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**CONSTITUTION OF HARROGATE AND DISTRICT NHS  
FOUNDATION TRUST**

**(A PUBLIC BENEFIT CORPORATION)**

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**Updated in line with the requirements of the Health and Social Care Act 2012**

**With effect from 1 August 2018**

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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 include 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 function specified in section 25(5) of Schedule 7 to the 2006 Act;
"Annual Members' Meeting"	is defined in paragraph 15 of this constitution;
“area of the Trust”	means the areas specified in Annex A;
“Board of Directors”	means the Board of Directors as constituted in accordance with this constitution;
“CCGs”	means Clinical Commissioning Groups;
“Chairman”	means the individual appointed by the Council of Governors to provide leadership to and chair meetings of the Board of Directors and the Council of Governors;
“Company Secretary”	means the individual appointed to perform the duties of the Secretary to the Trust as defined in section 17 of this constitution;
“constitution”	means this constitution and all annexes to it;
“Council of Governors”	means the Council of Governors as constituted in accordance with this constitution;
“Deputy Chairman of	means the person appointed to preside over

Governors”	meetings of the Council of Governors in the absence of the Chairman and Vice Chairman.
“Director”	means a member of the Board of Directors;
“elected Governors”	means those Governors elected by the public constituencies and the classes within the staff constituency;
“financial year”	means each successive period of twelve months beginning with 1 April;
"Governor"	means a member of the Council of Governors and either being a Public Governor, Staff Governor or Stakeholder Governor;
“Licence”	means the Trust’s licence granted by Monitor under the 2012 Act;
"Medical Practitioners' Staff Class"	means the staff class of the staff constituency defined in paragraph 7.3.3 of this constitution;
“NHS Improvement” (formally known as Monitor)	is the body corporate known as Monitor, as provided by Section 61 of the 2012 Act;
"Nursing and Midwifery Staff Class"	means the staff class of the staff constituency defined in paragraph 7.3.2 of this constitution;
"Other Clinical Staff Class"	means the staff class of the staff constituency defined in paragraph 7.3.4 of this constitution;
"Non-Clinical Staff Class"	means the staff class of the staff constituency defined in paragraph 7.2.5 of this constitution;
“Local Authority Governor”	means a member of the Council of Governors appointed by one or more local authorities whose area includes the whole or part of the area of the Trust;
“member”	means a member of the Trust;
“the Trust”	means Harrogate and District NHS Foundation Trust;

	“Public Governor”	means a member of the Council of Governors elected by members of the public constituencies;
Trust	“Senior Independent Director”	means the individual appointed by the Board to act as the Senior Independent Director in accordance with section 16.5 of the constitution;
	“Staff Governor”	means a member of the Council of Governors elected by the members of the relevant class within the staff constituency;
	“Stakeholder Governor”	means those members of the Council of Governors appointed by the appointing organisations;
	“Vexatious Complainant”	a definition can be found within the Trust’s Making Experiences Count Policy;
	“Vice Chairman”	means the individual appointed by the Council of Governors, to chair in the absence of the Chairman, meetings of the Board of Directors and the Council of Governors.

## 2 Name

- 2.1 The name of the foundation Trust is Harrogate and District NHS Foundation Trust (the Trust).

## 3 Principal purpose

- 3.1 The principal purpose of the Trust is the provision of goods and services for the purposes of the health service in England.
- 3.2 The Trust does not fulfil its principal purpose unless, in each financial year, its total income from the provision of goods and services for the purposes of the health service in England is greater than its total income from the provision of goods and services for any other purposes.
- 3.3 The Trust may provide goods and services for any purposes related to:
- 3.3.1 the provision of services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness, and

3.3.2 the promotion and protection of public health.

3.4 The Trust may also carry out 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 its Licence.

4.2 In particular it may:

4.2.1 acquire and dispose of property;

4.2.2 enter into contracts;

4.2.3 accept gifts of property (including property to be held on Trust for the purposes of the Trust or for any purposes relating to the health service); and,

4.2.4 employ staff.

4.3 Any power of the Trust to pay remuneration and allowances to any person includes the power to make arrangements for providing, or securing the provision of, pensions or gratuities (including those payable by way of compensation for loss of employment or loss or reduction of pay).

4.4 The Trust may borrow money for the purposes of or in connection with its functions subject to any restrictions imposed by NHS Improvement from time to time.

4.5 The Trust may invest money (other than money held by it as Trustee) for the purposes of or in connection with its functions subject to any guidance provided by NHS Improvement. The investment may include investment by:

4.5.1 forming, or participating in forming bodies corporate;

4.5.2 otherwise acquiring membership of bodies corporate.

4.6 The Trust may give financial assistance (whether by way of loan, guarantee or otherwise) to any person for the purposes of or in connection with its functions.

4.7 The Trust may raise charitable funds and in doing so, appeal for any contribution, donation, grant, gift money or property.

## 5 Commitments

- 5.1 The Trust shall exercise its functions effectively, efficiently and economically.
- 5.2 Representative membership
- 5.2.1 The Trust shall at all times endeavour to procure membership that, taken as a whole, is representative of those eligible for membership, and in deciding which areas are to be areas of the Trust, have regard to the need for those eligible for such membership to be representative of those to whom the Trust provides goods and services. The Trust shall at all times have in place and pursue a Membership Development Strategy which shall be approved by the Council of Governors, and which shall be reviewed by them from time to time, and in any event, at least every three years.
- 5.2.2 The Council of Governors shall present to each Annual Members' Meeting:
- 5.2.2.1 a report on steps taken to procure that, taken as a whole, the actual membership of its constituencies is representative of those eligible for such membership;
- 5.2.2.2 the progress of a Membership Development Strategy; and,
- 5.2.2.3 any changes to the Membership Development Strategy.
- 5.3 Co-operation with external organisations
- 5.3.1 In exercising its functions the Trust shall co-operate with other NHS bodies (as defined in Section 275 of the 2006 Act) including the National Institute for Health and Clinical Excellence, NHS Digital, Local Authorities, NHS Improvement, the Care Quality Commission and with other non-health organisations, both statutory and voluntary.
- 5.4 Respect for rights of people
- 5.4.1 In conducting its affairs, the Trust shall respect the rights of members of the community it services, its employees and people dealing with the Trust as set out in the Charter of

Fundamental Rights of the European Union and the NHS Constitution.

## 5.5 Openness

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

## 6 Framework

- 6.1 The affairs of the Trust are to be conducted by the Board of Directors, the Council of Governors and the members in accordance with this constitution. The members, the Council of Governors and the Board of Directors are to have the roles and responsibilities set out in this constitution.

## 7 Membership and constituencies

- 7.1 The members of the Trust are those individuals whose names are entered in the membership database. Every member is either a member of one of the public constituencies or a member of one of the classes of the staff constituency. Subject to this constitution, membership is open to any individual who:
- 7.1.1 is 16 years of age and over; and
  - 7.1.2 is entitled under this constitution to be a member of a public constituency or a member of the appropriate class within the staff constituency as applicable; and
  - 7.1.3 if applying to be a member of a public constituency, has completed a public membership application form; or
  - 7.1.4 if applying to be a member of a class within the staff constituency, chooses to opt in to the staff membership scheme.
- 7.2 Public constituencies
- 7.2.1 There are six public constituencies covering the area of the Trust as set out in Annex A. Membership of each of the public constituencies is open to individuals:
- 7.2.1.1 who live in an area of the Trust;

- 7.2.1.2 who are not eligible to be members of the staff constituency;
- 7.2.1.3 who meet the criteria and have completed the application referred to in paragraph 7.1 above; and
- 7.2.1.4 who are not otherwise disqualified from membership under paragraph 8 of this constitution.

7.2.2 The minimum number of members in each of the public constituencies is:

200 in Harrogate and surrounding villages;

120 in Ripon and West District;

120 in Knaresborough and East District;

120 in Wetherby and Harewood including Otley and Yeadon, Adel and Wharfedale and Alwoodley Wards;

100 in the rest of North Yorkshire and York; and

50 in the Rest of England.

7.2.3 Those individuals who live in an area of the Trust are referred to collectively as a public constituency.

### 7.3 Staff constituency

7.3.1 The staff constituency is to be divided into four classes of individuals as follows:

The Nursing and Midwifery Staff Class;

The Medical Practitioners' Staff Class;

The Other Clinical Staff Class; and

The Non-Clinical Staff Class.

The classes are collectively referred to as the staff constituency. In the case of employment covering a dual role, the primary appointment will determine the relevant class of the staff constituency.

- 7.3.2 The members of the Nursing and Midwifery Staff Class are individuals who are members of the staff constituency whose regulatory body falls within the remit of the Council for Healthcare Regulatory Excellence established by section 25 of the NHS Reform and Health Care Professions Act 2002 and who are registered with the Nursing and Midwifery Council, and unregistered nursing staff who are employed by the Trust.
- 7.3.3 The members of the Medical Practitioners' Staff Class are individuals who are members of the staff constituency who are fully registered persons within the meaning of the Medical Act 1983 or the Dental Act 1984.
- 7.3.4 The members of the Other Clinical Staff Class are individuals who are members of the staff constituency (other than nurses or midwives referred to in paragraph 7.3.2 above) whose regulatory body falls within the remit of the Council for Healthcare Regulatory Excellence established by section 25 of the NHS Reform and Health Care Professions Act 2002, or are employed by the Trust to carry out associated clinical duties to support clinical staff.
- 7.3.5 The members of the Non-Clinical Staff Class are individuals who are members of the staff constituency who do not come within paragraphs 7.3.2, 7.3.3 and 7.3.4 above.
- 7.3.6 Members of the staff constituency are to be individuals who:
- 7.3.6.1 are employed by the Trust under a contract of employment which has no fixed term or a fixed term of at least 12 months; or,
  - 7.3.6.2 have been continuously employed by the Trust for at least 12 months; and,
  - 7.3.6.3 are not disqualified from membership under paragraph 8 below; and,
  - 7.3.6.4 have been invited by the Trust to become a member of the relevant class of the staff constituency and have informed the Trust they wish to be a member.
- 7.3.7 The minimum number of members in each class of the staff constituency is:
- 150 will be registered in the Nursing and Midwifery Staff Class;

15 in the Medical Practitioners' Staff Class;

50 in the Other Clinical Staff Class; and

100 in the Non-Clinical Staff Class.

- 7.3.8 A person who is eligible to be a member of one of the classes of the staff constituency may not become or continue as a member of the public constituencies and may not become or continue as a member of more than one staff class.

## **8 Disqualification from membership**

- 8.1 A person may not be a member of the Trust:
- 8.1.1 If, in the opinion of the Council of Governors after following proper procedures as required by the Trust's Standing Orders, there are reasonable grounds to believe that they are likely to act in a way detrimental to the interests of the Trust;
  - 8.1.2 If within the last five years they have perpetrated a serious incident of violence towards any of the Trust's facilities, employees or volunteers in association with their employment as defined in the Trust's Violence and Aggression Policy; or
  - 8.1.3 If they are not eligible to be a member in accordance with paragraphs 7.2 and 7.3 of this constitution.

## **9 Termination of membership**

- 9.1 A member shall cease to be a member if:
- 9.1.1 they resign by notice to the Foundation Trust Office;
  - 9.1.2 they die;
  - 9.1.3 they are disqualified from membership by paragraph 8;
  - 9.1.4 being a member of a public constituency, they cease to fulfil the requirements of paragraph 7.2; or,
  - 9.1.5 being a member of the staff constituency, they cease to fulfil the requirements of paragraph 7.3.

- 9.2 Upon ceasing to be a member, any benefits attaching to membership cease immediately.

## **10 The role of members**

- 10.1 The role of members is to demonstrate their support to the Trust and should they wish to, and be eligible, stand for election to be a Public Governor or Staff Governor on the Council of Governors.
- 10.2 To vote on whether to approve amendments to the constitution in relation to the powers and duties of the Council of Governors (or otherwise with respect to the role that the Council of Governors has as part of the Trust) and to take such other part in the affairs of the Trust as is provided in this constitution.
- 10.3 The surpluses or any profits of the Trust are not to be distributed either directly or indirectly in any way at all among members of the Trust.
- 10.4 Members will receive treatment by the Trust on exactly the same basis as any other NHS patient.

## **11 The Council of Governors**

- 11.1 The Trust is to have a Council of Governors. It is to consist of elected Public and Staff Governors and appointed Stakeholder Governors.
- 11.2 The Council of Governors of the Trust is to comprise:
- 11.2.1 Thirteen Public Governors, which must be more than half the total membership of the Council of Governors, are to be elected by the public constituencies as follows:
- Area 1 – Harrogate and surrounding villages (five Governors);
- Area 2 – Ripon and West District (two Governors);
- Area 3 – Knaresborough and East District (two Governors);
- Area 4 – Wetherby and Harewood wards and Alwoodley, Adel and Wharfedale and Otley and Yeadon wards (two Governors);
- Area 5 – The Rest of North Yorkshire and York (one Governor); and
- Area 6 – the Rest of England (one Governor).

- 11.2.2 Five Staff Governors from each of the following four staff classes are to be elected as follows:
- Medical Practitioners' Staff Class (one Governor);
- Nursing and Midwifery Staff Class (two Governors);
- Other Clinical Staff Class (one Governor); and,
- Non-Clinical Staff Class (one Governor).
- 11.2.3 Six appointed Stakeholder Governors from each of the following:
- 11.2.3.1 Patient Experience Stakeholder Governor;
- 11.2.3.2 North Yorkshire County Council;
- 11.2.3.3 Harrogate Borough Council;
- 11.2.3.4 A Governor appointed by a local university or research institution;
- 11.2.3.5 A Voluntary Organisation Governor appointed by a local voluntary organisation; and,
- 11.2.3.6 A Governor appointed by Harrogate Healthcare Facilities Management Limited.
- 11.3 Composition of the Council of Governors, subject to the 2006 Act, shall seek to ensure that:
- 11.3.1 the interests of the community served by the Trust are appropriately represented; and,
- 11.3.2 the level of representation of the public constituencies, the staff constituency and the appointed Stakeholder Governors strikes an appropriate balance having regard to their legitimate interest in the Trust's affairs.
- 11.4 Elected Governors
- 11.4.1 Subject to the composition of the Council of Governors, members of the public constituencies may elect any of their number to be Public Governors for that constituency. Members of each of the classes in the staff constituency may elect any of their number to be Staff Governors for that class.

- 11.4.2 If contested, the elections will take place by secret ballot in accordance with the Trust's election rules using the single transferable vote system.
- 11.4.3 The model election rules for the Council of Governors, which govern the elections for elected Governors, are set out in Annex B to this constitution. Any subsequent variation of the model election rules shall not constitute a variation of the terms of this constitution for the purposes of paragraph 27 of this constitution.
- 11.5 Appointed Stakeholder Governors
- 11.5.1 The organisations set out in 11.2.3 above shall, on request, furnish the Trust the names of Governors appointed to serve and be responsible for replacement as necessary.
- 11.6 Council of Governors – tenure
- 11.6.1 Elected Governors:
- 11.6.1.1 shall normally hold office for a period of three years;
- 11.6.1.2 subject to the next sub-paragraph, are eligible for re-election after the end of that period;
- 11.6.1.3 may not hold office for more than nine years in total or three terms of office; and
- 11.6.1.4 An elected Governor who has fulfilled their term of office may not return as a Stakeholder Governor without a break of one term (three years).
- cease to be a Governor if they:
- 11.6.1.5 cease to hold office;
- 11.6.1.6 cease to be a member of the public constituency to which they were elected, or;
- 11.6.1.7 cease to be a member of the class of the staff constituency to which they were elected.
- 11.6.2 Appointed Stakeholder Governors:

- 11.6.2.1 shall normally hold office for a maximum period of three years commencing from the date of their appointment;
- 11.6.2.2 subject to the next sub-paragraph, are eligible for re-appointment after the end of that period;
- 11.6.2.3 may not hold office for longer than nine years in total or three terms of office; and
- 11.6.2.4 shall cease to hold office if the appointing organisation terminates their appointment.

## 11.7 Deputy Chairman of the Council of Governors

- 11.7.1 The Council of Governors shall elect a Deputy Chairman from amongst the elected Governors. The Deputy Chairman shall preside in the absence of the Chairman and Vice Chairman. The Council of Governors shall operate its own procedure for electing the Deputy Chairman.

## 11.8 Ineligibility to be a Governor

- 11.8.1 A person may not become a Governor of the Trust, and if already holding such office will immediately cease to do so if:
  - 11.8.1.1 they have been responsible for, been privy to, contributed to or facilitated any serious misconduct or mismanagement (whether unlawful or not) in the course of carrying out regulated activity or providing a service elsewhere which, if provided in England would be a regulated activity;
  - 11.8.1.2 they are a Director of the Trust, or a Governor or Director of another NHS Foundation Trust;
  - 11.8.1.3 they are a member who shares the same household as a member of the Board of Directors of the Trust;
  - 11.8.1.4 they have been adjudged bankrupt or their estate has been sequestrated and in either case they have not been discharged;
  - 11.8.1.5 they have made a composition or arrangement with, or granted a trust deed for, their creditors and have not been discharged in respect of it;
  - 11.8.1.6 they have within the preceding five years been

- convicted in the British Islands of any offence, and a sentence of imprisonment (whether suspended or not) for a period of three months or more (without the option of a fine) was imposed on them;
- 11.8.1.7 they have within the preceding two years been dismissed from any paid employment with a health service body for reasons considered to be inappropriate by this Trust;
- 11.8.1.8 they are 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 their appointment is not in the interests of the health service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest;
- 11.8.1.9 they have had their name removed, by a direction under paragraph 10 of the National Health Service (Performers Lists) Regulations 2004 or Section 151 of the 2006 Act (or similar provision elsewhere), and has not subsequently had their name included in such a list;
- 11.8.1.10 they are not by reason of their health capable of properly performing tasks which are intrinsic to the office for which they are elected or appointed;
- 11.8.1.11 they are a vexatious complainant of the Trust, as defined by Trust policy;
- 11.8.1.12 they are a vexatious litigant of the Trust as defined by Trust policy;
- 11.8.1.13 they are a family relation or occupant of the same household of a person who is an existing Governor of the Trust;
- 11.8.1.14 any amount properly owing to the Trust by them remains outstanding without good cause;
- 11.8.1.15 they do not, or cease to, fulfil the eligibility requirements as set out in this constitution.

## 11.9 Termination of office and removal of Governors

- 11.9.1 A person holding office as a Governor shall immediately cease to do so if:
- 11.9.1.1 they resign by notice in writing to the Chairman;
  - 11.9.1.2 they fail to attend half of the Council of Governor meetings in any financial year, unless the other Governors are satisfied that:
    - 11.9.1.2.1 the absences were due to reasonable causes; and
    - 11.9.1.2.2 they will start attending meetings of the Trust again within such a period as the Council of Governors consider reasonable,
  - 11.9.1.3 in the case of an elected Governor, they cease to be a member of the constituency or class of the constituency by whom they were elected.
  - 11.9.1.4 in the case of an appointed Stakeholder Governor the appointing organisation terminates their appointment;
  - 11.9.1.5 without good reason they have failed to undertake any training which the Council of Governors or Trust requires Governors to undertake;
  - 11.9.1.6 they have failed to sign and deliver to the Foundation Trust Office a statement in the form required by the Council of Governors confirming acceptance of the code of conduct for Governors;
  - 11.9.1.7 they refuse to sign the declaration form that they are a member of one of the public constituencies or one of the classes of the staff constituency as the case may be and are not prevented from being a member of the Council of Governors;
  - 11.9.1.8 their name has been placed on a register of Schedule 1 offenders pursuant to the Sex Offences Act 2003 and/or the Children and Young Persons Act 1933 and the conviction is not spent under the Rehabilitation of Offenders Act 1974;
  - 11.9.1.9 they are removed from the Council of Governors by a resolution approved by a majority of 75% (of the remaining Governors) at a quorate meeting of the Council of Governors . The Governor would

be permitted to address the Council of Governors in person if they wish to do so but must withdraw from the discussion, decision and voting on the resolution. The Council of Governors would consider a resolution to remove a Governor on the grounds that:

- 11.9.1.9.1 they have committed a serious breach of the code of conduct, or;
- 11.9.1.9.2 they have acted in a manner detrimental to the interests of the Trust which would undermine public confidence; and,
- 11.9.1.9.3 the Council of Governors considers that it is not in the best interests of the Trust for them to continue as a Governor.

#### 11.9.2 Special Provisions relating to Termination of Governors' Tenure

- 11.9.2.1 Any complaint or concern made in respect of a Governor on any of the grounds set out in the Constitution shall be dealt with in line with the Procedure for Management of Governor Conduct Concerns.
- 11.9.2.2 At any time, the Chairman is authorised to take such interim measures as may be immediately required, including the exclusion of the Governor concerned from a meeting or suspension from duties, on the basis that such measures are necessary to:
  - 11.9.2.2.1 Enable an effective investigation to be undertaken into any concern or complaint about a Governor;
  - 11.9.2.2.2 Address or prevent any significant disruption to

the effective operation of any part of the Trust;

11.9.2.2.3 Manage risk to the health or wellbeing of a Governor, employee, volunteer or patient of the Trust;

11.9.2.2.4 Protect the reputation of the Trust or safeguard public confidence in the Trust;

11.9.2.2.5 Give effect to a proposal by the Council to impose a sanction on a Governor.

## 11.10 Vacancies amongst Governors

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

11.10.1.1 where the vacancy arises amongst the appointed Stakeholder Governors, the Chairman shall request that the appointing organisation appoint a replacement to hold office for the remainder of the term of office;

11.10.1.2 where the vacancy arises amongst the elected Governors, the Council of Governors shall be at liberty either:

11.10.1.2.1 to call an election within six months, provided that the period of the vacancy exceeds six months; or,

11.10.1.2.2 to invite the next highest polling eligible candidate for that seat at the most recent election, who is willing to take office to fill the seat until the next annual election, at which time the seat will become vacant and subject to election for any un-expired period of the term of office.

- 11.10.1.3 If no-one is available under 11.10.1.2.2, and the vacancy is for three months or less, the seat will remain vacant until the next scheduled election.

#### 11.11 Expenses and remuneration of Governors

- 11.11.1 The Trust may pay travelling and other expenses to Governors at such rates as it decides.
- 11.11.2 Governors are not to receive remuneration.
- 11.11.3 The Chairman will agree separate arrangements with each appointing organisation in 11.2.3 to cover the reimbursement costs of the appointed Stakeholder Governor.

#### 11.12 Disclosure of interests

- 11.12.1 Any Governor who has a material interest in a matter as defined in Annex E and below shall declare such interest to the Council of Governors and it shall be recorded in a register of interests. Further guidance is also available from the Trust's Conflicts of Interest Policy. The Governor in question:
  - 11.12.1.1 shall not be present except with the permission of the Council of Governors in any discussion of the matter; and,
  - 11.12.1.2 shall not vote on the issue (and if by inadvertence they do remain and vote, their vote shall not be counted).
- 11.12.2 Any Governor who fails to disclose any interest required to be disclosed under the preceding paragraph must permanently vacate their office if required to do so by a majority of the remaining Governors, in accordance with section 11.9.1.
- 11.12.3 A material interest, as defined in Annex E, is a matter of any interest held by a Governor, their spouse or partner, or member of their immediate family, in any firm or company or business which, in connection with the matter, is trading with the Trust, or is likely to be considered as a potential trading partner with the Trust. The exceptions which shall not be treated as material interests are as follows:
  - 11.12.3.1 shares not exceeding 1% of the total shares in issue held in any company whose shares are listed on any public exchange;

- 11.12.3.2 an employment contract held by Staff Governors;
  - 11.12.3.3 an employment contract with a Local Authority;
  - 11.12.3.4 an employment contract with an educational establishment (a university or research institute) and
  - 11.12.3.5 a contract held with a voluntary organisation.
- 11.12.4 An elected Governor may not vote at a meeting of the Council of Governors unless, before attending their first meeting, they have made a declaration in the form specified by the Council of Governors that they are a member of a public constituency or a member of the classes of the staff constituency and are not prevented from being a Governor of the Council of Governors. An elected Governor shall be deemed to have confirmed the declaration upon attending any subsequent meeting of the Council of Governors.

## **12 Roles and responsibilities of the Council of Governors**

- 12.1 The general duties of the Council of Governors are:
- 12.1.1 to hold the Non-Executive Directors individually and collectively to account for the performance of the Board of Directors;
  - 12.1.2 to represent the interests of the members of the Trust as a whole and the interests of the public;
  - 12.1.3 to appoint or remove the Chairman and the other Non-Executive Directors;
  - 12.1.4 to approve an appointment (by the Non-Executive Directors) of the Chief Executive;
  - 12.1.5 to appoint the Deputy Chairman of the Council of Governors;
  - 12.1.6 to decide the remuneration and allowances, and the other terms and conditions of office, of the Chairman and Non-Executive Directors;
  - 12.1.7 to appoint or remove the Trust's external auditor selected from an approved list put forward by the Board of Directors;

- 12.1.8 to consider the annual accounts, any report of the external auditor on them and the annual report;
  - 12.1.9 to provide their views to the Board of Directors when the Board of Directors is preparing the document containing information about the Trust's forward planning;
  - 12.1.10 to respond as appropriate when consulted by the Board of Directors in accordance with this constitution;
  - 12.1.11 to undertake such functions as the Board of Directors shall from time to time request and which the Council of Governors shall agree;
  - 12.1.12 to prepare, and from time to time to review, the Membership Development Strategy, its policy for the composition of the Council of Governors and of the Non-Executive Directors;
  - 12.1.13 to require one or more Directors to attend a meeting of the Council of Governors for the purpose of obtaining information about the Trust's performance of its functions or the Directors' performance of their duties (and deciding whether to propose a vote on the Trust or Directors' performance);
  - 12.1.14 to approve any merger, acquisition, separation or dissolution application in respect of the Trust before the application is made to NHS Improvement and the entering into of any significant transactions;
  - 12.1.15 to vote on whether to approve the referral of a question by a Governor to any panel appointed by NHS Improvement; and
  - 12.1.16 to approve any proposals to increase by 5% or more of the Trust's proportion of its total income in any financial year attributable to activities other than the provision of goods and services for the purposes of the health service in England. The proposal may be implemented only if more than half of the members of the Council of Governors of the Trust voting approve its implementation.
- 12.2 The Council of Governors will conduct its business at meetings held in accordance with this constitution.
  - 12.3 All Governors will adhere to the policies and procedures of the Trust, acting in the best interest of the Trust at all times.
  - 12.4 The Trust must take steps to secure that the Governors are equipped with the skills and knowledge they require in their capacity as such.

- 12.5 Any amendments to the constitution in relation to the powers or duties of the Council of Governors (or otherwise in respect of the role that the Council of Governors has as part of the Trust) must be put to the vote of the members and approved at the Annual Members' Meeting in accordance with paragraphs 27.3 and 27.4 of this constitution.

### **13 Meetings of the Council of Governors**

- 13.1 The Chairman of the Trust, or in his absence, the Vice Chairman of the Trust, or in exceptional circumstances in the absence of both the Chairman and Vice Chairman, the Deputy Chairman of the Council of Governors shall preside at a meeting of the Council of Governors.
- 13.2 Where a conflict of interest arises for the Chairman and Vice Chairman, the Deputy Chairman of the Council of Governors shall chair that element of the meeting. In the absence of the Deputy Chairman, the Governors shall elect from their members a Governor to chair that element of the meeting. In acting as the Chairman, a Governor shall have a casting vote on that issue.
- 13.3 Meetings of the Council of Governors are to be open to members of the public except in the following circumstances:
- 13.3.1 during the consideration of any material or discussion in relation to a named person employed by or proposed to be employed by the Trust;
  - 13.3.2 during the consideration of any material or discussion in relation to a named person who is, or has been, or is likely to become a patient of the Trust, or a carer in relation to such a patient; and,
  - 13.3.3 during the consideration of any matter which, by reason of its nature, the Council is satisfied should be dealt with on a confidential basis.
- 13.4 The Chairman may exclude any person present from a meeting of the Council of Governors if they are interfering or preventing proper conduct of a meeting. In addition the Chairman may exclude any person present from a meeting of the Council of Governors for a breach of the Standing Orders relating to the conduct of meetings.
- 13.5 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.

- 13.6 The Council of Governors is to meet at least four times per year, three of which will be general meetings and one the Annual Members' Meeting.
- 13.7 At an Annual Members' Meeting, within six months of the end of the financial year, the Council of Governors are to receive and consider the annual accounts, any report of the external auditor on them and the annual report, see 12.1.8.
- 13.8 The Council of Governors is to adopt its own Standing Orders for its practice and procedure, in particular for its procedure at meetings, and these shall be in accordance with Annex D.
- 13.9 A Governor, whether elected to the Council of Governors by a public constituency, elected by one of the classes of the staff constituency or nominated as a Stakeholder Governor, may not vote at a meeting of the Council of Governors unless, within one month of election or appointment, he has made a declaration of eligibility in the form set out at Annex C stating which constituency or section he is a member of and is not prevented from being a member of the Council of Governors by paragraph 8 of Schedule 7 to the 2006 Act or under this constitution.

#### **14 Council of Governors – referral to the Panel**

- 14.1 In this paragraph, the Panel means a panel of persons appointed by NHS Improvement to which a governor of an NHS Foundation Trust may refer a question as to whether the Trust has failed or is failing:
- 14.1.1 to act in accordance with its constitution; or
- 14.1.2 to act in accordance with provision made by or under Chapter 5 of the 2006 Act.
- 14.2 A Governor may refer a question to the Panel only if more than half of the members of the Council of Governors in attendance at a quorate meeting vote to approve the referral.

#### **15 Annual Members' Meeting**

- 15.1 The Trust is to hold an annual meeting of its members (Annual Members' Meeting) within six months of the end of each financial year. The Annual Members' Meeting shall be open to members of the public.
- 15.2 At the Annual Members' Meeting the Council of Governors shall present to the members (and in respect of presenting the documents referred to in sub-paragraphs 15.2.1 to 15.2.4, at least one member of the Board of Directors must be in attendance):

- 15.2.1 the annual accounts;
  - 15.2.2 any report of the external auditor;
  - 15.2.3 any report of any other external auditor of the Trust's affairs;
  - 15.2.4 the annual report;
  - 15.2.5 forward planning information for the next financial year;
  - 15.2.6 a report on steps taken to secure that (taken as a whole) the actual membership of its public constituencies is representative of those eligible for such membership;
  - 15.2.7 the progress of the Membership Development Strategy;
  - 15.2.8 subject to 15.5 below, any proposed changes to the constitution for the composition of the Council of Governors and of the Non-Executive Directors;
  - 15.2.9 a report on the activities of the Remuneration, Nominations and Conduct Committee within the previous year; and
  - 15.2.10 the results of elections and appointment to the Council of Governors.
- 15.3 The Council of Governors will invite the external auditor to the Annual Members' Meeting.
- 15.4 Minutes of every Annual Members' Meeting, of every meeting of the Council of Governors and of every meeting of the Board of Directors are to be kept. Minutes of meetings will be taken at the next meeting and signed by the Chairman of that meeting. The signed minutes will be conclusive evidence of the events of the meeting.
- 15.5 Any amendments to the constitution in relation to the powers or duties of the Council of Governors (or otherwise in respect of the role that the Council of Governors has as part of the Trust) must be put to the vote of the members and approved at the Annual Members' Meeting in accordance with paragraphs 27.3 and 27.4 of this constitution.

## **16 Board of Directors**

- 16.1 The Trust shall have a Board of Directors. It shall comprise of Executive and Non-Executive Directors.
- 16.1.1 Non-Executive Directors:
    - 16.1.1.1 a Chairman, who is to be appointed by the Council of Governors; and,

- 16.1.1.2 a minimum of six Non-Executive Directors who are to be appointed by the Council of Governors.
- 16.1.2 Executive Directors:
  - 16.1.2.1 a Chief Executive who is to be appointed by the Non-Executive Directors, subject to the approval of the Council of Governors;
  - 16.1.2.2 the Chief Executive shall be the Accounting Officer;
  - 16.1.2.3 a Finance Director;
  - 16.1.2.4 a registered medical practitioner or a registered dentist (within the meaning of the Dentists' Act 1984);
  - 16.1.2.5 a registered nurse or a registered midwife;
  - 16.1.2.6 Two Executive Directors.
  - 16.1.2.7 a Deputy Chief Executive who will be one of the above.
- 16.1.3 The Non-Executive Directors and Chief Executive will establish and set the Terms of Reference for a Remuneration and Nominations Committee for the appointment of Executive Directors. The committee should consist of the Chairman, the Chief Executive and other Non-Executive Directors. The removal of an Executive Director is subject to the application of the appropriate Trust policies and procedures.
- 16.1.4 Only members of the public constituencies who are not disqualified by virtue of paragraph 11.8.1 are eligible for appointment as a Non-Executive Director.
- 16.2 Appointment and removal of Non-Executive Directors
  - 16.2.1 Non-Executive Directors (including the Chairman) are to be appointed by the Council of Governors. Removal of the Chairman and other Non-Executive Directors shall require the approval of 75% of the members of the Council of Governors at a quorate meeting.
  - 16.2.2 The Council of Governors will establish and set the terms of reference for a Remuneration, Nominations and Conduct

Committee. The Committee will normally be chaired by the Chairman. Where the Chairman has a conflict of interest, for example when the Committee is considering the Chairman's re-appointment or remuneration, the Committee will normally be chaired by the Deputy Chairman of Governors.

- 16.2.3 That committee will recommend to the full Council of Governors no more than one individual per Non-Executive vacancy for appointment to the Board of Directors.
- 16.2.4 The Board of Directors will identify the skills, experience and knowledge required from time to time of any vacant post of Non-Executive Directors (including the Chairman). The Board of Directors will draw on advice from external sources as necessary.
- 16.2.5 The Council of Governors will have responsibility for the handling of all further aspects of the recruitment process, including any appointment.
- 16.2.6 The Trust shall publicly advertise the posts to be filled where determined by the Remuneration, Nominations and Conduct Committee on the basis of performance or when a Non-Executive Director is approaching their final term of office.
- 16.2.7 A long list for consideration will be identified by the Remuneration, Nominations and Conduct Committee. Only those candidates meeting the skills and experience agreed by the Board of Directors will be eligible for appointment.
- 16.2.8 For the purpose of considering the appointment of Non-Executive Directors the interview panel will include the Chairman, three Governors, at least one of whom will be a Public Governor, an independent external assessor and the Chief Executive, acting in an ex-officio capacity. The Chief Executive and the independent external assessor have no vote.
- 16.2.9 For the purpose of considering the appointment of the Chairman of the Trust, the interview panel will include four Governors, two of whom will be Public Governors, an independent external assessor and the Chief Executive, acting in an ex-officio capacity. The Chief Executive and the independent external assessor have no vote.

### 16.3 Terms of office of Non-Executive Directors

- 16.3.1 The Chairman and the Non-Executive Directors are to be appointed for a period of office in accordance with the terms

and conditions of office decided by the Council of Governors at a general meeting. Non-Executive Directors will serve a three year period and will not normally exceed a maximum of three terms of office except in exceptional circumstances.

- 16.3.2 Any terms beyond two terms (six years) should be subject to annual endorsement of the continued appointment by the Council of Governors.

#### 16.4 Board of Directors – roles and responsibilities

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

- 16.4.2 The business of the Trust shall be managed by the Board of Directors who, subject to this constitution, shall exercise all the powers of the Trust including:

- 16.4.2.1 to act as the critical decision making body of the Trust and to be accountable for the subsequent risks and liabilities that rest with this responsibility;
- 16.4.2.2 to set the strategic direction of the Trust within the overall limits detailed in the Licence by NHS Improvement;
- 16.4.2.3 to define its annual and longer-term objectives and agree plans to achieve them;
- 16.4.2.4 to oversee the delivery of its plan by monitoring performance against objectives and ensuring that corrective action is taken when necessary;
- 16.4.2.5 to ensure effective financial stewardship through value for money, financial control, financial planning and strategy;
- 16.4.2.6 to ensure high standards of corporate governance and personal behaviour are maintained in the conduct of business of the Trust;
- 16.4.2.7 to ensure appropriate mechanisms for the appointment, appraisal and remuneration of staff;

- 16.4.2.8 to endeavour to ensure effective dialogue between the Trust and the local community on its plans and performance and that these are responsive to the needs of the community; and,
- 16.4.2.9 to work collaboratively with the Council of Governors to ensure that each body understands their respective roles and responsibilities and develop practical ways of engaging and interacting with each other.
- 16.4.3 A third party dealing in good faith with the Trust shall not be affected by any defect in the process by which Directors are appointed or any vacancy on the Board of Directors.
- 16.4.4 All Directors will adhere to the policies and procedures of the Trust and shall act in the best interests of the Trust at all times.
- 16.5 Appointment of the Vice Chairman and Senior Independent Director
  - 16.5.1 For the purposes of enabling the proceedings of the Trust to be conducted in the absence of the Chairman, the Council of Governors will appoint by simple majority, following a recommendation from the Chairman, a Non-Executive Director to be Vice Chairman for such a period, not exceeding the remainder of their term as a Non-Executive Director of the Trust.
  - 16.5.2 The Board of Directors, following a recommendation from the Chairman and in consultation with the Council of Governors, will appoint a Non-Executive Director to be Senior Independent Director for such a period, not exceeding the remainder of their term as a Non-Executive Director of the Trust.
- 16.6 Remuneration and Nominations Committees
  - 16.6.1 The Remuneration and Nominations Committee of Non-Executive Directors shall decide the terms and conditions of office, including remuneration and allowances, of the Executive Directors (including the Chief Executive). The Director of Workforce and Organisational Development shall be the secretary to this Committee. The Chief Executive shall be in attendance at the request of the Committee. Neither the Director of Workforce and Organisational Development nor the Chief Executive shall be present to the discussion of their own remuneration.

- 16.6.2 The Remuneration, Nominations and Conduct Committee of Governors shall recommend to the Council of Governors the terms and conditions of office, including remuneration and allowances, of the Non-Executive Directors, including the Chairman.
- 16.6.3 The remuneration for Directors is to be disclosed in the annual report.

## 16.7 Disqualification

- 16.7.1 A person may not become or continue as a Director of the Trust if:
- 16.7.1.1 they are not of good character;
  - 16.7.1.2 they do not have the qualifications, competence, skills and experience which are intrinsic for the work for which they are to be appointed, or have been appointed;
  - 16.7.1.3 they have been responsible for, been privy to, contributed to or facilitated any serious misconduct or mismanagement (whether unlawful or not) in the course of carrying out a regulated activity or providing a service which, if provided in England, would be a regulated activity;
  - 16.7.1.4 they have been adjudged bankrupt or their estate has been sequestrated and in either case they have not been discharged;
  - 16.1.7.5 they have made a composition or arrangement with, or granted a trust deed for, their creditors and have not been discharged in respect of it;
  - 16.7.1.6 they are the subject of a bankruptcy restriction order or an interim bankruptcy restriction order or an order to like effect made in Scotland or Northern Ireland;
  - 16.7.1.7 they are a person to whom a moratorium period under a debt relief order applied under Part VIIA (Debt Relief Order) of the Insolvency Act 1986;
  - 16.7.1.8 they are included on the children's barred list or the adults' barred list maintained under section 2 of the Safeguarding Vulnerable Groups Act

- 2006, or in any corresponding list maintained under an equivalent enactment in force in Scotland or Northern Ireland;
- 16.7.1.9 they are prohibited from holding the relevant office or position or from carrying on the regulated activity, by or under enactment;
  - 16.7.1.10 they have within the preceding five years been convicted in the British Islands of any offence, and a sentence of imprisonment (whether suspended or not) for a period of three months or more (without the option of a fine) was imposed on them;
  - 16.7.1.11 any amount properly owing to the Trust by them remains outstanding without good cause;
  - 16.7.1.12 they are the subject of a disqualification order made under the Company Directors Disqualification Act 1986;
  - 16.7.1.13 in the case of a Non-Executive Director, they are no longer a member of a public constituency;
  - 16.7.1.14 they are a person whose tenure of office as a Chairman or as a member or Director of a health service body has been terminated on the grounds that their appointing is not in the interests of the health service, for non-attendance at meetings or for non-disclosure of a pecuniary interest;
  - 16.7.1.15 they have had their name removed by a direction under paragraph 10 of the National Health Service (Performers Lists) Regulations 2004 or Section 151 of the 2006 Act (or similar provision elsewhere) and have not subsequently had their name included on such a list;
  - 16.7.1.16 they have within the preceding two years been dismissed, for reasons considered to be inappropriate by the Trust, from any paid employment with a health service body;
  - 16.7.1.17 in the case of a Non-Executive Director they have without good reason failed to fulfil any

training requirement established by the Board of Directors;

- 16.7.1.18 in the case of a Non-Executive Director they have failed to sign and deliver to the Company Secretary, a statement in the form required by the Board of Directors, confirming acceptance of the code of conduct for Directors.

## 16.8 Meetings of the Board of Directors

- 16.8.1 Meetings of the Board of Directors shall be open to members of the public unless the Board of Directors decides otherwise in relation to all or part of such meetings having regard to the confidential nature of the business to be transacted, publicity on which would be prejudicial to the public interest. The Chairman may exclude any member of the public and representatives of the press from any meeting or part of meeting of the Board of Directors if they are interfering with or preventing the proper conduct of the meeting.
- 16.8.2 Before holding a meeting, the Board of Directors must send a copy of the agenda of the meeting and a copy of the draft minutes of the previous meeting to the Council of Governors.
- 16.8.3 The Board of Directors shall meet at the direction of the Chairman. Standing Orders govern the proceedings and business of meetings. The proceedings shall not however be invalidated by any vacancy of its membership, or defect in a Director's appointment.

## 16.9 Committees and delegation

- 16.9.1 The Board of Directors shall have a schedule of delegation. Any of the powers of the Board may be delegated, whether to a committee, group of Directors, or to an Executive Director, subject to the Board maintaining a list of powers reserved to itself.
- 16.9.2 The Board of Directors shall appoint an Audit Committee of Non-Executive Directors to monitor the exercise of the external auditor's functions and perform such monitoring, reviewing and other functions as the Board of Directors shall consider appropriate. The Audit Committee shall function pursuant to its terms of reference.

## 16.10 Conflicts of interest

- 16.10.1 The duties that a Director has by virtue of being a Director include in particular:

- 16.10.1.1 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;
  - 16.10.1.2 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.
- 16.10.2 The duty referred to in sub-paragraph 16.10.1.1 of this constitution is not infringed if:
- 16.10.2.1 the situation cannot reasonably be regarded as likely to give rise to a conflict of interest; or
  - 16.10.2.2 the matter has been authorised in accordance with this constitution.
- 16.10.3 The duty referred to in sub-paragraph 16.10.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- 16.10.4 In sub-paragraph 16.10.1.2 of this constitution. "third party" means a person other than:
- 16.10.4.1 the Trust; or
  - 16.10.4.2 a person acting on its behalf.
- 16.10.5 If a Director has in any way a direct or indirect interest in a proposed transaction or arrangement with the Trust, which includes a relevant and material interest in a matter as defined in Annex E and at 16.10.10 below, the Director must declare the nature and extent of that interest to the other Directors and it shall be recorded at the earliest opportunity and before the next meeting of the Board of Directors in a register of interests. Further guidance is also available from the Trust's Conflicts of Interest Policy. The Director in question:
- 16.10.5.1 shall not be present except with the permission of the Board of Directors in any discussion of the matter; and,
  - 16.10.5.1 shall not vote on the issue (and if by inadvertence they do remain and vote, their vote shall not be counted).

- 16.10.5.3 It shall be a disciplinary offence on the part of a Director wilfully to fail to disclose any interest required to be disclosed under the preceding paragraph.
- 16.10.6 Any declaration required by this paragraph 16.10 must be made before the Trust enters into the transaction or arrangement.
- 16.10.7 If a declaration under this paragraph 16.10 proves to be, or becomes inaccurate or incomplete, a further declaration must be made.
- 16.10.8 This paragraph 16.10 of the constitution 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.
- 16.10.9 A Director need not declare an interest:
- 16.10.9.1 If it cannot reasonably be regarded as likely to give rise to a conflict of interest;
- 16.10.9.1 If, or to the extent that, the Directors are already aware of it;
- 16.10.9.2 If, or to the extent that, it concerns terms of the Director's appointment that have been or are to be considered:
- 16.10.9.2.1 By a meeting of the Board of Directors; or
- 16.10.9.2.2 By a committee of the Directors appointed for the purpose under this constitution.
- 16.10.10 A material interest in a matter, as defined in Annex E, is any interest held by a Director, their spouse or partner, or a member of immediate family, in any firm or company or business which in connection with the matter is trading with the Trust or is likely to be considered as a potential trading partner with the Trust. The exceptions which shall not be treated as material interests are as follows:
- 16.10.10.1 shares not exceeding 1% of the total shares in issue held in any company whose shares are listed on any public exchange; and,

- 16.10.10.2 an employment contract with an appointing organisation held by a Non-Executive Director.

## 16.11 Expenses

- 16.11.1 The Trust may pay travelling and other expenses to Executive Directors and Non-Executive Directors at such rates as it decides.

## 17 Roles and responsibilities of the Company Secretary of the Trust

- 17.1 The Trust shall have a Company Secretary. The Company Secretary shall not be a member of the Council of Governors or the Chief Executive or the Finance Director. The Company Secretary's functions shall include responsibility for:
- 17.1.1 acting as secretary to the Council of Governors and the Board of Directors and such committees as may from time to time be required by either the Board or Council;
  - 17.1.2 summoning and attending all meetings of the Council of Governors and the Board of Directors and keeping the minutes of those meetings;
  - 17.1.3 keeping the register of members and other registers required by this constitution to be kept;
  - 17.1.4 publishing to members, in appropriate form, information about the Trust's affairs; and
  - 17.1.5 preparing and sending to NHS Improvement, and any other statutory body, all returns which are required to be made.

## 18 Registers

- 18.1 The Trust is to have:
- 18.1.1 a register of members showing, in respect of each member, the constituency to which he belongs and, where there are classes within it, the class to which he belongs;
  - 18.1.2 a register of the Council of Governors;
  - 18.1.3 a register of interests of the Council of Governors;
  - 18.1.4 a register of Directors; and
  - 18.1.5 a register of interests of the Board of Directors.

- 18.2 The Foundation Trust Office shall remove from the register of members the name of any member who ceases to be entitled to be a member under the provisions of this constitution, and will add the name of anyone who applies to be and becomes a member.
- 18.3 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.
- 18.4 So far as the registers are required to be made available:
- 18.4.1 they are to be available for inspection free of charge at all reasonable times; and
- 18.4.2 a person who requests a copy of, or extract from, the registers is to be provided with a copy or extract.
- 18.5 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.

## **19 Public documents**

- 19.1 The following documents of the Trust are to be available for inspection by members of the public at all reasonable times and shall be available on the Trust's website, in line with the Trust's Freedom of Information Policy:
- 19.1.1 a copy of the current constitution;
- 19.1.2 a copy of the latest annual accounts and of any report of the external auditor on them;
- 19.1.3 a copy of the report of any other external auditor of the Trust's affairs appointed by the Council of Governors;
- 19.1.4 a copy of the latest annual report;
- 19.2 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:
- 19.2.1 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;
- 19.2.2 a copy of any report laid under section 65D (appointment of Trust special administrator) of the 2006 Act;

- 19.2.3 a copy of any information published under section 65D (appointment of Trust special administrator) of the 2006 Act;
  - 19.2.4 a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act;
  - 19.2.5 a copy of any statement provided under section 65F (administrator's draft report) of the 2006 Act;
  - 19.2.6 a copy of any notice published under section 65F (administrator's draft report), 65G (consultation plan), 65H (consultation requirements), 65J (power to extend time), 65KA (NHS Improvement's decision), 65KB (Secretary of State's response to NHS Improvement's decision), 65KC (action following Secretary of State's rejection of final report) or 65KD (Secretary of State's response to re-submitted final report) of the 2006 Act;
  - 19.2.7 a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act;
  - 19.2.8 a copy of any final report published under section 65I (administrator's final report) of the 2006 Act;
  - 19.2.9 a copy of any statement published under section 65J (power to extend time) or 65KC (action following Secretary of State's rejection of final report) of the 2006 Act; and,
  - 19.2.10 a copy of any information published under section 65M (replacement of Trust special administration) of the 2006 Act.
- 19.3 Any person who requests a copy of, or extract from any of the above documents, is to be provided with a copy. 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.

## **20 External auditor**

- 20.1 The Trust is to have an external auditor and is to provide the auditor with every facility and all information which he may reasonably require for the purposes of his functions under Schedule 10 to the 2006 and paragraph 23 of Schedule 7 to the 2006 Act.
- 20.2 A person may only be appointed as the external auditor if he (or in the case of a firm of 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.
- 20.3 The Council of Governors at a general meeting shall appoint or remove the Trust's external auditors.

- 20.4 The external auditor is to carry out his duties in accordance with Schedule 15 to the 2006 Act and in accordance with any directions given by NHS Improvement on standards, procedures and techniques to be adopted.
- 20.5 The Board of Directors shall nominate a list of external auditors to be considered for appointment by the Council of Governors and may resolve that external auditors be appointment to review any other aspect of the Trust's performance. Any such external auditors are to be appointed by the Council of Governors.

## **21 Accounts**

- 21.1 The Trust must keep proper accounts and proper records in relation to the accounts.
- 21.2 NHS Improvement may, with the approval of the Secretary of State, give directions to the Trust as to the content and form of the accounts.
- 21.3 The accounts are to be audited by the Trust's external auditor.
- 21.4 The Trust shall prepare in respect of each financial year annual accounts in such form as NHS Improvement may with the approval of the Secretary of State direct.
- 21.5 The annual accounts, any report of the external auditor on them, and the annual report are to be presented and considered at a Council of Governors meeting. The Trust may combine a meeting of the Council of Governors convened for the purposes of this paragraph with the Annual Members' Meeting.
- 21.6 The Trust shall lay a copy of the annual accounts, and any report of the external auditor on them, before Parliament and send copies of those documents to NHS Improvement within such period as NHS Improvement may direct.

## **22 Annual reports, forward plans and non-NHS work**

- 22.1 The Trust is to prepare annual reports and send them to NHS Improvement.
- 22.2 The Trust shall give information as to its forward planning in respect of each financial year to NHS Improvement. The document containing this information is to be prepared by the Directors, and in preparing the document, the Board of Directors must have regard to the views of the Council of Governors.
- 22.3 Each forward plan must include information about:

- 22.3.1 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.
- 22.3.2 the income it expects to receive from doing so.
- 22.4 Where a forward plan contains a proposal that the Trust carry on an activity of a kind mentioned in sub-paragraph 22.3.1, the Council of Governors must:
  - 22.4.1 determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfilment by the Trust of its principal purpose or the performance of its other functions; and
  - 22.4.2 notify the Directors of the Trust of its determination.
- 22.5 A Trust which proposes to increase by 5% or more the proportion of its total income in any financial year attributable to activities other than the provision of goods and services for the purposes of the health service in England may implement the proposal only if more than half of the members of the Council of Governors of the Trust voting approve its implementation.

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

- 23.1 The following documents are to be presented to the Council of Governors at a general meeting of the Council of Governors for consideration:
  - 23.1.1 the annual accounts;
  - 23.1.2 any report of the external auditor on them; and
  - 23.1.3 the annual report.
- 23.2 The documents shall also be presented to the members of the Trust at the Annual Members' Meeting with at least one member of the Board of Directors in attendance.
- 23.3 The Trust may combine a meeting with the Council of Governors convened for the purposes of sub-paragraph 23.1 with the Annual Members' Meeting.

## **24 Indemnity**

- 24.1 The Council of Governors and the Board of Directors and officers of the Trust, acting honestly and in good faith, will be indemnified against personal liability incurred in the execution or purported execution of their functions, save where they have acted recklessly. Any costs arising in this way will be met by the Trust. The Trust may purchase and maintain insurance against this risk.

## **25 Execution of documents**

- 25.1 The Trust is to have a seal, but this is not to be affixed except under the authority of the Board of Directors.
- 25.2 A document purporting to be duly executed under the Trust's seal, or to be signed on its behalf, is to be received in evidence and, unless the contrary is proved, taken to be so executed or signed.

## **26 Dispute resolution procedures**

- 26.1 Other than where specified in the constitution or the Standing Orders of the Council of Governors, questions of eligibility, procedure and administrative matters in relation to governorship or meetings of members or Governors shall be determined by the Company Secretary, with the right of appeal to a committee of the Council of Governors convened for the purpose of this, whose decision shall be final and binding except in the case of manifest error.
- 26.2 Other than where specified in the constitution or the Standing Orders for the Board of Directors, questions of procedure and administrative matters in relation to directorship or meetings of Directors shall be determined by the Company Secretary, with the right of appeal to the Board of Directors convened for the purpose of this, whose decision shall be final and binding except in the case of manifest error.

## **27 Amendment of the constitution**

- 27.1 No amendment shall be made to this constitution unless:
- 27.1.1 More than half of the members of the Council of Governors of the Trust voting approve the amendments; and,
- 27.1.2 More than half of the members of the Board of Directors of the Trust voting approve the amendments.

- 27.2 Amendments made under paragraph 27.1 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.
- 27.3 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:
- 27.3.1 at least one member of the Council of Governors must attend the next Annual Members' Meeting and present the amendment; and,
- 27.3.2 the Trust must give the members an opportunity to vote on whether they approve the amendment.
- 27.4 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.
- 27.5 Amendments by the Trust of its constitution are to be notified to NHS Improvement. For the avoidance of doubt, NHS Improvement's functions do not include a power or duty to determine whether or not the constitution as a result of the amendments accords with Schedule 7 of the 2006 Act.

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

- 28.1 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.
- 28.2 The Trust may enter into a significant transaction only if more than half of the members of the Council of Governors of the Trust voting approve entering into the transaction.
- 28.3 Significant transaction means a transaction which would not otherwise require the approval of the Council of Governors under paragraph 28.1 above which meets any one of the criteria below:

### **Assets:**

The gross assets subject to the transaction are greater than 25% of the Trust's existing gross assets.

### **Income:**

The income attributable to the assets or the contract associated with the transaction is greater than 25% of the Trust's overall income.

### **Consideration to total Trust capital**

The gross capital of the company or business being acquired/divested, is greater than 25% of the total capital of the Trust following completion, or the effects on the total capital of the Trust resulting from a transaction.

28.4 For the purposes of this paragraph:

28.4.1 "gross assets" is the total of fixed assets and current assets;

28.4.2 "gross capital" is the market value of the target's shares and debt securities, plus the excess of current liabilities over current assets; and

28.4.3 "total capital" is the taxpayers' equity.

28.5 Material transaction means:

28.4.1 If a transaction meets the criteria above, but the details are greater than 10% of the assets, income or total capital of the Trust, it is considered to be a material transaction. Material transactions do not require more than half of the Council of Governors to vote to approve entering into the transaction however, the Trust would undertake consultation with the Council of Governors prior to entering into a material transaction.

## **29 Head office and website**

29.1 The Trust's head office is at:

29.1.1 Harrogate and District NHS Foundation Trust, Lancaster Park Road, Harrogate, HG2 7SX.

29.2 The Trust maintains a website, the current address of which is:

29.2.1 [www.hdft.nhs.uk](http://www.hdft.nhs.uk)

29.3 The Trust will display its name on the outside of its head office and at every other place at which it carries on business, and on its business letters, notices, advertisements and other publications.

29.4 Changes to the address and website will require a change to the constitution and will need to be approved by the Board of Directors and Council of Governors.

## Annex A

### 1 Area of the Trust

Eligibility to become a public member will be available to people living within the defined catchment area of the Trust. This includes residents from the following Local Authority electoral areas (as defined for the purposes of local government elections):

- ❖ Harrogate and surrounding villages
- ❖ Ripon and West District
- ❖ Knaresborough and East District
- ❖ Wetherby and Harewood
- ❖ Alwoodley
- ❖ Otley and Yeadon
- ❖ Adel and Wharfedale
- ❖ The Rest of North Yorkshire and York
- ❖ The Rest of England

Membership will remain valid whilst ever a person resides in the above catchment areas.

Public constituencies with minimum numbers as described in 7.2.2:

Public constituency area 1 – Harrogate and surrounding villages is defined by the following electoral wards of Harrogate District Council:

Killinghall, Ripley, Washburn and Harrogate (including: Stray, Hookstone, Rossett, Pannal, Harlow Moor, Saltergate, New Park, Low Harrogate, High Harrogate, Bilton, Woodfield, Granby and Starbeck).

Public constituency area 2 - Ripon and West District is defined by the following electoral wards of Harrogate District Council:

Pateley Bridge, Mashamshire, Kirkby Malzeard, Nidd Valley, Lower Nidderdale, Bishop Monkton, Wathvale and Ripon (including Spa, Minster and Moorside).

Public constituency area 3 – Knaresborough and East District is defined by the following electoral wards of Harrogate District Council:

Newby, Boroughbridge, Claro, Ouseburn, Ribston, Marston Moor, Spofforth with Lower Wharfedale and Knaresborough (including Scriven Park, East and King James).

Public constituency area 4 – Wetherby, and Harewood including Otley and Yeadon, Adel and Wharfedale and Alwoodley Wards are defined by the Wetherby and Harewood electoral Wards of Leeds City Council.

Public Constituency Area 5 – rest of North Yorkshire and York is defined as those areas not served by public constituency areas 1 – 3.

Public Constituency Area 6 – the rest of England is defined as those areas not served by public constituency areas 1 – 5.

- 2 Staff constituency as defined in 7.3.1, with minimum numbers as described in 7.3.7

The Nursing and Midwifery Staff Class;

The Medical Practitioners' Staff Class;

The Other Clinical Staff Class; and,

The Non-Clinical Staff Class.

## **Annex B**

### **MODEL ELECTION RULES**

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1. Interpretation

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

2. Timetable
3. Computation of time

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

4. Returning officer
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6. Expenditure
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*Procedure for receipt of envelopes, internet votes, telephone vote and text message votes*

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**PART 1: INTERPRETATION**

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**1. Interpretation**

1.1 In these rules, unless the context otherwise requires:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“*postal voting information*” has 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:

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

### 3. Computation of time

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

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

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

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

**PART 3: RETURNING OFFICER**

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**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 13.

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

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

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

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

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

15.2 The statement must show:

- (a) the name, and constituency or class within a constituency of each candidate standing, and
- (b) the declared interests of each candidate standing,

as given in their nomination form.

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

15.4 The returning officer must send a copy of the statement of candidates and copies of the nomination forms to the corporation as soon as is practicable after publishing the statement.

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

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

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

## **17. Withdrawal of candidates**

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

## **18. Method of election**

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

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

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

- (a) the candidates who remain validly nominated are to be declared

- elected in accordance with Part 7 of these rules, and
- (b) the returning officer is to order a new election to fill any vacancy which remains unfilled, on a day appointed by him or her in consultation with the corporation.

**PART 5: CONTESTED ELECTIONS**

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

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

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

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

("postal voting information").

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

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

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

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

for the purposes of the poll.

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

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

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

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

25.2 The covering envelope is to have:

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

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

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

**26. E-voting systems**

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

that comprises of-

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

26.5

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

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

with confirmation of this;

- (f) prevent any voter from voting after the close of poll.

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

- (a) require a voter to:
  - (i) provide his or her voter ID number; and
  - (ii) where the election is for a public or patient constituency, make a declaration of identity;

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

### *The poll*

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

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

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

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

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

- 29.1 If a voter has dealt with his or her ballot paper in such a manner that it cannot

be accepted as a ballot paper (referred to as a “spoilt ballot paper”), that voter may apply to the returning officer for a replacement ballot paper.

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

**30. Lost voting information**

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

**31. Issue of replacement voting information**

- 31.1 If a person applies for replacement voting information under rule 29 or 30 and a declaration of identity has already been received by the returning officer in the name of that voter, the returning officer may not issue replacement voting information unless, in addition to the requirements imposed by rule 29.3 or 30.2, he or she is also satisfied that that person has not already voted in the election, notwithstanding the fact that a declaration of identity if required has already been received by the returning officer in the name of that voter.
- 31.2 After issuing replacement voting information under this rule, the returning officer shall enter in a list ("the list of tendered voting information"):
- (a) the name of the voter,
  - (b) the unique identifier of any replacement ballot paper issued under this rule;
  - (c) the voter ID number of the voter.

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

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

*Polling by internet, telephone or text*

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

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

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

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

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

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

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

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

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

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

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

(b) put the ballot paper aside for counting after the close of the poll.

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

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

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

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

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

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

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

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

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

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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. De-duplication of votes**

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

**40. Sealing of packets**

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

packets containing:

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

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

## PART 6: COUNTING THE VOTES

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### 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.
- STV49.8 Any ballot documents on which no next available preferences have been expressed shall be set aside as non-transferable votes.
- STV49.9 After the returning officer has completed the transfer of the ballot documents in the sub-parcel of ballot documents with the highest transfer value he or she shall proceed to transfer in the same way the sub-parcel of ballot

documents with the next highest value and so on until he has dealt with each sub-parcel of a candidate excluded under rule STV49.1.

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

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

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

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

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

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

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

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

STV50.2 Where only one vacancy remains unfilled and the votes of any one

continuing candidate are equal to or greater than the total of votes credited to other continuing candidates together with any surplus not transferred, the candidate shall thereupon be deemed to be elected.

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

**STV51. Order of election of candidates**

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

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

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

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

**FPP51. Equality of votes**

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

**FPP52. Declaration of result for contested elections**

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

- (a) declare the candidate or candidates whom more votes have been given than for the other candidates, up to the number of vacancies to be filled on the council of governors from the constituency, or class within a constituency, for which the election is being held to be elected,
- (b) give notice of the name of each candidate who he or she has declared elected:

- (i) where the election is held under a proposed constitution pursuant to powers conferred on the [insert name] NHS Trust by section 33(4) of the 2006 Act, to the chairman of the NHS Trust, or
- (ii) in any other case, to the chairman of the corporation; and
- (c) give public notice of the name of each candidate whom he or she has declared elected.

FPP52.2 The returning officer is to make:

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

available on request.

## **STV52. Declaration of result for contested elections**

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

- (a) declare the candidates who are deemed to be elected under Part 6 of these rules as elected,
- (b) give notice of the name of each candidate who he or she has declared elected –
  - (i) where the election is held under a proposed constitution pursuant to powers conferred on the [insert name] NHS Trust by section 33(4) of the 2006 Act, to the chairman of the NHS Trust, or
  - (ii) in any other case, to the chairman of the corporation, and
- (c) give public notice of the name of each candidate who he or she has declared elected.

STV52.2 The returning officer is to make:

- (a) the number of first preference votes for each candidate whether elected or not,
- (b) any transfer of votes,
- (c) the total number of votes for each candidate at each stage of the count at which such transfer took place,
- (d) the order in which the successful candidates were elected, and
- (e) the number of rejected ballot papers under each of the headings in rule STV44.1,

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

available on request.

**53. Declaration of result for uncontested elections**

53.1 In an uncontested election, the returning officer is to as soon as is practicable after final day for the delivery of notices of withdrawals by candidates from the election:

- (a) declare the candidate or candidates remaining validly nominated to be elected,
- (b) give notice of the name of each candidate who he or she has declared elected to the chairman of the corporation, and
- (c) give public notice of the name of each candidate who he or she has declared elected.

**PART 8: DISPOSAL OF DOCUMENTS**

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**54. Sealing up of documents relating to the poll**

54.1 On completion of the counting at a contested election, the returning officer is to seal up the following documents in separate packets:

- (a) the counted ballot papers, internet voting records, telephone voting records and text voting records,
- (b) the ballot papers and text voting records endorsed with “rejected in part”,
- (c) the rejected ballot papers and text voting records, and
- (d) the statement of rejected ballot papers and the statement of rejected text voting records,

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

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

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

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

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

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

**55. Delivery of documents**

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

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

56.1 Where:

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

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

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

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

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

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

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

58.1 The corporation may not allow:

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

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

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

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

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

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

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

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

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

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

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

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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 NHS Improvement under Part 11 of these rules.

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

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

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

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

62.1 No person may:

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

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

### *Publicity*

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

63.1 The corporation may:

- (a) compile and distribute such information about the candidates, and
- (b) organise and hold such meetings to enable the candidates to speak and respond 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 NHS Improvement 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 NHS Improvement by:
- (a) a person who voted at the election or who claimed to have had the right to vote, or
  - (b) a candidate, or a person claiming to have had a right to be elected at the election.
- 66.4 The application must:
- (a) describe the alleged breach of the rules or electoral irregularity, and
  - (b) be in such a form as 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. NHS Improvement will refer the application to the independent election arbitration panel appointed by NHS Improvement.
- 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 NHS Improvement shall delegate the determination of an application to a person or panel of persons to be nominated for the purpose.
- 66.8 The determination by the 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.

**PART 12: MISCELLANEOUS**

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**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 C

### Form of Declaration

Harrogate and District NHS Foundation Trust  
 Lancaster Park Road  
 Harrogate  
 HG2 7SX

Date:

Dear Sirs

#### Election or Nomination to the Office of Governor

I ..... confirm that I am a member of the **staff constituency/public constituency/have been nominated by a partner organisation [delete as appropriate]**, and that I:

- am not a Director of the NHS Foundation Trust, or a governor of another NHS Foundation Trust;
- am not a public member who shares the same household as a member of the Board of Directors of the NHS Foundation Trust;
- have not been responsible for, been privy to, contributed to or facilitated any serious misconduct or mismanagement (whether unlawful or not) in the course of carrying out regulated activity or providing a service elsewhere which, if provided in England, would be a regulated activity;
- have not been adjudged bankrupt or my estate has been sequestrated and (in either case) I have not been discharged;
- have not made a composition or arrangement with, or granted a trust deed for, creditors and have not been discharged in respect of it;
- have not within the preceding 5 years been convicted in the British Islands of any offence where a sentence of imprisonment (whether suspended or not) for a period of not less than 3 months (without the option of a fine) was imposed;
- have not within the preceding two years been dismissed from any paid employment with a health for reasons considered to be inappropriate by this Trust;
- am not 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 my appointment was not in the interests of the health service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest;
- have not had my name removed by a direction under paragraph 10 of the National Health Service (Performers Lists) Regulations 2004 or Section 151 of the 2006 Act (or similar provisions elsewhere), and have not subsequently had my name included in such a list;
- am not able by reason of my health of properly performing tasks which are intrinsic to the office for which I am elected or appointed;
- have not had my name placed on a register of Schedule 1 offenders pursuant

to the Sex Offences Act 2003 and/ or the Children and Young Persons Act 1933 and the conviction is not spent under the Rehabilitation of Offenders Act 1974;

- am not a vexatious complainant of the NHS Foundation Trust, as defined by the Trust policy;
- am not a vexatious litigant of the NHS Foundation Trust, as defined by the Trust policy;
- am not a family relation or occupant of the same household of a person who is an existing Governor of the NHS Foundation Trust; and
- confirm any amount properly owing to the NHS Foundation Trust by me, if any, does not remain outstanding without good cause.

Yours faithfully

.....  
SIGNATURE

.....  
PRINTED NAME

.....  
DATE

**Annex D****Council of Governors****Standing Orders****1. NOTICE**

- 1.1 The Council of Governors is to meet at least three times in each financial year in addition to the Annual Members' Meeting. Save in the case of emergencies or the need to conduct urgent business, the Company Secretary shall give at least seven days written notice of the date and place of every meeting of the Council of Governors to all Governors.
- 1.2 Meetings of the Council of Governors will normally be called at the direction of the Chairman. A meeting may also be held if ten Governors give written notice to the Company Secretary specifying the business to be carried out. The Company Secretary shall send a written notice to all Governors as soon as possible after receipt of such a request. The Company Secretary shall issue notice of a meeting on at least seven but not more than twenty-eight days' notice to discuss the specified business.
- 1.3 Notice of the meetings of the Council of Governors is to be given:
- 1.3.1 by notice sent by post, or by electronic mail where the Governor has provided an email address for service, to all Governors;
  - 1.3.2 by notice prominently displayed at the registered office and at all of the Trust's places of business;
  - 1.3.3 by notice on the Trust's website;
  - 1.3.4 by any other method approved by the Council of Governors at least seven clear days before the date of the meeting.
- 1.4 The notice must:
- 1.4.1 be given to the Council of Governors and the Board of Directors, and to the external auditors;
  - 1.4.2 state whether the meeting is an Annual Members' Meeting or a Council of Governors meeting;
  - 1.4.3 give the time, date and place of the meeting; and

1.4.4 indicate the business to be dealt with at the meeting

## **2. QUORUM**

2.1 Before a Council of Governors meeting can do business there must be a quorum present. Except where these rules say otherwise, a quorum is one third of Governors in post and entitled to vote at the meeting, with the majority of Governors from the public constituencies.

2.2 If no quorum is present within half an hour of the time fixed for the start of the meeting, the meeting shall stand adjourned to the same day in the next week at the same time and place or to such time and place as the Council of Governors determine and notice of the adjourned meeting shall be circulated to members of the Council of Governors. If a quorum is not present within half an hour of the time fixed for the start of the adjourned meeting, the number of Governors present during the meeting is to be a quorum.

## **3. CONDUCT OF MEETING**

3.1 It is the responsibility of the Council of Governors, the Chairman of the meeting and the Company Secretary to ensure that at any meeting:

3.1.1 the issues to be decided are clearly explained;

3.1.2 sufficient information is provided to Governors to enable rational discussion to take place; and

3.1.3 where appropriate, experts in relevant fields or representatives of special interest groups are invited to address the meeting.

3.2 The Chairman of the Trust, or in their absence, the Vice Chairman of the Trust, or in exceptional circumstances in the absence of both the Chairman and Vice Chairman, the Deputy Chairman of the Council of Governors shall preside at a meeting of the Council of Governors.

Where a conflict of interest arises for the Chairman and Vice Chairman, the Deputy Chair of the Governors shall chair that element of the meeting. In these circumstances and in the absence of the Deputy Chairman, the Governors shall elect from their members, a Governor to chair that element of the meeting. In acting as the Chairman a Governor shall have a casting vote on that issue.

3.3 Where a Governor wishes to formally pose a question at the public Council of Governors meeting, they should supply this question in

writing to the Company Secretary no less than 24 hours prior to the meeting. If a query arises during the meeting that is not resolved through the discussions at the meeting, any questions to be formally posed should be supplied in writing to the Company Secretary or the Chairman.

#### **4. VOTING**

- 4.1 Subject to the constitution, a resolution put to the vote at a meeting of the Council of Governors shall, except where a poll is demanded or directed, be decided upon by a show of hands.
- 4.2 On a show of hands or on a poll, every Governor present is to have one vote. On a poll, votes may be given either personally or by proxy under arrangements laid down by the Council of Governors, and every Governor is to have one vote. In the case of an equality of votes the Chairman of the meeting is to have a casting vote, unless there is a conflict of interest as set out in 3.2. in which case the acting chairman will have both a primary and a casting vote.
- 4.3 Unless a poll is demanded, the result of any vote will be declared by the Chairman and entered in the minutes of the meeting. The minutes will be conclusive evidence of the result of the vote.
- 4.4 A poll may be directed by the Chairman or demanded either before or immediately after a vote by show of hands by not less than one-tenth of the Governor present at the meeting. A poll shall be taken immediately.
- 4.5 Subject to the following provisions of this paragraph, questions arising at a meeting of the Council of Governors shall be decided by a majority of votes.
- 4.5.1 no resolution of the Council of Governors shall be passed if all the Public Governors present unanimously oppose it.
- 4.5.2 the removal of the Chairman or another Non-Executive Director requires the approval of three-quarters of the full membership of the Council of Governors.
- 4.6 Save as set out in 4.2 the Chairman of the Council of Governors or Vice Chairman shall not have a vote at a meeting of the Council of Governors.

## **5 PERSONS ENTITLED TO ATTEND MEETINGS**

- 5.1 All meetings of the Council of Governors are to be open to the public unless the Council of Governors decides otherwise in relation to all or part of a meeting for reasons of commercial confidentiality or on other proper grounds as set out in the constitution. The Chairman may exclude any member of the public from a meeting of the Council of Governors if they are interfering with or preventing the proper conduct of the meeting.
- 5.2 The Council of Governors may invite the Chief Executive or any other representatives of the Board of Directors, or a representative of the Trust's external auditors or other advisors to attend a meeting of the Council of Governors.
- 5.3 The Chief Executive and any other Director shall have the right to attend any meeting of the Council of Governors provided that they shall not be present for any discussion of their individual relationship with the Trust.

## **6. MEANS OF ATTENDANCE**

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

## **7. COMMITTEES**

- 7.1 The Council of Governors may form advisory sub committees under written terms of reference to the Council of Governors which may include members of the Board of Directors and appropriate people (paid or unpaid) nominated by the Board of Directors and having relevant skills or experience. Those powers shall be exercised in accordance with any written instructions given by the Council of Governors. The Council of Governors will appoint the Chairman of any committee and shall specify the quorum. All acts and proceedings of any committee shall be reported to the Council of Governors.
- 7.2 The Council of Governors will establish a Remuneration, Nominations and Conduct Committee for the purpose of making recommendations to the Council of Governors for the appointment of the Chairman and Non-Executive Directors. In addition this committee will consider the remuneration of the Chairman and Non-Executive Directors, and decisions will be taken at a meeting of the Council of Governors.

7.4 The Council of Governors may, through the Company Secretary, request that advisors assist them on any committee they appoint in carrying out their functions.

**8. VALIDITY OF DECISIONS**

8.1 Decisions taken in good faith at a meeting of the Council of Governors or of any committee shall be valid even if it is discovered subsequently that there was a defect in the calling of the meeting, or the appointment of the Council of Governors attending the meeting

## **Annex E**

Pursuant to Section 20 of Schedule 7 of the 2006 Act, a register of Director's and Governors' interests must be kept by each NHS Foundation Trust.

### **1. Declaration of Interests By Directors and Governors**

- 1.1. All existing Directors (including for the purposes of this document, Non-Executive Directors) and Governors should declare relevant and material interests. Any Directors or Governors appointed or elected subsequently should do so on appointment or election.
- 1.2. Interests which should be regarded as "relevant and material" and which, for the avoidance of doubt, should be included in the register, are:
  - (a) Directorships, including Non-Executive Directorships held in private companies or PLCs (with the exception of those of dormant companies).
  - (b) Ownership, part-ownership or directorship of private companies, business or consultancies likely or possibly seeking to do business with the NHS.
  - (c) Majority or controlling share holdings in organisations likely or possibly seeking to do business with the NHS.
  - (d) A position of Authority in a charity or voluntary organisation in the field of health and social care.
  - (e) A position of Authority in a local council or Local Authority, for example, a Councillor.
  - (f) Any connection with a voluntary or other organisation contracting for NHS services or commissioning NHS services.
  - (g) Any connection with an organisation, entity or company considering entering into or having entered into a financial arrangement with the Trust, including but not limited to, lenders or banks.
- 1.3. If Directors or Governors have any doubt about the relevance or materiality of an interest, this should be discussed with the Chairman.
- 1.4. At the time the interests are declared, they should be recorded in the Board of Director minutes or Council of Governor minutes as appropriate. Any changes in interests should be officially declared at the next Board meeting or Council of Governors meeting as appropriate following the change occurring. It is the obligation of the Director or Governor to inform the Company Secretary of the Trust in writing within 7 days of becoming aware of the existence of a relevant or material interest. The Company Secretary will amend the register upon receipt within 3 working days.

- 1.5. During the course of a Board of Director meeting or Council of Governor meeting, if a conflict of interest is established, the Directors or Governors concerned should withdraw from the meeting and play no part in the relevant discussion or decision. For the avoidance of doubt, this includes voting on such an issue where a conflict is established. If there is a dispute as to whether a conflict of interest does exist, the majority will resolve the issue with the Chairman having the casting vote.
- 1.6. There is no requirement for the interests of Directors' or Governors' spouses or partners to be declared.

## **2. Register of Interests**

- 2.1. The details of Directors and Governors interests recorded in the register will be kept up to date by means of a monthly review of the register by the Company Secretary of the Trust, during which any changes of interests declared during the preceding month will be incorporated.
- 2.2. Subject to contrary regulations being passed, the register will be available for inspection by the public free of charge. The Chairman will take reasonable steps to bring the existence of the Register to the attention of the local population and to publicise arrangements for viewing it. Copies or extracts of the register must be provided to members of the Trust free of charge and within a reasonable time period of the request.