
CONSTITUTION OF

DERBYSHIRE HEALTHCARE NHS FOUNDATION TRUST

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DERBYSHIRE HEALTHCARE NHS FOUNDATION TRUST CONSTITUTION

1. Name

The name of the foundation Trust is Derbyshire Healthcare NHS Foundation Trust (the “Trust”).

2. Principal purpose

- 2.1 The principal purpose of the Trust is the provision of goods and services for the purposes of the health service in England.
- 2.2 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.
- 2.3 The Trust may provide goods and services for any purposes related to:
 - 2.3.1 the provision of services provided to individuals for or in connection with the prevention, diagnosis or treatment of illness; and
 - 2.3.2 the promotion and protection of public health and.
 - 2.3.3 the delivery of safe, effective care and the effective use of resources; and
 - 2.3.4 the contribution to the objectives of the integrated care system (ICS); and
 - 2.3.5 the collective responsibility with partners for delivery of high quality and sustainable services across system ICS) and place based footprints.
- 2.4 The Trust may also carry on activities other than those mentioned in paragraph 2.3 above for the purpose of making additional income available in order better to carry on its principal purpose.
- 2.5 The Trust is required to comply with the triple aim duty of better health and wellbeing for everyone, better quality of health services for all and sustainable use of NHS resources.
- 2.6 The Trust will also be required to engage consistently and constructively in shared planning and decision making with partners in system, place based partnerships, provider collaboratives and any other relevant forum.
- 2.7 The Trust will consistently take responsibility for delivery of improvements and decisions agreed through system and place based partnerships, provider collaboratives or any other relevant forums.

3. Powers

- 3.1 The powers of the Trust are set out in the 2006 Act, updated in the 2012 and 2022 Act, subject to any restrictions in its Licence.
- 3.2 The powers of the Trust shall be exercised by the Board of Directors on behalf of the Trust.
- 3.3 Subject to the provisions of the Mental Health Act 2007, any of these powers may be delegated to a committee of Directors or to an Executive Director.
- 3.4 For the avoidance of doubt, the Trust shall, in performing its NHS functions (as defined in the Health Act 2009) have regard to the NHS Constitution.
- 3.5 The Trust may arrange for any functions exercisable by it to be exercised by or jointly with any one or more of the bodies set out in section S 65Z5(i) of the 2006 Act. Where such a function is exercisable jointly the bodies may arrange for the functions to be exercised by joint committees as set out in S 65Z6 of the 2006 Act.
- 3.6 In exercising its powers, the Trust will have regard to:

- 3.6.1 S.63B of the 2006 Act (revised 2022) (duty to have regard to the wider effect of discussions), also referred to as the “Triple Aim”.
- 3.6.2 S.63B of the 2006 Act (revised 2022) (duties in relation to climate change).

4. Membership and constituencies

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

- 4.1 a Public Constituency; and
- 4.2 a Staff Constituency.

5. Application for Membership

- 5.1 An individual who is eligible to become a Member of the Trust may do so on application to the Trust, save as provided for in paragraph 8.1
- 5.2 Applications for Membership shall be dealt with by the Trust in accordance with the provisions of Annex 8.

6. Public Constituency

- 6.1 An individual who lives in an area specified in Annex 1 as an area for a Public Constituency may become or continue as a Member of the Trust.
- 6.2 Those individuals who live in an area specified as an area for any Public Constituency are referred to collectively as the Public Constituency.
- 6.3 The minimum number of Members in each area for a Public Constituency is specified in Annex 1.
- 6.4 Further provisions relating to Membership of the Public Constituency are set out in Annex 8.

7. Staff Constituency

- 7.1 An individual who is employed by the Trust under a contract of employment with the Trust may become or continue as a Member of the Trust provided:
 - 7.1.1 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
 - 7.1.2 they have been continuously employed by the Trust under a contract of employment for at least 12 months.
- 7.2 Individuals who exercise functions for the purposes of the Trust, otherwise than under a contract of employment with the Trust, may become or continue as Members of the Staff Constituency provided such individuals have exercised these functions continuously for a period of at least 12 months.
- 7.3 Those individuals who are eligible for Membership of the Trust by reason of the previous provisions of this paragraph 7 are referred to collectively as the Staff Constituency.
- 7.4 The Staff Constituency shall be divided into 4 descriptions of individuals who are eligible for membership of the Staff Constituency, each description of individuals being specified within Annex 2 and being referred to as a class within the Staff Constituency.
- 7.5 The minimum number of Members in each class of the Staff Constituency is 100 in the Nursing Staff class and Allied Healthcare Professions Staff class, 20 in the Medical and Dental Staff class and 50 in the Administration and Allied Support Staff class.
- 7.6 For the purposes of paragraph 7.1.2 and 7.2 of the Constitution, Chapter 1 of Part 14 of the Employment Rights Act 1996 shall apply for the purposes of determining

whether an individual has been continuously employed by the Trust or has continuously exercised functions for the purposes of the Trust.

- 7.7 An individual who satisfies the criteria for membership of the Staff Constituency may not become or continue as a member of any constituency other than the Staff Constituency.

8. Automatic Membership by default and application for Membership – staff

- 8.1 An individual who is:

- 8.1.1 eligible to become a Member of the Staff Constituency, and
- 8.1.2 invited by the Trust to become a Member of the Staff Constituency and a member of the appropriate class within the Staff Constituency,

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

- 8.2 An individual who is:

- 8.2.1 eligible to become a Member of the Staff Constituency by reason of paragraph 7.2, and
 - 8.2.2 has made an application to become a Member of the Staff Constituency,
- may become a Member of the Staff Constituency in accordance with this Constitution.

- 8.3 The process by which an individual may become a Member of the Staff Constituency by application or by being invited to become a Member of the Staff Constituency shall be in accordance with the provisions of Annex 8.

9. Restriction on Membership

- 9.1 An individual, who is a Member of a Constituency, or of a class within a Constituency, may not while membership of that Constituency or class continues, be a Member of any other Constituency or class.
- 9.2 An individual who satisfies the criteria for Membership of the Staff Constituency may not become or continue as a Member of any constituency other than the Staff Constituency.
- 9.3 An individual must be at least 16 years old to become a Member of the Trust.
- 9.4 Further provisions as to the circumstances in which an individual may not become or continue as a Member of the Trust are set out in Annex 8.

10. Council of Governors –composition

- 10.1 The Trust shall have a Council of Governors, which shall comprise both Elected and Appointed Governors.
- 10.2 The composition of the Council of Governors is specified in Annex 3.
- 10.3 The Members of the Council of Governors, other than the Appointed Governors, shall be chosen by election by their Constituency or, where there are classes within a Constituency, by their class within that Constituency.
- 10.4 The number of Governors to be elected by each Constituency is specified in Annex 3.

11. Council of Governors – election of Governors

- 11.1 Elections for the elected members of the Council of Governors shall be conducted in accordance with the Model Election Rules.
- 11.2 The Model Election Rules as published from time to time by the Department of Health form part of this Constitution and are attached as Annex 4.

11.3 A subsequent variation of the Model Election Rules by the Department of Health shall not constitute a variation of the terms of this Constitution for the purposes of paragraph 39 of the Constitution.

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

12. Council of Governors – tenure

12.1 An Elected Governor may hold office for a period of up to three years.

12.2 An Elected Governor shall cease to hold office if they cease to be a Member of the Constituency or class by which they were elected.

12.3 An Elected Governor shall be eligible for re-election at the end of their term, subject to the provisions of paragraph 1.2 of Annex 5 (Additional Provisions – Council of Governors).

12.4 An Appointed Governor may hold office for a period of up to three years and shall be eligible for re-appointment at the end of that term, subject to the provisions of paragraph 1.2 of Annex 5.

12.5 An Appointed Governor shall cease to hold office if the appointing organisation withdraws its sponsorship of them, the organisation ceases to exist or the individual leaves the organisation.

12.6 Further provisions relating to a Governor's tenure of office are set out in Annex 5.

13. Council of Governors – disqualification and removal

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

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

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

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

13.2 Governors must be at least 16 years of age at the date they are nominated for election or appointment.

13.3 Further provisions as to the circumstances in which an individual may not become or continue or may be removed as a member of the Council of Governors are set out in Annex 5.

13A Council of Governors – duties of Governors

13A.1 The general duties of the Council of Governors are:

13A.1.1 to hold the Non-Executive Directors individually and collectively to account for the performance of the Board of Directors; and

13A.1.2 to represent the interests of the Members as a whole and the interests of the public at large to support collaboration and system working

13A.2 The Trust must take steps to secure that the Governors are equipped with the skills and knowledge they require in their capacity as such.

14. Council of Governors – meetings of Governors

14.1 The Chair of the Trust (i.e. the Chair of the Board of Directors, appointed in accordance with the provisions of paragraph 21.1 below) or, in their absence, the Deputy

Chair (appointed in accordance with the provisions of paragraph 23 below), shall preside at meetings of the Council of Governors.

14.2 Meetings of the Council of Governors shall be open to members of the public save that members of the public and media may be excluded from a meeting on the grounds more particularly provided for in Annex 5.

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

15. Council of Governors – standing orders

The standing orders for the practice and procedure of the Council of Governors are attached at Annex 6.

15A Council of Governors – referral to the panel

15A.1 In this Clause the Panel means a panel of persons appointed by NHSI to which a Governor may refer a question as to whether the Trust has failed or is failing:

15A.1 to act in accordance with its Constitution, or

15A.2 to act in accordance with the provisions made by or under Chapter 5 of the 2006 Act.

15A.2 A Governor may refer a question to the Panel only if more than half of the members of the Council of Governors voting approve the referral.

15A.3 Without prejudice to the ability of a governor to make a referral to Panel, the trust must take steps to secure that governors are able to access support and / or advice, as and where necessary, to enable them to fulfil their duties

16. Council of Governors – conflicts of interest of Governors

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

16.2 The Standing Orders for the Council of Governors shall make provision for the disclosure of interests and arrangements for the exclusion of a Governor declaring any interest from any discussion or consideration of the matter in respect of which an interest has been disclosed.

17. Council of Governors – travel expenses

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

18. Council of Governors – further provisions

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

19. Board of Directors – composition

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

19.2 Subject to paragraph 19.8, the Board of Directors is to comprise:

19.2.1 a non-executive Chair

19.2.2 up to six other Non-Executive Directors (one of which may be nominated as the Senior Independent Director); and

19.2.3 up to six Executive Directors.

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

19.4 The Chief Executive shall be the Accounting Officer.

19.5 One of the Executive Directors shall be the Finance Director.

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

19.7 One of the Executive Directors shall be a registered nurse or a registered midwife.

19.8 The Board of Directors shall at all times be constituted so that at least half the Board, excluding the Chair, shall comprise of Non-Executive Directors.

19.9 The Chair may appoint one of the Independent Non-Executive Directors as the Senior Independent Director in consultation with the Governors and the other Non- Executive Directors. The Chair shall normally, but not necessarily appoint the Deputy Chair to this position.

19A Board of Directors – general duty

19A.1 The general duty of the Board of Directors and of each Director individually, is to act with a view to promoting the success of the Trust so as to maximise the benefits for the Members as a whole and for the public.

19A.2 The Board of Directors should promote the long-term sustainability of the trust as part of the ICS and wider healthcare system.

20. Board of Directors – qualification for appointment as a Non-Executive Director

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

20.1 they are a Member of the Public Constituency; and

20.2 they are not disqualified by virtue of paragraph 26 below.

21. Board of Directors – appointment and removal of Chair and other Non-Executive Directors

21.1 The Council of Governors at a general meeting of the Council of Governors shall appoint or remove the Chair of the Trust and the other Non-Executive Directors.

21.2 The removal of the Chair or any other Non-Executive Director shall require the approval of three-quarters of the members of the Council of Governors.

21.3 The appointment of the Chair and Non-Executive Directors will be for an initial term of three years, further extensions require the approval of the Council of Governors. Chairs or Non-Executive Directors should not remain in post beyond nine years from the date of their first appointment in line with the code of governance for NHS provider trusts.

22. Not Used

23. Board of Directors – appointment of Deputy Chair

23.1 The Council of Governors at a general meeting of the Council of Governors shall appoint one of the Non-Executive Directors as the Deputy Chair.

24. Board of Directors – appointment and removal of the Chief Executive and other Executive Directors

- 24.1 The Non-Executive Directors shall appoint or remove the Chief Executive.
- 24.2 The appointment of the Chief Executive shall require the approval of the Council of Governors.
- 24.3 Not used.
- 24.4 A committee consisting of the Chair, the Chief Executive and the other Non- Executive Directors shall appoint or remove the other Executive Directors.
- 24.5 The process for the appointment to (and dismissal from) the post fulfilling the function of Secretary is a matter for the whole Board of Directors.

25. Not Used

26. Board of Directors – disqualification

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

- 26.1 a person who has been adjudged bankrupt or whose estate has been sequestrated and who (in either case) has not been discharged;
- 26.2 a person who has made a composition or arrangement with, or granted a trust deed for, their creditors and who has not been discharged in respect of it;
- 26.3 a person who within the preceding five years has been convicted in the British Islands of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on the individual;
- 26.4 a person who falls within the further grounds for disqualification set out in Annex 8.

26A Board of Directors – meetings

- 26A.1 Meetings of the Board of Directors shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons.
- 26A.2 Before holding a meeting, the Board of Directors must send a copy of the agenda of the meeting to the Council of Governors. As soon as practicable after holding a meeting, the Board of Directors must send a copy of the minutes of the meeting to the Council of Governors.

27. Board of Directors – standing orders

- 27.1 The Board of Directors shall adopt standing orders from time to time for the practice and procedure of the Board of Directors and in particular for its procedure at meetings. These shall include setting a quorum for meetings, both of Executive and Non-Executive Directors.
- 27.2 The standing orders can be found in a separate Trust controlled document.

28. Board of Directors – conflicts of interest of directors

- 28.1 The duties that a Director has by virtue of being a Director include in particular:
 - 28.1.1 A duty to avoid a situation in which the Director has (or can have) a direct or indirect interest that conflicts (or possibly may conflict) with the interests of the Trust.
 - 28.1.2 A duty not to accept a benefit from a third party by reason of being a Director or doing (or not doing) anything in that capacity.
- 28.2 The duty referred to in sub-paragraph 28.1.1 is not infringed if:

- 28.2.1 the situation cannot reasonably be regarded as likely to give rise to a conflict of interest, or
- 28.2.2 the matter has been authorised in accordance with the Constitution.
- 28.3 The duty referred to in sub-paragraph 28.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- 28.4 In sub-paragraph 28.1.2, "third party" means a person other than:
 - 28.4.1 the Trust, or
 - 28.4.2 a person acting on its behalf.
- 28.5 If a Director 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.
- 28.6 If a declaration under this paragraph proves to be, or becomes, inaccurate or incomplete, a further declaration must be made.
- 28.7 Any declaration required by this paragraph must be made before the Trust enters into the transaction or arrangement.
- 28.8 This paragraph does not require a declaration of an interest of which the Director is now aware or where the Director is not aware of the transaction or arrangement in question.
- 28.9 A Director need not declare an interest:
 - 28.1.1 if it cannot reasonably be regarded as likely to give rise to a conflict of interest;
 - 28.1.2 if, or to the extent that, the Directors are already aware of it;
 - 28.1.3 if, or to the extent that, it concerns terms of the Director's appointment that have been or are to be considered:
 - (a) by a meeting of the Board of Directors;
 - (b) by a committee of the Directors appointed for the purpose under the Constitution.
- 28.10 The Standing Orders of the Board of Directors shall make provision for the disclosure of interests and arrangements for the exclusion of a Director declaring any interest from any discussion or consideration of the matter in respect of which an interest has been disclosed.

29. Board of Directors – remuneration and terms of office

- 29.1 The Council of Governors at a general meeting of the Council of Governors shall decide the remuneration and allowances, and the other terms and conditions of office, of the Chair and the other Non-Executive Directors.
- 29.2 The Trust shall establish a committee of Non-Executive Directors to decide the remuneration and allowances and the other terms and conditions of office of the Chief Executive and other Executive Directors.

30. Registers

- 30.1 The Trust shall have:
 - 30.1.1 a register of Members showing, in respect of each Member, the Constituency to which they belong and, where there are classes within it, the class to which the individual belongs;
 - 30.1.2 a register of members of the Council of Governors;

30.1.3 a register of interests of Governors;

30.1.4 a register of Directors; and

30.1.5 a register of interests of the Directors.

30.2 The process of admission to and removal from the registers shall be as set out in Annex 8.

31. Registers – inspection and copies

31.1 The Trust shall make the registers specified in paragraph 30 above available for inspection by members of the public, except in the circumstances set out below or as otherwise prescribed by regulations.

31.2 The Trust shall not make any part of its registers available for inspection by members of the public which shows details of any Member of the Trust, if they so request.

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

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

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

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

32. Documents available for public inspection

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

32.1.1 a copy of the current Constitution;

32.1.2 a copy of the latest annual accounts and of any report of the auditor on them;

32.1.3 a copy of the latest annual report;

32.1.4 a copy of the latest information as to its forward planning; and

32.1.5 a copy of any notice given under Section 52 of the 2006 Act.

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

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

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

32.2.3 a copy of any information published under 65D (appointment of trust special administrator) of the 2006 Act;

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

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

32.2.6 a copy of any notice published under section 65F (administrator's draft

report), 65G (consultation plan), 65H (consultation requirements), 65J (power to extend time), 65KA (NHS England decision), 65KB (Secretary of State's response to NHS England 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;

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

32.2.8 a copy of any final report published under section 65I (administrator's final report);

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

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

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

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

33. Auditor

33.1 The Trust shall have an auditor.

33.2 The Council of Governors shall appoint or remove the auditor at a general meeting of the Council of Governors.

34. Audit committee

The Trust shall establish a committee of Non-Executive Directors as an audit committee to perform such monitoring, reviewing and other functions as are appropriate. The Audit Committee should not be chaired by the Chair, Deputy Chair or Senior Independent Director.

35. Accounts

35.1 The Trust shall keep proper accounts and proper records in relation to the accounts.

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

35.3 The accounts are to be audited by the Trust's auditor.

35.4 The Trust shall prepare in respect of each Financial Year annual accounts in such form as NHS England may with the approval of the Secretary of State direct.

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

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

36.1 The Trust shall prepare an Annual Report and send it to NHS England.

36.2 The Trust shall give information as to its forward planning in respect of each Financial Year to NHS England.

36.3 The document containing the information with respect to forward planning referred to at paragraphs 32.1.4 and 36.2 above shall be prepared by the Directors.

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- 36.4 In preparing the document, the Directors shall have regard to the views of the Council of Governors.
 - 36.5 Each forward plan must include information about:
 - 36.5.1 the activities other than the provision of goods and services for the purposes of the health service in England that the Trust proposes to carry on; and
 - 36.5.2 the income it expects to receive from doing so.
 - 36.6 Where a forward plan contains a proposal that the Trust carry on an activity of a kind mentioned in sub-paragraph 36.5.1 the Council of Governors must:
 - 36.6.1 determine whether it is satisfied that the carrying on of the activity will not to any significant extent interfere with the fulfilment by the Trust of its principal purpose or the performance of its other functions; and
 - 36.6.2 notify the Directors of the Trust of its determination.
 - 36.7 The Trust may only implement any proposal to increase by 5% or more the proportion of its total income in any Financial Year attributable to activities other than the provision of goods and services for the purposes of health service in England if more than half of the members of the Council of Governors voting approve its implementation.

37. Presentation of the annual accounts and Reports to the Governors and Members

- 37.1 The following documents are to be presented to the Council of Governors at a general meeting of the Council of Governors:
 - 37.1.1 the annual accounts;
 - 37.1.2 any report of the auditor on them; and
 - 37.1.3 the annual report.
- 37.2 The documents shall also be presented to the Members of the Trust at the Annual Members' Meeting by at least one member of the Board of Directors in attendance.
- 37.3 The Trust may combine a meeting of the Council of Governors convened for the purposes of paragraph 37.1 with the Annual Members' Meeting.

38. Instruments

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

39. Amendment of the Constitution

- 39.1 The Trust may make amendments of its Constitution only if:
 - 39.1.1 more than half of the members of the Council of Governors voting approve the amendments, and
 - 39.1.2 more than half of the members of the Board of Directors voting approve the amendments.
- 39.2 Amendments made under paragraph 39.1 take effect as soon as the conditions in that paragraph are satisfied, but the amendment has no effect in so far as the Constitution would, as a result of the amendment, not accord with Schedule 7 of the 2006 Act.
- 39.3 Where an amendment is made to the Constitution in relation to the powers or duties of the Council of Governors (or otherwise with respect to the role that the Council of Governors has as part of the Trust):

- 39.3.1 at least one member of the Council of Governors must attend the next Annual Members' Meeting and present the amendment, and
- 39.3.2 the Trust must give the Members an opportunity to vote on whether they approve the amendment.
- 39.4 If more than half of the Members voting approve the amendment, the amendment continues to have effect; otherwise, it ceases to have effect, and the Trust must take such steps as are necessary as a result.
- 39.5 Amendments by the Trust of its Constitution are to be notified to NHS England. For the avoidance of doubt, NHS England's functions do not include a power or duty to determine whether or not the Constitution, as a result of the amendments, accords with Schedule 7 of the 2006 Act.

39A Significant transactions

- 39A.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.
- 39.6 The Trust may enter into a significant transaction only if more than half of the members of the Council of Governors of the Trust voting approve entering into the transaction.
 - 39.6.1 In taking decisions on significant transactions, mergers, acquisitions, separations or dissolutions, Governors need to be assured that the process undertaken by the Board was appropriate, and that the interests of the public at large were considered. A Council of Governors may disagree with the merits of a particular decision of the Board on a transaction, but still give its consent because due diligence has been followed and assurance received. To withhold its consent, the Council of Governors would need to provide evidence that due diligence was not undertaken
- 39.7 "Significant transaction" means a transaction defined as significant by NHS England.

40. Interpretation and definitions

- 40.1 Unless a contrary intention is evident or the context requires otherwise, words or expressions contained in this Constitution shall bear the same meaning as in the 2006 Act, 2012 Act and the 2022 Act.
- 40.2 Not used.
- 40.3 References in this Constitution to legislation include all amendments, replacements or re-enactments made and references to paragraph numbers are references to paragraphs of this Constitution unless the context provides otherwise.
- 40.4 References to legislation include all regulations, statutory guidance or directions.
- 40.5 Headings are for ease of reference only and are not to affect interpretation.
- 40.6 If there is a conflict between the provisions of this Constitution and the provisions of any document referred to herein or the law, then the provisions of this Constitution shall prevail unless the law requires otherwise.
- 40.7 All Annexes referred to in this Constitution form part of it.
- 40.8 References to paragraphs are to paragraphs in this Constitution save that where there is a reference to a paragraph in an Annex to this Constitution it shall be a reference to a paragraph in that Annex unless the contrary is expressly stated, or the context otherwise so requires.

40.9 In this Constitution:

“Accounting Officer”	means the person who from time to time discharges the functions specified in paragraph 25(5) of Schedule 7 to the 2006 Act;
“the 2006 Act”	means the National Health Service Act 2006;
“the 2012 Act”	means the Health and Social Care Act 2012;
“the 2022 Act”	means the Health and Social Care Act 2022;
“Annual Members’ Meeting”	means the annual meeting of all the Members as described in paragraph 3 of Annex 8;
“Appointed Governors”	Means the Local Authority Governors and the Partnership Governors;
“Area of the Trust”	means the area consisting of all the areas specified in Annex 1 as an area for a Public Constituency;
“Board of Directors”	means the Board of Directors of the Trust as constituted in accordance with this Constitution and referred to in paragraph 19 and “Board” shall be construed accordingly;
“Chair”	means the Chair of the Trust appointed in accordance with paragraph 21 of this Constitution;
“Chief Executive”	means the Chief Executive (and Accounting Officer) of the Trust appointed in accordance with paragraph 24 of this Constitution;
“Code of Governance for NHS Provider Trusts”	means the Code of Governance by NHS England or such similar or further guidance as NHS England may publish from time to time;
“Constituencies”	Means the Public Constituencies and, the Staff Constituency;
“Constitution”	means this Constitution of Derbyshire Healthcare NHS Foundation Trust;
“Council of Governors”	means the Council of Governors of the Trust as constituted in accordance with this Constitution;
“Deputy Chair”	means the Deputy Chair of the Trust;
“Director”	means a Director on the Board of Directors;
“Elected Governors”	means the Public Governors and Staff Governors;
“Election Scheme”	means the election scheme and rules set out in Annex 4 and which are to be used in connection with the election of the Elected Governors;
“Executive Director”	means an Executive Director of the Trust;
“Finance Director”	means the person who from time to time is appointed by the Trust to discharge the usual functions of its chief finance officer;
“Financial Year”	means each successive period of twelve months beginning with 1 April;
“Governor”	means a Governor on the Council of Governors and being either an Elected Governor or an Appointed Governor;
“Integrated Care System”	means a statutory partnership of organisations who plan, buy and provide health and care services in their geographical area. The organisations involved include the NHS, local authorities, voluntary and charity groups, and independent care providers
“Licence”	means the licence granted to the Trust by Monitor pursuant to the 2012 Act and any subsequent re-issue;

“Local Authorities”	means those local authorities specified in Annex 3 which are local authorities for an area which includes the whole or part of the Area of the Trust;
“Local Authority Governor”	means a member of the Council of Governors appointed by a Local Authority in accordance with the provisions of this Constitution and as specified in Annex 3;
“Member”	means a Member of the Trust as determined in accordance with paragraph 5 and paragraph 8 of this Constitution;
“Membership”	means membership of the Trust through being a Member of one of its Constituencies;
“Members’ Meetings”	means a meeting of the Members;
“Model Election Rules”	shall have the meaning given to them in paragraph 11. 2 of this Constitution;
“NHS Constitution”	means: the document entitled "The NHS Constitution" published by the Secretary of State on 21 January 2009; or any revised version of that document published under sections 3 or 4 of the Health Act 2009;
“NHS England”	means the body corporate known as NHS England and previously as NHS Improvement and before that Monitor, as provided by Section 61 of the 2012 Act.
"Nominated Lead Governor"	means the Governor nominated as the nominated lead Governor by the Council of Governors in accordance with Annex 5, Paragraph 10;
“Non-Executive Director”	means a Non-Executive Director of the Trust;
“Partnership Governor”	means a member of the Council of Governors appointed by a Partnership Organisation specified in Annex 3;
“Partnership Organisations”	means those organisations designated as partnership organisations for the purposes of this Constitution specified in Annex 3 powers:
“Public Governor”	means a Member of the Council of Governors elected by the Members of a Public Constituency;
“Public Constituencies”	means a public constituency of the Trust as defined in Annex 1;
“Secretary”	means the secretary of the Trust or any other person appointed to perform the duties of the secretary of the Trust;
"Senior Independent Director"	means a Non-Executive Director nominated to the role of Senior Independent Director in accordance with the provisions of this Constitution;
"Staff Classes"	Means the classes of the Staff Constituency as specified in Annex 2 (The Staff Constituency);
“Staff Constituency”	means that part of the Trust’s Membership consisting of the staff of the Trust and other persons as more particularly provided for at paragraph 7 of this Constitution and which is divided into the staff classes as specified in Annex 2;
“Staff Governor”	means a member of the Council of Governors elected by a Staff Class;
“the Trust”	means Derbyshire Healthcare NHS Foundation Trust;
“University of Derby	Means the university of that name whose main campus is at Kedleston Road, Derby, DE22 1GB

“University of Nottingham”

means the university of that name whose main campus is at University Park, Nottingham, NG7 2RD;

“Voluntary Organisation”

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

ANNEX 1
The Public Constituency

1	2	3	4
Name of the Public Constituency	Area of Public Constituency (as defined by electoral wards or Council areas)	Minimum number of Members	Number of Governors to be elected
Derby City – East	Alvaston Boulton Chaddesden Chellaston Derwent Oakwood Sinfen Spondon	100	2
Derby City – West	Abbey/Allestree Arboretum Blagreaves Darley Littleover Mackworth Normanton Mickleover	100	2
Amber Valley	Alfreton Belper Central Belper East Belper North Belper South Codnor and Waingrove Crich Duffield Heage and Ambergate Heanor and Loscoe Heanor West Ironville and Riddings Kilburn Langley Mill and Aldercar Ripley and Marehay Shipley Park Somercotes South West Parishes Swanwick Wingfield	100	2
Bolsover and North East Derbyshire	Bolsover District Council North East Derbyshire District Council	60	2
Chesterfield	Barrow Hill and New Wittington Brimington North Brimington South Brockwell Dunston Hasland Hollingwood and Inkersall Holmesbrook Linacre Loundsley Green Lowgates and Woodthorpe Middlescote and Poolsbrook Moor Old Whittington	100	2

	Rother St Helens St Leonards Walton West		
High Peak and Derbyshire Dales	Derbyshire Dales District Council High Peak Borough Council	100	2
Erewash	Abbotsford Breaston Cotmanhay Derby Road East Derby Road West Draycott Hallam Fields Ilkeston Central Ilkeston North Kirk Hallam Little Eaton and Breadsall Little Hallam Long Eaton Central Nottingham Road Ockbrook and Borrowash Old Park Stanley Sandiacre North Sandiacre South Sawley West Hallam and Dale Abbey Wilsthorne	100	2
South Derbyshire	South Derbyshire District Council	50	1
Rest of England	All electoral areas in England not falling within one of the electoral wards or council areas referred to above)	25	1

ANNEX 2
The Staff
Constituency

1	2	3	4
Classes within the Staff Constituency	Individuals eligible for Membership of that Staff Class	Minimum number of Members in each Staff Class	Numbers of Governors to be Elected for each Staff Class
Medical and Dental Staff Class	Those individuals defined in paragraph 1 below	20	1
Nursing Staff Class	Those individuals defined in paragraph 2 below	100	2
Allied Healthcare Professions Staff Class	Those individuals defined in paragraph 3 below	100	1
Administration and Allied Support Staff Class	Those individuals defined in paragraph 4 below	50	2

1. Medical and Dental Staff Class

- 1.1 The Members of the Medical and Dental Staff Class are individuals who are Members of the Staff Constituency who:
- 1.1.1 are fully registered persons within the meaning of the consolidated Medical Act 1983 and the Dentists Act 1984 (as the case may be) and who are otherwise fully authorised and licensed to practice in England and Wales or who are otherwise designated by the Trust from time to time as eligible to be members of this Staff Class for the purposes of this paragraph having regard to the usual definitions applicable at that time for persons carrying on the professions of medical practitioner or dentist;
- 1.1.2 are employed by the Trust in that capacity at the end of their invitation or application under paragraph 8 of the Constitution to become a Member in accordance with the provisions of Annex 8 and at all times thereafter remain employed by the Trust in that capacity.

2. Nursing Staff Class

- 2.1 The Members of the Nursing Staff Class are individuals who:
- 2.1.1 are registered with the Nursing and Midwifery Council and who are otherwise fully authorised and licensed to practice in England and Wales or who are otherwise designated by the Trust from time to time as eligible to be members of this Staff Class for the purposes of this paragraph having regard to the usual definitions applicable at that time for persons carrying and the profession of registered nurse; or
- 2.1.2 are employed by the Trust in that capacity at the date of their invitation under paragraph 8 of the Constitution to become a member in accordance with the provisions of Annex 8 and at all times thereafter remain employed by the Trust in that capacity.

3. Allied Healthcare Professional Staff

3.1 The Members of the Allied Healthcare Professional Staff Class are individuals who:

3.1.1 whose regulating body falls within the remit of the Council for Healthcare Regulatory Excellence established by Section 25 of the NHS Reform and Health Care Professions Act 2002; and

3.1.2 who are employed by the Trust in that capacity at the date of their invitation under paragraph 8 of the Constitution to become a member in accordance with the provisions of Annex 8 and at all times thereafter remain employed by the Trust in that capacity.

4. Administration and Allied Support Staff

4.1 The Members of the Administration and Allied Support Staff Class are individuals who:

4.1.1 do not come within paragraphs 1, 2 or 3 above and who are designated by the Trust from time to time to time as eligible to be a Member of this Staff Class and who are not eligible to be members of another Staff Class for the purpose of this paragraph; and

4.1.2 who are employed or designated by the Trust at the date of their invitation and application under paragraph 8 of the Constitution to become a Member in accordance with the provisions of Annex 8 and at all times thereafter remain employed by the Trust in that capacity.

5. Minimum Numbers and Numbers of Governors

5.1 The minimum number of Members in each Staff Class shall be as set out in Column 3 of Table 1 to this Annex and the number of Governors to be elected by each such Staff Class is given the corresponding entry in Column 4 of that Table.

6. Continuous Employment

6.1 For the purposes of paragraphs 7.1 and 7.2 of the Constitution, Chapter 1 of Part 14 of the Employment Rights Act 1996 shall apply for the purposes of determining whether an individual has been continuously employed by the Trust or has continuously exercised functions for the purpose of the Trust.

7. Exercise of Functions

7.1 For the purpose of paragraph 7.2 of the Constitution it shall be for the Trust in its absolute discretion to determine whether an individual exercises functions for the purposes of the Trust and whether that individual has done so continuously for a period of at least 12 months.

ANNEX 3

Composition of the Council of Governors

1. Introduction
 - 1.1 The Council of Governors shall comprise Governors who are:
 - 1.1.1 elected by the respective Constituencies in accordance with the provisions of this Constitution; and
 - 1.1.2 appointed in accordance with paragraph 2 below.
 - 1.2 The Council of Governors shall at all times be constituted so that more than half the Council of Governors shall consist of Governors who are elected by Members of the Trust other than those who are Members of the Staff Constituency.
2. Bodies entitled to appoint a member of the Council of Governors
 - 2.1 The following bodies in this paragraph 2 shall be entitled to appoint a Governor or Governors (as the case may be) to the Council of Governors as provided for in this paragraph 2.
 - 2.2 Not used.

Qualifying Local Authorities

 - 2.3 Derby City Council and Derbyshire County Council shall be entitled to appoint one Governor each in accordance with a process of appointment agreed by it with the Trust. The absence of any such agreed process of appointment shall not preclude the said local authority from appointing its Governors.

Partnership Organisations

 - 2.4 The Trust shall nominate those organisations to be designated as Partnership Organisations for the purposes of this Constitution. The organisations so nominated as Partnership Organisations are:
 - 2.4.1 Derbyshire Mental Health Forum;
 - 2.4.2 Derbyshire Voluntary Action;
 - 2.4.3 University of Nottingham; and
 - 2.4.4 The University of Derby.
 - 2.5 Each of the above organisations shall be entitled to appoint one Governor each in accordance with a process of appointment agreed by it with the Trust. The absence of any such agreed process of appointment shall not preclude that Partnership Organisation from appointing its Governor provided the appointment is duly made in accordance with its own internal processes.

Composition of the Council of Governors
Table 1

	Electing/Appointing Body)	Number of Governors	Total
1.	Public Constituencies		16
	1.1 Derby City - East	2	
	1.2 Derby City - West	2	
	1.3 Amber Valley	2	
	1.4 Bolsover and North East Derbyshire	2	
	1.5 Chesterfield	2	
	1.6 High Peak and Derbyshire Dales	2	
	1.7 Erewash	2	
	1.8 South Derbyshire	1	
	1.9 Rest of England	1	
2.	Staff Constituency		6
	2.1 Medical and Dental Staff Class	1	
	2.2 Nursing Staff Class	2	
	2.3 Allied Healthcare Professions Staff Class	1	
	2.4 Administration and Allied Support Staff Class	2	
3.	Appointed Governors		6
	3.1 Derby City Council	1	
	3.2 Derbyshire County Council	1	
	3.3 Derbyshire Mental Health Forum	1	
	3.4 Derbyshire Voluntary Action	1	
	3.5 University of Nottingham	1	
	3.5 University of Derby	1	
	Total number of Governors		28

4. Further Provision

Further provisions relating to the composition of the Council of Governors are at Annex 5.

ANNEX 4

The Model Election Rules

PART 1: INTERPRETATION

1. Interpretation

PART 2: TIMETABLE FOR ELECTION

2. Timetable
3. Computation of time

PART 3: RETURNING OFFICER

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

PART 4: STAGES COMMON TO CONTESTED AND UNCONTESTED ELECTIONS

8. Notice of election
9. Nomination of candidates
10. Candidate's particulars
11. Declaration of interests
12. Declaration of eligibility
13. Signature of candidate
14. Decisions as to validity of nomination forms
15. Publication of statement of nominated candidates
16. Inspection of statement of nominated candidates and nomination forms
17. Withdrawal of candidates
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PART 5: CONTESTED ELECTIONS

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

Action to be taken before the poll

22. List of eligible voters
23. Notice of poll
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25. Ballot paper envelope and covering envelope
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The poll

27. Eligibility to vote
28. Voting by persons who require assistance
29. Spoilt ballot papers and spoilt text message votes
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33. Procedure for remote voting by internet
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35. Procedure for remote voting by text message

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

- 36. Receipt of voting documents
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- STV41. Interpretation of Part 6
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- STV49. Exclusion of candidates
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- STV51. Order of election of candidates
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- 54. Sealing up of documents relating to the poll
- 55. Delivery of documents
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Expenses

60. Election expenses
61. Expenses and payments by candidates
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Publicity

63. Publicity about election by the corporation
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PART 12: MISCELLANEOUS

67. Secrecy
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PART 1: INTERPRETATION

1. Interpretation

1.1 In these rules, unless the context otherwise requires:

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

2006;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

by telephone;

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

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

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

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

PART 2: TIMETABLE FOR ELECTIONS

2. Timetable

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

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

3. Computation of time

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

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

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

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

PART 3: RETURNING OFFICER

4. Returning Officer

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

5. Staff

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

6. Expenditure

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

7. Duty of co-operation

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

PART 4: STAGES COMMON TO CONTESTED AND UNCONTESTED ELECTIONS

8. Notice of election

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

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

9. Nomination of candidates

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

9.2 The returning officer:

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

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

10. Candidate's particulars

10.1 The nomination form must state the candidate's:

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

11. Declaration of interests

11.1 The nomination form must state:

- (a) any financial interest that the candidate has in the corporation, and

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

12. Declaration of eligibility

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

- (a) that he 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 qualification to vote as a member of that constituency, or class within that constituency, for which the election is being held.

13. Signature of candidate

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

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

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

14. Decisions as to the validity of nomination

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

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

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

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

14.3 The returning officer is to examine each nomination form as soon as is practicable

after they have received it and decide whether the candidate has been validly nominated.

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

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

15. Publication of statement of candidates

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

15.2 The statement must show:

- (a) the name, contact address (which shall be the candidate's postal address), and constituency or class within a constituency of each candidate standing, and
- (b) the declared interests of each candidate standing, as given in their nomination form.

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

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

16. Inspection of statement of nominated candidates and nomination forms

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

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

17. Withdrawal of candidates

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

18. Method of election

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

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

Part 7 of these rules.

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

PART 5: CONTESTED ELECTIONS

19. Poll to be taken by ballot

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

20. The ballot paper

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

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

20.3 Each ballot paper must have a unique identifier.

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

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

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

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

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

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

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

Action to be taken before the poll

22. List of eligible voters

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

22.2 The list is to include, for each member:

- (a) a postal address; and,
 - (b) the member's e-mail address, if this has been provided
- to which their voting information may, subject to rule 22.3, be sent.

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

23. Notice of poll

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

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

24. Issue of voting information by returning officer

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

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

("postal voting information").

- 24.2 Subject to rules 24.3 and 24.4, as soon as is reasonably practicable on or after the publication of the notice of the poll, the returning officer is to send the following information by email and/ or by post to each member of the corporation named in the list of eligible voters whom the corporation determines in accordance with rule 19.3 and/ or rule 19.4 may cast their vote by an e-voting method of polling:
- (a) instructions on how to vote and how to make a declaration of identity (if required),
 - (b) the voter's voter ID number,
 - (c) information about each candidate standing for election, pursuant to rule 64 of these rules, or details of where this information is readily available on the internet or available in such other formats as the Returning Officer thinks appropriate,
 - (d) contact details of the returning officer,

("e-voting information").

- 24.3 The corporation may determine that any member of the corporation shall:

- (a) only be sent postal voting information; or
- (b) only be sent e-voting information; or
- (c) be sent both postal voting information and e-voting information;

for the purposes of the poll.

- 24.4 If the corporation determines, in accordance with rule 22.3, that the e-voting information is to be sent only by email to those members in the list of eligible voters for whom an email address is included in that list, then the returning officer shall only send that information by email.

- 24.5 The voting information is to be sent to the postal address and/ or e-mail address for each member, as specified in the list of eligible voters.

25. Ballot paper envelope and covering envelope

- 25.1 The ballot paper envelope must have clear instructions to the voter printed on it, instructing the voter to seal the ballot paper inside the envelope once the ballot paper has been marked.

- 25.2 The covering envelope is to have:

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

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

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

26. E-voting systems

- 26.1 If internet voting is a method of polling for the relevant election, then the returning

officer must provide a website for the purpose of voting over the internet (in these rules referred to as "the polling website").

- 26.2 If telephone voting is a method of polling for the relevant election then the returning officer must provide an automated telephone system for the purpose of voting by the use of a touch-tone telephone (in these rules referred to as "the telephone voting facility").
- 26.3 If text message voting is a method of polling for the relevant election then the returning officer must provide an automated text messaging system for the purpose of voting by text message (in these rules referred to as "the text message voting facility").
- 26.4 The returning officer shall ensure that the polling website and internet voting system provided will:
- (a) require a voter to:
 - (i) enter their voter ID number; and
 - (ii) where the election is for a public or patient constituency, make a declaration of identity;
 in order to be able to cast their vote;
 - (b) specify:
 - (i) the name of the corporation,
 - (ii) the constituency, or class within a constituency, for which the election is being held,
 - (iii) the number of members of the council of governors to be elected from that constituency, or class within that constituency,
 - (iv) the names and other particulars of the candidates standing for election, with the details and order being the same as in the statement of nominated candidates,
 - (v) instructions on how to vote and how to make a declaration of identity,
 - (vi) the date and time of the close of the poll, and
 - (vii) the contact details of the returning officer;
 - (c) prevent a voter from voting for more candidates than he or she is entitled to at the election;
 - (d) create a record ("internet voting record") that is stored in the internet voting system in respect of each vote cast by a voter using the internet that comprises of:
 - (i) the voter's voter ID number;
 - (ii) the voter's declaration of identity (where required);
 - (iii) the candidate or candidates for whom the voter has voted; and
 - (iv) the date and time of the voter's vote,
 - (e) if the voter's vote has been duly cast and recorded, provide the voter with confirmation of this; and
 - (f) prevent any voter from voting after the close of poll.
- 26.5 The returning officer shall ensure that the telephone voting facility and telephone

voting system provided will:

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

26.6

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

- (a) require a voter to:
 - (i) provide their voter ID number; and
 - (ii) where the election is for a public or patient constituency, make a declaration of identity;

in order to be able to cast their vote;
- (b) prevent a voter from voting for more candidates than he or she is entitled to at the election;
- (d) create a record ("text voting record") that is stored in the text messaging voting system in respect of each vote cast by a voter by text message that comprises of:
 - (i) the voter's voter ID number;
 - (ii) the voter's declaration of identity (where required);
 - (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.

The poll

27. Eligibility to vote

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

28. Voting by persons who require assistance

- 28.1 The returning officer is to put in place arrangements to enable requests for assistance to vote to be made.
- 28.2 Where the returning officer receives a request from a voter who requires assistance to vote, the returning officer is to make such arrangements as he or she considers necessary to enable that voter to vote.

29. Spoilt ballot papers and spoilt text message votes

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

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- 29.8 After issuing a replacement voter ID number in respect of a spoilt text message vote, the returning officer shall enter in a list ("the list of spoilt text message votes"):
- (a) the name of the voter, and
 - (b) the details of the voter ID number on the spoilt text message vote (if that officer was able to obtain it), and
 - (c) the details of the replacement voter ID number issued to the voter.
- 30. Lost voting information**
- 30.1 Where a voter has not received their voting information by the tenth day before the close of the poll, that voter may apply to the returning officer for replacement voting information.
- 30.2 The returning officer may not issue replacement voting information in respect of lost voting information unless he or she:
- (a) is satisfied as to the voter's identity,
 - (b) has no reason to doubt that the voter did not receive the original voting information,
 - (c) has ensured that no declaration of identity, if required, has been returned.
- 30.3 After issuing replacement voting information in respect of lost voting information, the returning officer shall enter in a list ("the list of lost ballot documents"):
- (a) the name of the voter
 - (b) the details of the unique identifier of the replacement ballot paper, if applicable, and
 - (c) the voter ID number of the voter.
- 31. Issue of replacement voting information**
- 31.1 If a person applies for replacement voting information under rule 29 or 30 and a declaration of identity has already been received by the returning officer in the name of that voter, the returning officer may not issue replacement voting information unless, in addition to the requirements imposed by rule 29.3 or 30.2, he or she is also satisfied that that person has not already voted in the election, notwithstanding the fact that a declaration of identity if required has already been received by the returning officer in the name of that voter.
- 31.2 After issuing replacement voting information under this rule, the returning officer shall enter in a list ("the list of tendered voting information"):
- (a) the name of the voter,
 - (b) the unique identifier of any replacement ballot paper issued under this rule;
 - (c) the voter ID number of the voter.
- 32. ID declaration form for replacement ballot papers (public and patient constituencies)**
- 32.1 In respect of an election for a public or patient constituency an ID declaration form must be issued with each replacement ballot paper requiring the voter to make a declaration of identity.

Polling by internet, telephone or text

33. Procedure for remote voting by internet

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

34. Voting procedure for remote voting by telephone

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

35. Voting procedure for remote voting by text message.

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

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

36. Receipt of voting documents

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

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

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

39. De-duplication of votes

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

40. Sealing of packets

- 40.1 As soon as is possible after the close of the poll and after the completion of the procedure under rules 37 and 38, the returning officer is to seal the packets containing:
- (a) the disqualified documents, together with the list of disqualified documents inside it,
 - (b) the ID declaration forms, if required,
 - (c) the list of spoilt ballot papers and the list of spoilt text message votes,
 - (d) the list of lost ballot documents,
 - (e) the list of eligible voters, and
 - (f) the list of tendered voting information

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

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

PART 6: COUNTING THE VOTES

STV41. Interpretation of Part 6

STV41.1 In Part 6 of these rules:

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

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

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

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

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

“non-transferable vote” means a ballot document:

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

or

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

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

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

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

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

“stage of the count” means:

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

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

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

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

42. Arrangements for counting of the votes

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

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

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

43. The count

43.1 The returning officer is to:

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

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

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

STV44. Rejected ballot papers and rejected text voting records

STV44.1 Any ballot paper:

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

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

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

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

STV44.3 Any text voting record:

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

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

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

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

FPP44. Rejected ballot papers and rejected text voting records

FPP44.1 Any ballot paper:

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

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

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

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

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

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

FPP44.4 The returning officer is to:

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

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

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

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

FPP44.6 Any text voting record:

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

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

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

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

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

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

FPP44.9 The returning officer is to:

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

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

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

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

STV45. First stage

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

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

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

STV46. The quota

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

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

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

STV47. Transfer of votes

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

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

STV48. Supplementary provisions on transfer

- STV48.1 If, at any stage of the count, two or more candidates have surpluses, the transferable ballot documents of the candidate with the highest surplus shall be transferred first, and if:
- (a) The surpluses determined in respect of two or more candidates are equal, the transferable ballot documents of the candidate who had the highest recorded vote at the earliest preceding stage at which they had unequal votes shall be transferred first, and
 - (b) the votes credited to two or more candidates were equal at all stages of the count, the returning officer shall decide between those candidates by lot, and the transferable ballot documents of the candidate on whom the lot falls shall be transferred first.
- STV48.2 The returning officer shall, on each transfer of transferable ballot documents under rule STV47:
- (a) record the total value of the votes transferred to each candidate,
 - (b) add that value to the previous total of votes recorded for each candidate and record the new total,
 - (c) record as non-transferable votes the difference between the surplus and the total transfer value of the transferred votes and add that difference to the previously recorded total of non-transferable votes, and
 - (d) compare:
 - (i) the total number of votes then recorded for all of the candidates, together with the total number of non-transferable votes, with
 - (ii) the recorded total of valid first preference votes.
- STV48.3 All ballot documents transferred under rule STV47 or STV49 shall be clearly marked, either individually or as a sub-parcel, so as to indicate the transfer value recorded at that time to each vote on that ballot document or, as the case may be, all the ballot documents in that sub-parcel.
- STV48.4 Where a ballot document is so marked that it is unclear to the returning officer at any stage of the count under rule STV47 or STV49 for which candidate the next preference is recorded, the returning officer shall treat any vote on that ballot document as a non-transferable vote; and votes on a ballot document shall be so treated where, for example, the names of two or more candidates (whether continuing candidates or not) are so marked that, in the opinion of the returning officer, the same order of preference is indicated or the numerical sequence is broken.

STV49. Exclusion of candidates

- STV49.1 If:
- (a) all transferable ballot documents which under the provisions of rule STV47 (including that rule as applied by rule STV49.11) and this rule are required to be transferred, have been transferred, and
 - (b) subject to rule STV50, one or more vacancies remain to be filled,
- the returning officer shall exclude from the election at that stage the candidate with the then lowest vote (or, where rule STV49.12 applies, the candidates with the then lowest votes).

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

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

- STV49.11 If after a transfer of votes under any provision of this rule, a candidate has a surplus, that surplus shall be dealt with in accordance with rules STV47.5 to STV47.10 and rule STV48.
- STV49.12 Where the total of the votes of the two or more lowest candidates, together with any surpluses not transferred, is less than the number of votes credited to the next lowest candidate, the returning officer shall in one operation exclude such two or more candidates.
- STV49.13 If when a candidate has to be excluded under this rule, two or more candidates each have the same number of votes and are lowest:
- (a) regard shall be had to the total number of votes credited to those candidates at the earliest stage of the count at which they had an unequal number of votes and the candidate with the lowest number of votes at that stage shall be excluded, and
 - (b) where the number of votes credited to those candidates was equal at all stages, the returning officer shall decide between the candidates by lot and the candidate on whom the lot falls shall be excluded.

STV50. Filling of last vacancies

- STV50.1 Where the number of continuing candidates is equal to the number of vacancies remaining unfilled the continuing candidates shall thereupon be deemed to be elected.
- STV50.2 Where only one vacancy remains unfilled and the votes of any one continuing candidate are equal to or greater than the total of votes credited to other continuing candidates together with any surplus not transferred, the candidate shall thereupon be deemed to be elected.
- STV50.3 Where the last vacancies can be filled under this rule, no further transfer of votes shall be made.

STV51. Order of election of candidates

- STV51.1 The order in which candidates whose votes equal or exceed the quota are deemed to be elected shall be the order in which their respective surpluses were transferred or would have been transferred but for rule STV47.10.
- STV51.2 A candidate credited with a number of votes equal to, and not greater than, the quota shall, for the purposes of this rule, be regarded as having had the smallest surplus at the stage of the count at which he or she obtained the quota.
- STV51.3 Where the surpluses of two or more candidates are equal and are not required to be transferred, regard shall be had to the total number of votes credited to such candidates at the earliest stage of the count at which they had an unequal number of votes and the surplus of the candidate who had the greatest number of votes at that stage shall be deemed to be the largest.
- STV51.4 Where the number of votes credited to two or more candidates were equal at all stages of the count, the returning officer shall decide between them by lot and the candidate on whom the lot falls shall be deemed to have been elected first.

FPP51. Equality of votes

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

PART 7: FINAL PROCEEDINGS IN CONTESTED AND UNCONTESTED ELECTIONS

FPP52. Declaration of result for contested elections

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

STV52. Declaration of result for contested elections

- STV52.1 In a contested election, when the result of the poll has been ascertained, the returning officer is to:
- (a) declare the candidates who are deemed to be elected under Part 6 of these rules as elected,
 - (b) give notice of the name of each candidate who he or she has declared elected
 - (i) where the election is held under a proposed constitution pursuant to powers conferred on the [insert name] NHS Trust by section 33(4) of the 2006 Act, to the Chair of the NHS Trust, or
 - (ii) in any other case, to the Chair of the corporation, and
 - (c) give public notice of the name of each candidate who he or she has declared elected.
- STV52.2 The returning officer is to make:
- (a) the number of first preference votes for each candidate whether elected or not,
 - (b) any transfer of votes,
 - (c) the total number of votes for each candidate at each stage of the count at which such transfer took place,
 - (d) the order in which the successful candidates were elected, and
 - (e) the number of rejected ballot papers under each of the headings in rule STV44.1,
 - (f) the number of rejected text voting records under each of the headings in rule STV44.3, available on request.

53. Declaration of result for uncontested elections

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

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

PART 8: DISPOSAL OF DOCUMENTS

54. Sealing up of documents relating to the poll

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

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

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

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

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

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

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

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

55. Delivery of documents

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

56. Forwarding of documents received after close of the poll

56.1 Where:

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

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

57. Retention and public inspection of documents

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

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

- 58.1 The corporation may not allow:
- (a) the inspection of, or the opening of any sealed packet containing:
 - (i) any rejected ballot papers, including ballot papers rejected in part,
 - (ii) any rejected text voting records, including text voting records rejected in part,
 - (iii) any disqualified documents, or the list of disqualified documents,
 - (iv) any counted ballot papers, internet voting records, telephone voting records or text voting records, or
 - (v) the list of eligible voters, or
 - (b) access to or the inspection of the complete electronic copies of the internet voting records, telephone voting records and text voting records created in accordance with rule 26 and held in a device suitable for the purpose of storage,
- by any person without the consent of the board of directors of the corporation.
- 58.2 A person may apply to the board of directors of the corporation to inspect any of the documents listed in rule 58.1, and the board of directors of the corporation may only consent to such inspection if it is satisfied that it is necessary for the purpose of questioning an election pursuant to Part 11.
- 58.3 The board of directors of the corporation's consent may be on any terms or conditions that it thinks necessary, including conditions as to:
- (a) persons,
 - (b) time,
 - (c) place and mode of inspection,
 - (d) production or opening,
- and the corporation must only make the documents available for inspection in accordance with those terms and conditions.
- 58.4 On an application to inspect any of the documents listed in rule 58.1 the board of directors of the corporation must:
- (a) in giving its consent, and
 - (b) in making the documents available for inspection
- ensure that the way in which the vote of any particular member has been given shall

not be disclosed, until it has been established:

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

PART 9: DEATH OF A CANDIDATE DURING A CONTESTED ELECTION

FPP59. Countermand or abandonment of poll on death of candidate

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

STV59. Countermand or abandonment of poll on death of candidate

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

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

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

PART 10: ELECTION EXPENSES AND PUBLICITY

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

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

61. Expenses and payments by candidates

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

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

62. Election expenses incurred by other persons

62.1 No person may:

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

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

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

63.1 The corporation may:

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

as it considers necessary.

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

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

candidates, at the expense of the electoral prospects of one or more other candidates.

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

64. Information about candidates for inclusion with voting information

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

- 64.2 The information must consist of:

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

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

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

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

PART 11: QUESTIONING ELECTIONS AND THE CONSEQUENCE OF IRREGULARITIES

66. Application to question an election

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

PART 12: MISCELLANEOUS

67. Secrecy

67.1 The following persons:

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

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

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

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

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

68. Prohibition of disclosure of vote

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

69. Disqualification

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

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

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

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

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

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

ANNEX 5

Additional Provisions - Council of Governors

1. Council of Governors: Terms of Office

A Governor shall be:

- 1.1 elected or appointed for a term of up to three years;
- 1.2 shall be eligible for re-election or re-appointment at the end of that term but may not serve as a Governor for more than a total of nine years;
- 1.3 shall cease to hold office if:
 - 1.3.1 they cease to be a member of a Trust Constituency or, in the case of an Appointed Governor, if the body which appointed them withdraws its appointment at any time;
 - 1.3.2 their term of office is terminated in accordance with paragraph 3 below and/or they are disqualified from or is otherwise ineligible to hold office as a Governor; or
 - 1.3.3 they resign by notice in writing to the Trust.

2. Not used.

3. Council of Governors: Removal and Disqualification

- 3.1 A Governor shall not be eligible to become or continue in office as a Governor if:
 - 3.1.1 they cease to be eligible to be a Member or a Member of the constituency (or class of constituency) which they represent, save in the case of Appointed Governors;
 - 3.1.2 in the case of an Appointed Governor, the appointing organisation withdraws its appointment of them, the organisation ceases to exist or the individual leaves the organisation;
 - 3.1.3 any of the grounds contained in paragraph 13 of the Constitution apply to them;
 - 3.1.4 they have within the preceding two years been lawfully dismissed otherwise than by reason of redundancy from any paid employment with a health service body;
 - 3.1.5 they are a person whose term of office as the Chair or as a member or director of a health service body has been terminated on the grounds that their continuance in office is no longer in the best interests of the health service, for non-attendance at meetings or for non-disclosure of a pecuniary interest;
 - 3.1.6 they have had their name removed by a direction under Section 154 of the 2006 Act from any list prepared under Part 4 of that Act and has not subsequently had their name included in such a list;
 - 3.1.7 they have failed to make, or have falsely made, any declaration as required to be made under Section 60 of the 2006 Act;
 - 3.1.8 NHS England has exercised its powers to remove them as a Governor of the Trust or has suspended them from office or has disqualified them from holding office as a Governor of the Trust for a specified period or NHS England has exercised any of those powers in relation to them on any other occasion whether in relation to the Trust or some other NHS Foundation Trust;

- 3.1.9 they have received a written warning from the Trust for verbal and/or physical abuse towards Trust staff and patients;
- 3.1.10 their term of office is terminated pursuant to paragraph 4 below;
- 3.1.11 the relevant organisation which they represent ceases to exist;
- 3.1.12 they are a Director of the Trust or a governor or director of another NHS foundation trust;
- 3.1.13 they are a vexatious or persistent litigant or complainant with regard to the Trust's affairs.
- 3.1.14 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);
- 3.1.15 A staff governor who is suspended from staff duties for any reason will also be suspended from their role as a governor for the duration of their suspension. Whilst a staff governor is under investigation, they cannot attend meetings of the Council of Governors in any capacity, but missing any meetings of the Council of Governors will not count as failure to attend for the purpose of 4.1.3 below.
- 3.2 Where a person has been elected or appointed to be a Governor and becomes disqualified from that appointment they shall notify the Trust in writing of such disqualification as soon as practicable and in any event within 14 days of first becoming aware of those matters which rendered them disqualified.
- 3.3 If it comes to the notice of the Trust that a Governor is disqualified, the Trust shall immediately declare them disqualified and shall give them notice in writing to that effect as soon as practicable.
- 3.4 Upon the giving of notice under paragraphs 3.2 and 3.3 above, that person's tenure of office as a Governor shall thereupon be terminated and they shall cease to be a Council Governor and their name shall be removed from the Register of Governors.

4. Council of Governors: Termination of Tenure

- 4.1 A Governor's term of office shall be terminated:
 - 4.1.1 by the Governor giving notice in writing to the Secretary of their resignation from office at any time during that term of office;
 - 4.1.2 by the Trust if any grounds exist under paragraph 3 above;
 - 4.1.3 by the Council of Governors if they have failed to attend three successive meetings of the Council of Governors unless the Council of Governors is satisfied;
 - (a) the absence was due to reasonable cause; and
 - (b) that the Governor will resume attendance at meetings of the Council of Governors within such period as it considers reasonable.
 - 4.1.4 If the Council of Governors resolves to terminate their term of office for reasonable cause on the grounds that in the reasonable opinion of 70% of the Governors present and voting at a meeting of the Council of Governors convened for that purpose that their continuing as a Governor would or would be likely to:
 - (a) prejudice the ability of the Trust to fulfil its principal purpose or of its purposes under this Constitution or otherwise to discharge its duties and functions; or
 - (b) prejudice the Trust's work with other persons or body with whom it is engaged or may be engaged in the provision of goods and services; or

- (c) adversely affect public confidence in the goods and services provided by the Trust; or
 - (d) otherwise brings the Trust into disrepute or is detrimental to the interest of the Trust; or
 - (e) it would not be in the best interests of the Trust for that person to continue in office as a Governor e.g.:
 - (i) they have failed or refused to undertake and/or satisfactorily complete any training which the Council of Governors has required them to undertake in their capacity as a Governor;
 - (ii) they have failed to confirm acceptance of the code of conduct applicable to Governors;
 - (iii) they have, in their conduct as a Governor failed to comply in a material way with the values and principles of the National Health Service or the Trust; or
 - (iv) they have committed a material breach of any code of conduct applicable to Governors of the Trust.
- 4.2 Upon a Governor resigning under paragraph 4.1.1 above or upon the Council of Governors resolving to terminate a Governor's tenure of office in accordance with the above provisions, that Governor shall cease to be a Governor and their name shall be forthwith removed from the Register of Governors.
- 4.3 Any decision of the Council of Governors' to terminate a Governor's tenure of office may be referred by the Governor to the dispute resolution procedure referred to in Annex 8, Paragraph 5.4 within 14 days of the date upon which notice in writing of the Council of Governor's decision is given to the Governor.
- 4.4 The Standing Orders adopted by the Council of Governors may contain provisions governing its procedure for termination under these provisions and for a Governor to appeal against the decision terminating their tenure of office.
- 4.5 A Governor who resigns or whose tenure of office is terminated under this paragraph 4 shall not be eligible to stand for re-election for a period of 3 years from the date of their resignation or removal from office or the date upon which any appeal against their removal from office is disposed of whichever is the later.

5. Council of Governors: Vacancies

- 5.1 Where a Governor's term of office terminates for whatever reason then:
- 5.1.1 in the case of an Appointed Governor, the Trust shall invite the relevant appointing body to appoint a new Governor as soon as practicable; and
 - 5.1.2 in the case of an Elected Governor, elections for a new Governor shall take place as soon as practicable subject to the provisions of paragraphs 5.2 and 5.3 below.
- 5.2 Where an Elected Governor ceases for whatever reason to hold office within twelve months of his election:
- 5.2.1 the Trust shall offer the candidate who was ranked next highest in the last election for the Constituency (or class of Consistency as the case may be) which the vacancy has arisen the opportunity assume the vacant office of Governor for the unexpired balance of the former Governor's term of office;
 - 5.2.2 if that candidate does not accept that invitation in a timely manner it shall be offered to that candidate who was next highest ranked in the last said election until the vacancy is filled; but if no other candidate stood for election or there are no remaining candidates who stood for election to that office or no candidate accepts the Trust's invitation in accordance with the above

provisions within such time as the Trust may in its absolute discretion decide, the Trust shall hold an election for the vacancy as soon as reasonably practicable thereafter.

- 5.3 Subject to the provisions of paragraph 5.5, where an Elected Governor ceases for whatever reason to hold office within the last twelve months of his term of office, the office shall remain vacant until the next scheduled election takes place.
- 5.4 The Returning Officer under the Election Scheme shall maintain a record of votes cast at each election under the Election Scheme for the purpose of paragraph 5.2 and the Returning Officer shall conduct and oversee the conducting of the process set out in paragraph 5.2 of this Annex 5.
- 5.5 Notwithstanding the above provisions of this paragraph 5, where the termination of a Governor's term of office causes the total number of Public Governors to be equal to or fewer than the other Governors of the Trust then an election for that vacant office shall be held as soon as reasonably practicable.
- 5.6 No defect in the election or appointment of a Governor nor any deficiency in the composition of the Council of Governors shall affect the validity of any act or decision of the Council of Governors.

6. Council of Governors: Role

- 6.1 The Council of Governors and each Governor shall act in the best interests of the Trust at all times and with proper regard to the provisions of the Code of Governance for NHS Provider Trusts and NHS England guidance "Your Statutory Duties: A Reference Guide for NHS Foundation Trust Governors" or any subsequent amendments.
- 6.2 Subject to the requirement specified in paragraph 6.1 above, each Governor shall exercise their own skill and judgement in his conduct of the Trust's affairs and shall in their stewardship of the Trust's affairs bring as appropriate the perspective of the Constituency or organisation by which they were elected or appointed, as the case may be.
- 6.3 Subject to the further provisions of this Constitution and without in any way derogating from them, the Council of Governors shall;
 - 6.3.1 assist the Board of Directors in setting the strategic direction of the Trust and targets for the Trust's performance and in monitoring the Trust's performance in terms of achieving those strategic aims and targets which have been set; and
 - 6.3.2 monitor the activities of the Trust with the view to ensuring that they are being conducted in a manner consistent with its Licence and the terms of this Constitution.

7. Council of Governors: Meetings

- 7.1 Meetings of the Council of Governors shall be held at such times and places and of such format including in person, by using virtual media communication or hybrid as the Council of Governors may determine and held not less than four general meetings each Financial Year.
- 7.2 All such meetings shall be open to the public unless the Council of Governors resolves that before each meeting public and media be excluded from the meeting, whether for the whole or part of the proceedings on the grounds that publicity would be prejudicial to the public interest or the interests of the Trust by reason of the confidential nature of the business to be transacted or for other special reasons stated in the resolution and arising from the nature of the business to be transacted or the proceedings.
- 7.3 Not used.
- 7.4 The Council of Governors may request the attendance of some or all of the members of the Board of Directors at its meetings and the Board of Directors may attend and

may give such reports and information to the Council of Governors as the Board of Directors considers appropriate and subject always to the other provisions of this Constitution.

- 7.5 A meeting of the Council of Governors shall be quorate and quoracy shall require that there shall be present at the meeting not less than one third, with a minimum of six, of all Council of Governors, a majority of whom must be Governors elected by the Public Constituencies, and one Staff Governor.
- 7.6 No business shall be conducted at a meeting which is not quorate.
- 7.7 If a meeting is not quorate within 15 minutes of the time scheduled for its commencement it shall automatically stand adjourned for a period of seven days and the Chair shall give or shall procure the giving of notice to all Governors of the date, time and place of that adjourned meeting.
- 7.8 The Council of Governor's Standing Orders as set out in Annex 6 of the Constitution provide for further details of the practice and procedure at Council of Governor's meetings (including general meetings).

8. Council of Governors: Declarations

- 8.1 A Member of a Public Constituency standing for election as Governor must make a declaration for the purposes of Section 60(2) of the 2006 Act in the form specified below stating the particulars of their qualification to vote as a Member and that they are not prevented from being a Member of the Council of Governors by virtue of any provisions of this Constitution. It is an offence to knowingly or recklessly make a statement or declaration which is false in material particular.
- 8.2 The specified form of declaration shall be set out on the Nomination Form referred to in the Model Election Rules at Annex 4 and shall state as follows:

"I, the above named candidate, consent to my nomination and agree to stand for election to the Council of Governors in the Constituency indicated in Section One of this form. I also declare that I am a member in that Constituency.

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

- (a) *a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;*
- (b) *a person who has made a composition or arrangement with, or granted a trust deed for, their creditors and has not been discharged in respect of it;*
- (c) *a person who within the preceding five years has been convicted in the British Islands of any offence with 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 the individual.*

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

- 8.3 A Governor elected to the Council of Governors by the Public Constituency or Staff Constituency may not for the purposes of Section 60(3) of the 2006 Act vote at a meeting of the Council of Governors unless within the period since their election, they have made a declaration in the form specified in paragraph 8.4 below stating which Constituency they are a Member of and is not prevented from being a member of the Council of Governors by paragraph 8 of Schedule 7 to the 2006 Act or by virtue of any provisions of this constitution.

- 8.4 The specified form of declaration referred to in paragraph 8.3 above shall state as follows:

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

by virtue of any provisions of this Constitution."

9. Council of Governors: Committees and Sub-Committees

- 9.1 A committee, chaired by the Chair, shall be established to assist the Council of Governors with the nomination and selection of the Non-Executive Directors (the "Nomination Committee for Non-Executive Directors"). In the case of the nomination and selection of the Chair the Nominated Committee for Non-Executive Directors shall be chaired by the Deputy Chair.
- 9.2 A committee may be established to assist the Council of Governors with the remuneration of the Chair and Non-Executive Directors (the "Remuneration Committee for Non-Executive Directors").
- 9.3 The Trust has established the Governors Nominations and Remuneration Committee for the purposes of 9.1 and 9.2 above and the functions and membership are listed within its Terms of Reference, which will be approved by the Council of Governors.
- 9.4 The Council of Governors shall resolve in general meeting to appoint such candidate or candidates (as the case may be) as it considers appropriate and in reaching its decision it shall have regard to the views of the Board of Directors and of the Nominations Committee for Non-Executive Directors as to the suitability of the available candidates and the remuneration and allowances and other terms and conditions of office.

10. Nominated Lead Governor

- 10.1 The Council of Governors shall nominate one of its Governors as the nominated lead Governor (the "**Nominated Lead Governor**").
- 10.2 The Nominated Lead Governor shall provide their contact details to NHS England and continue to update NHS England with their contact details as and when they change.
- 10.3 The role of the Nominated Lead Governor is to facilitate direct communication between NHS England and the Council of Governors in the limited circumstances where it may not be appropriate to communicate through the normal channels.
- 10.4 The Nominated Lead Governor shall take steps to understand NHS England's role, the available guidance and the basis on which NHS England may take regulatory action.
- 10.4 In the event that an individual Governor wishes to make contact with NHS England, this contact will be through the Nominated Lead Governor.

ANNEX 6

Standing Orders for the Practice and Procedure of the Council of Governors

**DERBYSHIRE HEALTHCARE NHS FOUNDATION
TRUST**

Standing Orders

Council of Governors

FOREWORD

This document provides a regulatory and business framework for the conduct of the Council of Governors.

INTRODUCTION

Statutory Framework

Derbyshire Healthcare NHS Foundation Trust ("the Trust") is a Public Benefit Corporation.

The statutory functions conferred on the Trust are set out in the National Health Service Act 2006 (as amended) and in the Trust's Licence issued by NHS England.

As a Public Benefit Corporation the Trust has specific powers to contract in its own name and to act as a corporate trustee. In the latter role it is accountable to the Charity Commission for those funds deemed to be charitable.

NHS Framework

Paragraph 15 of the Constitution requires the Council of Governors to adopt its own Standing Orders for its practice and procedure.

1. INTERPRETATION

- 1.1 In these Standing Orders, the provisions relating to Interpretation in the Constitution shall apply and the words and expressions defined in the Constitution shall have the same meaning.

2. THE COUNCIL OF GOVERNORS

- 2.1 Roles and Responsibilities of Governors:
- 2.1.1 Appointment and removal of the Chair and Non-Executive Directors (Constitution Paragraph 21)
 - 2.1.1.1 The Council of Governors should raise issues to the Chair or in the case of the Chair to the Senior Independent Director prior to any formal action to remove a Non-Executive Director or the Chair
 - 2.1.1.2 Any proposal for removal must be proposed by a Governor and seconded by not less than ten Governors.
 - 2.1.1.3 Written reasons for the proposal shall be provided to the Chair or Non-Executive Director in question, who shall be given the opportunity to respond to such reasons
 - 2.1.1.4 In making any decision to remove the Chair or a Non-Executive Director, the Council of Governors shall take into account the annual appraisal carried out by the Chair or Senior Independent Director, respectively.
 - 2.1.1.5 A decision to remove the Chair or a Non-Executive Director will only be effective if such decision is approved by not less than three quarters of the total number of the Council of Governors.
 - 2.1.2 Approve the appointment (but not the removal) of the Chief Executive (Constitution Paragraph 24)
 - 2.1.3 Appoint and remove the Auditor (Constitution Paragraph 33)
 - 2.1.4 Receive the Annual Report & Accounts (Constitution Paragraph 37)
 - 2.1.5 Ensure that the Trust operates in accordance with its Licence and will also act in a Trustee role for the welfare of the organisation as a vehicle for influencing change and developments.
 - 2.1.6 Oversee and advise the Board of Directors regarding future Trust plans and priorities.
 - 2.1.7 To hold the Non-Executive Directors individually and collectively to account for the performance of the Board of Directors, and to represent the interests of the Members as a whole and the interests of the public, and monitor the performance of the Trust against the strategic direction and the targets with a view to satisfying itself that the Board of Directors is fulfilling its responsibilities in this regard. This will be achieved by regular briefings on the performance of the Trust and at its meetings, being able to consider and comment on that performance.
 - 2.1.8 Ensure continued success of the organisation through overseeing of effective management, partnership working and maintenance of NHS values and principles.
 - 2.1.9 Oversee the development of the Trust as an effective social enterprise through focus on the wider public interest and promoting social cohesion in ensuring that the Council of Governors reflects all the interests of the membership community.

- 2.1.10 To share local responsibility for the success of the Trust, in particular by building and sustaining a wide consensus to the vision for the Trust and by members representing the hospital to their respective communities and organisations and vice versa.
- 2.1.11 Instigate or be involved in review of a specific issue or be involved in further development of a particular strategy through specific working groups.
- 2.1.12 To require one or more Directors to attend a meeting of the Council of Governors for the purpose of obtaining information about the Trust's performance of its functions or the Directors' performance of their duties (and deciding whether to propose a vote on the Trust's or Directors' performance).
- 2.1.13 To approve the entering into of any significant transactions.
- 2.1.14 To determine issues in the forward plans regarding the proportion of the Trust's activities and income in relation to non-NHS income and implementation of the same.
- 2.1.15 To exercise such other powers and to discharge such other duties as may be conferred on the Council of Governors under this Constitution.
- 2.2 **Composition of the Council of Governors** – The composition of the Council of Governors shall be as set out in Annex 3 of the Constitution.
- 2.3 **Appointment of the Chair and Non-Executive Directors** – The Chair and Non-Executive Directors are appointed by the Council of Governors in accordance with Paragraph 21 of the Constitution.
- 2.4 **Terms of Office of the Chair and Non-Executive Directors** – The provisions governing the period of tenure of office of the Chair and the Non-Executive Directors are contained in Paragraph 29 of the Constitution.
- 2.5 **Deputy-Chair** - The Deputy-Chair may preside at meetings of the Council of Governors in the following circumstances:
 - 2.5.1 When there is a need for someone to have the authority to chair any meeting of the Council of Governors when the Chair is not present.
 - 2.5.2 When the remuneration, allowance and other terms and conditions of the Chair are being considered.
 - 2.5.3 When the appointment of the Chair is being considered, should the current Chair be a candidate for re-appointment.
 - 2.5.4 On occasions when the Chair declares a pecuniary interest that prevents him from taking part in the consideration or discussion of a matter before the Council of Governors.

3. MEETINGS OF THE COUNCIL OF GOVERNORS

3.1 Calling Meetings

- 3.1.1 Meetings of the Council of Governors shall be held at such times and places as determined by the Trust. Meetings may be held virtually by digital means. Save in the case of emergencies or the need to conduct urgent business, the Secretary shall give at least fourteen days written notice of the date and place of every meeting of the Council of Governors to all Governors. Notice will also be published on the Foundation Trust's website. The agenda pack will be issued to Governors and published on the Trust's website at least three clear days before the meeting.
- 3.1.2 The Secretary shall ensure that within the meeting cycle of the Council of Governors, general meetings are called at appropriate times to consider matters as required by the 2006 Act and the Constitution.

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- 3.2 Admission of the Public** – The provisions for the admission of the public and media to meetings of the Council of Governors are detailed at Paragraph 14 and Annex 5 of the Constitution. The public and representatives of the media shall be afforded facilities to attend all formal meetings of the Council of Governors but shall be required to withdraw upon the Council of Governors resolving as follows:

"That representatives of the media and other members of the public be excluded from the remainder of this meeting because the confidential nature of the business to be transacted is such that publicity would be prejudicial to the public interest".

- 3.2.1 Managing disruption** – The Chair shall give such directions as they think fit in regard to the arrangements for meetings and accommodation of the public and representatives of the press such as to ensure that the Council of Governors' business shall be conducted without interruption and disruption and, without prejudice to the power to exclude on grounds of the confidential nature of the business to be transacted, the public will be required to withdraw upon the Council of Governors resolving as follows.

"That in the interests of public order the public withdraw from the meeting for (the period to be specified) to enable the Council of Governors to complete business without the presence of the public and media".

- 3.2.2** Nothing in these standing orders shall require the Council of Governors to allow members of the public or representatives of the press to record proceedings in any manner whatsoever, other than writing, or to make any oral report of proceedings as they take place without the prior agreement of the Council of Governors.

- 3.3 Chair of Meetings** – The Chair of the Trust, or in their absence, the Deputy Chair, is to preside at meetings of the Council of Governors. If the Chair is absent from a meeting temporarily on the grounds of a declared conflict of interest the Deputy-Chair shall preside.

- 3.4 Setting the Agenda** – The Council of Governors may determine that certain matters shall appear on every agenda for a meeting of the Council of Governors and shall be addressed prior to any other business being conducted.

- 3.5 Agenda** – A Governor desiring a matter to be included on an agenda shall specify the question or issue to be included by request in writing to the Chair or Secretary at least three clear business days before Notice of the meeting is given. Requests made less than three days before the Notice is given may be included on the agenda at the discretion of the Chair.

- 3.6 Notices of Motion** – A Governor desiring to move or amend a motion shall send a written notice thereof at least ten clear days before the meeting to the Chair or Secretary, who shall insert in the agenda for the meeting all notices so received subject to the Notice being permissible under the appropriate regulations. This paragraph shall not prevent any motion being moved during the meeting, without Notice on any business mentioned on the agenda in accordance with Standing Order 3.5, subject to the Chair's discretion.

- 3.7 Withdrawal of Motion or Amendments** – A motion or amendment once moved and seconded may be withdrawn by the proposer with the concurrence of the seconder and the consent of the Chair.

- 3.8 Motion to Rescind a Resolution** – Notice of motion to amend or rescind any resolution (or the general substance of any resolution) which has been passed within the preceding six calendar months shall be in writing, be in accordance with Standing Order 3.6 and shall bear the signature of the Governor who gives it and also the signature of four other Governors. When any such motion has been disposed of by the Council of Governors, it shall not be competent for any Governor other than the Chair to propose a motion to the same effect within six months; however the Chair may do so if considered appropriate.

- 3.9 Motions** – The mover of a motion shall have a right of reply at the close of any discussion on the motion or any amendment thereto.

- 3.10** When a motion is under discussion or immediately prior to discussion it shall be open to

a Governor to move:

- 3.10.1 An amendment to the motion.
- 3.10.2 The adjournment of the discussion or the meeting.
- 3.10.3 That the meeting proceed to the next business.
- 3.10.4 That the motion be now put.

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

3.11 Chair's Ruling – Statements of Governors made at meetings of the Council of Governors shall be relevant to the matter under discussion at the material time and the decision of the Chair of the meeting on questions of order, relevancy, regularity and any other matters shall be observed at the meeting.

Save as permitted by law, at any meeting the person presiding shall be the final authority on the interpretation of Standing Orders (on which he should be advised by the Chief Executive).

3.12 Voting – Save as otherwise provided in the Constitution and/or the 2006 Act (as amended), if the Chair so determines or if a Governor requests, a question at a meeting shall be determined by a majority of the votes of the Governors present and voting on the question and, in the case of any equality of votes, the person presiding shall have a casting vote.

3.13 All questions put to the vote shall, at the discretion of the person presiding, be determined by oral expression or by a show of hands or by appropriate electronic means. A paper ballot may also be used if a majority of the Governors present so request. In the event of a meeting being held by virtual media, an electronic voting facility will be made available, including when appropriate, the facility for holding a secret ballot.

3.14 If at least one-third of the Governors present so request, the voting (other than by paper ballot) on any question may be recorded to show how each Governor present voted or abstained.

3.15 If a Governor so requests, their vote shall be recorded by name upon any vote (other than by paper ballot).

3.16 A Governor may only vote if present (either in person, by telephone or by electronic communication) at the time of the vote on which the question is to be decided. In no circumstances may an absent Governor vote by proxy. Absence is defined as being absent at the time of the vote.

3.17 Minutes – The Minutes of the proceedings of a matter shall be drawn up and submitted for agreement at the next ensuing meeting where they will be ratified as the correct record by the person presiding at it.

3.18 No discussion shall take place upon the minutes except upon their accuracy or where the Chair considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the next meeting. The ratified minutes will be conclusive evidence of the events of the meeting and retained by the Secretary.

3.19 Minutes of meetings will be taken and circulated in accordance with Governors' wishes.

3.20 Suspension of Standing Orders – Except where this would contravene any statutory provision, the Licence or any provision of the Constitution, any one or more of the Standing Orders may be suspended at any meeting provided that at least two thirds – of the Council of Governors are present, including two Public Governors and one Staff Governor, and that a majority of those present vote in favour of suspension.

3.21 A decision to suspend Standing Orders shall be recorded in the minutes of the meeting and shall apply only for the duration of the meeting in question.

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- 3.22** A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the Governors.
 - 3.23** No formal business may be transacted while Standing Orders are suspended.
 - 3.24 Variation and Amendment of Standing Orders** – these Standing Orders shall be amended only in accordance with paragraph 39 of this Constitution.
 - 3.25 Record of Attendance** – the names of the Governors present at the meeting shall be recorded in the minutes. Governors who are unable to attend a meeting shall notify the Secretary in advance of the meeting so that their apologies may be recorded. For the avoidance of doubt, attendance may include through virtual media.
 - 3.26 Quorum** – no business shall be transacted at a meeting of the Council of Governors unless at least one third of the Council of Governors are present, with a minimum of six, a majority of whom must be Governors elected by the Public Constituencies, and one staff governor. At the start of each meeting, the Chair shall be responsible for determining that the meeting is quorate.
 - 3.27** A Governor who has declared a non-pecuniary interest in any matter may participate in the discussion and consideration of the matter but may not vote in respect of it: in these circumstances the Governor will count towards the quorum of the meeting. If a Governor has declared a pecuniary interest in any matter, the Governor must leave the meeting room and will not count towards the quorum of the meeting, during the consideration, discussion and voting on the matter. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business.
 - 3.28** Subject to Standing Orders in relation to interests, any Director or their nominated representatives shall have the right to attend meetings of the Council of Governors and, subject to the overall control of the Chair, to speak to any item under consideration.

4. COMMITTEES

- 4.1 Except as required by paragraph 9.2 of Annex 5, the Council of Governors shall exercise its functions in general meeting and shall not delegate the exercise of any function or any power in relation to any function to a Committee, but it may appoint Committees to assist the Council of Governors in carrying out its roles.

5. DECLARATIONS OF INTERESTS AND REGISTER OF INTERESTS

- 5.1 **Declaration of Interests** – in accordance with Paragraph 16 of the Constitution, Governors are required to declare formally any direct or indirect pecuniary interest and any other interest which is relevant and material to the business of the Trust. The responsibility for declaring an interest is solely that of the Governor concerned.
- 5.2 A Governor must declare to the Secretary:
 - 5.2.1 any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter concerning the Trust, and
 - 5.2.2 any interests which are relevant and material to the business of the Trust.
- 5.3 Declaration shall be made by completing and signing a form, as prescribed by the Secretary from time to time setting out any interests required to be declared in accordance with the Constitution or these Standing Orders and delivering it to the Secretary within 28 days of a Governor's election or appointment or otherwise within seven days of becoming aware of the existence of a relevant or material interest. An annual declaration is also required. The Secretary shall amend the Register of Interests upon receipt of notification within three working days.
- 5.4 If a Governor is present at a meeting of the Council of Governors and has an interest of any sort in any matter which is the subject of consideration, they shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not vote on any question with respect to the matter and, if they have declared a pecuniary

interest, they shall not take part in the consideration or discussion of the matter. The provisions of this Paragraph are subject to Paragraph 5.9.

- 5.5 “relevant and material” interests may include but may not be limited to the following:
- 5.5.1 directorships, including non-executive directorships held in private companies or PLCs (with the exception of those of dormant companies);
 - 5.5.2 ownership or part-ownership or directorships of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS;
 - 5.5.3 majority or controlling shareholdings in organisations likely or possibly seeking to do business with the NHS;
 - 5.5.4 a position of authority in a charity or voluntary organisation in the field of health and social care;
 - 5.5.5 any connection with a voluntary or other organisation contracting for or commissioning NHS services;
 - 5.5.6 any connection with an organisation, entity or company considering entering into or having entered into a financial arrangement with the Trust, including but not limited to, lenders or banks;
 - 5.5.7 research funding/grants that may be received by an individual or their department;
 - 5.5.8 interests in pooled funds that are under separate management.
- 5.6 Any travelling or other expenses or allowances payable to a Governor in accordance with this Constitution shall not be treated as a pecuniary interest.
- 5.7 Subject to any other provision of this Constitution, a Governor shall be treated as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if:
- 5.7.1 the individual, or a nominee of the individual, is a director of a company or other body not being a public body, with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration; or
 - 5.7.2 the individual is a partner of or is in the employment of a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration.
- 5.8 A Governor shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only:
- 5.8.1 of their membership of a company or other body, if they have no beneficial interest in any securities of that company or other body;
 - 5.8.2 of an interest in any company body or person with which the individual is connected as mentioned in paragraphs 5.2, 5.5 and 5.7 which is so remote or significant 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.
- 5.9 Where a Governor:
- 5.9.1 has an indirect pecuniary interest in a contract, proposed contract or other matter by reason only of a beneficial interest in securities of a company or other body; and
 - 5.9.2 the total nominal value of those securities does not exceed £5,000 or one-hundredth of the total nominal value of the issued share capital of the company or body, whichever is the less, and

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

the Governor shall not be prohibited from taking part in the consideration or discussion of the contract or other matter or from voting on any question with respect to it, without prejudice however to his duty to disclose his interest.

- 5.10 In the case of persons living together the interest of one partner or spouse shall, if known to the other, be deemed for the purposes of these Standing Orders to be also an interest of the other.
- 5.11 If Governors have any doubt about the relevance of an interest, this should be discussed with the Secretary.
- 5.12 **Register of Interests** – the Secretary shall record any declarations of interest made in a Register of Interests kept by him in accordance with paragraph 30 of the Constitution. Any interest declared at a meeting shall also be recorded in the minutes of the meeting.
- 5.13 The Register will be available for inspection by members of the public free of charge at all reasonable times. A person who requests it is to be provided with a copy or extract from the register. If the person requesting a copy or extract is not a member of the Trust then a reasonable charge may be made for doing so.

6. STANDARDS OF BUSINESS CONDUCT

- 6.1 **Policy** – in relation to their conduct as a Governor of the Trust, each Governor must comply with the principles outlined in HSG(93)5, “Standards of Business Conduct for NHS staff” as amended. In particular, the Trust must be impartial and honest in the conduct of its business and its office holders and staff must remain beyond suspicion. Governors are expected to be impartial and honest in the conduct of official business.
- 6.2 **Interest of Governors in Contracts** – if it comes to the knowledge of a Governor that a contract in which he/she has any pecuniary interest not being a contract to which he is himself a party, has been, or is proposed to be, entered into by the Trust he/she shall, at once, give notice in writing to the Secretary of the fact that he/she is interested therein. In the case of married persons or persons living together as partners, the interest of one partner shall, if known to the other, be deemed to be also the interest of that partner.
- 6.3 A Governor shall not solicit for any person any appointment in the Trust.

7. REMUNERATION

- 7.1 Governors are not to receive remuneration.

8. PAYMENT OF EXPENSES TO GOVERNORS

- 8.1 The Trust will pay travelling expenses to Governors at such rates as the Board of Directors decides for attendance at General Meetings of the Governors, or any other business authorised by the Secretary as being under the auspices of the Council of Governors.
- 8.2 Expenses will be authorised and reimbursed through the Secretary’s office on receipt of a completed and signed expenses form provided by the Secretary.
- 8.3 A summary of expenses paid to Governors will be published in the Annual Report.

9. RESOLUTION OF DISPUTES

9.1 Dispute Resolution between Board of Directors and Council of Governors

- 9.1.1 The Council of Governors and the Board of Directors shall be committed to developing and maintaining a constructive and positive relationship. The aim at all times is to resolve any potential or actual differences of opinion quickly, through discussion and negotiation.
- 9.1.1.1 Governors can raise concerns with the Secretary who may in the first instance be able to resolve the matter informally.
- 9.1.1.2 Where the Secretary has been unable to resolve the matter, the Lead Governor shall be the first point of contact when Governors wish to seek advice and/or raise issues and who acts as the Council of Governors lead representative to the Chair on Governor matters or the Deputy Chair if the dispute involves the Chair).
- 9.1.2 If the Chair (or Deputy Chair) cannot achieve resolution of a disagreement through informal efforts the Chair will follow the dispute resolution procedure described below. The aim is to resolve the matter at the first available opportunity and only to follow this procedure if initial action fails to achieve resolution:
- (a) The Secretary will call a joint meeting (“Resolution Meeting”) of the members of the Council of Governors and Board of Directors, to take place as soon as possible, but no later than twenty clear days following the date of the request. The meeting must comprise two thirds of the membership of the Council of Governors and two thirds of the membership of the Board of Directors. The meeting will be held in private. A Disputes Statement should set out clearly and concisely the issue or issues giving rise to the dispute. The aim of the meeting will be to achieve resolution of the conflict. The Chair will have the right to appoint an independent facilitator to assist the process. Every reasonable effort must be made to reach agreement.
 - (b) If a Resolution Meeting of the members of the Council of Governors and Board of Directors fails to resolve a conflict, the Board of Directors will decide the disputed matter.
 - (c) If following the formal Resolution Meeting, and the decision of the Board of Directors, the Council of Governors considers that implementation of the decision will result in the Trust failing to comply with its Licence; the Council of Governors, through the Lead Governor, will notify NHS England of the specific issue of non-compliance.
- 9.1.3 The right to call a Resolution Meeting rests with following, in the sequence of escalation shown:
- (a) the Chair;
 - (b) the Chief Executive;
 - (c) two thirds of the members of the Council of Governors;
 - (d) two thirds of the members of the Board of Directors.

10. MISCELLANEOUS

- 10.1 **Review of Standing Orders** – These Standing Orders shall be reviewed annually by the Council of Governors.

- 10.2 **Deputy-Chair** – In relation to any matter touching or concerning the Council of Governors or a Governor outside a meeting of the Council of Governors, which arises the Deputy-Chair may exercise such power as the Chair would have in those circumstances.
- 10.3 **Notice** – Any written notice required by these Standing Orders shall be deemed to have been given on the day the notice was sent to the recipient.
- 10.4 **Confidentiality** – A Governor shall not disclose any matter reported to the Council of Governors notwithstanding that the matter has been reported or action has been concluded, if the Council of Governors shall resolve that it is confidential.

ANNEX 7

Not used

ANNEX 8

Further Provisions

1. Eligibility for Membership

- 1.1** An individual shall not be eligible for Membership of the Trust if the individual:
- 1.1.1 is under 16 years of age at the date of their application or invitation to become a member (as the case may be).;
 - 1.1.2 fails or ceases to fulfil the criteria for Membership of any of the constituencies;
 - 1.1.3 has been placed on the registers of Schedule 1 offenders pursuant to the Sexual Offences Act 2003 (as amended) and/or the Children and Young Person's Acts 1933 to 1969 (as amended) and their conviction is not spent under the Rehabilitation of Offenders Act 1974;
 - 1.1.4 has been involved as a perpetrator in a serious incident of violence or has used persistent abusive behaviour in the last five years at any of the Trust's facilities or against any of the Trust's staff members or patients, provided that the Trust may resolve acting in the absolute discretion and that their so doing is part of their medical or mental condition and should not in itself preclude him from being a Member of the Trust;
 - 1.1.5 has been excluded from the Trust's premises or facilities from which services are provided;
 - 1.1.6 does not agree to abide by the Trust principles; or
 - 1.1.7 has been identified as a vexatious complainant.
- 1.2** It is the responsibility of Members to ensure their eligibility and not the Trust, but if the Trust is on notice that a Member may be disqualified from Membership, the Trust shall carry out all reasonable enquiries to establish if this is the case.

Public Constituency

- 1.3** For the purposes of determining whether an individual lives in an area specified as an area for Public Constituency, an individual shall be deemed to do so if;
- 1.3.1 the individual's name appears on the electoral roll at an address within the said area and the Trust has no reasonable cause to conclude that the individual is not living at that address; or
 - 1.3.2 the Trust is otherwise satisfied that the individual lives in the said area.
- 1.4** An individual who is a Member of the Public Constituency shall cease to be eligible to continue as a Member if they ceases to live in the area of the Public Constituency of which they are a Member save as may otherwise be provided in this paragraph 1.
- 1.5** Where a Member of a Public Constituency ceases to live permanently in the area of the Public Constituency of which they are a Member they shall forthwith advise the Trust that they are no longer eligible to continue as a Member and the Trust shall forthwith remove the individual's name from the Register of Members unless the Trust is satisfied that the individual concerned lives in some other area of a Public Constituency of the Trust. Where the Trust is satisfied that such an individual continues to live in the area of a Public Constituency of the Trust it shall, if the individual so requests, thereafter treat that individual as a Member of that other Public Constituency and amend the Register of Members accordingly provided the Trust has given that individual not less than 14 days' notice of its

intention to do so.

- 1.6** Where a Member ceases to live temporarily in the area of the Public Constituency of which they are a Member, the Trust may permit that individual nonetheless to remain on the Register of Members for that Public Constituency if it is for good cause satisfied that the absence is of a temporary duration only and that the Member will either return to live in the area of that Public Constituency of which they are a Member or will live in some other part of the Area of the Trust in which case the provisions of paragraph 1.4 shall apply as appropriate.

Staff Constituency

- 1.7** A Member of a Staff Class will cease to be eligible to be a Member of that Staff Class if they no longer meet the eligibility requirements of paragraph 7 of the Constitution.

2. Application for Membership

- 2.1** An individual may become a Member by application to the Trust in accordance with this Constitution or, where so provided for in this Constitution, by being invited by the Trust to become a member of a Staff Class of the Staff Constituency in accordance with paragraph 8.1 of this Constitution.
- 2.2** Where an individual wishes to apply to become a Member of the Trust, the following procedure shall apply:
- 2.2.1 the Trust shall upon request supply the individual with a form of application for Membership in a form determined by the Trust;
 - 2.2.2 upon receipt of the said form of application duly completed and signed by the applicant (or in the Trust's discretion signed on behalf of the applicant) the Trust shall as soon as is reasonably practicable and in any event within 28 working days of receipt of the duly completed form consider the same;
 - 2.2.3 unless the applicant is ineligible for Membership or is disqualified from Membership, the Trust shall cause his name to be entered forthwith on the Trust's Register of Members and shall give notice in writing to the applicant of that fact;
 - 2.2.4 upon the applicant's name being entered on the Trust's Register of Members the individual shall thereupon become a member;
 - 2.2.5 the information to be included in the Trust's Register of Members shall include the following details relating to that Member:
 - 2.2.5.1 full name and title;
 - 2.2.5.2 date of birth;
 - 2.2.5.3 full postal address;
 - 2.2.5.4 home telephone number (if any);
 - 2.2.5.5 email address (if any);
 - 2.2.5.6 the Constituency and class of which they are a Member;
 - 2.2.5.7 the date upon which they became a Member;
 - 2.2.5.8 gender and ethnicity, and
 - 2.2.5.9 affiliation to any health and social care group.

2.3 Where an individual is to be invited by the Trust to become a Member, the following procedure shall apply:

2.3.1 the Trust shall take all reasonable steps to satisfy itself that the individual

is eligible to become a Member of the Staff Class of the Staff Constituency relevant to them before inviting the individual to become a Member of the Trust and that it has all the information needed to complete the Register of Members in accordance with paragraph 2.2.5 above;

2.3.2 the Trust having so satisfied itself, it shall thereupon invite that individual to become a Member pursuant to paragraph 8.1, of the Constitution;

2.3.3 unless the individual has within 28 days of the date upon which the Trust dispatches its invitation to them to become a Member advised the Trust that they do not wish to become a Member, the Trust shall thereupon enter that individual's name on the Register of Members and they shall thereupon become a Member provided that the Trust has been provided with the information, if any, requested pursuant to paragraph 2.3.2 to enable it to complete the relevant entry in the Register of Members.

2.4 No individual who is ineligible or disqualified from Membership shall be entered or remain on the Register of Members.

2.5 For the avoidance of doubt, an individual shall become a Member on the date upon which their name is entered on the Trust's Register of Members and shall cease to be a Member upon the date on which their name is removed from the Register of Members as provided for in this Constitution.

2.6 The Trust shall procure that the Register of Members and all other Registers to be maintained in accordance with this Constitution or in accordance with the 2006 Act are regularly reviewed and updated and that the Register of Members in particular is reviewed and updated as appropriate and no less often than every 28 days.

2.7 Where in the reasonable opinion of the Trust a Member is no longer eligible or is disqualified from Membership of the Trust it shall be entitled to remove the name of that individual from the Register of Members and that individual shall thereupon cease to be a Member provided always that this power shall not be exercised until the Trust has given not less than fourteen days written notice to the Member addressed to them at the address given in the Register of Members of its intention to remove them from the Register and that Member has not within that period notified the Trust of their wish to continue as Member and provided proof satisfactorily to the Trust of his continued eligibility.

3. Members Meetings

3.1 The Trust shall hold an annual Members' Meeting of its members (called the "Annual Members' Meeting") within eight months of the end of each Financial Year of the Trust. The Annual Members' Meeting shall be open to members of the public.

3.2 Any Members' Meetings other than the Annual Members' Meeting shall be called "Special Members' Meetings".

3.3 Not used.

3.4 All Members' Meetings are to be convened by order of the Board of Directors.

3.5 The Board of Directors may

3.5.1 decide where a Members' Meeting is to be held and may also for the benefit of the Members arrange for the Annual Members' Meeting to be

held in different venues each year;

- 3.5.2 make provision for a Members' Meeting to be held at different venues simultaneously or at different times. In making such provision the Board of Directors shall also fix an appropriate quorum for each venue provided that the aggregate of the quorum requirements shall be not less than the quorum set out in paragraph 3.26 of Annex 6 of this Constitution.

3.6 The Board of Directors shall present to the Members at the Annual Members' Meeting:

- 3.6.1 a report on steps taken to secure that (taken as a whole) the actual membership is representative of those eligible for such membership;
- 3.6.2 the progress of the Membership strategy;
- 3.6.3 any proposed changes to the policy for the composition of the Council of Governors and of the Non-Executive Directors;
- 3.6.4 the results of the election and appointment of Governors;
- 3.6.5 the annual accounts, any report of the auditor on them and the annual report; and
- 3.6.6 any other reports or documentation it considers necessary or otherwise required by Monitor or the 2006 Act.

3.7 The Trust shall give notice of all Members' Meetings:

- 3.7.1 by notice in writing to all Members;
- 3.7.2 by notice prominently displayed at the Trust's main address and at all of the Trust's principal places of business;
- 3.7.3 by notice on the Trust's website;

- 3.7.4 to the Council of Governors and the Board of Directors, and to the Trust's auditors stating whether the meeting is an Annual or Special Members' Meeting giving the time, date and place of the meeting and indicating the business to be dealt with at the meeting at least 14 clear days before the date of the meeting.

3.8 The Chair or in their absence the Deputy Chair shall preside at all Members' Meetings of the Trust. If neither of the Chair or the Deputy Chair is present, the Governors present shall elect one of their number to be Chair and if there is only one Governor present and willing to act that person shall be Chair. If no Governor is willing to act as Chair or if no Governor is present within fifteen minutes after the time appointed for holding the meeting, the Members present and entitled to vote shall choose one of their number to be Chair.

3A. Voting at Governor Elections

- 3A.1 A Member may not for the purpose of Section 60(1) of the 2006 Act vote at an election for a Public Governor unless within the specified period they have made a declaration in the specified form stating the particulars of their gratification to vote as a Member of the Public Constituency for which an election is being held. It is an offence knowingly or recklessly to make such a declaration which is false in a material particular.

4. Board of Directors: Disqualification

- 4.1 In addition to the grounds of disqualification set out in paragraph 26 of the Constitution, a person may also not be or continue as a Director of the Trust if:

- 4.1.1 in the case of a Non-Executive Director, they no longer satisfy the relevant requirements for appointment;
- 4.1.2 they are a person whose tenure of office as a Chair or as a member or director of a health service body has been terminated on the grounds that their appointment is not in the interests of public service, or for non-disclosure of a pecuniary interest;
- 4.1.3 they have within the preceding two years been dismissed, otherwise than by reason of redundancy, by the coming to an end of fixed term contract or through ill health, from any paid employment with a health service body;
- 4.1.4 information revealed by a Disclosure and Barring check is such that it would be inappropriate for the individual to become or continue as a Director on the grounds that this would adversely affect public confidence in the Trust or otherwise bring the Trust into disrepute;
- 4.1.5 that person is not a fit and proper person for the purpose of Regulation 5 of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 and/or conditions of the Trust's Licence.
- 4.1.6 in the case of an Executive Director, the individual is no longer employed by the Trust.

5. Governors and Directors: Communication and Conflict

5.1 Summary

This paragraph 5 describes the processes intended to ensure a successful and constructive relationship between the Council of Governors and the Board of Directors. It emphasises the importance of informal and formal communication and confirms the formal arrangements for communication within the Trust. It suggests an approach to informal communications and sets out the formal arrangements for resolving conflicts between the Council of Governors and the Board of Directors.

5.2 Informal Communications

- 5.2.1 Informal and frequent communication between the Governors and the Directors is an essential feature of a positive and constructive relationship designed to benefit the Trust and the services it provides.
- 5.2.2 The Chair shall use his reasonable endeavors to encourage effective informal methods of communication including:
 - 5.2.2.1 participation of members of the Board of Directors in the induction, orientation and training of Governors;
 - 5.2.2.2 development of special interest relationships between Non-Executive Directors and Governors;
 - 5.2.2.3 discussions between Governors and the Chair and/or the Chief Executive and/or Directors through the office of the Chief Executive or their nominated officer;
 - 5.2.2.4 involvement in membership recruitment and briefings at public events organised by the Trust.

5.3 Formal Communication

- 5.3.1 Some aspects of formal communication are defined by the constitutional roles and responsibilities of the Council of Governors and the Board of Directors respectively.

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- 5.3.2 Formal communications initiated by the Council of Governors and intended for the Board of Directors will be conducted as follows: -
- 5.3.2.1 specific requests by the Council of Governors will be made through the Chair to the Board of Directors;
 - 5.3.2.2 any Governor has the right to raise specific issues to be put to the Board of Directors at a duly constituted meeting of the Council of Governors through the Chair but if the Chair declines to raise any such issue the said Governor may nonetheless still raise it provided two thirds of the Governors present approve their request to do so. The Chair shall then raise the matter with the Board of Directors and provide the response to the Council of Governors;
 - 5.3.2.3 joint meetings will take place between the Council of Governors and the Board of Directors as and when appropriate.
- 5.3.3 The Board of Directors may request the Chair to seek the views of the Council of Governors on such matters as the Board of Directors may from time to time determine.
- 5.3.4 Communications between the Council of Governors and the Board of Directors may occur with regard to, but shall not be limited to:
- 5.3.4.1 the Board of Directors proposals for the Strategic Direction and the Annual Business Plan, including information on the ICS plans, decisions and delivery that directly affects the organisation and its patients and service users;
 - 5.3.4.2 the Board of Directors' proposals for developments;
 - 5.3.4.3 Trust performance;
 - 5.3.4.4 involvement in service reviews and evaluation relating to the trust's services; and
 - 5.3.4.5 proposed changes, plans and developments for the Trust other than may be covered by paragraph 5.3.4.1 above.
- 5.3.5 The Board of Directors shall also present to the Council of Governors the Annual Accounts, Annual Report and Auditors Report in accordance with the terms of this Constitution and of the 2006 Act, as amended.
- 5.3.6 The following formal methods of communication may also be used as appropriate with the consent of both the Council of Governors and the Board of Directors:
- 5.3.6.1 attendance by Board Directors at a meeting of the Council of Governors;
 - 5.3.6.2 provision of formal reports or presentations by executive directors to a meeting of the Council of Governors;
 - 5.3.6.3 inclusion of appropriate minutes for information on the agenda of a meeting of the Council of Governors;
 - 5.3.6.4 reporting the views of the Council of Governors to the Board of Directors through the Chair, Deputy Chair or Senior Independent Director;
 - 5.3.6.5 The Senior Independent Director (SID) can act as an alternative source of advice to Governors from the Chair;

- 5.3.6.6 The SID shall be available to Governors if they have concerns that contact through normal channels has failed to resolve any issues which been raised or for which such contact is inappropriate.

5.4 Other Disputes

- 5.4.1 Where an individual is held by the Trust to be ineligible and/or disqualified from Membership of the Trust and disputes the Trust's decision in this respect, the matter shall be referred to the Chief Executive (or such other officer of the Trust as the Chief Executive may nominate) as soon as reasonably practicable thereafter.
- 5.4.2 The Chief Executive (or his nominated representative) shall:
- 5.4.2.1 review the original decision having regard to any representations made by the individual concerned and such other material, if any, as the Chief Executive considers appropriate;
 - 5.4.2.2 then either confirm the original decision or make some other decision as appropriate based on the evidence which he has considered; and
 - 5.4.2.3 communicate their decision and the reasons for it in writing to the individual concerned as soon as reasonably practicable.
- 5.4.3 Where a Governor is declared ineligible or disqualified from office or their term of office as a Governor has been terminated (otherwise than as a consequence of their own resignation) and that person disputes the decision, they shall as soon as reasonably practicable be entitled to refer the matter to an independent assessor agreeable to both parties who will consider the evidence and conclude whether the proposed removal is reasonable or otherwise.

5.5 Not used.

5.6 Indemnity

Members of the Council of Governors and Board of Directors who act honestly and in good faith will not have to meet out of their personal resources any personal civil liability which is incurred in the execution or purported execution of their Board functions, save where they have acted recklessly. Any costs arising in this way will be met by the Trust and the Trust shall have the power to purchase suitable insurance or make appropriate arrangements with the National Health Service Litigation Special Health Authority to cover such costs.

5.7 Validity of Actions

No defect or deficiency in the appointment or composition of the Council of Governors or the Board of Directors shall affect the validity of any action taken by them.