

**KING'S COLLEGE HOSPITAL NHS FOUNDATION TRUST  
(A PUBLIC BENEFIT CORPORATION)**

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**CONSTITUTION**

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**DECEMBER 2025**

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***KINGS COLLEGE HOSPITAL NHS FOUNDATION TRUST CONSTITUTION***

**1. DEFINITIONS & INTERPRETATION**

1.1 In this Constitution:

<b>“Accountable Officer”</b>	means that person who from time to time discharges the functions specified in paragraph 25(5) of Schedule 7 to the 2006 Act.
<b>"Annual Members' Meeting"</b>	means an annual meeting of the Members.
<b>“Applicant”</b>	means an individual who has applied to become a Member or who has been invited to become a Member of the Trust.
<b>"Auditor"</b>	means the auditor of the Trust appointed by the Council of Governors pursuant to paragraph 22 of this Constitution.
<b>“Board of Directors”</b>	means the Board of Directors of the Trust as constituted in accordance with this Constitution.
<b>“Chairman” or “Chair”</b>	means the person appointed as chair of the Trust. The expression "the Chairman" shall be deemed to include the Deputy Chairman or any other non-executive director appointed if the Chairman and/or Deputy Chairman is absent from the meeting or is otherwise unavailable.
<b>"Clear Day"</b>	means a day of the week not including a Saturday, Sunday or public holiday.
<b>“Constituency”</b>	means any of the Patient Constituency, Public Constituency or Staff Constituency.
<b>“Constitution”</b>	means this constitution together with the annexes attached hereto.
<b>“Council of Governors”</b>	means the Council of Governors of the Trust as constituted in accordance with this Constitution.
<b>“Class”</b>	means the division of a Constituency by reference to the description of individuals eligible to be Members of it.
<b>“Director”</b>	means a director on the Board of Directors.
<b>"Elected Governor"</b>	means a Public Governor, Staff or Patient Governor.
<b>“Financial Year”</b>	means a period of twelve months beginning with 1 <sup>st</sup> April.
<b>“Governor”</b>	means a person who is a member of the Council of Governors.

<b>“Health Service Body”</b>	shall have the meaning ascribed to it in section 65(1) of the 2006 Act.
<b>"Immediate Family Member"</b>	means either a: (a) spouse; or (b) person whose status is that of "Civil Partner" as defined in the Civil Partnerships Act 2004; or (c) child, step child or adopted child; or (d) sibling; or (e) parent.
<b>"Licence"</b>	means the licence granted to the Trust under Section 88 of the 2012 Act.
<b>“Local Authority Governor”</b>	means a member of the Council of Governors appointed in accordance with paragraph 12.15 of this Constitution.
<b>“Member”</b>	means a member of the Trust.
<b>NHS Improvement (NHSI) Previously Monitor</b>	means the corporate body known as NHS Improvement the umbrella under which the remit of Monitor as provided by section 61 of the 2012 Act now falls
<b>“Nominated Governor”</b>	means a Governor who has not been elected by the Public, Patient or Staff Constituencies.
<b>"Other Staff Criteria"</b>	means an individual who exercises functions for the purposes of the Trust otherwise than under a contract of employment with the Trust, provided such individuals have exercised these functions continuously for a period of at least 12 months, and do so:  (i) under an honorary contract with the Trust and are acknowledged in writing by the Trust as so doing; or  (ii) as contractors or the staff of contractors who work full time at the Trust providing services to the Trust and are acknowledged in writing by the Trust as so doing; or  (iii) working on behalf of a Voluntary Organisation or where such persons are registered volunteers at the Trust and who in both cases are acknowledged in writing by the Trust as so doing; or  (iv) in a manner where they are otherwise exercising functions for the purposes of the Trust and are acknowledged in writing by the Trust as so doing.
<b>“Partnership Organisation Governor”</b>	means a member of the Council of Governors appointed in accordance with paragraph 12.17 of this Constitution.
<b>“Patient”</b>	means a person whose name is recorded as a patient on the Trust’s patient administration system or other record maintained by the Trust for the purpose of identifying patients of the Trust and who at the date of their

application to become a Member and at all subsequent times thereafter has attended the Trust as a patient within the preceding 6 years.

<b>“Patient Carer”</b>	means a person within the definition contained in paragraph 9.2 of this Constitution.
<b>“Patient Constituency”</b>	means the constituency of the Trust constituted in accordance with paragraph 6 and paragraph 9 of this Constitution.
<b>“Patient Governor”</b>	means a member of the Council of Governors elected by the Members of the Patient Constituency in accordance with this Constitution.
<b>"Principal Purpose"</b>	means the purpose set out in section 43(1) of the 2006 Act and paragraph 3.1 of this Constitution;
<b>“Public Constituency”</b>	means a constituency of the Trust constituted in accordance with paragraph 6 and paragraph 7 of this Constitution.
<b>“Public Governor”</b>	means a member of the Council of Governors elected by the Members of a Public Constituency in accordance with this Constitution.
<b>"Registered Dentist"</b>	means a fully registered person within the meaning of the Dentists Act 1984 who holds a license to practice under that Act.
<b>"Registered Medical Practitioner"</b>	means a fully registered person within the meaning of the Medical Act 1983 who holds a license to practice under that Act.
<b>"Registered Midwife"</b>	means a person fully registered as a midwife within the meaning of the Nursing and Midwifery Order 2001 (SI 2002/253).
<b>"Registered Nurse"</b>	means a person fully registered as a nurse within the meaning of the Nursing and Midwifery Order 2001 (SI 2002/253).
<b>“Register of Members”</b>	means the register of members which the Trust is required to have and maintain pursuant to paragraph 20(1)(a) of Schedule 7 to the 2006 Act.
<b>“Secretary”</b>	means the Secretary of the Trust or any other person appointed to perform the duties of the Secretary of the Trust including a joint, assistant or deputy Secretary or such other person as may be appointed by the Trust from time to time to perform the functions of the Secretary under this Constitution.

<b>"Sex Offenders Order"</b>	means any order in connection with sections 103A to 129 of the Sexual Offences Act 2003.
<b>"Sex Offenders Register"</b>	means the notification requirements set out in Part 2 of the Sexual Offences Act 2003, commonly known as the Sex Offenders Register.
<b>"Staff Constituency"</b>	means the constituency of the Trust constituted in accordance with paragraph 6 and paragraph 8 of this Constitution.
<b>"Staff Governor"</b>	means a member of the Council of Governors elected by the Members of the Staff Constituency in accordance with this Constitution.
<b>"the 2006 Act"</b>	means the National Health Service Act 2006 (as amended by the 2012 Act).
<b>"the 2012 Act"</b>	means the Health and Social Care Act 2012.
<b>"the Trust"</b>	means the King's College Hospital NHS Foundation Trust.
<b>"Trust Hospital"</b>	means all or any hospital or other patient care facilities administered by the Trust from time to time and designated by the Trust as falling within this definition.
<b>"University Governor"</b>	means a Member of the Council of Governors appointed in accordance with paragraph 12.16 of this Constitution.
<b>"Voluntary Organisation"</b>	means a voluntary organisation as defined in section 275 of the 2006 Act;
1.2	Unless the contrary intention appears or the context otherwise requires, words or expressions contained in this Constitution bear the same meaning as in the 2006 Act.
1.3	References in this Constitution to legislation include all amendments, replacements, or re-enactments made to that legislation.
1.4	References to legislation include all regulations, statutory guidance or directions made in respect of it.
1.5	Headings are for ease of reference only and are not to affect interpretation.
1.6	References to paragraphs are to paragraphs in this Constitution.
1.7	All annexes referred to in this Constitution form part of it.

## **2. NAME**

- 2.1 The name of the foundation trust shall be King's College Hospital NHS Foundation Trust.

## **3. PRINCIPAL PURPOSE**

- 3.1 The Trust's Principal Purpose shall be the provision of goods and services for the purposes of the health service in England.
- 3.2 The Trust does not fulfil its Principal Purpose unless, in each Financial Year, its total income from the provision of goods and services for the purposes of the health service in England is greater than its total income from the provision of goods and services for any other purposes.
- 3.3 The Trust may provide goods and services for any purposes related to -
- 3.3.1 the provision of services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness, and
  - 3.3.2 the promotion and protection of public health.
- 3.4 The Trust may also carry on activities other than those mentioned in the above paragraph for the purpose of making additional income available in order better to carry on its Principal Purpose.

## **4. POWERS**

- 4.1 The Trust shall have all the powers of an NHS Foundation Trust pursuant to the 2006 Act, subject to the terms of its Licence.
- 4.2 All powers of the Trust shall be exercised by the Board of Directors on behalf of the Trust.
- 4.3 Subject to paragraph 4.4, any powers of the Trust may be delegated to a committee of Directors or an Executive Director.
- 4.4 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.

## **5. OTHER PURPOSES**

- 5.1 The Trust may:
- 5.1.1 provide goods and services, including education, training and research and other facilities for purposes related to the provision of health care, in accordance with its statutory duties and its Licence;



5.1.2 carry out research in connection with the provision of health care and make facilities and staff available for the purposes of education, training or research carried on by others;

5.1.3 fulfil the social care functions of any local authority as specified by an agreement made under Section 75 of the 2006 Act.

5.2 The Trust may also undertake activities other than those mentioned in paragraphs 5.1.1 to 5.1.3 above subject to any restrictions in the Licence. These activities must be for the purpose of making additional income available in order better to carry on the Trust's Principal Purpose.

## **6. MEMBERSHIP, CONSTITUENCIES AND ANNUAL MEMBERS' MEETING**

6.1 The Trust shall have Members, each of whom shall be a member of one of the following Constituencies:

6.1.1 the public constituencies constituted in accordance with paragraph 7 below (**"the Public Constituencies"**);

6.1.2 a staff constituency constituted in accordance with paragraph 8 below (**"the Staff Constituency"**);

6.1.3 a patient constituency constituted in accordance with paragraph 9 below (**"the Patient Constituency"**).

6.2 Subject to paragraph 8.5 below, an individual may become a Member by application to the Trust as set out in this paragraph, and paragraphs 7, 8 and 9 below.

6.3 Where an individual applies to become a Member of the Trust, the Secretary shall consider their application for membership as soon as reasonably practicable, and in any case within 21 days of its receipt. Unless that individual is ineligible or is disqualified from membership their name shall within 21 days of receipt of their application be entered on the Register of Members and they shall thereupon become a Member.

6.4 An individual shall become a Member on the date upon which their name is entered on the Register of Members and the individual shall cease to be a Member on the date upon which their name is removed from the Register of Members as provided for in this Constitution.

6.5 Where an individual is eligible both to be a Member of a Public Constituency and the Patient Constituency and has applied to the Trust to become a Member or is invited by the Trust to be a Member of a Public Constituency, the Trust shall allocate that individual to the appropriate Public Constituency as provided for in Part A of Annex 1.

### **Annual Members' Meeting**

6.6 The Trust shall hold an Annual Members' Meeting which shall be open to the members of the public. This meeting may be combined with a general meeting of the Council of Governors as referred to at paragraph 15.5, at which the Council of Governors is

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

## **7. PUBLIC CONSTITUENCY**

- 7.1 Subject to the provisions of paragraph 10 below, an individual who lives in an area specified in Part A of Annex 1 as an area for a public constituency may become or continue as a Member of the Trust.
- 7.2 Those individuals who live in an area specified for any public constituency are referred to collectively as the "Public Constituency".
- 7.3 The minimum number of Members required for each Public Constituency is set out in Part A of Annex 1.
- 7.4 An eligible individual shall become a Member upon entry to the Trust's Register of Members pursuant to an application by them. The Secretary may require any individual to supply supporting evidence to confirm eligibility.
- 7.5 The Secretary shall, subject to being satisfied that the applicant is eligible, cause the applicant's name to be entered in the Trust's Register of Members as soon as reasonably practicable.

## **8. STAFF CONSTITUENCY**

- 8.1 Subject to paragraph 10, an individual may become or continue as a Member of the Staff Constituency provided:
  - 8.1.1 they are employed by the Trust under a contract of employment which has no fixed term or has a fixed term of at least 12 months; or
  - 8.1.2 they have been continuously employed by the Trust under a contract of employment for at least 12 months; or
  - 8.1.3 they fall within the Other Staff Criteria.
- 8.2 The minimum number of Members required for each Staff Class of the Staff Constituency are set out in Part B of Annex 1.
- 8.3 Chapter 1 of Part 14 of the Employment Rights Act 1996 applies for the purpose of determining whether an individual has been continuously employed by the Trust or has continuously exercised functions for the purposes of the Trust for the purposes of paragraph 8.1 above.
- 8.4 The Staff Constituency shall be divided into four descriptions of individuals who are eligible for membership of the Staff Constituency ("**Staff Classes**") as set out and defined in Annex 1, Part B of this Constitution and being referred to as a class within the Staff Constituency.
- 8.5 An individual who is eligible and who is invited by the Trust to become a member of the Staff Constituency, shall automatically become a Member of the Trust as a member of

the Staff Constituency (within the relevant Staff Class) without an application being made unless they inform the Trust, that they do not wish to do so.

- 8.6 An individual who is eligible to become a member of the Staff Constituency and who wishes to become a Member of the appropriate Staff Class may make an application to the Trust to become a Member of the appropriate Staff Class and such application shall be considered in accordance with the provisions of paragraph 6.3.
- 8.7 A person who is eligible to be a Member of the Staff Constituency may not become or continue as a Member of any Constituency other than the Staff Constituency and may not become or continue as a Member of more than one Staff Class.
- 8.8 Where a person who was formerly a Member of a Staff Class is no longer eligible to be a Member of any Staff Class, but is eligible to be a Member of a Public Constituency, that person shall be entered onto the Register of Members as a Member of the relevant Public Constituency by the Secretary, unless they inform the Trust that they do not wish to be so included.

## **9. PATIENT CONSTITUENCY**

- 9.1 Members of the Patient Constituency shall be individuals who:
  - 9.1.1 are Patients or Patient Carers; and
  - 9.1.2 are not eligible to become a Member of the Staff Constituency or any other Constituency or Class of Constituency and are not otherwise disqualified for membership; and
  - 9.1.3 have made an application to the Trust to become a Member and their name has been entered on the Register of Members in accordance with paragraph 6.3 above.
- 9.2 A Patient Carer for the purposes of paragraph 9.1.1 shall be a Member of the Patient Constituency who:
  - 9.2.1 provides care on a regular basis for a Patient; and
  - 9.2.2 does not provide that care:
    - 9.2.2.1 by virtue of a contract of employment or other contract with any person; or
    - 9.2.2.2 as a volunteer for a Voluntary Organisation; and
  - 9.2.3 has either been:
    - 9.2.3.1 nominated by that Patient as their Patient Carer for the time being for the purposes of this paragraph and has been accepted by the Trust as that Patient's carer for that purpose; or

9.2.3.2 accepted by the Trust as a Patient Carer for the purposes of this paragraph where the Patient is under 16 years of age or lacks the legal or mental capacity to nominate that person as their patient carer and the Trust has to the extent that it is reasonably practicable to do so consulted with that Patient as to their wishes.

9.3 A person shall not be eligible to apply to become a Patient Carer or to continue as a Patient Carer if:

9.3.1 the Patient is a Member; or

9.3.2 the Patient has withdrawn their nomination of that person under paragraph 9.2.3.1 as their Patient Carer; or

9.3.3 the Patient Carer is eligible to be a Member of some other Constituency or Class of Constituency under this Constitution; or

9.3.4 the Patient on whose behalf they are a Patient Carer is ineligible or disqualified from membership under paragraph 10; or

9.3.5 where paragraph 9.2.3.2 applies the Patient becomes capable of discharging the functions of a Member or attains the age of 16 years of age.

9.4 The minimum number of Members required for the Patient Constituency is set out in Part C of Annex 1.

## **10. MEMBERSHIP**

### **Representative Membership**

10.1 Subject to paragraph 10.2 below, the Trust shall take steps to secure that, taken as a whole, the actual membership of the Public Constituency and Patients' Constituency is representative of those eligible for such membership.

10.2 In deciding which areas are to be areas for the Public Constituency, the Trust must have regard to the need for those eligible for such membership to be representative of those to whom the Trust provides services.

### **Restriction on Membership**

10.3 An individual who is a member of a constituency, or of a class within a constituency, may not while membership of that constituency or class continues, be a member of any other constituency or class.

10.4 All membership is individual and there shall be no facility for corporate membership.

10.5 Save as provided for under paragraph 15, Members are not entitled to receive payments or dividends from the Trust and no Member is entitled to preferential receipt of any goods or services provided by the Trust.

- 10.6 Save as provided for in this Constitution, no Member may represent themselves in writing or verbally as belonging to a category of membership of the Trust:

10.6.1 in a manner which might associate the Trust with the personal opinions expressed by the Member in question; and

10.6.2 save for members of the Staff Constituency and/or where otherwise expressly agreed by the Secretary, no Member shall designate the Trust as their personal or professional postal address in any published work or any communication to the media.

### **Disqualification from Membership**

- 10.7 An individual shall not become or continue as a Member if:

10.7.1 they are not eligible under any of paragraphs 7, 8 or 9 above to be a Member; or

10.7.2 they are under the age of 16 at the date of their application or invitation to become a Member (as the case may be); or

10.7.3 they are the subject of a Sex Offenders Order and/or their name is included in the Sex Offenders Register; or

10.7.4 they have been dismissed as an employee of the Trust otherwise than for reasons of redundancy; or

10.7.5 in the reasonable opinion of the Secretary, they have demonstrated aggressive or violent behaviour (such as verbal assault, physical assault, violence or harassment) at any NHS hospital, NHS premises or NHS establishment against any of the Trust's employees, other persons who exercise functions for the purposes of the Trust or visitors to any NHS hospital or NHS premises whether or not in circumstances leading to their removal or exclusion from any NHS hospital, premises or establishment; or

10.7.6 they have been removed as a member from this or another NHS foundation trust; or

10.7.7 in the reasonable opinion of the Secretary, they are the maker or has procured the making or has otherwise been involved in making vexatious complaints to or about the Trust, its officers or staff; or

10.7.8 in the reasonable opinion of the Secretary, has conducted or intends to conduct themselves in a manner which is materially prejudicial to the proper conduct of the Trust's affairs.

- 10.8 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 inform the Secretary as soon as practicable and that Member's

name shall thereupon be removed forthwith from the Register of Members and they shall forthwith cease to be a Member.

- 10.9 Where the Trust has grounds to believe that a Member may not be eligible under paragraphs 7, 8 or 9 for membership or that grounds may exist for them to be disqualified for membership under this paragraph 10, the Secretary shall make reasonable enquiries to establish if this is the case.
- 10.10 Where the Secretary considers that there may be grounds for concluding that a Member or Applicant is ineligible or that grounds may exist for them to be disqualified from membership they shall advise that Member or Applicant of those reasons in summary form and invite representations from the Member or Applicant within 28 days or such other longer period as the Secretary may in their absolute discretion determine. Any representations received shall be considered by the Secretary who shall make a decision on the Member's or Applicant's eligibility or disqualification as soon as reasonably practicable and notice of that decision shall be given to the Member or Applicant within 14 days of the decision being made.
- 10.11 If no representations are received within the said period of 28 days or longer period (if any) permitted under the preceding paragraph, the Secretary shall be entitled nonetheless to proceed and make a decision on the Member's or Applicant's eligibility or disqualification notwithstanding the absence of any such representations from them.
- 10.12 If the Secretary decides that a Member is ineligible or disqualified from membership and they have given notice in accordance with paragraph 10.10 above that Member's name shall thereupon be removed from the Register of Members and they shall cease to be a Member forthwith.
- 10.13 Any decision made under this paragraph 10 to disqualify a Member or to declare them ineligible may be referred by the Member concerned to the Dispute Resolution Procedure set out in paragraph 26.

#### **Termination of Membership**

- 10.14 A Member shall cease to be a Member if they:
- 10.14.1 die; or
  - 10.14.2 resign by giving notice in writing to the Secretary; or
  - 10.14.3 cease to fulfil the requirements of paragraphs 7, 8 or 9; or
  - 10.14.4 are ineligible or disqualified in accordance with the provisions of this paragraph 10.
- 10.15 In all cases where an individual ceases to be a Member the Secretary shall cause their name to be removed forthwith from the Register of Members and they shall thereupon cease to be a Member.

## 11. SPECIAL MEMBERS' MEETINGS

- 11.1 Notwithstanding any provisions contained in this Constitution regarding meetings of the Council of Governors, Annual Members' Meetings or meetings of the Board of Directors, the Board of Directors may resolve to call special meetings of the Trust for the benefit of its Members (a "**Special Members' Meeting**") for the purpose of providing Members with information and to offer Members an opportunity to provide feedback to the Trust.
- 11.2 Special Members' Meetings are open to all Members of the Trust, Governors, Directors and representatives of the Auditor and any external consultant, but not to members of the general public or representatives of the press unless the Board of Directors determines otherwise.
- 11.3 Notwithstanding the provisions of paragraph 11.2 above, the Board of Directors may invite representatives of the press and any experts or advisors whose attendance they consider to be in the best interests of the Trust to attend a Special Members' Meeting.
- 11.4 All Special Members' Meetings are to be convened by the Secretary by order of the Board of Directors and the following provisions of paragraphs 11.5 and 11.6 below shall apply for these purposes.
- 11.5 Notice of a Special Members' Meeting is to be given to all Members, Governors, Directors, the Auditor and any external consultant personally, or:
- 11.5.1 by notice prominently displayed at the Trust's Headquarters; and
  - 11.5.2 by notice on the Trust's website, at least 14 Clear Days before the date of the meeting.
- 11.6 The notice referred to in paragraph 11.5 above must:
- 11.6.1 state the time, date and place of the meeting; and
  - 11.6.2 indicate the business to be dealt with at the meeting.
- 11.7 No business may be conducted at a Special Members' Meeting unless a quorum is present. The quorum for Special Members' Meetings is the Chairman (or Deputy Chairman) and at least one Member from each of the Staff Constituency, the Public Constituency and the Patient Constituency.
- 11.8 It is the responsibility of the person chairing the meeting to ensure that:
- 11.8.1 any issues to be decided upon at the meeting are clearly explained; and
  - 11.8.2 sufficient information is provided to those in attendance to enable rational discussion to take place.
- 11.9 The Chairman, or in their absence the Deputy Chairman, shall act as chairman at all Special Members' Meetings. If neither the Chairman nor the Deputy Chairman is present, the members of the Board of Directors present shall elect one of their number

to chair the meeting. If there is only one Director present and willing to act, then they shall chair the meeting.

- 11.10 If at any Special Members' Meeting there is no quorum present within 30 minutes of the time fixed for the start of the meeting, the meeting shall stand adjourned to such date, time and place as the person chairing the meeting shall in their absolute discretion determine, and the Secretary shall give or shall procure the giving of notice to all Members, Governors, Directors, the Auditor and any external consultant of the date, time and place of that adjourned meeting. Notwithstanding the provisions of paragraph 11.7 above, upon reconvening, those present shall constitute a quorum.
- 11.11 Any resolution put to the vote at a Special Members' Meeting shall be decided upon by a poll.
- 11.12 Every Member present and every Member who has voted by post or using electronic communications is to have one vote. In the case of an equality of votes the person chairing the meeting is to have a second or casting vote.
- 11.13 The result of any vote will be declared by the person chairing the meeting and the Secretary shall cause the result to be entered in the minute book. The minute book will be conclusive evidence of the result of that vote.
- 11.14 In this paragraph 11 'electronic communication' shall have the meaning ascribed to it in Section 1168 of the Companies Act 2006.

## 12. COUNCIL OF GOVERNORS – COMPOSITION, ELECTIONS AND TENURE

- 12.1 The Trust shall have a Council of Governors constituted in accordance with this Constitution and which shall comprise both Elected Governors and Nominated Governors. The members of the Council of Governors, other than the Nominated Governors, shall be chosen by election by their Constituency or, where there are Classes within a Constituency, by their Class within that Constituency.
- 12.2 The Chairman (or in their absence the Deputy Chairman or such other person as may be appointed in accordance with paragraph 15.2 below) shall preside at meetings of the Council of Governors.
- 12.3 The Council of Governors shall consist of:
  - 12.3.1 **14 Public Governors** as set out in Part A of Annex 1;
  - 12.3.2 **5 Staff Governors** as set out in Part B of Annex 1;
  - 12.3.3 **6 Patient Governors** as set out in Part C of Annex 1;
  - 12.3.4 **3 Local Authority Governors** appointed in accordance with paragraph 12.15 below;
  - 12.3.5 **1 University Governor** appointed in accordance with paragraph 12.16; and



**12.3.64 Partnership Organisation Governors** appointed in accordance with paragraphs 12.17 to 12.19 below.

- 12.4 The aggregate number of members of the Council of Governors who are Public Governors and Patient Governors shall be more than half the total membership of the Council of Governors.

## **Elections**

- 12.5 Elections for Elected Governors shall be conducted in accordance with the Model Rules for Elections. The Model Rules for Elections, as published from time to time, form part of this Constitution. The Model Rules for Elections are attached at Annex 3.
- 12.6 A subsequent variation of the Model Rules for Elections shall not constitute a variation of the terms of this Constitution. For the avoidance of doubt, the Trust cannot amend the Model Rules for Elections.
- 12.7 Elections for Elected Governors shall be conducted using the First Past the Post system. Thus, where appropriate, the rules marked "FPP" (First Past the Post) should be used.
- 12.8 An election, if contested, shall be by secret ballot.
- 12.9 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 in the forms specified below in paragraphs 12.10 and/or 12.11 below (as appropriate). It is an offence (other than in relation to the Staff Constituency) to knowingly or recklessly make such a declaration which is false in a material particular.
- 12.10 The specified form of declaration referred to at paragraph 12.9 above 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 3 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 of my political membership and any financial interests I have in the Applicant Trust (or, as the case may be, the 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."*

- 12.11 The specified form of declaration referred to at paragraph 12.9 above regarding the declaration to vote in elections for Public Governors will be as set out in Rule 21 of the Model Rules for Elections.

## **Elected Governors - tenure**

12.12 Elected Governors:

- 12.12.1 may hold office for a period of up to 3 years; and
- 12.12.2 are eligible for re-election at the end of that period; and
- 12.12.3 may not hold office for longer than a continuous period of eight years (therefore any third term would be for a period of up to two years only); and
- 12.12.4 shall cease to hold office if they cease to be a member of the constituency or class by which they were elected.

**Nominated Governors - tenure**

12.13 Nominated Governors:

- 12.13.1 may hold office for a period of up to 3 years; and
- 12.13.2 are eligible for re-election at the end of that period; and
- 12.13.3 may not hold office for longer than a continuous period of eight years (therefore any third term would be for a period of up to two years only); and

12.14 Nominated Governors shall cease to hold office if:

- 12.14.1.1 the relevant sponsoring organisation withdraws their nomination of them by notice in writing to the Secretary; or
- 12.14.1.2 the relevant sponsoring organisation ceases to exist; or
- 12.14.1.3 the Nominated Governor ceases to be employed by or associated with the relevant sponsoring organisation.

**Local Authority Governors**

12.15 The Local Authority Governors may be appointed by (1) the London Borough of Lambeth, and (2) the London Borough of Southwark and (3) the London Borough of Bromley, and each shall be entitled to appoint one such Governor in accordance with a process agreed by it with the Secretary. The absence of any such agreed process shall not preclude any of the said local authorities from appointing a Local Authority Governor.

**University Governor**

12.16 One University Governor may be appointed by King's College London in accordance with a process agreed by it with the Secretary. The absence of any such agreed process shall not preclude King's College London from appointing a University Governor.

**Partnership Organisation Governors**

- 12.17 Each of the Partnership Organisations listed in paragraph 12.18 below may appoint one Partnership Organisation Governor in accordance with a process agreed by it with the Secretary. The absence of any such agreed process shall not preclude any Partnership Organisation from appointing a Partnership Organisation Governor.
- 12.18 The Partnership Organisations of the Trust for the purposes of paragraph 12.17 are:
- 12.18.1 South London and Maudsley NHS Foundation Trust;
  - 12.18.2 the Trust's Joint Staff Committee; and
  - 12.18.3 Guy's and St Thomas' NHS Foundation Trust.
- 12.19 The South East London Integrated Care System shall be entitled to appoint two System Governors in accordance with a process of appointment agreed with the Secretary. The absence of any such agreed process shall not preclude the organisation from appointing its System Governors.
- 12.20 Governors shall cease to be Governors if their tenure is terminated or they are disqualified from being a Governor in accordance with this Constitution. Where a Nominated Governor is appointed and the appointing body withdraws its appointment of them and nominates a new Governor in their place, that new Governor shall be appointed for a new three-year period and not for the remaining balance of the previous Governor's period of office

## COUNCIL OF GOVERNORS – ELIGIBILITY, DISQUALIFICATION AND TERMINATION

### **Eligibility/Disqualification criteria**

- 12.21 A person may not become or continue as a Governor if:
- 12.21.1 they have been adjudged bankrupt or their estate has been sequestrated and in either case they have not been discharged; or
  - 12.21.2 they are a person in relation to whom a moratorium period under a debt relief order applies (under Part 7A of the Insolvency Act 1986); or
  - 12.21.3 they have made a composition or arrangement with or granted a trust deed for their creditors and has not been discharged in respect of it; or
  - 12.21.4 they have within the preceding five years been convicted in the British Islands of any offence, and a sentence of imprisonment (whether suspended or not) for a period of three months or more (without the option of a fine) was imposed on them; or
  - 12.21.5 NHSI has exercised its power to remove that person as a Member of the Council of Governors of the Trust or has suspended them from office or has disqualified them from holding office as a Governor for a specified

period or NHSI has exercised any of those powers in relation to the person concerned at any other time whether in relation to the Trust or some other NHS foundation trust; or

- 12.21.6 in the case of an Elected Governor, they cease to be a Member of the Constituency or where relevant, the Class within the Constituency they represents; or
- 12.21.7 in the case of a Nominated Governor, the sponsoring organisation withdraws their sponsorship of them; or
- 12.21.8 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; or
- 12.21.9 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 is not in the interest of the health service; or
- 12.21.10 they are a Director of the Trust, or a governor, executive director, non-executive director, chairman, chief executive officer of another NHS foundation trust or other Health Service Body (unless they are appointed by a sponsoring organisation which is an NHS foundation trust or Health Service Body); or
- 12.21.11 they have had their name removed from a list maintained under regulations pursuant to Sections 91, 106, 123, or 147A 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 and due to the reason(s) for such removal they are considered by the Trust to be unsuitable to be a Governor; or
- 12.21.12 they have refused without reasonable cause to undertake any training which the Trust and/or Council of Governors requires all Governors to undertake; or
- 12.21.13 they are the subject of a Sex Offenders Order and /or their name is included in the Sex Offenders Register; or
- 12.21.14 they are an Immediate Family Member of a Governor or Director of the Trust; or
- 12.21.15 they have failed to repay (without good cause) any amount of monies properly owed to the Trust; or
- 12.21.16 they have failed to sign and deliver to the Secretary a statement in the form required by the Trust confirming acceptance of the Governor's Code of Conduct; or

- 12.21.17 they are a person who by reference to information revealed by a Disclosure and Barring Service check or otherwise is considered by the Chief Executive to be inappropriate on the grounds that their appointment might adversely affect public confidence in the Trust or otherwise bring the Trust into disrepute; or
  - 12.21.18 they have failed to make, or has falsely made, any declaration as required by this Constitution or otherwise by the Trust; or
  - 12.21.19 they are a person who is included in any barred list established under the Safeguarding Vulnerable Groups Act 2006 or is on an equivalent list maintained under the law of Scotland or Northern Ireland; or
  - 12.21.20 they are a person who is the subject of a disqualification order made under the Company Directors' Disqualification Act 1986; or
  - 12.21.21 they have received a written warning from the Trust for verbal and/or physical abuse towards Trust staff; or
  - 12.21.22 they have been expelled from the post of governor of another NHS foundation trust; or
  - 12.21.23 where the Secretary reasonably considers (having sought appropriate clinical advice) that they lack capacity, for the purposes of the Mental Capacity Act 2005, to manage and administer their property and/or affairs; or
  - 12.21.24 they are an active member of a body or organisation with policies or objectives such that their membership would be likely to cause the Trust to be in breach of its statutory obligations or to bring the Trust into disrepute.
- 12.22 A Governor may resign from that office at any time during the period of that office by giving notice in writing to the Secretary.

## Termination

- 12.23 A Governor may resign from that office at any time during the term of that office by giving notice in writing to the Secretary.
- 12.24 If a Governor fails to attend three (3) successive meetings of the Council of Governors or three (3) or more such meetings in any period of 18 months, the Secretary shall discuss this with the Governor, and shall report such absences to the Council of Governors on a quarterly basis. Where the Secretary considers it appropriate, they shall put forward a resolution to remove that Governor from office, to be considered at the next formal meeting of the Council of Governors and that Governor's tenure of office shall be terminated by the Council of Governors unless they are satisfied that:
- 12.24.1 the absences were due to reasonable cause; and/or
  - 12.24.2 the Governor will be able to start attending meetings of the Council of Governors within such a period as it considers reasonable.
- 12.25 The Council of Governors may terminate a Governor's tenure of office if for reasonable cause they consider that they:
- 12.25.1 is disqualified from being a Governor under this Constitution or is ineligible to be a Governor under this Constitution; or
  - 12.25.2 has knowingly or recklessly made a false declaration or has failed or declined to make a declaration for any purpose provided for in this Constitution or in the 2006 Act; or
  - 12.25.3 fails to adhere to the Code of Conduct for Governors of the Trust at Annex 5; or
  - 12.25.4 has conducted themselves in a manner which has caused or is likely to cause material prejudice to the best interests of the Trust or the proper conduct of the affairs of the Council of Governors or otherwise in a manner inconsistent with their continued membership of the Council of Governors.
- 12.26 Where the Council of Governors takes a decision to terminate a Governor's tenure of office under paragraphs 12.23 or 12.25 the Council of Governors shall give that Governor notice thereof within 14 days of passing the resolution and paragraphs 12.27 to 12.30 shall apply.
- 12.27 A Governor whose tenure of office is terminated shall not be eligible to stand for re-election to the Council of Governors.
- 12.28 Upon a Governor resigning under paragraph 12.23 above or upon termination of a Governor's tenure of office under paragraphs 12.24 or 12.25 above they shall cease to be a Governor and their name shall be removed from the Register of Governors notwithstanding any reference to the Dispute Resolution Procedure under paragraph 26 below.

- 12.29 Any decision of the Council of Governors to terminate a Governor's tenure of office under paragraphs 12.24 or 12.25 may be referred by the Governor to the dispute resolution procedure referred to at paragraph 26 below within 28 days of the date upon which the resolution is passed or notice of it is given to the Governor pursuant to paragraph 12.26 above, whichever is the later.
- 12.30 Where a Governor's term of office is terminated under paragraphs 12.24 or 12.25 above, no replacement Governor shall take office in their place until the time limit under paragraph 12.29 for referring the matter to the dispute resolution procedure at paragraph 26 has expired.
- 12.31 If the decision of the Council of Governors is referred to the dispute resolution procedure within the time limited for doing so then notwithstanding the Governor's removal from office they shall not be replaced as a Governor in accordance with the provisions of this Constitution pending the outcome of that reference to the dispute resolution procedure unless:
- 12.31.1 in the case of a Nominated Governor the appointing body resolves to appoint some other person to act as its Nominated Governor. In that event the Governor will assume the office of Governor and the former Governor who has been replaced shall not be reappointed as Governor without the formal approval of the Council of Governors; or
  - 12.31.2 in the case of a person elected by a Public Constituency or Patient Constituency the consequence of failing to replace that individual will cause the aggregate number of Governors who are Public Constituency Governors and Patient Constituency Governors not to be more than half the total membership of the Council of Governors. In that event the provisions of paragraphs 12.289 and 13.1 shall apply but the replacement Governor shall only hold office on an interim basis pending the outcome of the reference to the dispute resolution procedure. If the outcome of that reference is that the Council of Governors then resolves to reverse its earlier decision and restore the Governor to their earlier office (and for which purpose the interim Governor shall not be entitled to exercise their vote) then they shall thereupon be restored to that office and the interim Governor shall thereupon cease to be a Governor.

### **13. COUNCIL OF GOVERNORS - VACANCIES**

- 13.1 Where a Governor dies or a Governor's membership of the Council of Governors ceases for one or more of the reasons set out in paragraphs 12.23 to 12.25 or a Governor is disqualified in accordance with the provisions at paragraph 12.21, Public Governors, Staff Governors and Patient Governors shall, subject to the provisions of paragraph 13.2, be replaced in accordance with the Model Rules for Election set out in Annex 3 and Nominated Governors shall be replaced in accordance with the nomination processes agreed pursuant to paragraphs 12.15 to 12.19.
- 13.2 Where a Governor dies or their membership of the Council of Governors ceases for one or more of the reasons set out in paragraphs 12.23 to 12.25 or a Governor is disqualified

in accordance with the provisions at paragraph 13.1 above, the following process shall apply:

13.2.1 in the case of Governors elected by the Public, Patient or Staff constituencies, where a vacancy so arises the Trust will offer the candidate securing the second highest number of votes in the last election for that constituency or Class in that constituency in which the vacancy has arisen the opportunity to assume the role of Governor for the remainder of the term of office of the Governor whom they are to replace until such time as the next election is held, thereby avoiding the need for by-elections. If that candidate does not wish to accept appointment, the vacancy will be offered to the candidate securing the next highest number of votes and so on until the vacancy is filled.

13.2.2 If no such reserve candidate is available or willing to fill the vacancy, an election shall be held unless an election would have been due for the office of the Governor in question within 9 months of the vacancy having arisen, in which case the office will stand vacant until the next scheduled election unless the consequence of failing to replace that Governor will cause the aggregate number of Governors who are Public Governors or Patient Governors to be not more than half the total membership of the Council of Governors. In that event, an election shall be held in the usual way as soon as reasonably practicable.

#### **14. ROLES AND RESPONSIBILITIES OF THE COUNCIL OF GOVERNORS**

14.1 The rights and duties of the Council of Governors shall be:-

14.1.1 at a General Meeting:

- 14.1.1.1 to appoint and remove the Chairman and the non-executive Directors of the Trust. A resolution to remove a non-executive Director shall only be passed by a majority of not less than three-quarters of the members of the Council of Governors entitled at that time to attend and vote at meetings of the Council of Governors;
- 14.1.1.2 to approve the appointment by the non-executive Directors of the Chief Executive of the Trust;
- 14.1.1.3 to fix the remuneration and allowances and the other terms and conditions of office of the non-executive Directors;
- 14.1.1.4 to appoint and remove the Auditor; and
- 14.1.1.5 to receive from the Board of Directors and to consider the Trust's annual accounts, any report of the Auditor of the Trust on the annual accounts and the annual report of the Board of Directors;



- 14.1.2 to provide their views to the Board of Directors as to the Trust's forward planning in respect of each Financial Year;
  - 14.1.3 to respond and provide assistance as appropriate when consulted by the Board of Directors in accordance with this Constitution;
  - 14.1.4 to hold the non-executive directors individually and collectively to account for the performance of the Board of Directors;
  - 14.1.5 to represent the interests of the Members of the Trust as a whole and the interests of the public;
  - 14.1.6 to require one or more Directors to attend a meeting of the Council of Governors for the purpose of obtaining information about the Trust's performance of its functions or the Directors' performance of their duties (and deciding whether to propose a vote on the Trust's or Directors' performance);
  - 14.1.7 to approve any merger, acquisition, separation or dissolution application in respect of the Trust before the application is made to NHSI.
  - 14.1.8 to review and approve proposed amendments to this Constitution in accordance with paragraph 27;
  - 14.1.9 to establish a Nominations Committee in accordance with the provisions of paragraph 15.12;
  - 14.1.10 consider and approve (where applicable) proposals in respect of the Trust carrying on activities other than the provision of goods and services for the purposes of the health service in England as further described in paragraph 22.8;
  - 14.1.11 consider and approve (where applicable) proposals in respect of the Trust increasing its income in circumstances further described in paragraph 22.10; and
  - 14.1.12 to exercise such other powers and to discharge such other duties as may be conferred on the Council of Governors under this Constitution.
- 14.2 The Council of Governors may elect a lead governor.
- 14.2.1 When a vacancy occurs, an appointment meeting of the Council of Governors shall be called.
  - 14.2.2 Any Governor with at least one year of their term remaining, may nominate themselves for the office of Lead Governor by giving notice to the Chair at least ten clear days before the Appointment Meeting.

14.2.3 As long as at least one nomination has been received in accordance with paragraph 14.2.1, the Council of Governors shall appoint the Lead Governor at the Appointment Meeting.

14.3 If:

- one nomination has been received, the nominated Governor shall be appointed Lead Governor at the Appointment Meeting;
- more than one nomination has been received, the Council of Governors shall choose the Lead Governor by paper ballot at the Appointment Meeting, and if there is an equality of votes, the tied nominees shall draw lots to decide which of them shall be chosen;
- no nomination has been received, the office shall lie vacant until the next Appointment Meeting.

14.4 The Lead Governor may resign from the office at any time by giving written notice to the Chair, and shall cease to hold the office immediately if they cease to be a Governor.

14.5 If a Lead Governor ceases to hold office during their term, the second- placed nominee in the last ballot for the office shall be offered the opportunity to assume the vacant office for the unexpired balance of the retiring Lead Governor's term. If that candidate does not agree to fill the vacancy it will then be offered to the third-placed nominee and so on until the vacancy is filled. If no candidate is available or willing to fill the vacancy, the office shall remain vacant until the next Appointment Meeting.

14.6 The Lead Governor's duties shall be as follows:

- facilitating communication between Governors and members of the Board of Directors;
- assisting the Chair in settling the agenda for meetings of the Council of Governors and other meetings involving Governors;
- chairing the Council of Governors when required to do so by the Standing Orders attached at Annex 2;
- contributing to the appraisal of the Chair in such manner and to such extent as the person conducting the appraisal may see fit;
- initiating proceedings to remove a Governor where circumstances set out in this Constitution for removal have arisen (without prejudice to the right of any other Governor to initiate such proceedings);
- liaising, as appropriate, with councils of governors for other NHS Foundation Trusts, and
- such other duties, consistent with the 2006 Act and this Constitution, as may be approved by the Governors.

14.7 If NHSI has appointed a panel for advising governors, a Governor may refer a question to that panel as to whether the Trust has failed or is failing to act in accordance with this Constitution or Chapter 5 of Part 1 the 2006 Act. A Governor may only refer a question

under this paragraph if more than half of the members of the Council of Governors voting approve the referral.

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

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

- 15.1 The Council of Governors, in consultation with the Board of Directors, shall adopt and at all times adhere to:

15.1.1 procedures governing the conduct of its meetings and these shall be in accordance with Annex 2; and

15.1.2 a Code of Conduct for the Governors of the Trust and this shall be in accordance with Annex 5.

- 15.2 The Chair of the Trust or in their absence the Deputy Chair shall preside at meetings of the Council of Governors. If the Chair and Deputy Chair are absent such other non-executive Director of the Trust as the Chair shall nominate shall preside but if the Chair shall have failed or declined to make such a nomination the Council of Governors shall nominate one of the Governors present at the meeting to preside and that person shall for the purposes of that meeting exercise the powers of the Chair in relation to it.

- 15.3 If any matter for consideration at a meeting of the Council of Governors relates to the conduct and interests of the Chair or to the conduct and interests of a non-executive Director individually or to the non-executive Directors as a class, neither the Chair, the individual non-executive Director nor any of the non-executive Directors (as the case may be) shall preside over that period of the meeting during which that matter is under consideration. The Governors (excluding the Chair, the individual non-executive Directors or non-executive Directors as a class as the specific circumstances require) present at the meeting shall elect one of their number to preside during that period.

- 15.4 The Council of Governors shall meet not less than three times each Financial Year.

- 15.5 At a general meeting to take place each year the Council of Governors shall receive and consider the Trust's annual accounts, any report of the Auditor on them and the Trust's annual report.

- 15.6 A Governor may not vote at a meeting of the Council of Governors unless within the previous 12 month period they have made a declaration in the form specified at paragraph 15.7 stating of which constituency or Class of a constituency they are a Member and that they are not prevented from being a member of the Council of Governors by paragraph 8(1) of Schedule 7 to the 2006 Act or otherwise under this Constitution.

- 15.7 The declaration referred to in paragraph 15.6 shall be in such form as will comply with all relevant requirements of the 2006 Act and of this Constitution and will be in accordance with Annex 4 or as may be otherwise determined by the Trust from time to time.

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

**Committees and Sub-Committees**

- 15.9 The Council of Governors may appoint committees consisting of its members to assist it in carrying out its functions. A committee appointed under this paragraph may appoint a sub-committee.
- 15.10 Committees or sub-committees appointed under paragraph 15.9 may call upon outside advisors to help them in their tasks and these may include members of the Board of Directors.
- 15.11 The Council of Governors may seek external advice where it considers it reasonable and proportionate to do so for the discharge of its roles and responsibilities and where approved by the Chairman.

**Nominations Committee**

- 15.12 The Council of Governors shall establish a Nominations Committee to assist it in the recruitment and recommendation of candidates for the post of non-executive Director of the Trust in accordance with the process more particularly set out in paragraphs 15.14 and 18.5 below.
- 15.13 The Nominations Committee shall comprise not more than 6 persons and these shall include the Chair (who shall also preside as Chairman of the Committee), and 5 Governors, a majority of whom shall be drawn from the patient or public constituencies.
- 15.14 The Terms of Reference of the Nominations Committee shall be determined by the Council of Governors who shall in doing so and also in preparing the specification referred to in paragraph 18.5 below seek and have due regard to the opinion of the Board of Directors in relation thereto.

**16. COUNCIL OF GOVERNORS - EXPENSES**

- 16.1 The Trust may reimburse travelling and other expenses to Governors at such rates and on such basis as the Trust may decide. These are to be published in the Trust's annual report.
- 16.2 The remuneration and allowances for non-executive Directors are to be fixed by the Council of Governors and details thereof are to be published in the Trust's annual report.

**Remuneration**

- 16.3 The Governors shall receive no remuneration from the Trust for acting as Governors but may be reimbursed for travelling and other expenses as provided for in paragraph 16.1 above.

## **17. DECLARATION OF INTERESTS OF GOVERNORS**

- 17.1 A Governor who has an interest in an actual, proposed or possible contract, transaction or arrangement made by or likely to be made by the Trust, another foundation trust or another NHS body, shall declare the nature of that interest to a meeting of the Council of Governors.
- 17.2 The declaration shall be made at the first meeting of the Council of Governors attended by the Governor upon their appointment or election as a Governor and the Secretary shall cause a formal record of any such declaration to be made in the minutes of the meeting.
- 17.3 A Governor has an interest in a contract, transaction or arrangement made with any company or firm of which they are a member, or with any individual, organisation or legal entity with whom they are connected.
- 17.4 A general notice given by a Governor to a meeting of the Council of Governors to the effect that after the date of that notice:
- 17.4.1 they are a member of a specified company or firm and is to be regarded as interested in any contract, transaction or arrangement entered into with that company or firm, or
  - 17.4.2 they are to be regarded as interested in any contract, transaction or arrangement made with a specified individual, organisation or legal entity connected with them; or
  - 17.4.3 is deemed a sufficient declaration of interest in relation to any such contract, transaction or arrangement.
- 17.5 An individual, organisation or legal entity is to be considered to be connected with a Governor if they, or it:
- 17.5.1 is an organisation or legal entity of which they are a governor, director, partner or employee; or
  - 17.5.2 is their spouse or partner; or
  - 17.5.3 is their child or step-child, including any illegitimate child of theirs but not including any person who has attained the age of 18; or
  - 17.5.4 is a body corporate in which they and the persons connected with them are interested in shares comprised in the equity capital of that body corporate of a nominal value equal to at least one fifth of that share capital, or are entitled to exercise or control the exercise of more than one fifth of the voting power at any general meeting of that body; or
  - 17.5.5 acts in the capacity of trustee of any trust the beneficiaries of which include the Governor and/or any individual or legal entity connected with them.

- 17.6 The provisions of paragraph 17.5 shall not apply to a person acting in the capacity of trustee under an employees' share scheme or a pension scheme.
- 17.7 A Governor shall not be treated as having an interest in a contract, proposed contract or other matter by reason only of an interest in any company, body or person with which they are connected which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a Governor in the consideration or discussion of or in voting on any question with respect to that contract or matter.
- 17.8 A Governor must as soon as possible and in any event within 14 days of their appointment as a Governor declare to the Secretary particulars of:
- 17.8.1 any company of which they are or were in the last preceding five years been a director;
  - 17.8.2 any charity or voluntary organisation in the field of health and social care in which they hold a position of authority;
  - 17.8.3 any political party or recognised campaign or pressure group of which they are a member or employee; and
  - 17.8.4 any employment, business, or other relationship which might influence or conflict with, or might reasonably be predicted to influence or conflict with the interests of the Trust.
- 17.9 The Secretary shall cause any such declarations to be noted at the next following meeting of the Council of Governors and a record to be made in the minutes of the meeting.
- 17.10 An interest of which a Governor has no knowledge and of which it is unreasonable to expect them to have knowledge shall not be treated as an interest of theirs.
- 17.11 It is the responsibility of each Governor as soon as they become aware of any change to the interests declared by them to declare that change to the next possible meeting of the Council of Governors. The Secretary shall cause a record of such declarations to be made in the minutes of the meeting.
- 17.12 The Secretary shall enter the particulars of each declaration made under this paragraph 17 in the Register of Governors' Interests within 14 days of the date of the meeting of the Council of Governors at which the declaration is made and shall ensure that the Register of Governors' Interests is available for inspection by members of the public at all reasonable times.
- 17.13 If a Governor has any doubt about the relevance of an interest, they should discuss this with the Secretary.

#### **Conflict of Interests of Governors**

- 17.14 If a Governor has an interest in any actual or proposed contract, arrangement, transaction or other matter and is present at a meeting of the Council of Governors (or

any committee or sub-committee of it) at which the contract, arrangement, transaction or other matter is the subject of consideration, they shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not take part in the consideration or discussion of the contract or other matter or vote on any question with respect to it and they shall no longer count towards the quorum.

- 17.15 If a question arises at a meeting of the Council of Governors or a committee or sub-committee thereof as to the right of a Governor to vote, the question may, before the conclusion of the meeting, be referred to the Chair of the meeting and their ruling in relation to any Governor other than themselves shall be conclusive.

## **18. BOARD OF DIRECTORS**

- 18.1 The Trust shall have a Board of Directors which shall consist of executive and non-executive Directors appointed in accordance with this Constitution and with the provisions of the 2006 Act.

- 18.2 The Board of Directors shall comprise:

18.2.1 the following non-executive Directors:

18.2.1.1 a Chair; and

18.2.1.2 at least five and up to nine other non-executive Directors, and

18.2.2 the following executive Directors:

18.2.2.1 a Chief Executive (and Accountable Officer);

18.2.2.2 a Chief Financial Officer; and

18.2.2.3 at least three and up to six other executive Directors.

18.2.3 The executive Directors shall include a Registered Medical Practitioner or Registered Dentist and a Registered Nurse or Registered Midwife.

- 18.3 The Board of Directors shall elect one of the non-executive Directors to be Deputy-Chair of the Board of Directors. If the Chair is unable to discharge their office as Chair of the Trust, the Deputy-Chair of the Board of Directors shall be acting Chair of the Trust.

- 18.4 Only a Member of a Public Constituency or the Patient Constituency or an individual exercising functions for King's College London may be appointed as a non-executive Director.

- 18.5 Non-executive Directors shall be appointed in accordance with a process of open competition as follows:

18.5.1 the Nominations Committee shall in accordance with paragraph 15.14 above prepare a specification which shall describe the role and responsibilities of a non-executive Director of the Trust and any particular

skills, qualifications or experience of the Trust which it would be desirable for a non-executive Director to possess;

18.5.2 the Nominations Committee shall then:

18.5.2.1 seek candidates by open advertisement and by such other means as they consider appropriate;

18.5.2.2 interview such candidates as they consider appropriate; and

18.5.2.3 recommend the most appropriate candidate(s) to the Council of Governors for appointment;

18.5.3 the Council of Governors shall appoint non-executive directors of the Trust by resolution at a general meeting in accordance with paragraph 14.1.1.

18.5.4 The Council of Governors may appoint a person who is willing to act to be a non-executive Director to fill a vacancy. A non-executive Director so appointed shall hold office only until the next following general meeting of the Council of Governors. If not reappointed at such general meeting they shall vacate office at the conclusion thereof.

18.5.5 The Council of Governors may at any meeting remove a non-executive Director, but shall vote upon the removal of the non-executive Director at the next following general meeting of the Council of Governors and unless the vote is carried at that general meeting the non-executive Director shall be re-appointed automatically at the conclusion thereof.

18.5.6 The validity of any act of the Trust shall not be affected by any vacancy among the Directors or by any defect in the appointment of any Director.

### **Terms of Office**

18.6 The non-executive Directors (including the Chair) shall be eligible for appointment for two four year terms of office, and in exceptional circumstances a further term of two years. No non-executive Director (including the Chair) shall be appointed to that office for a total period which exceeds ten years in aggregate. .

18.7 The Chief Executive (and Accounting Officer) shall hold office for a period in accordance with the terms and conditions of office decided by the relevant committee of non-executive Directors.

18.8 The executive Directors, other than the Chief Executive, shall hold office for a period in accordance with the terms and conditions decided by the relevant committee of non-executive Directors.

### **Termination of Tenure and Disqualification**

18.9 A Director may resign from that office at any time during the period of that office by giving notice in writing to the Secretary.



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

- 18.10.1 they have been adjudged bankrupt or their estate has been sequestrated and (in either case) has not been discharged; or
- 18.10.2 they are a person in relation to whom a moratorium period under a debt relief order applies (under Part 7A of the Insolvency Act 1986); or
- 18.10.3 they have made a composition or arrangement with, or granted a trust deed for, their creditors and has not been discharged in respect of it; or
- 18.10.4 within the preceding five years they have been convicted of any offence anywhere in the world and a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on them; or
- 18.10.5 their 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;
- 18.10.6 they have had their name removed from a list maintained under regulations pursuant to sections 91, 106, 123, or 147A 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 and due to such reasons, they are considered by the Foundation Trust to be unsuitable to be a Director; or
- 18.10.7 they has 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; or
- 18.10.8 they are the subject of a disqualification order made under the Company Directors' Disqualification Act 1986; or
- 18.10.9 they have failed without reasonable cause to fulfil any training requirement established by the Board of Directors; or
- 18.10.10 they have 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; or
- 18.10.11 they are an Immediate Family Member of a Director or a Governor; or
- 18.10.12 they are the subject of a Sex Offenders Order and/or their name is included in the Sex Offenders Register; or
- 18.10.13 on the basis of disclosures obtained through an application to the Disclosure and Barring Service or otherwise, they are not considered suitable by the Chairman; or

- 18.10.14 they have demonstrated aggressive or violent behaviour (such as verbal assault, physical assault, violence or harassment at any NHS hospital, NHS premises or other NHS establishment or against any of the Foundation Trust's employees or other persons who exercise the functions for the purposes of the Foundation Trust in circumstances where the Foundation Trust has taken further action in line with the Foundation Trust's policy, whether or not in circumstances leading to their removal or exclusion from any NHS hospital, premises or establishment; or
- 18.10.15 in the case of a non-executive Director, they no longer satisfy paragraph 18.4 above; or
- 18.10.16 they are otherwise disqualified at law from acting as a director of an NHS foundation trust; or
- 18.10.17 NHSI has exercised their power under the 2006 Act to remove that person as a Director of the Trust or any other foundation trust within their jurisdiction or has suspended them from office or has disqualified them from holding office as a director of the Trust for a specified period; or
- 18.10.18 where the Secretary reasonably considers (having sought appropriate clinical advice) that they lack capacity, for the purposes of the Mental Capacity Act 2005, to manage and administer their property and/or affairs; or
- 18.10.19 they do not otherwise meet the requirements of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014; or
- 18.10.20 they have refused or failed to sign or make and deliver to the Secretary, or has falsely signed or made, a statement or declaration in such form as may from time to time be determined or required by the Trust in connection with their role as a Director within the period specified.

### **Roles and Responsibilities**

- 18.11 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 members of the Trust as a whole and for the public.
- 18.12 The Directors shall at all times cause the Trust to carry out its business in accordance with the provisions of this Constitution.
- 18.13 A committee of non-executive Directors established as an audit committee shall monitor, review and carry out such functions as are appropriate.
- 18.14 The non-executive Directors shall appoint and remove the Chief Executive (and Accounting Officer). The appointment of a Chief Executive (but not their removal) shall require the approval of the Council of Governors.
- 18.15 A committee consisting of the Chair, the Chief Executive (and Accounting Officer) and the other non-executive Directors shall appoint and remove the executive Directors.
- 18.16 The Trust shall establish a committee of non-executive Directors to fix the remuneration and allowances and the other terms and conditions of office of the executive Directors.
- 18.17 The Trust may establish advisory committees whose membership may include Governors, executive and non-executive Directors of the Trust, external advisors and other persons as the Trust may think fit.

### **Meetings of Directors**

- 18.18 The Board of Directors shall adopt Standing Orders covering the proceedings and business of its meetings. These shall include setting a quorum for meetings, both of executive and non-executive Directors. The proceedings shall not however be invalidated by any vacancy in its membership, or any defect in a Director's appointment.
- 18.19 Meetings of the Board of Directors shall be open to members of the public, however, members of the public may be excluded from a meeting for special reasons.
- 18.20 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.
- 18.21 The Chair of the Trust or, in their absence, the Deputy-Chair of the Board of Directors, is to chair meetings of the Board of Directors. If neither the Chair nor the Deputy Chair is present, then one of the other non-executive Directors present shall chair.

### **Declaration of Interests of Directors**

- 18.22 A Director who has an interest in an actual, proposed or possible contract, transaction or arrangement made by, or likely to be made by the Trust, another foundation trust or another NHS body shall declare the nature of that interest to a meeting of the Board of Directors.
- 18.23 The declaration shall be made at the first meeting of the Board of Directors attended by the Director upon their appointment as a Director and the Secretary shall cause a formal record of any such declaration to be made in the minutes of the meeting.
- 18.23.1 A Director has an interest in a contract, transaction or arrangement made with any company or firm of which they are a member, or with any individual, organisation or legal entity with whom they are connected.
- 18.23.2 A general notice given by a Director to a meeting of the Board of Directors to the effect that after the date of that notice:
- 18.23.2.1 they are a member of a specified company or firm and is to be regarded as interested in any contract, transaction or arrangement entered into with that company or firm, or
- 18.23.2.2 they are to be regarded as interested in any contract, transaction or arrangement made with a specified individual, organisation or legal entity connected with them,
- is deemed a sufficient declaration of interest in relation to any such contract, transaction or arrangement.
- 18.23.3 An individual, organisation or legal entity is to be considered to be connected with a Director if they, she or it:
- 18.23.3.1 is an organisation or legal entity of which they are a governor, director, partner or employee; or
- 18.23.3.2 is their spouse or partner; or
- 18.23.3.3 is their child or step-child, including any illegitimate child of their but not including any person who has attained the age of 18; or
- 18.23.3.4 is a body corporate in which they and the persons connected with them are interested in shares comprised in the equity capital of that body corporate of a nominal value equal to at least one fifth of that share capital, or are entitled to exercise or control the exercise of more than one fifth of the voting power at any general meeting of that body; or

- 18.23.3.5 acts in the capacity of trustee of any trust the beneficiaries of which include the Director and/or any individual or legal entity connected with them.
- 18.23.4 In paragraph 18.23.3 the provisions of paragraph 18.23.3.5 shall not apply to a person acting in the capacity of trustee under an employees' share scheme or a pension scheme.
- 18.23.5 A Director shall not be treated as having an interest in a contract, proposed contract or other matter by reason only of an interest in any company, body or person with which they is connected which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a Director in the consideration or discussion of or in voting on, any question with respect to that contract or matter.
- 18.23.6 A Director must as soon as possible after and in any event within 14 days of their appointment as a Director declare to the Secretary particulars of:
- 18.23.6.1 any company of which they are or has in the last preceding five years been a director;
  - 18.23.6.2 any charity or voluntary organisation in the field of health and social care in which they hold a position of authority;
  - 18.23.6.3 any political party or recognised campaign or pressure group of which they are a member or employee; and
  - 18.23.6.4 any employment, business or other relationship which might influence or conflict with, or might reasonably be predicted to influence or conflict with the interests of the Trust.
- The Secretary shall cause any such declarations to be noted at the next following meeting of the Board of Directors and a record to be made in the minutes of the meeting.
- 18.23.7 An interest of which a Director has no knowledge and of which it is unreasonable to expect them to have knowledge shall not be treated as an interest of theirs.
- 18.23.8 It is the responsibility of each Director as soon as they become aware of any change to the interests declared by them to declare that change to the next possible meeting of the Board of Directors. The Secretary shall cause a record of such declarations to be made in the minutes of the meeting.
- 18.23.9 The Secretary shall enter the particulars of each declaration made under this Section 18.23 in the Register of Directors' Interests within 14 days of the date of the meeting of the Board of Directors at which the declaration is made and shall ensure that the Register of Directors' Interests is available for inspection by members of the public at all reasonable times.

18.23.10 If a Director has any doubt about the relevance of an interest, this should be discussed with the Secretary.

### **Conflict of Interests of Directors**

- 18.24 If a Director has an interest in an actual or proposed contract, arrangement, transaction or other matter and is present at a meeting of the Board of Directors (or any committee or sub-committee of it) at which the contract, arrangement, transaction or other matter is the subject of consideration, they shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not take part in the consideration or discussion of the contract or other matter or vote on any question with respect to it and they shall no longer count towards the quorum.
- 18.25 If a question arises at a meeting of the Board of Directors or a committee or sub-committee thereof as to the right of a Director to vote, the question may, before the conclusion of the meeting, be referred to the Chair of the meeting and their ruling in relation to any Director other than themselves shall be conclusive.
- 18.26 The duties that a Director of the Trust has by virtue of being a Director include in particular:
- 18.26.1 a duty to avoid a situation in which the Director has (or can have) a direct or indirect interest that conflicts (or possibly may conflict) with the interests of the Trust; and
  - 18.26.2 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.
- 18.27 The duty referred to in sub-paragraph 18.26.1 is not infringed if:
- 18.27.1 the situation cannot reasonably be regarded as likely to give rise to a conflict of interest, or
  - 18.27.2 the matter has been authorised in accordance with the Constitution.
- 18.28 The duty referred to in sub-paragraph 18.26.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- 18.29 In sub-paragraph 18.26.2, "third party" means a person other than:
- 18.29.1 the Trust; or
  - 18.29.2 a person acting on its behalf.
- 18.30 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.
- 18.31 If a declaration under this paragraph proves to be, or becomes, inaccurate, or incomplete, a further declaration must be made.

- 18.32 Any declaration required by this paragraph 18 must be made before the Trust enters into the transaction or arrangement.
- 18.33 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.
- 18.34 A Director need not declare an interest –
- 18.34.1 if it cannot reasonably be regarded as likely to give rise to a conflict of interest; or
  - 18.34.2 if, or to the extent that, the Directors are already aware of it; or
  - 18.34.3 if, or to the extent that, it concerns terms of the Director's appointment that have been or are to be considered:
    - 18.34.3.1 by a meeting of the Board of Directors, or
    - 18.34.3.2 by a committee of the Directors appointed for the purpose under the Constitution.

## **19. REGISTERS**

- 19.1 The Trust shall hold and maintain:
- 19.1.1 a register of Members showing, in respect of each Member, and except as otherwise provided by law, the constituency, and where there are Classes within it the Class, to which they belong;
  - 19.1.2 a register of members of the Council of Governors;
  - 19.1.3 a register of Directors;
  - 19.1.4 a register of interests of the Directors; and
  - 19.1.5 a register of interests of members of the Council of Governors.
- 19.2 The Trust shall maintain the registers referred to in paragraph 19.1 above in such form and subject to such provisions as comply with the 2006 Act, this Constitution and any regulations which may be made in this regard and subject to such provisions as the Trust may determine from time to time. Members will be removed from the Register of Members if:
- 19.2.1 the Member is no longer eligible or is disqualified; or
  - 19.2.2 the Member is deceased.

## **20. PUBLIC DOCUMENTS**

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

20.1.1 a copy of the current Constitution;

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

20.1.3 a copy of the latest annual report;

20.1.4 a copy of the latest information as to the Trust's forward planning; and

20.1.5 a copy of the following documents relating to a special administration of the Trust:

20.1.5.1 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;

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

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

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

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

20.1.5.6 any notice published under section 65F (administrator's draft report), 65G (consultation plan), 65H (consultation requirements), 65J (power to extend time), 65KA (NHSI's decision), 65KB (Secretary of State's response to NHSI'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;

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

20.1.5.8 any final report published under section 65I (administrator's final report);



20.1.5.9 any statement published under section 65J (power to extend time) or 65KC (action following Secretary of State's rejection of final report) of the 2006 Act; and

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

20.2 Any person who requests it shall be provided with a copy or extract from any of the above documents.

20.3 If the person requesting a copy or extract is not a Member, the Trust may impose a reasonable charge for providing the copy or extract.

20.4 The registers mentioned in paragraph 19.1 above shall all be made available for inspection by members of the public except in circumstances prescribed by the Public Benefit Corporation (Register of Members) Regulations 2004 and any other applicable regulations made from time to time under the 2006 Act. The Trust shall not make available for inspection by members of the public any part of the Register of Members that shows details of:

20.4.1 the Members of the Patient Constituency; or

20.4.2 the Members of the Staff Constituency; or

20.4.3 any Member who so requests.

## **21. AUDITOR**

21.1 The Trust shall have an Auditor.

21.2 The appointment and removal of the Auditor by the Council of Governors shall be as provided for in paragraph 14.1, and the monitoring of the Auditor's functions by a committee of non-executive Directors shall be as provided for in paragraph 18.13.

## **22. ACCOUNTS**

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

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

22.3 The accounts shall be audited by the Auditor.

22.4 The Trust (through its Chief Executive and Accounting Officer) shall prepare in respect of each Financial Year annual accounts in such form as NHSI may with the approval of the Secretary of State direct.

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

- 22.6 In preparing its annual accounts, the Trust is to comply with any directions given by NHSI with the approval of the Secretary of State as to:
- 22.6.1 the methods and principles according to which the accounts are to be prepared;
  - 22.6.2 the content and form of the accounts;
- 22.7 The annual accounts, any report of the Auditor on them, and the annual report are to be presented to the Council of Governors at a general meeting.
- 22.8 The Trust must:
- 22.8.1 lay a copy of the annual accounts, and any report of the Auditor on them, before Parliament; and
  - 22.8.2 once it has done so, send copies of those documents to NHSI within such period as NHSI may direct.
- 22.9 The Chief Executive as accounting officer is responsible for the preparation of the annual accounts, for laying before Parliament a copy of the annual accounts and any report of the Auditor on them, and for sending copies of such documents to NHSI.

### **23. ANNUAL REPORTS, FORWARD PLANS AND NON-NHS WORK**

- 23.1 The Trust shall prepare annual reports and send them to NHSI.
- 23.2 The reports are to give:
- 23.2.1 information on any steps taken by the Trust to secure that (taken as a whole) the actual membership of the Public and Patient Constituencies and the Classes of the Staff Constituency is representative of those eligible for such membership; and
  - 23.2.2 information on the impact that income received by the Trust otherwise than from the provision of goods and services for the purposes of the health service in England has had on the provision by the Trust of goods and services for those purposes;
  - 23.2.3 information on any exercise by the Council of Governors of its power to require a Director to attend a meeting;
  - 23.2.4 information on the Trust's policy on pay, on the work of the committee of non-executive Directors established to decide the remuneration and allowances and the other terms and conditions of office of the executive Directors and on such other procedures as the Trust has on pay;
  - 23.2.5 information on the remuneration of the Directors and on the expenses of the Governors and the Directors; and

- 23.2.6 any other information that NHSI requires.
- 23.3 The Trust shall comply with any decision NHSI makes as to:
  - 23.3.1 the form of the reports;
  - 23.3.2 when the reports are to be sent to it; and
  - 23.3.3 the periods to which the reports are to relate.
- 23.4 The Trust shall give information as to its forward planning in respect of each Financial Year to NHSI.
- 23.5 The document containing the information with respect to forward planning (referred to above) shall be prepared by the Directors.
- 23.6 In preparing the document, the Directors shall have regard to the views of the Council of Governors.
- 23.7 Each forward plan must include information about:
  - 23.7.1 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
  - 23.7.2 the income it expects to receive from doing so.
- 23.8 Where a forward plan contains a proposal that the Trust carry on an activity of a kind mentioned in paragraph 23.7.1 the Council of Governors must:
  - 23.8.1 determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfilment by the Trust of its Principal Purpose or the performance of its other functions, and
  - 23.8.2 notify the Directors of the Trust of its determination.
- 23.9 Until the Council of Governors has notified the Directors that it has made a determination in accordance with paragraph 23.8 that it is satisfied that the carrying on of the proposed activity will not to any significant extent interfere with the fulfilment of its other functions, the Trust shall not implement the proposal.
- 23.10 Where the Trust proposes to increase by 5% or more the proportion of its total income in any financial year attributable to activities other than the provision of goods and services for the purposes of the health service in England, it may implement the proposal only if more than half of the members of the Council of Governors of the Trust voting approve its implementation.

## **24. INDEMNITY**

- 24.1 Save where they have acted recklessly members of the Council of Governors and Board of Directors and officers of the Trust who act honestly and in good faith shall not have to meet out of their personal resources any personal civil liability which is incurred in the execution or purported execution of their respective functions and any costs arising in this way shall be met by the Trust.
- 24.2 The Trust may make such arrangements as it considers appropriate for the provision of indemnity insurance or similar arrangements for the protection of the Trust, its Governors, Directors and officers to meet all or any of those liabilities properly the liability of the Trust under paragraph 24.1 above.

## **25. INSTRUMENTS ETC**

- 25.1 The Trust shall have a seal which shall not be affixed except under the authority of the Board of Directors.
- 25.2 A document purporting to be duly executed under the Trust's seal or to be signed on its behalf is to be received in evidence and, unless the contrary is proven, taken to be so executed or signed.

## **26. DISPUTE RESOLUTION PROCEDURES**

- 26.1 In the event of a dispute with a Member or Applicant in relation to matters of eligibility and disqualification, such Member or Applicant shall be invited to discuss the grounds of dispute with the Trust Secretary and one or more Directors to be determined by mutual agreement of the Secretary and the individual concerned. If not resolved, the dispute shall then be referred for decision to a committee of the Council of Governors whose decision shall be final.
- 26.2 In the event of a dispute with a Governor in relation to matters of eligibility, disqualification and termination of tenure, such Governor shall be invited to an informal meeting with Secretary and one or more Directors to be determined by mutual agreement of the Secretary and the individual concerned. The dispute shall then, if not resolved, be referred for a decision to a panel consisting of the Chair and at least two Governors of whom one Governor must have been elected by the Public, Patient or Staff constituencies. The decision of that panel shall be final.
- 26.3 In the event of a dispute between the Council of Governors and the Board of Directors:
- 26.3.1 the dispute shall be referred to the Chair and Chief Executive Officer of the Trust and two Governors nominated by the Council of Governors. The Chair will not participate in the nomination of governors to this Panel. The Panel shall use their reasonable endeavours to facilitate the resolution of the dispute;
  - 26.3.2 If the Panel is unable to facilitate a resolution of the dispute then they shall formally consult the Council of Governors and Board of Directors as to whether the matter should be referred to a process of mediation to be

agreed between the Council of Governors and the Board of Directors or, in default of agreement, as selected by the Chair;

26.3.3 if the option of mediation is rejected or proves unsuccessful in facilitating a resolution to the dispute, the Council of Governors and the Board of Directors must then rely on such other remedies as are available to them; and

26.3.4 nothing in the above shall preclude any party from referring any dispute to a court of competent jurisdiction in England and Wales.

## **27. AMENDMENT OF THE CONSTITUTION**

27.1 Subject to paragraph 27.2, the Trust may make amendments to this Constitution where:

27.1.1 more than half of the Council of Governors voting approve the amendments; and

27.1.2 more than half of the members of the Board of Directors voting approve the amendments;

and such amendments shall take effect once both of the approvals set out in this paragraph 27.1 have been obtained.

27.2 Any amendments proposed and approved under paragraph 27.1 shall take no effect where the effect of such an amendment would not accord with the provisions of Schedule 7 of the 2006 Act.

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

27.3.1 at least one member of the Council of Governors must attend the next Annual Members' Meeting and present the amendment;

27.3.2 the Trust must give the Members an opportunity to vote on whether they approve the amendment; and

27.3.3 if more than half the members voting approve the amendment, the amendment shall continue to have effect, otherwise it shall cease to have effect and the Trust shall take such other steps as are necessary as a result.

27.4 The Trust shall notify NHSI of any amendments made to the Constitution in accordance with paragraph 27.1. For the avoidance of doubt, NHSI has no power or duty to determine whether or not the Constitution, as a result of the amendments, accords with Schedule 7 of the 2006 Act.

**28. MERGERS AND SIGNIFICANT TRANSACTIONS**

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

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

**"Significant Transaction"** means:

28.2.1 the acquisition of, or an agreement to acquire, whether contingent or not, assets the value of which is more than 25% of the value of the Trust's gross assets before the acquisition; or

28.2.2 the disposition of, or an agreement to dispose of, whether contingent or not, assets of the Trust the value of which is more than 25% of the value of the Trust's gross assets before the disposition; or

28.2.3 a transaction that has or is likely to have the effect of the Trust acquiring rights or interests or incurring obligations or liabilities, including contingent liabilities, the value of which is more than 25% of the value of the Trust's gross assets before the transaction.

28.3 For the purpose of this paragraph 28.2:

28.3.1 "gross assets" means the total of fixed assets and current assets;

28.3.2 in assessing the value of any contingent liability for the purposes of sub-paragraph 28.2.3, the Directors:

28.4 The views of the Council of Governors will be taken into account before the Trust enters into any proposed transaction which would exceed a threshold of 10% for any of the criteria set out in paragraph 28.2 (a "Material Transaction").

## ANNEX 1

## PART A - PUBLIC CONSTITUENCIES

Table 1

PUBLIC CONSTITUENCY	ELECTORAL WARDS	MINIMUM NUMBER OF MEMBERS	NUMBER OF GOVERNORS
Lambeth	All of the electoral wards in the London Borough of Lambeth.	60	4
Southwark	All of the electoral wards in the London Borough of Southwark.	60	4
Bromley	All of the electoral wards in the London Borough of Bromley.	60	4
SEL System constituency	All of the electoral wards in the London Boroughs of Bexley, Greenwich and Lewisham	20	1
Public Constituency– London	All other electoral wards and boroughs in London	20	1
<b>TOTAL</b>		<b>220</b>	<b>14</b>

**PART B – STAFF CLASSES****Table 2**

<b>NAME OF STAFF CLASS</b>	<b>PERSONS ELIGIBLE TO BE PART OF THE STAFF CLASS</b>	<b>MINIMUM NUMBER OF MEMBERS</b>	<b>NUMBER OF GOVERNORS</b>
Medical and Dental Practitioners Staff Class	Individuals who are recognised medical or dental practitioners or medical or dental practitioner trainees who are recognised by the Trust as being within this Staff Class or are otherwise designated by the Trust from time to time as Members of this Staff Class, having regard to the usual definitions applicable at that time to a person discharging these functions and who fit this definition at the date of their application or invitation (as the case may be), and at all times afterwards.	10	1
Nurses and Midwives Staff Class	Individuals who are nurses and midwives who undertake nursing and midwifery roles within the Trust's Hospitals and are recognised by the Trust as being within this Staff Class or are otherwise designated by the Trust from time to time as Members of this Staff Class having regard to the usual definitions applicable at that time to a person discharging these functions and who fit this definition at the date of their application or invitation (as the case may be), and at all times afterwards.	20	2
Allied Health Professionals, Scientific, and Technical Staff Class	Individuals who undertake allied health professional, scientific and technical roles	10	1



	within a Trust Hospital and are recognised by the Trust as being within this Staff Class or are otherwise designated by the Trust from time to time as Members of this Staff Class, having regard to the usual definitions applicable at that time to a person discharging these functions and who fit this definition at the date of their application or invitation (as the case may be), and at all times afterwards.		
Administrative and Clerical and Management Grade Staff Class	Individuals who undertake administrative and clerical and management grade roles, including information technology staff, and are recognised by the Trust as being within this Staff Class or are otherwise designated by the Trust from time to time as Members of this Staff Class, having regard to the usual definitions applicable at that time to the person discharging these functions and who fit this definition at the date of their application or invitation (as the case may be), and at all times afterwards.	10	1

**PART C – PATIENT CONSTITUENCY**

**Table 3**

Patient Constituency	Patients and Patient Carers as defined in paragraph 9 of this Constitution.	120	6
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## **ANNEX 2**

### **PROCEDURE FOR MEETINGS OF THE COUNCIL OF GOVERNORS**

#### ***Calling Meetings***

1. The Chair may call a meeting at any time and shall, after receipt of a requisition for that purpose, signed by at least one third of the whole number of Governors call a meeting.
2. If the Chair does not call a meeting within seven days of receipt of a requisition signed by at least one third of the whole number of Governors, such one third of the Governors may call a meeting.
3. In the case of a meeting called by the Governors in default of the Chair the notice shall be signed by those Governors and no business shall be transacted at that meeting other than that specified in the notice.

#### ***Notice of Meetings***

4. A notice of meeting specifying the date, time and place of the meeting and the business proposed to be carried out at it shall be delivered to every Governor, or sent by post to the usual place of residence of such Governor at least three clear working days before each meeting. Notification may be made by electronic means.
5. Failure to serve notice on one quarter or more of the whole of the number of Governors shall invalidate the meeting, but lack of service of notice on any Governor shall not otherwise affect the validity of a meeting or the business transacted at it.
6. It shall not be necessary to give notice of a meeting to a Governor who is absent from the United Kingdom. Notice shall be presumed to have been served at the time at which the notice would be delivered in the ordinary course of the post.
7. Subject to paragraph 9 below a public notice of the time and place of the meeting, and the business to be carried out shall be displayed on the Trust's website at least three clear working days before the meeting.
8. Meetings may be held via video conference.

#### ***Admittance of the Public***

9. All meetings of the Governors are deemed to be General Meetings open to members of the public, unless for reasons of patient, individual or commercial sensitivity the Council of Governors resolves otherwise.
10. Members of the public have the right to attend General Meetings but do not have the right to intervene or ask questions unless invited to do so by the Chairman. Members of the public may be excluded from a meeting, if it is deemed necessary to conclude the business of the meeting.

#### ***Quorum***

11. No business may be carried out unless a quorum is present.

## Constitution

12. A quorum for any meeting of the Governors shall be eleven Governors of whom at least three must be Governors elected by the Public and Patient constituencies, one must be elected by the Staff constituency, and one must be a Nominated Governor.
13. If this quorum is not present within half an hour from the time set for the meeting, or if during the meeting a quorum ceases to be present, the meeting shall automatically be adjourned to such time and place as the Chair in their sole discretion shall decide save that notice of the adjourned meeting shall be given in accordance with paragraph 4 above.
14. The Council of Governors may from time to time and upon request agree that a member or members of the Council of Governors may participate in a meeting by video link. If so agreed, participation in a meeting in this manner shall be deemed to constitute presence in person at that meeting.

### **Chair**

15. Statements of Governors made at meetings of the Council of Governors shall be relevant to the matter under discussion at the time and the decision of the Chair of the meeting as to questions of order, relevance, or regularity shall be observed at the meeting.

### **Voting**

16. Voting at duly convened meetings of the Council of Governors shall be conducted on a show of hands, or by paper ballot if agreed by a majority of those Governors present, and decided by a simple majority of the votes cast and no absent Governor shall vote by proxy. If the meeting is being held using electronic means, votes may, at the Chairman's discretion, take place by oral expression.
17. Each Governor shall have one vote.
18. In the case of an equality of votes, the Chair of the meeting or that part of the meeting shall have a casting vote. In the event that the Chair or non-executive Director presiding at a meeting or part of a meeting is disqualified from discussion of, and voting on a matter by reason of a conflict of interest or otherwise, and the Chair of the meeting or that part of a meeting is therefore also a member of the Council of Governors, the Chair shall have one vote as a Governor and a second casting vote.

### **Minutes**

19. The Governors shall cause minutes of the meetings of the Council of Governors to be taken and kept in books for that purpose.
20. The names of the Governors present at each meeting, of the Governors who have sent apologies in respect of each meeting and of the Governors absent from each meeting shall be recorded in the minutes.
21. The minutes of each meeting shall be circulated in draft as soon as is practicable after the meeting and shall be submitted for agreement at the next ensuing meeting where they will be signed by the person presiding at it.

### **Committees**

22. Unless otherwise provided by the 2006 Act or this Constitution the Council of Governors may appoint Committees consisting of its members, Directors of the Trust and other persons to assist it to carry out its functions.

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## ANNEX 3

### KING'S COLLEGE HOSPITAL NHS FOUNDATION TRUST - MODEL ELECTION RULES FOR THE ELECTION OF GOVERNORS

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**1. Interpretation**

1.1 In these rules, unless the context otherwise requires:

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

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

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

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

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

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

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

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

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

“*lead governor*” means the governor nominated by the corporation to fulfil the role described in Appendix B to The NHS Foundation Trust Code of Governance (NHSI, 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;

“*NHSI*” means the corporate body known as NHSI 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



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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.

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## PART 2: TIMETABLE FOR ELECTIONS

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### 2. Timetable

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

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

### 3. Computation of time

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

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

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

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

**4. Returning Officer**

- 4.1 Subject to rule 69, the returning officer for an election is to be appointed by the corporation.
- 4.2 Where two or more elections are to be held concurrently, the same returning officer may be appointed for all those elections.

**5. Staff**

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

**6. Expenditure**

- 6.1 The corporation is to pay the returning officer:
- (a) any expenses incurred by that officer in the exercise of their or her functions under these rules,
  - (b) such remuneration and other expenses as the corporation may determine.

**7. Duty of co-operation**

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

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

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

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

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

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

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

9.2 The returning officer:

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

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

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

10.1 The nomination form must state the candidate's:

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

### **11. Declaration of interests**

11.1 The nomination form must state:

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

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

## **12. Declaration of eligibility**

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

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

## **13. Signature of candidate**

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

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

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

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

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

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

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

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

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

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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

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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 or her in consultation with the corporation.

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

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

**20. The ballot paper**

- 20.1 The ballot of each voter (other than a voter who casts their or her ballot by an e-voting method of polling) is to consist of a ballot paper with the persons remaining validly nominated for an election after any withdrawals under these rules, and no others, inserted in the paper.
- 20.2 Every ballot paper must specify:
- (a) the name of the corporation,
  - (b) the constituency, or class within a constituency, for which the election is being held,
  - (c) the number of members of the council of governors to be elected from that constituency, or class within that constituency,
  - (d) the names and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,



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- (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 or she has not marked or returned any other voting information in the election, and
- (c) the particulars of their or her qualification to vote as a member of the constituency or class within the constituency for which the election is being held,

("declaration of identity")

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

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

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

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

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

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

22.2 The list is to include, for each member:

- (a) a postal address; and,

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

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

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

## **23. Notice of poll**

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

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

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

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

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

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- 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 or her vote by an e-voting method of polling:
- (a) instructions on how to vote and how to make a declaration of identity (if required),
  - (b) the voter's voter ID number,
  - (c) information about each candidate standing for election, pursuant to rule 64 of these rules, or details of where this information is readily available on the internet or available in such other formats as the Returning Officer thinks appropriate, (d) contact details of the returning officer,
- ("e-voting information").
- 24.3 The corporation may determine that any member of the corporation shall:
- (a) only be sent postal voting information; or
  - (b) only be sent e-voting information; or
  - (c) be sent both postal voting information and e-voting information;
- for the purposes of the poll.
- 24.4 If the corporation determines, in accordance with rule 22.3, that the e-voting information is to be sent only by e-mail to those members in the list of eligible voters for whom an e-mail address is included in that list, then the returning officer shall only send that information by e-mail.
- 24.5 The voting information is to be sent to the postal address and/ or e-mail address for each member, as specified in the list of eligible voters.
- 25. Ballot paper envelope and covering envelope**
- 25.1 The ballot paper envelope must have clear instructions to the voter printed on it, instructing the voter to seal the ballot paper inside the envelope once the ballot paper has been marked.
- 25.2 The covering envelope is to have:
- (a) the address for return of the ballot paper printed on it, and
  - (b) pre-paid postage for return to that address.
- 25.3 There should be clear instructions, either printed on the covering envelope or elsewhere, instructing the voter to seal the following documents inside the covering envelope and return it to the returning officer –
- (a) the completed ID declaration form if required, and
  - (b) the ballot paper envelope, with the ballot paper sealed inside it.
- 26. E-voting systems**
- 26.1 If internet voting is a method of polling for the relevant election then the returning officer must provide a website for the purpose of voting over the internet (in these rules referred to as "the polling website").
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- 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 or her voter ID number; and
    - (ii) where the election is for a public or patient constituency, make a declaration of identity;in order to be able to cast their or her vote;
  - (b) specify:
    - (i) the name of the corporation,
    - (ii) the constituency, or class within a constituency, for which the election is being held,
    - (iii) the number of members of the council of governors to be elected from that constituency, or class within that constituency,
    - (iv) the names and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
    - (v) instructions on how to vote and how to make a declaration of identity,
    - (vi) the date and time of the close of the poll, and
    - (vii) the contact details of the returning officer;
  - (c) prevent a voter from voting for more candidates than they or she is entitled to at the election;
  - (d) create a record (“internet voting record”) that is stored in the internet voting system in respect of each vote cast by a voter using the internet that comprises of-
    - (i) the voter’s voter ID number;
    - (ii) the voter’s declaration of identity (where required);
    - (iii) the candidate or candidates for whom the voter has voted; and
    - (iv) the date and time of the voter’s vote,
  - (e) if the voter’s vote has been duly cast and recorded, provide the voter with confirmation of this; and
  - (f) prevent any voter from voting after the close of poll.
- 26.5 The returning officer shall ensure that the telephone voting facility and telephone voting system provided will:
- (a) require a voter to
    - (i) enter their or her voter ID number in order to be able to cast their or her vote; and
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- (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 or she is entitled to at the election;
  - (d) create a record ("telephone voting record") that is stored in the telephone voting system in respect of each vote cast by a voter using the telephone that comprises of:
    - (i) the voter's voter ID number;
    - (ii) the voter's declaration of identity (where required);
    - (iii) the candidate or candidates for whom the voter has voted; and
    - (iv) the date and time of the voter's vote
  - (e) if the voter's vote has been duly cast and recorded, provide the voter with confirmation of this;
  - (f) prevent any voter from voting after the close of poll.

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

- (a) require a voter to:
    - (i) provide their or her voter ID number; and
    - (ii) where the election is for a public or patient constituency, make a declaration of identity;in order to be able to cast their or her vote;
  - (b) prevent a voter from voting for more candidates than they or she is entitled to at the election;
  - (d) create a record ("text voting record") that is stored in the text messaging voting system in respect of each vote cast by a voter by text message that comprises of:
    - (i) the voter's voter ID number;
    - (ii) the voter's declaration of identity (where required);
    - (ii) the candidate or candidates for whom the voter has voted; and
    - (iii) the date and time of the voter's vote
  - (e) if the voter's vote has been duly cast and recorded, provide the voter with confirmation of this;
  - (f) prevent any voter from voting after the close of poll.
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*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 or she considers necessary to enable that voter to vote.

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

- 29.1 If a voter has dealt with their or her ballot paper in such a manner that it cannot be accepted as a ballot paper (referred to as a "spoilt ballot paper"), that voter may apply to the returning officer for a replacement ballot paper.
- 29.2 On receiving an application, the returning officer is to obtain the details of the unique identifier on the spoilt ballot paper, if they or she can obtain it.
- 29.3 The returning officer may not issue a replacement ballot paper for a spoilt ballot paper unless they or she:
- (a) is satisfied as to the voter's identity; and
  - (b) has ensured that the completed ID declaration form, if required, has not been returned.
- 29.4 After issuing a replacement ballot paper for a spoilt ballot paper, the returning officer shall enter in a list ("the list of spoilt ballot papers"):
- (a) the name of the voter, and
  - (b) the details of the unique identifier of the spoilt ballot paper (if that officer was able to obtain it), and
  - (c) the details of the unique identifier of the replacement ballot paper.
- 29.5 If a voter has dealt with their or her text message vote in such a manner that it cannot be accepted as a vote (referred to as a "spoilt text message vote"), that voter may apply to the returning officer for a replacement voter ID number.
- 29.6 On receiving an application, the returning officer is to obtain the details of the voter ID number on the spoilt text message vote, if they or she can obtain it.
- 29.7 The returning officer may not issue a replacement voter ID number in respect of a spoilt text message vote unless they or she is satisfied as to the voter's identity.
- 29.8 After issuing a replacement voter ID number in respect of a spoilt text message vote, the returning officer shall enter in a list ("the list of spoilt text message votes"):
- (a) the name of the voter, and

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

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

- 30.1 Where a voter has not received their or her voting information by the tenth day before the close of the poll, that voter may apply to the returning officer for replacement voting information.
- 30.2 The returning officer may not issue replacement voting information in respect of lost voting information unless they or she:
  - (a) is satisfied as to the voter's identity,
  - (b) has no reason to doubt that the voter did not receive the original voting information,
  - (c) has ensured that no declaration of identity, if required, has been returned.
- 30.3 After issuing replacement voting information in respect of lost voting information, the returning officer shall enter in a list ("the list of lost ballot documents"):
  - (a) the name of the voter
  - (b) the details of the unique identifier of the replacement ballot paper, if applicable, and
  - (c) the voter ID number of the voter.

### **31. Issue of replacement voting information**

- 31.1 If a person applies for replacement voting information under rule 29 or 30 and a declaration of identity has already been received by the returning officer in the name of that voter, the returning officer may not issue replacement voting information unless, in addition to the requirements imposed by rule 29.3 or 30.2, they or she is also satisfied that that person has not already voted in the election, notwithstanding the fact that a declaration of identity if required has already been received by the returning officer in the name of that voter.
- 31.2 After issuing replacement voting information under this rule, the returning officer shall enter in a list ("the list of tendered voting information"):
  - (a) the name of the voter,
  - (b) the unique identifier of any replacement ballot paper issued under this rule;
  - (c) the voter ID number of the voter.

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

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

*Polling by internet, telephone or text*

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

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

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

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

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

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

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

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

**36. Receipt of voting documents**

- 36.1 Where the returning officer receives:
- (a) a covering envelope, or
  - (b) any other envelope containing an ID declaration form if required, a ballot paper envelope, or a ballot paper,
- before the close of the poll, that officer is to open it as soon as is practicable; and rules 37 and 38 are to apply.



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- 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 or she is to:
- (a) put the ID declaration form if required in a separate packet, and
  - (b) put the ballot paper aside for counting after the close of the poll.
- 37.3 Where the returning officer is not satisfied that rule 37.1 has been fulfilled, they or she is to:
- (a) mark the ballot paper “disqualified”,
  - (b) if there is an ID declaration form accompanying the ballot paper, mark it “disqualified” and attach it to the ballot paper,
  - (c) record the unique identifier on the ballot paper in a list of disqualified documents (the “list of disqualified documents”); and
  - (d) place the document or documents in a separate packet.
- 37.4 An internet, telephone or text message vote shall not be taken to be duly returned unless the returning officer is satisfied that the internet voting record, telephone voting record or text voting record (as applicable) has been received by the returning officer before the close of the poll, with a declaration of identity if required that has been correctly made.
- 37.5 Where the returning officer is satisfied that rule 37.4 has been fulfilled, they or she is to put the internet voting record, telephone voting record or text voting record (as applicable) aside for counting after the close of the poll.
- 37.6 Where the returning officer is not satisfied that rule 37.4 has been fulfilled, they or she is to:
- (a) mark the internet voting record, telephone voting record or text voting record (as applicable) “disqualified”,
  - (b) record the voter ID number on the internet voting record, telephone voting record or text voting record (as applicable) in the list of disqualified documents; and
  - (c) place the document or documents in a separate packet.
- 38. Declaration of identity but no ballot paper (public and patient constituency)<sup>1</sup>**
- 38.1 Where the returning officer receives an ID declaration form if required but no ballot

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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.

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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 or she shall:

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

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

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

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

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

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

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

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

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- (d) the list of lost ballot documents,
  - (e) the list of eligible voters, and
  - (f) the list of tendered voting information

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

**STV41. Interpretation of Part 6**

STV41.1 In Part 6 of these rules:

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

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

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

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

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

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

- (a) on which no second or subsequent preference is recorded for a continuing candidate,
- or
- (b) which is excluded by the returning officer under rule STV49,

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

- (a) “first preference” means the figure “1” or any mark or word which clearly indicates a first (or only) preference,
- (b) “next available preference” means a preference which is the second, or as the case may be, subsequent preference recorded in consecutive order for a continuing candidate (any candidate who is deemed to be elected or is excluded thereby being ignored); and
- (c) in this context, a “second preference” is shown by the figure “2” or any mark or word which clearly indicates a second preference, and a third preference by the figure “3” or any mark or word which clearly indicates a third preference, and so on,

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

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

*“stage of the count”* means:

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

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

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

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

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

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

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

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

## **43. The count**

43.1 The returning officer is to:

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

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

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

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

STV44.1 Any ballot paper:

- (a) which does not bear the features that have been incorporated into the other ballot

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papers to prevent them from being reproduced,

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

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

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

STV44.3 Any text voting record:

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

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

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

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

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

FPP44.1 Any ballot paper:

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

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

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

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

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

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

FPP44.4 The returning officer is to:

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

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

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

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

FPP44.6 Any text voting record:

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

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

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

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

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

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

FPP44.9 The returning officer is to:

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

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

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

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

#### **STV45. First stage**

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

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

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

#### **STV46. The quota**

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

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

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



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STV47.1 to STV47.3 has been complied with.

#### **STV47. Transfer of votes**

- STV47.1 Where the number of first preference votes for any candidate exceeds the quota, the returning officer is to sort all the ballot documents on which first preference votes are given for that candidate into sub- parcels so that they are grouped:
- (a) according to next available preference given on those ballot documents for any continuing candidate, or
  - (b) where no such preference is given, as the sub-parcel of non-transferable votes.
- STV47.2 The returning officer is to count the number of ballot documents in each parcel referred to in rule STV47.1.
- STV47.3 The returning officer is, in accordance with this rule and rule STV48, to transfer each sub-parcel of ballot documents referred to in rule STV47.1(a) to the candidate for whom the next available preference is given on those ballot documents.
- STV47.4 The vote on each ballot document transferred under rule STV47.3 shall be at a value ("the transfer value") which:
- (a) reduces the value of each vote transferred so that the total value of all such votes does not exceed the surplus, and
  - (b) is calculated by dividing the surplus of the candidate from whom the votes are being transferred by the total number of the ballot documents on which those votes are given, the calculation being made to two decimal places (ignoring the remainder if any).
- STV47.5 Where at the end of any stage of the count involving the transfer of ballot documents, the number of votes for any candidate exceeds the quota, the returning officer is to sort the ballot documents in the sub-parcel of transferred votes which was last received by that candidate into separate sub-parcels so that they are grouped:
- (a) according to the next available preference given on those ballot documents for any continuing candidate, or
  - (b) where no such preference is given, as the sub-parcel of non-transferable votes.
- STV47.6 The returning officer is, in accordance with this rule and rule STV48, to transfer each sub-parcel of ballot documents referred to in rule STV47.5(a) to the candidate for whom the next available preference is given on those ballot documents.
- STV47.7 The vote on each ballot document transferred under rule STV47.6 shall be at:
- (a) a transfer value calculated as set out in rule STV47.4(b), or
  - (b) at the value at which that vote was received by the candidate from whom it is now being transferred,
- whichever is the less.
- STV47.8 Each transfer of a surplus constitutes a stage in the count.
- STV47.9 Subject to rule STV47.10, the returning officer shall proceed to transfer transferable ballot documents until no candidate who is deemed to be elected has a surplus or all the vacancies have been filled.
- STV47.10 Transferable ballot documents shall not be liable to be transferred where any surplus

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or surpluses which, at a particular stage of the count, have not already been transferred, are:

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

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

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

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

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

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

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

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

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

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## STV49. Exclusion of candidates

- STV49.1        If:
- (a)    all transferable ballot documents which under the provisions of rule STV47 (including that rule as applied by rule STV49.11) and this rule are required to be transferred, have been transferred, and
  - (b)    subject to rule STV50, one or more vacancies remain to be filled,
- the returning officer shall exclude from the election at that stage the candidate with the then lowest vote (or, where rule STV49.12 applies, the candidates with the then lowest votes).
- STV9.2        The returning officer shall sort all the ballot documents on which first preference votes are given for the candidate or candidates excluded under rule STV49.1 into two sub-parcels so that they are grouped as:
- (a)    ballot documents on which a next available preference is given, and
  - (b)    ballot documents on which no such preference is given (thereby including ballot documents on which preferences are given only for candidates who are deemed to be elected or are excluded).
- STV49.3        The returning officer shall, in accordance with this rule and rule STV48, transfer each sub-parcel of ballot documents referred to in rule STV49.2 to the candidate for whom the next available preference is given on those ballot documents.
- STV49.4        The exclusion of a candidate, or of two or more candidates together, constitutes a further stage of the count.
- STV49.5        If, subject to rule STV50, one or more vacancies still remain to be filled, the returning officer shall then sort the transferable ballot documents, if any, which had been transferred to any candidate excluded under rule STV49.1 into sub- parcels according to their transfer value.
- STV49.6        The returning officer shall transfer those ballot documents in the sub-parcel of transferable ballot documents with the highest transfer value to the continuing candidates in accordance with the next available preferences given on those ballot documents (thereby passing over candidates who are deemed to be elected or are excluded).
- STV49.7        The vote on each transferable ballot document transferred under rule STV49.6 shall be at the value at which that vote was received by the candidate excluded under rule STV49.1.
- STV9.8        Any ballot documents on which no next available preferences have been expressed shall be set aside as non-transferable votes.
- STV49.9        After the returning officer has completed the transfer of the ballot documents in the sub-parcel of ballot documents with the highest transfer value they or she shall proceed to transfer in the same way the sub-parcel of ballot documents with the next highest value and so on until they has dealt with each sub-parcel of a candidate excluded under rule STV49.1.
- STV49.10       The returning officer shall after each stage of the count completed under this rule:
- (a)    record:
    - (i)    the total value of votes, or
    - (ii)   the total transfer value of votes transferred to each candidate,

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

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

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

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

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

#### **STV50. Filling of last vacancies**

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

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

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

#### **STV51. Order of election of candidates**

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

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

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

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deemed to be the largest.

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

**FPP51. Equality of votes**

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

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

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### FPP52. Declaration of result for contested elections

- FPP52.1 In a contested election, when the result of the poll has been ascertained, the returning officer is to:
- (a) declare the candidate or candidates whom more votes have been given than for the other candidates, up to the number of vacancies to be filled on the council of governors from the constituency, or class within a constituency, for which the election is being held to be elected,
  - (b) give notice of the name of each candidate who they or she has declared elected:
    - (i) where the election is held under a proposed constitution pursuant to powers conferred on the [insert name] NHS Trust by section 33(4) of the 2006 Act, to the chairman of the NHS Trust, or
    - (ii) in any other case, to the chairman of the corporation; and
  - (c) give public notice of the name of each candidate whom they or she has declared elected.
- FPP52.2 The returning officer is to make:
- (a) the total number of votes given for each candidate (whether elected or not), and
  - (b) the number of rejected ballot papers under each of the headings in rule FPP44.5,
  - (c) the number of rejected text voting records under each of the headings in rule FPP44.10,
- available on request.

### STV52. Declaration of result for contested elections

- STV52.1 In a contested election, when the result of the poll has been ascertained, the returning officer is to:
- (a) declare the candidates who are deemed to be elected under Part 6 of these rules as elected,
  - (b) give notice of the name of each candidate who they or she has declared elected –
    - (i) where the election is held under a proposed constitution pursuant to powers conferred on the [insert name] NHS Trust by section 33(4) of the 2006 Act, to the chairman of the NHS Trust, or
    - (ii) in any other case, to the chairman of the corporation, and
  - (c) give public notice of the name of each candidate who they or she has declared elected.
- STV52.2 The returning officer is to make:
- (a) the number of first preference votes for each candidate whether elected or not,
  - (b) any transfer of votes,
  - (c) the total number of votes for each candidate at each stage of the count at which such transfer took place,
  - (d) the order in which the successful candidates were elected, and

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- (e) the number of rejected ballot papers under each of the headings in rule STV44.1,
  - (f) the number of rejected text voting records under each of the headings in rule STV44.3,

available on request.

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

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

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

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

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

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

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

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

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

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

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

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

**55. Delivery of documents**

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

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

56.1 Where:

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



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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

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

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

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

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

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

- STV59.1 If, at a contested election, proof is given to the returning officer's satisfaction before the

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result of the election is declared that one of the persons named or to be named as a candidate has died, then the returning officer is to:

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

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

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## PART 10: ELECTION EXPENSES AND PUBLICITY

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### *Election expenses*

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

- 60.1 Any expenses incurred, or payments made, for the purposes of an election which contravene this Part are an electoral irregularity, which may only be questioned in an application made to NHSI 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 or her family any money or property (whether as a gift, donation, loan, or otherwise) to meet or contribute to expenses incurred by or on behalf of the candidate for the purposes of an election.
- 62.2 Nothing in this rule is to prevent the corporation from incurring such expenses, and making such payments, as it considers necessary pursuant to rules 63 and 64.

### *Publicity*

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

- 63.1 The corporation may:
- (a) compile and distribute such information about the candidates, and
  - (b) organise and hold such meetings to enable the candidates to speak and respond to questions,
- as it considers necessary.
- 63.2 Any information provided by the corporation about the candidates, including information compiled by the corporation under rule 64, must be:
- (a) objective, balanced and fair,
  - (b) equivalent in size and content for all candidates,
  - (c) compiled and distributed in consultation with all of the candidates standing for election, and
  - (d) must not seek to promote or procure the election of a specific candidate or

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

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

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

- 66.1 An application alleging a breach of these rules, including an electoral irregularity under Part 10, may be made to NHSI 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 NHSI 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. NHSI will refer the application to the independent election arbitration panel appointed by NHSI.
- 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 NHSI shall delegate the determination of an application to a person or panel of persons to be nominated for the purpose.
- 66.8 The determination by the IEAP shall be binding on and shall be given effect by the corporation, the applicant and the members of the constituency (or class within a constituency) including all the candidates for the election to which the application relates.
- 66.9 The IEAP may prescribe rules of procedure for the determination of an application including costs.

**67. Secrecy**

67.1 The following persons:

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

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

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

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

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

**68. Prohibition of disclosure of vote**

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

**69. Disqualification**

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

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

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

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

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

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



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## ANNEX 4

### KING'S COLLEGE HOSPITAL NHS FOUNDATION TRUST

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#### DECLARATION OF ELIGIBILITY TO VOTE AT A MEETING OF THE COUNCIL OF GOVERNORS OF THE TRUST

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1. In order legally to be entitled to vote at a meeting of the Council of Governors of the Trust, each Public Governor and each Patient Governor must upon appointment and at least every 12 months thereafter make a formal declaration of their qualification to vote as a Member of the Constituency or Class within the Constituency by which they is elected.
2. All Governors (including Staff Governors) must upon appointment and at least every 12 months thereafter make a declaration that they are not prevented from being a Member of the Council of Governors.
3. Paragraph 8 of Schedule 7 of the 2006 Act provides that you may not become or continue as a Member of the Council of Governors of the Trust if you:
  - 3.1 have been adjudged bankrupt or your estate has been sequestrated and, in either case you have not been discharged; or
  - 3.2 you are a person in relation to whom a moratorium period under a debt relief order applies (under Part 7A of the Insolvency Act 1986); or
  - 3.3 you have made a composition or arrangement with, or entered into a Trust Deed for your creditors and you have not been discharged in respect of it; or
  - 3.4 you are a person who has in the preceding five years has been convicted in the British Islands of any offence for which 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 you.
4. There are other circumstances in which you may not become or continue as a Member of the Trust or of the Council of Governors. Before voting at a Board of Governor's meeting you should satisfy yourself as to your eligibility and that you are not disqualified. A copy of the Constitution can be obtained from and is available for inspection at the office of the Trust.
5. If you are in any doubt as to your eligibility please contact the Trust Secretary.
6. Would you therefore please complete the information below and return it to the Trust in accordance with the instructions given in the final paragraph.
7. **IT IS A CRIMINAL OFFENCE** if you make a declaration which you know to be false in some material respect or if you make such a declaration recklessly which is false in some material respect.
8. **If you wish to vote at a meeting of the Council of Governors this form must be returned to the Trust Secretary not later than [insert date] otherwise you will not be eligible to vote after [insert date].**

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1.	My Name	
2.	My Address	
3.	My Trust Membership Number	
4.	The Constituency or Class of Constituency of which I am a Member is as appears opposite ( <i>insert full name of Constituency or Class of Constituency of which you are a Member</i> )	
5.	The details of why I am entitled to be a Member of that Class are as appear opposite ( <i>insert details</i> )*	
*to be completed by Patient Governors and Public Governors only		
6.	<p>I declare that the details above and the following statements are correct to the best of my knowledge and belief:</p> <p>(a) I remain eligible to be a Member of the Constituency or Class of Constituency above (this applies only to Public Governors and Patient Governors).</p> <p>(b) I am not disqualified from being a Member or a Governor by virtue of the provisions in the Constitution (see paragraph 10.1 and paragraph 12.1 in particular)</p>	
Signature		Date

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## ANNEX 5

### KING'S COLLEGE HOSPITAL NHS FOUNDATION TRUST - CODE OF CONDUCT FOR THE GOVERNORS

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Each Governor undertakes upon nomination for election that they will in assuming the role of Governor of the Trust and at all times thereafter whilst acting as a Governor that they will:

- be honest and act with integrity at all times;
- if they are a Public, Patient or Staff Governor, and a member of any trade's union, political party or other organisation, they shall recognise that should they be elected, they will not be representing those organisations (or the views of those organisations), but will be representing the constituency (patient, public or staff) that elected them;
- respect and treat with dignity and fairness, the members of the public, patients, relatives, carers, NHS staff and partners in other agencies;
- work constructively and collaboratively with their fellow Governors and colleagues in the NHS and the wider community;
- seek to ensure that the membership of the constituency they represents is kept informed;
- not discriminate against anyone because of their religion, belief, race, colour, gender, marital status, disability, sexual orientation, age, social and economic status or national origin;
- at all times, comply with the policies and procedures of the Trust;
- respect the confidentiality of individual patients and comply with the confidentiality policies of the Trust;
- not make, permit or knowingly allow to be made, any untrue or misleading statement relating to their own duties or the functions of the Trust;
- not disclose any confidential information made known to them in their capacity as Governor, and will not discuss details of the Trust or their duties publicly without first clearing this through the Trust Secretary;
- seek to ensure that the best interests of the public and patients/clients are upheld in decision-making and that decisions are not improperly influenced by gifts or inducements;
- support and assist the Accounting Officer of the Trust in their responsibility to answer to the Regulator, Commissioners and the Public in terms of fully and faithfully declaring and explaining the use of resources and the performance of the local NHS in putting national policy into practice and delivering targets; and
- uphold the seven principles of public life as detailed by the Nolan Committee below.

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## **The Seven Principles of Public Life (Nolan)**

### **1. Selflessness**

Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

### **2. Integrity**

Holders of public office should not place themselves under any financial or other obligation to outside individuals or organizations that might influence them in the performance of their official duties.

### **3. Objectivity**

In carrying out public business, including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.

### **4. Accountability**

Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.

### **5. Openness**

Holders of public office should be as **open** as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.

### **6. Honesty**

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

### **7. Leadership**

Holders of public office should promote and support these principles by leadership and example.

**These principles apply to all aspects of public life. The Nolan Committee has set them out here for the benefit of all who serve the public in any way.**