

MOORFIELDS EYE HOSPITAL NHS FOUNDATION TRUST
(A PUBLIC BENEFIT CORPORATION)
CONSTITUTION

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 Words importing the masculine gender only shall include the feminine gender; words importing the singular shall include the plural and vice-versa.
- 1.5 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.
- 1.6 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 7.8.1 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;

"Applicant NHS Trust"

means the Moorfields Eye Hospital NHS Trust which made the application to become the Trust;

"Appointed Governor"

means a Local Authority Governor, or an Other Partnership Governor;

"Area of the Trust"

means the area consisting of all the areas specified in Annex 1 as an area for a Public Constituency;

"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 Committee"

means a committee of the Board of Directors as established pursuant to paragraph 9.9.3 of the Constitution;

"Authorisation"

means the Authorisation issued to the Trust by Monitor under Section 35 of the 2006 Act;

"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;

"Clear Day"

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

"Constitution"

means this Constitution, including the annexes and appendices attached hereto;

"Deputy Chief Executive"

means an Executive Director appointed pursuant to paragraph 9.9.10 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;

"Finance Director"

means the Director of Finance of the Trust;

"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 2 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;

"Local Involvement Network"

means any Local Involvement Network established pursuant to the Local Government and Public Involvement in Health Act 2007;

"London Borough of Islington"

means Islington Council currently of 222 Upper Street, London, N1 1XR;

"London Strategic Health Authority"

means the London Strategic Health Authority currently of Southside, 105 Victoria Street, London, SW1E 6QT;

"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 4 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 7.4.5 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 7.2.5 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);

"Replacement Governor"

has the meaning ascribed to it in paragraph 8.16.3 of this Constitution;

"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 7.3.6 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 Part 2 of Annex 2 of this Constitution;

"Standing Orders for the Membership Council"

means the standing orders referred to in Part 1 of Annex 2 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 paragraph 9.4.3 of the Constitution; and

"Vice Chairman of the Membership Council"

means the Vice Chairman of the Membership Council appointed pursuant to paragraph 8.18.2.7 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 to be "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 and the terms of its Authorisation:

- 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 and the terms of Authorisation.
- 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 subject to any restrictions in the terms of Authorisation. 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, subject to any restrictions in the terms of Authorisation.
- 5.2 In the exercise of its powers, the Trust shall have regard to the core principles of the NHS and the Trust as set out in paragraph 6 below.
- 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 CORE PRINCIPLES

6.1 NHS Core Principles

- 6.1.1 the NHS will provide a universal service for all based on clinical need, not ability to pay. The NHS will provide a comprehensive range of

services. The NHS will shape its services around the needs and preferences of individual patients, their families and their carers;

- 6.1.2 the NHS will respond to different needs of different populations;
- 6.1.3 the NHS will work continuously to improve quality services and to minimise errors;
- 6.1.4 the NHS will support and value its staff; public funds for healthcare will be devoted solely to NHS patients;
- 6.1.5 the NHS will work together with others to ensure a seamless service for patients;
- 6.1.6 the NHS will help keep people healthy and work to reduce health inequalities; and
- 6.1.7 the NHS will respect the confidentiality of individual patients and where appropriate and required, provide open access to information about services, treatment and performance.

6.2 **Moorfields' Mission and Core Values**

The mission of the Trust is to be the leading international centre in the care and treatment of eye disorders, driven by excellence in research and education, and to:

- 6.2.1 give people the best possible visual health so that they can live their lives to the full;
- 6.2.2 put patients at the centre of everything the Trust does by treating everyone with respect and compassion;
- 6.2.3 use our resources effectively and efficiently to deliver high quality care;
- 6.2.4 seek to build on our pioneering legacy by leading innovations in eye health;

- 6.2.5 recognise the worth of our staff by providing rewarding careers and supporting personal and professional development;
- 6.2.6 provide seamless care through professional team working and strong innovative partnerships;
- 6.2.7 act responsibly and be held accountable; and
- 6.2.8 adhere to the NHS Core Principles in realising the mission of the Trust.

7 MEMBERS

- 7.1 The Trust is to have Members, each of whom shall be a member of one of the following constituencies:
 - 7.1.1 a public constituency; or
 - 7.1.2 the Staff Constituency; or
 - 7.1.3 the Patient Constituency.

The Patient Constituency is not divided into classes. The Staff Constituency is divided into two classes, as set out in Paragraph 7.3.3 below.

7.2 Public Constituencies

- 7.2.1 Subject to paragraph 7.5 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.
- 7.2.2 An eligible individual shall become a Member upon entry to the membership register pursuant to an application by them.
- 7.2.3 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.

7.2.4 The minimum number of Members of each public constituency is to be 25.

7.2.5 Those individuals who live in an area for any public constituency are referred to collectively as the "Public Constituency".

7.3 **Staff Constituency**

7.3.1 Subject to paragraph 7.5 below individuals are eligible to become members of the Staff Constituency if:

7.3.1.1 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

7.3.1.2 they satisfy the minimum duration requirements set out in paragraph 3(3) of Schedule 7 to the 2006 Act, that is to say:

7.3.1.2.1 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

7.3.1.2.2 they have been continuously employed by the Trust for at least 12 months.

7.3.2 An individual who is eligible under paragraph 7.3.1 above will become a Member if either:

7.3.2.1 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

- 7.3.2.2 they apply to the Secretary to become a Member and are entered in the Trust's register of Members.
- 7.3.3 The Staff Constituency shall be divided into two classes:
- 7.3.3.1 individuals whose work base is at Moorfields Eye Hospital, City Road, London EC1V 2PD (the "City Road Class"); and
- 7.3.3.2 all other individuals (the "Satellite Class").
- 7.3.4 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.
- 7.3.5 The minimum number of Members of each class of the Staff Constituency is to be 100.
- 7.3.6 Those individuals who are eligible for membership of the Trust by reason of the provisions of paragraph 7.3.1 above are referred to collectively as the "Staff Constituency".
- 7.3.7 For the purposes of paragraph 7.3.1 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.

7.4 Patient Constituency

- 7.4.1 Subject to paragraph 7.5 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.

- 7.4.2 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.
- 7.4.3 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).
- 7.4.4 The minimum number of Members of the Patient Constituency is to be 50.
- 7.4.5 Those individuals who are eligible for membership of the Trust by reason for the provisions of paragraph 7.4.1 to 7.4.3 above are referred to collectively as the "Patient Constituency".

7.5 Disqualification for membership

- 7.5.1 A person may not become or continue as a Member of the Trust if:
- 7.5.1.1 he is under 14 years of age at the date of his application or invitation to become a Member (as the case may be);
- 7.5.1.2 in the five years preceding the date of his application or invitation to become a Member, he 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 removal or exclusion from any Trust Premises;

- 7.5.1.3 he has been confirmed as a 'vexatious complainant' in accordance with the Trust's policy for handling complaints;
- 7.5.1.4 he has within the preceding five years been removed as a member from another NHS foundation trust;
- 7.5.1.5 he has been deemed to have acted in a manner contrary to the interests of the Trust in accordance with paragraph 7.6;
- 7.5.1.6 he fails or ceases to fulfil the criteria for membership of the Public Constituency, Patient Constituency or the Staff Constituency; or
- 7.5.1.7 in the case the Public Constituency, the individual's principal place of residence is not within an area specified in Annex 1.
- 7.5.2 Save in relation to paragraph 7.5.1.5, 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 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 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 22.1 below.
- 7.5.3 All Members of the Trust shall be under a duty to notify the Secretary of any change in their particulars which may affect their entitlement as a Member.

7.6 Expulsion from membership of the Trust

- 7.6.1 Where an issue arises as to whether a Member is disqualified under paragraph 7.5.1.5, either following a complaint by another Member or otherwise, the provisions of this paragraph 7.6 shall apply.
- 7.6.2 Subject to paragraphs 7.6.3 to 7.6.7 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:

- 7.6.2.1.1 dismiss the complaint and take no further action; or
- 7.6.2.1.2 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.
- 7.6.3 If a resolution to expel a Member is to be considered at a meeting of the Membership Council pursuant to paragraph 7.6.2.1.2 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.
- 7.6.4 At the meeting referred to in paragraph 7.6.2 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.
- 7.6.5 If the Member complained of fails to attend the meeting mentioned in paragraph 7.6.2 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.
- 7.6.6 A person expelled from membership under the provisions of paragraphs 7.6.1 to 7.6.5 above will cease to be a Member upon the declaration by the person chairing the meeting that the resolution to expel them is carried.
- 7.6.7 No person who has been expelled from membership pursuant to the provisions of paragraphs 7.6.1 to 7.6.6 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.

7.7 Termination of membership

An individual Member shall cease to be a Member on:

- 7.7.1 death;
- 7.7.2 resignation by notice in writing to the Secretary;
- 7.7.3 ceasing to fulfil the requirements of paragraphs 7.2, 7.3 or 7.4 above, as the case may be; and/or
- 7.7.4 being disqualified pursuant to paragraph 7.5 above, or being expelled pursuant to paragraph 7.6 above.

7.8 Annual Members' Meeting

- 7.8.1 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.

8 MEMBERSHIP COUNCIL

- 8.1 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.

- 8.2 The Membership Council shall comprise:

- 8.2.1 12 Public Governors;
- 8.2.2 3 Patient Governors;
- 8.2.3 4 Staff Governors of which 2 shall be elected by the City Road Class and 2 by the Satellite Class;

- 8.2.4 1 Local Authority Governor; and
- 8.2.5 4 Other Partnership Governors.
- 8.3 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 8.2 above.
- 8.4 The aggregate number of Public Governors and Patient Governors is to be more than half of the total membership of the Membership Council.
- 8.5 The organisations currently specified as Partnership Organisations that may appoint a Governor to the Membership Council are:
- 8.5.1 The University of London;
- 8.5.2 The City University;
- 8.5.3 The Royal National Institute for the Blind; and
- 8.5.4 International Glaucoma Association.
- 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 24 of the Constitution.
- 8.6 Notwithstanding the provisions of paragraph 8.5 above, the Chairman may veto the appointment of a Partnership Governor by serving notice in writing on the relevant Partnership Organisation where he believes that the appointment in question is unreasonable, irrational, or otherwise inappropriate.

8.7 Public Governors

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

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

8.8 Staff Governors

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

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

8.9 Patient Governors

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

8.10 Election of Governors

8.10.1 Elections for Elected Governors shall be conducted in accordance with the Model Rules for Elections using the first past the post voting system. Thus, where appropriate, the alternative rules marked "FPP" (First Past the Post) should be used.

8.10.2 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 4.

8.10.3 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 24 of the Constitution. For the avoidance of doubt, the Trust cannot amend the Model Rules for Elections.

- 8.10.4 An election, if contested, shall be by secret ballot.
- 8.10.5 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 has made a declaration in the forms specified in paragraph 2 of Annex 3 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.

8.11 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.

8.12 Other Partnership Governors

- 8.12.1 Each Other Partnership Organisation may appoint one Partnership Governor.
- 8.12.2 The Trust and the Partnership Organisations may agree a process for the selection and approval of the appointee.

8.13 Terms of office

- 8.13.1 Elected Governors:
- 8.13.1.1 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
- 8.13.1.2 shall cease to hold office if they cease to be a member of the constituency by which they were elected.

- 8.13.2 Appointed Governors:
 - 8.13.2.1 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
 - 8.13.2.2 shall cease to hold office if the sponsoring organisation withdraws its sponsorship of them by notice in writing to the Secretary.
- 8.13.3 Further provisions regarding the Governors are set out in Annex 3 of this Constitution.

8.14 Termination of tenure

- 8.14.1 A Governor may resign from that office at any time during the term of that office by giving notice in writing to the Secretary.
- 8.14.2 If a Governor fails to attend at least 3 meetings of the Membership Council, in any 12 months, his tenure of office is to be immediately terminated unless the other Governors are satisfied by a three quarters majority of the number of Governors present and voting at the relevant meeting that:
 - 8.14.2.1 the absence was due to a reasonable cause; and
 - 8.14.2.2 he will be able to start attending meetings of the Membership Council again within such a period as they consider reasonable.
- 8.14.3 Notwithstanding the provisions of paragraph 8.14.2 above, if a Governor fails to attend 2 out of 3 consecutive meetings of the Membership Council and he has previously been the subject of a decision in his favour under paragraph 8.14.2 above, that Governor's tenure of office is to be terminated immediately.
- 8.14.4 If a Governor is considered to have acted in a manner inconsistent with:

- 8.14.4.1 the Trust's core principles as set out in paragraph 6.2 above, or in a manner detrimental to the interests of the Trust; or
- 8.14.4.2 the Authorisation; or
- 8.14.4.3 the Standing Orders for the Membership Council; or
- 8.14.4.4 the Governor's Code of Conduct; or
- 8.14.4.5 he has failed to declare an interest as required by this Constitution or the Standing Orders for the Membership Council, or he has spoken or voted at a meeting on a matter in which he 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
- 8.14.4.6 he is 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 office immediately.
- 8.14.5 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.
- 8.14.6 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 23.2 below within 28 days of the date upon which notice in writing of the Membership Council's decision made in accordance with paragraphs 8.14.3 or 8.14.4 above is communicated to the Governor concerned.

8.15 **Disqualification**

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

- 8.15.1.1 in the case of an Elected Governor, he ceases to be a member of the constituency he represents;
- 8.15.1.2 in the case of an Appointed Governor, the sponsoring organisation withdraw their sponsorship of him;
- 8.15.1.3 he has been adjudged bankrupt or his estate has been sequestrated and in either case he has not been discharged;
- 8.15.1.4 is the subject of a moratorium period under a debt relief order (under Part 7A of the Insolvency Act 1986);
- 8.15.1.5 he has made a composition or arrangement with, or granted a trust deed for, his creditors and has not been discharged in respect of it;
- 8.15.1.6 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;
- 8.15.1.7 he is under 18 years of age;
- 8.15.1.8 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;
- 8.15.1.9 he is 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 appointment is not in the interests of the health service, for non attendance at meetings, or for non-disclosure of a pecuniary interest;
- 8.15.1.10 he is 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 a corporate body whose business involves the provision of health care

services, including for the avoidance of doubt those who have a commercial interest in the affairs of the Trust;

- 8.15.1.11 he has had his 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 name included in such a list;
- 8.15.1.12 he is incapable by reason of mental disorder, illness or injury of managing and administering his property and affairs;
- 8.15.1.13 he is a member of a Local Involvement Network;
- 8.15.1.14 he has refused without reasonable cause to undertake any training which the Trust and/or Membership Council requires all Governors to undertake;
- 8.15.1.15 he is a member of a local authority Health Overview and Scrutiny Committee;
- 8.15.1.16 he is the subject of a Sex Offenders Order and/or his name is included in the Sex Offenders Register;
- 8.15.1.17 he is an Immediate Family Member of a Governor or Director;
- 8.15.1.18 he has failed to repay (without good cause) any amount of monies properly owed to the Applicant NHS Trust or the Trust;
- 8.15.1.19 he has 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;
- 8.15.1.20 he is 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;

- 8.15.1.21 he 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;
- 8.15.1.22 he is a person who is the subject of a disqualification order made under the Company Directors' Disqualification Act 1986;
- 8.15.1.23 he has been subject to a prohibition order made under Section 56 of the Financial Services and Markets Act 2000;
- 8.15.1.24 the relevant Partnership Organisation which he represents ceases to exist;
- 8.15.1.25 he has received a written warning from the Trust for verbal and/or physical abuse towards Trust staff; and/or
- 8.15.1.26 he has been expelled from the post of governor of another NHS foundation trust.
- 8.15.2 Where a person has been elected or appointed to be a Governor and he becomes disqualified from office under paragraph 8.161 above, he shall notify the Secretary in writing of such disqualification. If it comes to the notice of the Secretary at the time of his 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 in writing to that effect. Upon despatch of any such notification, that person's tenure of office, if any, shall be terminated and he shall cease to act as a Governor.

8.16 **Vacancies**

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

8.16.2 Where the vacancy arises amongst the Elected Governors, the Membership Council shall decide either:

8.16.2.1 to call an election within three months to fill the seat for the remainder of that term of office; or

8.16.2.2 to co-opt the next highest polling candidate for that seat at the most recent election or (where relevant) by-election, who is willing to take office, to fill the seat until the next annual election, at which time the seat will fall vacant and be subject to election for any unexpired period of the term of office, or

8.16.2.3 to leave the seat vacant until the next scheduled elections are held if the unexpired period of office is less than three months.

8.16.3 Where the vacancy arises amongst the Appointed Governors, the Trust will request that the relevant organisation appoints a Replacement Governor within 30 days to hold office for the remainder of the term of office. Appointed Governors shall be replaced in accordance with the processes agreed pursuant to paragraph 8.13.2 above.

8.17 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.

8.18 **Roles and responsibilities of Governors**

The roles and responsibilities of the Governors are:

8.18.1 at a General Meeting;

8.18.1.1 Subject to paragraphs 8.19, 9.4 and 9.5 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;

- 8.18.1.2 to decide the remuneration and allowances, and the other terms and conditions of office, of the Non-Executive Directors;
- 8.18.1.3 to appoint or remove the Auditor;
- 8.18.1.4 to be presented with the Annual Accounts, any report of the Auditor on them, and the Annual Report; and
- 8.18.1.5 to consider resolutions to remove a Governor pursuant to paragraph 8.15 of the Constitution.
- 8.18.2 At a General Meeting or otherwise:
 - 8.18.2.1 to hold the non-executive directors individually and collectively to account for the performance of the Board of Directors;
 - 8.18.2.2 to represent the interests of the members of the Trust as a whole and the interests of the public;
 - 8.18.2.3 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;
 - 8.18.2.4 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;
 - 8.18.2.5 to consider the Annual Accounts, any report of the Auditor on them, the Annual Report and any report of an External Auditor;
 - 8.18.2.6 to respond as appropriate when consulted by the Board of Directors; and
 - 8.18.2.7 to appoint one of the Governors to be Vice Chairman of the Membership Council.

- 8.18.3 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 in accordance with the terms of Authorisation.
- 8.18.4 Notwithstanding the provisions of paragraphs 8.18.1 to 8.18.3 above, the Governors may exercise other functions at the request of the Board of Directors.
- 8.18.5 The Trust must take steps to secure that the Governors are equipped with the skills and knowledge they require in their capacity as such.

8.19 Process for appointing Non-Executive Directors and the Chairman

- 8.19.1 Subject to the provisions of paragraphs 9.4 and 9.5 of the Constitution, the process for appointing Non-Executive Directors and the Chairman will be as follows:
 - 8.19.1.1 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.
 - 8.19.1.2 Where the Nominations Committee for Non-Executive Directors considers that either the Chairman or the Non-Executive Director coming to the end of his 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.
 - 8.19.1.3 Where:
 - 8.19.1.3.1 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

- 8.19.1.3.2 the Chairman or (as the case may be) the Non-Executive Director in question does not want to be reappointed; or
- 8.19.1.3.3 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 8.19.1.2 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.
- 8.19.1.4 The Nominations Committee for Non-Executive Directors will make recommendations to the Membership Council, including recommendations about remuneration.
- 8.19.1.5 The membership of the Nominations Committee for Non-Executive Directors will be decided 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 9.9.6 below.
- 8.19.1.6 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.
- 8.19.1.7 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.

8.19.1.8 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.

8.20 Referral to the Panel

8.20.1 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:

8.20.1.1 to act in accordance with this Constitution, or

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

8.20.2 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.

8.21 Expenses

8.21.1 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.

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

8.22 Remuneration

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

8.23 Meetings

- 8.23.1 The Chairman of the Trust or in his 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.
- 8.23.2 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.
- 8.23.3 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.
- 8.23.4 The Secretary shall call meetings in accordance with paragraph 8.23.3 above.
- 8.23.5 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), but these shall be in accordance with Annex 2 Part 1 of this Constitution.

- 8.23.6 An Elected Governor may not vote at a meeting of the Membership Council unless, within 7 days prior to the commencement of the meeting he has made a declaration in the form specified that he is a member of the public constituency that elected him, the patient constituency that elected him or the staff constituency as the case may be and is not prevented from being a member of the Membership Council by reason of paragraph 8 of schedule 7 to the 2006 Act or under this constitution.
- 8.23.7 The form referred to in paragraph 8.23.6 above is set out in Annex 2 paragraph 6 of this Constitution.
- 8.23.8 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.

8.24 Committees and sub-committees

- 8.24.1 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.
- 8.24.2 The Membership Council may appoint members to serve on joint committees with the Board of Directors or committees thereof.
- 8.24.3 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 advisors have been discussed and agreed with the Chairman and reported to the Board of Directors.

8.25 **Conflicts of interests**

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 shall disclose that to the rest of the Membership Council as soon as he 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.

8.26 **Declaration of interests**

8.26.1 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.

8.26.2 Interests which should be regarded as “relevant and material” and which, for the guidance of doubt, should be included in the register, are:

8.26.2.1 Directorships, including non-executive directorships held in private companies or PLCs (with the exception of those of dormant companies);

8.26.2.2 Ownership, part-ownership or directorship of private companies, business or consultancies likely or possibly seeking to do business with the NHS;

8.26.2.3 Majority or controlling share holdings in organisations likely or possibly seeking to do business with the NHS;

8.26.2.4 A position of authority in a charity or voluntary organisation in the field of health and social care;

8.26.2.5 Any connection with a voluntary or other organisation contracting for NHS services or commissioning NHS services; and/or

- 8.26.2.6 Any connection with an organisation, entity or company considering entering into or having entered into a financial arrangement with the Trust, including but not limited to, lenders or banks.

9 BOARD OF DIRECTORS

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

9.2 The Board of Directors is to include:

9.2.1 the following Non-Executive Directors:

9.2.1.1 the Chairman,

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

9.2.2 the following Executive Directors, who must include a Registered Medical Practitioner and a Registered Nurse.

9.2.2.1 A Chief Executive who shall be the Accounting Officer;

9.2.2.2 A Finance Director;

9.2.2.3 Not less than 3 and not more than 6 other Executive Directors

9.2.3 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.

9.2.4 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.

9.3 Only a member of a Public Constituency or the Patient Constituency is eligible for appointment as a Non-Executive Director save that this shall not apply to the initial chairman and non-executive directors appointed under paragraph 9.4.1 below.

9.4 **Appointment of the initial Chairman and initial Non-Executive Directors**

9.4.1 The Membership Council shall appoint as the initial Chairman and initial Non-Executive Directors of the Trust, the chairman and non-executive directors of the Applicant NHS Trust for the unexpired period of their respective terms of office as chairman or non-executive director of the Applicant NHS Trust, or twelve months whichever is the longer unless they notify the Membership Council that they do not wish to be appointed.

9.4.2 On expiry of the initial appointments under paragraph 9.4.1 above, the Membership Council shall appoint the Chairman and Non-Executive Directors in accordance with paragraphs 8.19 above and 9.5 below.

9.4.3 The Board of Directors shall appoint one of the Non-Executive Directors as a Vice Chairman of the Board of Directors for such period, not exceeding his term of office as a Non-Executive Director, as the Board of Directors may specify on appointing him.

9.5 **Appointment and removal of Chairman and other Non-Executive Directors**

9.5.1 Subject to paragraph 9.5.2 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.

9.5.2 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.

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

9.6 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.

9.7 **Remuneration and terms of office**

9.7.1 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.

9.7.2 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.

9.8 **Disqualification**

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

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

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

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

9.8.1.4 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;

- 9.8.1.5 in the case of a Non-Executive Director, he no longer satisfies paragraph 9.3 above;
- 9.8.1.6 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 appointment is not in the interests of public service, for non attendance at meetings, or for non-disclosure of a pecuniary interest;
- 9.8.1.7 a person who has had his 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 has not subsequently had his name included in such a list;
- 9.8.1.8 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;
- 9.8.1.9 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;
- 9.8.1.10 a person who is a member of a Local Involvement Network;
- 9.8.1.11 a person who is a member of a local authority Health Overview and Scrutiny Committee;
- 9.8.1.12 a person who is the subject of a disqualification order made under the Company Directors' Disqualification Act 1986;

- 9.8.1.13 he has been subject to a prohibition order made under Section 56 of the Financial Services and Markets Act 2000;
- 9.8.1.14 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;
- 9.8.1.15 a person who is an Immediate Family Member of a Director or a Governor;
- 9.8.1.16 a person who is the subject of a Sex Offenders Order and/or his name is included in the Sex Offenders Register;
- 9.8.1.17 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;
- 9.8.1.18 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;
- 9.8.1.19 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 removal or exclusion from any NHS hospital, premises or establishment; and/or
- 9.8.1.20 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.

9.9 Roles and responsibilities

- 9.9.1 The powers of the Trust are to be exercised by the Board of Directors on its behalf.
- 9.9.2 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.
- 9.9.3 Any of those powers may be delegated to a committee consisting of Directors or to an Executive Director.
- 9.9.4 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.
- 9.9.5 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. The initial Chief Executive is to be the chief executive of the Applicant NHS Trust if he wishes to be appointed.
- 9.9.6 It is for the Nominations Committee for Executive Directors to appoint or remove the Executive Directors.
- 9.9.7 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, and pending the establishment of such a committee and their decisions these matters are to be decided in accordance with the remuneration and allowances of the respective officers as employed by the Applicant NHS Trust.
- 9.9.8 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.

- 9.9.9 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.
- 9.9.10 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.
- 9.9.11 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.

9.10 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 term as a Non-Executive Director, as they may specify on appointing him.

10 ASSOCIATE DIRECTORS

The Chief Executive may appoint and identify Officers of the Trust as Associate Directors.

11 MEETINGS OF DIRECTORS

- 11.1 The Board of Directors is to adopt standing orders covering the proceedings and business of its meetings in accordance with part 2 of 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.

- 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.
- 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.

12 CONFLICTS OF INTEREST OF DIRECTORS

- 12.1 The duties that a Director of the Trust has by virtue of being a Director include in particular:
- 12.1.1 a duty to avoid a situation in which the Director has (or can have) a direct or indirect interest that conflicts (or possibly may conflict) with the interests of the Trust (a "Conflict").
 - 12.1.2 a duty not to accept a benefit from a third party by reason of being a Director or doing (or not doing) anything in that capacity.
- 12.2 The duty referred to in sub-paragraph 12.1.1 above is not infringed if:
- 12.2.1 the situation cannot reasonably be regarded as likely to give rise to a Conflict, or
 - 12.2.2 the matter has been authorised in accordance with the Constitution.
- 12.3 The duty referred to in paragraph 12.1.2 above is not infringed if acceptance of the benefit cannot reasonably be regarded as likely to give rise to a Conflict.
- 12.4 In paragraph 12.1.2 above, "third party" means a person other than:
- 12.4.1 the Trust, or
 - 12.4.2 a person acting on its behalf.

- 12.5 If a Director of the Trust has in any way a direct or indirect interest in a proposed transaction or arrangement with the Trust, the Director must declare the nature and extent of that interest to the other Directors.
- 12.6 If a declaration under this paragraph proves to be, or becomes, inaccurate, incomplete, a further declaration must be made.
- 12.7 Any declaration required by this paragraph must be made before the Trust enters into the transaction or arrangement.
- 12.8 This paragraph does not require a declaration of an interest of which the Director is not aware or where the Director is not aware of the transaction or arrangement in question.
- 12.9 A Director need not declare an interest –
- 12.9.1 if the interest cannot reasonably be regarded as likely to give rise to a Conflict;
 - 12.9.2 if, or to the extent that, the Directors are already aware of the interest;
 - 12.9.3 if, or to the extent that, it concerns terms of the Director's appointment the have been or are to be considered:
 - 12.9.3.1 by a meeting of the Board of Directors, or
 - 12.9.3.2 by a committee of the Directors appointed for the purpose under the Constitution.
- 12.10 A matter shall have been authorised for the purposes of paragraph 12.2.2 above if:
- 12.10.1 the Directors, in accordance with the requirements set out in this paragraph 12.10, authorise any matter or situation proposed to them by any Director which would, if not authorised, involve a Director (an "Interested Director") breaching his duty under paragraph 12.2.1 above to avoid Conflicts:

- 12.10.1.1 the matter in question shall have been proposed by any Director for consideration in the same way that any other matter may be proposed to the Directors under the provisions of this Constitution;
- 12.10.1.2 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
- 12.10.1.3 the matter was agreed to without the Interested Director voting or would have been agreed to if the Interested Director's and any other Interested Director's vote had not been counted.
- 12.10.2 Any authorisation of a Conflict under this paragraph 26.10 may (whether at the time of giving the authorisation or subsequently):
 - 12.10.2.1 extend to any actual or potential conflict of interest which may reasonably be expected to arise out of the Conflict so authorised;
 - 12.10.2.2 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;
 - 12.10.2.3 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;
 - 12.10.2.4 impose upon the Interested Director such other terms for the purposes of dealing with the Conflict as the Directors think fit;
 - 12.10.2.5 provide that, where the Interested Director obtains, or has obtained (through his involvement in the Conflict and otherwise than through his position as a Director of the Trust) information that is confidential to a third party, he 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

- 12.10.2.6 permit the Interested Director to absent himself 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.
- 12.11 Where the Directors authorise a Conflict, the Interested Director will be obliged to conduct himself in accordance with any terms imposed by the Directors in relation to the Conflict.
- 12.12 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.
- 12.13 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 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.

13 REGISTERS

- 13.1 The Trust is to have:
- 13.1.1 a register of Members showing, in respect of each Member, the constituency, and where applicable, class, to which he belongs;
 - 13.1.2 a register of members of the Membership Council;
 - 13.1.3 a register of members of the Board of Directors;
 - 13.1.4 a register of interests of the Governors; and
 - 13.1.5 a register of interests of the Directors and Associate Directors.
- 13.2 The Secretary shall be responsible for keeping the registers up to date from information received by him, 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.

13.3 The Trust is to send to Monitor a list of the persons who were first elected or appointed as:

13.3.1 the members of the Membership Council; and

13.3.2 the Board of Directors.

14 ADMISSION TO AND REMOVAL FROM THE REGISTERS

14.1 Register of Members

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

14.1.1 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 15 and 16 below.

14.1.2 Part two shall contain all the information from the application referred to in paragraphs 7.2.2, 7.3.2.2 and 7.4.1 above 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).

14.1.3 Notwithstanding the provisions of paragraphs 14.1.1 and 14.1.2 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.

14.2 Register of members of the Membership Council

The register of members of the Membership Council shall list:

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

14.3 Register of interests of the Governors

The register of interests of the Governors shall contain:

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

14.4 Register of members of the Board of Directors

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

- 14.4.1 the name of each Director;
- 14.4.2 their capacity on the Board of Directors; and
- 14.4.3 an address through which they may be contacted which may be the Secretary.

14.5 Register of interests of the Directors and Associate Directors

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

- 14.5.1 the name of each Director and Associate Director;

14.5.2 whether the Director/Associate Director has declared any interests;
and

14.5.3 if so, the interests declared in accordance with this Constitution and
the Standing Orders for the Board of Directors.

15 REGISTERS – INSPECTION AND COPIES

15.1 The Trust shall make the registers specified in paragraph 14 above available for inspection by members of the public, except in the circumstances set out in paragraph 15.2 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).

15.2 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.

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

15.3.1 they are, subject to paragraph 16.4 below, to be available for inspection free of charge at all reasonable times; and

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

16 PUBLIC DOCUMENTS

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

16.1.1 a copy of the Constitution;

16.1.2 a copy of the latest Annual Accounts and of any report of the Auditor on them; and

- 16.1.3 a copy of the latest Annual Report.
- 16.2 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:
 - 16.2.1 a copy of any order made under section 65D (appointment of trust special administrator), 65J (power to extend time), 65KC (action following Secretary of State's rejection of final report), 65L(trusts coming out of administration) or 65LA (trusts to be dissolved) of the 2006 Act.
 - 16.2.2 a copy of any report laid under section 65D (appointment of trust special administrator) of the 2006 Act.
 - 16.2.3 a copy of any information published under section 65D (appointment of trust special administrator) of the 2006 Act.
 - 16.2.4 a copy of any draft report published under section 65F (administrator's draft report) of the 2006 Act.
 - 16.2.5 a copy of any statement provided under section 65F(administrator's draft report) of the 2006 Act.
 - 16.2.6 a copy of any notice published under section 65F(administrator's draft report), 65G (consultation plan), 65H (consultation requirements), 65J (power to extend time), 65KA(Monitor's decision), 65KB (Secretary of State's response to Monitor's decision), 65KC (action following Secretary of State's rejection of final report) or 65KD (Secretary of State's response to re-submitted final report) of the 2006 Act.
 - 16.2.7 a copy of any statement published or provided under section 65G (consultation plan) of the 2006 Act.
 - 16.2.8 a copy of any final report published under section 65I (administrator's final report),

- 16.2.9 a copy of any statement published under section 65J (power to extend time) or 65KC (action following Secretary of State's rejection of final report) of the 2006 Act.
- 16.2.10 a copy of any information published under section 65M (replacement of trust special administrator) of the 2006 Act.
- 16.3 Any person who requests a copy of or extract from any of the above documents is to be provided with a copy.
- 16.4 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.

17 AUDITOR

- 17.1 The Trust is to have an Auditor and is to provide the Auditor with every facility and all information which he may reasonably require for the purposes of his functions under Schedule 10 of the 2006 Act.
- 17.2 A person may not be appointed as Auditor unless he (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.
- 17.3 Appointment of the Auditor by the Membership Council is covered in paragraph 8.19.1.3 above, and monitoring of the Auditor's functions by a committee of Non-Executive Directors is covered in paragraph 9.9.3 above.
- 17.4 An officer of the Audit Commission may be appointed as Auditor with the agreement of the Audit Commission. If such an appointment is made the Audit Commission shall charge fees for the services of the officer so appointed.
- 17.5 The Auditor is to carry out his 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.

18 ACCOUNTS

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

18.2 Monitor may, with the approval of the Secretary of State give directions to the Trust as to the content and form of its accounts.

18.3 The accounts are to be audited by the Auditor.

18.4 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.

18.5 In preparing its Annual Accounts, the Trust is to comply with any directions given by Monitor with the approval of the Treasury as to:

18.5.1 the methods and principles according to which the Annual Accounts are to be prepared; and

18.5.2 the information to be given in the Annual Accounts.

18.6 The Trust must:

18.6.1 lay a copy of the Annual Accounts, and any report of the Auditor on them, before Parliament; and

18.6.2 once it has done so, send copies of those documents to Monitor.

19 ANNUAL REPORTS, ANNUAL PLANS AND NON-NHS WORK

19.1 The Trust is to prepare Annual Reports and send them to Monitor.

19.2 The Annual Reports are to give:

19.2.1 information on 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; and

19.2.2 any other information Monitor requires.

19.3 The Trust is to comply with any decision Monitor makes as to:

19.3.1 the form of the reports;

19.3.2 when the reports are to be sent to it;

19.3.3 the periods to which the reports are to relate.

19.4 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.

19.5 Each Annual Plan must include information about:

19.5.1 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

19.5.2 the income it expects to receive from doing so.

19.6 Where an Annual Plan contains a proposal that the Trust carry on an activity mentioned in sub paragraph 19.5.1 the Membership Council must:

19.6.1 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

19.6.2 notify the Directors of the Trust of its determination

19.7 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.

20 PRESENTATION OF THE ANNUAL ACCOUNTS AND REPORTS TO THE GOVERNORS AND MEMBERS

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

20.1.1 the Annual Accounts;

20.1.2 any report of the Auditor on them; and

20.1.3 the Annual Report.

20.2 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.

20.3 The Trust may combine a meeting of the Membership Council convened for the purposes of paragraph 20.1 with the Annual General Meeting.

21 INDEMNITY

21.1 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.

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

21.3 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.

21.4 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.

22 INSTRUMENTS ETC.

22.1 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.

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

23 DISPUTE RESOLUTION PROCEDURES

Membership Disputes

23.1 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 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

23.2 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 may appeal in writing within 28 days of the Chairman's decision to the Board of Directors whose decision shall be final.

23.3 In the event of a dispute being referred to the Chairman under paragraph 8.14.6 above and a determination being made in accordance with the procedure set out in

paragraph 23.2 above, if the Governor in question is aggrieved at the decision of the Board of Directors he may apply in writing within 7 days to the Board of Directors for the decision to be referred to an independent assessor. The independent assessor will then consider the evidence and conclude whether the proposed removal is reasonable or otherwise.

- 23.4 On receipt of an application under paragraph 23.3 above, the Board of Directors and the applicant Governor will co-operate in good faith to agree on the appointment of the independent assessor. If the parties fail to agree on an independent assessor within 28 days of the date upon which the application is received by the Board of Directors, the independent assessor will be nominated by the Centre for Dispute Resolution. The independent assessor's decision will be binding and conclusive on the parties.

Disputes between the Membership Council and the Board of Directors

- 23.5 In the event of dispute between the Membership Council and the Board of Directors:

23.5.1 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;

23.5.2 If the Chairman is unable to resolve the dispute, he 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

23.5.3 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 considers appropriate.

24 AMENDMENT OF THE CONSTITUTION

- 24.1 The Trust may make amendment to this Constitution only if:

- 24.1.1 more than half of the members of the Membership Council present and voting at a meeting of the Membership Council approve the amendments, and
- 24.1.2 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.
- 24.2 Amendments made under paragraph 24.1 take effect as soon as the conditions in paragraph 24.1 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.
- 24.3 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):
 - 24.3.1 At least one member of the Membership Council must attend the next Annual General Meeting and present the amendment, and
 - 24.3.2 The Trust must give the Members an opportunity to vote on whether they approve the amendment.
- 24.4 If more than half of the Members present and voting at the Annual General Meeting approve the amendment, the amendment continue to have effect; otherwise, it ceases to have effect and the Trust must take such steps as are necessary as a result.
- 24.5 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.

25 NOTICES

- 25.1 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.
- 25.2 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.
- 25.3 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 25.1 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.

26 Mergers etc. and Significant Transactions

- 26.1 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.
- 26.2 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 AREA OF THE TRUST

The Area of the Trust comprises the local government areas specified in each of the seven constituencies set out below:

Constituency	Area	Minimum number of Members	Number of Governors
North Central London	London Boroughs of Barnet, Camden, Islington, Haringey, Enfield	25	2
North East London and Essex	London Boroughs of Barking & Dagenham, Waltham Forest, Hackney, Havering, Newham, Redbridge, Tower Hamlets; City of London The County council of Essex; the borough councils of Southend-on-Sea, and Thurrock	25	2
North West London	London Boroughs of Brent, Ealing, Hammersmith & Fulham, Harrow, Hillingdon, Hounslow; Royal Borough of Kensington & Chelsea; City of Westminster	25	2

Constituency	Area	Minimum number of Members	Number of Governors
South East London	London Boroughs of Bexley, Bromley, Greenwich, Lambeth, Lewisham, Southwark	25	2
South West London	London Boroughs of Croydon, Richmond Upon Thames, Sutton, Merton; Royal Borough of Kingston Upon Thames; Wandsworth Borough Council	25	2
Bedfordshire & Hertfordshire	County councils of Bedfordshire and Hertfordshire; the borough of Luton	25	2

ANNEX 2 PRACTICE AND PROCEDURE FOR MEETINGS

In accordance with paragraphs 8.2.3.5 and 11.1 of the Constitution, the Membership Council and the Board of Directors must adopt standing orders for the regulation of their procedure in accordance with the minimum terms set out in this Annex 2 ("Standing Orders for the Membership Council").

Part 1 Membership Council

The Standing Orders for the Membership Council must provide for

- 1** A minimum notice period for meetings and the agenda and supporting papers of not less than 5 Clear Days.
- 2** Provision for the conduct of meetings including:
 - 2.1 Notices of motion, petitions, the withdrawal of motions and motions to rescind resolutions.
 - 2.2 Voting, which may not provide for voting otherwise than on the basis of one vote for each Governor apart from the Chairman of the meeting.
 - 2.3 Provision for proxies who must be Governors in their own right.
 - 2.4 Chairing the meeting in the absence of the Chairman.
 - 2.5 Powers of the Chairman to determine the conduct of the meeting.
 - 2.6 Circumstances where persons other than Governors may be allowed to speak at meetings
 - 2.7 Quorum, which must provide for there to be a majority of Public Governors and Patient Governors at any meeting.
- 3** Provision for a record of attendance and the requirement for minutes of the meetings to be kept.

- 4 Provision for the approval of decisions without meetings where all Governors have been notified of the proposal and a majority of those eligible to vote have approved the resolution in writing within not less than 4 days.
- 5 Provision for the establishment of committees, sub-committees and working groups.
- 6 Provision for the delivery to the Secretary at or immediately before the commencement of the meeting of a declaration in the form below:

“To the Secretary of Moorfields Eye Hospital NHS Foundation Trust

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

Dated

Signed.....

Part 2 Board of Directors

The standing orders for the Board of Directors (the “Standing Orders for the Board of Directors”) must provide for:

- 1** A minimum notice period for meetings and the agenda and supporting papers of not less than 5 Clear Days, save with the consent of a majority of those entitled to be present and actually present at the meeting.
- 2** Provision for the conduct of meetings including:
 - 2.1 Notices of motion, petitions, the withdrawal of motions and motions to rescind resolutions.
 - 2.2 Voting, which may not provide for voting otherwise than on the basis of one vote for each Director apart from the Chairman of the meeting.
 - 2.3 Provision for proxies.
 - 2.4 Chairing the meeting in the absence of the Chairman.
 - 2.5 Powers of the Chairman to determine the conduct of the meeting.
 - 2.6 Circumstances where persons other than Directors may be allowed to speak at meetings.
 - 2.7 Quorum.
- 3** Provision for a record of attendance and the requirement for minutes of the meetings to be kept.
- 4** Provision for the approval of decisions without meetings.
- 5** Provision for meetings to be held using telephone or electronic means.
- 6** Provision for the establishment of committees, sub-committees and working groups which must include:

- 6.1 An Audit Committee comprising Non-Executive Directors;
 - 6.2 A remuneration committee, comprising the Chief Executive and Non-Executive Directors;
 - 6.3 A Nominations Committee for Executive Directors;
 - 6.4 A Nominations Committee for Non-Executive Directors; and
 - 6.5 Such other committees as the Board of Directors may determine from time to time.
- 7** Provision requiring the declarations of interests and providing for the conduct of Directors when an interest is material.
 - 8** Provision requiring the adherence to the NHS standard for Business conduct as published from time to time.
 - 9** Provisions governing the procurement of works, goods and services, and tendering and contracting procedures.
 - 10** Provision regarding the use of the seal of the Trust and the execution of documents.

ANNEX 3: ELECTION PROCEDURES

11 Additional Provision for Elected Governors

2.1 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.

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

11.3 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.

11.4 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).

12 Declarations

12.1 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."

12.2 The specified form of declaration referred to at paragraph 8.10.5 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.

ANNEX 4 MODEL RULES FOR ELECTION

Model Rules for Elections to the Board of Governors¹

Part 1 – Interpretation

1. Interpretation

Part 2 – Timetable for election

2. Timetable
3. Computation of time

Part 3 – Returning officer

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

Part 4 - Stages Common to Contested and Uncontested Elections

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

¹ References in this Annex 4 to "Board of Governors" shall bear the same meaning as "Membership Council" in the Constitution.

18. Method of election

Part 5 – Contested elections

19. Poll to be taken by ballot

20. The ballot paper

21. The declaration of identity

Action to be taken before the poll

22. List of eligible voters

23. Notice of poll

24. Issue of voting documents

25. Ballot paper envelope and covering envelope

The poll

26. Eligibility to vote

27. Voting by persons who require assistance

28. Spoilt ballot papers

29. Lost ballot papers

30. Issue of replacement ballot paper

31. Declaration of identity for replacement ballot papers

Procedure for receipt of envelopes

32. Receipt of voting documents

33. Validity of ballot paper

34. Declaration of identity but no ballot paper

35. Sealing of packets

Part 6 - Counting the votes

STV36. Interpretation of Part 6

37. Arrangements for counting of the votes

38. The count

STV39. Rejected ballot papers

- FPP39. Rejected ballot papers
- STV40. First stage
- STV41. The quota
- STV42. Transfer of votes
- STV43. Supplementary provisions on transfer
- STV44. Exclusion of candidates
- STV45. Filling of last vacancies
- STV46. Order of election of candidates
- FPP46. Equality of votes

Part 7 – Final proceedings in contested and uncontested elections

- FPP47. Declaration of result for contested elections
- STV47. Declaration of result for contested elections
- 48. Declaration of result for uncontested elections

Part 8 – Disposal of documents

- 49. Sealing up of documents relating to the poll
- 50. Delivery of documents
- 51. Forwarding of documents received after close of the poll
- 52. Retention and public inspection of documents
- 53. Application for inspection of certain documents relating to election

Part 9 – Death of a candidate during a contested election

- FPP54. Countermand or abandonment of poll on death of candidate
- STV54. Countermand or abandonment of poll on death of candidate

Part 10 – Election expenses and publicity

Expenses

- 55. Expenses incurred by candidates
- 56. Expenses incurred by other persons
- 57. Personal, travelling, and administrative expenses

Publicity

- 58. Publicity about election by the corporation
- 59. Information about candidates for inclusion with voting documents
- 60. Meaning of “for the purposes of an election”

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

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.

Proceeding	Time
Publication of notice of election	Not later than the fortieth day before the day of the close of the poll.
Final day for delivery of nomination 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.

Proceeding	Time
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) for a member of the public or patient constituency, of the particulars of his or her qualification to vote as a member of that constituency, or class within that constituency, for which the election is being held.

13. Signature of candidate – 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.

The poll

26. 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.

27. 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.

28. 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.

29. 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.

30. 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.

31. 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

32. 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.

33. 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.

34. 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.

35. 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) A ballot paper on which a vote is marked –

(a) elsewhere than in the proper place,

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

(c) by more than one mark,

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

(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

(d) compare—

(i) the total number of votes then recorded for all of the candidates, together with the total number of non-transferable votes, with

(ii) the recorded total of valid first preference votes.

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

(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 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) 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 spoilt 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) persons,

(b) time,

(c) place and mode of inspection,

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

(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

(b) proceed with the counting of the votes as if that candidate had been excluded from the count so that –

(i) 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.

