



**Moorfields  
Eye Hospital**  
NHS Foundation Trust



**MOORFIELDS EYE HOSPITAL NHS  
FOUNDATION TRUST  
CONSTITUTION**

**December 2019**

# Constitution of the Moorfields Eye Hospital NHS Foundation Trust

## CONTEXT OF THE CONSTITUTION

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

## 1 DEFINITIONS AND INTERPRETATION

- 1.1 Unless the contrary intention appears or the context otherwise requires, words or expressions contained in this Constitution bear the same meaning as in the 2006 Act.
- 1.2 References in this Constitution to legislation include all amendments, replacements, or re-enactments made.
- 1.3 Headings are for ease of reference only and are not to affect interpretation.
- 1.4 Any reference to any organisation shall include a reference to any successor in title or any organisation or entity which has taken over its functions or responsibilities.
- 1.5 In this Constitution:

**"the 2006 Act"** – means the National Health Service Act 2006 (as amended);

**"the 2012 Act"** – means the Health and Social Care Act 2012;

**"Accounting Officer"** – means the person who from time to time discharges the functions specified in paragraph 25(5) of Schedule 7 to the 2006 Act;

**"Annual Accounts"** – means those accounts prepared by the Trust pursuant to paragraph 25 of Schedule 7 to the 2006 Act;

**"Annual General Meeting"** – has the meaning ascribed to it in paragraph 14.1 of the Constitution;

**"Annual Plan"** – means the document prepared by the Trust pursuant to paragraph 27 of Schedule 7 to the 2006 Act;

**"Annual Report"** – means a report prepared by the Trust pursuant to paragraph 26 of Schedule 7 to the 2006 Act;

**"Appointed Governor"** – means a Local Authority Governor, or an Other Partnership Governor;

**"Associate Director"** – means an officer of the Trust appointed as such by the Chief Executive who may attend meetings of the Board of Directors. For the avoidance of doubt, Associate

Directors are not members of the Board of Directors, and are not entitled to vote; they may however, subject to the discretion and control of the Chairman, attend and speak at meetings of the Board of Directors;

**"Auditor"** – means the Auditor of the Trust appointed by the Membership Council pursuant to paragraph 17 of the Constitution;

**"Audit and Risk Committee"** – means a committee of the Board of Directors as established pursuant to paragraph 5.6 of the Constitution;

**"Board of Directors"** – means the Board of Directors of the Trust as constituted in accordance with this Constitution;

**"Carer"** – means an individual who provides or was providing a substantial amount of care to a Patient, other than an individual providing care in pursuance of a contract (including a contract of employment), or as a volunteer for a Voluntary Organisation, and who attended a Trust Premises with a Patient;

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

**"Chief Executive"** – means the Chief Executive Officer of the Trust;

**"Chief Financial Officer"** – means the Chief Financial Officer of the Trust and the finance director for the purposes of Paragraph 16(1) of Schedule 7 of the 2006 Act;

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

**"Deputy Chief Executive"** – means an Executive Director appointed pursuant to paragraph 8.8.10 of this Constitution;

**"Director"** – means a member of the Board of Directors and for the avoidance of doubt includes Executive Directors and Non-Executive Directors, but does not include Associate Directors;

**"Director's Code of Conduct"** – means the Code of Conduct for Directors of the Trust, as amended from time to time by the Board of Directors, to which all Directors must subscribe to;

**"Elected Governor"** – means a Patient Governor, a Staff Governor, or a Public Governor;

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

**"External Auditor"** – means any person other than the Auditor appointed by the Board of Directors to review and report upon any aspect of the Trust's performance;

**"Financial Year"** – means:

- (a) the period beginning with the date on which the Trust is authorised and ending with the next 31st March; and
- (b) each successive period of twelve months beginning with 1st April;

**"General Meeting"** – means a formal meeting of the Membership Council convened in accordance with the Standing Orders for the Membership Council as provided in Annex 3 of this Constitution and references to "meeting(s)" shall where the context permits be construed accordingly.

**"Governor"** – means a member of the Membership Council;

**"Governor's Code of Conduct"** – means the Code of Conduct for Governors of the Foundation Trust, as amended from time to time by the Board of Directors (following consultation with the Membership Council), which all Governors must subscribe to;

**"Health Overview and Scrutiny Committee"** – means a local authority overview and scrutiny committee established pursuant to Section 21 of the Local Government Act 2000;

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

**"Immediate Family Member"** – means, in relation to any person (the "Person"), either:

- (a) a spouse;
- (b) a person whose status is that of "Civil Partner" as defined in the Civil Partnerships Act 2004;
- (c) child, step child or adopted child of the Person or any other person who in relation the Person falls within subparagraphs (a) or (b) above, who have not attained the age of 18;
- (d) a parent; or
- (e) any other person (whether of the same sex or not) with whom the Person lives as a partner in an enduring family relationship;

**"Institute of Ophthalmology"** – means the Institute of Ophthalmology currently of 11-43 Bath Street, London EC1V 9EL;

**"Local Authority Governor"** – means a member of the Membership Council appointed pursuant to paragraph 8.12 of the Constitution by one or more local authorities whose area includes the whole or part of the Area of the Trust;

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

**"Membership Council"** – has the same meaning as the "Council of Governors" in paragraph 7 of Schedule 7 to the 2006 Act as constituted in accordance with this Constitution and hereafter known as the Membership Council;

**"Model Rules for Elections"** – means the election rules set out in Annex 5 of the Constitution;

**"Monitor"** – is the corporate body known as Monitor, as provided by Section 61 of the 2012 Act;

**"NHS Foundation Trust Code of Governance"** – means the best practice advice published by Monitor on 10 March 2010, and as may be amended, varied or replaced by Monitor from time to time;

**"Nominations Committee for the Executive Directors"** – means the committee of the Chairman, the Chief Executive and the other Non-Executive Directors established to appoint the Executive Directors;

**"Nominations Committee for the Non-Executive Directors"** – means the committee of the Membership Council established from time to time to assist the Governors in connection with the appointment of Non-Executive Directors;

**"Non-Executive Director"** – means a non-executive member of the Board of Directors of the Trust;

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

**"Other Partnership Governor"** – means a member of the Membership Council appointed by a Partnership Organisation other than a Primary Care Trust or a Local Authority;

**"Partnership Organisation"** – means an organisation that may appoint Other Partnership Governors and which is listed at paragraph 8.5 of the Constitution;

**"Patient"** – means an individual who has attended and received treatment at any Trust Premises in that capacity in the period since 1 April 2000;

**"Patient Constituency"** – has the meaning ascribed to it in paragraph 6.4.9 of this Constitution;

**"Patient Governor"** – means a member of the Membership Council elected by the members of the Patient Constituency;

**"Protocol for Meetings"** – means the document titled 'Principles relating to information in public and confidential sessions of Board meetings' as agreed from time to time between the Membership Council and the Board of Directors;

**"Public Constituency"** – has the meaning ascribed to it in paragraph 6.3 of this Constitution;

**"Public Governor"** – means a member of the Membership Council elected by the members of one of the public constituencies;

**"Registered Medical Practitioner"** – means a fully registered person within the meaning of the Medical Act 1983 who holds a license to practice under that Act;

**"Registered Nurse"** – means a fully registered person within the meaning of the Nurse and

Midwifery Order 2001 (SI 2002/253);

**"Secretary"** – means the Secretary of the Trust or any other person or body corporate appointed to perform the duties of the Secretary of the Trust, including a joint, assistant or deputy secretary;

**"Sex Offenders Order"** – means either:

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

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

**"Significant Transaction"** – means a transaction or arrangement that meets the principles set out in the Trust's protocol for significant transactions as agreed from time to time between the Membership Council and the Board of Directors;

**"Staff Constituency"** – has the meaning ascribed to it in paragraph 6.4 of this Constitution;

**"Staff Governor"** – means a member of the Membership Council elected by the members of the Staff Constituency;

**"Standing Orders for the Board of Directors"** – means the standing orders referred to in Annex 2 of this Constitution;

**"Standing Orders for the Membership Council"** – means the standing orders referred to in Annex 3 of this Constitution;

**"Trust"** – means Moorfields Eye Hospital NHS Foundation Trust;

**"Trust Premises"** – means those hospitals, establishments and facilities at which the Trust provides and/or manages the provision of goods and/or services, including accommodation;

**"Vice Chairman of the Board of Directors"** – means the Vice Chairman of the Board of Directors appointed pursuant to Annex 2 (paragraph 2.4) of the Constitution; and

**"Vice Chairman of the Membership Council"** – means the Vice Chairman of the Membership Council appointed pursuant to paragraph 7.17.12 of this Constitution and who shall preside as set out in paragraph 7.22.1 of this constitution;

**"Voluntary Organisation"** – means a body other than a public or local authority which does not carry out activities for profit.

## **2 NAME**

The name of this Trust is "Moorfields Eye Hospital NHS Foundation Trust".

## **3 PRINCIPAL PURPOSE**

3.1 The Trust's principal purpose 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 purpose 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 to better carry on its principal purpose.

## **4 OTHER PURPOSES**

Subject always to the provisions of the 2006 Act:

4.1 The purpose of the Trust is to provide goods and services for purposes related to the provision of healthcare in accordance with its statutory duties.

4.2 The Trust may carry out research in connection with the provision of health care and make facilities and staff available for the purposes of education, training or research carried on by others.

4.3 The Trust may also carry on activities other than those mentioned in paragraphs 4.1 and 4.2 above. These activities must be for the purpose of making additional income available in order to better carry on the Trust's principal purpose.

## **5 POWERS**

5.1 The Trust is to have all the powers of an NHS Foundation Trust set out in the 2006 Act.

5.2 In the exercise of its powers, the Trust shall have regard to the core principles of the NHS.

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

- 5.4 Subject to any restriction contained in the Constitution or in the 2006 Act, any of these powers may be delegated to a committee of Directors or to an Executive Director.

## **6 MEMBERS**

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

- 6.1.1 a public constituency; or
- 6.1.2 the Staff Constituency; or
- 6.1.3 the Patient Constituency.

The Patient Constituency is not divided into classes. The Staff Constituency is divided into two classes, as set out in Paragraph 6.4.3 below. In deciding which areas are to comprise the Public Constituency, and in deciding how the Patient Constituency is to be comprised, the Trust shall have regard to the need for those eligible for such membership to be representative of those to whom the Trust provides services.

- 6.2 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.

### **6.3 Public Constituencies**

- 6.3.1 Subject to paragraph 6.6 below, an individual is eligible to become a member of a public constituency listed in column 1 of Annex 1 if he or she lives in the area specified for that constituency in the corresponding entry in column 2 of Annex 1.
- 6.3.2 An eligible individual shall become a Member upon entry to the membership register pursuant to an application by them.
- 6.3.3 On receipt of an application for membership and subject to being satisfied that the applicant is eligible, the Secretary shall, normally within 28 days of receipt of an application for membership, cause the applicant's name to be entered in the Trust's register of Members. The Secretary may require any individual to supply supporting evidence to confirm eligibility.
- 6.3.4 The minimum number of Members of each public constituency is to be 25.
- 6.3.5 Those individuals who live in an area for any public constituency are referred to collectively as the "Public Constituency". The Trust will ensure that (taken as a whole) the actual membership of its public constituency is representative of those eligible for such membership.



## 6.4 Staff Constituency

Subject to paragraph 6.6 below individuals are eligible to become members of the Staff Constituency if:

- 6.4.1 they are employed under a contract of employment by the Trust (provided that Non-Executive Directors of the Trust shall not be regarded as employees for this purpose); and
  - 6.4.1.1 they satisfy the minimum duration requirements set out in paragraph 3(3) of Schedule 7 to the 2006 Act, that is to say:
    - 6.4.1.1.1 they are employed by the Trust under a contract of employment which has no fixed term or a fixed term of at least 12 months; or
    - 6.4.1.1.2 they have been continuously employed by the Trust for at least 12 months.
- 6.4.2 An individual who is eligible under paragraph 6.4.1 above will become a Member if either:
  - 6.4.2.1 they have been invited to become a member of the Staff Constituency and have not informed the Trust within the period specified in the invitation that they do not wish to do so; or
  - 6.4.2.2 they apply to the Secretary to become a Member and are entered in the Trust's register of Members.
- 6.4.3 The Staff Constituency shall be divided into two classes:
  - 6.4.3.1 individuals whose work base is at Moorfields Eye Hospital, City Road, London EC1V 2PD (the "City Road Class"); and
  - 6.4.3.2 all other individuals (the "Satellite Class").
- 6.4.4 Members of the Staff Constituency whose work base is shared between the City Road work base and an outreach work base may express a preference as to which staff class to join but in all cases members of the Staff Constituency will be allocated to a class by the Secretary on becoming a Member. In the event that an individual's work base changes, they shall notify the Secretary who will make any necessary re-allocation to a different class and notify the Member accordingly.
- 6.4.5 The minimum number of Members of each class of the Staff Constituency is to be 100.
- 6.4.6 Those individuals who are eligible for membership of the Trust by reason of

the provisions of paragraph 6.4.1 above are referred to collectively as the "Staff Constituency".

- 6.4.7 For the purposes of paragraph 6.4.1 above, Chapter 1 of Part 14 of the Employment Rights Act 1996 shall apply for the purposes of determining whether an individual has been continuously employed by the Trust as it applies for the purposes of that Act.
- 6.4.8 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.

## **6.5 Patient Constituency**

- 6.5.1 Subject to paragraph 6.6 below, members of the Patient Constituency are to be Patients or Carers who have made an application for membership of the Trust and have been entered in the Trust's register of Members.
- 6.5.2 On receipt of an application for membership subject to being satisfied that the applicant is eligible, the Secretary shall, normally within 28 days of receipt of an application for membership, cause the applicant's name to be entered in the Trust's register of Members.
- 6.5.3 Where an applicant is eligible to be a member of the Patient Constituency and of any Public Constituency they shall be assigned to the relevant Public Constituency. If a Patient or Carer (as the case may be) does not wish to become a member of the Public Constituency, they can opt to become a member of the Patient Constituency (but once they have made such a specification they shall not be entitled to subsequently change constituencies unless they shall cease to be a member of the Patient Constituency).
- 6.5.4 The minimum number of Members of the Patient Constituency is to be 50.
- 6.5.5 Those individuals who are eligible for membership of the Trust by reason for the provisions of paragraph 6.5.1 to 6.5.3 above are referred to collectively as the "Patient Constituency".

## **6.6 Disqualification for membership**

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

- 6.6.1 they are under 14 years of age at the date of his or her application or invitation to become a Member (as the case may be);
- 6.6.2 in the five years preceding the date of his or her application or invitation to become a Member, he or she has demonstrated aggressive or violent behaviour at any Trust Premises or against the Trust's employees, volunteers or other persons who exercise functions for the purposes of the Trust whether or

not in circumstances leading to his or her removal or exclusion from any Trust Premises;

- 6.6.3 they have been confirmed as a 'vexatious complainant' in accordance with the Trust's policy for handling complaints;
- 6.6.4 they have within the preceding five years been removed as a member from another NHS foundation trust;
- 6.6.5 they have been deemed to have acted in a manner contrary to the interests of the Trust in accordance with paragraph 6.7;
- 6.6.6 they fail or cease to fulfil the criteria for membership of the Public Constituency, Patient Constituency or the Staff Constituency; or
- 6.6.7 in the case of the Public Constituency, the individual's principal place of residence is not within an area specified in Annex 1.
- 6.6.8 Save in relation to paragraph 6.5.1.5, where the Trust is on notice that a Member may be disqualified from membership, or may no longer be eligible to be a Member the Secretary shall give the Member 28 days written notice to show cause why his or her name should not be removed from the Trust's register of Members. On receipt of any such information supplied by the Member, the Secretary may, if he or she considers it appropriate, remove the Member from the Trust's register of Members. In the event of any dispute, the dispute shall be resolved in accordance with the procedure set out in paragraph 17.1 below.
- 6.6.9 All Members of the Trust shall be under a duty to notify the Secretary of any change in their particulars which may affect their entitlement as a Member.

## **6.7 Expulsion from membership of the Trust**

- 6.7.1 Where an issue arises as to whether a Member is disqualified under paragraph 6.5.1.5, either following a complaint by another Member or otherwise, the provisions of this paragraph shall apply.
- 6.7.2 Subject to paragraphs 6.7.3 to 6.7.7 below, if a complaint is made, the Membership Council, or a delegated committee, sub-committee or joint committee of the Membership Council and the Board of Directors, will consider the complaint, having taken such steps as it considers appropriate, to ensure that each Member's point of view is heard and may either:
  - 6.7.2.1 dismiss the complaint and take no further action; or
  - 6.7.2.2 recommend that a resolution to expel the Member complained of to be considered at the next meeting of the Membership Council. Such resolution must be approved by not less than two-thirds of the members of the Membership Council present and

voting at that meeting.

- 6.7.3 If a resolution to expel a Member is to be considered at a meeting of the Membership Council pursuant to paragraph 6.7.2 above, details of the complaint must be sent to the Member complained of not less than one calendar month before the meeting with an invitation to answer the complaint and to attend the meeting and be heard by the Membership Council.
- 6.7.4 At the meeting referred to in paragraph 6.7.2 above, the Membership Council will consider the evidence in support of the complaint and such other evidence as the Member complained of may wish to place before them.
- 6.7.5 If the Member complained of fails to attend the meeting mentioned in paragraph 6.7.2 above without due cause, the meeting may proceed in their absence. The decision to proceed in these circumstances will be at the sole discretion of the person chairing the meeting in question.
- 6.7.6 A person expelled from membership under the provisions of paragraphs 6.6.1 to 6.6.5 above will cease to be a Member upon the declaration by the person chairing the meeting that the resolution to expel them is carried.
- 6.7.7 No person who has been expelled from membership pursuant to the provisions of paragraphs 6.6.1 to 6.6.5 above is to be re-admitted as a Member except by a resolution of the Membership Council carried by votes of two-thirds of the members of the Membership Council present and voting at a General Meeting of the Membership Council.

## **6.8 Termination of membership**

An individual Member shall cease to be a Member on:

- 6.8.1 death;
- 6.8.2 resignation by notice in writing to the Secretary;
- 6.8.3 ceasing to fulfil the requirements of paragraphs detailed in 6.6 above, as the case may be; and/or
- 6.8.4 being disqualified pursuant to paragraph 6.6 above, or being expelled pursuant to paragraph 6.7 above.

## **6.9 Annual Members' Meeting**

- 6.9.1 The Trust shall hold an annual meeting of its members ("Annual General Meeting"). The Annual General Meeting shall be open to members of the public.

## **7 MEMBERSHIP COUNCIL**

- 7.1 The Trust is to have a Membership Council which shall comprise both Elected Governors and Appointed Governors. The Membership Council is to be chaired by the Chairman of the Trust. The Membership Council shall comprise:
- 7.1.1 12 Public Governors;
  - 7.1.2 3 Patient Governors;
  - 7.1.3 4 Staff Governors of which 2 shall be elected by the City Road Class and 2 by the Satellite Class;
  - 7.1.4 1 Local Authority Governor; and
  - 7.1.5 4 Other Partnership Governors.
- 7.2 The members of the Membership Council, other than the Appointed Governors, shall be chosen by election by their constituency or, where there are classes within a constituency, by their class within that constituency. The number of Governors to be elected by each constituency, or, where appropriate, by each class of each constituency, is specified in paragraph 7.1 above.
- 7.3 The aggregate number of Public Governors and Patient Governors is to be more than half of the total membership of the Membership Council.
- 7.4 The organisations currently specified as Partnership Organisations that may appoint a Governor to the Membership Council are:
- 7.4.1 University College London;
  - 7.4.2 The College of Optometrists;
  - 7.4.3 The Royal National Institute for Blind People;
  - 7.4.4 Vision UK; and
  - 7.4.5 London borough of Islington

The Trust will review the list of Partnership Organisations from time to time with a view to considering which are most appropriate and to ensure proper representation from universities associated with the provision of education and training to the Trust, and from patient interest groups associated with eye disease. For the avoidance of doubt, any change to a Partnership Organisation shall be made in accordance with paragraph 18 of the Constitution.

- 7.5 Notwithstanding the provisions of paragraph 7.4 above, the Chairman may veto the appointment of a Partnership Governor by serving notice in writing on the relevant

Partnership Organisation where he or she believes that the appointment in question is unreasonable, irrational, or otherwise inappropriate.

## 7.6 **Public Governors**

7.6.1 There shall be 12 Public Governors; 2 from each Public Constituency.

7.6.2 Members of each Public Constituency may elect any of their number who is eligible to be a Public Governor.

## 7.7 **Staff Governors**

7.7.1 There shall be 4 Staff Governors. The City Road Class shall elect 2 Staff Governors, and the Satellite Class shall elect 2 Staff Governors.

7.7.2 Members of each class of the Staff Constituency may elect any of their number who is eligible to be a Staff Governor.

## 7.8 **Patient Governors**

7.8.1 Members of the Patient Constituency may elect any of their number who is eligible to be a Patient Governor.

## 7.9 **Election of Governors**

7.9.1 Elections for Elected Governors shall be conducted in accordance with the Model Rules for Elections using the single transferable vote voting system. Thus, where appropriate, the alternative rules marked "STV" (Single Transferable Vote) should be used.

7.9.2 The Model Rules for Elections, as published from time to time by the Department of Health, form part of this Constitution. The Model Rules for Elections current at the date of authorisation are attached at Annex 5.

7.9.3 A subsequent variation of the Model Rules for Elections by the Department of Health shall not constitute a variation of the terms of this Constitution for the purposes of paragraph 18 of the Constitution. For the avoidance of doubt, the Trust cannot amend the Model Rules for Elections.

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

7.9.5 A person may not vote at an election for or stand for election as an Elected Governor unless within the specified period stated in the Model Rules for Elections he or she has made a declaration in the forms specified in paragraph 2 of Annex 4 of the Constitution. It is an offence (other than in relation to the Staff Constituency) to knowingly or recklessly make such a declaration which is false in a material particular.

## **7.10 Election of lead governor and vice chair:**

- 7.10.1 The Membership Council will elect a lead governor from among their number, who shall on any occasion when direct contact with Monitor is required, facilitate that contact between the Governors and Monitor.
- 7.10.2 The Membership Council will elect a vice chair from among their number, who shall act as the key point of communication between the Chair and the Membership Council.
- 7.10.3 If a lead governor or vice chair ceases to hold the office for any reason, the Secretary shall send out nominations forms for appointment as lead governor not less than 15 clear days prior to the next meeting of the Membership Council. (If a lead governor ceases to hold the office less than 15 clear days before a scheduled meeting of the Membership Council, the Secretary shall send out nominations forms not less than 15 clear days before the next following meeting of the Membership Council.) Each nomination shall be made in writing by the Governor seeking appointment and must be returned to the principal place of business of the Trust addressed to the Secretary to arrive not less than 3 days before the meeting.
- 7.10.4 If there are two or more nominations for appointment a secret ballot shall be held of all the Governors present at the meeting with each Governor present having one vote. [Nominees may not vote].
- 7.10.5 The term of office for a lead governor or vice chair will be three years, after which an election will be held. A lead governor or vice chair may serve a maximum of two three-year terms.

## **7.11 Local Authority Governor**

The London Borough of Islington may appoint one Local Authority Governor by notice in writing signed by the leader of the Council or a member of the Council executive, and delivered to the Secretary.

## **7.12 Other Partnership Governors**

- 7.12.1 Each other partnership organisation may appoint one partnership governor.
- 7.12.2 The Trust and the partnership organisations may agree a process for the selection and approval of the appointee.

## **7.13 Terms of office**

Elected Governors:

- 7.13.1 may hold office for a term of up to three years and are eligible for re-

election at the end of their term of office ; and

7.13.2 shall cease to hold office if they cease to be a member of the constituency by which they were elected.

**Appointed Governors:**

7.13.3 may hold office for a period of up to 3 years and are eligible for reappointment at the end of their term of office; and

7.13.4 shall cease to hold office if the sponsoring organisation withdraws its sponsorship of them by notice in writing to the Secretary.

7.13.5 Further provisions regarding the Governors are set out in Annex 4 of this Constitution.

**7.14 Termination of tenure**

7.14.1 A Governor may resign from that office at any time during the term of that office by giving notice in writing to the Secretary.

7.14.2 If a Governor fails to attend 3 meetings of the Membership Council, in any 12 months, his or her tenure of office is to be immediately terminated unless the other Governors are satisfied by a two-thirds majority of the number of Governors present and voting at the relevant meeting that:

7.14.2.1 the absence was due to a reasonable cause; and

7.14.2.2 they will be able to start attending meetings of the Membership Council again within such a period as they consider reasonable.

7.14.3 If a Governor is considered to have acted in a manner inconsistent with the Trust's core principles as set out in paragraph 5.2 above, or in a manner detrimental to the interests of the Trust; or

7.14.3.1 the Trust's provider licence; or

7.14.3.2 the Standing Orders for the Membership Council; or

7.14.3.3 the Governor's Code of Conduct; or

7.14.3.4 they have failed to declare an interest as required by this Constitution or the Standing Orders for the Membership Council, or he or she has spoken or voted at a meeting on a matter in which he or she has an interest contrary to this Constitution or the Standing Orders for the Membership Council, and in this paragraph "interest" includes a pecuniary and a non-pecuniary interest and in either case whether direct or indirect, and



7.14.3.5 they are adjudged to have so acted by a majority of not less than 75% of the members of the Membership Council then the Governor shall vacate his or her office immediately.

7.14.4 With the agreement of a majority of the members of the Membership Council, the Trust may disqualify an individual from seeking election if, in the judgement of the Board of Directors, the individual's actions are damaging the Trust's ability to carry out its role.

7.14.5 Any decision of the Membership Council to terminate a Governor's tenure of office may be referred by the Governor concerned to the dispute resolution procedure set out in paragraph 17 below within 28 days of the date upon which notice in writing of the Membership Council's decision made in accordance with paragraphs 7.14.3 or

7.14.4 above is communicated to the Governor concerned.

#### **7.15 Disqualification**

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

7.15.1 in the case of an Elected Governor, he or she ceases to be a member of the constituency he or she represents;

7.15.2 in the case of an Appointed Governor, the sponsoring organisation withdraw their sponsorship of him or her;

7.15.3 they have been adjudged bankrupt or his or her estate has been sequestrated and in either case he or she has not been discharged;

7.15.4 is the subject of a moratorium period under a debt relief order (under Part 7A of the Insolvency Act 1986);

7.15.5 they have made a composition or arrangement with, or granted a trust deed for, his or her creditors and has not been discharged in respect of it;

7.15.6 they have within the preceding five years been convicted in the British Islands of any offence, and a sentence of imprisonment (whether suspended or not) for a period of three months or more (without the option of a fine) was imposed on him or her;

7.15.7 they are under 18 years of age;

7.15.8 they have within the preceding five years been dismissed, otherwise than by reason of redundancy or ill health, from any paid employment with a Health Service Body;

7.15.9 they are a person whose tenure of office as the chairman or as a member or

director of a Health Service Body has been terminated on the grounds that his or her appointment is not in the interests of the health service, for non-attendance at meetings, or for non-disclosure of a pecuniary interest;

- 7.15.10 they are an Executive Director or Non-Executive Director of the Trust, or a governor, non-executive director, chairman, chief executive officer of another Health Service Body (unless they are appointed by a sponsoring organisation which is a Health Service Body), or services, including for the avoidance of doubt those who have a commercial interest in the affairs of the Trust;
- 7.15.11 they have had their name removed from any list maintained under regulations pursuant to Sections 91, 106, 123 and 146 of the 2006 Act (or the equivalent lists maintained by Local Health Boards in Wales under the National Health Service (Wales) Act 2006, and has not subsequently had his or her name included in such a list;
- 7.15.12 they are incapable by reason of mental disorder, illness or injury of managing and administering his or her property and affairs;
- 7.15.13 they have refused without reasonable cause to undertake any training which the Trust and/or Membership Council requires all Governors to undertake;
- 7.15.14 they are a member of a local authority Health Overview and Scrutiny Committee;
- 7.15.15 they are the subject of a Sex Offenders Order and/or his or her name is included in the Sex Offenders Register;
- 7.15.16 they are an Immediate Family Member of a Governor or Director;
- 7.15.17 they have failed to repay (without good cause) any amount of monies properly owed to the Applicant NHS Trust or the Trust;
- 7.15.18 they have failed to sign and deliver to the Secretary a statement in the form required by the Trust confirming acceptance of the Governor's Code of Conduct;
- 7.15.19 they are a person who, by reference to information revealed in a criminal record certificate or enhanced criminal record certificate issued by the Disclosure and Barring Service under Part V of the Police Act 1997, is considered by the Trust to be inappropriate on the grounds that his appointment might adversely affect public confidence in the Trust or otherwise bring the Trust into disrepute;
- 7.15.20 they are included in any barred list established under the Safeguarding Vulnerable Groups Act 2006, or who is included in an equivalent list maintained under the law of Scotland or Northern Ireland;
- 7.15.21 they are a person who is the subject of a disqualification order made under the

Company Directors' Disqualification Act 1986;

7.15.22 they have been subject to a prohibition order made under Section 56 of the Financial Services and Markets Act 2000;

7.15.23 the relevant Partnership Organisation which he or she represents ceases to exist;

7.15.24 they have received a written warning from the Trust for verbal and/or physical abuse towards Trust staff; and/or

7.15.25 they have been expelled from the post of governor of another NHS foundation trust.

7.15.26 Where a person has been elected or appointed to be a Governor and he or she becomes disqualified from office under paragraph 7.15 above, he or she shall notify the Secretary in writing of such disqualification. If it comes to the notice of the Secretary at the time of his or her taking office or later that the Governor is so disqualified, the Secretary shall immediately declare that the person in question is disqualified and notify him or her in writing to that effect. Upon despatch of any such notification, that person's tenure of office, if any, shall be terminated and he or she shall cease to act as a Governor.

7.15.27 Where a Governor has been disqualified from office in accordance with paragraph 7.15.26, the secretary shall notify the membership council of the disqualification at a private session as allowed under Annex 3 – standing orders of the membership council, clause 2.1 (admission of the press and public).

## **7.16 Vacancies**

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

7.16.2 If the vacancy occurs less than 6 months before the end of the term of office, then an election will take place to elect a new governor from the start of the next term

7.16.3 If a vacancy occurs more than 6 months before the end of the term of office, an election will be arranged as soon as is practicable.

The validity of any act of the Membership Council is not affected by any vacancy among the Governors or by any defect in the appointment of any Governor.

## **7.17 Roles and responsibilities of Governors**

The roles and responsibilities of the Governors are:

7.17.1 at a General Meeting;

- 7.17.1.1 Subject to paragraphs 8.2.2, 8.3 and 8.4 below, to appoint or remove the Chairman and the other Non-Executive Directors. The removal of a Non-Executive Director requires the approval of three-quarters of the members of the Membership Council;
- 7.17.1.2 to decide the remuneration and allowances, and the other terms and conditions of office, of the Non-Executive Directors;
- 7.17.1.3 to appoint or remove the Auditor;
- 7.17.1.4 to be presented with the Annual Accounts, any report of the Auditor on them, and the Annual Report; and
- 7.17.1.5 to consider resolutions to remove a Governor pursuant to paragraph 7.15 of the Constitution.

At a General Meeting or otherwise:

- 7.17.2 to hold the non-executive directors individually and collectively to account for the performance of the Board of Directors;
- 7.17.3 to represent the interests of the members of the Trust as a whole and the interests of the public;
- 7.17.4 to approve (by a majority of the Members of the Membership Council present and voting at a meeting of the Membership Council) an appointment (by the Non-Executive Directors) of the Chief Executive other than the initial Chief Executive appointed in accordance with paragraph 19(5) of Schedule 7 to the 2006 Act;
- 7.17.5 to give the views of the Membership Council to the Directors for consideration by the Directors in the preparation and approval of the Annual Plan in respect of each Financial Year to be given to Monitor;
- 7.17.6 to respond as appropriate when consulted by the Board of Directors; and
- 7.17.7 to appoint one of the Governors to be Vice Chairman of the Membership Council.
- 7.17.8 The Governors also have the specific role and function of developing membership and representing the interests of the Members and holding the Board of Directors to account in relation to the Trust's performance
- 7.17.9 Further roles and responsibilities are set out in Sections 18 and 20 of this Constitution.
- 7.17.10 Notwithstanding the provisions of paragraphs 7.17.1 to 7.17.5 above, the Governors may exercise other functions at the request of the Board of

Directors.

#### **7.18 Process for appointing Non-Executive Directors and the Chairman**

Subject to the provisions of paragraphs 8.2 and 8.3 of the Constitution, the process for appointing Non-Executive Directors and the Chairman will be as follows:

- 7.18.1 Not less than six months before the end of the term of office of the Chairman or a Non-Executive Director (as the case may be) the Membership Council will appoint a Nominations Committee for Non-Executive Directors to seek a suitable replacement.
- 7.18.2 Where the Nominations Committee for Non-Executive Directors considers that either the Chairman or the Non-Executive Director coming to the end of his or her term of office should be reappointed for a further term, the Nominations Committee for Non-Executive Directors shall make a recommendation to the Membership Council to that effect.
- 7.18.3 Where: the Nominations Committee for Non-Executive Directors does not make a recommendation that the Chairman or a Non-Executive Director should be reappointed in accordance with paragraph 8.20.1.2 above; or the Chairman or (as the case may be) the Non-Executive Director in question does not want to be reappointed; or
- 7.18.4 The Membership Council rejects a recommendation that the Chairman or (as the case may be) a Non-Executive Director should be reappointed in accordance with paragraph 7.18.1 above, the Nominations Committee for Non-Executive Directors shall initiate a process of open competition for the appointment of the Chairman and/or Non-Executive Director(s), and the post(s) will be advertised.
- 7.18.5 The Nominations Committee for Non-Executive Directors will make recommendations to the Membership Council, including recommendations about remuneration.
- 7.18.6 The membership of the Nominations Committee for Non-Executive Directors will be decided by the Membership Council from time to time, provided that where the Nominations Committee for Non-Executive Directors is considering recommendations regarding the appointment of a Non-Executive Director, the voting members of the Nominations Committee for Non-Executive Directors will always comprise a majority of Governors. For the avoidance of doubt, where an Executive Director is being appointed, this will be dealt with by the Nominations Committee for Executive Directors in accordance with paragraph 8.8.6 below.
- 7.18.7 The Chief Executive will be invited to attend meetings of the Nominations Committee for Non-Executive Directors in an advisory capacity only. The Membership Council will appoint a Governor as chairman of the Nominations

Committee for Non-Executive Directors. Each member of the Nominations Committee for Non-Executive Directors will have one vote. In the event of an equality of votes, the chairman will have a casting vote.

7.18.8 The Nominations Committee for Non-Executive Directors may be supported by appropriate advice from a human resources specialist and it may also engage an external organisation or individual recognised as expert at appointments to identify the qualifications, skills and experience required for the positions of Chairman and/or Non-Executive Director, provided that the financial and other implications of seeking outside advisors have been discussed and agreed with the Board of Directors.

7.18.9 The Membership Council will not consider nominations for membership of the Board of Directors other than those made by the Nominations Committee for Non-Executive Directors.

#### **7.19 Referral to the Panel**

In this paragraph, the Panel means a panel of persons appointed by Monitor to which a Governor of the Trust may refer a question as to whether the Trust has failed or is failing:

7.19.1 to act in accordance with this Constitution, or

7.19.2 to act in accordance with provision made by or under Chapter 5 of the 2006 Act.

7.19.3 a Governor may refer a question to the Panel only if more than half of the members of the Membership Council present and voting at a meeting of the Membership Council approve the referral.

#### **7.20 Expenses**

7.20.1 The Trust may pay and/or reimburse travelling and other expenses to Governors at such rates as it decides. These are to be published in the Annual Report.

7.20.2 The remuneration and allowances for Non-Executive Directors set by the Governors are also to be published in the Annual Report.

#### **7.21 Remuneration**

7.21.1 Governors are not to receive remuneration, provided that this shall not prevent the remuneration of Governors by their employer.

#### **7.22 Meetings**

7.22.1 The Chairman of the Trust or in his or her absence the Vice Chairman of the Board of Directors, is to chair the meetings of the Membership Council, and the person chairing the meeting shall have a casting vote. If the Chairman and the Vice Chairman of the Board of Directors are absent temporarily from a meeting of the Membership Council owing to a declared conflict of interest or

otherwise, the Vice Chairman of the Membership Council shall preside for that part of the meeting and the person chairing the meeting shall have a casting vote in accordance with the Standing Orders for the Membership Council. In the event that one of the Chairman, the Vice Chairman of the Board of Directors or the Vice Chairman of the Membership Council is unable to attend the meeting, the Membership Council may appoint one of the members of the Board of Directors to act as Chairman of the meeting.

- 7.22.2 Meetings of the Membership Council are to be open to members of the public, but the public may be excluded from all or part of any meeting by resolution of the Membership Council on the grounds that publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted or for other special reasons stated in the resolution and arising from the nature of the business or of the proceedings.
- 7.22.3 The Membership Council is to meet at least four times per Financial Year, including an annual meeting no later than 31 October in each Financial Year when the Membership Council are to receive and consider the Annual Accounts, any report of the Auditor on them, and the Annual Report.
- 7.22.4 The Secretary shall call meetings in accordance with paragraph 7.22.3 above.
- 7.22.5 The Membership Council is to adopt its own standing orders for its practice and procedure, in particular for its procedure at meetings (including General Meetings), and these shall form Annex 3 of this constitution.
- 7.22.6 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 Membership Council may require one or more of the Directors to attend a meeting of the Membership Council.

### **7.23 Committees and sub-committees**

- 7.23.1 The Membership Council may appoint committees consisting wholly or partly of its members to assist it in carrying out its functions. A committee appointed under this paragraph may appoint a sub-committee.
- 7.23.2 For the avoidance of doubt, the Membership Council may not delegate any of its powers to any committee.
- 7.23.3 The Membership Council may appoint members to serve on joint committees with the Board of Directors or committees thereof.
- 7.23.4 These committees or sub-committees may call upon outside advisers to help them in their tasks, provided that the financial and other implications of seeking outside advisers have been discussed and agreed with the Chairman and reported to the Board of Directors.

## 7.24 Conflicts of interests

- 7.24.1 If a Governor has a pecuniary interest, whether direct or indirect, in any contract, proposed contract or other matter which is under consideration by the Membership Council, he or she shall disclose that to the rest of the Membership Council as soon as he or she is aware of it. The Membership Council shall adopt standing orders specifying the arrangements for excluding Governors from discussion or consideration of the contract or other matter, as appropriate.
- 7.24.2 All Governors are expected to comply with the Trust's Declaration of Interests, Gifts and Hospitality Policy.

## 7.25 Declaration of interests

- 7.25.1 All existing Directors and Governors must declare relevant and material interests. Any Directors or Governors appointed or elected subsequently should do so on appointment or election.
- 7.25.2 Interests which should be regarded as "relevant and material" and which, for the guidance of doubt, should be included in the register, are:
- 7.25.3 Directorships, including non-executive directorships held in private companies or PLCs (with the exception of those of dormant companies);
- 7.25.4 Ownership, part-ownership or directorship of private companies, business or consultancies likely or possibly seeking to do business with the NHS;
- 7.25.5 Majority or controlling shareholdings in organisations likely or possibly seeking to do business with the NHS;
- 7.25.6 A position of authority in a charity or voluntary organisation in the field of health and social care;
- 7.25.7 Any connection with a voluntary or other organisation contracting for NHS services or commissioning NHS services; and/or
- 7.25.8 Any connection with an organisation, entity or company considering entering into or having entered into a financial arrangement with the Trust, including but not limited to, lenders or banks.

Governors should refer to the guidance on Managing Conflicts of Interest in the NHS set out in Annex A.

## 8 BOARD OF DIRECTORS

- 8.1 The Trust is to have a Board of Directors. It is to consist of the Chairman, Executive



Directors and Non-Executive Directors.

8.2 The Board of Directors is to include:

Non-Executive Directors:

- 8.2.1 the Chairman,
- 8.2.2 not less than 5 and not more than 8 other Non-Executive Directors including a representative of the Institute of Ophthalmology;

Executive Directors:

- 8.2.3 A Chief Executive who shall be the Accounting Officer;
- 8.2.4 A Chief Financial Officer;
- 8.2.5 A Registered Medical Practitioner and a Registered Nurse.
- 8.2.6 Not less than 3 and not more than 6 other Executive Directors
- 8.2.7 The post of an Executive Director may be held by 2 individuals on a job-share basis (the executive positions of Registered Medical Practitioner and Registered Nurse cannot be shared between the two professions), but where such an arrangement is in force, the 2 individuals may only exercise 1 vote between them at any meeting of the Board of Directors.
- 8.2.8 The power to appoint Non-Executive Directors and Executive Directors shall at all times be exercised so as to ensure that the aggregate voting rights vested in the Chairman and remaining Non-Executive Directors exceed the aggregate of those votes vested in the Executive Directors.

8.3 Only a member of a Public Constituency or the Patient Constituency is eligible for appointment as a Non-Executive Director.

8.4 Appointment and removal of Chairman and other Non-Executive Directors

- 8.4.1 Subject to paragraph 8.4.3 below, the Membership Council at a General Meeting of the Membership Council shall appoint or remove the Chairman of the Trust and the other Non-Executive Directors.
- 8.4.2 During any General Meeting of the Membership Council at which the Chairman may be removed, the Vice Chairman of the Board of Directors shall preside or, if the Vice Chairman of the Board of

Directors is absent from the meeting or is absent temporarily on the grounds of a declared conflict of interest, the Vice Chairman of the Membership Council shall preside.

8.4.3 Removal of the Chairman or another Non-Executive Director shall require the approval of three-quarters of the members of the Membership Council.

8.5 The validity of any act of the Trust is not affected by any vacancy among the Directors or by any defect in the appointment of any Director.

#### 8.6 **Remuneration and terms of office**

8.6.1 The Chairman and the Non-Executive Directors are to be appointed for a period of office in accordance with the remuneration and allowances and other terms and conditions of office decided by the Membership Council at a General Meeting.

8.6.2 Non-executive directors may in exceptional circumstances serve longer than six years (e.g. two three-year terms), but subject to annual re-appointment.

8.6.3 The Executive Directors shall hold offices for a period in accordance with the remuneration and allowances and other terms and conditions of office decided by the relevant committee of Non-Executive Directors.

#### 8.7 **Disqualification**

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

8.7.2 he has been adjudged bankrupt or his or her estate has been sequestrated and in either case he or she has not been discharged;

8.7.3 is the subject of a moratorium period under a debt relief order (under Part 7A of the Insolvency Act 1986);

8.7.4 he has made a composition or arrangement with, or granted a trust deed for, his or her creditors and has not been discharged in respect of it;

8.7.5 he has within the preceding five years been convicted in the British Islands of any offence, and a sentence of imprisonment (whether suspended or not) for a period of three months or more (without the option of a fine) was imposed on him or her;

- 8.7.6 in the case of a Non-Executive Director, he or she no longer satisfies paragraph 8.3 above;
- 8.7.7 he is a person whose tenure of office as a chairman or as a member or director of a Health Service Body has been terminated on the grounds that his or her appointment is not in the interests of public service, for non- attendance at meetings, or for non-disclosure of a pecuniary interest;
- 8.7.8 a person who has had his or her name removed from a list maintained under regulations pursuant to Sections 91, 106, 123, or 146 of the 2006 Act, or the equivalent lists maintained by Local Health Boards in Wales under the National Health Service (Wales) Act 2006, and he or she has not subsequently had his or her name included in such a list;
- 8.7.9 he has within the preceding five years been dismissed, otherwise than by reason of redundancy or ill health, from any paid employment with a Health Service Body;
- 8.7.10 he is an executive or non-executive director of another Foundation Trust, or a governor, non-executive director, chairman, chief executive officer of another Health Service Body, or a body corporate whose business includes the provision of health care services, including for the avoidance of doubt those who have a commercial interest in the affairs of the Trust;
- 8.7.11 a person who is a member of a local authority Health Overview and Scrutiny Committee;
- 8.7.12 a person who is the subject of a disqualification order made under the Company Directors' Disqualification Act 1986;he has been subject to a prohibition order made under Section 56 of the Financial Services and Markets Act 2000;
- 8.7.13 a person who has failed to sign and deliver to the Secretary a statement in the form required by the Board of Directors confirming acceptance of the Directors' Code of Conduct;
- 8.7.14 a person who is an Immediate Family Member of a Director or a Governor;
- 8.7.15 a person who is the subject of a Sex Offenders Order and/or his or her name in included in the Sex Offenders Register;
- 8.7.16 a person who, by reference to information revealed in a criminal record certificate or enhanced criminal record certificate issued by the Disclosure and Barring Service under Part V of the Police

Act 1997, is considered by the Trust to be inappropriate on the grounds that his or her appointment might adversely affect public confidence in the Trust or otherwise bring the Trust into disrepute;

- 8.7.17 a person who is included in any barred list established under the Safeguarding Vulnerable Groups Act 2006, or who is included in an equivalent list maintained under the law of Scotland or Northern Ireland;
- 8.7.18 a person who has demonstrated aggressive or violent behaviour (such as verbal assault, physical assault, violence or harassment) at any NHS hospital, NHS premises or NHS establishment or against any of the Applicant NHS Trust's or (as the case may be) the Trust's employees, or other persons who exercise functions for the purposes of the Trust, whether or not in circumstances leading to his or her removal or exclusion from any NHS hospital, premises or establishment; and/or
- 8.7.19 a person who has held the position of Non-Executive Director (and for the avoidance of doubt this shall include the Chairman) for a period of 9 consecutive years.

## **8.8 Roles and responsibilities**

- 8.8.1 The powers of the Trust are to be exercised by the Board of Directors on its behalf.
- 8.8.2 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.
- 8.8.3 Any of those powers may be delegated to a committee consisting of Directors or to an Executive Director.
- 8.8.4 A committee of Non-Executive Directors is to be established as an Audit Committee to monitor, review and carry out other such functions in relation to the Auditor as appropriate.
- 8.8.5 It is for the Chairman and the Non-Executive Directors to appoint (subject to the approval of the Membership Council) or remove the Chief Executive.
- 8.8.6 It is for the Nominations Committee for Executive Directors to appoint or remove the Executive Directors.
- 8.8.7 The Trust is to establish a committee of Non-Executive Directors

to decide the remuneration and allowances, and the other terms and conditions of office, of the Executive Directors,

- 8.8.8 The Directors, having regard to the views of the Membership Council, are to prepare the Annual Plan in respect of each Financial Year to be given to Monitor, The Directors are to present to the Membership Council at a General Meeting of the Membership Council the Annual Accounts, any report of the Auditor on them, and the Annual Report.
- 8.8.9 The Board of Directors may establish committees to advise the Membership Council and/or the Board of Directors on issues relating to the Area of the Trust.
- 8.8.10 The Chief Executive may from time to time make a nomination to the Nominations Committee for Executive Directors for one of the Executive Directors to be the Deputy Chief Executive. The Nominations Committee for Executive Directors may approve this nomination (or make another recommendation) and recommend that the Board of Directors approve the appointment by way of a resolution to be approved by a majority of members of the Board of Directors present and voting at a meeting of the Board of Directors.
- 8.8.11 The Board of Directors must take steps to secure that the Governors are equipped with the skills and knowledge they require in their capacity as such.

## **8.9 Senior Independent Director**

The Board of Directors (in consultation with the Membership Council) may appoint any Non-Executive Director as the "senior independent director" (as defined in the NHS Foundation Trust Code of Governance), for such period not exceeding the remainder of his or her term as a Non-Executive Director, as they may specify on appointing him or her.

## **8.10 Associate Directors**

The Chief Executive may appoint and identify Officers of the Trust as Associate Directors. Such Associate Directors shall have no vote.

## **8.11 Meetings of Directors**

- 8.11.1 The Board of Directors is to adopt standing orders covering the proceedings and business of its meetings in accordance with Annex 2 of this Constitution. These are to include setting a quorum for meetings. The proceedings shall not however be invalidated by any vacancy of its membership, or defect in a Director's appointment.

8.11.2 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 in accordance with the Trust's Protocol for the Meetings.

8.11.3 Before holding a meeting, the Board of Directors must send a copy of the agenda of the meeting to the Membership Council. As soon as practicable after holding a meeting, the Board of Directors must send a copy of the minutes of the meeting to the Membership Council.

## 8.12 CONFLICTS OF INTEREST OF DIRECTORS

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

8.12.1 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 (a "Conflict").

8.12.2 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.

The duty referred to in sub-paragraph 8.12.1 above is not infringed if:

8.12.3 the situation cannot reasonably be regarded as likely to give rise to a Conflict, or

8.12.4 the matter has been authorised in accordance with the Constitution.

In paragraph 8.12.2 above, "third party" means a person other than:

8.12.5 the Trust, or

8.12.6 a person acting on its behalf.

8.12.7 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 as soon as he or she is aware of it.

8.12.8 If a declaration under this paragraph proves to be, or becomes, inaccurate, incomplete, a further declaration must be made.

8.12.9 Any declaration required by this paragraph must be made before the Trust enters into the transaction or arrangement.

8.12.10 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.

A Director need not declare an interest –

- 8.12.11 if the interest cannot reasonably be regarded as likely to give rise to a Conflict;
- 8.12.12 if, or to the extent that, all the Directors are already aware of the interest;
- 8.12.13 if, or to the extent that, it concerns terms of the Director's appointment that have been or are to be considered:
- 8.12.14 by a meeting of the Board of Directors, or
- 8.12.15 by a committee of the Directors appointed for the purpose under the Constitution.

A matter shall have been authorised for the purposes of paragraph 8.12.2 above if:

- 8.12.16 the Directors, in accordance with the requirements set out in paragraph 8.12.4, authorise any matter or situation proposed to them by any Director which would, if not authorised, involve a Director (an "Interested Director") breaching his or her duty under paragraph 8.12.1 above to avoid Conflicts:
- 8.12.17 the matter in question shall have been proposed by any Director for consideration in the same way that any other matter may be proposed to the Directors under the provisions of this Constitution;
- 8.12.18 any requirement as to the quorum for consideration of the relevant matter is met without counting the Interested Director or any other Interest Director; and
- 8.12.19 the matter was agreed to without the Interested Director voting or would have been agreed to if the Interested Director's and any other Interested Director's vote had not been counted.
- 8.12.20 Any authorisation of a Conflict under paragraph 8.12.4 may (whether at the time of giving the authorisation or subsequently):
  - 8.12.20.1 extend to any actual or potential conflict of interest which may reasonably be expected to arise out of the Conflict so authorised;
  - 8.12.20.2 provide that the Interested Director be excluded from the receipt of documents and information and the participation in

- discussions (whether at meetings of the Directors or otherwise) related to the Conflict;
- 8.12.20.3 provide that the Interested Director be excluded from the receipt of documents and information and the participation in discussions (whether at meetings of the Directors or otherwise) related to the Conflict;
- 8.12.20.4 impose upon the Interested Director such other terms for the purposes of dealing with the Conflict as the Directors think fit;
- 8.12.20.5 provide that, where the Interested Director obtains, or has obtained (through his or her involvement in the Conflict and otherwise than through his or her position as a Director of the Trust) information that is confidential to a third party, he or she will not be obliged to disclose that information to the Board of Directors, or to use it in relation to the Trust's affairs where to do so would amount to a breach of that confidence; and
- 8.12.20.6 permit the Interested Director to absent himself or herself from the discussion of matters relating to the Conflict at any meeting of the Directors and be excused from reviewing papers prepared by, or for, the Directors to the extent they relate to such matters.
- 8.12.21 Where the Directors authorise a Conflict, the Interested Director will be obliged to conduct himself or herself in accordance with any terms imposed by the Directors in relation to the Conflict. The Board of Directors shall adopt standing orders specifying the arrangements for excluding Directors from discussion or consideration of the contract or other matter as appropriate.
- 8.12.22 The Directors may revoke or vary such authorisation at any time, but this will not affect anything done by the Interested Director, prior to such revocation or variation in accordance with the terms of such authorisation.
- 8.12.23 A Director is not required, by reason of being a Director, to account to the Trust for any remuneration, profit or other benefit which he or she derives from or in connection with a relationship involving a Conflict which has been authorised by the Directors (subject in each case to any terms, limits or conditions attaching to that authorisation) and no contract shall be liable to be avoided on such grounds.

## **9 REGISTERS**

### **9.1 The Trust is to have:**



- 9.1.1 a register of Members showing, in respect of each Member, the constituency, and where applicable, class, to which he or she belongs;
  - 9.1.2 a register of members of the Membership Council;
  - 9.1.3 a register of members of the Board of Directors;
  - 9.1.4 a register of interests of the Governors; and
  - 9.1.5 a register of interests of the Directors and Associate Directors.
- 9.2 The Secretary shall be responsible for keeping the registers up to date from information received by him or her, and the registers may be kept in either paper or electronic form. Admission to and removal from the registers shall be in accordance with the provisions of the Constitution. The Secretary shall update the registers with new or amended information as soon as is practical and in any event within 28 days of receipt.
- 9.3 The Trust is to send to Monitor a list of the persons who were first elected or appointed as:
- 9.3.1 the members of the Membership Council; and
  - 9.3.2 the Board of Directors.

**9.4 Admission to and removal from the registers**

**Register of Members**

The Secretary shall maintain the register of Members in two parts:

- 9.4.1 Part one, which shall be the register referred to in the 2006 Act, shall include the name of each Member and the constituency and, where there are classes within it, the class to which they belong, and shall be open to inspection by the public in accordance with paragraphs 9.5.3 and 9.5.4 below.
- 9.4.2 Part two shall contain all the information from the application referred to in paragraphs 9.4.4, 9.4.5 and 9.4.6 and shall not be open to inspection by the public nor may copies or extracts from it be made available to any third party (save to the extent that copies or extracts are made available to the organisation appointed by the Trust to maintain the register of Members and to conduct elections).
- 9.4.3 Notwithstanding the provisions of paragraphs 9.4.1 and 9.4.2 above, the Trust shall extract such information as it needs in aggregate to satisfy itself that the actual membership of the

Trust is representative of those eligible for membership and for the administration of the provisions of this Constitution.

#### **Register of members of the Membership Council**

The register of members of the Membership Council shall list:

- 9.4.4 the name of each Governor;
- 9.4.5 their category of membership of the Membership Council (public, staff, primary care trust, local authority, or partnership organisation); and
- 9.4.6 an address through which they may be contacted, which may be the Secretary.

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

The register of interests of the Governors shall contain:

- 9.4.7 the name of each Governor; and
- 9.4.8 whether he or she has declared any interests and, if so, the interests declared in accordance with this Constitution and the Standing Orders for the Membership Council.

#### **Register of members of the Board of Directors**

The register of members of the Board of Directors shall list:

- 9.4.9 the name of each Director;
- 9.4.10 their capacity on the Board of Directors; and
- 9.4.11 an address through which they may be contacted which may be the Secretary.

#### **Register of interests of the Directors and Associate Directors**

The register of interests of the Directors and Associate Directors shall contain:

- 9.4.12 the name of each Director and Associate Director;
- 9.4.13 whether the Director/Associate Director has declared any interests; and
- 9.4.14 if so, the interests declared in accordance with this Constitution and the Standing Orders for the Board of Directors.

### **9.5 REGISTERS – INSPECTION AND COPIES**

- 9.5.1 The Trust shall make the registers specified in paragraph 9 above available for inspection by members of the public, except in the circumstances set out in paragraph 9.5.2 below or as

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

- 9.5.2 The Trust shall not make any part of the register of Members available for inspection by members of the public which shows details of any Member of the Patient Constituency or any other Member of the Trust, if the Member so requests.

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

- 9.5.3 they are, subject to paragraph 10.3.1 below, to be available for inspection free of charge at all reasonable times; and
- 9.5.4 a person who requests a copy of or extract from the registers is to be provided with a copy or extract.

## **10 PUBLIC DOCUMENTS**

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

- 10.1 a copy of the Constitution;
- 10.2 a copy of the latest Annual Accounts and of any report of the Auditor on them; and
- 10.3 a copy of the latest Annual Report.

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

- 10.4 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.
- 10.5 a copy of any report laid under section 65D (appointment of trust special administrator) of the 2006 Act.
- 10.6 a copy of any information published under section 65D (appointment of trust special administrator) of the 2006 Act.
- 10.7 a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act.
- 10.8 a copy of any statement provided under section 65F (administrator's draft report) of the 2006 Act.

- 10.9 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.
- 10.10 a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act.
- 10.11 a copy of any final report published under section 65I (administrator's final report),
- 10.12 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.
- 10.13 a copy of any information published under section 65M (replacement of trust special administrator) of the 2006 Act.
- 10.14 Any person who requests a copy of or extract from any of the above documents is to be provided with a copy.
- 10.15 If the person requesting a copy or extract is not a Member of the Trust, the Trust may impose a reasonable charge for providing the copy or extract.

## **11 AUDITOR**

- 11.1 The Trust is to have an Auditor and is to provide the Auditor with every facility and all information which he or she may reasonably require for the purposes of his or her functions under Schedule 10 of the 2006 Act.
- 11.2 A person may not be appointed as Auditor unless he or she (or, in the case of a firm, each of its members) is a member of one or more of the bodies specified in paragraph 23(4) of Schedule 7 of the 2006 Act.
- 11.3 Appointment of the Auditor by the Membership Council is covered in paragraph 7.17.4 above, and monitoring of the Auditor's functions by a committee of Non-Executive Directors is covered in paragraph 8.8.4 above.
- 11.4 The Auditor is to carry out his or her duties in accordance with Schedule 10 to the 2006 Act and in accordance with any directions given by Monitor on standards, procedures and techniques to be adopted.

## **12 ACCOUNTS**

- 12.1 The Trust must keep proper accounts and proper records in relation to the accounts.
- 12.2 Monitor may, with the approval of the Secretary of State give directions to the Trust as to the content and form of its accounts.

- 12.3 The accounts are to be audited by the Auditor.
- 12.4 The Trust (through its Chief Executive as Accounting Officer) is to prepare in respect of each Financial Year, Annual Accounts in such form as Monitor may with the approval of the Secretary of State direct.
- 12.5 In preparing its Annual Accounts, the Trust is to comply with any directions given by Monitor with the approval of the Treasury as to:
  - 12.5.1 the methods and principles according to which the Annual Accounts are to be prepared; and
  - 12.5.2 the information to be given in the Annual Accounts.
- 12.6 The Trust must:
  - 12.6.1 lay a copy of the Annual Accounts, and any report of the Auditor on them, before Parliament; and
  - 12.6.2 once it has done so, send copies of those documents to Monitor within such period as Monitor may direct.

### **13 ANNUAL REPORTS, ANNUAL PLANS AND NON-NHS WORK**

- 13.1 The Trust is to prepare Annual Reports and send them to Monitor.
- 13.2 The Annual Reports are to give information on
  - 13.2.1 any steps taken by the Trust to secure that (taken as a whole) the actual membership of any Public Constituency and the Patient Constituency is representative of those eligible for such membership;
  - 13.2.2 the impact that income received by the Trust otherwise than from the provision of goods and services for the purposes of the health service in England has had on the provision by the Trust of goods and services for those purposes
  - 13.2.3 any exercise by the Council of Governors of its power to require a Director to attend a meeting;
  - 13.2.4 the Trust's policy on pay, on the work of the committee of Non-Executive Directors established to decide the remuneration and allowances and the other terms and conditions of office of the executive Directors, and on such other procedures as the Trust has on pay;
  - 13.2.5 the remuneration of the Directors and on the expenses of the

- Governors and the Directors; and
- 13.2.6 any other information Monitor requires.
- 13.3 The Trust is to comply with any decision Monitor makes as to:
  - 13.3.1 the form of the reports;
  - 13.3.2 when the reports are to be sent to it;
  - 13.3.3 the periods to which the reports are to relate.
- 13.4 The Trust is to give its Annual Plan in respect of each Financial Year to Monitor. This information is to be prepared by the Directors, who must have regard to the views of the Membership Council.
- 13.5 Each Annual Plan must include information about:
  - 13.5.1 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
  - 13.5.2 the income it expects to receive from doing so.
- 13.6 Where an Annual Plan contains a proposal that the Trust carry on an activity mentioned in sub paragraph 13.2.2 the Membership Council must:
  - 13.6.1 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 other functions; and
  - 13.6.2 notify the Directors of the Trust of its determination
  - 13.6.3 The Trust may implement a proposal to increase by 5% or more the proportion of its total income in any Financial Year attributable to activities other than the fulfilment of the principal purpose of the Trust only if more than half of the members of Membership Council of the Trust present and voting at a meeting of the Membership Council approve the implementation of the proposal.

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

- 14.1 The following documents are to be presented to the Membership Council at a general meeting of the Membership Council:

- 14.1.1 the Annual Accounts;
- 14.1.2 any report of the Auditor on them; and
- 14.1.3 the Annual Report.

14.2 The documents shall also be presented to the Members of the Trust at the Annual General Meeting by at least one member of the Board of Directors in attendance.

14.3 The Trust may combine a meeting of the Membership Council convened for the purposes of paragraph 14.1 with the Annual General Meeting.

## **15 INDEMNITY**

15.1 Members of the Membership Council and Board of Directors and the 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 Membership Council or Board of Director functions, save where they have acted recklessly. Any costs arising in this way will be met by the Trust.

15.2 The Secretary who acts 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 Secretary functions, save where they have acted recklessly. Any costs arising in this way will be met by the Trust

15.3 The Trust may purchase and maintain insurance against this liability for its own benefit and for the benefit of members of the Membership Council, the Board of Directors and the Secretary.

15.4 The Trust may take out insurance either through the NHS Litigation Authority or otherwise in respect of directors and officers liability, including liability arising by reason of the Trust acting as a corporate trustee of an NHS charity.

## **16 INSTRUMENTS**

16.1 A document purporting to be duly executed under the Trust's seal or to be signed on its behalf is to be received in evidence and, unless the contrary is proved, taken to be so executed or signed.

16.2 The Trust is to have a seal, but this is not to be affixed except under the authority of the Board of Directors.

## **17 DISPUTE RESOLUTION PROCEDURES**

### **Membership Disputes**

17.1 In the event of any dispute about the entitlement to membership the dispute shall be referred to the Secretary who shall make a determination on the point in issue. If the

Member or applicant (as the case may be), is aggrieved at the decision of the Secretary he or she may appeal in writing within 28 days of the Secretary's decision to the Membership Council or a delegated committee or sub-committee of the Membership Council or a joint committee of the Membership Council and the Board of Directors, whose decision shall be final.

### **Other Disputes**

- 17.2 In the event of any dispute in relation to this Constitution that concerns anything other than membership, the dispute shall be referred to the Chairman who shall make a determination on the point in issue. If the Member or complainant (as the case may be) is aggrieved at the decision of the Chairman he or she may appeal in writing within 28 days of the Chairman's decision to the Board of Directors whose decision shall be final.

### **Disputes between the Membership Council and the Board of Directors**

- 17.3 In the event of dispute between the Membership Council and the Board of Directors:
- 17.3.1 In the first instance the Chairman, on advice of the Secretary, and such other advice as the Chairman may see fit to obtain, shall seek to resolve the dispute;
  - 17.3.2 If the Chairman is unable to resolve the dispute, he or she shall appoint a special committee comprising equal numbers of Directors and Governors to consider the circumstances and to make recommendations to the Membership Council and the Board of Directors (the "Special Committee") with a view to resolving the dispute; and
  - 17.3.3 If the recommendations (if any) of the Special Committee are unsuccessful in resolving the dispute, the Chairman may refer the dispute to an external mediator appointed by the Centre for Dispute Resolution or such other organisation as he or she considers appropriate.

## **18 AMENDMENT OF THE CONSTITUTION**

The Trust may make amendment to this Constitution only if:

- 18.1 more than half of the members of the Membership Council present and voting at a meeting of the Membership Council approve the amendments; and
- 18.2 more than half of the members of the Board of Directors present and voting at a meeting of the Board of Directors approve the amendments.
- 18.3 Amendments made under paragraph 18 take effect as soon as the conditions in paragraph 18 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.

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

18.4.1 At least one member of the Membership Council must attend the next Annual General Meeting and present the amendment, and

18.4.2 The Trust must give the Members an opportunity to vote on whether they approve the amendment.

18.5 If more than half of the Members present and voting at the Annual General Meeting 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.

18.6 Amendments by the Trust of this Constitution are to be notified to Monitor. For the avoidance of doubt, Monitor's functions do not include a power or duty to determine whether or not the Constitution, as a result of the amendments, accords with Schedule 7 of the 2006 Act.

## **19 NOTICES**

19.1 Save where a specific provision of the Constitution otherwise requires or permits, any notice required by this Constitution to be given shall be given in writing or shall be given using electronic communications to an address for the time being notified for that purpose.

19.2 In this paragraph 25 "electronic communication" shall have the meaning ascribed to it in the Electronic Communications Act 2000 or any statutory modification or re-enactment thereof.

19.3 Proof that an envelope containing a notice was properly addressed, prepaid and posted shall be conclusive evidence that the notice was given. A notice served pursuant to paragraph 19.1 above shall be deemed to have been received 48 hours after the envelope containing it was posted, or in the case of a notice contained in an electronic communication, 48 hours after it was sent.

## **20 Mergers etc. and Significant Transactions**

20.1 The Trust may only apply for a merger, acquisition, separation or dissolution with the approval of more than half of the members of the Membership Council at a meeting of the Membership Council.

20.2 The Trust may enter into a Significant Transaction only if more than half of the members of the Membership Council present and voting at a meeting of the Membership Council approve entering into the transaction.

## ANNEX 1 – TRUST CONSTITUENCIES

The trust constituencies are set out below:

Constituency	Area	Minimum no. of members	Number of governors
<b>Public (12)</b>			
North Central London (NCL)	London Boroughs of Barnet, Camden, Islington, Haringey, Enfield	25	2
North East London & Essex (NEL)	London Boroughs of Barking & Dagenham, Waltham Forest, Hackney, Havering, Newham, Redbridge, Tower Hamlets City of London County councils of Essex, Southend on Sea and Thurrock	25	2
North West London (NWL)	London Boroughs of Brent, Ealing, Hammersmith & Fulham, Harrow, Hillingdon, Hounslow, Kensington & Chelsea, City of Westminster	25	2
South East London (SEL)	London Boroughs of Bexley, Bromley, Greenwich, Lambeth, Lewisham, Southwark	25	2
South West London (SWL)	London Boroughs of Croydon, Richmond upon Thames, Sutton, Merton, Kingston Upon Thames	25	2
Bedfordshire & Hertfordshire	Council council of Hertfordshire, Borough councils of Bedford, Central Bedfordshire, Luton and the district council of South Bedfordshire	25	2
<b>Patient (3)</b>		50	3
<b>Staff (4)</b>	City Road	100	2
	Satellite sites	100	2
<b>Appointed (5)</b>	Vision UK	N/A	1
	RNIB		1
	UCL		1
	London Borough of Islington		1
	The College of Optometrists		1
<b>Total number of Governors = 24</b>			

**MOORFIELDS EYE HOSPITAL NHS FOUNDATION TRUST**

**STANDING ORDERS OF THE BOARD OF DIRECTORS**

January 2018



## INTRODUCTION

### **Statutory Framework**

The Moorfields Eye Hospital NHS Foundation Trust (the Trust) is a statutory body authorised under the National Health Service Act 2006 (“the 2006 Act”) to provide goods and services for the purposes of the health service.

The principal place of business of the Trust is 162 City Road, London EC1V 2PD.

The Constitution requires the Trust to adopt Standing Orders for the regulation of its proceedings and business. The Trust must also adopt Standing Financial Instructions (SFIs) as an integral part of Standing Orders setting out the responsibilities of individuals.

The NHS foundation trusts: Code of Governance requires that Boards draw up a schedule of decisions reserved to the Board, and ensure that management arrangements are in place to enable responsibility to be clearly delegated to staff. The Reservation of Powers and Delegation of Powers form part of the Standing Orders. Audit and Remuneration Committees with formally agreed terms of reference are established under the Constitution.

## **1 INTERPRETATION**

- 1.1 Save as otherwise permitted by law, at any meeting the Chairman of the Trust shall be the final authority on the interpretation of Standing Orders (on which he/she should be advised by the Chief Executive).
- 1.2 Any expression to which a meaning is given in the 2006 Act and other Acts relating to the National Health Service or in the Financial or other Regulations made under the Acts or in the Authorisation or Constitution shall have the same meaning in this interpretation and in addition:
- a) **“Associate director”** means a director who is an Officer of the Trust without voting rights.
  - b) **“Budget”** means a resource, expressed in financial terms, proposed by the Trust for the purpose of carrying out, for a specific period, any or all of the functions of the Trust.
  - c) **“Chairman”** is the person appointed in accordance with the Constitution to lead the Membership Council and the Board of Directors and to ensure that they successfully discharge their overall responsibility for the Trust as a whole. The expression “the Chairman” shall be deemed to include the Vice-Chairman of the Trust if the Chairman is absent from the meeting or is otherwise unavailable.
  - d) **“Chief Executive”** means the chief officer of the Trust.
  - e) **“Commissioning”** means the process for determining the need for and for obtaining the supply of healthcare and related services by the Trust within available resources.
  - f) **“Committee”** means a committee appointed by the Board of Directors.

- g) "**Committee members**" means persons formally appointed by the Board of Directors to sit on or to chair specific committees.
- h) "**Constitution**" means the Constitution of the Trust as approved by the Board of Directors and the Membership Council from time to time
- i) "**Contracting and procuring**" means the systems for obtaining the supply of goods, materials, manufactured items, services, building and engineering services, works of construction and maintenance and for disposal of surplus and obsolete assets.
- j) "**Director**" means any Executive Director or Non-executive Director of the Trust<sup>1</sup>.
- k) "**Executive Director**" means a director who is an Officer of the Trust with voting rights.
- l) "**Governance Committee**" means a committee whose functions are concerned with the arrangements for the purpose of monitoring and improving the quality of health care for which the Trust has responsibility.
- m) "**Headquarters**" means the principal place of business of the Trust at 162 City Road, London EC1V 2PD.
- n) "**Nominated officer**" means an officer charged with the responsibility for discharging specific tasks within Standing Orders and Standing Financial Instructions.
- o) "**Non-executive Director**" means a director who is not an officer of the Trust and has been appointed in accordance with the Constitution.
- p) "**Officer**" means an employee of the Trust or any other person who exercises functions for the purposes of the Trust other than solely as a member Governor or Non-executive Director of the Trust
- q) "**SFIs**" means Standing Financial Instructions.
- r) "**SOs**" means Standing Orders.
- s) "**Vice Chairman**" means the non-Officer director appointed by the Board of Directors to take on the Chairman's duties if the Chairman is absent for any reason.

## 2 THE TRUST BOARD

- 2.1 All business shall be conducted in the name of the Trust.
- 2.2 The powers of the Trust established under statute shall be exercised by the Board of Directors meeting in public session except as otherwise provided for in Standing Order 4.
- 2.3 The Board of Directors has resolved that certain powers and decisions may only be exercised by the Board of Directors in formal session. These powers and decisions are set out in Reservation of Powers to the Board of Directors and have effect as if incorporated into the Standing Orders.

### ***Appointment and Powers of Vice Chairman***

- 2.4 Subject to SO 2.5 below, the Chairman and Directors of the Trust may appoint one of their number, who is not also an Executive Director, to be Vice Chairman, for such period, not exceeding the remainder of his term as a director of the Trust, as they may specify on appointing him.
- 2.5 Any Director so appointed may at any time resign from the office of Vice Chairman by giving notice in writing to the Chairman. The Chairman and Directors may thereupon appoint another Director as Vice Chairman in accordance with the provisions of Standing Order 2.4.
- 2.6 Where the Chairman has died or has ceased to hold office, or where he or she has been unable to perform his or her duties as Chairman owing to illness or any other cause, the Vice Chairman shall act as Chairman until a new Chairman is appointed or the existing Chairman resumes his duties, as the case may be; and references to the Chairman in these Standing Orders shall, so long as there is no Chairman able to perform his or her duties, be taken to include references to the Vice Chairman.

### ***Joint Directors***

- 2.7 Where more than one person is appointed jointly to a post mentioned in the Constitution those persons shall count for that purpose as one person.

## **3 MEETINGS OF THE BOARD OF DIRECTORS**

### ***Admission of the Public and the Press***

- 3.1 The public and representatives of the press shall be afforded facilities to attend all formal meetings of the Board of Directors but shall be required to withdraw upon the Board of Directors resolving as follows:
- 3.2 "That representatives of the press and other members of the public be excluded from the remainder of this meeting having regard to the confidential nature of the business to be transacted, publicity on which would be prejudicial to the public interest"
- 3.3 The Chairman (or Vice Chairman) shall give such directions as he or she thinks fit in regard to the arrangements for meetings and accommodation of the public and representatives of the press such as to ensure that the Trust's business shall be conducted without interruption and disruption and, without prejudice to the power to exclude on grounds of the confidential nature of the business to be transacted, the public will be required to withdraw upon the Board of directors resolving as follows:
- 3.4 "That in the interests of public order the meeting adjourn for (the period to be specified) to enable the Board of Directors to complete business without the presence of the public" (
- 3.5 Nothing in these Standing Orders shall require the Board of Directors to allow members of the public or representatives of the press to record proceedings in any manner whatsoever, other than writing, or to make any oral report of proceedings as they take place, without the prior agreement of the Board of Directors.

### ***Calling Meetings***

- 3.6 Ordinary meetings of the Board of Directors shall be held at such times and places as the Board of Directors may determine.

- 3.7 The Chairman of the Trust may call a meeting of the Board of Directors at any time. If the Chairman refuses to call a meeting after a requisition for that purpose, signed by at least one-third of the whole number of Directors, has been presented to him/her, or if, without so refusing, the Chairman does not call a meeting within seven days after such requisition has been presented to him at the Trust's Headquarters, such one third or more Directors may forthwith call a meeting.

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

- 3.8 Before each meeting of the Board of Directors, a notice of the meeting, specifying the business proposed to be transacted at it, and signed by the Chairman or by an Officer authorised by the Chairman to sign on his behalf shall be delivered to every Director, or sent by post to the preferred address of such director, so as to be available to him or her at least five (5) Clear Days before the meeting.
- 3.9 Want of service of the notice on any Director shall not affect the validity of a meeting.
- 3.10 In the case of a meeting called by Directors in default of the Chairman, the notice shall be signed by those Directors and no business shall be transacted at the meeting other than that specified in the notice.
- 3.11 Agendas will be sent to Directors five days before the meeting and supporting papers, whenever possible, shall accompany the agenda, but will certainly be despatched no later than three (3) days before the meeting, save in emergency. Failure to serve such a notice on more than three directors will invalidate the meeting. A notice shall be presumed to have been served one day after posting or on the same day where the notice has been e-mailed.
- 3.12 Before each meeting of the Board of Directors a public notice of the time and place of the meeting, and the public part of the agenda, shall be displayed at the Trust's office at least five (3) Clear Days before the meeting.

#### ***Setting the Agenda***

- 3.13 The Board of Directors may determine that certain matters shall appear on every agenda for a meeting and shall be addressed prior to any other business being conducted. (Such matters may be identified within these Standing Orders or following subsequent resolution shall be listed in an Appendix to the Standing Orders.)
- 3.14 A Director desiring a matter to be included on an agenda shall make his or her request in writing to the Chairman at least five (5) days before the meeting. The request should state whether the item of business is proposed to be transacted in the presence of the public and should include appropriate supporting information. Requests made less than five (5) days before a meeting may be included on the agenda at the discretion of the Chairman.

#### ***Petitions***

- 3.15 Where a petition has been received by the Trust the Chairman of the Board of Directors shall include the petition as an item for the agenda of the next Board of Directors meeting.

#### ***Chairman of Meeting***

- 3.16 At any meeting of the Board of Directors, the Chairman, if present, shall preside. If the Chairman is absent from the meeting the Vice Chairman, if there is one and he/she is



present, shall preside. If the Chairman and Vice Chairman are absent such Non-executive Director as the Directors present shall choose shall preside.

- 3.17 If the Chairman is absent temporarily on the grounds of a declared conflict of interest the Deputy Chairman, if present, shall preside. If the Chairman and Deputy Chairman are absent, or are disqualified from participating, such Non-executive Director as the Directors present shall choose shall preside.

#### ***Notices of Motion***

- 3.18 A Director desiring to move or amend a motion shall send a written notice thereof at least five (5) Clear Days before the meeting to the Chairman, who shall insert in the agenda for the meeting all notices so received subject to the notice being permissible under the appropriate regulations. This paragraph shall not prevent any motion being moved during the meeting, without notice on any business mentioned on the agenda.

#### ***Withdrawal of Motion or Amendments***

- 3.19 A motion or amendment once moved and seconded may be withdrawn by the proposer with the concurrence of the seconder and the consent of the Chairman.

#### ***Motion to Rescind a Resolution***

- 3.20 Notice of motion to amend or rescind any resolution (or the general substance of any resolution) which has been passed within the preceding six calendar months shall bear the signature of the Director who gives it and also the signature of four other Directors. When any such motion has been disposed of by the Board of Directors, it shall not be competent for any Director other than the Chairman to propose a motion to the same effect within six months, however the Chairman may do so if he/she considers it appropriate.

#### ***Motions***

- 3.21 The mover of a motion shall have a right of reply at the close of any discussion on the motion or any amendment thereto.
- 3.22 When a motion is under discussion or immediately prior to discussion it shall be open to a director to move:
- An amendment to the motion.
  - The adjournment of the discussion or the meeting.
  - That the meeting proceed to the next business.\*
  - The appointment of an ad hoc committee to deal with a specific item of business.
  - That the motion be now put.\*
  - A motion resolving to exclude the public (including the press).

\* To ensure objectivity motions may only be put by a Director who has not previously taken part in the debate and who is eligible to vote.

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

### ***Chairman's Ruling***

- 3.24 Statements of Directors made at meetings of the Board of Directors shall be relevant to the matter under discussion at the material time and the decision of the Chairman of the meeting on questions of order, relevancy, regularity and any other matters shall be final.

### ***Voting***

- 3.25 Every question at a meeting shall be determined by a majority of the votes of the voting Directors present and voting on the question. In the case of the number of votes for and against a motion being equal, the Chairman of the meeting shall have a second or casting vote.
- 3.26 All questions put to the vote shall, at the discretion of the Chairman of the meeting, be determined by oral expression or by a show of hands. A paper ballot may also be used if a majority of the Directors present so request.
- 3.27 If at least one-third of the Directors present so request, the voting (other than by paper ballot) on any question may be recorded to show how each director present voted or abstained.
- 3.28 If a Director so requests, his or her vote shall be recorded by name upon any vote (other than by paper ballot).
- 3.29 In no circumstances may an absent Director vote by proxy. Absence is defined as being absent at the time of the vote.
- 3.30 An Officer who has been appointed formally by the Board of Directors to act up for an Executive director during a period of incapacity or temporarily to fill an Executive Director vacancy, shall be entitled to exercise the voting rights of the Executive Director. An Officer attending the Board of Directors to represent an Executive Director during a period of incapacity or temporary absence without formal acting up status may not exercise the voting rights of the Executive Director. An Officer's status when attending a meeting shall be recorded in the minutes.

### ***Minutes***

- 3.31 The minutes of the proceedings of a meeting shall be drawn up and submitted for agreement at the next ensuing meeting where they will be signed by the person presiding at it.
- 3.32 No discussion shall take place upon the minutes except upon their accuracy or where the Chairman considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the next meeting.
- 3.33 Minutes shall be circulated in accordance with Directors' wishes. Where providing a record of a public meeting the minutes shall be made available to the public.

### ***Votes of Joint Directors***

- 3.34 Where the office of an Executive Director is shared jointly by more than one person:
- a) either or both of those persons may attend or take part in meetings of the Board of Directors:
  - b) if both are present at a meeting they should cast one vote if they agree:
  - c) in the case of disagreements no vote should be cast;

- d) the presence of either or both of those persons should count as the presence of one person for the purposes of SO 3.41

### ***Suspension of Standing Orders***

- 3.35 Except where this would contravene any statutory provision or any provision of the authorisation or of the constitution or any direction of the regulator, any one or more of the Standing Orders may be suspended at any meeting, provided that at least two-thirds of the Board of Directors are present, including one Executive Director and one Non-executive Director, and that a majority of those present vote in favour of suspension.
- 3.36 A decision to suspend Standing Orders shall be recorded in the minutes of the meeting.
- 3.37 A separate record of matters discussed during the suspension of Standing Orders shall be made and shall be available to the Chairman and directors.
- 3.38 The Audit and Risk Committee shall review every decision to suspend Standing Orders.

### ***Variation and Amendment of Standing Orders***

- 3.39 These Standing Orders shall be amended only if:
- a notice of motion under Standing Order 3.18 has been given; and
  - no fewer than half the total of the Trust's Non-executive Directors vote in favour of amendment; and
  - at least two-thirds of the Directors are present; and
  - the variation proposed does not contravene any statutory or regulatory requirements or of the Constitution.

### ***Record of Attendance***

- 3.40 The names of the Chairman and Directors present at the meeting shall be recorded in the minutes.

### ***Quorum***

- 3.41 No business shall be transacted at a meeting unless at least one-third of the whole number of the Chairman and other voting Directors appointed, (including at least one Non-executive Director and one Executive Director) are present.
- 3.42 An Officer in attendance for an Executive Director but without formal acting up status may not count towards the quorum.
- 3.43 If the Chairman or Director has been disqualified from participating in the discussion on any matter and/or from voting on any resolution by reason of the declaration of a conflict of interest (see Standing Order **Error! Reference source not found.** or 7) he shall no longer count towards the quorum. If a quorum is then not available for the discussion and/or the passing of a resolution on any matter, that matter may not be discussed further or voted upon at that meeting. Such a position shall be recorded in the minutes of the meeting. The meeting must then proceed to the next business. The above requirement for at least one Executive Director to form part of the quorum shall not apply where the Executive Directors are excluded from a meeting (for example when the Board of Directors considers the recommendations of the Remuneration and Terms of Service Committee).

3.44 The above requirement for at least one Non-executive Director to form part of the quorum shall not apply where the Non-executive Directors are excluded from a meeting as a class (for example when the Board of Directors considers provisions of the Constitution relating to the interests of Non-executive Directors as a class).

3.45 Three quarters of the Directors must be present for any vote on a special resolution; this to include decisions on appointment or dismissal.

#### **4 ARRANGEMENTS FOR THE EXERCISE OF FUNCTIONS BY DELEGATION**

4.1 Subject to the constitution and any such directions as may be given by the Regulator, the Board of Directors may make arrangements for the exercise, on behalf of the Board of Directors and the Trust, of any of its functions:

- by a committee, or a sub-committee appointed by virtue of Standing Order 5.1 or 5.2 below; or
- by an Executive Director of the Trust, in each case subject to such restrictions and conditions as the Board of Directors thinks fit.

##### ***Emergency Powers***

4.2 The powers which the Board of Directors has retained to itself within these Standing Orders (Standing Order 2.3) may in emergency be exercised by the Chief Executive and the Chairman after having consulted at least two Non-executive Directors. The exercise of such powers by the Chief Executive and Chairman shall be reported to the next formal meeting of the Executive Committee and the Board of Directors in public session for ratification. The Board of Directors may also instruct the Chairman to take certain actions and report back to a subsequent meeting.

##### ***Delegation to Committees***

4.3 The Board of Directors shall agree from time to time to the delegation of executive powers to be exercised by committees or sub-committees which it has formally constituted in accordance with Standing Order 5.1 or 5.2 below and the Constitution. The Constitution and terms of reference of these committees, or sub-committees and their specific executive powers shall be approved by the Board of Directors.

4.4 When the Board of Directors is not meeting as the Trust in public session it shall operate as a committee and may only exercise such powers as may have been delegated to it by the Trust in public session.

##### ***Delegation to Officers***

4.5 Those functions of the Trust which have not been retained as reserved by the Board of Directors or delegated to a committee or sub-committee shall be exercised on behalf of the Trust by the Chief Executive. The Chief Executive shall determine which functions he or she will perform personally and shall nominate Officers to undertake the remaining functions for which he or she will still retain accountability to the Trust.

4.6 The Chief Executive shall prepare a Reservation of Powers and Scheme of Delegation identifying his or her proposals, which shall be considered and approved by the Board of Directors, subject to any amendment, agreed during the discussion. The Chief Executive may periodically propose amendment to the Reservation of Powers and Scheme of

Delegation, which shall be considered and approved by the Board of Directors as indicated above.

- 4.7 Nothing in the Reservation of Powers and Delegation of Powers shall impair the discharge of the direct accountability to the Board of Directors of the Chief Financial Officer to provide information and advise the Board of Directors in accordance with the Constitution of any statutory requirements or provisions required by the Regulator. Outside these statutory requirements the Chief Financial Officer shall be accountable to the Chief Executive for operational matters.
- 4.8 The arrangements made by the Board of Directors as set out in the Reservation of Powers and Delegation of Powers shall have effect as if incorporated in these Standing Orders.

***Lack of compliance with Standing Orders***

- 4.9 If for any reason these Standing Orders are not complied with, full details of the non-compliance and any justification for non-compliance and the circumstances around the non-compliance, shall be reported to the next formal meeting of the Board of Directors for action or ratification. All Directors of the Board of Directors and staff have a duty to disclose any non-compliance with these Standing Orders to the Chief Executive as soon as possible.

**5 COMMITTEES**

- 5.1 Subject to the Constitution and any applicable regulatory requirements, the Board of Directors may appoint committees of the Trust, consisting wholly or partly of directors of the Trust. The Board may only delegate its powers to such a committee if that committee consists entirely of Board directors.
- 5.2 Subject to the Constitution and any applicable regulatory requirements, a committee appointed under these Standing Orders may appoint sub-committees consisting of either (a) wholly or partly of members of the relevant committee (whether or not they are directors of the Trust) or (b) wholly of persons who are not Directors of the Trust subject to the same proviso as in S.O 5.1 relating to membership of the committee and the restrictions relation to delegation of powers.
- 5.3 The Standing Orders of the Trust, as far as they are applicable, shall apply with appropriate alteration to meetings of any committees or sub-committees established by the Board of Directors. In such a case the term “Chairman” is to be read as a reference to the Chairman of the committee or sub-committee as the context permits, and the term “Director” is to be read as a reference to a member of the committee also as the context permits. (There is no requirement to hold meetings of committees or sub-committees established by the Board of Directors in public.)
- 5.4 Each such committee and sub-committee shall have such terms of reference and powers and be subject to such conditions (as to reporting back to the Board of Directors), as the Board of Directors shall decide and shall be in accordance with any relevant legislation and regulation or direction issued by Monitor. Such terms of reference shall have effect as if incorporated into the Standing Orders.
- 5.5 The Board of Directors shall approve the appointments to each of the committees, which it has formally constituted. Where the Board of Directors determines that persons, who are

neither Directors nor Officers, shall be appointed to a committee the terms of such appointment shall be determined by the Board of Directors. The Board of Directors shall define the powers of such appointees and shall agree allowances, including reimbursement for loss of earnings, and/or expenses in accordance where appropriate with its Constitution.

5.6 The committees established by the Board of Directors are:

- Audit and Risk Committee
- Nominations and Remuneration Committee

The board may establish any other committee it requires in order to carry out the business of the trust. However, the committee structure must allow for the following portfolios to be covered for assurance purposes:

- Quality and safety
- Strategy
- Workforce

## **6 DECLARATIONS OF INTERESTS**

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

6.1 The Constitution requires the Directors to declare relevant and material interests. These may be their interests or those of close family members. The Directors must comply with the Trust's Declaration of Interests, Gifts and Hospitality Policy.

6.2 All Directors must make a declaration of relevant interests at least once per year (even if a 'nil' return) or when their interests change. Any Directors appointed subsequently should make the declaration on appointment.

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

6.3 The details of Directors interests recorded in the Register will be kept up to date in accordance with the Constitution. Directors must notify the Company Secretary of any new or amended information as they occur during the year.

6.4 The Register will be available for inspection by the public free of charge at all reasonable times. The Chairman will take reasonable steps to bring the existence of the Register to the attention of the local population and to publicise arrangements for viewing it. Copies or extracts of the Register must be provided to members of the Trust free of charge and within a reasonable time period of the request. A reasonable charge may be imposed on non-members for copies or extracts from the Register.

## **7 DISABILITY OF CHAIRMAN AND DIRECTORS IN PROCEEDINGS ON ACCOUNT OF PECUNIARY INTEREST**

7.1 Subject to the following provisions of this Standing Order, if the Chairman or a director has any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter and is present at a meeting of the Board of Directors at which the contract or other matter is the subject of consideration, he shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not take part in the consideration or discussion of the contract or other matter or vote on any question with respect to it.

- 7.2 The Board of Directors may exclude the Chairman or any Director from a meeting of the Board of Directors while any contract, proposed contract or other matter in which he has a pecuniary interest, is under consideration.
- 7.3 Any remuneration, compensation or allowances payable to the Chairman or a Non-executive Director in accordance with the Constitution shall not be treated as a pecuniary interest for the purpose of this Standing Order.
- 7.4 For the purpose of this Standing Order the Chairman or a Director shall be treated, subject to SO 7.3 and SO 7.5, as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if:
- a) he or she, or a nominee of his or hers, is a director of a company or other body, not being a public body, with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration;
  - or
  - b) he or she is a partner of, or is in the employment of a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration;
- and in the case of family or close personal relationships the interest of one party shall, if known to the other, be deemed for the purposes of this Standing Order to be also an interest of the other.
- 7.5 The Chairman or a Director shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only:
- a) of his membership of a company or other body, if he has no beneficial interest in any securities of that company or other body;
  - b) of an interest in any company, body or person with which he is connected as mentioned in SO 7.4 above which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a director in the consideration or discussion of or in voting on, any question with respect to that contract or matter.
- 7.6 This Standing Order shall not prohibit the Chairman or a director from taking part in the consideration or discussion of the contract or other matter or from voting on any question with respect to it, without prejudice however to his or her duty to disclose his or her interest, where:
- a) the Chairman or a director has an indirect pecuniary interest in a contract, proposed contract or other matter by reason only of a beneficial interest in securities of a company or other body, and
  - b) the total nominal value of those securities does not exceed £5,000 or one-hundredth of the total nominal value of the issued share capital of the company body, whichever is the less, and
  - c) if the share capital is of more than one class, the total nominal value of shares of any one class in which he has a beneficial interest does not exceed one-hundredth of the total issued share capital of that class.

- 7.7 The Standing Order applies to a committee or sub-committee as it applies to the Board of Directors and applies to a member of any such committee or sub-committee (whether or not he is also a Director) as it applies to a Director.

## **8 MANAGING CONFLICTS WITHIN THE NHS**

- 8.1 Staff should comply with the national guidance contained in Annex A. This section of Standing Orders should be read in conjunction with these documents.

### ***Interest of Officers in Contracts***

- 8.2 If it comes to the knowledge of an Officer of the Trust that a contract in which he has any pecuniary interest not being a contract to which he is himself a party, has been, or is proposed to be, entered into by the Trust he shall, at once, give notice in writing to the Chief Executive of the fact that he is interested therein. In the case of married persons or persons living together as partners, the interest of one partner shall, if known to the other, be deemed to be also the interest of that partner.
- 8.3 An Officer should also declare to the Chief Executive any other employment or business or other relationship of his, or of a member of his/her family or of someone with whom he/she has a close personal relationship, that conflicts, or might reasonably be predicted could conflict with the interests of the Trust.
- 8.4 The Trust requires interests, employment or relationships so declared to be entered in a register of interests of staff.

### ***Canvassing of, and Recommendations by, Directors in Relation to Appointments***

- 8.5 Canvassing of Directors or of members of any Committee of the Board of Directors directly or indirectly for any appointment under the Trust shall disqualify the candidate for such appointment. The contents of this paragraph of the Standing Order shall be included in application forms or otherwise brought to the attention of candidates.
- 8.6 A Director shall not solicit for any person any appointment under the Trust or recommend any person for such appointment, but this paragraph of this Standing Order shall not preclude a Director from giving written testimonial of a candidate's ability, experience or character for submission to the Trust.
- 8.7 Informal discussions outside appointments panels or committees, whether solicited or unsolicited, should be declared to the panel or committee.

### ***Relatives of Directors or Officers***

- 8.8 Candidates for any Trust staff appointment shall, when making application, disclose in writing to the Trust whether they are related to any Director or the holder of any office under the Trust. Failure to disclose such a relationship shall disqualify a candidate and, if appointed, render him liable to instant dismissal.
- 8.9 The Chairman and every Director and Officer of the Trust shall disclose to the Chief Executive any relationship between himself and a candidate of whose candidature that Director or Officer is aware. It shall be the duty of the Chief Executive to report to the Board of Directors any such disclosure made.



- 8.10 On appointment, Directors (and prior to acceptance of an appointment in the case of Executive Directors) should disclose to the Board of Directors whether they are related to any other Director or holder of any office in the Trust.
- 8.11 Where the relationship to a Director of the Trust is disclosed, the Standing Order headed 'Disability of Chairman and directors in proceedings on account of pecuniary interest' (SO 7) shall apply.

## **9 CUSTODY OF SEAL AND SEALING OF DOCUMENTS**

### ***Custody of Seal***

- 9.1 The Chief Executive shall keep the Common Seal of the Trust in a secure place.

### ***Sealing of Documents***

- 9.2 The Seal of the Trust shall not be fixed to any documents unless the sealing has been authorised by a resolution of the Board of Directors or of a committee, thereof or where the Board of Directors has delegated its powers. The fixing of the Seal of the Trust shall be authenticated by the signature of the Chairman (or the Vice Chairman in the absence of the Chairman) and of one Director,
- 9.3 Before any building, engineering, property or capital document is sealed it must be approved and signed by the Chief Financial Officer (or an Officer nominated by him/her) and authorised and countersigned by the Chief Executive (or an Officer nominated by him/her who shall not be within the originating directorate).

### ***Register of Sealing***

- 9.4 An entry of every sealing shall be made and numbered consecutively in a book provided for that purpose, and shall be signed by the persons who shall have approved and authorised the document and those who attested the seal. A report of sealings will be made to the Board of Directors meeting following use of the seal. An annual report of sealings will be made to the Audit and Risk committee and appended to the next report of that committee to the board.

## **10 SIGNATURE OF DOCUMENTS**

- 10.1 Where the signature of any document will be a necessary step in legal proceedings involving the Trust, it shall be signed by the Chief Executive, unless any enactment otherwise requires or authorises, or the Board of Directors shall have given the necessary authority to some other person for the purpose of such proceedings.
- 10.2 The Chief Executive or nominated officers shall be authorised, by resolution of the Board of Directors, to sign on behalf of the Trust any agreement or other document not requested to be executed as a deed, the subject matter of which has been approved by the Board of Directors or any committee, sub-committee or standing committee with delegated authority.

## **11 MISCELLANEOUS**

### ***Standing Orders to be given to Directors and Officers***

- 11.1 It is the duty of the Chief Executive to ensure that Directors and Officers and all new appointees are notified of and understand their responsibilities within Standing Orders and

Standing Financial Instructions. Updated copies shall be issued to staff designated by the Chief Executive. New designated Officers shall be informed in writing and shall receive copies where appropriate of Standing Orders.

***Documents having the standing of Standing Orders***

- 11.2 Standing Financial Instructions and Reservation of Powers and Delegation of Powers shall have effect as if incorporated into Standing Orders.

***Review of Standing Orders***

- 11.3 Standing Orders shall be reviewed annually by the Board of Directors. The requirement for review extends to all documents having the effect as if incorporated in Standing Orders.

***Joint Finance Arrangements***

- 11.4 The Board of Directors may confirm contracts to purchase from a voluntary organisation or a local authority using its powers under Section 75 of the 2006 Act. The Board of Directors may confirm contracts to transfer money from the NHS to the voluntary sector or the health-related functions of local authorities where such a transfer is to fund services to improve the health of the local population more effectively than equivalent expenditure on NHS services, using its powers under Section 75 of the 2006 Act.

## ANNEX A – PART A

The public rightly expect the highest standards of behaviour in the NHS, and we take our responsibility as custodians of taxpayers' money very seriously. Decisions involving the use of NHS funds should never be influenced by outside interests or expectations of private gain, but we recognise that conflicts of interest are unavoidable in complex systems.

NHS staff need to be empowered to use good judgement in managing conflicts of interest effectively, and need to be safeguarded so they can continue to work innovatively with partners whilst also providing transparency to the taxpayer.

New guidance on managing conflicts of interest in the NHS:

- introduces common principles and rules for managing conflicts of interest
- provides simple advice to staff and organisations about what to do in common situations
- supports good judgement about how interests should be approached and managed.

Link to Guidance: [Conflicts of Interest in the NHS – Guidance for staff and organisations](#)

The guidance came into force on **1 June 2017** and is applicable to the following NHS organisations:

- [Clinical Commissioning Groups \('CCGs'\)](#) via the statutory guidance to CCGs issued by NHS England
- NHS Trusts and NHS Foundation Trusts – which include secondary care trusts, mental health trusts, community trusts, and ambulance trusts
- NHS England (through the Standards of Business Conduct).

This guidance supersedes and extinguishes the Standards of Business Conduct for NHS staff (HSG(93)5).

The guidance does not apply to bodies not listed above (i.e. independent and private sector organisations, general practices, social enterprises, community pharmacies, community dental practices, optical providers, local authorities).

## ANNEX A PART B

### ***NHS Management Executive (NHSME) - general guidelines as adapted by the Moorfields Eye Hospital NHS Foundation Trust Hospitality Policy***

#### ***Introduction***

1. These guidelines, which are intended by the NHSME to be helpful to all NHS employers and their employees, re-state and reinforce the guiding principles previously set out in Circular HM (62) 21 (now cancelled), relating to the conduct of business in the NHS.

*Note - In these guidelines "NHS employer" means all "for action" addressees listed on the title page of HSG (93) 5.*

#### ***Responsibility of NHS employers***

2. NHS employers are responsible for ensuring that these guidelines are brought to the attention of all employees; also that machinery is put in place for ensuring that they are effectively implemented.

### ***Responsibility of NHS staff***

3. It is the responsibility of staff to ensure that they are not placed in a position, which risks, or appears to risk, conflict between their private interests and their NHS duties. This primary responsibility applies to *all NHS Staff*, i.e. those who commit NHS resources directly (e.g. by the ordering of goods) or those who do so indirectly (e.g. by the prescribing of medicines). A further example would be staff who may have an interest in a private nursing home and who are involved with the discharge of patients to residential facilities.

### ***Guiding principle in conduct of public business***

4. It is a long established principle that public sector bodies, which include the NHS, must be impartial and honest in the conduct of their business, and that their employees should remain beyond suspicion. It is also an offence under the Prevention of Corruption Acts 1906 and 1916 for an employee corruptly to accept any inducement or reward for doing, or refraining from doing anything, in his or her official capacity, or corruptly showing favour, or disfavour, in the handling of contracts (see PART A).

*Staff will need to be aware that a breach of the provisions of these Acts renders them liable to prosecution and may also lead to loss of their employment and superannuation rights in the NHS*

### ***Principles of conduct in the NHS***

5. NHS staff are expected to:
  - ensure that the interest of patients remains paramount at all times;
  - be impartial and honest in the conduct of their official business;
  - use the public funds entrusted to them to the best advantage of the service, always ensuring value for money.
6. It is also the responsibility of staff to ensure that they do **not**:
  - abuse their official position for personal gain or to benefit their family or friends;
  - seek to advantage or further private business or other interests, in the course of their official duties.

### ***Implementing the guiding principles Hospitality, Gifts and Rewards***

7. Directors and employees of the Trust should not receive any hospitality, gift or rewards, including luncheon or dinner appointments or entertainment outside Trust premises, from any firm, individual or organisation external to the Trust, other than isolated gifts of a trivial nature eg. Calendars or conventional hospitality such as working lunches.
8. This applies to both implicit and explicit offers and whether or not linked to the awarding of contracts, or a change in working practices.
9. If an individual receives hospitality, gifts or rewards in excess of £25.00 they should declare the offer. If an individual is unsure whether the offer constitutes hospitality, gifts or rewards as defined by the Trust's policy, then they should declare.
10. All declarations of hospitality, gifts or rewards will be entered into the Trust's Hospitality Register.

### ***Declaration of interests***

11. NHS employers need to be aware of all cases where an employee, or his or her close relative or associate, has a controlling and/or significant financial interest in a business (including a private company, public sector organisation, other NHS employer and/or voluntary organisation), or in any

other activity or pursuit, which may compete for an NHS contract to supply either goods or services to the employing authority.

12. All NHS staff should therefore declare such interests to their employer, either on starting employment or on acquisition of the interest, in order that it may be known to and in no way promoted to the detriment of either the employing authority or the patients whom it serves.
13. One particular area of potential conflict of interest, which may directly affect patients, is when NHS staff hold a self-beneficial interest in private care homes or hostels. While it is for staff to declare such interests to their employing authority, the employing authority has a responsibility to introduce whatever measures it considers necessary to ensure that its interests and those of patients are adequately safeguarded. This may for example take the form of a contractual obligation on staff to declare any such interests. Advice on professional conduct issued by the General Medical Council recommends that when a doctor refers a patient to a private care home or hostel in which he or she has an interest, the patient must be informed of that interest before referral is made.
14. In determining what needs to be declared, employers and employees will wish to be guided by the principles set out in paragraph 5 above; also the more detailed guidance to staff contained in Part D.
15. NHS employers should:
  - ensure that staff are aware of their responsibility to declare relevant interests (perhaps by including a clause to this effect in staff contracts)
  - consider keeping registers of all such interests and making them available for inspection by the public.
  - develop a local policy, in consultation with staff and local staff interests, for implementing this guidance. This may include the disciplinary action to be taken if an employee fails to declare a relevant interest, or is found to have abused his or her official position, or knowledge, for the purpose of self-benefit, or that of family or friends.

#### ***Preferential treatment in private transactions***

16. Individual staff must not seek or accept preferential rates or benefits in kind for private transactions carried out with companies with which they have had, or may have, official dealings on behalf of their NHS employer. (This does not apply to concessionary agreements negotiated with companies by NHS management, or by recognised staff interests, on behalf of all staff - for example, NHS staff benefits schemes.)

#### ***Contracts***

17. All staff who are in contact with suppliers and contractors (including external consultants), and in particular those who are authorised to sign Purchase Orders, or place contracts for goods, materials or services, are expected to adhere to professional standards of the kind set out in the CIPS Code set out at Annex A Part C.

#### ***Favouritism in awarding contracts***

18. Fair and open competition between prospective contractors or suppliers for NHS contracts is a requirement of NHS Standing Orders and of EC Directives on Public Purchasing for Works and Supplies. This means that:

- no private, public or voluntary organisation or company which may bid for NHS business should be given any advantage over its competitors, such as advance notice of NHS requirements. This applies to all potential contractors, whether or not there is a relationship between them and the NHS employer, such as a long-running series of previous contracts.
  - each new contract should be awarded solely on merit, taking into account the requirements of the NHS and the ability of the contractors to fulfil them.
19. NHS employers should ensure that no special favour is shown to current or former employees or their close relatives or associates in awarding contracts to private or other businesses run by them or employing them in a senior or relevant managerial capacity. Contracts may be awarded to such businesses where they are won in fair competition against other tenders, but scrupulous care must be taken to ensure that the selection process is conducted impartially, and that staff who are known to have a relevant interest play no part in the selection.

#### ***Warnings to potential contractors***

20. NHS employers will wish to ensure that all invitations to potential contractors to tender for NHS business include a notice warning tenderers of the consequences of engaging in any corrupt practices involving employees of public bodies.

#### ***Outside employment***

21. NHS employees are advised not to engage in outside employment, which may conflict with their NHS work, or be detrimental to it. They are advised to tell their NHS employing authority if they think they may be risking a conflict of interest in this area: the NHS employer will be responsible for judging whether the interests of patients could be harmed, in line with the principles in paragraph 5 above. NHS employers may wish to consider the preparation of local guidelines on this subject.

#### ***Private practice***

22. Consultants (and associate specialists) employed under the Terms and Conditions of Service of Hospital Medical and Dental Staff are permitted to carry out private practice in NHS hospitals subject to the conditions outlined in the handbook "A Guide to the Management of Private Practice in the NHS". (See also PM (79) 11). Consultants who have signed new contracts with Trusts will be subject to the terms applying to private practice in those contracts.
23. Other grades may undertake private practice or work for outside agencies, providing they do not do so within the time they are contracted to the NHS, and they observe the conditions in paragraph 20 above. All hospital doctors are entitled to fees for other work outside their NHS contractual duties under "Category 2" (paragraph 37 of the TCS of Hospital Medical and Dental staff), e.g. examinations and reports for life insurance purposes. Hospital doctors and dentists in training should not undertake locum work outside their contracts where such work would be in breach of their contracted hours. Career grade medical and dental staff employed by NHS Trusts may agree terms and conditions different from the National Terms and Conditions of Service.

#### ***Rewards for Initiative***

24. NHS employers should ensure that they are in a position to identify potential intellectual property rights (IPR), as and when they arise, so that they can protect and exploit them properly, and thereby ensure that they receive any rewards or benefits (such as royalties) in respect of work commissioned from third parties, or work carried out by their employees in the course of their NHS

duties. Most IPR are protected by statute; e.g. patents are protected under the Patents Act 1977 and copyright (which includes software programmes) under the Copyright Designs and Patents Act 1988. To achieve this NHS employers should build appropriate specifications and provisions into the contractual arrangements, which they enter into *before* the work is commissioned, or begins. They should always seek legal advice if in any doubt in specific cases.

25. With regard to patents and inventions, in certain defined circumstances the Patents Act gives *employees a right* to obtain some reward for their efforts, and employers should see that this is effected. Other rewards may be given voluntarily to employees who within the course of their employment have produced innovative work of outstanding benefit to the NHS. Similar rewards should be voluntarily applied to other activities such as giving lectures and publishing books and articles.
26. In the case of collaborative research and evaluative exercises with manufacturers, NHS employers should see that they obtain a fair reward for the input they provide. If such an exercise involves additional work for an NHS employee outside that paid for by the NHS employer under his or her contract of employment, arrangements should be made for some share of any rewards or benefits to be passed on to the employee(s) concerned from the collaborating parties. Care should however be taken that involvement in this type of arrangement with a manufacturer does not influence the purchase of other supplies from that manufacturer.

## ANNEX A – PART B

### *Chartered Institute of Purchasing and Supply – Code of Conduct (reproduced by kind permission of CIPS)*

The purpose of this code of conduct is to define behaviours and actions which CIPS members must commit to maintain as long as they are members of CIPS (Chartered Institute of Procurement & Supply).

- Never engaging in conduct, either professional or personal, which would bring the profession or the Chartered Institute of Procurement & Supply into disrepute
- Not accepting inducements or gifts (other than any declared gifts of nominal value which has been sanctioned by the employer)
- Not allowing offers of hospitality or those with vested interests to influence, or be perceived to influence, my business decisions
- Being aware that my behaviour outside my professional life may have an effect on how I am perceived as a professional

Promote the eradication of unethical business practices, by:

- Fostering awareness of human rights, fraud and corruption issues in all my business relationships
- Responsibility managing any business relationships where unethical practices may come to light, and taking appropriate action to report and remedy them
- Undertaking due diligence on appropriate supplier relationships in relation to forced labour (modern slavery) and other human rights abuses, fraud and corruption

Continually developing my knowledge of forced labour (modern slavery), human rights, fraud and corruption

issues, and applying this in my professional life.

Maintain the highest standard of integrity in all business relationships, by:

- Rejecting any business practice which might reasonably be deemed improper
- Never using my authority or position for my own financial gain
- Declaring to my line manager any personal interest that might affect, or be seen by others to affect, my impartiality in decision making
- Ensuring that the information I give in the course of my work is accurate and not misleading
- Never breaching the confidentiality of information I receive in a professional capacity
- Striving for genuine, fair and transparent competition

Being truthful about my skills, experience and qualifications

Enhance the proficiency and stature of the profession by:

- Continually developing and applying knowledge to increase my personal skills and those of the organisation I work for
- Fostering the highest standards of professional competence amongst those for whom I am responsible
- Optimising the responsible use of resources which I have influence over for the benefit of my organisation

Ensure full compliance with laws and regulations by:

- Adhering to the law of countries in which I practise, and in countries where there is no relevant law in place I will apply the standards inherent in this Code
- Fulfilling agreed contractual obligations
- Following CIPs guidance on professional practice

Use of the code

Members of CIPS worldwide are required to uphold this code and to seek commitment to it by all the parties they engage with in their professional practice.

Members should encourage their organisation to adopt an ethical procurement and supply policy based on the principles of this code and raise any matter of concern relating to business ethics at an appropriate level within their organisation.

Members' conduct will be judged against the code and any breach may lead to action under the disciplinary rules set out in the Institute's Royal Charter. Members are expected to assist any investigations by CIPs in the event of a complaint being made against them.



**ANNEX 3 – STANDING ORDERS OF THE MEMBERSHIP COUNCIL**

**MOORFIELDS EYE HOSPITAL NHS FOUNDATION TRUST**

**STANDING ORDERS OF MEMBERSHIP COUNCIL**

**January 2018**

## INTRODUCTION

### ***Statutory Framework***

The Moorfields Eye Hospital NHS Foundation Trust ("**the Trust**") became a Public Benefit Corporation on 1<sup>st</sup> April 2004 following the approval of the Independent Regulator pursuant to what was then the Health and Social Care (Community Health and Standards) Act 2003.

The Trust is governed by the 2006 Act, the Constitution and the Authorisation granted by the Independent Regulator ("**the Regulatory Framework**"). The functions of the Trust are conferred by the Regulatory Framework. The Regulatory Framework, and in particular paragraph 8.23.5 of the Constitution requires the Membership Council to adopt standing orders for the regulation of its proceedings and business.

### **1 INTERPRETATION**

Save as otherwise permitted by law, at any meeting the Chairman shall be the final authority on the interpretation of these Standing Orders for the Membership Council (on which he should be advised by the Secretary).

Any expression to which a meaning is given in the 2006 Act or any regulations or orders made under the 2006 Act shall have the same meaning in these SOs and in addition, defined terms used in these SOs have the same meaning as in the Constitution unless the context requires otherwise, or a contrary intention is evident.

Words importing the masculine gender only shall include the feminine gender, words importing the singular shall include the plural, and vice versa.

In these SOs:

- t) "**Committee**" means a committee appointed by the Membership Council;
- u) "**Committee members**" means persons formally appointed by the Membership Council to sit on or to chair specific Committees;
- v) "**Motion**" means a formal proposition to be discussed and voted on during the course of a meeting;
- w) "**Register**" means the register of interests maintained by the Company Secretary;
- x) "**Regulatory Framework**" means the Constitution, the 2006 Act, the 2012 Act or any other laws or guidance applicable to NHS foundation trusts as required by Monitor or any other relevant government department or regulator from time to time;
- y) "**SOs**" means these Standing Orders;
- z) "**Trust Headquarters**" means Moorfields Eye Hospital, 162 City Road, London, EC1V 2PD

### **2 MEETINGS OF THE MEMBERSHIP COUNCIL**

#### ***2.1 Admission of the Public and the Press***

The public and representatives of the press shall be afforded facilities to attend all formal meetings of the Membership Council but the public and press may be excluded from all or part of any meeting by resolution of the Membership Council on the grounds that publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted or for other special reasons stated in the resolution and arising from the nature of the business or of the proceedings.

Nothing in these SOs shall require the Membership Council to allow members of the public and/or representatives of the press to record proceedings in any manner whatsoever, other than in writing, or to make any oral report of proceedings as they take place, without the prior agreement of the Membership Council.

## **2.2 Calling meetings**

Subject to SO 2.3, ordinary meetings of the Membership Council shall be held at such times and places as the Membership Council may determine.

The Membership Council shall meet at least four times per financial year, including an annual meeting no later than 31 October in each financial year when the Membership Council is to receive and consider the annual accounts, any report of the auditor on them and the annual report.

The Company Secretary shall call the meetings referred to in SO 0.

## **2.3 Notice of Meetings**

**2.3.1** Before each meeting of the Membership Council, a notice of the meeting, specifying the business proposed to be transacted at it, and signed by the Chairman (or by an Officer authorised by the Chairman to sign on his or her behalf) shall be sent to every Governor by e-mail to the given e-mail address of such Governor and/or by post to the preferred address of such Governor, so as to be available to him at least five days before the meeting.

**2.3.2** Want of service of the notice referred to in SO 2.3.1 on any Governor shall not affect the validity of a meeting.

**2.3.3** Not less than three Governors may by notice in writing to the Secretary requisition an extraordinary meeting of the Membership Council and on receipt of such notice the Secretary shall cause such a meeting to be called within seven days of receipt of the notice. No business shall be transacted at the meeting other than that specified in the notice.

**2.3.4** The notice of the agenda will be sent to Governors at least five days before the meeting and supporting papers, whenever possible, shall accompany the agenda, but will certainly be despatched no later than three days before the meeting, save in emergency. Failure to serve the notice of agenda and supporting papers on more than three Governors will invalidate the meeting. The notice of agenda and supporting papers shall be presumed to have been served one day after posting or on the same day where the notice has been e-mailed.

**2.3.5** Before each meeting of the Membership Council a public notice of the time and place of the meeting, and the public part of the agenda, shall be displayed at the Trust Headquarters at least three days before the meeting.

## **2.4 Setting the Agenda**

**2.4.1** The Membership Council may determine that certain matters shall appear on every agenda for a meeting and shall be addressed prior to any other business being conducted.

**2.4.2** A Governor desiring a matter to be included on an agenda shall make his request in writing to the Chairman at least ten days before the meeting. The request should state whether the item of business is proposed to be transacted in the presence of the public and should include appropriate supporting information. Requests made less than ten days before a meeting may be included on the agenda at the discretion of the Chairman.

## **2.5 Petitions**

Where a petition has been received by the Trust the Chairman of the Membership Council shall include the petition as an item for the agenda of the next Membership Council meeting.

## **2.6 Chairman of the Meeting**

**2.6.1** At any meeting of the Membership Council, the Chairman, if present, shall preside.

**2.6.2** If the Chairman is absent from the meeting (including by reason of a conflict of interests) the Vice Chairman of the Board of Directors shall preside.

**2.6.3** If the Chairman and Vice Chairman of the Board of Directors are absent temporarily from a meeting of the Membership Council owing to a declared conflict of interest or otherwise, the Vice Chairman of the Membership Council shall preside for that part of the meeting and as the person chairing the meeting, shall have a casting vote.

**2.6.4** In the event that one of the Chairman, Vice Chairman of the Board of Directors or Vice Chairman of the Membership Council is unable to attend the meeting, the Membership Council may appoint one of the members of the Board of Directors to act as Chairman of the meeting.

## **2.7 Notices of Motion**

A Governor desiring to move a Motion shall send a written notice thereof at least ten days before the meeting to the Chairman, who shall insert in the agenda for the meeting all notices so received. This paragraph shall not prevent any Motion being moved during the meeting, without notice on any business mentioned on the agenda.

## **2.8 Withdrawal of Motion or Amendments**

A Motion or amendment once moved and seconded may be withdrawn by the proposer with the concurrence of the seconder and the consent of the Chairman.

## **2.9 Motion to Rescind a Resolution**

Notice of a Motion to amend or rescind any resolution (or the general substance of any resolution) which has been passed within the preceding six calendar months shall bear the signature of the Governor who gives it and also the signature of four other Governors. When any such Motion has been disposed of by the Membership Council (i.e. a Motion to amend or rescind any resolution has failed to be passed), no Governor shall propose a Motion to the same effect within six months, unless the Chairman gives his consent for a Governor to do so.

## **2.10 Motions**

**2.10.1** The mover of a Motion shall have a right of reply at the close of any discussion on the motion or any amendment thereto.

**2.10.2** When a Motion is under discussion or immediately prior to discussion it shall be open to a Governor to move:

- An amendment to the Motion.
- The adjournment of the discussion or the meeting.
- That the meeting proceed to the next item of business\*.
- The appointment of an ad hoc committee to deal with a specific item of business.
- That the Motion be now put\*.
- A Motion resolving to exclude the public (including the press).

\* To ensure objectivity, Motions may only be put by a Governor who has not previously taken part in the debate and who is eligible to vote.

**2.10.3** No amendment to the Motion shall be admitted if, in the opinion of the Chairman, the amendment negates the substance of the Motion.

***2.11 Circumstances where persons other than Governors may be allowed to speak at meetings***

Subject to these SOs in relation to interests, any Director or their nominated representatives may attend meetings of the Membership Council and, subject to the approval of the Chairman speak to any item under consideration.

***2.12 Chairman's Ruling***

Statements of Governors (and other persons with the right to speak in accordance with SO 2.11 above) made at meetings of the Membership Council shall be relevant to the matter under discussion at the material time and the decision of the Chairman on questions of order, relevancy, regularity and any other matters shall be final.

***2.13 Voting***

**2.13.1** Every question at a meeting shall be determined by a majority of the votes of the Chairman and Governors present and voting on the question and, in the case of the number of votes for and against a Motion being equal, the Chairman shall have a second and casting vote.

**2.13.2** All questions put to the vote shall, at the discretion of the Chairman, be determined by oral expression or by a show of hands. A paper ballot may also be used if a majority of the Governors present so request.

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

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

***2.14 Minutes***

**2.14.1** The Minutes of the proceedings of a meeting shall be drawn up and submitted for agreement at the next ensuing meeting where they will be signed by the person presiding at it.

**2.14.2** No discussion shall take place upon the minutes except upon their accuracy or where the Chairman considers discussion appropriate. Any amendment to the minutes shall be agreed and recorded at the next meeting.

**2.14.3** Minutes shall be circulated in accordance with Governors' wishes. Where providing a record of a meeting held in public the minutes shall be made available to the public as required by the Freedom of Information Act 2000.

***2.15 Suspension of Standing Orders***

**2.15.1** Save where prohibited by the Regulatory Framework or the law, any SO may be suspended at a meeting, provided that at least two-thirds of the Membership Council are present and the majority of that two thirds are the aggregate of the Public Governors and Patient Governors, and that a majority of those present vote in favour of suspension.

**2.15.2** A decision to suspend the SOs shall be recorded in the minutes of the meeting. No formal business shall be transacted while the SOs are suspended.

**2.15.3** A separate record of matters discussed during the suspension of SOs shall be made and shall be available to the Chairman and Governors.

**2.15.4** The Trust's Audit and Risk Committee shall review every decision to suspend the SOs.

## **2.16 Variation and Amendment of Standing Orders**

These SOs shall be amended only if:

- a notice of Motion under SO 2.10 has been given; and
- no fewer than half the total of the Governors vote in favour of amendment; and
- at least two-thirds of the Governors are present; and
- the variation proposed does not contravene the Regulatory Framework

## **2.17 Record of Attendance**

The names of the Chairman and Governors present at the meeting shall be recorded in the minutes. The names of others in attendance at the meeting shall also be recorded in the minutes.

## **2.18 Quorum**

**2.18.1** No business shall be transacted at a meeting unless the Chairman (or the person presiding in his absence under SO 2.6.2 to 2.6.4) is present and at least one-third of the number of Governors is present, where one third of the number of Governors consists of a majority of the aggregate of Public and Patient Governors.

**2.18.2** Where at any meeting there is no quorum present within 30 minutes the meeting shall stand adjourned for a minimum of five days to a maximum of twenty days and upon reconvening those present shall constitute a quorum.

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

## **2.19 Meetings – electronic communication**

**2.19.1** In this SO, "communication" and "electronic communication" shall have the meanings set out in the Electronic Communications Act 2000 (to primarily include telephone or video conferencing) or any statutory modification or re-enactment thereof.

**2.19.2** A Governor in electronic communication with the Chairman and all other parties to a meeting of the Membership Council or of a committee or sub-committee of the Membership Council shall be regarded for all purposes as personally attending such a meeting provided that, but only for so long as, at such a meeting he has the ability to communicate interactively and simultaneously with all other parties attending the meeting including all persons attending by way of electronic communication.

**2.19.3** A meeting at which one or more of the Governors attends by way of electronic communication is deemed to be held at such a place as the Governors shall at the said meeting resolve. In the absence of such a resolution, the meeting shall be deemed to be held at the place (if any) where a majority of the Governors attending the meeting are physically present, or in default of such a majority, the place at which the Chairman of the meeting is physically present.

**2.19.4** Meetings held in accordance with this SO are subject to SO 2.18 (Quorum). For such a meeting to be valid, a quorum MUST be present and maintained throughout the meeting.

**2.19.5** The minutes of a meeting held in this way MUST state that it was held by electronic communication and that the Governors were all able to hear each other and were present throughout the meeting. This will be confirmed by acceptance of the minutes at the next meeting.

### **3 COMMITTEES**

**3.1** Subject to the Regulatory Framework, the Membership Council may appoint Committees, sub committees, joint committees and/or working groups with the Board of Directors or other health service or related bodies. Committees, sub committees, joint committees and/or working groups may call upon outside advisors to help them in their tasks, provided that the financial and other implications of seeking outside advisors have been discussed and agreed with the Chairman and reported to the Board of Directors.

**3.2** Committees and joint committees appointed under SO 3.1 may appoint sub committees consisting wholly or partly of Governors of that Committee or joint committee (whether or not they are Governors or members of the Trust or other health service or related bodies in question); or wholly of persons who are not members of the Trust or other health service bodies or the Committee of the Trust or other health service bodies in question.

**3.3** The SOs shall, as far as they are applicable, apply with appropriate alteration to meetings of any Committees established by the Membership Council. In which case the term “Chairman” is to be read as a reference to the Chairman of the Committee as the context permits, and the term “member” is to be read as a reference to a member of the committee also as the context permits. There is no requirement to hold meetings of Committees established by the Membership Council in public.

**3.4** Each such Committee shall have such terms of reference and powers and be subject to such conditions (as to reporting back to the Membership Council), as the Membership Council shall decide and shall be in accordance with the Regulatory Framework. Such terms of reference shall have effect as if incorporated into the SOs.

**3.5** Where Committees and joint committees are authorised to establish sub-committees they may not delegate Governors' powers to the sub-committee.

**3.6** The Membership Council shall approve the appointments to each of the Committees, which it has formally constituted. Where the Membership Council determines, and the Regulatory Framework permits, that persons, who are not Governors, shall be appointed to a Committee the terms of such appointment shall be within the powers of the Membership Council as defined by the Constitution. The Membership Council shall define the powers of such appointees and shall agree allowances, including costs and expenses in accordance with the Regulatory Framework.

**3.7** Where the Membership Council is required to appoint persons to a Committee, and where such appointments are to operate independently of the Membership Council such appointment shall be made in accordance with the Regulatory Framework.

### **4 DECLARATIONS OF INTERESTS**

#### **4.1 Declaration of Interests –**

The Constitution requires Governors to declare relevant and material interests. These may be their interests or those of close family members. The Governors must comply with the Trust's Declaration of Interests, Gifts and Hospitality Policy.

All Governors must make a declaration of relevant interests at least once per year (even if ‘nil’ returns) or when their interests change such interests. Any Governors appointed subsequently should do so on appointment.

The Trust's Declaration of Interests, Gifts and Hospitality Policy should be referred to for details of interests to be declared and the definition of 'close relative'

#### **4.2 Disability of Chairman and Governors in proceedings on account of pecuniary interest**

**4.2.1** Subject to the following provisions of this SO, if the Chairman or a Governor has any pecuniary interest, direct or indirect, in any contract, proposed contract or other matter and is present at a meeting of the Membership Council at which the contract or other matter is the subject of consideration, he or she shall at the meeting and as soon as practicable after its commencement disclose the fact and shall not take part in the consideration or discussion of the contract or other matter or vote on any question with respect to it.

**4.2.2** The Membership Council may exclude the Chairman or a Governor from a meeting of the Membership Council while any contract, proposed contract or other matter in which he has a pecuniary interest, is under consideration.

**4.2.3** Any expenses payable to Governors in accordance with the Constitution shall not be treated as a pecuniary interest for the purpose of this SO.

**4.2.4** For the purpose of this SO the Chairman or a Governor shall be treated, subject to SO 0 and SO 4.2.6, as having indirectly a pecuniary interest in a contract, proposed contract or other matter, if:

- d) he, or a nominee of his, is a director of a company or other body, not being a public body, with which the contract was made or is proposed to be made or which has a direct pecuniary interest in the other matter under consideration;
- or
- e) he is a partner of, or is in the employment of a person with whom the contract was made or is proposed to be made or who has a direct pecuniary interest in the other matter under consideration.

**4.2.5** The Chairman or a Governor shall not be treated as having a pecuniary interest in any contract, proposed contract or other matter by reason only:

- f) of his directorship of a company or other body, if he has no beneficial interest in any securities of that company or other body;
- g) of an interest in any company, body or person with which he is connected as mentioned in SO 4.2.4 above which is so remote or insignificant that it cannot reasonably be regarded as likely to influence a Governor in the consideration or discussion of or in voting on, any question with respect to that contract or matter under consideration.

**4.2.6** Where the Chairman or a Governor has an indirect pecuniary interest in a contract, proposed contract or other matter by reason only of a beneficial interest in securities of a company or other body, and the total nominal value of those securities does not exceed £5,000 or one-hundredth of the total nominal value of the issued share capital of the company body, whichever is the less, and if the share capital is of more than one class, and the total nominal value of shares of any one class in which he has a beneficial interest does not exceed one-hundredth of the total issued share capital of that class, this SO shall not prohibit him from taking part in the consideration or discussion of the contract or other matter or from voting on any question with respect to it, without prejudice however to his duty to disclose his interest.

The SOs apply to a Committee, sub-committee, joint committee or a working group as they apply to the Membership Council and apply to a member of any such Committee, sub-committee, joint committee or working group (whether or not he is also a member) as they apply to a Governor.



### **4.3 Managing conflicts of interest in the NHS**

Governors should comply with the NHS Foundation Trust Code of Governance, the Governors' Code of Conduct and any guidance and best practice advice issued by the Independent Regulator. Directors and Officers should also consider and comply with Appendix A of the SOs (see pages 59 – 64). This section of the SOs should be read in conjunction with these documents.

### **4.4 Interest of Officers in Contracts**

**4.4.1** If it comes to the knowledge of a Governor that a contract in which he has any pecuniary interest not being a contract to which he is himself a party, has been, or is proposed to be, entered into by the Trust he shall, at once, give notice in writing to the Chief Executive of the fact that he is interested therein. In the case of married persons or persons living together as partners, the interest of one partner shall, if known to the other, be deemed to be also the interest of that partner.

**4.4.2** A Governor should also declare to the Chief Executive any other employment or business or other relationship of his, or of a member of his family or of someone with whom he has a close personal relationship, that conflicts, or might reasonably be predicted could conflict with the interests of the Trust.

**4.4.3** The Trust requires interests, employment or relationships so declared to be entered in a register of interests of Governors.

## **5 MISCELLANEOUS**

### **5.1 Standing Orders to be given to Governors**

It is the duty of the Secretary to ensure that Governors are notified of and understand their responsibilities within the SOs.

### **5.2 Lack of compliance with Standing Orders**

If for any reason these SOs are not complied with, full details of the non-compliance and any justification for non-compliance and the circumstances around this, shall be reported to the next formal meeting of the Membership Council and the Audit Committee for action or ratification. All Governors have a duty to disclose any non-compliance with SOs to the Chairman as soon as possible.

### **5.3 Review of Standing Orders**

The SOs shall be reviewed annually by the Membership Council. The requirement for review extends to all documents having the effect as if incorporated in the SOs.

### **5.4 Conflicts of interest and standards of ethical business conduct guidance**

Governors should make reference to Annex A – Annex B (pages 59 – 64 of this constitution). All clauses relating to the duty to avoid conflicts of interest and adherence to the standards of ethical business conduct apply to the governors elected to, and appointed to, the Membership Council.

## **ANNEX 4: ELECTION PROCEDURES**

### **1. Additional Provision for Elected Governors**

Elected Governors should indicate any special circumstances such as work and home arrangements that the Trust should take into account when setting meeting dates and times and any other sessions such as training or induction.

The Trust will provide support and resources (word processing, mailing lists for example) to enable Elected Governors to carry out their duties.

Managers and heads of department will allow Staff Governors to attend meetings of the Membership Council, the Annual General Meeting, and associated meetings or training sessions.

Staff Governors will be given time out (approximately 1 day per month) from their everyday duties to perform Governor duties (travel to other sites for staff membership purposes for example).

### **2. Declarations**

The specified form of declaration referred to at paragraph 8.10.5 of this Constitution regarding the declaration to stand for election as an Elected Governor shall be as set out on the nomination paper referred to in the Model Rules for Elections at Annex 4 and shall state as follows:

*"I declare that I am resident at the address detailed in Section 1 of this form. I declare that to the best of my knowledge I am eligible to stand for election to the Membership Council for the seat named in Section 2 of this form. I declare that to the best of my knowledge I am not de-barred from standing for election by any of the provisions detailed at Section 3 of this form. I declare that I have stated details of any of my political membership and any financial interests I have in the Applicant NHS Trust or (as the case may be) the Trust at Section 4 of this form. I understand that if any of these declarations are later found to be false I will if elected lose my seat on the Membership Council and may also have my membership withdrawn."*

The specified form of declaration referred to at paragraph 7.9.5 of this Constitution regarding the declaration to vote in elections for Public Governors will be as set out in Rule 21 of the Model Rules for Elections.

Model Rules for Elections to  
the  
Board of Governors<sup>1i</sup>

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***Part 1 – Interpretation***

1. Interpretation

***Part 2 – Timetable for election***

2. Timetable
3. Computation of time

***Part 3 – Returning officer***

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

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

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10. Candidate's consent and particulars 1
  1. Declaration of interests
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***The poll***

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Declaration of result for contested elections

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Countermand or abandonment of poll on death of candidate

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- 58. Publicity about election by the corporation
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***Part 11 – Questioning elections and irregularities***

- 61. Application to question an election

***Part 12 – Miscellaneous***

- 62. Secrecy
- 63. Prohibition of disclosure of vote
- 64. Disqualification
- 65. Delay in postal service through industrial action or unforeseen event

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**Part 1 – Interpretation**

1. **Interpretation** – (1) In these rules, unless the context otherwise requires –  
“corporation” means the public benefit corporation subject to this constitution;  
“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 Board of Governors;

“the regulator” means the Independent Regulator for NHS foundation Trusts; and “the 2006 Act” means the National Health Service Act 2006.

(2) Other expressions used in these rules and in Schedule 7 to the National Health Service Act 2006 have the same meaning in these rules as in that Schedule.

**Part 2 – Timetable for election**

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

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

<b>Proceeding</b>	<b>Time</b>
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
Close of the close of the poll.	Close of the poll By 5.00pm on the final day of the election.

**3. Computation of time** - (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.

(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** – (1) Subject to rule 64, the returning officer for an election is to be appointed by the corporation.

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

**5. Staff** – Subject to rule 64, 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** - 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** – 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** – 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 Board of Governors to be elected from that constituency, or class within that constituency,
- (c) the details of any nomination committee that has been established by the corporation,
- (d) the address and times at which nomination papers may be obtained;
- (e) the address for return of nomination papers and the date and time by which they must be received by the returning officer,
- (f) the date and time by which any notice of withdrawal must be received by the returning officer
- (g) the contact details of the returning officer, and
- (h) the date and time of the close of the poll in the event of a contest.

**9. Nomination of candidates** – (1) Each candidate must nominate themselves on a single nomination paper.

(2) The returning officer-

- (a) is to supply any member of the corporation with a nomination paper, and
- (b) is to prepare a nomination paper 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.

**10. Candidate's particulars** – (1) The nomination paper must state the candidate's -

- (a) full name,
- (b) contact address in full, and
- (c) constituency, or class within a constituency, of which the candidate is a member.

**11. Declaration of interests** – The nomination paper must state –

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

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

**12. Declaration of eligibility** – The nomination paper must include a declaration made by the candidate–

(a) that he or she is not prevented from being a member of the Board of Governors by paragraph 8 of Schedule 7 of the 2006 Act or by any provision of the constitution; and,

(b) or 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** – The nomination paper must be signed and dated by the candidate, 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.

**14. Decisions as to the validity of nomination** – (1) Where a nomination paper is received by the returning officer in accordance with these rules, the candidate is deemed to stand for election unless and until the returning officer-

(a) decides that the candidate is not eligible to stand,

(b) decides that the nomination paper is invalid,

(c) receives satisfactory proof that the candidate has died, or

(d) receives a written request by the candidate of their withdrawal from candidacy.

(2) The returning officer is entitled to decide that a nomination paper is invalid only on one of the following grounds –

(a) that the paper is not received on or before the final time and date for return of nomination papers, as specified in the notice of the election,

(b) that the paper does not contain the candidate's particulars, as required by rule 10;

(c) that the paper does not contain a declaration of the interests of the candidate, as required by rule 11,

(d) that the paper does not include a declaration of eligibility as required by rule 12, or

(e) that the paper is not signed and dated by the candidate, as required by rule 13.

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

(4) Where the returning officer decides that a nomination is invalid, the returning officer must endorse this on the nomination paper, stating the reasons for their decision.

(5) The returning officer is to send notice of the decision as to whether a nomination is valid or invalid to the candidate at the contact address given in the candidate's nomination paper.

**15. Publication of statement of candidates** – (1) The returning officer is to prepare and publish a statement showing the candidates who are standing for election.

(2) The statement must show –

(a) the name, contact address, and constituency or class within a constituency of each candidate standing, and

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

(3) The statement must list the candidates standing for election in alphabetical order by surname.

(4) The returning officer must send a copy of the statement of candidates and copies of the nomination papers to the corporation as soon as is practicable after publishing the statement.

**16. Inspection of statement of nominated candidates and nomination papers** –

(1) The corporation is to make the statements of the candidates and the nomination papers supplied by the returning officer under rule 15(4) available for inspection by members of the public free of charge at all reasonable times.

(2) If a person requests a copy or extract of the statements of candidates or their nomination papers, the corporation is to provide that person with the copy or extract free of charge.

**17. Withdrawal of candidates** - 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** – (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 Board of Governors, a poll is to be taken in accordance with Parts 5 and 6 of these rules.

(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 Board of Governors, those candidates are to be declared elected in accordance with Part 7 of these rules.

(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 Board 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** – (1) The votes at the poll must be given by secret ballot.

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

**20. The ballot paper** – (1) The ballot of each voter 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.

(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 Board 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,

(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.

(3) Each ballot paper must have a unique identifier.

(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)** – (1) In respect of an election for a public or patient constituency a declaration of identity must be issued with each ballot paper.

(2) The declaration of identity is to include a declaration –

(a) that the voter is the person to whom the ballot paper was addressed,

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

(c) for a member of the public or patient constituency, of the particulars of that member's qualification to vote as a member of the constituency or class within a constituency for which the election is being held.

(3) The declaration of identity is to include space for –

(a) the name of the voter,

(b) the address of the voter,

(c) the voter's signature, and

(d) the date that the declaration was made by the voter.

(4) The voter must be required to return the declaration of identity together with the ballot paper.

(5) The declaration of identity must caution the voter that, if it is not returned with the ballot paper, or if it is returned without being correctly completed, the voter's ballot paper may be declared invalid.

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

**22. List of eligible voters** – (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 26 as soon as is reasonably practicable after the final date for the delivery of notices of withdrawals by candidates from an election.

(2) The list is to include, for each member, a mailing address where his or her ballot paper is to be sent.

**23. Notice of poll** - 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 Board 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 address for return of the ballot papers, and the date and time of the close of the poll,

(g) the address and final dates for applications for replacement ballot papers, and

(h) the contact details of the returning officer.

**24. Issue of voting documents by returning officer** – (1) As soon as is reasonably practicable on or after the publication of the notice of the poll, the returning officer is to send the following documents to each member of the corporation named in the list of eligible voters–

(a) a ballot paper and ballot paper envelope,

(b) a declaration of identity (if required),

(c) information about each candidate standing for election, pursuant to rule 59 of these rules, and

(d) a covering envelope.

(2) The documents are to be sent to the mailing address for each member, as specified in the list of eligible voters.

**25. Ballot paper envelope and covering envelope** – (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.

(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.

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

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

## **26. E-Voting systems**

(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").

(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").

(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").

(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 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,
- (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 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; and

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

(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;
  - (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 date and time of the close of the poll, and
    - (v) 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 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.
- (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 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 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** – 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** – (1) The returning officer is to put in place arrangements to enable requests for assistance to vote to be made.



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

(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.

(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 declaration of identity, if required, has not been returned.

(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.

**30. Lost ballot papers** – (1) Where a voter has not received his or her ballot paper by the fourth day before the close of the poll, that voter may apply to the returning officer for a replacement ballot paper.

(2) The returning officer may not issue a replacement ballot paper for a lost ballot paper unless he or she –

(a) is satisfied as to the voter’s  
identity,

(b) has no reason to doubt that the voter did not receive the original ballot paper, and

(c) has ensured that the declaration of identity if required has not been returned.

(3) After issuing a replacement ballot paper for a lost ballot paper, the returning officer shall enter in a list (“the list of lost ballot papers”) –

(a) the name of the voter,  
and

(b) the details of the unique identifier of the replacement ballot paper.

**31. Issue of replacement ballot paper–**

(1) If a person applies for a replacement ballot paper under rule 28 or 29 and a declaration of identity has already been received by the returning officer in the name of that voter, the returning officer may not issue a replacement ballot paper unless, in addition to the requirements imposed rule 28(3) or 29(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.

(2) After issuing a replacement ballot paper under this rule, the returning officer shall enter in a list (“the list of tendered ballot papers”) –

(a) the name of the voter,  
and

(b) the details of the unique identifier of the replacement ballot paper issued under this rule.

**32. Declaration of identity for replacement ballot papers (public and patient constituencies) -**

(1) In respect of an election for a public or patient constituency a declaration of identity must be issued with each replacement ballot paper.

(2) The declaration of identity is to include a declaration –

(a) that the voter has not voted in the election with any ballot paper other than the ballot paper being returned with the declaration, and

(b) of the particulars of that member’s qualification to vote as a member of the public or patient constituency, or class within a constituency, for which the election is being held.

(3) The declaration of identity is to include space for –

(a) the name of the  
voter,

(b) the address of the  
voter,

(c) the voter’s signature,  
and

(d) the date that the declaration was made by the voter.

(4) The voter must be required to return the declaration of identity together with the ballot paper.

(5) The declaration of identity must caution the voter that if it is not returned with the ballot paper, or if it is returned without being correctly completed, the replacement ballot paper may be declared invalid.

***Procedure for receipt of envelopes***

**33. Receipt of voting documents** – (1) Where the returning officer receives a –

(a) covering envelope,  
or

(b) any other envelope containing a declaration of identity if required, a ballot paper envelope, or a ballot paper, before the close of the poll, that officer is to open it as soon as is practicable; and rules 33 and 34 are to apply.

(2) The returning officer may open any ballot paper envelope for the purposes of rules 33 and 34, 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.

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

**34. Validity of ballot paper** – (1) A ballot paper shall not be taken to be duly returned unless the returning officer is satisfied that it has been received by the returning officer before the close of the poll, with a declaration of identity if required that has been correctly completed, signed, and dated.

(2) Where the returning officer is satisfied that paragraph (1) has been fulfilled, he or she is to –

(a) put the declaration of identity if required in a separate packet, and

(b) put the ballot paper aside for counting after the close of the poll.

(3) Where the returning officer is not satisfied that paragraph (1) has been fulfilled, he or she is to –

(a) mark the ballot paper  
“disqualified”,

(b) if there is a declaration of identity accompanying the ballot paper, mark it as “disqualified” and attach it to the ballot paper,

(c) record the unique identifier on the ballot paper in a list (the “list of disqualified documents”); and

(d) place the document or documents in a separate packet.

**35. Declaration of identity but no ballot paper (public and patient constituency)** – Where the returning officer receives a declaration of identity if required but no ballot paper, the returning officer is to –

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

(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 declaration of identity in a separate packet.

**36. Sealing of packets** – As soon as is possible after the close of the poll and after the completion of the procedure under rules 33 and 34, the returning officer is to seal the packets containing–

(a) the disqualified documents, together with the list of disqualified documents inside it,

(b) the declarations of identity if required,

(c) the list of spoilt ballot papers,

(d) the list of lost ballot papers,

(e) the list of eligible voters, and

(f) the list of tendered ballot papers.

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

**STV36. Interpretation of Part 6** – In Part 6 of these rules –

“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 paper –

(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 STV44(4) below,

“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

(b) 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 STV41 below,

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

“stage of the count” means

–

(a) the determination of the first preference vote of each candidate,

(b) the transfer of a surplus of a candidate deemed to be elected, or

(c) the exclusion of one or more candidates at any given time,

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

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

“transfer value” means the value of a transferred vote calculated in accordance with paragraph (4) or

(7) of rule STV42

below.

**37. Arrangements for counting of the votes** – The returning officer is to make arrangements for counting the votes as soon as is practicable after the close of the poll.

**38. The count** – (1) The returning officer is to –

(a) count and record the number of ballot papers that have been returned, and

(b) count the votes according to the provisions in this Part of the rules.

(2) The returning officer, while counting and recording the number of ballot papers 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.

(3) The returning officer is to proceed continuously with counting the votes as far as is practicable.

**STV39. Rejected ballot papers – (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.

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

(3) 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 paragraph (1).

**FPP39. Rejected ballot papers – (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 paragraphs (2) and (3) below, be rejected and not counted.

(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.

(3) 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.

(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 paragraph (2) or (3) above, endorse the words “rejected in part” on the ballot paper and indicate which vote or votes have been counted.

(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.

**STV40. First stage** – (1) The returning officer is to sort the ballot papers into parcels according to the candidates for whom the first preference votes are given.

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

(3) The returning officer is to also ascertain and record the number of valid ballot papers.

**STV41. The quota** – (1) The returning officer is to divide the number of valid ballot papers by a number exceeding by one the number of members to be elected.

(2) The result, increased by one, of the division under paragraph (1) above (any fraction being disregarded) shall be the number of votes sufficient to secure the election of a candidate (in these

rules referred to as “the quota”).

(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 paragraphs (1) to (3) of rule 44 has been complied with.

**STV42. Transfer of votes** – (1) Where the number of first preference votes for any candidate exceeds the quota, the returning officer is to sort all the ballot papers on which first preference votes are given for that candidate into sub-parcels so that they are grouped –

(a) according to next available preference given on those papers for any continuing candidate, or

(b) where no such preference is given, as the sub-parcel of non-transferable votes.

(2) The returning officer is to count the number of ballot papers in each parcel referred to in paragraph (1) above.

(3) The returning officer is, in accordance with this rule and rule STV43 below, to transfer each sub-parcel of ballot papers referred to in paragraph (1)(a) to the candidate for whom the next available preference is given on those papers.

(4) The vote on each ballot paper transferred under paragraph (3) above shall be at a value (“the transfer value”) which –

(a) reduces the value of each vote transferred so that the total value of all such votes does not exceed the surplus, and

(b) is calculated by dividing the surplus of the candidate from whom the votes are being transferred by the total number of the ballot papers on which those votes are given, the calculation being made to two decimal places (ignoring the remainder if any).

(5) Where at the end of any stage of the count involving the transfer of ballot papers, the number of votes for any candidate exceeds the quota, the returning officer is to sort the ballot papers in the sub-parcel of transferred votes which was last received by that candidate into separate sub-parcels so that they are grouped –

(a) according to the next available preference given on those papers for any continuing candidate, or

(b) where no such preference is given, as the sub-parcel of non-transferable votes.

(6) The returning officer is, in accordance with this rule and rule STV43 below, to transfer each sub-parcel of ballot papers referred to in paragraph (5)(a) to the candidate for whom the next available preference is given on those papers.

(7) The vote on each ballot paper transferred under paragraph (6) shall be at –



(a) a transfer value calculated as set out in paragraph (4)(b) above, or

(b) at the value at which that vote was received by the candidate from whom it is now being transferred, whichever is the less.

(8) Each transfer of a surplus constitutes a stage in the count.

(9) Subject to paragraph (10), the returning officer shall proceed to transfer transferable papers until no candidate who is deemed to be elected has a surplus or all the vacancies have been filled.

(10) Transferable papers shall not be liable to be transferred where any surplus or surpluses which, at a particular stage of the count, have not already been transferred, are –

(a) less than the difference between the total vote then credited to the continuing candidate with the lowest recorded vote and the vote of the candidate with the next lowest recorded vote, or

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

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

**STV43. Supplementary provisions on transfer** – (1) If, at any stage of the count, two or more candidates have surpluses, the transferable papers of the candidate with the highest surplus shall be transferred first, and if –

(a) The surpluses determined in respect of two or more candidates are equal, the transferable papers of the candidate who had the highest recorded vote at the earliest preceding stage at which they had unequal votes shall be transferred first, and

(b) the votes credited to two or more candidates were equal at all stages of the count, the returning officer shall decide between those candidates by lot, and the transferable papers of the candidate on whom the lot falls shall be transferred first.

(2) The returning officer shall, on each transfer of transferable papers under rule STV42 above –

(a) record the total value of the votes transferred to each candidate,

(b) add that value to the previous total of votes recorded for each candidate and record the new total,

(c) record as non-transferable votes the difference between the surplus and the total transfer value of the transferred votes and add that difference to the previously recorded total of non-transferable votes, and 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) he recorded total of valid first preference votes.

(3) All ballot papers transferred under rule STV42 or STV44 shall be clearly marked, either individually or as a sub-parcel, so as to indicate the transfer value recorded at that time to each vote on that paper or, as the case may be, all the papers in that sub-parcel.

(4) Where a ballot paper is so marked that it is unclear to the returning officer at any stage of the count under rule STV42 or STV44 for which candidate the next preference is recorded, the returning officer shall treat any vote on that ballot paper as a non-transferable vote; and votes on a ballot paper shall be so treated where, for example, the names of two or more candidates (whether continuing candidates or not) are so marked that, in the opinion of the returning officer, the same order of preference is indicated or the numerical sequence is broken.

**STV44. Exclusion of candidates – (1) If—**

(a) all transferable papers which under the provisions of rule STV42 above (including that rule as applied by paragraph (11) below) and this rule are required to be transferred, have been transferred, and

(b) subject to rule STV45 below, 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 paragraph (12) below applies, the candidates with the then lowest votes).

(2) The returning officer shall sort all the ballot papers on which first preference votes are given for the candidate or candidates excluded under paragraph (1) above into two sub-parcels so that they are grouped as—

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

(b) ballot papers on which no such preference is given (thereby including ballot papers on which preferences are given only for candidates who are deemed to be elected or are excluded).

(3) The returning officer shall, in accordance with this rule and rule STV43 above, transfer each sub-parcel of ballot papers referred to in paragraph (2)(a) above to the candidate for whom the next available preference is given on those papers.

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

(5) If, subject to rule STV45 below, one or more vacancies still remain to be filled, the returning officer shall then sort the transferable papers, if any, which had been transferred to any candidate excluded under paragraph (1) above into sub-parcels according to their transfer value.

(6) The returning officer shall transfer those papers in the sub-parcel of transferable papers with the highest transfer value to the continuing candidates in accordance with the next available preferences given on those papers (thereby passing over candidates who are deemed to be elected or are excluded).

(7) The vote on each transferable paper transferred under paragraph (6) above shall be at the value at which that vote was received by the candidate excluded under paragraph (1) above.

(8) Any papers on which no next available preferences have been expressed shall be set aside as non-transferable votes.

(9) After the returning officer has completed the transfer of the ballot papers in the sub-parcel of ballot papers with the highest transfer value he or she shall proceed to transfer in the same way the sub-parcel of ballot papers with the next highest value and so on until he or she has dealt with each sub-parcel of a candidate excluded under paragraph (1) above.

(10) The returning officer shall after each stage of the count completed under this rule—

(a) —

(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.

(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 paragraphs (5) to (10) of rule STV42 and rule STV43.

(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.

(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.

**STV45. Filling of last vacancies** – (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.

(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.

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

**STV46. Order of election of candidates** – (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 STV42(10) above.

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

(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.

(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.

**FPP46. Equality of votes** – 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***

**FPP47. Declaration of result for contested elections** – (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 Board of Governors from the constituency, or class within a constituency, for which the election is being held to be elected,

(b) give notice of the name of each candidate who he or she has declared elected–

(i) where the election is held under a proposed constitution pursuant to powers conferred on the

Moorfields Eye Hospital NHS Trust by section 33 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.

(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 FPP39(5), available on request.

**STV47. Declaration of result for contested elections** – (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 Moorfields Eye Hospital NHS Trust by section 33 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.

(2) The returning officer is to make a record of:

(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 STV39(1), available on request.

**48. Declaration of result for uncontested elections** – 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***

**49. Sealing up of documents relating to the poll** – (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,

(b) the ballot papers endorsed with “rejected in part”,

(c) the rejected ballot papers, and

(d) the statement of rejected ballot papers.

(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 declarations of identity,

(c) the list of spoiled ballot papers,

(d) the list of lost ballot papers,

(e) the list of eligible voters, and

(f) the list of tendered ballot papers.

(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.

**50. Delivery of documents** – Once the documents relating to the poll have been sealed up and endorsed pursuant to rule 49, the returning officer is to forward them to the chair of the corporation.

**51. Forwarding of documents received after close of the poll** – Where –

(a) any voting documents are received by the returning officer after the

close of the poll, or

(b) any envelopes addressed to eligible voters are returned as undelivered too late to be resent, or

(c) any applications for replacement ballot papers are made too late to enable new ballot papers to be issued, the returning officer is to put them in a separate packet, seal it up, and endorse and forward it to the chairman of the corporation.

**52. Retention and public inspection of documents** – (1) The corporation is to retain the documents relating to an election that are forwarded to the chair by the returning officer under these rules for one year, and then, unless otherwise directed by the regulator, cause them to be destroyed.

(2) With the exception of the documents listed in rule 53(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.

(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.

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

(1) The corporation may not allow the inspection of, or the opening of any sealed packet containing –

(a) any rejected ballot papers, including ballot papers rejected in part,

(b) any disqualified documents, or the list of disqualified documents,

(c) any counted ballot papers,

(d) any declarations of identity, or

(e) the list of eligible voters, by any person without the consent of the Regulator.

(2) A person may apply to the Regulator to inspect any of the documents listed in (1), and the Regulator may only consent to such inspection if it is satisfied that it is necessary for the purpose of questioning an election pursuant to Part 11

(3) The Regulator's consent may be on any terms or conditions that it thinks necessary, including conditions as to -

(a) place and mode of inspection,

(b) A person's time

(c) production or opening, and the corporation must only make the documents available for inspection in accordance with those terms and conditions.

(4) On an application to inspect any of the documents listed in paragraph (1), –

(a) in giving its consent, the regulator, and

(b) and making the documents available for inspection, the corporation, must ensure that the way in which the vote of any particular member has been given shall not be disclosed, until it has been established –

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

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

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

**FPP54. Countermand or abandonment of poll on death of candidate** – (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 ballot papers have 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.

(2) Where a new election is ordered under paragraph (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.

(3) Where a poll is abandoned under paragraph (1)(a), paragraphs (4) to (7) are to apply.

(4) The returning officer shall not take any step or further step to open envelopes or deal with their contents in accordance with rules 33 and 34, and is to make up separate sealed packets in accordance with rule 35.

(5) The returning officer is to –

(a) count and record the number of ballot papers that have been received, and

(b) seal up the ballot papers into packets, along with the records of the number of ballot papers.

(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.

(7) Once the documents relating to the poll have been sealed up and endorsed pursuant to paragraphs (4) to (6), the returning officer is to deliver them to the chairman of the corporation, and rules 52 and 53 are to apply.

**STV54. Countermand or abandonment of poll on death of candidate** – (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

(i) proceed with the counting of the votes as if that candidate had been excluded from the count so that ballot papers 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 papers 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.

(2) The ballot papers which have preferences recorded for the candidate who has died are to be sealed with the other counted ballot papers pursuant to rule 49(1)(a).

### ***Part 10 – Election expenses and publicity***

#### ***Election expenses***

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

**56 Expenses and payments by candidates** - 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.

**57. Election expenses incurred by other persons** – (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.

(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 58 and 59.

### ***Publicity***

**58. Publicity about election by the corporation** – (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.

(2) Any information provided by the corporation about the candidates, including information compiled by the corporation under rule 59, 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.

(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.

**59. Information about candidates for inclusion with voting documents** - (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.

(2) The information must consist of

(a) a statement submitted by the candidate of no more than 100 words, and

(b) where the candidate so decides, a photograph of the candidate.

**60. Meaning of “for the purposes of an election”** - (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.

(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***

**61. Application to question an election** – (1) An application alleging a breach of these rules, including an electoral irregularity under Part 10, may be made to the regulator.

(2) An application may only be made once the outcome of the election has been declared by the returning officer.

(3) An application may only be made to the Regulator by –

(a) a person who voted at the election or who claimed to have had the right to vote, or

(b) a candidate, or a person claiming to have had a right to be elected at the election.

(4) The application must –

(a) describe the alleged breach of the rules or electoral irregularity, and

(b) be in such a form as the Regulator may require.

(5) The application must be presented in writing within 21 days of the declaration of the result of the election.

(6) If the Regulator requests further information from the applicant, then that person must provide it as soon as is reasonably practicable.

a. The Regulator shall delegate the determination of an application to a person or persons to be nominated for the purpose of the Regulator.

b. The determination by the person or persons nominated in accordance with Rule 61(7) shall be binding on and shall be given effect by the corporation, the applicant and the members of the constituency (or class within a constituency) including all the candidates for the election to which the application relates.

c. The Regulator may prescribe rules of procedure for the determination of an application including costs.

### ***Part 12 – Miscellaneous***

**62. Secrecy** – (1) The following persons –

(a) the returning officer,

(b) the returning officer's staff, must maintain and aid in maintaining the secrecy of the voting and the counting of the votes, and must not, except for some purpose authorised by law, communicate to any

person any information as to –

(i) the name of any member of the corporation who has or has not been given a ballot paper or who has or has not voted,

(ii) the unique identifier on any ballot paper,

(iii) the candidate(s) for whom any member has voted.

(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.

(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.

63. Prohibition of disclosure of vote – 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.

**64. Disqualification** – 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.

**65. Delay in postal service through industrial action or unforeseen event** – 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 and declarations of identity, the returning officer may extend the time between the publication of the notice of the poll and the close of the poll, with the agreement of the Regulator

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