerned and should state whether the business is proposed to be transacted in private.

- 5.2. On receipt of a formal motion in accordance with paragraph 5.1 above for the removal of a Non-Executive Director, the Council of Governors shall appoint an ad hoc Nomination Committee composed in accordance with paragraph 2 above.
- 5.3. The responsibilities of the Nomination Committee appointed by the Council of Governors shall be to:
  - 5.3.1. consider the written statement of the reasons for the proposal to remove the Non-Executive Director and request from the proposer of the motion such further information or clarification as the Nomination Committee sees fit;
  - 5.3.2. notify the Non-Executive Director concerned of the reasons given for the proposed removal, including any specific allegations, and invite his or her written response within a defined and reasonable timescale;
  - 5.3.3. consider the response received from the Non-Executive Director whose removal has been proposed and request from the Non-Executive Director concerned such further information or clarification as the Nomination Committee sees fit;
  - 5.3.4. take into account the annual appraisal carried out by the Chairman (in the case of a Non-Executive Director) or the Senior Independent Director (in the case of the Chairman);
  - 5.3.5. report to the Council of Governors on its proceedings in formulating its recommendations; and
  - 5.3.6. make recommendations to the Council of Governors as to whether the formal motion for the removal of a Non-Executive Director should be approved or rejected.
- 5.4. The Council of Governors shall consider the recommendations of the Nomination Committee and shall, subject to the approval of three-quarters of the Members of the Council of Governors, determine whether the Non-Executive Director concerned should be removed in accordance with the original motion.
- 5.5. If the motion to remove the Non-Executive Director is rejected by the Members of the Council of Governors, no further proposal can be put forward to remove the same Non-Executive Director based upon the same reasons within twelve months of the meeting.
- 5.6. If the motion to remove the Non-Executive Director is carried, the Non-Executive Director concerned shall cease to be a member of the Board of Directors and the Secretary shall his or her name to be removed immediately from the register of Directors.
- 5.7. Any decision of the Council of Governors to remove a Director may be referred by the Director concerned to the dispute resolution procedure under paragraph 7 of Annex 8 within 28 days of the date upon which notice in writing of the Council of Governors' decision is communicated to the Director.
- 5.8. On completion of the process set out in paragraphs 5.2 - 5.4 above, the Nomination Committee appointed by the Council of Governors shall be dissolved and a fresh Nomination Committee shall be appointed as and when the need arises.

## **Appendix 5B:**

### **APPOINTMENT AND REMOVAL OF THE EXTERNAL AUDITOR AND OTHER EXTERNAL AUDITORS**

(Paragraph 39)

#### **1. Process for Appointment of the External Auditor and Other External Auditor**

The Audit Committee shall nominate the External Auditor to be appointed by the Council of Governors and may also resolve that an external auditor other than the External Auditor be appointed to review and publish a report on any other aspect of the Trust's performance. Any such external auditor is to be appointed by the Council of Governors.

#### **2. Qualification for Appointment as the External Auditor and Other External Auditor**

2.1 A person may only be appointed as the auditor if he or she (or in the case of a firm each of its Members) is a member of one or more of the bodies referred to in paragraph 23 (4) of Schedule 7 to the 2006 Act.

2.2 The External Auditor is to carry out his or her duties in accordance with Schedule 10 to the 2006 Act and in accordance with any directions given by Monitor on standards, procedures and techniques to be adopted.

#### **3. Process for the Removal of the External Auditor**

The Audit Committee shall investigate the reasons surrounding the proposed removal of the Auditors, including, where appropriate, any allegations made against the Auditor. The Audit Committee will report the findings of these investigations to the Council of Governors and, if supported by the conclusions of the report, recommend the removal of the Auditor.



**Appendix 5C:**

**DECLARATION OF ELIGIBILITY TO SERVE AS GOVERNOR**

To: The Secretary  
Robert Jones and Agnes Hunt Orthopaedic Hospital  
NHS Foundation Trust  
Oswestry  
Shropshire  
SY10 7AG

I *name*.....

hereby declare that I am a member of the

**Public Constituency / Staff Constituency**  
*delete where not applicable*

and that I am not prevented from being a member of the Council of Governors by reason of any provisions of paragraph 8 of Schedule 7 to the National Health Service Act 2006 or of the Trust's Constitution.

Signed.....

Date.....

## **Annex 6:**

### **COUNCIL OF GOVERNORS: STANDING ORDERS**

(Paragraph 17)

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## **1. Introduction**

- 1.1 The Robert Jones and Agnes Hunt Orthopaedic Hospital NHS Foundation Trust became a Public Benefit Corporation on its authorisation by Monitor pursuant to the 2006 Act as amended by the 2012 Act.
- 1.2 The principal place of business of the Trust is currently at The Robert Jones and Agnes Hunt Orthopaedic Hospital, Oswestry, Shropshire SY10 7AG.
- 1.3 The Trust is governed by the 2006 Act as amended by the 2012 Act, its Constitution and its Terms of Authorisation or subsequent license conditions issued by Monitor (the Regulatory Framework). The functions of the Trust are defined by the Regulatory Framework. The Regulatory Framework requires the Council of Governors of the Trust to adopt Standing Orders for the regulation of its proceedings and business and to adhere at all times to the Governors' Code of Conduct.

## **2. Interpretation**

Save as otherwise permitted by law, at any meeting the Chairman shall be the final authority on the interpretation of Standing Orders on which he or she shall be advised by the Chief Executive and the Secretary.

## **3. The Council of Governors**

The roles and responsibilities of the Council of Governors are set out in paragraph 1 and 2 of Annex 5 of the Constitution and have effect as if incorporated into these Standing Orders.

## **4. Meetings of the Council of Governors**

### **4.1. Frequency of Meetings**

Meetings of the Council of Governors shall be held at such times and places as the Council of Governors may determine and there shall be at least four meetings in any year including:

- 4.1.1. an annual meeting no later than 30 September in each year apart from the first year, when the Council of Governors is to receive and consider the annual accounts, any report by the Auditor and the annual report; and
- 4.1.2. any other meetings required of the Governors in order to fulfill their functions in accordance with the Constitution.

### **4.2. Annual Meeting**

- 4.2.1. The Council of Governors shall present to each annual meeting:
  - 4.2.1.1. a report on the proceedings of its meetings held since the last annual meeting;
  - 4.2.1.2. a report on progress since the last annual meeting in developing the membership strategy including the steps taken to ensure that the actual membership is fully representative of the persons who are eligible to be Members under the Constitution;
  - 4.2.1.3. a report on any change to the membership of the Council of Governors which has taken place since the last annual meeting; and

- 4.2.1.4. a report containing such comments as it wishes to make regarding the Trust's performance, its accounts for the preceding financial year and its future service development plans.
- 4.2.1.5. This meeting may be combined with the Trust's Annual Members meeting.

#### **4.3. Admission of the Public**

- 4.3.1. The public and representatives of the press shall be afforded facilities to attend all formal meetings of the Council of Governors except where it resolves that members of the public and representatives of the press be excluded from all or part of a meeting on the grounds that:
  - 4.3.1.1. any publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted; or
  - 4.3.1.2. for other reasons stated in the resolution and arising from the nature of the business or the proceedings that the Council of Governors believes are special reasons for excluding the public from the meeting in accordance with the Constitution.
- 4.3.2. Nothing in these Standing Orders shall require the Council of Governors to allow members of the public and representatives of the press to record proceedings in any manner whatsoever, other than writing, or to make any oral report of proceedings as they take place, without the prior agreement of the Council of Governors.

#### **4.4. Calling Meetings**

- 4.4.1. The Secretary may call a meeting of the Council of Governors at any time.
- 4.4.2. If the Secretary refuses to call a meeting after a requisition for that purpose, signed by at least one-third of the whole number of the Governors and specifying the business to be transacted at the meeting, has been presented to him or her, or if, without so refusing, the Secretary does not call a meeting within five Clear Days after such requisition has been presented to him or her at the Trust's Headquarters, one-third or more of the Governors may forthwith call a meeting for the purpose of conducting that business.

#### **4.5. Notice of Meetings**

- 4.5.1. Before each meeting of the Council of Governors, a notice of the meeting, specifying the business proposed to be transacted at it, shall be delivered to, or sent by post to the usual place of residence of every governor, so as to be available to him or her at least six Clear Days before the meeting save in the case where the Chairman (or Deputy Chairman) consider that an emergency situation prevails.
- 4.5.2. Before each meeting of the Council of Governors a public notice of the time and place of the meeting, and the public part of the agenda, shall, insofar as it is available, be displayed at the Trust's Headquarters at least three Clear Days before the meeting.

- 4.5.3. Want of service of the notice on any governor shall not affect the validity of a meeting, but failure to serve the notice on more than three Governors shall invalidate the meeting. A notice shall be presumed to have been served at the time at which the notice would be delivered in the ordinary course of posting.
- 4.5.4. In the case of a meeting called by Governors in accordance with paragraph 4.4.2 above, the notice shall be signed by those Governors and no business shall be transacted at the meeting other than that specified in the requisition.
- 4.5.5. Agendas will be sent to Governors before the meeting and supporting papers, whenever possible, shall accompany the agenda, but will certainly be dispatched no later than three Clear Days before the meeting, save when the Chairman (or Deputy Chairman) considers that emergency circumstances prevail.

#### **4.6. Setting the Agenda**

- 4.6.1. The Council of Governors may determine that certain matters shall appear on every agenda for a meeting and shall be addressed prior to any other business being conducted.
- 4.6.2. A governor who desires a matter to be included on an agenda, including a formal motion for discussion and voting on at a meeting, shall make his or her request in writing to the Chairman at least ten Clear Days before the meeting. The request should state whether the item of business is proposed to be transacted in the presence of the public and should include appropriate supporting information. Requests made less than ten Clear Days before a meeting may be included on the agenda at the discretion of the Chairman.

#### **4.7. Petitions**

Where a petition has been received by the Trust, the Chairman shall include the petition as an item for the agenda of the next meeting of the Council of Governors.

#### **4.8. Chairman of Meeting**

- 4.8.1. At any meeting of the Council of Governors, the Chairman, if present, shall preside.
- 4.8.2. If the Chairman is absent from the meeting or is absent temporarily on the grounds of a declared conflict of interest the Deputy Chairman shall preside.
- 4.8.3. If the Deputy Chairman is absent from the meeting or is absent temporarily on the grounds of a declared conflict of interest, another Non-Executive Director shall be appointed by the Council of Governors to preside at that meeting.

#### **4.9. Chairman's Ruling**

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

#### **4.10. Quorum**

No business shall be transacted at a meeting of the Council of Governors unless at least six Governors, consisting of four Governors who are members of the Public Constituency, and two from the other constituencies.

- 4.10.1. If at any meeting of the Council of Governors there is no quorum present within 30 minutes of the time fixed for the start of the meeting, the meeting shall stand adjourned for five Clear Days and upon reconvening, those present shall constitute a quorum.
- 4.10.2. A governor who has been disqualified from participating in the discussion on any matter shall not count towards the quorum.
- 4.10.3. A governor who has not been disqualified but who is excluded from voting on a particular matter by reason of the declaration of a conflict of interest as provided in paragraph 5 below shall not count towards the quorum for the discussion on that matter. If as a result a quorum is not available for the discussion and/or the passing of a motion on that matter, the 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.

#### **4.11. Discussion on Motion Requested by a Governor**

Where a governor has requested inclusion of a motion on the agenda in accordance with paragraph 4.6.2 above, the process for discussion and voting on the motion shall be as follows:

- 4.11.1. the governor who requested its inclusion shall have the right to move the motion, subject to a time limit of five minutes;
- 4.11.2. the governor proposing the motion shall have a right of reply at the close of any discussion on the motion or any amendment thereto, subject to a time limit of three minutes;
- 4.11.3. once a motion has been moved, no governor shall speak more than once or for more than three minutes;
- 4.11.4. when a motion is under discussion or immediately prior to discussion it shall be open to a governor to move:
  - 4.11.4.1. an amendment to the motion;
  - 4.11.4.2. the adjournment of the discussion or of the meeting;
  - 4.11.4.3. that the meeting proceed to the next business;
  - 4.11.4.4. the appointment of an ad hoc committee to deal with the specific item of business to which the motion refers;
  - 4.11.4.5. that the motion be now put;
  - 4.11.4.6. that as provided by paragraph 4.3.1 the public be excluded from the meeting in relation to the discussion concerning the motion.
- 4.11.5. In the case of sub-paragraphs 4.11.4.3 and 4.11.4.5 above, to ensure objectivity these matters may only be put by a governor who has not previously taken part in the debate and who is eligible to vote.

- 4.11.6. 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.

#### **4.12. Voting**

- 4.12.1. A governor may not vote at a meeting of the Council of Governors unless (at the beginning of his or her tenure or at another time agreed by the Secretary) he or she has made a declaration in the form specified in Appendix 5C to Annex 5 confirming that he or she is a member of the constituency which elected him or her and is not prevented from being a member of the Council of Governors by paragraph 8 of Schedule 7 to the 2006 Act or this Constitution. Where a governor's circumstances in respect of his or her declaration have changed, he or she shall make a new declaration in the form specified in Appendix 5C to Annex 5 within seven days.
- 4.12.2. Except where this Constitution expressly provides that the approval of three-quarters of the Governors present and voting is required, every question at a meeting of the Council of Governors shall be determined by a simple majority of the votes of the Chairman of the meeting and the Governors present and voting on the question.
- 4.12.3. The Chairman of the meeting of the Council of Governors shall in the case of an equality of votes on any question or proposal have a casting vote.
- 4.12.4. 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 be used if a majority of the Governors present so request.
- 4.12.5. If at least one-third of the Governors present so request, the voting (other than by paper ballot) on any question may be recorded to show how each governor present voted or abstained.
- 4.12.6. If a governor so requests, his or her vote shall be recorded by name upon any vote (other than by paper ballot).
- 4.12.7. In no circumstances may an absent governor vote by proxy. Absence is defined as being absent at the time of the vote.
- 4.12.8. In circumstances which must be approved in advance by the Council of Governors and which may be included in a Schedule to these Standing Orders, the Chairman may specify in a notice of a meeting any matter which requires approval by a written resolution and such a matter may be approved in writing provided that at least three-quarters of the Governors, and a majority of Governors who are Members of the Public Constituency of the Trust, approve the resolution in writing within the timescale imposed in such a notice.

#### **4.13. Suspension of Standing Orders**

- 4.13.1. Except where this would contravene any statutory provision, any one or more of these Standing Orders may be suspended at any meeting, provided that:

- 4.13.1.1. at least two-thirds of the Governors are present;
  - 4.13.1.2. there is a majority of Governors present who are Members of the Public Constituency of the Trust; and
  - 4.13.1.3. a majority of those present vote in favor of suspension.
- 4.13.2. A decision to suspend the Standing Orders shall be recorded in the minutes of the meeting.
- 4.13.3. A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the Chairman and Governors.
- 4.13.4. No formal business may be transacted while Standing Orders are suspended.

**4.14. Minutes**

- 4.14.1. The minutes of the proceedings of every meeting of the Council of Governors and of any committee appointed by the Council of Governors in accordance with paragraph 4.16 below shall be drawn up by the Secretary and submitted for agreement at the next ensuing meeting of the Council of Governors.
- 4.14.2. 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 at the next ensuing meeting of the Council of Governors and recorded in manuscript on the minutes, which shall be signed by the person presiding at the meeting. Signed minutes shall be retained by the Secretary.
- 4.14.3. The signed minutes shall be conclusive evidence of the events of the meeting to which they relate.
- 4.14.4. Minutes of meetings of the Council of Governors shall be circulated in accordance with Governors' wishes.

**4.15. Record of Attendance**

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

**4.16. Committees**

- 4.16.1. The Council of Governors shall not delegate to any committee or individual governor any of the powers or responsibilities which are to be exercised by it at a general meeting. However, the Council of Governors may appoint committees to assist it in the proper performance of its functions under the Regulatory Framework.
- 4.16.2. These Standing Orders, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees established by the Council of Governors, with the terms "Chairman" to be read as a reference to the Chairman of the committee and the term "governor" to be read as a reference to a member of the committee as the context permits.



- 4.16.3. Each such committee shall have such terms of reference and powers and be subject to such conditions as the Council of Governors shall decide and shall be in accordance with the Regulatory Framework. Such terms of reference shall have effect as if incorporated into these Standing Orders.
- 4.16.4. Any committee established under this paragraph 4.16 may call upon outside advisers to assist it with its tasks, subject to the advance agreement of the Board of Directors. Any conflict arising between the Council of Governors and the Board of Directors under this paragraph shall be determined in accordance with the dispute resolution procedure set out in paragraph 7 of Annex 8.
- 4.16.5. The Council of Governors shall approve the appointment of Members to each of the committees which it has formally constituted.
- 4.16.6. Where the Council of Governors is to appoint persons to a committee to undertake statutory functions, and where such appointments are to operate independently of the Council of Governors, such appointments shall be made in accordance with applicable statute and regulations and with guidance issued by Monitor.
- 4.16.7. Where the Council of Governors determines that persons other than Governors, Directors or officers of the Trust shall be appointed to a committee, the terms of such appointment shall be determined by the Council of Governors subject to the payment of travelling expenses and other allowances being in accordance with such sum as may be determined by the Board of Directors.
- 4.16.8. The Council of Governors may appoint Members to serve on joint committees with the Board of Directors or committees of the Board of Director if requested by the Board of Directors.

## **5. Declarations of Interests and Register of Governors' Interests**

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

- 5.1.1. The Regulatory Framework requires each governor to declare to the Secretary:
  - 5.1.1.1. any actual or potential interest, direct or indirect, which is relevant and material to the business of the Trust, as described in paragraph 5.2.2 below; and
  - 5.1.1.2. any actual or potential pecuniary interest, direct or indirect, in any contract, proposed contract or other matter concerning the Trust, as described in paragraph 5.2.3 below; and
  - 5.1.1.3. any actual or potential family interest, direct or indirect, of which the governor is aware, as described in paragraph 5.2.6 below.
- 5.1.2. Such a declaration shall be made either at the time of the governor's election or appointment or as soon thereafter as the interest arises, but within five Clear Days of the governor becoming aware of the existence of that interest, and shall be made in such manner as the Secretary may prescribe from time to time.

- 5.1.3. In addition, if a governor is present at a meeting of the Council of Governors and has an interest of any sort in any matter which is the subject of consideration, he or she shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not vote on any question with respect to the matter. At the time that the interests are declared, they should be recorded in the minutes of the meeting.
- 5.1.4. Subject to paragraph 5.2.4 below, if a governor has declared a pecuniary interest (as described in paragraphs 5.2.2 and 5.2.3) in any matter which is the subject of consideration, he or she shall not take part in the consideration or discussion of that matter.
- 5.1.5. A governor who is aware of an alteration in his or her circumstances which gives rise to any changes in the interests he or she has previously declared should declare the changes at the next meeting of the Council of Governors following the change occurring.
- 5.1.6. This paragraph 5 applies to any committee, sub-committee or joint committee of the Council of Governors and to any member of any such committee, sub-committee, or joint committee (whether or not he or she is also a governor).
- 5.1.7. The interests of Governors in 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. Nature of Interests**

- 5.2.1. Definitions of the terms "relevant and material", "pecuniary interest" and "family interest" are set out below. If having considered these definitions a governor is in doubt as to the relevance or materiality of an interest, he or she should discuss the matter with the Chairman or the Secretary.

### **"Relevant and Material"**

- 5.2.2. Interests which should be regarded as "relevant and material" are as follows:
  - 5.2.2.1. Directorships, including Non-Executive Directorships held in private companies or public limited companies (with the exception of those of dormant companies); or
  - 5.2.2.2. ownership, part-ownership or Directorship of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS; or
  - 5.2.2.3. majority or controlling share holdings in organisations likely or possibly seeking to do business with the NHS; or
  - 5.2.2.4. a position of authority in a charity or voluntary organisation in the field of health and social care; or
  - 5.2.2.5. an affiliation to a health or social care related campaigning special interest group
  - 5.2.2.6. any connection with a voluntary or other organisation contracting for NHS services or commissioning NHS services; or

- 5.2.2.7. any connection with an organisation, entity or company considering entering into or having entered into a financial agreement with the Trust, including but not limited to, lenders or banks.

**"Pecuniary Interest"**

- 5.2.3. A governor shall be treated as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if:
  - 5.2.3.1. he or she, or a nominee of his or hers, 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
  - 5.2.3.2. he or she 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.
- 5.2.4. A governor shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only of:
  - 5.2.4.1. his or her membership of a company or other body, if he or she has no beneficial interest in any securities of that company or other body; or
  - 5.2.4.2. an interest in any company, body or person with which he or she is connected which is so remote or insignificant that it cannot reasonably be regarded as likely to influence the governor in the consideration or discussion of or in voting on, any question with respect to that contract or matter; or
  - 5.2.4.3. any travelling or other expenses or allowances payable to the governor in accordance with paragraph 20 of the Core Constitution.
- 5.2.5. Where a governor 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
  - 5.2.5.1. 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
  - 5.2.5.2. if the share capital is of more than one class, the total nominal value of shares of any one class in which he or she has a beneficial interest does not exceed one-hundredth of the total issued share capital of that class, the governor shall not be prohibited 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 or her duty to disclose the interest.

## **“Family Interest”**

5.2.6. A "family interest" is an interest of the spouse or partner or any parent, child, brother or sister of a governor which if it were the interest of that governor would be a personal interest or a pecuniary interest of his or hers.

### **5.3. Register of Governors' Interests**

5.3.1. The Secretary shall keep a register of Governors' interests which shall contain the names of each governor, whether he or she has declared any interest, and if so, the interest declared.

5.3.2. It is the obligation of the governor to inform the Secretary in writing within seven Clear Days of becoming aware of the existence of a relevant or material interest. The Secretary must amend the appropriate register of interests upon receipt within three Clear Days.

5.3.3. The register of Governors' interests will be available to the public and the Chairman will take reasonable steps to bring the existence of the register of interests to the attention of the local population and to publicise arrangements for viewing it. Copies or extracts of the register of interests must be provided to Members of the Trust free of charge and within a reasonable time period of the request. A reasonable charge may be imposed on non-members for copies or extracts of the register of interests.

5.3.4. In establishing, maintaining, updating and publicising the register of interests, the Trust shall comply with all guidance issued from time to time by Monitor. The details of Governors' interests recorded in the register of interests will be kept up to date by means of a regular review as necessary by the Chief Executive or Secretary during which any changes of interests recently declared will be incorporated.

## **6. Standards of Business Conduct**

### **6.1. Governors' Code of Conduct**

A Governor shall sign and deliver to the Secretary a statement confirming his or her agreement to comply with the Governors' Code of Conduct and shall at all times comply with its provisions and with the provisions of the Trust's policies, procedures and Standing Financial Instructions.

### **6.2. Interest of Governors in Contracts**

6.2.1. If it comes to the knowledge of a governor that a contract in which he or she has any pecuniary interest not being a contract to which the governor is a party, has been, or is proposed to be, entered into by the Trust he or she shall at once give notice in writing to the Chairman or Secretary of the fact that he or she is interested therein. In the case of persons living together as partners, the interest of one partner shall, if known to the other, be deemed to be also the interest of that partner.

6.2.2. A governor must also declare to the Chairman or Secretary any other employment or business or other relationship of his or hers, or of a cohabiting spouse or partner, that conflicts, or might reasonably be predicted could conflict with the interests of the Trust. The Trust shall require such interests to be recorded in the register of Governors' interests.

### **6.3. Canvassing and Recommendations in Relation to Appointments**

- 6.3.1. Canvassing of Governors directly or indirectly for any appointment under the Trust shall disqualify the candidate for such appointment. The contents of this paragraph 6.3.1 shall be included in application forms or otherwise brought to the attention of candidates.
- 6.3.2. A governor shall not solicit for any person any appointment under the Trust or recommend any person for such appointment, but this shall not preclude a governor from giving written testimonial of a candidate's ability, experience or character for submission to the Trust in relation to any appointment.
- 6.3.3. Informal discussions outside appointment panels or committees, whether solicited or unsolicited, should be declared to the panel or committee.

### **6.4. Relatives of Governors**

- 6.4.1. Candidates for any staff appointment shall when making an application disclose in writing whether they are related to any governor. Failure to disclose such a relationship shall disqualify a candidate and, if appointed, render him or her liable to instant dismissal.
- 6.4.2. A governor shall disclose to the Chairman any relationship between himself or herself and a candidate of whose candidature that governor is aware. It shall be the duty of the Chairman to report to the Council of Governors any such disclosure made.
- 6.4.3. On appointment, Governors should disclose to the Council of Governors whether they are related to any other governor, any member of the Board of Directors or any holder of an office in the Trust.

### **6.5. External Consultants**

This paragraph 6 will apply equally to all external consultants or other agents acting on behalf of the Trust. The Trust's Scheme of Delegation should be adhered to at all times.

## **7. Interface Between the Board of Directors and the Council of Governors**

- 7.1. The Board of Directors will co-operate with the Council of Governors in order to comply with the Regulatory Framework in all respects and in particular in relation to the following matters which are set out specifically within the Constitution:
  - 7.1.1. The Directors, having regard to the views of the Council of Governors, are to prepare the information as to the Trust's forward planning in respect of each financial year to be given to Monitor.
  - 7.1.2. The Directors are to present to the Council of Governors at a general meeting the annual accounts, any report of the Auditor on them, and the annual report.
  - 7.1.3. Before holding a meeting, the Board of Directors must send a copy of the agenda of the meeting to the Council of Governors. As soon as practicable after holding a meeting, the Board of Directors must send a copy of the minutes of the meeting to the Council of Governors.

- 7.2. 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.
- 7.3. The Trust will take steps to ensure that the Governors are equipped with the skills and knowledge they require in their capacity as such.
- 7.4. The Council of Governors may request that any matter which relates to the Trust's compliance with the Regulatory Framework is included on the agenda for a meeting of the Board of Directors.
- 7.5. If the Council of Governors desires that a matter as described in paragraph 7.2 be included on an agenda for discussion by the Board of Directors, it shall make its request in writing to the Chairman at least 14 Clear Days before the meeting of the Board of Directors. The Chairman shall decide whether the matter is appropriate to be included on the agenda. Requests made less than 14 Clear Days before a meeting may be included on the agenda at the discretion of the Chairman.

## **8. Status of Standing Orders**

### **8.1. Standing Orders to be Given to Governors**

The Secretary shall provide a copy of these Standing Orders to each governor and shall endeavor to ensure that each governor understands his or her responsibilities within these Standing Orders.

### **8.2. Documents Having the Standing of Standing Orders**

The Trust's Scheme of Delegation (incorporating the Schedule of Matters reserved to the Board of Directors) and Standing Financial Instructions (incorporating the Tendering and Contract Procedure) shall have effect as if incorporated into these Standing Orders.

### **8.3. Duty to Report Non-Compliance with Standing Order**

All Governors have a duty to disclose any non-compliance with these Standing Orders to the Secretary as soon as possible. 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 Council of Governors for action or ratification.

### **8.4. Review, Variation and Amendment of Standing Orders**

- 8.4.1. These Standing Orders, including all documents having effect as if incorporated in them, shall be subject to regular review by the Council of Governors at intervals not exceeding every three years.
- 8.4.2. As prescribed by paragraph 45 of the Core Constitution, amendment by the Trust of its Constitution, including these Standing Orders, are to be made with the approval of the Board of Directors and the Council of Governors.
- 8.4.3. No amendment of these Standing Orders shall be made unless:
  - 8.4.3.1. relevant notice of a meeting of the Council of Governors has been served in accordance with paragraph 4.5 above;
  - 8.4.3.2. a notice of motion under paragraph 4.6.2 has been given;

- 8.4.3.3. the proposed amendment has been discussed at a meeting of the Council of Governors at which at least one-half of the Governors were present;
  - 8.4.3.4. at least 50% of the Governors present and voting voted in favour of the proposed amendment;
  - 8.4.3.5. the proposed amendment does not contravene the Regulatory Framework, any statutory provisions or any guidance issued by Monitor; and
  - 8.4.3.6. the change has been approved by the Board of Directors.
- 8.4.4. Amendments made under paragraph 45.1 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.
- 8.5. 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) –
  - 8.5.1. At least one member of the Council of Governors must attend the next Annual Members' Meeting and present the amendment, and
  - 8.5.2. The Trust must give the Members an opportunity to vote on whether they approve the amendment.
  - 8.5.3. 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.
  - 8.5.4. Amendments by the Trust of its Constitution are to be notified to Monitor. For the avoidance of doubt, Monitor's functions do not include a power or duty to determine whether or not the Constitution, as a result of the amendments, accords with Schedule 7 of the 2006 Act.

## Annex 7:

### BOARD OF DIRECTORS: STANDING ORDERS

(Paragraph 32)

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## **1. Introduction**

- 1.1. The Robert Jones and Agnes Hunt Orthopaedic Hospital NHS Foundation Trust became a Public Benefit Corporation on its authorisation by Monitor pursuant to the National Health Service Act 2006, as amended by the 2012 Act.
- 1.2. The principal place of business of the Trust is The Robert Jones and Agnes Hunt Orthopaedic Hospital, Oswestry, Shropshire SY10 7AG.
- 1.3. The Trust is governed by the 2006 Act, the 2012 Act, its Constitution and the Term of Authorisation granted by Monitor (since April 2016 it is part of NHS Improvement and therefore references to Monitor in accordance with the Act are applicable to NHS Improvement) or subsequent license conditions issued by Monitor (together the Regulatory Framework). The functions of the Trust are conferred by the Regulatory Framework.
- 1.4. The Regulatory Framework requires the Board of Directors to adopt Standing Orders for the regulation of its proceedings and business. The Standing Orders set out below, together with the Scheme of Delegation and the Standing Financial Instructions (which documents have effect as if incorporated into these Standing Orders), provide a comprehensive operating framework for the business conduct of the Trust.
- 1.5. As a Public Benefit Corporation the Trust has specific powers to contract in its own name and to act as a corporate trustee. In the latter role it is accountable to the Charity Commission for those funds deemed to be charitable. The Trust also has a common law duty as a bailee for patients' property held by the Trust on behalf of patients.

## **2. Interpretation**

Save as otherwise permitted by law, at any meeting the Chairman shall be the final authority on the interpretation of Standing Orders, on which he or she shall be advised by the Chief Executive and the Secretary.

## **3. The Board of Directors**

### **3.1. Authority**

- 3.2. As a Foundation Trust, the Trust shall have all the powers set out in the Constitution and in the 2006 Act, as amended the 2012 Act
  - 3.2.1. The powers of the Trust established under statute shall be exercised by the Board of Directors.
  - 3.2.2. The Trust has resolved that certain powers and decisions may only be exercised or made by the Board of Directors in formal session. These powers and decisions are set out in the Schedule of Matters Reserved to the Board, which has effect as if incorporated into these Standing Orders.

### **3.3. Composition of the Board of Directors**

- 3.3.1. In accordance with paragraph 22 of the Core Constitution The Board of the Trust is to comprise:
  - 3.3.1.1. a Non-Executive Chairman;
  - 3.3.1.2. no fewer than four and no more than six other Non-Executive Directors; and

- 3.3.1.3. no fewer than four and no more than six Executive Directors such that at any time at least half the Board of Directors (excluding the Chairman) shall be Non-Executive Directors.
  - 3.3.2. One of the Executive Directors shall be the Chief Executive.
  - 3.3.3. The Chief Executive shall be the Accounting Officer.
  - 3.3.4. One of the Executive Directors shall be the finance Director.
  - 3.3.5. One of the Executive Directors is to be a registered medical practitioner or a registered dentist (within the meaning of the Dentists Act 1984).
  - 3.3.6. One of the Executive Directors is to be a registered nurse or a registered midwife.
- 3.4. **Appointment, Re-Appointment and Removal of the Chairman and Other Non-Executive Directors**
  - 3.4.1. As provided by paragraph 25 of the Core Constitution, the Council of Governors at a general meeting of the Council of Governors shall appoint, re-appoint or remove the Chairman of the Trust and the other Non-Executive Directors.
  - 3.4.2. The process for the appointment, re-appointment or removal of Non-Executive Directors (including the Chairman) shall be as provided in Appendix 5A to Annex 5 of this Constitution.
- 3.5. **Remuneration and Terms of Office of the Chairman and Non-Executive Directors**
  - 3.5.1. The Chairman and the Non-Executive Directors are to be appointed by the Council of Governors at a general meeting at which the Council of Governors shall decide:
    - 3.5.1.1. the period of office;
    - 3.5.1.2. the remuneration and allowances; and
    - 3.5.1.3. the other terms and conditions of office of the Chairman and other Non-Executive Directors.
- 3.6. **Appointment and Powers of Deputy Chairman**
  - 3.6.1. As provided by paragraph 26 of the Core Constitution, the Council of Governors shall appoint a Non-Executive Director to be Deputy Chairman for such period, not exceeding the remainder of his or her term as a Non-Executive Director, as the Council of Governors may specify on appointing him or her.

- 3.6.2. Where the Chairman of the Trust has died or has ceased to hold office, or where he or she has been unable to perform his or her duties as Chairman owing to illness, conflict of interest or any other cause, the Deputy Chairman shall act as Chairman until a new Chairman is appointed or the existing Chairman resumes his or her duties, as the case may be. References to the Chairman in these Standing Orders shall, so long as there is no Chairman able to perform his duties, be taken to include references to the Deputy Chairman. Where both the Chairman and Deputy Chairman are unable to perform their duties owing to illness, conflict of interest or any other cause, another Non-Executive Director may be appointed by the Council of Governors to act as Chairman.
- 3.6.3. A Non-Executive Director so appointed may at any time resign from the office of Deputy Chairman by giving notice in writing to the Council of Governors. The Council of Governors may thereupon appoint another Non-Executive Director as Deputy Chairman in accordance with the provisions of paragraph 3.6.1 above.

### **3.7. Appointment and Powers of Senior Independent Director**

- 3.7.1. The Board of Directors shall in consultation with the Council of Governors appoint as the Senior Independent Director one of the Non-Executive Directors who is deemed by the Board of Directors to be independent by reference to FT Code Provision A.4.1. The term of office of the Senior Independent Director shall be specified by the Board of Directors on appointing him or her but shall not exceed the remainder of his or her term as a Non-Executive Director.
- 3.7.2. The Senior Independent Director shall perform the role set out in FT Code Provisions A.4.1 and otherwise as summarised in a role description agreed between the Board of Directors and the Council of Governors which shall as a minimum include:
- 3.7.2.1. leading the Non-Executive Directors in the evaluation of the Chairman as part of process agreed with the Council of Governors;
  - 3.7.2.2. being available to Members and Governors if they have concerns which contact through the normal channels of Chairman, Chief Executive or Finance Director has failed to resolve or for which such contact is inappropriate; and
  - 3.7.2.3. attending sufficient meetings with Governors to listen to their views in order to help develop a balanced understanding of the issues and concerns of Governors.
- 3.7.3. As provided by FT Code Provision A.4.1, the Deputy Chairman appointed in accordance with paragraph 3.6 above may also be appointed as the Senior Independent Director, provided that he or she is deemed by the Board of Directors to be independent by reference to FT Code Provision A.3.1.
- 3.7.4. If a Deputy Chairman who is also the Senior Independent Director is required to act in the capacity of Chairman in accordance with paragraph 3.6.2 above, the Board of Directors in consultation with the Council of Governors shall appoint another independent Non-Executive Director to serve as Senior Independent Director on a temporary basis. Where the Deputy Chairman is required to act in the capacity of the Chairman for a period exceeding one calendar month, the Board of Directors in consultation with the Council of Governors shall appoint a new permanent

Senior Independent Director from amongst the other independent Non-Executive Directors.

- 3.7.5. A Non-Executive Director so appointed may at any time resign from the office of Senior Independent Director by giving notice in writing to the Chairman. The Board of Directors in consultation with the Council of Governors may thereupon appoint another Non-Executive Director as Senior Independent Director in accordance with the provisions of paragraph 3.7.1 above.

**3.8. Appointment and Removal of Chief Executive and other Executive Directors**

- 3.8.1. As provided by paragraph 29 of the Core Constitution, the Non-Executive Directors shall appoint or remove the Chief Executive, save that the appointment of the Chief Executive shall require the approval of a majority of the Governors present and voting at a general meeting of the Council of Governors.

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

**3.9. Remuneration and Terms of Office of the Chief Executive and Executive Directors**

- 3.9.1. The Trust shall establish a committee of Non-Executive Directors in accordance with paragraph 7.1 below to decide:

3.9.1.1. the period of office;

3.9.1.2. the remuneration and allowances; and

3.9.1.3. the other terms and conditions of office of the Chief Executive and other Executive Directors.

- 3.9.2. The Trust may reimburse Directors' travelling and other costs and expenses incurred in carrying out their duties at rates determined by the committee of Non-Executive Directors referred to in paragraph 3.9.1 above.

- 3.9.3. The remuneration and allowances for Directors are to be disclosed in bands in the annual report.

**3.10. Disqualification of Directors**

See paragraph 30 - the grounds for disqualification herewith also apply in addition to paragraph 30.

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

- 3.10.1. he or she has refused or otherwise failed to sign and deliver to the Secretary a declaration confirming compliance with the Trust's policy on Fit and Proper Persons requirements and the Standards for Board Members personal declaration.
- 3.10.2. he or she is a member of a Local Involvement Network covering the Trust;
- 3.10.3. he or she is a member of a local authority's Overview and Scrutiny Committee covering health matters;

- 3.10.4. he or she is the subject of a disqualification order made under the Company Directors Disqualification Act 1986;
- 3.10.5. he or she is a person whose tenure of office as a Chairman or as a member or Director of an NHS body has been terminated on the grounds that his or her appointment is not in the interests of the health service, including for non-attendance at meetings or for non-disclosure of a pecuniary interest;
- 3.10.6. he or she has within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment with an NHS body;
- 3.10.7. in the case of a Non-Executive Director, he or she has refused without reasonable cause to fulfill any training requirement established by the Board of Directors;
- 3.10.8. he or she is incapable by reason of mental disorder, illness or injury of managing or administering his or her property and affairs;
- 3.10.9. Monitor has exercised its powers to remove him or her as a member of the Board of Directors of the Trust or has suspended him or her from office or has disqualified him or her from holding office as a Director of the Trust for a specified period or has exercised any of those powers in relation to him or her at any time, whether in relation to the Trust or to any other NHS Foundation Trust;
- 3.10.10. he or she has had his or her name removed from any list maintained by NHS England pursuant to Parts 4, 5, 6 or 7 of the 2006 Act and/or Regulations made under those Parts and has not subsequently had his or her name included on such a list and in view of the reason or reasons for such removal he or she is not considered by the Chairman to be a fit and proper person to hold the office of Director;
- 3.10.11. on the basis of disclosures obtained through an application to the Disclosure & Barring Service, he or she is not considered by the Chairman to be a fit and proper person to hold the office of Director;
- 3.10.12. he or she is or has been subject to a Sexual Risk Order or a Sexual Harm Prevention Order made under the provisions of the Anti-social Behaviour, Crime and Policing Act 2014.
- 3.10.13. he or she is a person in relation to whom a moratorium period under a debt relief order applies or comes to apply (under Part 7A of the Insolvency Act 1986),
- 3.10.14. he or she is or becomes disqualified in law or under the Constitution from holding office as a Non-Executive Director,
- 3.10.15. he or she is or becomes an unfit person for the purposes of the Trust's Monitor Licence or if Monitor determines that the Trust is in breach of its Licence, exercise its powers to require the Trust (either directly or through an enforcement undertaking from the Trust) to remove him or her from office as a director of the Trust, or to suspend or disqualify him or her from office or take any other action Monitor considers necessary,
- 3.10.16. he or she is the subject of conditions from the CQC requiring his or her removal from office as a director of the Trust or his or her suspension or disqualification from office or take any other action the CQC considers necessary,

3.10.17. he or she fail to satisfy the fit and proper person requirements of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 and the guidance issued by the Care Quality Commission.

#### **4. Secretary**

- 4.1. The Trust shall have a Secretary who may be an employee. The Secretary may not be a Governor, or the Chief Executive or the Finance Director.
- 4.2. The Secretary's functions shall include:
  - 4.2.1. acting as the Secretary to the Council of Governors and the Board of Directors, and to any committees, sub-committee or joint committees of the Council of Governors and the Board of Directors;
  - 4.2.2. calling and attending all meetings of the Council of Governors and the Board of Directors and of any committees, sub-committee or joint committees of the Council of Governors and the Board of Directors and ensuring that minutes are kept of those meetings;
  - 4.2.3. keeping the register of Governors, the register of Governors' interests, the register of Directors, the register of Directors' interests and the other registers and books required by this Constitution to be kept;
  - 4.2.4. having custody of the Trust's seal;
  - 4.2.5. publishing to Members in an appropriate form information which they should have about the Trust's affairs; and
  - 4.2.6. preparing and sending to Monitor and to any other statutory body all returns which are required to be made.
- 4.3. The Secretary is to be appointed and removed by the Chairman and the Chief Executive acting jointly.
- 4.4. The Secretary provides support to the Board of Directors and the Council of Governors. The Secretary's role includes advising both the Board of Directors and the Council of Governors (through the chairperson) on all governance matters.

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

##### **5.1. Calling Meetings**

- 5.1.1. Ordinary meetings of the Board of Directors shall be held at such times and places as the Board of Directors may determine.
- 5.1.2. 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.
- 5.1.3. The Chairman may call a meeting of the Board of Directors at any time. If the Chairman refuses to call a meeting after a requisition for that purpose, signed by at least one-third of the whole number of members of the Board of the Directors, and this has been presented to him or her, or if, without so refusing, the Chairman does not call a meeting within five Clear Days after such requisition has been presented to him or her at the Trust's Headquarters, one-third or more members of the Board of Directors may forthwith call a meeting.

## 5.2. **Notice of Meetings**

- 5.2.1. Before each meeting of the Board of Directors a notice of the meeting, specifying the business proposed to be transacted at it, shall be delivered to every Director, or sent by post to the usual place of residence of every Director, so as to be available to him or her at least six Clear Days before the meeting save in the case where the Chairman (or Deputy Chairman) consider that an emergency situation prevails.
- 5.2.2. Want of service of the notice on any member of the Board of Directors shall not affect the validity of a meeting, but failure to serve the notice on more than three Directors shall invalidate the meeting. A notice shall be presumed to have been served at the time at which the notice would be delivered in the ordinary course of the post.
- 5.2.3. In the case of a meeting called by Directors in default of the Chairman in accordance with paragraph 5.1.3 above, the notice shall be signed by those Directors and no business shall be transacted at the meeting other than that specified in the notice.
- 5.2.4. In the event of an emergency giving rise to the need for an immediate meeting, paragraph 5.2.1 shall not prevent the calling of such a meeting without the requisite six Clear Days' notice provided that every effort is made to make personal contact with every Director who is not absent from the United Kingdom and the agenda for the meeting is restricted to matters arising in that emergency.
- 5.2.5. Agendas will be sent to Directors before the meeting and supporting papers, whenever possible, shall accompany the agenda, but will certainly be dispatched no later than three Clear Days before the meeting, save in the case where the Chairman or Deputy Chairman consider that an emergency situation prevails.
- 5.2.6. Agendas will be sent to the Council of Governors prior to the meeting

## 5.3. **Setting the Agenda**

- 5.3.1. The Board of Directors may determine that certain matters shall appear on every agenda for a meeting and shall be addressed prior to any other business being conducted.
- 5.3.2. A Director who desires a matter to be included on an agenda, including a motion for discussion and voting at a meeting, shall make his or her request in writing to the Chairman at least ten Clear Days before the meeting. The request should include appropriate supporting information. Requests made less than ten Clear Days before a meeting may be included on the agenda at the discretion of the Chairman.

## 5.4. **Petitions**

Where a petition has been received by the Trust the Chairman shall include the petition as an item for the agenda of the next Board of Directors meeting.

## 5.5. **Chairman of Meeting**

- 5.5.1. At any meeting of the Board of Directors, the Chairman, if present, shall preside.



- 5.5.2. If the Chairman is absent from the meeting or is absent temporarily on the grounds of a declared conflict of interest, the Deputy Chairman shall preside.
- 5.5.3. If both the Chairman and Deputy Chairman are absent from the meeting or are absent temporarily on the grounds of declared conflicts of interest, another Non-Executive Director shall be appointed by the Board of Directors to preside at that meeting.

**5.6. Chairman's Ruling**

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

**5.7. Quorum**

- 5.7.1. No business shall be transacted at a meeting of the Board of Directors unless at least one-third of the whole number of the Directors are present, including at least one Executive Director and one Non-Executive Director.
- 5.7.2. 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 of Directors considers recommendations in relation to the remuneration or other terms of service of the Executive Directors).
- 5.7.3. An officer who has been appointed formally by the Board of Directors to act-up for an Executive Director during a period of incapacity or temporarily to fill an Executive Director vacancy shall count towards the quorum. An officer attending a meeting of the Board of Directors to represent an Executive Director during a period of incapacity or temporary absence without formal acting-up status shall not count towards the quorum. An officer's status when attending a meeting of the Board of Directors shall be recorded in the minutes.
- 5.7.4. A Director who has been disqualified from participating in the discussion on any matter shall not count towards the quorum.
- 5.7.5. A Director who has not been disqualified but who is excluded from voting on a particular matter on the grounds of a declared conflict of interest shall not count towards the quorum for the discussion on that matter. If as a result a quorum is not available for the discussion and/or the passing of a motion on any matter, the matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business.

**5.8. Discussion on Motion Requested by a Director**

Where a Director has requested the inclusion of a motion on the agenda in accordance with paragraph 5.3.2 above, the process for discussion and voting on the motion shall be as follows:

- 5.8.1. the Director who requested its inclusion shall have the right to propose the motion, subject to a time limit of five minutes;
- 5.8.2. the Director proposing the motion shall have a right of reply at the close of any discussion on the motion or any amendment thereto, subject to a time limit of three minutes;

- 5.8.3. once a motion has been proposed, no Director shall speak more than once or for more than three minutes;
- 5.8.4. when a motion is under discussion or immediately prior to discussion it shall be open to Director to move:
  - 5.8.4.1. an amendment to the motion;
  - 5.8.4.2. the adjournment of the discussion or the meeting;
  - 5.8.4.3. that the meeting proceed to the next business;
  - 5.8.4.4. the appointment of an ad hoc committee to deal with the specific item of business to which the motion refers; or
  - 5.8.4.5. that the motion be now put.
- 5.8.5. In the case of 5.8.4.3 and 5.8.4.5 above, to ensure objectivity these matters may only be put by a Director who has not previously taken part in the debate and who is eligible to vote.
- 5.8.6. 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.

5.9. **Written Motions**

- 5.9.1. In urgent situations and with the consent of the Chairman, a written motion may be used to transact business otherwise required to be conducted at a general meeting of the Board of Directors.
- 5.9.2. If all Directors have been notified of the motion and a simple majority of Directors entitled to attend and vote at a general meeting of the Board of Directors sign and return a copy of a written motion within five Clear Days of dispatch, then the motion will be deemed to have been resolved notwithstanding that the Directors have not gathered in one place.
- 5.9.3. The effective date of the resolution shall be the date that the last copy is signed and, until that date, a Director who has previously indicated acceptance can withdraw and the motion shall fail.
- 5.9.4. Once the resolution is passed, a copy certified by the Secretary shall be recorded in the minutes of the next ensuring meeting of the Board of Directors where it will be signed by the person presiding at it.

5.10. **Voting**

- 5.10.1. Every question at a meeting of the Board of Directors shall be determined by a majority of the votes of the Directors present and voting on the question.
- 5.10.2. In the case of the number of votes for and against a motion being equal, the Chairman of the meeting shall have a second or casting vote.
- 5.10.3. 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 be used if a majority of the Directors present so request.

- 5.10.4. If at least one-third of the Members of the Board of Directors present so request, the voting (other than by paper ballot), on any question may be recorded to show how each Director present voted or abstained.
- 5.10.5. If a Director so requests, his or her vote shall be recorded by name upon any vote (other than by paper ballot).
- 5.10.6. In no circumstances may an absent Director vote by proxy. Absence is defined as being absent at the time of the vote.
- 5.10.7. An officer who has been appointed formally by the Board of Directors to act-up for an Executive Director during a period of incapacity or temporarily to fill an Executive Director vacancy shall be entitled to exercise the voting rights of the Executive Director. An officer attending a meeting of the Board of Directors to represent an Executive Director during a period of incapacity or temporary absence without formal acting-up status may not exercise the voting rights of the Executive Director. An officer's status when attending a meeting of the Board of Directors shall be recorded in the minutes.

5.11. **Suspension of Standing Orders**

- 5.11.1. Except where this would contravene any statutory provision or any direction made by Monitor, any one or more of the Standing Orders may be suspended at any meeting, provided that:
  - 5.11.1.1. at least two-thirds of the Directors are present, including one Executive Director and one Non-Executive Director; and
  - 5.11.1.2. a majority of those present vote in favour of suspension.
- 5.11.2. A decision to suspend the Standing Orders shall be recorded in the minutes of the meeting.
- 5.11.3. A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the Directors.
- 5.11.4. No formal business may be transacted while Standing Orders are suspended.
- 5.11.5. The Audit Committee shall review every decision to suspend Standing Orders.

5.12. **Minutes**

- 5.12.1. The minutes of the proceedings of every meeting of the Board of Directors and of any committee appointed by the Board of Directors in accordance with paragraph 7 below shall be drawn up by the Secretary and submitted for agreement at the next ensuing meeting of the Board of Directors.
- 5.12.2. 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 at the next ensuing meeting of the Board of Directors and recorded in manuscript on the minutes, which shall be signed by the person presiding at the meeting. Signed minutes shall be retained by the Secretary.
- 5.12.3. The signed minutes shall be conclusive evidence of the events of the meeting to which they relate.

5.12.4. Minutes of meetings of the Board of Directors shall be circulated in accordance with Directors' wishes.

5.12.5. Minutes of the meeting will be sent to the Council of Governors

**5.13. Record of Attendance**

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

**5.14. Meetings: Electronic Communication**

5.14.1. In this Standing Order "communication" and "electronic communication" shall have the meanings set out in the Electronic Communications Act 2000 or any statutory modification or re-enactment thereof.

5.14.2. A Director in electronic communication with the Chairman and all other parties to a meeting of the Board of Directors or of a committee or sub-committee of the Directors shall be regarded for all purposes as personally attending such a meeting provided that, but only for so long as, at such a meeting, he or she has the ability to communicate interactively and simultaneously with all other parties attending the meeting, including all persons attending by way of electronic communication.

5.14.3. A meeting at which one or more of the Directors attends by way of electronic communication is deemed to be held at such a place as the Directors shall at the said meeting resolve. In the absence of such a resolution, the meeting shall be deemed to be held at the place (if any) where a majority of the Directors attending the meeting are physically present, or in default of such a majority, the place at which the Chairman of the meeting is physically present.

5.14.4. Meetings held in accordance with this paragraph 5.14 are subject to the provisions of paragraph 5.7 in respect of the quorum. For such a meeting to be valid, a quorum must be present and maintained throughout the meeting.

5.14.5. The minutes of a meeting held in this way must state that it was held by electronic communication and that the Directors were all able to hear each other and were present throughout the meeting.

**6. Arrangements for the Exercise of Functions by Delegation**

Subject to guidance as may be given by Monitor, the Board of Directors may make arrangements for the exercise of any of its functions by a committee or sub-committee appointed by virtue of paragraph 7 below or by a Director or officer of the Trust, in each case subject to such restrictions and conditions as the Board of Directors considers appropriate.

**6.1. Emergency Powers**

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

## 6.2. **Delegation to Committees**

The Board of Directors may from time to time constitute committees, sub-committees and joint committees and may delegate to them executive powers. The Constitution and terms of reference of these committees, sub-committees or joint committees, including their specific executive powers, shall be approved by the Board of Directors.

## 6.3. **Delegation to Officers**

- 6.3.1. Those functions of the Trust which have not been reserved to the Board of Directors or delegated to a committee, sub-committee or joint committee shall be exercised on behalf of the Board of Directors by the Chief Executive. The Chief Executive shall determine which functions he or she will perform personally and shall nominate officers to undertake the remaining functions, for which he or she will retain accountability to the Board of Directors.
- 6.3.2. The Chief Executive shall prepare a Scheme of Delegation identifying his or her proposals, which shall be considered and approved by the Board of Directors, subject to any amendment agreed during the discussion. The Chief Executive may periodically propose amendment to the Scheme of Delegation, which shall be considered and approved by the Board of Directors.
- 6.3.3. Nothing in the Scheme of Delegation shall impair the discharge of the direct accountability to the Board of Directors of the Finance Director or other Executive Director to provide information and advise the Board of Directors in accordance with any statutory requirements. Outside these statutory requirements, the Finance Director shall be accountable to the Chief Executive for operational matters.
- 6.3.4. The arrangements made by the Board of Directors as set out in the Scheme of Delegation shall have effect as if incorporated in these Standing Orders.

## 7. **Committees**

### 7.1. **Appointment of Committees**

- 7.1.1. Subject to paragraph 6 above and to such guidance as may be issued from time to time by Monitor, the Board of Directors may appoint committees consisting of Directors.
- 7.1.2. The Board of Directors shall approve the appointments to each of the committees which it has formally constituted.
- 7.1.3. A committee appointed under paragraph 6.2 above may, subject to such guidance as may be given by Monitor or the Board of Directors or other health service bodies, appoint sub-committees consisting of Directors of the Trust. A committee may not delegate executive powers to a sub-committee unless expressly authorised by the Board of Directors.

### 7.2. **Terms of Reference**

Each such committee or sub-committee shall have such terms of reference and powers and be subject to such conditions (including the requirement to report to the Board of Directors), as the Board of Directors shall decide in accordance with any legislation. Such terms of reference shall have effect as if incorporated into these Standing Orders.

### **7.3. Confidentiality**

- 7.3.1. 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 Board of Directors or shall otherwise have concluded on that matter.
- 7.3.2. A Director or a member of a committee shall not disclose any matter reported to the Board of Directors or otherwise dealt with by the committee, notwithstanding that the matter has been reported or action has been concluded, if the Board of Directors or committee shall resolve that it is confidential.

### **7.4. Applicability of Standing Orders**

These Standing Orders of the Board of Directors, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees established by the Board of Directors, in which case the term "Chairman" is to be read as a reference to the chairman of the committee as the context permits, and the term "member" is to be read as a reference to a member of the committee also as the context permits.

## **8. Interface between the Board of Directors and the Council of Governors**

- 8.1. The Board of Directors will co-operate with the Council of Governors in order to comply with the Regulatory Framework in all respects and in particular in relation to the following matters which are set out specifically within the Constitution:
  - 8.1.1. The Directors, having regard to the views of the Council of Governors, are to prepare the information as to the Trust's forward planning in respect of each financial year to be given to Monitor.
  - 8.1.2. The Directors are to present to the Council of Governors at a general meeting the annual accounts, any report of the Auditor on them, and the annual report.
- 8.2. 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.
- 8.3. The Council of Governors may require a Director to attend one of their meetings to obtain information about the Trust's performance.
- 8.4. The Trust will take steps to ensure that the Governors are equipped with the skills and knowledge they require in their capacity as such.
- 8.5. The Council of Governors may request that any matter which relates to the Trust's compliance with the Regulatory Framework is included on the agenda for a meeting of the Board of Directors.
- 8.6. If the Council of Governors desires that a matter as described in paragraph 8.2 be included on an agenda for discussion by the Board of Directors, it shall make its request in writing to the Chairman at least 14 Clear Days before the meeting of the Board of Directors. The Chairman shall decide whether the matter is appropriate to be included on the agenda. Requests made less than 14 Clear Days before a meeting may be included on the agenda at the discretion of the Chairman.

## **9. Declaration of Interests and Register of Directors' Interests**

### **9.1. Declaration of Interests**

- 9.1.1. The Regulatory Framework requires each Director to declare to the Secretary:
- 9.1.1.1. any actual or potential interest, direct or indirect, which is relevant and material to the business of the Trust, as described in paragraph 9.2.2 below;
  - 9.1.1.2. any actual or potential pecuniary interest, direct or indirect, in any contract, proposed contract or other matter which is under consideration concerning the Trust or is to be considered by the Board of Directors, as described in paragraph 9.2.3 below; and
  - 9.1.1.3. any actual or potential family interest, direct or indirect, as described in paragraph 9.2.6 below.
- 9.1.2. Such a declaration shall be made either at the time of the Director's appointment or as soon thereafter as the interest arises, but within five Clear Days of the Director becoming aware of the existence of that interest, and shall be made in such manner as the Secretary shall prescribe from time to time.
- 9.1.3. In addition, if a Director is present at a meeting of the Board of Directors and has an interest of any sort in any matter which is the subject of consideration, he or she shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not vote on any question with respect to the matter. At the time that the interests are declared, they should be recorded in the minutes of the meeting.
- 9.1.4. If a Director has declared a pecuniary interest in accordance with paragraph 9.2.3 below he shall not take part in the consideration or discussion of the matter in respect of which an interest has been disclosed and shall be excluded from the meeting while the matter is under consideration.
- 9.1.5. A Director who is aware of an alteration in his or her circumstance which gives rise to any changes in the interests he or she has previously declared should declare the changes at the next meeting of the Board of Directors following the change occurring.
- 9.1.6. This paragraph 9 applies to any committee, sub-committee or joint committee of the Board of Directors and to any member of any such committee, sub-committee or joint committee (whether or not he or she is also a Director).
- 9.1.7. The interests of Directors in 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.

## 9.2. **Nature of Interests**

- 9.2.1. Definitions of the terms "relevant and material", "pecuniary interest" and "family interest" are set out below. If having considered these definitions a Director is in doubt as to the relevance or materiality of an interest, he or she should discuss the matter with the Chairman or the Secretary.

### **"Relevant and Material"**

- 9.2.2. Interests which should be regarded as "relevant and material" are as follows and are to be interpreted in accordance with guidance issued by Monitor:
- 9.2.2.1. Directorships, including non-Executive Directorships held in private companies or public limited companies (with the exception of those of dormant companies); or
  - 9.2.2.2. ownership, part-ownership or Directorship of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS; or
  - 9.2.2.3. majority or controlling share holdings in organisations likely or possibly seeking to do business with the NHS; or
  - 9.2.2.4. a position of authority in a charity or voluntary organisation in the field of health and social care; or
  - 9.2.2.5. an affiliation to a health or social care related campaigning special interest group
  - 9.2.2.6. any connection with a voluntary or other organisation contracting for NHS services or commissioning NHS services; or
  - 9.2.2.7. any connection with an organisation, entity or company considering entering into or having entered into a financial agreement with the Trust, including but not limited to, lenders or banks.

### **"Pecuniary Interest"**

- 9.2.3. A Director shall be treated as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if:
- 9.2.3.1. he or she, or a nominee of his or hers, 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
  - 9.2.3.2. he or she 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.
- 9.2.4. A Director shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only:



- 9.2.4.1. of his or her membership of a company or other body, if he or she has no beneficial interest in any securities of that company or other body; or
  - 9.2.4.2. of an interest in any company, body or person with which he or she is connected which is so remote or insignificant that it cannot reasonably be regarded as likely to influence the Director in the consideration or discussion of or in voting on, any question with respect to that contract or matter; or
  - 9.2.4.3. of any remuneration, compensation or allowances payable to a Director by virtue of paragraph 18 of Schedule 7 of the 2006 Act; or
  - 9.2.4.4. of any travelling or other expenses or allowances payable to a Director in accordance with the Constitution.
- 9.2.5. Where a Director 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
- 9.2.5.1. 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
  - 9.2.5.2. if the share capital is of more than one class, the total nominal value of shares of any one class in which he or she has a beneficial interest does not exceed one-hundredth of the total issued share capital of that class; the Director shall not be prohibited 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 the Director's duty to disclose his or her interest.

#### **"Family Interest"**

- 9.2.6. A "family interest" is an interest of the spouse or partner or of any parent, child, brother or sister of a Director which, if it were the interest of that Director, would be a personal interest or a pecuniary interest of his or hers.

### **9.3. Register of Directors' Interests**

- 9.3.1. The register of Directors' interests shall contain the names of each Director, whether he or she has declared any interests and, if so, the interests declared in accordance with the Constitution or these Standing Orders.
- 9.3.2. It is the obligation of the Director to inform the Secretary in writing within seven Clear Days of becoming aware of the existence of a relevant or material interest. The Secretary must amend the appropriate register of interests upon receipt within three Clear Days.

- 9.3.3. The register of Directors' interests will be available to the public and the Chairman will take reasonable steps to bring the existence of the register of interests to the attention of the local population and to publicise arrangements for viewing it. Copies or extracts of the register of interests must be provided to Members of the Trust free of charge and within a reasonable time period of the request. A reasonable charge may be imposed on non-members for copies or extracts of the register of interests.
- 9.3.4. In establishing, maintaining, updating and publicising the register of interests, the Trust shall comply with all guidance issued from time to time by Monitor. The details of Directors' interests recorded in the register of interests will be kept up to date by means of a regular review as necessary by the Chief Executive or the Secretary during which any changes of interests recently declared will be incorporated.

## **10. Standards of Business Conduct**

### **10.1. Directors' Code of Conduct**

A Director shall sign and deliver to the Secretary a statement set out in confirming his or her agreement to comply with the Directors' Code of Conduct and shall at all times comply with its provisions, with the provisions of the Trust's policies, procedures and Standing Financial Instructions and with Department of Health Guidance contained in HSG 1993/5 "Standards of Business Conduct for NHS Staff", "Code of Conduct for NHS Managers and Fit and Proper persons declaration..

### **10.2. Interest of Directors and Employees in Contracts**

- 10.2.1. If it comes to the knowledge of a Director or officer of the Trust that a contract in which he has any pecuniary interest not being a contract to which the Director is a party, has been, or is proposed to be, entered into by the Trust he or she shall at once give notice in writing to the Chairman or Secretary of the fact that he or she is interested therein. In the case of persons living together as partners, the interest of one partner shall, if known to the other, be deemed to be also the interest of that partner.
- 10.2.2. A Director or officer must also declare to the Chairman or Secretary any other employment or business or other relationship of his or hers, or of a cohabiting spouse or partner, that conflicts, or might reasonably be predicted could conflict with the interests of the Trust in accordance with paragraph 9. The Trust shall require such interests to be recorded in the register of Directors' interests.

### **10.3 Canvassing of, and Recommendations by, Directors in Relation to Appointments**

- 10.3.1 Canvassing of Directors or Members of any committee of the Board of Directors directly or indirectly for any appointment under the Trust shall disqualify the candidate for such appointment. The contents of this paragraph 10.3.1 shall be included in application forms or otherwise brought to the attention of candidates.

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

#### **10.4 Relatives of Directors or Officers**

- 10.4.1 Candidates for any staff appointment shall when making an application disclose in writing whether they are related to any Director or the holder of any office under the Trust. Failure to disclose such a relationship shall disqualify a candidate and, if appointed, render him liable to instant dismissal.
- 10.4.2 A Director or officer of the Trust shall disclose to the Chairman any relationship between himself and a candidate of whose candidature that Director or officer is aware. It shall be the duty of the Chairman to report to the Board of Directors any such disclosure made.
- 10.4.3 On appointment, Directors (and prior to acceptance of an appointment in the case of Executive Directors) should disclose to the Board of Directors whether they are related to any other member of the Board of Directors or holder of any office in the Trust.
- 10.4.4 Where the relationship to an officer or another Director to a Director of the Trust is disclosed, the provisions of paragraph 9 above shall apply.

#### **10.5 External Consultants**

This paragraph 10 will apply equally to all external consultants or other agents acting on behalf of the Trust. The Trust's Scheme of Delegation should be adhered to at all times.

### **11 Instruments**

#### **11.3 Common Seal of the Trust**

- 11.3.1 The Secretary shall keep the Common Seal of the Trust in a secure place.
- 11.3.2 The Common Seal of the Trust shall not be fixed to any documents unless the sealing has been authorised by a resolution of the Board of Directors or of a committee thereof, or where the Board of Directors has delegated its powers.
- 11.3.3 Before any building, engineering, property or capital document is sealed it must be approved and signed by the Finance Director (or an officer nominated by him or her) and authorised and countersigned by the Chief Executive (or an Officer nominated by him or her who shall not be within the originating Directorate).
- 11.3.4 The Secretary shall make and number consecutively an entry of every sealing in a book provided for that purpose. Each entry 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 Board of Directors at least quarterly, giving details of the seal number, the description of the document and date of sealing.

#### **11.4 Signature of Documents**

- 11.4.1 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.

11.4.2 The Chief Executive or Nominated Officer shall be authorised, by resolution of the Board of Directors, to sign on behalf of the Trust any agreement or other document (not required to be executed as a deed) the subject matter of which has been approved by the Board of Directors or committee or sub-committee to which the Board of Directors has delegated appropriate authority.

## **12 Status of Standing Orders**

### **12.3 Standing Orders to be Given to Directors and Officers**

The Secretary shall provide a copy of these Standing Orders to each Director and officer of the Trust and shall endeavor to ensure that each Director and officer understands his or her responsibilities within these Standing Orders.

### **12.4 Documents Having the Standing of Standing Orders**

The Scheme of Delegation (incorporating the Schedule of Matters reserved to the Board of Directors) and the Standing Financial Instructions (incorporating the Tendering and Contract Procedure) shall have effect as if incorporated into these Standing Orders.

### **12.5 Duty to Report Non-Compliance with Standing Orders**

All Directors and officers of the Trust have a duty to disclose any non-compliance with these Standing Orders to the Secretary as soon as possible. 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 of Directors for action or ratification.

### **12.6 Review, Variation and Amendment of Standing Orders**

12.6.1 These Standing Orders, including all documents having effect as if incorporated in them, shall be subject to regular review by the Board of Directors at intervals not exceeding every three years.

12.6.2 As prescribed by paragraph 45 of the Core Constitution, amendment by the Trust of its Constitution, including these Standing Orders, are to be made with the approval of the Board of Directors and the Council of Governors.

12.6.3 No amendment of these Standing Orders shall be made unless:

- 12.4.3.1 relevant notice of a meeting has been served in accordance with paragraph 5.2 above;
- 12.4.3.2 a notice of motion under paragraph 5.3 has been given;
- 12.4.3.3 at least two-thirds of the Directors are present;
- 12.4.3.4 no fewer than half the total of the Trust's Board of Directors vote in favour of amendment; and the amendment proposed does not contravene the Regulatory Framework, any statutory provisions or any guidance made by Monitor.

## **Annex 8:**

### **FURTHER PROVISIONS**

#### **1. Commitments**

The Trust shall at all times exercise its functions effectively, efficiently and economically and operate in accordance with the NHS Core Principles and the Trust Core Principles as set out below.

##### **1.1. NHS Core Principles**

- 1.1.1. The NHS will provide a universal service for all based on clinical need, not ability to pay.
- 1.1.2. The NHS will provide a comprehensive range of services.
- 1.1.3. The NHS will shape its services around the needs and preferences of individual patients, their families and their carers.
- 1.1.4. The NHS will respond to different needs of different populations.
- 1.1.5. The NHS will work continuously to improve quality services and to minimise errors.
- 1.1.6. The NHS will support and value its staff.
- 1.1.7. Public funds for healthcare will be devoted solely to NHS patients.
- 1.1.8. The NHS will work together with others to ensure a seamless service for patients.
- 1.1.9. The NHS will help keep people healthy and work to reduce health inequalities.
- 1.1.10. The NHS will respect the confidentiality of individual patients and provide open access to information about services, treatment and performance.

##### **1.2. Trust Core Principles**

###### **General**

- 1.2.1. The Trust aims to provide the best possible patient care, based on evidence and in a culture that encourages continuous improvement.
- 1.2.2. The Trust will listen to patients and understand what they have to say and encourage their involvement in decisions about their care.
- 1.2.3. The Trust will aim to provide a clean, healthy and welcoming hospital environment for patients, visitors and staff.
- 1.2.4. The Trust will aim to improve the patient's experience of care provided at its Hospital and by its services respecting their privacy and preserving their dignity.

- 1.2.5. The Trust will have open and honest communications between staff and patients.
- 1.2.6. The Trust will recognise the contribution of staff by developing and supporting them to do their jobs better, and involving them in decision-making.
- 1.2.7. The Trust will aim to provide high quality services through working in partnership.

#### **Representative Membership**

- 1.2.8. The Trust must take steps to strive to ensure that, taken as a whole; its actual membership is representative of those eligible for membership.
- 1.2.9. To this end, the Trust shall at all times have in place and pursue a membership strategy which shall be approved by the Council of Governors and shall be reviewed by them from time to time and at least annually.
- 1.2.10. The Council of Governors shall present to each annual meeting of the Trust's Members:
  - 1.2.10.1. a report on steps taken to secure that, taken as a whole, the actual membership of its constituencies and the classes of constituencies is representative of those eligible for such membership; and
  - 1.2.10.2. the progress of the membership strategy; and
  - 1.2.10.3. any changes to the membership strategy.

#### **Co-operation with Health Service and Other Bodies**

- 1.2.11. In exercising its functions the Trust shall co-operate with NHS bodies and any local authority with which the Trust has a Local Authority Partnership Agreement under section 75 of the 2006 Act, or otherwise.

#### **Respects for Rights of People**

- 1.2.12. In conducting its affairs, the Trust shall respect the rights of the members of the community it serves, its employees and people dealing with the Trust as set out in the Charter of Fundamental Rights of the European Union.

### **2. Membership of the Trust**

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

### **3. Disqualification from Membership of the Trust**

- 3.1. Notwithstanding the provisions of paragraphs 5 and 6 of the Core Constitution, a person may not be a member of the Trust if:
  - 3.1.1. he or she is under 14 years of age at the time of his application to become a member;

- 3.1.2. during the five years prior to his or her application, he or she has demonstrated aggressive or violent behavior at any hospital or towards any person working for an NHS body and following such behavior he or she has been asked to leave, has been removed or excluded from any hospital or other NHS establishment under either the Trust's or other NHS body's policy for withholding treatment from violent/aggressive patients (zero tolerance), or equivalent;
- 3.1.3. he or she is otherwise ineligible under paragraph 9 of the Core Constitution to be a member;
- 3.1.4. he or she has been confirmed as a vexatious complainant.
- 3.1.5. he or she has been removed as a member from another NHS Foundation Trust;
- 3.1.6. he or she is the subject of a Sex Offenders Order and/or his name is included in the Sex Offenders Register;
- 3.1.7. the Council of Governors resolves (in accordance with the procedure for expulsion set out at paragraph 4 below that for reasonable cause his or her so doing would, or would be likely to:
  - 3.1.7.1. prejudice the ability of the Trust to fulfill its principal purpose or other of its purposes under this Constitution or otherwise to discharge its duties and functions; or
  - 3.1.7.2. harm the Trust's work with other persons or bodies with whom it is engaged or may be engaged in the provision of goods and services; or
  - 3.1.7.3. adversely affect public confidence in the goods or services provided by the Trust; or
  - 3.1.7.4. otherwise bring the Trust into disrepute.
- 3.2. It is the responsibility of each member to ensure his or her eligibility at all times and not the responsibility of the Trust to do so on his or her behalf. A member who becomes aware of his or her ineligibility shall inform the Trust as soon as practicable and that person shall thereupon be removed forthwith from the register of Members and shall cease to be a member.
- 3.3. Where the Trust has reason to believe that a member or applicant for membership may be ineligible for membership or may be disqualified for membership under this Constitution, the Secretary shall carry out reasonable enquiries to establish if this is the case.
- 3.4. Where the Secretary considers that there may be reasons for concluding that a member or applicant for membership may be ineligible or be disqualified for membership, he or she shall advise that individual of those reasons in summary form and invite representations from the member or applicant for membership within 21 days or such other reasonable period as the Secretary may in his or her absolute discretion determine. Any representations received shall be considered by the Secretary and he or she shall make a decision on the member's or applicant's eligibility or disqualification as soon as reasonably practicable and shall give notice in writing of that decision to the member or applicant within 14 days of the decision being made.

- 3.5. If no representations are received within the period of 21 days or longer period (if any) permitted under paragraph 3.4 above, the Secretary shall be entitled to proceed and make a decision on the member's or applicant's eligibility or disqualification notwithstanding the absence of any such representations from him or her.
- 3.6. Upon a decision being made under paragraphs 3.4 or 3.5 above that the member or applicant is ineligible or disqualified for membership the member's name shall be removed from the register of Members forthwith and he or she shall cease to be a member.
- 3.7. Any decision made under paragraphs 3.4, 3.5 or 3.6 to disqualify a member or applicant for membership may be referred by the member or applicant concerned to the dispute resolution procedure under paragraph 7 below.

#### **4. Expulsion from Membership of the Trust**

- 4.1. A member may be expelled by a resolution approved by not less than two-thirds of the Members of the Council of Governors present and voting at a meeting of the Council of Governors. The procedure set out below is to be adopted.
- 4.2. Any member or Director may complain to the Secretary that another member has acted in a way detrimental to the interests of the Trust, or is otherwise disqualified as set out in paragraph 3 above.
- 4.3. If a complaint is made, the Council of Governors may itself consider the complaint, having taken such steps as it considers appropriate, to ensure that each member's point of view is heard and may either:
  - 4.3.1. dismiss the complaint and take no further action; or
  - 4.3.2. arrange for the next meeting of the Council of Governors to consider a motion for the expulsion of the member complained of.

#### **5. Termination of Membership**

A member shall cease to be a member of the Trust on:

- 5.1. death;
- 5.2. resignation by notice in writing to the Secretary;
- 5.3. ceasing to fulfill the requirements of paragraphs 5 or 6 of the Core Constitution, as the case may be;
- 5.4. being disqualified pursuant to paragraph 9 of the Core Constitution or paragraph 3 above; or
- 5.5. being expelled pursuant to paragraph 4 above.

#### **6. Indemnity**

- 6.1. Members of the Council of Governors and the Board of Directors (including the Secretary) who act honestly and in good faith will not have to meet out of their personal resources any personal civil liability which is incurred in the execution or purported execution of their functions, including (but not limited to) any liability arising by reason of the Trust acting as a Corporate Trustee, save where they have acted recklessly. Any costs arising in this way will be met by the Trust.



- 6.2. The Trust may purchase and maintain insurance against this liability for its own benefit and for the benefit of Members of the Council of Governors and the Board of Directors (including the Secretary) and may participate in risk pooling schemes, including (but not limited to) insurance and schemes operated by the NHS Litigation Authority.

## **7. Dispute Resolution Procedure**

- 7.1. In the event of any dispute about the entitlement of a person to membership of the Trust, the dispute shall be referred to the Secretary who shall make a determination on the point in issue. If the person (whether or not a member) is aggrieved at the decision of the Secretary he or she may appeal in writing within 14 days of the Secretary's decision to the Council of Governors, whose decision shall be final.
- 7.2. In the event of dispute between the Council of Governors and the Board of Directors:
- 7.2.1. in the first instance the Senior Independent Director (or another independent Non-Executive Director, if the Senior Independent Director has a conflict of interest), on the advice of the Secretary, and such other advice as the Senior Independent Director may see fit to obtain, shall seek to resolve the dispute;
  - 7.2.2. if the Senior Independent Director is unable to resolve the dispute he or she shall appoint an ad hoc Dispute Resolution Committee comprising equal numbers of Non-Executive Directors and Governors to consider the circumstances and to make recommendations to the Council of Governors and the Board of Directors with a view to resolving the dispute;
  - 7.2.3. if the recommendations, if any, of the Dispute Resolution Committee are unsuccessful in resolving the dispute, the Senior Independent Director (or another independent Non-Executive Director, if the Senior Independent Director has a conflict of interest) may refer the dispute to an independent assessor agreeable to both parties, for adjudication. The assessor's decision will be binding and conclusive on all parties.

## **8. Notices**

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

## **9. Prohibition on Distribution**

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

## **10. Dissolution of the Trust**

The Trust may not be dissolved except by order of the Secretary of State for Health, in accordance with the 2006 Act, as amended by the 2012 Act.