

**CONSTITUTION OF MID AND SOUTH ESSEX  
NHS FOUNDATION TRUST**

**(A PUBLIC BENEFIT CORPORATION)**

**Version 1.0**

**Effective from 1<sup>st</sup> April 2020**

## **Preamble**

This document is the Constitution of the Mid and South Essex NHS Foundation Trust

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

The NHS Constitution is a Department of Health and Social Care publication that establishes the Service's principles and values for staff and patients. It sets out the rights to which patients, public and staff are entitled, and pledges which the NHS is committed to achieve. It also sets out responsibilities which the public, patients and staff owe to one another to ensure that the NHS operates fairly and effectively.

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## **1. Interpretation and definitions**

- 1.1 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 or as amended by the Health and Social Care Act 2012.
- 1.2 References in this Constitution to legislation include all amendments, replacements or re-enactments made and include all subordinate legislation made thereunder.
- 1.3 Words importing the masculine gender only shall include the feminine gender; words importing the singular shall import the plural and vice versa.
- 1.4 Headings are for ease of reference only and are not to affect interpretation.
- 1.5 All Annexes referred to in this Constitution form part of it.
- 1.6 In this Constitution:

**the 2003 Act** is the Health and Social Care (Community Health and Standards) Act 2003;

**the 2006 Act** is the National Health Service Act 2006 (as amended);

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

**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;

**Annual Accounts** means those accounts prepared by the Trust in accordance with paragraph 25 of Schedule 7 to the 2006 Act;

**Annual Governors' Meeting** is defined in paragraph 25 of this Constitution;

**Annual Members' Meeting** is defined in paragraph 26 of this Constitution;

**Annual Report** means a report prepared by the Trust in accordance with paragraph 26 of Schedule 7 to the 2006 Act;

**Appointed Governors** means a Local Authority Governor or Partnership Governor;

**Appointments Committee for Non-Executives and the Chairman** means a committee comprised of Governors for the purpose of carrying out activities and functions in accordance with its terms of reference;

**Area of the Trust** means an area specified in Annex 1 as an area for a Public constituency;

**Audit Committee** means a committee of the Board of Directors established in accordance with paragraph 44 of this Constitution;

**Auditor** means the Auditor of the Trust appointed by the Council of Governors in accordance with paragraph 44 of this Constitution;

**Board of Directors** means the Board of Directors of the Trust, constituted in accordance with this Constitution;

**Chairman** means the person appointed in accordance with this Constitution to ensure that the Board of Directors and Council of Governors successfully discharge their overall responsibilities for the Trust as a whole. The expression "the Chairman" shall include the

Deputy Chairman or any other Non-Executive Director appointed if the Chairman or Deputy Chairman is absent or is otherwise unavailable;

**Chief Executive** means the Chief Executive of the Trust;

**Clear Day** means a day of the week not including a Saturday, Sunday or public holiday;

**Close Family Member** means either a:

- a) Spouse;
- b) Person whose status is that of “Civil Partner” as defined in the Civil Partnerships Act 2004 or a co-habitee;
- c) Parent;
- d) Child, step child or adopted child;
- e) Sibling;
- f) a close relative, close friend or close associate; or
- g) Spouse, Civil Partner or co-habitee of any of (c) to (f) listed above;

**Constitution** means this Constitution and all annexes to it;

**Council of Governors** means the Council of Governors as constituted in accordance with this Constitution and which has the same meaning as the Council of Governors in paragraph 7 of Schedule 7 to the 2006 Act;

**Deputy Chairman** means the Deputy Chairman of the Trust appointed in accordance with paragraph 34 of this Constitution;

**Deputy Lead Governor** means a Governor appointed by the Council of Governors to fulfil the duties and activities set out in the role description of the Deputy Lead Governor;

**Director** means a member of the Board of Directors and any other Officer employed as a director;

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

**Disclosure and Barring Service** means the Executive Agency of the Home Office to which the Secretary of State has delegated his functions under Part V of the Police Act 1977 in relation to applications for criminal records certificates and enhanced criminal record certificates as established by section 87(1) of the Protection of Freedoms Act 2012;

**Elected Governor** means a Public Governor or a Staff Governor;

**Executive Director** means an executive member of the Board of Directors of the Trust;

**Financial Year** means each successive period of 12 months beginning with 1 April and ending with 31 March;

**Forward Plan** means the document prepared by the Trust in accordance with paragraph 27 of Schedule 7 to the 2006 Act;

**Governor** means a member of the Council of Governors;

**Governors' Code of Conduct** means the Code of Conduct for Governors of the Trust, as adopted by the Trust and as amended from time to time by the Council of Governors, to which all Governors must subscribe;

**Health Service Body** shall have the meaning ascribed to "NHS Body" in Section 275 of the 2006 Act;

**Interested Director** shall have the meaning ascribed to "Interested Director" in paragraph 38.11.1 of this Constitution;

**Lead Governor** means a Governor appointed by the Council of Governors to fulfil the duties and activities set out in the role description of the Lead Governor;

**Licence** means the licence granted to the Trust under Section 88 of the 2012 Act;

**Local Authority Governor** means a member of the Council of Governors appointed by one or more Local Authorities whose area includes the whole or part of the area of the Trust;

**Meeting Chairman** means the person presiding over a meeting, committee or event;

**Member** means a Member of the Trust and the term "Membership" shall be construed accordingly;

**Membership Strategy** means the document of that name which describes the Trust's strategy to set up systems and processes to establish, maintain and develop its Membership;

**Model Election Rules** means the rules set out in Annex 4 of this Constitution;

**NHSI** means the corporate body known as NHS Improvement as provided by section 61 of the 2012 Act in the name of 'Monitor';

**Non-Executive Director** means a Non-Executive Director of the Trust;

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

**Partnership Governor** means a member of the Council of Governors other than a Public Governor, a Staff Governor or a Local Authority Governor;

**Partnership Organisation** means an organisation that may appoint a Partnership Governor and which is listed in Annex 3 of this Constitution;

**Predecessor Trusts/Foundation Trusts** means one or more of the organisations that merged to form Mid and South Essex NHS Foundation Trust on 1 April 2020. These were Basildon and Thurrock University Hospitals NHS Foundation Trust, Southend University Hospital NHS Foundation Trust, and Mid Essex Hospital Services NHS Trust.

**Principal Purpose** means the purpose set out in Section 43(1) of the 2006 Act;

**Public Constituency** is defined in paragraph 8 of this Constitution;

**Public Governor** means a member of the Council of Governors elected by Members of the Public Constituency;

**Registered Dentist** means a fully registered person within the meaning of the Dentists Act 1984 who holds a licence to practise under that Act;

**Registered Medical Practitioner** means a fully registered person within the meaning of the Medicines Act 1983 who holds a licence to practise under that Act;

**Registered Midwife** means a fully registered person within the meaning of the Nurse and Midwifery Order 2001 (SI 2001/253);

**Registered Nurse** means a fully registered person within the meaning of the Nurse and Midwifery Order 2001 (SI 2001/253);

**Regulatory Framework** means the 2006 Act, the Constitution and the Licence;

**Replacement Governor** is defined in paragraph 16.4 of this Constitution;

**Secretary** means a person whose function shall be to provide advice on corporate governance issues to the Board of Directors, Council of Governors and the Chairman and monitor the Trust's compliance with the Regulatory Framework. The Secretary shall be appointed and removed by the Chief Executive and Chairman of the Trust acting jointly;

**Senior Independent Director** means a Non-Executive Director appointed in accordance with paragraph 34 of this Constitution;

**Sex Offenders' Order** means either:

- a) a Sexual Offences Prevention Order made under Section 104 or Section 105 of the Sexual Offences Act 2003; or
- b) an Interim Sexual Offences Prevention Order made under Section 109 of the Sexual Offences Act 2003; or
- c) a Foreign Travel Order made under Section 114 of the Sexual Offenders Act; or
- d) a Risk of Harm Order made under Section 123 of the Sexual Offences Act 2003; or
- e) an Interim Risk of Sexual Harm made under Section 126 of the Sexual Offences Act 2003;

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

**Staff Constituency** is defined in paragraph 9 of this Constitution;

**Staff Governor** means a member of the Council of Governors elected by the Members of the Staff Constituency;

**Trust** means the Mid and South Essex NHS Foundation Trust.



## **2. Name**

- 2.1 The name of the foundation trust is Mid and South Essex NHS Foundation Trust (the "Trust").

## **3. Principal Purpose**

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

## **4. Other Purposes**

- 4.1 Without prejudice to the generality of the foregoing, the Trust may also:
- 4.1.1 subject to the restrictions on disposal of protected property, take on exchange, hire or otherwise acquire, hold, manage and mortgage, charge, sell, exchange or let out any real and personal property of any kind;
  - 4.1.2 purchase, take licenses of, protect, extend and renew any intellectual property rights of any description and may exploit the same and sell or license the same to others;
  - 4.1.3 form, acquire, invest in, assist and dispose of any companies or businesses carrying out any activity the Trust is authorised to carry out;
  - 4.1.4 form, acquire an interest in, invest in, participate in, and dispose of any interest in, joint ventures and partnerships, whether incorporated or not, carrying out any activity the Trust is authorised to carry out;
  - 4.1.5 enter into, carry on and participate in financial transactions, dealings and operations of all kinds and to take any steps which may be considered expedient for carrying into effect such transactions, dealings and operations including, but not limited to, borrowing and lending money and entering into contracts and arrangements of all kinds and guaranteeing or otherwise ordering or securing the liabilities and obligations or payment of monies by any person, firm or company including, but not limited to, any company which is for the time being a subsidiary (as defined by Section 1159 of the Companies Act 2006) of the Trust or is otherwise associated with the Trust in its activities;

- 4.1.6 act and continue to act as trustee of charitable and other trusts and funds, including but not limited to those trusts and funds of which the Trust is a trustee at the date of adoption of this constitution;
- 4.1.7 appoint any person or persons, firm or firms, company or companies to be the agent of agents or attorneys of the Trust and to act as agents, managers, secretaries, contractors or in a similar capacity;
- 4.1.8 establish and maintain for the benefit of current and former directors, governors and other officers of the Trust and employees of the Trust, and their families (including former spouses) and dependents, insurance and pension or superannuation funds and to grant pensions, emoluments, allowances, donations, gratuities, loans and bonuses to such persons;
- 4.1.9 establish, maintain and support institutions (including but not limited to research institutions), associations, societies, clubs or other establishments the support of which may, in the opinion of the board of directors be calculated directly or indirectly to benefit the Trust, or may be connected with the area of the Trust or any other place where the Trust carries on business or otherwise connected in any way with any activities of the Trust;
- 4.1.10 join, participate in and subsidise or assist any organisation of employers or employees or a trade association relevant to the activities of the Trust;
- 4.1.11 take, make, execute, enter into, commence, carry on, prosecute and defend all steps, claims, demands, contracts, agreements, negotiations, legal and other proceedings, compromises, arrangements and schemes, and to do all other acts, matters and things which shall at any time appear conducive or expedient for the advantage or protection of the Trust;
- 4.1.12 take all and any action required or permitted by sections 14, 44 and 45 of the 2003 Act, section 26 of the Health Act 1999 and section 11(2) of the Health and Social Care Act 2001, all as amended from time to time and insofar as the same apply to the Trust; and
- 4.1.13 undertake any activities which promote or further the purposes set out at paragraph 3 and the foregoing paragraphs of this paragraph 4.

## **5. Powers**

- 5.1 The powers of the Trust are set out in the 2006 Act.
- 5.2 All the powers of the Trust shall be exercised by the Board of Directors on behalf of the Trust.
- 5.3 Any of these powers may be delegated to a committee of Directors or to an Executive Director.
- 5.4 In performing its NHS functions, the Trust shall have regard to the NHS Constitution. For the purpose of this paragraph, "NHS functions" means functions under an enactment which is a function concerned with, or connected to, the provision, commissioning or regulation of NHS services and "NHS services" means health services provided in England for the purposes of the health service under Section1(1) of the 2006 Act.

## **6. Membership and constituencies**

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

6.1.1 a Public Constituency; or

6.1.2 a Staff Constituency.

## **7. Application for Membership**

- 7.1 An individual who is eligible to become a Member of the Trust may do so on application to the Trust, subject to paragraphs 7 and 8.
- 7.2 Subject to paragraph 9.5 below, applicants for Membership of the Trust must complete a form prescribed by the Chief Executive or the Secretary and agreed by the Council of Governors.
- 7.3 All Members of the Trust shall be under a duty to notify the Secretary of any change in their particulars which may affect their entitlement as a Member.
- 7.4 The Secretary shall, on receipt of an application and subject to being satisfied that the applicant is eligible, ensure the applicant's name is entered into the Trust's register of Members at which point they shall become a Member of the Trust.
- 7.5 The Secretary may require any individual to supply supporting evidence to confirm eligibility.

## **8. Public Constituency**

- 8.1 An individual who lives in an area specified in Annex 1 as an area for the Public Constituency may become or continue as a Member of the Trust.
- 8.2 Those individuals who live in an area specified for a public constituency are referred to collectively as a Public Constituency.
- 8.3 The minimum number of Members in each Public Constituency is specified in Annex 1.

## **9. Staff Constituency**

- 9.1 An individual who is employed by the Trust under a contract of employment with the Trust may become or continue as a Member of the Trust provided the individual:
- 9.1.1 is employed by the Trust under a contract of employment which has no fixed term or has a fixed term of at least 12 months; or
- 9.1.2 has been continuously employed by the Trust under a contract of employment for at least 12 months.
- 9.2 Those individuals who are eligible for Membership of the Trust by reason of the previous provisions are referred to collectively as the Staff Constituency.
- 9.3 The minimum number of Members in the Staff Constituency is specified in Annex 2.
- 9.4 For the purposes of paragraph 9.1 above, 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.
- 9.5 An individual who is eligible to become a Member of the Staff Constituency under paragraph 9.1 above, and who is invited by the Trust to become a Member of the Staff Constituency, shall become a Member of the Staff Constituency without an application being made, unless the individual informs the Trust that s/he does not wish to do so.

## **10. Membership**

- 10.1 The Trust shall at all times strive to ensure that, taken as a whole, its actual Membership of the Public Constituency is representative of those eligible for Membership of the Trust.
- 10.2 The area set out for the Public Constituency shall have regard to the need for those eligible for such Membership to be representative of those to whom the Trust provides services.
- 10.3 The Trust shall have in place at all times a Membership Strategy which shall be regularly reviewed by the Council of Governors, at least every 3 years. The Membership Strategy shall be agreed by the Board of Directors and shall include a strategy to involve young people in the Trust and a framework for their involvement.

## **11. Restriction on Membership**

- 11.1 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.
- 11.2 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.
- 11.3 An individual must be at least 12 years old to become a Member of the Trust.

## **12. Disqualification from Membership**

- 12.1 An individual shall not become or continue as a Member of the Trust if the individual:
  - 12.1.1 has failed to agree to and abide by the values of the Trust;
  - 12.1.2 has been deemed to have acted in a manner detrimental to and contrary to the interests and values of the Trust;
  - 12.1.3 in the opinion of the Council of Governors, there are reasonable grounds to believe that the individual is likely to act in a way which is detrimental to the interests or values of the Trust;
  - 12.1.4 has been confirmed as an habitual and/or vexatious complainant in accordance with the Trust's policy for handling complaints;
  - 12.1.5 has been the subject of action under the Trust's policy for dealing with patients or relatives who are violent and abusive;
  - 12.1.6 is the subject of a Sex Offenders' Order and/or his/her name is included in the Sex Offenders' Register which is the individual's responsibility to disclose though the Trust may also be notified by an appropriate authority;
  - 12.1.7 is included in any barred list established under the Safeguarding Vulnerable Groups Act 2006 which is the individual's responsibility to disclose though the Trust may also be notified by an appropriate authority.

## **13. Termination of Membership**

- 13.1 A Member shall cease to be a Member if the individual:
  - 13.1.1 resigns by notice in writing to the Secretary;
  - 13.1.2 dies;

- 13.1.3 ceases to fulfil the requirements of paragraphs 7, 8 or 9 of this Constitution; or
- 13.1.4 is expelled from membership under this Constitution.
- 13.2 A Member may be expelled by a resolution approved by not less than three-quarters of the members of the Council of Governors present and voting at a general meeting. The following procedure is to be followed:
- 13.2.1 Any Member may complain to the Secretary that another Member has acted in a way detrimental to or contrary to the interests of the Trust or is otherwise disqualified, as set out in paragraph 12 above.
- 13.2.2 If a complaint is made, the Council of Governors may itself consider it.
- 13.2.3 Alternatively, a complaint may be considered by a specially convened panel chaired by the Chairman, or an agreed nominated deputy in the absence of the Chairman, three Governors (ideally including the Lead Governor or Deputy Lead Governor) and the Secretary and a recommendation put to the Council of Governors at a general meeting.
- 13.2.4 However the complaint is to be handled, the Member:
- 13.2.4.1 will be suspended while the matter is under consideration, but will remain eligible to stand for election as a Governor whilst under suspension;
- 13.2.4.2 shall be given the opportunity to make their views known.
- 13.2.5 The Member shall be given advance notice of the date and time of any meeting at which a complaint against the Member is to be considered and receive an invitation to attend. At the meeting, the Member may address the complaint directly and present evidence which s/he wishes to put forward.
- 13.2.6 If the Member complained of fails to attend the meeting (described above) without due cause, the meeting may proceed in their absence. The decision to proceed in these circumstances will be at the sole discretion of the Chairman, or person chairing the meeting in the absence of the Chairman.
- 13.2.7 Having taken such steps to ensure that the Member's point of view is heard, the panel shall put a recommendation to the Council of Governors to either:
- 13.2.7.1 dismiss the complaint and take no further action taken; or
- 13.2.7.2 consider the complaint at the next general meeting of the Council of Governors with a resolution to expel the Member who is the subject of the complaint.
- 13.2.8 If a resolution to expel a Member is to be considered at a general meeting of the Council of Governors, details of the complaint must be sent to the Member complained of not less than one calendar month before the meeting, with an invitation to answer the complaint and attend the meeting.
- 13.2.9 At the meeting, the Council of Governors will consider evidence in support of the complaint and such evidence as the Member complained of may wish to place before them.
- 13.3 At the general meeting of the Council of Governors at which the panel's recommendation to expel the Member is considered, the Council of Governors shall be at liberty to either:

- 13.3.1 agree with the committee's recommendation, by a three-quarters majority vote of those Governors present, and expel the Member immediately; or
- 13.3.2 remove the Member's suspension with immediate effect should the Council of Governors not agree with the committee's recommendation.
- 13.4 In either case, the Member shall be duly informed of the decision of the Council of Governors.
- 13.5 A person expelled from Membership will cease to be a Member upon the declaration of the person chairing the meeting that the resolution to expel them is carried.
- 13.6 No person who has been expelled from Membership in accordance with these provisions shall be re-admitted as a Member except by a resolution carried by the votes of three-quarters of the members of the Council of Governors present and voting at a general meeting in favour of the individual concerned being re-admitted.

#### **14. Council of Governors – composition**

- 14.1 The Trust is to have a Council of Governors, which shall comprise both Elected Governors and Appointed Governors.
- 14.2 The composition of the Council of Governors is specified in Annex 3.
- 14.3 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.
- 14.4 The number of Governors to be elected by each constituency, or, where appropriate, by each class of each constituency, is specified in Annexes 1 and 2.
- 14.5 The composition of the Council of Governors shall seek to ensure that:
- 14.5.1 the interests of the public and those served by the Trust are appropriately represented; and
- 14.5.2 there is a balance in the level of representation from the Public Constituency, the Staff Constituency and Partnership Organisations.
- 14.6 The number of members of the Council of Governors who are Public Governors shall always be more than half the total number of Governors serving on the Council of Governors.

#### **15. Council of Governors – election of Governors**

- 15.1 Elections for elected members of the Council of Governors shall be conducted using the single transferable vote method in accordance with the Model Election Rules, as may be varied from time to time.
- 15.2 The Model Election Rules as published from time to time by authorised organisations form part of this Constitution. The current Model Election Rules are attached at Annex 4.
- 15.3 A subsequent variation of the Model Election Rules by authorised organisations shall not constitute a variation of the terms of this Constitution for the purposes of paragraph 51 of this Constitution.
- 15.4 An election, if contested, shall be by secret ballot.

- 15.5 A person may not vote at an election or stand for election as an Elected Governor unless, within the specified period in the Model Election Rules, a signed declaration has been made in the form specified in paragraph 15.6. It is an offence to knowingly or recklessly make a declaration which is false.
- 15.6 The specified form of declaration referred to in paragraph 15.5 above regarding the declaration to stand for election as an Elected Governor shall be as set out on the nomination paper referred to in the Model Election Rules at Annex 4 and shall state as follows:

*“I declare that, to the best of my knowledge, I am eligible to stand for election to the Council of Governors for the seat named in Section X of this form. I declare that, to the best of my knowledge, I am not de-barred from standing for election by any of the provisions detailed at Section X of this form. I declare that I have stated details of any political membership and financial interests I have in the Foundation Trust at Section X of this form. I understand that if any of these declarations are later found to be false, I will, if elected, lose my seat on the Council of Governors and may also have my Membership withdrawn.”*

## **16. Council of Governors - vacancies**

- 16.1 Where a vacancy arises on the Council of Governors for any reason other than expiry of a term of office, the provisions set out below will apply.
- 16.2 Where the vacancy arises amongst the Elected Governors, the Council of Governors shall be at liberty either:
- 16.2.1 to call an election to fill the remainder of the unexpired term of office where it is in excess of one year; or
- 16.2.2 to invite the next highest polling candidate for that seat at the most recent election or (where relevant) by-election, who is willing to take office, to fill the seat for the remainder of the unexpired term of office. If that candidate does not accept to fill the vacancy, it may be offered to the next highest polling candidate until the vacancy is filled where no reserve candidate is available or willing to fill the vacancy, to call an election; or
- 16.2.3 to leave the seat vacant until the next scheduled annual elections are to be held.
- 16.3 When deciding on a course of action, the Council of Governors must always ensure that the aggregate number of Governors who are Public Governors on the Council of Governors always remains in the majority.
- 16.4 Where the vacancy arises amongst the Appointed Governors, the Secretary will request the relevant Partnership Organisation to appoint a Replacement Governor, in line with the eligibility criteria set out for Governors at paragraph 12, 18.1 and Annex 5, to hold office for the remainder of the unexpired term of office. The Partnership Organisation shall agree the appointment of a Replacement Governor with the Secretary within three months of being notified.
- 16.5 The validity of any act of the Council of Governors is not affected by any vacancy among the Governors or by any defect in the appointment of any Governor.

## **17. Council of Governors - tenure**

- 17.1 All Governors may hold office for a period of up to three years.
- 17.2 A Governor shall be eligible for re-election or re-appointment at the end of their period of

office.

- 17.3 All Governors may not hold office for a continuous period of longer than six years within this Trust, which must be followed by a break of two years before standing for re-election or before being re-appointed. Previous service as a Governor of one of the predecessor Foundation Trusts will not count towards the maximum eligible term of six years.
- 17.4 An Elected Governor shall cease to hold office if s/he ceases to be a Member of the constituency by which s/he was elected.
- 17.5 An Appointed Governor shall cease to hold office if the appointing organisation withdraws its sponsorship of him/her.
- 17.6 Any Governor shall cease to hold office if s/he is disqualified for any of the reasons set out in this Constitution.

## **18. Council of Governors – disqualification and removal**

- 18.1 A person may not become or continue as a Governor if:
  - 18.1.1 s/he is a person in relation to whom a moratorium period under a debt relief order applies (under Part 7A of the Insolvency Act 1986);
  - 18.1.2 the individual is under sixteen years of age when the nomination date for the election to the Council of Governors closes;
  - 18.1.3 the individual meets any of the criteria set out in paragraph 12 which shall apply equally to Elected and Appointed Governors of the Trust;
  - 18.1.4 the individual is a Director of the Trust, or a governor, executive director, non-executive director, chairman, chief executive of another NHS foundation trust, or other Health Service Body (unless they are appointed by a Partnership Organisation which is an NHS body);
  - 18.1.5 the individual has been a Director of the Trust in the preceding five years prior to the date of his/her nomination to stand as an Elected Governor, or in the case of an Appointed Governor, the date of his/her appointment;
  - 18.1.6 the individual is an employee of, consultant to or office holder of:
    - 18.1.6.1 NHSI; or
    - 18.1.6.2 the Care Quality Commission, or successor organisation; or
    - 18.1.6.3 any company which provides an Internal Audit or External Audit service to the Trust;
  - 18.1.7 the individual is incapable by reason of his/her mental disorder, illness or injury of managing and/or administering his/her property and/or affairs;
  - 18.1.8 the individual has refused, without reasonable cause, to undertake any training which the Trust and/or Council of Governors requires all Governors to undertake;
  - 18.1.9 the individual has failed to sign and deliver to the Secretary a statement in the form required by the Trust confirming acceptance of the Governors' Code of Conduct;
  - 18.1.10 the individual is a person who, by reference to information revealed by a



Disclosure and Barring Service check, is considered by a panel comprising the Chairman, three Governors (ideally including the Lead Governor or Deputy Lead Governor) and the Secretary to be inappropriate on the grounds that his/her appointment might adversely affect public confidence in the Trust or otherwise might bring the Trust into disrepute;

- 18.1.11 the relevant Partnership Organisation which s/he represents ceases to exist;
  - 18.1.12 the individual has been expelled from the post of governor from another NHS foundation trust; or
  - 18.1.13 the individual is an active member of a body or organisation with policies or objectives such that his/her membership thereof would likely cause the Trust to be in breach of its statutory obligations or to bring the Trust into disrepute.
- 18.2 Further circumstances in which an individual may not become or continue as a member of the Council of Governors are set out in Annex 5.
- 18.3 Where a person has been elected or appointed to be a Governor and becomes disqualified under provisions set out in paragraphs 12, 18.1 and Annex 5, the individual shall notify the Secretary in writing of such disqualification as soon as is practicable and, in any event, within ten Clear Days of first becoming aware of those matters which rendered the individual disqualified.
- 18.4 If it comes to the notice of the Secretary at the time of the Governor taking office or later that the Governor is so disqualified, the Secretary shall immediately declare that the Governor in question is disqualified and notify him/her in writing to that effect as soon as is practicable.
- 18.5 Upon dispatch of any such notification, a Governor's tenure of office, if any, shall be terminated immediately and the Secretary shall cause the individual's name to be removed from the register of members of the Council of Governors. From that point, the individual shall immediately cease to be or act as a Governor.
- 18.6 Where there are concerns about an individual holding the office of Governor, a panel chaired by the Chairman, or an agreed nominated deputy in the absence of the Chairman, and comprising three Governors (including the Lead Governor or Deputy Lead Governor where possible and appropriate) and the Secretary shall be convened to consider the circumstances further and to put a recommendation to the Council of Governors.
- 18.7 Such a panel may be convened for one or more of the circumstances set out below or for another specified reason:
- 18.7.1 the Governor is found to be disqualified from holding the post of Governor for one or more of the reasons set out in paragraph 12, 18.1 or Annex 5;
  - 18.7.2 the Governor is considered to have acted in a manner inconsistent with the values of the Trust or in a manner detrimental to or contrary to the:
    - 18.7.2.1 interests of the Trust;
    - 18.7.2.2 Licence; or
    - 18.7.2.3 Governors' Code of Conduct.
  - 18.7.3 the Governor has failed to declare an interest as required by the Constitution or he has spoken or voted at a meeting on a matter in which he has an interest contrary to the Constitution. For the purpose of this paragraph, "interest" includes a relevant

and material interest, or a pecuniary, personal or family interest, whether that interest is direct or indirect; or

- 18.7.4 the Governor is found to be incapable, by reason of mental disorder, illness or injury, of managing and/or administering his/her property and/or affairs for the purposes of paragraph 18.7.1 above.
- 18.8 In considering whether an individual is incapable by reason of mental disorder, illness or injury of managing and/or administering his/her property and/or affairs, the panel (described above) shall take into account the provisions of the Mental Capacity Act 2005, or any statutory modification thereof, and shall be entitled to take appropriate professional advice from internal Trust advisors and/or external advisors as necessary.
- 18.9 The Governor, who is the subject of the panel's considerations, shall be given the opportunity to attend the meeting at which the concerns are to be considered and address the concerns directly. The Governor may also present evidence which s/he wishes the panel to consider when making their deliberations. The Governor may bring a companion to the panel meeting, provided that this companion does not act in a formal legal advisory capacity.
- 18.10 If the Governor fails to attend the meeting (described above) without due cause, the meeting may proceed in their absence. The decision to proceed in these circumstances will be at the sole discretion of the Chairman, or person chairing the meeting in the absence of the Chairman.
- 18.11 Where the panel deems that the Governor is ineligible for, or unfit to hold, the office of Governor, or that the Governor is incapable, by reason of mental disorder, illness or injury, of managing and/or administering his/her property and/or affairs, the Governor shall be immediately suspended from office and the panel shall make a recommendation to the next general meeting of the Council of Governors.
- 18.12 The Secretary shall inform the Governor of the recommendation of the panel and invite the Governor to attend the meeting of the Council of Governors at which the panel's recommendations are to be considered. The Governor shall be given the opportunity to attend the meeting and address the concerns directly. The Governor may also present evidence which s/he wishes the Council of Governors to consider before it makes its final decision.
- 18.13 At the meeting where the panel's recommendations are considered, the Council of Governors shall pass a resolution by a three-quarters majority of those members of the Council of Governors present and voting to either:
- 18.13.1 disqualify the Governor from office on the grounds that s/he is either ineligible or unfit to hold the post of Governor; or
- 18.13.2 temporarily suspend the Governor from office until such time as the Council of Governors, in its absolute discretion, considers the Governor to be capable of managing and/or administering his/her property and/or affairs; or
- 18.13.3 disqualify the Governor from office where the Council of Governors, in its absolute discretion, considers the Governor to be permanently incapable of managing and/or administering his/her property and affairs; or
- 18.13.4 remove the suspension of the Governor, should the Council of Governors not agree with the panel's recommendation.
- 18.14 The Secretary will duly inform the Governor of the decision of the Council of Governors.

- 18.15 Upon dispatch of any such notification, a Governor's tenure of office shall be terminated immediately and the Secretary shall cause the individual's name to be removed from the register of members of the Council of Governors. From that point, the individual shall immediately cease to be or act as a Governor.
- 18.16 A Governor whose office is terminated shall not be eligible to stand for re-election or re-appointment to the Council of Governors for a period of three years from the termination date.
- 18.17 If a Governor fails to attend three out of four consecutive meetings, the Council of Governors may immediately expel the Governor in question by a three quarters majority in favour of those members of the Council of Governors present and voting unless the Council of Governors is satisfied that:
- 18.17.1 the absence was due to a reasonable cause; and
- 18.17.2 the Governor will be able to start attending meetings of the Council of Governors again within such a period as the other Governors consider reasonable.
- 18.18 Where a person has been elected or appointed as a Governor and becomes aware of a reason which prevents him/her from holding such office, the Governor shall immediately notify the Secretary and cease to be or act as a Governor.
- 18.19 A Governor may resign from office at any time during the term of that office by giving notice in writing to the Secretary. Where possible and appropriate, a resigning Governor should agree a notice period with the Secretary prior to resigning from office.

## **19. Council of Governors – roles and responsibilities**

- 19.1 The roles and responsibilities of the Council of Governors are:
- 19.1.1 to appoint and, if appropriate, remove the Chair;
- 19.1.2 to appoint and, if appropriate, remove the other non-executive directors;
- 19.1.3 to decide the remuneration and allowances and other terms and conditions of office of the Chair and the other non-executive directors;
- 19.1.4 to approve (or not) any new appointment of a chief executive;
- 19.1.5 to appoint and, if appropriate, remove the Trust's Auditor;
- 19.1.6 to receive the Trust's Annual Accounts, any report of the Auditor on them and the Annual Report at a members' meeting
- 19.1.7 to hold the Non-Executive Directors individually and collectively to account for the performance of the Board of Directors;
- 19.1.8 to represent the interests of the Members of the Trust as a whole and the interests of the public;
- 19.1.9 to approve "significant transactions" as per section 52;
- 19.1.10 to approve an application by the Trust to enter into a merger, acquisition, separation or dissolution as per section 52;
- 19.1.11 to decide whether the Trust's non-NHS work would significantly interfere with its principal purpose as per section 3; and

19.1.12 to approve amendments to the Trust's constitution.

## **20. Council of Governors – skills and knowledge**

20.1 The Trust must take steps to enable the Governors to be equipped with the skills and knowledge they require in their capacity as such, upon election and on an ongoing basis.

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

### **Admission of the Public**

21.1 Meetings of the Council of Governors shall be open to members of the public. Members of the public and representatives of the press may be excluded from a meeting for special reasons as set out in Annex 6.

### **Calling Meetings**

21.2 Subject to paragraph 27 below, the Council of Governors is to meet at least four times per year. Meetings are to be held at such times and places as the Council of Governors may determine.

21.3 One of the Council of Governors' meetings shall be an annual meeting held no later than 30 September in each year (the "Annual Members' Meeting").

21.4 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 of the Council of Governors.

21.5 The Council of Governors may invite the Chief Executive, members of the Board of Directors or a representative of the Auditor or other advisors to attend and speak at a meeting of the Council of Governors.

21.6 Over and above the agreed schedule of general meetings of the Council of Governors set out in paragraph 1.13 in Annex 6, the Chairman of the Trust may call a meeting of the Council of Governors at any time in the event of special circumstances. Where possible and appropriate, the Chairman shall give at least ten Clear Days' notice of the meeting.

21.7 The Chairman of the Trust may call a meeting of the Council of Governors at any time after a requisition for that purpose, signed by at least half of the whole number of Governors, has been presented to him at the Trust headquarters. If the Chairman does not call a meeting within at least ten but not more than twenty Clear Days' notice after such a requisition has been presented to him, half the Governors or more may call a meeting.

### **Notice of meetings and agenda**

21.8 General provisions relating to the notice of meetings and agenda are provided at Annex 6.

21.9 In the case of a meeting called by Governors in default of the Chairman, the notice shall be signed by those Governors and no such business shall be transacted at the meeting other than that specified in the notice.

### **Conduct of meetings**

21.10 The Chairman of the Trust (i.e. the Chairman of the Board of Directors, appointed in accordance with the provisions of paragraph 32 below) or, in the Chairman's absence the Deputy Chairman (appointed in accordance with the provisions of paragraph 34 below), or in the Deputy Chairman's absence one of the Non-Executive Directors shall preside at

meetings of the Council of Governors and be the Meeting Chairman.

- 21.11 If the Meeting Chairman has a conflict of interest in relation to the business being discussed, then the Vice Chair of the Council of Governors shall chair that part of the meeting. Should the Vice Chair not be present, the Lead Governor or Deputy Vice Chair/Deputy Lead Governor shall chair this part of the meeting.
- 21.12 The Council of Governors may appoint committees or groups consisting of its members to assist it in carrying out its functions but may not delegate any of its powers or functions to them. A committee or group so appointed may appoint its own working groups.
- 21.13 These committees or groups may include Directors or Officers of the Trust and/or outside advisors to help them in their tasks.
- 21.14 The Council of Governors may, through the Secretary, request that advisors assist them or any committee they appoint in carrying out their functions.
- 21.15 Annex 6 provides further provisions for the conduct of meetings of the Council of Governors.

### **Voting**

- 21.16 Every question at a meeting of the Council of Governors shall be determined by a majority of votes of the Governors present. The only exception is a decision upon a significant transaction (including a proposed merger, dissolution or acquisition) where a majority of all Governors is required in order to pass the motion, not merely a majority of those attending the meeting where the matter is put to a vote. Further detail can be found in section 52.
- 21.17 In the case of the number of votes for and against a motion being equal, the Meeting Chairman shall have the casting vote.
- 21.18 Every Governor must make an annual declaration that s/he is qualified to vote at meetings of the Council of Governors. The Governor will do so in the form specified below:

*Declaration to the Secretary of the Mid and South Essex NHS Foundation Trust*

#### **Elected Governors**

*"I hereby declare that I am, at the date of this declaration, a Member of the [Public / Staff] Constituency, and I am not prevented from being a member of the Council of Governors by reason of any provision of paragraph 8 of Schedule 7 to the 2006 Act or the Constitution."*

#### **Appointed Governors**

*"I hereby declare that I am at the date of this declaration a properly Appointed Governor and I am not prevented from being a member of the Council of Governors by reason of any provision of paragraph 8 of Schedule 7 to the 2006 Act or the Constitution."*

- 21.19 A Governor may not vote at a meeting of the Council of Governors unless, prior to the meeting, the Governor has made the declaration referred to in paragraph 21.19 above.
- 21.20 Each Governor must also notify the Secretary as soon as possible and provide a further declaration at any subsequent meeting if the Governor's circumstances have changed.
- 21.21 All Governors shall be deemed to have confirmed the declaration upon attending any

subsequent meeting of the Council of Governors, and every agenda for meetings of the Council of Governors will draw this to the attention of Governors.

21.22 All questions put to the vote shall, at the discretion of the Meeting Chairman, be determined by show of hands.

21.23 In no circumstances may an absent Governor vote by proxy or in advance of the meeting. Absence is defined as being absent at the time of the vote.

### **Electronic Participation and Voting in Council of Governor Meetings**

21.24 The Council of Governors may agree that Governors can participate in its meetings and vote on decisions by telephone, video or computer link or other such agreed means. Participation in a meeting and voting on decisions in this manner shall be deemed exceptional but shall constitute presence in person at the meeting. Express approval from the Chairman must be sought in advance. Further provisions which apply in these circumstances are set out in Annex 7.

### **Content and length of speeches**

21.25 General provisions relating to the content and length of speeches are provided at Annex 6.

### **Quorum**

21.26 Any meeting of the Council of Governors requires a quorum of nine Governors, the majority of which shall be Public Governors.

21.27 If the Meeting Chairman or a Governor has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of the declaration of a conflict of interest (paragraphs 22, 38 and Annex 8), s/he shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next agenda item.

21.28 If at any meeting of the Council of Governors, there is no quorum present within 30 minutes of the time fixed for the start of the meeting, the meeting shall stand adjourned. The Secretary shall give notice of the date, time and place of the adjourned meeting and upon reconvening those present shall constitute a quorum.

## **22. Council of Governors - conflicts of interest of Governors**

22.1 If a Governor has a pecuniary, personal or family interest, whether that interest is actual or potential and whether that interest is direct or indirect, in any proposed contract or other matter which is under consideration or is to be considered by the Council of Governors, the Governor shall disclose the nature and extent of that interest to the members of the Council of Governors as soon as s/he becomes aware of it.

22.2 If a declaration under this paragraph proves to be, or becomes, inaccurate or incomplete, the Governor must make a further declaration before the Trust enters into the transaction or arrangement.

22.3 This paragraph does not require a declaration of an interest of which the Governor is not aware or where the Governor is not aware of the transaction or arrangement in question.

22.4 Any interests raised by the Governors in this way shall be recorded in the register of interests of the Governors.

- 22.5 Further provisions as to the circumstances in which a Governor must declare a conflict of interest are set out in Annex 8.
- 22.6 These shall include that the Governor shall not:
- 22.6.1 be present, except with the permission of the Council of Governors, in any discussion of the matter;
- 22.6.2 vote on the issue (and if by inadvertence they do remain and vote, their vote shall not be counted).

### **23. Council of Governors – remuneration, travel and other expenses**

- 23.1 Governors are not to receive remuneration from the Trust provided that this shall not prevent remuneration of Governors by their employer.
- 23.2 Subject to any Trust policy on the payment of expenses, the Trust may pay travelling and other expenses to members of the Council of Governors at rates determined by the Trust.

### **24. Council of Governors – referral to the panel**

- 24.1 In this paragraph, the panel means a panel of persons appointed by NHSI to which a governor of an NHS foundation trust may refer a question as to whether the Trust has failed or is failing:
- 24.1.1 to act in accordance with its constitution; or
- 24.1.2 to act in accordance with provision made by or under Chapter 5 of the 2006 Act.
- 24.2 A Governor may refer a question to the panel only if more than half of the members of the Council of Governors present and voting approve the referral at a general meeting of the Council of Governors.
- 24.3 Attention is drawn to the role of the Senior Independent Director (SID) as an individual to whom concerns can be addressed when the normal channels of contact with the Chair or the Chief Executive would be inappropriate, or where these routes have failed to resolve the concerns.

### **25. Meeting of the Council of Governors to consider the Annual Accounts and Reports**

- 25.1 The following documents are to be presented to the Council of Governors at the Annual Members' Meeting:
- 25.1.1 the Annual Accounts;
- 25.1.2 any report of the Auditor on them; and
- 25.1.3 the Annual Report.

### **26. Annual Members' Meeting**

- 26.1 The Trust shall hold an annual meeting of its Members (the "Annual Members' Meeting"). The Annual Members' Meeting shall be open to all members of the public.
- 26.2 Notice of the Annual Members' Meeting shall be given:
- 26.2.1 to individual Members;

- 26.2.2 through notices prominently displayed at the Trust's headquarters and at each of its sites; and
- 26.2.3 on the Trust's website.
- 26.3 The notice shall give the time, date and place of the meeting and indicate the business to be dealt with at the meeting.
- 26.4 In addition to the obligations set out in paragraph 26.5 below, the Council of Governors shall present to each Annual Members' Meeting:
  - 26.4.1 a report on steps taken to secure that, taken as a whole, the actual Membership of the Public Constituency is representative of those eligible for such Membership;
  - 26.4.2 the progress of the Membership Strategy and any changes to it;
  - 26.4.3 any changes to the structure of the Council of Governors or to the Non-Executive Directors on the Board of Directors.
  - 26.4.4 changes to the Council of Governors.
- 26.5 At least one member of the Board of Directors must attend each Annual Members' Meeting and present the following documents:
  - 26.5.1 the Annual Accounts;
  - 26.5.2 any report of the Auditor on them; and
  - 26.5.3 the Annual Report.
- 26.6 Arrangements for the Annual Members' Meeting shall be carried out in accordance with arrangements for meetings of the Council of Governors except that the quoracy shall be the Chairman (or Deputy Chairman) and at least twenty Members.

## **27. Combined Meetings of Members and Governors**

- 27.1 The Trust may combine a meeting of the Council of Governors convened for the purposes of paragraph 25.1 above with the Annual Members' Meeting above.

## **28. Special Members' Meeting**

- 28.1 Notwithstanding any provisions contained in this Constitution regarding meetings of the Council of Governors, the Annual Members' Meetings or meetings of the Board of Directors, the Board of Directors or the Council of Governors may resolve to call special meetings of the Trust for the benefit of its Members (a "Special Members' Meeting") for the purpose of providing Members with information and to offer Members an opportunity to provide feedback to the Trust.
- 28.2 Special Members' Meetings shall be open to all Members of the Trust, Governors, Directors and representatives of the Auditor and any external consultant as well as members of the general public and representatives of the press unless determined otherwise.
- 28.3 Notwithstanding the provisions of paragraph 28.1 above, the Board of Directors or Council of Governors may invite to attend a Special Members' Meeting any experts or advisors whose attendance they consider to be in the best interests of the Trust.
- 28.4 Arrangements for the Special Members' Meeting shall be carried out in accordance with



arrangements for meetings of the Council of Governors except that the quoracy shall be the same as that for the Annual Members' Meeting (see section 21.26).

## **29. Board of Directors – composition**

- 29.1 The Trust is to have a Board of Directors, which shall comprise both Executive and Non-Executive Directors.
- 29.2 The Board of Directors is to comprise:
  - 29.2.1 a non-executive Chairman;
  - 29.2.2 up to eight other Non-Executive Directors; and
  - 29.2.3 up to twelve Executive Directors, comprising of up to seven voting Executive Directors and up to five non-voting Executive Directors.
- 29.3 One of the Executive Directors shall be the Chief Executive.
- 29.4 The Chief Executive shall be the Accounting Officer.
- 29.5 One of the Executive Directors shall be the designated Deputy Chief Executive
- 29.6 One of the Executive Directors shall be the chief finance officer.
- 29.7 One of the Executive Directors is to be a registered medical practitioner or a registered dentist (within the meaning of the Dentists Act 1984).
- 29.8 One of the Executive Directors is to be a registered nurse or a registered midwife.
- 29.9 The validity of any act of the Trust is not affected by any vacancy among the Directors or by any defect in the appointment of any Director.
- 29.10 Subject to the provisions of paragraphs 29.1 to 29.7 above, the Board of Directors shall determine any change in the number of Directors, provided that any change in the number shall be in the range set out at paragraph 29.2 above. The Council of Governors shall be consulted if the changes relate to the Non-Executive Directors.
- 29.11 In the event that the number of Non-Executive Directors (including the Chairman) is equal to the number of Executive Directors, the Chairman (and in his absence the Deputy Chairman) shall have the casting vote at meetings of the Board of Directors.

## **30. Board of Directors – general duty**

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

## **31. Board of Directors – qualification for appointment as a Non-Executive Director**

- 31.1 A person may be appointed as a Non-Executive Director only if the individual is:
  - 31.1.1 a Member of a Public Constituency; or
  - 31.1.2 not disqualified by virtue of paragraph 36 or Annex 5 below.

### **32. Board of Directors – appointment of the Chairman and other Non-Executive Directors**

- 32.1 The Council of Governors at a meeting of the Council of Governors shall appoint the Chairman of the Trust and the other Non-Executive Directors, taking into account the views of the Board of Directors on the qualities, skills and experience required for each position. A recommendation will be made to the Council of Governors by the Appointments Committee for Non-Executive Directors and the Chairman.
- 32.2 The Chairman and Non-Executive Directors shall be appointed for a period of office of up to three years subject to paragraph 32.3. The terms of office can be extended for a second term of three years subject to paragraph 32.4.
- 32.3 Non-Executive Directors shall be appointed in accordance with a process agreed by the Appointments Committee for Non-Executive Directors and Chairman on behalf of the Council of Governors.
- 32.4 An existing Non-Executive Director nearing the end of a term of office shall be considered for a further term subject to the following:
- 32.4.1 a satisfactory appraisal of performance which confirms that that the Non-Executive Director continues to be effective;
  - 32.4.2 that the Non-Executive Director is willing to complete a further term of office and is not precluded by paragraph 32.2 by virtue of time already served;
  - 32.4.3 that the Non-Executive Director continues to show commitment to the role;
  - 32.4.4 that the Non-Executive Director meets the person specification drawn up by the Appointments Committee for Non-Executive Directors and the Chairman which sets out the personal and professional qualities needed.
- 32.5 Should the Council of Governors decide to advertise externally for a Non-Executive Director, the person specification referred to in 32.4.4 shall be used.
- 32.6 When advertising for a vacancy, the Appointments Committee for Non-Executive Directors and the Chairman shall follow a process which involves advertising for the vacancy, shortlisting against the specification and interviewing candidates. In the case of appointing a Non-Executive Director, the interview panel will include at least one Public Governor and the Chairman. In the case of appointing the Chairman, the interview panel will include at least one Public Governor.
- 32.7 The Appointments Committee for Non-Executive Directors and the Chairman may use the services of internal and external advisors to support them with the recruitment of and selection of new Non-Executive Directors, including the Chairman. These services shall be requested through the Secretary.
- 32.8 From time to time and not less than every three years, the Board of Directors and the Council of Governors will work together to consider the skills and experience required amongst the Non-Executive Directors. When considering this, the Council of Governors will have due regard to the Trust's Membership Strategy.

### **33. Board of Directors – suspension and removal of the Chairman and other Non-Executive Directors**

- 33.1 Suspension or removal of the Chairman or another Non-Executive Director shall require a resolution to be submitted by three-quarters of the members of the Council of Governors.

- 33.2 The Governor sponsoring the resolution shall set out in writing the reasons in support of the resolution. At the meeting of the Council of Governors where the resolution is to be considered and voted upon, the Chairman or other Non-Executive Director, who is the subject of the resolution, shall be given the opportunity to respond to the reasons given. If the individual fails to attend the meeting without due cause, the meeting may proceed in their absence. The decision to proceed in these circumstances shall be at the sole discretion of the Meeting Chairman.
- 33.3 Suspension or removal of the Chairman or another Non-Executive Director shall require the approval of three quarters of the members of the Council of Governors.
- 33.4 During any meeting of the Council of Governors at which the Chairman may be suspended or removed, the Senior Independent Director shall preside, or if the Senior Independent Director is absent from the meeting or is absent temporarily on the grounds of a conflict of interest, another Non-Executive Director shall preside.
- 33.5 In making the decision to remove the Chairman or another Non-Executive Director, the Council of Governors shall take into account the results of the annual appraisal concerning the individual in question. The Council of Governors shall also remove or suspend a Non-Executive Director in consultation with the Chairman (if the matter concerns another Non-Executive Director) or the Senior Independent Director (if the matter concerns the Chairman).
- 33.6 If any resolution to remove either the Chairman or another Non-Executive Director is not approved at the meeting of the Council of Governors where the matter was considered, no further resolution can be put forward to remove such Non-Executive Director, or the Chairman, which is based on the same reasons, within twelve calendar months of the date of the meeting at which the resolution was considered.
- 33.7 Suspension is a temporary measure which shall be used to prevent a Non-Executive Director from exercising his/her function pending the completion of an investigation or removal from office.
- 33.8 The Council of Governors may use the power of suspension in the following circumstances:
- 33.8.1 where the Trust is in receipt of information which gives cause for concern about the Non-Executive Director continuing to hold office because of its effect on the reputation of the Trust or on the integrity of the role of Non-Executive Director;
- 33.8.2 where there is sufficient evidence to warrant removal from office but before removal takes effect;
- 33.8.3 where there is an allegation of fraud or other impropriety or other alleged misconduct that would require the Non-Executive Director to be suspended to protect patients, staff or public funds.

#### **34. Board of Directors – appointment of Deputy Chairman and Senior Independent Director**

- 34.1 The Council of Governors at a meeting of the Council of Governors shall appoint one of the Non-Executive Directors as a Deputy Chairman. This shall be done in consultation with the Board of Directors and following a recommendation from the Chairman.
- 34.2 If the Chairman is unable to discharge his/her functions as the Chairman of the Trust, the Deputy Chairman will be the “acting Chairman” until such time as the Chairman is able to discharge his/her functions as Chairman or a new Chairman is appointed by the Council of Governors in accordance with paragraph 32 above.

- 34.3 The Board of Directors shall appoint one of the Non-Executive Directors to be the Senior Independent Director in consultation with the Council of Governors.
- 34.4 The Senior Independent Director should not be the Deputy Chairman.
- 34.5 A Non-Executive Director appointed as either the Deputy Chairman or the Senior Independent Director shall be so for a period consistent with his/her existing term of office as a Non-Executive Director.
- 34.6 A Non-Executive Director so appointed may at any time resign from the office of Deputy Chairman or Senior Independent Director by giving notice in writing to the Chairman and the Secretary.

**35. Board of Directors - appointment and removal of the Chief Executive and other Executive Directors**

- 35.1 The Non-Executive Directors shall appoint or remove the Chief Executive, acting through the Remuneration and Nominations Committee (RemNom) of the Trust.
- 35.2 The appointment of the Chief Executive shall require the approval of the Council of Governors.
- 35.3 A committee consisting of the Chairman, the Chief Executive and the other Non-Executive Directors shall appoint or remove the other Executive Directors.

**36. Board of Directors – disqualification**

- 36.1 The following may not become or continue as a member of the Board of Directors:
  - 36.1.1 a person who is an executive or non-executive director or governor of another NHS foundation trust, other Health Service Body, or a body corporate which presents a conflict of interest with the affairs of the Trust which cannot be resolved.
  - 36.1.2 a person who is a member of the Trust's Council of Governors.
  - 36.1.3 a person who is incapable by reason of a mental disorder, illness or injury of managing and/or administering his/her property and/or affairs. In considering whether an individual is incapable by reason of mental disorder, illness or injury of managing and/or administering his/her property and/or affairs, the provisions of the Mental Capacity Act 2005, or any statutory modification thereof, shall be taken into account. Further internal or external advice shall be sought where necessary.
  - 36.1.4 a person who has refused, without reasonable cause, to fulfil any training requirement established by the Board of Directors.
  - 36.1.5 on the basis of disclosures obtained through an application to the Disclosure and Barring Service, a person who is not considered suitable by the Chairman on the grounds that his/her appointment might adversely affect public confidence in the Trust or otherwise might bring the Trust into disrepute;
  - 36.1.6 a person who has failed to sign and deliver to the Secretary a statement in the form required by the Trust confirming acceptance of the Directors' Code of Conduct.
- 36.2 Further circumstances in which an individual may not become a member of the Board of Directors are set out in Annex 5.

### **37. Board of Directors – meetings**

- 37.1 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 as set out in Annex 6.
- 37.2 Five Directors including not less than two Executive Directors and not less than two Non-Executive Directors shall form a quorum.
- 37.3 Decisions arising at a meeting of the Board of Directors shall be decided by a majority of votes. In the case of an equality of votes, the Chairman shall have the casting vote.
- 37.4 The Board of Directors may agree that Directors can participate in its meetings or vote by telephone, video or computer link or other such agreed means. Participation in a meeting or voting in this manner shall constitute presence in person at the meeting. Further provisions which may apply in these circumstances are set out in Annex 7.
- 37.5 In the absence of the Chairman of the Trust or the Deputy Chairman, one of the other Non-Executive Directors in attendance shall chair meetings of the Board of Directors.
- 37.6 Before holding a meeting, the Board of Directors must send a copy of the agenda of the meeting to the members of 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 members of the Council of Governors.
- 37.7 Governors shall be able to ask questions at an appropriate part of a meeting of the Board of Directors. Members of the public wishing to raise a question at a Board of Directors' meeting shall submit their question in writing to the Secretary, two Clear Days in advance of the meeting.
- 37.8 The Chairman may choose to invoke the provisions of the Public Bodies (Admission to Meetings) Act 1960 where he or she considers that the discussion of specific issues in public session could be prejudicial to the public interest. It is expected that this facility will be exercised sparingly and that any decisions to discuss or resolve matters in closed session should be auditable and that those decisions should be reported in public session as soon as the reason for withholding it from the public domain no longer applies.

### **38. Board of Directors - conflicts of interest of Directors**

- 38.1 The duties that a Director of the Trust has by virtue of being a Director include in particular:
  - 38.1.1 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.
  - 38.1.2 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.
- 38.2 The duty referred to in sub-paragraph 38.1.1 is not infringed if:
  - 38.2.1 the situation cannot reasonably be regarded as likely to give rise to a conflict of interest; or
  - 38.2.2 the matter has been authorised in accordance with the Constitution.
- 38.3 The duty referred to in sub-paragraph 38.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest.
- 38.4 In sub-paragraph 38.1.2, "third party" means a person other than:

- 38.4.1 the Trust; or
- 38.4.2 a person acting on its behalf.
- 38.5 If a Director of the Trust has in any way a relevant and material interest or 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. This shall be recorded in the register of interests of the Directors.
- 38.6 If a declaration under this paragraph proves to be, or becomes inaccurate or incomplete, a further declaration must be made.
- 38.7 Any declaration required by this paragraph must be made before the Trust enters into the transaction or arrangement.
- 38.8 This paragraph does not require a declaration of an interest of which the Director is not aware or where the Director is not aware of the transaction or arrangement in question.
- 38.9 A Director need not declare an interest:
  - 38.9.1 if it cannot reasonably be regarded as likely to give rise to a conflict of interest;
  - 38.9.2 if, or to the extent that, the directors are already aware of it;
  - 38.9.3 if, or to the extent that, it concerns terms of the director's appointment that have been or are to be considered by:
    - 38.9.3.1 a meeting of the Board of Directors; or
    - 38.9.3.2 by a committee of the Directors appointed for the purpose under the Constitution.
- 38.10 Any interests raised by the Directors in this way shall be recorded in the register of interests of the Directors.
- 38.11 A matter shall have been authorised for the purposes of paragraph 38.2.2 if:
  - 38.11.1 the Directors, in accordance with the requirements set out in this paragraph 38.11, authorise any matter or situation proposed to them by any Director which would, if not authorised, involve a Director (an "Interested Director") breaching his/her duty under paragraph 38.1.1 above to avoid conflicts of interest (a "Conflict").
  - 38.11.2 Any authorisation under this paragraph will be effective only if:
    - 38.11.2.1 the matter in question shall have been proposed by any Director for consideration in the same way that any other matter may be proposed to the Directors under the provisions of this Constitution or in such other manner as the Directors may determine;
    - 38.11.2.2 any requirement as to the quorum for consideration of the relevant matter is met without counting the Interested Director or any other Interested Director; and
    - 38.11.2.3 the matter was agreed to without the Interested Director voting or would have been agreed to if the Interested Director's and any other Interested Director's vote had not been counted.
  - 38.11.3 Any authorisation of a Conflict under this paragraph may (whether at the time of

giving the authorisation or subsequently):

38.11.3.1 extend to any actual or potential conflict of interest which may reasonably be expected to arise out of the Conflict so authorised;

38.11.3.2 provide that the Interested Director be excluded from the receipt of documents and information and the participation in discussions (whether at meetings of the Directors or otherwise) related to the Conflict;

38.11.3.3 provide that the Interested Director shall or shall not be an eligible Director in respect of any future decision of the Directors in relation to any resolution related to the Conflict;

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

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

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

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

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

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

38.12 Subject to paragraph 38.13 below if a question arises at a meeting of Directors or of a committee of Directors as to the right of a Director to participate in the meeting (or part of the meeting) for voting or quorum purposes, the question may, before the conclusion of the meeting, be referred to the Chairman whose ruling in relation to any Director other than the Chairman is to be final and conclusive.

38.13 If any question as to the right to participate in the meeting (or part of the meeting) should arise in respect of the Chairman, the question is to be decided by a decision of the Directors (other than the Chairman) at that meeting, for which purpose the Chairman is not to be counted as participating in the meeting (or that part of the meeting) for voting or quorum purposes.

### **39. Board of Directors – remuneration and terms of office**

- 39.1 The Council of Governors at a general meeting of the Council of Governors shall decide the remuneration and allowances, and the other terms and conditions of office, of the Chairman and the other Non-Executive Directors. These shall be published in the Trust's Annual Report.
- 39.2 The Board of Directors 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. This shall be called the Remuneration and Nominations Committee (RemNom).
- 39.3 When deciding the remuneration and allowances, and the other terms and conditions of office of the other Executive Directors, the committee has the ability to invite the Chief Executive and independent advisors as the Chairman sees fit.
- 39.4 Subject to any Trust policy on the payment of expenses, the Trust may pay travelling and other expenses to members of the Board at rates determined by the Trust.

### **40. Registers**

- 40.1 The Trust shall have:
- 40.1.1 a register of Members showing, in respect of each Member, the constituency to which the Member belongs and, where there are classes within it, the class to which the Member belongs;
  - 40.1.2 a register of members of the Council of Governors;
  - 40.1.3 a register of interests of the Governors;
  - 40.1.4 a register of Directors; and
  - 40.1.5 a register of interests of the Directors.
- 40.2 The Secretary shall be responsible for compiling and maintaining the registers which may be kept in either paper or electronic form. Admission to or removal from any register shall be in accordance with the provisions of this Constitution. The Secretary shall update registers with new or amended information as soon as is practical.

### **41. Admission to and removal from the registers**

#### **Register of Members**

- 41.1 The Secretary shall maintain a register of Members in two parts
- 41.2 Part one, which shall be the register referred to in the 2006 Act, shall include the name of each Member and the Constituency to which they belong and this shall be open to inspection by the public in accordance with paragraphs 43 below.
- 41.3 Part two shall contain all the information from the application referred to in paragraph 7 (Application for Membership) and shall not be open to inspection by the public nor may copies or extracts from it be available to any third party (save to the extent that copies or extracts from it be made available to any third party appointed to the Trust to maintain the register of the Members and to conduct elections in accordance with the provisions of paragraph 15.
- 41.4 Notwithstanding the provisions of paragraphs 41.1 to 41.3 (inclusive), the Trust shall



extract such information as it needs in aggregate to satisfy itself that the actual Membership of the Trust's Public Constituency is representative of those eligible for Membership and for the administration of the provisions of this Constitution.

#### **Register of the Members of the Council of Governors**

- 41.5 The register of members of the Council of Governors shall list:
- 41.5.1 the name of each Governor;
  - 41.5.2 their category of membership of the Council of Governors (public, staff, Local Authority or Partnership Governor);
  - 41.5.3 an address through which the Governor can be contacted, which may be the Secretary; and
  - 41.5.4 the dates of the Governor's term of office, including start and end date, or date of resignation or removal.

#### **Register of interests of the Governors**

- 41.6 The register of interests of the Council of Governors shall contain:
- 41.6.1 the name of each Governor;
  - 41.6.2 whether the Governor has any declared interests and, if so, the interests declared in accordance with the Constitution; and
  - 41.6.3 the dates of the Governor's term of office, including start and end date, or date of resignation or removal.

#### **Register of Directors**

- 41.7 The register of members of the Directors shall list:
- 41.7.1 the name of each Director;
  - 41.7.2 an address through which the Director can be contacted, which may be the Secretary;
  - 41.7.3 the dates of the Director's term of office, including start and end date, or date of resignation or removal.

#### **Register of interests of the Directors**

- 41.8 The register of interests of the Directors contain:
- 41.8.1 the name of each Director;
  - 41.8.2 whether the Director has any declared interests and, if so, the interests declared in accordance with the Constitution; and
  - 41.8.3 the dates of the Director's term of office, including start and end date, or date of resignation or removal.

### **42. Registers – inspection and copies**

- 42.1 The Trust shall make the registers specified in paragraph 41 above available for inspection by members of the public, except in the circumstances set out below or as otherwise

prescribed by regulations, including for the avoidance of doubt, the Public Benefit Corporation (Register of Members) Regulations 2004 (SI2004/539).

- 42.2 The Trust shall not make any part of its registers available for inspection by members of the public which shows details of any Member of the Trust, if the Member so requests.
- 42.3 So far as the registers are required to be made available:
  - 42.3.1 they are to be available for inspection free of charge at all reasonable times; and
  - 42.3.2 a person who requests a copy of or extract from the registers is to be provided with a copy or extract.
- 42.4 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.

### **43. Documents available for public inspection**

- 43.1 The Trust shall make the following documents available for inspection by members of the public free of charge at all reasonable times and on its website:
  - 43.1.1 a copy of the current Constitution;
  - 43.1.2 a copy of the current authorisation;
  - 43.1.3 a copy of the latest Annual Accounts and of any report of the Auditor on them; and
  - 43.1.4 a copy of the latest Annual Report.
- 43.2 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 and on its website:
  - 43.2.1 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.
  - 43.2.2 a copy of any report laid under section 65D (appointment of trust special administrator) of the 2006 Act.
  - 43.2.3 a copy of any information published under section 65D (appointment of trust special administrator) of the 2006 Act.
  - 43.2.4 a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act.
  - 43.2.5 a copy of any statement provided under section 65F(administrator's draft report) of the 2006 Act.
  - 43.2.6 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(NHSI's decision), 65KB (Secretary of State's response to NHIS's decision), 65KC (action following Secretary of State's rejection of final report) or 65KD (Secretary of State's response to re-submitted final report) of the 2006 Act.
  - 43.2.7 a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act.

- 43.2.8 a copy of any final report published under section 65I (administrator's final report),
- 43.2.9 a copy of any statement published under section 65J (power to extend time) or 65KC (action following Secretary of State's rejection of final report) of the 2006 Act.
- 43.2.10 a copy of any information published under section 65M (replacement of trust special administrator) of the 2006 Act.
- 43.3 Any person who requests a copy of or extract from any of the above documents is to be provided with a copy.
- 43.4 If the person requesting a copy or extract is not a Member of the Trust, the Trust may impose a reasonable charge for doing so.

#### **44. Auditor**

- 44.1 The Trust shall have an Auditor. The Auditor shall provide external audit services to the Trust.
- 44.2 A panel comprising members of the Audit Committee and members of the Council of Governors shall be convened to consider the appointment of the Auditor and shall make recommendations to the Council of Governors.
- 44.3 In appointing the Auditor, the Council of Governors shall have regard to the recommendations of the panel set out above.
- 44.4 The Council of Governors shall appoint or remove the Auditor at a general meeting of the Council of Governors.
- 44.5 The Accounting Officer shall ensure that the Auditor carries out the Auditor's duties in accordance with Schedule 10 of the 2006 Act.

#### **45. Audit Committee**

- 45.1 The Trust shall establish a committee of Non-Executive Directors as an Audit Committee to perform such functions relating to internal control, risk and assurance as outlined in the Audit Committee Terms of Reference.

#### **46. Accounts**

- 46.1 The Trust must keep proper accounts and proper records in relation to the accounts.
- 46.2 NHSI may with the approval of the Secretary of State give directions to the Trust as to the content and form of its accounts.
- 46.3 The accounts are to be audited by the Trust's Auditor.
- 46.4 The Trust shall prepare in respect of each Financial Year Annual Accounts in such form as NHSI may with the approval of the Secretary of State direct.
- 46.5 The functions of the Trust with respect to the preparation of the Annual Accounts shall be delegated to the Accounting Officer.

#### **47. Annual Report, Forward Plans and non-NHS work**

- 47.1 The Trust shall prepare an Annual Report and submit it formally to NHSI.

- 47.2 The Trust shall give information as to its forward planning in respect of each Financial Year to NHSI.
- 47.3 The Forward Plan shall be prepared by the Board of Directors.
- 47.4 In preparing the Forward Plan, the Directors shall have regard to the views of the Council of Governors.
- 47.5 Each Forward Plan must include information about:
- 47.5.1 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
- 47.5.2 the income it expects to receive from doing so.
- 47.6 Where a Forward Plan contains a proposal that the Trust carry on an activity of a kind mentioned in sub-paragraph 47.5.1 the Council of Governors must:
- 47.6.1 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
- 47.6.2 notify the Directors of the Trust of its determination.
- 47.7 The Trust's total income in any Financial Year is made up of (a) income attributable to its Principal Purpose as provided in paragraph 3.1 above; plus (b) income attributable to the provision of goods and services for any other purposes ("non-NHS income"). If the Trust in any Financial Year proposes to increase its non-NHS income and this would result in the non-NHS income as a proportion of its total income increasing by 5% or more, then the Trust may implement the proposal only if more than half of the members of Council of Governors present and voting at a meeting of the Council of Governors approves its implementation.

#### **48. Instruments**

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

#### **49. Indemnity**

- 49.1 Members of the the Council of Governors, the Board of Directors, the Secretary and other Officers of the Trust who act honestly and in good faith shall not have to meet out of their own personal resources any personal civil liability which is incurred in the execution or purported execution of their functions save where they have acted recklessly. Any costs arising in this way shall be met by the Trust.
- 49.2 The Trust may purchase and maintain insurance against this liability for its own benefit and for the benefit of members of the Council of Governors, Board of Directors, Secretary and other Officers.
- 49.3 The Trust may take out insurance either through the NHS Litigation Authority or otherwise in respect of Directors' and Officers' liability, including liability arising by reason of the Trust acting as a corporate trustee of an NHS charity.

#### **50. Disputes between the Council of Governors and the Board of Directors**

- 50.1 Subject to paragraph 24 above, in the event of a dispute between the Council of Governors

and the Board of Directors:

- 50.1.1 in the first instance, the Chairman, on the advice of the Secretary and other such advice as the Chairman may see fit to obtain, shall seek to resolve the dispute;
  - 50.1.2 if the Chairman is unable to resolve the dispute, he shall convene and chair a special committee, comprising equal numbers of Directors and Governors, for the express purpose of considering the circumstances and to making recommendations to the Council of Governors and the Board of Directors with a view to resolving the dispute; in the case of the special committee passing a motion, the Chairman shall have the casting vote in the event that the number of votes for and against the motion are equal;
  - 50.1.3 if the recommendations (if any) of the special committee are unsuccessful in resolving the dispute, the Chairman may refer the dispute back to the Board of Directors who shall make the final decision.
- 50.2 The dispute resolution procedures set out in this paragraph do not preclude the Governors from referring the matter to the panel of persons appointed by NHSI as set out in paragraph 24. In these circumstances, the dispute must relate to a question about the Trust failing or its failure to act in accordance with provision made by or under Chapter 5 of the 2006 Act and must otherwise satisfy the conditions set out in paragraph 24.

## **51. Amendment of the Constitution**

- 51.1 The Trust may make amendments of its Constitution only if:
  - 51.1.1 more than half of the members of the Council of Governors of the Trust present and voting approve the amendments; and
  - 51.1.2 more than half of the members of the Board of Directors of the Trust present and voting approve the amendments.
- 51.2 Amendments made under paragraph 51.1 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.
- 51.3 Where an amendment is made to the Constitution in relation the powers or duties of the Council of Governors (or otherwise with respect to the role that the Council of Governors has as part of the Trust):
  - 51.3.1 at least one member of the Council of Governors must attend the next Annual Members' Meeting or Special Members' Meeting and present the amendment; and
  - 51.3.2 the Trust must give the Members an opportunity to vote on whether they approve the amendment.
- 51.4 If more than half of the Members present and 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.
- 51.5 Amendments by the Trust of its Constitution are to be notified to NHSI. For the avoidance of doubt, NHSI'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.

## **52. Mergers, acquisitions, dissolutions and significant transactions**

- 52.1 The Trust may only apply for a merger, acquisition, separation or dissolution with the approval of more than half of the members of the whole Council of Governors, not only half of those attending the decision-making meeting.
- 52.2 The Trust may enter into a significant transaction only if more than half of the members of the full Council of Governors voting approve entering into the transaction.
- 52.3 A “Significant Transaction” means a transaction which meets any of the tests below:
- 52.3.1 the fixed asset test; or
  - 52.3.2 the turnover test; or
  - 52.3.3 the gross capital test (relating to acquisitions or divestments).
- 52.4 The fixed asset test is met if the assets which are the subject of the transaction exceed 25% of the fixed assets of the Trust before the transaction.
- 52.5 The turnover test is met if, following the completion of the relevant transaction, the gross income of the Trust will increase or decrease by more than 25%.
- 52.6 The gross capital test is met if the gross capital of the company or business being acquired or divested represents more than 25% of the capital of the Trust following completion (where “gross capital” is the market value of the relevant company or business’s shares and debt securities, plus the excess of current liabilities over current assets, and the Trust’s capital is determined by reference to its balance sheet).
- 52.7 For the purposes of calculating the tests in paragraphs 52.4 to 52.6, figures used to classify assets and profits must be the figures shown in the latest published audited consolidated accounts.
- 52.8 A transaction:
- 52.8.1 includes all agreements (including amendments to agreements) entered into by the Trust;
  - 52.8.2 excludes a transaction in the ordinary course of business (including the renewal, extension or entering into an agreement in respect of healthcare services carried out by the Trust);
  - 52.8.3 excludes any agreement or changes to healthcare services carried out by the Trust following a reconfiguration of services led by the commissioners of such services; and
  - 52.8.4 excludes any grant of public dividend capital or the entering into of a working capital facility or other loan, which does not involve the acquisition or disposal of any fixed asset of the Trust.

## **53. Dissolution of the Trust**

- 53.1 The Trust may not be dissolved except by order of NHS Improvement, in accordance with the 2006 Act.

## **54. Head Office**

54.1 The Trust's Registered Office is :

Basildon University Hospital

Nethermayne

Basildon

Essex SS16 5NL

## **ANNEX 1 – THE PUBLIC CONSTITUENCY**

(Paragraph 8)

### **Composition of the Public Constituencies of the Trust from 1<sup>st</sup> April 2020**

<b>NAME OF CONSTITUENCY</b>	<b>AREA</b>	<b>NO. OF GOVERNORS</b>
Basildon	All the electoral wards of the borough of Basildon	5 Public Governors
Brentwood	All the electoral wards of the borough of Brentwood	2 Public Governors
Thurrock	All the electoral wards of the unitary authority of Thurrock	5 Public Governors
Chelmsford	All the electoral wards of the borough of Chelmsford	5 Public Governors
Braintree	All the electoral wards of the borough of Braintree	4 Public Governors
Maldon	All the electoral wards of the borough of Maldon	2 Public Governors
Southend	All the electoral wards of the borough of Southend	5 Public Governors
Castle point	All the electoral wards of the borough of Castle point	3 Public Governors
Rochford	All the electoral wards of the borough of Rochford	2 Public Governors
Rest of England	All other electoral wards in England not already specified	2 Public Governors



**ANNEX 2 – THE STAFF CONSTITUENCY**

(Paragraph 9)

**Composition of the Staff Constituency of the Trust  
from 1<sup>st</sup> April 2020**

<b>DESCRIPTION OF MEMBERS</b>	<b>NO. OF GOVERNORS</b>
Staff based in the South West Essex Locality	2
Staff based in the Mid Essex Locality	2
Staff based in South East Essex Locality	2

## ANNEX 3 – COMPOSITION OF THE COUNCIL OF GOVERNORS

### Part 1

(Paragraph 14)

#### Composition of the Council of Governors of the Trust from 1<sup>st</sup> April 2020

<b>Governor Type</b>	<b>Governor Description</b>	<b>No. of Governors</b>
Elected	Public – Basildon	5
	Public - Brentwood	2
	Public – Thurrock	5
	Public – Chelmsford	5
	Public – Braintree	4
	Public – Maldon	2
	Public - Southend	5
	Public – Castle Point	3
	Public – Rochford	2
	Public – Rest of England	2
Elected	Staff Governors	6
<b>Total of Elected Governors (Public and Staff)</b>		<b>41</b>
Appointed (Local Authority)	Essex County Council	1
	Thurrock Borough Council	1
	Southend Borough Council	1
<b>Total Appointed Governors from Local Authorities</b>		<b>3</b>
Appointed (Partnership Organisation)	Anglia Ruskin University	1
	South Essex College	1
	Councils of Voluntary Services	1
	Mid and South Essex CCGs (one representative from the five CCGs)	1
<b>Total of Appointed Governors from Partnership Organisations</b>		<b>4</b>
<b>Total Number of Governors</b>		<b>48</b>

## **ANNEX 4 –THE MODEL ELECTION RULES**

(Paragraph 15)

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

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#### **Part 1 – Interpretation**

1. Interpretation

#### **Part 2 – Timetable for election**

2. Timetable
3. Computation of time

#### **Part 3 – Returning officer**

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

#### **Part 4 - Stages Common to Contested and Uncontested Elections**

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 papers
15. Publication of statement of nominated candidates
16. Inspection of statement of nominated candidates and nomination forms
17. Withdrawal of candidates
18. Method of election

#### **Part 5 – Contested elections**

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

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

22. List of eligible voters
23. Notice of poll

24. Issue of voting information by returning officer
25. Ballot paper envelope and covering envelope
26. E-voting systems

### ***The poll***

27. Eligibility to vote
28. Voting by persons who require assistance
29. Spoilt ballot papers and spoilt text message votes
30. Lost voting information
31. Issue of replacement voting information
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## **Part 1 – Interpretation**

### **1. Interpretation I**

- 1.1 In these rules, unless the context otherwise requires –

“*the 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 (December 2013) or any later version of such code;

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

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

“*NHS*” means the corporate body known as NHS Improvement as provided by section 61 of the 2012 Act in the name of ‘Monitor’

“*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 National Health Service Act 2006 have the same meaning in these rules as in that Schedule.

## **Part 2 – Timetable for election**

2.1 Timetable - The proceedings at an election shall be conducted in accordance with the following timetable.

<b>Proceeding</b>	<b>Time</b>
<b>Publication of notice of election</b>	Not later than the fortieth day before the day of the close of the poll.
Final day for delivery of nomination papers to	Not later than the twenty eighth day before the

returning officer.	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 the 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.	Close of the poll by 5.00pm on the final day of the election.

### **3. Computation of time**

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

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

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

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

### ***Part 3 – Returning officer***

#### **4. Returning officer**

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

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

#### **5. Staff**

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

#### **6. Expenditure**

6.1 The corporation is to pay the returning officer –

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

#### **7. Duty of co-operation**

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

### ***Part 4 - Stages Common to Contested and Uncontested Elections***

## **8. Notice of election**

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

- (a) the constituency, or class within a constituency, for which the election is being held,
- (b) the number of members of the Council of Governors to be elected from that constituency, or class within that constituency,
- (c) the details of any nomination committee that has been established by the corporation,
- (d) the address and times at which nomination papers may be obtained;
- (e) the address for return of nomination papers (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, and
- (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 paper must state the candidate's -

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

## **11. Declaration of interests**

11.1 The nomination paper 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 paper 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 constituency, of the particulars of his or her qualification to vote as a member of that constituency, or class within that constituency, for which the election is being held.

### **13. Signature of candidate**

13.1 The nomination paper 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 paper 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 paper 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 paper 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 papers, 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, as required by rule 13.

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

14.4 Where the returning officer decides that a nomination is invalid, the returning officer must endorse this on the nomination paper, 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 paper. If an e-mail address has been given in the candidate's nomination form (in addition to the candidate's postal address), the returning officer may send notice of the decision to that address.

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

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

15.2 The statement must show –

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

(b) the declared interests of each candidate standing, as given in their nomination paper.

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 statements of the candidates and the nomination forms supplied by the returning officer under rule 15(4) available for inspection by members of the public free of charge at all reasonable times.

16.2 If a person requests a copy or extract of the statements of candidates or their nomination form, the corporation is to provide that person with the copy or extract free of charge.

#### **17. Withdrawal of candidates**

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

#### **18. Method of election**

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

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

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

(a) the candidates who remain validly nominated are to be declared elected in accordance with Part 7 of these rules, and

(b) the returning officer is to order a new election to fill any vacancy which remains unfilled, on a day appointed by him or her in consultation with the corporation.

### ***Part 5 – Contested elections***

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

19.1 The votes at the poll must be given by secret ballot.

19.2 The votes are to be counted and the result of the poll determined in accordance with Part 6 of these rules.

19.3 The corporation may decide that voters within a constituency or class within a constituency, may, subject to rule 19.4, cast their votes at the poll using such different methods of polling in any combination as the corporation may determine.

19.4 The corporation may decide that voters within a constituency or class within a constituency for whom an e-mail address is included in the list of eligible voters may only cast their votes at the poll using an e-voting method of polling.

19.5 Before the corporation decides, in accordance with rule 19.3 that one or more e-voting methods of polling will be made available for the purposes of the poll, the corporation must satisfy itself that:

(a) if internet voting is to be a method of polling, the internet voting system to be used for the purpose of the election is:

(i) configured in accordance with these rules; and

(ii) will create an accurate internet voting record in respect of any voter who casts his or her vote using the internet voting system;

(b) if telephone voting to be a method of polling, the telephone voting system to be used for the purpose of the election is:

(i) configured in accordance with these rules; and

(ii) will create an accurate telephone voting record in respect of any voter who casts his or her vote using the telephone voting system;

(c) if text message voting is to be a method of polling, the text message voting system to be used for the purpose of the election is:

(i) configured in accordance with these rules; and

(ii) will create an accurate text voting record in respect of any voter who casts his or her vote using the text message voting system.

## **20. The ballot paper**

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

20.2 Every ballot paper must specify –

(a) the name of the corporation,

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

(c) the number of members of the Council of Governors to be elected from that constituency, or class within that constituency,

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

(e) instructions on how to vote by all available methods of polling, including the relevant voter's voter ID number if one or more e-voting methods of polling are available,

(f) if the ballot paper is to be returned by post, the address for its return and the date and time of the close of the poll, and

(g) the contact details of the returning officer.

20.3 Each ballot paper must have a unique identifier.

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

## **21. The declaration of identity (public 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,
- (ii) to whom the voter ID number contained within the e-voting information was allocated,

(b) that the voter has not marked or returned any other voting paper in the election, and

(c) the particulars of his or her qualification to vote as a member of the constituency or class within a constituency for which the election is being held, 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 the declaration of identity together with his or her ballot paper.

21.3 The voting information shall caution the voter that, if the Declaration of identity is not returned or if it is returned without being correctly completed, 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,

- (i) a mailing address
- (ii) the member's e-mail address, if this has been provided

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

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

## **23. Notice of poll**

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

(a) the name of the corporation,

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

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

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

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

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

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

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

*(“postal voting information”)*

24.2 Subject to rules 24.3 and 24.4, as soon as is reasonably practicable on or after the publication of the notice of the poll, the returning officer is to send the following information by e-mail and/ or by post to each member of the corporation named in the list of eligible voters whom the corporation determines in accordance with rule 19.3 and/ or rule 19.4 may cast his or her vote by an e-voting method of polling

- (a) instructions on how to vote and how to make a declaration of identity (if required),
- (b) the voter’s voter ID number,
- (c) information about each candidate standing for election, pursuant to rule 64 of these rules, or details of where this information is readily available on the internet or available in such other formats as the Returning Officer thinks appropriate, (d) contact details of the returning officer,

*(“e-voting information”).*

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

- (a) only be sent postal voting information; or

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

for the purposes of the poll.

- 24.4 If the corporation determines, in accordance with rule 22.3, that the e-voting information is to be sent only by e-mail to those members in the list of eligible voters for whom an e-mail address is included in that list, then the returning officer shall only send that information by e-mail.
- 24.5 The documents are to be sent to the mailing 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 declaration of identity if required, and
  - (b) the ballot paper envelope, with the ballot paper sealed inside it.

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

- 26.1 If internet voting is a method of polling for the relevant election then the returning officer must provide a website for the purpose of voting over the internet (in these rules referred to as "the polling website").
- 26.2 If telephone voting is a method of polling for the relevant election then the returning officer must provide an automated telephone system for the purpose of voting by the use of a touch-tone telephone (in these rules referred to as "the telephone voting facility").
- 26.3 If text message voting is a method of polling for the relevant election then the returning officer must provide an automated text messaging system for the purpose of voting by text message (in these rules referred to as "the text message voting facility").
- 26.4 The returning officer shall ensure that the polling website and internet voting system provided will:
  - (a) require a voter to:
    - (i) enter his or her voter ID number; and
    - (ii) where the election is for a public or patient constituency, make a declaration of identity; in order to be able to cast his or her vote;
  - (b) specify:

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

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

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

- (iii) the candidate or candidates for whom the voter has voted; and
- (iv) the date and time of the voter's vote

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

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

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

(a) require a voter to:

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

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

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

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

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

(i) the voter's voter ID number;

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

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

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

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

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

### ***The poll***

#### **27. Eligibility to vote**

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

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

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

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

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

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

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

- 30.1 Where a voter has not received his or her ballot paper by the tenth day before the close of the poll, that voter may apply to the returning officer for a replacement ballot paper.
- 30.2 The returning officer may not issue a replacement voting information for a 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 ballot paper, and
  - (c) has ensured that the declaration of identity if required has not been returned.
- 30.3 After issuing a replacement ballot paper for a lost ballot paper, the returning officer shall enter in a list (“the list of lost ballot papers”) –
- (a) the name of the voter, and
  - (b) the details of the unique identifier of the replacement ballot paper.

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

- 31.1 If a person applies for a 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 a replacement voting information unless, in addition to the requirements imposed 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 a replacement ballot paper under this rule, the returning officer shall enter in a list ("the list of tendered voting information):
- (a) the name of the voter, and
  - (b) the details of the unique identifier or 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 a declaration of identity must be issued with each replacement ballot paper requiring the voter to make a declaration of identity

#### ***Polling by internet, telephone or text***

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

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

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

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

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

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

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

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

**36. Receipt of voting documents**

36.1 Where the returning officer receives a:

- (a) covering envelope, or
- (b) any other envelope containing a declaration of identity if required, a ballot paper envelope, or a ballot paper,

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

36.2 The returning officer may open any 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 a declaration of identity 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 declaration of identity 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 paragraph (37.1) has been fulfilled, he or she is to:

- (a) mark the ballot paper “disqualified”,
- (b) if there is a declaration of identity accompanying the ballot paper, mark it as “disqualified” and attach it to the ballot paper,
- (c) record the unique identifier on the ballot paper in a list (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) –**

38.1 Where the returning officer receives a declaration of identity if required but no ballot paper, the returning officer is to –

(a) mark the declaration of identity “disqualified”,

(a) 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

(b) place the ID of 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 declarations of identity if required,
- (c) the list of spoiled ballot papers and the list of spoiled text message votes,
- (d) the list of lost ballot papers,
- (e) the list of eligible voters, and
- (f) the list of tendered Voting information

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

### **Part 6 - Counting the votes**

#### **STV41. Interpretation of Part 6**

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 papers 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 paper on which a second or subsequent preference is recorded for the candidate to whom that paper has been transferred, and

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

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

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

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

(a) the board of directors and the council of governors of the corporation have approved:

(i) the use of such software for the purpose of counting votes in the relevant election, and

(ii) a policy governing the use of such software, and

(b) the corporation and the returning officer are satisfied that the use of such software will produce an accurate result.

## **43. The count**

43.1 The returning officer is to:

(a) count and record the number of:

(iii) ballot papers that have been returned, and

(iv) the number of internet voting records, telephone voting records and/or text voting records that have been created, and

(b) count the votes according to the provisions in this Part of the rules and/or the provisions of any policy approved pursuant to rule 42.2(ii) where vote counting software is being used.

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

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

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

STV44.1 Any ballot paper –

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

(b) on which the figure “1” standing alone is not placed so as to indicate a first preference for any candidate,

(c) on which anything is written or marked by which the voter can be identified except the unique identifier, or

(d) which is unmarked or rejected because of uncertainty,

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

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

STV44.3 Any text voting record:

(a) on which the figure “1” standing alone is not placed so as to indicate a first preference for any candidate,

(b) on which anything is written or marked by which the voter can be identified except the unique identifier, or

(c) which is unmarked or rejected because of uncertainty,

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

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

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

**STV45. First stage –**

STV45.1 The returning officer is to sort the ballot papers 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 paragraph STV46.1 above (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 papers 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 papers 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 papers in each parcel referred to in rule STV47.1 above.

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

STV47.4 The vote on each ballot paper 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 papers 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 papers, the number of votes for any candidate exceeds the quota, the returning officer is to sort the ballot papers 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 papers 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 below, to transfer each sub-parcel of ballot papers referred to in paragraph STV46.5(a) to the candidate for whom the next available preference is given on those papers.

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

- (a) a transfer value calculated as set out in rule STV47.4(b) above, 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 paragraph STV47.10, the returning officer shall proceed to transfer transferable papers until no candidate who is deemed to be elected has a surplus or all the vacancies have been filled.

STV47.10 Transferable papers 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 papers 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 papers 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 papers of the candidate on whom the lot falls shall be transferred first.

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

- (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 papers 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 paper or, as the case may be, all the papers in that sub-parcel.

STV48.4 Where a ballot paper 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 paper as a non-transferable vote; and votes on a ballot paper 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 papers which under the provisions of rule STV47 above (including that rule as applied by rule STV49.11 and this rule are required to be transferred, have been transferred, and

(b) subject to rule STV50, one or more vacancies remain to be filled,

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

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

(a) ballot documents on which a next available preference is given, and

(b) ballot documents on which no such preference is given (thereby including ballot papers 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 above, 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 below, 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.

STV49.5 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).

STV49.6 The vote on each transferable ballot documents transferred under rule STV49.6 shall be at the value at which that vote was received by the candidate excluded under rule STV49.1.

STV49.7 Any ballot documents on which no next available preferences have been expressed shall be set aside as non-transferable votes.

STV49.8 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 papers with the next highest value and so on until he has dealt with each sub-parcel of a candidate excluded under rule STV49.1.

STV49.9 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 .10) and rule STV48.

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

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

(a) regard shall be had to the total number of votes credited to those candidates at the earliest stage of the count at which they had an unequal number of votes and the candidate with the lowest number of votes at that stage shall be excluded, and

(b) where the number of votes credited to those candidates was equal at all stages, the returning officer shall decide between the candidates by lot and the candidate on whom the lot falls shall be excluded.

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

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

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

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

**STV51. Order of election of candidates**

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

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

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

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

***Part 7 – Final proceedings in contested and uncontested elections*****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 Mid and South Essex NHS Foundation Trust by section 33(4) of the 2006 Act, to the chairman of the NHS Trust, or
  - (ii) in any other case, to the chairman of the corporation, and
- (c) give public notice of the name of each candidate who he or she has declared elected.

STV52.2 The returning officer is to make –

- (a) the number of first preference votes for each candidate whether elected or not,
- (b) any transfer of votes,
- (c) the total number of votes for each candidate at each stage of the count at which such transfer took place,
- (d) the order in which the successful candidates were elected, and
- (e) the number of rejected ballot papers under each of the headings in rule STV44.1, available on request.
- (f) the number rejected text voting records under each of the headings in rule STV44.3, available on request.

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

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

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

## ***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
- (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 ballot papers are made too late to enable new ballot papers to be issued,

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

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

57.1 The corporation is to retain the documents relating to an election that are forwarded to the chair by the returning officer under these rules for one year, and then, unless otherwise directed by the regulator, 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,

(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 (1), and the Regulator 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 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, –

(a) in giving its consent, and

(b) in making the documents available for inspection,

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

(i) that his or her vote was given, and

(ii) that the regulator has declared that the vote was invalid.

### ***Part 9 – Death of a candidate during a contested election***

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

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

(a) 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.

59.2 The ballot papers which have preferences recorded for the candidate who has died are to be sealed with the other counted ballot papers 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 to the regulator under Part 11 of these rules.

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

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

(a) personal expenses,

(b) travelling expenses, and expenses incurred while living away from home, and

(c) expenses for stationery, postage, telephone, internet (or any similar means of communication) and other petty expenses, to a limit of £100.

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

62.1 No person may:

(a) incur any expenses or make a payment (of whatever nature) for the purposes of a candidate's election, whether on that candidate's behalf or otherwise, or

(b) give a candidate or his or her family any money or property (whether as a gift, donation, loan, or otherwise) to meet or contribute to expenses incurred by or on behalf of the candidate for the purposes of an election.

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

## ***Publicity***

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

63.1 The corporation may:

(a) compile and distribute such information about the candidates, and

(b) organise and hold such meetings to enable the candidates to speak and respond to questions, as it considers necessary.

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

(a) objective, balanced and fair,

(b) equivalent in size and content for all candidates,

(c) compiled and distributed in consultation with all of the candidates standing for election, and

(d) must not seek to promote or procure the election of a specific candidate or candidates, at the expense of the electoral prospects of one or more other candidates.

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

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

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

64.2 The information must consist of –

(a) a statement submitted by the candidate of no more than 250 words,

(b) if voting by telephone or text message is a method of polling for the election, the numerical voting code allocated by the returning officer to each candidate, for the purpose of recording votes using the telephone voting facility or the text message voting facility (“numerical voting code”), and



c) where the candidate so decides, a photograph of the candidate.

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

- 65.1 In this Part, the phrase “for the purposes of an election” means with a view to, or otherwise in connection with, promoting or procuring a candidate’s election, including the prejudicing of another candidate’s electoral prospects; and the phrase “for the purposes of a candidate’s election” is to be construed accordingly.
- 65.2 The provision by any individual of his or her own services voluntarily, on his or her own time, and free of charge is not to be considered an expense for the purposes of this Part.

## ***Part 11 – Questioning elections and the consequence of irregularities***

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

- 66.1 An application alleging a breach of these rules, including an electoral irregularity under Part 10, may be made to the regulator.
- 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 the Regulator 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 Regulator may require.
- 66.5 The application must be presented in writing within 21 days of the declaration of the result of the election.
- 66.6 If the Regulator requests further information from the applicant, then that person must provide it as soon as is reasonably practicable.
- 66.7 The Regulator shall delegate the determination of an application to a person or persons to be nominated for the purpose of the Regulator.
- 66.8 The determination by the person or persons nominated in accordance with rule 66.7 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 Regulator 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 a 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.

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 – ELIGIBILITY AND DISQUALIFICATION CRITERIA FOR GOVERNORS AND DIRECTORS**

(Paragraphs 17 and 35)

- 1.1 A person may not become or continue as a member of the Council of Governors or the Board of Directors if the individual:
- a) has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged;
  - b) has made a composition or arrangement with, or granted a trust deed for, his/her creditors and has not been discharged in respect of it;
  - c) has within the preceding five years has been convicted anywhere in the world 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 him/her;
  - d) has, within the preceding two years, been dismissed (otherwise than by reason of redundancy or ill health) from any paid employment within a Health Service Body, unless the dismissal was found to be unfair on appeal;
  - e) tenure of office as the chairman or director of a Health Service Body has been terminated on grounds that his/her appointment is not in the interest of the health service, for non-
  - f) attendance at meetings or for non-disclosure of a relevant and material interest;
  - g) is a member of a Local Authority Health Overview and Scrutiny Committee;
  - h) is a member of Health Watch (nationally or locally);
  - i) is the subject of a Sex Offenders' Order and/or his/her name is included in the Sex Offenders' Register;
  - j) is a person who is included in any barred list established under the Safeguarding Vulnerable Groups Act 2006;
  - k) is a Close Family Member of a Governor or Director of the Trust;
  - l) he has failed to repay (without good cause) monies properly owed to the Trust;
  - m) has been the subject of action under the Trust's policy for dealing with patients or relatives who are violent and abusive or that of another NHS body; or
  - n) a person who is the subject of a disqualification order made under the Company Directors' Disqualification Act 1986.

## **ANNEX 6 – CONDUCT OF MEETINGS OF THE COUNCIL OF GOVERNORS AND THE BOARD OF DIRECTORS**

(Paragraphs 201 and 37)

### **Special Reasons to Exclude Members of the Press and Public**

- 1.1 Members of the public and representatives of the press shall be afforded facilities to attend all formal meetings of the Council of Governors and the Board of Directors except in circumstances where a special resolution is passed that members of the public and representatives of the press shall be excluded from a meeting.
- 1.2 The reasons for passing such a resolution shall be due to the sensitive or confidential nature of the discussion which might include information relating to:
  - a) employees, former employees or applicants;
  - b) occupiers or former occupiers of accommodation provided by or at the expense of the Trust;
  - c) patients or service users;
  - d) information relating to the financial or business affairs of a particular person.
- 1.3 Further, the Council of Governors or the Board of Directors, as the case may be, may resolve that:
  - a) in the interests of public order, the meeting should be adjourned, for a reasonable, specified period, to enable the meeting to complete business without the presence of the public or the press; or
  - b) publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted; or
  - c) there is another special reason, which shall be stated in the resolution, which requires that members of the public and representatives of the press be excluded.
- 1.4 Matters to be dealt with, following the exclusion of the public and representatives of the press, shall be confidential to the Governors or the Directors as the case may be. Members of the Council of Governors, Board of Directors, Officers and/or others in attendance at the request of the Chairman shall not reveal or disclose the content of papers or reports presented, or any discussion on these generally, which take place while the public and press are excluded, without the express permission of the Chairman.

### **Conduct and Behaviour at Meetings**

- 1.5 The Chairman may exclude any member of the public or representative of the press from a meeting of the Council of Governors or the Board of Directors, as the case may be, if he considers that they are interfering with or preventing the proper conduct of the meeting.
- 1.6 Behaviour at all meetings is expected to be exemplary.
- 1.7 Approval to speak at meetings shall be given by the Meeting Chairman. This includes Directors, Governors, Members, members of the public or press, Officers or any other person in attendance at a meeting.
- 1.8 Speeches or statements must be directed to the matter, motion or question under discussion and the decision of the Meeting Chairman on questions of order, relevancy, regularity and any other matters shall be final.

- 1.9 Unless, in the opinion of the Meeting Chairman, it would not be desirable or appropriate to limit speeches on any topic to be discussed, having regard to its nature complexity or importance, no proposal, speech nor any reply, may exceed three minutes.
- 1.10 In the interests of time, the Meeting Chairman may, in his/her absolute discretion, limit the number of replies, questions or speeches which are heard at any one meeting.

### **Meeting Administration**

- 1.8 Meetings of both the Council of Governors and the Board of Directors shall be convened by the Secretary.
- 1.9 Minutes of the meetings of the Council of Governors and the Board of Directors shall be kept and shall include the names of the person chairing the meeting and those present from the Council of Governors or Board of Directors, as the case may be. The minutes shall be considered at the next meeting, and following agreement, shall be signed by the Meeting Chairman. The signed minutes shall be conclusive evidence of the events of the meeting.
- 1.10 Before each meeting of the Council of Governors or Board of Directors, as the case may be, a notice of the meeting, specifying the business proposed to be transacted at it shall be delivered to every Governor or Director, by post or electronically.
- 1.11 Agendas and supporting papers shall be sent at least five Clear Days before the meeting in question, save in exceptional or emergency circumstances and with the Chairman's approval.
- 1.12 Want of service of the notice on a Governor or Director, as the case may be, shall not affect the validity of the meeting. A notice of the meeting shall be presumed to have been served one day after posting or, in the case of a notice being sent electronically, on the date of transmission.
- 1.13 The Council of Governors and the Board of Directors shall agree in advance the dates of their respective meetings and publish these on the Trust's website. These dates shall also be publicised through local media and with notices at the Trust's headquarters as appropriate.
- 1.14 The Council of Governors and Board of Directors shall adopt Standing Orders covering the proceedings and business of its meetings.
- 1.15 Nothing in this Constitution requires the Council of Governors or the Board of Directors to allow members of the public and representatives of the press to record proceedings in any manner whatsoever other than in writing, or to make any oral report of proceedings as they take place, without the prior agreement of the Chairman or Meeting Chairman.

**ANNEX 7 – MEETINGS OF THE COUNCIL OF GOVERNORS AND THE BOARD OF DIRECTORS**  
**– ELECTRONIC COMMUNICATION**

(Paragraphs 21 and 37)

- 1.1 In exceptional cases, with the advance approval of the Chairman or Meeting Chairman, arrangements can be made for Governors or Directors to participate in meetings of the Council of Governors or the Board of Directors, as the case may be, by telephone, video or computer link or other such agreed means.
- 1.2 In these circumstances the following provisions apply:
- a) “Communication” and “electronic communication” shall have the meanings set out in the Electronic Communications Act 2000 or any statutory modification or re-enactment thereof.
  - b) A Governor or Director, as the case may be, in electronic communication with the Chairman and all other parties to a meeting of the Council of Governors or the Board of Directors, or of a committee thereof, shall be regarded for all purposes as personally attending such a meeting. This is provided that, but only for so long as, at such a meeting he has the ability to communicate interactively and simultaneously with all other parties attending the meeting including all persons attending by way of electronic communication.
  - c) A meeting at which one or more Governors or Directors attends by way of electronic communication is deemed to be held at such a place as the Governors or Directors, as the case may be, shall at the said meeting resolve. In the absence of such a resolution, the meeting shall be deemed to be held at the place (if any) where a majority of the Governors or Directors attending the meeting are physically present, or in default of such a majority, the place at which the Chairman of the meeting is physically present.
  - d) Meetings held in accordance with this paragraph are subject to paragraphs 21.27 – 21.30 and 37.2. For such a meeting to be valid, a quorum must be present and maintained throughout the meeting.
  - e) The minutes of a meeting held in this way must state that it was held by electronic communication and that the Governors or Directors were all able to hear each other and were present throughout the meeting.

## **ANNEX 8 – CONFLICTS OF INTEREST FOR GOVERNORS AND DIRECTORS**

(Paragraphs 22 and 38)

- 1.1 Interests which should be regarded as “relevant and material” for Governors and Directors are set out below:
- a) directorships, including non-executive directorships, held in private companies or public limited companies (with the exception of dormant companies); or
  - b) ownership, part ownership or directorship of private companies, businesses or consultancies likely or possibly seeking to do business with the NHS or the Trust; or
  - c) significant or controlling share in organisations likely or possibly seeking to do business with the NHS or the Trust; or
  - d) a position of authority in a charity or voluntary organisation in the field of health or social care; or
  - e) any connection with a voluntary or other organisation contracting for NHS or Trust services or commissioning NHS or Trust services; or
  - f) 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 of banks.
- 1.2 For the avoidance of doubt, they shall be included in the relevant register of interests of the Governors or the Directors, as the case may be.
- 1.3 A "family interest" is an interest of a Close Family Member of a Governor or Director which, if it were the interest of that Governor or Director, would be a personal or pecuniary interest of that Governor or Director.
- 1.4 If Governors or Directors have any doubt about the relevance or materiality of an interest, this should be discussed with the Secretary. Influence rather than immediacy of the relationship is more important in assessing the relevance of an interest.
- 1.5 There shall be arrangements for excluding Governors and Directors from discussion or consideration of matters in which they have a “relevant or material” interest.