

**SOMERSET NHS FOUNDATION TRUST**

**CONSTITUTION**

# Somerset NHS Foundation Trust Constitution

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## **1. INTRODUCTION**

- 1.1 An NHS Foundation Trust is a Public Benefit Corporation which is authorised under the National Health Service Act 2006 to provide goods and services for the purposes of the health service in England. A Public Benefit Corporation is a body corporate which is constituted in accordance with Schedule 7 of the 2006 Act. The Constitution provides, inter alia, for the Trust to have Members, Governors and Directors, and determines who may be eligible for membership and how Governors and Directors are appointed and defines their respective roles and powers. Further, Members of the Trust may vote in elections to, and stand for election for the Council of Governors, as provided in this Constitution.

## **2. INTERPRETATION AND DEFINITIONS**

- 2.1 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
- 2.2 Words importing the singular shall import the plural and vice-versa.
- 2.3 Any reference to any organisation shall include a reference to any successor in title or any organisation or entity which has taken over its functions or responsibilities.
- 2.4 References in this Constitution to legislation include all amendments, replacements or re-enactments made and include all subordinate legislation made thereunder.
- 2.5 References to legislation also includes all regulations, orders, statutory guidance or directives.
- 2.6 Headings are for ease of reference only and are not to affect interpretation.
- 2.7 All Annexes referred to in this Constitution form part of it.
- 2.8 References to paragraphs are to paragraphs in this Constitution save that where there is a reference to a paragraph in an annex to this Constitution it shall be a reference to a paragraph in that annex unless the contrary is expressly stated or the context otherwise so requires.
- 2.9 In this Constitution:
- the **2006 Act** is the National Health Service Act 2006.

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

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

**"Annex"**

followed by a number, means the Annex to this Constitution so numbered.

**"Annual Accounts"**

means those accounts prepared by the Trust pursuant to paragraph 25 of Schedule 7 to the 2006 Act.

**Annual Members Meeting** is defined in paragraph 15 of the constitution and has the same meaning as the Annual General Meeting.

**"Appointed Governor"**

means a NHS Somerset Governor, a Local Authority Governor, or a Partnership Organisation Governor as specified in paragraph 4 of Annex 3.

**“Appointments Panel”**

means a Panel of the Council of Governors appointed pursuant to Annex 8.

**"Annual Report"**

means a report prepared by the Trust pursuant to paragraph 26 of Schedule 7 to the 2006 Act.

**"Area of the Trust"**

means the area, consisting of all the areas, specified in Annex 1, as an area for the Public Constituencies.

**"Audit Committee"**

means a committee of the Board of Directors as established pursuant to paragraph 40 of this Constitution.

**"Auditor"**

means the auditor of the Trust appointed by the Council of Governors pursuant to paragraph 39 of this Constitution.

**"Authorisation"**

means the authorisation issued to the Trust by Monitor under section 35 of the 2006 Act.

**"Board of Directors"**

means the Board of Directors as constituted in accordance with this Constitution.

**"British Islands"**

means the United Kingdom, the Channel Islands and the Isle of Man as defined in the Interpretation Act 1978. The Republic of Ireland is not included in this definition.

**"Chairman"**

means the person appointed in accordance with the Constitution to ensure that the Board of Directors and Council of Governors successfully discharge their overall responsibilities for the Trust as a whole. The expression "the Chairman" shall be deemed to include the Deputy Chairman or any other Non-Executive Director appointed if the Chairman is absent from the meeting or is otherwise unavailable.

**"Chief Executive"**

means the Chief Executive of the Trust.

**"Constitution"**

means this Constitution together with the Annexes attached hereto.

**"Council of Governors"**

means the Council of Governors as constituted in this Constitution, which has the same meaning as the "Board of Governors" in paragraph 7 of Schedule 7 to the 2006 Act.

**"Deputy Chairman"**

means the Deputy Chairman of the Trust appointed in accordance with paragraph 27 of this Constitution.

**"Designated Organisation"**

means an organisation registered as such in the register of Governors which provides staff who exercise functions on behalf the Trust.

**"Director"**

means a member of the Board of Directors and includes both Executive and Non-Executive Directors.

**"Directors' Code of Conduct"**

means the Code of Conduct for Directors of the Trust, as adopted by the Trust and as amended from time to time by the Board of Directors. which all Directors must subscribe to.

**"Elected Governor"**

means a Public Governor or a Staff Governor.

**"Election Scheme"**

means the election rules set out at Annex 4 of the Constitution.

**"Executive Director"**

means an Executive member of the Board of Directors of the Trust. An executive member of the Board of Directors can be a voting or a non voting Director'

**"Finance Director"**

means the Finance Director of the Trust.

**"Financial Year"**

means each period of twelve months beginning with 1 April.

**"Forward Plan"**

means the document prepared by the Foundation Trust pursuant to paragraph 27 of Schedule 7 to the 2006 Act.

**"Governor"**

means a member of the Council of Governors and includes both Appointed Governors and Elected Governors.

**"Governors' Code of Conduct"**

means the Code of Conduct for Governors of the Trust, as adopted by the Trust and as amended from time to time by the Council of Governor, which all governors must subscribe to.

**"Health Overview and Scrutiny Committee"**

means a local authority overview and scrutiny committee established pursuant to section 21 of the Local Government Act 2000.

**"Health Service Body"**

Shall have the meaning ascribed to it in Section 275 of the 2006 Act and includes the following organisations, or their successors:

- strategic health authority.
- clinical commissioning group.
- NHS trust,
- special health authority. and
- NHS foundation trust.

**"Immediate Family Member"**

means either:

- (a) A partner (of whatever gender), whether married, in a civil partnership (if defined in the Civil Partnership Act 2004), or some other similar arrangement, whether or not residing together in the same household, or.



- (b) A child or adopted child. including a biological child of one or both of two parties to a marriage or relationship or any other child who has been treated by one or both of those parties as a child of their family. or
- (c) A sibling or step-sibling. or
- (d) A parent or step-parent. or
- (e) A partner (as defined in sub-paragraph (a) above, of a person identified in sub-paragraphs (b), (c), or (d)..

**“HealthWatch”**

means the independent consumer champion for health and social care in England, or any statutory successor

**“Licence”**

means the Trust’s Provider Licence issued by NHS Improvement (Monitor). The Licence includes licence conditions and standards which will need to be adhered to by the Trust.

**“Local Authority”**

means a local authority that may appoint a Local Authority Governor and which is listed in Annex 3.

**"Local Authority Governor"**

means a Governor of the Council of Governors appointed by one or more Local Authority whose area includes the whole or part of the Area of the Trust.

**"Local Authority Partnership Agreement"**

means an agreement made under section 75 of the 2006 Act.

**"Member"**

means a member of the Trust.

**"Model Rules for Elections"**

means the election rules set out in Annex 4.

**"Monitor"**

means the body corporate known as Monitor, as provided by section 61 of the 2012 Act.

**“NHS England/Improvement (NHSE/I)”** is the body corporate known as NHS England/NHS Improvement (Monitor), as provided by Section 61 of the 2012 Act.

**"NHS Foundation Trust Code of Governance"**

means the best practice advice published by Monitor on 4 July 2014, as may be amended, varied or replaced by NHS

England/Improvement (Monitor) or its successor body from time to time.

**"NHS Somerset Governor"**

means a Governor of the Council of Governors appointed by NHS Somerset.

**"Non-Executive Director"**

means a Non-Executive Director of the Trust. For the avoidance of doubt, the Chairman is a Non-Executive Director.

**"Officer"**

means an employee of the Trust or any other person holding a paid appointment or office with the Trust.

**"Partnership Organisation"**

means an organisation that may appoint Partnership Governors and which is listed in Annex 3 to this Constitution.

**"Partnership Organisation Governor"**

means a Governor of the Council of Governors appointed by a Partnership Organisation other than: a Public Governor, Staff Governor, CCG Governor. or Local Authority Governor.

**"Public Constituency"**

has the meaning ascribed to it in paragraph 8 of this Constitution.

**"Public Governor"**

means a Governor of the Council of Governors elected by the Members of a Public Constituency.

**"Secretary"**

means the Secretary of the Trust or any other person other than a Governor, the Chief Executive or the Finance Director of the Trust, appointed by the NHS Foundation Trust or (as the case may be) the Trust or body corporate appointed to perform the roles and responsibilities of the Secretary as set out in Annex 8 and Appendix A of the NHS Foundation Trust Code of Governance.

**"Sex Offenders Order"**

Means—

- a) a Sexual Offences Prevention Order made under either Section 104 or 105 of the Sexual Offences Act 2003 or
- b) an Interim Sexual Offences Prevention Order made under Section 109 of the Sexual Offences Act 2003 or
- c) a Risk of Sexual Harm Order made under Section 123 of the Sexual Offences Act 2003 or

- d) the Interim Risk of Sexual Harm Order made under Section 126 of the Sexual Offences Act 2003 or
- e) a Sexual Harm Prevention Order made under Section 103A of the Sexual Offences Act 2003 or
- f) an Interim Sexual Harm Prevention Order made under Section 103F of the Sexual Offences Act 2003 or
- g) a Sexual Risk Order made under Section 122A of the Sexual Offences Act 2003 or
- h) an Interim Sexual Risk Order made under Section 122E of the Sexual Offences Act 2003 or
- i) a Foreign Travel Order made under Section 114 of the Sexual Offences Act 2003.

**"Sex Offenders Register"**

means the notification requirements, set out in Part 2 of the Sexual Offences Act 2003, commonly known as the "Sex Offenders Register".

**"Staff Constituency"**

has the meaning ascribed to it in paragraph 9 of this Constitution.

**"Staff Governor"**

means a member ~~Governor~~ of the Council of Governors elected by the members of the Staff Constituency.

**"Standing Orders"**

means the Standing Orders of the Council of Governors or the Board of Directors.

**"Trust"**

means Somerset NHS Foundation Trust.

**"Trust Premises"**

means any premises owned, leased or occupied under licence by the Trust for the purposes of providing or supporting its services as specified within the Trust's Provider Licence and the schedules to the Licence.

**"Vexatious Complainant"** is someone who persists in pursuing a complaint where the NHS Complaints procedure at the NHS Trust or (as the case may be) the Trust, has been fully implemented and exhausted (as defined in the Trust's policy for managing unsatisfied complaints).

**"Voluntary Organisation"**

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

**"Volunteer"**

means a person who provides goods or services to the NHS Trust or (as the case may be) the Trust, but who is not employed to do so by the NHS Trust or (as the case may be) the Trust.

**3. NAME**

3.1 The name of the foundation trust is Somerset NHS Foundation Trust (the Trust).

**4. PRINCIPAL PURPOSE**

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

4.2 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.

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

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

4.3.2 the promotion and protection of public health.

**5. POWERS**

5.1 The powers of the Trust are set out in the 2006 Act, as amended by the Health and Social Care Act 2012, subject to any restrictions in the Terms of its Licence.

5.2 In the exercise of its powers, the Trust shall have regard to the principles of the NHS and the Trust as set out in Annex 4 of the Standing Orders.

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

5.4 Subject to any restriction contained in this Constitution, in the 2006

Act, or in Annex 2 of the Standing Orders, any of these powers may be delegated to a committee of directors or to an executive director.

- 5.5 Where the Trust is exercising functions of managers pursuant to Section 23 of the Mental Health Act 1983 (as amended), those functions may be exercised by any three or more persons authorised by the Board of Directors, each of whom must be neither an Executive Director of the Trust, nor an employee of the Trust. For the avoidance of doubt a Non -Executive Director is not an employee of the Trust.

## **6. OTHER PURPOSES**

- 6.1 The purpose of the Trust may include education, training and research and other facilities for purposes related to the provision of health care, in accordance with its statutory duties and the terms of its Licence.
- 6.2 The Trust may fulfil the social care functions of any local authority as specified by an agreement made under Section 75 of the 2006 Act or otherwise.
- 6.3 The Trust may also carry on activities other than those mentioned above, subject to the regulatory framework, for the purpose of making additional income available in order to carry out its principal purpose better.

## **7. MEMBERSHIP AND CONSTITUENCIES**

- 7.1 It is a requirement that the Trust, in deciding membership constituencies, shall have regard to the need for those eligible to be representative of those to whom the Trust provides services.
- 7.2 The Trust shall have members, each of whom shall be a member of one of the following constituencies:
- 7.2.1 a public constituency
- 7.2.2 a staff constituency

## **8. PUBLIC CONSTITUENCY**

- 8.1 An individual who lives in an area specified in Annex 1, and is not a member of staff, as an area for a public constituency may become or continue as a member of the trust.
- 8.2 Those individuals who live in an area specified for a public

constituency are referred to collectively as the “Public Constituency”.

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

## **9. STAFF CONSTITUENCY**

- 9.1 An individual who is employed by the Trust under a contract of employment with the Trust (the Non-Executive Directors of the Trust shall not be regarded as employees for this purpose) may become or continue as a member of the trust provided:

9.1.1 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

9.1.2 they have been continuously employed by the Trust under a contract of employment for at least 12 months.

- 9.2 Individuals who exercise functions for the purposes of the Trust, otherwise than under a contract of employment with the Trust, may become or continue as members of the staff constituency provided such individuals have exercised these functions continuously for a period of at least 12 months. For the avoidance of doubt, this does not include voluntary organisations or those who assist or provide services to the Trust on a voluntary basis.

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

- 9.4 The Staff Constituency shall not be divided into classes.

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

- 9.6 An individual who is:

9.6.1 eligible to become a member of the Staff Constituency, or

9.6.2 invited by the Trust to become a member of the Staff Constituency.

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

- 9.7 An eligible individual under paragraph 9.1 who has previously informed the Trust that they do not wish to become a member of the

Staff Constituency under paragraph 9.6 above may become a Member upon entry to the membership register pursuant to an application by them.

9.8 On receipt of an application for membership as set out in paragraph 9.7 above, and subject to being satisfied that the applicant is eligible, the Secretary shall cause the applicant's name to be entered in the Trust's Register of Members.

9.9 An individual who is no longer employed by the Trust shall have their Membership of the Trust transferred to the Public Constituency upon termination of their employment unless they inform the Trust they do not wish to continue their Membership.

**10. NOT USED**

**11. NOT USED**

**12. APPLICATION FOR MEMBERSHIP**

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

12.2 On receipt of an application for membership and subject to being satisfied that the applicant is eligible, the Secretary shall cause the applicant's name to be entered in the Trust's register of Members.

**13. DISQUALIFICATION AND EXPULSION FROM MEMBERSHIP OF THE TRUST**

13.1 An individual shall not become or continue as a Member of the Trust if they:

13.1.1 are a Member of any other constituency or class within a constituency as an individual cannot be a member of more than one constituency or class of a constituency.

13.1.2 are a member or are eligible to be a member of the Staff Constituency as an individual cannot be a member of the public constituency if they are also eligible to be a member of the staff constituency.

13.1.3 fail or cease to fulfil the criteria for membership of the Public Constituencies, or the Staff Constituency under the provisions of this Constitution to be a Member.

13.1.4 are less than 12 years of age at the date of their application to

become a Member.

13.1.5 were formerly employed by the Trust or the NHS Trust and were dismissed for gross misconduct.

13.1.6 have been identified as a Vexatious Complainant in line with the relevant policy.

13.1.7 have been placed on the Sex Offenders Register and/or is subject to a Sex Offenders Order.

13.1.8 have been involved as a perpetrator in a serious incident of violence or abuse within the last five years at any NHS hospital or facility or against any NHS employee or other persons who exercise functions for the purpose of a Health Service Body.

13.1.1 have been previously expelled as a member by the Council of Governors or by another NHS foundation trust, and has not been subsequently re-admitted by the Council of Governors.

13.1.2 have demonstrated aggressive or violent behaviour at any Hospital and following such behaviour they 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.

13.1.3 have deemed to have acted in a manner contrary to the interests of the Trust. or

13.2 do not agree to abide by the Trust's principles (as set out in Annex 4 of the Standing Orders).

#### **14. TERMINATION OF MEMBERSHIP**

14.1 An individual shall cease to be a Member on:

14.1.1 Resignation by.

14.1.1.1 giving notice in writing to the Trust, or

14.1.1.2 telephoning the Trust and confirming their wish to resign, with such resignation to take effect on written confirmation of their resignation by the Trust.

14.1.2 Disqualification or expulsion from membership under this Constitution pursuant to paragraph 13 above.



14.1.3 Death.

14.1.4 or if they have not provided a current postal address.

14.2 It is the responsibility of each Member to ensure their eligibility at all times and not the responsibility of the Trust to do so on their behalf. A Member who becomes aware of their ineligibility shall be under a duty to inform the Secretary as soon as practicable and that person shall thereupon be removed forthwith from the Register of Members and shall cease to be a Member.

14.3 Where the Trust is on notice that a Member may be disqualified from membership, or may no longer be eligible to be a Member, it shall give the Member 14 days' written notice to show cause why his 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.

## **15. ANNUAL MEMBERS' MEETING**

15.1 The Trust shall hold an annual meeting of its members (referred to as either 'Annual Members' Meeting or 'Annual General Meeting'). The Annual Members' Meeting shall be open to members of the public.

15.2 The following documents are to be presented to Members of the Trust at the Annual Members' Meeting by at least one member of the Board of Directors in attendance:

15.2.1 the Annual Accounts.

15.2.2 any report of the Auditor on them and

15.2.3 the Annual Report.

15.3 Where an amendment is made to the constitution as per paragraph 53.3 in relation the powers or duties of the Council of Governors (or otherwise with respect to the role that the Council of Governors has as part of the Trust).

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

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

15.4 The Council of Governors shall present to the Annual Members Meeting:

15.4.1 A report on the proceedings of its meetings held since the last annual meeting.

15.4.2 A report on the progress since the last annual meeting in developing the membership strategy is fully representative of the persons who are eligible to be members under the Constitution.

15.4.3 A report on any change to the Governors which has taken place since the last annual meeting. and

15.4.4 A report containing such comments as it wishes to make regarding the performance of the Trust and the accounts of the Trust for the preceding Financial Year and the future service development plans of the Trust.

## **16. COUNCIL OF GOVERNORS**

16.1 The Trust is to have a Council of Governors, which shall comprise both Elected Governors and Appointed Governors. It is to be chaired by the Chairman of the Trust and it is to consist of Public Governors, Staff Governors, Local Authority Governors, and Other Partnership Governors.

## **17. COUNCIL OF GOVERNORS – COMPOSITION**

17.1 The Trust is to have a Council of Governors, which shall comprise both elected and appointed governors. It is to be chaired by the Chairman of the Trust and is to consist of Public Governors, Staff Governors and Appointed Governors.

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

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

17.4 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 1.

17.5 The organisations currently specified that may appoint a member of the Council of Governors are:

17.5.1 NHS Somerset

17.5.2 Somerset Council

17.5.3 Somerset Primary Care Board

17.5.4 Voluntary, Community and Social Enterprise (VCSE)

17.5.5 Universities

17.5.6 Symphony Healthcare Services Ltd

17.5.7 Simply Serve Limited

## **18. COUNCIL OF GOVERNORS – ELECTION OF GOVERNORS**

18.1 Elections for elected members of the Council of Governors shall be conducted in accordance with the Model Election Rules. Elections for Elected Governors shall be conducted using the First Past the Post (FPP) system.

18.2 The Model Election Rules as published from time to time by the Department of Health, NHS Providers or its successor body, form part of this constitution. The Model Election Rules are attached at Annex 4.

18.3 A subsequent variation of the Model Election Rules by the Department of Health, NHS Providers or its successor body, shall not constitute a variation of the terms of this constitution for the purposes of paragraph 46 of the constitution (amendment of the constitution). For the avoidance of doubt, the Trust cannot amend the Model Rules for Elections.

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

18.5 Paragraph 18.1 and 18.4 above shall apply to all elections for Public and Staff Governors.

18.6 Members of each Public and Staff Constituencies may elect any of their members who are eligible to be a Public or Staff Governor.

18.7 A person may not vote at an election for or stand for election as an Elected Governor unless within the specified period stated in the Model Rules for Elections they have made a declaration as set out in paragraph 18.8 below. It is an offence to knowingly or recklessly make such a declaration which is false in a material particular.

- 18.8 The specified form regarding the declaration to stand for election as an Elected Governor shall be as set out on the nomination paper referred to in the Model Rules for Elections at Annex 4 and shall state as follows:

"I declare that I am resident at the address detailed in Section 1 of this form. I declare that to the best of my knowledge I am eligible to stand for election to the Council of Governors for the seat named in Section 2 of this form. I declare that to the best of my knowledge I am not de-barred from standing for election by any of the provisions detailed at Section 3 of this form. I declare that I have stated details of any financial interests I have in the NHS Trust (or, as the case may be, the Foundation Trust) at Section 4 of this form. I understand that if any of these declarations are later found to be false I will if elected lose my seat on the Council of Governors and may also have my membership withdrawn. I endorse the principles of the National Health Service and in particular that healthcare should be available to everyone regardless of age, income or ethnicity and is based on need, not the ability to pay, as well as being free at the point of delivery".

- 18.9 The procedure for nominating Appointed Governors is set out in Annex 3.

## **19. COUNCIL OF GOVERNORS - TENURE**

### **19.1 Elected Governors**

- 19.1.1 An elected governor may hold office for a period of up to 3 (three) years.
- 19.1.2 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.
- 19.1.3 An elected governor shall be eligible for re-election at the end of their term, subject to paragraph 19.1.4 and paragraph 20.
- 19.1.4 An Elected Governor may hold office for a maximum of 9 (nine) consecutive years.

### **19.2 Appointed Governors**

- 19.2.1 An appointed governor shall cease to hold office if the appointing organisation withdraws its sponsorship of them by notice in writing to the Trust or if they cease to be employed by or associated with the appointing

organisation.

- 19.2.2 An appointed governor shall be appointed for a period of up to 3 (three) years.
- 19.2.3 An appointed governor shall be eligible for re-appointment at the end of their term subject to paragraph 19.2.4.
- 19.2.4 An Appointed Governor may hold office for a maximum of 9 (nine) consecutive years.

## **20. TERMINATION OF TERMS OF OFFICE**

- 20.1 A Governor may resign from that office at any time during the term of that office by giving notice in writing to the Secretary.
- 20.2 A Governor shall cease to hold office if their term of office is terminated in accordance with paragraph 20.1 above and/or they are disqualified from or are otherwise ineligible to hold office as a Governor.
- 20.3 If a Governor fails to attend any meeting of the Council of Governors for a consecutive period of twelve months or alternatively for three successive meetings of the Council of Governors, their tenure of office is to be immediately terminated by the Council of Governors unless the Council of Governors is satisfied that:
  - 20.3.1 The absence was due to reasonable cause and
  - 20.3.2 That the Governor will be able to start attending meetings of the Council of Governors within such a period as it considers reasonable.
- 20.4 The Council of Governors may by a resolution of at least three quarters of the Governors present at the meeting, terminate a Governor's tenure of office if for reasonable cause it considers that:
  - 20.4.1 They are disqualified from becoming or continuing as a Member under this Constitution.
  - 20.4.2 They have knowingly or recklessly made a false declaration for any purpose provided for under this Constitution or in the 2006 Act or
  - 20.4.3 Their continuing as a Governor would or would be likely to prejudice the ability of the Trust to discharge its duties and functions or adversely affect public confidence in the services provided by the Trust or otherwise bring the Trust into disrepute.

- 20.5 If a Governor is considered to have acted in a manner inconsistent with:
- 20.5.1 the core principles as set out in Annex 4 of the Standing Orders.
  - 20.5.2 the Provider Licence, Authorisation or
  - 20.5.3 the Standing Orders for the Practice and Procedure of the Council of Governors, as set out in Annex 1 of the Standing Orders for or
  - 20.5.4 the Governor's Code of Conduct, or
  - 20.5.5 they have failed to declare an interest as required by this Constitution or the Standing Orders for Governors or, they have spoken or voted at a meeting on a matter in which they have an interest contrary to this Constitution or the Standing Orders Governors, and in this paragraph "interest" includes a pecuniary and a non-pecuniary interest and in either case whether direct or indirect, and they are adjudged to have so acted by a majority of not less than 75% of the Council of Governors then the Governor shall vacate their office immediately.
  - 20.5.6 The Standing orders for the Council of Governors shall provide for the process to be adopted in cases relating to the termination of a Governor's tenure.
  - 20.5.7 A Governor whose office is terminated under this paragraph 20.5 and paragraph 21 below shall not be eligible to stand for re-election or re-appointment to the Council of Governors for a period of three years from the date of their removal from office.

## **21. COUNCIL OF GOVERNORS – DISQUALIFICATION AND REMOVAL**

- 21.1 The following may not become or continue as a member of the Council of Governors:
- 21.1.1 In the case of an Elected Governor they cease to be a Member of the constituency or part of a constituency by which they were elected.
  - 21.1.2 In the case of an Appointed Governor the appointing organisation withdraws its sponsorship of them.

- 21.1.3 In the case of a Staff Governor, Governors who are subject to any form of investigation, either by the Trust or by an external organisation, resulting in suspension from their substantive role will be suspended from their Governor role pending the outcome of the investigation.
- 21.1.4 A person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged.
- 21.1.5 The person is a person to whom a moratorium period under a debt relief order applies under Part VIIA (debt relief orders) of the Insolvency Act 1986.
- 21.1.6 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.
- 21.1.7 They are a person who is a subject of a disqualification order made under the Company Directors' Disqualification Act 1986.
- 21.1.8 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.
- 21.1.9 They are under 16 years of age at the date they are nominated for election or appointment.
- 21.1.10 They are a Director of the Trust, or executive director, non-executive director, chairman, chief executive officer of another Health Service Body (unless appointed by a Partnership Organisation which is a Health Service Body), or a body corporate whose business involves the provision of health care services, including for the avoidance of doubt those who have a commercial interest in the affairs of the Trust.
- 21.1.11 NHS England (Monitor) has exercised its powers to remove that person as a Governor of the Trust or has suspended them from office or has disqualified them from holding office as a Governor of the Trust for a specified period or NHS England/Improvement (Monitor) has exercised any of those powers in relation to the person concerned at any other time whether in relation to the Trust or some other NHS foundation trust.

- 21.1.12 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.
- 21.1.13 They are a person whose tenure of office as the chairman or as a member or director of a Health Service Body has been terminated on the grounds that their appointment was not in the interests of the health service, for non attendance at meetings, or for non-disclosure of a pecuniary interest.
- 21.1.14 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 has not subsequently had their name included in such a list.
- 21.1.15 They have failed or refused to confirm in writing that they will abide by any Code of Conduct for Governors which the Trust shall have published from time to time.
- 21.1.16 They have refused without reasonable cause to undertake any training which the Trust and/or Council of Governors requires all Governors to undertake.
- 21.1.17 They are a member of a local authority Health Overview and Scrutiny Committee.
- 21.1.18 They are the subject of a Sex Offenders Order and/or their name is included in the Sex Offenders Register.
- 21.1.19 They are an occupant of the same household and/or they are an Immediate Family Member of a Director of the Trust.
- 21.1.20 They are a person who by reference to information revealed by a Disclosure and Barring Service check is considered by the Trust to be inappropriate on the grounds that their appointment might adversely affect public confidence in the Trust or otherwise bring the Trust into disrepute.
- 21.1.21 They have failed to make, or has falsely made, any declaration as required by paragraph 18.8 of this Constitution.
- 21.1.22 They have been removed as a Governor or equivalent by any foundation trust within the last five (5) years.
- 21.1.23 They are a person who is a subject of a disqualification



order made under the Company Directors' Disqualification Act 1986.

- 21.1.24 They are incapable by reason of mental disorder, illness or injury of managing and administering their property and affairs.
  - 21.1.25 They have failed to repay (without good cause) any amount of monies properly owed to the Trust,
  - 21.1.26 They have received a written warning from the Trust for abuse of any type or.
  - 21.1.27 The Partnership Organisation which they represent ceases to exist or withdraws its entitlement to appoint a Governor.
- 21.2 The provisions of paragraph 21.1 above apply to both Elected Governors and Appointed Governors and to anyone seeking election or appointment.
- 21.3 Where a Governor's membership of the Council of Governors ceases for one of the reasons set out in paragraph 21 of the Constitution, they shall notify the Secretary in writing of such disqualification and/or (as the case may be), removal as soon as is practicable and, in any event, within 14 days of first becoming aware of those matters which rendered them disqualified or removed.
- 21.4 If it comes to the notice of the Secretary at the time of their taking office or later that the Governor is so disqualified, the Secretary shall immediately declare that the person in question is disqualified and notify them in writing to that effect as soon as is practicable.
- 21.5 Upon despatch of any such notification under paragraphs 21.3 or 21.4 above, that person's tenure of office, if any, shall be terminated and they shall cease to act as a Governor, and the Secretary shall cause their name to be removed from the register of Governors of the Council of Governors.
- 21.6 The Trust will make, from time to time, policy on the grounds, processes and procedures for the removal of Governors. Such policies shall be presented to the Council of Governors for comments and approval and any changes shall be reflected in the Standing Orders.

## **22. VACANCIES**

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

22.2 Elected Governors shall be replaced using the following provisions:

22.2.1 The Council of Governors shall offer the candidate who secured the next highest number of votes in the last election for the Constituency (or part of Constituency, as the case may be) in which the vacancy has arisen the opportunity to assume the vacant office for the unexpired balance of the retiring Governor's term of office. If that candidate does not wish to fill the vacancy it will then be offered to that candidate who secured the next highest number of votes until the vacancy is filled.

22.2.2 If no reserve candidate is available or willing to fill the vacancy, a by-election will be held in accordance with the Model Rules for Elections save that if an election is due to be held within 12 months of the vacancy having arisen, the office will stand vacant until the next scheduled election.

22.2.3 The Returning Officer shall maintain a record of votes cast at each election for the above purposes and the Returning Officer shall conduct or shall oversee the conducting of the process set out in paragraphs 22.2.1 and 22.2.2 above.

22.3 Notwithstanding the provisions above, where any termination of a Governor's term of office causes the total number of Governors elected from the Public Constituency to be less than half the total membership of the Council of Governors', a by-election will be held in accordance with paragraph 18 of this Constitution as soon as reasonably practicable.

22.4 Where an Appointed Governor's membership of the Council of Governors ceases for whatever reason, the Council of Governors shall invite the relevant appointing bodies to appoint a new Governor as soon as practicable. Appointed Governors shall be replaced in accordance with the processes agreed pursuant to paragraph 4 of Annex 3 of this Constitution.

22.5 No proceedings of a Council of Governors shall be invalidated by any vacancy in its membership or any defect in the appointment or election of any Governor.

## **23. COUNCIL OF GOVERNORS – DUTIES OF GOVERNORS**

23.1 The general duties of the Council of Governors are:

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

23.1.2 to represent the interests of the members of the trust as a whole and the interests of the public.

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

23.2 Each Governor shall exercise their own skill and judgement in the conduct of the Trust's affairs and shall in their stewardship of the Trust's affairs bring as appropriate the perspective of the constituency or organisation by which they were elected or appointed as the case may be.

## **24. COUNCIL OF GOVERNORS: ROLES AND RESPONSIBILITIES**

24.1 The roles and responsibilities of the Council of Governors at a general meeting or otherwise shall be:

24.1.1 To support the Board of Directors in terms of strategic guidance by giving feedback on: the corporate objectives; annual plan and quality report.

24.1.2 To monitor the Trust's performance in achieving strategic objectives and performance targets that have been set.

24.1.3 To be presented with the annual accounts, any report of the Auditor on them and the annual report.

24.1.4 To consider disputes as to membership referred to it pursuant to paragraph 54. and/or

24.1.5 To consider resolutions to remove a Governor pursuant to paragraph 20.4 of this Constitution.

24.1.6 To act as guardians to ensure that the Trust operates in a way that is consistent with NHS and Trust principles (as set out in Annex 4 of the Standing Orders) and the terms of the Trust's Authorisation.

- 24.1.7 To exercise such other powers and to discharge such other duties as may be conferred on the Council of Governors under this Constitution.
- 24.1.8 To respond as appropriate when consulted by the Board of Directors.
- 24.2 The Council of Governors shall appoint the Chairman and other Non-Executive Directors of the Trust at a general meeting. The appointment and re-appointment process for the Chairman and other Non-Executive Directors is set out in Annex 4 of the Standing Orders.
- 24.3 The Council of Governors shall decide the remuneration and allowances, and the other terms and conditions of office, of the non-Executive Directors.
- 24.4 The Council of Governors may remove the Chairman and other Non-Executive Directors of the Trust at a general meeting. The removal of the Chairman and other Non-Executive Directors of the Trust requires the approval of at least three quarters of the Governors.
- 24.5 The Council of Governors shall approve (by a majority of the Council of Governors voting) the appointment of the Chief Executive by the Non-Executive Directors of the Trust at a general meeting.
- 24.6 The Council of Governors will agree with the Audit Committee the criteria for appointing, reappointing and removing external Auditors and shall appoint, reappoint or remove the Trust's external Auditor, following a written recommendation from the Audit Committee.
- 24.7 This written recommendation must include the reason(s) for the appointment, reappointment or removal of the external Auditors. Should the Council of Governors disagree with the Audit Committee's recommendation, the Council of Governors will provide the Audit Committee with the reasons for the disagreement and the Audit Committee will be required to consider these reasons and to present any further recommendations to the Council of Governors. The recommended appointment term for the appointment or reappointment of external auditors is three to five years.
- 24.8 The Council of Governors may establish sub-committees (as set out in Annex 1 of the Standing Orders) of its members to discharge its duties under this Constitution or in order to more effectively meet its roles and responsibilities.

- 24.9 The Governors also have the specific role and function of:
- 24.9.1 developing membership and representing the interests of the Members and holding the Board of Directors to account in relation to the Trust's performance.
  - 24.9.2 representing the interests of the Members of the Trust as a whole and the interests of the public.
  - 24.9.3 holding the Non-Executive Directors, individually and collectively, to account for the performance of the Board of Directors.
  - 24.9.4 approving an application by the Trust to enter into a merger, acquisition, separation or dissolution.
- 24.10 The Trust must take steps to secure that the Governors are equipped with the skills and knowledge they require in their capacity as such.

## **25. COUNCIL OF GOVERNORS – REMUNERATION AND TRAVEL EXPENSES**

- 25.1 Governors are not to receive remuneration, provided that this shall not prevent the remuneration of Governors by their employer (such as in the instance of staff governors).
- 25.1 The Trust may pay travelling and other expenses to members of the Council of Governors at rates determined by the Trust, in accordance with the rates paid to employees and the Trust's policy on travelling and subsistence expenses as may be varied from time to time.

## **26. COUNCIL OF GOVERNORS – MEETINGS OF GOVERNORS**

- 26.1 The Chairman of the Trust (i.e. the Chairman of the Board of Directors, appointed in accordance with the provisions of paragraph 33.1 below) or, in their absence the Deputy Chairman (appointed in accordance with the provisions of paragraph 37.1 below) shall chair at meetings of the Council of Governors and the person chairing the meeting shall have a casting vote.
- 26.2 If the Deputy Chairman is absent from the meeting or is absent temporarily on the grounds of a declared conflict of interest, another Non-Executive Director shall preside.
- 26.3 Where it has been determined by the Chair that it is inappropriate for the Chairman or any non-executive director to chair the meeting, the Lead Governor shall preside.

26.4 Meetings of the Council of Governors shall be open to members of the public unless the Council of Governors decides otherwise in accordance with the exclusions identified in Annex 1 of the Standing Orders.

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

**27. COUNCIL OF GOVERNORS - CONFLICTS OF INTEREST OF GOVERNORS**

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

27.2 The Standing Orders for the Council of Governors shall make provision for the disclosure of interests and arrangements for the exclusion of a governor declaring any interest from any discussion or consideration of the matter in respect of which an interest has been disclosed. These provisions are set out in Annex 1 of the Standing Orders.

**28. LEAD GOVERNOR**

28.1 The Governors may (at their discretion) appoint a Lead and Deputy Lead Governor at any general meeting of the Council of Governors thereafter. The method of appointment shall be determined by agreement of the Council of Governors.

28.2 If the Governors make the appointments specified in Standing Order 28.1 above, then the following provisions of this Standing Order shall apply:

28.2.1 Without prejudice to the rights of any Governor to communicate directly with the Chairman, the Lead Governor shall be responsible for receiving from Governors observations and concerns expressed to them by Governors regarding a potential significant breach of the Trust's Licence.

28.2.2 Subject to paragraph 28.1, the Lead and Deputy Lead Governor so appointed shall hold office for a period of 12 calendar months but shall be eligible for reappointment at that time.

28.2.3 The contact details of the Lead and Deputy Lead Governor shall be provided to NHS England/Improvement (Monitor) on appointment. The Lead Governor shall then be responsible for receiving and communicating to the Council of Governors any correspondence from NHS England/Improvement (Monitor).

28.2.4 The Lead or Deputy Lead Governor shall chair the meeting of the Council of Governors when it is inappropriate for the Chair or a Non-Executive Director to do so.

28.3 Notwithstanding the tenure provisions set out at in paragraph 28.2.2 above, if the Lead and/or Deputy Lead Governor is considered to have acted in a manner inconsistent with paragraph 28.2.1 above and they are adjudged to have so acted by a majority of not less than 75% of the Council of Governors, then the Lead and/or Deputy Lead Governor shall stand down and cease to fulfil the role of Lead or Deputy Lead Governor.

## **29. COUNCIL OF GOVERNORS – STANDING ORDERS**

29.1 The standing orders for the practice and procedure of the Council of Governors and further additional provisions are set out in Annex 1 of the Standing Orders.

## **30. BOARD OF DIRECTORS – GENERAL DUTY**

30.1 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.

## **31. BOARD OF DIRECTORS – COMPOSITION**

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

31.2 The Board of Directors is to comprise:

31.2.1 a non-executive Chairman

31.2.2 up to a maximum of 9 other non-executive directors. and

- 31.2.3 up to a maximum of 8 executive directors.
- 31.3 One of the executive directors shall be the Chief Executive.
- 31.4 The Chief Executive shall be the Accounting Officer.
- 31.5 One of the executive directors shall be the Finance Director.
- 31.6 One of the executive directors is to be a registered medical practitioner (within the meaning of the Medical Act 1983) or a registered dentist (within the meaning of the Dentists Act 1984).
- 31.7 One of the executive directors is to be a registered nurse or a registered midwife (within the meanings of the Nursing and Midwifery Order (SI2002/253)).
- 31.8 The post of an Executive Director may be held by two individuals on a job-share basis (the executive positions of registered medical practitioner/registered dental practitioner and nurse/midwife cannot be shared between the two professions), but where such an arrangement is in force and the post carries voting rights, the two individuals may only exercise one vote between them at any meeting of the Board of Directors.
- 31.9 In the event that the number of Non-Executive Directors (including the Chairman) is equal to the number of Executive Directors, the Chairman (and in their absence, the Deputy Chairman), shall have a second or casting vote at meetings of the Board of Directors in accordance with the Standing Orders for the Board of Directors.
- 31.10 If, in spite of the Chairman's casting or second vote, there remained an imbalance at Board meetings between the number of Executive and Non Executive Directors, if a formal vote is required, the maximum number of Executive votes to be counted will be equivalent to the number of Non Executive Directors present at the meeting of the Board of Directors in accordance with the Standing Orders for the Board of Directors.
- 31.11 The validity of any act of the Trust is not affected by any vacancy among the Directors or by any defect in the appointment of any Director.
- 31.12 Subject to the provisions of paragraphs 31.2 to 31.7 above, the Board of Directors shall determine any change in the number of Directors, provided that any change in the number of Directors is within the range set out in paragraph 31.2 above.



**32. BOARD OF DIRECTORS – APPOINTMENT AND REMOVAL OF CHAIRMAN AND OTHER NON-EXECUTIVE DIRECTORS**

- 32.1 The Council of Governors at a general meeting of the Council of Governors shall appoint or remove the Chairman of the Trust and the other Non-Executive Directors.
- 32.2 Removal of the Chairman or another Non-Executive Director shall require the approval of three-quarters of the members of the Council of Governors.
- 32.3 Without prejudice to paragraph 32.1 above and subject to the provisions of paragraph 31, the process for appointing new Non-Executive Directors and the Chairman will be as set out in Annex 4 of the Standing Orders.

**33. BOARD OF DIRECTORS – REMUNERATION AND TERMS OF OFFICE**

- 33.1 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 Chairman and the other Non-Executive Directors.
- 33.2 The Trust shall establish a committee of non-executive directors to decide the remuneration and allowances, and the other terms and conditions of office, of the Chief Executive and other executive directors.

**34. BOARD OF DIRECTORS – QUALIFICATION FOR APPOINTMENT AS A NON-EXECUTIVE DIRECTOR**

- 34.1 A person may be appointed as a non-executive director only if:
- 34.1.1 They are a member of a Public Constituency,
- 34.2 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
- 34.3 They are not disqualified by virtue of paragraph 35 below.

**35. BOARD OF DIRECTORS – DISQUALIFICATION**

- 35.1 The following may not become or continue as a member of the Board of Directors:
- 35.1.1 A person who has been adjudged bankrupt or whose estate

has been sequestrated and (in either case) has not been discharged.

- 35.1.2 The person is the subject of a bankruptcy restrictions order or an interim bankruptcy restrictions order or an order to like effect made in Scotland or Northern Ireland.
- 35.1.3 The person is a person to whom a moratorium period under a debt relief order applies under Part VIIA (debt relief orders) of the Insolvency Act 1986.
- 35.1.4 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.
- 35.1.5 The person is included in the children's barred list or the adults' barred list maintained under section 2 of the Safeguarding Vulnerable Groups Act 2006, or in any corresponding list maintained under an equivalent enactment in force in Scotland or Northern Ireland.
- 35.1.6 The person is prohibited from holding the relevant office or position, or in the case of an individual from carrying on the regulated activity, by or under any enactment.
- 35.1.7 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.
- 35.1.8 A person has been erased, removed or struck off a register of professionals maintained by a regulator of health care or social work professionals.
- 35.1.9 The person has been responsible for, been privy to, contributed to or facilitated any serious misconduct or mismanagement (whether unlawful or not) in the course of carrying on a regulated activity, or discharging any functions relating to any office or employment with a service provider.
- 35.1.10 A person whose tenure of office as a chairman or member or director of a Health Service Body has been terminated on the grounds that their appointment is not in the interests of the health service.
- 35.1.11 A person who has 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.

- 35.1.12 A person who has within the preceding (2) two years been dismissed, otherwise than by reason of redundancy or ill health, from any paid employment with a Health Service Body.
- 35.1.13 A person who is a governor of another NHS foundation trust (unless they are appointed by a Partnership Organisation which is a Health Service Body). Any executive or non-executive director who has a pecuniary or other interest in another health or social care related organisation must make this known to the Chairman and must excuse themselves from Board discussion and proceedings if they believe that a conflict of interest exists at any time during the business of the Board.
- 35.1.14 A person who holds an office or paid work with HealthWatch.
- 35.1.15 A person who is a member of a local authority Health Overview and Scrutiny Committee.
- 35.1.16 A person who has failed without reasonable cause to fulfill any training requirements established by the Board of Directors.
- 35.1.17 A person who is a subject of a disqualification order made under the Company Directors' Disqualification Act 1986.
- 35.1.18 A person who has failed to sign and deliver to the Secretary a statement in the form required by the Board of Directors confirming acceptance of the Directors' Code of Conduct.
- 35.1.19 A person who is the subject of a Sex Offenders Order and/or their name is included in the Sex Offenders Register.
- 35.1.20 A person who by reference to information revealed by a Disclosure and Barring Service check is considered by the Trust to be inappropriate on the grounds that their appointment may adversely affect public confidence in the Trust or otherwise bring the Trust into disrepute or
- 35.1.21 A person who is unable or unwilling to sign an annual declaration that they continue to meet the Care Quality Commission's Fit and Proper Person regulations.

35.1.22 In the case of a Non-Executive Director, they no longer satisfy paragraph 35.1 above.

35.1.23 They do not meet the criteria set out in Regulation 5(3) of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 (including any modification or re-enactment).

**36. BOARD OF DIRECTORS – APPOINTMENT OF DEPUTY CHAIRMAN**

36.1 The Council of Governors at a general meeting of the Council of Governors shall appoint one of the Non-Executive Directors as a deputy chairman, on the recommendation of the Chairman.

**37. BOARD OF DIRECTORS - APPOINTMENT AND REMOVAL OF THE CHIEF EXECUTIVE AND OTHER EXECUTIVE DIRECTORS**

37.1 The Non-Executive Directors shall appoint or remove the Chief Executive.

37.2 The appointment of the Chief Executive shall require the approval of a majority of the members of the Council of Governors present and voting at a meeting of the Council of Governors.

37.3 A committee consisting of the Chairman, the Chief Executive and the other Non-Executive Directors shall appoint or remove the other executive directors.

**38. BOARD OF DIRECTORS – MEETINGS**

38.1 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.

38.2 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.

38.3 Further provisions are set out in Annex 2 of the Standing Orders.

**39. BOARD OF DIRECTORS – STANDING ORDERS**

39.1 The standing orders for the practice and procedure of the Board of Directors are attached to the Constitution as a separate document.

#### **40. BOARD OF DIRECTORS - CONFLICTS OF INTEREST OF DIRECTORS**

- 40.1 The duties that a director of the Trust has by virtue of being a director include in particular:
- 40.1.1 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.
  - 40.1.2 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.
- 40.2 The duty referred to in sub-paragraph 40.1.1 is not infringed if:
- 40.2.1 The situation cannot reasonably be regarded as likely to give rise to a conflict of interest, or
  - 40.2.2 The matter has been authorised in accordance with the constitution.
- 40.3 The duty referred to in sub-paragraph 40.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- 40.3.1 In sub-paragraph 40.1.2, “third party” means a person other than –
  - 40.3.2 The Trust, or
  - 40.3.3 A person acting on its behalf.
- 40.4 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.
- 40.5 If a declaration under this paragraph proves to be, or becomes, inaccurate, incomplete, a further declaration must be made.
- 40.6 Any declaration required by this paragraph must be made before the Trust enters into the transaction or arrangement.
- 40.7 This paragraph does not require a declaration of an interest of which the director is not aware or where the director is not aware of the transaction or arrangement in question.

- 40.8 A director need not declare an interest:
- 40.8.1 If it cannot reasonably be regarded as likely to give rise to a conflict of interest.
  - 40.8.2 If, or to the extent that, the directors are already aware of it.
  - 40.8.3 If, or to the extent that, it concerns terms of the director's appointment that have been or are to be considered –
    - 40.8.4 By a meeting of the Board of Directors, or
    - 40.8.5 By a committee of the directors appointed for the purpose under the constitution.
- 40.9 A matter shall have been authorised for the purposes of paragraph 40.2.2 above if:
- 40.9.1 the Directors, in accordance with the requirements set out in this paragraph 40.9, authorise any matter or situation proposed to them by any Director which would, if not authorised, involve a Director (an "Interested Director") breaching his duty under paragraph 40.1.1 above to avoid Conflicts:
    - 40.9.1.1 the matter in question shall have been proposed by any Director for consideration in the same way that any other matter may be proposed to the Directors under the provisions of this Constitution.
    - 40.9.1.2 any requirement as to the quorum for consideration of the relevant matter is met without counting the Interested Director or any other Interest Director. and
    - 40.9.1.3 the matter was agreed to without the Interested Director voting or would have been agreed to if the Interested Director's and any other Interested Director's vote had not been counted.
  - 40.9.2 Any authorisation of a Conflict under this paragraph 40.9 may (whether at the time of giving the authorisation or subsequently):
    - 40.9.2.1 extend to any actual or potential conflict of interest which may reasonably be expected to arise out of the Conflict so authorised.
    - 40.9.2.2 provide that the Interested Director be excluded from the receipt of documents and information

and the participation in discussions (whether at meetings of the Directors or otherwise) related to the Conflict.

40.9.2.3 impose upon the Interested Director such other terms for the purposes of dealing with the Conflict as the Directors think fit.

40.9.2.4 provide that, where the Interested Director obtains, or has obtained (through his involvement in the Conflict and otherwise than through his position as a Director of the Trust) information that is confidential to a third party, he will not be obliged to disclose that information to the Board of Directors, or to use it in relation to the Trust's affairs where to do so would amount to a breach of that confidence. and

40.9.2.5 permit the Interested Director to absent himself from the discussion of matters relating to the Conflict at any meeting of the Directors and be excused from reviewing papers prepared by, or for, the Directors to the extent they relate to such matters.

40.10 Where the Directors authorise a Conflict, the Interested Director will be obliged to conduct himself in accordance with any terms imposed by the Directors in relation to the Conflict.

40.11 The Directors may revoke or vary such authorisation at any time, but this will not affect anything done by the Interested Director, prior to such revocation or variation in accordance with the terms of such authorisation.

40.12 A Director is not required, by reason of being a Director, to account to the Trust for any remuneration, profit or other benefit which he derives from or in connection with a relationship involving a Conflict which has been authorised by the Directors (subject in each case to any terms, limits or conditions attaching to that authorisation) and no contract shall be liable to be avoided on such grounds.

## **41. REGISTERS**

41.1 The Trust shall have:

41.1.1 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.

41.1.2 a register of members of the Council of Governors.

41.1.3 a register of interests of governors.

41.1.4 a register of directors and

41.1.5 a register of interests of the directors.

## **42. ADMISSION TO AND REMOVAL FROM THE REGISTERS**

### **Register of Members**

42.1 The Secretary shall maintain the Register of Members in two parts. Part one, which shall be the register referred to in the 2006 Act, shall include the name of each member and the constituency or class to which they belong, and shall be open to inspection by the public in accordance with paragraph 43 below. Part two shall contain all the information from the application form and shall not be open to inspection by the public nor may copies or extracts from it be made available to any third party. Notwithstanding this provision the Trust shall extract such information as it needs in aggregate to satisfy itself that the actual membership of the Trust is representative of those eligible for membership and for the administration of the provisions of this Constitution.

### **Register of Governors**

42.2 The Register of Governors shall list the names of Governors, their category of membership of the Council of Governors and an address through which they may be contacted which may be that of the Secretary.

### **Register of Interests of the Governors**

42.3 The Register of Interests of the Governors shall contain the names of each Governor, whether they have declared any interests and, if so, the interests declared in accordance with this Constitution or the Standing Orders for the Council of Governors.

### **Register of Directors**

42.4 The Register of Directors shall list the names of Directors, their capacity on the Board of Directors and an address through which they may be contacted which may be the Secretary.

### **Register of Interests of Directors**

42.5 The register of interests of Directors shall contain the names of each Director, whether they have declared any interests and, if so, the interests declared in accordance with this Constitution or the Standing Orders for the Board of Directors.

## **43. REGISTERS – INSPECTION AND COPIES**



- 43.1 The Trust shall make the registers specified in paragraph 42 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.
- 43.2 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.
- 43.3 So far as the registers are required to be made available:
- 43.3.1 they are to be available for inspection free of charge at all reasonable times. and
  - 43.3.2 a person who requests a copy of or extract from the registers is to be provided with a copy or extract.
- 43.4 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.

#### **44. DOCUMENTS AVAILABLE FOR PUBLIC INSPECTION**

- 44.1 The Trust shall make the following documents available for inspection by members of the public free of charge at all reasonable times:
- 44.1.1 a copy of the current constitution
  - 44.1.2 a copy of the latest annual accounts and of any report of the auditor on them, and
  - 44.1.3 a copy of the latest annual report
  - 44.1.4 a copy of any notice given under section 52 of the 2006 Act.
- 44.2 The Trust shall also make the following documents relating to a special administration of the trust available for inspection by members of the public free of charge at all reasonable times:
- 44.2.1 a copy of any order made under section 65D (appointment of trust special administrator), 65J (power to extend time), 65KC (action following Secretary of State's rejection of final report), 65L(trusts coming out of administration) or 65LA (trusts to be dissolved) of the 2006 Act.
  - 44.2.2 a copy of any report laid under section 65D (appointment of trust special administrator) of the 2006 Act.

- 44.2.3 a copy of any information published under section 65D (appointment of trust special administrator) of the 2006 Act.
  - 44.2.4 a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act.
  - 44.2.5 a copy of any statement provided under section 65F(administrator's draft report) of the 2006 Act.
  - 44.2.6 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.
  - 44.2.7 a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act.
  - 44.2.8 a copy of any final report published under section 65I (administrator's final report).
  - 44.2.9 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.
  - 44.2.10 a copy of any information published under section 65M (replacement of trust special administrator) of the 2006 Act.
- 44.3 Any person who requests a copy of or extract from any of the above documents is to be provided with a copy.
- 44.4 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.

## **45. EXTERNAL AUDITOR**

- 45.1 The Trust shall have an auditor and the Trust agrees to provide the Auditor with every facility and all information which he may reasonably require for the purposes of his functions under Schedule 10 of the 2006 Act.
- 45.2 The Council of Governors shall appoint or remove the external auditor at a general meeting of the Council of Governors.
- 45.3 The external auditor is to carry out its duties in accordance with Schedule 10 of the 2006 Act and in accordance with any directions

given by NHS England/Improvement (Monitor), or its successor body, on standards, procedures and techniques to be adopted.

- 45.4 The external auditor may provide services which are outside of the scope of the annual accounts external audit process (non-audit services). The Council of Governors may agree to delegate the approval of non-audit services to the Audit Committee.

**46. AUDIT COMMITTEE**

- 46.1 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.

**47. ACCOUNTS**

- 47.1 The Trust must keep proper accounts and proper records in relation to the accounts.
- 47.2 NHS England/Improvement (Monitor) may with the approval of the Secretary of State give directions to the Trust as to the content and form of its accounts.
- 47.3 The accounts are to be audited by the Trust's auditor.
- 47.4 The Trust shall prepare in respect of each financial year annual accounts in such form as NHS England/Improvement (Monitor) may with the approval of the Secretary of State direct.
- 47.5 The functions of the Trust with respect to the preparation of the annual accounts shall be delegated to the Accounting Officer.

**48. ANNUAL REPORT, FORWARD PLANS AND NON-NHS WORK**

- 48.1 The Trust shall prepare an Annual Report and send it to NHS England/Improvement (Monitor).
- 48.2 The Trust shall give information as to its forward planning in respect of each financial year to NHS England/Improvement (Monitor).
- 48.3 The document containing the information with respect to forward planning (referred to above) shall be prepared by the directors.
- 48.4 In preparing the document, the directors shall have regard to the views of the Council of Governors.
- 48.5 Each forward plan must include information about:
- 48.5.1 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

48.5.2 the income it expects to receive from doing so.

48.6 Where a forward plan contains a proposal that the Trust carry on an activity of a kind mentioned in sub-paragraph 48.5.1 the Council of Governors must:

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

48.6.2 notify the directors of the Trust of its determination.

A trust which proposes to increase by 5% or more the proportion of its total income in any financial year attributable to activities other than the provision of goods and services for the purposes of the health service in England may implement the proposal only if more than half of the members of the council of governors of the trust voting approve its implementation.

## **49. PRESENTATION OF THE ANNUAL ACCOUNTS AND REPORTS TO THE GOVERNORS AND MEMBERS**

49.1 The following documents are to be presented to the Council of Governors at a general meeting of the Council of Governors:

49.1.1 the annual accounts

49.1.2 any report of the auditor on them

49.1.3 the annual report.

49.2 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.

49.3 The Trust may combine a meeting of the Council of Governors convened for the purposes of sub-paragraph 49.1 with the Annual Members' Meeting.

## **50. MERGERS ETC. AND SIGNIFICANT TRANSACTIONS**

- 50.1 The Trust may enter into a significant transaction only if more than half of the members of the Council of Governors of the Trust voting approve entering into the transaction.
- 50.2 A “Significant transaction” means a transaction that meets any of the criteria set out below:
- assets – the gross asset value (total of the fixed assets and current assets) of the asset which is subject to the transaction is greater than 25% of the Trust Gross Assets prior to the transaction at the time the Board seeks approval from the Governors.
  - income – either the forecast annual income attributable to the Asset associated with the transaction or the contract value associated with the transaction is greater than 25% of the Trust’s gross annual income forecast by the Trust for the current financial year prior to the transaction at the time the Board seeks approval from the Governors.
  - capital – the gross capital of the company or business being acquired/divested is greater than 25% of what would be the Trust forecasted total capital following completion of the transaction or the effects on the total capital of the Trust resulting from a transaction greater than 25% of that total capital. For this purpose Gross Capital equals the market value of the target’s shares and debt securities, plus the excess of current liabilities over current assets. Total Capital of the Trust equals taxpayers’ equity in the Trust.
  - An application for a merger, acquisition, dissolution, separation etc. as defined in the NHS Act 2006.
- 50.3 Notwithstanding the above provisions and for the avoidance of doubt, a Significant Transaction does not include:
- 50.3.1 transaction pursuant to: Sections 56, 56A 56B and 57A of the 2006 Act. or
  - 50.3.2 contracts in place, from time to time, with NHS Somerset Clinical Commissioning Group (or its successor organisation). or
  - 50.3.3 contracts in place, from time to time, with any other Clinical Commissioning Groups, or the NHS Commissioning Board (or its successor organisation). or
  - 50.3.4 contracts in place, from time to time, with Public Health England (or its successor organisation) and local authorities

## **51. INDEMNITY**

- 51.1 Governors of the Council of Governors and Board of Directors and Secretary who act honestly and in good faith will not have to meet out of their personal resources any personal civil liability which is incurred in the execution or purported execution of their functions, save where they have acted recklessly. Any costs arising in this way will be met by the Trust.
- 51.2 The Trust may make such arrangements as it considers appropriate for the provision of indemnity insurance or similar arrangement for its own benefit and for the benefit of the Council of Governors, Board of Directors and the Secretary.

## **52. INSTRUMENTS**

- 52.1 The Trust shall have a seal.
- 52.2 The seal shall not be affixed except under the authority of the Board of Directors.
- 52.3 An overview of the sealings is to be presented to the Board of Directors on a quarterly basis.

## **53. DISPUTE RESOLUTION PROCEDURES**

### **53.1 Dispute about entitlement to membership**

53.1.1 In the event of any dispute about the entitlement to membership, the dispute shall be referred to the Secretary who shall make a determination on the point in issue. If the Member or applicant (as the case may be) is aggrieved at the decision of the Secretary they may appeal in writing within 14 days of the Secretary's decision to the Council of Governors or a delegated committee or sub-committee of the Council of Governors whose decision shall be final.

### **53.2 Dispute in relation to this Constitution (other than about membership)**

53.2.1 In the event of any dispute in relation to this Constitution that concerns anything other than membership, the dispute shall be referred to the Chairman who shall make a determination on the point in issue. If the Member or complainant (as the case may be) is aggrieved at the decision of the Chairman they may appeal in writing within 14 days of the Chairman's decision to the Board of Directors whose decision shall be final.

**13.2 Dispute between the Council of Governors and Board of Directors**

4.3.1 In the event of dispute between the Council of Governors and the Board of Directors the Raising Concern Policy will apply.

13.2.1 In the first instance the Chairman on the advice of the Secretary, and such other advice as the Chairman may see fit to obtain, shall seek to resolve the dispute.

13.2.2 If the Chairman is unable to resolve the dispute they shall appoint a special committee comprising equal numbers of Directors and Governors 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.

13.2.3 If the recommendations (if any) of the special committee are unsuccessful in resolving the dispute, the Chairman may refer the dispute back to the Board of Directors who shall make the final decision.

**54. AMENDMENT OF THE CONSTITUTION**

54.1 The Trust may make amendments of its constitution only if:

54.1.1 More than half of the members of the Council of Governors of the Trust voting approve the amendments, and

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

54.2 Amendments made under paragraph 54.1 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.

- 54.3 Where an amendment is made to the constitution in relation the powers or duties of the Council of Governors (or otherwise with respect to the role that the Council of Governors has as part of the Trust):
- 54.3.1 At least one member of the Council of Governors must attend the next Annual Members' Meeting and present the amendment, and
  - 54.3.2 The Trust must give the members an opportunity to vote on whether they approve the amendment.
- 54.4 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.
- 54.5 Amendments by the Trust of its constitution are to be notified to NHS England/Improvement (Monitor), or its successor body. For the avoidance of doubt, NHS England/Improvement (Monitor)'s, or its successor body's, functions do not include a power or duty to determine whether or not the constitution, as a result of the amendments, accords with Schedule 7 of the 2006 Act.

## **55. DISSOLUTION OF THE TRUST**

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

## **56. NOTICES**

- 56.1 Save where a specific provision of the Constitution otherwise requires or permits, any notice required by this Constitution to be given shall be given in writing or shall be given using electronic communications to an address for the time being notified for that purpose.
- 56.2 In paragraph 56.1 "electronic communication" shall have the meaning set out in the Electronic Communications Act 2000 or any statutory modification or re-enactment thereof.
- 56.3 Proof that an envelope containing a notice was properly addressed, prepaid and posted shall be conclusive evidence that the notice was given. A notice served pursuant to paragraph 56.1 above shall be deemed to have been received 48 hours after the envelope containing it was posted, or in the case of a notice contained in an electronic communication, 48 hours after it was sent.



## **57. THE ROLE AND RESPONSIBILITIES OF THE SECRETARY**

57.1 The Trust shall have a Secretary who may be an employee of the Trust, but may not be a Governor, the Chief Executive or the Finance Director of the Trust.

57.2 Notwithstanding the specific functions of the Secretary, as set out in this Constitution, the Secretary will be expected to:

57.2.1 Ensure good information flows within the Board of Directors and its committees and between senior management and the Council of Governors and Members.

57.2.2 Ensure that the procedures of the Board of Directors (as set out in this Constitution and the Standing Orders for the Board of Directors) are complied with.

57.2.3 Ensure that the procedures of the Council of Governors (as set out in this Constitution and the Standing Orders for Governors) are complied with.

57.2.4 Advise the Board of Directors and the Council of Governors (through the Chairman or the Deputy Chairman, as the case may be) on all governance matters. and

57.2.5 Be available to give advice and support to individual Directors and assistance with professional development.

## **ANNEX 1 – THE PUBLIC CONSTITUENCIES**

(Ref. Paragraph 8)

**Table 1 - Seats on the Council of Governors from 1 May 2023**

<b>Name of Constituency</b>	<b>For residents of</b>	<b>Minimum number of members</b>	<b>Elected Governors</b>
Mendip	The Mendip District Council area	150	4
Sedgemoor	The Sedgemoor District Council area	150	4
South Somerset	The South Somerset District Council area	200	6
Somerset West and Taunton	Somerset West and Taunton District Council	200	5
Dorset	Dorset	50	1
Outside Somerset and Dorset	England and Wales outside Somerset and Dorset	50	1
<b>Totals</b>	<b>Minimum Membership</b>	<b>800</b>	
	<b>Governors</b>		<b>21</b>

## **ANNEX 2 – THE STAFF CONSTITUENCY**

(Ref. Paragraph 9)

### **1. MINIMUM NUMBER OF MEMBERS**

- 1.1 There will be a single Staff Constituency with at least 1,200 members.

### **2. NUMBER OF SEATS ON COUNCIL OF GOVERNORS**

- 2.1 The number of Governors to be elected by the Staff Constituency is 12 (twelve).

### **3. STAFF GOVERNOR ELIGIBILITY**

- 3.1 Subject to the provisions set out in paragraphs 3.2 and 3.3 below, members of the Staff Constituency may elect any of the members of the Staff Constituency who are eligible to be a Staff Governor.

## **ANNEX 3 – COMPOSITION OF COUNCIL OF GOVERNORS**

(Paragraph 17)

### **1. OBJECTIVES**

- 1.1 The Trust shall seek to ensure, subject to the requirements of the 2006 Act, that the composition of the Council of Governors meets the following objectives:
  - 1.1.1. The interests of the community served by the Trust are appropriately represented and the NHS and Trust principles (as set out in Annex 4 of the Standing Orders) are upheld.  
and
  - 1.1.2. The level of representation of the Public Constituencies, the Staff Constituency, and the Appointing Organisations strikes an appropriate balance having regard to their legitimate interest in the Trust's affairs and, to this end, the Council of Governors'.
- 1.2 The Council shall at all times maintain a policy for the composition of the Council of Governors which takes account of the Trust's membership strategy.
- 1.3 Shall from time to time, and not less than every three years, review the policy for the composition of the Council of Governors and the membership strategy.
- 1.4 When appropriate, shall propose amendments to this Constitution.
- 1.5 Shall provide to the Members relevant information concerning the performance and forward plans of the Trust. and
- 1.6 Shall act in an advisory capacity when the Board of Directors has to make challenging or difficult decisions including those that affect the strategic direction of the Trust.

### **2. COMPOSITION**

- 2.1 The Composition of the Council of Governors shall be as follows:

2.2 The Composition of the Council of Governors from 1 May 2023 shall be as follows:

	<b>Electing/Appointing Body</b>		<b>Elected Governors</b>	<b>Appointed Governors</b>
<b>1.1</b>	<b>Public Governors</b>			
	1.1.1	Mendip District Council area	4	
	1.1.2	Sedgemoor District Council area	4	
	1.1.3	South Somerset District Council area	6	
	1.1.4	Somerset West and Taunton District Council	5	
	1.1.5	Dorset	1	
	1.1.6	England and Wales outside Somerset	1	
<b>1.2</b>	<b>Staff Governors</b>			
	Staff Constituency		12	
<b>Appointed Governors</b>				
<b>1.3</b>	<b>CCG Governor</b>			
	NHS Somerset			1
<b>1.4</b>	<b>Local Authorities' Governors</b>			
	1.5.1	Somerset Council		2
<b>1.5</b>	<b>Partnership Organisations' Governors</b>			
	1.6.1	Somerset Primary Care Board		1
	1.6.2	Voluntary, Community and Social Enterprise (VCSE)		2
	1.6.3	Universities		1
	1.6.4	Symphony Healthcare Services Ltd		1
	1.6.5	Simply Serve Limited		1
<b>Total</b>			<b>33</b>	<b>9</b>

2.3 The Council of Governors shall comprise Governors who are:

2.4.1 Elected by the respective constituencies in accordance with the provisions of this Constitution. or

2.4.2 Appointed in accordance with paragraph 3 of this Annex 3 below.

2.4 The Council of Governors shall at all times be constituted so that more than half the Governors are elected by members of the Trust other than those who are members of the Staff Constituency.

### 3. APPOINTED GOVERNORS

3.1 The following organisations, as listed in paragraph 17.5 shall be entitled to appoint Governors:

#### 3.1.1 NHS Somerset

3.1.1.1 **NHS Somerset** or its successor organisation shall be entitled to appoint 1 (one) Governor by notice in writing signed by the Chief Executive or the Chairman of such Trust and delivered to the Secretary.

#### 3.1.2 Local Authorities' Governors

3.1.2.1 **Somerset Council** or its successor organisation shall be entitled to appoint 2 (two) Governors by notice in writing signed by the Leader of the Council or a member of the Council executive and delivered to the Secretary.

#### 3.1.3 Partnership Organisations' Governors

3.1.3.1 **Somerset Primary Care Board** shall be entitled to appoint 1 (one) Governor by notice in writing signed by an authorised officer of the Board and delivered to the Secretary.

3.1.3.2 **Voluntary, Community and Social Enterprise (VCSE)** shall be entitled to co-ordinate the appointment of 2 (two) Governors by notice in writing and delivered to the Secretary.

3.1.3.3 **Bournemouth University** (established under Section 216(1) of the Education Reform Act 1988 by virtue of the Educational (Recognised Bodies) (England) Order 2003), whose address is Fern Barrow, Talbot Campus, Poole, Dorset, BH12 5BB. **University of Bristol**, (established under Royal Charter granted on 17 May 1909) whose address is Senate House, Tyndall Avenue, Bristol, BS8 1TH. **University of Plymouth** (established under Section 216(1) of the Education Reform Act 1988 by virtue of the Educational (Recognised Bodies) (England) Order 2003) whose address is Drake Circus, Plymouth, PL4 8AA. **University of Exeter**, (established under Section 216(1) of the Education Reform Act 1988 by virtue of the Educational (Recognised Bodies) (England) Order 2003), whose address is Stocker Rd, Exeter EX4 4PY, (together the "Universities") or their respective successor organisations shall be entitled to appoint 1

(one) Governor between them by notice in writing signed by a Vice Chancellor or a pro Vice Chancellor from each university, and delivered to the Secretary.

3.1.3.4 **Symphony Healthcare Services Ltd** shall be entitled to appoint 1 (one) Governor by notice in writing signed by an authorised officer of the Board and delivered to the Secretary.

3.1.3.5 **Simply Serve Limited** shall be entitled to appoint 1 (one) Governor by notice in writing signed by an authorised officer of the Board and delivered to the Secretary.

3.2 All Appointed Governors shall be named individuals. The organisations entitled to appoint Governors shall agree one named deputy to attend meetings in the absence of the appointed governor by notice in writing signed by an authorised officer of the organisation and delivered to the Secretary.

3.3 The Council of Governors retains the right to review and amend the organisations entitled to appoint a Governor.

3.4 Notwithstanding the provisions of paragraphs 3.1 above, the Chairman may veto the appointment of any Appointed Governor by serving notice in writing on the relevant Organisation where they believe that the appointment in question is unreasonable, irrational, or otherwise inappropriate.

## **ANNEX 4 - MODEL ELECTION RULES**

### **Model Rules for Elections to the Council of Governors**

#### **PART 1: INTERPRETATION**

1. Interpretation

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

2. Timetable
3. Computation of time

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

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

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

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

#### **PART 5: CONTESTED ELECTIONS**

19. Poll to be taken by ballot
20. The ballot paper
21. The declaration of identity (public and patient constituencies)

#### **Action to be taken before the poll**

22. List of eligible voters
23. Notice of poll
24. Issue of voting information by returning officer



- 25. Ballot paper envelope and covering envelope
- 26. E-voting systems

### **The poll**

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

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

- 36. Receipt of voting documents
- 37. Validity of votes
- 38. Declaration of identity but no ballot (public and patient constituency)
- 39. De-duplication of votes
- 40. Sealing of packets

### **PART 6: COUNTING THE VOTES**

- STV41. Interpretation of Part 6
- 42. Arrangements for counting of the votes
- 43. The count
- STV44. Rejected ballot papers and rejected text voting records
- FPP44. Rejected ballot papers and rejected text voting records
- STV45. First stage
- STV46. The quota
- STV47. Transfer of votes
- STV48. Supplementary provisions on transfer
- STV49. Exclusion of candidates
- STV50. Filling of last vacancies
- STV51. Order of election of candidates
- FPP51. Equality of votes

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

- FPP52. Declaration of result for contested elections
- STV52. Declaration of result for contested elections
- 53. Declaration of result for uncontested elections

## **PART 8: DISPOSAL OF DOCUMENTS**

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

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

- FPP59. Countermand or abandonment of poll on death of candidate
- STV59. Countermand or abandonment of poll on death of candidate

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

### **Expenses**

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

### **Publicity**

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

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

- 66. Application to question an election

## **PART 12: MISCELLANEOUS**

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

## **PART 1: INTERPRETATION**

### **1. INTERPRETATION**

1.1 In these rules, unless the context otherwise requires:

“2006 Act” means the National Health Service Act 2006.

“corporation” means the public benefit corporation subject to this constitution.

“council of governors” means the council of governors of the corporation.

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

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

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

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

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

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

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

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

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

“NHS England/Improvement” means the corporate body known as NHS England/Improvement (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:

<b>Proceeding</b>	<b>Time</b>
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 they consider 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 their 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 their 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.

## **12. DECLARATION OF ELIGIBILITY**

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

- (a) That they are 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 their 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 they have 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 them 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 their vote using the internet voting system.
  - (b) If telephone voting is to be a method of polling, the telephone voting system to be used for the purpose of the election is:
    - (i) Configured in accordance with these rules. and
    - (ii) Will create an accurate telephone voting record in respect of any voter who casts their vote using the telephone voting system.
  - (c) If text message voting is to be a method of polling, the text message voting system to be used for the purpose of the election is:
    - (i) Configured in accordance with these rules. and
    - (ii) Will create an accurate text voting record in respect of any voter who casts their vote using the text message voting system.

## **20. THE BALLOT PAPER**

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

20.2 Every ballot paper must specify:

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

20.3 Each ballot paper must have a unique identifier.

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

## **21. THE DECLARATION OF IDENTITY (PUBLIC AND PATIENT CONSTITUENCIES)**

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

- (a) That the voter is the person:
  - (i) To whom the ballot paper was addressed, and/or
  - (ii) To whom the voter ID number contained within the e-voting information was allocated,

- (b) That they have not marked or returned any other voting information in the election, and
- (c) The particulars of their 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 their declaration of identity with their 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 their 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 their 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 their 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 their 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 they are 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 their voter ID number in order to be able to cast their 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 they are 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
- (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.
- 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 their 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 their vote.
  - (b) Prevent a voter from voting for more candidates than they are entitled to at the election.
  - (c) Create a record ("text voting record") that is stored in the text messaging voting system in respect of each vote cast by a voter by text message that comprises of:
    - (i) The voter's voter ID number.
    - (ii) The voter's declaration of identity (where required).
    - (iii) The candidate or candidates for whom the voter has voted. and
    - (iii) The date and time of the voter's vote
  - (d) If the voter's vote has been duly cast and recorded, provide the voter with confirmation of this.
  - (e) Prevent any voter from voting after the close of poll.

## **THE POLL**

### **27. ELIGIBILITY TO VOTE**

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

### **28. VOTING BY PERSONS WHO REQUIRE ASSISTANCE**

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

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

## **29. SPOILT BALLOT PAPERS AND SPOILT TEXT MESSAGE VOTES**

29.1 If a voter has dealt with their 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 they can obtain it.

29.3 The returning officer may not issue a replacement ballot paper for a spoilt ballot paper unless they:

(a) Are satisfied as to the voter’s identity. and

(b) Have 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 their 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 they 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 they are 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 spoiled text message votes”):

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

### **30. LOST VOTING INFORMATION**

30.1 Where a voter has not received their 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 they:

- (a) Are satisfied as to the voter’s identity.
- (b) Have no reason to doubt that the voter did not receive the original voting information.
- (c) Have 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, they are also satisfied that that person has not already voted in the election, notwithstanding the fact that a declaration of identity if required has

already been received by the returning officer in the name of that voter.

- 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 their 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 their 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 their vote, the voter will need to key in a mark on the screen opposite the particulars of the candidate or candidates for whom they wish to cast their vote.
- 33.5 The voter will not be able to access the internet voting system for an election once their vote at that election has been cast.

### **34. VOTING PROCEDURE FOR REMOTE VOTING BY TELEPHONE**

- 34.1 To cast their 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 their 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 their vote by keying in the numerical voting code of the candidate or candidates, for whom they wish to vote.
- 34.5 The voter will not be able to access the telephone voting facility for an election once their vote at that election has been cast.

### **35. VOTING PROCEDURE FOR REMOTE VOTING BY TEXT MESSAGE**

- 35.1 To cast their 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 their voter ID number and the numerical voting code for the candidate or candidates, for whom they wish 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**

42.1 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, they are 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, they are 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, they are 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, they are to:
- (a) Mark the internet voting record, telephone voting record or text voting record (as applicable) “disqualified”.
  - (b) Record the voter ID number on the internet voting record, telephone voting record or text voting record (as applicable) in the list of disqualified documents. and.
  - (c) Place the document or documents in a separate packet.

**38. DECLARATION OF IDENTITY BUT NO BALLOT PAPER (PUBLIC AND PATIENT CONSTITUENCY)<sup>1</sup>**

- 38.1 Where the returning officer receives an ID declaration form if required but no ballot paper, the returning officer is to:
- (a) Mark the ID declaration form “disqualified”.
  - (b) Record the name of the voter in the list of disqualified documents, indicating that a declaration of identity was received from the voter without a ballot paper, and.
  - (c) Place the ID declaration form in a separate packet.

**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 they 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

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

- 39.3 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.
  - (c) 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,
  - (b) 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**

### **STV 41. NOT USED**

### **42. ARRANGEMENTS FOR COUNTING OF THE VOTES**

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

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

- (a) The board of directors and the council of governors of the corporation have approved:
  - (i) The use of such software for the purpose of counting votes in the relevant election, and
  - (ii) A policy governing the use of such software, and
- (b) The corporation and the returning officer are satisfied that the use of such software will produce an accurate result.

### **43. The count**

43.1 The returning officer is to:

- (a) Count and record the number of:
  - (iii) Ballot papers that have been returned. and.
  - (iv) The number of internet voting records, telephone voting records and/or text voting records that have been created, and.
- (b) Count the votes according to the provisions in this Part of the rules and/or the provisions of any policy approved pursuant to rule 42.2(ii) where vote counting software is being used.

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

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

#### **44 (FPP). REJECTED BALLOT PAPERS AND REJECTED TEXT VOTING RECORDS**

44.1 Any ballot paper:

- (a) Which does not bear the features that have been incorporated into the other ballot papers to prevent them from being reproduced.
- (b) On which 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.

44.2 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.

44.3 A ballot paper on which a vote is marked:

- (a) Elsewhere than in the proper place.
- (b) Otherwise than by means of a clear mark.
- (c) By more than one mark,

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

44.4 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.

44.5 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.

44.6 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.

44.7 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.

44.8 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 they can be identified by it.

44.9 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.

44.10 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. NOT USED.**

**STV46. NOT USED.**

**STV47. NOT USED.**

**STV48. NOT USED.**

**STV49. NOT USED.**

**STV50. NOT USED.**

**STV51. NOT USED.**

#### **51(FPP) Equality of votes**

51.1 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**

### **52(FPP). DECLARATION OF RESULT FOR CONTESTED ELECTIONS**

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

- (a) Declare the 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 they have declared elected:
  - (i) Where the election is held under a proposed constitution pursuant to powers conferred on the [insert name] NHS Trust by section 33(4) of the 2006 Act, to the chairman of the NHS Trust, or.
  - (ii) In any other case, to the chairman of the corporation.  
and
- (c) Give public notice of the name of each candidate whom they have declared elected.

52.2 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 44.5,
- (c) The number of rejected text voting records under each of the headings in rule 44.10,  
  
available on request.

**STV52. NOT USED.**

### **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 they have declared elected to the chairman of the corporation, and.
- (c) Give public notice of the name of each candidate who they have 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 spoiled ballot papers and the list of spoiled text message votes.
- (c) The list of lost ballot documents, and.
- (d) The list of eligible voters,

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

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

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

election relates.

## **55. DELIVERY OF DOCUMENTS**

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

## **56. FORWARDING OF DOCUMENTS RECEIVED AFTER CLOSE OF THE POLL**

56.1 Where:

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

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

## **57. RETENTION AND PUBLIC INSPECTION OF DOCUMENTS**

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

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

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

## **58. APPLICATION FOR INSPECTION OF CERTAIN DOCUMENTS RELATING TO AN ELECTION**

58.1 The corporation may not allow:

- (a) The inspection of, or the opening of any sealed packet containing:
  - (i) Any rejected ballot papers, including ballot papers rejected in part.
  - (ii) Any rejected text voting records, including text voting records rejected in part.
  - (iii) Any disqualified documents, or the list of disqualified documents.
  - (iv) Any counted ballot papers, internet voting records, telephone voting records or text voting records, or.
  - (v) The list of eligible voters, or
- (b) Access to or the inspection of the complete electronic copies of the internet voting records, telephone voting records and text voting records created in accordance with rule 26 and held in a device suitable for the purpose of storage, by any person without the consent of the board of directors of the corporation.

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

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

- (a) Persons.
- (b) Time.
- (c) Place and mode of inspection.
- (d) Production or opening,

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

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

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

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

- (i) That their vote was given, and
- (ii) That NHS England/Improvement (Monitor) has declared that the vote was invalid.

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

### **59(FPP). COUNTERMAND OR ABANDONMENT OF POLL ON DEATH OF CANDIDATE**

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

- (a) 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 them in consultation with the corporation, within the period of 40 days, computed in accordance with rule 3 of these rules, beginning with the day that the poll was countermanded or abandoned.

59.2 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.

59.3 Where a poll is abandoned under rule 59.1(a), rules 59.4 to 59.7 are to apply.

59.4 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.

59.5 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.

59.6 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.

59.7 Once the documents relating to the poll have been sealed up and endorsed pursuant to rules FPP59.4 to FPP59.6, the returning officer is to deliver them to the chairman of the corporation, and rules 57 and 58 are to apply.

**STV59. NOT USED.**



## **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 NHS Improvement (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 their family any money or property (whether as a gift, donation, loan, or otherwise) to meet or contribute to expenses incurred by or on behalf of the candidate for the purposes of an election.

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 their own services voluntarily, on their own time, and free of charge is not to be considered an expense for the purposes of this Part.

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

### **66. APPLICATION TO QUESTION AN ELECTION**

66.1 An application alleging a breach of these rules, including an electoral irregularity under Part 10, may be made to NHS Improvement (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 NHS Improvement(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. NHS Improvement (Monitor) will refer the application to the independent election arbitration panel appointed by NHS Improvement (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 NHS Improvement (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 they think 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 they have 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 they consider appropriate.