

**Essex Partnership University NHS Foundation Trust**  
**Constitution**

May 2018

**TABLE OF CONTENTS**

*Paragraph*

- 1. Interpretation and Definitions.....5
- 2. Name .....6
- 3. Principal Purpose .....6
- 4. Powers.....7
- 5. Membership and Constituencies .....7
- 6. Application for Membership .....7
- 7. Public Constituency .....8
- 8. Staff Constituency .....8
- 9. Automatic Membership by Default: Staff .....8
- 10. NOT USED .....9
- 11. NOT USED .....9
- 12. Restriction on Membership .....9
- 13. Annual Members’ Meeting .....9
- 14. Council of Governors – Composition .....9
- 15. Council of Governors – Election of Governors..... 10
- 16. Council of Governors – Tenure..... 10
- 17. Council of Governors – Disqualification and Removal..... 11
- 18. Council of Governors – Duties of Governors ..... 11
- 19. Council of Governors – Meetings of Governors..... 12
- 20. Council of Governors – Standing Orders..... 12
- 21. Council of Governors – Referral to the Panel ..... 12
- 22. Council of Governors – Conflicts of Interest of Governors..... 12
- 23. Council of Governors – Travel Expenses ..... 13
- 24. Council of Governors – Further Provisions ..... 13
- 25. Board of Directors – Composition..... 13
- 26. Board of Directors – General Duty..... 14
- 27. Board of Directors – Qualification for Appointment as a Non-Executive  
Director ..... 14
- 28. Board of Directors – Appointment and removal of Chair and other Non-  
Executive Directors..... 14
- 29. Interim Directors ..... 14

- 30. Board of Directors – Appointment of Vice-Chair, Senior Independent Director and Deputy Chief Executive ..... 14
- 31. Board of Directors - Appointment and Removal of the Chief Executive and other Executive Directors..... 15
- 32. NOT USED
- 33. Board of Directors – Disqualification..... 15
- 34. Board of Directors – Meetings ..... 17
- 35. Board of Directors – Standing Orders..... 17
- 36. Board of Directors – Conflicts of Interest of Directors..... 17
- 37. Board of Directors – Remuneration and Terms of Office ..... 19
- 38. Registers – Inspection and Copies ..... 19
- 39. Admission to and Removal from the Registers..... 19
- 40. Registers – Inspection and Copies ..... 19
- 41. Documents Available for Public Inspection.....20
- 42. Auditor .....21
- 43. Audit Committee .....21
- 44. Accounts.....22
- 45. Annual Report, Forward Plans and Non-NHS Work .....22
- 46. Presentation of the Annual Accounts and Report to the Governors and Members.....23
- 47. Instruments.....23
- 48. Amendment of the Constitution .....23
- 49. Mergers, etc. and Significant Transactions.....24
- 50. Indemnities .....24

ANNEX A1: THE INTERIM DIRECTORS ..... 25

ANNEX 1: THE PUBLIC CONSTITUENCIES.....25

ANNEX 2: THE STAFF CONSTITUENCIES .....27

ANNEX 3: NOT USED.....28

ANNEX 4: COMPOSITION OF COUNCIL OF GOVERNORS.....29

ANNEX 4.1 COUNCIL OF GOVERNORS – TENURE .....30

ANNEX 5: THE MODEL ELECTION RULES.....32

ANNEX 6: ADDITIONAL PROVISIONS – COUNCIL OF GOVERNORS .....81

ANNEX 7: STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE  
COUNCIL OF GOVERNORS .....87

ANNEX 8: STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE  
BOARD OF DIRECTORS.....88

ANNEX 9: FURTHER PROVISIONS .....89

ANNEX 10: ANNUAL MEMBERS’ MEETING.....92

## 1. Interpretation and Definitions

- 1.1 Unless otherwise stated, words or expressions contained in this constitution shall bear the same meaning as in the National Health Service Act 2006 as amended by the Health and Social Care Act 2012
- 1.2 Words importing the masculine gender only shall include the feminine gender; words importing the singular shall import the plural and vice-versa
- 1.3 The **2006 Act** is the National Health Service Act 2006
- 1.4 The **2012 Act** is the Health and Social Care Act 2012
- 1.5 **Annual Members' Meeting** is defined in paragraph 13 of the constitution
- 1.6 **Board of Directors** or **Board** means the Chair, Executive and Non-Executive Directors of the Trust collectively as a body in accordance with this constitution
- 1.7 **Board of Directors Nominations Committee** means a committee of the Board described in paragraph 30.4 of the constitution
- 1.8 **Constitution** means this constitution which has effect in accordance with Section 56(11) of the 2006 Act
- 1.9 **Council of Governors or Council** means the Council of Governors of the Trust as described in paragraph 14 of this constitution
- 1.10 **Chair** is the person appointed as Chair of the Board of Directors (and Chair of the Council of Governors) under paragraph 28 of this constitution
- 1.11 **Chief Executive** is the person appointed as the Chief Executive Officer of the Trust under paragraph 31 of this constitution
- 1.12 **Directors** means the Executive and Non-Executive members of the Board of Directors
- 1.13 **Executive Director** means a member of the Board of Directors appointed under paragraph 25 of the constitution
- 1.14 **Interim Directors** means those individuals who were Directors of the Predecessor Trusts immediately prior to their dissolution
- 1.15 **Interim Non-Executive Directors** means those Interim Directors who were Non-Executive Directors of the Predecessor Trusts immediately prior to their dissolution
- 1.16 **Member** means a person registered as a member of one of the constituencies set out in paragraph 5 of this constitution

- 1.17 **Model Election Rules** means the Model Election Rules published by Department of Health and/or NHS Providers
- 1.18 **Monitor** is the body corporate known as Monitor, as part of NHS Improvement, as provided by Section 61 of the 2012 Act
- 1.19 **Non-Executive Director** means a member of the Board of Directors, including the Chair, appointed by the Council of Governors under paragraph 28 of the constitution
- 1.20 **Officer** means an employee of the Trust or any person holding a paid appointment or office with the Trust
- 1.21 **Predecessor Trusts** means North Essex Partnership University NHS Foundation Trust and South Essex Partnership University NHS Foundation Trust which were dissolved by order of Monitor on 1 April 2017
- 1.22 **Regulated Activities Regulations** means the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 as amended
- 1.23 The **Accounting Officer** is the person who from time to time discharges the functions specified in paragraph 25(5) of Schedule 7 to the 2006 Act
- 1.24 The **Trust Secretary** is the person appointed by the Chair and Chief Executive as the Trust Secretary
- 1.25 **Transitional Period Governor** means an initial Governor of the Trust who has been elected to office for a period determined in accordance with Annex 4.1.
- 1.26 **Vice-Chair** means the Non-Executive Director appointed under paragraph 30.1 and 30.2 of this constitution
- 1.27 **Voluntary Organisation** is a body, other than a public or local authority, the activities of which are not carried out for profit
- 1.28 **Working Day** means a day of the week which is not a Saturday, Sunday or public holiday in England.

<b>2.</b>	<b>Name</b>
-----------	-------------

2.1 The name of the foundation Trust is Essex Partnership University NHS Foundation Trust (the Trust).

<b>3.</b>	<b>Principal Purpose</b>
-----------	--------------------------

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.

#### **4. Powers**

- 4.1** The powers of the Trust are set out in the 2006 Act
- 4.2** All the powers of the Trust shall be exercised by the Board of Directors on behalf of the Trust
- 4.3** Any of these powers may be delegated to a committee of Directors or to an Executive Director.

#### **5. Membership and Constituencies**

- 5.1** The Trust shall have members, each of whom shall be a member of one of the constituencies in paragraph 5.2
- 5.2** The constituencies of the Trust shall be:
- 5.2.1** a Public Constituency
  - 5.2.2** a Staff Constituency.

#### **6. Application for Membership**

- 6.1** An individual who is eligible to become a member of the Trust may do so on application to the Trust subject to paragraphs 8 and 12 below
- 6.2** An applicant will become a member when the Trust has received and accepted the application, and the name of the applicant has been entered in the Trust's Register of Members (see Annex 9: Further Provisions paragraph 2).

**7. Public Constituency**

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

**8. Staff Constituency**

- 8.1 An individual who is employed by the Trust under a contract of employment with the Trust may become or continue as a member of the Trust provided:
  - 8.1.1 he 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
  - 8.1.2 he has been continuously employed by the Trust under a contract of employment for at least 12 months
- 8.2 Individuals who exercise functions for the purposes of the Trust, otherwise than under a contract of employment with the Trust, may become or continue as members of the Staff Constituency provided such individuals have exercised these functions continuously for a period of at least 12 months. For the avoidance of doubt, this does not include those who assist or provide services to the Trust on a voluntary basis
- 8.3 Those individuals who are eligible for membership of the Trust by reason of the previous provisions are referred to collectively as the Staff Constituency
- 8.4 The Staff Constituency shall be divided into two descriptions of individuals who are eligible for membership of the Staff Constituency; each description of individuals being specified within Annex 2 and being referred to as a class within the Staff Constituency
- 8.5 The minimum number of members in each class of the Staff Constituency is specified in Annex 2.

**9. Automatic Membership by Default – Staff**

- 9.1 An individual who is:
  - 9.1.1 eligible to become a member of the Staff Constituency, and
  - 9.1.2 invited by the Trust to become a member of the Staff Constituency and a member of the appropriate class within the Staff Constituency,



shall become a member of the Trust as a member of the Staff Constituency and appropriate class within the Staff Constituency without an application being made, unless he informs the Trust that he does not wish to do so.

**10. NOT USED**

**11. NOT USED**

**12. Restriction on Membership**

- 12.1 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
- 12.2 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
- 12.3 An individual must be at least 12 years old to become a member of the Trust
- 12.4 Further provisions as to the circumstances in which an individual may not become or continue as a member of the Trust are set out in Annex 9: Further Provisions paragraph 2.

**13. Annual Members' Meeting**

- 13.1 The Trust shall hold an annual meeting of its members (Annual Members' Meeting). The Annual Members' Meeting shall be open to members of the public
- 13.2 Annual Members' Meetings shall be conducted in accordance with paragraph 27A of Schedule 7 of the 2006 Act (and as set out in paragraph 46 of this constitution) and the standing orders for the practice and procedure of Annual Members' Meetings as set out in Annex 10: Annual Members' Meeting.

**14. Council of Governors – Composition**

- 14.1 The Trust is to have a Council of Governors, which shall comprise both elected and appointed Governors
- 14.2 The composition of the Council of Governors is specified in Annex 4
- 14.3 The members of the Council of Governors, other than the appointed members, shall be chosen by election by their constituency or, where there are classes within a constituency, by their class within that constituency. The number of Governors to be elected by each constituency, or, where appropriate, by each class of each constituency, is specified in Annex 4.

**15. Council of Governors – Election of Governors**

- 15.1** Elections for elected members of the Council of Governors shall be conducted in accordance with the Model Election Rules adopting STV
- 15.2** The Model Election Rules are attached at Annex 5 but they do not form part of this constitution
- 15.3** A variation of the Model Election Rules by the Department of Health or NHS Providers shall not constitute a variation of the terms of this constitution for the purposes of paragraph 48 of the constitution (amendment of the constitution)
- 15.4** An election, if contested, shall be by secret ballot
- 15.5** Where a vacancy arises from amongst the elected Governors within the first year of their term of office, the Trust Secretary shall offer the next highest polling candidate in the election for that post the opportunity to assume the vacancy office for the unexpired balance of the retiring member's term of office. If that candidate does not wish to fill the vacancy, it will then be offered to the next highest polling candidate and so on until the vacancy is filled.

**16. Council of Governors – Tenure**

- 16.1** An elected Governor may hold office for a period of up to three years. A Transitional Period Governor shall hold office for a period determined in accordance with Annex 4.1. In each case the period of office shall be known as the 'term'
- 16.2** An elected Governor shall cease to hold office if he ceases to be a member of the constituency or class by which he was elected
- 16.3** An elected Governor shall be eligible for re-election at the end of his term
- 16.4** An appointed Governor may hold office for a period of up to three years
- 16.5** An appointed Governor shall cease to hold office if the appointing organisation withdraws its sponsorship of him or if the appointing organisation ceases to exist and there is no successor in title to its business
- 16.6** An appointed Governor shall be eligible for re-appointment at the end of his term
- 16.7** A Governor may serve a maximum of three terms of up to three years in office and shall be eligible to stand for election or appointment as a Governor again following a break of at least a year

- 16.8** “Year” means the period commencing on the date of election or appointment (as the case may be) and ending 12 months after such election or appointment.

**17. Council of Governors – Disqualification and Removal**

- 17.1** The following may not become or continue as a member of the Council of Governors:
- 17.1.1** a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged
  - 17.1.2** a person in relation to whom a moratorium period under a debt relief order applies (under Part 7A of the Insolvency Act 1986)
  - 17.1.3** a person who has made a composition or arrangement with, or granted a Trust deed for his creditors and has not been discharged in respect of it
  - 17.1.4** a person who within the preceding five years has been convicted in the British Islands of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him
- 17.2** Governors must be at least 16 years of age at the date they are nominated for election or appointment
- 17.3** Further provisions as to the circumstances in which an individual may not become or continue as a member of the Council of Governors and for the removal of Governors are set out in Annex 6 paragraphs 4 and 5.

**18. Council of Governors – Duties of Governors**

- 18.1** The general duties of the Council of Governors are:
- 18.1.1** to hold the Non-Executive Directors individually and collectively to account for the performance of the Board of Directors, and
  - 18.1.2** to represent the interests of the members of the Trust as a whole and the interests of the public
- 18.2** Further provision as to the roles and responsibilities of the Council of Governors is set out in Annex 6
- 18.3** The Trust must take steps to ensure that Governors are equipped with the skills and knowledge they require in their capacity as such.

**19. Council of Governors – Meetings of Governors**

- 19.1** The Chair of the Trust (i.e. the Chair of the Board of Directors, appointed in accordance with the provisions of paragraph 28 of this constitution) or, in his absence the Vice-Chair (appointed in accordance with the provisions of paragraph 30 of this constitution), shall preside at meetings of the Council of Governors except as otherwise provided pursuant to the standing orders for the Council of Governors as at Annex 7
- 19.2** Meetings of the Council of Governors shall be open to members of the public. Members of the public may be excluded from a meeting for special reasons. Special reasons include for reasons of commercial confidentiality. The Chair may exclude any person from a meeting of the Council of Governors if that person is interfering with or preventing the proper conduct of the meeting
- 19.3** For the purposes of obtaining information about the Trust's performance of its functions or the Directors' performance of their duties (and deciding whether to propose a vote on the Trust's or Directors' performance), the Council of Governors may require one or more of the Directors to attend a meeting.

**20. Council of Governors – Standing Orders**

- 20.1** The standing orders for the practice and procedure of the Council of Governors are attached at Annex 7
- 20.2** The standing orders do not form part of this constitution. Any amendment of the standing orders shall not constitute an amendment of the terms of this constitution for the purposes of paragraph 48 of this constitution.

**21. Council of Governors – Referral to the Panel**

- 21.1** In this paragraph, the Panel means a panel of persons appointed by Monitor to which a Governor of an NHS Foundation Trust may refer a question as to whether the Trust has failed or is failing:
- 21.1.1** to act in accordance with its constitution, or
  - 21.1.2** to act in accordance with provision made by or under Chapter 5 of the 2006 Act
- 21.2** A Governor may refer a question to the Panel only if more than half of the members of the Council of Governors voting approve the referral.

**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 that interest to the members of the Council of Governors as soon as he becomes

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

**23. Council of Governors – Travel Expenses**

**23.1** The Trust may pay travelling and other expenses to Governors that are incurred in carrying out their duties at rates determined by the Trust. These expenses are to be disclosed in the Trust’s annual report

**23.2** Governors do not receive remuneration when undertaking their duties and role as a Governor.

**24. Council of Governors – Further Provisions**

**24.1** Further provisions with respect to the Council of Governors are set out in Annex 6.

**25. Board of Directors – Composition**

**25.1** The Trust is to have a Board of Directors, which shall comprise both Executive and Non-Executive Directors

**25.2** The Board of Directors is to comprise:

**25.2.1** a Non-Executive Chair

**25.2.2** not less than five and not more than eight other Non-Executive Directors; and

**25.2.3** not less than four and not more than eight Executive Directors,

so that the number of Non-Executive Directors including the Chair shall always exceed the number of Executive Directors including the Chief Executive

**25.3** One of the Executive Directors shall be the Chief Executive

**25.4** The Chief Executive shall be the Accounting Officer

**25.5** One of the Executive Directors shall be the Finance Director

**25.6** One of the Executive Directors is to be a registered Medical Practitioner or a registered Dentist (within the meaning of the Dentists Act 1984)

**25.7** One of the Executive Directors is to be a registered Nurse or a registered Midwife.

**26. Board of Directors – General Duty**

- 26.1** 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.

**27. Board of Directors – Qualification for Appointment as a Non-Executive Director**

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

- 27.1** he is a member of a Public Constituency, or
- 27.2** where any of the Trust's hospitals includes a medical or dental school provided by a university, he exercises functions for the purposes of that university, and
- 27.3** he is not disqualified by virtue of paragraph 33 of this constitution.

**28. Board of Directors – Appointment and Removal of Chair and Other Non-Executive Directors**

- 28.1** The Council of Governors at a general meeting of the Council of Governors shall appoint or remove the Chair of the Trust and the other Non-Executive Directors
- 28.2** Appointment of the Chair or another Non-Executive Director shall require the approval of a majority of the Council of Governors present at a meeting of the Council of Governors
- 28.3** Removal of the Chair or another Non-Executive Director shall require the approval of three-quarters of the members of the Council of Governors
- 28.4** The Council of Governors shall adopt a procedure for appointing/removing the Chair and/or other Non-Executive Directors in accordance with any guidance issued by Monitor.

**29. Interim Directors**

- 29.1** Annex A1 makes provision for how the Interim Directors shall exercise the functions of the Trust on its behalf until such time as the Board of Directors is appointed in accordance with this constitution.

**30. Board of Directors – Appointment of Vice-Chair, Senior Independent Director and Deputy Chief Executive**

- 30.1** The Council of Governors at a general meeting of the Council of Governors shall appoint one of the Non-Executive Directors as the Vice-Chair

- 30.2** Before a resolution for such an appointment is passed, the Chair shall be entitled to advise the Council of Governors of the Non-Executive Director who is recommended by the Board of Directors for that appointment. This recommendation will not, however, be binding upon the Council of Governors; it will be presented to the Council of Governors at its meeting before it comes to its decision
- 30.3** The Board of Directors shall, following consultation with the Council of Governors, appoint one of the Non-Executive Directors as the Senior Independent Director to act in accordance with Monitor's *NHS Foundation Trust Code of Governance* (as may be amended and replaced from time to time) and the Trust's standing orders
- 30.4** The Board of Directors Nominations Committee, which comprises of all the Non-Executive Directors, shall appoint one of the Executive Directors as the Deputy Chief Executive in line with agreed procedure.

<b>31. Board of Directors – Appointment and Removal of the Chief Executive and Other Executive Directors</b>
--

- 31.1** The Non-Executive Directors shall appoint or remove the Chief Executive
- 31.2** The appointment of the Chief Executive shall require the approval of a majority of the Council of Governors present at a meeting of the Council of Governors in accordance with the procedure agreed by the Council of Governors from time to time
- 31.3** A committee consisting of the Chair, the Chief Executive and the other Non-Executive Directors shall appoint or remove the other Executive Directors
- 31.4** An Executive Director's post may be held by two individuals on a job share basis (save that the Executive positions of registered Medical Practitioner or registered Dentist and registered Nurse or registered Midwife cannot be shared between the two professions). Where such an arrangement is in force, the two individuals may only exercise one vote between them at any meeting of the Board of Directors as in the standing orders.

<b>32. NOT USED</b>
---------------------

<b>33. Board of Directors – Disqualification</b>
--

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

- 33.1** a person who has been adjudged bankrupt or whose estate has been sequestrated and (in either case) has not been discharged
- 33.2** a person in relation to whom a moratorium period under a debt relief order applies (under Part 7A of the Insolvency Act 1986)

- 33.3** a person who has made a composition or arrangement with, or granted a Trust deed for, his creditors and has not been discharged in respect of it
- 33.4** a person who within the preceding five years has been convicted in the British Islands of any offence if a sentence of imprisonment (whether suspended or not) for a period of not less than three months (without the option of a fine) was imposed on him
- 33.5** a person who is subject of a disqualification order made under the Company Directors Disqualification Act 1986 and/or who is disqualified from being a trustee of a charity under the Charities Act 2011
- 33.6** a person where disclosures revealed by a Disclosure & Barring Service check against such a person are such that it would be inappropriate for him to become or continue as a Director or would adversely affect public confidence in the Trust or otherwise bring the Trust into disrepute
- 33.7** a person whose tenure of office as Chair or as a member or Director of a health service body has been terminated on the grounds that their appointment is not in the interests of the health service for reasons including non-attendance at meetings, or for non-disclosure of a pecuniary interest
- 33.8** a person who has within the preceding two years been dismissed, otherwise than by reason of redundancy or for ill health, from any paid employment with a health service body or a local authority
- 33.9** a person who is the subject of a Sexual Offenders Order under the Sexual Offences Act 2003
- 33.10** a person who is included in any barred list established under the Safeguarding Vulnerable Adults Act 2006 or any equivalent list maintained under the laws of Scotland or Northern Ireland
- 33.11** a person who is a Director or Governor or Governing Body member or equivalent of another NHS body, including Clinical Commissioning Groups unless approved by the Board of Directors for Executive Directors or the Council of Governors for Non-Executive Directors
- 33.12** a person who is a member of the Council of Governors
- 33.13** in the case of Non-Executive Directors, a person who is no longer a member of one of the public constituencies
- 33.14** in the case of Non-Executive Directors, a person who has refused without any reasonable cause to fulfil any training requirement established by the Board of Directors
- 33.15** a person who is a member of a Local Authority's Overview & Scrutiny



Committee covering health matters or of a Local Healthwatch Board or of a Health & Wellbeing Board

- 33.16** a person who is the spouse, partner, parent or child of a member of the Trust's Board of Directors
- 33.17** a person who has displayed aggressive or violent behavior at any NHS establishment or against any of the Trust's staff or persons exercising functions for the Trust
- 33.18** a person who fails to satisfy the requirements of the Regulated Activities Regulations
- 33.19** a person who has failed to sign and return to the Trust Secretary a statement in the form required by the Board of Directors confirming acceptance of the code of conduct for the Board of Directors
- 33.20** a person who has acted in a manner inconsistent with or who has failed to comply with the Trust's terms of authorisation, standing orders, standing financial instructions and/ or the code of conduct for the Board of Directors.

#### **34. Board of Directors – Meetings**

- 34.1** 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. Special reasons include for reasons of commercial confidentiality. The Chair may exclude any person from a meeting of the Board of Directors if that person is interfering with or preventing the proper conduct of the meeting
- 34.2** Before holding a meeting, the Board of Directors must send a copy of the agenda of the meeting to the Council of Governors. As soon as practicable after holding a meeting, the Board of Directors must send a copy of the minutes of the meeting to the Council of Governors.

#### **35. Board of Directors – Standing Orders**

- 35.1** The Board of Directors has adopted the standing orders for the practice and procedure of the Board of Directors attached at Annex 8.
- 35.2** The standing orders do not form part of this constitution. Any amendment of the standing orders shall not constitute an amendment of the terms of this constitution for the purposes of paragraph 48 of the constitution.

#### **36. Board of Directors – Conflicts of Interest of Directors**

- 36.1** The duties that a Director of the Trust has by virtue of being a Director include in particular:
- 36.1.1** 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

- 36.1.2** 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
- 36.2** The duty referred to in sub-paragraph 36.1.1 is not infringed if:
  - 36.2.1** the situation cannot reasonably be regarded as likely to give rise to a conflict of interest, or
  - 36.2.2** the matter has been authorised in accordance with the constitution if it has been considered and approved by the Board of Directors
- 36.3** The duty referred to in sub-paragraph 36.1.2 is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a conflict of interest
- 36.4** In sub-paragraph 36.1.2, “third party” means a person other than:
  - 36.4.1** the Trust, or
  - 36.4.2** a person acting on its behalf
- 36.5** If a Director of the Trust has in any way a direct or indirect interest in a proposed transaction or arrangement with the Trust, the Director must declare the nature and extent of that interest to the other Directors
- 36.6** If a declaration under this paragraph proves to be, or becomes, inaccurate, incomplete, a further declaration must be made
- 36.7** Any declaration required by this paragraph must be made before the Trust enters into the transaction or arrangement
- 36.8** 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
- 36.9** A Director need not declare an interest:
  - 36.9.1** if it cannot reasonably be regarded as likely to give rise to a conflict of interest
  - 36.9.2** if, or to the extent that, the Directors are already aware of it
  - 36.9.3** if, or to the extent that, it concerns terms of the Director’s appointment that have been or are to be considered:
    - 36.9.3.1** by a meeting of the Board of Directors, or

36.9.3.2 by a committee of the Directors appointed for the purpose under the constitution

**36.10** The standing orders for the Board of Directors make further provision for the disclosure of interests.

**37. Board of Directors – Remuneration and Terms of Office**

**37.1** The Council of Governors at a general meeting of the Council of Governors shall decide the remuneration and allowances, and the other terms and conditions of office, of the Chair and the other Non-Executive Directors

**37.2** The Trust shall establish a committee of Non-Executive Directors to decide the remuneration and allowances, and the other terms and conditions of office, of the Chief Executive and other Executive Directors.

**38. Registers**

The Trust shall have:

**38.1** a register of members showing, in respect of each member, the constituency to which he belongs and, where there are classes within it, the class to which he belongs

**38.2** a register of members of the Council of Governors

**38.3** a register of interests of Governors

**38.4** a register of Directors, and

**38.5** a register of interests of the Directors.

**39. Admission to and Removal from the Registers**

**39.1** The Trust Secretary shall be responsible for fulfilling the obligations of the Trust in relation to the maintenance of, admission to and removal from the registers under the provisions of this constitution and as set out in paragraph 38.

**39.2** Each Director and Governor shall advise the Trust Secretary as soon as practicable of anything which comes to his attention or of which he is aware and which might affect the accuracy of the matters recorded in any of the registers referred to in paragraph 38.

**40. Registers – Inspection and Copies**

**40.1** The Trust shall make the registers specified in paragraph 38 above available for inspection by members of the public, except in the circumstances set out

below or as otherwise prescribed by regulations

**40.2** 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

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

**40.3.1** they are to be available for inspection free of charge at all reasonable times, and

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

**40.4** 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.

<b>41. Documents Available for Public Inspection</b>
--

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

**41.1.1** a copy of the current constitution,

**41.1.2** a copy of the latest annual accounts and of any report of the auditor on them, and

**41.1.3** a copy of the latest annual report

**41.2** 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:

**41.2.1** 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

**41.2.2** a copy of any report laid under section 65D (appointment of Trust special administrator) of the 2006 Act

**41.2.3** a copy of any information published under section 65D (appointment of Trust special administrator) of the 2006 Act

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

**41.2.5** a copy of any statement provided under section 65F (administrator's

draft report) of the 2006 Act

- 41.2.6** a copy of any notice published under section 65F(administrator's draft report), 65G (consultation plan), 65H (consultation requirements), 65J (power to extend time), 65KA(Monitor's decision), 65KB (Secretary of State's response to Monitor's decision), 65KC (action following Secretary of State's rejection of final report) or 65KD (Secretary of State's response to re-submitted final report) of the 2006 Act
- 41.2.7** a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act
- 41.2.8** a copy of any final report published under section 65I (administrator's final report) of the 2006 Act
- 41.2.9** 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
- 41.2.10** a copy of any information published under section 65M (replacement of Trust special administrator) of the 2006 Act

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

**41.4** 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.

## **42. Auditor**

**42.1** The Trust shall have an auditor

**42.2** The Council of Governors shall appoint or remove the auditor at a general meeting of the Council of Governors

**42.3** The auditor shall comply with Schedule 10 of the 2006 Act in auditing the accounts of the Trust.

## **43. Audit Committee**

**43.1** The Board of Directors shall establish a committee comprising Non-Executive Directors (at least one of whom has competence in accounting and/or auditing and recent and relevant financial experience) as an Audit Committee to perform such monitoring, reviewing and other functions as are appropriate

**43.2** The Audit Committee as a whole shall have competence relevant to the NHS sector.

**44. Accounts**

- 44.1** The Trust must keep proper accounts and proper records in relation to the accounts
- 44.2** Monitor may with the approval of the Secretary of State give directions to the Trust as to the content and form of its accounts
- 44.3** The accounts are to be audited by the Trust's auditor
- 44.4** The Trust shall prepare in respect of each financial year annual accounts in such form as Monitor may with the approval of the Secretary of State direct
- 44.5** The functions of the Trust with respect to the preparation of the annual accounts, as set out in paragraph 25 of Schedule 7 of the 2006 Act, shall be delegated to the Accounting Officer.

**45. Annual Report, Forward Plans and Non-NHS Work**

- 45.1** The Trust shall prepare an annual report and send it to Monitor
- 45.2** The Trust shall give information as to its forward planning in respect of each financial year to Monitor
- 45.3** The forward plan shall be prepared by the Directors
- 45.4** In preparing the forward plan, the Directors shall have regard to the views of the Council of Governors
- 45.5** Each forward plan must include information about:
  - 45.5.1** 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
  - 45.5.2** the income it expects to receive from doing so
- 45.6** Where a forward plan contains a proposal that the Trust carry on an activity of a kind mentioned in sub-paragraph 45.5.1 the Council of Governors must:
  - 45.6.1** 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
  - 45.6.2** notify the Directors of the Trust of its determination
- 45.7** A Trust which proposes to increase by 5% or more the proportion of its total income in any financial year attributable to activities other than the provision

of goods and services for the purposes of the health service in England may implement the proposal only if more than half of the members of the Council of governors of the Trust voting approve its implementation.

<b>46. Presentation of the Annual Accounts and Reports to the Governors and Members</b>
---

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

**46.1.1** the annual accounts

**46.1.2** any report of the auditor on them

**46.1.3** the annual report

**46.2** The documents shall also be presented to the members of the Trust at the Annual Members' Meeting by at least one Board Director in attendance

**46.3** The Trust may combine a meeting of the Council of Governors convened for the purposes of sub-paragraph 46.1 with the Annual Members' Meeting.

<b>47. Instruments</b>
------------------------

**47.1** The Trust shall have a seal

**47.2** The seal shall not be affixed except under the authority of the Board of Directors.

<b>48. Amendment of the Constitution</b>
--

**48.1** The Trust may make amendments of its constitution only if:

**48.1.1** more than half of the members of the Council of Governors of the Trust voting approve the amendments, and

**48.1.2** more than half of the members of the Board of Directors of the Trust voting approve the amendments

**48.2** Amendments made under sub-paragraph 48.1 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

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

**48.3.1** at least one member of the Council of Governors must attend the

next Annual Members’ Meeting and present the amendment, and

**48.3.2** the Trust must give the members an opportunity to vote on whether they approve the amendment

If more than half of the members voting approve the amendment, the amendment continues to have effect; otherwise, it ceases to have effect and the Trust must take such steps as are necessary as a result. Actions taken by the Trust under the amended constitution, prior to the amendment ceasing to have effect, remain valid

**48.4** Amendments by the Trust of its constitution are to be notified to Monitor.

**49. Mergers, etc, and Significant Transactions**

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

**49.2** The Trust may enter into a significant transaction only if more than half of the members of the Council of Governors of the Trust voting approve entering into the transaction

**49.3** The definition of “significant transaction” for the purposes of paragraph 49.2 and section 51A of the 2006 Act is set out in Annex 9 paragraph 1.

**50. Indemnities**

**50.1** Members of the Board of Directors, members of the Council of Governors and the Trust Secretary who act honestly and in good faith will not have to meet out of their personal resources any personal civil liability which is incurred in the execution or purported execution of their functions, save where they have acted recklessly. Any costs arising in this way will be met by the Trust

**50.2** The Trust may purchase and maintain insurance against this liability for its own benefit and for the benefit of the Board of Directors, the Council of Governors and the Trust Secretary.



**ANNEX A1: INTERIM DIRECTORS**

1. The Interim Directors shall exercise the functions of the Trust on its behalf until such time as the Board of Directors is appointed in accordance with this constitution
2. The Interim Directors shall comply with this constitution in exercising the functions of the Trust as if they were the Directors
3. This constitution shall apply to the Interim Directors as if they were the Directors
4. Until such time as the Transitional Period Governors are elected, the Appointed Governors shall be responsible for holding the Interim Non-Executive Directors individually and collectively to account for their performance as a Board
5. Before holding a meeting, the Interim Directors must send a copy of the agenda of the meeting to the Appointed Governors. As soon as practicable after holding a meeting, the Interim Directors must send a copy of the minutes of the meeting to the Appointed Governors
6. The Appointed Governors may hold a meeting for the purpose of exercising their general duty to hold the Interim Non-Executive Directors individually and collectively to account for their performance. The Trust Secretary shall, at the request of at least two Appointed Governors, call a meeting of the Appointed Governors and shall provide at least ten (10) days' written notice of any such meeting. The meeting shall be quorate provided that at least three Appointed Governors are in attendance. One of the Interim Non-Executive Directors shall preside at any meeting of the appointed Governors
7. Meetings of the Appointed Governors shall be held in accordance with paragraph 19.2 of the constitution and paragraphs 4.12, 4.13, 4.15, 4.17 and 4.21 of the Standing Orders for the Council of Governors
8. The Appointed Governors shall declare any interests that they may have in accordance with paragraph 22 of the constitution and the Standing Orders for the Council of Governors.

**ANNEX 1: THE PUBLIC CONSTITUENCIES**

(Paragraphs 7.1 and 7.3)

<b>THE PUBLIC CONSTITUENCIES</b>			
<b>Constituency Name</b>	<b>Area of the Constituency</b>	<b>No of Governors to be Elected</b>	<b>Minimum No of Members</b>
Essex Mid & South	The electoral wards covered by: <ul style="list-style-type: none"> <li>• Basildon Borough Council</li> <li>• Braintree District Council</li> <li>• Brentwood Borough Council</li> <li>• Castle Point Borough Council</li> <li>• Chelmsford Borough Council</li> <li>• Maldon District Council</li> <li>• Rochford District Council</li> <li>• Southend on Sea Borough Council</li> <li>• Thurrock Council</li> </ul>	11	60
North East Essex & Suffolk	<ul style="list-style-type: none"> <li>• Colchester Borough Council</li> <li>• Suffolk County Council</li> <li>• Tendring District Council</li> </ul>	5	60
West Essex & Herts	<ul style="list-style-type: none"> <li>• Borough of Broxbourne Council</li> <li>• East Herts District Council</li> <li>• Epping Forrest District Council</li> <li>• Harlow Council</li> <li>• North Herts District Council</li> <li>• Stevenage Borough Council</li> <li>• Uttlesford District Council</li> <li>• Welwyn Hatfield Borough Council</li> </ul>	5	60
Milton Keynes, Bedfordshire & Luton, and Rest of England	<ul style="list-style-type: none"> <li>• Bedford Borough Council</li> <li>• Central Bedfordshire Council</li> <li>• Luton Borough Council</li> <li>• Milton Keynes Council</li> <li>• Any other Council in England unless named in Annex 1 to the Trust's Constitution</li> </ul>	6	60

**ANNEX 2: THE STAFF CONSTITUENCY**

(Paragraph 8.4 and 8.5)

<b>THE STAFF CONSTITUENCIES</b>			
<b>Constituency Name</b>	<b>Area of the Constituency</b>	<b>No of Governors to be Elected</b>	<b>Minimum No of Members</b>
Clinical	<ul style="list-style-type: none"> <li>• Registered medical practitioners and registered dentists</li> <li>• Registered nurses and registered midwives</li> </ul>	3	60
Non-Clinical	<ul style="list-style-type: none"> <li>• Healthcare professionals (not included above)</li> <li>• Social workers</li> <li>• Support staff</li> </ul>	3	60

**ANNEX 3: NOT USED**

**ANNEX 4: COMPOSITION OF COUNCIL OF GOVERNORS**

(Paragraphs 14.2 and 14.3)

<b>Public Governors</b>		<b>27</b>
Essex Mid & South	11	
North East Essex & Suffolk	5	
West Essex & Herts	5	
Milton Keynes, Bedfordshire & Luton, and Rest of England	6	
<b>Staff Governors</b>		<b>6</b>
Clinical	3	
Non-Clinical	3	
<b>Appointed and Partnership Governors</b>		<b>7</b>
Bedford Borough Council and Central Bedfordshire Council (joint appointment)	1	
Essex County Council	1	
Southend Borough Council	1	
Thurrock Council	1	
Anglian Ruskin and Essex Universities (joint appointment)	1	
CVS Essex	1	
Service Users & Carers Forum	1	
<b>Total Council of Governors</b>		<b>40</b>

**ANNEX 4.1: COUNCIL OF GOVERNORS – TENURE**

(Paragraph 1.25 and 16.1)

The term of office for the Transitional Period Governors will commence on the date notified to them by the Trust in writing and shall be for the Terms set out below. Any Transitional Period Governor who is elected to serve a further term of office thereafter will serve a term of office of three years:

<b>Constituency</b>	<b>No of Governors</b>	<b>End of Term</b>
Essex Mid & South	Up to 6	The 6 Governors who poll the highest number of votes will serve a term of office of three years from the date of their appointment
	Up to 5	The 5 Governors who poll the highest number of votes, after the Governors referred to above, will serve a term of office of two years from the date of their appointment
		For those Governors who have been elected unopposed, the length of their term of office will be determined by drawing straws so as to secure that there is an even balance of Governors serving a two and three year term
North East Essex & Suffolk	Up to 3	The 3 Governors who poll the highest number of votes will serve a term of office of three years from the date of their appointment
	Up to 2	The 2 Governors who poll the highest number of votes, after the Governors referred to above, will serve a term of office of two years from the date of their appointment
		For those Governors who have been elected unopposed, the length of their term of office will be determined by drawing straws so as to secure that there is an even balance of Governors serving a two and three year term
West Essex & Herts	Up to 3	The 3 Governors who poll the highest number of votes will serve a term of office of three years from the date of their appointment
	Up to 2	The 2 Governors who poll the highest number of votes, after the Governors referred to above, will serve a term of office of two years from the date of their appointment
		For those Governors who have been elected unopposed, the length of their term of office will be determined by drawing straws so as to secure that there is an even balance of Governors serving a two and three year term
Milton Keynes, Bedfordshire & Luton, and	Up to 3	The 3 Governors who poll the highest number of votes will serve a term of office of three years from the date of their appointment

Rest of England	Up to 3	The 3 Governors who poll the highest number of votes, after the Governors referred to above, will serve a term of office of two years from the date of their appointment
		For those Governors who have been elected unopposed, the length of their term of office will be determined by drawing straws so as to secure that there is an even balance of Governors serving a two and three year term
Staff: Clinical	Up to 2	The 2 Governors who poll the highest number of votes will serve a term of office of three years from the date of their appointment
	Up to 1	The 1 Governor who polls the highest number of votes, after the Governors referred to above, will serve a term of office of two years from the date of their appointment
		For those Governors who have been elected unopposed, the length of their term of office will be determined by drawing straws so as to secure that there is an even balance of Governors serving a two and three year term
Staff: Non-Clinical	Up to 2	The 2 Governors who poll the highest number of votes will serve a term of office of three years from the date of their appointment
	Up to 1	The 1 Governor who polls the highest number of votes, after the Governors referred to above, will serve a term of office of two years from the date of their appointment
		For those Governors who have been elected unopposed, the length of their term of office will be determined by drawing straws so as to secure that there is an even balance of Governors serving a two and three year term

**ANNEX 5: THE MODEL ELECTION RULES**

(Paragraph 15.2)

**MODEL ELECTION RULES 2014**

**PART 1: INTERPRETATION**

1. Interpretation

**PART 2: TIMETABLE FOR ELECTION**

2. Timetable
3. Computation of time

**PART 3: RETURNING OFFICER**

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

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

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

**PART 5: CONTESTED ELECTIONS**

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

*Action to be taken before the poll*

22. List of eligible voters
23. Notice of poll
24. Issue of voting information by returning officer
25. Ballot paper envelope and covering envelope



26. E-voting systems

*The poll*

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

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

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

**PART 6: COUNTING THE VOTES**

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

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

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

**PART 8: DISPOSAL OF DOCUMENTS**

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

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

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

**PART 10: ELECTION EXPENSES AND PUBLICITY**

*Expenses*

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

*Publicity*

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

**PART 11: QUESTIONING ELECTIONS AND IRREGULARITIES**

- 66. Application to question an election

**PART 12: MISCELLANEOUS**

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

## **PART 1: INTERPRETATION**

---

### **1. Interpretation**

1.1 In these rules, unless the context otherwise requires:

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

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

“*Council of Governors*” means the Council of Governors of the corporation;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **PART 2: TIMETABLE FOR ELECTIONS**

---

### **2. Timetable**

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

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

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

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

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

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

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

## **PART 3: RETURNING OFFICER**

---

### **4. Returning Officer**

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

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

### **5. Staff**

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

### **6. Expenditure**

6.1 The corporation is to pay the returning officer:

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

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

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

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

---

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

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

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

- 9.1 Subject to rule 9.2, each candidate must nominate themselves on a single nomination form.
- 9.2 The returning officer:
- (a) is to supply any member of the corporation with a nomination form, and
  - (b) is to prepare a nomination form for signature at the request of any member of the corporation,

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

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

- 10.1 The nomination form must state the candidate's:
- (a) full name
  - (b) contact address in full (which should be a postal address although an e-mail address may also be provided for the purposes of electronic

communication), and

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

## **11. Declaration of interests**

11.1 The nomination form must state:

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

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

## **12. Declaration of eligibility**

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

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

## **13. Signature of candidate**

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

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

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

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

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

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

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

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

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

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

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

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

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

15.2 The statement must show:

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



candidate standing, and

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

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

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

## **16. Inspection of statement of nominated candidates and nomination forms**

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

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

## **17. Withdrawal of candidates**

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

## **18. Method of election**

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

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

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

- (a) the candidates who remain validly nominated are to be declared elected in accordance with Part 7 of these rules, and
- (b) the returning officer is to order a new election to fill any vacancy which remains unfilled, on a day appointed by him or her in consultation with the corporation.

## **PART 5: CONTESTED ELECTIONS**

---

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

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

- (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 and patient constituencies)**

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

- (a) that the voter is the person:
  - (i) to whom the ballot paper was addressed, and/or
  - (ii) to whom the voter ID number contained within the e-voting information was allocated,
- (b) that he or she has not marked or returned any other voting information

- in the election, and
- (c) the particulars of his or her qualification to vote as a member of the constituency or class within the constituency for which the election is being held

(“declaration of identity”)

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

- 21.2 The voter must be required to return his or her declaration of identity with his or her ballot.
- 21.3 The voting information shall caution the voter that if the declaration of identity is not duly returned or is returned without having been made correctly, any vote cast by the voter may be declared invalid.

*Action to be taken before the poll*

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

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

- 22.2 The list is to include, for each member:
- (a) a postal address, and,
  - (b) the member’s e-mail address, if this has been provided

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

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

## **23. Notice of poll**

- 23.1 The returning officer is to publish a notice of the poll stating:
- (a) the name of the corporation

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

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

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

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

("postal voting information").

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

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

("e-voting information").

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

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

for the purposes of the poll.

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

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

## **25. Ballot paper envelope and covering envelope**

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

25.2 The covering envelope is to have:

- (a) the address for return of the ballot paper printed on it, and

(b) pre-paid postage for return to that address.

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

(a) the completed ID declaration form if required, and

(b) the ballot paper envelope, with the ballot paper sealed inside it.

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

26.1 If internet voting is a method of polling for the relevant election then the returning officer must provide a website for the purpose of voting over the internet (in these rules referred to as "the polling website").

26.2 If telephone voting is a method of polling for the relevant election then the returning officer must provide an automated telephone system for the purpose of voting by the use of a touch-tone telephone (in these rules referred to as "the telephone voting facility").

26.3 If text message voting is a method of polling for the relevant election then the returning officer must provide an automated text messaging system for the purpose of voting by text message (in these rules referred to as "the text message voting facility").

26.4 The returning officer shall ensure that the polling website and internet voting system provided will:

(a) require a voter to:

(i) enter his or her voter ID number, and

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

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

(b) specify:

(i) the name of the corporation

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

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

(iv) the names and other particulars of the candidates standing for

election, with the details and order being the same as in the statement of nominated candidates

- (v) instructions on how to vote and how to make a declaration of identity
  - (vi) the date and time of the close of the poll, and
  - (vii) the contact details of the returning officer
- (c) prevent a voter from voting for more candidates than he or she is entitled to at the election
- (d) create a record ("internet voting record") that is stored in the internet voting system in respect of each vote cast by a voter using the internet that comprises of:
- (i) the voter's voter ID number
  - (ii) the voter's declaration of identity (where required)
  - (iii) the candidate or candidates for whom the voter has voted, and
  - (iv) the date and time of the voter's vote
- (e) if the voter's vote has been duly cast and recorded, provide the voter with confirmation of this, and
- (f) prevent any voter from voting after the close of poll.

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

- (a) require a voter to
  - (i) enter his or her voter ID number in order to be able to cast his or her vote, and
  - (ii) where the election is for a public or patient constituency, make a declaration of identity
- (b) specify:
  - (i) the name of the corporation
  - (ii) the constituency, or class within a constituency, for which the election is being held
  - (iii) the number of members of the Council of Governors to be elected from that constituency, or class within that constituency
  - (iv) instructions on how to vote and how to make a declaration of identity
  - (v) the date and time of the close of the poll, and



- (vi) the contact details of the returning officer
- (c) prevent a voter from voting for more candidates than he or she is entitled to at the election
- (d) create a record ("telephone voting record") that is stored in the telephone voting system in respect of each vote cast by a voter using the telephone that comprises of:
  - (i) the voter's voter ID number
  - (ii) the voter's declaration of identity (where required)
  - (iii) the candidate or candidates for whom the voter has voted, and
  - (iv) the date and time of the voter's vote
- (e) if the voter's vote has been duly cast and recorded, provide the voter with confirmation of this
- (f) prevent any voter from voting after the close of poll.

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

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

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

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

*The poll*

**27. Eligibility to vote**

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

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

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

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

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

29.1 If a voter has dealt with his or her ballot paper in such a manner that it cannot be accepted as a ballot paper (referred to as a “spoilt ballot paper”), that voter may apply to the returning officer for a replacement ballot paper.

29.2 On receiving an application, the returning officer is to obtain the details of the unique identifier on the spoilt ballot paper, if he or she can obtain it.

29.3 The returning officer may not issue a replacement ballot paper for a spoilt ballot paper unless he or she:

- (a) is satisfied as to the voter’s identity, and
- (b) has ensured that the completed ID declaration form, if required, has not been returned.

29.4 After issuing a replacement ballot paper for a spoilt ballot paper, the returning officer shall enter in a list (“the list of spoilt ballot papers”):

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

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

- 29.6 On receiving an application, the returning officer is to obtain the details of the voter ID number on the spoilt text message vote, if he or she can obtain it.
- 29.7 The returning officer may not issue a replacement voter ID number in respect of a spoilt text message vote unless he or she is satisfied as to the voter's identity.
- 29.8 After issuing a replacement voter ID number in respect of a spoilt text message vote, the returning officer shall enter in a list ("the list of spoilt text message votes"):
- (a) the name of the voter, and
  - (b) the details of the voter ID number on the spoilt text message vote (if that officer was able to obtain it), and
  - (c) the details of the replacement voter ID number issued to the voter.

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

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

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

- 31.1 If a person applies for replacement voting information under rule 29 or 30 and a declaration of identity has already been received by the returning officer in the name of that voter, the returning officer may not issue replacement voting information unless, in addition to the requirements imposed by rule 29.3 or

30.2, he or she is also satisfied that that person has not already voted in the election, notwithstanding the fact that a declaration of identity if required has already been received by the returning officer in the name of that voter.

- 31.2 After issuing replacement voting information under this rule, the returning officer shall enter in a list (“the list of tendered voting information”):
- (a) the name of the voter
  - (b) the unique identifier of any replacement ballot paper issued under this rule
  - (c) the voter ID number of the voter.

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

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

*Polling by internet, telephone or text*

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

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

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

- 34.1 To cast his or her vote by telephone, the voter will need to gain access to the

telephone voting facility by calling the designated telephone number provided in the voter information using a telephone with a touch-tone keypad.

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

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

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

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

**36. Receipt of voting documents**

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

envelope for the purposes of rules 37 and 38, but must make arrangements to ensure that no person obtains or communicates information as to:

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

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

### **37. Validity of votes**

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

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

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

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

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

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

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

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

or she is to:

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

**38. Declaration of identity but no ballot paper (public and patient constituency)<sup>1</sup>**

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

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

**39. De-duplication of votes**

39.1 Where different methods of polling are being used in an election, the returning officer shall examine all votes cast to ascertain if a voter ID number has been used more than once to cast a vote in the election.

39.2 If the returning officer ascertains that a voter ID number has been used more than once to cast a vote in the election 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

---

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

- (d) place the document or documents in a separate packet, and
- (e) disregard the ballot paper when counting the votes in accordance with these rules.

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

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

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

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

- (a) the disqualified documents, together with the list of disqualified documents inside it
- (b) the ID declaration forms, if required
- (c) the list of spoilt ballot papers and the list of spoilt text message votes,
- (d) the list of lost ballot documents
- (e) the list of eligible voters, and
- (f) the list of tendered voting information

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



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

---

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

STV41.1 In Part 6 of these rules:

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

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

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

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

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

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

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

or

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

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

(a) “first preference” means the figure “1” or any mark or word which clearly indicates a first (or only) preference,

(b) “next available preference” means a preference which is the second, or as the case may be, subsequent preference recorded in consecutive order for a continuing candidate (any candidate who is deemed to be elected or is excluded thereby being ignored); and

(c) in this context, a “second preference” is shown by the figure “2” or any mark or word which clearly indicates a second preference,

and a third preference by the figure “3” or any mark or word which clearly indicates a third preference, and so on,

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

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

“*stage of the count*” means:

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

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

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

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

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

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

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

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

**43. The count**

43.1 The returning officer is to:

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

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

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

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

STV44.1 Any ballot paper:

- (a) which does not bear the features that have been incorporated into the other ballot papers to prevent them from being reproduced
- (b) on which the figure “1” standing alone is not placed so as to indicate a first preference for any candidate
- (c) on which anything is written or marked by which the voter can be identified except the unique identifier, or
- (d) which is unmarked or rejected because of uncertainty

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

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

- STV44.3 Any text voting record:
- (a) on which the figure “1” standing alone is not placed so as to indicate a first preference for any candidate
  - (b) on which anything is written or marked by which the voter can be identified except the unique identifier, or
  - (c) which is unmarked or rejected because of uncertainty

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

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

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

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

- FPP44.1 Any ballot paper:
- (a) which does not bear the features that have been incorporated into the other ballot papers to prevent them from being reproduced
  - (b) on which votes are given for more candidates than the voter is entitled to vote
  - (c) on which anything is written or marked by which the voter can be identified except the unique identifier, or
  - (d) which is unmarked or rejected because of uncertainty

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

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

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

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

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

FPP44.4 The returning officer is to:

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

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

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

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

FPP44.6 Any text voting record:

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

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

FPP44.7 Where the voter is entitled to vote for more than one candidate, a text

voting record is not to be rejected because of uncertainty in respect of any vote where no uncertainty arises, and that vote is to be counted.

FPP448 A text voting record on which a vote is marked:

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

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

FPP44.9 The returning officer is to:

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

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

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

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

**STV45. First stage**

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

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

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

**STV46. The quota**

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

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

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

**STV47. Transfer of votes**

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

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

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

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

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

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

made to two decimal places (ignoring the remainder if any).

- STV47.5 Where at the end of any stage of the count involving the transfer of ballot documents, the number of votes for any candidate exceeds the quota, the returning officer is to sort the ballot documents in the sub-parcel of transferred votes which was last received by that candidate into separate sub-parcels so that they are grouped:
- (a) according to the next available preference given on those ballot documents for any continuing candidate, or
  - (b) where no such preference is given, as the sub-parcel of non-transferable votes.
- STV47.6 The returning officer is, in accordance with this rule and rule STV48, to transfer each sub-parcel of ballot documents referred to in rule STV47.5(a) to the candidate for whom the next available preference is given on those ballot documents.
- STV47.7 The vote on each ballot document transferred under rule STV47.6 shall be at:
- (a) a transfer value calculated as set out in rule STV47.4(b), or
  - (b) at the value at which that vote was received by the candidate from whom it is now being transferred
- whichever is the less.
- STV47.8 Each transfer of a surplus constitutes a stage in the count.
- STV47.9 Subject to rule STV47.10, the returning officer shall proceed to transfer transferable ballot documents until no candidate who is deemed to be elected has a surplus or all the vacancies have been filled.
- STV47.10 Transferable ballot documents shall not be liable to be transferred where any surplus or surpluses which, at a particular stage of the count, have not already been transferred, are:
- (a) less than the difference between the total vote then credited to the continuing candidate with the lowest recorded vote and the vote of the candidate with the next lowest recorded vote, or
  - (b) less than the difference between the total votes of the two or more continuing candidates, credited at that stage of the count with the lowest recorded total numbers of votes and the candidate next above such candidates.
- STV47.11 This rule does not apply at an election where there is only one



vacancy.

**STV48. Supplementary provisions on transfer**

- STV48.1 If, at any stage of the count, two or more candidates have surpluses, the transferable ballot documents of the candidate with the highest surplus shall be transferred first, and if:
- (a) The surpluses determined in respect of two or more candidates are equal, the transferable ballot documents of the candidate who had the highest recorded vote at the earliest preceding stage at which they had unequal votes shall be transferred first, and
  - (b) the votes credited to two or more candidates were equal at all stages of the count, the returning officer shall decide between those candidates by lot, and the transferable ballot documents of the candidate on whom the lot falls shall be transferred first.
- STV48.2 The returning officer shall, on each transfer of transferable ballot documents under rule STV47:
- (a) record the total value of the votes transferred to each candidate
  - (b) add that value to the previous total of votes recorded for each candidate and record the new total
  - (c) record as non-transferable votes the difference between the surplus and the total transfer value of the transferred votes and add that difference to the previously recorded total of non-transferable votes, and
  - (d) compare:
    - (i) the total number of votes then recorded for all of the candidates, together with the total number of non-transferable votes, with
    - (ii) the recorded total of valid first preference votes.
- STV48.3 All ballot documents transferred under rule STV47 or STV49 shall be clearly marked, either individually or as a sub-parcel, so as to indicate the transfer value recorded at that time to each vote on that ballot document or, as the case may be, all the ballot documents in that sub-parcel.
- STV48.4 Where a ballot document is so marked that it is unclear to the returning officer at any stage of the count under rule STV47 or STV49 for which candidate the next preference is recorded, the returning officer shall treat any vote on that ballot document as a non-transferable vote; and

votes on a ballot document shall be so treated where, for example, the names of two or more candidates (whether continuing candidates or not) are so marked that, in the opinion of the returning officer, the same order of preference is indicated or the numerical sequence is broken.

**STV49. Exclusion of candidates**

STV49.1 If:

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

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

STV9.2 The returning officer shall sort all the ballot documents on which first preference votes are given for the candidate or candidates excluded under rule STV49.1 into two sub-parcels so that they are grouped as:

- (a) ballot documents on which a next available preference is given, and
- (b) ballot documents on which no such preference is given (thereby including ballot documents on which preferences are given only for candidates who are deemed to be elected or are excluded).

STV49.3 The returning officer shall, in accordance with this rule and rule STV48, transfer each sub-parcel of ballot documents referred to in rule STV49.2 to the candidate for whom the next available preference is given on those ballot documents.

STV49.4 The exclusion of a candidate, or of two or more candidates together, constitutes a further stage of the count.

STV49.5 If, subject to rule STV50, one or more vacancies still remain to be filled, the returning officer shall then sort the transferable ballot documents, if any, which had been transferred to any candidate excluded under rule STV49.1 into sub- parcels according to their transfer value.

STV49.6 The returning officer shall transfer those ballot documents in the sub-parcel of transferable ballot documents with the highest transfer value

to the continuing candidates in accordance with the next available preferences given on those ballot documents (thereby passing over candidates who are deemed to be elected or are excluded).

- STV49.7 The vote on each transferable ballot document transferred under rule STV49.6 shall be at the value at which that vote was received by the candidate excluded under rule STV49.1.
- STV9.8 Any ballot documents on which no next available preferences have been expressed shall be set aside as non-transferable votes.
- STV49.9 After the returning officer has completed the transfer of the ballot documents in the sub-parcel of ballot documents with the highest transfer value he or she shall proceed to transfer in the same way the sub-parcel of ballot documents with the next highest value and so on until he has dealt with each sub-parcel of a candidate excluded under rule STV49.1.
- STV49.10 The returning officer shall after each stage of the count completed under this rule:
- (a) record:
    - (i) the total value of votes, or
    - (ii) the total transfer value of votes transferred to each candidate
  - (b) add that total to the previous total of votes recorded for each candidate and record the new total
  - (c) record the value of non-transferable votes and add that value to the previous non-transferable votes total, and
  - (d) compare:
    - (i) the total number of votes then recorded for each candidate together with the total number of non-transferable votes, with
    - (ii) the recorded total of valid first preference votes.
- STV49.11 If after a transfer of votes under any provision of this rule, a candidate has a surplus, that surplus shall be dealt with in accordance with rules STV47.5 to STV47.10 and rule STV48.
- STV49.12 Where the total of the votes of the two or more lowest candidates, together with any surpluses not transferred, is less than the number of votes credited to the next lowest candidate, the returning officer shall in

one operation exclude such two or more candidates.

- STV49.13 If when a candidate has to be excluded under this rule, two or more candidates each have the same number of votes and are lowest:
- (a) regard shall be had to the total number of votes credited to those candidates at the earliest stage of the count at which they had an unequal number of votes and the candidate with the lowest number of votes at that stage shall be excluded, and
  - (b) where the number of votes credited to those candidates was equal at all stages, the returning officer shall decide between the candidates by lot and the candidate on whom the lot falls shall be excluded.

**STV50. Filling of last vacancies**

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

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

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

**STV51. Order of election of candidates**

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

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

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

candidate who had the greatest number of votes at that stage shall be deemed to be the largest.

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

**FPP51. Equality of votes**

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

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

---

**FPP52. Declaration of result for contested elections**

FPP52.1 In a contested election, when the result of the poll has been ascertained, the returning officer is to:

- (a) declare the candidate or candidates whom more votes have been given than for the other candidates, up to the number of vacancies to be filled on the Council of Governors from the constituency, or class within a constituency, for which the election is being held to be elected,
- (b) give notice of the name of each candidate who he or she has declared elected:
  - (i) where the election is held under a proposed constitution pursuant to powers conferred on Essex Partnership University 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 whom he or she has declared elected.

FPP52.2 The returning officer is to make:

- (a) the total number of votes given for each candidate (whether elected or not), and
- (b) the number of rejected ballot papers under each of the headings

in rule FPP44.5

- (c) the number of rejected text voting records under each of the headings in rule FPP44.10

available on request.

**STV52. Declaration of result for contested elections**

- STV52.1 In a contested election, when the result of the poll has been ascertained, the returning officer is to:
- (a) declare the candidates who are deemed to be elected under Part 6 of these rules as elected
  - (b) give notice of the name of each candidate who he or she has declared elected:
    - (i) where the election is held under a proposed constitution pursuant to powers conferred on Essex Partnership University 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
  - (f) the number of rejected text voting records under each of the headings in rule STV44.3

available on request.

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

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

candidates from the election:

- (a) declare the candidate or candidates remaining validly nominated to be elected
- (b) give notice of the name of each candidate who he or she has declared elected to the 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, and
- (d) the list of eligible voters

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

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

- (a) its contents
- (b) the date of the publication of notice of the election
- (c) the name of the corporation to which the election relates, and

- (d) the constituency, or class within a constituency, to which the election relates.

**55. Delivery of documents**

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

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

56.1 Where:

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

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

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

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

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

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

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

58.1 The corporation may not allow:

- (a) the inspection of, or the opening of any sealed packet containing:
  - (i) any rejected ballot papers, including ballot papers rejected in part



- (ii) any rejected text voting records, including text voting records rejected in part
  - (iii) any disqualified documents, or the list of disqualified documents
  - (iv) any counted ballot papers, internet voting records, telephone voting records or text voting records, or
  - (v) the list of eligible voters, or
- (b) access to or the inspection of the complete electronic copies of the internet voting records, telephone voting records and text voting records created in accordance with rule 26 and held in a device suitable for the purpose of storage

by any person without the consent of the Board of Directors of the corporation.

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

58.3 The Board of Directors of the corporation's consent may be on any terms or conditions that it thinks necessary, including conditions as to:

- (a) persons
- (b) time
- (c) place and mode of inspection
- (d) production or opening

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

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

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

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

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

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

---

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

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

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

FPP59.7 Once the documents relating to the poll have been sealed up and endorsed pursuant to rules FPP59.4 to FPP59.6, the returning officer is to deliver them to the Chairman of the corporation, and rules 57 and 58 are to apply.

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

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

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

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

**PART 10: ELECTION EXPENSES AND PUBLICITY**

---

*Election expenses*

**60. Election expenses**

60.1 Any expenses incurred, or payments made, for the purposes of an election which contravene this Part are an electoral irregularity, which may only be

questioned in an application made to Monitor under Part 11 of these rules.

**61. Expenses and payments by candidates**

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

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

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

62.1 No person may:

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

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

*Publicity*

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

63.1 The corporation may:

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

as it considers necessary.

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

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

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

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

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

64.2 The information must consist of:

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

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

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

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

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

---

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

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

## **PART 12: MISCELLANEOUS**

---

### **67. Secrecy**

- 67.1 The following persons:
- (a) the returning officer
  - (b) the returning officer's staff

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

- (i) the name of any member of the corporation who has or has not been given voting information or who has or has not voted,
  - (ii) the unique identifier on any ballot paper,
  - (iii) the voter ID number allocated to any voter,
  - (iv) the candidate(s) for whom any member has voted.
- 67.2 No person may obtain or attempt to obtain information as to the candidate(s) for whom a voter is about to vote or has voted, or communicate such information to any person at any time, including the unique identifier on a ballot paper given to a voter or the voter ID number allocated to a voter.
- 67.3 The returning officer is to make such arrangements as he or she thinks fit to ensure that the individuals who are affected by this provision are aware of the duties it imposes.

### **68. Prohibition of disclosure of vote**

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

### **69. Disqualification**

- 69.1 A person may not be appointed as a returning officer, or as staff of the returning officer pursuant to these rules, if that person is:
- (a) a member of the corporation
  - (b) an employee of the corporation
  - (c) a Director of the corporation, or
  - (d) employed by or on behalf of a person who has been nominated for

election.

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

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

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

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



<b>ANNEX 6: ADDITIONAL PROVISIONS – COUNCIL OF GOVERNORS</b>
--

(Paragraphs 17.3, 18.2 and 24.1)

## **1. Roles and Responsibilities of the Council of Governors**

The roles and responsibilities of the Council of Governors which are to be carried out in accordance with the constitution, the Trust's licence and Monitor's *NHS Foundation Trust Code of Governance* include:

### **1.1 General Duties**

- 1.1.1 to hold the Non-Executive Directors individually and collectively to account for the performance of the Board of Directors, including ensuring that the Board of Directors acts so that the Trust does not breach the terms of its licence. "Holding the Non-Executive Directors to account" includes scrutinising how well the Board is working, challenging the Board in respect of its effectiveness, and asking the Board to demonstrate that it has sufficient quality assurance in respect of the overall performance of the Trust, questioning Non-Executive Directors about the performance of the Board and of the Trust and making sure to represent the interests of the Trust's members and of the public in doing so
- 1.1.2 to represent the interests of the members of the Trust and the interests of the public

### **2.1 Non-Executive Directors, Chief Executive and Auditor**

- 2.1.1 to approve the policies and procedures for the appointment and removal of the Chair and Non-Executive Directors on the recommendation of the Nomination Committee of the Council of Governors
- 2.1.2 to appoint the Chair and Non-Executive Directors
- 2.1.3 to remove the Chair and the Non-Executive Directors. However, the Council should only exercise its power to remove the Chair or any Non-Executive Directors after exhausting all means of engagement with the Board
- 2.1.4 to approve the policies and procedures for the appraisal of the Chair, and Non-Executive Directors on the recommendation of the remuneration committee of the Council of Governors. All Non-Executive Directors should be submitted for re-appointment at regular intervals. The performance of Executive Directors should be subject to regular appraisal and review. The Council of Governors

should ensure planned and progressive refreshing of the Non-Executive Directors

- 2.1.5** to decide the remuneration of Non-Executive Directors and the Chair and to approve changes to the remuneration, allowances and other terms of office for the Chair and the Non-Executive Directors having regard to the recommendations of the Remuneration Committee of the Council of Governors
- 2.1.6** to approve the appointment of the Chief Executive of the Trust
- 2.1.7** to approve the criteria for the appointment, removal and reappointment of the auditor
- 2.1.8** to appoint, remove and reappoint the auditor, having regards to the recommendation of the Audit Committee

### **3.1 Strategy Planning**

- 3.1.1** to provide feedback to the Board of Directors on the development of the strategic direction of the Trust, as appropriate
- 3.1.2** to collaborate with the Board of Directors in the development of the forward plan
- 3.1.3** where the forward plan contains a proposal that the Trust will carry out activities other than the provision of goods and services for the purposes of the NHS in England, to 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 notify its determination to the Board of Directors
- 3.1.4** where the Trust proposes to increase by 5% or more the proportion of its total income in any financial year attributable to activities other than the provision of goods and services for the purposes of the NHS in England, approve such a proposal
- 3.1.5** to approve the entering into of any significant transaction (as defined in this constitution) in accordance with the 2006 Act and the constitution
- 3.1.6** to approve proposals from the Board of Directors for merger, acquisition, dissolution or separation in accordance with 2006 Act and the constitution

**3.1.7** when appropriate, to make recommendations for the revision of the constitution and approve any amendments to the constitution in accordance with the 2006 Act and the constitution

**3.1.8** to receive the Trust's annual accounts, any report of the auditor on them, and the annual report at a general meeting of the Council of Governors

#### **4.1 Representing Members and the Public**

**4.1.1** to prepare and from time to time review the Trust's membership engagement strategy and policy

**4.1.2** to notify Monitor, via the Lead Governor, if the Council is concerned that the Trust is at risk of breaching the terms of its licence, and if these concerns cannot be resolved at local level

**4.1.3** to report to the members annually on the performance of the Council of Governors

**4.1.4** to promote membership of the Trust and contribute to opportunities to recruit members in accordance the membership strategy

**4.1.5** to seek the views of stakeholders and feed back to the Board of Directors.

(Paragraphs 17.3 and 24.1)

#### **4. Eligibility to be a Governor**

**4.1** A person may not become a Governor of the Trust, and if already holding such office will immediately cease to do so, if:

**4.1.1** he is an Executive Director of the Trust, or a Governor or an Executive Director of a health service body

**4.1.2** he is the spouse, partner, parent or child of a member of the Board of Directors for the Trust

**4.1.3** he is the subject of a disqualification order made under the Company Directors Disqualification Act 1986

**4.1.4** he is subject to a Sexual Offenders Order under the Sexual Offences Act 2003

- 4.1.5 he is included in any barred list established under the Safeguarding Vulnerable Adults Act 2006 or any equivalent list maintained under the laws of Scotland or Northern Ireland
- 4.1.6 he is undergoing a period of disqualification from a statutory health or social care register
- 4.1.7 he has been disqualified from being a member of a relevant authority under the provisions of the Local Government Act 2000
- 4.1.8 he has been dismissed, otherwise than by reason of redundancy or ill health, from any paid employment with a health service body
- 4.1.9 he is a vexatious complainant as determined in accordance with the Trust's complaints procedure
- 4.1.10 within the twelve months prior to his nomination for election or appointment to the Council of Governors, he has resigned as a member of the Council of Governors
- 4.1.11 he has been employed by the Trust in the previous 12 months.

(Paragraph 17)

## **5. Termination of Office and Removal of Governors**

- 5.1 A person holding office as a Governor shall cease to do so if:
  - 5.1.1 he resigns by notice in writing to the Trust Secretary
  - 5.1.2 in the case of an elected Governor, he ceases to be member of the area of the constituency or class of the constituency by which he was elected
  - 5.1.3 in the case of an appointed or partnership Governor, the appointing organisation terminates the appointment of the individual
  - 5.1.4 he consistently and unjustifiably fails to attend the meetings of the Council of Governors in line with the Governor attendance policy as agreed by the Council of Governors
  - 5.1.5 he has refused without reasonable cause to undertake any training which the Trust requires all Governors to undertake
  - 5.1.6 he has failed to sign and deliver to the Trust Secretary a statement in the form required confirming acceptance of the code of conduct for Governors
  - 5.1.7 he has committed a serious breach of the code of conduct for Governors or fails to abide by the Council of Governors standing

orders

- 5.1.8 he has acted in a manner detrimental to the interests of the Trust
  - 5.1.9 he has expressed opinions which are incompatible with the values of the Trust
  - 5.1.10 he is incapable by reason of mental disorder, illness or injury of managing and administering his property and affairs
- 5.2 Governors who are to be removed under any of the grounds set out in paragraph 5.1 above (with the exception of sub-paragraph 5.1.1 – 5.1.3) above shall be removed from the Council of Governors by a resolution approved by the majority of the remaining Governors present and voting
- 5.3 There shall be a working group/committee of the Council of Governors whose function shall be to:
- 5.3.1 receive and consider concerns about the conduct of any governor and/or
  - 5.3.2 consider whether there are grounds to remove a Governor from office
- and to make recommendations to the Council of Governors. Membership of the working group/committee shall be determined from time to time
- 5.4 If the Council of Governors receives a complaint in writing about any Governor or is asked to consider whether an individual is eligible to become or remain a Governor, the working group shall investigate the matter and make a recommendation to the Council of Governors, which may include a recommendation that a Governor is removed from office pursuant to paragraph 5.2 above
- 5.5 The Council of Governors may decide that whilst the working group is carrying out its investigation, the Governor concerned shall be suspended from office. Suspension is a neutral act and any decision to suspend the Governor concerned shall not be seen as an indicator of, or have any bearing on, the eventual recommendation of the working group
- 5.6 If the Council of Governors decides to terminate a Governor's tenure of office pursuant to paragraph 5.2 above, the Governor may apply in writing to the Council of Governors within seven (7) days of the date of the decision, for the decision to be referred to an independent assessor
- 5.7 The decision of the Council of Governors to terminate the tenure of office of the Governor concerned shall not take effect until the later of:
- 5.7.1 seven (7) days after the date of decision; or

- 5.7.2 where the Governor applies for the decision to be referred to an independent assessor in accordance with paragraph 5.6 above, the date on which the independent assessor determines the matter
- 5.8 The Governor shall be suspended from office (if he/ she has not already been suspended from office pursuant to paragraph 5.5 above) with effect from the date of the Council of Governors' decision until the later of the two dates set out in paragraph 5.7 above
- 5.9 On receipt of an application under paragraph 5.6 above the Council of Governors and the applicant Governor will co-operate in good faith to agree on the appointment of the independent assessor. If the parties fail to agree on the identity of the independent assessor within twenty-one (21) days of the date upon which the application is received by the Council of Governors, then the Council of Governors shall request the Chartered Institute of Arbitrators to nominate an independent assessor
- 5.10 The independent assessor will consider the evidence and conclude whether the decision to remove the Governor was reasonable or otherwise
- 5.11 The independent assessor's decision will be binding on the parties. If the independent assessor finds that the decision of the Council of Governors to remove the governor was not reasonable, the decision of the Council of Governors will be rescinded
- 5.12 The Trust shall bear the independent assessor's costs unless the independent assessor determines that such costs shall be shared between the Trust and the Governor.

**ANNEX 7: STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE COUNCIL OF GOVERNORS**

(Paragraph 19.1 and 20)

**ANNEX 8: STANDING ORDERS FOR THE PRACTICE AND PROCEDURE OF THE BOARD OF DIRECTORS**

(Paragraph 35)



<b>ANNEX 9 – FURTHER PROVISIONS</b>
-------------------------------------

(Paragraph 49)

## 1. SIGNIFICANT TRANSACTIONS

- 1.1 In accordance with section 51A of the National Service Act 2006, the Trust may enter into a Significant Transaction only if more than half of the members of the Council of Governors of the Trust voting approve entering into the transaction
- 1.2 For the purpose of this paragraph 1 and subject to paragraph 1.4 below, “Significant Transaction” means a “transaction” as defined in paragraph 1.3 below which meets any one of the following tests:
- 1.2.1 the assets which are the subject of the transaction exceed 25% of the total fixed assets of the Trust (Asset Test); or
- 1.2.2 the income of the Trust will increase or decrease by more than 25% following the completion of the relevant transaction (Income Test); or
- 1.2.3 the gross capital of the company or business being acquired or divested represents more than 25% of the total 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) (Gross Capital Test); or
- 1.2.4 the Asset Test, the Income Test and the Gross Capital Test are not satisfied but the transaction, in the reasonable opinion of the Board of Directors:
- (a) would impact on the manner in which health services are delivered by the Trust and/or the range of health services the Trust delivers; or
- (b) exceeds a total value of £10,000,000 (£10 million) and has an overall risk rating which in the reasonable opinion of the Board of Directors is considered to be significant. The Board of Directors will assess the significance of the overall risk of the transaction against the applicable Trust’s own risk management framework in force at the time the risk assessment is conducted by the Boards of Directors
- 1.3 “Transaction” means any agreement (including an amendment to an agreement) entered into by the Trust in respect of a merger, demerger, joint venture, divestment, or any other arrangement for the acquisition, disposal or delivery of health services, but, for the avoidance of doubt, it does not include:

- 1.3.1 an agreement entered into or changes to the health services carried out by the Trust following a reconfiguration of the health services led by the commissioners of such health services; or
- 1.3.2 a grant of public dividend capital or the entering into a working capital facility or other loan, which does not involve the acquisition or disposal of any fixed asset of the trust
- 1.3.3 For the purpose of this paragraph 1.3 the following definitions apply:
  - (a) “merger” means a transaction that involves one organisation acquiring the assets and liabilities of another, either wholly or in part;
  - (b) “demerger” means a transaction that involves the disaggregation of a single corporate body into two or more new corporate bodies;
  - (c) “joint venture” means a transaction involving an agreement between two or more parties to undertake economic activity together. This may take the form of a contractual joint venture or the parties may set up a corporate body; and
  - (d) “divestment” means a transaction that involves the disposal, in whole or in part, of an organisation’s business, services or assets and liabilities
- 1.4 A transaction is not a Significant Transaction if it is:
  - 1.4.1 a transaction which is a statutory merger, acquisition, separation or dissolution under sections 56, 56A, 56B or 57A of the National Health Service Act 2006; or
  - 1.4.2 a transaction in the ordinary course of current business from time to time (including the expiry, termination, renewal, extension of, or the entering into an agreement in respect of the health services carried out by the Trust).

(Paragraphs 6.2 and 12.4)

## **2. TERMINATION OF MEMBERSHIP**

- 2.1 A member shall not become or continue to be a member if:
  - 2.1.1 it is discovered that in the five years prior to the individual’s application for membership of the Trust or during the period of his/ her membership of the Trust, he/ she has been involved as a perpetrator in a serious incident of assault or violence, or in one or more incidents of harassment, against:
    - a) any of the Trust’s employees or other persons who exercise

functions for the purpose of the Trust, or against any volunteers; or

- b) any employee of another health service body or any person who exercises functions for the purposes of another health service body or against any person who volunteers with another health service body; or
- c) any service user or carer or visitor to the Trust or any service user, carer or visitor to any other health service body

2.1.2 he has been excluded from the Trust's premises within the previous five years

2.1.3 he is expelled from membership by resolution of the Council of Governors

2.1.4 he ceases to be eligible under this constitution to be a member

2.1.5 he dies

2.2 It is the responsibility of each member to ensure their eligibility at all times and not the responsibility of the Trust to do so on their behalf. A member who becomes aware of their ineligibility shall inform the Trust as soon as practicable and the name of that person shall be removed from the Register of Members

2.3 Where the Trust has reason to believe that a member ceases to be eligible for membership or their membership can be terminated under this constitution, the Trust Secretary shall carry out reasonable enquiries to establish if this is the case.

## **ANNEX 10: ANNUAL MEMBERS' MEETING**

(Paragraphs 13 and 46)

### **1. Interpretation**

- 1.1. Save as permitted by law, the Chair shall be the final authority on the interpretation of these standing orders (on which he shall be advised by the Chief Executive and the Trust Secretary)

### **2. General Information**

- 2.1. The purpose of the standing orders for Annual Members' Meetings is to ensure that the highest standards of corporate governance and conduct are applied to all Annual Members' Meetings
- 2.2. All business shall be conducted in the name of the Trust

### **3. Attendance**

- 3.1. Each member shall be entitled to attend an Annual Members' Meeting

### **4. Meetings in Public**

- 4.1. Meetings of the Annual Members' Meetings must be open to the public subject to the provisions of paragraph 4.2 below
- 4.2. The Chair may exclude any member of the public from an Annual Members' Meeting if he is interfering with or preventing the reasonable conduct of the meeting
- 4.3. Annual Members' Meetings shall be held annually at such times and places as the Chair may determine

### **5. Notice of Meetings**

- 5.1. Before each Annual Members' Meeting, a notice of the meeting, specifying the business proposed to be transacted at it, and signed by the Chair, or by an officer of the Trust authorised by the Chair to sign on his behalf, shall be served upon every member at least 10 clear days before the meeting and posted on the Trust's website and displayed at its headquarters
- 5.2. The Annual Report and Accounts shall be circulated to Governors and published on the website at the earliest and appropriate opportunity. Copies of the Annual Report and Accounts shall be sent to any member upon written request to the Trust Secretary and shall be available for inspection by a member free of charge at the place of the meeting

**6. Setting the Agenda**

- 6.1. The Chair shall determine the agenda for Annual Members' Meetings which must include the business required by the Act

**7. Chair of Annual Members' Meetings**

- 7.1. The Chair, if present, shall preside. If the Chair is absent from the meeting, the Vice-Chair shall preside. If neither the Chair nor Vice-Chair is present the Directors and Governors shall elect one of their number to act as Chair

**8. Chair's Ruling**

- 8.1. Statements of members made at Annual Members' Meetings shall be relevant to the matter under discussion at the material time and the decision of the Chair of the meeting on questions of order, relevancy, regularity and any other matters shall be final

**9. Voting**

- 9.1. Decisions at meetings shall be determined by a majority of the votes of the members present and voting. In the case of any equality of votes, the person presiding shall have a second or casting vote subject to the Act
- 9.2. All decisions put to the vote shall, at the discretion of the Chair of the meeting, be determined by oral expression or by a show of hands
- 9.3. In no circumstances may an absent member vote by proxy

**10. Suspension of Standing Orders**

- 10.1. Except where this would contravene any statutory provision, any one or more of these standing orders may be suspended at an Annual Members' Meeting, provided that a majority of members present vote in favour of suspension
- 10.2. A decision to suspend the standing orders shall be recorded in the minutes of the meeting
- 10.3. A separate record of matters discussed during the suspension of the standing orders shall be made and shall be available to the members
- 10.4. No formal business may be transacted while the standing orders are suspended
- 10.5. The Trust's Audit Committee shall review every decision to suspend the standing orders

**11. Variation and Amendment of Standing Orders**

- 11.1. These standing orders may be amended in accordance with paragraph 48 of

the constitution

**12. Record of Attendance**

- 12.1. The Trust Secretary shall keep a record of the names of the members present at an Annual Members' Meeting

**13. Minutes**

- 13.1. The minutes of the proceedings of an Annual Members' Meeting shall be drawn up and maintained as a public record. They will be submitted for agreement at the next Annual Members' Meeting where they will be signed by the person presiding at it
- 13.2. No discussion shall take place upon the minutes except upon their accuracy or where the Chair considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the meeting
- 13.3. The minutes of an Annual Members' Meeting shall be made available to the public on the Trust's website

**14. Quorum**

- 14.1. No business shall be transacted at an Annual Members' Meeting unless at least 20 members are present.