



Camden and Islington
NHS Foundation Trust

CAMDEN AND ISLINGTON NHS FOUNDATION TRUST

CONSTITUTION

**CONSTITUTION OF
CAMDEN AND ISLINGTON NHS FOUNDATION TRUST
(A PUBLIC BENEFIT CORPORATION)**

Updated version approved by:
Council of Governors on 8 May 2018
Board of Directors on 26 April 2018

Camden and Islington NHS Foundation Trust Constitution

TABLE OF CONTENTS

<u>Paragraph</u>	<u>Page</u>
1. Interpretation and definitions	6
2. Name.....	9
3. Principal purpose	10
4. Powers.....	10
5. Membership and constituencies	10
6. Application for membership.....	11
7. Public Constituencies	11
8. Staff Constituency.....	11
9. Automatic membership by default – staff	12
10. Service Users’ Constituency	12
11. Restriction on membership	13
12. Annual Members’ Meeting	14
13. Council of Governors – composition.....	14
14. Council of Governors – election of Governors	16
15. Council of Governors – tenure	17
16. Council of Governors – appointment of a Lead Governor.....	17
17. Council of Governors – disqualification and removal.....	18
18. Council of Governors – duties of Governors	18
19. Council of Governors – meetings of Governors.....	19
20. Council of Governors – standing orders.....	19
21. Council of Governors – referral to the panel.....	20
22. Council of Governors – conflicts of interest of Governors.....	20
23. Council of Governors – travel expenses	20
24. Council of Governors – further provisions	20
25. Board of Directors – composition.....	21
26. Board of Directors – general duty.....	21
27. Board of Directors – qualification for appointment as a non-executive Director	22

28. Board of Directors – appointment and removal of Chair and other non-executive Directors	22
29. Board of Directors – appointment of Deputy Chair and Senior Independent Director	23
30. Board of Directors - appointment and removal of the Chief Executive and other executive Directors.....	23
31. Board of Directors – tenure	23
32. Board of Directors – disqualification.....	24
33. Board of Directors – meetings	26
34. Board of Directors – standing orders	26
35. Board of Directors - conflicts of interest of Directors.....	26
36. Board of Directors – remuneration and terms of office	30
37. Registers	30
38. Admission to and removal from the registers	30
39. Registers – inspection and copies.....	31
40. Documents available for public inspection.....	31
41. Auditor.....	33
42. Audit committee	33
43. Accounts	33
44. Annual report, forward plans and non-NHS work.....	34
45. Presentation of the annual accounts and reports to the Governors and members	35
46. Instruments.....	35
47. Amendment of the Constitution	36
48. Mergers etc. and significant transactions	37
49. Procedures and protocols	38
50. Indemnity	38
ANNEX 1 – THE PUBLIC CONSTITUENCIES	39
ANNEX 2 – THE STAFF CONSTITUENCY.....	40
ANNEX 3 – THE SERVICE USERS’ CONSTITUENCY	41
ANNEX 4 – COMPOSITION OF THE COUNCIL OF GOVERNORS	42
ANNEX 5 –THE MODEL ELECTION RULES	44
ANNEX 6 – ADDITIONAL PROVISIONS – COUNCIL OF GOVERNORS.....	102

ANNEX 7 – STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE COUNCIL OF GOVERNORS	107
ANNEX 8 – STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE BOARD OF DIRECTORS.....	112
ANNEX 9 – FURTHER PROVISIONS	116
ANNEX 10 – ANNUAL MEMBERS’ MEETING	121

1. **Interpretation and definitions**

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

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

the **2006 Act** is the National Health Service Act 2006 as amended by the 2012 Act.

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

the **Accounting Officer** is the person who from time to time discharges the functions specified in paragraph 25(5) of Schedule 7 to the 2006 Act.

Annual Members' Meeting is defined in paragraph 12 of this Constitution.

Appointed Governors means those Governors appointed by the Appointing Organisations.

Appointing Organisations means those organisations which are entitled under the 2006 Act to appoint Governors and Partnership Organisations which are invited by the Trust to appoint Governors.

Auditor means an individual or organisation appointed by the Trust's Governors to evaluate and verify the accuracy of the financial records and accounting practices of the Trust.

Board of Directors is the board of directors of the Trust as constituted in accordance with this Constitution.

the **Chair** means the chair of the Trust, or, in relation to the function of presiding at or chairing a meeting where another person is carrying out that role as required by the Constitution.

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

the **Code of Conduct for Directors** means the Trust's code of conduct for the Directors as adopted by the Trust from time to time.

the **Code of Conduct for Governors** means the Trust's code of conduct for the Governors as adopted by the Trust from time to time.

Constitution means this constitution and all annexes to it.

Corporate Governance Manual means a manual detailing matters of corporate governance as adopted by the Trust from time to time and maintained by the Trust Secretary.

Council of Governors is the council of governors of the Trust as constituted in accordance with this Constitution.

days mean calendar days for the purposes of this Constitution, unless otherwise specified.

Deputy Chair means one non-executive Director appointed by the Board of Directors to act as the Chair of the Trust in certain circumstances.

Director means a member of the Board of Directors.

Dispute Resolution Procedure means a procedure detailing matters relating to the resolution of disputes as adopted by the Trust from time to time.

Elected Governors means those Governors elected by the Public Constituencies, the Service Users' Constituency (which includes Service Users and Service User Carers) and the Staff Constituency.

Financial Year means:

- (a) the period beginning with the date on which the Trust is authorised and ending with the next 31 March; and
- (b) each successive period of twelve (12) months beginning with 1 April.

Governor means a member of the Council of Governors.

Health Overview and Scrutiny Committee means a local authority committee in accordance with regulations made further to paragraph 244 of the 2006 Act, and includes joint Health Overview and Scrutiny Committees established by more than one local authority further to paragraph 245 of the 2006 Act.

Healthwatch means (1) the committee of the Care Quality Commission established under paragraph 6 of Schedule 1 of the Health and Social Care Act 2008 known as Healthwatch England; and (2) any local healthwatch organisation with the functions set out in paragraph 221 of Local Government and Public Involvement in Health Act 2007 relating to service user and public involvement in healthcare.

Lead Governor means one (1) Governor appointed by the Council of Governors to lead the Council of Governors and to communicate directly with Monitor in certain circumstances.

Local Authority Governor means an “Appointed Governor” appointed by one (1) or more qualifying local authorities.

Meeting of the Board of Directors means a duly convened meeting of the Board of Directors.

Meeting of the Council of Governors means a duly convened meeting of the Council of Governors.

Model Election Rules means those election rules as published by NHS Providers from time to time.

NHS Improvement is the body corporate known as NHS Improvement (NHSI), which replaces Monitor as provided by Section 61 of the 2012 Act.

partner means, in relation to another person, a member of the same household living together as a family unit.

Partnership Governor means a Governor appointed by a Partnership Organisation.

Partnership Organisation means a partnership organisation for the purposes of Schedule 7 paragraph 9(7) of the 2006 Act.

Public Constituency means those who live in an area specified in Annex 1 of this Constitution as an area for any public constituency of the Trust as constituted in accordance with paragraph 7 of this Constitution.

Public Governor means a Governor elected by the members of a Public Constituency.

Senior Independent Director means the non-executive Director appointed by the Board of Directors in accordance with paragraph 29.3 of this Constitution.

Service User an individual whose name is recorded as a service user on the Trust's service user administration system or other record maintained by the Trust for the purposes of identifying service users of the Trust, and has attended any of the Trust's premises as a service user in the last five (5) years.

Service User Carer is an individual who comes within the description of service user carer as set out in paragraph 1 of Annex 9.

Service Users' Constituency means those who are referred to collectively as the service users' constituency, as constituted in accordance with paragraph 10 of this Constitution.

Service User Governor means a Governor elected by the members of the Service Users' Constituency.

Staff Constituency means those individuals who come within paragraph 8.1 of this Constitution and who are referred to collectively as the staff constituency, in accordance with paragraph 9.2 of this Constitution.

Staff Governor means a Governor elected by the members of the Staff Constituency.

the **Terms of Reference** means the terms of reference adopted by the committees of the Trust and which are set out in the Trust's Corporate Governance Manual, which may be amended by the Council of Governors from time to time.

the **Trust** means the Camden and Islington NHS Foundation Trust.

Trust Secretary is the person with responsibility or acting as the secretary or with responsibility for the corporate affairs of the Trust from time to time.

voluntary organisation means a body, other than a public or local authority, the activities of which are not carried on for profit.

2. Name

The name of the foundation trust is the Camden and Islington NHS Foundation Trust (the “Trust”).

3. Principal purpose

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

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

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

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

3.3.2 the promotion and protection of public health.

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

4. Powers

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

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

4.3 Any of these powers may be delegated to a committee of Directors or to an executive Director.

5. Membership and constituencies

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

5.1 a Public Constituency;

5.2 a Staff Constituency; and

5.3 a Service Users' Constituency.

6. Application for membership

An individual who is eligible to become a member of the Trust may do so on application to the Trust in accordance with this Constitution, with the exception of individuals who are eligible to become members of the Staff Constituency, who shall automatically become members in accordance with paragraph 9.

7. Public Constituencies

7.1 An individual who lives in an area specified in Annex 1 as an area for a Public Constituency may become or continue as a member of the Trust.

7.2 Those individuals who live in an area specified for a Public Constituency are referred to collectively as a Public Constituency.

7.3 The minimum number of members in each Public Constituency is specified in Annex 1.

8. Staff Constituency

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

8.1.1 he/she is employed by the Trust under a contract of employment which has no fixed term or has a fixed term of at least twelve (12) months; or

8.1.2 he/she has been continuously employed by the Trust under a contract of employment for at least twelve (12) months; and

8.1.3 he/she has not been disqualified from membership in accordance with Annex 9 or restricted from membership in accordance with paragraph 11 of this Constitution.

9. Automatic membership by default – staff

9.1 An individual who is:

9.1.1 eligible to become a member of the Staff Constituency;
and

9.1.2 invited by the Trust to become a member of the Staff
Constituency,

shall become a member of the Trust as a member of the Staff
Constituency without an application being made, unless he/she
informs the Trust that he does not wish to do so.

9.2 Those individuals who are eligible for membership of the Trust
by reason of the previous provisions are referred to collectively
as the Staff Constituency.

9.3 The minimum number of members in the Staff Constituency is
specified in Annex 2.

10. Service Users' Constituency

10.1 An individual who has, within the period specified below,
accessed any of the Trust's services as either a Service User
or as the Service User Carer may become a member of the
Trust.

10.2 The period referred to above shall be the period of five (5)
years immediately preceding the date of an application by the
Service User or Service User Carer to become a member of
the Trust.

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

10.4 An individual providing care in pursuance of a contract
(including a contract of employment) with a voluntary
organisation, or as a volunteer for a voluntary organisation,
does not come within the category of those who qualify for
membership of the Service User Constituency.

- 10.5** Further provisions as to the circumstances in which an individual may not become or continue as a Service User Carer are set out in Annex 9.
- 10.6** The minimum number of members in the Service Users' Constituency is specified in Annex 3.

11. Restriction on membership

- 11.1** An individual who is a member of a constituency, or of a class within a constituency, may not while membership of that constituency or class continues, be a member of any other constituency or class.
- 11.2** An individual who satisfies the criteria for membership of both a Public Constituency and the Service Users' Constituency may choose whether they become a member of either a Public Constituency or the Service User Constituency.
- 11.3** An individual who is a member of the Service Users' Constituency and is eligible to become a member of a Public Constituency, may upon notice to the Trust Secretary of their termination of membership of the Service Users' Constituency, make an application to become a member of a Public Constituency.
- 11.4** An individual who is a member of a Public Constituency and is eligible to become a member of the Service Users' Constituency, may upon notice to the Trust Secretary of their termination of membership of a Public Constituency, make an application to become a member of the Service Users' Constituency.
- 11.5** An individual who satisfies the criteria for membership of the Staff Constituency may not become or continue as a member of any constituency other than the Staff Constituency.
- 11.6** An individual must be at least sixteen (16) years old to become a member of the Trust.
- 11.7** Further provisions as to the circumstances in which an individual may not become or continue as a member of the Trust are set out in Annex 9 – further provisions.

12. Annual Members' Meeting

- 12.1** The Trust shall hold an annual meeting of its members ('Annual Members' Meeting') within nine (9) months of the end of each Financial Year. The Annual Members' Meeting shall be open to members of the public.
- 12.2** Further provisions about the Annual Members' Meeting are set out in Annex 10 – Annual Members' Meeting.

13. Council of Governors – composition

- 13.1** The Trust is to have a Council of Governors, which shall comprise both Elected and Appointed Governors.
- 13.2** The composition of the Council of Governors is specified in Annex 4.
- 13.3** The members of the Council of Governors, other than the appointed members, shall be chosen by election by their constituency or, where there are classes within a constituency, by their class within that constituency. The number of Governors to be elected by each constituency, or, where appropriate, by each class of each constituency, is specified in Annex 4.
- 13.4** No person shall be eligible to be elected or appointed (as the case may be) a Governor in accordance with the terms of this Constitution unless at the date of their nomination for election or upon the date of their appointment they have attained the age of sixteen (16) years. Persons who are eligible under this paragraph 13.4 shall be eligible for appointment or election under the provisions of this paragraph 13.

13.5 Public Governors

- 13.5.1** Members of the Public Constituency may vote for any eligible member to be a Public Governor, subject to paragraphs 13.5.2 and 13.5.3 below.
- 13.5.2** A person shall not stand for election to the Council of Governors as a Public Governor unless he/she has made a declaration in a form specified by the Trust

Secretary.

13.5.3 A Public Governor shall not vote at a Meeting of the Council of Governors unless within the previous twelve (12) months he/she has made, in a form specified by the Trust Secretary, a declaration of eligibility to vote.

13.5.4 The declarations required under 13.5.2 and 13.5.3 above and the equivalent provisions of the declaration required under rule 12 of Annex 5 are required by section 60 of the 2006 Act. It is a criminal offence knowingly or recklessly to make a declaration under section 60 of the 2006 Act which is false in a material particular.

13.6 Service User Governors

13.6.1 Members of the Service User Constituency may vote for any eligible member to be a Service User Governor, subject to paragraphs 13.6.2 and 13.6.3 below.

13.6.2 A person shall not stand for election to the Council of Governors as a Service User Governor unless he/she has made a declaration of eligibility in a form specified by the Trust Secretary.

13.6.3 A Service User Governor shall not vote at a Meeting of the Council of Governors unless within the previous twelve (12) months he/she has made, in a form specified by the Trust Secretary, a declaration of eligibility to vote.

13.6.4 The declarations required under paragraphs 13.6.2 and 13.6.3 above and the equivalent provisions of the declaration required under rule 12 of Annex 5 are required by section 60 of the 2006 Act. It is a criminal offence knowingly or recklessly to make a declaration under section 60 of the 2006 Act which is false in a material particular.

13.7 Staff Governors

13.7.1 Members of the Staff Constituency may vote for any eligible member to be a Staff Governor.

13.8 Local Authority Governors

13.8.1 The London Borough of Camden and the London Borough of Islington shall be entitled to appoint one (1) Local Authority Governor each.

13.9 Partnership Governors

13.9.1 There shall be one (1) Partnership Governor appointed by each Partnership Organisation (as set out in Annex 4).

13.10 The validity of any act of the Trust is not affected by any vacancy among the Governors or by any defect in the appointment of any Governor, unless this vacancy causes the aggregate number of Governors who are Public Governors and Service User Governors to be less than half of the total membership of the Council of Governors. In that case an election will be held in accordance with the Model Election Rules as soon as reasonably practicable.

14. Council of Governors – election of Governors

14.1 Elections for elected members of the Council of Governors shall be conducted in accordance with the Model Election Rules.

14.2 The Model Election Rules as published from time to time by NHS Providers form part of this Constitution.

14.3 A subsequent variation of the Model Election Rules by NHS Providers shall not constitute a variation of the terms of this Constitution for the purposes of paragraph 47 of this Constitution (amendment of the Constitution).

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

15. Council of Governors - tenure

- 15.1** An Elected Governor may hold office for a term of three (3) years commencing immediately after the Annual Members' Meeting at which his/her election is announced.
- 15.2** An Elected Governor shall cease to hold office if he/she ceases to be a member of the constituency or class by which he/she was elected.
- 15.3** An Elected Governor shall be eligible for re-election at the end of his term for a further three-year term.
- 15.4** An Elected Governor may not hold office for more than nine (9) consecutive years, or three full terms of office.
- 15.5** For the purposes of the provisions in paragraphs 15.13 to 15.4 concerning terms of office for Elected Governors, 'year' means a period commencing immediately after the conclusion of their appointment.
- 15.6** An Appointed Governor may hold office for a period of three (3) years commencing immediately after the Annual Members' Meeting at which his/her appointment is announced.
- 15.7** An Appointed Governor shall cease to hold office if the Appointing Organisation withdraws its sponsorship of him and the Trust has been notified that the sponsorship has been terminated.
- 15.8** An Appointed Governor shall be eligible for re-appointment at the end of his term for a further three-year term.
- 15.9** An Appointed Governor may not hold office for longer than nine (9) consecutive years, or three full terms of office.
- 15.10** For the purposes of the provisions in paragraphs 15.8 to 15.9 concerning terms of office for Appointed Governors, 'year' means a period commencing immediately after the conclusion of their appointment.

16. Council of Governors – appointment of a Lead Governor

- 16.1** The Governors shall nominate one (1) of the Governors to be

Lead Governor to chair the Council of Governors where it is not considered appropriate for the Chair or another non-executive Director to do so. The Lead Governor will communicate directly with Monitor in certain circumstances where it would not be appropriate for the Chair to contact Monitor, or for Monitor to contact the Chair.

17. Council of Governors – disqualification and removal

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

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

17.1.2 a person in relation to whom a moratorium period under a debt relief order applies (under part 7A of the Insolvency Act 1986);

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

17.1.4 a person who within the preceding five (5) years has been convicted anywhere in the world of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three (3) months (without the option of a fine) was imposed on him.

17.2 Governors must be at least sixteen (16) years of age at the date they are nominated for election or appointment.

17.3 Further provisions as to the circumstances in which an individual may not become or continue as a member of the Council of Governors are set out in Annex 6.

17.4 The Constitution is to make provision for the removal of Governors.

18. Council of Governors – duties of Governors

18.1 The general duties of the Council of Governors are:

18.1.1 to hold the non-executive Directors individually and collectively to account for the performance of the Board of Directors; and

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

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

18.3 All Governors shall comply with the Code of Conduct for Governors.

19. Council of Governors – meetings of Governors

19.1 The Council of Governors shall meet at least four (4) times in each Financial Year at such time and places as the Chair may determine from time to time.

19.2 The Chair of the Trust (i.e. the Chair of the Board of Directors, appointed in accordance with the provisions of paragraph 28.1) or, in his absence, the Deputy Chair (appointed in accordance with the provisions of paragraph 29.1 below), shall preside at meetings of the Council of Governors.

19.3 Meetings of the Council of Governors shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons, including, but not limited to, reasons of commercial confidentiality; and/or interference with or preventing the proper conduct of the meeting.

19.4 For the purposes of obtaining information about the Trust's performance of its functions or the Directors' performance of their duties (and deciding whether to propose a vote on the Trust's or Directors' performance), the Council of Governors may require one (1) or more of the Directors to attend a meeting.

20. Council of Governors – standing orders

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

21. Council of Governors – referral to the panel

21.1 In this paragraph, the panel means a panel of persons appointed by Monitor to which a Governor of an NHS foundation trust may refer a question as to whether the Trust has failed or is failing:

21.1.1 to act in accordance with its Constitution; or

21.1.2 to act in accordance with any provision made by or under chapter 5 of the 2006 Act.

21.2 A Governor may refer a question to the panel only if more than half of the members of the Council of Governors voting approve the referral.

22. Council of Governors - conflicts of interest of Governors

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

22.2 Further provision for dealing with Governor conflicts of interest are set out in paragraph 7 of Annex 7 – standing orders for the practice and procedure of the Council of Governors.

23. Council of Governors – travel expenses

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

24. Council of Governors – further provisions

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

25. Board of Directors – composition

- 25.1** The Trust is to have a Board of Directors, which shall comprise both executive and non-executive Directors, including the Chair. The non-executive Directors will always form the majority of the Board of Directors.
- 25.2** Subject to the requirements of paragraph 25.1 above, the Board of Directors is to comprise:
- 25.2.1** a non-executive Chair;
- 25.2.2** Not less than four (4) but no more than seven (7) other non-executive Directors; and
- 25.2.3** Not less than four (4) but no more than seven (7) executive Directors.
- 25.3** One (1) of the executive Directors shall be the Chief Executive.
- 25.4** The Chief Executive shall be the Accounting Officer.
- 25.5** One (1) of the executive Directors shall be the finance Director.
- 25.6** One (1) of the executive Directors is to be a registered medical practitioner or a registered dentist (within the meaning of the Dentists Act 1984).
- 25.7** One (1) of the executive Directors is to be a registered nurse or a registered midwife.
- 25.8** The validity of any act of the Trust is not affected by any vacancy among the Directors or by any defect in the appointment of any Director.

26. Board of Directors – general duty

- 26.1** 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.

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

A person may be appointed as a non-executive Director only if:

- 27.1 he/she is a member of a Public Constituency; or
- 27.2 he/she is a member of the Service Users' Constituency; or
- 27.3 where any of the Trust's hospitals includes a medical or dental school provided by a university, he/she exercises functions for the purposes of that university; and
- 27.4 he/she is not disqualified by virtue of paragraph 32 below.

28. Board of Directors – appointment and removal of Chair and other non-executive Directors

- 28.1 The Council of Governors at a general Meeting of the Council of Governors shall appoint or remove the Chair of the Trust and the other non-executive Directors.
- 28.2 Removal of the Chair or another non-executive Director shall require the approval of three-quarters of the members of the Council of Governors.
- 28.3 Further provisions with respect to the appointment and removal of the Chair and other non-executive Directors are set out in paragraph 3 of Annex 8 – standing orders for the practice and procedure of the Board of Directors.

29. Board of Directors – appointment of Deputy Chair and Senior Independent Director

- 29.1** The Council of Governors at a general Meeting of the Council of Governors shall appoint one (1) of the non-executive Directors as a Deputy Chair.
- 29.2** If the Chair is unable to discharge his/her office as Chair of the Trust, the Deputy Chair of the Board of Directors shall be acting Chair of the Trust.
- 29.3** The Council of Governors at a Meeting of the Council of Governors shall appoint one (1) of the non-executive Directors (who may be the same person as appointed in paragraph 29.1) as Senior Independent Director.
- 29.4** The Governors may approach the Senior Independent Director with any queries if in the circumstances it is not appropriate to approach the Chair.

30. Board of Directors - appointment and removal of the Chief Executive and other executive Directors

- 30.1** The non-executive Directors shall appoint or remove the Chief Executive.
- 30.2** The appointment of the Chief Executive shall require the approval of the Council of Governors.
- 30.3** A committee consisting of the Chair, the Chief Executive and the other non-executive Directors shall appoint or remove the other executive Directors.

31. Board of Directors – tenure

- 31.1** A non-executive Director (including the Chair):
- 31.1.1** shall hold office for a period of up to three (3) years;
- 31.1.2** shall be eligible for reappointment at the end of their term;
- 31.1.3** may not hold office for longer than nine (9) consecutive

years, and shall not be eligible for re-appointment if he/she has already held office for more than six (6) consecutive years.

31.2 The executive Directors including the Chief Executive (and Accounting Officer) and the finance Director shall hold office for a period in accordance with the terms and conditions of office decided by the relevant committee of non-executive Directors as set out in Annex 8 of this Constitution.

32. Board of Directors – disqualification

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

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

32.1.2 a person in relation to whom a moratorium period under a debt relief order applies (under part 7A of the Insolvency Act 1986);

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

32.1.4 a person who within the preceding five (5) years has been convicted anywhere in the world of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three (3) months (without the option of a fine) was imposed on him;

32.1.5 in the case of a non-executive Director, a person who no longer satisfies the provisions of paragraph 27 of this Constitution;

32.1.6 a person who is a CCG Governing Body member;

32.1.7 a person who is a member of Healthwatch;

32.1.8 a person who is a spouse, partner, parent or child of a member of the Board of Directors of the Trust;

- 32.1.9** a person who is a member of a local authority's Health Overview and Scrutiny Committee;
- 32.1.10** a person who is the subject of a disqualification order made under the Company Directors Disqualification Act 1986;
- 32.1.11** a person whose tenure of office as a Chair or as a member or Director of an NHS body has been terminated on the grounds that their appointment is not in the interests of the health service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest;
- 32.1.12** a person who within the preceding five (5) years has been dismissed, otherwise than by reason of redundancy from any paid employment with an NHS body and not reinstated;
- 32.1.13** a person who is otherwise disqualified by law from acting as a Director of an NHS foundation trust;
- 32.1.14** in the case of a non-executive Director, a person who has refused without reasonable cause to fulfil any training requirement established by the Board of Directors; or
- 32.1.15** a person who fails to meet the requirements of the fit and proper person test under the 2012 Act; or
- 32.1.16** a person who has refused to sign and deliver to the Trust Secretary a statement in the form required by the Board of Directors within one (1) calendar month of appointment confirming acceptance of the Code of Conduct for Directors.
- 32.2** Any person who is disqualified from becoming or continuing as a Director on any of the grounds set out this paragraph 32 shall immediately resign as a Director of the Trust or if they decline or fail to do so shall be removed immediately by the Board of Directors and a new Director appointed in his/her place in accordance with the provisions in this Constitution.

33. Board of Directors – meetings

33.1 Meetings of the Board of Directors shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons including, but not limited to, reasons of commercial confidentiality; and/or interference with or preventing proper conduct of the meeting.

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

34. Board of Directors – standing orders

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

35. Board of Directors - conflicts of interest of Directors

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

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

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

35.2 The duty referred to in sub-paragraph 35.1.1 is not infringed if:

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

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

- 35.3** The duty referred to in sub-paragraph 35.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- 35.4** In sub-paragraph 35.1.2, “third party” means a person other than:
- 35.4.1** the Trust; or
- 35.4.2** a person acting on its behalf.
- 35.5** Members of the Board of Directors shall disclose to the Board of Directors the nature and extent of any material interests whether direct or indirect (as defined below) held by a Director, their spouse or partner, which shall be recorded in the register of interests of the Directors.
- 35.6** A direct or indirect interest is:
- 35.6.1** any interest (excluding a holding of shares in a company whose shares are listed on any public exchange where the holding is less than 2% of the total shares in issue) or position held by a Director in any firm, company or business which has or is likely to have a trading or commercial relationship with the Trust;
- 35.6.2** any interest in an organisation providing health and social care services to the national health service;
- 35.6.3** a position of authority in a charity or voluntary organisation in the field of health and social care; or
- 35.6.4** any connection with any organisation, entity or company considering entering into a financial arrangement with the Trust including but not limited to lenders or banks.
- 35.7** Any Director who has an interest either direct or indirect in a matter to be considered by the Board of Directors (whether because the matter involves a firm, company, business or organisation in which the Director or his/her spouse or partner has a direct or indirect interest or otherwise) shall declare the nature and extent of such interest to the Board of Directors and

that Director is not to be counted as participating in the decision-making process for quorum or voting purposes.

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

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

35.10 This paragraph does not require a declaration of an interest of which the Director is not aware or where the Director is not aware of the transaction or arrangement in question.

35.11 A Director need not declare an interest:

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

35.11.2 if, or to the extent that, the Directors are already aware of it;

35.11.3 if, or to the extent that, it concerns terms of the Director's appointment that have been or are to be considered:

35.11.3.1 by a Meeting of the Board of Directors; or

35.11.3.2 by a committee of the Directors appointed for the purpose under this Constitution.

35.12 However, if paragraph 35.13 applies, a Director who is interested in an actual or proposed matter to be considered by the Board of Directors is to be counted as participating in the decision making process for quorum and voting purposes.

35.13 A matter shall have been authorised for the purposes of paragraph 35.2.2 if:

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

35.13.2 the Director's interest cannot reasonably be regarded as likely to give rise to a conflict of interest; or

35.13.3 the Director's conflict of interest arises from a permitted cause.

35.13.4 For the purposes of paragraph 35.13.3, the following is a permitted cause:

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

35.14 For the purposes of this paragraph, references to proposed decisions and decision-making processes include any Directors' meeting or part of a Directors' meeting.

35.15 Subject to paragraph 35.16, if a question arises at a meeting of Directors or of a committee of Directors as to the right of a Director to participate in the meeting (or part of the meeting) for voting or quorum purposes, the question may, before the conclusion of the meeting, be referred to the Chair whose ruling in relation to any Director other than the Chair is to be final and conclusive.

35.16 If any question as to the right to participate in the meeting (or part of the meeting) should arise in respect of the Chair, the question is to be decided by a decision of the Directors at that meeting, for which purpose the Chair is not to be counted as participating in the meeting (or that part of the meeting) for voting or quorum purposes.

35.17 This paragraph does not require a declaration of an interest of which the Director is not aware or where the Director is not aware of the transaction or arrangement in question.

35.18 Should an interest in a matter for consideration or decision at a board meeting or board committee meeting affect either all the non-executive Directors or all the executive Directors, the Directors present not affected by the interest will form the quorum for that item.

36. Board of Directors – remuneration and terms of office

- 36.1** The Council of Governors at a general Meeting of the Council of Governors shall decide the remuneration and allowances, and the other terms and conditions of office, of the Chair and the other non-executive Directors.
- 36.2** The Trust shall establish a committee of non-executive Directors to decide the remuneration and allowances, and the other terms and conditions of office, of the Chief Executive and other executive Directors.

37. Registers

The Trust shall have:

- 37.1** a register of members showing, in respect of each member, the constituency to which he/she belongs and, where there are classes within it, the class to which he/she belongs;
- 37.2** a register of members of the Council of Governors;
- 37.3** a register of interests of Governors;
- 37.4** a register of Directors; and
- 37.5** a register of interests of the Directors.

38. Admission to and removal from the registers

- 38.1** The Trust Secretary shall remove from the register of members the name of any member who ceases to be entitled to be a member under the provisions of this Constitution, and membership shall only formally commence once that name has been entered into the register.
- 38.2** The Trust Secretary shall remove from the register of Governors the name of any member who ceases to be a Governor under the provisions of this Constitution and shall notify Monitor.

38.3 The Trust Secretary shall remove from the register of Directors the name of any Director who ceases to be to be a Director under the provisions of this Constitution and shall notify Monitor.

39. Registers – inspection and copies

39.1 The Trust shall make the registers specified in paragraph 37 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.

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

39.2.1 any member of the Service Users' Constituency, where that member has not consented to his details being made so available; or

39.2.2 any other member of the Trust, if he so requests.

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

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

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

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

40. Documents available for public inspection

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

40.1.1 a copy of the current Constitution;

40.1.2 a copy of the latest annual accounts and of any report of the Auditor on them; and

40.1.3 a copy of the latest annual report.

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

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

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

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

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

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

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

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

40.2.8 a copy of any final report published under section 65L (administrator’s final report);

40.2.9 a copy of any statement published under section 65J (power to extend time); or 65KC (action following

Secretary of State's rejection of final report) of the 2006 Act; and

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

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

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

41. Auditor

41.1 The Trust shall have an Auditor.

41.2 The Council of Governors shall appoint or remove the Auditor at a general Meeting of the Council of Governors.

41.3 A person may only be appointed as the Auditor if they (or in the case of a firm, each of its members) are eligible to become an Auditor in accordance with paragraph 23 of Schedule 7 to the 2006 Act.

41.4 The Auditor is to carry out its duties in accordance with Schedule 10 of the 2006 Act and in accordance with any directions given by NHSI on standards, procedures and techniques to be adopted.

42. Audit committee

The Trust shall establish a committee consisting of at least three (3) independent non-executive Directors as an audit committee to perform such monitoring, reviewing and other functions as are appropriate.

43. Accounts

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

43.2 NHSI may with the approval of the Secretary of State give directions to the Trust as to the content and form of its

accounts.

- 43.3** The accounts are to be audited by the Trust's Auditor.
- 43.4** The Trust shall prepare in respect of each Financial Year annual accounts in such form as Monitor may with the approval of the Secretary of State direct.
- 43.5** The functions of the Trust with respect to the preparation of the annual accounts shall be delegated to the Accounting Officer.

44. Annual report, forward plans and non-NHS work

- 44.1** The Trust shall prepare an annual report and send it to NHSI.
- 44.2** The Trust shall give information as to its forward planning in respect of each Financial Year to NHSI.
- 44.3** The document containing the information with respect to forward planning (referred to above) shall be prepared by the Directors.
- 44.4** In preparing the document, the Directors shall have regard to the views of the Council of Governors.
- 44.5** Each forward plan must include information about:
 - 44.5.1** 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
 - 44.5.2** the income it expects to receive from doing so.
- 44.6** Where a forward plan contains a proposal that the Trust carry on an activity of a kind mentioned in sub-paragraph 44.5.1 the Council of Governors must:
 - 44.6.1** determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfilment by the Trust of its principal purpose or the performance of its other functions; and
 - 44.6.2** notify the Directors of the Trust of its determination.

44.7 A Trust which proposes to increase by 5% or more the proportion of its total income in any Financial Year attributable to activities other than the provision of goods and services for the purposes of the health service in England may implement the proposal only if more than half of the members of the Council of Governors of the Trust voting approve its implementation.

45. Presentation of the annual accounts and reports to the Governors and members

45.1 The following documents are to be presented to the Council of Governors at a general Meeting of the Council of Governors:

45.1.1 the annual accounts;

45.1.2 any report of the Auditor on them; and

45.1.3 the annual report.

45.2 The documents shall also be presented to the members of the Trust at the Annual Members' Meeting by at least one (1) member of the Board of Directors in attendance.

45.3 The Trust may combine a Meeting of the Council of Governors convened for the purposes of sub-paragraph 45.1 with the Annual Members' Meeting.

46. Instruments

46.1 The Trust shall have a seal.

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

47. Amendment of the Constitution

47.1 The Trust may make amendments of its Constitution only if:

47.1.1 more than half of the members of the Council of Governors of the Trust voting approve the amendments; and

47.1.2 more than half of the members of the Board of Directors of the Trust voting approve the amendments.

47.2 Amendments made under paragraph 47.1 take effect as soon as the conditions in that paragraph are satisfied, but the amendment has no effect in so far as the Constitution would, as a result of the amendment, not accord with Schedule 7 of the 2006 Act.

47.3 Where an amendment is made to the Constitution in relation the powers or duties of the Council of Governors (or otherwise with respect to the role that the Council of Governors has as part of the Trust):

47.3.1 At least one (1) member of the Council of Governors must attend the next Annual Members' Meeting and present the amendment; and

47.3.2 The Trust must give the members an opportunity to vote on whether they approve the amendment.

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

47.4 Amendments by the Trust of its Constitution are to be notified to NHSI. For the avoidance of doubt, NHSI's functions do not include a power or duty to determine whether or not the Constitution, as a result of the amendments, accords with Schedule 7 of the 2006 Act.

48. Mergers etc. and significant transactions

48.1 The Trust may only apply for a merger, acquisition, separation or dissolution with the approval of more than half of the members of the Council of Governors.

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

48.3 In paragraph 48.2, the following words have the following meanings:

48.4 “Significant transaction” means a transaction which meets any one (1) of the below criteria:

48.4.1 the total of the fixed assets and current assets subject to the transaction represents more than 25% of the value of the total fixed assets and current assets of the Trust; and/or

48.4.2 the increase in income attributable to:

48.4.2.1 the assets; or

48.4.2.2 the contract,

associated with the transaction represents more than 25% of the value of the Trust’s income; and/or

48.4.3 the gross capital of the company or business which is the subject of the transaction represents more than 25% of the total capital of the Trust following completion (where gross capital is the market value of the relevant company or business’s shares and debt securities, plus the excess of current liabilities over current assets).

49. Procedures and protocols

The Board of Directors shall adopt such procedures and protocols (by way of a Corporate Governance Manual or otherwise) as it shall deem to be appropriate for the good governance of the Trust from time to time.

50. Indemnity

50.1 Members of the Board of Directors, the Council of Governors and the Trust 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 of their functions, save where they have acted recklessly. Any costs arising in this way will be met by the Trust.

50.2 The Trust may purchase and maintain for members of the Board of Directors, Council of Governors and the Trust Secretary, insurance in respect of Directors' and officers' liability, including, without limitation, liability arising by reason of the Trust acting as a corporate trustee of an NHS charity.

ANNEX 1 – THE PUBLIC CONSTITUENCIES

There shall be three (3) Public Constituencies. Members of the public shall be eligible for membership of the Public Constituencies as shown in the table below:

Public Constituency	Electoral area	Minimum number of members
London Borough of Camden	All 18 electoral wards in the London Borough of Camden	100
London Borough of Islington	All 16 electoral wards in the London Borough of Islington	100
Rest of London	All electoral wards within the City of London and the remaining thirty (30) principal subdivisions of the administrative area of Greater London each governed by a London borough council, established by the London Government Act 1963.	100
Total		300

ANNEX 2 – THE STAFF CONSTITUENCY

The Staff Constituency is divided into one (1) class. Staff shall be eligible for membership of the class within the Staff Constituency as shown in the table below.

Staff Constituency class	Description	Minimum number of members
Staff	Individuals who are employed by the Trust under a contract of employment which has no fixed term or has a fixed term of more than twelve (12) months; or have been continuously employed by the Trust under a contract of employment for at least twelve (12) months.	100
Total		100

ANNEX 3 – THE SERVICE USERS’ CONSTITUENCY

The Service Users’ Constituency is divided into one (1) class. Service Users and Service User Carers shall be eligible for membership of the class within the Service User Constituency as shown in the table below.

Service User Constituency class	Description	Minimum number of members
Service Users and Service User Carers	An individual who has been a Service User of the Trust within the last five (5) years at the point of application for membership (in accordance with paragraph 10.2) or is over the age of sixteen (16) and provides care on a regular basis for a Service User who has not attained the age of sixteen (16) or who is by reason of physical or mental incapacity unable to discharge the functions of a member.	100
Total		100

ANNEX 4 – COMPOSITION OF THE COUNCIL OF GOVERNORS

The Council of Governors shall comprise twenty-six (26) Governors as set out in the tables below:

1. Elected Governors

Constituency	Area	Number of Governors
Public	London Borough of Camden	5
	London Borough of Islington	5
	Rest of London	1
Staff	All staff	4
Service User	All Service Users and Service User Carers	6
Total		21

2. Appointed Governors

Representative of	Type	Number of Governors
Local Authority - Camden	Appointing Organisation	1
Local Authority - Islington	Appointing Organisation	1
University College London	Appointing Organisation	1
Voluntary Action Camden	Partnership Organisation	1
Voluntary Action Islington	Partnership Organisation	1
Total		5

ANNEX 5 –THE MODEL ELECTION RULES

The Trust is to hold elections in accordance with the single transferable vote version of the Model Election Rules, as set out below.

PART 1 INTERPRETATION

1. Interpretation

PART 2 TIMETABLE FOR ELECTION

2. Timetable
3. Computation of time

PART 3 RETURNING OFFICER

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

PART 4 STAGES COMMON TO CONTESTED AND UNCONTESTED ELECTIONS

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

PART 5 CONTESTED ELECTIONS

19. Poll to be taken by ballot
20. The ballot paper
21. The declaration of identity (Public and Service Users' Constituencies)

Action to be taken before the poll

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

The poll

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

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

36. Receipt of voting documents
37. Validity of votes
38. Declaration of identity but no ballot (Public and Service Users' Constituency)
39. De-duplication of votes
40. Sealing of packets

PART 6 COUNTING THE VOTES

41. Interpretation of Part 6
42. Arrangements for counting of the votes
43. The count
44. Rejected ballot papers and rejected text voting records
45. First stage
46. The quota
47. Transfer of votes
48. Supplementary provisions on transfer
49. Exclusion of candidates
50. Filling of last vacancies
51. Order of election of candidates

PART 7 FINAL PROCEEDINGS IN CONTESTED AND UNCONTESTED ELECTIONS

52. Declaration of result for contested elections
53. Declaration of result for uncontested elections

PART 8 DISPOSAL OF DOCUMENTS

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

PART 9 DEATH OF A CANDIDATE DURING A CONTESTED ELECTION

59. Countermand or abandonment of poll on death of candidate

PART 10 ELECTION EXPENSES AND PUBLICITY

Expenses

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

Publicity

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

PART 11 QUESTIONING ELECTIONS AND IRREGULARITIES

66. Application to question an election

PART 12 MISCELLANEOUS

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

PART 1 INTERPRETATION

1. Interpretation

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

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

"corporation" means the public benefit corporation subject to this Constitution;

"Council of Governors" means the council of governors of the corporation;

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

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

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

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

"ID declaration form" has the meaning set out in Rule 21.1;

"internet voting record" has the meaning set out in rule 26.4(d);

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

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

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

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

"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);

"poling 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; and

"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 2006 Act have the same meaning in these rules as in that Schedule.

PART 2 TIMETABLE FOR ELECTIONS

2. Timetable

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

Proceeding	Time
Publication of notice of election	Not later than the 40th day before the day of the close of the poll.

Final day for delivery of nomination forms to returning officer	Not later than the 28th day before the day of the close of the poll.
Publication of statement of nominated Candidates	Not later than the 27th 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 25th day before the day of the close of the poll.
Notice of the poll	Not later than the 15th day before the day of the close of the poll.
Close of the poll	By 5pm on the final day of the election.

3. Computation of time

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

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

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

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

PART 3 RETURNING OFFICER

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/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/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/her functions under these rules.

PART 4 STAGES COMMON TO CONTESTED AND UNCONTESTED ELECTIONS

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 email 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 email 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/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 Service Users' Constituency, of the particulars of his/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/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 email 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/her in consultation with the corporation.

PART 5 COUNTING THE VOTES

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 email 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/her vote using the internet voting system;
- (b) if telephone voting is 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/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/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/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 Service Users' Constituencies)

21.1. The corporation shall require each voter who participates in an election for a Public or Service Users' 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/she has not marked or returned any other voting information in the election; and
- (c) the particulars of his/hers 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/her declaration of identity with his/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 email address, if this has been provided; to which his/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 email to those members in the list of eligible voters for whom an email address is included in that list.

23. Notice of poll

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

- (a) the name of the corporation;
- (b) the constituency, or class within a constituency, for which the election is being held;
- (c) the number of members of the Council of Governors to be elected from that constituency, or class with that constituency;
- (d) the names, contact addresses, and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated

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

24. Issue of voting information by returning officer

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

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

24.2. Subject to rules 24.3 and 24.4, as soon as is reasonably practicable on or after the publication of the notice of the poll, the returning officer is to send the following information by email 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/hers 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 email to those members in the list of eligible voters for whom an email address is included in that list, then the returning officer shall only send that information by email.

24.5. The voting information is to be sent to the postal address and/or

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

The poll

27. Eligibility to vote

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

28. Voting by persons who require assistance

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

28.2. Where the returning officer receives a request from a voter who requires assistance to vote, the returning officer is to make such arrangements as he/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/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/she can obtain it.

29.3. The returning officer may not issue a replacement ballot paper for a spoilt ballot paper unless he/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/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/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/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/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/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/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 Service Users' Constituencies)

- 32.1.** In respect of an election for a Public or Service Users' 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/hers 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/hers 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/hers vote, the voter will need to key in a mark on the screen opposite the particulars of the candidate or candidates for whom he/she wishes to cast his/hers vote.

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

34. Voting procedure for remote voting by telephone

34.1. To cast his/hers 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/hers 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/hers vote by keying in the numerical voting code of the candidate or candidates, for whom he/she wishes to vote.
- 34.5.** The voter will not be able to access the telephone voting facility for an election once his/hers vote at that election has been cast.

35. Voting procedure for remote voting by text message

- 35.1.** To cast his/hers 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/hers voter ID number and the numerical voting code for the candidate or candidates, for whom he/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/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/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/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/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 Service Users' Constituency)

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/she shall:
- (a) only accept as duly returned the first vote received that was cast using the relevant voter ID number; and
 - (b) mark as "disqualified" all other votes that were cast using the relevant voter ID number.
- 39.3.** Where a ballot paper is disqualified under this rule the returning officer shall:
- (a) mark the ballot paper "disqualified";
 - (b) if there is an ID declaration form accompanying the ballot paper, mark it "disqualified" and attach it to the ballot paper;
 - (c) record the unique identifier and the voter ID number on the ballot paper in the list of disqualified documents;
 - (d) place the document or documents in a separate packet; and
 - (e) disregard the ballot paper when counting the votes in accordance with these rules.
- 39.4.** Where an internet voting record, telephone voting record or text voting record is disqualified under this rule the returning officer shall:
- (a) mark the internet voting record, telephone voting record or text voting record (as applicable) "disqualified";

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

40. Sealing of packets

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

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

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

PART 6 COUNTING THE VOTES

41. Interpretation of Part 6

41.1. 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 49;

"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 46;

"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 47.4 or 47.7.

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.

44. Rejected ballot papers and rejected text voting records

44.1. 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.

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

44.3. 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.

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

44.5. 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 44.1 and the number of text voting records rejected by him or her under each of the sub-paragraphs (a) to (c) of rule 44.3.

45. First stage

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

45.2. 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.

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

46. The quota

46.1. 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.

46.2. The result, increased by one, of the division under rule 46.1 (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").

46.3. 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 47.1 to 47.3 has been complied with.

47. Transfer of votes

- 47.1.** 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.
- 47.2.** The returning officer is to count the number of ballot documents in each parcel referred to in rule 47.1.
- 47.3.** The returning officer is, in accordance with this rule and rule 48, to transfer each sub-parcel of ballot documents referred to in rule 47.1
- (a) to the candidate for whom the next available preference is given on those ballot documents.
- 47.4.** The vote on each ballot document transferred under rule 47.3 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).

47.5. 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.

47.6. The returning officer is, in accordance with this rule and rule 48, to transfer each sub-parcel of ballot documents referred to in rule 47.5(a) to the candidate for whom the next available preference is given on those ballot documents.

47.7. The vote on each ballot document transferred under rule 47.6 shall be at:

- (a) a transfer value calculated as set out in rule 47.4(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.

47.8. Each transfer of a surplus constitutes a stage in the count.

47.9. Subject to rule 47.10, 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.

47.10. 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.

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

48. Supplementary provisions on transfer

48.1. 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.

48.2. The returning officer shall, on each transfer of transferable ballot documents under rule 47:

- (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.

48.3. All ballot documents transferred under rule 47 or 49 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.

48.4. Where a ballot document is so marked that it is unclear to the returning officer at any stage of the count under rule 47 or 49 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.

49. Exclusion of candidates

- 49.1.** If:
- (a) all transferable ballot documents which under the provisions of rule 47 (including that rule as applied by rule 49.11) and this rule are required to be transferred, have been transferred; and
 - (b) subject to rule 50, 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 49.12 applies,

the candidates with the then lowest votes).

- 49.2.** The returning officer shall sort all the ballot documents on which first preference votes are given for the candidate or candidates excluded under rule 49.1 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).
- 49.3.** The returning officer shall, in accordance with this rule and rule 48, transfer each sub-parcel of ballot documents referred to in rule 49.2 to the candidate for whom the next available preference is given on those ballot documents.
- 49.4.** The exclusion of a candidate, or of two or more candidates together, constitutes a further stage of the count.
- 49.5.** If, subject to rule 50, 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 49.1 into sub- parcels according to their transfer value.
- 49.6.** 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).

- 49.7.** The vote on each transferable ballot document transferred under rule 49.6 shall be at the value at which that vote was received by the candidate excluded under rule 49.1.
- 49.8.** Any ballot documents on which no next available preferences have been expressed shall be set aside as non-transferable votes.
- 49.9.** 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/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 49.1.
- 49.10.** 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.
- 49.11.** 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 47.5 to 47.10 and rule 48.

49.12. 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.

49.13. 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.

50. Filling of last vacancies

50.1. 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.

50.2. 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.

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

51. Order of election of candidates

51.1. 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 47.10.

51.2. 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/she obtained the quota.

51.3. 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.

51.4. 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.

PART 7 FINAL PROCEEDINGS IN CONTESTED AND UNCONTESTED ELECTIONS

52. Declaration of result for contested elections

52.1. 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/she has declared elected:
 - (i) where the election is held under a proposed Constitution pursuant to powers conferred on the Trust 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 he/she has declared elected.

52.2. 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 44.1;
 - (f) the number of rejected text voting records under each of the headings in rule 44.3;
- 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/she has declared elected to the Chair of the corporation; and

- (c) give public notice of the name of each candidate who he/she has declared elected.

PART 8 DISPOSAL OF DOCUMENTS

54. Sealing up of documents relating to the poll

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

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

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

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

- (a) the disqualified documents, with the list of disqualified documents inside it;
- (b) the list of 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 Chair 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/hers vote was given; and
- (ii) that Monitor has declared that the vote was invalid.

PART 9 DEATH OF A CANDIDATE DURING A CONTESTED ELECTION

59. Countermand or abandonment of poll on death of candidate

59.1. 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.

59.2. The ballot documents which have preferences recorded for the candidate who has died are to be sealed with the other counted ballot documents pursuant to rule 54.1(a).

PART 10 ELECTION EXPENSES AND PUBLICITY

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/hers 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/hers own services voluntarily, on his/hers 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.

PART 12 MISCELLANEOUS

67. Secrecy

67.1. The following persons:

- (a) the returning officer; and
- (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/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/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 paper;

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/she considers appropriate.

ANNEX 6 – ADDITIONAL PROVISIONS – COUNCIL OF GOVERNORS

1. Council of Governors – disqualification and removal

1.1 A person may not become or continue as a Governor, if:

1.1.1 in the case of a Staff Governor, Service User Governor or Public Governor the person ceases to be a member of the constituency by which he/she was elected;

1.1.2 NHSI has exercised its powers to remove that person as a Governor or has suspended him/her from office or has disqualified him/her from holding office as a Governor for a specified period or NHSI has exercised any of those powers in relation to the person concerned at any other time whether in relation to the Trust or another NHS foundation trust;

1.1.3 they are a Director of the Trust or a governor or director of another NHS body (unless they are appointed by an Appointing Organisation which is an NHS body);

1.1.4 they are the spouse, partner, parent or child of a member of the Board of Directors of the Trust;

1.1.5 they are a member of a local authority's Health Overview and Scrutiny Committee;

1.1.6 they have been previously removed as a Governor pursuant to this paragraph 1 of Annex 6 as a result of their inappropriate conduct and not in view of their employment or other status or role at any relevant time;

1.1.7 being a member of the Public Constituency or the Service Users' Constituency, they refuse to sign a declaration in the form specified by the Trust Secretary of particulars of their qualification to vote as a member of the Trust, and that they are not prevented from being a Governor;

1.1.8 they have previously been or are currently subject to a sex offender order and/or required to register under the Sexual Offences Act 2003 or have committed a sexual offence prior to

the requirements to register under current legislation coming into force;

- 1.1.9** they have within the preceding five (5) years been dismissed, otherwise than by reason of redundancy, from any paid employment with an NHS body and not reinstated;
- 1.1.10** they have been disqualified from being a member of a relevant authority under a provision of the Local Government Act 2000;
- 1.1.11** they are a person whose tenure of office as the Chair or as a member or director of another NHS body has been terminated on the grounds that their appointment is not in the interests of the health service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest;
- 1.1.12** they are incapable by reason of mental disorder, illness or injury of managing and administering their property and affairs;
- 1.1.13** on the basis of disclosures obtained through an application to the Disclosure and Barring Service established under section 87 of the Protection of Freedoms Act 2012 (or any other checks required by the Trust from time to time as being consistent with its licence conditions or mandatory or nationally recommended good governance arrangements), they are not considered suitable by the Chief Executive;
- 1.1.14** they have been suspended, and during such period of suspension that Governor's term of office is due to expire; and/or
- 1.1.15** they have been suspended, and prior to any investigation being carried out and/or concluded, they have resigned.

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

- 1.2.1** they resign by notice in writing to the Trust Secretary;
- 1.2.2** they have failed to attend three (3) consecutive meetings of the Council of Governors, and by the end of the following Meeting of the Council of Governors the other Governors are not satisfied that the absences were due to reasonable causes;

1.4.4.4 adversely affect public confidence in the goods and services provided by the Trust; and/or

1.4.4.5 otherwise bring the Trust into disrepute.

1.5 The provisions of this paragraph 1 of Annex 6 and paragraph 17 of this Constitution applies to both Elected and Appointed Governors and to those seeking election or appointment.

1.6 Where an individual has been elected or appointed to be a Governor and he/she becomes disqualified for election or appointment, he/she shall notify the Trust Secretary in writing of such disqualification as soon as practicable and in any event within fourteen (14) days of first becoming aware of those matters which render him/her disqualified.

1.7 If it comes to the notice of the Trust Secretary that a Governor is disqualified, whether at the time of the Governor's appointment or later, the Trust Secretary shall immediately declare that the individual in question is disqualified and give notice to him in writing to that effect as soon as practicable and in any event within fourteen (14) days of the date of said declaration.

1.8 Upon giving of notice under paragraphs 1.6 or 1.7 of this Annex 6 that an individual's tenure of office, if any, shall be terminated forthwith, he/she shall cease to be a Governor and his/her name shall be removed from the register of Governors. Any Governor may refer any dispute he/she may have with regard to that decision to the Trust's Dispute Resolution Procedure.

2. Council of Governors - vacancies

2.1 Where a vacancy arises for a Governor for any reason other than expiry of term of office, the following provisions will apply:

2.1.1 where an Elected Governor's membership of the Council of Governors ceases for one of the reasons set out in paragraph 17 of this Constitution or paragraph 1 of this Annex 6 he/she may be replaced in accordance with the following provisions:

2.1.1.1 the Trust may invite the highest polling unelected candidate for that constituency, or class within that constituency, at the most recent election the opportunity to fill the seat for the unexpired period of

the term of office, subject to the approval of the majority of the Council of Governors voting at a Meeting of the Council of Governors. If that candidate does not agree to fill the vacancy it may then be offered to the next highest polling unelected candidate until the vacancy is filled.

2.1.1.2 if no such reserve candidate is available, chosen, or willing to fill the vacancy, an election will then be held in accordance with the Model Election Rules save that if an election is due to be held within nine (9) months of the vacancy having arisen the position shall stand vacant unless this causes the aggregate number of Governors who are Public Governors and Service User Governors to be less than half of the total membership of the Council of Governors. In that case an election will be held in accordance with the Model Election Rules as soon as reasonably practicable.

2.1.1.3 Where an Appointed Governor's membership of the Council of Governors ceases for one of the reasons set out in paragraph 17 of this Constitution or paragraph 1 of this Annex 6, he/she shall be replaced in accordance with a process of appointment as agreed by the Trust Secretary and the Appointing Organisation.

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

1. Composition of the Council of Governors – further provisions

1.1 The Council of Governors, subject to the 2006 Act, shall seek to ensure through the composition of the Council of Governors that:

1.1.1 the interests of the community served by the Trust are appropriately represented;

1.1.2 the level of representation of the Public Constituency, the Service Users' Constituency, the Staff Constituency, the Appointing Organisations and the Partnership Organisations strikes an appropriate balance such that no individual or small group of individuals can dominate the Council of Governor's decision making, having regard to their legitimate interest in the Trust's affairs,

and to this end, the Council of Governors:

1.1.2.1 shall at all times maintain a policy for the composition of the Council of Governors;

1.1.2.2 shall from time to time and not less than every three (3) years review the policy for the composition of the Council of Governors; and

1.1.2.3 where appropriate shall propose amendments to this Constitution.

2. Roles and responsibilities of the Council of Governors

2.1 Notwithstanding any statutory responsibilities and obligations imposed by NHSI, the general responsibilities of the Council of Governors shall be to:

2.1.1 engage in dialogue with and provide advice to the Board of Directors with regard to the Trust's future vision and strategy and act as a source of ideas about how the Trust can provide its services in ways that meet the needs of the community it serves;

2.1.2 review annually the extent to which the Trust is meeting its objective of delivering high quality services; and

2.1.3 work with the Board of Directors on such other matters for the benefit of the Trust as may be agreed between them.

2.2 The specific rights and duties of the Council of Governors are:

2.2.1 in a general meeting to:

2.2.1.1 appoint or remove the Chair and the other non-executive Directors of the Trust. The removal of any non-executive Director shall require the approval of not less than three-quarters of the Governors;

2.2.1.2 approve the appointment of the Chief Executive of the Trust by non-executive Directors;

2.2.1.3 decide the remuneration and expenses and the other terms and conditions of office of the non-executive Directors;

2.2.1.4 appoint or remove the Trust's Auditor;

2.2.1.5 receive and consider the Trust's annual accounts, any Auditor's reports on those annual accounts and the annual report from the Board of Directors;

2.2.1.6 to be consulted by the Board of Directors regarding the information to be given to NHSI as to the Trust's forward planning in respect of each Financial Year and to give their views to the Board of Directors on any document containing such information which is to be given to Monitor;

2.2.1.7 to undertake such functions as the Board of Directors shall from time to time request; and

2.2.1.8 to prepare and from time to time review the Trust's policy for the composition of the Council of Governors and of the Trust, subject to any contrary provisions of the 2006 Act as given effect by this Constitution.

3. Council of Governors - committees

The Council of Governors may establish committees and working groups as appropriate and to which the Council of Governors may not delegate any of their powers but that may assist the Council of Governors in carrying out its duties. This will include a nominations committee and a remuneration committee which may be combined. Committees of the Trust are governed by the Terms of Reference.

4. Disputes between the Council of Governors and the Board of Directors

4.1 The procedure that should be followed in the event of any unresolved dispute between the Council of Governors and the Board of Directors is set out in the Trust's Dispute Resolution Procedure.

5. Eligibility to vote and stand for election

5.1 A person may not vote at an election for, or stand for election to the Council of Governors unless within a period and form specified by the Trust Secretary made a declaration:

5.1.1 of the particulars of his/her qualification to vote as a member of the Constituency, for which the election is being held;

5.1.2 that he/she is not prevented from being a member of the Council by paragraph 8 of Schedule 7 to the 2006 Act; and

5.1.3 that he is not otherwise disqualified under paragraph 1 of Annex 6 or paragraph 17 of the Constitution.

5.1.4 This paragraph 5.1 of Annex 7 does not apply to an election held for the Staff Constituency.

5.2 Every Service User Governor and Public Governor must upon their election as a Governor make a declaration, and they must make a further declaration within each Financial Year, in the form specified below, that they are qualified to vote at meetings of the Council of Governors and are not prevented from being a member of the Council of Governors by paragraph 8 of Schedule 7 of the 2006 Act or under the Constitution:

“I declare that the details I have provided to the Trust are correct to the best of my knowledge and belief; that I remain eligible to be a member of the [] constituency and am not otherwise disqualified from membership of the Trust; and that I am not prevented from being a Foundation Trust Governor by paragraph 8 of Schedule 7 to the National Health Service Act 2006.”

5.3 A person is guilty of an offence under the 2006 Act if he/she:

5.3.1 makes a declaration under this section which he knows to be false in a material particular; or

5.3.2 recklessly makes such a declaration which is false in a material particular.

6. Meetings of Council of Governors

6.1 No business shall be transacted at a Meeting of the Council of Governors unless at least 50% of the Elected Governors are present.

6.2 For the purposes of paragraph 6.1 above, an Elected Governor shall not be counted towards the quorum in the event that that Governor has taken a leave of absence which has been acknowledged by the Chair.

7. Council of Governors - conflicts of interest of Governors

7.1 Governors shall declare any pecuniary, personal or family interest, whether that interest is direct or indirect, in any proposed contract or other matter which is under consideration or is to be considered by the Council of Governors. A family interest will include those of a Governor’s spouse or partner. Any Governors appointed subsequently shall declare such interests on appointment or election.

7.2 Subject to the exceptions below a direct or indirect interest is:

7.2.1 any directorship of a company;

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

7.2.3 any interest in an organisation providing health and social care services to the national health service;

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

1. Board of Directors – committees

The Board of Directors shall establish an audit committee and a remuneration committee comprised of non-executive Directors and any other committees comprised of Board members as appropriate, to which any of the powers exercised by the Board of Directors (except for powers reserved for the Board) on behalf of the Trust may be delegated. The Terms of Reference for committees shall be as set out in the Trust's Corporate Governance Manual.

2. Disputes between the Council of Governors and the Board of Directors

The procedure that should be followed in the event of any unresolved dispute between the Council of Governors and the Board of Directors is set out in the Trust's Dispute Resolution Procedure.

3. Appointment and removal of the Chair and other non-executive Directors

1.1. The appointment of the Chair and the other non-executive Directors shall be in accordance with the following procedures:

- 1.1.1.** the Council of Governors shall create a duly authorised nominations committee responsible for dealing with nominations for the non-executive Directors consisting of a majority of Governors;
- 1.1.2.** membership of the nominations committee will be determined by the Governors and defined in that committee's Terms of Reference;
- 1.1.3.** the Council of Governors will maintain a policy for the composition of the non-executive Directors, and which they shall review from time to time and not less than every three (3) years;
- 1.1.4.** the Council of Governors will work with an external organisation recognised as expert at appointments to identify the skills and experience required for non-executive Directors;

Directors or to an executive Director in accordance with the Trust's Corporate Governance Manual.

- 2.3. A committee of non-executive Directors established as an audit committee shall monitor, review and carry out such functions in relation to the Auditor outlined in paragraph 41 of this Constitution as appropriate.
- 2.4. The non-executive Directors shall appoint or remove the Chief Executive (and Accounting Officer). The appointment of a Chief Executive (but not his/her removal) shall require the approval of the Council of Governors.
- 2.5. A nominations committee consisting of the Chair, the Chief Executive (and Accounting Officer) and the other non-executive Directors shall appoint the executive Directors.
- 2.6. The Trust shall establish a committee of non-executive Directors to decide the remuneration, allowances and the other terms and conditions of office of the executive Directors.
- 2.7. The Board of Directors shall give information as to its forward planning in respect of each Financial Year to NHSI. The Board of Directors shall prepare a document containing that information for submission to NHSI and shall have regard to the views of the Council of Governors when preparing it.
- 2.8. The Board of Directors shall present to the Council of Governors in a members' meeting the Trust's annual accounts, and any report of the Auditor on them, and the Trust's annual report.

3. **Signature of documents**

- 3.1. The Chief Executive or other nominated officer of the Chief Executive shall be authorised by resolution of the Board of Directors to sign any agreement or other document not required to be executed as a deed, the subject matter of which has been approved by the Board of Directors or any committee with delegated authority, on behalf of the Trust.

4. **Board of Directors – meetings of Directors**

- 4.1. Ordinary meetings of the Board of Directors shall be held at regular intervals, no less than four (4) times in each Financial Year, at such times and in such places as the Board of Directors may determine from time to time.
- 4.2. Seven (7) Directors including not less than two (2) executive Directors (one (1) of whom must be the Chief Executive or another executive Director

nominated by the Chief Executive), and not less than two (2) non-executive Directors (one (1) of whom must be the Chair or the Deputy Chair of the Board of Directors) shall form a quorum.

ANNEX 9 – FURTHER PROVISIONS

1. Membership of the Service Users’ Constituency – Service User Carers

1.1. A Service User Carer is an individual who:

1.1.1. is not less than sixteen (16) years of age at the date of applying to become a member;

1.1.2. provides care on a regular basis for a Service User who has not attained the age of sixteen (16) years or who is by reason of physical or mental incapacity unable to discharge the functions of a member; and

1.1.3. does not (as set out in paragraph 3(6) of Schedule 7 to the 2006 Act) provide that care:

1.1.3.1. in pursuance of a contract (including a contract of employment); or

1.1.3.2. as a volunteer for a voluntary organisation; and

1.1.4. has either been:

1.1.4.1. nominated by that Service User as his/her Service User Carer for the time being for the purposes of this paragraph 1 of Annex 9 and has been accepted by the Trust as that Service Users’ Carer for that purpose; or

1.1.4.2. has been accepted by the Trust as a Service User Carer for the purposes of this paragraph 1 of Annex 9 where the Service User is under sixteen (16) years of age or lacks the legal or mental capacity to nominate that individual as his/her Service User Carer and the Trust has to the extent that it is reasonably practicable (and in line with a policy agreed by the Council of Governors) with that Service User as to his/her wishes and has then agreed to treat that individual as the Service User Carer for the purposes of this paragraph 1 of this Annex 9 provided the individual has agreed in writing to act in that capacity and he/she is otherwise qualified in accordance with this Constitution.

1.2. An individual shall not be eligible to apply to become a member as Service User Carer or to continue as a member as a Service User Carer if:

1.1.1. the Service User has withdrawn his/her nomination of that individual under paragraph 1.1.4.2 of Annex 9 as his/her Service User Carer; or

1.1.2. the Service User Carer is a member of another constituency under this Constitution; or

1.1.3. where the individual no longer fits the description of Service User Carer as set out in paragraph 1.1 of this Annex 9.

2. Disqualification from membership

2.1. An individual shall not become or continue as a member if:

1.1.4. they are under sixteen (16) years of age;

1.1.5. they become ineligible to be a member under paragraphs 6 – 11 of this Constitution;

1.1.6. they have been involved within the last five (5) years as a perpetrator in a serious incident of assault or violence, or in one or more incidents of harassment against any of the Trust's employees or other persons who exercise functions for the purposes of the Trust, or against any registered volunteer and the Council of Governors considers that it is not in the best interests of the Trust for them to become or remain a member;

1.1.7. they have received a conviction anywhere within the European Union;

1.1.8. the Council of Governors resolves for other reasonable cause that his/her doing so would or would be likely to:

1.1.8.1. prejudice the ability of the Trust to fulfil its principal purpose or other of its purposes under this Constitution or otherwise to discharge its duties and functions;

1.1.8.2. harm the Trust's ability to work with other persons or bodies with whom it is engaged or may be engaged in the provision of goods and services;

3. Representative membership

- 3.1. The Trust shall at all times strive to ensure that taken as a whole its actual membership is representative of those eligible for membership.
- 3.2. The Council of Governors shall present to each Annual Members' Meeting a report on the steps taken to secure that (taken as a whole) the actual membership of a Public Constituency, of the Service Users' Constituency and of the Staff Constituency is representative of those eligible for such membership.

4. Termination of Membership

- 4.1. A person's membership shall be terminated if:
 - 4.1.1. they resign by giving notice to the Trust Secretary;
 - 4.1.2. they are disqualified under paragraph 2 of Annex 9 above;
 - 4.1.3. they die;
 - 4.1.4. they cease to be entitled under this Constitution to be a member of a Public Constituency or of the Service Users' Constituency or of the Staff Constituency; or
 - 4.1.5. it appears to the Trust Secretary that they no longer wish to be a member of the Trust, and after enquiries, they fail to demonstrate that they wish to continue as a member of the Trust.
- 4.2. A member may be expelled via the following adopted procedure:
 - 4.2.1. any member may complain to the Trust Secretary, in accordance with the Trust's Dispute Resolution Procedure, that another member has acted in a way detrimental to the interests of the Trust; and
 - 4.2.2. that member shall be expelled by a resolution approved by not less than two-thirds of the Governors present and voting at a Meeting of the Council of Governors.

5. Voting in Council of Governors Elections

- 5.1. A member may not vote at an election for a Public Governor or a Service User Governor (as the case may be) unless within the specified period

he/she has made a declaration in the specified form that he/she is a member of the Public Constituency or the Service Users' Constituency (as the case may be) and stating the particulars of his/her qualification to vote as a member of that Constituency for which an election is being held. It is an offence to knowingly or recklessly make such a declaration which is false in a material particular.

- 5.2.** The form and content of the declaration and the period for making such a declaration for the purposes of paragraph 5.1 of Annex 7 above shall be specified and published by the Trust from time to time and shall be so published not less than twenty-eight (28) days prior to elections.

ANNEX 10 – ANNUAL MEMBERS’ MEETING

1. Annual Members’ Meeting – further provisions

- 1.1.** Before a members' meeting can do business there must be a quorum present. Except where this Constitution states otherwise a quorum is twenty (20) members with at least one (1) member present from each of the Trust’s constituencies.
- 1.2.** If a quorum is not present, no matter may be discussed or voted upon at that meeting and the meeting shall be adjourned. Such a position shall be recorded in the minutes of the meeting.
- 1.3.** If no quorum is present within half an hour of the time fixed for the start of the meeting, the meeting shall stand adjourned to the same day in the next week at the same time and place or to such time and place as the Board of Directors determine. If a quorum is not present within half an hour of the time fixed for the start of the adjourned meeting, the number of members present shall be a quorum.