

Council of Governors Meeting: Wednesday 14 July 2021

CoG2021.17

Title: OUH Constitution Review: Final Phase

Status: For Decision

History: CoG2021.04 and CoG2021.11

Board Lead: Trust Chair

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Confidential: No

Key Purpose: Strategy, Assurance

OUH Constitution Review: Final Phase

1. Purpose

- 1.1. The Board and the Council of Governors have previously approved substantive amendments to the OUH Constitution, accepting recommendations made by a governor-led Working Group.
- 1.2. The final phase of what has been a comprehensive review of the OUH Constitution is now complete, and the final revised version of the Constitution (attached at **Appendix 1**) is presented for approval by the Board and the Council of Governors.
- 1.3. If approved by the Board and the Council of Governors at meetings held on 14 July 2021, then the fully revised version of the OUH Constitution will take immediate effect.
- 1.4. To the extent that any part of the fully revised Constitution is not approved, then current provision will continue to prevail.

2. Background

- 2.1. Review of the OUH Constitution commenced in September 2020. Upon completing the 1st Phase of its deliberations, the governor-led Constitution Review Working Group recommended amendments which were approved by the Board and Council of Governors on 13 January 2021.
- 2.2. Further amendments, reflecting the outcome of deliberations of the Working Group in the 2nd Phase of the review, were approved by the Board and Council of Governors in March 2021.

3. Final Phase of Review of OUH Constitution

- 3.1. In the Final Phase of the review, the OUH Constitution has been revised and amended to:
 - reflect the principles of gender-neutral terminology;
 - delete provisions which are now unnecessary or obsolete; and
 - update provision relating to communication and attendance at meetings where possible, to allow for advances in technology.
- 3.2. Members of the governor-led Working Group have had the opportunity to review all of the proposed amendments in detail, shown as fully tracked changes in the document circulated to them. Commentary is provided in the margin of the fully revised Constitution (attached at **Appendix 1**) to expand on issues that may be of particular note.

- 3.3. The full text of the revised OUH Constitution has been subjected to independent legal review, to ensure that it is fully compliant with all legal and regulatory requirements.

4. Recommendations

- 4.1. The Council of Governors is asked to approve the fully revised OUH Constitution (at **Appendix 1**).

Constitution for Oxford University Hospitals NHS Foundation Trust

**Version 6
July 2021**

Version 6 is the final engrossment of the OUH Constitution following considered deliberations undertaken by a Working Group led by Governors between September 2020 and June 2021.

Summary record of changes

Version	Summary of any change	Date approved
Version 1	Adoption of Constitution upon achieving Foundation Trust status	October 2015 <i>(Trust Board approved in principle in November 2012)</i>
Version 2	1.8 Amended definition of Monitor to reflect establishment of NHS Improvement.	January 2017
	1.10 Added definition of Finance Director to mean Chief Finance Officer.	
	Para 1 Appendix 3 to Annex 8 Clarification that CRB checks and occupational health assessments (part of the checking process for Non-executive Directors) do not extend to governors.	
Version 3	Para 24 of Annex 7 Authority to sign non-legally binding documents which might implicitly commit the trust, or create significant reputational risk, to be expressly linked to authority to sign the resultant legally binding document.	January 2018
Version 4	1. Interpretation and definitions Amended to include statement of intention to reflect the principles of gender-neutral drafting throughout the document, avoiding default use of the masculine gender.	January 2021
	Annex 3: Composition of Council of Governors Increase in the number of governors to be elected by the public constituency of Buckinghamshire, Berkshire, Gloucestershire and Wiltshire from 2 to 3, increasing the total number of public governors from 15 to 16; and Increase in the number of governors who may be appointed from 8 to 9; Definition of organisations specified as entitled to appoint a governor to include Oxfordshire Clinical Commissioning Group or any future body that takes on the commissioning functions of the Clinical Commissioning Group; and Increase in the upper limit on the overall size of Council from 29 to 31 (with public elected governors always to remain in the majority, as is required by law).	
	13. Council of Governors – tenure Provision for an elected governor's tenure to be limited to no more than 3 terms of up to 3 years each, subject to re-election, and subject to no elected governor serving more than 9 years in aggregate (additional terms may be consecutive); and At the discretion of the Chair (to be exercised following consultation with governors as appropriate), an appointed governor may be eligible for reappointment to a 3rd term provided that s/he will not serve more than 9 years in total.	

Version	Summary of any change	Date approved
Version 4 (.../cont)	Annex 5: Additional Provisions – Council of Governors Deletion of paragraph 6 “Initial (first) Governors’ Term of Office” as obsolete	January 2021
	Annex 5: Additional Provisions – Council of Governors 1. Eligibility to be a governor Existing exclusions to remain in force, including clarification that an individual will not be eligible to be a governor of OUH if: she or he is a member of the OUH Board; nor if she or he is a member of a Health Overview and Scrutiny Committee. Also further to clarify that: An elected governor of another FT will not be eligible to be a governor of OUH; and An individual who is an appointed governor at another foundation trust may be appointed as a governor at OUH, and may stand for election; in either case, subject to there being no material conflict of interest (as will be determined by the Chair, in consultation with governors as appropriate).	
Version 5	Annex 5: Additional Provisions – Council of Governors 5. Termination of Office of a Governor Amended to provide that a Governor’s tenure of office may be terminated immediately by Council upon recommendation by the Chair if they have failed to attend two successive meetings of the Council of Governors (or three meetings in a single financial year) without reasonable cause. (Under previous provision, criteria was failure to attend two successive meetings in a single financial year without reasonable cause).	March 2021
	25. Board of Directors: appointment and removal of Chair and other non-executive directors Amended to incorporate gender-neutral terminology Deletion of paragraph 26 “Board of Directors: appointment of initial Chairman and initial non-executive directors”	
	Annex 5: Additional Provisions – Council of Governors Deletion of reference to paragraph 26.	
	Annex 8, Appendix 4: Appointment of Chair and non-executive directors Amended to provide flexibility for Governors to re-appoint a non-executive director (including the Chair) for a further term of specified duration beyond six years in aggregate where necessary to meet specific needs of the Trust, and to enhance effectiveness of the Board in its leadership of the Trust.	
	45. Mergers etc. and significant transactions Amended definition of a ‘significant transaction’ as “investments, divestments or other transactions comprising more than 25% of the assets, income or capital of the NHS Foundation Trust.”	

	<p>33. Board of Directors: conflicts of interest of members of the Board</p> <p>Amended to clarify that where a matter is duly authorised by the Board a member of the Board who has declared an interest in the matter will not be in breach of the duty to avoid a conflict of interest in respect of that matter.</p> <p>Further to provide that the Board may authorise a member of the Board who has declared an interest in an authorised matter to participate in discussion and/or determination of an issue relating to the authorised matter.</p>	
Version 6	<p><i>Following the incorporation of a number of amendments recommended by the Constitution Review Working Group between September 2020 and March 2021 (see Versions 4 and 5), the comprehensive review of the OUH Constitution was concluded by reviewing the entirety of the document, upon which independent legal advice was taken. Further amendments incorporated reflect the principles of gender-neutral drafting, and update terminology and references where appropriate. Provision relating to communication and attendance at meetings has been updated where possible, to reflect advances in technology.</i></p>	July 2021

Constitution for Oxford University Hospitals NHS Foundation Trust

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Constitution

1. Interpretation and definitions

- 1.1. Unless otherwise stated, words or expressions contained in this constitution shall bear the same meaning as in the National Health Service Act 2006 as amended by the Health and Social Care Act 2012.
- 1.2. It is intended that the whole of the Constitution will reflect the principles of gender-neutral drafting. Default use of the masculine gender is to be avoided throughout this document but, for the avoidance of doubt when construing the intent of any provision made herein, any words importing the masculine gender only shall include the feminine gender; words importing the singular shall import the plural and vice versa.
- 1.3. '2006 Act' is the National Health Service Act 2006.
- 1.4. '2012 Act' is the Health and Social Care Act 2012.
- 1.5. 'Accounting Officer' is the person who from time to time discharges the functions specified in paragraph 25(5) of Schedule 7 to the 2006 Act.
- 1.6. 'Annual Members' Meeting' is defined in paragraph 10 of the constitution 'Board of Directors' is the board of directors of the Trust as constituted pursuant to this Constitution and the 2006 Act.
- 1.7. 'Constitution' means this constitution and all annexes to it.
- 1.8. 'Director' means a member of the Board of Directors.
- 1.9. 'finance director' means the Chief Finance Officer of the Trust.
- 1.10. 'Governor' means a member of the Council of Governors.
- 1.11. 'Health Service Body' means an organisation listed as such in section 9(4) of the 2006 Act and an NHS foundation trust.
- 1.12. 'Monitor' is the corporate body known as Monitor, as provided by Section 61 of the 2012 Act and any statutory successor to that body.
- 1.13. 'Secretary' is the Trust Secretary or any other person appointed by the Trust to perform the duties of the Trust 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 Oxford University Hospitals 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:

Commented [PS(O1)]: This section has been slightly expanded, upon the advice of DACBeachcroft solicitors, to provide greater clarity.

Commented [PS(O2)]: A 'Director' under the Constitution is one who has been properly appointed under its terms, i.e. a 'statutory director', although their job title may be 'Chief Officer'. Any other person who has 'director' in their job title but who has not been appointed as a 'statutory director' is not a 'Director' under the Constitution.

- 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. Subject to paragraph 39, 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 convened by the Board of Directors or to an executive director.

Commented [PS(O3)]: This language has been amended to reflect the provisions of para. 15 Schedule 7 2006 Act

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.

6. Application for membership

- 6.1. Subject to paragraph 8.6 below, an individual who is eligible to become a member of the trust may do so on application to the Trust in accordance with paragraphs 7 and 8 below.
- 6.2. Subject to paragraph 8.2 below, applicants for membership of the Trust must complete an application in the form prescribed by the Secretary and approved by the Council of Governors.

Commented [PS(O4)]: This section has been slightly expanded, upon the advice of DACBeachcroft solicitors, to provide greater clarity.

7. Public Constituency

- 7.1. An individual who lives in an area specified in Annex 1 as an area for a public constituency may become or continue as a member of the Trust.
- 7.2. Those individuals who live in the area specified for a public constituency are referred to collectively as a Public Constituency.
- 7.3. The minimum number of members in each Public Constituency is specified in Annex 1.

8. Staff Constituency

- 8.1. An individual who is employed by the trust under a contract of employment with the trust may become or continue as a member of the trust provided that:
 - 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 who:
 - 8.2.1. have a contract of employment with the University of Oxford within its Medical Sciences Division; or

- 8.2.2. are employed by a Private Finance Initiative provider to provide services at any of the Trust's premises,
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 two 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.
- 8.6. *Automatic membership by default – staff*
- 8.6.1. Subject to paragraph 8.6.2, an individual who is:
- 8.6.1.1. eligible to become a member of the Staff Constituency pursuant to paragraph 8.1 above, and
- 8.6.1.2. invited by the Trust to become a member of the Staff Constituency and 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.
- 8.6.2. An individual who:
- 8.6.2.1. is eligible to become a member of the Staff Constituency pursuant to paragraph 8.2 above as a result of:
- 8.6.2.1.1. their contract of employment with the University of Oxford in the Medical Sciences Division and who does not hold an honorary contract award with the Trust, or
- 8.6.2.1.2. their contract of employment with a Private Finance Initiative provider to provide services at the Trust's premises,
shall become a member of the Trust as a member of the Staff Constituency and appropriate class within the Staff Constituency by making an application to the Trust to become a member of the relevant class of the Staff Constituency.

9. Restriction on membership

- 9.1. To be a member of the Trust, an individual must be at least sixteen years old on the date of their application to be a member.
- 9.2. An individual who is a member of a constituency, or of a class within a constituency, may not while their membership of that constituency or class continues, be a member of any other constituency or class.
- 9.3. An individual who satisfies the criteria for membership of the Staff Constituency may not become or continue as a member of any constituency other than the Staff Constituency.
- 9.4. Further provisions as to the circumstances in which an individual may not become or continue as a member of the trust are set out in Annex 8: Further provisions.

10. Annual Members' Meeting

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.

11. Council of Governors – composition

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

12. Council of Governors – election of governors

- 12.1. Elections for elected members of the Council of Governors shall be conducted in accordance with the Model Election Rules.
- 12.2. The Model Election Rules as published from time to time by the Department of Health and Social Care form part of this constitution. The Model Election Rules current at the date of this Constitution are at Annex 4.
- 12.3. A subsequent variation of the Model Election Rules by the Department of Health and Social Care shall not constitute a variation of the terms of this constitution for the purposes of paragraph 42 of the constitution (Amendment of the constitution).
- 12.4. An election, if contested, shall be by secret ballot.

13. Council of Governors – tenure

- 13.1. Subject to the provisions in Annex 5: Additional Provisions – Council of Governors and in accordance with paragraph 10 of Schedule 7 to the 2006 Act an elected governor may hold a term of office of up to three years.
- 13.2. 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.
- 13.3. Subject to paragraph 13.7 an elected governor shall be eligible for re-election at the end of their term.
- 13.4. An appointed governor may hold office for a period of up to 3 years.
- 13.5. An appointed governor shall cease to hold office if the appointing organisation withdraws its sponsorship of them.
- 13.6. Subject to paragraph 13.7 an appointed governor shall be eligible for re-appointment at the end of their term.
- 13.7. No governor shall serve as a governor for more than three terms of up to three years each and no governor shall serve for more than nine years in total (whether by consecutive or non-consecutive terms).

14. Council of Governors – disqualification and removal

- 14.1. The following may not become or continue as a member of the Council of Governors:
 - 14.1.1. a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;
 - 14.1.2. a person who has made a composition or arrangement with, or granted a trust deed for, their creditors and has not been discharged in respect of it;
 - 14.1.3. a person who within the preceding five years has been convicted in the British Islands of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on them;
 - 14.1.4. a person in relation to whom a moratorium period under a debt relief order applies (under Part 7A of the Insolvency Act 1986).

Commented [PS(O5)]: This section has already been amended, upon recommendation of the Working Group, approved by Council and the Board in January 2021.

- 14.2. Governors must be at least sixteen years of age at the date they are nominated for election or appointment.
- 14.3. Further provisions as to the circumstances in which an individual may not become or continue as a member of the Council of Governors are set out in Annex 5: Additional Provisions – Council of Governors, where details are also provided of how membership of the Council of Governors may be terminated.

15. Council of Governors – duties of governors

- 15.1. The general duties of the Council of Governors are to:
- 15.1.1. hold the non-executive directors individually and collectively to account for the performance of the Board of Directors, and
 - 15.1.2. represent the interests of the members of the trust as a whole and the interests of the public.
- 15.2. The Trust must take steps to secure the governors are equipped with the skills and knowledge they require in their capacity as such.

16. Council of Governors – meetings of Governors

- 16.1. The Chair of the Trust (i.e. the Chair of the Board of Directors, appointed in accordance with the provisions of paragraph 25 below) or, in their absence, the deputy Chair (appointed in accordance with the provisions of paragraph 26.1 below), shall preside at meetings of the Council of Governors.
- 16.2. Meetings of the Council of Governors shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons as set out in Annex 6.
- 16.3. For the purposes of obtaining information about the Trust's performance of its functions or the directors' performance of their duties (and deciding whether to propose a vote on the Trust's or directors' performance), the Council of Governors may require one or more of the members of the board of directors to attend a meeting.

17. Council of Governors – standing orders

The standing orders for the practice and procedure of the Council of Governors are attached at Annex 6: Standing Orders for the Practice and Procedure of the Council of Governors.

18. Council of Governors – referral to the Panel

- 18.1. In this paragraph 18, the Panel means a panel of persons that may be appointed by Monitor to which a governor of an NHS foundation trust may refer a question as to whether the Trust has failed or is failing:
- 18.1.1. to act in accordance with its constitution, or
 - 18.1.2. to act in accordance with provision made by or under Chapter 5 of the 2006 Act.
- 18.2. A governor may refer a question to the Panel only if more than half of the members of the Council of Governors voting approve the referral.

19. Council of Governors – conflicts of interest of governors

If a governor has a pecuniary, personal or family interest, whether that interest is actual or potential and whether that interest is direct or indirect, in any proposed contract or other matter which is under consideration or is to be considered by the Council of Governors, the governor shall disclose that interest to the members of the Council of Governors as soon as they become aware of it. Annex 6: Standing Orders for the Practice and Procedure of the Council

of Governors makes provision for the disclosure of interests and arrangements for the exclusion of a governor declaring any interest from any discussion or consideration of the matter in respect of which an interest has been disclosed.

20. Council of Governors – travel expenses

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

21. Council of Governors – further provisions

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

22. Board of Directors: composition

22.1. The Trust is to have a Board of Directors, which shall comprise both executive and non-executive directors.

22.2. The Board of Directors shall comprise:

- 22.2.1. a non-executive Chair;
- 22.2.2. between five and nine non-executive directors; and
- 22.2.3. between five and nine executive directors.

22.3. The University of Oxford may nominate an individual as a candidate for appointment as a non-executive director, provided that individual qualifies for appointment in accordance with paragraph 24 below. The individual may be appointed only in accordance with the 2006 Act and paragraphs 24 and 25 of the constitution below.

22.4. One of the executive directors shall be the Chief Executive.

22.5. The Chief Executive shall be the Accounting Officer.

22.6. One of the executive directors shall be the Chief Finance Officer.

22.7. One of the executive directors is to be a registered medical practitioner or a registered dentist (within the meaning of the Dentists Act 1984).

22.8. One of the executive directors is to be a registered nurse or a registered midwife.

22.9. The Board of Directors shall at all times be constituted so that the number of non-executive directors (excluding the Chair) equals or exceeds the number of executive directors.

23. Board of Directors: general duty

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

24. Board of Directors: qualification for appointment as a non-executive Director

24.1. A person may be appointed as a non-executive director only if:

- 24.1.1. they are a member of a Public Constituency, or
- 24.1.2. where any of the Trust's hospitals includes a medical or dental school provided by a university, they exercise functions for the purposes of that university, and
- 24.1.3. they are not disqualified by virtue of paragraph 28 below.

25. Board of Directors: appointment and removal of Chair and other non-executive directors

- 25.1. The Council of Governors at a general meeting of the Council of Governors shall appoint or remove the Chair of the Trust and the other non-executive directors. The appointment of the Chair or any other non-executive directors shall be in accordance with Annex 8: Further provisions and subject to paragraph 26 below.
- 25.2. Removal of the Chair or another non-executive director shall require the approval of three-quarters of the members of the Council of Governors.

26. Board of Directors: appointment of deputy Chair and of senior independent director

- 26.1. The Council of Governors at a general meeting of the Council of Governors shall appoint one of the non-executive directors as deputy Chair.
- 26.2. The Board of Directors shall appoint one of the non-executive directors as senior independent director in consultation and agreement with the Council of Governors.

27. Board of Directors: appointment and removal of the Chief Executive and other executive directors

- 27.1. The non-executive directors shall appoint or remove the Chief Executive.
- 27.2. The appointment of the Chief Executive shall require the approval of the Council of Governors.
- 27.3. A committee consisting of the Chair, the Chief Executive and the other non-executive directors shall appoint or remove the other executive directors.

Commented [PS(O6)]: This provision is now obsolete

Commented [PS(O7)]: Propose deleting as unnecessary and obsolete.

Commented [PS(O8)]: This section mirrors the requirements of paragraph 16(3) of Schedule 7 to the 2006 Act.

28. Board of Directors: disqualification

- 28.1. The following may not become or continue as a member of the Board of Directors:
- 28.1.1. a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;
 - 28.1.2. 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; or
 - 28.1.3. a person who within the preceding five years has been convicted in the British Islands of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on them.
 - 28.1.4. a person in relation to whom a moratorium period under a debt relief order applies (under Part 7A of the Insolvency Act 1986).

29. Board of Directors: meetings

- 29.1. 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.
- 29.2. 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.

30. Board of Directors: standing orders

The standing orders for the practice and procedure of the Board of Directors are attached at Annex 7: Standing Orders for the Practice and Procedure of the Board of Directors.

31. Board of Directors: conflicts of interest of directors

- 31.1. The duties that a director of the Trust has by virtue of being a director include in particular:
- 31.1.1. 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.
 - 31.1.2. 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.
- 31.2. The duty referred to in sub-paragraph 33.1.1 is not infringed if:
- 31.2.1. the situation cannot reasonably be regarded as likely to give rise to a conflict of interest, or
 - 31.2.2. the matter has been authorised in accordance with the constitution.
- 31.3. 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.
- 31.4. In sub-paragraph 33.1.2, "third party" means a person other than:
- 31.4.1. the Trust, or
 - 31.4.2. a person acting on its behalf.
- 31.5. If a director of the Trust has in any way a direct or indirect interest in a proposed transaction or arrangement with the Trust, the director must declare the nature and extent of that interest to the other directors.
- 31.6. If a declaration under this paragraph provides to be, or becomes inaccurate, incomplete, a further declaration must be made.
- 31.7. Any declaration required by Paragraph 31.5 must be made before the Trust enters into the transaction or arrangement.
- 31.8. Paragraph 31.5 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.
- 31.9. A director need not declare an interest:
- 31.9.1. if it cannot reasonably be regarded as likely to give rise to a conflict of interest;
 - 31.9.2. if, or to the extent that, the directors are already aware of it;
 - 31.9.3. if, or to the extent that, it concerns terms of the director's appointment that have been or are to be considered:
 - 31.9.3.1. by a meeting of the Board of Directors, or
 - 31.9.3.2. by a committee of the directors appointed for the purpose under the constitution.
- 31.10. For the purposes of paragraph 32.2.2:
- 31.10.1. A matter shall have been authorised in accordance with the Constitution if it has been approved by a majority of directors voting (excluding any director who has declared an interest in the matter which is the subject of authorisation) on the basis that to do so would be in the best interest of the Trust;
 - 31.10.2. The Board of Directors may authorise a matter pursuant to paragraph 33.10.1 subject to such terms and conditions as it thinks fit;
 - 31.10.3. The Board of Directors may decide to revoke or vary any authorisation granted pursuant to paragraph 33.10.1 at any time, but such a decision will not affect anything done prior to such revocation or variation by the member(s) of the board who declared an interest in the matter which is the subject of authorisation.
- 31.11. Annex 7: Standing Orders for the Practice and Procedure of the Board of Directors make provision for the disclosure of interests and arrangements for the exclusion of a director declaring any interest from any discussion or consideration of the matter in respect of which an interest has been disclosed.

Commented [PS(O9)]: This section has already been amended, upon recommendation of the Working Group, approved by Council and the Board in March 2021.

32. Board of Directors: remuneration and terms of office

- 32.1. 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.
- 32.2. The Trust shall establish a committee of non-executive directors, to be known as the Remuneration and Appointments Committee, to decide the remuneration and allowances, and the other terms and conditions of office, of the Chief Executive and other executive directors.

33. Registers

- 33.1. The Trust shall have:
- 33.1.1. 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;
 - 33.1.2. a register of members of the Council of Governors;
 - 33.1.3. a register of interests of members of the Council of Governors;
 - 33.1.4. a register of directors; and
 - 33.1.5. a register of interests of the directors.

34. Registers: inspection and copies

- 34.1. The Trust shall make the registers specified in paragraph 33 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.
- 34.2. 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.
- 34.3. So far as the registers are required to be made available:
- 34.3.1. they are to be available for inspection free of charge at all reasonable times; and
 - 34.3.2. a person who requests a copy of or extract from the registers is to be provided with a copy or extract.
- 34.4. 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.

35. Documents available for public inspection

- 35.1. The Trust shall make the following documents available for inspection by members of the public free of charge at all reasonable times:
- 35.1.1. a copy of the current constitution;
 - 35.1.2. a copy of the latest annual accounts and of any report of the auditor on them; and
 - 35.1.3. a copy of the latest annual report.
- 35.2. The Trust shall also make the following documents relating to a special administration of the trust available for inspection by member of the public free of charge at all reasonable times:
- 35.2.1. 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 rejection of final report), 65L (trusts coming out of administration) or 65LA (trusts to be dissolved) of the 2006 Act;
 - 35.2.2. a copy of any report laid under section 65D (appointment of trust special administrator) of the 2006 Act;
 - 35.2.3. a copy of any information published under section 65D (appointment of trust special administrator) of the 2006 Act;

- 35.2.4. a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act;
 - 35.2.5. a copy of any statement provided under section 65F (administrator's draft report) of the 2006 Act;
 - 35.2.6. a copy of any notice published under section 65F (administrator's draft report), 65G (consultation plan), 65H (consultation requirements), 65J (power to extend time), 65KA (Monitor's decision), 65KB (Secretary of State's response to Monitor's decision), 65KC (action following Secretary of State's rejection of final report) or 65KD (Secretary of State's response to re-submitted final report) of the 2006 Act;
 - 35.2.7. a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act;
 - 35.2.8. a copy of any final report published under section 65I (administrator's final report);
 - 35.2.9. a copy of any statement published under section 65J (power to extend time) or 65KC (action following Secretary of State's rejection of final report) of the 2006 Act;
 - 35.2.10. a copy of any information published under section 65M (replacement of trust special administrator) of the 2006 Act.
- 35.3. Any person who requests a copy of or extract from any of the above documents is to be provided with a copy.
- 35.4. 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.

36. Auditor

36.1 The Trust shall have an auditor. The Council of Governors shall appoint or remove the auditor at a general meeting of the Council of Governors.

36.2 A person may only be appointed auditor if they (or in the case of a firm each of its members) are eligible for appointment as a statutory auditor or local auditor within the meaning of Paragraphs 23(4)(a) or 23(4)(aa) or are a member of one or more of the bodies referred to in Paragraph 23(4)(c) of Schedule 7 to the 2006 Act.

36.3 The auditor shall carry out their duties in accordance with Schedule 10 to the 2006 Act.

37. 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.

38. Accounts

38.1. The Trust must keep proper accounts and proper records in relation to the accounts which shall comply with any directions made by Monitor with the approval of the Secretary of State, as to the content and form of the Trust's accounts

38.2. The accounts are to be audited by the trust's auditor.

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

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

Commented [PS(O10): This section has been expanded and made more explicit, upon advice from DACBeachcroft Solicitors.

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

- 39.1. The Trust shall prepare an Annual Report and send it to Monitor, which provides the information required under the 2006 Act.
- 39.2. The Trust shall give information as to its forward planning in respect of each financial year to the Secretary of State.
- 39.3. The document containing the information with respect to forward planning (referred to above) shall be prepared by the directors.
- 39.4. In preparing the document, the directors shall have regard to the views of the Council of Governors.
- 39.5. Each forward plan must include information about:
- 39.5.1. the activities other than the provision of goods and services for the purposes of the health service in England that the trust proposes to carry on; and
 - 39.5.2. the income it expects to receive from doing so.
- 39.6. Where a forward plan contains a proposal that the Trust carry on an activity of a kind mentioned in sub-paragraph 39.5.1 the Council of Governors must:
- 39.6.1. determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfilment by the trust of its principal purpose or the performance of its other functions; and
 - 39.6.2. notify the directors of the Trust of its determination.
- 39.7. A Trust may only implement any proposal 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 if more than half of the members of Council of Governors of the Trust voting approve its implementation.

Commented [PS(O11)]: This provision has been expanded to make more explicit what is required.

40. Presentation of the annual accounts and reports to the Council of Governors and members

- 40.1. The following documents are to be presented to the Council of Governors at a general meeting of the Council of Governors:
- 40.1.1. the annual accounts.
 - 40.1.2. any report of the auditor on the annual accounts.
 - 40.1.3. the annual report.
- 40.2. 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.
- 40.3. The Trust may combine a meeting of the Council of Governors convened for the purposes of sub-paragraph 40.1 with the Annual Members' Meeting.

41. Instruments

- 41.1. The Trust shall have a seal.
- 41.2. The seal shall not be affixed except under the authority of the Board of Directors.

42. Amendment of the constitution

- 42.1. The Trust may make amendments to this Constitution only if:
- 42.1.1. more than half of the members of the Council of Governors of the Trust voting approve the amendments, and
 - 42.1.2. more than half of the members of the Board of Directors of the Trust voting approve the amendments.
- 42.2. Amendments made under paragraph 42.1 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.

- 42.3. Where an amendment is made to the constitution in relation to the powers or duties of the Council of Governors (or otherwise in respect to the role that the Council of Governors has as part of the trust) -
- 42.3.1. at least one member of the Council of Governors must attend the next Annual Members' Meeting and present the amendment; and
 - 42.3.2. the trust must give the members an opportunity to vote on whether they approve the amendment.
- 42.4. 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.
- 42.5. An amendment shall have no effect insofar as the Constitution would, as a result of the amendment, not accord with Schedule 7 of the 2006 Act.
- 42.6. The Trust shall inform Monitor of amendments to the Constitution.

Commented [PS(O12)]: Monitor no longer needs to approve amendments to a Foundation Trust's Constitution.

43. Mergers etc. and significant transactions

- 43.1. The Trust may only apply for a merger, acquisition, separation or dissolution with the approval of more than half of the members of the Council of Governors.
- 43.2. The Trust may enter into a significant transaction only if more than half of the members of the Council of Governors voting approve entering into the transaction.
- 14.1. "Significant transaction" is defined as investments, divestments or other transactions comprising more than 25% of the assets, income or capital of the NHS Foundation Trust.

Commented [PS(O13)]: This section has already been amended, upon recommendation of the Working Group, approved by Council and the Board

43.3. Annex 1: The Public Constituencies

1. The areas for public constituencies shall be as shown below.
2. The areas numbered 1 to 5 below shall be the local authority district council areas and include all those resident in all electoral wards of these areas.
3. The areas numbered 6 and 7 below shall be all of the local authority council areas within the counties listed and include all those resident in all electoral wards of these areas.
4. The area numbered 8 below shall be all counties within England not included within areas 1–7 and all counties in Wales and include all those resident in all electoral wards of these areas.

	<i>Local authority</i>	<i>Minimum number of members</i>
1	Cherwell District Council	100
2	Oxford City Council	100
3	South Oxfordshire District Council	100
4	Vale of White Horse District Council	100
5	West Oxfordshire District Council	100
6	Buckinghamshire, Berkshire, Gloucestershire and Wiltshire	50
7	Northamptonshire and Warwickshire	50
8	Rest of England and Wales	50
	Total public membership minimum	650

Annex 2: The Staff Constituency

1. There will be two classes of staff members within the Staff Constituency as follows:
 - 1.1. groups of staff:
 - 1.1.1. categorised in the Trust's Electronic Staff Record as administrative and clerical, estates and ancillary staff;
 - 1.1.2. employed by, or seconded to (under a retention of employment model) a Private Finance Initiative provider to provide services at any of the Trust's premises; and
 - 1.1.3. employed by the University of Oxford in its Medical Sciences Division in a non-clinical rolewill be assigned to the 'non-clinical' staff class; and
 - 1.2. allied health professionals, additional clinical services, healthcare scientists, medical and dental, nurses and midwives and professional scientific and technical staff will be assigned to the 'clinical' staff class.
2. The minimum number of members within each class within the Staff Constituency shall be 300.

Annex 3: Composition of Council of Governors

1. The Composition of the Council of Governors is as shown.
2. Appointed Governors as required by statute shall be from:
 - 2.1. Oxfordshire County Council, whose area includes the whole or part of an area being an area for a Public Constituency; and
 - 2.2. University of Oxford
3. Other Governors are to be appointed by the following organisations, specified for the purposes of paragraph 9(7) of Schedule 7 to the 2006 Act:
 - 3.1. Oxford Brookes University;
 - 3.2. Oxford Health NHS Foundation Trust;
 - 3.3. Oxfordshire Clinical Commissioning Group or any future body that takes on the commissioning functions of the Clinical Commissioning Group;
 - 3.4. Oxfordshire Local Medical Committee;
 - 3.5. NHS England (Specialised Commissioning); and
 - 3.6. Young People's Executive (YiPpEe), with the nominated Governor to be at least 16 years old.
4. One further governor may be appointed by another organisation, subject to that organisation being specified by the trust for the purposes of paragraph 9(7) of Schedule 7 to the 2006 Act ; and
 - 4.1. If another organisation is to be so specified by the trust for the purposes of paragraph 9(7) of Schedule 7 to the 2006 Act, this should be recorded by addendum or amendment to the constitution which will be subject to approval by the Council of Governors and by the Board of Directors (as set out in paragraph 42 of the Constitution, reflecting section 37 of the 2006 Act).
5. The table below shows the constituencies, classes and bodies which may elect or appoint members of the Council of Governors and the number of governors that may be elected or appointed by each.

	Seats	
Public constituency (elected):	16	
Area served by Cherwell District Council		2
Area served by Oxford City Council		2
Area served by South Oxfordshire District Council		2
Area served by Vale of White Horse District Council		2
Area served by West Oxfordshire District Council		2
Buckinghamshire, Berkshire, Gloucestershire and Wiltshire		3
Northamptonshire and Warwickshire		2
Rest of England and Wales		1
Staff constituency (elected):	6	
Clinical staff		4
Non-clinical staff		2
Appointed Governors required by statute:	2	
Oxfordshire County Council		1
University of Oxford		1
Other Governors:	7	
Oxford Brookes University		1

Commented [PS(O14): Annex 3 has already been amended, upon recommendation of the Working Group, approved by Council and the Board – and the composition reflects the agreement of the Council of Governors and the Board.

Oxford Health NHS FT		1
Oxfordshire Clinical Commissioning Group		1
Oxfordshire Local Medical Committee		1
Specialist Commissioner (nominated by NHS Commissioning Board)		1
Young person (nominated by Young People's Executive)		1
Up to 1 other organisation that may be specified for the purposes of paragraph 9(7) of Schedule 7 to the NHS Act 2006; to be recorded by addendum to the constitution, subject to approval of the Council of Governors and the Board		1
Total	31	

Annex 4: Model Election Rules

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

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PART 1: INTERPRETATION

1. Interpretation

1.1 In these rules, unless the context otherwise requires:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“*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

2. Timetable

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

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

3. Computation of time

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

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

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

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

PART 3: RETURNING OFFICER

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

8. Notice of election

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

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

9. Nomination of candidates

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

9.2 The returning officer:

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

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

10. Candidate's particulars

10.1 The nomination form must state the candidate's:

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

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

11. Declaration of interests

11.1 The nomination form must state:

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

12. Declaration of eligibility

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

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

13. Signature of candidate

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

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

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

14. Decisions as to the validity of nomination

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

- (a) decides that the candidate is not eligible to stand,
- (b) decides that the nomination form is invalid,
- (c) receives satisfactory proof that the candidate has died, or

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

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

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

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

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

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

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

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

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

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

15. Publication of statement of candidates

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

15.2 The statement must show:

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

(b) the declared interests of each candidate standing,

as given in their nomination form.

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

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

statement.

16. Inspection of statement of nominated candidates and nomination forms

- 16.1 The corporation is to make the statement of the candidates and the nomination forms supplied by the returning officer under rule 15.4 available for inspection by members of the corporation free of charge at all reasonable times.
- 16.2 If a member of the corporation requests a copy or extract of the statement of candidates or their nomination forms, the corporation is to provide that member with the copy or extract free of charge.

17. Withdrawal of candidates

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

18. Method of election

- 18.1 If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is greater than the number of members to be elected to the council of governors, a poll is to be taken in accordance with Parts 5 and 6 of these rules.
- 18.2 If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is equal to the number of members to be elected to the council of governors, those candidates are to be declared elected in accordance with Part 7 of these rules.
- 18.3 If the number of candidates remaining validly nominated for an election after any withdrawals under these rules is less than the number of members to be elected to be council of governors, then:
- (a) the candidates who remain validly nominated are to be declared elected in accordance with Part 7 of these rules, and
 - (b) the returning officer is to order a new election to fill any vacancy which remains unfilled, on a day appointed by him or her in consultation with the corporation.

PART 5: CONTESTED ELECTIONS

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:
 - (a) (i) configured in accordance with these rules; and
 - (b) (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
 - (b)
 - (ii) to whom the voter ID number contained within the e-voting information was allocated,
- (c) that he or she has not marked or returned any other voting information in the election, and
- (d) 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 spoilt ballot paper, the returning officer shall enter in a list ("the list of spoilt ballot papers"):

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

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

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

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

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

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

30. Lost voting information

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

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

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

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

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

31. Issue of replacement voting information

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

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

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

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

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

Polling by internet, telephone or text

33. Procedure for remote voting by internet

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

34. Voting procedure for remote voting by telephone

- 34.1 To cast his or her vote by telephone, the voter will need to gain access to the telephone voting facility by calling the designated telephone number provided in the voter information using a telephone with a touch-tone keypad.
- 34.2 When prompted to do so, the voter will need to enter his or her voter ID number using the keypad.
- 34.3 If the telephone voting facility authenticates the voter ID number, the voter will be prompted to vote in the election.
- 34.4 When prompted to do so the voter may then cast his or her vote by keying in the numerical voting code of the candidate or candidates, for whom he or she wishes to vote.

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

35. Voting procedure for remote voting by text message

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

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

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

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

36. Receipt of voting documents

36.1 Where the returning officer receives:

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

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

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

- (a) the candidate for whom a voter has voted, or
- (b) the unique identifier on a ballot paper.

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

37. Validity of votes

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

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

- (a) put the ID declaration form if required in a separate packet, and
- (b) put the ballot paper aside for counting after the close of the poll.

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

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

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

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

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

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

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

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

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

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

39. De-duplication of votes

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

40. Sealing of packets

- 40.1 As soon as is possible after the close of the poll and after the completion of the procedure under rules 37 and 38, the returning officer is to seal the packets containing:
- (a) the disqualified documents, together with the list of disqualified documents inside it,
 - (b) the ID declaration forms, if required,

- (c) the list of spoiled ballot papers and the list of spoiled text message votes,
- (d) the list of lost ballot documents,
- (e) the list of eligible voters, and
- (f) the list of tendered voting information

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

PART 6: COUNTING THE VOTES

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,

(g)

"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 subparagraphs (a) to (c) of rule STV44.3.

FPP44. Rejected ballot papers and rejected text voting records

FPP44.1 Any ballot paper:

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

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

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

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

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

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

FPP44.4 The returning officer is to:

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

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

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

and, where applicable, each heading must record the number of ballot papers

rejected in part.

FPP44.6 Any text voting record:

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

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

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

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

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

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

FPP44.9 The returning officer is to:

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

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

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

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

STV45. First stage

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

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

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

STV46. The quota

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

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

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

STV47. Transfer of votes

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

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

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

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

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

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

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

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

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

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

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

whichever is the less.

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

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

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

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

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

STV48. Supplementary provisions on transfer

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

- (a) The surpluses determined in respect of two or more candidates are equal, the

transferable ballot documents of the candidate who had the highest recorded vote at the earliest preceding stage at which they had unequal votes shall be transferred first, and

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

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

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

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

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

STV49. Exclusion of candidates

STV49.1 If:

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

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

lowest votes).

- STV9.2 The returning officer shall sort all the ballot documents on which first preference votes are given for the candidate or candidates excluded under rule STV49.1 into two sub-parcels so that they are grouped as:
- (a) ballot documents on which a next available preference is given, and
 - (b) ballot documents on which no such preference is given (thereby including ballot documents on which preferences are given only for candidates who are deemed to be elected or are excluded).
- STV49.3 The returning officer shall, in accordance with this rule and rule STV48, transfer each sub-parcel of ballot documents referred to in rule STV49.2 to the candidate for whom the next available preference is given on those ballot documents.
- STV49.4 The exclusion of a candidate, or of two or more candidates together, constitutes a further stage of the count.
- STV49.5 If, subject to rule STV50, one or more vacancies still remain to be filled, the returning officer shall then sort the transferable ballot documents, if any, which had been transferred to any candidate excluded under rule STV49.1 into sub-parcels according to their transfer value.
- STV49.6 The returning officer shall transfer those ballot documents in the sub-parcel of transferable ballot documents with the highest transfer value to the continuing candidates in accordance with the next available preferences given on those ballot documents (thereby passing over candidates who are deemed to be elected or are excluded).
- STV49.7 The vote on each transferable ballot document transferred under rule STV49.6 shall be at the value at which that vote was received by the candidate excluded under rule STV49.1.
- STV9.8 Any ballot documents on which no next available preferences have been expressed shall be set aside as non-transferable votes.
- STV49.9 After the returning officer has completed the transfer of the ballot documents in the sub-parcel of ballot documents with the highest transfer value he or she shall proceed to transfer in the same way the sub-parcel of ballot documents with the next highest value and so on until he has dealt with each sub-parcel of a candidate excluded under rule STV49.1.
- STV49.10 The returning officer shall after each stage of the count completed under this rule:
- (a) record:
 - (i) the total value of votes, or
 - (ii) the total transfer value of votes transferred to each candidate,
 - (b) add that total to the previous total of votes recorded for each candidate and

record the new total,

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

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

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

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

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

STV50. Filling of last vacancies

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

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

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

STV51. Order of election of candidates

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

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

FPP51. Equality of votes

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

PART 7: FINAL PROCEEDINGS IN CONTESTED AND UNCONTESTED ELECTIONS

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 chair of the NHS Trust, or
 - (ii) in any other case, to the chair of the corporation; and
- (c) give public notice of the name of each candidate whom 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 chair of the NHS Trust, or
 - (ii) in any other case, to the chair of the corporation, and

- (c) give public notice of the name of each candidate who he 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 chair of the corporation, and
- (c) give public notice of the name of each candidate who he or she has declared elected.

PART 8: DISPOSAL OF DOCUMENTS

54. Sealing up of documents relating to the poll

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

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

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

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

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

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

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

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

55. Delivery of documents

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

56. Forwarding of documents received after close of the poll

56.1 Where:

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

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

57. Retention and public inspection of documents

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

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

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

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

58.1 The corporation may not allow:

- (a) the inspection of, or the opening of any sealed packet containing –
 - (i) any rejected ballot papers, including ballot papers rejected in part,
 - (ii) any rejected text voting records, including text voting records rejected in part,
 - (iii) any disqualified documents, or the list of disqualified documents,
 - (iv) any counted ballot papers, internet voting records, telephone voting records or text voting records, or
 - (v) the list of eligible voters, or
- (h) (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

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 chair 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

Election expenses

60. Election expenses

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

61. Expenses and payments by candidates

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

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

62. Election expenses incurred by other persons

62.1 No person may:

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

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

Publicity

63. Publicity about election by the corporation

63.1 The corporation may:

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

as it considers necessary.

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

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

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

64. Information about candidates for inclusion with voting information

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

64.2 The information must consist of:

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

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

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

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

PART 11: QUESTIONING ELECTIONS AND THE CONSEQUENCE OF IRREGULARITIES

66. Application to question an election

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

PART 12: MISCELLANEOUS

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. Eligibility to be a governor

- 1.1. Governors must be at least sixteen years of age at the date they are nominated for election or appointment.
- 1.2. A person may not become or continue as a governor of the Trust if:
 - 1.2.1. in the case of an individual who is a member of the Public Constituency, they cease to live in the area of the Public Constituency of which they are a member;
 - 1.2.2. in the case a member of a staff class of the Staff Constituency, they no longer meet the eligibility requirements of paragraph 8 of the Constitution and of Annex 2;
 - 1.2.3. in the case of an appointed governor, the local authority, university or other organisation withdraws their sponsorship of them;
 - 1.2.4. they have within the preceding two years been dismissed, otherwise than by reason of redundancy or ill health, from any paid employment with a Health Service Body;
 - 1.2.5. they are a person whose tenure of office as the 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 interest of the health service;
 - 1.2.6. they are a person who has previously been removed as a governor of the Trust or any other foundation trust;
 - 1.2.7. they are a member of the Board of Directors;
 - 1.2.8. they are an executive director, non-executive director, chair, or chief executive officer of another Health Service Body, or a body corporate whose business involves the provision of health care services, unless they are appointed to represent that body as one of the Trust's partner organisations; in such instances regard shall be given to any circumstances which may give rise to potential conflicts of interest to such a degree as to interfere with the person's proper exercise of their duties as a governor of this Trust. Any doubt or question as to what constitutes a material conflict of interest for the purposes of this paragraph should be referred to the Chair of the Trust whose decision on the matter will be final. In coming to their decision on the matter, it is expected that the Chair will confer with governors as appropriate;
 - 1.2.9. they are an elected governor of another Health Service Body;
 - 1.2.10. they are an appointed governor of another Health Service Body unless
 - 1.2.10.1. that other Health Service Body is one of the Trust's partner organisations, they are appointed to represent that partner organisation and, having regard to any circumstances which may give rise to potential conflicts of interest to such a degree as to interfere with the person's proper exercise of their duties as a governor of this Trust, there is not found to be a material conflict of interest. Any doubt or question as to what constitutes a material conflict of interest for the purposes of this paragraph should be referred to the Chair of the Trust whose decision on the matter will be final. In coming to their decision on the matter, it is expected that the Chair will confer with governors as appropriate; or
 - 1.2.10.2. they wish to stand for election as a governor of the Trust by a public constituency and, having regard to any circumstances which may give rise to potential conflicts of interest to such a degree as to interfere with the person's proper exercise of their duties as a governor of this trust, there is not found to be a material conflict of interest. Any doubt or question as to what constitutes a

Commented [PS(O16): This section has already been amended, upon recommendation of the Working Group, approved by Council and the Board.

material conflict of interest for the purposes of this paragraph should be referred to the Chair of the Trust whose decision on the matter will be final. In coming to their decision on the matter, it is expected that the Chair will confer with governors as appropriate;

- 1.2.11. they have had their name removed from a list maintained under regulations pursuant to sections 91, 106, 123, or 146 of the 2006 Act, or the equivalent lists maintained by Local Health Boards in Wales under the National Health Service (Wales) Act 2006, and they have not subsequently had their name included in such a list;
 - 1.2.12. they are incapable by reason of mental disorder, illness or injury of managing and administering their property and affairs;
 - 1.2.13. they have refused without reasonable cause to undertake any training which the Trust and/ or Council of Governors requires all governors to undertake;
 - 1.2.14. they are a member of a local authority Health Overview and Scrutiny Committee;
 - 1.2.15. they are the subject of a Sex Offenders Order and/or their name is included in the Sex Offenders Register;
 - 1.2.16. they are an occupant of the same household and/or they are an immediate family member of a governor or of a member of the Board of Directors;
 - 1.2.17. they have failed to repay (without good cause) any amount of monies properly owed to the Trust; or
 - 1.2.18. they have failed to sign and deliver to the Head of Corporate Governance a statement in the form required by the Trust confirming acceptance of the Council of Governors' Code of Conduct.
- 1.3. Where a person has been elected or appointed to be a governor and they become disqualified from office under paragraph 14 of the Constitution or paragraph 1.2 of this Annex, they shall notify the Secretary in writing of such disqualification. If it comes to the notice of the Head of Corporate Governance at the time of his taking office or later that the governor is so disqualified, the Head of Corporate Governance shall immediately declare that the person in question is disqualified and notify them in writing to that effect. Upon dispatch of any such notification, that person's tenure of office, if any, shall be terminated and they shall cease to act as a governor.

2. Roles and Responsibilities of Council of Governors

- 2.1 The Council of Governors shall:
 - 2.1.1 hold the non-executive directors individually and collectively to account for the performance of the Board of Directors; and
 - 2.1.2 represent the interests of the members of the Trust as a whole and the interests of the public.
- 2.2 The roles and responsibilities of Council of Governors are:
 - 2.2.1 subject to paragraph 25 of this Constitution, to appoint or remove the Chair and the other non-executive directors. The removal of a non-executive director requires the approval of three-quarters of the members of the Council of Governors;
 - 2.2.2 to decide the remuneration and allowances, and the other terms and conditions of office, of the non-executive directors;
 - 2.2.3 to appoint or remove the auditor;
 - 2.2.4 to consider resolutions to remove a member of the Trust pursuant to paragraph 3 of Annex 8, Appendix 1;

- 2.2.5 to consider resolutions to remove a governor pursuant to paragraph 5 of Annex 5;
 - 2.2.6 to approve (by a majority of the Council of Governors voting) an appointment (by the non-executive directors) of the Chief Executive (and Accounting Officer);
 - 2.2.7 to consider the annual accounts, any report of the Auditor on them and the annual report;
 - 2.2.8 to require one or more directors to attend a meeting of the Council of Governors for the purpose of obtaining information about the trust's performance of its functions or the directors' performance of their duties (and deciding whether to propose a vote on the Trust's or directors' performance);
 - 2.2.9 to approve any merger, acquisition, separation or dissolution application in respect of the trust before the application is made to Monitor and the entering into of any significant transactions;
 - 2.2.10 to respond as appropriate when consulted by the directors;
 - 2.2.11 to approve amendments to the constitution pursuant to paragraph 42 of the Constitution;
 - 2.2.12 to appoint the deputy Chair; and
 - 2.2.13 to determine issues in the forward plans regarding the proportion of the Trust's activities and income relating to non-NHS income and implementation of the same pursuant to paragraph 39 of the Constitution.
- 2.3 The Council of Governors also has the specific role and function of:
- 2.3.1 providing views to the Board of Directors on the strategic direction and annual plan of the Trust;
 - 2.3.2 developing the Trust's membership;
 - 2.3.3 representing the interests of the members;
 - 2.3.4 regularly feeding back information about the Trust, its vision and its performance to the constituencies and the stakeholder organisations that either elected or appointed them;
 - 2.3.5 complying with the NHS Foundation Trust Code of Governance and the Council of Governors' Code of Conduct; and
 - 2.3.6 exercising other functions at the request of the Board of Directors.

3. Council of Governors: Remuneration

Governors of the Trust are not, by law, allowed to be paid for their work. The Trust will, however, meet travel, subsistence and out of pocket expenses incurred in carrying out duties as a member of the Council of Governors.

4. Council of Governors: Vacancies

Where a vacancy arises on the Council of Governors for any reason other than expiry of term of office, the following provisions will apply. Where the vacancy arises amongst the elected Governors, the Council of Governors shall decide either to:

- (a) call an election within three months to fill the seat for the remainder of that term of office;
- (b) invite the next highest polling (runner-up) candidate for that seat at the most recent election, who is willing to take office, to fill the seat until the next election, for the unexpired period of the term of office; or

- (c) leave the seat vacant until the next scheduled elections are held if the un-expired period of office is less than twelve months.

5. Termination of Office of a governor

- 5.1 A governor may resign from office by giving notice in writing to the Head of Corporate Governance.
- 5.2 If a governor fails to attend two successive meetings of the Council of Governors, or alternatively fails to attend three meetings of the Council of Governors in any single financial year, the Chair should recommend to the Council of Governors that their tenure of office is terminated unless in consultation with the Head of Corporate Governance the Chair determines that:

- (a) the absences were due to reasonable cause; and
- (b) the governor will be able to attend meetings of the Council of Governors within such a period as the Chair considers reasonable.

And upon such recommendation the Council of Governors may terminate that governor's tenure with immediate effect.

- 5.3 The Council of Governors may by a resolution approved by a majority of governors present and entitled to vote at a properly constituted meeting of the Council of Governors terminate a governor's tenure of office if for a reasonable cause it considers:
 - (a) they have failed to undertake any training which the Council of Governors requires all Governors to undertake;
 - (b) they have committed a serious breach of the Council of Governors' Code of Conduct or of the Trust's Code of Conduct, or
 - (c) they have acted in a manner detrimental to the interests of the Trust.

Commented [PS(O17): This section has already been amended, upon recommendation of the Working Group, approved by Council and the Board.

7. Induction Programme

- 7.1 A comprehensive induction programme will be available for all governors following their election or appointment.

Commented [PS(O18): Section covering "Initial (first) Governors' Term of Office" has been deleted as no longer necessary.

Annex 6: Standing Orders for the Practice and Procedure of the Council of Governors

1. Introduction

- 1.1. These Standing Orders for the practice and procedures of the Council of Governors are the standing orders referred to in paragraph 17 of the Constitution.

2. Interpretation

- 2.1. The definition and interpretation of words and expressions contained in these Standing Orders are as set out in the Constitution.

3. The Council of Governors

- 3.1. The Council of Governors may only exercise its powers and take decisions at a properly constituted meeting carried out in accordance with the Standing Orders.

4. Meetings of the Council of Governors

4.1. Admission of the Public and the Press

- 4.1.1. The public and representatives of the press shall be afforded facilities to attend all formal meetings of the Council of Governors subject to Standing Orders 4.1.2 and 4.1.3 below.
- 4.1.2. The Council of Governors may resolve to exclude members of the public and representatives of the press from any meeting or part of a meeting on the grounds that:
 - 4.1.2.1. publicity would be prejudicial to the public interest having regard to the confidential nature of the business to be transacted; or
 - 4.1.2.2. there are special reasons stated in the resolution and arising from the nature of the business of the proceedings.
- 4.1.3. In the interests of public order the meeting may be adjourned for a period to be specified in such resolution to enable the Council of Governors to complete business without the presence of the public.
- 4.1.4. Nothing in these Standing Orders shall require the Council of Governors to allow members of the public and representatives of the press to record proceedings in any manner whatsoever, other than writing, or to make any oral report of proceedings as they take place, without the prior agreement of the Council of Governors.

4.2. Calling Meetings

- 4.2.1. Meetings of the Council of Governors shall be held at such times and places as the Council of Governors may determine and there shall be no fewer than four meetings in any year, and this condition will be fulfilled provided that at least four meetings have been held in a calendar year or a financial year.
- 4.2.2. The Chair, or in their absence the deputy Chair, may call a meeting of the Council of Governors at any time. If the Chair refuses to call a meeting after a requisition for that purpose, signed by at least one third of the whole number of the Governors and specifying the business to be transacted at the meeting, has been presented to them, or if, without so refusing, the Chair does not call a meeting within seven clear days after such requisition has been presented to them at the Trust's Headquarters, such one third or more of the Governors may forthwith call a meeting for the purpose of conducting that business.

4.3. Notice of Meetings

- 4.3.1. Before each meeting of the Council of Governors, a notice of the meeting, specifying the business proposed to be transacted at it, and indicating that it has been approved by the Chair or by an officer of the Trust authorised by the Chair, shall be published on the Trust's website and delivered electronically to every governor, so as to be available to them at least five clear days before the meeting save in the case of emergencies. Subject to Standing Order 4.3.4 below, lack of service of the notice on any governor shall not affect the validity of a meeting.
- 4.3.2. Notwithstanding the above requirement for notice, the Chair may waive notice in writing on written receipt of agreement of at least 50% of governors.
- 4.3.3. In the case of a meeting called by governors in default of the Chair, the notice shall be signed by those governors and no business shall be transacted at the meeting other than that specified in the requisition.
- 4.3.4. Subject to Standing Order 4.3.2 above, failure to serve notice of a meeting on any one governor shall not affect the validity of a meeting but failure to serve notice on more than three quarters of governors will invalidate any meeting. A notice will be presumed to have been served upon publication on the trust website and its electronic transmission.
- 4.3.5. Save in an emergency, an agenda shall be sent electronically to the email address notified to the Trust by the relevant governor so as to arrive no later than five days in advance of each meeting and supporting papers, whenever possible, shall accompany the agenda. Minutes of the previous meeting will be circulated with the papers for approval and this will be a specific agenda item.
- 4.3.6. Papers for meetings to be held in public – agenda, minutes and supporting papers – shall be made available via the Trust's website no later than four days in advance of the meeting.
- 4.3.7. Before any meeting of the Council of Governors which is to be held in public, a public notice of the time and place of the meeting, and the public part of the agenda, shall be displayed at the Trust's office at least three clear days before the meeting.

4.4. Setting the Agenda

- 4.4.1. The Council of Governors may determine that certain matters shall appear on every agenda for a meeting and shall be addressed prior to any other business being conducted ("Standing Agenda Items").
- 4.4.2. A governor desiring a matter other than a Standing Agenda Item to be included on an agenda shall make his request in writing to the Chair at least ten clear days before the meeting. The request should state whether the item of business is proposed to be transacted in the presence of the public and should include appropriate supporting information. Requests made less than ten clear days before a meeting may be included on the agenda at the discretion of the Chair.

4.5. Petition

- 4.5.1. 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 of the Council of Governors.

4.6. Chair of Meeting

- 4.6.1. At any meeting of the Council of Governors, the Chair, if present, shall preside.

Commented [PS(O19)]: Provision contained herein has been updated to reflect advances in technology, consistent with requirements of the Companies Act 2006, under which notice may be given in electronic form or by means of a website. The Trust will continue to ensure that paper copies can be made available on request.

- 4.6.2. If the Chair is absent from the meeting or is absent temporarily on the grounds of a declared conflict of interest the deputy Chair or senior independent director shall preside.
- 4.6.3. If the deputy Chair or senior independent director is absent from the meeting or is absent temporarily on the grounds of a declared conflict of interest, such governor as the governors that are present shall appoint, shall preside.

4.7. Motions

- 4.7.1. A governor wishing to move or amend a motion shall send written notice of it to the Chair at least ten clear days before the meeting. Requests made less than ten days before a meeting may be included on the agenda at the discretion of the Chair. This paragraph shall not prevent any motion being moved during the meeting, without notice, on any business mentioned on the agenda subject to Standing Order 4.3.3 above.
- 4.7.2. 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.
- 4.7.3. Notice of a 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 governors who gave it and also the signature of four other governors. When the Council of Governors has disposed of any such motion it shall not be competent for any governor, other than the Chair, to propose a motion to the same effect within six months; however the Chair may do so if he considers it appropriate.
- 4.7.4. The mover of a motion shall have the right of reply at the close of any discussion on the motion or any amendment thereto.
- 4.7.5. When a motion is under discussion or immediately prior to discussion it shall be open to a governor to move:
- 4.7.5.1. An amendment to the motion;
 - 4.7.5.2. The adjournment of the discussion or the meeting;
 - 4.7.5.3. That the meeting proceeds to the next item of business;
 - 4.7.5.4. The appointment of an *ad hoc* committee to make recommendations regarding a specific item of business;
 - 4.7.5.5. That the motion be now put.
- 4.7.6. 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.
- 4.7.7. Subject to the agreement of the Chair and this Standing Order 4.7, 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. At the Chair's discretion, the emergency motion shall be declared to the Council of Governors at the commencement of the business of the meeting as an additional item included on the agenda. The Chair's decision to include the item shall be final.

4.8. Chair's Ruling

- 4.8.1. 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, relevancy, regularity and any other matters shall be final. This applies to all forms of speech and debate in relation to motions or questions under discussion at a meeting.

4.9. Voting

- 4.9.1. Save as otherwise provided in the constitution and/or the 2006 Act, if the Chair so determines or if a governor requests, a question at a meeting shall be determined by a majority of the

Commented [PS(O20)]: This provision has been expanded upon the advice of DACBeachcroft Solicitors, to clarify the extent of Standing Order 4.8

votes of the governors present and voting on the question and, in the case of any equality of votes, the Chair shall have a casting vote.

4.9.2. All questions put to the vote shall, at the discretion of the Chair, be decided by a show of hands. A paper ballot may be used if a majority of the governors so request.

4.9.3. In no circumstances may an absent governor vote by proxy. Absence is defined as being absent at the time of the vote.

4.10. Minutes

4.10.1. The Minutes of the proceedings of a meeting shall be drawn up by the Head of Corporate Governance and submitted for agreement at the next ensuing meeting where the Chair presiding at it will sign them.

4.10.2. 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 at the next meeting.

4.11. Attendance

4.11.1. Governors unable to attend a meeting shall notify the Head of Corporate Governance in advance of the Meeting so that their apologies may be submitted.

4.12. Suspension of Standing Orders

4.12.1. Except where this would contravene any statutory provision or provision of this Constitution, any one or more of the Standing Orders may be suspended at any meeting, provided that at least two-thirds of the Governors are present, there is a majority of governors who are members of the Public Constituency of the Trust, and that a majority of those present vote in favour of suspension.

4.12.2. A decision to suspend the Standing Orders shall be recorded in the minutes of the meeting.

4.12.3. A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the Chair and Governors.

4.12.4. No formal business may be transacted while Standing Orders are suspended.

4.13. Variation and Amendment of Standing Orders

These Standing Orders shall be amended in accordance with paragraph 42 of the Constitution.

4.14. Record of Attendance

The names of the Chair and governors present at the meeting shall be recorded in the minutes.

4.15. Quorum

4.15.1. No business shall be transacted at a meeting unless at least one third of the total number of governors entitled to vote are present at the meeting with the majority of Governors from the Public Constituency and those 'present' will include anyone attending by electronic means as long as they have the ability to communicate interactively and simultaneously with all other parties attending the meeting including all persons attending by way of electronic communication.

Commented [PS(O21): The definition of who is 'present' at a meeting has been updated, and the wording now included is that advised by DAC Beachcroft Solicitors.

- 4.15.2. If at any meeting there is no quorum present within 30 minutes of the time fixed for the start of the meeting, the meeting shall stand adjourned for five clear days and upon reconvening, those present shall constitute a quorum.
- 4.15.3. If a governor has been disqualified from participating in the discussion on any matter and/or from other voting on any resolution by reason of the declaration of a conflict of interest then he shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the 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 item of business.

5. **Committees**

- 5.1. The Council of Governors may appoint committees of the Council of Governors from time to time to assist it in the proper performance of its functions under the constitution and the 2006 Act (the 'Regulatory Framework'), consisting wholly or partly of governors.
- 5.2. A committee appointed under Standing Order 5.1 may, subject to such directions as may be given by the Council of Governors, appoint sub-committees consisting wholly or partly of members of the committee. Where a committee appoints a sub-committee, it may not delegate its powers to the sub-committee unless expressly authorised to do so by the Council of Governors.
- 5.3. These Standing Orders, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees established by the Council of Governors with the term "Chair" to be read as a reference to the chair of the committee and the term "Member" to be read as a reference to a member of the committee as the context permits.
- 5.4. Each such committee shall have such terms of reference and be subject to such conditions as the Council of Governors shall decide and shall be in accordance with the Regulatory Framework and any guidance issued by Monitor but the Council of Governors shall not delegate to any committee any of the powers or responsibilities which are to be exercised by the Council of Governors.
- 5.5. Where the Council of Governors determines that persons who are neither Governors, nor members of the Board of Directors nor officers of the Trust, shall be appointed to a committee, the terms of such appointment shall be determined by the Council of Governors subject to the payment of travelling expenses and other allowances being in accordance with such as may be determined by the Board of Directors.

Commented [PS(O22)]: This provision is sufficient to allow for development of a committee structure – without prescribing further detail, beyond the fact that where committees are authorised to establish sub-committees they may not delegate their powers to any sub-committee unless expressly authorised by the Council of Governors.

6. **Declarations of Interests and Register of Interests**

6.1. **Declaration of Interests**

- 6.1.1. The Regulatory Framework requires each governor to disclose to the other governors:
- 6.1.1.1. any actual or potential interest, direct or indirect, which is relevant and material to the business of the Trust, as described in Standing Order 6.2.1; and
- 6.1.1.2. any actual or potential pecuniary interest, direct or indirect, in any contract, proposed contract or other matter concerning the Trust, as described in Standing Orders 6.2.2 and 6.2.3; and
- 6.1.1.3. any actual or potential family interest, direct or indirect, of which the governor is aware, as described in Standing Order 6.2.5.
- 6.1.2. Such a declaration shall be made either at the time of the governor's election or appointment or as soon thereafter as the interest arises, and in such manner as the Head of Corporate Governance may prescribe from time to time.
- 6.1.3. In addition, if a governor is present at a meeting of the Council of Governors and has an interest of any sort in any matter which is the subject of consideration, they shall at the

meeting and as soon as practicable after its commencement disclose the fact and shall not vote on any question with respect to the matter. Where a non-pecuniary interest is declared the Chair shall determine whether the governor should take part in the consideration or discussion of the matter, seeking advice from the Head of Corporate Governance where required.

- 6.1.4. Subject to Standing Order 6.2.3, if a governor has declared a pecuniary interest, they shall not take part in the consideration or discussion of the matter. At the time the interests are declared, they should be recorded in the Council of Governors meeting minutes. Any changes in interests should be officially declared at the next relevant meeting following the change occurring.
- 6.1.5. This Standing Order 6 applies to any committee, sub-committee or joint committee of the Council of Governors and applies to any member of any such committee, sub-committee, or joint committee (whether or not they are also a governor).
- 6.1.6. The interests of governors in companies likely or possibly seeking to do business with the NHS should be published in the trust's Annual Report. The information should be kept up to date for inclusion in succeeding Annual Reports.

6.2. Nature of Interests

6.2.1. Interests which should be regarded as "relevant and material" are as follows and are to be interpreted in accordance with guidance issued by Monitor:

- 6.2.1.1. Directorships, including non-executive directorships held in private companies or public limited companies; or
- 6.2.1.2. ownership, part-ownership or directorship of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS; or
- 6.2.1.3. majority or controlling shareholdings in organisations likely or possibly seeking to do business with the NHS; or
- 6.2.1.4. a position of authority in a charity or voluntary organisation in the field of health and social care; or
- 6.2.1.5. any connection with a voluntary or other organisation contracting for NHS services or commissioning NHS services; or
- 6.2.1.6. any connection with an organisation, entity or company considering entering into or having entered into a financial agreement with the Trust, including but not limited to, lenders or banks.

6.2.2. A governor shall be treated as having indirectly a pecuniary interest in a contract, proposed contract or other matter if:

- 6.2.2.1. they, or a nominee of theirs, is a director of a company or other body, not being a public body, with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration; or
- 6.2.2.2. they are a partner of, or are in the employment of a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration.

6.2.3. A governor shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only:

- 6.2.3.1. of their membership of a company or other body, if they have no beneficial interest in any securities of that company or other body; or
- 6.2.3.2. of an interest in any company, body or person with which they are connected which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a

governor in the consideration or discussion of or in voting on, any question with respect to that contract or matter; or

6.2.3.3. of any travelling or other expenses or allowances payable to a Governor in accordance with the constitution.

6.2.4. An interest in the securities of a company or other body shall for the purposes of paragraph 6.2.3.2 above be regarded as remote or insignificant if:

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

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

6.2.5. A family interest is an interest of an immediate family member (including spouse, civil partner, child, step-child, adopted child, parent, sibling or member of the same household) of a governor which if it were the interest of that governor would be a personal interest or a pecuniary interest of the individual's.

Commented [PS(O23)]: The definition of 'family interest' as that of an "immediate family member" has been included, on the advice of DACBeachcroft Solicitors.

6.2.6. If governors have any doubt about the relevance or materiality of an interest, this should be discussed with the Chair. Influence rather than the immediacy of the relationship is more important in assessing the relevance of an interest. The interests of an immediate family member in professional partnerships including General Practitioners should also be considered.

6.3. Exclusion from proceedings of the Council of Governors

6.3.1. Subject to Standing Order 6.2.3 above, if a governor discloses a pecuniary interest pursuant to Standing Order 6 to the other governors, they shall not take part in the consideration or discussion of the matter or vote on any question with respect to it. Where a non-pecuniary interest is declared the Chair shall determine whether the governor should take part in the consideration or discussion of the matter, seeking advice from the Head of Corporate Governance where required. At the time any interest is declared, it should be recorded in the meeting minutes.

6.3.2. Any change in interests should be officially declared at the next relevant meeting following the change occurring.

6.3.3. If a conflict of interest is established during the course of a meeting, the governor concerned should withdraw from the meeting and play no part in the relevant discussion or decision.

6.4. Register of Interests

6.4.1. The Head of Corporate Governance shall keep a Register of Interests of Governors, which shall contain the names of each governor, whether they have declared any interest, and if so, the interest declared.

6.4.2. These details will be kept up to date by means of an annual review of the Register of Interest in which any changes to interests declared during the preceding twelve months will be incorporated.

6.4.3. The Register of Interests will be available to the public in accordance with the constitution and the Chief Executive will take reasonable steps to bring the existence of the Register of Interests to the attention of the local population.

6.4.4. In establishing, maintaining and publicising the Register of Interests, the Trust shall comply with all guidance issued from time to time by Monitor.

7. Standards of Business Conduct

Each governor shall comply with the Regulatory Framework, the Trust's Code of Conduct and any guidance and directions issued by Monitor, in particular the NHS Foundation Trust Code of Governance.

8. Appointments and Recommendations

- 8.1. A governor shall not solicit for any person any appointment under the trust or recommend any person for such appointment but this paragraph of this Standing Order shall not preclude governors from giving written testimonial of a candidate's ability, experience or character for submission to the trust in relation to any appointment.
- 8.2. Informal discussions outside appointments panels or committees, whether solicited or unsolicited, should be declared to the panel or committee.
- 8.3. Candidates for any staff appointment under the Trust shall, when making such an application, disclose in writing to the trust whether they are related to any governors or the holder of any office within the trust. Failure to disclose such a relationship shall disqualify a candidate and, if appointed, render them liable to instant dismissal.
- 8.4. Every governor shall disclose to the Chief Executive or their delegated officer any relationship between themselves and a candidate of whose candidature that governor or officer is aware. It shall be the duty of the Chief Executive or their delegated officer to report to the Council of Governors any such disclosure made.
- 8.5. Upon appointment, each governor should disclose to the Council of Governors whether they are related to any other governor or holder of any office in the Trust.
- 8.6. Where a relationship to another governor is disclosed, Standing Order 6 shall apply.

9. Confidentiality

- 9.1. All governors shall abide by the Trust's policies on confidentiality and the Council of Governors' Code of Conduct.
- 9.2. A governor or an attendee on a committee of the Council of Governors shall not disclose a matter dealt with by, or brought before, the Council of Governors and discussed by the committee in non-public session without the permission of the Council of Governors or until the committee shall have reported to the Council of Governors or shall otherwise have concluded on that matter.
- 9.3. A governor or other attendee at a committee shall not disclose any matter dealt with by the committee, notwithstanding that the matter has been reported or action has been concluded, if the Council of Governors or committee resolves that it is confidential.

10. Interface between the Council of Governors and the Board of Directors

- 10.1. The Council of Governors will cooperate with the Board of Directors as far as possible in order to comply with the Regulatory Framework in all respects and in particular in relation to matters set out in the constitution.
- 10.2. In the event of a dispute, arrangements are set out in Annex 8, Appendix 2: Dispute resolution procedures.

11. Miscellaneous

- 11.1. The Head of Corporate Governance shall provide a copy of these Standing Orders to each governor and endeavour to ensure that each governor understands his responsibilities within these Standing Orders.

- 11.2. If for any reason these Standing Orders are not complied with, full details of the non-compliance, any justification for non-compliance and the circumstances of it, shall be reported to the next formal meeting of the Council of Governors for action or ratification.
- 11.3. Each governor has a duty to disclose any non-compliance with these Standing Orders to the Chair as soon as possible.

12. Council of Governors: Declarations

12.1. A member of a Public Constituency standing for election as governor must make a declaration for the purposes of Section 60(2) of the 2006 Act in the form specified below stating the particulars of his qualification to vote as a member and that he is not prevented from being a governor by virtue of paragraph 8 of Schedule 7 of the 2006 Act. It is an offence to knowingly or recklessly make a statement or declaration in respect of Section 60(2) of the 2006 Act which is false in material particular.

12.2. The specified form of declaration shall be set out on the nomination form referred to in Annex 4: Model Election Rules and shall state:

"I, the above named candidate, consent to my nomination and agree to stand for election to the Council of Governors in the constituency indicated in Section 1 of this form. I also declare that I am a member in that constituency and that I am eligible to act as a governor under the provisions of Annex 5 of the constitution.

I, the above named candidate, hereby declare that I am not:

- a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;
- a person who has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it;
- a person who within the preceding 5 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 3 months (without the option of a fine) was imposed on him.
- a person in relation to whom a moratorium period under a debt relief order applies (under Part 7A of the Insolvency Act 1986).

I confirm that to the best of my knowledge, the information provided on (or in connection with) this form is accurate."

12.3. A member elected to the Council of Governors by a Public Constituency or the Staff Constituency may not for the purposes of Section 60(3) of the 2006 Act vote at a meeting of the Council of Governors unless within the period since his election, he has made a declaration in the form specified below stating which constituency he is a member of, and is not prevented from being a member of the Council of Governors by paragraph 8 of Schedule 7 to the 2006 Act:

"I declare that I am a member of the Public Constituency or Staff Constituency and am eligible to vote at a meeting of the Council of Governors, and that I am not debarred from voting by any of the provisions in paragraph 8 of Schedule 7 to the 2006 Act."

13. Nominated Lead Governor

- 13.1. The Council of Governors shall nominate one of its governors as the nominated lead governor ('Nominated Lead Governor').
- 13.2. The Nominated Lead Governor shall provide their contact details to Monitor and continue to update Monitor and the Council of Governors with their contact details as and when they change.

- 13.3. The role of the Nominated Lead Governor is to facilitate direct communication between Monitor and the Council of Governors in the limited circumstances where it may not be appropriate to communicate through the normal channels.
- 13.4. The role of the Lead Governor may be expanded by agreement between the Council of Governors and the Board of Directors.
- 13.5. The Nominated Lead Governor shall take steps to understand Monitor's role, the available guidance and the basis on which Monitor may take regulatory action.
14. In the event that an individual governor wishes to make contact with Monitor, this contact will be through the Nominated Lead Governor.

Commented [PS(O24): This definition of the role of Lead Governor (as in the Model Core Constitution) preserves the minimum requirement, but does not preclude expansion of the role of Lead Governor by agreement of the Council of Governors and the Board.

Annex 7: Standing Orders for the Practice and Procedure of the Board of Directors

1. Interpretation

The definition and interpretation of words and expressions contained in these Standing Orders are as set out in the constitution.

2. Composition of Board of Directors

The composition of the Board of Directors shall be in accordance with paragraph 22 of the Constitution.

3. Role of Members of the Board of Directors

The Board of Directors will function as a corporate decision-making body. Executive and non-executive directors will be full and equal members of the Board of Directors. 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.

4. Meetings

4.1 Calling of Meetings

4.1.1 Ordinary meetings of the Board of Directors shall be held at regular intervals at such times and in such places as the Board of Directors may determine. Board meetings shall be held in public but the whole or any part of a meeting may be held in private if the Board of Directors so resolves for special reasons.

4.1.2 The Chair may call a meeting of the Board of Directors at any time.

4.1.3 One third or more directors of the Board of Directors may requisition a meeting in writing. If the Chair refuses, or fails, to call a meeting within seven clear days of a requisition being presented, the directors signing the requisition may forthwith call a meeting.

4.2 Notice of Meetings

4.2.1 Before each meeting of the Board of Directors, a notice of the meeting, specifying the business proposed to be transacted at it, and indicating that it has been approved by the Chair or by an officer of the Trust authorised by the Chair to approve it on their behalf, shall be sent electronically to every director, so as to be available to them at least five clear days before the meeting save in the case of emergencies.

4.2.2 In the case of a meeting called by directors in default of the Chair calling the meeting, the notice shall be signed by those directors.

4.2.3 Failure to serve notice on any one director shall not affect the validity of a meeting but failure to serve notice on more than three directors will invalidate any meeting. A notice will be deemed to have been served upon electronic transmission.

4.2.4 Before any meeting of the Board of Directors which is to be held in public, a public notice of the time and place of the meeting, and the public part of the agenda, shall be published on the Trust's website at least three clear days before the meeting.

Commented [PS(O25): Provisions under this section have been revised and updated, consistent with provision made in the Standing Orders for the Council of Governors.

4.2.5 Before holding a meeting, the Board of Directors will make available a copy of the agenda of the meeting to the Council of Governors through publication on the Trust's website and as soon as practicable after holding a meeting, it will make available to the Council of Governors a copy of the minutes of the meeting.

5. **Agendas and Supporting Papers**

- 5.1 Save in an emergency, an agenda shall be sent electronically to each director so as to arrive with each director no later than 5 days in advance of each meeting and supporting papers, whenever possible, shall accompany the agenda. Minutes of the previous meeting will be circulated with the papers for approval and this will be a specific agenda item.
- 5.2 Agendas and supporting papers for meetings held in public shall be published on the Trust's website prior to the meeting and printed copies may be made available on request.

6. **Petition**

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.

7. **Motions**

- 7.1 A member of the Board of Directors wishing to move or amend a motion shall send written notice of it to the Chair at least ten clear days before the meeting. Requests made less than ten days before a meeting may be included on the agenda at the discretion of the Chair. This paragraph shall not prevent any motion being moved during the meeting, without notice, on any business mentioned on the agenda subject to Standing Order 7.5 below.
- 7.2 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.
- 7.3 Notice of a 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 gave it and also the signature of four other members of the Board of Directors. When the Board of Directors has disposed of any such motion it shall not be competent for any member of the Board of Directors, other than the Chair, to propose a motion to the same effect within six months; however the Chair may do so if he/she considers it appropriate.
- 7.4 The mover of a motion shall have the right of reply at the close of any discussion on the motion or any amendment thereto.
- 7.5 When a motion is under discussion or immediately prior to discussion it shall be open to a director to move:
- (i) An amendment to the motion;
 - (ii) The adjournment of the discussion or the meeting;
 - (iii) That the meeting proceed to the next business;
 - (iv) The appointment of an *ad hoc* committee to deal with a specific item of business;
 - (v) That the motion be now put.

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.

7.6 **Emergency Motion**

Subject to the agreement of the Chair and this Standing Order 7, a director 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. At the Chair's discretion, the emergency motion shall be declared to the Board of Directors

at the commencement of the business of the meeting as an additional item included on the agenda. The Chair's decision to include the item shall be final.

8. Voting

- 8.1 All questions put to the vote shall, at the discretion of the Chair, be decided by a show of hands. A paper ballot may be used if a majority of the Board of Directors present so request.
- 8.2 Save as provided in the constitution, every question put to a vote at a meeting shall be determined by a majority of the votes of the directors present and voting on the question.
- 8.3 In no circumstances may an absent director vote by proxy. Absence is defined as being absent at the time of the vote.
- 8.4 In the case of an equal vote, the Chair or such other person presiding at the meeting shall have a second, and casting vote.

9. Attendance

Directors who are unable to attend a meeting shall notify the Secretary in advance of the meeting in question so that their apologies may be submitted.

10. Quorum

- 10.1 The quorum of a meeting will be at least half of the whole number of members of the Board of Directors (including at least one non-executive director and one executive director) and those 'present' will include anyone attending by electronic means as long as they have the ability to communicate interactively and simultaneously with all other parties attending the meeting including all persons attending by way of electronic communication.
- 10.2 Except as provided for in paragraph 10.3 below where a member of the Board of Directors has declared an interest in a matter under paragraph 32.5 of the constitution, that member will be disqualified from participating in the discussion on the matter and/or from voting on any resolution in relation to that matter and that member shall not count towards the quorum. If a quorum is then not available for the discussion and/or the 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 item of business.
- 10.3 Where a member of the board has declared an interest in a matter under paragraph 32.5 of the constitution which is authorised in accordance with paragraph 32.2.2 and 32.10 of the constitution the consequences of that authorisation are that the relevant member of the board:
 - 10.3.1 is not (without more) in breach of the duty referred to in sub-paragraph 32.1.1 of the constitution; and
 - 10.3.2 is excluded, subject to paragraph 10.3.3 below, from participating in discussion by the board or from voting on any resolution in relation to the authorised matter in respect of which an interest has been declared; but
 - 10.3.3 the relevant member may participate in discussion and may vote on any resolution relating to the authorised matter if:
 - 10.3.3.1 a majority of members of the board (excluding any member of the board who has declared an interest in the matter which has been duly authorised) determines that this would be in the best interest of the Trust.
- 10.3 The requirement in Standing Order 10.1 above for a least one executive director to form part of the quorum shall not apply where the executive directors are excluded from a meeting.

Commented [PS(O26): This is consistent with the definition of 'present' in relation to counting quorum at a meeting of the Council of Governors.

11. Chair

The Chair is appointed in accordance with the Constitution and shall be responsible for the operation of the Board of Directors (and Council of Governors) and chair all Board of Directors and Council of Governors meetings when present.

12. Appointment of the Deputy Chair and Senior Independent Director

12.1 **Deputy Chair:** The Council of Governors at a general meeting may appoint one of the non-executive directors to be deputy Chair. Where the Chair dies or ceases to hold office, or where they are unable to perform their duties as Chair owing to illness, conflict of interest or any other cause, the deputy Chair shall act as Chair and perform the Chair's duties until a new Chair is appointed or the existing Chair resumes their duties, as the case may be.

12.2 **Senior Independent Director:** The Board of Directors (in consultation with the Council of Governors) may appoint a non-executive director as the Senior Independent Director who shall perform the role set out in the NHS Foundation Trust Code of Governance.

13. Executive Directors

Executive directors (who may also be known as Chief Officers) are appointed in accordance with the constitution and shall exercise their authority within the terms of these Standing Orders, the Standing Financial Instructions and the Scheme of Reservation and Delegation.

14. Chief Executive

The Chief Executive shall be responsible for the overall performance of the executive functions of the Trust and is the Accounting Officer for the Trust.

15. Finance Director

The Finance Director (who may also be known as the Chief Finance Officer) shall be responsible for the provision of financial advice to the Trust and for the supervision of financial control and accounting systems.

16. Non-Executive Directors

The non-executive directors shall not be granted nor shall they seek to exercise any individual executive powers on behalf of the Trust.

17. Chairman's ruling

The decision of the Chair of the meeting on questions of order, relevancy and regularity (including procedure on handling motions) and his or her interpretation of the Standing Orders and Standing Financial Instructions, at the meeting, shall be final.

18. Arrangements for the Exercise of Trust Functions by Delegation

18.1 *Scheme of Reservation and Delegation*

The Chief Executive shall prepare a Scheme of Reservation and Delegation identifying matters that shall be reserved and those to be delegated which shall be considered and approved by the Board of Directors.

18.2 **Delegation of Functions to Committees, Officers or other bodies.**

Subject to the Regulatory Framework and such guidance, if any, as may be given by Monitor, the Board of Directors may make arrangements on behalf of the Trust for the exercise of any of its functions by an executive director of the Trust or by a committee or sub-committee which it has formally constituted in accordance with the constitution subject to paragraph 19.1 below; in each case subject to such restrictions and conditions as the Board of Directors think fit.

18.3 **Emergency Powers**

The powers which the Board of Directors has retained to itself may be exercised by the Chief Executive and the Chair after having consulted at least one other Non-Executive Director. The exercise of such powers by the Chief Executive and the Chair shall be reported to the next formal meeting of the Board of Directors for ratification.

Commented [PS(O27)]: Explicit provision for the exercise of emergency powers has been included, on the advice of DACBeachcroft Solicitors, in the interests of transparency.

18.4 **Delegation to Committees**

The Board of Directors shall agree from time to time to the delegation of executive powers to be exercised by committees, or sub-committees, which it has formally constituted in accordance with the constitution subject to paragraph 19.1 below. The constitution and terms of reference of these committees, or sub-committees and their specific executive powers shall be approved by the Board of Directors in respect of its sub-committees.

18.5 **Scheme of Delegation**

The Chief Executive shall prepare a Scheme of Delegation identifying their proposals which shall be considered and approved by the Board of Directors. The Chief Executive may periodically propose any amendment to the Scheme of Delegation which shall be considered and approved by the Board of Directors.

18.6 **Delegation to Officers**

Those functions of the trust which have not been retained as reserved by the Board of Directors or delegated to an executive director or to another 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.

18.7 **Discharge of the Direct Accountability**

Nothing in the Scheme of Reservation and Delegation shall impair the discharge of the direct accountability to the Board of Directors of the Finance Director to provide information and advise the Board of Directors in accordance with statutory requirements or any requirements of Monitor.

18.8 **Duty to report non-compliance with Standing Orders and Standing Financial Instructions**

If for any reason these Standing Orders are not complied with, full details of the non-compliance, and the circumstance around it, shall be reported to the next formal meeting of the Board of Directors for action or ratification. All members of the Board of Directors and officers have a duty to disclose any non-compliance with these Standing Orders to the trust Secretary as soon as possible.

19. Appointment of Committees and Sub-Committees

19.1 Appointment of Committees and Sub-Committees

Subject to paragraph 3.3 of the constitution and such directions and guidance as may be issued by the Board of Directors from time to time, the Board of Directors may appoint committees of the Board of Directors consisting of one or more directors.

A committee appointed under this Standing Order may, subject to such directions and guidance as may be issued by the Board of Directors, appoint sub-committees.

19.2 Applicability of Standing Orders and Standing Financial Instructions to Committees and Sub-Committees

The Standing Orders and Standing Financial Instructions of the trust, as far as applicable, shall as appropriate apply to meetings and any committees and sub-committees established by the Board of Directors. In which case the term "Chair" is to be read as a reference to the Chair of the committee or sub-committee as the context permits, and the term "member of the Board" is to be read as a reference to a member of the committee or sub-committee also as the context permits.

19.3 Delegation of powers by Committees to Sub-Committees

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

19.4 Terms of Reference of Committees

Each such committee or sub-committee shall have such terms of reference and powers and be subject to such conditions as the Board of Directors shall decide. Such terms of reference shall be in accordance with the Regulatory Framework and guidance issued by Monitor.

19.5 Approval of Appointments to Committees

Subject to Standing Order 19.6, the Board of Directors shall approve the appointments to each of the committees which it has formally constituted.

19.6 Appointments for Statutory Functions

Where the Board is required by the Constitution, by any applicable statute or regulations or by any guidance issued by Monitor to appoint persons to a committee to undertake statutory functions, and where such appointments are to operate independently of the Board of Directors, such appointments shall be made in accordance with the constitution or such applicable statute or regulations or such guidance issued by Monitor.

19.7 Committees established by the Board of Directors

The committees established by the Board of Directors are:

19.7.1 Audit Committee;

19.7.2 Remuneration and Appointments Committee;

19.7.3 Integrated Assurance Committee; and

19.7.4 where so required, a committee to act as a joint special committee with a committee of the Council of Governors for the purpose of resolving disputes between the Council of Governors and the Board of Directors in accordance with the Dispute Resolution Procedure at Annex 8, Appendix 2: Dispute resolution procedures.

Commented [PS(O28): This section has been previously updated, to reflect the revised Board Committee structure.

19.8 **Other Committees and Sub-Committees**

The Board of Directors may also establish such other committees and sub-committees as required to discharge its responsibilities.

20. **Declarations of Interest and Register of Interests**

20.1 The Constitution, the 2006 Act and the Code of Conduct and Accountability require directors to declare interests which are relevant and material to the NHS board of which they are a director. All existing directors should declare such interests. Any directors appointed subsequently should do so on appointment.

20.1 The requirements made of members of the Board of Directors in relation to declaring and managing conflicts of interest are set out in paragraph 31 of the Constitution.

20.2 The requirements made of members of the Council of Governors in relation to declaring and managing conflicts of interest are set out at paragraph 6 in *Annex 6 to the Constitution: Standing Orders for the Practice and Procedure of Governors*.

21. **Custody of Seal**

The common seal of the trust shall be kept by the Chief Executive or a nominated manager by them in a secure place.

22. **Sealing of Documents**

Where it is necessary that a document shall be sealed, the seal shall be affixed in the presence of two senior managers duly authorised by the Chief Executive and also not from the originating department, and shall be attested by them.

23. **Register of Sealing**

The Chief Executive shall keep a register in which they, or another manager of the trust authorised by them, shall enter a record of the sealing of every document.

24. **Signature of Documents**

Where any document will be a necessary step in legal proceedings on behalf of the Trust, it shall, unless any enactment otherwise requires or authorises, be signed by the Chief Executive or any executive director.

In land transactions, the signing of certain supporting documents will be delegated to managers and set out clearly in the Scheme of Delegation but will not include the main or principal documents effecting the transfer (e.g. sale/purchase agreement, lease, contracts for construction works and main warranty agreements or any document which is required to be executed as a deed).

The signature of any non-legally binding document (such as Heads of Terms or Memoranda of Understanding) which may subsequently create a reputational or other risk to the Trust should it subsequently wish to renegotiate the terms of the agreement, shall, unless any enactment otherwise requires, be signed by either the person or persons who are authorized to sign the resulting legally binding document.

25. **Suspension of Standing Orders**

25.1 Except where this would contravene any statutory provision, or guidance issued by Monitor, any one or more of the Standing Orders may be suspended at any meeting, provided the meeting is quorate. Any such suspension shall be recorded in the minutes of the meeting.

Commented [PS(O29)]: This section has been previously updated, upon recommendation of the Working Group, approved by Council and the Board.

25.2 A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the directors.

25.3 No formal business may be transacted while Standing Orders are suspended.

25.4 The Audit Committee shall review every decision to suspend the Standing Orders.

Commented [PS(O30)]: This provision has been expanded, upon the advice of DACBeachcroft Solicitors, to make it more explicit what is required.

26. Confidentiality

All members of the Board of Directors shall abide by the Trust's policies on confidentiality and the Trust's Code of Conduct and will be required to declare compliance with the code upon appointment and annually thereafter.

27. Interface between the Board of Directors and the Council of Governors

The Board will cooperate with the Council of Governors as far as possible in order to comply with the Regulatory Framework in all respects and in particular in relation to matters set out in the Constitution. In the event of a dispute arrangements are set out in Annex 8, Appendix 2: Dispute resolution procedures.

28. Standing Orders to be given to Members of the Board and Officers

It is the duty of the Chief Executive to ensure that existing members of the Board of Directors and officers and all new appointees are notified of and understand their responsibilities within Standing Orders and Standing Financial Instructions. Updated copies shall be issued to staff designated by the Chief Executive.

Annex 8: Further provisions

Annex 8, Appendix 1: Membership

1. Representative Membership

- 1.1. The Trust shall at all times strive to have a membership that is, taken as a whole, representative of those eligible for membership. To this end, the Trust shall 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.
- 1.2. The Council of Governors shall present to each Annual Members' Meeting:
 - 1.2.1. A report on steps taken to achieve membership that is representative of those eligible for membership.
 - 1.2.2. Progress on the membership strategy.
 - 1.2.3. Any changes to the membership strategy.

2. Disqualification from membership of the trust

- 2.1. A person may not become or remain a member of the Trust if they have demonstrated aggressive or violent behaviours at any hospital and following such behaviours have been asked to leave, have been removed or excluded from any hospital in accordance with the relevant trust policy for withholding treatment from violent/aggressive patients.
- 2.2. A person may not become or remain a member of the Trust if they have been confirmed as a 'vexatious complainant' in accordance with the relevant trust policy for handling complaints.
- 2.3. Any person involved in an incident of violence against the Trust's hospitals, facilities, employees or registered volunteers may not become or remain a member of the Trust.
- 2.4. A person may not become or remain a member of the Trust if they have been removed as a member from another NHS Foundation Trust.
- 2.5. A person may not become or remain a member of the Trust if they are deemed to have acted in a manner contrary to the interests of the trust.
- 2.6. Where the Trust is on notice that a member may be disqualified from membership, or may no longer be eligible to be a member the Secretary shall give the member 14 days' written notice to show cause why their name should not be removed from the register of members. On receipt of any such information supplied by the member, the Secretary may, if they consider it appropriate, remove the member from the register of members. In the event of any dispute the Secretary shall refer the matter to the Council of Governors to determine. Any appeal against the determination made by the Council of Governors in such circumstances may be referred for resolution in accordance with the procedures under Annex 8 Appendix 2: Dispute Resolution Procedures.
- 2.7. All members of the Trust shall be under a duty to notify the Secretary of any change in their particulars which may affect their entitlement as a member.

3. Expulsion from membership of the trust

- 3.1. A member may be expelled by a resolution approved by not less than two-thirds of the members of the Council of Governors present and voting at a meeting of the Council of Governors. The following procedure is to be adopted:

Commented [PS(031): This corrects an apparent mistaken omission in earlier versions.

- 3.1.1. Any member may complain to the Head of Corporate Governance that another member has acted in a way detrimental to the interests of the Trust, or is otherwise disqualified as set out in paragraph 2 above.
- 3.1.2. If a complaint is made, the Council of Governors may itself consider the complaint, having taken such steps as it considers appropriate, to ensure that each member's point of view is heard and may either:
 - 3.1.2.1. dismiss the complaint and take no further action; or
 - 3.1.2.2. arrange for a resolution to expel the member complained of to be considered at the next meeting of the Council of Governors.

4. Termination of Membership

- 4.1. A member shall cease to be a member on:
 - 4.1.1. death;
 - 4.1.2. resignation by notice in writing to the Secretary;
 - 4.1.3. ceasing to fulfil the requirements of paragraphs 6, 7 or 8 of the constitution, as the case may be; or
 - 4.1.4. being disqualified or expelled pursuant to paragraphs 2 and 3 of Annex 8 respectively.

5. Voting at Council of Governors elections

- 5.1. As required by section 60(5) of the NHS Act 2006, a member may not for the purpose of Section 60(1) of the 2006 Act, vote at an election for a public Council of Governors constituency unless within the period specified they have made a declaration in the specified form stating the particulars of his qualification to vote as a member of a constituency, or class, or area within a constituency for which an election is being held.
- 5.2. No member may make a statement of declaration which is false in material particular; this is an offence in respect of Section 60(1) of the 2006 Act for public members. Trust procedures apply for staff members.

Annex 8, Appendix 2: Dispute resolution procedures

1. Dispute: General

- 1.1. In the event of an unresolved dispute which arises out of this Constitution between the Trust and:
 - a. a member; or
 - b. any person aggrieved who has ceased to be a member within the six months prior to the date of the dispute; or
 - c. any person bringing a claim under this constitution; or
 - d. a governor of the Trust;the issue is to be submitted to an arbitrator agreed by the parties. The arbitrator's decision will be binding and conclusive on all parties.
- 1.2. Any person bringing a dispute must, if required to do so, deposit with the Trust a reasonable sum (not exceeding £250) to be determined by the Council of Governors and approved by the Head of Corporate Governance. The arbitrator will decide how the costs of arbitration will be paid and what should be done with the deposit.

2. Dispute: Council of Governors and the Board of Directors

- 2.1. In the event of dispute between the Council of Governors and the Board of Directors:
 - 2.1.1. In the first instance the Chair on the advice of the Head of Corporate Governance, and such other advice as the Chair may see fit to obtain, shall seek to resolve the dispute;
 - 2.1.2. If the Chair is unable to resolve the dispute they shall agree with the Lead Governor the appointment of a joint special committee constituted as a committee of the Board of Directors and a committee of the Council of Governors, both comprising equal numbers, to consider the circumstances and to make recommendations to the Council of Governors and the Board of Directors with a view to resolving the dispute. The Chair and Lead Governor shall agree whether the joint special committee shall be chaired by an independent person to facilitate resolution;
 - 2.1.3. If the recommendations (if any) of the joint special committee are unsuccessful in resolving the dispute, the Chair may refer the dispute to the Board of Directors who shall make the final decision.

Annex 8, Appendix 3: Legal issues

1. Checking Process: Non-Executive Directors

Non-executive directors will be subject to a checking process at the time of appointment. This will involve Disclosure and Barring Service (DBS) checks, and the fit and proper person requirement and a medical undertaken by the Trust's Occupational Health Department. N.B. executive directors undergo these checks as part of the Trust's recruitment process.

2. Review of Trust Documents

As part of its commitment to good governance, the Trust will undertake regular reviews of all its documentation. Any change/amendment will be considered by the appropriate Board/Committee within the Trust and made in accordance with paragraph 44 of the constitution.

3. Interpretation

In the event of a question arising about any ambiguity, meaning or internal inconsistency within this Constitution or about any matter not provided for by the constitution the Board of Directors shall have jurisdiction to determine that question and its decision shall be binding.

Annex 8, Appendix 4: Appointment of Chair and non-executive Directors

Commented [PS(032): This section has already been amended, upon recommendation of the Working Group, approved by Council and the Board.

1. Arrangements for Appointments

- 1.1. Subject to the provisions of the constitution, the process for appointing new non-executive directors and the Chair will be as follows:
- 1.2. Subject to paragraphs 1.3, 1.4, 1.5 and 2 below, the Chair and other non-executive directors are to be appointed (or re-appointed) by the Council of Governors following a process of open competition.
- 1.3. On the first renewal of the appointment of the Chair or other non-executive director, where possible no later than four months before the end of their first term, the Council of Governors *Remuneration, Nominations and Appointments Committee* [RNAC] will recommend to the Council of Governors whether the Chair or other non-executive director may be reappointed for a second term without a process of open competition. If the Council of Governors having considered RNAC's recommendation does not consider the reappointment without open competition appropriate, then a suitable replacement will be identified in accordance with paragraphs 1.6 – 1.10 below.
- 1.4. In advance of the expiry of a second or subsequent term of the Chair or other non-executive director, where possible no later than four months before the expiry of their term, the RNAC may be asked to advise the Council of Governors whether specific and exceptional circumstances can be demonstrated which support reappointment of that non-executive director for a further term of specified duration. This will be the case only if RNAC determines that the reappointment is necessary
 - 1.4.1. to meet specified needs of the Trust; and
 - 1.4.2. to enhance effectiveness of the Board in its leadership of the Trust.In such cases, RNAC will recommend reappointment for a further term of specified duration without a process of open competition as being in the best interests of the Trust. When considering whether to recommend reappointment, and when specifying the duration of any further term, RNAC will have due regard to the *NHS Foundation Trust Code of Governance*. If RNAC does not consider reappointment without open competition to be appropriate, then a suitable replacement should be identified in accordance with paragraphs 1.6 - 1.10 below.
- 1.5. The University of Oxford shall be entitled to nominate a representative to serve as a non-executive director of the Trust for a period to be agreed by the RNAC, subject to appointment in accordance with the 2006 Act.
- 1.6. No later than three months before the end of the term of office of the Chair or a non-executive director (as the case may be), who is not to be reappointed without open competition in accordance with paragraphs 1.3 or 1.4 above, an Appointment Panel will be convened to seek a suitable replacement. The relevant Appointment Panel will be constituted in accordance with paragraph 1.9 or 1.10 below.
- 1.7. The Appointment Panel shall seek candidates for office by way of open advertisement and other means. It shall assess and select for interview such candidates as are considered appropriate and in doing so the Appointment Panel shall be at liberty to seek advice and assistance from persons other than members of the Panel, including (without limitation) the Council of Governors and the Board of Directors.
- 1.8. The Appointment Panel will make recommendations to the Council of Governors on the appointment of any candidate or candidates (as the case may be) identified through open competition as it considers appropriate. The RNAC will make recommendations to the Council of Governors about non-executive directors' pay. External professional advisers will be

consulted on comparable remuneration levels for the Chair and other non-executive directors at least once every three years and when they intend to make a material change to the remuneration of a non-executive director. The Council of Governors shall resolve in a general meeting to appoint such candidate or candidates (as the case may be) as it considers appropriate and in reaching its decision it shall have regard to the views of the Appointment Panel and of the Board of Directors as to the suitability of the available candidates and the remuneration and allowances and other terms and conditions of office.

- 1.9. The *Appointment Panel for the Chair* will consist of three Public Governors, one Staff Governor and one appointed Governor.
 - 1.9.1. If the number of Governors prepared to serve on the Appointment Panel is greater than the number of places available, the Panel members will be selected by secret ballot of Governors.
 - 1.9.2. The Appointment Panel shall be chaired by the Vice-Chair of the Trust.
 - 1.9.3. Each of the members of the Appointment Panel shall have one vote on making a recommendation to the Council of Governors as to potential candidates for appointment. The Appointment Panel's Chair will have a casting vote.
- 1.10. The *Appointment Panel for Non-Executive Directors* will consist of the Chair of the Trust, two elected public governors, one elected staff governor, and one appointed governor.
 - 1.10.1. The Chief Executive may attend at the Committee's request in an advisory capacity only.
 - 1.10.2. If the number of governors wishing to serve on the Appointment Panel for non-executive directors is greater than the number of places available, the Appointment Panel's members will be selected by secret ballot of governors.
 - 1.10.3. The Chair of the Trust will chair the committee.
 - 1.10.4. Each of the five members of the Appointment Panel will have one vote on a recommendation to the Council of Governors as to potential candidates for appointment.
- 1.11. The Appointment Panels will be supported by appropriate advice from the Trust's Chief People Officer.
- 1.12. All appointments will be conducted and made in accordance with the Human Resources policies of the Trust.
- 1.13. The Council of Governors will not consider nominations for membership of the Board of Directors other than those made by the appropriate Appointment Panel.

2. Term of Office of Chairman and Non-Executive Directors

- 2.1. Except as provided in paragraph 2.2 below, non-executive directors including the Chair shall be eligible for appointment by the Council of Governors for up to two terms of office, and each term of office will be for a duration specified by the Council of Governors that may be of up to three years' duration.
- 2.2. Where recommended by the RNAC in accordance with paragraph 1.4 above, non-executive directors including the Chair shall be eligible for re-appointment to a further term of office by the Council of Governors. Where the Council of Governors makes a reappointment in accordance with paragraph 1.4 above, the duration of such term of office will be specified by the Council of Governors.