

**The Clatterbridge Cancer  
Centre NHS Foundation Trust  
Trust Constitution**

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**CONSTITUTION OF**

**THE CLATTERBRIDGE CANCER CENTRE**

**NHS FOUNDATION TRUST**

**(A PUBLIC BENEFIT ORGANISATION)**

**Version 13**  
**Approved 25 January 2023**

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## The Clatterbridge Cancer Centre NHS Foundation Trust Constitution

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## 1. Interpretation and Definitions

1.1 Unless the contrary intention appears or the context otherwise requires, words or expressions contained in this constitution and its Annexes shall bear the same meaning as in the National Health Service Act 2006 as amended by the Health and Social Care Act 2012. References to legislation include all amendments, replacements, or re-enactments made.

1.2 Headings are for ease of reference only and are not to affect interpretation. Words importing the masculine gender only shall include the feminine gender; words importing the singular shall include the plural and vice-versa.

1.3 In this Constitution and its Annexes:

<b>the 2006 Act</b>	means the National Health Service Act 2006
<b>the 2012 Act</b>	means the Health and Social Care Act 2012
<b>Accounting Officer</b>	means the person who from time to time discharges the functions specified in paragraph 25(5) of Schedule 7 to the 2006 Act
<b>Appointed Governor</b>	means those Governors appointed by the appointing organisations
<b>Appointing Organisations</b>	means those organisations named in this Constitution who are entitled to appoint Governors
<b>Areas of the Trust</b>	means the areas of the Public Constituencies in Annex 1
<b>Authorisation</b>	means an authorisation given by NHS England which incorporates Monitor, the statutory entity that remains the regulator of NHS foundation trusts
<b>Board of Directors</b>	means the Board of Directors as constituted in accordance with this Constitution and the 2006 Act
<b>Chair</b>	means the Chairman of the Trust (the expression “the Chair” shall be deemed to include the Deputy Chair of the Trust if the Chair is absent from the relevant meeting or is otherwise unavailable)
<b>Contracting and Procuring</b>	means the systems for obtaining the supply of goods, materials, manufactured items, services, building and engineering services, works of construction and maintenance and for disposal of surplus and obsolete assets
<b>Council of Governors</b>	means the Council of Governors as constituted in accordance with this Constitution and the 2006 Act

<b>Dispute Resolution Procedure</b>	means the dispute resolution procedure as set out in Annex 9 of this Constitution
<b>Elected Governors</b>	means those Governors elected by the public constituencies and the classes of the staff constituency
<b>External Auditor</b>	means any external auditor other than the financial auditor appointed to review and report upon other aspects of the Trust's performance
<b>Financial Auditor</b>	means the person appointed to audit the accounts of the Trust, who is referred to as the auditor in the 2006 Act
<b>Financial Year</b>	means each period of 12 months beginning on 1 April
<b>Lead Governor</b>	means the Governor appointed by the Council of Governors in accordance with paragraph 22 of this Constitution as the main link between the Governors and the Chair of the Trust
<b>Member</b>	means a member of the Trust
<b>Monitor</b>	means the body corporate known as Monitor (as provided by Section 61 of the 2012 Act and incorporated into NHS England), the statutory entity that remains the regulator of NHS foundation trusts
<b>Nominations Committee</b>	means a Committee of the Council of Governors established in accordance with Paragraph 27 of this Constitution
<b>Public Governor</b>	means a Governor elected by the members of one of the public constituencies
<b>Registered Dentist</b>	means a Registered Dentist within the meaning of the Dentists Act 1984
<b>Registered Medical Practitioner</b>	means a fully registered person within the meaning of the Medical Act 1983 who holds a licence to practice under that Act.
<b>Registered Nurse or Midwife</b>	means a Nurse or Midwife registered in accordance with the Nursing and Midwifery Order 2001
<b>Senior Independent Director</b>	means the Non-Executive Director appointed in accordance with paragraph 24.9 of this Constitution, who supports the Chair and serves as an intermediary for other directors
<b>Significant Transaction</b>	has the meaning as defined in Paragraph 46 of this Constitution
<b>Staff Governor</b>	means a Governor elected by the members of one of the classes of the staff constituency
<b>the Trust</b>	means The Clatterbridge Cancer Centre NHS Foundation Trust
<b>Trust Secretary</b>	means the Secretary of the Trust or any other person

appointed to perform the duties of the Secretary including a joint, assistant or deputy Secretary or such other person as may be appointed by the Trust to perform the functions of the Secretary under this Constitution

## **2. Name**

The name of the foundation trust is The Clatterbridge Cancer Centre 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**

- 5.1 The Trust shall have members, each of whom shall be a member of one of the following constituencies:
  - 5.1.1 a public constituency; or
  - 5.1.2 a staff constituency.
- 5.2 The Trust shall at all times strive to ensure that taken as a whole its actual membership is representative of those eligible for membership. To this end the Trust shall at all times have in place and pursue a Membership Strategy which shall be approved by the Council of Governors, and shall be reviewed by them from time to time, and at least every three years.

## **6. Application for Membership**

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

## **7. Public Constituency**

- 7.1 An individual who lives in the areas specified in Annex 1 as the areas for a public constituency may become or continue as a member of the trust.
- 7.2 Those individuals who live in the areas 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 They are employed by the Trust under a contract of employment which has no fixed term or has a fixed term of at least 12 months; or
  - 8.1.2 They have been continuously employed by the trust under a contract of employment for at least 12 months.
- 8.2 Individuals who exercise functions for the purposes of the Trust, otherwise than under a contract of employment with the Trust, may become or continue as members of the staff constituency provided such individuals have exercised these functions continuously for a period of at least 12 months.
- 8.3 Those individuals who are eligible for membership of the Trust by reason of the previous provisions are referred to collectively as the Staff Constituency.
- 8.4 The Staff Constituency shall be divided into six descriptions of individuals who are eligible for membership of the Staff Constituency, each description of individuals being specified within Annex 2 and being referred to as a class within the Staff Constituency.
- 8.5 The minimum number of members in each class of the Staff Constituency is specified in Annex 2.

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

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



become a member of the Trust as a member of the Staff Constituency and appropriate class within the Staff Constituency without an application being made, unless they inform the Trust that they do not wish to do so.

## **10. Restriction on Membership**

- 10.1 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.
- 10.2 An individual who satisfies the criteria for membership of the Staff Constituency may not become or continue as a member of any constituency other than the Staff Constituency.
- 10.3 An individual must be at least 16 years old to become a member of the Trust.
- 10.4 A member shall cease to be a member if:
  - 10.4.1 they resign by notice to the Trust Secretary
  - 10.4.2 they die
  - 10.4.3 they are expelled from membership under this Constitution
  - 10.4.4 they cease to be entitled under this Constitution to be a member of the Public Constituency or any classes of the Staff Constituency.
- 10.5 A member may 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.
- 10.6 Any complaint made about a member must be sent to the member no less than one calendar month before the meeting of the Council of Governors where the complaint will be considered with an invitation to attend to answer the complaint.
- 10.7 If the member complained of fails to respond and fails to attend the meeting without due cause, the meeting may proceed in their absence.
- 10.8 At the meeting the Council of Governors will consider evidence in support of the complaint and such evidence as the member complained of may wish to place before them. The Council of Governors may either dismiss the complaint and take no further action, or for a period not exceeding twelve months suspend the rights of the member complained of to attend members meetings and vote under the Constitution, or arrange for a resolution to expel the member complained of to be considered at the next general meeting of the Council of Governors.
- 10.9 A member expelled from membership will cease to be a member upon the declaration of the Chair of the meeting that the resolution to expel them was carried.
- 10.10 No person who has been expelled from membership is to be re-admitted except by a resolution carried by two-thirds of the Council of Governors voting.

## 11. Annual Members' Meeting

- 11.1 The Trust shall hold an annual meeting of its members ('Annual Members' Meeting'). The Annual Members' Meeting shall be open to members of the public and will be held within 9 months of the end of each financial year. All members meetings other than the Annual Members' Meeting are called special members meetings.
- 11.2 The Annual Members' Meeting is open to all members of the Trust, Governors, Directors and representatives of the Trust Financial Auditors.
- 11.3 All Annual Members' Meetings shall be convened by the Trust Secretary.
- 11.4 At the Annual Members' Meeting:
- 11.4.1 The Board of Directors shall present to the members:
    - 11.4.1.1 the annual accounts
    - 11.4.1.2 any report of the Trust's Financial Auditor
    - 11.4.1.3 the annual report.
  - 11.4.2 The Council of Governors shall present to the members:
    - 11.4.2.1 a report on steps taken to secure that (taken as a whole) the actual membership of its public constituencies and of the classes of the Staff Constituency is representative of those eligible for such membership
    - 11.4.2.2 the progress of the membership strategy which it has approved and any changes to the membership strategy
    - 11.4.2.3 any proposed changes to the composition of the Council of Governors and of Non-Executive Directors.
  - 11.4.3 The results of the election and appointment of Governors and the appointment of any Non-Executive Directors will be announced.
- 11.5 Notice of the Annual Members' Meeting is to be given:
- 11.5.1 by notice prominently displayed at the Trust Headquarters and at all of the Trust's places of business; and
  - 11.5.2 by notice on the Trust website
- at least 14 clear days before the date of the meeting. The notice must:
- 11.5.3 be given to the Council of Governors and the Board of Directors and to the Financial Auditor;
  - 11.5.4 state whether the meeting is an annual or a special members meeting;
  - 11.5.5 give the time, date and place of the meeting; and
  - 11.5.6 indicate the business to be dealt with at the meeting.
- 11.6 The Chair of the Trust, or in their absence the Lead Governor, shall act as Chair at all members meetings of the Trust. If neither are present, the Governors present shall elect one of the Governors to Chair.
- 11.7 Before a members meeting can do business there must be a quorum present. A quorum is ten members present from any of the Trust's constituencies. If no quorum is present within half an hour of the time fixed for the start of the meeting,

the meeting shall stand adjourned to the same day in the next week at the same time and place or to such time and place as the Council of Governors determine. 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 during the meeting is to be a quorum.

11.8 The Trust may make arrangements for members to vote by post or by using electronic communications. Members may participate in the Annual Members' Meeting by telephone, video or computer link. Participation in this manner shall be deemed to constitute presence in person at the meeting.

11.9 It is the responsibility of the Council of Governors, the Chair of the meeting and the Trust Secretary to ensure that at any members meeting:

11.9.1 the issues to be decided are clearly explained,

11.9.2 sufficient information is provided to members to enable rational discussion to take place,

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

11.10A resolution put to the vote at a members meeting shall be decided upon by a poll.

11.11 Every member present and every member who has voted by post or using electronic communications is to have one vote. In the case of an equality of votes the Chair of the meeting is to have a second or casting vote.

11.12 The Trust shall ensure that minutes are maintained of members meetings. The result of any vote will be declared by the Chair and entered in the minutes of the meeting. The minutes will be conclusive evidence of the result of the vote.

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

12.1 The Trust is to have a Council of Governors, which shall comprise both Elected and Appointed Governors.

12.2 The composition of the Council of Governors is specified in Annex 3.

12.3 The members of the Council of Governors, other than the appointed members, shall be chosen by election by their constituency or, where there are classes within a constituency, by their class within that constituency. The number of governors to be elected by each constituency, or, where appropriate, by each class of each constituency, is specified in Annex 3.

12.4 The Council of Governors represents the interests of members of the Trust and appointed organisations, regularly feeding back information about the Trust, its vision and its performance to the constituency they represent.

12.5 The Council of Governors, subject to the 2006 Act, shall seek to ensure that through the composition of the Council of Governors the interests of the community served by the Trust are appropriately represented, and the level of representation of the public constituencies, the classes of the staff constituency and the appointing organisations strikes an appropriate balance having regard to their legitimate interest in the Trust's affairs, and to this end, the Council of Governors shall:

- 12.5.1 at all times maintain a policy for the composition of the Council of Governors which takes account of the membership strategy,
- 12.5.2 from time to time and not less than every three years review the policy for the composition of the Council of Governors, and
- 12.5.3 when appropriate propose amendments to the Constitution.

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

- 13.1 Elections for elected members of the Council of Governors shall be conducted in accordance with the Model Election Rules.
- 13.2 The Model Election Rules as published from time to time by NHS Providers, form part of this Constitution. The Model Election Rules are attached at Annex 4.
- 13.3 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 44 of the Constitution (amendment of the Constitution).
- 13.4 An election, if contested, shall be by secret ballot.
- 13.5 Governors must be at least 16 years of age at the closing date for nomination for their election or appointment.
- 13.6 A member of a public constituency may not vote at an election for a Public Governor unless within twenty-one days before they vote they have made a declaration in the form specified by the Trust Secretary that they are qualified to vote as a member of the relevant public constituency. It is an offence to knowingly or recklessly make such a declaration which is false in a material particular.

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

- 14.1 An elected governor may hold office for a period of up to 3 years commencing immediately after the Annual Members' Meeting at which their election is announced.
- 14.2 An elected governor shall cease to hold office if they cease to be a member of the constituency or class by which they were elected.
- 14.3 An elected governor shall be eligible for re-election at the end of their term but shall serve for no more than 9 years in total (3 consecutive terms if so elected).
- 14.4 If a vacancy arises on the Council of Governors for any other reason other than expiry of term of office, the following provisions will apply:
  - 14.4.1 Where the vacancy arises amongst the Appointed Governors, the Trust Secretary shall request that the Appointing Organisation appoints a replacement to hold office for the remainder of the term of office.
  - 14.4.2 Where the vacancy arises amongst the elected Governors, the Trust Secretary shall, having consulted the Chairman, be at liberty to either:
    - 14.4.2.1 call an election within three months to fill the seat for the remainder of the term;
    - 14.4.2.2 invite the next highest polling candidate for that seat at the most recent election, who is willing to take office, to fill the seat until the next annual election, at which time the seat will fall vacant and subject to

election; or

14.4.2.3 leave the seat vacant until the next elections are held.

14.5 An appointed governor may hold office for a period of up to 3 years.

14.6 An appointed governor shall cease to hold office if the Appointing Organisation withdraws its sponsorship of them.

14.7 An appointed governor shall be eligible for re-appointment at the end of their term but shall serve for no more than three consecutive terms of office (9 years).

14.8 Appointed governors shall be appointed in accordance with a process agreed with the Trust Secretary.

## **15. Council of Governors – Disqualification and Removal**

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

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

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

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

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

15.2 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 5.

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

16.1 The general duties of the Council of Governors are:

16.1.1 to hold the non-executive directors individually and collectively to account for the performance of the Board of Directors, and

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

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

16.3 Governors must comply with the Trust's Code of Conduct for Governors.

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

17.1 The Chair of the Trust (i.e. the Chair of the Board of Directors, appointed in accordance with the provisions of paragraph 26 below) or, in their absence the Deputy Chair (appointed in accordance with the provisions of paragraph 27 below), shall preside at meetings of the Council of Governors. If the Chair and Deputy Chair are absent, another Non-Executive Director shall preside as chosen by the Directors present.

- 17.2 Meetings of the Council of Governors shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons. The Chair may exclude any member of the public from a meeting of the Council of Governors if they are interfering or preventing the proper conduct of the meeting.
- 17.3 For the purposes of obtaining information about the Trust's performance of its functions or the Directors' performance of their duties (and deciding whether to propose a vote on the Trust's or Directors' performance), the Council of Governors may require one or more of the Directors to attend a meeting.
- 17.4 The Council of Governors may invite a representative of the Financial Auditor or other advisors to attend a meeting of the Council of Governors.

## **18. Council of Governors – Standing Orders and Committees**

- 18.1 The standing orders for the practice and procedure of the Council of Governors are attached at Annex 6.
- 18.2 The Council of Governors may not delegate any of its powers to a committee or sub-committee, but it may appoint committees consisting of its members, Directors, and other persons to assist the Council of Governors in carrying out its functions. The Council of Governors may, through the Trust Secretary, request that advisors assist them or any committee they appoint in carrying out its duties.

## **19. Council of Governors – Support/Advice**

- 19.1 Paragraph 39A of the 2006 Act provides Monitor with the ability to appoint a panel of persons to which a Governor of an NHS Foundation Trust may refer a question as to whether the Trust has failed or is failing:
- 19.1.1 to act in accordance with its constitution, or
  - 19.1.2 to act in accordance with provision made by or under Chapter 5 of the 2006 Act.
- 19.2 As such a panel does not presently exist, the Trust must take steps to secure that the governors are able to access support and/or advice, as and where necessary, to enable them to fulfil the duties set out at paragraph 16 above.

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

- 20.1 If a Governor has a pecuniary, professional, 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 and to the Trust Secretary as soon as they become aware of it.
- 20.2 The Trust shall adopt a policy for the management of conflicts of interest, including the declaration of interests and declarations of gifts and hospitality. Governors shall comply with any such policy and with provisions in the standing orders for the Council of Governors which relate to the management of conflicts of interest.

## **21. Council of Governors – Expenses**

21.1 The Trust may pay travelling and other expenses to members of the Council of Governors at rates determined by the Trust. These are to be disclosed in the annual report.

21.2 Governors are not to receive remuneration.

## **22. Lead Governor**

22.1 The Council of Governors shall appoint one of the governors as the Lead Governor. Subject to the below, such governor shall fulfil the role of the Lead Governor for a period of 12 months.

22.2 The Council of Governors may reappoint a governor to the position of Lead Governor at the end of any 12 month period, if they wish to be so reappointed.

22.3 If the Lead Governor notifies the Council of Governors, prior to the end of their term in office, that they no longer wish to be the Lead Governor then the Council of Governors shall appoint another governor as the Lead Governor.

22.4 The Lead Governor's duties shall include:

22.4.1 facilitating communication between Governors and members of the Board of Directors

22.4.2 contributing to the appraisal of the Chairman in such manner and to such extent as the person conducting the appraisal may see fit

22.4.3 initiating proceedings to remove a Governor where circumstances set out in this Constitution for removal have arisen.

22.4.4 liaising, as appropriate, with the Council of Governors for other NHS Foundation Trusts;

22.4.5 liaising with NHS England where it would be inappropriate for the Chairman to do so.

22.5 The Lead Governor shall lead the Council of Governors in the event that:

22.5.1 neither the Chair or Deputy Chair is present at a meeting; or

22.5.2 both the Chair and the Deputy Chair are disqualified from voting by virtue of a conflict of interest.

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

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

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

24.1 The Trust is to have a Board of Directors, which shall comprise both Executive and Non-Executive Directors.

24.2 The Board of Directors is to comprise:

- 24.2.1 a Non-Executive Chairman
- 24.2.2 up to 6 other Non-Executive Directors; and
- 24.2.3 up to 6 Executive Directors.

24.3 One of the Executive Directors shall be the Chief Executive.

24.4 The Chief Executive shall be the Accounting Officer.

24.5 One of the Executive Directors shall be the Finance Director

24.6 One of the Executive Directors is to be a registered medical practitioner or a registered dentist (within the meaning of the Dentists Act 1984).

24.7 One of the Executive Directors is to be a registered nurse or a registered midwife.

24.8 The operation of the Board of Directors, shall be such that, at all times, at least half of the voting members of the Board of Directors, excluding the Chair, shall be Non-Executive Directors.

24.9 The Chair shall, following consultation with the Council of Governors, appoint one of the Non-Executive Directors to be the Senior Independent Director. The Senior Independent Director shall make themselves available to Directors and Governors who have concerns that they do not feel they can raise with the Chair or any Executive Director of the Trust.

24.10 Officers of the Trust may be referred to from time to time as non-voting Directors. Such individuals are not a member of the Board of Directors, but may attend meetings of the Board of Directors and may participate in discussions at such meetings, with the agreement of the Chair. For the avoidance of doubt, such individuals do not have any voting rights at any such meetings, unless they are acting up for an Executive Director at any such meeting and therefore have a vote in accordance with the Board of Directors standing orders.

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

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

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

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

26.1 They are a member of a Public Constituency, and

26.2 They are not disqualified by virtue of Paragraph 30 below.

## **27. Board of Directors – Appointment and Removal of Chair and other Non-Executive Directors**

27.1 The Council of Governors will maintain a policy for the composition of the Non-Executive Directors which takes account of the membership strategy, and which they shall review from time to time and not less than every three years.



- 27.2 The Council of Governors shall create a duly authorised Nominations Committee consisting of the Chair (or the Deputy Chair if the Committee is considering the appointment of the Chair, unless they are standing for appointment, in which case the Senior Independent Director) and at least three Elected Governors.
- 27.3 The Nominations Committee shall seek the views of the Board of Directors as to the skills and experience required for Non-Executive Directors and, having regard to those views and the policy referred to above, shall then seek, shortlist and interview such candidates as the Nominations Committee considers appropriate and shall make recommendations to the Council of Governors as to the potential appointments of the Chair and Non-Executive Directors and shall advise the Board of Directors of those recommendations.
- 27.4 The Nominations Committee shall be at liberty to request the attendance of and seek advice and assistance from persons other than members of the Nominations Committee or other Governors in arriving at its said recommendations.
- 27.5 The Nominations Committee shall provide advice to the Council of Governors on the levels of remuneration for the Chair and the Non-Executive Directors.
- 27.6 The Nominations Committee shall receive reports on behalf of the Council of Governors on the process and outcomes of appraisal for the Chair and Non-Executive Directors.
- 27.7 The Council of Governors at a general meeting of the Council of Governors shall resolve to appoint such candidate or candidates as they consider appropriate and shall have regard to the recommendation of the Nominations Committee and views of the Chief Executive and Board of Directors in reaching that decision.
- 27.8 Removal of the Chair or another Non-Executive Director shall require the approval of three-quarters of the members of the Council of Governors and shall be in accordance with the following procedures.
- 27.8.1 Any proposal for removal must be proposed by a Governor and seconded by not less than half of the Governors including at least one appointed Governor.
- 27.8.2 Written reasons for the proposal shall be provided to the Non-Executive Director in question, who shall be given the opportunity to respond to such reasons.
- 27.8.3 In making any decision to remove a Non-Executive Director, the Council of Governors shall take into account the annual appraisal carried out by the Chair.
- 27.9 If any proposal to remove a Non-Executive Director is not approved at a meeting of the Council of Governors, no further proposal can be put forward to remove such Non-Executive Director based upon the same reasons within 12 months of the meeting.

## **28. Board of Directors – Appointment of a Deputy Chair**

- 28.1 The Council of Governors at a general meeting of the Council of Governors shall appoint one of the Non-Executive Directors as Deputy Chair.
- 28.2 If the Chair is unable to discharge their office as Chairman of the Trust, the Deputy Chair shall be acting Chair of the Trust until a new Chair is appointed or the existing Chair resumes their duties, as the case may be; and references to the Chair in this Constitution and in standing orders shall, so long as there is no Chair

able to perform those duties, be taken to include references to the Deputy Chair.

## **29. Board of Directors - Appointment and Removal of the Chief Executive and other Executive Directors**

29.1 The Non-Executive Directors shall appoint or remove the Chief Executive. The appointment of the Chief Executive shall require the approval of the Council of Governors.

29.2 A committee comprising the Chair, the Chief Executive and the other Non-Executive Directors shall appoint or remove the other Executive Directors.

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

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

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

30.1.2 a person who has made a composition or arrangement with, or granted a trust deed for, their creditors and has not been discharged in respect of it.

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

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

30.1.5 a person who is a member of the Council of Governors of the Trust or a governor of another health service body.

30.1.6 a person who is the spouse, civil partner, partner, parent or child of a member of the Board of Directors of the Trust.

30.1.7 a person who is currently a member of an independent scrutiny body whose role includes or will include independent scrutiny of the Trust.

30.1.8 a person who is subject to a sex offender order.

30.1.9 a person who is the subject of a disqualification order made under the Company Directors Disqualification Act 1986.

30.1.10 in the case of a Non-Executive Director, a person who is no longer a member of one of the public constituencies.

30.1.11 a person whose tenure of office as a Chair or as a member or director of a health service body has been terminated on the grounds that their appointment is not in the interests of the health service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest.

30.1.12 a person who within the preceding two years has been dismissed, otherwise than by reason of redundancy, from any paid employment with an NHS body.

30.1.13 a person who is incapable by reason of a mental disorder, illness or injury, of managing and administering their property and affairs.

30.1.14 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.

30.1.15 a person who has refused to sign and deliver to the Trust Secretary a statement in the form required by the Board of Directors confirming

acceptance of the code of conduct for Directors.

- 30.1.16 a person who has had their name removed or been suspended from any list (including any performers list maintained by NHS England) prepared under the 2006 Act or under any related subordinate legislation or who has otherwise been suspended or disqualified from any healthcare profession, and has not subsequently had their name included in such a list or had their suspension lifted or qualification reinstated.
- 30.1.17 a medical practitioner who has been removed from the professional register by the General Medical Council or a nursing professional who has been removed from the professional register by the Nursing and Midwifery Council.
- 30.1.18 In the opinion of a majority of the voting members of the Board, a person whose conduct has caused, or is likely to cause, material prejudice to the best interests of the Trust or the proper conduct of the Board of Directors or has otherwise acted in a manner inconsistent with continued membership of the Board of Directors.

30.2 Directors must meet the fit and proper person requirement set out in the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 and must comply with any policy established by the Trust to give effect to the fit and proper person requirement.

### **31. Board of Directors – Meetings**

- 31.1 Meetings of the Board of Directors shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons and having regard to the confidential nature of the business to be transacted, publicity of which would be prejudicial to the public interest.
- 31.2 Before holding a meeting, the Board of Directors must send a copy of the agenda of the meeting to the Council of Governors. As soon as practicable after holding a meeting, the Board of Directors must send a copy of the minutes of the meeting to the Council of Governors.

### **32. Board of Directors – Standing Orders**

The standing orders for the practice and procedure of the Board of Directors are attached at Annex 7.

### **33. Board of Directors - Conflicts of Interest of Directors**

- 33.1 The duties that a Director of the Trust has by virtue of being a Director include in particular:
  - 33.1.1 A duty to avoid a situation in which the Director has (or can have) a direct or indirect interest that conflicts (or possibly may conflict) with the interests of the Trust.
  - 33.1.2 A duty not to accept a benefit from a third party by reason of being a Director or doing (or not doing) anything in that capacity.
- 33.2 The duty referred to in sub-paragraph 33.1.1 is not infringed if:

- 33.2.1 The situation cannot reasonably be regarded as likely to give rise to a conflict of interest, or
  - 33.2.2 The matter has been authorised in accordance with the Constitution.
- 33.3 The duty referred to in sub-paragraph 33.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- 33.4 In sub-paragraph 33.1.2, “third party” means a person other than:
  - 33.4.1 The Trust, or
  - 33.4.2 A person acting on its behalf.
- 33.5 If a Director of the Trust has in any way a direct or indirect interest in a proposed transaction or arrangement with the Trust or has any pecuniary, professional, personal, or family interest (whether that interest is actual or potential and whether that interest is direct or indirect) in any other matter that is under consideration or to be considered by the Director or the Board of Directors, they must declare the nature and extent of the interest to the Board of Directors and Trust Secretary as soon as they become aware of it and in accordance with any policy adopted by the Trust for the declaration of interests and management of conflicts of interest. Any such interests must be appropriately recorded in the register of interests maintained in accordance with this constitution.
- 33.6 If a declaration under this paragraph proves to be, or becomes inaccurate or incomplete, a further declaration must be made.
- 33.7 Any declaration required by this paragraph must be made before the Trust enters into the transaction or arrangement.
- 33.8 This paragraph does not require a declaration of an interest of which the Director is not aware or where the Director is not aware of the transaction or arrangement in question.
- 33.9 A Director need not declare an interest –
  - 33.9.1 If it cannot reasonably be regarded as likely to give rise to a conflict of interest;
  - 33.9.2 If, or to the extent that, the Directors and Trust Secretary are already aware of it;
  - 33.9.3 If, or to the extent that, it concerns terms of the Director’s appointment that have been or are to be considered:
    - 33.9.3.1 By a meeting of the Board of Directors, or
    - 33.9.3.2 By a committee of the Directors appointed for the purpose under this Constitution.
- 33.10A matter shall have been authorised for the purposes of paragraph 33.2.2 if the interest has been declared by the Director in accordance with any policy adopted by the Trust for the declaration of interests and management of conflicts of interest, and approved by the Board of Directors at a meeting, and the minutes of the meeting shall be conclusive evidence of such approval having been given. Conflicts or potential conflicts arising from any such interests shall be managed

in accordance with the relevant policy.

33.11 The Trust shall adopt a policy for the management of conflicts of interest, including the declaration of interests and declarations of gifts and hospitality. Directors shall comply with any such policy. Conflicts of interest shall be managed in accordance with any such policy and the standing orders of the Board of Directors.

#### **34. Board of Directors – Remuneration and Terms of Office**

34.1 The Council of Governors at a general meeting of the Council of Governors shall decide the remuneration and allowances, and the other terms and conditions of office, of the Chair and the other Non-Executive Directors.

34.2 The Chair and the Non-Executive Directors shall be eligible for appointment for three consecutive three year terms of office, and in exceptional circumstances a further term of one year subject to a satisfactory appraisal. The Chair or the Non-Executive Directors shall not be appointed to that office for a total period which exceeds ten years in aggregate.

34.3 The Trust shall establish a committee of Non-Executive Directors to decide the remuneration and allowances, and the other terms and conditions of office, of the Chief Executive and other Executive Directors.

#### **35. Registers**

The Trust shall have:

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

35.2 a register of members of the Council of Governors;

35.3 a register of interests of governors;

35.4 a register of directors; and

35.5 a register of interests of the directors.

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

36.1 The Trust Secretary shall be responsible for establishing registers and for keeping these registers up-to-date.

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

37.1 The Trust shall make the registers specified in Paragraph 35 above available for inspection by members of the public, except in the circumstances set out below

or as otherwise prescribed.

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

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

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

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

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

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

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

38.1.1 a copy of the current Constitution

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

38.1.3 a copy of the latest annual report.

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

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

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

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

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

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

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

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

38.2.8 a copy of any final report published under Section 65I (administrator's

final report).

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

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

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

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

### **39. Auditor**

39.1 The Trust shall have a Financial Auditor.

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

39.3 The Financial Auditor is to carry out his duties in accordance with Schedule 10 to the 2006 Act and in accordance with any directions given by NHS England (NHSE) the organisation that incorporates Monitor, the statutory entity that remains the regulator of NHS Foundation Trusts.

### **40. Audit Committee**

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

### **41. Accounts**

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

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

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

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

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

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

- 42.1 The Trust shall prepare an Annual Report and send it to NHS England.
- 42.2 The Trust shall give information as to its forward planning in respect of each financial year to NHS England, the organisation that incorporates Monitor, the statutory entity that remains the regulator of NHS Foundation Trusts. The document containing the information with respect to forward planning (referred to above) shall be prepared by the Directors.
- 42.3 In preparing the document, the Directors shall have regard to the views of the Council of Governors.
- 42.4 Each forward plan must include information about:
- 42.4.1 the activities other than the provision of goods and services for the purposes of the health service in England that the Trust proposes to carry on, and
  - 42.4.2 the income it expects to receive from doing so.
- 42.5 Where a forward plan contains a proposal that the Trust carry on an activity of a kind mentioned in sub-paragraph 42.4.1 the Council of Governors must:
- 42.5.1 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
  - 42.5.2 notify the Directors of the Trust of its determination.
- 42.6 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.

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

- 43.1 The following documents are to be presented to the Council of Governors at a general meeting of the Council of Governors:
- 43.1.1 the Annual Accounts
  - 43.1.2 any report of the auditor on them
  - 43.1.3 the Annual Report.
- 43.2 The documents shall also be presented to the members of the Trust at the Annual Members' Meeting by at least one member of the Board of Directors in attendance.
- 43.3 The Trust may combine a meeting of the Council of Governors convened for the purposes of sub-paragraph 43.1 with the Annual Members' Meeting.



#### **44. Instruments**

44.1 The Trust shall have a seal.

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

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

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

45.1.1 More than half of the members of the Council of Governors of the Trust voting approve the amendments; and

45.1.2 More than half of the members of the Board of Directors of the Trust voting approve the amendments.

45.2 Amendments made under Paragraph 45.1 take effect as soon as the conditions in that paragraph are satisfied, but the amendment has no effect in so far as the Constitution would, as a result of the amendment, not accord with Schedule 7 of the 2006 Act.

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

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

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

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

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

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

46.1 The Trust may only apply for a merger, acquisition, separation or dissolution (in accordance with the provisions of the 2006 Act) with the approval of more than half of the members of the Council of Governors.

46.2 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.

- 46.3 “Significant transaction” means a transaction which is either an investment or a divestment whose value equates to 25% of either the Trust’s Gross Assets, Income or Gross Capital (inclusive of the transaction), calculated with reference to the Trust’s opening Balance Sheet for the Financial Year in which approval is being sought.
- 46.4 If more than half of the members of the Council of Governors voting at a meeting of the Council decline to approve a significant transaction or any part of it, the meeting must provide an agreed written Statement of Reasons for its rejection to the Board of Directors.

## ANNEX 1 – THE PUBLIC CONSTITUENCIES

<b>Name of the Public Constituency</b>	<b>Minimum Number of Members</b>	<b>Number of Governors</b>
<b>Liverpool</b>	<b>10</b>	<b>3</b>
<b>St Helens and Knowsley</b>	<b>10</b>	<b>2</b>
<b>Sefton</b>	<b>10</b>	<b>2</b>
<b>Cheshire West and Chester</b>	<b>10</b>	<b>2</b>
<b>Warrington and Halton</b>	<b>10</b>	<b>2</b>
<b>Wirral and the Rest of England</b>	<b>10</b>	<b>3</b>
<b>Wales</b>	<b>10</b>	<b>1</b>
<b>Total Public Governors</b>		<b>15</b>

## ANNEX 2 – THE STAFF CONSTITUENCY

<b>Staff Classes within the Staff Constituency</b>	<b>Minimum number of members</b>	<b>Number of governors</b>
<b>Doctor</b>	<b>10</b>	<b>1</b>
<b>Non-Clinical</b>	<b>10</b>	<b>1</b>
<b>Nurse</b>	<b>10</b>	<b>1</b>
<b>Other Clinical</b>	<b>10</b>	<b>1</b>
<b>Radiographer</b>	<b>10</b>	<b>1</b>
<b>Volunteers and Service Providers</b>	<b>10</b>	<b>1</b>
<b>Total Staff Governors</b>		<b>6</b>

In the case of any query as to which class of the Staff Constituency a member of staff is eligible to be a member of, the Trust Secretary shall be responsible for determining which one of the classes of the Staff Constituency, shown in this Annex, the member of staff is eligible to be a member of. If any member of staff is eligible to be a member of more than one class of the Staff Constituency, they shall select one class to be a member of or, where they fail to do so (including where they fail to notify the Trust Secretary of their selection), the Trust Secretary shall determine the class that the member of staff shall be a member of and shall notify the member of that determination in writing.

For the avoidance of doubt, Service Providers referred to above relates to staff directly employed by the Trust's wholly owned subsidiaries i.e. Propcare and Clatterbridge Pharmacy Ltd.

## ANNEX 3 – COMPOSITION OF COUNCIL OF GOVERNORS

**29 Governors in Total** - The aggregate number of Public Governors is to be more than half of the total number of members of the Council of Governors.

### Elected Governors

Public Constituency	Number of Governors
Liverpool	3
St Helen's and Knowsley	2
Sefton	2
Cheshire West and Chester	2
Warrington and Halton	2
Wirral and the Rest of England	3
Wales	1
<b>Total</b>	<b>15</b>

### Appointed Governors

Appointing Organisation	Number of Governors
Liverpool University	1
Macmillan Cancer Support	1
Liverpool University Hospital NHS Foundation Trust	1
Cancer Alliance	1
NHS England: Cheshire and Merseyside sub regional team	1
Wirral Council	1
Liverpool Council	1
Isle of Man Department of Health	1
<b>Total</b>	<b>8</b>

### Staff Governors

Name of Constituency	Class of Staff Membership	Number of Governors
Staff	Doctor	1
	Non-Clinical	1
	Nurse	1
	Other Clinical	1
	Radiographer	1
	Volunteers and Service Providers	1
<b>Total</b>		<b>6</b>

## ANNEX 4 –THE MODEL ELECTION RULES

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# MODEL ELECTION RULES 2014

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### PART 1: INTERPRETATION

1. Interpretation

### PART 2: TIMETABLE FOR ELECTION

2. Timetable
3. Computation of time

### PART 3: RETURNING OFFICER

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

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

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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
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### PART 5: CONTESTED ELECTIONS

19. Poll to be taken by ballot
20. The ballot paper
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#### *Action to be taken before the poll*

22. List of eligible voters
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27. Eligibility to vote

- 28. Voting by persons who require assistance
- 29. Spoilt ballot papers and spoilt text message votes
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- 32. ID declaration form for replacement ballot papers (public and patient constituencies)
- 33. Procedure for remote voting by internet
- 34. Procedure for remote voting by telephone
- 35. Procedure for remote voting by text message

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

- 36. Receipt of voting documents
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## **PART 8: DISPOSAL OF DOCUMENTS**

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- 55. Delivery of documents
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## **PART 9: DEATH OF A CANDIDATE DURING A CONTESTED ELECTION**

FPP59. Countermand or abandonment of poll on death of candidate

STV59. Countermand or abandonment of poll on death of candidate

## **PART 10: ELECTION EXPENSES AND PUBLICITY**

### *Expenses*

60. Election expenses

61. Expenses and payments by candidates

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### *Publicity*

63. Publicity about election by the corporation

64. Information about candidates for inclusion with voting information

65. Meaning of "for the purposes of an election"

## **PART 11: QUESTIONING ELECTIONS AND IRREGULARITIES**

66. Application to question an election

## **PART 12: MISCELLANEOUS**

67. Secrecy

68. Prohibition of disclosure of vote

69. Disqualification

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



**1. Interpretation**

1.1 In these rules, unless the context otherwise requires:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## PART 2: TIMETABLE FOR ELECTIONS

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### 2. Timetable

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

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

### 3. Computation of time

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

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

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

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

**4. Returning Officer**

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

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

**5. Staff**

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

**6. Expenditure**

6.1 The corporation is to pay the returning officer:

- (a) any expenses incurred by that officer in the exercise of his or her functions under these rules,
- (b) such remuneration and other expenses as the corporation may determine.

**7. Duty of co-operation**

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

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

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### **8. Notice of election**

- 8.1 The returning officer is to publish a notice of the election stating:
- (a) the constituency, or class within a constituency, for which the election is being held,
  - (b) the number of members of the council of governors to be elected from that constituency, or class within that constituency,
  - (c) the details of any nomination committee that has been established by the corporation,
  - (d) the address and times at which nomination forms may be obtained;
  - (e) the address for return of nomination forms (including, where the return of nomination forms in an electronic format will be permitted, the e-mail address for such return) and the date and time by which they must be received by the returning officer,
  - (f) the date and time by which any notice of withdrawal must be received by the returning officer
  - (g) the contact details of the returning officer
  - (h) the date and time of the close of the poll in the event of a contest.

### **9. Nomination of candidates**

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

9.2 The returning officer:

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

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

### **10. Candidate's particulars**

10.1 The nomination form must state the candidate's:

- (a) full name,
- (b) contact address in full (which should be a postal address although an e-mail address may also be provided for the purposes of electronic communication), and
- (c) constituency, or class within a constituency, of which the candidate is a member.

**11. Declaration of interests**

11.1 The nomination form must state:

- (a) any financial interest that the candidate has in the corporation, and
- (b) whether the candidate is a member of a political party, and if so, which party,

and if the candidate has no such interests, the paper must include a statement to that effect.

**12. Declaration of eligibility**

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

- (a) that he or she is not prevented from being a member of the council of governors by paragraph 8 of Schedule 7 of the 2006 Act or by any provision of the constitution; and,
- (b) for a member of the public or patient constituency, of the particulars of his or her qualification to vote as a member of that constituency, or class within that constituency, for which the election is being held.

**13. Signature of candidate**

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

- (a) they wish to stand as a candidate,
- (b) their declaration of interests as required under rule 11, is true and correct, and
- (c) their declaration of eligibility, as required under rule 12, is true and correct.

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

**14. Decisions as to the validity of nomination**

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

- (a) decides that the candidate is not eligible to stand,
- (b) decides that the nomination form is invalid,
- (c) receives satisfactory proof that the candidate has died, or
- (d) receives a written request by the candidate of their withdrawal from candidacy.

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

- (a) that the paper is not received on or before the final time and date for

- return of nomination forms, as specified in the notice of the election,
- (b) that the paper does not contain the candidate's particulars, as required by rule 10;
  - (c) the paper does not contain a declaration of the interests of the candidate, as required by rule 11,
  - (d) the paper does not include a declaration of eligibility as required by rule 12, or
  - (e) the paper is not signed and dated by the candidate, if required by rule 13.

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

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

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

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

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

15.2 The statement must show:

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

as given in their nomination form.

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

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

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

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

16.2 If a member of the corporation requests a copy or extract of the statement of

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

**17. Withdrawal of candidates**

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

**18. Method of election**

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

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

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

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



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

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

**20. The ballot paper**

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

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

20.3 Each ballot paper must have a unique identifier.

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

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

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

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

("declaration of identity")

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

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

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

*Action to be taken before the poll*

## **22. List of eligible voters**

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

22.2 The list is to include, for each member:

(a) a postal address; and,

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

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

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

## **23. Notice of poll**

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

(a) the name of the corporation,

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

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

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

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

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

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

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

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

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

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

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

(m) the contact details of the returning officer.

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

- 24.1 Subject to rule 24.3, as soon as is reasonably practicable on or after the publication of the notice of the poll, the returning officer is to send the following information by post to each member of the corporation named in the list of eligible voters:
- (a) a ballot paper and ballot paper envelope,
  - (b) the ID declaration form (if required),
  - (c) information about each candidate standing for election, pursuant to rule 61 of these rules, and
  - (d) a covering envelope;
- ("postal voting information").
- 24.2 Subject to rules 24.3 and 24.4, as soon as is reasonably practicable on or after the publication of the notice of the poll, the returning officer is to send the following information by e-mail and/ or by post to each member of the corporation named in the list of eligible voters whom the corporation determines in accordance with rule 19.3 and/ or rule 19.4 may cast his or her vote by an e-voting method of polling:
- (a) instructions on how to vote and how to make a declaration of identity (if required),
  - (b) the voter's voter ID number,
  - (c) information about each candidate standing for election, pursuant to rule 64 of these rules, or details of where this information is readily available on the internet or available in such other formats as the Returning Officer thinks appropriate, (d) contact details of the returning officer,
- ("e-voting information").
- 24.3 The corporation may determine that any member of the corporation shall:
- (a) only be sent postal voting information; or
  - (b) only be sent e-voting information; or
  - (c) be sent both postal voting information and e-voting information;
- for the purposes of the poll.
- 24.4 If the corporation determines, in accordance with rule 22.3, that the e-voting information is to be sent only by e-mail to those members in the list of eligible voters for whom an e-mail address is included in that list, then the returning officer shall only send that information by e-mail.
- 24.5 The voting information is to be sent to the postal address and/ or e-mail address for each member, as specified in the list of eligible voters.
- 25. Ballot paper envelope and covering envelope**
- 25.1 The ballot paper envelope must have clear instructions to the voter printed on it, instructing the voter to seal the ballot paper inside the envelope once the ballot paper has been marked.
- 25.2 The covering envelope is to have:

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

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

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

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

26.1 If internet voting is a method of polling for the relevant election then the returning officer must provide a website for the purpose of voting over the internet (in these rules referred to as "the polling website").

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

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

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

- (a) require a voter to:
  - (i) enter his or her voter ID number; and
  - (ii) where the election is for a public or patient constituency, make a declaration of identity;in order to be able to cast his or her vote;
- (b) specify:
  - (i) the name of the corporation,
  - (ii) the constituency, or class within a constituency, for which the election is being held,
  - (iii) the number of members of the council of governors to be elected from that constituency, or class within that constituency,
  - (iv) the names and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
  - (v) instructions on how to vote and how to make a declaration of identity,
  - (vi) the date and time of the close of the poll, and
  - (vii) the contact details of the returning officer;

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

26.5

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

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

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

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

(a) require a voter to:

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

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

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

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

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

(i) the voter's voter ID number;

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

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

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

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

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

### *The poll*

## **27. Eligibility to vote**

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

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

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

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

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

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

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

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

- (a) is satisfied as to the voter's identity; and
- (b) has ensured that the completed ID declaration form, if required, has not been returned.

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

- (a) the name of the voter, and
- (b) the details of the unique identifier of the spoiled ballot paper (if that officer was able to obtain it), and
- (c) the details of the unique identifier of the replacement ballot paper.

29.5 If a voter has dealt with his or her text message vote in such a manner that it cannot be accepted as a vote (referred to as a "spoiled 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 spoiled text message vote, if he or she can obtain it.

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

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

- (a) the name of the voter, and
- (b) the details of the voter ID number on the spoiled text message vote (if that officer was able to obtain it), and
- (c) the details of the replacement voter ID number issued to the voter.

### **30. Lost voting information**

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

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

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

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



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

**31. Issue of replacement voting information**

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

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

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

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

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

*Polling by internet, telephone or text*

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

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

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

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

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

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

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

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

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

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

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

**36. Receipt of voting documents**

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

**37. Validity of votes**

- 37.1 A ballot paper shall not be taken to be duly returned unless the returning officer is satisfied that it has been received by the returning officer before the close of the poll, with an ID declaration form if required that has been correctly completed, signed and dated.
- 37.2 Where the returning officer is satisfied that rule 37.1 has been fulfilled, he or she is to:
- (a) put the ID declaration form if required in a separate packet, and
  - (b) put the ballot paper aside for counting after the close of the poll.
- 37.3 Where the returning officer is not satisfied that rule 37.1 has been fulfilled, he or she is to:
- (a) mark the ballot paper “disqualified”,
  - (b) if there is an ID declaration form accompanying the ballot paper, mark it “disqualified” and attach it to the ballot paper,
  - (c) record the unique identifier on the ballot paper in a list of disqualified documents (the “list of disqualified documents”); and
  - (d) place the document or documents in a separate packet.
- 37.4 An internet, telephone or text message vote shall not be taken to be duly returned unless the returning officer is satisfied that the internet voting record, telephone voting record or text voting record (as applicable) has been received by the returning officer before the close of the poll, with a declaration of identity if required that has been correctly made.
- 37.5 Where the returning officer is satisfied that rule 37.4 has been fulfilled, he or she is to put the internet voting record, telephone voting record or text voting record (as applicable) aside for counting after the close of the poll.
- 37.6 Where the returning officer is not satisfied that rule 37.4 has been fulfilled, he or she is to:
- (a) mark the internet voting record, telephone voting record or text voting record (as applicable) “disqualified”,
  - (b) record the voter ID number on the internet voting record, telephone voting record or text voting record (as applicable) in the list of disqualified documents; and
  - (c) place the document or documents in a separate packet.
- 38. Declaration of identity but no ballot paper (public and patient constituency)<sup>1</sup>**
- 38.1 Where the returning officer receives an ID declaration form if required but no ballot paper, the returning officer is to:
- (a) mark the ID declaration form “disqualified”,
  - (b) record the name of the voter in the list of disqualified documents, indicating that a declaration of identity was received from the voter without a ballot paper, and

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

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

### **39. De-duplication of votes**

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

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

- (a) only accept as duly returned the first vote received that was cast using the relevant voter ID number; and
- (b) mark as “disqualified” all other votes that were cast using the relevant voter ID number

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

- (a) mark the ballot paper “disqualified”,
- (b) if there is an ID declaration form accompanying the ballot paper, mark it “disqualified” and attach it to the ballot paper,
- (c) record the unique identifier and the voter ID number on the ballot paper in the list of disqualified documents;
- (d) place the document or documents in a separate packet; and
- (e) disregard the ballot paper when counting the votes in accordance with these rules.

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

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

### **40. Sealing of packets**

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

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

- (e) the list of eligible voters, and
- (f) the list of tendered voting information

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

**STV41. Interpretation of Part 6**

STV41.1 In Part 6 of these rules:

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

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

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

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

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

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

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

or

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

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

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

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

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

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

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

“*stage of the count*” means:

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

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

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

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

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

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

## **43. The count**

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

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

STV44.1 Any ballot paper:

- (a) which does not bear the features that have been incorporated into the other ballot papers to prevent them from being reproduced,
- (b) on which the figure “1” standing alone is not placed so as to indicate a first preference for any candidate,
- (c) on which anything is written or marked by which the voter can be identified except the unique identifier, or
- (d) which is unmarked or rejected because of uncertainty,

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

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

STV44.3 Any text voting record:

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

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

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

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



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

FPP44.1 Any ballot paper:

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

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

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

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

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

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

FPP44.4 The returning officer is to:

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

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

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

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

FPP44.6 Any text voting record:

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

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

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

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

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

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

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

FPP44.9 The returning officer is to:

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

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

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

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

**STV45. First stage**

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

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

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

**STV46. The quota**

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

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

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

**STV47. Transfer of votes**

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

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

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

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

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

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

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

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

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

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

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

whichever is the less.

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

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

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

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

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

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

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

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

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

- (a) record the total value of the votes transferred to each candidate,
- (b) add that value to the previous total of votes recorded for each candidate and record the new total,
- (c) record as non-transferable votes the difference between the surplus and the total transfer value of the transferred votes and add that difference to the previously recorded total of non-transferable votes, and
- (d) compare:

- (i) the total number of votes then recorded for all of the candidates, together with the total number of non-transferable votes, with
- (ii) the recorded total of valid first preference votes.

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

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

**STV49. Exclusion of candidates**

STV49.1 If:

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

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

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

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

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

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

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

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

deemed to be elected or are excluded).

- STV49.7 The vote on each transferable ballot document transferred under rule STV49.6 shall be at the value at which that vote was received by the candidate excluded under rule STV49.1.
- STV9.8 Any ballot documents on which no next available preferences have been expressed shall be set aside as non-transferable votes.
- STV49.9 After the returning officer has completed the transfer of the ballot documents in the sub-parcel of ballot documents with the highest transfer value he or she shall proceed to transfer in the same way the sub-parcel of ballot documents with the next highest value and so on until he has dealt with each sub-parcel of a candidate excluded under rule STV49.1.
- STV49.10 The returning officer shall after each stage of the count completed under this rule:
- (a) record:
    - (i) the total value of votes, or
    - (ii) the total transfer value of votes transferred to each candidate,
  - (b) add that total to the previous total of votes recorded for each candidate and record the new total,
  - (c) record the value of non-transferable votes and add that value to the previous non-transferable votes total, and
  - (d) compare:
    - (i) the total number of votes then recorded for each candidate together with the total number of non-transferable votes, with
    - (ii) the recorded total of valid first preference votes.
- STV49.11 If after a transfer of votes under any provision of this rule, a candidate has a surplus, that surplus shall be dealt with in accordance with rules STV47.5 to STV47.10 and rule STV48.
- STV49.12 Where the total of the votes of the two or more lowest candidates, together with any surpluses not transferred, is less than the number of votes credited to the next lowest candidate, the returning officer shall in one operation exclude such two or more candidates.
- STV49.13 If when a candidate has to be excluded under this rule, two or more candidates each have the same number of votes and are lowest:
- (a) regard shall be had to the total number of votes credited to those candidates at the earliest stage of the count at which they had an unequal number of votes and the candidate with the lowest number of votes at that stage shall be excluded, and
  - (b) where the number of votes credited to those candidates was equal at all stages, the returning officer shall decide between the candidates by lot and the candidate on whom the lot falls shall be excluded.

**STV50. Filling of last vacancies**

- STV50.1 Where the number of continuing candidates is equal to the number of

vacancies remaining unfilled the continuing candidates shall thereupon be deemed to be elected.

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

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

**STV51. Order of election of candidates**

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

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

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

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

**FPP51. Equality of votes**

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

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

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

- FPP52.1 In a contested election, when the result of the poll has been ascertained, the returning officer is to:
- (a) declare the candidate or candidates whom more votes have been given than for the other candidates, up to the number of vacancies to be filled on the council of governors from the constituency, or class within a constituency, for which the election is being held to be elected,
  - (b) give notice of the name of each candidate who he or she has declared elected:
    - (i) where the election is held under a proposed constitution pursuant to powers conferred on the [insert name] NHS Trust by section 33(4) of the 2006 Act, to the chairman of the NHS Trust, or
    - (ii) in any other case, to the chairman of the corporation; and
  - (c) give public notice of the name of each candidate whom he or she has declared elected.

FPP52.2 The returning officer is to make:

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

available on request.

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

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

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

STV52.2 The returning officer is to make:

- (a) the number of first preference votes for each candidate whether elected or not,



- (b) any transfer of votes,
- (c) the total number of votes for each candidate at each stage of the count at which such transfer took place,
- (d) the order in which the successful candidates were elected, and
- (e) the number of rejected ballot papers under each of the headings in rule STV44.1,
- (f) the number of rejected text voting records under each of the headings in rule STV44.3,

available on request.

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

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

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

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

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

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

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

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

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

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

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

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

**55. Delivery of documents**

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

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

56.1 Where:

- (a) any voting documents are received by the returning officer after the close of the poll, or

- (b) any envelopes addressed to eligible voters are returned as undelivered too late to be resent, or
- (c) any applications for replacement voting information are made too late to enable new voting information to be issued,

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

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

- 57.1 The corporation is to retain the documents relating to an election that are forwarded to the chair by the returning officer under these rules for one year, and then, unless otherwise directed by the board of directors of the corporation, cause them to be destroyed.
- 57.2 With the exception of the documents listed in rule 58.1, the documents relating to an election that are held by the corporation shall be available for inspection by members of the public at all reasonable times.
- 57.3 A person may request a copy or extract from the documents relating to an election that are held by the corporation, and the corporation is to provide it, and may impose a reasonable charge for doing so.

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

- 58.1 The corporation may not allow:
  - (a) the inspection of, or the opening of any sealed packet containing –
    - (i) any rejected ballot papers, including ballot papers rejected in part,
    - (ii) any rejected text voting records, including text voting records rejected in part,
    - (iii) any disqualified documents, or the list of disqualified documents,
    - (iv) any counted ballot papers, internet voting records, telephone voting records or text voting records, or
    - (v) the list of eligible voters, or
  - (b) access to or the inspection of the complete electronic copies of the internet voting records, telephone voting records and text voting records created in accordance with rule 26 and held in a device suitable for the purpose of storage,  
by any person without the consent of the board of directors of the corporation.
- 58.2 A person may apply to the board of directors of the corporation to inspect any of the documents listed in rule 58.1, and the board of directors of the corporation may only consent to such inspection if it is satisfied that it is necessary for the purpose of questioning an election pursuant to Part 11.
- 58.3 The board of directors of the corporation's consent may be on any terms or conditions that it thinks necessary, including conditions as to –
  - (a) persons,

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

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

58.4

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

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

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

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

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

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### **FPP59. Countermand or abandonment of poll on death of candidate**

- FPP59.1 If at a contested election, proof is given to the returning officer's satisfaction before the result of the election is declared that one of the persons named or to be named as a candidate has died, then the returning officer is to:
- (a) countermand notice of the poll, or, if voting information has been issued, direct that the poll be abandoned within that constituency or class, and
  - (b) order a new election, on a date to be appointed by him or her in consultation with the corporation, within the period of 40 days, computed in accordance with rule 3 of these rules, beginning with the day that the poll was countermanded or abandoned.
- FPP59.2 Where a new election is ordered under rule FPP59.1, no fresh nomination is necessary for any candidate who was validly nominated for the election where the poll was countermanded or abandoned but further candidates shall be invited for that constituency or class.
- FPP59.3 Where a poll is abandoned under rule FPP59.1(a), rules FPP59.4 to FPP59.7 are to apply.
- FPP59.4 The returning officer shall not take any step or further step to open envelopes or deal with their contents in accordance with rules 38 and 39, and is to make up separate sealed packets in accordance with rule 40.
- FPP59.5 The returning officer is to:
- (a) count and record the number of ballot papers, internet voting records, telephone voting records and text voting records that have been received,
  - (b) seal up the ballot papers, internet voting records, telephone voting records and text voting records into packets, along with the records of the number of ballot papers, internet voting records, telephone voting records and text voting records and
- ensure that complete electronic copies of the internet voting records telephone voting records and text voting records created in accordance with rule 26 are held in a device suitable for the purpose of storage.
- FPP59.6 The returning officer is to endorse on each packet a description of:
- (a) its contents,
  - (b) the date of the publication of notice of the election,
  - (c) the name of the corporation to which the election relates, and
  - (d) the constituency, or class within a constituency, to which the election relates.
- FPP59.7 Once the documents relating to the poll have been sealed up and endorsed pursuant to rules FPP59.4 to FPP59.6, the returning officer is to deliver them to the chairman of the corporation, and rules 57 and 58 are to apply.

**STV59. Countermand or abandonment of poll on death of candidate**

STV59.1 If, at a contested election, proof is given to the returning officer's satisfaction before the result of the election is declared that one of the persons named or to be named as a candidate has died, then the returning officer is to:

- (a) publish a notice stating that the candidate has died, and
- (b) proceed with the counting of the votes as if that candidate had been excluded from the count so that –
  - (i) ballot documents which only have a first preference recorded for the candidate that has died, and no preferences for any other candidates, are not to be counted, and
  - (ii) ballot documents which have preferences recorded for other candidates are to be counted according to the consecutive order of those preferences, passing over preferences marked for the candidate who has died.

STV59.2 The ballot documents which have preferences recorded for the candidate who has died are to be sealed with the other counted ballot documents pursuant to rule 54.1(a).

## PART 10: ELECTION EXPENSES AND PUBLICITY

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### *Election expenses*

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

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

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

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

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

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

62.1 No person may:

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

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

### *Publicity*

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

63.1 The corporation may:

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

as it considers necessary.

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

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

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

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

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

64.2 The information must consist of:

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

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

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

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



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

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### **66. Application to question an election**

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

**67. Secrecy**

67.1 The following persons:

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

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

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

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

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

**68. Prohibition of disclosure of vote**

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

**69. Disqualification**

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

- (a) a member of the corporation,
- (b) an employee of the corporation,
- (c) a director of the corporation, or
- (d) employed by or on behalf of a person who has been nominated for election.

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

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

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

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

## **ANNEX 5 – ADDITIONAL PROVISIONS – COUNCIL OF GOVERNORS**

### **1. Council of Governors – Further Provisions on Disqualification:**

Further to the provisions set out in Paragraph 15 the following may not become or continue as a Governor of the Council of Governors:

- 1.1 In the case of a Staff Governor, Public Governor or Appointed Governor, they cease to be a member of the Constituency or the class of a Constituency by which they were elected, or the organisation which appointed them terminates their employment or contract for services or withdraws its sponsorship of them.
- 1.2 NHS England (incorporating Monitor) has exercised its powers to remove that person as a Governor or has suspended them from office or has disqualified them from holding office as a Governor for a specified period.
- 1.3 A person who has within the preceding five years been dismissed, otherwise than by reason of redundancy, from any paid employment with an NHS body.
- 1.4 A person whose tenure of office as the Chair, Non-Executive Director or as a Governor of an NHS body has previously been terminated on the grounds that their appointment is not in the interests of the NHS, for non-attendance at meetings or for non-disclosure of a pecuniary interest.
- 1.5 A person who is a vexatious complainant of the Trust.
- 1.6 A person who has had their name removed or been suspended from any list (including any performers list maintained by NHS England) prepared under the 2006 Act or under any related subordinate legislation or who has otherwise been suspended or disqualified from any healthcare profession, and has not subsequently had his name included in such a list or had his suspension lifted or qualification reinstated;
- 1.7 A person who is currently a member of an independent scrutiny body whose role includes or will include independent scrutiny of The Clatterbridge Cancer Centre NHS Foundation Trust.
- 1.8 A person who is under 16 years of age.
- 1.9 A person who on the basis of disclosures obtained through an application to the Disclosure and Barring Scheme is not considered suitable by the Trust.
- 1.10 A person who is a Director of the Trust or a director of any other NHS body (unless they are appointed by an Appointing Organisation which is an NHS body); or a person who is the spouse, partner, parent or child of a Director or the Chair of the Trust.
- 1.11 A person who is incapable by reason of a mental disorder, illness or injury, of managing and administering their property and affairs.
- 1.12 A person who has failed to and continues to refuse to make the required Declarations under this Constitution.
- 1.13 A person who makes a false declaration for any purpose under this Constitution or the 2006 Act.
- 1.14 A person who has refused without reasonable cause to undertake any training which the Council of Governors requires all Governors to undertake.

- 1.15 A person who has failed to sign and deliver to the Trust Secretary a statement in any form required by the Trust Secretary confirming acceptance of the code of conduct for Governors.
- 1.16 A person whose conduct has caused, or is likely to cause, material prejudice to the best interests of the Trust or the proper conduct of the Council of Governors or who has otherwise acted in a manner inconsistent with continued membership of the Council of Governors.
- 1.17 A person whose tenure of office as Governor has previously been terminated pursuant to this Constitution by the Council of Governors.

The Trust Secretary shall, at their entire discretion, determine whether an individual is eligible to become or continue as a Governor under the provisions of this Constitution.

## **2. Termination of Tenure**

In addition to Paragraph 14 of this Constitution, the following will apply:

- 2.1 A Governor may resign from office at any time during the term of that office by giving notice in writing to the Trust Secretary.
- 2.2 If a Governor fails to attend 3 consecutive meetings of the Council of Governors their tenure of office shall be terminated immediately unless, on application by that Governor to the Council of Governors, the Council of Governors resolves that:
  - 2.2.1 the absence was due to reasonable cause; and
  - 2.2.2 the Governor will be able to start attending meetings of the Council of Governors within such a specified period as the Council of Governors considers reasonable.
- 2.3 The Council of Governors may, at a Council of Governors meeting, by a resolution approved by not less than 75% of the remaining Governors present terminate a Governor's tenure of office if for reasonable cause it considers that their continuing as a Governor would or would be likely to:
  - 2.3.1 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; or
  - 2.3.2 harm the Trust's work with other persons or bodies with whom it is engaged or may be engaged in the provision of goods and services; or
  - 2.3.3 adversely affect public confidence in the goods or services provided by the Trust; or
  - 2.3.4 otherwise bring the Trust into disrepute.
- 2.4 Upon a Governor resigning or, upon the Council of Governors resolving to terminate a Governor's tenure of office, or upon the Trust Secretary determining that a Governor is ineligible to continue as a Governor, that Governor shall cease to be a Governor and their name shall be forthwith removed from the Register of Governors notwithstanding any reference to the Dispute Resolution Procedure.

- 2.5 Any decision of the Trust Secretary or Council of Governors to terminate a Governor's tenure of office may be referred by that Governor to the Dispute Resolution Procedure (as set out in Annex 8) within 28 calendar days of the date upon which notice in writing of the decision is given to the Governor.

## **ANNEX 6 – STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE COUNCIL OF GOVERNORS**

The following Standing Orders form part of the Constitution of The Clatterbridge Cancer Centre NHS Foundation Trust.

### **1. Interpretation**

- 1.1. Save as permitted by law, the Chair shall be the final authority on the interpretation of these Standing Orders (on which they should be advised, as necessary, by the Chief Executive or Trust Secretary). The decision of the Chair of the meeting on questions of order, relevancy and regularity (including procedure on handling motions) shall be final.
- 1.2. Statements of Governors made at meetings of the Council of Governors shall be relevant to the matter under discussion at the material time and the decision of the Chair of the meeting on questions of order, relevance, regularity and any other matters shall be observed at the meeting.

### **2. General**

- 2.1. All business shall be conducted in the name of the Trust.
- 2.2. The purpose of these Standing Orders is to ensure that the highest standards of corporate governance and conduct are applied to all Council of Governors meetings. The Council of Governors shall at all times seek to comply with the Code of Governance for NHS Provider Trusts as may be in place from time to time, and in exercising their functions all Governors must comply with the Trust's Code of Conduct for Governors.

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

- 3.1. **Admission of the public and press** – all meetings of the Council of Governors shall be open to members of the public and representatives of the press subject to the below.
- 3.2. The Council of Governors may resolve to exclude members of the public or press from any meeting or part of a meeting on the grounds that:
  - 3.2.1. publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted; or
  - 3.2.2. there are special reasons stated in the resolution and arising from the nature of the business of the proceedings.
- 3.3. The right of attendance referred to above carries no right to ask questions or otherwise participate in the meeting unless the Chairman (or other person presiding) allows it.
- 3.4. The Chair (or other person presiding) shall give such directions as they think fit in regards to the arrangements for meetings and accommodation of the public and representatives of the press to ensure that the business of the meeting shall be conducted without interruption and disruption and, without prejudice to the power to exclude on grounds of the confidential nature of the business to be transacted or for special reasons, the public and press will be required to withdraw upon the Council of Governors resolving as follows:

*“That in the interests of public order the meeting adjourn for (the period to be specified) to enable the completion of business without the presence of the public and press.”*

- 3.5. Nothing in these Standing Orders shall require the Council of Governors to allow members of the public or representatives of the press to record proceedings in any manner whatsoever, other than writing, or to make any oral report of proceedings or via social media as they take place without the prior agreement of the Council of Governors.
- 3.6. Where the public and press have been excluded from a meeting in accordance with standing order 3.2 above, then the matters dealt with following such exclusion shall be confidential to the Governors and Directors of the Trust. No Governor, Director, officer or employee of the Trust in attendance at such meeting shall reveal or disclose any information concerning such matters to any other person or disclose the contents of any papers presented to such meeting or minutes taken of such a meeting to any other person without the express permission of the Trust.
- 3.7. The Council of Governors may invite the Chief Executive, or any other director, or a representative of the Financial Auditor to attend any meeting of the Council of Governors to enable Governors to raise questions about the Trust’s affairs. For the avoidance of doubt, any such attendee shall not have the right to vote at such a meeting.
- 3.8. The Chief Executive and/or any other member of the Board of Directors may attend and address any meeting of the Council of Governors but shall not have the right to vote at such meetings.
- 3.9. The Chair and/or the Trust Secretary may introduce legal or other advisers to the Council of Governors to advise the Chair and the Council of Governors on behalf of the Trust and such individuals may be invited to attend meetings.
- 3.10. **Calling meetings** – the Council of Governors is to meet at least four times in each financial year. Meetings of the Council of Governors shall be called by the Trust Secretary, or in the Trust Secretary’s absence, by the Chair.
- 3.11. Save in the case of emergencies or the need to conduct urgent business, the Trust Secretary shall give at least fourteen days written notice of the date and place of every meeting of the Council of Governors to all Governors. The notice will be placed on the Trust website.
- 3.12. Extraordinary meetings may be called by the Trust Secretary or by the Chair at short notice.
- 3.13. Meetings of the Council of Governors shall be called by the Trust Secretary on the written request of at least six governors (including at least two Elected Governors and two Appointed Governors) who shall specify the business to be carried out. The Trust Secretary shall call a meeting of the Council of Governors on at least fourteen but not more than twenty-eight days written notice to discuss the specified business. If the Trust Secretary fails to call such a meeting within fourteen days of receipt of the written notice, then the relevant Governors may call such a meeting on not less than fourteen days written notice to all Governors.
- 3.14. The notice for each meeting of the Council of Governors shall:
  - 3.14.1. specify the business proposed to be transacted at the meeting;
  - 3.14.2. be signed by the Chair or by an officer authorised by the Chair to sign on their



behalf; and

3.14.3. be delivered in person to each Governor, sent by post to the usual place of residence of each such Governor or sent by electronic mail to the address provided by any Governor for such purposes.

3.15. Want of service of such a notice on any Governor shall not affect the validity of a meeting.

3.16. In the case of a meeting called by Governors in default of the Trust Secretary calling the meeting, the notice shall be signed by those Governors and no business shall be transacted at the meeting other than that specified in the notice. Failure to serve such a notice on more than three quarters of Governors will invalidate the meeting.

#### **4. Agenda and Supporting Papers**

4.1. The Council of Governors may determine that certain matters shall appear on every agenda. Subject to this, the Trust Secretary shall be responsible for producing the agenda for meetings in conjunction with the Chair.

4.2. Save in the case of an emergency or the need to conduct urgent business, the agenda will be provided to the Governors not less than 5 working days before the meeting and supporting papers, whenever possible, shall accompany the agenda.

4.3. A Governor desiring a matter to be included on an agenda shall make their request in writing to the Chair at least 10 days before the meeting. Requests made less than 10 days before a meeting may be included on the agenda at the discretion of the Chair. The request should state whether the item of business is proposed to be transacted in the presence of the public and should include appropriate supporting information.

4.4. No business shall be transacted at the meeting other than that specified on the agenda, or emergency motions.

#### **5. Chairman of the Meeting**

5.1. The Chair shall preside at meetings of the Council of Governors and shall be entitled to exercise a casting vote where the number of votes for and against a motion is equal.

5.2. If the Chair is absent from a meeting of the Council of Governors, the Deputy Chair shall preside over that meeting and they shall exercise all the rights and obligations of the Chair including the right to exercise a second or casting vote where the number of votes for and against a motion is equal.

5.3. If any matter for consideration at a meeting of the Council of Governors relates to the conduct or interests of the Chair or of the Non-Executive Directors as a class, neither the Chair nor any of the Non-Executive Directors shall preside over the period of the meeting during which the matter is under discussion. In these circumstances the period of the meeting shall be chaired by the Lead Governor, or in their absence, by another Governor chosen by the Governors. This person shall exercise all the rights and obligations of the Chairman including the right to exercise a second or casting vote where the number of votes for and against a motion is equal.

## **6. Notice of, Amending or Withdrawing Motions and Notice to Rescind a Resolution**

- 6.1. A Governor desiring to move or amend a motion or rescind a resolution shall send a written notice thereof at least 10 days before the meeting to the Chair, who shall insert in the agenda of the meeting all notices so received subject to the notice being permissible under the appropriate regulations. This shall not prevent a motion being moved during a meeting without notice on any business mentioned on the agenda.
- 6.2. Subject to the agreement of the Chair, a Governor may give written notice of an emergency motion after the issue of the notice of meeting and agenda, up to one hour before the time fixed for the meeting. The notice shall state the grounds of urgency. If in order, it shall be declared to the Council of Governors at the commencement of the business of the meeting as an additional item included in the agenda. The Chair's decision to include the item shall be final.
- 6.3. A motion or amendment once moved and seconded may be withdrawn by the proposer with the concurrence of the seconder and the consent of the Chair.
- 6.4. Notice of motion to amend or rescind any resolution (or the general substance of any resolution) which has been passed within the preceding six calendar months shall bear the signature of the Governor who gives it and also the signature of ten other Governors. When any such motion has been disposed of by the Council of Governors, it cannot be proposed again to the same effect within the next six calendar months unless the Chair deems it to be appropriate.
- 6.5. The proposer of the motion shall have the right of reply at the close of any discussions on the motion or any proposed amendments.
- 6.6. When a motion is under discussion or immediately prior to discussion it shall be open to a Governor to move:
  - 6.6.1. An amendment to the motion;
  - 6.6.2. The adjournment of the discussion or the meeting;
  - 6.6.3. That the meeting proceed to the next business;
  - 6.6.4. The appointment of an ad hoc committee to deal with a specific item of business
  - 6.6.5. That the motion be now put.
- 6.7 Such a motion shall be disposed of before the motion which was originally under discussion or about to be discussed. No amendment to the motion shall be admitted if, in the opinion of the Chair of the meeting, the amendment negates the substance of the motion.

## **7. Voting**

- 7.1. If, in the opinion of the Chair, a vote should be required on a question at a meeting of the Council of Governors, the result shall be determined by a majority of the votes of the Governors present and voting on the question.
- 7.2. All questions put to the vote shall, at the discretion of the Chair of the meeting be determined by oral expression or by a show of hands. A paper ballot may also be used if a majority of the Governors present so request. If a Governor so requests, their vote (other than by paper ballot) on any question shall be recorded by name.
- 7.3. In no circumstances may an absent Governor vote by proxy. Absence is defined as being absent at the time of the vote.

- 7.4. In the case of an equality of votes the person presiding at or chairing the meeting shall have a casting vote.
- 7.5. No resolution of the Council of Governors shall be passed if it is opposed by all of the Public Governors present.
- 7.6. An Elected Governor may not vote at a meeting of the Council of Governors unless, before attending the meeting, they have made a declaration in the form specified by the Trust Secretary of the particulars of their qualification to vote as a member of the Trust and that they are not prevented from being a member of the Council of Governors. An Elected Governor shall be deemed to have confirmed the declaration upon attending any subsequent meeting of the Council of Governors, and every agenda for meetings of the Council of Governors will draw this to the attention of Elected Governors.
- 7.7. All decisions taken in good faith at a meeting of the Council of Governors or of any committee where a quorum is present shall be valid even if it is discovered subsequently that there was a defect in the calling of the meeting, or the appointment of the Governors attending the meeting, and even if there is any vacancy of its membership.

## **8. Minutes**

- 8.1. Minutes of the proceedings of a meeting shall be drawn up and submitted for approval at the next meeting where they will be signed by the Chair of that meeting.
- 8.2. No discussion shall take place upon the minutes except upon their accuracy or where the Chair considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded in writing.
- 8.3. Minutes of the meeting shall record the names of those present.
- 8.4. Minutes of the meetings shall be made available to the public except for those minutes relating to business conducted when members of the public or press are excluded under the terms of these Standing Orders.

## **9. Quorum**

- 9.1. No business shall be transacted at a meeting of the Council of Governors unless at least five Public Governors, one Staff Governor and one Appointed Governor are present at the meeting.
- 9.2. If a Governor has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of the declaration of a conflict of interest they shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business.
- 9.3. The Council of Governors may agree that its members can participate in its meetings by telephone, video or computer link. Participation in a meeting in this manner shall be deemed to constitute presence in person at the meeting.

## **10. Nominations Committee and other working groups**

- 10.1. The Council of Governors shall create a duly authorised Nominations Committee in accordance with paragraph 27 of this Constitution.
- 10.2. The Trust Secretary shall attend the Nominations Committee and take minutes of any proceedings.
- 10.3. The Nominations Committee shall have such terms of reference as the Council of Governors may determine). Such terms of reference shall have effect as if incorporated into the Standing Orders.
- 10.4. The Council of Governors shall approve the Governor appointments to the Nominations Committee.
- 10.5. The Council of Governors may not delegate any of its powers to a committee or sub-committee, but it may appoint working groups and/or sub-groups consisting of members of the Council of Governors, directors, and/or other persons to assist it in carrying out its functions. The Council of Governors may, through the Trust Secretary, request that advisers assist it or any working group or sub-group it appoints in carrying out its duties. Each such working group or sub-group shall have such terms of reference and remit and be subject to such conditions (as to reporting back to the Council of Governors) as the Council of Governors shall decide. Such terms of reference shall have effect as if incorporated into these Standing Orders. The Council of Governors shall approve the membership of all working groups and sub-groups that it has formally constituted and shall appoint the chair of each such working group and sub-group.
- 10.6. Subject to Standing Order 10.7 below no Governor or member of any committee or sub-committee of the Council of Governors or attendee at a meeting of the Council of Governors or any committee or sub-committee shall disclose details of any matter dealt with by, or brought before, the Council of Governors or a committee or sub-committee of the Council of Governors without the permission of the Council of Governors or the relevant committee or sub-committee (as applicable) until such matter has been concluded or in the case of a committee or sub-committee, until the committee or sub-committee has reported to the Council of Governors.
- 10.7. No Governor or attendee at any meeting of the Council of Governors or any committee or sub-committee of the Council of Governors shall disclose any matter dealt with by the Council of Governors or the committee or sub-committee (as applicable), notwithstanding that the matter has been reported or action has been concluded, if the Council of Governors or committee or sub-committee resolves that it is confidential.

## **11. Declarations of Interest and Register of Interests**

- 11.1. If a Governor has a pecuniary, professional, 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 and to the Trust Secretary as soon as they become aware of it, in accordance with the Trust's policy on managing conflicts of interest, and at any meetings at which the matter is to be discussed, and, unless the Chair of any relevant meeting determines that the interest is not deemed to create a conflict of interest:

- 11.1.1. shall withdraw from the meeting and play no part in the relevant discussion or decision,
- 11.1.2. shall not vote on the issue (and if by inadvertence they do remain and vote, their vote shall not be counted).
- 11.2. In addition to the declaration of interests at meetings in accordance with standing order 11.1, interests required to be declared in accordance with the Trust's policy on managing conflicts of interest shall be declared to the Trust Secretary:
- 11.2.1. within 14 days of election or appointment; or
- 11.2.2. if arising later, as soon as the Governor becomes aware of the interest.
- 11.3. Interests shall be recorded in a register of interests maintained in accordance with the Trust's constitution.
- 11.4. Any conflicts of interest arising shall be managed in accordance with the Trust's policy for managing conflicts of interest, as may be in place from time to time.
- 11.5. Any Governor who fails to disclose any interest required to be disclosed under this paragraph must permanently vacate their office if required to do so by a majority of the remaining Governors.
- 11.6. The exceptions which shall not be treated as interests requiring declaration are as follows:
- 11.6.1. an employment contract held by Staff Governors;
- 11.6.2. an employment contract held with an Appointing Organisation by Governors appointed by that organisation.
- 11.7. If Governors have any doubt about the relevance of an interest, this should be discussed with the Chair of the Trust or with the Trust Secretary.
- 11.8. Interests which, for the avoidance of doubt, should be declared and included in the register, are:
- a) Directorships, including Non-Executive directorships, held in private companies or PLCs.
  - b) Ownership, part-ownership or directorship of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS.
  - c) A position of authority in a charity or voluntary organisation in the field of health and social care.
  - d) Majority or controlling shareholdings in organisations likely or possibly seeking to do business with the NHS.
  - e) Any connection with a voluntary or other organisation contracting for NHS services or commissioning NHS services.
  - f) Membership of clubs, societies or organisations whose purpose may include furthering the business or personal interests of their members by undeclared or informal means. Such organisations include Masonic lodges and religious societies whose membership consists of professional and business people.
  - g) Any connection with an organisation, entity or company considering entering into

or having entered into a financial arrangement with the NHS.

## **12. Non-compliance with Standing Orders**

12.1. If for any reason these Standing Orders are not complied with, full details of the non-compliance and any justification for non-compliance and the circumstances around the non-compliance, shall be reported to the next formal meeting of the Council of Governors for action or ratification. All members of the Council of Governors have a duty to disclose any non-compliance with these Standing Orders to the Chair and Trust Secretary as soon as possible.

## **13. Suspension of Standing Orders**

13.1. Except where this would contravene any statutory provision or the rules relating to the quorum, any one or more of these Standing Orders may be suspended at any meeting, provided that at least two-thirds of the whole number of the members of the Council of Governors are present and that at least two-thirds of those members present (including at least one Elected Governor and one Appointed Governor) signify their agreement to such suspension. The reason for the suspension shall be recorded in the Council's minutes.

13.2. A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the Chair and members of the Council of Governors. No formal business may be transacted while Standing Orders are suspended. The Audit Committee shall review every decision to suspend Standing Orders.

## **14. Variation and Amendment of Standing Orders**

14.1. These Standing Orders shall not be varied except in the following circumstances:

- 14.1.1. upon a notice of motion;
- 14.1.2. upon a recommendation of the Chair or Chief Executive included on the agenda for the meeting;
- 14.1.3. that two thirds of the Council of Governors are present at the meeting where the variation or amendment is being discussed; and
- 14.1.4. that at least half of the Trust's Public Governors vote in favour of the amendment,

providing that any variation or amendment does not contravene a statutory provision.

## **15. Compliance**

15.1. Governors shall comply with standing financial instructions prepared by the Director of Finance and approved by the Board of Directors for the guidance of all staff employed by the Trust.

15.2. Governors shall act at all times in accordance with the Trust's schedule of reservation and delegation of powers.

15.3. Governors must conduct themselves at all times in accordance with the Trust's Code of Conduct for Governors.

## **ANNEX 7 – STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE BOARD OF DIRECTORS**

The following Standing Orders form part of the Constitution of The Clatterbridge Cancer Centre NHS Foundation Trust.

### **1. Interpretation**

- 1.1. Save as permitted by law, the Chair shall be the final authority on the interpretation of these Standing Orders (on which they should be advised, as necessary, by the Chief Executive or Trust Secretary). The decision of the Chair of the meeting on questions of order, relevancy and regularity (including procedure on handling motions) shall be final.
- 1.2. Statements of Directors made at meetings of the Board of Directors shall be relevant to the matter under discussion at the material time and the decision of the Chair of the meeting on questions of order, relevance, regularity and any other matters shall be observed at the meeting.

### **2. General**

- 2.1. All business shall be conducted in the name of the Trust.
- 2.2. The purpose of these Standing Orders is to ensure that the highest standards of corporate governance and conduct are applied to all Board of Directors meetings. The Board of Directors shall at all times seek to comply with the Code of Governance for NHS Provider Trusts as may be in place from time to time, and in exercising their functions all Directors must comply with the Trust's Code of Conduct for Directors.

### **3. Meetings of the Board**

- 3.1. **Admission of the public and press** – all meetings of the Board of Directors shall be open to members of the public and representatives of the press subject to the below.
- 3.2. The Board of Directors may resolve to exclude members of the public or press from any meeting or part of a meeting on the grounds that:
  - 3.2.1. publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted; or
  - 3.2.2. there are special reasons stated in the resolution and arising from the nature of the business of the proceedings.
- 3.3. The right of attendance referred to above carries no right to ask questions or otherwise participate in the meeting unless the Chair (or other person presiding) allows it.
- 3.4. The Chair (or other person presiding) shall give such directions as they think fit in regards to the arrangements for meetings and accommodation of the public and representatives of the press to ensure that the business of the meeting shall be conducted without interruption and disruption and, without prejudice to the power to exclude on grounds of the confidential nature of the business to be transacted, the public and press will be required to withdraw upon the Board of Directors resolving as follows:

*“That in the interests of public order the meeting adjourn for (the period to be specified) to enable the completion of business without the presence of the public and*

*press.*”

- 3.5. Nothing in these Standing Orders shall require the Board of Directors to allow members of the public or representatives of the press to record proceedings in any manner whatsoever, other than writing, or to make any oral report of proceedings or social media as they take place without the prior agreement of the Board of Directors.
- 3.6. Where the public and press have been excluded from a meeting in accordance with standing order 3.2 above, then the matters dealt with following such exclusion shall be confidential to the Directors of the Trust. No Governor, Director, officer or employee of the Trust in attendance at such meeting shall reveal or disclose any information concerning such matters to any other person or disclose the contents of any papers presented to such meeting or minutes taken of such a meeting to any other person without the express permission of the Trust.
- 3.7. **Calling meetings** – ordinary meetings of the Board of Directors shall be held at regular intervals at such times and places as the Board may determine. Meetings of the Board of Directors shall be called by the Trust Secretary, or in the Trust Secretary’s absence, by the Chair.
- 3.8. Save in the case of emergencies or the need to conduct urgent business, the Trust Secretary shall give to all Directors at least fourteen days written notice of the date and place of every meeting of the Board of Directors. The notice will be placed on the Trust website.
- 3.9. Extraordinary meetings may be called by the Trust Secretary or by the Chair at short notice.
- 3.10. Meetings of the Board of Directors shall be called by the Trust Secretary on the written request of at least four Directors who shall specify the business to be carried out. The Trust Secretary shall call a meeting of the Board of Directors on at least fourteen but not more than twenty-eight days written notice to discuss the specified business. If the Trust Secretary fails to call such a meeting within fourteen days of receipt of the written notice, then the relevant Directors may call such a meeting on not less than fourteen days written notice to all Directors.
- 3.11. The notice for each meeting of the Board of Directors shall:
  - 3.11.1. specify the business proposed to be transacted at the meeting;
  - 3.11.2. be signed by the Chair or by an officer authorised by the Chair to sign on their behalf; and
  - 3.11.3. be delivered in person to each Director, sent by post to the usual place of residence of each such Director or sent by electronic mail to the address provided by any Director for such purposes.
- 3.12. Want of service of such a notice on any Director shall not affect the validity of a meeting.
- 3.13. In the case of a meeting called by Directors in default of the Trust Secretary calling the meeting, the notice shall be signed by those Directors and no business shall be transacted at the meeting other than that specified in the notice. Failure to serve such a notice on more than three quarters of Directors will invalidate the meeting.

#### **4. Agenda and Supporting Papers**

- 4.1. The Board of Directors may determine that certain matters shall appear on every agenda. Subject to this, the Trust Secretary shall be responsible for producing the agenda for meetings in conjunction with the Chair.



- 4.2. Save in the case of an emergency or the need to conduct urgent business, the agenda will be provided to the Directors not less than 5 working days before the meeting and supporting papers, whenever possible, shall accompany the agenda.
- 4.3. A Director desiring a matter to be included on an agenda shall make their request in writing to the Chair at least 10 days before the meeting. Requests made less than 10 days before a meeting may be included on the agenda at the discretion of the Chair. The request should state whether the item of business is proposed to be transacted in the presence of the public and should include appropriate supporting information.
- 4.4. Where a petition has been received by the Trust the Chair shall include the petition as an item for the agenda of the next meeting.
- 4.5. No business shall be transacted at the meeting other than that specified on the agenda, or emergency motions.

## **5. Chair of the Meeting**

- 5.1. The Chair shall preside at meetings of the Board of Directors and shall be entitled to exercise a casting vote where the number of votes for and against a motion is equal.
- 5.2. If the Chair is absent from a meeting, the Deputy Chair shall preside over that meeting and they shall exercise all the rights and obligations of the Chair including the right to exercise a second or casting vote where the number of votes for and against a motion is equal. If the Chair and Deputy Chair are absent, such member (Non-Executive Director) as the members present shall choose shall preside.

## **6. Notice of, Amending or Withdrawing Motions and Notice to Rescind a Resolution**

- 6.1. A Director desiring to move or amend a motion or rescind a resolution shall send a written notice thereof at least 10 days before the meeting to the Chair, who shall insert in the agenda of the meeting all notices so received subject to the notice being permissible under the appropriate regulations. This shall not prevent a motion being moved during a meeting without notice on any business mentioned on the agenda.
- 6.2. Subject to the agreement of the Chair, a member of the Board of Directors may give written notice of an emergency motion after the issue of the notice of meeting and agenda, up to one hour before the time fixed for the meeting. The notice shall state the grounds of urgency. If in order, it shall be declared to the Board of Directors at the commencement of the business of the meeting as an additional item included in the agenda. The Chair's decision to include the item shall be final.
- 6.3. A motion or amendment once moved and seconded may be withdrawn by the proposer with the concurrence of the seconder and the consent of the Chair.
- 6.4. Notice of motion to amend or rescind any resolution (or the general substance of any resolution) which has been passed within the preceding six calendar months shall bear the signature of the Director who gives it and also the signature of four other Directors. When any such motion has been disposed of by the Board of Directors, it cannot be proposed again to the same effect within the next six calendar months unless the Chair deems it to be appropriate.
- 6.5. The proposer of the motion shall have the right of reply at the close of any discussions

on the motion or any proposed amendments.

6.6. When a motion is under discussion or immediately prior to discussion it shall be open to a Director to move:

6.6.1. An amendment to the motion;

6.6.2. The adjournment of the discussion or the meeting;

6.6.3. That the meeting proceed to the next business;

6.6.4. The appointment of an ad hoc committee to deal with a specific item of business

6.6.5. That the motion be now put.

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

## **7. Voting**

7.1. Subject to the following provisions of this paragraph, questions arising at a meeting of the Board of Directors shall be decided by a majority of votes.

7.2. In case of an equality of votes, the Chair shall have a second and casting vote.

7.3. No resolution of the Board of Directors shall be passed if it is opposed by all of the Non-Executive Directors present or by all of the Executive Directors present.

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

7.5. If at least one third of the Board members present so request, the voting on any question may be recorded so as to show how each member present voted or did not vote (except when conducted by paper ballot).

7.6. A manager who has been formally appointed to act up for an Executive Director during a period of incapacity or temporarily to fill an Executive Director vacancy shall be entitled to exercise the voting rights of the Executive Director.

7.7. A manager attending the Board of Directors meeting to represent an Executive Director during a period of incapacity or temporary absence without formal acting up status may not exercise the voting rights of the Executive Director. An officer's status when attending a meeting shall be recorded in the minutes.

7.8. Save for in the circumstances above, in no circumstances may an absent Director vote by proxy. Absence is defined as being absent at the time of the vote.

7.9. All decisions taken in good faith at a meeting of the Board of Directors or of any committee shall be valid even if it is discovered subsequently that there was a defect in the calling of the meeting, or the appointment of the Directors attending the meeting, and even if there is any vacancy of its membership.

## **8. Minutes**

8.1. Minutes of the proceedings of a meeting shall be drawn up and submitted for approval at the next meeting where they will be signed by the Chair of that meeting.

8.2. No discussion shall take place upon the minutes except upon their accuracy or where the Chair considers discussion appropriate. Any amendment to the minutes shall be

agreed and recorded in writing.

8.3. Minutes of the meeting shall record the names of those present.

8.4. Minutes of the meetings shall be made available to the public except for those minutes relating to business conducted when members of the public or press are excluded under the terms of these Standing Orders.

## **9. Quorum**

9.1. No business shall be transacted at a meeting of the Board of Directors unless at least six Directors including not less than three Executive Directors (one of whom must be the Chief Executive or another Executive Director nominated by the Chief Executive), and not less than three Non-Executive Directors (one of whom must be the Chair or the Deputy Chair) are present.

9.2. An officer in attendance for an Executive Director (Officer Member) but without formal acting up status may not count towards the quorum.

9.3. If the Chair or another Director has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of the declaration of a conflict of interest they shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business.

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

## **10. Board Committees and Delegation**

10.1. The Board of Directors may delegate any of its powers to a committee of Directors or to an Executive Director.

10.2. The powers which the Board has retained to itself within these Standing Orders may, in emergency, be exercised by the Chief Executive and the Chair, after having consulted with at least two Non-Executive Directors. The exercise of such powers by the Chief Executive and Chairman shall be reported to the next formal meeting of the board in public session for ratification.

### **Committees**

10.3. The Board shall determine the membership and terms of reference for all committees established by the Board of Directors. The Board shall approve the appointments to each of the committees which it has formally constituted.

10.4. The Board of Directors shall appoint an audit committee of Non-Executive Directors to perform monitoring, reviewing and other functions as appropriate.

10.5. The Board of Directors shall appoint a remuneration committee of the Chair and other Non-Executive Directors to decide the remuneration and allowances, and the other terms and conditions of office, of the Executive Directors.

10.6. In addition to the statutory requirements, the Board of Directors may establish other committees as required for the conduct of their business. Where committees are

authorised to establish sub-committees they may not delegate executive powers to the sub-committee unless expressly authorised by the Board of Directors.

- 10.7. These Standing Orders and Standing Financial Instructions of the Trust, as far as they are applicable, shall as appropriate apply to Board meetings and any meetings of committees established by the Board, in which case the term “Chair” is to be read as a reference to the Chair of the meeting or committee as the context permits, and the term “member” is to be read as a reference to a member of the committee also as the context permits.
- 10.8. Subject to Standing Order 10.9 below no Director or member of any committee or sub-committee of the Board of Directors or attendee at a meeting of the Board of Directors or any committee or sub-committee shall disclose details of any matter dealt with by, or brought before, the Board of Directors or a committee or sub-committee of the Board without the permission of the Board or the relevant committee or sub-committee (as applicable) until such matter has been concluded or in the case of a committee or sub-committee, until the committee or sub-committee has reported to the Board.
- 10.9. No Director or attendee at any meeting of the Board of Directors or any committee or sub-committee of the Board shall disclose any matter dealt with by the Board of Directors or the committee or sub-committee (as applicable), notwithstanding that the matter has been reported or action has been concluded, if the Board of Directors or committee or sub-committee resolves that it is confidential.

#### **Delegation of Powers to Officers**

- 10.10. The Board of Directors has powers to delegate and make arrangements for delegation.
- 10.11. Those functions of the Trust which have not been retained as reserved by the Board or delegated to a committee or sub-committee shall be exercised on behalf of the Trust by the Chief Executive. The Chief Executive shall determine which functions they will perform personally and shall nominate officers to undertake the remaining functions for which they will still retain accountability to the Trust.
- 10.12. The Board of Directors shall prepare a Schedule of Matters Reserved to the Board and a Scheme of Delegation. The Chief Executive may periodically propose amendment to these documents, which shall be considered and approved by the Board of Directors.
- 10.13. Nothing in the Scheme of Delegation shall impair the discharge of the direct accountability to the Board of the Finance Director to provide information and advise the Board in accordance with statutory, NHS Improvement or Department of Health requirements. Outside these statutory requirements the roles of the Finance Director shall be accountable to the Chief Executive for operational matters.
- 10.14. The arrangements made by the Board as set out in the "Schedule of Matters Reserved to the Board" and "Scheme of Delegation" of powers shall have effect as if incorporated in these Standing Orders.

#### **11. Declarations of Interest and Register of Interests**

- 11.1. If a Director has a pecuniary, professional, 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 Board of Directors, the Director shall disclose that interest to the members of

the Board of Directors and to the Trust Secretary as soon as they become aware of it, in accordance with the Trust's policy on managing conflicts of interest, and at any meetings at which the matter is to be discussed, and, unless the Chair of any relevant meeting determines that the interest is not deemed to create a conflict of interest:

- 11.1.1. shall withdraw from the meeting and play no part in the relevant discussion or decision,
  - 11.1.2. shall not vote on the issue (and if by inadvertence they do remain and vote, their vote shall not be counted).
- 11.2. In addition to the declaration of interests at meetings in accordance with standing order 11.1, interests required to be declared in accordance with the Trust's policy on managing conflicts of interest shall be declared to the Trust Secretary:
- 11.2.1. within 14 days of appointment as a Director; or
  - 11.2.2. if arising later, as soon as the Director becomes aware of the interest.
- 11.3. Interests shall be recorded in a register of interests maintained in accordance with the Trust's constitution.
- 11.4. Any conflicts of interest arising shall be managed in accordance with the Trust's policy for managing conflicts of interest, as may be in place from time to time.
- 11.5. The exception which shall not be treated as an interest requiring declaration is an employment contract or contract of appointment with the Trust held by a Director.
- 11.6. If Board members have any doubt about the relevance of an interest, this should be discussed with the Chair of the Trust or with the Trust Secretary.
- 11.7. Interests which, for the avoidance of doubt, should be declared and included in the register are:
- Directorships, including Non-Executive directorships, held in private companies or PLCs.
  - Ownership, part-ownership or directorship of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS.
  - A position of authority in a charity or voluntary organisation in the field of health and social care.
  - Majority or controlling shareholdings in organisations likely or possibly seeking to do business with the NHS.
  - Any connection with a voluntary or other organisation contracting for NHS services or commissioning NHS services.
  - Membership of clubs, societies or organisations whose purpose may include furthering the business or personal interests of their members by undeclared or informal means. Such organisations include Masonic lodges and religious societies whose membership consists of professional and business people.
  - Any connection with an organisation, entity or company considering entering into or having entered into a financial arrangement with the NHS.

## **12. Non-compliance with Standing Orders**

- 12.1. If for any reason these Standing Orders are not complied with, full details of the non-compliance and any justification for non-compliance and the circumstances around the non-compliance, shall be reported to the next formal meeting of the Board for action or ratification. All members of the Board of Directors and staff have a duty to disclose any non-compliance with these Standing Orders to the Chief Executive as soon as possible.

## **13. Suspension of Standing Orders**

- 13.1. Except where this would contravene any statutory provision or the rules relating to the quorum, any one or more of these Standing Orders may be suspended at any meeting, provided that at least two-thirds of the whole number of the members of the Board of Directors are present and that at least two-thirds of those members present (including at least one member who is an Executive Director of the Trust and one member who is not) signify their agreement to such suspension. The reason for the suspension shall be recorded in the Board's minutes.
- 13.2. A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the Chair and members of the Board of Directors. No formal business may be transacted while Standing Orders are suspended. The Audit Committee shall review every decision to suspend Standing Orders.

## **14. Variation and Amendment of Standing Orders**

- 14.1. These Standing Orders shall not be varied except in the following circumstances:
  - 14.1.1. upon a notice of motion;
  - 14.1.2. upon a recommendation of the Chair or Chief Executive included on the agenda for the meeting;
  - 14.1.3. that two thirds of the Board of Directors are present at the meeting where the variation or amendment is being discussed; and
  - 14.1.4. that at least half of the Trust's Non-Executive Board members vote in favour of the amendment,

providing that any variation or amendment does not contravene a statutory provision.

## **15. Compliance**

- 15.1. Directors shall comply with standing financial instructions prepared by the Director of Finance and approved by the Board of Directors for the guidance of all staff employed by the Trust.
- 15.2. Directors shall act at all times in accordance with the Trust's schedule of reservation and delegation of powers.
- 15.3. Directors must conduct themselves at all times in accordance with the Trust's Code of Conduct for Directors.

## **ANNEX 8 – DISPUTE RESOLUTION PROCEDURE**

1. In the event of a dispute with:
  - a) A member or prospective member in relation to eligibility or disqualification; or
  - b) A governor or prospective governor in relation to matters of eligibility, disqualification or termination of tenure;

the individual concerned shall be invited to an informal meeting with the Trust Secretary or with one or more of the Directors. If not resolved, the dispute shall be referred to a panel comprising the Chairman, at least one Elected Governor, and either the Trust Secretary or one of the Directors. The decision of the panel shall be final.
2. A dispute arising between the Council of Governors and the Board of Directors shall be referred to a panel comprising the Chair, the Chief Executive and two Governors who have been nominated by the Council of Governors. The panel shall use all reasonable endeavours to facilitate the resolution of the dispute.
3. In the event resolution is not reached under Paragraph 2 above, the panel shall consult the Council of Governors and the Board of Directors to determine whether the matter should be referred to mediation. In the event the decision is to refer to mediation, an external mediator shall be appointed by the Centre for Dispute Resolution or such other organisation as the panel shall agree.