Constitution

York & Scarborough Teaching Hospitals NHS Foundation Trust

September 2022

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YORK & SCARBOROUGH TEACHING HOSPITALS NHS FOUNDATION TRUST

(A PUBLIC BENEFIT CORPORATION)

1. **DEFINITIONS**

1.1 In this constitution: -

"the 2006 Act"	The National Health Service Act 2006 as may be amended or replaced from time to time;
"the 2012 Act"	The Health and Social Care Act 2012 as may be amended or replaced from time to time;
"Accounting Officer"	The person who from time to time discharges the function specified in paragraph 25(5) in Schedule 7 to the 2006 Act;
"Area"	The area of the Trust consisting of all the areas specified in Annex 1 as an area of the Public Constituency and "Area" shall mean each of those areas individually or all of them collectively;
"Authorisation"	The authorisation of the Trust given under section 35 of the 2006 Act;
"Board of Directors"	Board of Directors as constituted in accordance with this constitution;
"Chair"	The person who is the Chair of the Board of Directors and the Council of Governors;
"Chief Executive"	The chief executive officer of the Trust appointed in accordance with the terms of this constitution;
"Council of Governors"	The Council of Governors as constituted in accordance with this constitution;
"Director"	A director on the Board of Directors;
"Election Scheme"	The election scheme set out in Annex 2, as may be amended from time to time;

“Executive Director”	An executive director of the Board of Directors including the Chief Executive where the context so permits;
“Financial Year”	Each successive period of twelve months beginning with 1 April;
“Governor”	A Member elected or a person appointed as a member of the Council of Governors;
“Healthcare Organisation”	An organisation that has an involvement with the Trust around the provision of Trust services [as listed in Annex 1];
“Healthcare Organisation Governor”	A member of the Council of Governors appointed by one of more of the Healthcare Organisations;
“Health Service Body”	has the same meaning as ascribed to it as section 9(4) of the 2006 Act;
“Lead Governor”	The Public Governor elected by the Council of Governors to act as Lead Governor, as defined by the NHSI, in accordance with the Standing Orders;
“Local Authority Governor”	A member of the Council of Governors appointed by one local authority whose area includes the whole or part of an area specified in Annex 1 as an area for the public constituency in accordance with this constitution;
“Member”	A member of the Trust, as provided by this constitution;
“NHSI”	NHS Improvement which succeeds and incorporates “Monitor” – a body corporate, as provided by section 61 of 2012 Act;
“Non-executive Director”	A Non-executive Director of the Board of Directors, including the Chair where the context so permits;
“Partnership Governor”	Any of the appointed Governors including the Local Authority, Healthcare Organisation, University and the Voluntary Sector;
"Partnership Organisation"	An organisation designated under the provisions of this constitution to appoint a Partnership Governor;
“Public Constituency”	Those constituencies whose areas are set out in Annex 1 and “Public Constituency” shall mean each of those constituencies individually and all of them collectively;

"Public Governor"	A member of the Council of Governors elected by the members of the public constituency;
"Safeguarding Registers"	The registers maintained in accordance with the Safeguarding Vulnerable Groups Act 2006 and connected regulations and orders; Part II of the Sexual Offences Act 2003, and the list maintained under Part 8 of the Education Act 2002, as may be amended or replaced from time to time;
"Staff Member or Group"	A type of membership within the Staff Constituency as provided for in Schedule 7 to the 2006 Act;
"Staff Constituency"	The part of the Trust's membership consisting of the Trust's staff and which is divided into staff groups as provided by this constitution;
"Staff Governor"	A member of the Council of Governors elected by the members of the relevant staff group within the staff constituency as provided by this constitution;
"Standing Orders"	Standing Orders for the Practice and Procedures for the Council of Governors set out in Annex 4 unless the context otherwise specifies;
"Secretary"	The secretary of the Trust or any other person appointed to perform the duties of the secretary of the Trust, including a joint, assistant or deputy secretary;
"Senior Independent Director"	The independent Non-executive Director appointed by the Board of Directors in consultation with the Council of Governors, who is available to Directors and Governors if they have concerns which contact with the Chair has failed to resolve or for which such contact is inappropriate; and who may also be the Vice Chair of the Board of Directors and Council of Governors;
"the Trust"	York & Scarborough Teaching Hospital NHS Foundation Trust;
"University Governor"	A member of the Council of Governors appointed by a university in accordance with this constitution;
"Vice Chair"	In relation to the: (a) Council of Governors – a Non-executive Director appointed as a Vice Chair, who is to preside over a meeting of the Council of Governors when the Chair is absent from the meeting or when the Chair declares a conflict of

interest which precludes them from presiding as Chair at that meeting; and

(b) Board of Directors – a Non-executive Director appointed as Vice Chair who is to preside over a meeting of the Board of Directors when the Chair is absent or when the Chair declares a conflict of interest which precludes them from presiding as Chair at that meeting;

"Voluntary Sector Governor"	A member of the Council of Governors appointed in accordance with this constitution from the voluntary sector.

1.2 Unless the contrary intention appears or the context otherwise requires, words or expressions contained in this constitution bear the same meaning as in the 2006 Act.

1.3 Reference in this constitution to legislation includes all amendments, replacements or re-enactments made, and all regulations, statutory guidance or directions.

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

1.5 References in this constitution to paragraphs are to paragraphs in the constitution.

1.6 All annexes referred to in this constitution form part of it.

1.7 This constitution is legally compliant with the 2006 Act as amended by the 2012 Act.

2. NAME

2.1 The name of this Trust is to be "York & Scarborough Teaching Hospitals NHS Foundation Trust".

2.2 The Trust is an NHS Foundation Trust authorised under the 2006 Act.

3. PRINCIPAL PURPOSE

3.1 The Trust's principal purpose is the provision of goods and services for the purposes of the health service in England.

3.2 The Trust does not fulfil its principle purpose unless, in each Financial Year, its total income from the provision of goods and services for the purpose of the Health Service in England is greater than its total income from the provision of goods and services for any other purpose.

3.3 The Trust may provide goods and services for any purpose related to:

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

3.3.2 The promotion and protection of public health.

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

4. FUNCTIONS

4.1 The Trust shall provide goods and services related to the provision of health care in accordance with its statutory duties and the Licence.

4.2 The Trust may also carry out other activities, subject to any restrictions in its authorisation, for the purpose of making additional income available in order to better carry out its principal purpose.

4.3 The profits or surpluses of the Trust are not to be distributed (either directly or indirectly) amongst members.

4.4 The Trust shall exercise its functions effectively, efficiently and economically.

5. **POWERS**

5.1 The Trust is to have all the powers of an NHS Foundation Trust set out in the 2006 Act, subject to the Licence.

5.2 Without prejudice to the generality of those powers, the Trust may in particular:

5.2.1 provide hospital and other accommodation for the purposes of any of its activities;

5.2.2 acquire and dispose of property;

5.2.3 accept gifts of property (including property to be held on trust for the purposes of the Trust or for any purpose relating to the health service);

5.2.4 employ staff;

5.2.5 enter into contracts;

5.2.6 provide the services of medical, dental, midwifery and nursing staff, other health care professionals, other staff and volunteers;

5.2.7 borrow money for the purposes of, or in connection with, its functions subject to the limit set by the NHSI;

5.2.8 provide such other facilities for the care of expectant and nursing mothers and young children as it considers appropriate;

5.2.9 provide such facilities for the prevention of illness, the care of persons suffering from illness and the aftercare of persons who have suffered from illness as it considers appropriate;

5.2.10 provide such other services as it considers are required for the diagnosis and treatment of illness and the care of those suffering from illness;

5.2.11 conduct, or assist by grants or otherwise any person to conduct, research into any matters relating to the causation, prevention, diagnosis or treatment of illness and into any such other matters connected with any service provided by the Trust as it considers appropriate and publish the results of such research;

5.2.12 educate and train its own staff and students and those from other organisations or educational establishments in any trade, profession or other occupation relevant or related to any part of the Trust's functions and collaborate with other organisations in the provision of such education and training;

5.2.13 provide goods and services in England;

5.2.14 provide or assist in providing, information, training and support to voluntary and community bodies within the area of the Trust;

5.2.15 invest money (other than money held by it as a trustee) for the purpose of, or in connection with, its functions;

5.2.16 give financial assistance (whether by way of a loan, guarantee or otherwise) to any person for the purposes of or in connection with its functions;

5.2.17 raise charitable funds and, in so doing, appeal for any contribution, donation, grant or gift money or property;

5.2.18 provide and participate in external quality assurance schemes; and

5.2.19 carry out investigations into any aspect of the activities of the Trust.

5.3 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 payable by way of compensation for loss of employment or loss or reduction in pay).

5.4 In fulfilling its statutory duty to co-operate with another body, provide to that body, and receive from it, goods and services on such terms as the Trust considers appropriate including terms under which the goods or services are provided or received free of charge.

6. FRAMEWORK

6.1 The following paragraphs describe the governance arrangements within the Trust and set out the respective roles of Members, Governors and Directors.

6.2 Members

6.2.1 The members may vote at the elections of Public Governors or Staff Governors to the Council of Governors depending on their constituency. They may take part in consultation and opinion testing exercises conducted by the Trust and attend open meetings of the Trust. A member can apply for an advertised role as a Non-executive Director but may only be appointed if they meet the qualification criteria in paragraph 16(4) of Schedule 7 to the 2006 Act.

6.2.2 A member may stand for election to the Council of Governors for their constituency or, where applicable, Staff Group.

6.2.3 A member will receive care and treatment from the Trust on exactly the same basis as any other NHS patient (that is, whether they are a member or not).

6.2.4 Members will not be required to pay a subscription.

6.2.5 The Council of Governors may ask members for their views.

6.3 Council of Governors

6.3.1 The Trust is to have a Council of Governors. It is to consist of Public Governors, Staff Governors, Healthcare Organisation Governors, Local Authority Governors, a University Governor and Voluntary Sector Governor.

6.3.2 The role and responsibilities of the Council of Governors are to be carried out in accordance with the constitution and the Trust's Licence. The Council of Governors' role and responsibilities are set out more particularly at paragraph 8.15 of this constitution.

6.4 Board of Directors

6.4.1 The Trust shall be managed by the Board of Directors, who shall exercise all the powers of the Trust subject to any contrary provisions of the 2006 Act as given effect by this constitution.

6.4.2 The Board of Directors will have the roles and responsibilities set out in paragraph 9.6 of this constitution.

6.5 General provision

6.5.1 Any dispute or complaint arising from the application of the procedures set out in the constitution, or any aspect of the membership or election arrangements for the Trust, will be resolved by the Secretary in consultation with the Chair and the Chief Executive.

7. MEMBERSHIP

7.1 The Trust is to have two membership constituencies, namely:

7.1.1 a public constituency (comprising seven separate public areas); and

7.1.2 a staff constituency (comprising of three staff groups).

7.2 A person, who is a member of a constituency, or of a staff group within a constituency, may not (while that membership continues) be a member of any other constituency or staff group.

7.3 A person may become a member by application to the Trust in accordance with this constitution or, where so provided for in this constitution, by being invited by the Trust to become a member of a staff group in accordance with paragraph 7.5 below.

7.4 Where a person applies to become a member, the Trust shall consider their application for membership as soon as reasonably practicable following receipt and unless that person is ineligible or is disqualified from membership in accordance with the terms of this constitution, the Secretary shall cause their name to be entered forthwith in the register of members and that person shall thereupon become a member.

7.5 Where a person is invited by the Trust to become a member of a staff group within the staff constituency in accordance with paragraph 7.8.1 that person shall automatically become a member and shall have their name entered on the register of members unless within the period specified in the said invitation, that person has informed the Trust that they do not wish to become a member.

7.6 Any person shall become a member on the date upon which their name is entered on the register of members and that person shall cease to be a member upon the date on which their name is removed from the register of members as provided for in this constitution.

7.7 Public Constituency

7.7.1 The public constituency comprises seven areas which are set out and named in Annex 1. Members of the Trust who are members of a public constituency are to be persons:

(a) who live in the area of that public constituency as set out in Annex 1 as evidenced by their name appearing on the electoral roll for their place of residence which shall be within that said area or where the Secretary is otherwise satisfied that they live in the area of the Trust; and

(b) who have each made an application for membership to the Trust;

(c) who are not members of the staff constituency; and

(d) who are not disqualified from membership under paragraph 7.9.

7.7.2 Membership of a public constituency is available to persons who satisfy the criteria at paragraph 7.7.1. The Trust is to ensure as far as reasonably practicable, taken as a whole, that the actual membership of the Trust's public constituency is representative of those eligible for membership.

7.8 The minimum number of members required for each area of the public constituency is set out at paragraph 1 of Annex 1.

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

(a) they are employed by the Trust under a contract of employment which has no fixed term or has a fixed term of at least 12 months; or

(b) been continuously employed by the Trust under a contract of employment for at least 12 months.

7.8.2 Individuals who exercise functions for the purposes of the Trust, otherwise than under a contract of employment with the Trust, may become or continue as members of the staff constituency provided such individuals have exercised these functions continuously for a period of at least 12 months and have been invited by the Trust to become a member of the relevant staff group and have not, within a period of 14 days commencing with the date of the said invitation, notified the Trust in writing that they do not wish to become a member.

7.8.3 The staff constituency is to be divided into three staff groups as follows:

(a) Scarborough & Bridlington staff group: all staff whose designated base hospital is either Scarborough General Hospital or Bridlington and District Hospital;

(b) Community staff group: all staff whose designated base hospital is Malton Community Hospital, The New Selby War Memorial Hospital, St Monica's Hospital, Easingwold and any other staff who are designated as "Community" staff and therefore do not have a designated base hospital as they work mainly with patients in a non-acute setting, including those members of staff who are engaged in support functions in connection with such services; and

(c) York staff group: all staff whose designated base hospital is York Hospital, White Cross Court Rehabilitation Hospital, St Helens Rehabilitation Hospital, or and any other staff not included in either of the above definitions

7.8.4 An individual who satisfies the criteria for membership of the staff constituency may not become, or continue, as a member of any constituency other than the staff constituency.

7.8.5 The minimum number of members for each staff group is as follows:

(a) Scarborough & Bridlington staff group 200;

(b) Community staff group 100; and

(c) York staff group 200.

7.9 Disqualification from membership

7.9.1 A person is disqualified from being a member of the Trust if:

(a) they are under the age of 16; or

(b) they do not meet the requirements set out at paragraphs 7.7 or 7.8; or

(c) their membership has previously been terminated; or

(d) the Council of Governors resolves for reasonable cause that the individual becoming a member would or would be likely to:

(i) prejudice the ability of the Trust to fulfil its principle purpose or other of its purposes under this constitution or otherwise to discharge its duties and functions; or

(ii) harm the Trust's work with other persons or bodies with whom it is engaged or may be engaged in the provision of goods and services; or

(iii) harm the Trust's work with other persons or bodies with whom it is engaged or may be engaged in the provision of goods and services; or

(iv) otherwise bringing the Trust into disrepute.

7.9.2 It is the responsibility of members, not the Trust, to ensure their eligibility for membership, but the Secretary will take reasonable steps to verify eligibility from the information collected through membership registrations and, where the Trust is on notice that a member may have ceased to be eligible for membership, the Secretary shall carry out all reasonable enquiries to establish if this is the case.

7.10 Termination of membership

7.10.1 A member shall cease to be a member if they:

(a) die;

(b) resign by notice to the Foundation Trust Secretary;

(c) cease to fulfil the requirements of paragraphs 7.2 and 7.7 to 7.9; or

(d) becomes disqualified from membership by reason of paragraph 7.9.

7.10.2 Staff will automatically cease to be eligible for membership of the staff constituency upon termination of their employment with the Trust.

7.10.3 Former employees will be eligible for membership of the public constituency if they live within one of the areas of the Trust as set out in Annex 1.

7.11 Voting at Governor elections

7.11.1 A person may not vote at an election for a Public Governor unless at the time of voting he has made a declaration in the specified form of the particulars of his qualification to vote as a member of the public constituency and, it is an offence, under section 60 of the 2006 Act, to knowingly or recklessly make such a declaration that is false in a material particular.

7.11.2 A person entitled to vote for a Staff Governor shall make a similar declaration to that at paragraph 7.11.1 above save that section 60 of the 2006 Act does not apply in such a case.

7.11.3 The Governor elections will be held in accordance with the provisions of Annex 3.

8. COUNCIL OF GOVERNORS

8.1 The Council of Governors shall comprise 30 Governors.

8.2 The Council of Governors of the Trust is to include the following Governors, as are detailed more particularly below and at Annex 1:

8.2.1 16 Public Governors elected in accordance with paragraph 8.4;

8.2.2 7 Staff Governors elected in accordance with paragraph 8.5 whereby:

(a) 3 Staff Governors are to be elected by the Scarborough & Bridlington Staff Group;

(b) 1 Staff Governor is to be elected by the Community Staff Group; and

(c) 3 Staff Governors are to be elected by the York Staff Group;

8.2.3 3 Local Authorities Governors appointed in accordance with paragraph 8.6 and 8.8.

8.2.4 2 Governors appointed from any organisation that has an involvement with the Trust around the provision of Trust services appointed in accordance with paragraph 8.7.

8.2.5 1 University Governor appointed in accordance with paragraph 8.6 and 8.9.

8.2.6 1 Voluntary Sector Governor appointed in accordance with paragraph 8.10.

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

8.4 Public Governors

8.4.1 Members of a public constituency may elect any of their number to be a Public Governor in accordance with the Election Scheme at Annex 2.

8.4.2 Members of a public constituency may stand for election as a Public Governor in respect of their respective area.

8.4.3 If contested, the election must be by secret ballot.

8.4.4 A member of a public constituency who stands for election as a Public Governor must make a declaration as to their eligibility in accordance with sections 60(2) of the 2006 Act. Under section 60(6) of the 2006 Act it is an offence to knowingly or recklessly make a declaration which is false in a material particular.

8.4.5 A Public Governor

(a) shall hold office for a maximum period of three years;

(b) is eligible for re-election at the end of that initial period;

(c) may be subsequently re-elected provided that they may serve no more than a maximum of nine years in office in aggregate; and

(d) ceases to hold office if they cease to be a member of the Trust.

8.5 Staff Governors

8.5.1 Staff Members may elect any of their number to be a Staff Governor in accordance with the Election Scheme at Annex 2.

8.5.2 Members of the staff constituency may stand for election as a Staff Governor for their staff group.

8.5.3 If contested, the election must be by secret ballot.

8.5.4 A Staff Governor:

(a) shall hold office for a maximum period of three years;

(b) is eligible for re-election at the end of that initial period;

(c) may be subsequently re-elected provided that they may serve no more than a maximum of nine years in office in aggregate; and

(d) ceases to hold office if they cease to be a member of the Trust' staff.

8.6 Appointed Governors

8.6.1 The arrangements by which the organisations referred to at paragraphs 8.2.3 to 8.2.6 may appoint members of the Council of Governors are described in paragraphs 8.7 to 8.10 below.

8.7 Healthcare Organisations

8.7.1 The Healthcare Organisations will at the request of the Trust coordinate the appointment of 2 Healthcare Organisation Governors to represent those Healthcare Organisations listed in Annex 1.

8.7.2 A Healthcare Organisation Governor:

(a) shall hold office for a maximum period of three years;

(b) is eligible for re-appointment at the end of that initial period;

(c) may be subsequently re-appointed provided that they may serve no more than a maximum of nine years in aggregate; and

(d) ceases to hold office for the Healthcare Organisation which has appointed them or withdraws its appointment of them.

8.8 Local Authority Governors

8.8.1 3 Local Authorities Governors shall be appointed to represent all Local Authorities within the Trust's geographical area.

8.8.2 The Local Authority Partnership Governors:

(a) shall hold office for a maximum period of three years;

(b) is eligible for re-appointment at the end of that initial period;

(c) may be subsequently re-appointed provided that they may serve no more than a maximum of nine years in aggregate; and

(d) ceases to hold office if a Local Authority which has appointed them withdraws its appointment of them.

8.9 University Governor

8.9.1 A University Governor is to be appointed by the University of York in accordance with a process agreed with the Secretary.

8.9.2 A University Governor:

(a) shall hold office for a maximum period of three years;

(b) is eligible for re-appointment at the end of that initial period;

(c) may be subsequently re-appointed provided that they may serve no more than a maximum of nine years in aggregate; and

(d) ceases to hold office if the University of York which has appointed them withdraws its appointment to them.

8.10 Voluntary Sector Governor

8.10.1 One Voluntary Sector Governor shall be appointed to represent the interests of all relevant voluntary organisations in the Area of the Trust.

8.10.2 The Voluntary Sector Governor:

(a) shall hold office for a maximum period of three years;

(b) is eligible for re-appointment at the end of that initial period;

(c) may be subsequently re-appointed provided that they may serve no more that a maximum of nine years in aggregate; and

(d) ceases to hold office if the voluntary organisation which has appointed them withdraws its appointment of them.

8.12 Disqualification from being a Governor

8.12.1 A person may not become a Governor (and if already holding office shall immediately cease to do so) if:

(a) they are a Director of the Trust or a Director of another NHS Foundation Trust;

(b) they are a Governor of another NHS Foundation Trust;

(c) they are a person in relation to whom a moratorium period under a debt relief order applies (under Part 7A of the Insolvency Act 1986)

(d) they have been made bankrupt or their estate has been sequestrated and in either case has not been discharged;

(e) they have made a composition or arrangement with, or granted a trust deed for, their creditors and has not been discharged in respect of it;

(f) 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 not less than three months (without the option of a fine) was imposed on them;

(g) they have in the preceding two years been dismissed by the Trust or any predecessor organisation, or in the case of another organisation, on any grounds other than redundancy;

(h) they have been excluded from the Trust's premises because of abusive or violent behaviour; and has been appropriately notified to that effect by the Chief Executive;

(i) they are a member of a Local Authority Overview and Scrutiny Committee for Health (Social Affairs and Health Scrutiny Commission);

(j) they lack capacity as defined by the Mental Capacity Act 2005;

(k) they are a vexatious complainant, in the opinion of the Board of Directors, who has persistently and without reasonable grounds made any unjustified complaint(s) the effect of which is to subject the Trust (or any of its staff, agents, patients or carers) to inconvenience, harassment or expense;

(l) their name has been placed on a Safeguarding Register; or

(m) they are a strategic member of a health monitoring organisation that would create a conflict of interest.

8.12.2 Where a person appointed as a Governor becomes disqualified from serving in that capacity by nature of paragraph 8.12.1, they shall notify the Secretary in writing without delay.

8.13 Eligibility, termination of office and removal of Governors

8.13.1 A person holding office as a Governor shall cease to do so if:

(a) they resign from that office by giving notice in writing to the Secretary;

(b) in the case of a Public Governor they cease to be a member of the public constituency by which they were elected;

(c) in the case of a Staff Governor they cease to be employed by the Trust or cease to be a member of the staff group by which they were elected;

(d) in the case of a Healthcare Organisation Governor, a Local Authority Governor, University Governor and Voluntary Sector Governor the organisation which has appointed them withdraws their appointment of them, or, if that appointment arises from their employment by the appointing organisation, they cease to be employed by the appointing organisation;

(e) they are a person whose tenure of office as a Chair, 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;

(f) they have failed to abide by the terms of any declaration made on nomination or appointment, or abide by any code of values and principles which the Trust may publish from time to time;

(g) they have failed to declare an interest in accordance with Standing Orders or, contrary to the Standing Orders, has voted at a meeting on a matter on which they have an interest, or has failed to declare any interest to the Secretary as required by this constitution or the Standing Orders whereby in this context 'interests' includes a pecuniary or a non-pecuniary interest whether direct or indirect;

(h) they refuse or fail to agree to a request from the Trust that a check be carried out through the Disclosure and Barring Services (DBS) or any such other security check that may be deemed appropriate; or

(i) they die or become mentally incapacitated to a degree that they cannot perform the role. .

8.13.2 Where a person appointed as a Governor ceases to be eligible to serve in that capacity by virtue of paragraph 8.12.1 or 8.12.2 they shall notify the Secretary in writing without delay.

8.13.3 Consideration will be given to the removal of a Governor if they breach the:

(a) requirements for attendance at the Council of Governor meetings set by the Council of Governors and detailed in the Council of Governors' Standing Orders;

(b) eligibility criteria as contained within the legislation and as set out in paragraph 8.12 above.

8.13.4 Removal of a Governor from the Council of Governors will require the approval of a majority of the Governors present at a general meeting of the Council of Governors.

8.13.5 The Governor concerned will be eligible to make representation to the Council of Governors but not to vote on any resolution relating to his removal or any associated issue.

8.14 Vacancies

8.14.1 Where an elected Public Governor or Staff Governor ceases to hold office within six months of their appointment, the Trust shall offer the candidate who is not currently a Governor and who secured the second highest number of votes in the last election for the staff group or public constituency in which the vacancy has arisen ("the reserve candidate") the opportunity to assume the vacant office for the unexpired balance of that Governor's term of office. If the reserve candidate does not accept the invitation to fill the vacancy, it will then be offered to the reserve candidate who secured the next highest number of votes until the vacancy is filled.

8.14.2 If no such reserve candidate is available or willing to fill the vacancy, or if the vacancy occurs more than six months after the retiring Governor's appointment, an election will then be held in accordance with the Election Scheme save that if an election is due to be held within six months of the vacancy having arisen, the office will stand vacant until the next scheduled election.

8.14.3 The returning officer under the election scheme shall maintain a record of votes cast at each election for the above purposes and the returning officer shall conduct or shall oversee the process set out in the preceding paragraphs.

8.14.4 Local Authority Governors, Healthcare Organisation Governors, the University Governor and Voluntary Sector Governor are to be replaced in accordance with a processes agreed with the appointing organisations and the initial term of office of those replacement Governors shall be as for the unexpired balance of the retiring Governor's term of office.

8.15 Roles and responsibilities of Governors

8.15.1 The Council of Governors will:

(a) decide at a general meeting of the Council of Governors held in public the remuneration and allowances and other terms and conditions of the office of the Chair and Non-executive Directors;

(b) appoint or remove the Chair and other Non-executive Directors at a general meeting;

(c) appoint or replace the Trust's auditor at a general meeting;

(d) be presented with the annual accounts, auditors' report, the annual report and the quality report and any comment from the auditors at a general meeting;

(e) approve an appointment (by the Non-executive Directors) of the Chief Executive of the Trust;

(f) provide the views of the Council of Governors to the Board of Directors for the purposes of the preparation by the Board of Directors of the document containing information as to the Trust's forward planning in respect of each financial year to be given to NHSI;

(g) receive and consider the views of the members on matters of significance to the future plans of the Trust;

(h) respond appropriately when asked for its views by the Board of Directors in accordance with this constitution;

(i) to require one or more of the 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); and

(j) if NHSI has appointed a panel for advising governors, vote on whether to approve the referral of a question by a Governor to the panel.

8.15.2 The general duties of the Council of Governors are:

8.15.3 hold the Non-Executive Directors individually and collectively to account for the performance of the Board of Directors; and

8.15.4 to represent the interests of members of the Trust as a whole and the interests of the public.

8.15.5 The removal of the Chair or a Non-executive Director under paragraph 8.15.1(b) shall require the approval of three-quarters of the members of the Council of Governors.

8.15.6 The Council of Governors may appoint committees and subcommittees consisting of Governors to advise and assist the Council of Governors in carrying out its functions, e.g. a nominations committee and/or a remuneration committee.

8.15.7 The Chair or Vice Chair, as the case may be, shall give such directions as they think fit with regard to the arrangements for meetings and accommodation of the public and representatives of the press so as to ensure that the Council of Governors' business shall be conducted without interruption and disruption.

8.15.8 Without prejudice to the generality of paragraph 8.15.7, meetings of the Council of Governors are to be open to members of the public except in the following circumstances:

(a) during the consideration of any material or discussion in relation to a named person employed by or proposed to be employed by the Trust;

(b) 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 patient;

(c) during the consideration of any matter which, by reason of its nature, the Council of Governors is satisfied should be dealt with on a confidential basis: and/or

(d) a direction is given by the Chair or Vice Chair, as the case may be, in accordance with paragraph 8.15.7.

8.15.9 The Council of Governors is to meet at least 4 times per year. These meetings will, subject to paragraph 8.15.8, be held in public.

8.15.10 The quorum for meetings of the Council of Governors will be nine and the majority of the Governors comprising quorum present must be elected Governors.

8.15.11 The Council of Governors is to adopt its own Standing Orders for its practice and procedure, in particular for its procedure at meetings (including general meetings), as required by paragraph 14(1)(c) of Schedule 7 to the 2006 Act, but these shall be in accordance with Annex 4 and paragraph 10.1.

8.16 Conflicts of interest of Governors

8.16.1 If a Governor has a pecuniary interest, whether direct or indirect, in any contract, proposed contract or other matter which is under consideration by the Council of Governors, they shall disclose that to the rest of the Council of Governors as soon as they are aware of it. Arrangements for excluding Governors from discussions or consideration of the contract, or other matters as appropriate, are set out at paragraph 11.

9. BOARD OF DIRECTORS

9.1 The Trust is to have a Board of Directors. It is to consist of Executive Directors and Non-executive Directors.

9.2 The Board of Directors is to include up to:

9.2.1 the following Non-executive Directors:

(a) a Chair; and

(b) the option of having 7 other Non-executive Directors, 1 of which (at any one time) can cover Yorkshire and the Humber; and

9.2.2 the following Executive Directors:

(a) a Chief Executive, who shall also be the Accounting Officer;

(b) a Director of Finance;

(c) a Medical Director, who shall be a registered medical practitioner or a registered dentist (within the meaning specified in the Dentists Act 1984);

(d) a registered nurse or registered midwife; and

(e) and three other Executive Directors.

9.3 Vacancies for Chair and Non-executive Directors

9.3.1 The following provisions shall apply in circumstances where a vacancy arises on the Board of Directors in respect of the Chair or other Non-executive Directors:

(a) all vacancies for appointment as Chair or Non-executive Director shall be advertised;

(b) the Chair or other Non-executive Director whose term of office has expired but who is entitled to hold office for a further term may be considered for reappointment; and

(c) all Non-executive Directors including the Chair, shall be eligible to serve six years. Any further extension will be assessed on a year by year basis subject to performance up until a maximum of a further 3 years.

9.3.2 A committee of the Council of Governors will be formed to assist the Council of Governors to undertake the appointment of the Chair and Non-executive Directors. The Chair of the Trust shall chair this committee (and any sub-committees) for the appointment of Non-executive Directors.

9.3.3 For the appointment of the Chair, the Lead Governor will chair the committee (and any sub-committees).

9.3.4 If a Chair is suspended from their appointment or is on long-term sick leave, the Council of Governors (with support and advice from the Chief Executive) may appoint another person as Chair in an acting capacity.

9.4 Executive Directors' terms of office

9.4.1 The terms and conditions of office for all Executive Directors shall be decided by the remuneration committee of the Board of Directors, comprising the Chair and other Non-executive Directors.

9.4.2 Chief Executive:

(a) The Chief Executive shall be appointed by and shall hold office in accordance with the terms and conditions of office decided by, and be removed by, an appointment committee which consists of the Non-executive Directors; and

(b) the appointment of a Chief Executive shall require the approval of the Council of Governors at a general meeting.

9.4.3 Executive Directors:

(a) The Executive Directors, other than the Chief Executive, shall be appointed by and be removed by an appointment committee consisting of the Chair, the Chief Executive and the other Non-executive Directors and led by the Chief Executive.

(b) The remuneration and allowances and the other terms and conditions of office of the Executive Directors shall be determined in accordance with paragraph 9.4.1.

9.4.4 On termination of their contract of employment, an Executive Director shall cease to be a member of the Board of Directors.

9.4.5 If an Executive Director is suspended from their contract of employment or is on long-term sick leave, the Chair and Non-executive Directors in the case of the Chief Executive, and the Chief Executive in the case of the other Executive Directors, may appoint another person as an Executive Director in an acting capacity in his place.

9.5 Disqualification from being a Director

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

(a) they have been made bankrupt or their estate has been sequestrated and in either case has not been discharged;

(b) they are a person in relation to whom a moratorium period under a debt relief order applies (under Part 7A of the Insolvency Act 1986);

(c) they have made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it;

(d) 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;

(e) in the case of the Chair and Non-executive Director, they no longer meet the requirements of paragraph 16(4) Schedule 7 to the 2006 Act;

(f) they are a person whose tenure of office as a Chair 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 public service, for non-attendance at meetings or for non-disclosure of a pecuniary interest;

(g) their name has been placed on a Safeguarding Register;

(h) they have within the preceding two years been dismissed, otherwise than by reason of redundancy, from any paid employment by a Health Service Body;

(i) they fail to declare an interest in accordance with Trust's Standing Orders for the Board of Directors or, contrary to the Standing Orders for the Board of Directors, has voted at a meeting on a matter in which they have an interest or has failed to declare any interest to the Secretary as required by this constitution or the Standing Orders for the Board of Directors and, in this sub-paragraph, interest includes a pecuniary or non-pecuniary interest, in either case whether direct or indirect;

(j) they are the subject of a disqualification order made under the Company Directors Disqualification Act 1986;

(k) in the case of a Non-executive Director they have refused, without reasonable cause, to fulfil any training requirement established by the Board of Directors;

(l) they have failed without reasonable cause, to sign and deliver to the Secretary a statement in the form required by the Board of Directors confirming acceptance of the code of conduct for Directors or

(m) a person who does not satisfy all of the requirements of Regulation 5(3) of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014/2936 (as amended or updated from time to time). – (fit and proper person test)

9.6 Roles and responsibilities of the Board of Directors

9.6.1 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.

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

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

(a) 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.

9.6.4 The duty referred to in paragraph 9.6.3 is not infringed if:

(a) the situation cannot reasonably be regarded as likely to give rise to a conflict of interest; or

(b) the matter has been authorised in accordance with Trust policy.

9.6.5 The duty referred to in paragraph 9.6.3(a) is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest and "third party" in that paragraph means a person other than the Trust or a person acting on its behalf.

9.6.6 All the powers of the Trust are to be exercisable by the Board of Directors on its behalf. Any of those powers may be delegated to a committee of Directors or to an Executive Director.

9.6.7 The Board of Directors will decide the strategic direction of the Trust, set the targets for the Trust's performance and direct the management of the Trust.

9.6.8 The Board of Directors will establish a committee of Non-executive Directors as an audit committee to monitor, review and carry out such other functions in relation to the auditors and to the audit functions of the Trust as appropriate.

9.6.9 The Board of Directors will establish a committee of Non-executive Directors as a remuneration committee to decide the remuneration and allowances and the terms and conditions of office of the Executive Directors.

9.6.10 The Chair and Non-executive Directors shall appoint or remove the Chief Executive. The appointment of the Chief Executive is subject to the approval of the Council of Governors.

9.6.11 It is for a committee consisting of the Chair, the Chief Executive and other Non-executive Directors to appoint or remove an Executive Director.

9.6.12 The Board of Directors is to prepare the information as to the Trust's forward planning in respect of each financial year to be given to NHSI and in doing so shall have regard to the views of the Council of Governors.

9.6.13 The Board of Directors is to present the Council of Governors at a meeting held no later than the end of September each year with the annual accounts, annual report and quality report and ask the Council of Governors to consider any reports of the auditors on them.

9.6.14 The functions of the Trust under sub-paragraphs 15.5 to 15.7 are delegated to the Chief Executive as Accounting Officer.

9.7 Qualification for appointment as a Non-executive Director

9.7.1 They are a member of a Public Constituency, or

9.7.2 They are a member of the Patients' Constituency, or

9.7.3 Where any of the Trust's hospitals includes a medical or dental school provided by a university, they exercise functions for the purpose of that university, and

9.7.4 They are not disqualified by virtue of paragraph 9.5 above.

10. MEETINGS

10.1 Meeting of the Council of Governors

10.1.1 The Chair is to preside at meetings of the Council of Governors. In the absence of, or at the request of, the Chair, the Vice Chair of the Board of Directors will preside at meeting of the Council of Governors. Where both the Chair and the Vice Chair are unable to preside over a meeting of the Council of Governors, the Lead Governor will do so subject to paragraph 11.12.

10.1.2 A record of each meeting will be kept.

10.1.3 Subject to paragraph 8.15.8 meetings of the Council of Governors are to be open to the public. The Council of Governors may, by resolution and for special reasons, exclude the public from the whole or part of a meeting in accordance with the provisions made in its Standing Orders.

10.1.4 A Governor may only vote at a meeting of the Council of Governors if he is not within paragraph 8.12 and 8.13.1 and in the case of a Public Governor, or Staff Governor, he is a Member of the Trust.

10.2 Meetings of Board of Directors

10.2.1 The Chair is to preside at meetings of the Board of Directors. In the absence of the Chair, a Non-executive Director appointed by the Board of Directors as the Vice Chair of the Board of Directors will preside at meetings.

10.2.2 The Board of Directors is to adopt Standing Orders covering the proceedings and business of the meetings of the Board of Directors which are appended to the constitution.

10.2.3 The proceedings of the Board of Directors shall not be invalidated by any vacancy in its membership or any defect in a Director's appointment.

10.2.4 Meetings of the Board of Directors shall be open to the public. Members of the public may be excluded from a meeting for special reasons.

10.2.5 A record of the meeting will be kept.

10.3 An Annual General Meeting of the Trust that will be open to the public shall be held prior to 31 October each year at which Members and members of the public will be presented with the annual accounts, annual report, quality report and any report of the auditor on them.

10.4 Committees and sub-committees

10.4.1 Meetings of any committees and sub-committees of the Council of Governors or the Board of Directors shall not be open to the public.

10.5 Joint meetings of the Council of Governors and the Board of Directors

10.5.1 Joint meetings between the Council of Governors and the Board of Directors will be held at least once a year.

10.5.2 The Chair shall preside at joint meetings of the Council of Governors and the Board of Directors. In the absence of, or at the request of, the Chair the Vice Chair of the Board of Directors will preside at such meetings.

10.5.3 Joint meetings of the Council of Governors and the Board of Directors shall be held for special reasons and to discuss confidential and commercial matters and shall not be open to the public.

10.6 Remuneration and expenses

10.6.1 Governors are not to receive remuneration for serving as Governors.

10.6.2 The Trust may pay travelling and other expenses to Governors at such rates as the Board of Directors may decide.

10.6.3 The remuneration and allowances for Non-executive Directors set by the Council of Governors are to be published in the annual report.

10.6.4 The Secretary will set out guidelines for the Council of Governors on the remuneration and allowances for Non-executive Directors.

11. DECLARATION OF INTERESTS

11.1 Pursuant to paragraph 20 of Schedule 7 to the 2006 Act, a register of Directors' interests and a register of Governors' interests shall be kept by the Trust.

11.2 All existing Directors (including for the purposes of this constitution, Non-executive Directors) and Governors shall declare relevant and material interests. Any Director or Governor appointed or elected subsequently shall do so on appointment or election.

11.3 Interests which should be regarded as "relevant and material" and which, for the avoidance of doubt, should be included in the register, are:

11.3.1 directorships, including non-executive directorships held in private companies or PLCs (with the exception of those of dormant companies);

11.3.2 ownership, part-ownership or directorship of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS;

11.3.3 majority or controlling share holdings in organisations likely or possibly seeking to do business with the NHS;

11.3.4 a position of authority in a charity or voluntary organisation in the field of health and social care;

11.3.5 any connection with a voluntary or other organisation contracting for NHS services or commissioning NHS services; or

11.3.6 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.

11.3.7 a direct or indirect interest in a proposed transaction or arrangement with the Trust unless the relevant person is unaware of the interest or unaware of the transaction or arrangement

11.4 If Directors or Governors have any doubt about the relevance or materiality of an interest, this should be discussed with the Chair or Secretary.

11.5 A person need not declare an interest:

11.5.1 if it cannot reasonably be regarded as likely to give rise to a conflict of interest;

11.5.2 if, or to the extent that, the Trust is already aware of it;

11.5.3 if, or to the extent that, it concerns terms of a Director's appointment that have been or are to be considered by a meeting of the Board of Directors or by a committee of the Directors appointed for the purpose under this constitution.

11.6 At the time the said interests are declared, they shall be recorded by the Secretary in the Board of Directors' or Council of Governors' minutes, as appropriate. Any changes in interests shall be officially declared at the next Board of Directors' or Council of Governors' meeting, as appropriate, following the change occurring. It is the obligation of the Director or Governor, on becoming aware of the existence of a relevant or material interest, to inform the Secretary before or at the next general meeting of the Board or Council. The Secretary shall amend the relevant register upon being notified.

11.7 The details of Directors' and Governors' interests recorded in the relevant register shall be kept up to date by means of a monthly review of the register carried out by the Secretary, during which any changes of interests declared during the preceding month will be incorporated.

11.8 Subject to contrary regulations being passed, a register will be available for inspection by the public free of charge.

11.9 Copies or extracts of the register must be provided to members upon request free of charge and within a reasonable time period of the request. A reasonable charge may be imposed on non-members for copies or extracts of a register.

11.10 If, during the course of a meeting of the Board of Directors or Council of Governors, a conflict of interest is established the Director or Governor concerned shall 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.

11.11 If there is a dispute as to whether a conflict of interest exists, the majority of Governors or Directors (as the case may be) present at the meeting shall resolve the issue, with the Chair having a casting vote.

11.12 If, in relation to paragraph 11.10, the Chair has a conflict of interest, the Vice Chair of the Board of Directors shall be entitled to exercise the casting vote. If the Vice Chair has a conflict of interest, the Lead Governor shall be entitled to exercise the casting vote at the Council of Governors meeting. If the Lead Governor is not present or has a conflict of interest, a Governor from the public constituency (in respect of the Council of Governors) shall be nominated to preside and exercise the casting vote. In respect of the Board of Directors, a Non-executive Director (in respect of the Board of Directors), shall be nominated to preside and to exercise the casting vote. The nomination shall in each case be approved by a majority vote of those present at the meeting.

11.13 Any travelling or other expenses or allowances payable to a Governor in accordance with this constitution shall not be treated as a pecuniary interest.

11.14 Subject to any other provision of this constitution, a Governor or Director shall be treated as indirectly having a pecuniary interest in a contract, proposed contract or other matter, if:

11.14.1 they, or a nominee , are a director of a company or other body, not being a public body, with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration; or

11.14.2 they are a partner of, or is in the employment of, a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration.

11.15 A Governor or Director shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only:

11.15.1 of their membership of a company or other body if they have no beneficial interest in any securities of that company or other body; or

11.15.2 of an interest in any company, body or person with which they are connected as mentioned in the preceding sub-paragraph which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a Governor in the consideration or discussion of or in voting on, any question with respect to that contract or matter.

11.16 Where a Governor or Director:

11.16.1 has an indirect pecuniary interest in a contract, proposed contract or other matter by reason only of a beneficial interest in securities of a company or other body; and

11.16.2 the total nominal value of those securities does not exceed £5,000 or one-hundredth of the total nominal value of the issued share capital of the company of body, whichever is less; and

11.16.3 if the share capital is of more than one class, the total nominal value of shares of any one class in which they have a beneficial interest does not exceed one-hundredth of the total issued share capital of that class,

11.16.4 the Governor or Director shall not be prohibited from taking part in the consideration or discussion of the contract or other matter or from voting on any question with respect to it, without prejudice to their duty to disclose their interest.

11.17 The Standing Orders of each of the Board of Directors and the Council of Governors respectively may make further provision in relation to interests and the requirement to declare an interest.

12. **REGISTERS**

12.1 The Trust is to have:

12.1.1 a register of members showing, in respect of each member, the constituency or staff group to which they belong;

12.1.2 a register of members of the Council of Governors;

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

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

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

12.2 The Secretary shall be responsible for compiling and maintaining the registers. Removal from any register shall be in accordance with the provisions of this constitution. The Secretary shall update the register with new or amended information as soon as is practical through a regular review of the registers.

12.3 Register of Members

12.3.1 The Trust shall maintain a register of members and all members of the public constituency must, at the request of the Trust, complete and sign a membership data form in the format prescribed by the Trust, containing such information regarding that member as the Trust may require for the purposes of compiling the register of members and in ensuring that the same is kept up to date as appropriate.

12.3.2 The Secretary shall maintain the register in two parts:

(a) part one shall include the name of each member and the constituency or staff group to which they belong and shall be open to inspection by the public in accordance with paragraph 13;

(b) part two shall contain all the information from the application form and shall not be open to inspection by the public nor may copies or extracts from it be made available to any third party.

12.3.3 Notwithstanding this provision the Trust shall extract such information as it needs, in aggregate, to satisfy itself in accordance with Annex 1 of this constitution that the actual membership of the Trust is representative of those eligible for membership.

12.4 The Trust shall maintain a register of members of the Council of Governors and the said register shall list the names of members of the Council of Governors, their category of membership (public, staff or partnership organisation represented) and an address through which they may be contacted (which may be via the Trust).

12.5 Register of interest of the members of the Council of Governors

12.5.1 The Trust shall maintain a register of interests of the members of the Council of Governors and each member of the Council of Governors shall complete and sign a form as prescribed by the Secretary setting out any interests to be declared and the register shall contain the names of all members of the Council of Governors and any interests declared, including the fact that no interests have been declared.

12.6 Register of the members of the Board of Directors

12.6.1 The Trust shall maintain a register of the members of the Board of Directors and that register shall list the names of members of the Board of

Directors, their capacity on the Board and an address through which they may be contacted (which may be via the Trust).

12.7 Register of interest of the members of the Board of Directors

12.7.1 The Trust shall maintain a register of interests of the members of the Board of Directors and each member of the Board of Directors shall complete and sign a form as prescribed by the Secretary setting out any interests to be declared and the register shall contain the names of the members of the Board of Directors and any interest declared, including the fact that no interests have been declared.

12.8 The Secretary will send to NHSI a list of the persons who are elected or appointed as:

12.8.1 the members of the Council of Governors;

12.8.2 the members of the Board of Directors.

13. PUBLIC DOCUMENTS

13.1 The following documents of the Trust are to be available for inspection by members of the public free of charge at all reasonable times:

13.1.1 a copy of the current constitution;

13.1.2 a copy of the current authorisation;

13.1.3 the registers referred to in paragraph 12.1 subject to the provisions of paragraph 12.3 and paragraph 13.3;

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

13.1.5 a copy of the latest annual report;

13.1.6 a copy of the latest information sent to NHSI as to the Trust's forward planning;

13.1.7 a copy of any notice given under section 52 of the 2006 Act (NHSI's notice to failing NHS foundation trust);

13.1.8 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;

13.1.9 a copy of any report laid under section 65D (appointment of trust special administrator) of the 2006 Act;

13.1.10 a copy of any information published under section 65D (appointment of trust special administrator) of the 2006 Act;

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

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

13.1.13 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 (NHSI's decision), 65KB (Secretary of State's response to NHSI 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;

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

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

13.1.16 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

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

13.2 Subject to the provision of paragraphs 13.3, 13.4 and 13.5, any person who requests it is to be provided with a copy or extract from any of the above documents.

13.3 The registers mentioned above are to be made available for inspection by members of the public, except (in relation to the register of members) the details of any member who has requested that the Trust not make their details available for inspection, in accordance with the Public Benefit Corporation (Register of Members) Regulations 2004 or as otherwise as prescribed by regulations made under the 2006 Act.

13.4 Insofar as those registers are required to be available:

13.4.1 they are to be available free of charge at all reasonable times; and

13.4.2 a person who requests it is to be provided with a copy of or extract from them.

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

14. AUDITOR

14.1 The Trust is to have an auditor and is to provide the auditor with every facility and all information, which they may reasonably require for the purposes of their functions under the 2006 Act.

14.2 A person may only be appointed auditor to the extent that they (or it) meet one of the requirements at paragraph 23(3) of Schedule 7 to the 2006 Act if they (or in the case of a firm each of its members) meets one or more of the criteria at paragraph 23(4) of Schedule 7 to the 2006 Act.

14.3 Appointment of the auditor by the Council of Governors shall be in accordance with paragraph 8.10.2(c), and monitoring of the auditor's functions by a committee of Non-executive Directors shall be as provided in paragraph 9.6.8.

14.4 The Trust's auditor is to carry out their duties in accordance with Schedule 10 to the 2006 Act and in accordance with any directions given by NHS I on standards, procedures and techniques to be adopted when preparing or auditing the accounts of the Trust.

15. ACCOUNTS

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

15.2 NHSI may with the approval of the Secretary of State give directions to the Trust on the content and form of its accounts.

15.3 The accounts are to be audited by the Trust's auditor.

15.4 The following documents will be made available to the Comptroller and Auditor General for examination at their request:

15.4.1 the accounts;

15.4.2 any records relating to them; and

15.4.3 any report of the auditor on them.

15.5 Where trustees have been appointed pursuant to section 51 of the 2006 Act, the Comptroller and Auditor General may also examine:

15.5.1 the accounts kept by the trustees;

15.5.2 any records relating to them; and

15.5.3 any report of an auditor on them.

15.6 The Trust (through the Accounting Officer) is to prepare in respect of each Financial Year annual accounts in such form NHS I may with the approval of the Secretary of State direct.

15.7 In preparing its annual accounts, the Trust is to comply with any directions given by NHS I with the approval of the Secretary of State as to:

15.7.1 the methods and principles according to which the accounts are to be prepared; and

15.7.2 the information to be given in the accounts.

15.8 The Trust must:

15.8.1 lay a copy of the annual accounts, and any report of the auditor on them, before Parliament; and

15.8.2 once it has done so, send copies of those documents to NHSI .

15.9 The Trust's functions in respect of paragraph 15.6 to 15.8 are delegated to the Accounting Officer.

16. ANNUAL REPORTS AND FORWARD PLANS AND NON – NHS WORK

16.1 The Trust is to prepare annual reports and send them to NHSI.

16.2 The reports are to give:

16.2.1 information on any steps taken by the Trust to secure that (taken as a whole) the actual membership of the public constituency is representative of those eligible for such membership

16.2.2 information on the impact of that income received by the Trust otherwise than from the provision of goods and services for the purposes of the health service in England has had on the provision by the Trust of goods and services for those purposes; and

16.2.3 any other information NHSI requires.

16.3 The Trust is to comply with any decision NHSI makes as to:

16.3.1 the form of the reports;

16.3.2 when the reports are to be sent to it; and

16.3.3 the periods to which the reports are to relate.

16.4 The Trust is to give information as to its forward planning in respect of each Financial Year to NHSI. This information is to be prepared by the Directors, who must have regard to the views of the Council of Governors.

16.5 Each forward plan must include information about –

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

16.5.2 the income it expects to receive from doing so.

16.6 Where a forward plan contains a proposal that the Trust carry on an activity of a kind mentioned in sub-paragraph 16.5.1 the Council of Governors must –

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

16.6.2 notify the Directors of the Trust of its determination.

16.7 If the Trust 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, it may implement the proposal only if more than half of the members of the Council of Governors of the Trust voting approve its implementation.

17. INDEMNITY

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

18. INSTRUMENTS ETC.

18.1 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.

18.2 The Trust is to have a seal, but this is not to be affixed except under the authority of the Board of Directors.

19. COMMUNICATION BETWEEN THE COUNCIL OF GOVERNORS AND THE BOARD OF DIRECTORS

19.1 The Board of Directors shall promote effective communication between the Council of Governors and the Board of Directors and shall have regard to the views of the Council of Governors in this respect.

19.2 The Council of Governors and the Board of Directors shall each use their best endeavours to resolve any difference of view through discussion but in the event of any conflict, the Board of Directors, pursuant to paragraph 15(2) of Schedule 7 to the 2006 Act, will decide the disputed matter.

20. AMENDMENT OF THE CONSTITUTION

20.1 The Trust may make amendments to this constitution with the approval of more than half of the members of the Council of Governors voting and more than half of the Board of Directors voting.

20.2 The Trust must inform NHSI of amendments made under section 37 of the 2006 Act.

20.3 Amendments to this constitution shall take effect as soon as the conditions in paragraph 20.1 are satisfied. An amendment is of no effect in so far as this constitution would, as a result of the amendment, not accord with Schedule 7 of the 2006 Act.

21. TRANSITIONAL PROVISIONS

21.1 No amendments to this constitution shall affect the validity of appointments made or processes followed prior to the adoption of the amendment.

21.2 Each Governor serving his term as at 1 April 2013 shall complete their current term of office as specified at Annex 3.

21.3 For the avoidance of doubt, at all times more than half the Governors will be elected by Members of the public constituency and the composition of the Council of Governors will satisfy the provisions of paragraph 9 of Schedule 7 to the Act.

21.4 Further provision is made in relation to transitional arrangements at Annex 3.

22. DISSOLUTION OF THE TRUST

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

23. SIGNIFICANT TRANSACTIONS

23.1 The Trust may enter into a significant transaction only if more than half of the members of the Council of Governors voting approve entering into the transaction.

23.2 This constitution does not contain any descriptions of the term ‘significant transaction’ for the purposes of section 51A of the 2006 Act.

Annex 1

Trust Constituencies and Governors

1. Public Constituency

1.1 A public constituency is defined by reference to the local authority electoral wards specified in this annex. This is also the area of the Trust for the purpose of governor elections.

1.2 The public constituency shall comprise seven areas, as set out below in addition to the relevant minimum number of members and number of governors to be elected.

Public Constituency	**Area**	**Minimum number of members**	**Number of Governors**
York	All electoral wards within the City of York Council, Ouseburn and Marston Moor	500	5
Selby	All electoral wards within Selby District Council	200	2
Hambleton	The 6 Hambleton District Council wards of Easingwold, Helperby, Huby & Sutton, Shipton, Stillington, Tollerton and White Horse, Northallerton Bromfield, Northallerton Central, Romanby, Sowerby, Thirsk, Thorntons, Topcliffe, Whitestone Cliff, Bishop Monkton, Boroughbridge, Carlo, Hookstone, Knaresborough East, Knaresborough King James, Knaresborough Scriven Park, Newby, Pannal, Ribston, Ripon Minster, Ripon Mooreside, Ripon Spa, Spofforth with Lower Wharfdale, Starbeck, Wetherby	100	1

Ryedale and East Yorkshire	The following electoral wards: Amotherby, Ampleforth, Cropton, Dales, Derwent, Helmsley, Hovingham, Kirbymoreside, Malton, Norton East, Norton West, Pickering East, Pickering West, Rillington, Ryedale South East, Sherburn, Sheriff Hutton, Sinnington, Thornton Dale, Wolds, Pocklington Provincial, Wolds Weighton, Holme upon Spalding Moor	300	3
East Coast	The following electoral wards: Danby, Esk Valley, Fylingdales, Mayfield, Mulgrave, Streonshalh, Whitby West Cliff, Bridlington Central & Old Town, Bridlington North, Bridlington South, East Wolds and Coastal, Driffield & Rural, Castle, Central, Clayton, Derwent Valley, Eastfield, Falsgrave Park, Filey, Hertford, Lindhead, Newby, North Bay, Northstead, Ramshill, Scalby, Hackness and Staintondale, Seamer, Stepney, Weaponess, Woodlands	500	5
Out of Area	The electoral wards not covered above.	100	1

2. Staff Constituency of the Trust

2.1 The staff constituency shall comprise three staff groups, as set out below in addition to the relevant minimum number of members and number of governors to be elected.

Staff Class	**Eligibility**	**Minimum number of**	**Number of Governors**

		members	
York	All staff whose designated base hospital is York Hospital, White Cross Court Rehabilitation Hospital, St Helens Rehabilitation Hospital, Archways Hospital and any other staff not included in either of the Staff Classes described below.	200	3
Scarborough	All staff whose designated base hospital is Scarborough General Hospital or Bridlington and District Hospital.	200	3
Community	All staff whose designated base hospital is Malton Community Hospital, New Selby Community Hospital (also known as the New War Memorial Hospital), St Monica's Hospital, Easingwold and any other staff who are designated as "Community" staff and therefore do not have a designated base hospital as they work mainly with patients in a non-acute setting, including those members of staff who are engaged in support functions in connection with such services.	100	1

3. Partnership Organisations

3.1 The partnership organisations specified below shall appoint the following partnership governors:

Partnership Organisation	**Number of Governors**
Local authorities	
3 Local Government Governors shall be appointed.	
University	
University of York	1

Voluntary Sector	
Voluntary Sector Representative	1
Healthcare Organisations	
National Council of Palliative Care Organisations	1
Third Sector Organisations	1

Annex 2

York and Scarborough Teaching Hospitals NHSFT

Model Election Rules 2014

(for inclusion within the model core constitution)

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1. Interpretation

1.1 In these rules, unless the context otherwise requires:

"*2006 Act*" means the National Health Service Act 2006;

"*corporation*" means the public benefit corporation subject to this constitution;

"*council of governors*" means the council of governors of the corporation;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"*the telephone voting system*" means such telephone voting facility as may be

provided by the returning officer for the purpose of enabling voters to cast their votes by telephone;

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

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

"*voting information*" means postal voting information and/or e-voting information

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

2. Timetable

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

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

3. Computation of time

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

(a) a Saturday or Sunday;

(b) Christmas day, Good Friday, or a bank holiday, or

(c) a day appointed for public thanksgiving or mourning,

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

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

4. Returning Officer

4.1 Subject to rule 69, the returning officer for an election is to be appointed by the corporation.

4.2 Where two or more elections are to be held concurrently, the same returning officer may be appointed for all those elections.

5. Staff

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

6. Expenditure

6.1 The corporation is to pay the returning officer:

(a) any expenses incurred by that officer in the exercise of his or her functions under these rules,

(b) such remuneration and other expenses as the corporation may determine.

7. Duty of co-operation

7.1 The corporation is to co-operate with the returning officer in the exercise of his or her functions under these rules.

8. Notice of election

8.1 The returning officer is to publish a notice of the election stating:

(a) the constituency, or class within a constituency, for which the election is being held,

(b) the number of members of the council of governors to be elected from that constituency, or class within that constituency,

(c) the details of any nomination committee that has been established by the corporation,

(d) the address and times at which nomination forms may be obtained;

(e) the address for return of nomination forms (including, where the return of nomination forms in an electronic format will be permitted, the e-mail address for such return) and the date and time by which they must be received by the returning officer,

(f) the date and time by which any notice of withdrawal must be received by the returning officer

(g) the contact details of the returning officer

(h) the date and time of the close of the poll in the event of a contest.

9. Nomination of candidates

9.1 Subject to rule 9.2, each candidate must nominate themselves on a single nomination form.

9.2 The returning officer:

(a) is to supply any member of the corporation with a nomination form, and

(b) is to prepare a nomination form for signature at the request of any member of the corporation,

but it is not necessary for a nomination to be on a form supplied by the returning officer and a nomination can, subject to rule 13, be in an electronic format.

10. Candidate's particulars

10.1 The nomination form must state the candidate's:

(a) full name,

(b) contact address in full (which should be a postal address although an e-mail address may also be provided for the purposes of electronic communication), and

(c) constituency, or class within a constituency, of which the candidate is a member.

11. Declaration of interests

11.1 The nomination form must state:

(a) any financial interest that the candidate has in the corporation, and

(b) whether the candidate is a member of a political party, and if so, which party, and if the candidate has no such interests, the paper must include a statement to that effect.

12. Declaration of eligibility

12.1 The nomination form must include a declaration made by the candidate:

(a) that he or she is not prevented from being a member of the council of governors by paragraph 8 of Schedule 7 of the 2006 Act or by any provision of the constitution; and,

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

13. Signature of candidate

13.1 The nomination form must be signed and dated by the candidate, in a manner prescribed by the returning officer, indicating that:

(a) they wish to stand as a candidate,

(b) their declaration of interests as required under rule 11, is true and correct, and

(c) their declaration of eligibility, as required under rule 12, is true and correct.

13.2 Where the return of nomination forms in an electronic format is permitted, the returning officer shall specify the particular signature formalities (if any) that will need to be complied with by the candidate.

14. Decisions as to the validity of nomination

14.1 Where a nomination form is received by the returning officer in accordance with these rules, the candidate is deemed to stand for election unless and until the returning officer:

(a) decides that the candidate is not eligible to stand,

(b) decides that the nomination form is invalid,

(c) receives satisfactory proof that the candidate has died, or

(d) receives a written request by the candidate of their withdrawal from candidacy.

14.2 The returning officer is entitled to decide that a nomination form is invalid only on one of the following grounds:

(a) that the paper is not received on or before the final time and date for return of nomination forms, as specified in the notice of the election,

(b) that the paper does not contain the candidate's particulars, as required by rule 10;

(c) that the paper does not contain a declaration of the interests of the candidate, as required by rule 11,

(d) that the paper does not include a declaration of eligibility as required by rule 12, or

(e) that the paper is not signed and dated by the candidate, if required by rule 13.

14.3 The returning officer is to examine each nomination form as soon as is practicable

after he or she has received it, and decide whether the candidate has been validly nominated.

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

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

15. Publication of statement of candidates

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

15.2 The statement must show:

(a) the name, contact address (which shall be the candidate's postal address), and constituency or class within a constituency of each candidate standing, and

(b) the declared interests of each candidate standing,

as given in their nomination form.

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

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

16. Inspection of statement of nominated candidates and nomination forms

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

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

17. Withdrawal of candidates

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

18. Method of election

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

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

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

(a) the candidates who remain validly nominated are to be declared elected in accordance with Part 7 of these rules, and

(b) the returning officer is to order a new election to fill any vacancy which remains unfilled, on a day appointed by him or her in consultation with the corporation.

19. Poll to be taken by ballot

19.1 The votes at the poll must be given by secret ballot.

19.2 The votes are to be counted and the result of the poll determined in accordance with Part 6 of these rules.

19.3 The corporation may decide that voters within a constituency or class within a constituency, may, subject to rule 19.4, cast their votes at the poll using such different methods of polling in any combination as the corporation may determine.

19.4 The corporation may decide that voters within a constituency or class within a constituency for whom an e-mail address is included in the list of eligible voters may only cast their votes at the poll using an e-voting method of polling.

19.5 Before the corporation decides, in accordance with rule 19.3 that one or more e-voting methods of polling will be made available for the purposes of the poll, the corporation must satisfy itself that:

(a) if internet voting is to be a method of polling, the internet voting system to be used for the purpose of the election is:

(i) configured in accordance with these rules; and

(ii) will create an accurate internet voting record in respect of any voter who casts his or her vote using the internet voting system.

(b) if telephone voting to be a method of polling, the telephone voting system to be used for the purpose of the election is:

(i) configured in accordance with these rules; and

(ii) will create an accurate telephone voting record in respect of any voter who casts his or her vote using the telephone voting system.

(c) if text message voting is to be a method of polling, the text message voting system to be used for the purpose of the election is:

(i) configured in accordance with these rules; and

(ii) will create an accurate text voting record in respect of any voter who casts his or her vote using the text message voting system.

20. The ballot paper

20.1 The ballot of each voter (other than a voter who casts his or her ballot by an e-voting method of polling) is to consist of a ballot paper with the persons remaining validly nominated for an election after any withdrawals under these rules, and no others, inserted in the paper.

20.2 Every ballot paper must specify:

(a) the name of the corporation,

(b) the constituency, or class within a constituency, for which the election is being held,

(c) the number of members of the council of governors to be elected from that

constituency, or class within that constituency,

(d) the names and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,

(e) instructions on how to vote by all available methods of polling, including the relevant voter's voter ID number if one or more e-voting methods of polling are available,

(f) if the ballot paper is to be returned by post, the address for its return and the date and time of the close of the poll, and

(g) the contact details of the returning officer.

20.3 Each ballot paper must have a unique identifier.

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

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

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

(a) that the voter is the person:

(i) to whom the ballot paper was addressed, and/or

(ii) to whom the voter ID number contained within the e-voting information was allocated,

(b) that he or she has not marked or returned any other voting information in the election, and

(c) the particulars of his or her qualification to vote as a member of the constituency or class within the constituency for which the election is being held,

("declaration of identity")

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

21.2 The voter must be required to return his or her declaration of identity with his or her ballot.

21.3 The voting information shall caution the voter that if the declaration of identity is not duly returned or is returned without having been made correctly, any vote cast by the voter may be declared invalid.

Action to be taken before the poll

22. List of eligible voters

22.1 The corporation is to provide the returning officer with a list of the members of the constituency or class within a constituency for which the election is being held who are eligible to vote by virtue of rule 27 as soon as is reasonably practicable after the final date for the delivery of notices of withdrawals by candidates from an election.

22.2 The list is to include, for each member:

(a) a postal address; and,

(b) the member's e-mail address, if this has been provided

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

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

23. Notice of poll

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

(a) the name of the corporation,

(b) the constituency, or class within a constituency, for which the election is being held,

(c) the number of members of the council of governors to be elected from that constituency, or class with that constituency,

(d) the names, contact addresses, and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,

(e) that the ballot papers for the election are to be issued and returned, if appropriate, by post,

(f) the methods of polling by which votes may be cast at the election by voters in a constituency or class within a constituency, as determined by the corporation in accordance with rule 19.3,

(g) the address for return of the ballot papers,

(h) the uniform resource locator (url) where, if internet voting is a method of polling, the polling website is located;

(i) the telephone number where, if telephone voting is a method of polling, the telephone voting facility is located,

(j) the telephone number or telephone short code where, if text message voting is a method of polling, the text message voting facility is located,

(k) the date and time of the close of the poll,

(l) the address and final dates for applications for replacement voting information, and

(m) the contact details of the returning officer.

24. Issue of voting information by returning officer

24.1 Subject to rule 24.3, as soon as is reasonably practicable on or after the publication of the notice of the poll, the returning officer is to send the following information by email or 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 (post only);

("postal voting information").

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

(a) instructions on how to vote and how to make a declaration of identity (if required),

(b) the voter's voter ID number,

(c) information about each candidate standing for election, pursuant to rule 64 of these rules, or details of where this information is readily available on the internet or available in such other formats as the Returning Officer thinks appropriate, (d) contact details of the returning officer,

("e-voting information").

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

(a) only be sent postal voting information; or

(b) only be sent e-voting information; or

(c) be sent both postal voting information and e-voting information;

for the purposes of the poll.

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

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

25. Ballot paper envelope and covering envelope

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

25.2 The covering envelope is to have:

(a) the address for return of the ballot paper printed on it, and

(b) pre-paid postage for return to that address.

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

(a) the completed ID declaration form if required, and

(b) the ballot paper envelope, with the ballot paper sealed inside it.

26. E-voting systems

26.1 If internet voting is a method of polling for the relevant election then the returning

officer must provide a website for the purpose of voting over the internet (in these rules referred to as "the polling website").

26.2 If telephone voting is a method of polling for the relevant election then the returning officer must provide an automated telephone system for the purpose of voting by the use of a touch-tone telephone (in these rules referred to as “the telephone voting facility”).

26.3 If text message voting is a method of polling for the relevant election then the returning officer must provide an automated text messaging system for the purpose of voting by text message (in these rules referred to as “the text message voting facility”).

26.4 The returning officer shall ensure that the polling website and internet voting system provided will:

(a) require a voter to:

(i) enter his or her voter ID number; and

(ii) where the election is for a public or patient constituency, make a declaration of identity;

in order to be able to cast his or her vote;

(b) specify:

(i) the name of the corporation,

(ii) the constituency, or class within a constituency, for which the election is being held,

(iii) the number of members of the council of governors to be elected from that constituency, or class within that constituency,

(iv) the names and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,

(v) instructions on how to vote and how to make a declaration of identity,

(vi) the date and time of the close of the poll, and

(vii) the contact details of the returning officer;

(c) prevent a voter from voting for more candidates than he or she is entitled to at the election;

(d) create a record ("internet voting record") that is stored in the internet voting system in respect of each vote cast by a voter using the internet that comprises of-

(i) the voter’s voter ID number;

(ii) the voter’s declaration of identity (where required);

(iii) the candidate or candidates for whom the voter has voted; and

(iv) the date and time of the voter’s vote,

(e) if the voter’s vote has been duly cast and recorded, provide the voter with confirmation of this; and

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

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

(a) require a voter to

(i) enter his or her voter ID number in order to be able to cast his or her vote; and

(ii) where the election is for a public or patient constituency, make a declaration of identity;

(b) specify:

(i) the name of the corporation,

(ii) the constituency, or class within a constituency, for which the election is being held,

(iii) the number of members of the council of governors to be elected from that constituency, or class within that constituency,

(iv) instructions on how to vote and how to make a declaration of identity,

(v) the date and time of the close of the poll, and

(vi) the contact details of the returning officer;

(c) prevent a voter from voting for more candidates than he or she is entitled to at the election;

(d) create a record ("telephone voting record") that is stored in the telephone voting system in respect of each vote cast by a voter using the telephone that comprises of:

(i) the voter's voter ID number;

(ii) the voter's declaration of identity (where required);

(iii) the candidate or candidates for whom the voter has voted; and

(iv) the date and time of the voter's vote

(e) if the voter's vote has been duly cast and recorded, provide the voter with confirmation of this;

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

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

(a) require a voter to:

(i) provide his or her voter ID number; and

(ii) where the election is for a public or patient constituency, make a declaration of identity;

in order to be able to cast his or her vote;

(b) prevent a voter from voting for more candidates than he or she is entitled to at the election;

(d) create a record ("text voting record") that is stored in the text messaging voting system in respect of each vote cast by a voter by text message that comprises of:

(i) the voter's voter ID number;

(ii) the voter's declaration of identity (where required);

(ii) the candidate or candidates for whom the voter has voted; and

(iii) the date and time of the voter's vote

(e) if the voter's vote has been duly cast and recorded, provide the voter with confirmation of this;

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

The poll

27. Eligibility to vote

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

28. Voting by persons who require assistance

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

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

29. Spoilt ballot papers and spoilt text message votes

29.1 If a voter has dealt with his or her ballot paper in such a manner that it cannot be accepted as a ballot paper (referred to as a "spoilt ballot paper"), that voter may apply to the returning officer for a replacement ballot paper.

29.2 On receiving an application, the returning officer is to obtain the details of the unique identifier on the spoilt ballot paper, if he or she can obtain it.

29.3 The returning officer may not issue a replacement ballot paper for a spoilt ballot paper unless he or she:

(a) is satisfied as to the voter's identity; and

(b) has ensured that the completed ID declaration form, if required, has not been returned.

29.4 After issuing a replacement ballot paper for a spoilt ballot paper, the returning officer shall enter in a list ("the list of spoilt ballot papers"):

(a) the name of the voter, and

(b) the details of the unique identifier of the spoilt ballot paper (if that officer was able to obtain it), and

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

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

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

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

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

(a) the name of the voter, and

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

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

30. Lost voting information

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

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

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

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

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

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

(a) the name of the voter

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

(c) the voter ID number of the voter.

31. Issue of replacement voting information

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

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

(a) the name of the voter,

(b) the unique identifier of any replacement ballot paper issued under this rule;

(c) the voter ID number of the voter.

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

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

Polling by internet, telephone or text

33. Procedure for remote voting by internet

33.1 To cast his or her vote using the internet, a voter will need to gain access to the polling website by keying in the url of the polling website provided in the voting information.

33.2 When prompted to do so, the voter will need to enter his or her voter ID number.

33.3 If the internet voting system authenticates the voter ID number, the system will give the voter access to the polling website for the election in which the voter is eligible to vote.

33.4 To cast his or her vote, the voter will need to key in a mark on the screen opposite the particulars of the candidate or candidates for whom he or she wishes to cast his or her vote.

33.5 The voter will not be able to access the internet voting system for an election once his or her vote at that election has been cast.

34. Voting procedure for remote voting by telephone

34.1 To cast his or her vote by telephone, the voter will need to gain access to the telephone voting facility by calling the designated telephone number provided in the voter information using a telephone with a touch-tone keypad.

34.2 When prompted to do so, the voter will need to enter his or her voter ID number using the keypad.

34.3 If the telephone voting facility authenticates the voter ID number, the voter will be prompted to vote in the election.

34.4 When prompted to do so the voter may then cast his or her vote by keying in the numerical voting code of the candidate or candidates, for whom he or she wishes to vote.

34.5 The voter will not be able to access the telephone voting facility for an election once his or her vote at that election has been cast.

35. Voting procedure for remote voting by text message

35.1 To cast his or her vote by text message the voter will need to gain access to the text message voting facility by sending a text message to the designated telephone number or telephone short code provided in the voter information.

35.2 The text message sent by the voter must contain his or her voter ID number and the numerical voting code for the candidate or candidates, for whom he or she wishes to vote.

35.3 The text message sent by the voter will need to be structured in accordance with the instructions on how to vote contained in the voter information, otherwise the vote will not be cast.

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

36. Receipt of voting documents

36.1 Where the returning officer receives:

(a) a covering envelope, or

(b) any other envelope containing an ID declaration form if required, a ballot paper envelope, or a ballot paper,

before the close of the poll, that officer is to open it as soon as is practicable; and rules 37 and 38 are to apply.

36.2 The returning officer may open any covering envelope or any ballot paper envelope for the purposes of rules 37 and 38, but must make arrangements to ensure that no person obtains or communicates information as to:

(a) the candidate for whom a voter has voted, or

(b) the unique identifier on a ballot paper.

36.3 The returning officer must make arrangements to ensure the safety and security of the ballot papers and other documents.

37. Validity of votes

37.1 A ballot paper shall not be taken to be duly returned unless the returning officer is satisfied that it has been received by the returning officer before the close of the poll, with an ID declaration form if required that has been correctly completed, signed and dated.

37.2 Where the returning officer is satisfied that rule 37.1 has been fulfilled, he or she is to:

(a) put the ID declaration form if required in a separate packet, and

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

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

(a) mark the ballot paper "disqualified",

(b) if there is an ID declaration form accompanying the ballot paper, mark it "disqualified" and attach it to the ballot paper,

(c) record the unique identifier on the ballot paper in a list of disqualified documents (the "list of disqualified documents"); and

(d) place the document or documents in a separate packet.

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

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

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

(a) mark the internet voting record, telephone voting record or text voting record (as applicable) "disqualified",

(b) record the voter ID number on the internet voting record, telephone voting record or text voting record (as applicable) in the list of disqualified documents; and

(c) place the document or documents in a separate packet.

38. Declaration of identity but no ballot paper (public and patient constituency)[1]

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

(a) mark the ID declaration form "disqualified",

(b) record the name of the voter in the list of disqualified documents, indicating that a declaration of identity was received from the voter without a ballot paper, and

(c) place the ID declaration form in a separate packet.

39. De-duplication of votes

39.1 Where different methods of polling are being used in an election, the returning officer shall examine all votes cast to ascertain if a voter ID number has been used more than once to cast a vote in the election.

39.2 If the returning officer ascertains that a voter ID number has been used more than once to cast a vote in the election he or she shall:

(a) only accept as duly returned the first vote received that was cast using the relevant voter ID number; and

(b) mark as "disqualified" all other votes that were cast using the relevant voter ID number

39.3 Where a ballot paper is disqualified under this rule the returning officer shall:

(a) mark the ballot paper "disqualified",

(b) if there is an ID declaration form accompanying the ballot paper, mark it "disqualified" and attach it to the ballot paper,

(c) record the unique identifier and the voter ID number on the ballot paper in the list of disqualified documents;

(d) place the document or documents in a separate packet; and

(e) disregard the ballot paper when counting the votes in accordance with these rules.

39.4 Where an internet voting record, telephone voting record or text voting 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

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

containing:

(a) the disqualified documents, together with the list of disqualified documents inside it,

(b) the ID declaration forms, if required,

(c) the list of spoilt ballot papers and the list of spoilt text message votes,

(d) the list of lost ballot documents,

(e) the list of eligible voters, and

(f) the list of tendered voting information

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

STV41. Interpretation of Part 6

STV41.1 In Part 6 of these rules:

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

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

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

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

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

"*non-transferable vote*" means a ballot document:

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

or

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

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

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

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

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

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

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

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

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

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

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

42. Arrangements for counting of the votes

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

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

(a) the board of directors and the council of governors of the corporation have approved:

(i) the use of such software for the purpose of counting votes in the relevant election, and

(ii) a policy governing the use of such software, and

(b) the corporation and the returning officer are satisfied that the use of such software will produce an accurate result.

43. The count

43.1 The returning officer is to:

(a) count and record the number of:

(iii) ballot papers that have been returned; and

(iv) the number of internet voting records, telephone voting records and/or text voting records that have been created, and

(b) count the votes according to the provisions in this Part of the rules and/or the provisions of any policy approved pursuant to rule 42.2(ii) where vote counting software is being used.

43.2 The returning officer, while counting and recording the number of ballot papers, internet voting records, telephone voting records and/or text voting records and counting the votes, must make arrangements to ensure that no person obtains or communicates information as to the unique identifier on a ballot paper or the voter ID number on an internet voting record, telephone voting record or text voting record.

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

STV44. Rejected ballot papers and rejected text voting records

STV44.1 Any ballot paper:

(a) which does not bear the features that have been incorporated into the other ballot papers to prevent them from being reproduced,

(b) on which the figure "1" standing alone is not placed so as to indicate a first

preference for any candidate,

(c) on which anything is written or marked by which the voter can be identified except the unique identifier, or

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

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

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

STV44.3 Any text voting record:

(a) on which the figure “1” standing alone is not placed so as to indicate a first preference for any candidate,

(b) on which anything is written or marked by which the voter can be identified except the unique identifier, or

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

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

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

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

FPP44. Rejected ballot papers and rejected text voting records

FPP44.1 Any ballot paper:

(a) which does not bear the features that have been incorporated into the other ballot papers to prevent them from being reproduced,

(b) on which votes are given for more candidates than the voter is entitled to vote,

(c) on which anything is written or marked by which the voter can be identified except the unique identifier, or

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

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

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

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

(a) elsewhere than in the proper place,

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

(c) by more than one mark,

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

FPP44.4 The returning officer is to:

(a) endorse the word “rejected” on any ballot paper which under this rule is not to be counted, and

(b) in the case of a ballot paper on which any vote is counted under rules FPP44.2 and FPP 44.3, endorse the words “rejected in part” on the ballot paper and indicate which vote or votes have been counted.

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

(a) does not bear proper features that have been incorporated into the ballot paper,

(b) voting for more candidates than the voter is entitled to,

(c) writing or mark by which voter could be identified, and

(d) unmarked or rejected because of uncertainty,

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

FPP44.6 Any text voting record:

(a) on which votes are given for more candidates than the voter is entitled to vote,

(b) on which anything is written or marked by which the voter can be identified except the voter ID number, or

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

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

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

FPP448 A text voting record on which a vote is marked:

(a) otherwise than by means of a clear mark,

(b) by more than one mark,

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

FPP44.9 The returning officer is to:

(a) endorse the word “rejected” on any text voting record which under this rule is not to be counted, and

(b) in the case of a text voting record on which any vote is counted under rules FPP44.7 and FPP 44.8, endorse the words “rejected in part” on the text voting record and indicate which vote or votes have been counted.

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

(a) voting for more candidates than the voter is entitled to,

(b) writing or mark by which voter could be identified, and

(c) unmarked or rejected because of uncertainty,

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

STV45. First stage

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

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

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

STV46. The quota

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

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

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

STV47. Transfer of votes

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

(a) according to next available preference given on those ballot documents for any continuing candidate, or

(b) where no such preference is given, as the sub-parcel of non-transferable votes.

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

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

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

(a) reduces the value of each vote transferred so that the total value of all such votes does not exceed the surplus, and

(b) is calculated by dividing the surplus of the candidate from whom the votes are being transferred by the total number of the ballot documents on which those votes are given, the calculation being made to two decimal places (ignoring the remainder if any).

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

(a) according to the next available preference given on those ballot documents for any continuing candidate, or

(b) where no such preference is given, as the sub-parcel of non-transferable votes.

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

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

(a) a transfer value calculated as set out in rule STV47.4(b), or

(b) at the value at which that vote was received by the candidate from whom it is now being transferred,

whichever is the less.

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

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

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

(a) less than the difference between the total vote then credited to the continuing candidate with the lowest recorded vote and the vote of the candidate with the next lowest recorded vote, or

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

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

STV48. Supplementary provisions on transfer

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

(a) The surpluses determined in respect of two or more candidates are equal, the transferable ballot documents of the candidate who had the highest recorded vote at the earliest preceding stage at which they had unequal votes shall be transferred first, and

(b) the votes credited to two or more candidates were equal at all stages of the count, the returning officer shall decide between those candidates by lot, and the transferable ballot documents of the candidate on whom the lot falls shall be transferred first.

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

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

(b) add that value to the previous total of votes recorded for each candidate and record the new total,

(c) record as non-transferable votes the difference between the surplus and the total transfer value of the transferred votes and add that difference to the previously recorded total of non-transferable votes, and

(d) compare:

(i) the total number of votes then recorded for all of the candidates, together with the total number of non-transferable votes, with

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

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

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

STV49. Exclusion of candidates

STV49.1 If:

(a) all transferable ballot documents which under the provisions of rule STV47 (including that rule as applied by rule STV49.11) and this rule are required to be transferred, have been transferred, and

(b) subject to rule STV50, one or more vacancies remain to be filled,

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

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

(a) ballot documents on which a next available preference is given, and

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

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

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

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

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

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

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

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

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

(a) record:

(i) the total value of votes, or

(ii) the total transfer value of votes transferred to each candidate,

(b) add that total to the previous total of votes recorded for each candidate and record the new total,

(c) record the value of non-transferable votes and add that value to the previous non-transferable votes total, and

(d) compare:

(i) the total number of votes then recorded for each candidate together with

the total number of non-transferable votes, with

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

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

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

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

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

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

STV50. Filling of last vacancies

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

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

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

STV51. Order of election of candidates

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

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

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

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

FPP51. Equality of votes

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

FPP52. Declaration of result for contested elections

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

(a) declare the candidate or candidates whom more votes have been given than for the other candidates, up to the number of vacancies to be filled on the council of governors from the constituency, or class within a constituency, for which the election is being held to be elected,

(b) give notice of the name of each candidate who he or she has declared elected:

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

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

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

FPP52.2 The returning officer is to make:

(a) the total number of votes given for each candidate (whether elected or not), and

(b) the number of rejected ballot papers under each of the headings in rule FPP44.5,

(c) the number of rejected text voting records under each of the headings in rule FPP44.10,

available on request.

STV52. Declaration of result for contested elections

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

(a) declare the candidates who are deemed to be elected under Part 6 of these rules as elected,

(b) give notice of the name of each candidate who he or she has declared elected –

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

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

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

STV52.2 The returning officer is to make:

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

(b) any transfer of votes,

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

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

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

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

available on request.

53. Declaration of result for uncontested elections

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

(a) declare the candidate or candidates remaining validly nominated to be elected,

(b) give notice of the name of each candidate who he or she has declared elected to the chairman of the corporation, and

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

54. Sealing up of documents relating to the poll

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

(a) the counted ballot papers, internet voting records, telephone voting records and text voting records,

(b) the ballot papers and text voting records endorsed with "rejected in part",

(c) the rejected ballot papers and text voting records, and

(d) the statement of rejected ballot papers and the statement of rejected text voting records,

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

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

(a) the disqualified documents, with the list of disqualified documents inside it,

(b) the list of spoilt ballot papers and the list of spoilt text message votes,

(c) the list of lost ballot documents, and

(d) the list of eligible voters,

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

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

(a) its contents,

(b) the date of the publication of notice of the election,

(c) the name of the corporation to which the election relates, and

(d) the constituency, or class within a constituency, to which the election relates.

55. Delivery of documents

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

56. Forwarding of documents received after close of the poll

56.1 Where:

(a) any voting documents are received by the returning officer after the close of the poll, or

(b) any envelopes addressed to eligible voters are returned as undelivered too late to be resent, or

(c) any applications for replacement voting information are made too late to enable new voting information to be issued,

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

57. Retention and public inspection of documents

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

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

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

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

58.1 The corporation may not allow:

(a) the inspection of, or the opening of any sealed packet containing –

(i) any rejected ballot papers, including ballot papers rejected in part,

(ii) any rejected text voting records, including text voting records rejected in part,

(iii) any disqualified documents, or the list of disqualified documents,

(iv) any counted ballot papers, internet voting records, telephone voting records or text voting records, or

(v) the list of eligible voters, or

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

by any person without the consent of the board of directors of the corporation.

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

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

(a) persons,

(b) time,

(c) place and mode of inspection,

(d) production or opening,

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

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

(a) in giving its consent, and

(b) in making the documents available for inspection

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

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

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

FPP59. Countermand or abandonment of poll on death of candidate

FPP59.1 If at a contested election, proof is given to the returning officer's satisfaction before the result of the election is declared that one of the persons named or to be named as a candidate has died, then the returning officer is to:

(a) countermand notice of the poll, or, if voting information has been issued, direct that the poll be abandoned within that constituency or class, and

(b) order a new election, on a date to be appointed by him or her in consultation with the corporation, within the period of 40 days, computed in accordance with rule 3 of these rules, beginning with the day that the poll was countermanded or abandoned.

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

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

FPP59.4 The returning officer shall not take any step or further step to open envelopes or deal with their contents in accordance with rules 38 and 39, and is to make up separate sealed packets in accordance with rule 40.

FPP59.5 The returning officer is to:

(a) count and record the number of ballot papers, internet voting records, telephone voting records and text voting records that have been received,

(b) seal up the ballot papers, internet voting records, telephone voting records and text voting records into packets, along with the records of the number of ballot papers, internet voting records, telephone voting records and text voting records and

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

FPP59.6 The returning officer is to endorse on each packet a description of:

(a) its contents,

(b) the date of the publication of notice of the election,

(c) the name of the corporation to which the election relates, and

(d) the constituency, or class within a constituency, to which the election relates.

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

STV59. Countermand or abandonment of poll on death of candidate

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

a candidate has died, then the returning officer is to:

(a) publish a notice stating that the candidate has died, and

(b) proceed with the counting of the votes as if that candidate had been excluded from the count so that –

(i) ballot documents which only have a first preference recorded for the candidate that has died, and no preferences for any other candidates, are not to be counted, and

(ii) ballot documents which have preferences recorded for other candidates are to be counted according to the consecutive order of those preferences, passing over preferences marked for the candidate who has died.

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

Election expenses

60. Election expenses

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

61. Expenses and payments by candidates

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

(a) personal expenses,

(b) travelling expenses, and expenses incurred while living away from home, and

(c) expenses for stationery, postage, telephone, internet(or any similar means of communication) and other petty expenses, to a limit of £100.

62. Election expenses incurred by other persons

62.1 No person may:

(a) incur any expenses or make a payment (of whatever nature) for the purposes of a candidate's election, whether on that candidate's behalf or otherwise, or

(b) give a candidate or his or her family any money or property (whether as a gift, donation, loan, or otherwise) to meet or contribute to expenses incurred by or on behalf of the candidate for the purposes of an election.

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

Publicity

63. Publicity about election by the corporation

63.1 The corporation may:

(a) compile and distribute such information about the candidates, and

(b) organise and hold such meetings to enable the candidates to speak and respond to questions,

as it considers necessary.

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

(a) objective, balanced and fair,

(b) equivalent in size and content for all candidates,

(c) compiled and distributed in consultation with all of the candidates standing for election, and

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

candidates.

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

64. Information about candidates for inclusion with voting information

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

64.2 The information must consist of:

(a) a statement submitted by the candidate of no more than 250 words,

(b) if voting by telephone or text message is a method of polling for the election, the numerical voting code allocated by the returning officer to each candidate, for the purpose of recording votes using the telephone voting facility or the text message voting facility ("numerical voting code"), and

(c) a photograph of the candidate.

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

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

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

PART 11: QUESTIONING ELECTIONS AND THE CONSEQUENCE OF IRREGULARITIES

66. Application to question an election

66.1 An application alleging a breach of these rules, including an electoral irregularity under Part 10, may be made to Monitor for the purpose of seeking a referral to the independent election arbitration panel (IEAP).

66.2 An application may only be made once the outcome of the election has been declared by the returning officer.

66.3 An application may only be made to Monitor by:

(a) a person who voted at the election or who claimed to have had the right to vote, or

(b) a candidate, or a person claiming to have had a right to be elected at the election.

66.4 The application must:

(a) describe the alleged breach of the rules or electoral irregularity, and

(b) be in such a form as the independent panel may require.

66.5 The application must be presented in writing within 21 days of the declaration of the result of the election. Monitor will refer the application to the independent election arbitration panel appointed by Monitor.

66.6 If the independent election arbitration panel requests further information from the applicant, then that person must provide it as soon as is reasonably practicable.

66.7 Monitor shall delegate the determination of an application to a person or panel of persons to be nominated for the purpose.

66.8 The determination by the IEAP shall be binding on and shall be given effect by the corporation, the applicant and the members of the constituency (or class within a constituency) including all the candidates for the election to which the application relates.

66.9 The IEAP may prescribe rules of procedure for the determination of an application including costs.

67. Secrecy

67.1 The following persons:

(a) the returning officer,

(b) the returning officer's staff,

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

(i) the name of any member of the corporation who has or has not been given voting information or who has or has not voted,

(ii) the unique identifier on any ballot paper,

(iii) the voter ID number allocated to any voter,

(iv) the candidate(s) for whom any member has voted.

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

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

68. Prohibition of disclosure of vote

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

69. Disqualification

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

(a) a member of the corporation,

(b) an employee of the corporation,

(c) a director of the corporation, or

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

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

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

(a) the delivery of the documents in rule 24, or

(b) the return of the ballot papers,

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

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Part 1 - Interpretation

1. Interpretation – (1) In these rules, unless the context otherwise requires -

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

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

“the regulator” means NHSI and

“the 2006 Act” means the NHS Act 2006

(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 election

2. Timetable - 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 papers 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 - (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.

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

Part 3 – Returning officer

4. Returning officer – (1) Subject to rule 64, the returning officer for an election is to be appointed by the corporation.

(2) Where two or more elections are to be held concurrently, the same returning officer may be appointed for all those elections.

5. Staff – Subject to rule 64, the returning officer may appoint and pay such staff, including such technical advisers, as they consider necessary for the purposes of the election.

6. Expenditure - The corporation is to pay the returning officer –

(a) any expenses incurred by that officer in the exercise of their functions under these rules,

(b) such remuneration and other expenses as the corporation may determine.

7. Duty of co-operation – The corporation is to co-operate with the returning officer in the exercise of their functions under these rules.

Part 4 - Stages Common to Contested and Uncontested Elections

8. Notice of election – The returning officer is to publish a notice of the election stating –

(a) the constituency, or group within a constituency, for which the election is being held,

(b) the number of members of the board of governors to be elected from that constituency, or group 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 papers may be obtained;

(e) the address for return of nomination papers 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, and

(h) the date and time of the close of the poll in the event of a contest.

9. Nomination of candidates – (1) Each candidate must nominate themselves on a single nomination paper.

(2) The returning officer-

(a) is to supply any member of the corporation with a nomination paper, and

(b) is to prepare a nomination paper 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.

10. Candidate's particulars – (1) The nomination paper must state the candidate's -

(a) full name,

(b) contact address in full, and

(c) constituency, or group within a constituency, of which the candidate is a member.

11. Declaration of interests – The nomination paper 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 – The nomination paper must include a declaration made by the candidate–

(a) that they are not prevented from being a member of the board 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 – The nomination paper must be signed and dated by the candidate, 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.

14. Decisions as to the validity of nomination – (1) Where a nomination paper 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 paper 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.

(2) The returning officer is entitled to decide that a nomination paper 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 papers, 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, as required by rule 13.

(3) The returning officer is to examine each nomination paper as soon as is practicable after they have received it, and decide whether the candidate has been validly nominated.

(4) Where the returning officer decides that a nomination is invalid, the returning officer must endorse this on the nomination paper, stating the reasons for their decision.

(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 paper.

15. Publication of statement of candidates – (1) The returning officer is to prepare and publish a statement showing the candidates who are standing for election.

(2) The statement must show –

(a) the name, contact address, and constituency or group within a constituency of each candidate standing, and

(b) the declared interests of each candidate standing,

as given in their nomination paper.

(3) The statement must list the candidates standing for election in alphabetical order by surname.

(4) The returning officer must send a copy of the statement of candidates and copies of the nomination papers to the corporation as soon as is practicable after publishing the statement.

16. Inspection of statement of nominated candidates and nomination papers – (1) The corporation is to make the statements of the candidates and the nomination papers supplied by the returning officer under rule 15(4) available for inspection by members of the public free of charge at all reasonable times.

(2) If a person requests a copy or extract of the statements of candidates or their nomination papers, the corporation is to provide that person with the copy or extract free of charge.

17. Withdrawal of candidates - 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 – (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 board of governors, a poll is to be taken in accordance with Parts 5 and 6 of these rules.

(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 board of governors, those candidates are to be declared elected in accordance with Part 7 of these rules.

(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 board of governors, then –

(a) the candidates who remain validly nominated are to be declared elected in accordance with Part 7 of these rules, and

(b) the returning officer is to order a new election to fill any vacancy which remains unfilled, on a day appointed by him or her in consultation with the corporation.

Part 5 – Contested elections

19. Poll to be taken by ballot – (1) The votes at the poll must be given by secret ballot.

(2) The votes are to be counted and the result of the poll determined in accordance with Part 6 of these rules.

20. The ballot paper – (1) The ballot of each voter 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.

(2) Every ballot paper must specify –

(a) the name of the corporation,

(b) the constituency, or group within a constituency, for which the election is being held,

(c) the number of members of the board of governors to be elected from that constituency, or group 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,

(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.

(3) Each ballot paper must have a unique identifier.

(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) – (1) In respect of an election for a public or patient constituency a declaration of identity must be issued with each ballot paper.

(2) The declaration of identity is to include a declaration –

(a) that the voter is the person to whom the ballot paper was addressed,

(b) that the voter has not marked or returned any other voting paper in the election, and

(c) for a member of the public or patient constituency, of the particulars of that member's qualification to vote as a member of the constituency or class within a constituency for which the election is being held.

(3) The declaration of identity is to include space for –

(a) the name of the voter,

(b) the address of the voter,

(c) the voter's signature, and

(d) the date that the declaration was made by the voter.

(4) The voter must be required to return the declaration of identity together with the ballot paper.

(5) The declaration of identity must caution the voter that, if it is not returned with the ballot paper, or if it is returned without being correctly completed, the voter's ballot paper may be declared invalid.

Action to be taken before the poll

22. List of eligible voters – (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 26 as soon as is reasonably practicable after the final date for the delivery of notices of withdrawals by candidates from an election.

(2) The list is to include, for each member, a mailing address where his or her ballot paper is to be sent.

23. Notice of poll - The returning officer is to publish a notice of the poll stating–

(a) the name of the corporation,

(b) the constituency, or group within a constituency, for which the election is being held,

(c) the number of members of the board of governors to be elected from that constituency, or group with that constituency,

(d) the names, contact addresses, and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,

(e) that the ballot papers for the election are to be issued and returned, if appropriate, by post,

(f) the address for return of the ballot papers, and the date and time of the close of the poll,

(g) the address and final dates for applications for replacement ballot papers, and

(h) the contact details of the returning officer.

24. Issue of voting documents by returning officer – (1) 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 documents to each member of the corporation named in the list of eligible voters–

(a) a ballot paper and ballot paper envelope,

(b) a declaration of identity (if required),

(c) information about each candidate standing for election, pursuant to rule 59 of these rules, and

(d) a covering envelope.

(2) The documents are to be sent to the mailing address for each member, as specified in the list of eligible voters.

25. Ballot paper envelope and covering envelope – (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.

(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.

(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 declaration of identity if required, and

(b) the ballot paper envelope, with the ballot paper sealed inside it.

The poll

26. Eligibility to vote – 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.

27. Voting by persons who require assistance – (1) The returning officer is to put in place arrangements to enable requests for assistance to vote to be made.

(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.

28. Spoilt ballot papers (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 a "spoilt ballot paper"), that voter may apply to the returning officer for a replacement ballot paper.

(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.

(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 declaration of identity, if required, has not been returned.

(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. Lost ballot papers – (1) Where a voter has not received his or her ballot paper by the fourth day before the close of the poll, that voter may apply to the returning officer for a replacement ballot paper.

(2) The returning officer may not issue a replacement ballot paper for a lost ballot paper 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 ballot paper, and

(c) has ensured that the declaration of identity if required has not been returned.

(3) After issuing a replacement ballot paper for a lost ballot paper, the returning officer shall enter in a list ("the list of lost ballot papers") –

(a) the name of the voter, and

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

30. Issue of replacement ballot paper– (1) If a person applies for a replacement ballot paper under rule 28 or 29 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 a replacement ballot paper unless, in addition to the requirements imposed rule 28(3) or 29(2), they are 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.

(2) After issuing a replacement ballot paper under this rule, the returning officer shall enter in a list ("the list of tendered ballot papers") –

(a) the name of the voter, and

(b) the details of the unique identifier of the replacement ballot paper issued under this rule.

31. Declaration of identity for replacement ballot papers (public and patient constituencies) – (1) In respect of an election for a public or patient constituency a declaration of identity must be issued with each replacement ballot paper.

(2) The declaration of identity is to include a declaration –

(a) that the voter has not voted in the election with any ballot paper other than the ballot paper being returned with the declaration, and

(b) of the particulars of that member's qualification to vote as a member of the public or patient constituency, or class within a constituency, for which the election is being held.

(3) The declaration of identity is to include space for –

(a) the name of the voter,

(b) the address of the voter,

(c) the voter's signature, and

(d) the date that the declaration was made by the voter.

(4) The voter must be required to return the declaration of identity together with the ballot paper.

(5) The declaration of identity must caution the voter that if it is not returned with the ballot paper, or if it is returned without being correctly completed, the replacement ballot paper may be declared invalid.

Procedure for receipt of envelopes

32. Receipt of voting documents – (1) Where the returning officer receives a –

(a) covering envelope, or

(b) any other envelope containing a declaration of identity 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 33 and 34 are to apply.

(2) The returning officer may open any ballot paper envelope for the purposes of rules 33 and 34, 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.

(3) The returning officer must make arrangements to ensure the safety and security of the ballot papers and other documents.

33. Validity of ballot paper – (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 a declaration of identity if required that has been correctly completed, signed, and dated.

(2) Where the returning officer is satisfied that paragraph (1) has been fulfilled, he or she is to –

(a) put the declaration of identity if required in a separate packet, and

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

(3) Where the returning officer is not satisfied that paragraph (1) has been fulfilled, he or she is to –

(a) mark the ballot paper "disqualified",

(b) if there is a declaration of identity accompanying the ballot paper, mark it as "disqualified" and attach it the ballot paper,

(c) record the unique identifier on the ballot paper in a list (the "list of disqualified documents"); and

(d) place the document or documents in a separate packet.

34. Declaration of identity but no ballot paper (public and patient constituency) – Where the returning officer receives a declaration of identity if required but no ballot paper, the returning officer is to –

(a) mark the declaration of identity "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 declaration of identity in a separate packet.

35. Sealing of packets – As soon as is possible after the close of the poll and after the completion of the procedure under rules 33 and 34, the returning officer is to seal the packets containing–

(a) the disqualified documents, together with the list of disqualified documents inside it,

(b) the declarations of identity if required,

(c) the list of spoilt ballot papers,

(d) the list of lost ballot papers,

(e) the list of eligible voters, and

(f) the list of tendered ballot papers.

Part 6 - Counting the votes

stv36. Interpretation of Part 6 – In Part 6 of these rules –

"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 paper –

(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 stv44(4) below,

"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 stv41 below,

“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 papers 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 paper” means a ballot paper 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 paper on which a second or subsequent preference is recorded for the candidate to whom that paper has been transferred, and

“transfer value” means the value of a transferred vote calculated in accordance with paragraph (4) or (7) of rule stv42 below.

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

38. The count – (1) The returning officer is to –

(a) count and record the number of ballot papers that have been returned, and

(b) count the votes according to the provisions in this Part of the rules.

(2) The returning officer, while counting and recording the number of ballot papers 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.

(3) The returning officer is to proceed continuously with counting the votes as far as is practicable.

Stv39. Rejected ballot papers – (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.

(2) The returning officer is to endorse the word “rejected” on any ballot paper which under this rule is not to be counted.

(3) 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 paragraph (1).

fpp39. Rejected ballot papers – (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 paragraphs (2) and (3) below, be rejected and not counted.

(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.

(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 they can be identified by it.

(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 paragraph (2) or (3) above, endorse the words “rejected in part” on the ballot paper and indicate which vote or votes have been counted.

(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.

stv40. First stage – (1) The returning officer is to sort the ballot papers into parcels according to the candidates for whom the first preference votes are given.

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

(3) The returning officer is to also ascertain and record the number of valid ballot papers.

stv41. The quota – (1) The returning officer is to divide the number of valid ballot papers by a number exceeding by one the number of members to be elected.

(2) The result, increased by one, of the division under paragraph (1) above (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”).

(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 paragraphs (1) to (3) of rule stv44 has been complied with.

stv42. Transfer of votes – (1) Where the number of first preference votes for any candidate exceeds the quota, the returning officer is to sort all the ballot papers 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 papers for any continuing candidate, or

(b) where no such preference is given, as the sub-parcel of non-transferable votes.

(2) The returning officer is to count the number of ballot papers in each parcel referred to in paragraph (1) above.

(3) The returning officer is, in accordance with this rule and rule stv43 below, to transfer each sub-parcel of ballot papers referred to in paragraph (1)(a) to the candidate for whom the next available preference is given on those papers.

(4) The vote on each ballot paper transferred under paragraph (3) above 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 papers on which those votes are given, the calculation being made to two decimal places (ignoring the remainder if any).

(5) Where at the end of any stage of the count involving the transfer of ballot papers, the number of votes for any candidate exceeds the quota, the returning officer is to sort the ballot papers 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 papers for any continuing candidate, or

(b) where no such preference is given, as the sub-parcel of non-transferable votes.

(6) The returning officer is, in accordance with this rule and rule stv43 below, to transfer each sub-parcel of ballot papers referred to in paragraph (5)(a) to the candidate for whom the next available preference is given on those papers.

(7) The vote on each ballot paper transferred under paragraph (6) shall be at –

(a) a transfer value calculated as set out in paragraph (4)(b) above, 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.

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

(9) Subject to paragraph (10), the returning officer shall proceed to transfer transferable papers until no candidate who is deemed to be elected has a surplus or all the vacancies have been filled.

(10) Transferable papers 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.

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

stv43. Supplementary provisions on transfer – (1) If, at any stage of the count, two or more candidates have surpluses, the transferable papers 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 papers 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 papers of the candidate on whom the lot falls shall be transferred first.

(2) The returning officer shall, on each transfer of transferable papers under rule stv42 above –

(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.

(3) All ballot papers transferred under rule stv42 or stv44 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 paper or, as the case may be, all the papers in that sub-parcel.

(4) Where a ballot paper is so marked that it is unclear to the returning officer at any stage of the count under rule stv42 or stv44 for which candidate the next preference is recorded, the returning officer shall treat any vote on that ballot paper as a non-transferable vote; and votes on a ballot paper 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.

stv44. Exclusion of candidates – (1) If—

(a) all transferable papers which under the provisions of rule stv42 above (including that rule as applied by paragraph (11) below) and this rule are required to be transferred, have been transferred, and

(b) subject to rule stv45 below, 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 paragraph (12) below applies, the candidates with the then lowest votes).

(2) The returning officer shall sort all the ballot papers on which first preference votes are given for the candidate or candidates excluded under paragraph (1) above into two sub-parcels so that they are grouped as—

(a) ballot papers on which a next available preference is given, and

(b) ballot papers on which no such preference is given (thereby including ballot papers on which preferences are given only for candidates who are deemed to be elected or are excluded).

(3) The returning officer shall, in accordance with this rule and rule stv43 above, transfer each sub-parcel of ballot papers referred to in paragraph (2)(a) above to the candidate for whom the next available preference is given on those papers.

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

(5) If, subject to rule stv45 below, one or more vacancies still remain to be filled, the returning officer shall then sort the transferable papers, if any, which had been transferred to any candidate excluded under paragraph (1) above into sub-parcels according to their transfer value.

(6) The returning officer shall transfer those papers in the sub-parcel of transferable papers with the highest transfer value to the continuing candidates in

accordance with the next available preferences given on those papers (thereby passing over candidates who are deemed to be elected or are excluded).

(7) The vote on each transferable paper transferred under paragraph (6) above shall be at the value at which that vote was received by the candidate excluded under paragraph (1) above.

(8) Any papers on which no next available preferences have been expressed shall be set aside as non-transferable votes.

(9) After the returning officer has completed the transfer of the ballot papers in the sub-parcel of ballot papers with the highest transfer value they shall proceed to transfer in the same way the sub-parcel of ballot papers with the next highest value and so on until they have dealt with each sub-parcel of a candidate excluded under paragraph (1) above.

(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.

(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 paragraphs (5) to (10) of rule stv42 and rule stv43.

(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.

(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.

stv45. Filling of last vacancies – (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.

(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.

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

stv46. Order of election of candidates – (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 stv42(10) above.

(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 they obtained the quota.

(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.

(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.

fpp46. Equality of votes – Where, after the counting of votes is completed, an equality of votes is found to exist between any candidates and the addition of a vote would entitle any of those candidates to be declared elected, the returning officer is to decide between those candidates by a lot, and proceed as if the candidate on whom the lot falls had received an additional vote.

Part 7 – Final proceedings in contested and uncontested elections

fpp47. Declaration of result for contested elections – (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 board 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 they have declared elected–

(i) where the election is held under a proposed constitution pursuant to powers conferred on the York & Scarborough Teaching Hospitals NHSFT by Section 33(4) of the 2006 Act, to the Chair of the NHS Trust, or

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

(c) give public notice of the name of each candidate whom they have declared elected.

(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 fpp39(5),

available on request.

stv47. Declaration of result for contested elections – (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 they have declared elected –

(i) where the election is held under a proposed constitution pursuant to powers conferred on the York & Scarborough Teaching Hospitals NHSFT by Section 33(4) of the 2006 Act, to the Chair of the NHS Trust, or

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

(c) give public notice of the name of each candidate who they have declared elected.

(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 stv39(1),

available on request.

48. Declaration of result for uncontested elections – 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 Chair 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

49. Sealing up of documents relating to the poll – (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,

(b) the ballot papers endorsed with “rejected in part”,

(c) the rejected ballot papers, and

(d) the statement of rejected ballot papers.

(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 declarations of identity,

(c) the list of spoilt ballot papers,

(d) the list of lost ballot papers,

(e) the list of eligible voters, and

(f) the list of tendered ballot papers.

(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.

50. Delivery of documents – Once the documents relating to the poll have been sealed up and endorsed pursuant to rule 49, the returning officer is to forward them to the chair of the corporation.

51. Forwarding of documents received after close of the poll – 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 ballot papers are made too late to enable new ballot papers to be issued,

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

52. Retention and public inspection of documents – (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 regulator, cause them to be destroyed.

(2) With the exception of the documents listed in rule 53(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.

(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.

53. Application for inspection of certain documents relating to an election – (1) The corporation may not allow the inspection of, or the opening of any sealed packet containing –

(a) any rejected ballot papers, including ballot papers rejected in part,

(b) any disqualified documents, or the list of disqualified documents,

(c) any counted ballot papers,

(d) any declarations of identity, or

(e) the list of eligible voters,

by any person without the consent of the Regulator.

(2) A person may apply to the Regulator to inspect any of the documents listed in (1), and the Regulator 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.

(3) The Regulator'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.

(4) On an application to inspect any of the documents listed in paragraph (1), –

(a) in giving its consent, the regulator, and

(b) and making the documents available for inspection, the corporation,

must 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 the regulator has declared that the vote was invalid.

Part 9 – Death of a candidate during a contested election

fpp54. Countermand or abandonment of poll on death of candidate – (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 ballot papers have been issued, direct that the poll be abandoned within that constituency or group, and

(b) order a new election, on a date to be appointed by them 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.

(2) Where a new election is ordered under paragraph (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 group.

(3) Where a poll is abandoned under paragraph (1)(a), paragraphs (4) to (7) are to apply.

(4) The returning officer shall not take any step or further step to open envelopes or deal with their contents in accordance with rules 33 and 34, and is to make up separate sealed packets in accordance with rule 35.

(5) The returning officer is to –

(a) count and record the number of ballot papers that have been received, and

(b) seal up the ballot papers into packets, along with the records of the number of ballot papers.

(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.

(7) Once the documents relating to the poll have been sealed up and endorsed pursuant to paragraphs (4) to (6), the returning officer is to deliver them to the Chair of the corporation, and rules 52 and 53 are to apply.

stv54. Countermand or abandonment of poll on death of candidate – (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 papers 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 papers 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.

(2) The ballot papers which have preferences recorded for the candidate who has died are to be sealed with the other counted ballot papers pursuant to rule 49(1)(a).

Part 10 – Election expenses and publicity

Election expenses

55. Election expenses – 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 to the regulator under Part 11 of these rules.

56 Expenses and payments by candidates - 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].

57. Election expenses incurred by other persons – (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 their 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.

(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 58 and 59.

Publicity

58. Publicity about election by the corporation – (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.

(2) Any information provided by the corporation about the candidates, including information compiled by the corporation under rule 59, 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.

(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.

59. Information about candidates for inclusion with voting documents - (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.

(2) The information must consist of –

(a) a statement submitted by the candidate of no more than [250] words, [and]

[(b) a photograph of the candidate.]

60. Meaning of "for the purposes of an election" - (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.

(2) The provision by any individual of their own services voluntarily, on their 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

61. Application to question an election – (1) An application alleging a breach of these rules, including an electoral irregularity under Part 10, may be made to the regulator.

(2) An application may only be made once the outcome of the election has been declared by the returning officer.

(3) An application may only be made to the Regulator 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.

(4) The application must –

(a) describe the alleged breach of the rules or electoral irregularity, and

(b) be in such a form as the Regulator may require.

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

(6) If the Regulator requests further information from the applicant, then that person must provide it as soon as is reasonably practicable.

a. The Regulator shall delegate the determination of an application to a person or persons to be nominated for the purpose of the Regulator.

b. The determination by the person or persons nominated in accordance with Rule 61(7) shall be binding on and shall be given effect by the corporation, the applicant and the members of the constituency (or group within a constituency) including all the candidates for the election to which the application relates.

c. The Regulator may prescribe rules of procedure for the determination of an application including costs.

Part 12 – Miscellaneous

62. Secrecy – (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 a ballot paper or who has or has not voted,

(ii) the unique identifier on any ballot paper,

(iii) the candidate(s) for whom any member has voted.

(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.

(3) The returning officer is to make such arrangements as they think fit to ensure that the individuals who are affected by this provision are aware of the duties it imposes.

63. Prohibition of disclosure of vote – 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 they have voted.

64. Disqualification – 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.

65. Delay in postal service through industrial action or unforeseen event – 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 and declarations of identity,

the returning officer may extend the time between the publication of the notice of the poll and the close of the poll, with the agreement of the Regulator.

Annex 3

Council of Governors: Transitional Provisions

1. Elections

1.1 The Trust wishes to eventually be able to hold Governor elections every year. To that end, the terms of service of the Public and Staff Governors will be as set out in the table below.

Constituency				**Elected seats**	**Election 2022**			
Public Constituency				Total governor (23)	3 year term ()			
York				*5*				
Selby				*2*				
Hambleton				*1*				
Ryedale				*3*				
East Coast				*5*				
Staff Constituency comprising:				*7*				
York Staff Group				*3*				
Scarborough Staff Group				*3*				
Community Staff Group				*1*				

Annex 4

STANDING ORDERS FOR THE PRACTICE AND PROCEDURE

OF THE COUNCIL OF GOVERNORS

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Introduction

Statutory framework

The York & Scarborough Teaching Hospitals NHS Foundation Trust (the Trust) is a public benefit corporation authorised by the Sector Regulator (the Independent Regulator of NHS Foundation Trusts) with effect from 1 April 2005.

The statutory functions conferred on the Trust are set out in the National Health Service Act 2006 and in the Trust's Terms of Authorisation set by the Sector Regulator.

As a public benefit corporation the Trust has specific powers to contract in its own name and to act as a corporate trustee. In the latter role it is accountable to the Charity Commission for those funds deemed to be charitable.

NHS Framework

The Constitution requires the Council of Governors to adopt Standing Orders for its practice and procedures.

In these Standing Orders, the provisions relating to interpretation in the Constitution shall apply and the words and expressions defined in the Constitution shall have the same meaning and in addition:

Definitions

"CLEAR DAYS"	shall mean days including Saturday and Sundays and any English bank holiday.
"CONSTITUTION"	shall mean the Trust's Constitution as approved by, and from time to time varied by agreement with the Sector Regulator.
"MOTION"	shall mean a formal proposition to be discussed and voted on during the course of a meeting.
"OFFICER"	shall mean an employee of the Trust.

SECTION A: COUNCIL OF GOVERNORS

1 **Roles and responsibilities of Governors** – The role and responsibilities of the Council of Governors are set out in paragraph 8.15 of and elsewhere in the Constitution. The Council of Governors shall support the NHS core principles.

2 **Composition of the Council of Governors** – The composition of the Council of Governors is set out in paragraph 8.2 of the Constitution.

3 **Appointment of the Chair and Non-executive Directors** – The Chair and Non-executive Directors are appointed by the Council of Governors in accordance with paragraph 9.3 of the Constitution and the process set out in these Standing Orders at section D (Standing Orders 62 and 63) and at Appendix A.

4 **Terms of office of the Chair and Non-executive Directors** – The provisions governing the respective terms of office of the Chair and Non-executive Directors are contained in Appendix A of these Standing Orders.

5 **Appointment of the Vice Chair** – The Council of Governors and Board of Directors shall jointly appoint a Non–executive Director as the Vice Chair of the Council of Governors and the Board of Directors.

6 **The Vice Chair of** the **Trust shall preside for the Chair of the Trust** in the following circumstances:

a) in the absence of the Chair on those occasions when the Council of Governors is considering matters relating to the Chair and it would be inappropriate for the Chair to be present or the Chair is otherwise absent;

b) when the remuneration, allowance and other terms and conditions of the Chair are being considered;

c) when the appointment of the Chair is being considered, should the current Chair be a candidate for reappointment or otherwise.

d) when the Council of Governors is reviewing the appraisal of the Chair and/or

e) on those occasions when the Chair declares a pecuniary interest that prevents them from taking part in the consideration or discussion of a matter before the Council of Governors or Board of Directors.

7 **Appointment of the Senior Independent Director** – The Board of Directors in consultation with the Council of Governors will appoint one of the independent Non-executive Directors as the Senior Independent Director for the Trust.

8 The Senior Independent Director shall be available to Directors and Governors if they have concerns, which contact through the normal channels of Chair, Chief Executive or Secretary has failed to resolve or for which such contact is inappropriate.

SECTION B: CONDUCT OF MEETINGS

Admission of the public and the press

9 The public and representatives of the press shall be afforded facilities to attend all formal meetings of the Council of Governors but shall be required to withdraw upon the Council of Governors resolving as follows:

> *"That representatives of the press and other members of the public be excluded from the remainder of this meeting having regard to [the confidential nature of the business to be transacted] [the direction of the [Vice] Chair]."*

10 Nothing in these Standing Orders shall require the Council of Governors to allow members of the public or representatives of the press to record proceedings in any manner whatsoever, other than in writing, or to make any oral report of proceedings as they take place without prior agreement of the Council of Governors.

Calling and notice of meetings

11 Meetings of the Council of Governors shall be at such times as the Council of Governors may determine and at such places as they may from time to time appoint.

12 Save in the case of emergencies or the need to conduct urgent business, the Secretary shall give at least seven **(7)** clear days written notice of the date and place of every meeting of the Council of Governors to all Governors. Notice will also be published on the Trust's website www.yorkhospitals.nhs.uk and the Trust's regular newsletter to Trust members. The notice of the meeting will be signed by the Chair or Secretary.

13 The names of Governors present at the meetings shall be recorded.

14 The Chair may call a meeting of the Council of Governors at any time.

15 If the Chair refuses to call a meeting after a requisition for that purpose signed by at least eight Governors which has been presented to them specifying the business to be carried out, the Secretary shall call a meeting on at least fourteen **(14)** clear days but not more than twenty-eight **(28)** days notice to discuss the specified business. If the Secretary fails to call such a meeting, the eight (or more) Governors shall call such a meeting.

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

17 Following notice of the meeting as per Standing Order 12, an agenda for the meeting, specifying the business proposed to be transacted at it and signed by the Chair or by the Secretary, shall be delivered to every Governor, or sent by post to the usual place of residence of such persons, so as to be available to them at least seven **(7)** clear days before the meeting.

18 The agendas will include all supporting papers available at the time of posting. Further supporting papers will be received no later than three **(3)** clear days before the meeting.

19 Lack of service of the notice on any one person above shall not affect the validity of the meeting, but failure to serve such a notice on more than half the Governors will invalidate the meeting. A notice shall be presumed to have been served on the second clear day after it was posted.

Quorum

20 No business shall be transacted at a meeting of the Council of Governors unless at least nine **(9)** Governors are present of which at least five **(5)** must be elected Governors.

Setting the agenda

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

22 A Governor desiring a matter to be included on an agenda shall make the request in writing to the Chair at least fourteen **(14)** clear days before the meeting. Requests made less than fourteen **(14)** clear days before a meeting may be included on the agenda at the discretion of the Chair or the Secretary.

Person Presiding Chairship of meetings

26 At any meeting of the Council of Governors, the Chair of the Trust, if present, shall preside. If the Chair is disqualified from participating because of a declared conflict of interest, the Vice Chair of the Council of Governors, if present, shall preside. If the Chair and the Vice Chair of the Council of Governors are both disqualified from participating because of a declared conflict of interest, because the matter under discussion relates to them or are otherwise absent, the Lead Governor shall preside. If the Chair, Vice Chair and the Lead Governor are all disqualified from participating because of a declared conflict of interest or are otherwise absent, a Governor from the Public Constituency will be nominated to preside and exercise the casting vote, the nomination to be approved by a majority vote of those present at the meeting.

Notices of motion

27 A Governor desiring to move or amend a motion shall send a written notice thereof to the Chair at least twenty one **(21)** clear days before the meeting, who shall insert in the agenda for the meeting all notices so received subject to the notice being permissible under the appropriate regulations. This Standing Order shall not prevent any motion being moved during the meeting, without notice, on any business mentioned on the agenda.

Withdrawal of motion or amendments

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

Motion to rescind a resolution

29 Notice of a motion to amend or rescind any resolution (or general substance of any resolution) which has been passed within the preceding six calendar months shall bear the signature of the Governors who give it and also the signature of four other Governors, of whom at least two shall be Public Governors. When any such motion has been disposed of by the Trust, no-one other than the Chair shall propose a motion to the same effect within six months, although the Chair may do so if they consider it appropriate.

Motions

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

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

- an amendment to the motion.;
- the adjournment of the discussion or the meeting
- that the meeting proceed to the next business(*);
- the appointment of an *ad hoc* committee to deal with a specific item of business; and/or
- that the motion be put(*).

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

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

Chair's ruling

33 The decision of the Chair of the meeting on the question of order, relevance and regularity and related matters shall be final. The Chair, advised by the Secretary, shall be the final authority in the interpretation of these Standing Orders.

Voting

34 If, in the opinion of the Chair or on the advice of the Secretary or requested by five or more Governors, a vote shall be required on a question at a meeting, a vote shall be taken. The results of such a vote will be determined by a majority vote of the Governors present. In the case of an equality of votes, the person presiding shall have a second or casting vote.

35 All questions put to the vote shall, at the discretion of the Chair, be determined by oral expression or by a show of hands. A paper ballot may also be used if a majority of the Governors present so request, or Secretary deems it advisable or necessary.

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

37 If a Governor so requests their vote shall be recorded by name upon any vote other than by paper ballot, and it shall be recorded in the minutes of the proceedings of the meeting.

Minutes

38 The minutes of the proceedings of a meeting shall be drawn up and appropriately record the decisions and action points arising from the meeting. Draft minutes should be distributed to the Council of Governors fourteen **(14)** clear days after the meeting.

39 The minutes of the meeting shall be included in the papers for the next meeting as an early agenda item. No discussion shall take place upon the minutes, except upon their accuracy, or where the Chair considers discussion appropriate. Any amendments to the minutes shall be agreed and recorded.

40 Once approved by the full Council of Governors, the minutes of the meeting shall be signed by the Chair (or person who presided at the meeting) and retained in the Trust as a permanent record and the final minutes shall be added to the Trust's website for public inspection.

Record of attendance

41 The attendance of the Governors at meetings of the Council of Governors will be recorded in the minutes and reported in the annual report. Governors are required to attend 80% of the Council of Governor meeting held during the year. Non-attendance of a Governor at Council of Governor meetings will be brought to the attention of the Chair who will review the reasons for non-attendance and consider any appropriate action. The Chair will in a private session of the Council of Governors

discuss the absence of the Governor and proposed action. The Council of Governors will be asked to agree the action to be taken. The absent Governor will be asked to leave the room during the discussion.

Adjournment of meetings

42 The Council of Governors may, by resolution, adjourn any meeting to some other specified date, place and time and such adjourned meeting shall be deemed a continuation of the original meeting. No business shall be transacted at any adjourned meeting which was not included in the agenda of the adjourned meeting.

43 When any meeting is adjourned to a date more than fourteen (14) clear days' later, notice of the adjournment shall be sent to each Governor specifying the business to be transacted.

SECTION C: COMMITTEES

Appointment of Committees

44 Subject to Standing Order 48 below and such directions as may be given by Independent Regulator, the Council of Governors may and, if directed, shall appoint committees and groups of the Council of Governors, consisting wholly or partly of Governors. In all cases, each committee shall have a majority of Public Governors.

45 The Council of Governors will form a Nominations/ Remuneration Committee, a Membership Development Group, a Constitution Review Group and an Out of Hospital Care Group as standing committees. Each of these committees will have terms of reference approved by the whole Council of Governors. The committees will be able to formulate recommendations, which must be approved by the full Council of Governors at a meeting held in public. Such terms of reference shall have effect as if incorporated into these Standing Orders. These Standing Orders shall not apply to joint committees which Governors attend e.g. Transport Committee. These committees are managed by the Executive Directors.

46 A committee appointed under Standing Order 44 may, subject to such directions as may be given by Independent Regulator or the Council of Governors, appoint sub-committees or working groups consisting wholly or partly of members of the particular committee.

47 These Standing Orders shall apply with appropriate alteration to meetings of any committees established by the Council of Governors. The provisions in this section which apply to committees of the Council of Governors shall also be taken to apply to sub-committees of those committees.

48 *Ad hoc* committees of the Council of Governors shall have such terms of reference and powers and be subject to such conditions (such as to reporting back to the Council of Governors), as the Council of Governors shall decide. Such terms of reference shall have effect as if incorporated into these Standing Orders.

49 Committees may not delegate their powers to a sub-committee unless expressly authorised by the Council of Governors.

50 The Council of Governors has the authority to form sub-committees and groups in the execution of their business.

51 The Council of Governors shall approve the proposed terms of reference of the committee which it has formally constituted. Governors will be invited to nominate themselves for membership of the committees or groups. Where the Council of Governors determines that persons who are neither governors, nor directors or officers~~,~~ shall be appointed to a committee, the terms of such an appointment shall be determined by the Council of Governors subject to the payment of travelling and other expenses being in accordance with such sum as may be determined by the Board of Directors or Independent Regulator.

52 Governors who nominate themselves to be a member of a sub-committee will provide their name to the Secretary within the prescribed timescale. On the occasion of over subscription to a committee or group the Secretary will prepare voting papers for the members of Council of Governors to vote the membership of the committee or group. Once the committee or group membership is established it is for the committee or group to agree the Chairship and the regularity of meetings.

53 Where the Council of Governors is required to appoint persons to a committee or to undertake statutory functions as required by the Sector Regulator, and where such appointments are to operate independently of the Council of Governors or the Board of Directors, such appointment shall be made in accordance with any regulations laid down by the Chief Executive or their nominated officer or any directions or guidance issued by the Sector Regulator from time to time.

54 An appointed Governor will be eligible to serve on a committee or group for the duration of their current term of office. At the expiry of that term, the appointed Governor's membership of the committee or group will automatically expire and the Council of Governors will seek nominations for membership of that committee or group from among the appointed Governors. The appointed Governor who has already served on the committee or group will, if re-appointed to the Council of Governors by their sponsoring organisation, be eligible to be nominated to serve on the committee or group again, coterminous with their further term of office.

55 An elected Governor will be eligible to serve on a sub-committee for the duration of their current term of office. At the expiry of that term, the elected Governor's membership of the Committee will automatically expire and the Council of Governors will seek nominations for membership of that committee from among the elected Governors. The elected Governor who has already served on the committee will, if re-elected to the Council of Governors, be eligible to be nominated to serve on the committee again, coterminous with their further term of office.

56 If an elected or appointed Governor is unable to complete his appointed term of membership of a committee or group (i.e. as a result of illness, planned extended absence, etc), the committee or group may, at its discretion, appoint another elected or appointed Governor in their place. Where a sponsoring organisation for an appointed Governor has been invited by the Council of Governors to appoint a temporary replacement for the absent appointed Governor to membership of the Council of Governors, that person will take the absent Governor's place on any committees or groups to which they have been appointed for the duration of the appointed Governor's absence.

57 Where the role of Chair for a committee or group has been left vacant due to term of office ending for the previous incumbent, the committee or group will, as its first agenda item, appoint the Chair.

Confidentiality

58 A member of a committee or group shall not disclose a matter dealt with by, or brought before, the committee or group without its permission until the committee or group has reported to the Council of Governors or has otherwise concluded that matter. A Governor on a committee or group may pass on to other governors a synopsis of points which are relevant but shall first obtain permission from the Chair of the committee or group.

59 A Governor or a member of a committee or group shall not disclose any matter reported to the Council of Governors or otherwise dealt with by the committee or group, notwithstanding that the matter has been reported or action has been concluded, if the Council of Governors or committee or group shall resolve that it is confidential.

60 In relation to patient confidentiality, the provisions at Standing Orders 58 and 59 above for disclosure of information by Governors or members of committees established by the Council of Governors shall not apply, and such information shall not be disclosed under any circumstances.

SECTION D: APPOINTMENT OF THE CHAIR AND NON-EXECUTIVE DIRECTORS, VICE CHAIR AND LEAD GOVERNOR

61 An *ad hoc* sub-committee of the Nominations/Remuneration Committee will be formed on each occasion that it becomes necessary to appoint the Chair or a Non-executive Director. This sub-committee will, in each case, be known as the Appointment Committee. Whilst its membership will generally be drawn from the Nominations/Remuneration Committee, other Governors may also be members. The membership of the Appointment Committee will be decided by the Nominations/Remuneration Committee be subject to the approval of a majority of the Council of Governors present and able to vote.

62 A Governor should declare to the Appointment Committee if a candidate is known to them.

63 The arrangements for the functioning of Nominations/Remuneration Committee and the Appointment Committee are set out in Appendix A attached to these Standing Orders.

Appointment of the Lead Governor

64 The Council of Governors will appoint a Lead Governor from the Public Governors. The appointment shall be for the Governor's term of office and subject to annual review. The review of the Lead Governor is undertaken by the Chair with support and contribution from the Council of Governors. Removal of the Lead Governor would be through a recommendation received from the Nominations/Remuneration Committee which is considered and approved by 75% of the Council of Governors present at the meeting considering the recommendation.

65 The Lead Governor will act in place of the Chair at meetings of the Council of Governors where it is for the Chair to be present (or in his absence) and in the absence of the Vice Chair.

66 The Lead Governor will be a member of the Nominations/Remuneration Committee.

SECTION E: DISQUALIFICATION

67 Where a person has been elected or appointed to be a Governor and they become disqualified for appointment~~,~~ under paragraphs 8.12 and 8.13 of the Constitution, they shall notify the Secretary in writing of such disqualification as required by paragraphs 8.12.2 and/or 8.13.2.

68 If it comes to the notice of Secretary that a person elected or appointed to be a Governor may be disqualified under paragraphs 8.12 and 8.13 of the Constitution from holding that office and the Secretary has not received a notice from that person, the Secretary will make such inquiries as they think fit and, if satisfied that the person may be so disqualified, the Secretary will advise the Chair so that the Chair can make a recommendation for disqualification to the Council of Governors. The recommendation will either be made to a general meeting or to a meeting called specifically for the purpose.

69 The Secretary shall give notice in writing to the person concerned that the Trust proposes to declare the person disqualified as a Governor. In this notice, the Secretary shall specify the grounds on which it appears to them that the person is disqualified and give that person a period of fourteen **(14)** clear days in which to make representations, orally or in writing, on the proposed disqualification.

70 The Chair's recommendations and any representations by the Governor concerned shall be provided to the Council of Governors. If the Council of Governors upholds the proposal to disqualify, the Secretary shall immediately declare that the person in question is disqualified and notify them in writing to that effect. On such declaration the person's tenure of office shall be terminated and they shall cease to act as a Governor.

SECTION F: REMUNERATION AND PAYMENT OF EXPENSES

Remuneration

71 Governors are not to receive remuneration.

Payment of expenses

72 The Trust will pay reasonable expenses to Governors, at such rates as the Board of Directors may determine, for attendance at general meetings of the Council of Governors [or its committees, sub-committees or working groups] or any other business authorised by the Board of Directors.

73 Expenses will be authorised through the Secretary's office and reimbursed on receipt of a completed and signed expenses form, evidenced by receipts. A summary of expenses paid to Governors will be published in the annual report.

SECTION G: STANDARDS OF CONDUCT OF GOVERNORS

Policy

74 In relation to their conduct as a member of the Council of Governors, each Governor must comply with the same standards of business conduct as for NHS staff. In particular, the Trust must be impartial and honest in the conduct of its business and its office holders and staff must remain beyond suspicion. Governors are expected to be impartial and honest in the conduct of official business.

75 Members of the Council of Governors are required on an annual basis to sign a code of conduct form as prescribed by the Secretary and must comply fully with the terms of the code of conduct.

76 A Governor shall not solicit for any person any appointment in the Trust.

Interest of Governors in contracts

77 If it comes to the knowledge of a Governor that a contract in which they have any pecuniary interest, not being a contract to which they are themselves a party, has been, or is proposed to be, entered into by the Trust, they shall immediately give notice in writing to the Secretary of the fact that they have such an interest.

SECTION H: MISCELLANEOUS PROVISIONS

Suspension of Standing Orders

78 These Standing Orders may be suspended in part or fully at any general meeting provided that:

(1) at least two-thirds of the Council of Governors are present, including at least six elected
(2) Governors and one appointed Governor~~,~~; and the Secretary does not advise against it~~,~~; and
(3) a majority of those present vote in favour.

79 Notwithstanding Standing Order 76 above, these Standing Orders cannot be suspended if to do so would contravene any statutory provision, the Trust's Authorisation or the Constitution.

80 A decision to suspend these Standing Orders shall be recorded in the minutes of the meeting and any matters discussed during the suspension of Standing Orders shall be recorded separately and made available to all members of the Council of Governors.

81 No formal business may be transacted whilst Standing Orders are suspended.

Variation and amendment of Standing Orders

82 Standing Orders may only be varied or amended if:

1. the proposed variation does not contravene any statutory provision, the Trust's–Authorisation or the Constitution;
(A) unless proposed by the Chair or the Chief Executive or the Secretary, a notice of motion under Standing Order 27 has been given;
(B) at least two-thirds of the members of the Council of Governors are present, including at least five elected Governors and one appointed Governor, and a majority of the Governors present vote in favour of the amendment.

Review of Standing Orders

83 These Standing Orders shall be reviewed bi-annually by the Council of Governors. The requirement for review shall extend to all and any documents having effect as if incorporated in the Standing Orders [other than the Constitution].

APPENDIX A

Procedure for the appointment of the Chair, Non-executive Directors of the Board of Directors and Vice Chair of the Board of Directors and Council of Governors

Appointment of the Chair and Non-executive Directors

The Council of Governors will appoint the Chair and the Non-executive Directors. These appointments will be made with the support of appropriate Directors and officers of the Trust.

When the appointment is for a Non-executive Director, the Chair will lead the process with the Governors. When the appointment is for the Chair, the Chair will not be involved and the process will be lead by the Lead Governor with the support of the Vice Chair and other Directors and officers, as appropriate.

Below is a process agreed by the Council of Governors for the appointment of a Chair and Non-executive Directors.

During this process, a regular report will be received by the Council of Governors in private on the progress of the appointment.

Once it has been established that it will be necessary to run an appointment process and the Council of Governors have been informed, a consultation meeting will be convened and attended by the Nominations/Remuneration Committee, a representative from the Trust's Recruitment Department and the Secretary. Those present at this meeting will establish the outline timeline for appointment~~,~~; review and amend the pro forma documentation – (the job description~~,~~ (including the required level of commitment) person specification and recruitment pack); agree the competencies to be measured at an assessment centre; and agree the appointment of an external assessor to act as an advisor to the Appointment Committee.

In the case of a Non-executive Director appointment, the Chair will comment on the views of the existing members of the Board of Directors. This process will be lead by the Chair as chair of the Nominations/Remuneration Committee and a report from the Chair will be presented to the next Council of Governors meeting.

In the case of a Chair appointment, the Vice Chair will provide the Nominations/Remuneration Committee with comments from the Board of Directors and the Lead Governor with the support of the Vice Chair will report to the Council of Governors.

The Secretary, a representative from the Trust's Organisational Development team and the representative from the Trust's Recruitment Department will prepare a recommendation on the measurements to be used for the agreed competencies for consideration by the Nominations/Remuneration Committee. The Nominations/Remuneration Committee will meet to discuss the recommendation

and agree the measures to be used. The Nominations/Remuneration Committee will also agree the finalised recruitment timetable and the proposed advert.

Long-listing will be undertaken by the representative from the Trust's Recruitment Department and the Secretary in accordance with criteria advised by the Nominations/Remuneration Committee. The Nominations/Remuneration Committee will be provided with reasons as to why candidates have been removed at long-listing stage and will review and amend the list, as necessary. The Nominations/Remuneration Committee will undertake the short-listing exercise and be advised by the external assessor wherever possible. The interview timetable will then be finalised.

The assessment centre work is to be undertaken in parallel with the work of the Nominations/Remunerations Committee. The results will be included in the information provided to the Appointment Committee.

The Appointment Committee may be split into two panels, if appropriate, with agreement as to what each panel will consider.

Once the interviews are held, the two panels (if used) will re-form the Appointment Committee and consider each of the candidates. The Appointment Committee will formalise a recommendation to be considered by the Council of Governors at their next meeting in private. Once the appointment has been made by the Council of Governors, the successful candidate will be informed. Arrangements will be made by the Secretary for the new Chair or Non-executive Director(s), as the case may be, to receive a full induction.

Term of Office of Non-executive Directors and the Chair

Each Non-executive Director including the Chair shall be eligible to serve six years. Any further extension will be assessed on a year by year basis subject to performance up until a maximum of a further 3 years.

Non-executive Directors, including the Chair, are appointed by the Council of Governors for specified terms, subject to re-appointment thereafter at intervals of no more than three years and subject to the National Health Service Act 2006 provisions relating to the removal of a Director. Re-appointment of the Chair or a Non-executive Director should only be made in exceptional circumstances and should be subject to particularly rigorous review to the extent that that individual has already served for six years (e.g. two three year terms), taking into account the need for progressive refreshing of the Board.

All Non-executive Directors including the Chair will undergo an annual appraisal. The appraisal for the Non-executive Directors is to be carried out by the Chair the results of the appraisal reported to the Nominations/Remuneration Committee and a recommendation prepared for consideration by the full Council of Governors. The appraisal for the Chair is to be carried out by the Senior Independent Director and the Lead Governor. The results of the appraisal are reported to the Nominations/Remuneration Committee and the Board of Directors and a recommendation prepared for consideration by the full Council of Governors.

Appointment of the Vice Chair of the Council of Governors and the Board of Directors

The Chair will develop a recommendation to present to the Council of Governors on the appointment of an appropriate Non-executive Director to fulfil the role of Vice Chair.

The Council of Governors will consider the recommendations and if appropriate approve the recommendation. The Board of Directors will also consider the same recommendation and if appropriate approve the appointment.

Annex 5